AMERICAN STEAMBOAT GOTHIC:
DISRUPTIVE COMMERCE AND SLAVERY’S LIQUIDATION, 1832-1865

Matthew Adams Axtell

A DISSERTATION
PRESENTED TO THE FACULTY
OF PRINCETON UNIVERSITY
IN CANDIDACY FOR THE DEGREE
OF DOCTOR OF PHILOSOPHY

RECOMMENDED FOR ACCEPTANCE
BY THE DEPARTMENT OF HISTORY
Adviser: Hendrik Hartog

April 2016
ABSTRACT

In the three decades before the Civil War, during the height of America’s fabled steamboat era, marginalized classes of people alongside the nation’s inland waterways began to erode discriminatory norms of economic and political citizenship through the formal structures of everyday commercial law. Within the riverfront economy of the Ohio River Valley, disruptive concepts about property and contract, initially designed to expedite the exchange of goods on Nineteenth-Century levees during a phase of rapid economic expansion, quickly spread beyond their initial bounds in waterfront law offices, creating subversive conceptual spaces for social change to occur from below, and sometimes across the color line. Rather than threatening individual liberty or slowing economic activity, routine transfers of rivergoing property on western waterfronts during the ages of Jackson and Abraham Lincoln, even when involuntary, occasionally empowered private actors in a way that upset social hierarchies between buyers and sellers, banks and laborers, masters and slaves. Always contested and often bloody, this egalitarian process was eventually backed by centralized government force by the time of the Civil War through the administrative apparatus of the U.S. Treasury Department, headed by Salmon P. Chase, a former steamboat lawyer and antislavery advocate from the Ohio River town of Cincinnati. During Chase’s turn as the Sixth Chief Justice of the United States in the early days of Reconstruction, this process was even given permanent constitutional form through the dual mechanisms of the Thirteenth and Fourteenth Amendments. Today, understanding the legal history of Salmon P. Chase’s lost world challenges a dominant narrative depicting everyday economic institutions like property and contract as largely functioning as the near-perfect weapons of the strong over the weak during the Nineteenth-Century American past. Indeed, it details a private law tradition of “equitable commerce” and inclusive property ownership that helped to catalyze a “long history of emancipation” predating Ft. Sumter and extending beyond Appomattox, informing and supplementing later public law understandings of “equal protection” that traced their hidden origins to the complex law and economics of America’s volatile riverboat era.
# Table of Contents

ii. Abstract

iv. Table of Contents

1. Introduction:
   River Ghosts and Prophecies

36. Chapter 1: The Paragons of Property

98. Chapter 2: The Unterrified Democracy

168. Chapter 3: The Freedom Trade

233. Chapter 4: The Ocean of Topsy-Turveyism

302. Chapter 5: The Fabled Styx

393. Conclusion:
   Spite Songs and Bounty Claims

411. Bibliography

438. Acknowledgments
Introduction:
River Ghosts and Prophecies

The following is a little-told story about how, in the three decades before the Civil War, during the height of America’s fabled steamboat era, marginalized classes of people in a particular place and time began to erode discriminatory norms of economic and political citizenship through the formal structures of everyday commercial law. Within the riverfront economy of the Ohio River Valley, disruptive concepts about property and contract, initially designed to expedite the exchange of goods on nineteenth-century levees during a period of rapid economic expansion, quickly spread beyond their initial bounds in waterfront law offices, creating subversive spaces for social change to occur from below. Indeed, rather than threatening individual liberty or slowing economic activity, routine transfers of riverboat property on western waterfronts during the ages of Jackson and Lincoln, even when involuntary, sometimes empowered private actors in a way that upset social hierarchies between buyers and sellers, banks and laborers, masters and slaves. Always contested and often bloody, this egalitarian process was eventually backed by centralized government force by the time of the Civil War. During the early days of Reconstruction, it was even given permanent constitutional form through the dual mechanisms of the Thirteenth and Fourteenth Amendments.

On June 19, 1865, during the closing stages of this story, the steamboat W.R. Carter, a Louisville-built steamboat traveling upstream from New Orleans, arrived at the confluence of the Mississippi and Ohio Rivers at Cairo Illinois carrying one of its key protagonists. Sometime around dawn, unnamed deckhands affixed the craft to Cairo’s wharf and Salmon P. Chase of Cincinnati, the new Chief Justice of the United States, stepped into town. As recorded into his diary, Chase’s Cairo visit lasted less than an hour, just long enough to kill time while the Carter refueled. After rebuffing an agent for the Illinois Central Railroad Co. who tried to convince him
to switch his mode of returning home, Chase was back onboard the *Carter* and steaming up the Ohio River by 9 a.m. The Chief Justice was in the closing stages of a “Southern tour” of former rebel territory before the start of the Supreme Court’s 1865 October Term. It was a transcontinental journey that Chase was determined to undertake completely by water: by ocean-going ship from the Potomac River to the Gulf of Mexico, then by steamboat up the Mississippi to the Ohio River. Until he reached Cincinnati, his former hometown, Chase’s river journey would not end.¹

Chase was wise to make his Cairo visit brief. Many locals had long suspected that the town, situated on a frequently-inundated isthmus between the shifting alluvial braids of these two waterways, was a deeply cursed place. There was, for instance, the attempt by a state-chartered private entity, the Cairo City and Canal Co., to settle Cairo in the mid-1830s, a commercial venture that had collapsed by 1840. When one of the town’s foreign investors, the English newspaper editor Charles Dickens, visited Cairo in 1842, his *American Notes* damned the near-abandoned village to hell. It was, Dickens claimed, “a dismal swamp, on which the half-built houses rot away.” The one business that was still operating was a barge moored to the Cairo wharf, a vessel “whose starting timbers scarcely held together.” By the 1850s, one local riverboat captain named J.S. Hacker later recalled, most of the town’s permanent residents lived in similar vessels at the water’s edge, operating store boats and boarding houses peddling liquor, coal-oil, and timber to steamboat passers-by. “At that time,” recalled another steamboat lifer, “Cairo was crowded with the toughest element I ever saw, and could hold her own as the wickedest city in the world.” It was unsafe to cross the levee at night alone. “We had to go in

gangs,” this riverman reminisced. Simply arriving at Cairo, the river junction that Huck and Jim’s fictional raft barely missed in 1844, put one’s private fortunes, and more importantly one’s life, at risk.  

Temporarily benefiting from its status as a wartime shipping depot, Cairo apparently presented a different picture during Chase’s hour-long visit in 1865. Indeed, the Chief Justice recorded in his diary that he was “much impressed” by the town, singling out the existence of a fine new banking institution near the town’s wharf for special kudos. But problems lingered. Down on the levee, competing parties were claiming the exclusive right to collect fees from vessels like the *Carter* as they landed at the foot of the town. When initially imposed by the remnants of the Canal Co. in 1843, Cairo river captain J.S. Hacker later recalled, such fees were “of little effect,” as they “sought to levy tribute for the use of the river bank, which was regarded as the property of the people.” By 1854, however, the canal company’s corporate successors were eager to profit from languishing parcels of Cairo waterfront land. Through a new entity styled as “The Cairo City Property,” they had started to take more aggressive steps to assert their ownership rights, pressuring some of the coffee houses, shantyboats, floating hotels, and storeboats on the riverfront to pay exorbitant fees or to leave. A few years later, with the value of the town’s wharf near its height, the municipality of Cairo responded by hiring its own “wharf-master” to collect a competing set of tolls. And by the 1860s, their dispute landed in court, eventually decided in the City Property Company’s favor. “The absolute rights of persons in the use of the stream for the purposes of navigation,” the Supreme Court of Illinois held in

1868, did not extend to “appropriation of soil on its banks.” As the rightful owners of the land adjacent to the city’s wharf, the City Property Company also held an “established and recognized right of property” in the riverbank itself. With this came an incidental private right to charge a fee for accessing the shantyboat-free waterfront they were trying to put in place.³

The episode left its mark on the town’s psyche. Well into the twentieth-century, locals still feared that the City Property Company’s river clearances had left the town haunted by some of the business proprietors that had been swept away in the 1850s and 1860s. Chief among them was the ghost of Joseph Spencer, the proprietor of the *Patrick Henry*, a composite wharfboat saloon, hotel, and reputed gambling den that lay at the foot of the levee during the 1850s. Joe Spencer, several Kentucky and Ohio newspapers reported, was “a free negro, well known in th[e] city,” a man sometimes alleged to have had “some white blood in him,” who had proven to be “a sharp fellow in every game.” His riverboat hotel, the Evansville *Daily Journal* added, was known throughout the region for its excellent dinners, “snow white sheets,” and “neatest little rooms imaginable.” By the early 1850s Spencer had allegedly amassed what one white Illinois lawyer called a “little fortune,” deposited mostly in Louisville and St. Louis banks. Coupled with the fact he was “generally acknowledged to be ‘smarter’ than many among the whites,” Spencer’s wealth made him very offensive to some people on Cairo’s shore, including a group of white carpenters from St. Louis hired to build a new hotel on City Property land. On November 27, 1854, with the river at its low water point, this group descended on the *Patrick Henry* and demanded that Spencer leave town. When Spencer refused, supposedly vowing that “the property was his and he would stick to it ‘til he died,” the crowd unmoored Spencer’s boat and

set it aflame. With his boat on fire, Spencer appeared on the deck of the *Henry* for a split second with a gun in his hand, something heavy tied around his neck, and angry words on his lips. He then leapt into the middle of the Ohio River, and was never seen again.  

Shortly after Joseph Spencer’s apparent death, a small notice ran in the local *Cairo City Times* with the following summary: “Jo. Spencer, a Negro, was drowned in the river on last Monday.” Upstream newspapers preferred to repeat the more colorful blow-by-blow account of Spencer’s demise given by Charles W. Batchelor, a white steamboat captain who had witnessed the entire event. A Louisville publication, for instance, labeled it the “Cairo Tragedy.” According to Batchelor, the incident that eventually triggered Spencer’s death came earlier the same day when a white Cairo man who had sold something of value to Spencer, a shipment of pork or an excess flatboat, brought a lawsuit against Spencer for a bill that had allegedly gone unpaid. Rather than paying this white man’s demand, Spencer challenged his claim, supposedly carrying a powderkeg into open court and threatening to blow “the entire party to h—ll” if he was not released from the demand. Accounts differed as to whether this form of advocacy persuaded the judge, but it was an agreed fact that no verdict was ever enforced against Spencer, except by extralegal means. For the Pittsburgh-based Batchelor, Spencer’s courtroom defiance helped to make him “one of the gamest men who ever came within my notice.” Here was a man of color defending his own private set of property claims within a legal system otherwise designed with only the business needs of the white-run Cairo City Property Company in mind. A Kentucky man paid similar respects, applauding what he saw when Spencer refused to let

---

others dictate where he moored his boat. “I hardly met a negro of more sport,” the Kentuckian
wrote to his slaveholding kin, “or a more cowardly set of white men.”

Over the years, the legend of Joe Spencer grew. “For a long time,” one witness later
recalled, “it was supposed that Cairo was haunted by the ghost of Joe Spencer.” Whenever a
fire occurred in town, for instance, it would initially be “attributed to the incendiary influences of
[Spencer’s] ghostship.” Writing in 1863, however, this particular eye-witness claimed that
Spencer’s spectral influence had recently waned. After all, most of the Mississippi Valley and
the entire Ohio River were now under Union control, which supposedly meant that “[t]here is no
danger of a negro being lynched in Cairo now.” Following the Civil War, participation in the
events that led to Spencer’s death would for a time even become a blemish on any white man’s
resume, something that they would have to deny or argue away. Thus, by the time the W.R.
Carter landed in the town, temporarily occupying similar river-space as the Patrick Henry, it was
possible that Salmon P. Chase never heard about this earlier vessel or its phantom black owner.
And even if Chase heard about Spencer’s death, it was possible that he was also informed that
Spencer’s ghost was now on friendly terms with Cairo’s white residents in the Land of Lincoln,
circa 1865.

For Chase, the fact that a petty capitalist “negro boatman” had entered a local courtroom
in Cairo in 1854 and demanded that equal justice be done on his behalf would not have been
particularly shocking. From the 1830s through the 1860s, from his time as a young lawyer in

5 See “Obituaries,” Cairo City Times, Nov. 29, 1854 (“drowned in the river”); Charles Batchelor, “The
Cairo Tragedy,” Louisville Daily Courier, Dec. 2, 1854; Batchelor, Incidents in My Life: With a Family
Genealogy (Pittsburgh: Eichbaum, 1887), 68-70 (“gamest men”); Letter from Horace Brand to Henry
Duncan, December 15, 1854, Box 1, Duncan Family Papers, University of Kentucky Special Collections,
Lexington, Ky.

6 See Willett, “A Western Tragedy,” Cleveland Plain Dealer, Nov. 19, 1863 (“ghostship”); “Testimony in
the Case of Leftwich v. Smith, Eighth Congressional District of Tennessee,” House Misc. Doc 143, 41st
Cong., 2d sess., pp. 151-152 (June 1, 1870) (Spencer connection during Reconstruction-era dispute).
Cincinnati to his service as the Secretary of Treasury within Lincoln’s cabinet, Chase had met other people in Spencer’s position, African-American workers and entrepreneurs seeking to bend existing legal institutions to their advantage. One of them was Robert Smalls, an African-American levee hand from South Carolina. Alongside a white abolitionist minister named Mansfield French, Smalls had visited Chase’s Treasury Department office in 1862, ostensibly with the purpose of enlisting Chase’s support in pressuring the Lincoln administration to accept the enlistment of black troops. The best way to make this case, Rev. French had found, was to introduce Smalls and to let him take the stand. Like Joe Spencer, the pivotal event in Smalls’ life took place on the water. Born into slavery in 1839, he had been hired out to a string of waterfront businesses in Charleston, South Carolina, where from age twelve he earned wages (sent back to his master) as a sail rigger and stevedore on the city’s wharf. By 1861, he later told a group of federal interviewers, he was “not a regular pilot for Charleston harbor, although [he] kn[ew] the water very thoroughly.” This was because in South Carolina, and indeed throughout most of the nation at the time, “a colored man was not allowed to be a pilot.” Nevertheless, on the morning of May 13, 1862, a Confederate lieutenant in South Carolina reported that the Planter, a vessel that Smalls had recently been working upon, had gone missing. By the time the Planter reappeared on the Union side of the Charleston blockade, U.S. Navy documents recorded the vessel as being “wholly manned by negroes,” and being steered by Robert Smalls.  

---

7 See Letter from Mansfield French to George Whipple, Aug. 28, 1862, American Missionary Association Manuscript Collection, Amistad Research Center, Tulane University, New Orleans, La. (documenting the Chase-Smalls meeting); “Testimony of Robert Smalls,” Freedmen Inquiry Commission, Testimony Taken in the Department of the South, File No. 3(1) (Nov. and Dec. 1863), pp. 81-82, 1863 O-328 (pt) – 333, Roll 200, M619, Letters Received by the Office of the Adjutant General, NARA, Washington, D.C. ("knew the waterway").  
8 See Official records of the Union and Confederate Navies in the War of the Rebellion: Series I - Volume I2: (Washington: GPO, 1901), 807-825.
Having heard about a recent U.S. Army order that any “contraband” human property found within Union lines in South Carolina would be considered free, Smalls and seven other slave crewmen had brought the Planter out of Charleston’s harbor while its white officers were still on shore. After reaching Union lines they surrendered the vessel – including “the arms, munition, tackle, and other property on board of her” - to the U.S. Navy under standard military procedures as a “prize of war.” Within days, Smalls related to Chase, the Planter was appraised and sold to the U.S. Government pursuant to an onshore “adjudication” under federal admiralty law. Then, in accordance with a special act of Congress, half of the proceeds of this sale were turned over to Smalls and its black crew, a group that now considered itself free. Explaining later that the only way he expected to seize and retain his freedom was “to fight for it” through these means, Smalls stayed on as the Planter’s civilian pilot, and was eventually promoted over lesser-skilled whites to serve as its captain. Within a few years, he had earned enough to purchase the home of his former master, and had launched a political career.  

According to a letter written by Rev. French, an enthralled Secretary Chase listened to the entirety of Robert Smalls’ account for “nearly an hour.” After hearing a similar version of the story, Edwin Stanton, Lincoln’s Secretary of War and a former Pittsburgh-based steamboat lawyer himself, drew the most obvious conclusion: free and quasi-free African-Americans could aid the Union war effort. Chase drew a subtler lesson. A few years later, Chase cited Smalls as an example of the black “laborers” that he had come to know over the years, former human

---

chattels who were more than prepared to draw upon existing legal institutions in unexpected ways to claim their own labor-time as a matter of law.\(^\text{10}\)

On May 13, 1865, one month before arriving in Cairo, Chase joined Smalls again, this time on the deck of the *Planter* during the opening stages of Chase’s “Southern Tour.” Starting on the Atlantic coast, Chase had informed Edwin Stanton, his plan was to travel by sea to New Orleans, then “go up the river to Cincinnati, touching at as many points as I can.” While passing through South Carolina in mid-May, Smalls had ferried Chase and his retinue from Beaufort, on South Carolina’s Port Royal Island, to Hilton Head. The ostensible purpose of Chase’s visit was for the new Chief Justice to become acquainted with the Southern portions of the judicial circuit he had inherited from his predecessor, Roger B. Taney, and to identify the best method for reorganizing the federal court system in the vanquished South on a more general basis.\(^\text{11}\) But as he boarded the *Planter*, one-third of the way into his two month odyssey, it was also possible for Chase to view this trip as a victory tour.

Port Royal, for instance, had been one of the first sites for a famous set of “experiments” undertaken by Chase’s Treasury Department during the war. There, pursuant to federal regulations that Chase helped to write, the proceeds of “forfeited” and “abandoned” cotton were being converted, through a streamlined process modeled upon the transfer of vessels like the *Planter*, into black property claims for worker-owned land. As a result, reported Whitelaw Reid,


a Cincinnati-based journalist traveling with Chase, Port Royal was currently occupied by “over 100,000 negroes,” many of whom appeared to be “absolutely self-sustaining,” having “bought the titles to their little farms – or ‘plantations’ as they ambitiously style them.” As of mid-1865, men that Chase had appointed while he was the Treasury Secretary were extending this process throughout the Mississippi River Valley, traveling by steamboat from a headquarters in Cincinnati all the way downstream to New Orleans.12

Between 1862 and 1864, the crux of Chase’s Treasury Department plan for Reconstruction had been to use new nationwide regulatory authorities to democratize private trade on an interracial basis throughout the entirety of the United States. Once this system was made permanent with government force, he told a mass meeting of freedpeople before boarding the Planter in 1865, former slaves would possess the tools to “take care of themselves.” At the time, his audience agreed. He was received, Whitelaw Reid noted in his diary, “with three cheers that made the Spanish moss sag.” One day before visiting Port Royal, Chase had preached a similar message to an “immense audience” of freedpeople at Charleston’s Zion Church. “Labor,” the Chief Justice instructed in the hometown of Robert Smalls, “must be the cardinal law of your lives.” “Work honestly for honest wages,” he counseled, until you “can afford to hire labor yourself.” Here he added that he spoke from a personal place, likening his biography to theirs. “I know the heart of the working-man,” he insisted, “for I have known his experiences.” Indeed, the beginning of Chase’s professional life paralleled part of the lesser-privileged life of Robert Smalls. In 1819, as a white orphan at the age of nine, Chase had briefly

worked for tips as a ferryboy at the edge of Lake Erie in Cleveland before heading further south. Standing before his audience in Charleston, he still claimed membership in America’s white working class, a community that he claimed had once “fared as hard and labored as hard” as people like Robert Smalls now did. “All we had to go upon – all the capital we had – were our good wills to work, patient endurance, and fair opportunity for education.” Thanks to their work in defeating the Union’s enemies, the South’s African-American population was finally in the same position, primed “to work on the same capital and to come to something also, if you will.”

As the historian Walter Johnson argues, such prophetic visions of “solidarity between working-whites and blacks” may have been more of a “fleeting apparition” than a realized historical legacy within America’s racist past, even from the standpoint of 1865. Conferring with Chase off the Carolina coast shortly after Chase’s Zion Church speech, for instance, U.S. Army General William Tecumseh Sherman was convinced that if the Chief Justice’s ideas were put into effect, they would more realistically cause a general race war. To this, Chase demurred. “I have always been thought a radical in principle and never have disclaimed the name, but I have tried to be conservative in working; and have generally got along without breaking things.” He had always believed, he told the Zion Church crowd in Charleston, that a day of general emancipation could come without relatively peacefully when governmental institutions made it possible for “all loyal citizens,” white and black, to participate equally in America’s political and commercial life. Now, following the war, Chase maintained that some Southern whites were

13 See Charleston Courier, “Large Meeting at Zion Church,” May 13, 1865, Reel 219, and Diary Entry for May 16, 1865, Diary Reel, Whitelaw Reid Papers, LC; Reid, After the War: A Southern Tour, 108, 581-586; (accounts of Chase’s speech).

prepared to agree with his long-held view. In a letter to President Johnson, Chase admitted that his prophecy of government-backed racial reconciliation made him a “progressive,” or what he also called a “man of the future.” Such people, he observed, realized that “Slavery is stone dead & are not sorry.” They also supported African-American citizenship and suffrage, and had long “made up their minds to conform to the new condition & to lead in it.” Presently limited in number, their ranks would swell as they, alongside their African-American allies, continued to infiltrate the U.S. economy, to influence law and policy, and to transform the nation’s legal order. “In the end,” the Chief Justice predicted, “they will control.”

One month after his Zion Church speech, the Chief Justice had long since parted ways with Robert Smalls. By June 13, 1865, Chase and his retinue were ascending the Mississippi River aboard the W.R. Carter, a vessel they had alighted in New Orleans, making their way to Cairo and then Chase’s former Cincinnati home. By mid-day Chase was visiting “Fashion,” a 1,700 acre sugar cane plantation once owned by Richard Taylor, the Louisville-born son of former U.S. President Zachary Taylor, an agricultural site formerly worked by over two hundred African-American slaves. A few months after Joseph Spencer’s death in 1855, Taylor had co-written an angry letter to Chase accusing the then-U.S. Senator of “widening the breach through which the pent up waters… washing with the power of the Mississippi” were dividing the North from the South. Particularly egregious for Taylor was Chase’s representation of runaway slaves, a project which clearly intended to establish a “geographical line” where the property claims of Southern slaveholders would stop having any effect. Chase deflected such complaints with river imagery of his own. “The states of the Mississippi Valley,” he said in one pre-war speech, were

---

in fact constrained to unity not only by virtue of “the great river system” that connected them all, but also by “the common origin and general identity of their political institutions.” Their one difference, concerning the “condition of labor” within their shared watershed, was but a brief “obstruction” that would soon be swept away. Now, from the vantage point of Richard Taylor’s former Louisiana plantation, circa 1865, Chase’s river prophecy seemed to hold true. Confiscated by government agents, sold, and then leased to some of its formerly enslaved occupants, Taylor’s former estate was being “cultivated by negroes themselves.” In fact, Chase would go on to hold up the mode of collective ownership adopted on “Gen. Dick Taylor’s plantation” – “of leaving plantations taken possession... by the government to the negroes in association” – as the system that worked best along the mighty Mississippi as a whole.16

Witnessing the same scene at Fashion, the white Cincinnati newspaperman Whitelaw Reid was more circumspect. The workers on Taylor’s former plantation, he noted, were still “under the authority of the United States.” Each of them “wanted to be master,” leading to some delay in processing the site’s crops. Passing between Fashion and adjacent plantations, Reid found many freedpeople “ill paid,” “swindled,” or not paid at all. Other field hands, one government agent reported concurrently, were being employed by people that “hired their laborers in a spirit of opposition to them,” fixing them into one-sided contracts often drawn up by Union Army personnel. In some ways, Reid’s observations hearkened back to the regime of Richard Taylor himself, the previous owner of “Fashion.” Yale and Harvard-educated, Taylor had once been a very different type of “man of the future.” When Frederick Law Olmsted

---

visited his plantation in the 1850s, he found Taylor to be a man of “intelligence, study, and enterprise,” managing a plantation that featured a mansion and several “neat and well-made… negro houses,” yielding a 25% return on investment. While Taylor considered slavery a “great evil,” the former Kentuckian was also supposedly convinced that abolishing slavery would institute “greater evils still.” Staying in possession of his plantation, battling abolition, and encouraging his slaves to work even harder through small cash rewards were all policies that were in the ultimate self-interest of his labor force, he told Olmsted at the time. 17

By May 1865, Gen. Richard Taylor’s convictions had ultimately led to the confiscation of his estate. At the same time, his pre-war worldview lived on, like an angry ghost in its own right. Indeed, by the time the W.R. Carter rolled into Memphis in mid-June, it was Chase and his imagined “men of the future” that seemed to be on history’s losing side. In West Tennessee, entrepreneurial freedmen were now openly derided by whites as “saucy and rude,” supposedly “unable to take care of themselves.” In late June 1865, when the W.R. Carter steamed up the Ohio River past Paducah, Chase’s own diary noted “rebel soldiers and ladies” streaming onboard, singing Confederate songs. Soon, a paroled soldier from “Dick Taylor’s Army” was bending Chase’s ear, repeating General Sherman’s words about a race war if African-Americans were ever granted equal legal rights. Stopping in Louisville on June 21, Chase and his party were met with the piece de resistance: six months before the ratification of the Thirteenth Amendment, the nation’s Chief Justice was treated to a sumptuous meal at the city’s finest hotel,

served to him by slaves.¹⁸ Back in Washington, Gen. Richard Taylor rushed to meet with Johnson Administration officials as part of a Southern “peace delegation” before Chase’s return. In ending the war and securing the peace, Taylor whispered, the Union government had simply gone too far. For starters, all “private property” that had not been directly used in the Confederate war effort should be immediately returned to white possession rather than being transferred to black hands.¹⁹

**

When writing about the heady post-war days of the early Reconstruction era, historians sometimes allow the troubling images Chase confronted at the end of his river tour to frame the entirety of their discussion. As a result, it may be tempting to read Chase’s diary entries and speeches in the summer of 1865 as utopian paens to a world that never existed, and never came to pass. For some, what Chase was witnessing in late June 1865 – an apparent “re-enslavement” of the greater Mississippi River Valley two months after Appomattox – was the logical outcome of the government-backed, but market-driven, program of self-emancipation that the Chief Justice supported at the time. As a number of historians have recently noted, pre-war slaveholders such as Richard Taylor were deeply entrenched in the same commercial processes that Chase and expectant black capitalists like Joe Spencer seemed to be relying upon.²⁰ From this starting point, some historians may be apt to interpret Chase’s 1865 utterings as simply

¹⁸ See Reid Diary, “[1862]” Notebook, Reid Papers, LC; Reid, After the War, 298 (“saucy and rude”); Entry for June 19, 1865, Chase Diaries, 576 (“rebel ladies and soldiers”); Entry for June 21, 1865, Chase Diaries, 577; After the War, 294 (Chase’s Louisville visit)

¹⁹ See Richard Taylor, Destruction and Reconstruction: Personal Experiences of the Late War (New York: Appleton, 1879), 227.

restating a hollow version of “free labor ideology” that by the end of Reconstruction could be twisted into a justification for a quasi-bonded status for America’s laboring classes, white and black. Under the guise of private contracts enforced by federal judges nominally overseen by Chase himself, this critique asserts, the labor of ex-slaves never stopped being a commodity owned and traded by white people within a larger legal-commercial institutional framework designed to uphold the principles of white supremacy.21

Given the devastating images that can be summoned to illustrate this bitter critique, the legal history of U.S. emancipation is often considered to have very little to do with the contentious commercial deals and property claims that often governed the private lives of free people of color like Joseph Spencer and their slave counterparts before the Civil War. Instead, the story of slavery’s American end is generally narrated entirely in public law terms, as the direct result of a set of national government policies only theorized by a few white abolitionists prior to the rebellion, and only implemented during wartime. Starting with the shielding of “contrabands” behind Union lines in 1861 and the arming of African-American troops in 1862, these government initiatives are said to extend through the Emancipation Proclamation in 1863 and end with the ratification of the three Reconstruction Amendments between 1865 and 1870.22


In the words of historians James McPherson, Eric Foner, and the legal scholars Bruce Ackerman and Akhil Amar, these federal acts, taken together, launched a “second revolution” in the constitutional order of the United States, replacing a generally racist patchwork “state of courts of parties” operating on the local level with a strong, centrally-managed administrative legal apparatus protecting minority rights. Through this public law history of American emancipation, at least part of Salmon P. Chase’s program - the government-led Treasury Department portion of his agenda - is recovered. But then it is herded off to an even more final and stinging defeat. The dismantling of Abraham Lincoln’s wartime-era state during the presidency of Andrew Johnson, Eric Foner has argued, left much of America’s second revolution “unfinished.”

Until the government institutions created during Radical Reconstruction times were rebuilt a century later, slavery’s badges were generally revived on a local level through the laws of Jim Crow, apparently clearing the way for an entire population of people to be converted back into units of labor for the benefit of a wealthy few.

This public law narrative of emancipation has a long history of its own, beginning with people like the former owner of the “Fashion” plantation, Gen. Richard Taylor himself. Considered near the end of his life to be a leading expert of military history, Taylor published a memoir in 1879 portraying the end of slavery in the United States as a failed government welfare measure inflicting losses on North and South alike, white and black. For Taylor, the Civil War

---


did not end with the possibility of Southern working class empowerment through a
democratization of America’s liberal capitalist legal order. Instead, it concluded with the
Thirteenth Amendment, a misguided governmental “taking” of private property that denuded the
South of its “accumulated wealth.” Sympathetic to such eye-witness accounts from the post-
war South, the students of the historian William A. Dunning repeated this story well into the
twentieth-century, with only W.E.B. DuBois and a select number of Afro–Caribbean
intellectuals offering any notable dissent within the academy.

A century after Richard Taylor’s memoir, however, his public law story was eventually retold as a story of triumph by historians influenced by the racial politics of the Civil Rights era. With Lincoln its chief protagonist and the Thirteenth Amendment its natural stopping point, histories of emancipation were again largely restricted to the five years of the Civil War itself. Writing in this tradition, the historian James Oakes has recently defined his task as explaining how federal administrators devised ways to destroy slavery as a type of “property rights in man.” Here, the end of slavery can be depicted as a type of antiracist New Deal for the nineteenth-century, a grand regulatory action theorized largely by white politicians, and performed by white government officials. In this version of events, an increasingly powerful central state, a
“Yankee leviathan” in the words of political scientist Richard Bensel, tempered the excesses of a social order that once protected the “absolute property rights” of white capitalists to such a degree that ownership claims were at one time asserted over the bodies of other human beings.

---

25 Taylor, *Destruction and Reconstruction* (1879), 236. In contrast to Chase’s speeches in 1865, Taylor’s analysis was designed to pique the sensibilities of northern whites who were beginning to reconcile with their Southern white neighbors through a renewed commitment to white supremacy.

26 On the “Dunning School” and the DuBois exception, see Foner, *Reconstruction*, xvii-xxv.

When historians narrate the history of American emancipation in this way, likening it to a type of state-led battle against the institution of “chattel property” fought by largely by white government agents, problems sometimes creep in. Within the context of an antebellum world where, according to the public law historian William J. Novak, visions for a “well-regulated society” often coexisted “comfortably with slavery and patriarchy,”

and where common resources like Cairo’s wharf were nevertheless just as likely to remain in private rather than government hands, the public law narrative does not seem fully capable of explaining what made emancipation conceivable as a matter of national law for Lincoln’s generation, circa 1865. Moreover, with its emphasis on the abstract growth of state power during the war and Reconstruction, this narrative remains poorly-equipped to explain the market-oriented content that many government-backed emancipation policies eventually did take during the Civil War. In the first chapter of Freedom National, for instance, James Oakes notes that key members of America’s white antislavery vanguard (both Chase and the eventual authors of the Thirteenth Amendment) actually saw themselves as defenders of “property rights,” viewing slavery itself as “a form of theft in which the individual’s inalienable claim of ownership to his or herself was forcibly violated.” Elsewhere, however, Chase and his cohort are categorized rather incongruously as making “arguments against… property rights,” as if they were instead seeking to combat the concept of ownership itself. In opposing a national right to “property in man,” were white antislavery advocates like Chase fighting a more general battle against what the

---


Or was theirs a battle for more *inclusive* forms of property ownership, fought initially within the hegemonic discursive framework of the private law? In general, historians of government-backed emancipation efforts eschew questions such as these, avoiding a sustained inquiry into what extent Civil War-era government-led emancipation policies subtly subverted, rather than directly challenged, fundamental private law understandings about property and contract drawn from the antebellum age.

When Chase spoke to Charleston’s Zion Church in May 1865, it is unlikely that a similar set of uncertainties could be sensed in his voice, or that his audience shared historians’ later ambivalence about what the end of slavery meant to the institution of property ownership within the post-emancipation United States. A few weeks after the Mt. Zion meeting, the free-born African-American activist Martin R. Delany spoke to a similar audience of ex-slaves in South Carolina. Like Chase, he concluded that emancipated African-Americans had received their freedom – their self-ownership – as a type of arm’s length commercial transaction, as just compensation for their support of the Union cause and for their earlier labors as well. Just as the Chief Justice had argued, Delany (who had actually preceded Chase onstage at Mt. Zion in May) added that this achievement could only be secured by black ownership of the means of production within the mercantile South. “Get up a community and get all the lands you can,” Delany counseled. A “well driving class of cultivators,” they would easily “become a wealthy and powerful population” trading on their own account. Their history of emancipation was not

---


30 See “Memorandum of Extracts from Speech by Major Delaney, African, at the Brick Church, St. Helena Island, S.C., Sunday, July 23, 1865,” in *Freedom: A Documentary History of Emancipation,*
to be driven by “arguments against” property rights, or the outright “destruction” of owned sources of wealth. Instead, like the story of how Joseph Spencer amassed a small fortune in 1854, or how Robert Smalls came to own the Planter eight years later, it was about the transfer (by legalized force, if necessary) of existing white ownership interests over black labor-time into black hands as a way to acquire formal legal standing, on an equal basis, to a shared commercial world.

In 1865, it would not have been surprising to hear Martin R. Delany, a man now known as a “father of black nationalism,”\textsuperscript{31} striking the same notes as Salmon P. Chase, the new Chief Justice of the United States. Delany was from Pittsburgh; Chase was from Cincinnati. Both were emissaries from the same steamboat society, equally familiar with a fully commercialized understanding of property that often transferred supposedly exclusive shares of ownership in unexpected ways, sometimes over a powerful white man’s dissent. Thus, when black riverboat workers earning government wages in Delany’s Pittsburgh first heard of Robert Smalls in 1862, they were as thrilled as Salmon Chase, naming a nearly-complete fort they were already building

in Smalls’ honor. Coming from places that were tied to slave-owning jurisdictions a single river’s journey away, the working class residents of Delany’s Pittsburgh had long suspected that the potential existed within America’s existing legal order to undermine exclusionary arguments about property ownership in the United States. Starting from the formal equality assumed between trading partners on river water fronts, mixing this with the tiny deceptions and withholdings of information allowed in every market transaction, white and black people in their position had been identifying ways that fragmented property interests could be transferred to the river’s laboring class for a number of years.

What black workers were helping to write in Martin Delany’s Pittsburgh when they named “Ft. Robert Smalls” in 1862 was a “long history of emancipation” that started well before Ft. Sumter and extended beyond Appomattox. Through the work of historians like Ira Berlin and Steven Hahn, this is a history that some scholars are beginning to describe again. Rather than a history solely centered on Presidential policy or white-governed public institutions, this “long history” is framed more by the private actions of people of color like the expectant black capitalist, Joseph Spencer. And yet, the central process that this history seeks to explain – how ownership interests in labor-time were (or were not) transferred into working people’s hands – is something that also framed much of Salmon P. Chase’s own legal work way back in his practitioner’s days in Cincinnati, a process that Chase personally carried with him to Washington, D.C. as the head of Lincoln’s Treasury Department in 1861.


Today, analyzing the legal dimension of “the long emancipation” from the perspective of sites such as Salmon P. Chase’s antebellum law office in Cincinnati – zones of unintended, arms-length, cross-racial, inter-class legal exchange - produces interesting results. According to the legal historian Morton Horwitz, for instance, private legal institutions such as property and contract largely were reshaped prior to the Civil War “to the advantage of men of commerce and industry at the expense of farmers, workers, consumers, and other less powerful groups within… society.”34 Maybe, however, this was not always the case. As seen in Joseph Spencer’s courtroom insistence that he be given equal justice as a “man of commerce” in his own right, and in Chase’s sustained advocacy for similar clients in Spencer’s position, commercial law arguments could occasionally transcend otherwise hardened barriers of race and class in powerful ways during the antebellum era. Enmeshed as it was in the private law of the Ohio River waterfront, for example, Chase’s pre-war business law practice was not immune to the increasingly egalitarian and redistributive claims about property ownership that pervaded the democratic politics of the Age of Jackson.35 Neither were Chase’s policies as Treasury Secretary, or his later thinking as Chief Justice during the Reconstruction era. Indeed, by 1868, even as Chase’s former agents within the Treasury lost their jobs or changed course, the egalitarian legal understanding of private economic life they once stood for was made permanent within America’s new constitutional order through the concept of “equal protection of the laws,” incorporated into the text of Section One of the newly-ratified Fourteenth Amendment, drafted


by U.S. Sen. John Bingham, a Buckeye lawyer protégée of Chase from the small Ohio River
town of Cadiz.

**

It can be easy to miss the “long history” of private law pre-Civil War emancipation that
was informing Chase, Delany, and John Bingham as this latter man drafted the first section of the
Fourteenth Amendment. Unlike emancipation’s public law story, the history of government-
backed emancipation’s commercial law supplement must be found largely within private papers
documenting an economic world that no longer exists. Take, for instance, the steamboat, the
signature technological artifact that connected Martin Delany’s Pittsburgh with Gen. Richard
Taylor’s New Orleans. As a mode of human transport, the steamboat is extinct. For anyone that
has opened a U.S. history textbook, the story told by George Rogers Taylor in his The
Transportation Revolution from 1951 will suffice. From the 1820s to the 1840s, he wrote, the
steamboat may have demonstrated its “competitive superiority” over earlier means of carrying
goods and people. But by the 1850s, it was fighting a losing battle to railroads, a supposedly
“faster, more regular and dependable, and more flexible” way of getting around.³⁶ Citing
empirical data of comparative levels of freight actually transported, economic historians later
challenged Taylor’s story, with Robert W. Fogel arguing that the primacy of rail over water
transport in the nineteenth-century was far from “an indisputable fact.”³⁷ Even today, America’s

---

³⁷ See Robert William Fogel, Railroads and American Economic Growth: Essays in Econometric History
(Baltimore: Hopkins, 1964), 5, 207-249. The central function of water transportation in U.S. economic
history has been further discussed in Jeremy Atack, “Economies of Scale in Western River Steamboating:
Transportation in the Nineteenth and Early Twentieth Centuries,” in The Cambridge Economic History
Haites, James Mak, and Gary Walton, Western River Transportation: The Era of Early Internal
inland waters carry more tons of freight today than most rival modes. Nevertheless, as early as the 1940s, when the economic historian Louis C. Hunter completed a 684 page manuscript titled “Steamboats on the Western Rivers,” he struggled to find a publisher. “Steamboating on the western rivers was no medium for entrepreneurship in the grand style,” Arthur C. Cole, Harvard historian and the Chairman of the Social Science Research Council’s new Committee on Research in Economic History assessed in 1944. Despite its length, Hunter’s manuscript was supposedly narrow in significance, “mainly concerned with the experience of the small operator in an industry to which ingress was easy.” The mainstream agenda for those writing America’s economic history, Cole believed, was to explain the rise of increasingly centralized forms of corporate management and control. Steamboats had no place within this narrative. Thus, when Alfred Chandler published his magisterial study of the history of business management in the United States thirty years later, railroads still took center stage. Steamboats (“loosely organized affairs”) were assigned to a prologue section, representing a form of “traditional enterprise” that Chandler quickly introduced and dismissed.

Perhaps, however, the legal experience of owning or operating a steamboat in the mid-1800s – the realized goal of no less an American personage than Mark Twain at the time – has been too quickly dismissed by historians seeking to understand the antebellum era. In Twain’s formative period as a Mississippi River pilot named Samuel Clemens, steamboats were the

---


original “disruptive technology” of the day, “the machine in the garden” making and unmaking private fortunes, labor markets, and legal doctrines, even as the vessels themselves collided, exploded, and capsized, teetering on the margins of economic profitability. Before he became one of the earth’s wealthiest men, for instance, Cornelius Vanderbilt launched his independent business career in the same way as Joseph Spencer, Robert Smalls, and Samuel Clemens, as a riverboat man. As the principal owner, stockholder, and manager of a web of transportation lines and financial institutions, Vanderbilt spent most of his career, biographer T.J. Stiles recounts, as “a radical force,” shaking the grip of New York’s “merchant elite” over Wall Street in the same way that Robert Smalls later challenged the grip of South Carolina slaveholders over the destiny of South Carolina, home state of John C. Calhoun.

Today, alongside fresh accounts of slavery’s origins as a capitalistic enterprise and the subsequent public law “destruction” of the peculiar institution as a property regime, perhaps there may also be a small annex reserved for historians of American capitalism to return to the world of the upstart Cornelius Vanderbilt or Joe Spencer, the era of Huckleberry Finn and Herman Melville’s Confidence Man. What connections can be drawn between the commercial upheavals that Samuel Clemens encountered from his pilot’s house during his waterborne days, and the egalitarian attitudes about race and class that were often present in his later written work? Based upon the little-studied documentary record of America’s lost steamboat economy during the unsettled years of the 1830s, 1840s, and 1850s, what follows is a sustained attempt to answer

---

40 Samuel Clemens recalled his life as a steamboat pilot at length in Mark Twain, Life on the Mississippi (1883; New York: Airmount, 1965). For Twain’s steamboats as a “machine in the garden” symbol, see Leo Marx, Technology and the Pastoral Ideal in America (New York: Oxford, 1964), 319-341. On the concept of “disruptive technologies” that upset or displace old value networks while creating new markets and/or sets of consumers despite their initial status as an irrational investment, see Clayton Christensen, The Innovator’s Dilemma: When New Technologies Cause Great Firms to Fail (Cambridge: Harvard Business School Press, 1997).

this question. Using the commercial world of white men like Chase, Vanderbilt, and Samuel Clemens as an occasional bridge, it attempts to explain how events like Joe Spencer’s death existed alongside, and occasionally made possible, counter-events like Robert Smalls’ self-emancipation.

We are not alone in taking such a steamboat journey. Banished from history monographs for decades, steamboats are beginning to reappear. In his 2004 book *Black Life on the Mississippi*, for instance, Thomas Buchanan argued that “the river and its black steamboat hands were an important, and underappreciated, component of the black networks that enabled slaves to reach freedom.” According to Buchanan, an inland river commercial system that supported as many as one thousand steamboats at any particular time extended the possibility of radical “mobility” throughout the Ohio and Mississippi River Valley system. By working onboard steamboats, some slaves developed a spending power that exceeded that of their shorebound counterparts, eventually knitting together a “Pan-Mississippi” black community that existed on a quasi-free basis in the midst of the cotton South “beyond the sight of masters, captains, and plantation owners.” Other recent historians have been less enthusiastic about the steamboat’s alleged liberating effects, arguing instead that easy steamboat communication between Ohio, western Virginia, Kentucky, Indiana, and Illinois created a “borderland” between slavery and freedom that offered few clear opportunities for escape. And when the attention turns to steamboats operating on the lower Mississippi, the picture gets darker still. In 2011, Robert Gudmestad argued that frequent trips by competing river steamers helped to keep cotton

---


shipping costs low while supplying the South with fresh waves of bonded labor from upstream. If, as Walter Johnson has recently argued, the shaky financial status of the steamboats themselves “was utterly characteristic of the full-throttle capitalism of the Cotton Kingdom,” so may have been the brutal form of racial policing that often framed the relationship between captain and crew downstream from Salmon Chase’s Cincinnati.44

Here, the conflicting pictures that emerge from recent work on the steamboat era, with inland river vessels simultaneously becoming vehicles for liberation and enslavement, arise from two features that all of these recent works share. The first feature is their inclination to privilege the most obvious physical work that steamboats performed, depicting them as technological hardware playing the single historical role of moving people and goods from point A to point B.45 Second is their shared inclination to collapse a story of radical physical mobility impacting power relations on both sides of the color line into a history about slavery alone. The chapters that follow break with these inclinations, preferring instead to take a broader view of what may be called the nineteenth-century’s greater “steamboat economy.” Here I take a cue from Louis Hunter, who studied steamboats not merely as a piece of hardware that moved, but as a complex “business organization” with components on the river and on shore.46 By taking as its subject the legal history of an entire river trading economy, my goal in the following pages is to analyze a nexus of river-based, multi-class, multiracial private law understandings that often threatened more static public law arrangements of power allocations within the greater Mississippi River

45 For the strongest articulation of mobility narrative, see Ari Kelman, A River and its City: The Nature of Landscape in New Orleans (Berkeley: California Press, 2006), 50-86.
Valley, a diverse legal environment that stretched from free labor villages nestled within the Allegheny mountains to Walter Johnson’s Cotton Kingdom headquartered in New Orleans.

Chapter 1 begins by placing the steamboat trade within this larger river trading environment. Here, as in most of the story that follows, the organizational focus is upon Salmon P. Chase’s antebellum Cincinnati, a central place where owning property was seen as a measure of one’s social standing, but where profit margins were sometimes slim, even among society’s early steamboat-owning capitalist class. In response to the demands of steamboat creditors within the Queen City of the West, ownership interests were frequently transferred between parties, sometimes on a voluntary basis but sometimes also under court order. Moreover, as steamboats moved between jurisdictions, so did the steamboat economy’s increasingly democratic understanding of property ownership, conflicting with older, more exclusionary property regimes forming away from the river. The process of managing debt in a river trading economy, I argue in Chapter 2, eventually gave rise to what I call a generalized legal theory of “equitable commerce” within the Ohio River Valley that the steamboat economy’s white working class occasionally used to transfer fragments of steamboat ownership into their own hands. As detailed in Chapter 3, this understanding quickly crossed the color line, passing from white to black steamboat workers through the common exchange points of the riverboat deck and the riverfront law office, particularly Chase’s law office in antebellum Cincinnati. In Chapter 4, I detail how Chase himself then eventually convinced a quorum of white Buckeye lawmakers to carry the egalitarian understandings of American law worked out in these settings into the national spotlight, specifically by sending Chase to Washington, D.C. as one of Ohio’s representatives in the U.S. Senate in 1849. As explained in Chapter 5, a group of Kentucky’s leading statesmen briefly devised a set of national safeguards to prevent Chase’s agenda from
reaching a national scale, devising new regulatory institutions that briefly assured Southern slaveholders that it was safe to stay in the water. Ultimately, however, their confidence was misplaced. After commercial steamboat disputes reached federal courts in the 1850s, the public administration of private steamboat debts eventually gave Chase’s Cincinnati-based Treasury Department agents a private law template that could be used to liquidate slavery as a property regime throughout the Ohio-Mississippi river system during the American Civil War.

Retelling this story makes two contributions to existing legal historiography. First, it challenges a dominant narrative within legal history scholarship depicting everyday private law institutions like property and contract as largely functioning during the nineteenth-century as the near-perfect weapons of the strong over the weak. Second, it uncovers the private law origins of Civil War-era emancipation, a familiar story usually only told in public law terms. In a second-best world occasionally lacking a centrally-administered state or a Congress capable of legislating in a particularly effective way, it finds the opponents of capitalist oppression taking the legal fight to their enemies, with private law notions of “equitable commerce” as their best remaining weapon of choice.

**

As Chase traveled across the greater Mississippi River Valley in June 1865, elements of this story were already moving under his feet. The *W.R. Carter*, for instance, the 563 ton burden hulk carrying Chase’s entourage, reflected the complex, multi-party ownership history typical of most riverboat property moving through the nineteenth-century steamboat world. Built in Louisville in 1864 and running between that city and New Orleans, federal papers listed the *W.R. Carter* as being helmed by William Fuller, a St. Louis man, as its “master.” No single person, however, actually owned the vessel. Instead, it was the property of “the Atlantic and Mississippi
Steamship Company,“ an attenuated concern headquartered in Missouri and superintended by John Bofinger, a man from Ohio. Bofinger had started his career as a steamboat clerk in Cincinnati in 1846, working onboard a vessel owned by Jacob Strader and James Gorman, co-owners of one of the leading steamboat lines linking Ohio’s river metropolis to its Kentucky rival of Louisville. Bofinger eventually earned enough equity in their business to buy Strader and Gorman’s entire fleet, vessels that he eventually transferred into the possession of the Atlantic and Mississippi Co., a new joint stock company running exclusively within the Ohio-Mississippi civilian trade. For a moment, the company’s capital stock was estimated at nearly $4 million. But once the *Carter* and other vessels hit the water, their value plummeted. Featuring “tubular boilers” federal regulators later outlawed as unsafe, many boatmen refused to work onboard. Bofinger found it impossible to keep the vessels running on a regular basis.

In February 1866, eight months after carrying Chase up the Mississippi and Ohio, the company that Cincinnati’s John Bofinger had helped to create was in financial distress. That month, the *W.R. Carter*’s boilers exploded near Vicksburg, killing most of its passengers and crew while destroying cargo insured at $77,000. By 1868, the insurers of the *Carter* were being sued in Indiana court for the value of the loss. Within five years, nine more of the company’s vessels had exploded, six had sunk, and ten had been dismantled. The company was under suit for damages throughout the inland river west. By 1869, it was selling its remaining vessels to pay off its creditors at a total loss. Perhaps seeing the writing on the wall, John Bofinger had sold some of his shares in the Atlantic and Mississippi Steamship Company at a reduced price in 1867 and stepped down as superintendent. During the company’s liquidation, he was even able to buy back some of the company’s assets at a steep discount. Others were less lucky. David Gibson, another steamboat investor based in Cincinnati, would lose $1 million of his savings and
become subject to bankruptcy proceedings overseen by Flamen Bell, a former law partner of Salmon P. Chase.  

A German-speaking former white steamboat clerk from Cincinnati, John Bofinger was not the only survivor from the W.R. Carter’s demise. On February 12, 1866, the St. Louis Republican reported that Daniel Reid, Littleton Brown, Smith Vinson, George Sanders, and Amos Gage, “five colored deckhands” working on the Carter on the day that it exploded, had emerged from the wreck. Like Bofinger and the fleet of vessels he once owned, these five African-American men lived an interstate existence, cycling between the varying urban nodes of America’s steamboat world. While Amos Gage listed Cincinnati as his home, George Sanders was identified as hailing from St. Louis. Three others, including Littleton Brown, were listed as residing in New Albany, Indiana, a boatbuilding town across the Ohio River from Louisville. Over the years, census records tied Brown to many of the places visited by Salmon P. Chase in his 1865 trip: Brown’s parents were from South Carolina, the home state of Robert Smalls; Brown himself was born in Louisiana; and sometime in his early years, Brown had apparently hitched a steamboat ride upstream to Louisville, Richard Taylor’s old Kentucky home. Like Littleton Brown, Gen. Taylor had once tied his own commercial welfare on the steamboat

---

47 The W.R. Carter’s enrollment papers are found within “Master Abstracts of Certificates of Enrollment for Steam Vessels at Saint Louis, Missouri, 1846-1870,” Microfilm Reel M2106, National Archives Building, Washington, D.C. (see certificate 156, issued Oct. 11, 1865). The story of John Bofinger and the Atlantic and Mississippi Steamship Co. can be further traced through the following sources: Emerson W. Gould, Fifty Years on the Mississippi (St. Louis: Nixon-Jones, 1889), 386-389, 675-678; John Thomas Scharf, The History of St. Louis City and County, vol. 2 (Philadelphia: Everts, 1883), 1119-1120; E.P. Anshutz Scrapbook, pp. 23, 36, Inland Rivers Library, Public Library of Cincinnati and Hamilton County, Cincinnati, Oh. For David Gibson’s legal difficulties after the company’s collapse, see David Gibson Papers, Box 1, Ohio Historical Society and State Archives, Columbus, Oh.

48 See “Some Particulars of the Loss of the Steamboat W.R. Carter,” Daily Missouri Republican (St. Louis), Feb. 12, 1866.

economy, relying upon cheap river transportation to supply his “Fashion” plantation and carry its products to market. But even at his most powerful, he was also complaining to Frederick Law Olmsted about the “petty traders” that came to his plantation by boat. Landing at the edge of his plantation at night, they purchased livestock and machinery directly from Taylor’s slaves, at times closing their deals without Taylor’s consent. Then these traders sold their new acquisitions to steamboats heading downstream. Along the Mississippi, the same property regime that sustained Taylor’s ownership of black labor-time was supporting the slow liquidation of Taylor’s estate, enriching transient black boatmen like Littleton Brown and African-American river traders like Joe Spencer, shielded sometimes behind property arguments of their own. “The law is entirely inadequate to protect us from these rascals,” Taylor groused to Olmsted, “it rather protects them.”

Chase’s travel diary is silent on whether he spoke to Littleton Brown or any of the “colored deckhands” on the W.R. Carter in May 1865. But if he did, chances are that their conversation would have turned quickly to the business law of the river, just it had for Richard Taylor a decade before. In letters describing the “colored” people he met during his Southern journey in mid-1865, Chase noted their incipient legal expertise. “They have,” he told one white colleague, “not infrequently, a sort of courts,” places where “plaintiffs and defendants manage their own causes.” Moreover, as new Freedmen’s Bureau courts began appearing in the towns that Chase visited, African-American river men in Littleton Brown’s position were beginning to

50 Taylor’s reliance upon Mississippi River shipping for receiving supplies and distributing products can be tracked in Reel 2, Zachary Taylor Papers, LC: Index to the Zachary Taylor Papers (Washington: Library of Congress, 1960). Taylor’s complaints to Olmsted are found at Journeys and Explorations in the Cotton Kingdom, Vol. 1,330-333.

51 See Letter from Chase to Pike, July 8, 1865, Chase Papers- Vol. 5 (Kent, 1998), 58; Letter from Chase to Andrew Johnson, May 23, 1865, Advice After Appomattox, 36-37; Chase to Johnson, May 21, 1865, Reel 35, Chase Papers, UPA.
use national legal institutions as new forums in which to assert their property claims. By late 1865, for instance, in a rough shipbuilding town across the Mississippi from New Orleans, black plaintiffs working as stevedores, boat builders, and deckhands began lodging complaints against their white employers, citing broken promises and rough treatment. At one point an African-American steamboat worker named Henry Willis filed a demand against a white man named John Porter, the former captain of the steamboat Philadelphia, for failing to pay Willis’ wages. With the vessel already seized and sold to satisfy another creditor’s demand, Willis secured an order against Porter himself, garnishing that white man’s wages as his own equitable recompense.52

**

On June 22, 1865, ten years after Frederick Law Olmsted’s steamboat trip to Gen. Richard Taylor’s troubled plantation, Salmon P. Chase’s own steamboat journey on the equally vexed W.R. Carter came to an end. At last, after passing a few more “old familiar places” along the Ohio, his steamboat docked in Cincinnati, his old hometown. Before returning east, Chase spent the next several days in the company of white men, dining with leading members of Cincinnati’s commercial bar.53 As he sat down and conversed with this group, it would be tempting to imagine him as exiting the contentious river-world of the W.R. Carter. But as people in river towns all knew by now, even the most innocent discussions of dollars and cents were capable of a second reading. Like the ornate “Steamboat Gothic” superstructure of the vessel

52 See Proceedings Before Provost’s Court, Case Files for U.S. v. Jim Pirket (Oct. 6, 1865); Complaint of George Williams (Aug. 28, 1866), Complaint of M. Boyd (Jan. 16, 1867), Complaint of Henry Willis (June 29, 1867), Register of Court Trials, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands, Louisiana, 1865-1872, Algiers Field Office, M1905, Reel 57, National Archives Building, Washington, D.C.

53 See Entries for June 22-26, 1865, Chase Diaries, 577-581.
that had carried Chase back home,\textsuperscript{54} the efficient surfaces of the private law that his former colleagues were beginning to practice after Appomattox masked an older and more disruptive river-world still lurking slightly below. Retreating into the fold of his fellow Cincinnati lawyers, Chase was slowly being carried back to the legal domain of Joe Spencer, a dangerous place where property accumulation was always under threat by the reverse action of property dispossession, accumulation’s parasitic twin. Settling into conversation with his “brother lawyers,” Chase’s river journey in fact rolled on. For a few days he was once more at home in Cincinnati’s volatile world of steamboats, river commodities, and zero-sum legal conflicts between private parties. Joe Spencer’s ghost may have departed Cairo, but the bones of his equal justice demand drifted back into Chase’s mind, haunting the one-time ferryboy’s conscience as he contemplated his new role as the first antislavery Chief Justice of the United States.

Chapter 1:  
The Paragons of Property

On March 12, 1830, a 22-year old man living in Washington, D.C. crossed the mountains, descended to Wheeling, and boarded a steamboat headed downstream. The vessel was tiny and slow, its accommodations dirty and mean. Its lofty name, “The Paragon,” seemed to be the punchline of a cynical joke. But it served the young man’s purposes. Sporting the aquatic-themed name of “Salmon Portland Chase,” he was, like the Paragon, headed to Cincinnati, the Queen City of the West. A new lawyer recently admitted to the District of Columbia bar, Chase believed that relocating to Ohio’s business capital gave him an easy way to become “first” in his chosen profession. “The commerce of Cincinnati exceeds that of any inland city in the Union,” he wrote to a friend before leaving for the west. “The city has already much capital employed in it.” Living there was cheap, the population was growing, and its wealth was increasing. “On the whole,” he assured himself in his diary, “it offers to you stronger inducements than any other place in the West.” And so, arriving in Cincinnati early the next day, Salmon Chase quickly went to work. By September 1830, he had started his own law office on Main and Third, five short blocks from the Ohio River. But things did not initially go according to plan, eventually devolving into what one contemporary called “a struggle for subsistence . . . without estate or influential friends.” One year in, the Paragon’s former

---

passenger wrote to a friend that he had been “visited by calamities,” becoming “considerably indebted” to others to stay afloat.  

With few new clients coming in, Chase briefly tried his hand at a literary career, publishing essays on British politics and the wonders of the steam engine. Sometime in late 1830, he also penned a real estate puff piece for the Cincinnati American, a local newspaper. Undaunted by his own situation, he chose to extol his new hometown as a “magnificent abode of civilization, opulence, taste, and power.” “Let us walk around Cincinnati and take note of what we see,” his article began. The best place to start was near the watery domain of the Paragon, at the edge of the Ohio River. Here one could find the city’s paved public landing, “reaching along the river more than two whole squares.” Situated at a river bend that formed a “natural harbor” for vessels like the Paragon, Chase’s literary river was now covered with steamboats “discharging and receiving their cargoes.” “Tomorrow,” he predicted, “almost every one of them will be gone, and their places will be filled with others.” Climbing up from the landing, Chase and his readers found signs of “busy occupation” throughout the town, from steam mills and cotton factories to canals, markets, and steam engine foundries. “Here is the principal source of the wealth and prosperity of our city,” Chase remarked. “It is labor that gives value to everything.” Chase then led his readers up Cincinnati’s tallest hill, a place where the “residences of some of our private citizens… show like palaces.” There, glimmering beneath sounds of a city at work - “the confused… rattling of wheels and the jar of machines” - they would once again spy La Belle Riviére, now sweeping round “in a beautiful curve,” “seeming like a zone of

2 See Edward Pierce, “Biography of Salmon P. Chase,” p. 8, Reel 32, Chase Papers, LC (“struggle for subsistence”); Letter from Chase to Hamilton Smith, Mar. 12, 1832, Reel 4, Salmon P. Chase Papers, University Publications of America, Frederick, Md. [hereinafter “Chase Papers, UPA”].  
silver… gliding away tranquilly toward the mighty Mississippi.” From here, he wrote, “we almost imagine that we see the city grow.”

Twelve months later, with Chase’s client list still limited, the skies darkened over this panorama. In late October 1831, a weeks-long cascade of rain swelled the Ohio’s smaller tributary streams, only to freeze into ice by November, when a “Siberian” wind blew in, blanketing the valley with a layer of snow. In January, the thermometer suddenly rose, from 10°F to 65°F, and a tropical rain began to fall. The ice broke, and the streams began to rise more than one inch per hour. Within days, a thick cold wave of water was pulsing down the Ohio River, traveling more than four miles per hour. By February 1832, the Ohio River, the principal highway used by what Frederick Jackson Turner once called a “flying column” of settlers streaming across the North American continent, was sweeping away the cities and towns these settlers had built along their path. In the Upper Ohio Valley, one eye-witness later recalled that the water rolled in “vast sheets, many acres in extent,” moving with “resistless force” to destroy nearly every vessel in harbor, including “not less than ten or twelve steamboats, some of which had valuable cargoes of merchandise on board.” The river, one boatman reported, had suddenly become too powerful to obey human commands. The cabins of “poor tenants” were set afloat,

---


5 The “flying column” phrase is from a description by Frederick Jackson Turner in *The Frontier in American History* (1920; Tucson: University of Arizona, 1986), 167 (cheering “[t]he part played by the pioneers of the Ohio Valley as a flying column of the nation, sent across the mountains and making a line of advance between hostile Indians and English on the north, and hostile Indians and Spanish to the south…”). For critiques of the “Turner frontier thesis,” as well as an analysis of its lasting usage among historians, see Kerwin Lee Klein, *Frontiers of Historical Imagination: Narrating the European Conquest of Native America, 1890-1990* (Berkeley: California, 1997).
“borne away to the sugar planters of the South.” All business, “for want of water-craft,” had been suspended. *La Belle Rivière* was “everywhere out of its lawful banks.”⁶

A few blocks from Chase’s office in Cincinnati, the river rose 63 feet above its ordinary low water mark. Within a day, it had submerged the most populous section of the Queen City, at 25,000 inhabitants the largest town west of the Allegheny Mountains and the eighth largest in the United States. Near the town’s public steamboat landing, waterfront shanties and warehouses were suddenly lost beneath ten feet of water. By February 17th, the *Cincinnati Gazette* reported that two people had drowned, many houses had “floated away,” and an “immense amount of property, in lumber, wood, rails, etc.” had been lost. By February 22, with the waters finally receding, one diarist noted that the calamity had “given a general shock to business which months cannot retrieve.”⁷ The entire bottom of the city was in a “dreadful situation,” a merchant named James D. Jones reported to a trading partner. One lumber dealer had lost nearly all of his boards, valued at $40,000. Nearby, a grocer was now $10,000 in debt, “depending on how much his meat and groceries are spoiled.” All of the traders close to the landing sustained a financial hit.⁸ As the water receded even further, fear of property loss gripped the city. “There has been plundering to a considerable extent,” the Gazette warned. In response, Ohio’s legislature passed

---


⁸ See John D. Jones to “Dear Brother,” Feb. 18, 1832, John D. Jones Letterbook, Cincinnati History Library and Archives, Cincinnati, Ohio [hereinafter “CHLA”].
a law mandating that any thief caught in Cincinnati “make restitution to the party injured for the full value of the property stolen.”  

Into this watery maelstrom paddled the intrepid Salmon P. Chase, now all of age 23. Only two years removed from the dingy passenger cabins of the Paragon, he was still brimming with the optimism of that earlier river trip. On February 14th, from the foot of his law office on Broadway, he boarded a woodboat to survey the wreckage, then transferred to a steamboat to view Cincinnati “from a commanding view.” He took several more trips over the next three days, cataloging in his diary how the private parlors of the city’s wealthiest residents became “deeply submerged,” how lumber floated away in “vast quantities,” and how merchants placed their goods on the second stories of their warehouses, only to remove them to the third level when “the river, like an animal eager in pursuit… pushed closely on.” When he arrived at the city’s flooded public landing, however, he also noted that even as Cincinnati’s accumulated wealth was washed away, the city’s wheels of commerce continued to spin. By virtue of the flood, he noted, the landing became “covered with steamers… crowded together, in close neighborhood.” “Almost everything that would float was brought into requisition for navigating the streets,” one newspaper reported. One by one, jerryrigged skiffs paddled into the city’s downtown until, “as if by magic, the great business part of the city was converted into a populated lake.” In Chase’s notes, the space between steamboats and the city’s largest buildings became “crowded with busy men,” people lashing their boats to curbs and trees, once more “receiving and discharging their cargo.” And while city authorities tracked down trespassers and looters, they looked the other way when some traders made predatory deals with town residents for household goods. Even in

---

9 See Cincinnati Daily Gazette, Feb. 15, 18, and 21, 1832 (vigilance committee); Feb. 22, 1832 (restitution law).

the most extreme moments, the rules underwriting bargains made at water’s edge were always in force, transforming one person’s loss into another’s gain.

Writing more than three hundred years earlier from the inland river trading city of Florence, the Italian diplomat Niccolò Machiavelli would have found Cincinnati, circa February 1832, a familiar scene. “I compare fortune,” he had written in The Prince, “to one of those violent rivers which, when they are enraged, flood the plains, tear down trees and buildings, [and] wash soil from one place to deposit it in another.” Rather than subjecting fortune to what Machiavelli had called “well regulated power,” Italy’s princes had settled for a fragmented political system that allowed them “to flourish one day and come to grief the next.” Before the 1832 flood, however, there was reason to believe that Machiavelli’s misgivings were inapplicable to Cincinnati. As its steamboat economy covered the river basin, a bare set of public institutions had emerged, creating a type of order out of the private chaos of waterfront economic life. Commercial laws, courts, and judges were in evidence, just enough government to inspire river travelers to board dirty vessels like the Paragon, to set one’s possessions in motion, and to trade them away in exchange for something else. Chase’s occasional law partner Timothy Walker insisted that the experiment had worked. Cincinnati, he wrote, had become a place where the law allowed “enterprising men” to bargain among themselves and to draw in outside capital, distributing property to all of the honest participants in the game. Both Walker and Chase repeated such assessments to Alexis de Tocqueville when he passed through the city in 1831, in part convincing “the French examiner” to assert in his Democracy in America that internal trade, capped by the accumulation of private property, had bequeathed a sociability and “equality of condition” to the American west that calmed any remnant “warlike passions.”

---

By February 1832, however, with Salmon P. Chase’s Cincinnati now a waterlogged theater of plunder, predatory dealing, and financial ruin, it would have been easy for the young lawyer to conclude that the city had lost its gamble with fortune, that it was time to move on. Indeed, as Chase noted in his diary, Cincinnati’s flood was “mighty” and “terrible.” But for the most part, he also found it “sublime.” Like the enterprising river traders that eventually composed his client base, Chase could see how basing a market economy around the fluctuations of a “horrible river” could present an opening for the underemployed. In the Spring of 1832, Chase made his own entry into public life by virtue of the deluge, serving as a relief commissioner for “worthy but poor families” suffering from its effects.\(^{12}\) He had arrived in Cincinnati in March 1830 to practice law in the metropolis of America’s inland West, largely to serve the stable interests of men of property and standing. To accomplish this, he needed to learn how to operate within a steamboat economy where profits were great but the risks of plunder were greater, and where claims to possess any form of property were nearly always subject to competing demands. Such a volatile jurisdiction, in its own way, was equally primed to give an ambitious and talented young attorney plenty of work to do.

**

Amidst the plunder and ruin of the flood of February 1832, Cincinnati’s river trade survived, even grew. During the entirety of Chase’s active legal career in Cincinnati, it would not be an understatement to say that this trade drove the economy of the Ohio Valley, in good times and bad. The steamboat – always present on Cincinnati’s docks and floating above its high

---


\(^{12}\) See Entry for Feb. 14, 1832, *Chase Diaries*, 62; *Cincinnati Daily Gazette*, April 27, 1832 (organization of relief committee); *Chase Diaries*, 64 (Chase’s participation).
low tides - was at its center, in turn shaping a fluid understanding of property ownership that eventually crossed from river to shore. Between 1820 and 1860, steamboats were the most consistently profitable piece of moveable and tangible capital knitting together a half-continent wide trading system that otherwise turned tangible possessions into abstract expectancies. Between 1832 and 1837, at least 35 steamboats had been built in Cincinnati. This only prefigured a building boom in the next decade, when 109 were built between the 1845 and 1849 alone. During this same period, over a seven-to-nine-month navigation season, river watchers in Cincinnati counted between 20 and 30 steamboats landing and departing per day. Over a single season, customs officers once logged 4,007 individual steamboat arrivals into the city, with 3,983 separate departures.13 Owned by private parties, these vessels were built and run mainly because of profits they were capable of clearing. When a census inspector surveyed 53 steamboats on Louisville’s waterfront at the height of America’s steamboat age in 1850, their captains reported the amount of “personal capital” invested in each ranging between $7,000 and $56,000. From this, over a single seven-to-nine month navigation season, they reported up to $64,980 in gross earnings from freight, and up to $72,000 in returns from passenger service.14

By the time Chase arrived in Cincinnati in 1831, owning at least a share of a steamboat engaged in this trade was a relatively common experience. Like the shipments they carried, interests in steamboats were typically split up, divided, pledged, and resold. As a business, steamboat ownership eventually became a collective social enterprise spreading risks and rewards among its many interested parties. When the U.S. Supreme Court decision Gibbons v.

13 See Richard Smith, A Review of the Trade, Commerce, and Manufactures of Cincinnati for the Commercial Year Ending August 31, 1850 (Cincinnati: Gazette, 1850), 2-16 (held by Inland Rivers Library, The Public Library of Cincinnati and Hamilton County, Cincinnati, Oh.).

14 See U.S. Census for 1850, Schedule 5 (Manufacturing), City of Louisville, Jefferson County, Kentucky, 577-583 (freight and capitalization statistics for steamboats docked in Louisville in mid-1850).
Ogden held in 1824 that New York could not enforce state-level monopolies over the interstate steamboat trade, this only confirmed a consensus that had been forming in the western waters since at least 1819, when a federal judge in Louisiana issued a similar verdict turning aside a state grant that purported to restrict steamboat ownership in the Mississippi River Valley.\(^\text{15}\) By this point, the steamboat trade had already become, as a group of economic historians have concluded, a “purely competitive industry,” a low-barrier-to-entry affair involving hundreds of vessels chasing after the same set of passengers and freight from Pittsburgh to New Orleans.\(^\text{16}\) In the earliest days, building a steamboat in the West was largely a job for investors with direct ties to Eastern capital who pooled their resources. By the early 1820s, however, steamboat ownership had diffused more broadly through the Ohio Valley. By the time Chase arrived in Cincinnati, one steamboat Louisville-Mississippi River steamer, the Hornet, was reportedly “owned by forty men, nearly all of them farmers.”\(^\text{17}\)

The proliferation of steamboat ownership interests within the Ohio-Mississippi River system was largely due to the region’s undercapitalization.\(^\text{18}\) Since the earliest days of the steamboat trade, shares of steamboat ownership had become the currency of choice for vessel captains and their families, who slowly distributed their shares into the general population as a

---


way to obtain credit within upland trading markets. While a partnership agreement may contain provisions that the sale or mortgage of one partner’s share required the approval of a vessel’s other owners, such approval seems to have been relatively easy to obtain. As early as 1818, deed books in Louisville were recording shares of steamboats being exchanged for other property, whether land or slaves, or being identified as collateral to obtain a mortgage to secure payment of a note.\textsuperscript{19} By 1827, Queen City lender Nicholas Longworth could come into possession of “four tenths” interest in the steamboat \textit{Mexico} through the winding up of a non-steamboat business deal. Dubious of the vessel’s value, he just as quickly authorized his Cincinnati attorney to dispose of his share on the open market, “either for cash or credit.”\textsuperscript{20} By the 1830s, absentee investors from Atlantic and Gulf Coast ports were conveying portions of their ownership interests to river town locals, usually “rivermen” with local knowledge of upstream and downstream markets, to serve as their on-the-river business managers in the role of steamboat clerk or captain. In 1836, an Illinois resident named Solomon Freeman could report to his wife in a letter from November that he had purchased a “one eighth part of the steamboat ‘\textit{B.G. Gillman}’” for $1,875 in this way. In exchange for agreeing to manage the \textit{Gillman} for its owners, primarily residents of New York, he became a part-owner himself. Similarly, one of Chase’s Cincinnati clients reported from Pittsburgh that he was planning to purchase “a three boiler boat” for $2500. A half-interest was then transferred to George Clark, a local steamboat


\textsuperscript{20} See Letter from Nicholas Longworth, Cincinnati, to Mr. Scott, St. Louis, n.d.; John Armstrong Power of Attorney for Steamboat \textit{Mexico}, Gwynne Family Papers, Mar. 30, 1827, CHLA.

Like the volatile rivers they ran upon, owning a steamboat came with its own set of risks. While steamboats like Longworth’s \textit{Mexico} may have stood near the apex of the credit-based, river-trading economy of the West, they were also peculiarly vulnerable to its many blind spots. As one Illinois boathand put it in 1856, steamboating was a “perfect doggs Life;” it was a “hard going business” where only some made money.\footnote{See Letter from John Smith, Napolean, Arkansas, to Thomas Smith, Golconda, Illinois, Mar. 26, 1856, John W. Smith Papers, Abraham Lincoln Presidential Library, Springfield, Illinois.} A typical steamboat ledger indicated running tabs with boatyards for construction and repair, with municipalities for wharfage and inspection, with commission merchants for freight, with storekeepers for food and supplies, and with crew members for wages. The ledgers of riverfront stores or boat builders listed similar liabilities, tracking debts owed by individual steamboats by name.\footnote{See, e.g., Daybook, 1851-1856, James Rees and Sons Co. Papers, Detre Library, Heinz History Center, Pittsburgh, Pa.; Timebook, Apr. 7, 1839-Feb. 22, 1847, Howard Shipyards and Dry Dock Co. Papers, Lilly Library, Indiana University-Bloomington, In.; “Sales by a Louisville Firm to Steamboats and others,” Sept. 1836-Mar. 1837, Inland Rivers Library, Public Library of Cincinnati and Hamilton County, Cincinnati, Oh.; Robert Buckner Account Book (1835-1839), Filson Historical Society, Louisville, Ky.} If rivers were too low or high to run safely, or if freight or passage was paid using valueless notes from local banks, a boat could lose “money like the Devil,” as one steamboat clerk put it in 1853, and would be forced to quit paying its bills.\footnote{See Account Book of Steamer \textit{Wisconsin No. 2}, Entry Aug. 21 to Aug. 27, 1854, Series I, Switzerland County Materials, Indiana Historical Society, Indianapolis, Indiana.} According to one river worker, this meant that the life of a steamboat owner was comparable to that of a “Gold digger.” His prospecting metaphor continued: “When a boat does get in a streak of luck, she makes a pile of money in a very short time… hence the excitement or
hope of making money keeps so many at it, until they either lose all they have, or attain their object.” This boatman’s employer, the *Moses Greenwood*, seemed to be on the losing end. Though there had been an “immense business” in cotton and western produce during the year the boatman was writing, it had “not been a profitable season so far.” The *Greenwood*’s earnings from the downstream trade, for instance, had all been offset by paying “the high wages of men,” by “the high price” of boat supplies, and by a lack of upstream freight. Unlike a commission merchant, who could avoid losses from market gluts and droughts by staying on the sidelines, vessels like the *Greenwood* could only make money by doubling down during the worst periods, staying in the water during the river’s narrow navigation windows during the spring and fall while continuing to solicit freight and passengers. “A Boat must have trips both ways to make money,” the *Greenwood*’s deckhand noted. Unfortunately for him while he wrote this, his vessel was in fact stranded in the middle of a western stream, beached by an unexpected drop in water levels and forced to “lay up” for four months while waiting the river to rise.25

Within the Ohio-Mississippi River system, market and river volatility meant that by the time Chase surveyed the wreckage of the 1832 flood, the river’s richest form of tangible investment property was often also owned by some of the river’s most notorious debtors. Starting in the 1830s, the Ohio River’s largest shipbuilding and repair establishment, the Howard Shipyards of New Albany, Indiana, sent young members of the Howard family up and down the western streams to pursue scofflaw steamboats on periodic “collecting tours.” One day in the 1850s, John C. Howard later recalled, he was paid off entirely in notes from “Wild Cat Banks, particularly of Illinois, Indiana, and Ohio,” currency which “depreciated very rapidly” and soon

was worthless.\textsuperscript{26} For a steamboat owner, evading Howard’s demands while chasing downstream freight made sense. Commanded by men following a “roving life,” considered a “stranger” in many of the towns they frequented, transient steamboat businesses could expect little sympathy if they came before a local magistrate or judge when and if the Howards actually sued for nonpayment. Indeed, the need to bunch as many upriver and downriver trips into a single season forced steamers to take on even more risks – to run in high or low water, or to run at night. Both strategies led to accidents where goods could be lost or passengers could be injured, bringing additional legal exposure. “It is a rare time that a Steamboat ever gains [in] a Law Suit,” one boatman noted. “They have to deal with all the crooked class of mankind,” including their own business partners.\textsuperscript{27}

In his earliest attempts to understand how his work as a lawyer in Cincinnati could fit within this larger economy, Salmon P. Chase was right to circle back, time and again, to the place the \textit{Paragon} deposited him in 1830 – the town’s public waterfront. It was a common technique for writers seeking to describe the Queen City in the 1800s to begin with a thick description of this ten-acre spit of land lying at the foot of Main and Front Streets, dropping off quickly into the Ohio River. This spot of real estate, every newcomer learned, was apparently reserved by the City of Cincinnati as a “public landing” for the city’s steamboat trade. Arriving in 1828, the British novelist Frances Trollope began her depiction of Cincinnati by noting the site, a “noble” and “well-paved” “landing-place” “extending for more than a quarter of a mile” along the edge of the river and “surrounded by neat, though not handsome buildings.” Trollope

\textsuperscript{26} See “Reminiscences by John C. Howard, (1903),” p. 4-8, Writings Box, Howard Shipyards and Dry Dock Co., Lilly Library, University of Indiana-Bloomington, Indiana.

had less charitable words for the people bustling around the landing, remarking that “every bee in the hive” was actively employed in the search of money. Writing a few years later, the statistician Charles Cist observed the following: “[t]he hurried arrival and departure of a whole battalion of drays; the unremitting and active labors of hands, loading and unloading the vessels in port; the incessant ringing of bells, as signals to the passengers or crews of the boats,” and “the brief and abrupt interchange of business among the clerks onboard.” For Cist, all of this communicated to fresh arrivals that they had “landed at a place where business is carried on a large scale, and among a people, who have neither the leisure nor the disposition to be idle.” For German visitor Moritz Busch, Cincinnati’s landing – once again “covered with all sorts of bales, goods, and barrels” and “crowded with carts, porters, sailors, merchants, and departing and arriving travelers” - was the true “face of the city.” It was “the entrance to the beehive that it resembles.”

With all of the private striving on display, it would have not been surprising for new arrivals like Salmon P. Chase to learn the waterfront’s status as “public” property had until very recently been in doubt. Only a few weeks after floodwaters receded from the city in 1832, the Cincinnati Daily Gazette reported the verdict in White’s Lessee v. The City of Cincinnati, a unanimous decision by the Supreme Court of the United States “involving a question of property in the Commons on the river between Broadway and Main Street.” According to Bellamy Storer, a lawyer representing the city in the matter, the Supreme Court had held that the riverfront landing’s “original dedication, for public use” was valid, precluding any further

“acquisition of private right” in the space.29 This decision, the Gazette duly reported, had finally put to rest an issue that had been vexing Cincinnatians for decades.

A closer look at the Supreme Court’s ultimate decision in White’s Lessee revealed a more complicated provenance for Cincinnati’s public landing than the Gazette article indicated, with “public” and “private” claims repeatedly merging into one. Cincinnati’s public landing, everyone agreed, was once part of an immense parcel of land purchased from the Confederation Government in 1788 by a New Jersey man named John Cleves Symmes just as he was beginning a new career as a territorial judge in the west. In 1789, Symmes sold off one riverfront section to a second New Jersey man, Mathias Denman, who in turn split his interests into thirds and distributed two of these shares to two other men, his business partners. Together, the three men drew up a map of a planned town called “Losantiville.” One evening, while surveying their new purchase by flatboat, they also apparently decided to set aside the wetlands lying between a fictive “Front Street” and the Ohio River as a “common forever, for the use and benefit of the citizens of said town.” As Robert Patterson (one of Denman’s partners) later testified, the three men, anointed by some later historians as Cincinnati’s “Founders,” did so with private gain in mind. In identifying a portion of the riverfront as a “public common,” a court reporter noted, Patterson and his partners believed that this immediately made the remaining lots “more valuable than they otherwise would have been,” capable of being sold at a higher price. Thus, while described in some court papers as a mere “ornament” to the new town, it was clear that the value of Cincinnati’s new waterfront commons came from its future commercial use, primarily as a spot adjacent to “dockyards, storehouses, etc.,” as a place for building boats, and as a “public way” to the river itself. The three Founders had even reserved a private ferry right in the

29 See Cincinnati Daily Gazette, March 7, 1832.
putative public landing, maintaining that no “commoner” could operate such a business from there.  

The creation of Cincinnati’s public landing followed a classic script. “It would almost appear that a man with capital or a company of men have only the will that there shall be a city and it is done,” one steamboat passenger observed while rolling into Cincinnati. All that was needed to be done was the following:

A plan is drawn up with some care. A city is laid out on paper. Some puffing appears in the newspapers and the work is half accomplished. The lots are advertised, the painted plan of the town or city (call it what you will) is hung up in all the Public places. The day of the sale arrives. The lots that sold last week for a few dollars, say two or three, may today bring a thousand or two.  

Denman, Patterson, and Israel Ludlow, Cincinnati’s three “Founders,” had done just this. Using open commercial access to the Ohio River as a key selling point, they eventually sold off their upland parcels at favorable rates. But there were problems. First, they lacked formal legal title to any of the land that they had reserved or sold. John Cleves Symmes had not obtained a patent from the national government until 1794, six years after the Founders had supposedly purchased their own interests from him. According to Justice Thompson in *White’s Lessee*, this turned the three Founders into mere “equitable owners.” Any interests held pursuant to their 1788 purchase required a decree in chancery to enforce an exception to strict rules of title. By 1800, after receiving his official patent, Symmes had resold the same parcels to a different man, Joel Williams, who eventually refused to honor the Founders’ public landing dedication. By 1802,

30 See *The President, Recorder and Trustees of the City of Cincinnati, Plaintiffs in Error v. The Lessee of Edward White, Defendant in Error*, 31 U.S. 431-444 (1832); Deposition of Robert Patterson, p.21-23; Deposition of Melyn Baker, p. 57-58, Official Transcript of Record, U.S. Supreme Court Records and Briefs, *Cincinnati v. Edward White’s Lessee*, No. 50, Term Year 1832 [hereinafter “Official White’s Lessee Record”].

when Cincinnati’s town plat was formally recorded, Williams had purchased what interests Denman and Patterson retained and was proposing to sell some of the putative “public landing” area to private parties. This raised a second problem. When the original public dedication was made, no incorporated municipal entity, empowered through statutory law to accept such a donation, was around. Instead, as of 1788, new settlers thought they were residing in an unincorporated village still called “Losantiville.”\(^{32}\) As a matter of law, until the town of “Cincinnati” was chartered by the legislature of the Northwest Territory in 1802, the public entity now claiming a property interest in the landing did not exist.

Between 1802, when Joel Williams began asserting his own private rights over the waterfront, and 1832, when the Supreme Court released its *White’s Lessee* verdict, the ownership status of the Ohio River’s most prominent landing point was in just as much doubt as the chain of title for many of the steamboats paddling into town. Interviewed in 1827, one Cincinnati resident stated that he had supposed the area to be a common, “from the fact of it being open.” But he was not sure. In 1808, the new town had obtained a verdict in Ohio’s Supreme Court ordering Williams to deed his land to Cincinnati. Even after this, structures would occasionally appear in the middle of the landing, built by Williams or one of his successors in interest. Sometime after 1808, for instance, a brick house appeared, first used as a store, and then for a private lumber business. And there came a frame building, built in 1812 by Edward or Jacob White, two brothers who had purchased waterfront land from Joel Williams. In 1816, one witness later testified, this structure was “pulled down by a great number of men in the middle of

the night.” According to one witness, this was done in “an unlawful manner.” According to another, it was fully legal, performed “by an order” of the municipal corporation of Cincinnati.

By 1819, Cincinnati was now recognized under state law as a full-fledged “city.” Shadowy “men in the middle of the night” were no longer summoned to perform additional work on its behalf. Instead, the city corporation was digging up and paving the land formerly occupied by the White brothers’ building. By 1824, it was also destroying the brick structure, paving over its remains as well. Three years later, as Cincinnati’s landing finally began to take its “public” shape, the Whites were in federal court, once again arguing that their own property rights were being ignored. “Report or reputation that this ground [is] a common,” their lawyer asserted, “does not make it so.” Like Cincinnati’s Founders, the corporation of Cincinnati held “equitable title only,” an interest that remained in dispute. Noting that the city had been in “possession and enjoyment” for a period less than twenty years, Ohio’s federal district court agreed. The 1788 dedication, it ruled in a verdict giving rise to the city’s appeal to the Supreme Court of the United States, “did not invest the public” with a defensible property interest.

As Bellamy Storer had reported in March 1832, the Supreme Court of the United States eventually sided with the City of Cincinnati. The “public” interpretation of the Cincinnati waterfront controlled its status. In justifying this outcome, however, Associate Justice Smith Thompson’s opinion turned as much on a discussion of “private right” as “public convenience.” Even though the original 1788 dedication was made merely under an “equitable” right in underlying waterfront land, many people had hinged their commercial prospects around the idea

33 See Depositions of Griffin Yeatman (p. 29); Jacob Burney (p. 29 and p. 69), Matthew Winton (p. 33); John Riley (p. 34); John Riddle (p. 34); Isaac Bates (p. 35), Charles Fox (p. 79), Official White’s Lessee Record.

34 See Verdict for Defendant, U.S. Circuit Court, District of Ohio, Official Transcript of Record, U.S. Supreme Court Records and Briefs, Cincinnati v. Edward White’s Lessee, No. 69, Term Year 1832.
that this original title was valid. “Private and individual rights,” Thompson maintained, had been “acquired with reference to it.” To declare the dedication invalid at this late date was to destroy the other private property that had sprouted up in reliance. In mushroom cities like Cincinnati, “so rapidly springing up in every part of our country,” it unfairly allowed the private interests of one party to trump the private interests of others, simply because there was no organized municipal body capable of asserting its own claim at an early date.35

It is tempting to read *White’s Lessee* in the way that Bellamy Storer interpreted it for the readers of the Cincinnati *Daily Gazette* in March 1832, as a simple triumph of a “public” over “private.” But Thompson’s opinion posited a mixed identity for Cincinnati’s waterfront, seeing it as a privately-owned space managed by a public entity for the benefit of a multiplicity of other private users. By 1832, Chase and other newcomers to the city would have readily seen this in the form of the long row of storefronts stretching along Cincinnati’s Water Street facing the Ohio River until they tapered off into the landing itself. One year before *White’s Lessee*, a city directory listed nearly eighty businesses occupying this nine block stretch of land, known as the city’s “Commercial Row.” Most of them were sole proprietorships or small partnerships devoted to receiving, forwarding, or processing items that had been carried to Cincinnati by steamboat and then hauled onshore. The row of businesses included ten grocers, five “produce merchants,” five papermakers, and four “commission merchants.” Added to this were people listed as carpenters, boarding house operators, pilots, painters, an “engine finisher,” and the owner of a “commercial coffee house,” all of whom offered services to riverboats and their passengers. In their midst were a handful of larger establishments also feeding into the river trade: five sawmills

35 See *White’s Lessee*, 441-444.
and one “mill warehouse.” By 1832, each of these individual concerns had staked their commercial livelihood on being able to exchange goods and services with one another at the foot of Main and Water Streets at no extra charge. Changing the rules altered the business expectations of too many Cincinnatians, destroying the web of private businesses deals that now composed a significant segment of the Ohio River’s greater steamboat economy.

Reading similar published court decisions like *White’s Lessee*, verdicts that supposedly subjected private property to “inalienable public rights of usage,” the historian William Novak has argued that nineteenth-century waterfronts such as Cincinnati’s public landing “became a key site for the exertion of state power” trumping the claims of “private decision makers.” In Cincinnati, however, it was not the city council - the type of organized lawmaking institutional body playing the role of “the state” in Novak’s account - that took the first step in defeating the private claims of Joel Williams. Instead, it was simply a “group of men in the middle of the night” asserting an adverse property claim pursuant to a quasi-governmental authority that, like Cincinnati’s Founders, they may have granted themselves. It was not until 1827 that the city council itself began to regulate Cincinnati’s waterfront by positive written law, passing an ordinance collecting wharfage fees and “regulating the loading and discharging of boats.” And there, rather than acting “to assert the preeminence of public powers” in a way posited by Novak, Cincinnati’s council merely worked to keep the waterfront open for the largest class of private users. Under city law, circa 1832, individuals who attempted to swim and bathe in the river

36 This list is compiled from businesses listed as either holding an address on “Water Street” or on “Commercial Row” in *The Cincinnati Directory for the Year 1831* (Cincinnati: Robinson & Fairbank, 1831).

during the day would be fined. Boats that stayed for more than twenty-four hours would be removed and sold. Vessels that were empty of goods would also be forced to give way. Small vessels engaged in petty trades like driftwood collection paid higher fines and could be seized. For large steamboats known to be actively “receiving and discharging cargo,” exceptions were made.  

If Cincinnati’s town council now asserted unchallenged “state power” over the city’s waterfront at all, it was a type of power that facilitated a select list of pre-approved commercial activities enhancing the value of the private businesses that now occupied Cincinnati’s Commercial Row. This was especially evident later in 1832, when the town council began attempting to extend its lawmaking authorities beyond commerce-enhancing measures. By June 1832, for instance, the council was struggling to obtain funds to clean the public landing, eventually deciding to borrow money directly from the Second Bank of the United States. Further uphill, its efforts to wash city streets and clear sewers in the town were being resisted, with newspaper editorialists suggesting that these were private responsibilities that should be undertaken by affected property owners. In mid-1832, the impending arrival of a cholera outbreak from the Atlantic Coast changed some of this, with Cincinnatians briefly allowing their city council to create a Board of Health with emergency street-cleaning powers. But even as Dr. Daniel Drake, the city’s leading physician, noted that “steamboat people” were particularly susceptible to the malady, he advised against taking any action on the landing. The cause of cholera, he maintained, was atmospheric in origin. It was not carried by people or contaminated produce arriving by riverboat. The public landing would not have to be cleaned by a public

__________________________


39 See Cincinnati Daily Gazette, Jun. 1, 1832 (cleaning public landing); Cincinnati Daily Gazette, May 4, 1832 (washing city sewers).
entity. This was reassuring news, since the alternate interpretation of cholera as a contagious disease raised the prospect of ordering a full quarantine of Cincinnati’s port. In the pages of the *Daily Gazette*, Drake cautioned that a quarantine would be “embarrassing to our commerce,” and called on the city’s “men of business” to resist.\(^4\) A few weeks later, when Ohio’s Governor refused the Cincinnati city council’s request that he close the state’s river borders himself, the council decided to follow Drake’s advice even though the Governor said that establishing a *cordon sanitaire* across the Ohio River was within the city’s own local power of “medical police.” As of October 1832, when Drake documented the first appearance of cholera among fifteen people whose livelihoods were “all connected with the water,” these “intemperate” souls were being carted off to a hospital by force. But even as some Cincinnatians began to die, its public landing remained open for business, just as it had during the flood earlier that year.\(^4\)

Such was the waterfront surveyed by Salmon P. Chase in his early Cincinnati years. When it came to derelict boats, drunk boatmen, transient driftwood salesmen, or structures that blocked the path of draymen to the water’s edge, it may have been governed by a city council

\(^4\) See *Cincinnati Daily Gazette*, July 2, 1832 (“steamboat people”); *Cincinnati Daily Gazette*, June 27, 1832 (“men of business). While scientists now agree that cholera is carried by *V. cholera*, primarily through waterborne fecal matter carrying this bacterium, the etiology of the disease was a matter of great debate during the first half of the nineteenth-century, with Drake’s geography-based theories holding many followers. L.J. Jordanova, “Earth Science and Environmental Medicine: the Synthesis of the late Enlightenment,” in *Images of the Earth: Essays in the History of the Environmental Sciences*, ed. L.J. Jordanova & Roy Porter (London: BSHS Monographs, 1979), 120-146; Conevery Bolton Valencius, “The Geography of Health and the Making of the American West: Arkansas and Missouri, 1800-1860,” in *Medical Geography in Historical Perspective*, ed. Nicolaas Rupke (London: Wellcome Trust Centre, 2000), 121-145. Contagion-based theories of the disease were also available, however, and while not acted upon in Cincinnati were followed in other locations during the outbreak of 1832. See Charles Rosenberg, *The Cholera Years: The United States in 1832, 1849 and 1866* (Chicago, 1962), 13-98. The decision not to implement quarantine procedures in Cincinnati, meanwhile, at least partly because of their potential economic impact, paralleled the practice of one of Europe’s most important ports at the time. *See Richard J. Evans, Death in Hamburg: Society and Politics in the Cholera Years, 1830-1910* (New York: Penguin, 2005).

\(^4\) See Ohio Governor’s Papers, Lucas Papers, Jan. 1830-Dec. 1832, Microfilm 999, Ohio Historical Society, Columbus, Ohio; *Cincinnati Daily Gazette*, Oct. 6, 1832 (“all connected with the water”).

57
equipped with “the ability to enact and enforce public laws regulating or even destroying private right, interest, liberty, or property for the common good,” what William Novak describes an all-pervasive “police power” that supposedly dominated the United States in the nineteenth-century. But when it came to steamboats and the compulsory activities that supported their commercial heartbeat, it remained a volatile place subject to a law of its own. If anything, it was best seen as a place governed by the council’s surrogates, “groups of men in the middle of the night” and other private parties adept at ignoring some claims over property even as they created others out of whole cloth. As White’s Lessee had shown, the police power of Novak’s nineteenth-century state could be turned against people who threatened the “private and individual rights” of certain Cincinnatians, even when no official government actors were present. When the well-regulated society’s police powers threatened to conflict with this select group’s own business plans, they could just as easily vanish from the scene. As Novak himself has admitted, the nineteenth-century’s “well-regulated society,” when it existed on the ground, seemed particularly adept at coexisting comfortably with repressive institutions like “slavery and patriarchy.”

In the end, Justice Thompson was careful to explain, no government entity ever obtained absolute legal title in the land underneath the city’s waterfront. All that the city had ever acquired, he wrote, was an equitable “easement” to operate this land as shared commercial space. In law as in fact, there were many ways in which ownership over Cincinnati’s public landing never left private hands. If the 1832 case of White’s Lessee had shown that a world of competing private parties lay behind even the strongest assertions of “public right” in Cincinnati, other events from that year had demonstrated that settled ideas about ownership could suddenly be revised under the cover of self-made law. Learning these lessons was part of the basic education

---

42 For the strong version of Novak’s “well-regulated society” argument, see The People’s Welfare, 1, 9. His observation about “slavery and patriarchy” appears on 248.
of any young lawyer planning to serve clients within the Ohio River Valley’s nineteenth-century steamboat economy.

**

To become a successful lawyer in 1830s Cincinnati, Salmon P. Chase would thus need to become an expert in private property and contract, the legal concepts that kept Cincinnati’s public landing bustling. As a man that studied federal statutes and Constitutional law under the longest-serving Attorney General of the United States, this initially seemed difficult to learn. In 1832, while he was still searching for clients, Salmon P. Chase agreed to edit a comprehensive, three-volume work publishing every Ohio statute then on the books. The first volume began with a preface purporting to tell the legal history of his adopted state. Rather than property and contract, it featured public laws of governance, starting with the Northwest Ordinance of 1787, a statute passed by the defunct Articles of Confederation Congress. For Chase, the Ordinance was “the basis of all future constitutions and legislation” in Ohio, “unalterable and indestructible except by… final and common ruin” of the American republic. Chief among its provisions was language declaring all “carrying places” into the Mississippi River “common highways, and forever free” from taxes, imposts, or duties inflicted by any single state. According to Chase, this turned rivers like the Ohio into resources of “common benefit,” open to “the use of all citizens of the United States.”

43 This provision, one federal Ohio judge explained a few years later, had indeed been “an inducement to immigration” for white settlers, promising “uninterrupted enjoyment” of the watery pathways to market westerners would follow. But, as steamboat lawyers would have also been prepared to instruct Chase, the “common benefits” that each American shared in waterways like the Ohio River were in fact limited in scope. All

people, wrote one leading Cincinnati lawyer in a brief for a steamboat company accused of
damaging a private wharf, maintained an equal “right to run over and lie in the navigable portion
of the river.” But this right could only be exercised for “purposes of commerce.” “The rights of
commerce,” that lawyer further explained, “are the paramount rights,” not access to the river in
and of itself. And as Cincinnati’s John McLean, Ohio’s member of the Supreme Court of the
United States explained in 1838, these rights were best enforced by *private* parties seeking to
enjoin any obstructions to free passage to, from, or on the Ohio River in court.44 Again, no
specific state action other than a court order was necessary to maintain the river as a shared
commercial resource.

Along interstate waterways like the Ohio River, new Buckeye lawyers like Chase
eventually learned, state and national legal officers were in fact extremely deferential to private
“commerce” performed by private individuals and trading firms. As the legal historian James
Willard Hurst once argued, this in turn delegated a great deal of lawmaking authority to private
commercial litigants engaged in the river trade.45 “Commerce,” Cincinnati’s Timothy Walker
instructed readers of the nation’s leading law textbook, was a spontaneous “mode of distribution”
created by individual traders, each of whom had agreed to transform “all the products of human
labor” into commodities which passed “from hand to hand in an almost ceaseless process of
exchange.”46 For traders on Cincinnati’s waterfront, it was “commercial law,” purporting to
provide rules for each transaction that occurred, that governed. To become a leading member of

---

44 See *Spooner v. McConnell*, 22 F. Cas. 939 (C.D.Oh., 1838) (“inducement for immigration” and creating
private rights of action for enforcement); Brief by Lincoln, Smith, Warnock & Stephens, Walker &
Roberts, *Sherlock v. Bainbridge*, Supreme Court of Indiana, Nov. Term, 1871, 2-5, 51-57 (“right to run
over and lie”).

45 See James Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in

(Cincinnati: Derby, 1846), 123.
the Ohio bar, Walker taught his students at the new Cincinnati Law School (founded in 1833), they needed to master its intricacies. Once a Cincinnati lawyer took on a new riverfront client engaged in a dispute with another private party, the terms of the Northwest Ordinance, or the “public” character of the Ohio River and the city’s steamboat landing, became moot.

To understand how the commercial law governing Cincinnati’s waterfront worked, nineteenth-century treatise writers often began with its most ubiquitous artifact, the bill of lading. These were small slips of paper, sometimes with printed headings and sometimes not, that acknowledged the receipt of items in one place while promising to deliver them somewhere else. Since the late 1810s, perhaps hundreds of thousands of these slips had been scattered throughout the Mississippi River Valley by steamboat, ending up in the files of merchants, clerks, and lawyers from Pittsburgh to New Orleans. From the moment that steamboat arrivals began taking over the city’s public landing, visitors peeking over the shoulders of waterfront clerks would have seen them scribbling out and signing notes with language similar to the following:

SHIPPED in good order and well conditioned, by G.V.H. De Witt, in and upon the good Steam Boat called the Genrl. Pike, whereof is master for the present voyage Rowan, now riding anchor in the Ohio River, off Cincinnati, and bound for Louisville, To say sixty Nine Kegs Butter, Being numbered and marked [B] as in the Margin, and are to be delivered without delay in the like good order, and well conditioned, at the aforesaid port of Louisville (the unavoidable dangers of the River only excepted) unto James Bogart or his assigns, he or they paying eighteen and three four cents per 100 lbs. IN WITNESS WHEREOF, the Master or Purser of the said St. Boat hath affirmed to Three Bills of Lading, all of this tenor and date; the one of which being accomplished, the other two to stand void. Dated in Cincinnati 25th November 1821

Here, clustered into less than two hundred words taking up the space of less than half of a page, was evidence of a commercial transaction creating a litany of promises, procedures, and

---

47 See, e.g., Bill of Lading, Nov. 25, 1821, Folder 4, General Pike Records, Inland Rivers Library, Public Library of Cincinnati and Hamilton County, Cincinnati, Ohio.
expectations running between a “shipper” (De Witt) and a “carrier” (the General Pike), between the shipper and its “master” (Rowan), between the carrier and its master, and finally between all of these parties and the recipient of the goods (“Bogart”) and any of his potential “assigns.” And yet, while the bill delineated some of the rights and obligations, a great deal was still left out. What would happen, God forbid, if the Pike never made it to Louisville? Was “De Witt” the owner of the butter, positioned to bring a claim against him or the Pike? Or was he only a “forwarding merchant,” shipping the butter for someone else completely unnamed in the bill, who would have to assert a claim in De Witt’s place? And if something went wrong on the Pike, what if “Rowan” or another officer or crewmember were personally to blame, but had left the Pike or went missing before it reached Louisville? Who would be the vessel’s representative then? Who, for that matter, actually owned the boat? And what if the Pike arrived, but the butter was spoiled on arrival? Would “Bogart” now be considered its sole owner, bearing the loss? What if Bogart had “assigned” the spoiled butter to someone else before it reached Louisville? Finally, would the answers to any of these questions be any different if the butter, or the Pike itself, were insured?

If something did go wrong with this shipment, the answers to all of these questions were eventually referred to members of Cincinnati’s commercial bar or their counterparts in cities up or downstream, people like Bellamy Storer, the local attorney that had represented the city in White’s Lessee. Standing alone, the bill of lading provided minimal guidance. As treatise writers were careful to explain, that document at best only created a contractual relationship between shipper and carrier. With respect to the other parties implicated by the underlying transaction – the captain, the vessel’s owner, and the owner(s) of the goods – it only served as
“evidence” that other agreements allocating benefits and risks may also exist. If he were lucky, an attorney like Storer would find that all of these parties had already come to written agreements among themselves before the butter was ever placed onboard the Pike, allocating nearly every remaining risk among the vessel’s many contingencies. But it was more likely that these parties had left elements of the transaction ambiguous, occasionally even leaving portions of the bill of lading blank, or merely scribbling in that document that items like freight were paid at an unspecified “customary rate.” In this case, Storer would have to rely upon Ohio law as he found it, based in part upon common law principles or statutory provisions borrowed from Atlantic or Mediterranean jurisdictions, and part upon rules of thumb and shipping practices of more local origin, elucidated in cases decided in places like Columbus or New Orleans.

In general, the commercial law that had developed in river jurisdictions like Cincinnati was a form of law only moderately capable of answering any of the questions left open by waterfront bills of lading. It was really at its most robust when identifying ways to split up property interests and to put them in motion, methods of easing what Timothy Walker called the river’s peculiar “mode of distribution.” It did not identify all possible contingencies or indicate at the outset - in the words of historian Jonathan Levy – who precisely “owned the risk” in every possible case. Rather, it subordinated these questions to a burning common desire to get saleable items loaded onto a steamboat and sent on their way. In lieu of any consummated risk,

49 See, e.g., Steamboat Bills of Lading File, Kentucky Historical Society, Frankfort, Ky. (bills with incomplete information); Bill of Lading, Jan. 31, 1852, A.V. Danner Papers, Indiana State Library Archives, Indianapolis, Indiana (“customary” rate).
Cincinnati’s wheels of commerce were allowed to spin. Through this process, upland “property” became “merchandise and goods” in waterfront shipping papers, subject to a set of competing interests when placed onboard. Thus, when an Ohio farmer wheeled his dairy products down to the river and, depending on prices up or downstream, either sold his churned butter outright or consigned it to a “commission and forwarding” house while agreeing on a future split of profits, and when these items were then transferred to steamboats that a third set of parties owned through interlocking partnership agreements, Ohio commercial law allowed something magical to happen: a new type of property, owned on a non-exclusive basis by a number of parties, was allowed to come into being. “By passing into the custody of a merchant,” the author of a treatise used by Cincinnati lawyers explained in 1837, one’s possessions became “mercantile property,” subject to immediate exchange. Or, as Walker, put it, the simple contracts passing between parties converted “property in possession” - tangible items that could be exclusively owned - into “property in expectation,” intangible assets divided between many parties, with interests divided up by private traders that were hastily jotted down and sometimes only partially understood.51

Within this legal system, it was only when a mishap occurred that basic questions like “who owns this steamboat?”, or “who owns this butter?” became relevant. Then, and generally only then, would Cincinnati’s legal specialists go to work, sifting through legal treatises, handwritten notes of previous court decisions, and slips of paper as they performed their legal tasks. Depending on the outcome of this inquiry, river traders had much to lose or much to gain. Every time they approached the river, they still risked, as one steamboat hand once put it, being

“sold out without ceremony or contract,” bearing the full loss.\textsuperscript{52} Since insurers had lawyers of their own, eager to shift the risks of commerce to someone else, this was the case even if any of these parties took the extra step of insuring their mercantile interests.

In the main, the clients of men like Bellamy Storer were forced to approach Cincinnati’s public landing like seasoned gamblers entering a plain air waterfront casino. Here, they played a popular game of chance called “the river trade” with scraps of property, some of it on loan or also claimed by someone else, as their only chips. When a farmer or storekeepers decided to convert their private property into merchandise and then place these articles on a rivergoing vessel that someone else controlled, they were indeed placing a set of wagers: they were betting that the price information they had received at the shipping point about distant markets was accurate, that the goods would actually reach their destination and find a buyer, that the buyer’s purchase price would exceed the forwarding fees and freight costs incurred at the waterfront, and that the buyer would actually live up to their bargain and be able to pay. Longtime river traders knew that there was a real chance of losing any one of these bets. This is what drove the radical division of property interests at the water’s edge, either through formal agreement at the outset or through the ambiguous ellipses punctuating riverfront bills of lading. Before arriving on the Cincinnati landing, for instance, farmers consulted a newspaper or specialized “Price Current” pamphlet on the going rate of their commodities heading upstream or downstream, and would have also likely already heard from a riverfront storekeeper as to whether it was an advantageous time to arrive. Typically a former “river man” that had “learned the markets” on his own with family members stationed up or down the river relaying information, riverfront storekeepers often engaged in what economists call “arbitrage”: the leveraging of price differentials between

\textsuperscript{52} Letter from J.M. Reader, Manckport, to Jacob Brandenburg, Nov. 26, 1858, John Brandenburg Papers, Sesquicentennial Papers Project, Box 1, Indiana Historical Society, Indianapolis, Ind.
markets. If the difference between the purchase price in Cincinnati and the sale price elsewhere was large and relatively certain, a storekeeper could offer to buy or exchange the farmer’s goods on the spot. But if upstream or downstream markets were already flooded with similar goods, or if the river was too low and shipping rates were too high, the storekeeper could also refuse to accept the goods, or could offer to serve only as a “forwarding and commission agent,” taking custody of the articles “on consignment,” pocketing a share of the proceeds only if they were sold.  

In such a scenario, farmers may have lost physical possession of their goods, but they still owned a reduced percentage of its exchange value when and if they were ever sold, fully shouldering the financial burden if the goods were sold at a loss, or if they failed to sell at all.

As the Cincinnati waterfront trader Sheldon Kellogg observed, betting on the river trade on this basis involved “close, severe, and anxious labor” for everyone involved - farmers, storekeepers, shorebound merchants, and boat owners. Sometimes the pressure was too much. From his Cincinnati storefront starting in the 1820s through the late 1840s, Kellogg witnessed “the rise and fall of many trading firms – the success and subsequent failure of many friends and acquaintances.” And yet, he also witnessed Cincinnati’s rise from a “weak, poor, and frontier village” into a “solidly rich and populous city.” For decades, through boom and bust, the sheer volume of activity on the Cincinnati waterfront sustained its continued existence, creating an even thicker amount of participation. As it turned out, thousands like Kellogg were prepared to gamble on the river trade – to enter Cincinnati’s plain air waterfront casino and thus to keep it open - because some of the most critical steps in their gamble were played using someone else’s money. Upon arrival in the Queen City in 1818, for instance, Sheldon Kellogg’s uncle rented

---

land from John Piatt, described by Kellogg as “a great property holder and banker” in the city, a man originally from New Jersey who maintained stable lines of credit in the east. In order to buy his supplies, Kellogg’s uncle also drew upon “paper money,” letters of credit issued by Piatt, redeemable mostly at local banks. In order to keep his own Commercial Row storefront stocked and in the black, Kellogg could start up a tab with his eastern suppliers, could barter away some of his produce for sale downstream, or could promise to pay at a later date. And at the same time that Kellogg became one person’s debtor, he could become the creditor of someone else. When Kellogg purchased goods from farmers in his uncle’s position, he could reduce some of the farmer’s tab, or could take a legal interest in some of the farmer’s goods. And when he purchased goods from another upstream or downstream merchant, he could also sell or “assign” over some of the debts that others owed to a bank in exchange for ready cash. In easy times, Kellogg could also follow his uncle’s lead and attempt to pay his own bills by exchanging some of the “paper money” or promissory notes they had been spotted by people like John Piatt. But if hard money or eastern credit was needed by his trading partners to complete their own transactions before the completion of the shipping season, this presented a problem, since at that point most Western profits were still “property in expectation,” reliant on a trail of transactions that had not yet been completed. To stay afloat, he would also need to turn to someone with longer lines of credit, someone like Piatt, who could take an interest in his business in exchange for more cash.

54 See, e.g., Sheldon Ingalls Kellogg Autobiography (1871), pp. 47, 62-3, Ohio Historical Society, Columbus, Ohio; “Account book of material, equipment and supplies purchased for the steamer George Washington during 1824 and 1825”; “Sales record of a Louisville general store of a variety of supplies including sales to steamboats, covering the period from September 11, 1836 through March 31, 1837,” Inland Rivers Library, Cincinnati, Oh.; John D. Jones Letter Book (1830-1834), CHLA.

55 In the 1830s, for instance, the first grocery and dry goods store that employed Sheldon Ingalls Kellogg, was owned by Philadelphians. See Kellogg Autobiography, pp. 1-30, Ohio Historical Society, Columbus, Oh. For an example of a well-heeled Cincinnati lender taking an interest in a borrower’s Cincinnati
In borrowing from private lenders like John H. Piatt to stay in the game, farmers and small-volume traders like the members of Cincinnati’s Kellogg family were turning to the parties most likely to end up with the greatest share of the game’s profits. Piatt, it could be said, was one of the original winners at Cincinnati’s plain air casino back in the early 1800s, and had helped to build its steamboat extensions during the 1810s. Like John Cleves Symmes, Piatt originally hailed from New Jersey. Unlike Symmes, he got his start as a river trader, transporting flour, whiskey, and cured beef on the Ohio rather than buying and selling fixed parcels of land. He had arrived in Ohio a few years before Sheldon Kellogg’s uncle, when he served as a deputy commissary agent within the War Department during the War of 1812. Appointed by William Henry Harrison, he gained notoriety for using local water routes rather than costlier overland methods to supply Harrison’s troops as they fought Indians and the British. After the war, Piatt leveraged his shipping acumen to become managing partner in the new firm of “Hunt, Riddle, Piatt & Co.” a concern founded “for the purpose of importing goods from Europe by way of New Orleans on the Mississippi River to the town of Cincinnati.”

What the first generation of New Jersey “Founders” were for Cincinnati’s public landing infrastructure, Piatt became for the Queen City’s commercial “superstructure” – the steamboats running on the river and the financial institutions hovering at its edges. With steamboats just beginning to appear on the Ohio and Mississippi Rivers after the War of 1812, it was a promising moment for Hunt, Riddle, Piatt & Co to begin experimenting with an upstream method of supplying settlers in the Northwest. By 1818, some of Piatt’s business partners had pooled their


resources and formed the “Cincinnati Steam Boat Company,” capitalized at $30,000 and created to build a vessel to dominate the local trade between the Queen City and Louisville. Piatt was named the company’s director, and the vessel that they eventually built was the first *General Pike*. Satisfying a need for water transportation at the steamboat’s point of inception, it was a success, picking up and delivering goods, passengers, and bills of lading throughout the Ohio River Valley during the late 1810s and early 1820s while facing limited competition.\(^5^7\) By this point, when Piatt lent “paper money” to emigrant farmers and small traders like the Kelloggs, it is unlikely that he was doing so with any predatory intent. For Piatt, Cincinnati’s public landing was a place of easy opportunity and limited risk. By offering newcomers a helping hand, he was helping to create a new generation of winners in the city’s plain air casino. Once successful, today’s small borrowers would only add to the casino’s continued viability tomorrow, consuming the stream of goods that vessels like the *General Pike* carried into and out of its invisible doors.

By the 1830s, when Cincinnati lawyers began reporting on the creditworthiness of the city’s commercial community for lenders in New York, a composite sketch of the ideal river city merchant had formed that looked a lot like John H. Piatt. First of all, he was a white man with family ties on the Atlantic coast. Second, like Piatt, he had likely been one of the first movers in the carrying trade, developing a reputation as a “shrewd” and “sharp” yet “responsible” trader that bought low and sold high. He was also known for paying his bills. He may have started his career on the water, leveraging family ties to gain a position of minor authority working onboard a steamboat, eventually rising to become a steamboat captain and part-owner of the vessels he

managed. But he also avoided having too much of his capital “locked up in steamboats.”

Instead, like Piatt, he eventually translated his river connections to success onshore, perhaps running a “popular boat store” or a forwarding house doing a “splendid steamboat business.” Over time, he may have also started investing in real estate or taking equity shares in the business of smaller river traders owing him money. By his forties or fifties, he could be classed into a select group of men known as the city’s “capitalists,” the natural heirs to its founding class.  

This was roughly the career path, for instance, of Jacob Strader, John Piatt’s nephew. Born in New Jersey in 1795, Strader had moved to Cincinnati in 1816 to work in his uncle’s trading house. By age 23, he had been appointed to serve as the first clerk of the *General Pike*, responsible under the Cincinnati Steamboat Company’s partnership agreement for keeping the vessel’s books clean and for turning its profits over to its owners. In this post, he was, pursuant to the *Pike*’s partnership agreement, “in all respects subject to the order” of the vessel’s “commander” or captain. A few years later, Strader had moved up to serve in this role himself. By the 1830s, customs papers listed Strader as the sole owner of a later incarnation of the *General Pike*, and owner or co-owner of dozens of other Ohio River steamers as well, all eventually enrolled into the U.S. Mail Line Co., taking over the Louisville-to-Cincinnati route of his uncle’s old steamboat line. His interests also began expanding upland, first through an  

---

investment in a railroad company and a cotton factory, and eventually by becoming the “owner” and President of the Commercial Bank of Cincinnati.59

By the end of the 1830s, successful river capitalists like Jacob Strader could make a legitimate argument that they in fact “owned” a great deal of Cincinnati. Down at the bottom of the town, for instance, was a stretch of riverfront land adjacent to the public landing where only Strader’s vessels arrived and departed, known as “Strader’s Wharf.” Held in private hands by Jacob Strader himself, it eventually entered the minds of later generations of Cincinnatians as being an extension of the public landing. This was repeated 130 miles downstream in Louisville, where a section of the wetlands considered part of Louisville’s municipal waterfront was actually owned privately by Jacob and his brother Charles, styled as another “Strader’s Wharf” serving Kentucky’s largest river town. Lacking a court decision like White’s Lessee in the Bluegrass State, it took many years for that city to acquire any defensible legal interest of its own in this prime riverfront land.60 Meanwhile, back in Cincinnati, Strader and other business leaders were busy building self-governing private institutions whose authorities began where the city council’s ended. At the beginning of the 1830s, for instance, a handful of leading Cincinnati merchants obtained a corporate charter from Ohio’s legislature to found a privately-owned “Commercial Exchange” blocks from the public landing, designed to be “a place of general resort” for river trade information. By the end of the decade, Strader and seventy-three other individuals and trading firms crowded into the offices of a similar exchange organization for a


60 See Joan G. Strader and John Jacob Strader IV Oral History Recordings Transcript, Jan. 25, 1996, CHLA (on “Strader Wharf” being confused for Cincinnati Public Landing); William Inman v. City of Louisville, Case No. 9653, Filed 1854, Chancery Court Case Files, Jefferson County, Kentucky Department of Libraries and Archives, Frankfort, Ky (on the process of transferring Louisville’s “Strader’s Wharf” to the municipality of Louisville).
“meeting of the merchants” in an attempt to manage their own business affairs. A new organization, the city’s Chamber of Commerce, was eventually born, in time equipped with self-granted powers to police the business behavior of its members through private arbitration.61

In the quasi-governmental role that they had started to play in 1830s Cincinnati, successful river trade capitalists like Jacob Strader became more than plum clients for new lawyers like Salmon P. Chase. Turning their social connections and “property in expectation” into an ever-increasing share of “property in possession,” and then leveraging their propertied status into a stake in the city’s public affairs, men like Strader were also members of a social class that rookie lawyers aspired to join. The parallels were many. Like Cincinnati’s leading men of business, the most financially successful members of Cincinnati’s bar were all from somewhere else.62 Nicholas Longworth, the wealthiest of the bunch, was from New Jersey, the same state that gave rise to Cincinnati’s Founders. Arriving in the Queen City in 1804, he had taken some of his fees in riverfront property that eventually became so valuable that he could retire from practice in 1819 to take on business as “a regular lot and land dealer.” Before he died in 1863, Longworth became one of the richest men in the nineteenth-century United States.63 Other successful Cincinnati lawyers, meanwhile, brandished what one law clerk called the “New England passport.” Nathaniel Wright, for instance, considered the city’s “safest and soundest” legal mind, was originally from New Hampshire. Before traveling to Ohio in the late 1810s, he


62 In 1850, the Hamilton County Clerk recorded 213 members of the Cincinnati bar, only 58 of whom had been born in Ohio. See James Hunter, “Roll of Members of the Bar in Hamilton County (1850), Miscellaneous Collection, CHLA.

had consulted with Bellamy Storer, himself a recent émigré from Maine, who reported that Cincinnati offered “permanent success to every person who is industrious and enterprising.” By the time of White’s Lessee, Storer’s law clerk reported that his boss had already “accumulated a fortune and gained himself a name,” helming an “immense business” that garnered prodigious fees. Like Jacob Strader, Bellamy Storer also had a taste for governance. Within a few years, he became a member of the U.S. Congress.⁶⁴

While they served clients embedded into an exchange economy that put property in motion, successful Cincinnati lawyers like Longworth, Wright, and Storer were all able to convert their earnings into land, what turned out to be the most stable form of property investment in the Queen City. Between 1831 and 1854, the assessed value of real property in Cincinnati rose from $3,356,523 to $58,135,436, an increase of nearly two thousand percent.⁶⁵ When he arrived in Cincinnati in 1830, the New Hampshire-born, Dartmouth-educated Chase was prepared to follow in these men’s footsteps. Before gaining entry to the Ohio bar, he had apprenticed for Nathaniel Wright, who was representing Jacob Strader at the time. In a few years he took on Nicholas Longworth as one of his clients while following Storer’s political lead by serving on the city council.⁶⁶ Chase also went into a brief partnership with Timothy Walker, another young recent émigré from New England. In comparison with Chase, considered by Bellamy Storer’s clerk to be largely of “literary merit,” Walker was destined to be a “lion in the West.” Born in Massachusetts, Walker had been trained at Harvard Law School by Joseph


⁶⁶ See Frederick Blue, Salmon P. Chase: A Life in Politics (Kent State University Press, 1987), 14-60.
Story, the leading theorist of America’s commercial bar, a teacher who had wished Walker much “honor,” “profit,” and “happiness” when his star pupil moved west. One year in, Story’s wishes had been granted. By wedding Nicholas Longworth’s daughter, Storer’s clerk wrote, Timothy Walker “married $50,000 and a very interesting damsel” in 1831. Three years in, he was representing steamboat capitalists and insurance companies and founding the Cincinnati Law School, seeking to become a type of Joseph Story for the west. “He is my friend and rival,” Chase admitted. “At present we are in cooperation but it cannot always be so.”

As Chase may have sensed when comparing himself with his well-heeled and well-connected colleague, not everyone could become Jacob Strader or Nicholas Longworth in 1830s Cincinnati. For those lucky few who could be appointed clerk on the General Pike in 1818 at the height of the initial steamboat boom, or who could marry into the Longworth family in 1831, the Queen City was a happy place. But it could also be unforgiving. The fluctuations of Cincinnati’s seasonal economy – where business could go from brisk to dull in a fortnight due to the height of the river or prices downstream - could also sweep away “property in expectation” before it became anything more tangible.

When he first visited Cincinnati in 1822, Chase had witnessed this first hand when he came across a man named Ethan Stone, “a gentleman that had been very prosperous and accumulated a large property,” but who had recently become “embarrassed” when his main

---

67 For Walker’s connection to Story, see Joseph Story, Cambridge, Mass., to Timothy Walker, Cincinnati, Ohio, Nov. 24, 1830, Box 1, Book 1, Timothy Walker Papers, Cincinnati History Library and Archives, Cincinnati, Oh. Profiles of Walker appear in Chambrun, The Making of Nicholas Longworth, 55-70; Daniel Aaron, Cincinnati, Queen City of the West, 1819-1838 (Columbus: OSU, 1992), 63-4; Walter Stix Glazer, Cincinnati in 1840: The Social and Functional Organization of an Urban Community during the Pre-Civil War Period (Columbus: OSU, 1999), 4-7. “Interesting damsel” quote is from Jewett, “Cincinnati Is a Delightful Place,” ed. Dunn, James Taylor, Bulletin of the Historical and Philosophical Society of Ohio 10 (October 1952): 267.

68 See Letter from Salmon P. Chase to Hamilton Smith, May 29, 1832, Reel 4, Chase Papers, UPA.
lender, the first Bank of the United States, had decided to wind up all of its affairs in Ohio and leave. Suddenly, Chase recalled, the Bank’s “debtors were called on for payment and it was impossible to pay.” Ethan Stone was one of them, and “was obliged to surrender nearly all of his property for a release of the claims against him.”

Across town, John H. Piatt himself eventually faced a similar fate. Writing that he faced “unjust suits” from eastern lenders following the Panic of 1819 that placed over “twenty thousand dollars of… property at stake,” Piatt decided to go on the run from his eastern creditors in early 1820. Nevertheless, with his own “paper money” considered worthless, Piatt also eventually traveled Ethan Stone’s path to financial ruin, falling into considerable debt to the Bank of United States. By the early 1820s, Piatt was spending time in debtor’s prison. This is when shares in the General Pike initially came into his nephew’s hands. For Piatt, transferring ownership of the Pike to his nephew was a way to shield some of his property from creditor’s claims. As Nathaniel Wright may have whispered to Chase during Chase’s brief apprenticeship with him, the fortunes of wealthy clients like Jacob Strader were often cobbled together in ways like this, gathered out of the fortunes of unluckier capitalists like John H. Piatt, men who had been forced to satisfy creditor demands of their own.

**

The riches-to-rags story of John Piatt allows us to return to Cincinnati’s public landing and to view it in a more anxious way than Chase saw it on the day he arrived on the Paragon.

---


Soon after Chase’s own verbal portrait of the public landing appeared in the *Cincinnati American*, the printer E.S. Thomas began editing a two-page financial sheet titled *Cincinnati Prices Current and State of the Market* which reported on the riverfront’s commercial life in an urgently practical manner. Sometimes Thomas saw exactly what Chase described. “Business at the quay has been very active, particularly in the shipping line,” he reported on January 21, 1832, comparing the landing’s bustle to the custom house wharf in London. More often than not, Thomas’ picture differed from Chase’s rosy view. A few days earlier in January 1832, he was reporting flatboats being “crushed to pieces” near the public landing, and shipments being missed. And back in late 1831, during the end of the fall shipping season, outside commodities had become “scarce” and business had gone from “dull” to “dullest.” By early February 1832, Thomas had been hoping for the market to finally return to its “stability and character.” But then the flood of 1832 hit. Like Chase, he reported that the floodwaters had not receded before “the hand of industry [was] at work repairing the damages.” Unlike Chase, he connected this image to Cincinnati’s overall precarious financial position. Even before the flood, for reasons unrelated to anything occurring in the West, eastern creditors were already placing pressure on Cincinnatians to pay their outstanding debts. Now, with the city’s money market under more pressure than E.S. Thomas had ever seen, river traders were scurrying to mitigate their “distresses and losses” as quickly as possible.71

The anxiety that drove river traders to the Ohio River in the midst of an historic flood came from a fear of sharing the fate of men like Ethan Stone or John H. Piatt, circa 1822 – a fear of being dispossessed by someone or something else, likely by one of the city’s leading banks.

Following a long winter and the Ohio River deluge, this fear was real. “Until the returns for the great quantity of produce being shipped begin to be received,” E.S. Thomas warned in his *Cincinnati Prices Current*, “we can scarcely expect permanent relief.” In the meantime, with few Cincinnatians being able to pay their bills in cash, their debts were being traded to local banks, which were in turn pressured by eastern creditors to convert these bills into cash. From his editor’s office near the river, Thomas could see this happening in real time. Only a half-block away from the landing, for instance, sat Jacob Strader’s Commercial Bank of Cincinnati. The only local institution listed in Thomas’ *Price Current* that was currently issuing bank notes trading at par with their stated face value, its clerk was no doubt sifting through all of the negotiable paper that the bank had acquired, choosing which ones to draw upon. Two blocks further up Main Street, its steps still inundated by river water, loomed an even bigger fish - the Cincinnati Branch of the Second Bank of the United States. Listing Bellamy Storer as one of its directors, with a branch office capitalized at nearly twice the amount of Strader’s institution, it was the only bank with a separate lending and exchange rate section in Thomas’ publication. Even more than Jacob Strader, it was beginning to take a hand in Cincinnati’s affairs, gathering up indebted waterfront property and attempting to sell it to the city as an extension of the public landing.  

---

72 See *Cincinnati Prices Current*, Mar. 10, 1832.

73 The respective capitalizations of the banks listed in the 1834 Cincinnati City directory were as follows: Cincinnati Branch of the Second Bank of the United States ($1.7 million); Franklin Bank of Cincinnati ($1 million); Commercial Bank of Cincinnati ($1 million); Lafayette Bank of Cincinnati ($1 million). The Ohio Life Insurance and Trust Co., chartered that year, was also reported to rival the Bank of the United States with a reported capital stock of $2 million. See *The Cincinnati Directory for the Year 1834* (Cincinnati: Deming, 1834), 237-239.

74 See, e.g., Letter from Timothy Kirby, Agent, Cincinnati Branch of the Second Bank of the United States, to Herman Cope, Philadelphia, June 18, 1838, Box 39, Vol. 4, p. 81, Timothy Kirby Papers, CHLA.
With the Second Bank of the United States hovering over Cincinnati’s public river landing, the city’s river commerce literally took place within the shadow of a powerful financial actor headquartered somewhere else, an institution that could determine when the riverfront’s entire chain of debt eventually came due. Like ice breaking up on the Ohio, the precise moment when this happened seemed arbitrary. But when it did happen, even the city’s leading merchants were impacted. Keeping a dry goods business going, Cincinnati storekeeper and small lender John D. Jones wrote in 1830, required not only “running about to pick up goods, here and there, to fill an order,” but also “much thinking and calculating… in order to keep ahead of the Bank.” In easy times, if a local farmer or buyer was having difficulty paying his bills or returning money that Jones had lent, Jones could extend the time they had to pay and adjust the debt. But sometimes, he instructed another struggling storekeeper, “you must act the Shylock among your constituents and make them pay up.”75 The alternative was foreclosure by the Second Bank of the United States.

Arriving in Cincinnati in 1819 from Pennsylvania, John D. Jones had long been an esteemed river trader, lauded for his “sound sense” and “probity.” A surviving letterbook of his indicates that in the months leading up to February 1832, he had survived difficult trading periods where the city was either “bare of goods” or “overrun with goods,” and where some of his shipments were lost to riverboats that had sunk or caught on fire. But even for him, the flood of 1832 proved almost too much. Following the loss of so much saleable property in the valley, nobody would accept his promises to pay at a later date. Instead, in order to complete his own transactions, he needed hard money that came from someone else. Writing that he felt “anxious” to keep his head “above water,” to collect his debts in order that he may pay his own, he viewed

75 See John D. Jones Letter Book, Entries for Sept 11, 1830; Jan. 2, 1832; Oct. 22, 1832; Sept. 4, 1832; Feb. 16 1833, Cincinnati History Library and Archives, Cincinnati, Oh.
his entire livelihood as being “under the spur,” his waking hours involved in “an endless job of collection.” It was always “much pain and anxiety to us to be compelled to use force in the collection of our debts,” he assured the agent of a debtor that had recently skipped town. But now, if that man’s client did not pay up on the spot, he had retained a lawyer and would bring suit.  

The unnamed “force” that caused so much anxiety for mid-level merchants like Jones, compelling them to bring lawsuits against others, was Ohio’s law of debt collection. This was the hidden supplement to the bare-bones transactional commercial law practiced on the public landing, filling in the ellipses left by the bill of lading. The special force of Ohio debt collection law resided within a single statute titled “An Act Regulating Judgments and Executions,” passed in March 1831 by Ohio’s state legislature. Within Ohio, this statute stated, “land, tenements, goods and chattels, shall be subject to the payment of debts, and shall be liable to be taken in execution and sold.” In 1835, Salmon P. Chase included the text of this statute in the third and last volume of *The Statutes of Ohio*, appending court decisions to demonstrate that the law was still in effect. Rather than sending out endless collection letters, creditors could simply appear as plaintiffs before a local justice of the peace, cite this law, and obtain a judgment that a debt was owed. The justice of the peace then issued a writ of execution, called a writ of *Fieri Facias*, commanding a local sheriff or constable to levy, seize, and sell property of the debtor, now made a formal defendant, in order to satisfy the debt. If, on execution of this writ, the defendant did not repay his debt voluntarily, a court or justice of the peace could issue a writ of *capias ad satisfaciendum* authorizing sheriffs to take the debtor to jail until the debtor furnished property

---

76 See Jones Letter Book, Entries for Aug. 29, 1832; Sept. 4, 1832; Oct. 1, 1832, CHLA. For a short biographical sketch of Jones, see Cist, *Sketches and Statistics of Cincinnati in 1851* (Cincinnati: Moore, 1851), 301.
sufficient to satisfy “the judgment and costs for which such writ was issued.” The statute spelled out the next steps as well: court officers started with the debtor’s moveable “goods and chattels,” but if these were insufficient, they could move on to levies against the debtor’s land. Indeed, as Chase argued in his Statutes, any judgment under the law was seen to operate as “a lien against the real estate of the defendant.”

As put into practice, Ohio’s 1831 debt collection law was decidedly pro-creditor. Once the process started, there were only limited ways that debtors could influence the outcome. According to attorney Timothy Walker, “the venerable forms of pleading” were never used before justices of the peace under the law, who conducted “a large of amount of collecting business,” and would “dispatch business in a most summary manner” for plaintiffs. In a letter published in a New England journal, Walker summarized the simple advice that Ohio creditor’s lawyers could now give: “Produce your claim, swear stiffly to it, and you have judgment in ten minutes; while the poor defendant has no recourse but to give bonds, if he can, and appeal to the [Court of] Common Pleas.” Favoring what legal historians like Willard Hurst and Morton Horwitz once called “dynamic” over “static” property interests, this law in turn allowed property titles to be transferred involuntarily in the Buckeye State, even if not all of the steps in the entire debt collection process had run their course. Appeals could only be taken, for instance, after a judgment had already been entered, that is, after property had already likely changed hands. At best, a debtor’s appeal could only “stay” the execution of the judgment, and still required defendants to place some of their assets in the sheriff’s hands as a “surety.” And if the seizure was made while the defendant was not present, or if the appeal was not made soon enough, the

debtor lost even this recourse. Here, even if the creditor’s claim turned out to be defective or false, there was little chance that the items seized would ever return to the defendant’s possession. Usually an apologist for the social benefits of Ohio commercial law, even Timothy Walker admitted that the debt collection system in Ohio, dominated by local justices of the peace who could dispense with formal pleadings and issue summary verdicts, created a “vexatious… system of petty tyranny.”

In 1832, while briefly partnering with Salmon Chase on debt collection matters, Walker noted that their debt collection work under the law turned creditor lawyers into “melancholy vultures.”

And yet, there were also commercial benefits to Ohio’s speedy debt collection process. In its own way, Ohio’s “Act Regulating Judgments and Executions” helped Cincinnati become what Walker called “a marvel in political economy.” While local capital was “not so plenty” in the Queen City, Walker explained, credit was “as good as in any city in the Union.” Cincinnati itself was open to “multiplied channels of private investment.” As the historian Claire Priest has noted when analyzing earlier debt collection laws passed in colonial Virginia, statutes like Ohio’s offered an extra layer of assurance to lenders: even if a deal went sour, and even if their contracts with borrowers did not offer a specific asset as a “security,” lenders were able to go to court to seek payment out of the borrower’s remaining assets. In good economic times such as the early 1830s, this helped to create a low-risk business environment where local elites and eastern banks could invest surplus capital, in turn giving mid-level businessmen like John D.

---


Jones space to extend their own lines of credit to Buckeyes lower down on the steamboat
economy’s food chain. And during hard economic times, Ohio’s law offered a summary
process, through forced property transfers, for big investors to claw back their capital, to convert
their own “property in expectation” back into “property in possession.”

Ohio’s debt collection law was indeed the key institutional secret behind the Queen
City’s commercial growth; it encouraged outside capital to enter the Cincinnati market while
circulating assets back into the hands of people able to pay off their debts. In 1837, a
commercial law treatise read by aspiring Cincinnati commercial lawyers argued that similar laws
in Britain, designed “for the advancement and continuance of commerce and trade,” were all for
the best. By forcing a “total cession” of the debtor’s property, “whether he will or no,” they
distributed the debtor’s effects “in the most expeditious, equal, and economical mode.” In
jurisdictions with bankruptcy laws (Ohio lacked one of these statutes), it did so while allowing
for the “liberation” of the debtor’s body, “after he has made full surrender of his property.”

Despite its seeming harshness when it was applied, the law on its face also seemed fair, at least
for some treatise writers. When a creditor received a judgment against a debtor, he was entering
the late “remedial” stage of a longer series of transactions that had started with a contract both
sides had agreed to. By ceding possession over their property in a gamble for greater profit,
businesspeople entering sales and consignment contracts in places like Cincinnati had willingly
entered a world where any asset – whether in the forms of goods, chattels, real estate, or (in the
case of debtor imprisonment) the debtor’s own body – became a transferrable object of

---

function of similar laws in Colonial Virginia, see Claire Priest, “Creating an American Property Law:

exchange. Property seizure or imprisonment, a creditor’s lawyer could argue, was just part of the rules of the game that river traders had already decided to play.

Still, even the author of the 1837 treatise that Cincinnati creditor lawyers relied upon the most acknowledged that the end result of this game - the near-liquidation of debtor estates - could be severe. And in Ohio, a state without a bankruptcy statute, where a debtor could still be imprisoned under a capias writ and ordered to surrender all property necessary to satisfy his debts before ever appearing in court, the law was harsher still.82 There, if a river trader failed to live up to their end of the contract, everything they possessed, even those things that were not part of the original transaction, became “goods and merchandise” that could be split up, transferred, bought, and sold. If this did not happen voluntarily, it could happen by force, with the losing trader having little say over the final outcome. Thus, when gambling losses mounted among the players of Cincinnati’s plain air riverfront casino, Ohio law made it clear that the wealth of the boom times would in the end only be “securitized” by the labor and expectations of those who were scraping by. And when the casino closed, only a few, those with the most capital to begin with, were left holding most of the chips. This was especially the case because mid-level traders like John D. Jones had usually “assigned over” their claims against smaller debtors to larger institutions like the Second Bank of the United States, receiving hard money fixed at a discounted percentage of the debt’s original face value. Already holding stakes in businesses they directly bankrolled, the strongest banks and most financially secure local lenders ended up in this way with “rights of redemption” over most of the remaining commercial property in town, from the river’s steamboats all the way down to the tools of the local tenant farmer. When a “day of general settlement” was finally announced by collection notices from

---

bankers in the east, the valley’s prospects immediately darkened for thousands of city residents, as if on the morning of Judgment Day.\textsuperscript{83}

**

Behind the largest banks and strongest private lenders were always the most experienced commercial lawyers, ready to invoke Ohio’s “Act Regulating Judgments and Executions” to obtain fresh debtor property for their capitalist clientele. During the 1830s, it was Salmon P. Chase, not Timothy Walker, who became one of Cincinnati’s best. In 1832, following his brief partnership with Walker, Chase caught his first major professional break, entering into a law partnership with Daniel Caswell, the solicitor for the Second Bank of the United States’ Cincinnati Branch. In exchange for a lump payment of $1,475, Chase became entitled to “share equally in all business, including that of the agency of the Bank.” When Caswell left Cincinnati for Indiana in January 1834, the partnership dissolved and Chase retained most of the firm’s Ohio banking business, ascending to Caswell’s old role as branch solicitor, a position he held for seven years.\textsuperscript{84} Starting also around that time, he also began performing a similar role for the Lafayette Bank, financed by Nicholas Longworth. As of 1838, both the Second Bank of the U.S. and Nicholas Longworth were part of a select group of six taxpaying individuals or institutions that held ninety percent of real estate in the city, judged in terms of its assessed market value. Both had become clients of Chase.\textsuperscript{85}


\textsuperscript{84} See Salmon P. Chase Diary Entry for Nov. 1830, Reel 1; Chase Memo to Mr. Caswell, ca. 1832, Reel 3, Chase Papers, LC. Even as he went into new partnerships, Chase retained 100% of BUS business and proceeds. See Dissolution Agreement between Chase and Caswell, ca. 1832; Partnership Agreement between Chase and Ells, ca. 1835, Reel 32, Chase Papers, LC

\textsuperscript{85} See, e.g., Outstanding Judgments Against Charles S. Clarkson (for Lafayette Bank), n.d., Box 21, Folder 1, Chase Papers, Historical Society of Pennsylvania, Philadelphia, Pa. On tiered ownership of
Chase’s work for the Second Bank of the United States was devoted exclusively to debt collection in Ohio courts, usually involving either filing a bill to foreclose a mortgage in a court of equity, or a bill in a court of law “to subject property to satisfy judgments” under the Act Regulating Judgment and Executions. Receiving a commission for each debt collected, and an additional fee for prosecuting cases that went to trial, his legal advice supported broad Bank claims to debtor property in all of its many forms, with a debtor’s land as the grand prize. And rather than simply helping the Bank of the United States apply Ohio law as he found it, Chase actively worked to shape it in his client’s favor, in part through his own interpretation of the bank’s charter, and in part by literally writing the book on how the bank’s charter interacted with state debt collection law. In an 1834 solicitor’s opinion, for instance, Chase asserted that “the right of the Bank to hold real estate” extended under its charter to “Lands conveyed to it in satisfaction of debts previously contracted in the course of its dealings,” and “Lands purchased at sales upon judgments obtained for such debts,” even if neither of these powers could be found in the charter’s actual text. Similarly, as Chase had interpreted Ohio’s debt collection law in his Statutes of Ohio, all debt judgments in Ohio automatically became adverse property interests in a debtor’s real estate, collectable at the will of the Bank, even if this idea could not be located in any enacted statute. Moreover, because bank judgments were usually larger than competing judgments and typically backed by a security interest (a prior pledge of property in case of default), Chase interpreted Bank “liens” on debtor land as superior to the claims of other mortgagors, including the municipal government, which could sell land for nonpayment of taxes. As the leading judgment creditor in town, Chase advised, the Bank could control the process by which most Cincinnatians held or lost their property. Specifically, it could set aside sheriff sales

Cincinnati real estate judged in market value during this period, see Glazer, Cincinnati in 1840 (Columbus: Ohio State University Press, 1999), 87-88.
by other creditors, could appropriate money that these other creditors had made by sheriff sale, and could proceed against a security’s property once the principal’s property was exhausted. And once the Bank received a sheriff’s deed to a particular tract of land, Chase argued, the Bank’s ownership interest attached even if it took no additional steps, such as a common law “action of ejectment” or a foreclosure action in equity, typically the methods used to establish possession. “Having the legal title and the right to the possession,” he summarized, “the Bank was at liberty to take possession at any time and in any way.”

Like the city council’s equitable claim over the Cincinnati waterfront in the 1820s, these were broad claims of ownership over property that others still claimed as their own. In the July 10, 1832 message explaining his decision to veto a new national charter for the Second Bank of the United States, President Andrew Jackson had argued that Chase’s client had been supported by legal interpretations creating “artificial distinctions” among people. Over time, Jackson alleged, this created an understanding of American law designed “to grant titles, gratuities, and exclusive privileges” while working to the detriment of farmers, mechanics, and laborers, people Jackson defended as “the humble members of society.” Like many Cincinnati lawyers, Chase entered the 1830s as an anti-Jackson man, dismissing such criticisms and justifying the social benefits of his Bank work, using arguments that eventually came to be associated with the American Whig party. Jackson’s Bank veto, Chase wrote to a friend, confirmed that the

86 See Salmon P. Chase Solicitor’s Report for Second Bank of the United States, Cincinnati Branch (1835), Box 34 (noting commission); Chase v. Dorsey, Casefiles, ca. 1841, Box 35 (“satisfy judgments”); Chase, Solicitor’s Opinion, June 1834, Box 12 (lands “conveyed” and lands “purchased”); Letter from Chase to Herman Cope, Feb. 6, 1835, Box 13, Kirby Papers, CHLA (“at liberty to take possession”); Chase, Statutes of Ohio, Vol. 3 (Cincinnati: Corey & Fairbank, 1835), 1709 (interpreting the act in his Statutes).

President was “plainly endeavoring to set himself above the law and the Constitution.” “The distress of the mercantile community is now great,” Chase continued in 1832 as Jackson stood for election. “If he should be reelected all is lost. The West is ruined.” Credit and fortunes, Chase predicted, would be wrecked. Property titles would become worthless.88

Across town, Chase’s former law partner Timothy Walker, a staunch Whig, firmly agreed. Walker was, he wrote in the nation’s leading textbook for law students, in favor of “one great controlling bank, with a large capital, so as to create universal confidence, and with branches conveniently distributed throughout the country.” As a law professor at the Cincinnati School of Law, he made it his job to develop multiple reasons why such an institution was essential for the Queen City’s survival. In Ohio, Walker wrote at one point, liberal but stable lines of credit helped to create a pervasive sense of “republican equality,” where “the actual equality of condition approaches… the theoretical equality of rights,” and where “the leveling disposition will work upward instead of downward.” Thanks to lenders like the Cincinnati Branch of the Second Bank of the United States, Walker further claimed, “almost everyone has acquired something already, and is striving for more.” To make sure that his audience understood his point in blunt Jacksonian terms, he wrote that “the HAVE-ERS - if I may so express it – so far outnumber the HAVE-NOTS.” With everyone equipped with “the necessaries of life,” the majority of Ohioans continually worked “to elevate themselves, rather than [working to] pull down the few who happen to be above them.” In this “free and generous competition,” Walker posited, “the whole… press onward and upward.” Moreover, thanks to the work of people like

88 See Letter from Salmon P. Chase, Cincinnati, to Charles Dexter Cleveland, Aug. 13, 1832, Box 13, Chase Papers, Historical Society of Pennsylvania, Pa. Evidence of Chase’s (and Timothy Walker’s) active participation at anti-Jackson meetings of the time appears at “Meeting of National Republican Young Men at Cincinnati,” Cincinnati Daily Gazette, Mar. 12, 1832. Both Chase and Walker spoke at this meeting.
Salmon P. Chase, the state was “strictly guarded” by laws that kept merchants “honest and scrupulous,” forcing debtors to pay their debts and live up to the “moral obligations” of their contracts. If Ohioans were able to luxuriate in the prosperity and opportunities of credit-backed commerce like nobody else, it was the law of debt collection - wielded expertly on behalf of the Second Bank of the United States – that was the reason why.89

The rhetoric of Jacksonian Democracy, with its insistence that eastern-funded banks represented an aristocracy corrupting governments and laws throughout the United States, stood in harsh opposition to Timothy Walker’s Whig political economy. Indeed, it placed Whig attorneys like Walker and Chase in the role of outright villains. Not surprisingly, Cincinnati’s leading commercial lawyers bristled at any anti-Bank critiques. “We have yielded too much to ‘Democracy’ here,” Bellamy Storer groused to Tocqueville in 1831. Chase agreed, stating in his own interview with the French aristocrat the following: “We have carried ‘Democracy’ to its last limits.”90 Walker himself went further: “Democracy” was really “Mobocracy.” In law, it meant disregard for precedent and ignorant legislation. In politics, it meant wholesale “disregard of principle.” For Walker, the traditional role of law was to “dignify and elevate” human character, to “regulate” interests and passions. Lawyers, whose profession was “to watch over the law,” were in fact intended to be “the watch towers of society,” uniquely capable of raising the alarm


“when rulers would trample the law under their feet, or mobs would arise to overthrow it.” But if Ohio’s political system came under the spell of Jackson’s Democracy, lawyers could play a different role, becoming potential agents of disorder. Even if “The Haves” outnumbered the “The Have-nots” in Cincinnati today, Walker wrote, the work of “a few unprincipled demagogues, and a few of their pitiful dupes who, on the mere question of interest, leaving justice out of view,” could work to “disturb the existing rights of property” tomorrow.91

In Cincinnati, where the property rights of “The Haves” were threatened by the specter of a politically-active, legally-engaged class of “Have-nots,” Chase’s fear of “taking Democracy to its last limits” demanded Whig reform. On a political level, action came swift: by 1834, Bellamy Storer had run a successful campaign to unseat Cincinnati’s Jacksonian representative in Congress. But as Storer explained to Tocqueville, major changes to the state constitution were also necessary, since the state’s judges, selected by the legislature to fixed terms, failed to be “independent of political passions.” As Walker noted to Tocqueville, Ohio’s 1802 Constitution extended the right to vote to all white men, “without regard to property.” And since, as Chase observed at one point, Ohio was largely populated by “men of no capital,” this meant that “property [was] not represented in the legislature,” the body that wrote the state’s laws and chose its judiciary. According to Walker, the problem was especially acute in the state’s “badly constituted” Courts of Common Pleas system, which heard the majority of private claims, sitting in both law and equity. At the county level, each Common Pleas court consisted of one circuit-riding “Presiding Judge,” a former lawyer selected directly by the state legislature, and three county-dwelling “Associate Judges” selected by the legislature from the general population,

91 See Timothy Walker, Notes on Mob Law (1842), Box 2, Book 2, Walker Papers, CHLA; Walker, Introductory lecture on the dignity of the law as a profession : delivered at the Cincinnati College, on the fourth of November (Cincinnati: Gazette, 1837),6; Walker, Annual discourse (Cincinnati: Flash, 1838), 15-16
people who did most of the everyday judicial work. “Under the present system,” Walker noted, “every respectable farmer and tradesman looks forward to the honor and emolument of being an associate judge.” While they were “upright and worthy in other respects,” these men were utterly “ignorant of law,” potentially swayed by the whims of the city’s Democratic “mob.”

This system would not do for Queen City Whigs. In 1838, over the objections of “aristocracy, taxes, and lawyers’ intrigues,” special legislation was obtained in Columbus to create a “Superior Court of Cincinnati,” staffed by a single judge with no fixed term who could hear all cases initially brought in the Hamilton County Court of Common Pleas with the agreement of both parties. The Princeton-educated David K. Este, the son-in-law of the future Whig President William Henry Harrison, a former mentor of Chase’s and a man that Storer lavished with praise in private letters to his friends, became the first person to hold this position. The change in the city’s legal landscape was immediate. Before the creation of the Superior Court, Chase brought most of his debt collection cases as the Bank’s solicitor in Ohio’s federal circuit court, filed under federal “diversity jurisdiction” to be heard by the federal judge John McLean, a man who openly supported the Bank in his own interview with Tocqueville in 1831. After 1838, going to McLean was unnecessary. Instead, Chase would steer much of his Bank caseload to Judge Este, the man presiding over Cincinnati’s new Superior Court.

---


94 On David Este, see Aaron, *Cincinnati: Queen City of the West*, 62-3; Letter from Bellamy Storer, Cincinnati, to Barrett Potter, Portland, Maine, Mar. 15, 1819, Storer Papers, CHLA. Chase’s filings on behalf of the Second Bank of the United States’ Cincinnati Branch before local and federal courts are
By the late 1830s, however, new Bank-friendly institutions like the city’s Superior Court were in fact small Whig islands within a sea of legislation washing away the hardest edges of Ohio’s debt collection law. Published in 1835, Volume 3 of Chase’s *Statutes* documented the early stages of this movement, recording new laws that seemed to favor the Buckeye State’s “humblest members.” The list included the following: On the farm, Section 29 of Ohio’s 1831 “Act Regulating Judgments and Executions” provided that “each person who ha[d] a family” was entitled to exempt “one cow, twelve head of sheep, and the wool shorn from them” from debt collection. Also exempted were all of the family’s flax and yarn, as well as its “usual and common wearing apparel” (up to seventy-five yards of cloth manufactured by the family), and up to two pots or kettles, or other household furniture valued at fifteen dollars or less. Exemptions applied to economic life within the city as well, with the same law providing that the tools which “a mechanic necessarily employs in his occupation” would not be subject to seizure until other personal property was sold. Initially used to guarantee the bare essentials of subsistence, this list continued to grow through further amendments, shielding more and more of the debtor’s land and personal property from creditor claims.95

Such property exemptions, one lawyer noted in 1845, were originally passed during fiscally lean years between the late 1830s and early 1840s, “at a time when our people were very much embarrassed, and goods and chattels were greatly sacrificed by forced sales.” But once in place, they took on a life of their own. By 1850, when the legislature passed “An Act to Exempt the Homestead of Families from Forced Sale on Execution, to Pay Debts,” Ohio’s farmers and

---

tradesmen could feel confident that no amount of debt would result in a complete reversal of fortune. And they could also be confident that their personal liberty would not be at stake if a deal went awry. Two weeks after passing the original “Act Regulating Judgment and Executions,” Ohio’s legislature also passed “An Act for the Relief of Insolvent Debtors,” which allowed any non-Ohio resident arrested under a capias for a debt, or any resident of Ohio (whether arrested or not) to send a petition to a local Court of Common Pleas, requesting “that his body be exempted from liability to imprisonment for debt.” So long as the debtor paid a bond and either conveyed most of his property to a Court-appointed “Commissioner of Insolvents,” or provided evidence that he had little or no property of his own to spare, he was free from serving time in jail.96

While the contract law of Cincinnati’s plain air riverfront casino transformed shorebound “possessions” into rivergoing merchandise and intangible “expectancies,” laws exempting debtor property from seizure and sale while shielding the bodies of debtors from imprisonment altered the rules of the game. By the late 1830s, Ohio law now placed a modest number of possessions outside of the procedural reach of the county sheriff. Meanwhile, the state’s insolvency laws created a new process that borrowers could use to avoid becoming prisoners to their debts. At least one Whig legal commentator complained that such statutory provisions were “in derogation of the common law, and confer privileges and immunities contrary to its maxims.” And as Timothy Walker noted in 1837, an argument could be made that they violated Article I, Section 10 of the U.S. Constitution, which barred states from passing any law “impairing the Obligation of Contracts.” If repossessing a debtor’s homestead was a valid remedy for a broken contract,

the argument went, it violated this “Contracts Clause” provision to block this remedy in the Buckeye State.97

Upon a closer review of the state’s new property exemption laws, however, Timothy Walker found a silver lining for Ohio’s lending class. He was, he wrote, not convinced that Ohio’s laws “impaired” any contracts at all. When parties entered a contract, he explained in 1846, they “have in view not only present property but future acquisitions,” a fund supported by both sides’ “industry, talents, and integrity.” A full-fledged bankruptcy law that released a contracting party’s “future acquisitions” from liability indeed impaired contracts. But insolvency laws like Ohio’s, “which merely release the person of the debtor from imprisonment, and not his after-acquired property from liability,” would not. If a farmer or tradesman lost his market-dealing bets and defaulted on his obligations, most of his after-acquired property could still end up in the creditor’s hands. Seen in this way, property exemption laws merely ensured that a defaulting debtor was “allowed a small sum out of the wreck of his fortune” so as “to encourage future efforts,” just enough to enable him to re-enter Cincinnati’s plain air riverfront casino to try his hand again.98

As could be inferred by Walker’s interpretation, Ohio’s property exemption and insolvency laws did not propose structural changes to property relations within the Buckeye State. Neither did they consist of any type of frontal attack on the concept of property as a social institution. Instead, they seemed to accomplish the reverse, supporting the idea that property was

---


98 See Walker (1837), at 140-1. In addition, Walker noted that the federal constitution’s Contracts Clause only prohibited state insolvency laws impacting inter-state contracts, i.e., where the contracting parties were residents of two different states. Under the U.S. Supreme Court’s 1827 decision in Ogden v. Saunders, 25 U.S. 213 (1827), a state retained unlimited power under the U.S. Constitution to regulate commercial relations where both parties were residents of the regulating state, a common scenario well into the 1840s.
something that even society’s “humblest members” should be entitled to hold against the rest of the world. Seemingly Democratic on their surface, Ohio’s exemption and insolvency laws were thus tacitly embedded with a number of Whig assumptions. As seen in the distinctions in law’s text between householders and mechanics, and in its use of male pronouns (“he” and “his”) to describe the parties most likely to seek protection under its provisions, the Buckeye State’s most sympathetic debtor - the individual most likely to benefit from the exemptions - was a male farmer that was a white resident of Ohio (under state laws from 1804 and 1807, free blacks still needed to follow a multi-step process to establish residency) and the head of a family residing on a rural “homestead,” already holding some property in his name. He was, in short, the ideal citizen of Walker’s Whiggish Ohio, where “almost everyone has acquired something already, and is striving for more.”

By protecting some of his property from debt collection, Ohio’s debtor relief legislation was in fact trying to create social facts in support of Walker’s political theory, ensuring that at least some of the state’s most precarious “Haves” did not fall into its dustbin of “Have-nots.” At the same time, the statutes allowed Cincinnati’s plain air casino to stay in business, guaranteeing that most of the non-exempt possessions of Ohio’s farmers and tradesmen were still subject to forced transfer under state law on an open-ended basis. Consisting of a small stipend of core livestock, a few essential tools, and a homestead worth $500 or less, the property floor under Ohio’s debtor relief laws was in fact very low, made mostly of dirt.

**

By the end of the 1830s, Salmon P. Chase was secure in his position as solicitor of the Second Bank of the United States and a full-fledged legal graduate of Cincinnati’s steamboat

economy. And the law that he had learned and mastered was building many Cincinnatis at once. First there was the idealized Cincinnati of the public landing and its commercial row, depicted in purple prose by Chase himself in 1831. This Cincinnati, one traveler remarked in 1839, was “well laid out,” with “wide straight streets” that sent a continual stream of farmers, country wagons, drays, horses, and cattle down to the river’s edge. Wholly reserved by public ordinance for commerce of the largest volume, it was governed by municipal fiat and occasionally by private intimidation. Second, there was the Cincinnati of the city’s largest banks, residing a few blocks away. This version of the Queen City operated under a veil of private commercial law, adjusting the property interests between the public landing’s winners and losers outside of the city council’s view. When the day ended, the river trade’s winners and losers went their separate ways, retreating to two more Cincinnatis under construction. Laborers and small farmers walked back to a third Cincinnati, composed of clapboard structures hugging the edge of the area’s rivers and streams, described by one onlooker as “nothing but log huts.” Relying in part on the state’s debtor relief laws, they planned for their next day on the public landing, expecting to try their luck again. Wealthy merchants, capitalists, and attorneys went in the opposite direction, retiring to private hilltop estates where trees sometimes blocked their view of the river, a fourth Cincinnati protected behind more exclusionary understandings of property ownership. A successful bank attorney by age 32, Salmon P. Chase eventually maintained a residence in “Clifton,” one of the hilltop communities of this fourth Cincinnati, acquiring land in a district that had been carved out of property recently acquired by one of his banking clients. There, through restrictions on the deeds they held, Chase and his neighbors hoped to create their own private Cincinnati, a Queen City that was not intended to resemble the Ohio River’s largest town.

100 See Letter from Samuel Wigglesworth to Thomas Wigglesworth, July 7, 1839, Filson Historical Society, Louisville, Kentucky.
at all. In Clifton, one writer explained, “there is neither store, grocery, mechanic’s shop, nor saloon.” Instead, “the whole place is… completely under the control of those who desire to keep it for purposes of country residence.”

Miles below these rarified grounds, however, churned a fifth Cincinnati hiding in plain sight – the riverine Cincinnati of the public landing. Close by, as one journalist later reported, a floating “village of houseboats” was beginning to form. There, amidst the shouting, clanking, and constant loading and unloading of goods, resided a laboring class of people with an understanding of property that had little to do with the security and independence on display at Chase’s Clifton refuge. There, flitting back and forth across the river itself, this journalist visitor continued, “in this seemingly God-forsaken bit of Ohio, called ‘No Man’s Land’ by many who live on its edge… fortune and fate seem to favor these nomads of the river, these true water gypies.” Never completely under the command of any single class of people, theirs was an unstable and disruptive Cincinnati always on the verge of collapse, a Queen City that Clifton’s residents drew their wealth from, but were desperately trying to escape. “The land whereon they live belongs to no one,” the visitor to Cincinnati’s “No Man’s Land” observed, referring in a sidelong way to the waterfront’s continued legal status as a commons. “Taking example by it,” he added, “they hold themselves responsible to no one either.” Indeed, as Whig lawyers like Bellamy Storer and Timothy Walker once feared, Cincinnati’s river zone was steadily becoming the breeding ground for a politically-engaged working class with a legal mind of its own. Within a few years, “men of no capital” began asserting democratic control over Ohio’s legal


102 See “A Village of Houseboats: It is Known as ‘Shantytown, No Man’s Land,’ and is Located Just Below Cincinnati, O.,” The Waterways Journal (St. Louis, Mo.), April 22, 1899.
institutions, using the same equitable arguments once made by Cincinnati’s Founders and city
council (to carve up and then govern the public landing) and the Bank of the United States (to
seize debtor property) to secure their own version of “property in possession.” By a twist of
professional fate, it was Clifton’s own Salmon Chase who soon emerged as one of their most
effective legal champions.
Chapter 2:  
The Unterrified Democracy

In 1845, a recent German immigrant named Charles Dimmig wrote to Salmon P. Chase with a burning question: “Do you think,” he asked, “I have talents necessary for becoming a good lawyer?” The query came from an unlikely source, from a member of the river’s white working class. Not finding steady work in Cincinnati but “too proud to become a beggar,” Dimmig had recently fled Chase’s hometown, traveling downstream to Louisiana in a bid to evade his creditors. His luck was no better in New Orleans, a town harboring three thousand men in Dimmig’s position, people with a modicum of bookkeeping skills and wide range of non-English European ethnicities – all apparently sharing Dimmig’s fate of being “clerks without employment.” In New Orleans, when Crescent City manufacturers refused to hire Dimmig as a “common hand” in their factories, he had recently turned to the river for work, loading and unloading boats as a “common laborer” or “levee hand” on the city’s waterfront. This situation, he complained to Chase, was “not endurable.” On the levee he was “classed with the lowest dregs of a white population,” also “mixed with those unfortunate beings whom a cruel fate has doomed to slavery.” Still seeking a temporary job as a clerk, Dimmig felt that he was now “looked upon and treated almost like a slave” himself. A man on the run from Ohio law, he was now turning to a career in the law as a way out of this predicament.¹

Dimmig’s question about becoming a lawyer was one that had been lingering in his mind for several years. Back in 1842 a similar letter he had written, also seeking a referral to “a man with whom I can read law,” had made its way into Chase’s hands. Becoming an Ohio attorney, Dimmig had posited then, was about more than just finding a way out of his own distressed

financial state. It was also a way to give back, to become a “speaker and reformer” in the public sphere, a “champion… for… equal rights to all men without distinction of color or descent.” These concepts, he wrote back in 1842, were “the only true rules of government.” And as a native German-speaker, Dimmig was in a unique position to teach them to his German countrymen, members of Cincinnati’s most numerous immigrant class. Although Dimmig insisted that his German colleagues naturally “love[d] all men without distinction,” he also claimed that they had been “misled by a group of heartless politicians” as soon as they arrived in the Buckeye State to believe that they were “worth more than their brethren of a darker complexion.” Some politicians, Dimmig reported, even went so far as to make the city’s German newcomers “believe that the blaks [sic] are not human beings, that they are born to be the slaves of the white race.”

Dimmig believed that the message his Teutonic brethren heard in Cincinnati was a perversion of America’s existing constitutional order, which supposedly stretched back to the Declaration of Independence and guaranteed everyone equal treatment under the law. As an Ohio-based attorney, Dimmig pledged in 1842, he would tell “the truth” to his Germans in their native tongue, all while “going to war against slavery and oppression in every shape and form.”

By 1845, however, his legal career still had not taken flight. Listed as a “teacher of bookkeeping” in Cincinnati’s city directory in 1842, he failed to make a repeat appearance in this publication in 1843. And as his economic prospects dimmed and he migrated south, he seemed to be taking on the narrow racial attitudes that he criticized a few years before. Rather than criticizing non-Anglo European immigrants trying to avoid being associated with river town

---

2 See Letter from Dimmig to Salmon P. Chase and King, Aug. 23, 1842, Reel 4, Chase Papers, LC.
“blaks,” his 1845 letter to Chase incorporated some of their prejudices, worrying about how working alongside people of color could undermine his own position within Anglo-American society. Now firmly a member of the river’s working class, Dimmig’s orientation towards the law had also changed. Back in 1842, while still a man with live business prospects within the Queen City of the West, his imagined legal career was a form of enlightened missionary work, a philanthropic project to educate white ethnic immigrants that not all “blaks” were born to be slaves. By 1845, as Dimmig settled uneasily into his life as a “common laborer” on the New Orleans levee, becoming a lawyer served a more pressing economic purpose, potentially keeping him from being mistaken for a “slave” himself. Realizing that it may have be too late to shift careers, his 1845 letter thus added a postscript, querying whether Chase could go to court on his behalf, collecting a small sum that someone else in Ohio still owed to him. If Dimmig could not emerge from his “slave-like” condition by becoming an Ohio lawyer himself, he was hoping for the next-best thing: he would make Cincinnati’s Salmon P. Chase his attorney of record.4

Why would Charles Dimmig, a semi-skilled, foreign-born member of the river’s working class striving to be accepted as “white” within American society, profess such liberal racial views of his own in 1842? And why would he seek out Salmon Chase, former branch solicitor of the Second Bank of the United States, as the person most likely to manipulate the river’s existing law of debt collection in his favor only a few years later? From the 1960s through the early 1990s, this first question – requiring its askers to probe the racial beliefs and behaviors of working class white people like Dimmig during the antebellum era - was a key focus of U.S. historians. In 1983, for instance, the historians Ira Berlin and Herbert Gutman posited that “the

4 See Letters from Charles Dimmig to Salmon P. Chase and King, Aug. 23, 1842, Reel 4, Salmon P. Chase Papers, Library of Congress, Washington, D.C. (LC); Dimmig to Chase, Nov. 24, 1845, Reel 5, Chase Papers, LC.
everyday realities and necessities of working-class life may have reinforced disdain for racial bondage and increased sympathy for slaves among free workers, particularly immigrants.” In some circumstances, they continued, common working and economic conditions created “shared values and behavior” that crossed racial lines. Indeed, as some historians later documented, Jacksonian critiques of the “money power” of the Second Bank of the United States occasionally created space in the 1830s and 1840s for a parallel critique of the “slave power” to form among working class political operators, precisely at the time of Dimmig’s first letter. Nevertheless, as even Berlin and Gutman were also ready to admit, the racial anxieties behind Dimmig’s second letter were always present as well. All too often among immigrant communities in places like Dimmig’s New Orleans, “hatred of slavery” collapsed into a more generalized anti-black attitude, stoked by a parallel “hatred of the slave.” Writing more recently, one historian has recently declared that this fact - standing alone - should be enough to close the inquiry opened by Berlin and Gutman decades before. Histories that tell of interracial working class solidarity in the nineteenth-century, Walter Johnson asserted in 2013, have the tendency to glorify eccentric individuals and paths not taken, at best telling a “ghost story” about a theorized American past that never came to fruition on the ground.

Missing in the debate between Johnson and his predecessors about whether working class men of European extraction like Dimmig became active shapers of a broader antislavery

---


movement in the antebellum era is a lack of attention to the question that Dimmig’s second letter also poses. Why, in an age of egalitarian rhetoric and ballot box mobilization, did this self-styled “speaker and reformer” close his second letter by turning to the everyday debt collection law practiced by Chase as Dimmig’s easiest path out of his own deteriorating social state? If there is any common ground between the perspectives of Berlin and Gutman (in 1983) and Johnson (in 2013) it is that nineteenth-century law, particularly the type of private law of contracts and property practiced by men like Salmon P. Chase in the 1840s, hardly had a liberating effect. To the extent working class solidarity existed at all in the nineteenth-century, some historians have contended, it had to occur outside America’s existing constitutional and legal order, which instead supposedly encoded racial difference while almost universally protecting the property of Timothy Walker’s “Haves” over his upstart “Have-Not.” As a member of the river’s working class, the historian Charles Sellers may have posited, Dimmig should have been more bitter about the law from the beginning, a repressed participant in a “market revolution” that he never voluntarily chose to serve. For legal historian Morton Horwitz, impoverished waterfront workers like Dimmig – whether they liked it or not - were in fact victims during the antebellum period of a “legal system [that] had been reshaped to the advantage of men of commerce and industry at the expense of… less powerful groups within the society.” Dimmig’s self-comparison to a slave, other historians might have added, revealed more than he intended. According to the legal historian Robert J. Steinfeld, for instance, white workers were often subject to forms of legal coercion that collapsed the distinction between the putatively “free” and the decisively “unfree” during the nineteenth-century. By seeking to become a lawyer in 1842 and again in 1845, Dimmig may have unwittingly been trying to

---

support the very system that kept him in chains. If that was indeed the case, other historians may add, by 1845 he was learning to view his white maleness as his chief source of capital, comparing himself favorably to his darker competitors placed in an even more degraded social position.

From the picture that historians have provided about business lawyers’ everyday careers in the pre-Civil War era, we may find it difficult to imagine Salmon P. Chase being particularly receptive to Dimmig’s dispatches from 1842 and 1845. Between 1760 and 1840, historians citing Horwitz have maintained, commercial lawyers like Chase were “the main purveyors of capitalist ideology,” defending “the sacred rights of property against the propertyless” in court while attending to the business interests of their wealthiest clients when they reached public office. With a client list that included Cincinnati’s largest banking institution (the Second Bank of the United States) and its single wealthiest individual (Nicholas Longworth), Salmon Chase seemed to fit this profile by 1840. By associating with the city’s “business and professional leaders,” one historian has argued, he developed a “conservative political and social outlook” that was only partially liberalized by later work for fugitive slaves. Indeed, outside of this line

---


of cases, biographies of Chase continue to read like a catalog of his personal and business connections to elite whites, mainly the leading businessmen or politicians of the day. It is generally assumed, for instance, that Chase spent very little professional energy as a day-to-day lawyer working on behalf of Cincinnati’s white working class. This was an Ivy League-educated man, after all, who complained to Tocqueville that Cincinnati was governed by people that mixed with “the mob” in 1831, who joined with Timothy Walker and other “Young Men of the First Congressional District of Ohio” to condemn Andrew Jackson as corrupt in 1832, and who criticized a Jacksonian lawyer campaigning for “pouring his leprous distillation” into the ear of an unnamed Cincinnati “workie” in 1833. Regardless of the phase of his career in which he was found, this was a Chase that seemed to have little time to file a legal claim on behalf of a German-speaking “common laborer” stranded on the banks of the Mississippi in 1845.

And yet, despite all of this, Charles Dimmig did in fact feel compelled to seek Chase’s advice in 1845. And Chase, in turn, chose to preserve Dimmig’s letters in his personal papers. For Dimmig, Chase was not a patrician commercial lawyer catering to an elite clientele. Instead, by 1845, he was a fellow traveler who “went for equal rights and freedom to all men without distinction,” empowering working class users to assert their own claims for recompense within the Buckeye State’s existing legal order. In 1833, just as Chase was beginning as branch solicitor for the Second Bank of the United States, this impression of Chase may have seemed absurd. A decade later, however, thanks to a series of legal transformations at the edge of Ohio River that have gone largely unexplored, it was in fact very easy for Dimmig, a white man

11 See Alexis de Tocqueville, Journey to America (New Haven: Yale, 1960), 92-93 (recording notes for Tocqueville’s field interview with Chase); “Meeting of National Republican Young Men at Cincinnati,” Cincinnati Gazette, Mar. 12, 1832 (Chase serving on a committee to draft an Anti-Jackson address in support of Henry Clay); Entry for Aug. 24, 1832, Salmon P. Chase Papers, Volume 1: Journals, 1829-1872 (Kent: Kent State, 1993), 67 (“leprous distillation”).
purportedly living in a “slave-like” condition, to imagine himself being represented a leading member of Cincinnati’s commercial bar. And it was equally possible to see how Chase’s existing debt collection practice could be built around working class clients like Dimmig, generating legal arguments that were capable of crossing the color line, even when some of the white purveyors of these arguments remained unlikely to cross this line themselves. An avowed attorney for the “Money Power” in 1835, Chase eventually became what Dimmig was hoping to become in 1845 – an attorney battling the “Slave Power” in its many guises from a working class plaintiff’s perspective.12 Understanding this transformation requires us to suspend what we think we know about the distributional tilt of nineteenth-century commercial law, and to instead begin with a discussion of the financial pressures that Chase, a successful bank lawyer in Cincinnati by the end of the 1830s, himself experienced as a new decade dawned.

**

The Salmon P. Chase that received Dimmig’s first letter in 1842 was not the Salmon P. Chase of the flood of 1832. Noting his activity as an organizer of the antislavery Liberty Party and his sporadic representation of self-emancipating people of color during the mid-1830s, one Chase biographer has argued that Chase moved from “right to left” in that period, principally in the way that he showed an increased interest in the struggles of Cincinnati’s black underclass.13 Some of the reasons for this, as discussed in the next chapters (Chapter 3 and 4), were personal in origin: a family tragedy and religious conversion played important roles. But external economic factors were also important. If Chase changed between 1832 and 1842, this was partly

13 See Frederick Blue, “From Right to Left,” supra note 10.
because the world was also changing around him. In 1832, for instance, the Cincinnati Branch of the Second Bank of the United States, Chase’s main client, dominated the Queen City’s commercial scene. Ten years later it was not even listed in Cincinnati’s city directory.\textsuperscript{14} And Chase was no longer its lawyer.

For Chase, the trouble began in 1840, four years after the federal charter for the Second Bank of the United States expired without renewal. In April of that year, Timothy Kirby, the manager of the Bank’s Cincinnati Branch, received a request from the institution’s Philadelphia to “reduce the expenses of the Bank and its offices and Agencies.” With the branch’s assets slimmed to one quarter of its size since 1842, Kirby singled out attorney’s fees as one of its last expenses capable of reduction. Since 1832, Chase had received a flat annual salary of $600 to prosecute debt collections on the Bank’s behalf. To this Chase had started to charge additional fees for cases that did not settle quickly and that instead went to trial. In response to Bank queries, he had defended the additional charges as reasonable, owing to “the increase of mortgage suits for debts of large amounts and the magnitude and importance of the questions in litigated cases.” But Kirby, who had instructed Chase to procure “speedy decisions… with the least delay possible,” was not convinced. Concerned that Chase’s fees were not being reduced in proportion to the Bank’s “hard times,” Kirby eventually accused Chase of mismanaging some of the property that Chase had acquired on the Bank’s behalf, and of cheating the Bank out of its “just rights” in another major collection case Chase supposedly already should have won.\textsuperscript{15}

\textsuperscript{14} See, e.g., Charles Cist, \textit{Cincinnati Directory for the Year 1842} (Cincinnati: Morgan, 1842), xii.

\textsuperscript{15} See Letter from Timothy Kirby, Cincinnati, to A. Lardner, Philadelphia, Mar. 23, 1840, vol. 4, p. 305-306, Timothy Kirby Papers, Cincinnati Library and Archives [CHLA] (reducing attorney’s fees); Letter from Chase to Timothy Kirby, Feb. 10, 1841, Box 20, Kirby Papers, CHLA; Letter from Kirby to Chase, Feb. 13, 1841, vol. 4, p. 427-8, Kirby Papers, CHLA; Letter from Timothy Kirby to Chase, Mar. 3, 1843, Reel 5, Salmon P. Chase Papers, University Publications of America, Frederick, Md. (“just rights’’).
By the time Charles Dimmig’s first letter crossed Chase’s desk in the summer of 1842, Chase had already resigned from his position as Bank of the United States solicitor in protest. Chase fee structure was reasonable, he asserted in a letter, arguing that it compensated for the fact that “having once been engaged in the suits of the Bank I am precluded from taking the opposite side.” By late 1841, he was suing the Bank in Cincinnati’s Superior Court for his still-unpaid fees. But as Chase should have known, taking on the Monster Bank in court, even if it was in its dying throes, was risky for a private citizen. In its court filings, the Bank intimated that Chase had not accounted for all of the property he had collected as contingency fees. The institution also alleged that he was continuing to manage a major piece of mortgaged Cincinnati real estate now claimed as Bank property without the Bank’s consent. Eventually the Bank’s officers obtained a court order requiring Chase to turn over a list of his pending cases. Once the list was received, it shifted these matters to a different Cincinnati attorney that it actually agreed to pay at a higher rate, seemingly out of spite to Salmon Chase.

Through it all, Chase had blustered that he felt “quite confident that I can make as much money if not more if left at liberty to act for clients who will not now employ me because I represent the Bank.” But within Cincinnati of the early 1840s, it proved nearly impossible to rebuild his practice around a single client in the way he had while representing the Bank. In early 1843, Nathaniel Wright, the attorney that Chase had worked with after arriving in Cincinnati in 1830, produced a bleak memo listing the remaining client options for the city’s banking bar. Outside of Wright’s own client, the Ohio Life Insurance and Trust Company, an institution which he considered “the safest of the lot,” it included fifteen banks that were in the

---

16 See Chase to Kirby, Mar 21, 1841, Box 20, Kirby Papers, CHLA.
process of “winding up,” heading towards liquidation, some of them reportedly “fraudulent.” Twelve more were relatively stable, with “ample means,” but which also possessed state charters set to expire. An additional thirteen, including the Lafayette Bank, Chase’s sole remaining institutional client, were in similarly tenuous political shape.¹⁸

For Queen City financiers, this shift in Cincinnati’s commercial landscape was due to a single cause. For more than a decade, institutions like Second Bank of the United States had been fighting a losing battle against “a combination of the debtors” in the Buckeye State, unruly gaggles of borrowers supposedly bent on “resist[ing] payment by any means in their power.”¹⁹ In its most direct form, this group was capable of taking its grievances to the streets. On the morning of January 11, 1842, for instance, a crowd of around 2,000 artisans, laborers, and mechanics formed outside the flagship office of the Miami Exporting Company bank when it refused to open its doors. Two blocks away, a shoe salesman named Augustus Roundy could hear their “screams and yells” and described them as a “mob.” By mid-day, they had forced their way into the Miami Exporting Co. “In less than an hour,” the Cincinnati Elevator reported, “the entire contents of the bank – desks, counters, books and papers, were broken in pieces and thrown into the street.” More than $200,000 in bank notes and coins were also stolen from its coffers. Beating back the Cincinnati’s sheriff and withstanding shots fired by “a detachment of military consisting of ten men,” the crowd then shouted down Charles Fox, a business lawyer who attempted to read them “the Riot Act.” It then made similar work of three more shuttered

¹⁸ See Letter from Chase to Timothy Kirby, Feb. 10, 1841, Box 20, Kirby Papers, CHLA (“I can make as much money”); “Memoranda of Ohio Banks, February 1843,” in Letter Book of Nathaniel Wright, Mar. 14, 1839-June 26, 1849, Box 42, Nathaniel Wright Family Papers, LC.

¹⁹ See Letter from Herman Cope to Timothy Kirby, September 28, 1841, Box 19, Kirby Papers, CHLA.
banking institutions. By this point, city officials had “abandoned all efforts to restore order.”²⁰

For a moment, around the same time that Chase’s fee dispute with the Bank of the United States reached court, the streets of Cincinnati were under the direct control of people like these, some of the most agitated opponents of Chase’s former client.

According to the Cincinnati Elevator, a publication advertising itself as “a weekly journal… devoted to the Political, Social, and Intellectual elevation of the Working Classes,” physical attacks on Cincinnati banking institutions like those of January 1842 went too far, setting “all law and order at defiance.” Nevertheless, it was clear that there was a sense of rough justice at play. While the Elevator reported that a small segment of the people responsible for sacking Miami Exporting Co. were thieves, most of the perpetrators “appeared to be persons seeking vengeance rather than plunder.” And this group, consisting of about 40 to 50 people, was supported by a “dense mass of spectators” that watched it all unfold, looking on in apparent satisfaction. As one protesting mechanic argued, the crowd was not “lawless mob” at all: it was composed of “hardworking, law-abiding” people that had “been swindled out of [their] hard earnings.”²¹ In specie-poor Cincinnati, the only financial instruments that qualified as day-to-day “currency” in the Queen City were paper notes issued by institutions like the Miami Exporting Co., meaning that the day-to-day wages of Cincinnati workers were often paid in this medium. When those institutions refused to open their doors and to allow these notes to be


redeemed for coin specie, the city’s working class had suddenly lost their only means to transform their very own “property in expectation” into “property in expectation.”

While bank managers may have seen the events of January 11, 1842 as the work of a greedy mob, the crowd breaking down bank doors that day actually saw itself as acting in a creditor’s spirit, trying to convert their hard-earned wages into cash. Because, as one participant explained, “the officers appointed to execute our laws have shamefully neglected the trust reposed in them,” the group now felt entitled to act on their own behalf “to demand our dues and satisfaction.” The organized plunder of Cincinnati banks like the Miami Exporting Co. was in fact a mass act of debt collection designed to remedy a legal system that had sanctioned, in the Elevator’s words, the “plundering of the industrious classes” for too long. In some ways, the forced conversion of bank assets into working class property resembled a type of popular analogue to the streamlined procedures practiced by Chase for his commercial clients back in the 1830s under Ohio’s “Act Regulating Judgments and Executions.” More directly, it hearkened back to one of the defining moments in Cincinnati’s early legal history, a sort of daytime re-enactment of the “crowd of citizens” who tore down private buildings on the waterfront, claiming the underlying land as city property in the 1810s.

Even as he filed his own suit against the former competitor of Miami Exporting Co. in 1842, Chase the lawyer likely shared the lament of the editors of the Elevator, who recoiled at the violent way in which the group expressed their creditor’s claims. Cincinnati’s working class, that newspaper suggested in 1842, should have spent more time seeking to reform commercial abuses through means that were on clearer legal footing, preferably “by the ballot box,” converting their out-of-doors complaints into positive legislation. As it turned out, that process

---

was well underway. Back in 1836, a Cincinnati publication calling itself the *Working Man’s Friend* had counseled “combinations of nature’s noblemen” to send “honest men – men of your own class – to make something like common sense laws” based on a principle of “equal rights.” A few years later, around the same time as the anti-bank crowd actions of 1842, a group of Cincinnati artisans formed a Working Men’s Association to protest the weak style of legal reform championed by the city’s Whig leadership. According to that group, the charity model espoused by Whig leaders like Bellamy Storer and Timothy Walker placed the common working man’s rights “upon an apex of wealth instead of its base, supported and upheld in an unnatural way by bad legislation, which not only gives preference to capital over labor, but creates capital as its agency.” Burned by bad law, the group proposed its own form of legal reform instead, resolving to place “working men” in state and local office – “men who will legislate for the true interests of those who placed them there.”

This was in fact a continuation of a political movement that had been growing in strength for more than a decade. Beginning in the late 1820s, political offices in Ohio had been falling into the hands of men sharing Andrew Jackson’s distrust of the powerful financial institutions lying at the edge of western levees. As early as 1823, for instance, Cincinnatians had sent an “equal rights” man to Congress in the form of James W. Gazlay. Born in New York in 1784, Gazlay had moved to the Queen City in 1813. Upon his arrival, in the words of one historian, Gazlay “immediately incurred the anger of the merchants by getting debtors out of jail, defending draymen, and running on popular tickets.” After being replaced by another Jacksonian in 1825, Gazlay continued in the public eye as the editor of the *Western Tiller*.

---


24 See Walter Stix Glazer, *Cincinnati in 1840: The Social and Functional Organization of an Urban Community during the Pre-Civil War Period* (Columbus: Ohio State, 1999), 110.
newspaper in Cincinnati, where he accused a “feudal, tyrannical, and oppressive” Second Bank of the United States of plotting to purchase “the political floating capital of the whole nation” while seeking to extend “the condition of landlord and tenant” across the entire state of Ohio.25 In 1832, after Gazlay’s successor broke from Jackson’s party, Gazlay’s old seat fell to a different Cincinnati lawyer named Robert Lytle, a man who spoke out on the House floor against “boards of trade, chambers of commerce, counting-house establishments, and stockjobbing associations” favoring the renewal of the Bank’s charter. In 1834, rather than pass along a petition circulated by Bellamy Storer and other men of “wealth,” “talent,” and “high standing” in support of the Bank, Lytle resigned from office, only to be re-elected in a special election for the remainder of his term.26

According to their supporters in Cincinnati, politicians like James Gazlay and Robert Lytle represented “the Democratic yeomanry of Hamilton County.” In the words of one of Lytle’s constituents, this coalition included unemployed “journeymen with familys” who were “getting used up by the Damned brokers.” It also incorporated “enterprising mechanics” who had purchased lots of land in town, but who now were “out of employment, out of money, [and out of] resources.”27 By 1834, it also included the highest national office-holder present on Cincinnati’s public landing in the form of Charles Larabee, appointed by Jackson to serve as the city’s customs surveyor. As soon as he reached office, Larabee resisted demands from


Washington D.C. to deposit all fines, fees, and forfeitures he collected with the Cincinnati Branch of the Second Bank of the United States. For Larabee, the work of the city’s riverfront working class was “laudable,” “useful,” and “deserving.” The work of Salmon P. Chase’s old client was that of the Devil. For too long, Larabee wrote to Robert Lytle in 1834, “we have permitted and obliged a set of strangers to come among us with an extraordinary privilege.” Even as the agents of these faceless financiers took away “thirty millions of… property” from the Queen City, they had “enticed and corrupted us to become thirty millions more in debt to them,” maintaining a government and legal system “administered on aristocratic principles.” “Without bringing a dollar of money or wealth of any kind or without laboring,” he continued, “they have actually made out of us, out of our own industry and labor and country, twenty millions of dollars and carried it off.” So long as banks like Chase’s client continued to dominate the city’s commercial life, Larabee concluded, Cincinnati’s journeymen, mechanics, and boatmen – those workers he considered the true “people of the west” - would “hold no better condition in the world than as poor debtors and slaves.”

Back in the 1830s, Salmon Chase and Timothy Walker characterized Larabee’s rhetoric as arising from a few working people that were “jealous… against all those who emerge from the ranks by their wealth, their talents or their service,” and an even smaller number of “demagogues” catering to their anxieties. A decade later, however, it was clear that the sentiments of Gazlay, Lytle, and Larabee were shared by a sizeable segment, perhaps a majority,

28 See Letter from Charles Larabee, Cincinnati, to Robert Lytle, Washington, D.C., Aug. 25, 1834, Box 25, Lytle Family Papers, CHLA; Letter from A. Dickins, Acting Secretary of the Treasury, Washington, D.C., to Charles Larabee, Surveyor of Customs, Cincinnati, Oh., July 13, 1831, Records of the U.S. Department of the Treasury, Correspondence of the Secretary of the Treasury with Collectors of Customs, Record Group 56, M178, Reel 34, National Archives and Records Administration II, Greenbelt, Md.

of Cincinnati’s political community. “The agricultural and mechanical class embrace nine-tenth of our population,” Gazlay noted at one point, \(^{30}\) and he was not far off. As the historian Walter Glazer has noted, of the 46,382 people listed in the 1840 census as residing in Cincinnati, only 14,544 people, or a little over 31\%, were listed as holding any occupation in Cincinnati’s 1840 federal census return. Of this, a much smaller group, only 377, or less than 3\%, fell into the college-educated professional class of lawyers, physicians, and clergymen that men like Walker, Chase, and Bellamy Storer occupied. Take away the Second Bank of the United States and the city’s remaining financial institutions, and Cincinnati’s remaining available client base of employed persons looked a lot like Hamilton County’s “Democratic yeomanry,” grouped into one of three lines of work: “commerce” (2,044), “manufactures and trades” (10,287), and “navigation” (1,756). A year after compiling these figures as the Queen City’s census-taker, Charles Cist grouped things similarly, allocating 2,226 people into a category called “Commerce and Navigation,” 10,886 into “Manufactures and Mechanic arts,” and 1,025 into a category labeled “Miscellaneous.” “Dealers in boat stores,” “fruterers, pedlars, river traders,” dry-goods and hardware merchants, and assorted “steamboat characters” composed the “Commerce and Navigation” category. Steamboat builders, boilermakers, caulkers, engineers, painters, founders, gilders, and glass-fitters made out the second category, while draymen, barbers, cooks, bar-keepers, and stage-drivers helped to round out the third. The mass of all three groups lived and worked close to the public landing and held little property of their own. According to Cincinnati’s 1838 tax list, for instance, only 2,559 people in a city more than twenty times that

size held any form of real estate. Of this group, only 20%, representing about 2% of Cincinnati’s total population, owned more than one parcel.\(^{31}\)

More likely to be on the receiving end of a collection letter than sending one on their own behalf, the Cincinnati masses had been forced to maintain a love-hate relationship with the law for many years. For some members of the city’s working class, the law was a force that could undermine propertied independence. At others, it was perhaps the only instrument that offered a way to achieve this civic republican ideal. This cultural understanding even crept into the language that travelers to the West used to describe what few possessions they were able to call their own. When a Connecticut-born traveler named John Law set out from Pittsburgh to explore the west by flatboat, for instance, he wrote that the confluence of the Monongahela and Allegheny was filled with “men, women, and children emigrants to the western world standing in groups around the wagons which conveyed their little property to the Ohio,” loading these onto wooden vessels the families called their “ark.” Arriving in Maysville, Kentucky (according to John Law, “the oldest and best landing place on the Ohio”), a porter came down to his boat “and asked us if we wanted our plunder toted up to the tavern.” The vessel’s passengers were mostly from New York, Connecticut, or Europe, and were at a loss as to what this meant until one Kentuckian explained that the porter refereed to their baggage. As John Law verified in his later travels, this word was indeed “a very common word in the western country,” where it was in fact used “to signify any kind of personal property” that made its way from east to west.\(^{32}\)

\(^{31}\) See Walter Stix Glazer, *Cincinnati in 1840* (Columbus: Ohio State, 1999), 79-122; Charles Cist, *Cincinnati in 1841: Its Early Annals and Future Prospects* (Cincinnati: Cist, 1841), pages 34 (population figures) and 43 (list of professions).

\(^{32}\) See John Law, “Journal of a Voyage Down the River Ohio in the Fall of 1817,” Indiana State Library, Indianapolis, Indiana.
This use of the word “plunder” by western migrants in the first half of the 1800s was revealing: what at first seemed ill-gotten to the outside observer – property held by the river’s humblest travelers - was in fact being jealously sought out and guarded as a matter of right. When they arrived in America’s aquatic west, poor whites came to a region where they found that land and other forms of property were held provisionally, subject to a variety of complex claims that were only occasionally based in law. The dispossession of Indian land by the earliest white settlers in Kentucky and the Northwest Territories set the tone. Uncontested and exclusive forms of ownership were still a rarity in this region well into the nineteenth-century, even for later generations of white migrants. Once onboard the typical riverboat, the detective Allan Pinkerton later cautioned, passengers were likely to encounter a “thief,” a “marauder,” or a “confidence man.” When arriving at their destination, migrants also needed to dodge more petty rogues on the docks and public landing, only to see most of their possessions eyed by merchants and lenders, eventually pledged as securities to the Second Bank of the United States or a lesser financial institution. In this world, what few additional possessions that a “common laborer” like Charles Dimmig managed to acquire and retain would have to be tricked, cajoled, or “plundered” out of a legal system that largely seemed to be structured against his interest.

And yet, the political ideology that eventually came to bind together the various elements of Cincinnati’s working class was not particularly anti-legal or anti-commercial at its core.


Instead, it reflected what the legal historian Tony Freyer has called a “producerist” viewpoint, valuing “modest economic independence based on honest individual labor over the extremes of capitalist wealth or desperate pauperism.”

“Every year,” Timothy Walker admitted to Tocqueville back in 1831, “a crowd of workmen, proletarians from other States or from Europe, arrive in our towns.” As Walker explained to Tocqueville, Cincinnati’s immigrants generally planned to follow settled rules of contract and property to sell their own labor on the city’s waterfront, to earn wages and then to stockpile capital, and finally to “buy lands and become landowners.”

When economic downturns made this project apparently out of reach for some proletarian “workmen,” they could meet in the streets as in January 1842, legislating the same results on their own behalf. But with no property restrictions on the franchise in the Buckeye State, they could also head to the ballot box and use statutory means to achieve the same ends. Elected Jacksonian legislators like Gazlay and Lytle were the result. Adopting a lawmaking platform that one historian of the Jacksonian age described as a “dismantling operation,” Gazlay proposed reforms to simplify “the splendid confusion” in Ohio law that apparently held the city’s laborers back. Lytle, meanwhile, followed the advice of the editors of the *Working Man’s Friend*, attacking legal supports for the Second Bank of the United States as a way to “equalize the opportunities of all,” specifically “by destroying all legalized, chartered exclusive

---


36 See Timothy Walker’s interview with Tocqueville in *Journey to America* (New Haven: Yale, 1960), 90-92; 94-98 (marked by Tocqueville as “important” in his own notes). Walker’s interpretation influenced Tocqueville’s own interpretation of the Buckeye State and especially Cincinnati, which he regarded as “a town which seems to want to get built too quickly to have things done in order.” See Tocqueville, “Notebook E,” in *Journey to America*, 265.

privileges… that operate exclusively against the poor for the benefit of the rich.”

Even Ohio’s 1831 statute concerning “Judgments and Executions,” which replaced what Gazlay called competing “forms, precedents, and endless theory” with a summary hearing, a quick judgment, and an even quicker execution, was capable of being given a Jacksonian reading. Its initial purpose, Gazlay may have posited, was to provide a streamlined way for Ohio’s small producers to get paid. A democratic society that allowed “the people to make their own laws,” Gazlay argued in the *Western Tiller*, did not allow bank lawyers to use “arbitrary” pleading defects to defeat a “just claim” for goods and services that had already been delivered.

When Charles Dimmig’s original letter passed into the Salmon Chase’s hands in 1842, seeking out an attorney mentor who stood for “equal rights of all men without distinction,” he was implicitly seeking out someone like James Gazlay or Robert Lytle, lawyers in deep conversation with the city’s growing “equal rights” legal tradition. Over time, the rise of this tradition had made it possible for working class people to go from being critics or perceived victims of Ohio law to some of its most active users. A comparison of working class newspapers appearing in Cincinnati between the 1820s, 1830s, and 1840s reveals the shift. In 1827, before Jackson’s Bank veto, Gazlay counseled *Western Tiller* readers to avoid “the expense, pains and ruin, of a course of law.” “The casualties of justice are like a voyage on a stormy sea,” he wrote to his inland river audience. “The best pilot cannot always conduct to port in safety.” A few years later, with the Second Bank’s charter set to expire but other banks still operating within Ohio under valid charters of their own, the *Working Man’s Friend* similarly advised its readers “to have as little as possible to do with any man who is fond of law suits.” As late as 1836, law


was still a technology of capitalist rule, the *Friend’s* editors argued, “keep[ing] down the mob, or people, by keeping them constantly by the ears.” For one workingman to hire an attorney and go to trial against another, that paper counseled, was “a very base act,” leaving everyone poorer than they were before.40

By the early 1840s, however, everything had changed. Coinciding with the liquidation of the Cincinnati Branch of the Second Bank of the United States, an “Anti-Bank” slate of state legislators had been swept into office in 1841, refusing to renew any state banking charters in Columbus. Around the same time, the latest newspaper catering to Cincinnati’s “producing classes,” the *Elevator*, expressed a more sanguine view of the law. Starting in November 1841, a semi-regular article titled “Law for the People” began to appear in the *Elevator’s* pages. As advertised, the series was designed to present “the substance of the law, as acknowledged in our courts… in plain English.” By April 1842, the *Elevator* had published twelve articles in its series, covering such basic commercial topics as “the law of contracts,” “the law of purchaser and vendor,” “the law of sale,” and “the law of partnership.” The law in these subjects, the *Elevator’s* editor promised, “so highly important to the farmer and mechanic,” had been so carefully guarded by Cincinnati’s commercial bar that it had become a “sealed mystery” even though it was actually “very simple.” In general, the *Elevator’s* “law for the people” placed Ohio’s “producers” on an equal moral level with its resident capitalist class, with white working class litigants poised to convert their “equality in civil rights” into a propertied form of “equality in social condition.” Illustrating its points with imaginary scenarios featuring a heroic farmer named “Mr. Workhard” suing a greedy trading house named “Higgle & Cheat,” the *Elevator’s* “Law for the People” articles of 1841 and 1842 operated under the theory that Buckeye law, if

handled in the right way, did not “deprive the workman of his right to remuneration for the work performed.” Carpenters and builders, the newspaper relayed, could collect under a building contract even if the underlying structure being built was later destroyed. Business partnerships could form, sometimes without an explicit contract, between one party furnishing capital and workers providing “labor and skill.” Most importantly, Ohio law provided protection for “all mechanics, laborers, and furnishers, who perform labor, or who furnish materials for the construction or repairing of any description of building, or water-craft” within the Buckeye State. By asserting a “lien,” or “a legal claim upon property,” they could force the sale of the thing they were building if they were not paid, pocketing their fair share of the proceeds.41

By insisting upon their own rights as market actors under Ohio law, the 1840s readers of the Cincinnati Elevator were apparently primed to establish what Josiah Warren, a Queen City typesetter, called “equitable commerce” in the Buckeye State. As first outlined in the pages of Gazlay’s Western Tiller in the 1820s and fully elucidated in an 1842 book, Warren advocated what he called the “Equal Exchange System”—a process founded upon a concept of “equal justice,” where goods, services, and property were traded between individuals “upon equal terms” based on the labor cost of each item, in turn tied to the time that went into each item’s individual production. This system, which Warren successfully implemented on a private voluntary basis for a spell by running an establishment he called “The Cincinnati Time Store,” was essentially an application of what property law scholars call a Lockean “labor theory of appropriation,” wherein every person was assigned a property right in the “Labour of his Body

and the Work of his Hands.” It was a type of working class capitalism attractive to a group of “producers” seeing themselves as an aspiring class of entrepreneurs. By 1842, when Warren’s *Equitable Commerce* treatise appeared in print, it had already found its way into Ohio law through statutory provisions that multiplied the legal methods that Ohio’s working class could use to obtain compensation for their labor.\footnote{See Josiah Warren, *Equitable Commerce: A New Development of Principles for the Harmonious Adjustment and Regulation of the Pecuniary, Intellectual, and Moral Intercourse of Mankind, Proposed as Elements of New Society* (New Harmony: Warren, 1846); Warren, “Explanation of the Time System, or the Equal Exchange of Labor,” *Western Tiller*, Sept. 12, 1828. For Lockean labor-property appropriation theory, see Gregory Alexander & Eduardo Peñalver, *An Introduction to Property Theory* (New York: Cambridge, 2012), 39-41.}

Josiah Warren’s own idiosyncratic version of “equitable commerce” never took hold beyond the walls of his Cincinnati Time Store and a few subsequent iterations that he established in his later travels. Nevertheless, it could be said that the transactional logic to which his system subscribed, wherein physical labor occupied the same moral plane as the ownership of tangible property, and wherein laborers imagined themselves as worthy of lawfully bargaining with the capitalist buyers of their services as a matter of arm’s-length “equal justice,” perhaps was representative of a more generalized spirit of “equitable commerce” animating Warren’s age. A few years later after the Cincinnati Time Store closed, for instance, the French economist Frédéric Bastiat offered an evocative description of where things still seemed to be headed. For Bastiat, law’s “proper domain,” defined in conservative terms as involving the collective organization of state institutions to protect an individual’s property and liberty, could be perverted by money interests, placing “the whole apparatus of judges, police, prisons, and gendarmes at the service of the plunderers.” Moreover, once it was admitted that “the law may be diverted from its true purpose – that it may violate property instead of protecting it – then everyone [would] want to participate in making the law.” Thus, as soon as what Bastiat called
“the plundered classes” – a group that included society’s “farmers, manufacturers, shipowners, artists” (the type of people, incidentally, who may have patronized one of Josiah Warren’s establishments) – gained political power, they did not abolish offensive commercial processes like Ohio’s “Act Regulating Judgments and Executions,” laws that sometimes led to their own dispossession. Instead, they worked to extend these mechanisms, making them their own.43

In Cincinnati, radical theorists like Josiah Warren may have characterized the sudden working class repossession of local political or economic institutions as a form of “equitable commerce,” even when this was occasionally accomplished by legalized force. But their Whig critics described such moves in Bastiat’s terms, as a disruptive form of “lawful plunder.” A reader of the Whig political theorist Henry Carey, Bastiat himself doubted that a cycle of lawful plunder could develop across the Atlantic in the United States, where a “harmony of interests” supposedly tied the interests of capital and labor together.44 The Queen City’s Whigs knew better. Beware, Timothy Walker warned an audience of law students, of the “reform spirit of the day.” Wild-eyed utopians like Josiah Warren may have been working to ensure that there would be “no high or low, no rich or poor, no master or servant,” seeking to ensure that all people remained “equal in condition, at least with respect to property.” But as a matter of sound policy and constitutional interpretation, their work was pure blasphemy. “Inequality of condition,” Walker lectured, was “the natural offspring of liberty.” Given the opportunity to act or not to


act, he theorized, some naturally worked more and some naturally worked less, leading to divergences in wealth and the organic creation of a “peasant class.” Rather than legislating equality or bending to the appetites of the mob, Walker prescribed a Whiggish “aristocracy,” or a “government of the best,” where the most talented people operated “social and political machinery” for the common good.45

For a time in the early 1830s, it seemed that sentiments like Timothy Walker’s were enough to mount a successful Whig counter-insurgency in Cincinnati. In 1834, Whigs succeeded in removing Robert Lytle from the city’s congressional post, replacing him with Bellamy Storer, a solid Whig, for a single term. But such victories were increasingly short-lived; between 1837 and 1855, for seven of the next eight terms of the U.S. Congress, Cincinnati’s seat in the U.S. House of Representatives would be in Democratic hands. During this period, legalized forms of “equitable commerce,” designed for the benefit of the white “democratic yeomanry of Hamilton County,” increasingly became the order of the day.

**

Well into the 1850s, both Bellamy Storer (wealthy through decades of a successful law practice) and Timothy Walker (wealthy because of his marriage into Nicholas Longworth’s family) had sufficient resources to evade the “lawful plunder” of their own social position during Ohio’s Jacksonian turn. Salmon P. Chase, a man who once openly shared Walker’s views but who never shared his private wealth, lacked this luxury. By 1841, Jacksonian politics had driven Chase’s main client, the Bank of the United States, into financial disarray, in turn giving rise to the fee dispute that led to his resignation as branch solicitor. In the same year, it also led to him being voted off Cincinnati’s city council during the city’s “Anti-Bank” election. In

---

contrast to Storer and Walker, Chase was suddenly thrust back into a second “struggle for subsistence.” Near the end of 1841, Chase’s *annus horriblis*, he wrote that he planned to “continue to focus on my profession until paying my debts off.” Since 1839, he had been engaging in this endeavor with Flamen Ball, a lawyer who had agreed to turn over two-thirds of firm earnings to Chase. Together, “Chase & Ball” stuck with Chase’s old debt collection formula, modeled upon his days as solicitor to the Second Bank of the United States. As Ball reported to Chase, they would advertise giving “particular attention to the collection of claims” in Ohio, also forwarding claims against residents of other “Western States” to “competent attorneys.” In doing so, they promised to remit collections “punctually and promptly,” in a manner “quicker, cheaper, and more advantageous than the competition.” In the end, the firm proved to be moderately successful. By November 1849, Ball estimated the firm’s assets to be worth slightly over $13,000, enough to permit Chase to enter the U.S. Senate. Getting there, however, was a commercial struggle worthy of Charles Dimmig or another working class Cincinnatian on the make.

Throughout the turbulent 1840s, Chase managed to maintain his professional identity as a commercial lawyer by continuing to specialize in debt collection. Without the Bank of the United States at the center of his practice, however, his work was necessarily performed for a different segment of Cincinnati’s population possessing smaller claims to a share of the city’s overall wealth. By the time Chase and Ball severed ties in the 1850s, their firm had spent over fifteen years counting carpenters, “lumber men,” and recent immigrants as some of its clients.

---

46 See Letter from Salmon P. Chase to Charles D. Cleveland, Oct. 22, 1841, Reel 4 (“paying my debts off”); Letter from Chase to Ball, Apr. 22, 1857, Reel 11; Proposed Agreement between Chase & Ball and Geo. Hoadley, Sept. 20, 1847, Reel 32; Agreement between Chase and Ball, Oct. 1, 1849, Reel 32, Chase Papers, LC.

47 See Letter from Ball to Chase, Dec. 29, 1843, Reel 5 (“punctually and promptly”); Letter from Ball to Chase, Nov. 13, 1849, Reel 7, Chase Papers, UPA (earning slightly over $13,000).
defending them against property seizures and foreclosures while seeking protections under state insolvency laws. They also brought collection claims on behalf of men like Charles Dimmig for modest debts stemming with such working class activities as “labor and drayage.” Collecting claims “punctually and promptly” still meant Chase & Ball seizing property and liquidating estates through forced judicial sales with a heavy use of Ohio’s “Judgments and Executions” law. And it also meant converting foreclosed mortgages into tangible real estate. Of the seventeen published cases that the firm was involved in between 1841 and 1849, seven of them were cases in ejectment, with Chase & Ball arguing in several that their sole remaining institutional creditor client, the Lafayette Bank, possessed superior “liens” on mortgaged properties, permitting transfer upon foreclosure without the bank first having to be in possession. A closer look at Chase & Ball’s published cases, however, underscored that the surface similarity in subject matter masked a deeper shift. Sometimes Chase used one of the modes he had developed to obtain debtor property to defeat the other, arguing that interests previously acquired through court-ordered sales could wipe away a parcel’s previous debts and encumbrances, making creditors ineligible for later ejectment proceedings for old debts. In other instances, his arguments aligned even more closely with the interests of debtors, with his firm representing owners and lessees who were simply attempting to evade an ejectment or court-ordered seizure

48 See Entries for June 29, 1840 (“lumber men”); May 21, 1857 (“drayage”) in Salmon P. Chase Papers, Volume 1: Journals, 1829-1872, pp. 131, 280; Letter from Ball to Chase, Dec. 27, 1844, Reel 5 (state insolvency laws); Letter from Chase to Ball, Oct. 23, 1845, Reel 6, Chase Papers, UPA (handling an estate sale).

49 These cases were the following: Steamboat Monarch v. Finley, 10 Oh. 384 (1841); Eckert v. Colvin, 10 Ohio Doc. Reprint 54 (1843); Northern Bank of Kentucky v. Roosa, 13 Oh. 334 (1844); McLean v. Lafayette Bank, 16 F. Cas. 253 (C. Oh. 1843); “The State v. Hoppess,” Western Law Journal, Mar. 1845, p. 6; Robb v. Irwin, 15 Oh. 689 (1846); Stevens v. Hey, 15 Oh. 313 (1846); Lafayette Bank v. McLaughlin, 10 Ohio Doc. Reprint 70 (1846); Goodrich v. Rogers, Western Law Journal, Oct. 1847; Jones v. Van Zandt, 46 U.S. 215 (1847); Perry v. Clarkson, 16 Oh. 571 (1847); Woodson v. State, 17 Oh. 161 (1848); Brisbane v. Stoughton, 17 Oh. 482 (1848); Lawler v. Walker, 18 Oh. 151 (1849); Nolan v. Urmston, 18 Oh. 273 (1849); Ohio Life Ins. Trust Co. v. McCague, 18 Oh. 54 (1849); State v. Guilford, 18 Oh. 500 (1849). Of these, only Hoppess and Van Zandt directly addressed “fugitive slaves.”
and resale. 50

What collection work that remained for Chase & Ball within this new law practice, now consisting of what one of Chase’s lawyer friends once called “a rascally business of chasing poor devils who have nothing . . . to pay,” 51 could not cover the firm’s expenses. Papers passing between Chase and Ball indicate that their work instead tried to feed into a larger real estate business, with Chase accepting land in lieu of legal fees, or with Chase directing Ball to purchase real estate at court-ordered sales and to sell some of these parcels to cover Chase’s personal debts. Chase also joined with Ball to solicit business in eastern cities, offering to serve as the business “agents” of merchants in Baltimore, New York, and Boston, managing their western investments in exchange for receiving some of the proceeds. At the same time, they offered to report on the creditworthiness of Cincinnati’s “small traders,” many of whom were the firm’s local clients. 52 Such work essentially sought to use Chase’s mastery of Ohio debt collection law to transform a lawyer-client relationship into the equivalent of a business partnership. It was not always successful. In Cincinnati, it led to the firm severing ties with Nicholas Longworth, who accused Chase of appropriating (as a form of alternative fee payment) some of the city lots that Longworth believed he had purchased with Chase’s help. Borrowing against potential future collections even placed Chase in debt to the Lafayette Bank, one of his few remaining institutional clients. 53

50 See Robb v. Irwin, id.
51 See Letter from Hamilton Smith to Chase, Mar. 1838, Reel 3, Chase Papers, LC.
52 See Letters from Chase to Ball, July 3, 1839; Ball to Chase, Aug. 3, 1841 (Reel 5, Chase Papers, UPA) (Chase taking some property “himself”); Ball to Chase, July 23, 1850 (Reel 8, Chase Papers, UPA) (property sales). On the firm’s credit reporting work, see Letter from Ball to Chase, Aug. 13, 1847, Reel 6, Chase Papers, UPA; Letter from Ball to Lewis Tappan, Mar. 10, 1842, Reel 4, Chase Papers, LC.
53 On Chase’s strained business relationship with Longworth, see Letters from Longworth to Chase, 1840; Jan. 5, 1840; Dec. 12, 1840, Reel 5, Chase Papers, UPA. On his debt to the Lafayette Bank, see Letter from Ball to Chase, Dec. 17, 1852, Reel 7, Chase Papers, UPA.
With his most steady remaining legal business coming from farmers, storekeepers, small traders, and riverfront laborers by the early 1840s, the “equitable commerce” perspective of Chase’s new client base began peeking through the arguments he made, even for his remaining banking clientele. In 1844, while arguing that the Northern Bank of Kentucky was entitled to an equal share of a lessee’s interest in a parcel of property that had been seized and sold, Chase asserted that the property interest in the case should be treated as real estate, and thus partitioned between all creditors without any priority of creditor liens under Ohio law (rather than as an article of personal property, which transferred all of the proceeds to other creditors who had been earlier to sue). “In the infancy of the common law,” Chase argued, “the possessors of land . . . were generally farmers or husbandmen, and were regarded, in those feudal times, as an inferior class, existing rather for the convenience of superiors than for their own welfare.” Rather than being seen as people who could own “any property of their own,” they were judged to be the “bailiffs and servants” of others, with their interests reverting back to “the lords – the landholders – who made the laws.” Now, in Jacksonian Ohio, statutes passed by lawmakers answerable to a non-landowning population had supposedly rendered such distinctions “a theoretical absurdity.”^54

Such arguments were no doubt designed to win over Ohio’s Supreme Court as it was constituted at the time, appointed by the same legislature that made the state’s laws, featuring some members with solid Jacksonian credentials. But they were also coming from a more personal place. By this time, Chase was mixing with members of the city’s working class, meeting with carpenters and workmen and taking on debt collection work on their behalf. By 1845, he titled a new house he was building “Hardscrabble Hall,” a symbolic reference to the

^54 See Northern Bank of Kentucky v. Roosa, 13 Oh. 334, *5-6 (1844).
change that was taking place.\textsuperscript{55}

\textbullet\textbullet\textbullet

As part of his transformation as a lawyer, Chase’s attention turned more closely to the city’s waterfront. By the end of the 1830s, his real estate interests had become enmeshed in the river trade, from canal lands that he had acquired which emptied into the Ohio River, to riverfront land he and another lawyer owned in Indiana, bought specifically for the purpose of supplying coal to the hundreds of steamboats passing by. During the 1840s he also advised and corresponded with one man seeking to roll over earnings from a Cincinnati debt collection suit into the purchase of a Pittsburgh steamboat, and another seeking to purchase an old warehouse made of old “boat bottoms” floating on the Ohio River. By the end of the decade he counted steamboat captains, representing the management side of the steamboat business ledger, as personal friends and potential clients.\textsuperscript{56} Finally, his pivot to the river also brought him in closer contact with the steamboat trade’s rank-and-file workforce, a class he had once dismissed as a lawless “mob.”

Back in 1831, when Chase scaled a mountaintop to describe the city’s “great landing” for the \textit{Cincinnati American}, he felt pressed to concede, in words that sounded familiar coming from


\textsuperscript{56} For records of Chase’s riverfront land holdings, \textit{see} Harris Grant (1839); Property deeds to Chase – Legal File, Reel 31, Chase Papers, LC. For his other river business, \textit{see} Letters from Hamilton Smith to Chase, Feb. 7, 1843, Reel 4; Apr. 28, 1848, Reel 6, Chase Papers, LC (coal lands); letter from F.B. Thorpe to Chase, Nov. 28, 1840, Reel 4, Chase Papers, LC (advising a Pittsburgh steamboat buyer); Letter from S. Hathaway to W.S. Johnston, Mar. 21, 1845, Reel 5, Chase Papers, LC (“boat bottom” purchaser); Entry Dated Dec. 2, 1845, \textit{Salmon P. Chase Papers, Volume 1: Journals, 1829-1872}, p. 177 (association with a steamboat captain). A decade earlier, Chase sought to collect debts from one steamboat captain who died “completely insolvent.” \textit{See} Letters from Chase to J.B. Harris, June 27, 1837; Chase to Hamilton Smith, Feb. 28, 1837, Reel 27, Chase Papers, LC.
Josiah Warren or Karl Marx (and that were shared by even more conservative political theorists at the time), that it was “labor that gives value to everything.” Then, while looking at the people scurrying back and forth between the landing, its warehouses, and its boatyards, Chase wrote that “the mechanic” actually stood alongside “the merchant” as a co-equal agent in the city’s economic growth.  

Under Chase’s own “labor theory of value” logic, a majority of Cincinnati’s riverfront workers were actually generating commercial “value” in an even purer form, simply through the contributions of their own unskilled time. Along the Ohio River, the general occupation of “Laborer” actually dwarfed the more skilled designation of “Mechanic” that Chase had used to describe the riverfront’s working class. The river’s leading steamboat builders and operators were keenly aware of this; it was labor – measured and compensated by task or time spent on the job – that literally brought the steamboat economy into being. Upstream in Pittsburgh, a daybook for the steamboat building firm of James Rees and Sons was full of payments to a legion of independent contractors for a variety of tasks, from supplying new parts or mending old joints. Downstream near Louisville, the Howard Shipyards, one of the river’s most prolific builders of steamers, maintained timebooks that allocated payments to individual men for the portion of the day (“quarter,” “half,” and “whole”) they spent hauling or building items on their behalf.

Once a newly-built steamboat reached the river, a new set of laborers arrived on the scene, similarly primed to receive fair compensation. During one four month span, for instance,

57 See “Our City,” in Robert Bruce Warden, An Account of the Private Life and Public Services of Salmon P. Chase (Cincinnati: Wilstatch, 1874), 185-187. On the rhetorical attempts of Timothy Walker and some of Chase’s other Whig contemporaries to wrestle the labor-focused Lockean concept of the origins of property to the ground, see Daniel T. Rodgers, Contested Truths: Keywords in American Politics Since Independence (Cambridge: Harvard, 1987), 122-30.

the *Eclipse*, a large Ohio-Mississippi River steamer of 1,600 tons burden, cycled through approximately 1,000 separate wage-earners, with officers such as pilots, mates, clerks, and engineers receiving pay alongside a mass of people listed as carpenters, deck hands, cabin boys, chambermaids, “firemen,” cooks, roustabouts, and “runners.” In theory, rates of compensation were set at monthly levels on riverboats, ranging from a few dollars per month to $250 depending upon the position being assumed. In practice, workers of all skill levels commonly passed from boat to boat for terms less than a month, following a practice called “jumping,” as they searched for the best available wage. In effect, this turned many steamboat workers into day laborers, forcing clerks to calculate their monthly wages on a daily basis similar to the steamboat craftsmen that worked onshore.59 Meanwhile, alongside the vessels carrying this mobile workforce was a floating armada of commercial hangers-on, from wood choppers hoping to sell supplies directly to the river’s steamboat behemoths, to a fleet of family-owned flatboats looking to siphon off some steamboat freight and passengers at a competitive price.60

In all, the Whig-leaning Cincinnati *Gazette* once estimated in 1838, “not less, perhaps more” than 50,000 people made their living “solely by their employment they obtain[ed]” on the Ohio River. “The nature of their employment,” that newspaper opined, “keeps them for a large portion of the year out of reach of that kind of moral influence which, to a great or less extent, encircles around every family hearth.” Working class rivermen, the consensus among

---

59 See “Steamer Eclipse Crew Register, June 1854-Nov. 13, 1855,” Inland Rivers Library, Public Library of Cincinnati and Hamilton County, Cincinnati, Oh; *Steamboat Wages Calculator* (Louisville: Maxwell, 1857) (containing per diem and monthly calculations, on repository at Missouri History Library, St. Louis, Mo.); Letter from Theodore Hornbeck to Lucie Hornbeck, June 16, 1865, Folder 4, Hornbeck Family Papers, Filson Historical Society, Louisville, Ky. (on “jumping” boatmen).

Cincinnati’s civic leaders went, were known for their “dishonesty,” particularly for “depredations constantly committed upon property.” Even Jacksonian officeholders like Charles Larabee read from this script, arguing that “fresh water seamen” were often discharged without any form of support, pushed to the “most filthy, sickly, and forlorn part of the city” and made to fend for themselves, sometimes by living outside of the law. Noting that the inland river steamboat trade brought millions of dollars into national coffers on a yearly basis, Larabee supported the creation of a “marine hospital” in the city, funded in part by federal dollars.

Whigs like Charles Hammond, the editor of the Gazette, recommended a different path, seeing the same people as suffering from a type of moral affliction that could only be cured on a private basis, preferably by a heavy dose of the Gospel. In 1838, Hammond called upon “the business men of the city” to attend to “the moral preservation of those from whose labor their wealth is derived.” Rather than supporting public hospitals supported by Jacksonians like Larabee, Whig relief efforts took the form of the “Western Seamen’s Friends Society,” a private charity funding missionaries and chapels for the spiritual elevation of “the wicked sailor and the degraded boatman.” Bellamy Storer, one of Cincinnati’s Whig stalwarts, served as its vice-president.

Whig lawyers like Bellamy Storer generally saw steamboat and waterfront laborers in the same way that Joseph Story, Timothy Walker’s law teacher at Harvard, saw sailors in the Atlantic World. “Generally poor and friendless,” Story posited in one opinion, seamen “acquire habits of gross indulgence, carelessness, and improvidence.” This meant they were frequently

---

62 Letter from Charles Larabee to Robert Lytle, Aug. 25, 1834, Box 25, Lytle Family Papers, CHLA.
“placed under the dominion and influence of men, who have . . . acquired a mastery over them.”

As such, Story instructed his students, seamen were best seen under the law as “wards of the admiralty,” meaning that their employment status - from their wages to their health care - was governed by “federal admiralty law,” a corpus of inherited rules and procedures applicable to ocean commerce. With boatmen the near-equivalents of infants, Story gave the federal “shipping papers” that each sea captain was required to file before engaging in an ocean venture “rigid scrutiny,” revising their contents when supposedly in a sailor’s best interest.64 The Western Seamen’s Friend Society repeated this narrative in Buckeye ports along the Ohio River and the Great Lakes, instructing steamboat captains to be on their best behavior and to sustain a “parental relation” to their crew.65 Switching political parties did not undermine some of the elements of this legal narrative. If Walker and other Whigs saw maritime laborers as wards of the admiralty, Democrats saw them as wards of the Jacksonian state. In 1837, Larabee’s suggestion to build a “marine hospital” in Cincinnati using national dollars received official approval from Congress. Together, Democratic officeholders like Larabee and Whig lawyers like Timothy Walker both conceptualized the Ohio River’s floating workforce in the same basic way: they were objects of charity, largely powerless to act on their own behalf under state or national law.66


Once a steamboat captain stepped onboard and attempted to manage his crew along the Ohio and Mississippi Rivers, however, paternalistic abstractions oftentimes gave way to a different story. In 1836, a man named Solomon Freeman purchased and then quickly resold a one-eighth interest in the Ohio River steamboat *B.G. Gillam*. He had exited steamboating nearly as quickly as he had began, particularly because of the unruliness of his crew, paid at “such high wages [] that they are quite too independent.” Prideful attitudes were first modeled at the top of riverboat chains of command, among steamboat officer corps. When one riverman first spotted a steamboat as a young boy, he singled out the vessel’s captain, its lead officer, “running around deck giving his orders.” He seemed to be “a very conspicuous person, and in my estimation, a great man.” But the captain’s authority was frequently rivaled by the steamboat pilot, the officer tasked with ensuring the vessel’s safe navigation. Steamboat pilots, a former steamboat hand reported, were “very consequential and self-conceited in their way,” unwilling to allow anyone to give them advice while on duty, not even if this advice came from their “pardners.” Further belowdecks was another rival to the captain – the steamboat carpenter, the person most likely to make on-the-river repairs. According to one steamboat operator, “the carpenter was the most important man on the boat.” Such self-importance did not end in the officers’ quarters, instead making its way into the thinking of what the Western Seamen’s Friend Society called its “subalterns,” people who stood “on medium ground – *betwixt and between.*” “In our apprenticeship we sometimes had disagreeable work to do,” one former steamboat hand later recalled. “But at the same time our proud heart was swelling . . . any reflection, whether in pity

---

or scorn, roused our indignation.”68 Reviewing a ten year career spent “fixing,” “rigging,” “strapping,” and “splicing” steamboats as a river hand, one Scotland-born man named William Cairncross claimed that he made a living saving vessels from the men attempting to give him orders. Near the end of his service, one captain concurred: William Cairncross was “worth a thousand to a man on a boat.”69

Rolling down the Ohio by flatboat in 1846, one genteel river traveler observed the following: “[t]he majority of boatmen seem to think that when they are on the river, they are a privileged class to say and to do whatever their vulgar tastes and feelings may dictate.” “Forty thousand Devils careening over the waters,” he complained, “could not make more noise nor be more disagreeable than this portion of the ‘unterrified democracy.’” Looking back on this era, Manassah Slawson, an Indiana farmer and occasional hired riverhand, admitted that he and his colleagues “were a law unto ourselves.” One source for their perceived independence was the seasonal nature of the steamboat economy, which tilted the laws of supply and demand in the favor of the river’s mobile workforce. During the peaks and troughs of the navigation year, as the water rose and fell, river merchants sometimes confronted what one of them noted in 1835: “great demands for boats and hands.” But steamboat operators could occasionally negotiate a “perfect understanding” of the annual or seasonal salaries for vessel officers in advance, at times asking them to name their price. Steamboat builders also had to bargain with a wider cast of characters, asking cabinet-makers, carpenters, and blacksmiths to complete their vessels by contract, people who took a security interest in the section of the boat they had built under


Ohio’s mechanic’s lien law. And when it came to negotiating the wages of steamboat crews, all bets were off. William Cairncross, for instance, recalled sometimes negotiating his wages on a per-voyage basis before he stepped onboard, and sometimes only after he reached shore after his voyage was over. A few times, in response to special services he had performed, he even sought to revise his compensation while his vessel was already underway. As Cairncross knew, if river vessels could demand more for carrying freight during periods of high demand, river hands could do the same. As another hand argued, “a hard season’s work” was seen as entitling crew to a share of the proceeds during profitable seasons. The reason was simple: “We deserve some credit for the boat’s success.”

The perceived independence of inland river steamboat crews was also related to the social origins they shared with some of their superiors. Over time in their careers, a select number of river hands climbed what one former steamboat captain called the “marine ladder” to officer status, even taking ownership shares in the vessels they once served as lesser hands. When they did so, they found that other leaders in the steamboat trade had similarly started as “subaltern” members of the waterfront’s working class. John Armstrong, for instance, captain and co-owner of a leading line of steamers running between Cincinnati and Louisville, had started his professional life as a “bound boy” to a cabinet maker and a farmer before running away to Cincinnati and eventually committing to a life of “work on the river.” James Howard, 70

---

head of the Ohio River’s most prolific steamboat-building family, had walked away from an apprenticeship to a boat builder in Cincinnati two years before his term had ended, financing the construction of his first vessel in 1833 at age 20. The curricula vitae of the river’s mid-level professional class, the trade’s forwarding merchants and steamboat clerks, often started in the same way. The riverfront storekeeper and occasional steamboat owner Sheldon Kellogg, for instance, began his career as an indentured servant within a “grocery and provision” house near Cincinnati’s public landing, arranging all of the firm’s river deliveries in exchange for clothing, room, and board. When he reached age 20, he later recalled, Kellogg “become free” and negotiated for a share of the business of the firm’s chief rival. Reviewing a career that tracked the same path, Louisville’s Harry Dumesnil noted that after he stepped onto his first steamboat as an orphaned cabin boy, he never again “applied directly or indirectly for a position.” Instead, his early work introduced him to “wealthy merchants and the respective owners of boats,” people who offered him shares in their businesses in exchange for his managerial expertise, sometimes “in blind confidence.”

All of this meant that when Charles Dimmig arrived in Cincinnati to work as a deckhand or “common laborer” at the waterfront in the early 1840s, it was plausible for him to believe that he was not entering a dead-end line of work, and that at one point he may be able to rise to Salmon P. Chase’s own level of social standing within the steamboat economy. While family connections were the greatest indicator of future success in the river trade, the tantalizing

---

possibility of climbing the river’s invisible “marine ladder” enabled steamboat hands to imagine that the social barriers separating them from the steamboat trade’s officers were temporary, always on the verge of being crossed. It was this sense that gave rise to many of the workplace conflicts found on Ohio River steamers. As an Ohio River steamboat captain in the 1850s, Pittsburgh’s Charles Batchelor hated transporting off-duty boathands on his vessel. Once, when one of them “threatened to take the boat” rather than pay their fare, he felt compelled to muster sixty members of his crew, armed “with anything they could get,” before the rabble-rousers finally backed down. Such a display of force was necessary, Batchelor wrote, “for me to assert my rights and perform my duties as captain of the boat.”

From the perspective of the common deckhand, such conflicts looked different. During his ten year career, William Cairncross recalled frequently exchanging words or blows with steamboat mates, the lowest ranking officers onboard. According to Cairncross, the steamboat mate was generally “an ignorant fool” or “petty tyrant,” a man that believed that the negligible amount of authority he had been given meant that he in fact “owned the boat.” Cairncross found himself coming across many such men during his decade on the water, including Tom Davis, the mate of the *Empire State*, “one of the most tyrannical bullies that was on the rivers at the time.” Davis, Cairncross recalled, was known for striking his crewmembers as a way to keep them in line. He met his match when he confronted Cairncross, who took up a wrench and threatened to “splatter his brains on the deck” if Davis ever laid a hand on him. When Davis responded by telling Cairncross to take his pay and leave, Cairncross was defended by the vessel’s engineer, who told Davis that the deckhand knew more about steamboating than him. Four days later, Cairncross had voluntarily left the

vessel while being paid in full. “I quit,” he wrote. So did “a good many” of his fellow crew.73

If the dispute between Tom Davis and William Cairncross occurred at sea, it would have played out under the shadow of federal admiralty law, possibly even adjudicated by a federal judge like Joseph Story. Under federal admiralty law, the wages of men like Cairncross were generally to be carved out of freight returns, set aside, and then paid only at the end of the voyage in preference to the claims of all other vessel creditors.74 According to Joseph Story and his student Richard Henry Dana, this system of law, assuming sailors to be “friendless” and without any option to escape any abusive experience once they hit the water, operated somewhat paternalistically on Atlantic waters to guarantee the payment of wages to a vessel’s oceangoing crew.75 For decades, however, it did not exist in the inland river west, thanks to The Steamboat Thomas Jefferson, an 1825 U.S. Supreme Court opinion written by Story himself. In rejecting a federal suit for wages by the crew of an Ohio River steamboat, Story held that federal admiralty law was restricted to coastal waters within the “ebb and flow” of the tide.76

Thinking in the abstract, the Whig lawyers supporting the Western Seamen’s Friend Society in Cincinnati might have assumed that Story’s decision stripped men like Cairncross of their remaining legal protections, reducing them to objects of Christian charity. For the Whig commercial lawyer Nathaniel Wright, donations to a Christian missionary organization for “degraded” steamboat crews could operate on a separate pro bono plane from his existing legal practice. Thus, at the

same time that Wright passed some of his legal fees to the Western Seamen’s Friend Society, he was busy developing arguments for the Ohio Life Insurance Co. assigning most vessel accidents to the “carelessness,” “negligence,” or “malfeasance” of wicked steamboat crews. He was also representing vessel owners when they faced a claim for unpaid wages. In theory, a world without federal admiralty law was a place governed by the law practiced in Wright’s office, visiting most of the costs of the steamboat trade upon its labor force. It gave rise to the conditions that Wright’s donations to the Western Seamen’s Friend Society were intended to offset.

And yet, in the absence of federal admiralty oversight over inland river employment relations, deckhands like William Cairncross found other ways to assert leverage over their steamboat employers. The tactics were many. If crewmen were underfed, they could pilfer food from the boat’s cargo hold. If the steamboat captain found out about this and, citing an understanding of the law found in contemporary law treatises, threatened to deduct the cost of the missing food from the crew’s wages, steamboat workers could also plan to “strike and leave the boat” at the first available stop, leaving the vessel without a crew. This was an effective threat. When one of Cairncross’ captains faced this possibility after disciplining his crew for a missing shipment of pork, he quickly backed down and required the steamboat itself to shoulder the costs of the missing food, presumably consumed by the crew, in its own accounts. “[L]et the boat pay for it,” he reasoned, associating the interests of the vessel itself with its subaltern

---

employees. “She got the benefit of it.” If conditions did not improve, Cairncross and his mates could eventually act on their threat to leave, simply going to work for one of the vessel’s competitors. “Labor is just like any other commodity,” Cairncross explained. “It is just worth what you can get for it.” If one steamboat did not value his time within a competitive market, others would. “You think you are getting it on me by having me discharged,” Cairncross scolded one steamboat mate who told him to collect his pay and depart. But like a barrel of whisky itching to be delivered, he wanted to go onshore himself, predicting that he would be snatched up soon. “I am no stranger to the river,” Cairncross taunted his superior.78

**

Grudges between steamboat officers and crew often hardened in their final stages into disputes over wages. In Atlantic Coast jurisdictions, where federal rules required vessels to specify crewmen’s wages in official “shipping papers,” the rules governing the payment of seamen’s wages had been relatively clear for some time. But along the Ohio River, where no equivalent federal “shipping papers” requirement existed, a boatman’s employment relationship with an inland river vessel existed on a largely unwritten basis as an “implied contract,” subject to revision on a per-voyage or even stop-by-stop basis. Steamboat managers sometimes accused vessel crews of exploiting this by “quitting their employment in the middle of a voyage” while still trying to collect some of their pay. Ohio River boatmen often told a different story, namely of steamboat captains routinely placing crewmembers onshore without pay as a form of vessel discipline. If they searched for a position on the waterfront once they were discharged, boatmen encountered other employers seeking to do the same. In 1851, for instance, Cincinnati’s leading...


140
steamboat boiler manufacturer responded to “some difficulty” with his hands about wages by simply deciding to “let them go and hire[] others in their places,” bringing in people who “appear to be better satisfied.”

Although no federal “shipping papers” rules mediated inland river steamboats employment relationships, this is not the same thing as saying that no law applied to these relationships at all. By the 1840s, state legislatures had stepped into the breach, passing a new set of statutes that gave people with grievances against river steamers a way to state their claim. Knowing this, when William Cairncross and his colleagues faced a particularly dislikable situation onboard one river steamer, they were not limited to footdragging, theft, or walking away – the standard “weapons of the weak.” They also felt empowered, like Charles Dimmig, to turn to the law. Cairncross’ memoirs recounted the steps in the process: leaving the offending steamboat and beating her to port on a competitor’s vessel, he went to a Justice of the Peace the next day and “sued the boat for full amount of our wages.” Later that day, his court summons was served on the captain of his old boat when that man also arrived in town. Like clockwork, Cairncross and his colleagues soon “got their cash.”

Here, it is likely that Cairncross availed himself to the provisions of one of a number of statutes present in inland river states during the 1840s, interpreted as giving steamboat laborers a type of equitable property interest in the vessels on which they were employed. According to Timothy Walker’s Western Law Journal, these statutes were known collectively as state

---


80 For a full introduction to these (largely non-legal) techniques of resistance, see James C. Scott, Weapons of the Weak: Everyday Forms of Peasant Resistance (New Haven: Yale, 1985).

“watercraft laws.” As one Cincinnati-based boatman’s attorney explained in 1847, wage claims under such statutes shifted the balance of power onboard river steamers. They aided “deserving young men in recovering the fruits of their labors, which are justly due them, and which they can ill afford to lose.” And they did not touch the old boatman’s self-help remedy of quitting their vessel mid-journey and stepping onshore.82

In 1849, the Western Boatmen, a steamboat trade publication edited by a former Cincinnati steamboat captain named Davis Embree catalogued “watercraft law” provisions in ten separate inland river states. Each authorized some sort of suit against steamboats, their owners, or their officers. A promoter of “concert, system, and a proper organization” among steamboat financiers, Embree decried their lack of uniformity. At the same time, he singled out a common thread: every single state watercraft law, he claimed, authorized a type of special “lien” on steamboat property, in effect “rendering it impossible for anyone to purchase a boat even at an officer’s sale with safety.” Of particular offense to Cincinnati lawyer Charles P. James, the son of one of Cincinnati’s pioneer steamboat owners and now Embree’s legal correspondent, was Ohio’s watercraft law, passed on February 26, 1840 and titled “an Act providing for the collection of claims against steamboats and other watercrafts, and authorizing proceedings against the same by name.” According to James, this statute gave “special privileges” to steamboat claimants that were not analogous to anything else under Buckeye law. As interpreted by the state’s courts, Charles James claimed, there was “no limit to the liability” of a boat under Ohio’s watercraft law, especially in relation to complaints brought by its crew.83

82 *See, e.g., “Watercraft Law – Usage,” The Western Law Journal* 5.1 (Oct. 1847): 8; Letter from Rice and Headington, Cincinnati, to William Dovenor, Jan. 16, 1847, Box 1, Steamboats and River History Collection, Missouri History Library, St. Louis, Mo. (“deserving young men”).

As drafted, Ohio’s watercraft law assigned liability to steamboats or other watercraft “navigating the waters within or bordering upon” Ohio waters for debts “contracted by the master, owner, steward, consignee or other agent,” specifically for “materials, supplies, or labor in the building, repairing, furnishing or equipping the same.” It also made the vessels themselves liable for “damages arising out of any contract for the transportation of goods or persons,” or for injuries to “persons or property” by the watercraft. Moreover, the law made vessels liable for any physical damages or injuries sustained by boathands or passengers from the actions of steamboat officers or anyone else working under their command. The process to collect compensation under the act was familiar: before a court clerk or justice of the peace, a plaintiff filed a claim against a steamboat’s owner, or against the steamboat itself through an in rem action, listing the vessel by name or by description. An Ohio court officer then immediately issued a warrant for a sheriff or constable to seize the craft in its entirety or to detain enough steamboat “apparel and furniture to satisfy the demand.” Unless the owner of a boat appeared and posted a bond double the amount of the demand, the vessel was tied up to the dock and the matter followed the normal debt collection procedures of Ohio’s “Act Regulating Judgments and Executions,” where any steamboat property still held could be “sold upon execution to satisfy the judgment.” Even if an owner posted a bond and a case went to court, the steamboat itself was the party subject to suit, subject to sale if the defendants lost.84

Following streamlined procedures that combined Ohio’s normal debt collection process with the expedited ownership adjudications of federal admiralty law, Ohio’s “Watercraft Law” authorized the redistribution of river trade proceeds across the Ohio’s steamboat trade. It mirrored an earlier Ohio law from 1823 that gave Cincinnati boatbuilders a temporary property

interest, or lien, in steamboats built in that city, a statute that by the 1840s was being promoted in the pages of the Elevator and the laypeople’s legal primer The People’s Law Book. It also drew inspiration from a New York law that gave a similar lien on vessels to “material-men” when they furnished critical boat parts. But unlike those earlier statutes, Ohio’s 1840 law did not place a time limit on registering a claim, did not require plaintiffs to seize or “attach” the vessel at the moment the alleged liability was incurred, and was not limited to boats built in a particular place. Instead, it broadened the class of people that could assert an interest in tangible rivergoing capital. Moreover, as in federal admiralty law, it also made steamboats themselves liable to suit and sale by name, without providing any additional notice to the vessel’s owners or their other creditors. Finally, rather than carving out an exception to Ohio’s Act Regulating Judgments and Executions like a debtor’s relief law, it simply incorporated this law into its own procedural workings.

In essence, Ohio’s Watercraft Law democratized the Buckeye State’s debt collection process within a leading sector of Cincinnati’s economy, turning mechanics, shipbuilders, storekeepers, boathands, and passengers – stalwart denizens of the debtor rolls - into a powerful new creditor class. “For labor performed on a watercraft on Ohio,” one judge summarized in a Watercraft Law case, “the craft is made liable by our statute so that the [laboring] party have, at the time, the rightful control of the craft, or of that portion of the craft on which the work is expended.” Without their notice, wealthy lenders like Nicholas Longworth who found themselves holding shares of steamboat property in their portfolio could now find a portion of

---

their assets transferred to people they considered their natural debtors, as payments for a debt they had never known. Indeed, as one commentator argued, the Watercraft Law could be seen as working an “implied hypothecation” of Ohio River steamboats in favor of their builders, crew, suppliers, and passengers in preference to the people that financed and putatively “owned” these vessels.86

Statutes like Ohio’s watercraft law addressed a problem that had been vexing large and small creditors within the steamboat economy since Story’s Steamboat Thomas Jefferson decision. While owning a steamboat came burdened with the legal disability of being a common carrier with creditors in almost every town it visited, it also came with one major legal advantage in the absence of nationwide steamboat law: the physical ability of interstate steamboats to evade effective legal process in any individual state. In the words of someone seeking to assert claim against one riverboat in the 1840s, a steamboat business was often a “shuffling, twisting, and cheating concern.” Collecting a debt against a steamboat man was difficult enough. In Salmon P. Chase’s law practice papers, one failed river merchant was listed as being “supposed to abscond - employed on a steamboat and not here.” But steamboats themselves, because of their divided ownership and routine crossings between inland jurisdictions, were even more effective evaders of state law. Indeed, until the 1850s, when the U.S. Customs Service began requiring vessels to register ownership percentages, there was no central way for steamboat creditors to determine the proper party to sue in order to resolve a debt. Thus, in jurisdictions where a suit for a steamboat debt had to be made out in the name of

86 See Webster v. The Brig Andes, 18 Oh. 187, 204-5 (1849) (“the craft is made liable”); Maskell Curwen, The Public Statutes at Large of the State of Ohio, Vol. 1 (Cincinnati: Curwen, 1853), 597-603 (“implied hypothecation”). Evidence of Longworth’s occasional steamboat holdings, apparently acquired through early debt collection, is found in Letter from Nicholas Longworth, Cincinnati, to Scott and Rule, St. Louis, ca. 1830, Doc. 256, Box 2; Nicholas Longworth Power of Attorney, Mar. 20, 1827, Box 2, Doc. 62, Gwynne Family Papers, CHLA.
the vessel’s owners rather than in the vessel’s name, such actions became difficult to maintain. And this problem only arose in the limited instances when a steamboat was actually present long enough on the waterfront for a creditor to hire a lawyer, and for that lawyer to draw up papers that a town sheriff or constable could serve. Many steamboats were not in port for that long. While some vessels like Strader’s *General Pike* ran as “packets” carrying mail and passengers between cities, even packets sometimes changed their upstream and downstream destinations when water levels or competition dictated. Others steamboats were river “transients,” running with no fixed point of origin or destination in a method known as “tramping.”

If collecting a debt against a steamboat meant physically tracking it down, this could be a costly chore for a shorebound creditor in states without an *in rem* watercraft law. Between 1836 and 1839, for instance, a vessel named the *Crockett* covered thousands of river miles across multiple state lines, making trips between St. Louis and Pittsburgh, Shreveport and New Orleans, Peoria and Cincinnati, and many places in between. If the *Crockett* were located by a former member of its crew while plying tidewaters along the Atlantic Coast, it could have been brought in federal court through an *in rem* admiralty proceeding without citing its owners. *Steamboat Thomas Jefferson*, however, foreclosed this possibility. Thus, in an inland river state like Kentucky with no *in rem* substitute available under state law, the best that a steamboat creditor could do was either to hope that *Crockett* eventually touched down in New Orleans, where an admiralty case could be brought in federal court, or to file a writ of *capias ad satisfaciendum*

---

87 See *The Steamboat Waverly v. Clements*, 14 Oh. 28, **9 (1846) (“shuffling, twisting”); Letter from John D. Patterson, Logansport, to Flamen Ball, Cincinnati, June 4, 1845, Reel 5; Letter from Salmon P. Chase, Cincinnati, to J.B. Harris, New Orleans, June 27, 1836, Reel 27, Chase Papers, LC (attempted Chase collections vs. steamboats and steamboat captains). On “packets” vs. “transients,” see Hunter, *Steamboats on the Western Rivers*, 317-335.

88 See Steamboat *Crockett* Ledger, 1836-1839, West Virginia Historical Collection, West Virginia University, Morgantown, W.Va. (recording short seasonal runs between Upper Ohio, Lower Ohio, Upper Mississippi, and Lower Mississippi destinations).
under state law against the vessel’s unknown owners, seeking its temporary “attachment.” While the former approach was costly and not always available, the latter consisted of the temporary “arrest” of the steamboat by a town sheriff or constable. This was different than suing the vessel itself; it merely forced absentee owners into court to answer personally for their debts. In contrast to Ohio’s *in rem* watercraft law, steamboats incurred no liability of their own through an attachment process, and were merely considered a “collateral security” that could be used to satisfy the owner’s debt if the vessel’s owners otherwise failed to appear. If an owner came forward, the vessel was not likely to be sold, since other assets could be equally available to satisfy the underlying debt.  

By making steamboats liable for suit *in rem* (in their own name) Ohio’s Watercraft Law closed off one of the main strategies that steamboat businesses could use to evade debt collection along the river. In Ohio courts, once a steamboat was served with papers, it was subject to sale even if its owner (or owners) came forward later. Just as in an admiralty proceeding, a creditor’s suit was brought against the vessel itself, now considered an artificial “person” that could only offer itself (its gear-and-girder “body”) as the sole asset out of which its debts could be collected. As Democratic Ohio Supreme Court Judge Nathaniel C. Read explained in 1842, this was designed to remedy “the ease with which persons navigating our waters could escape legal process,” stemming from “the difficulty of hunting up the owners of the boat.” According to Read, this problem had “induced the legislature, in all cases, to substitute the boat, in their stead, 

---

89 See *Broadwell v. Swigert*, 46 Ky. 39 (1846) (Louisville chancery court can attach steamboat and subject it to the payment of debts); *Fore v. Strader*, 41 Ky. 123 (1841) (boat is not liable, owner is liable; boat is held as collateral security); *Lyon v. Johns*, 33 Ky. 544 (1835) (jurisdiction is established by “attachment”); *Stephens v. Ward*, 50 Ky. 337 (1850) (look to owners, then to boat for satisfaction); *Peyroux v. Howard*, 32 U.S. 234 (1833) (federal admiralty jurisdiction extends to New Orleans through “occult tide”).
and treat her, for the purposes of a suit, as a person, and sell her out to satisfy the judgment which might be recovered.”

At the time and place where this occurred, this was a radical development. Timothy Walker may have found a silver lining in Ohio’s insolvency and property exemption laws, but he harbored no warm feelings for *in rem* suits under the state’s watercraft law. When practiced by Cincinnati’s traditional creditor class, aggressive debt collection capped by forcible property transfers may have lured capital into the Queen City and kept property in circulation. But by making plaintiff’s remedies under debt collection law available to anyone working or traveling on a steamboat, the Watercraft Law threatened the reverse. Commenting in the *Western Law Journal* on rulings by the Ohio Supreme Court that appeared to uphold and extend the law’s application, Walker argued that these decisions were “fraught with consequences to western navigation, more pernicious, it seems to me, than the judges could have been aware of.”

Perhaps most aggravating of all to Walker, the Watercraft Law was seen by the Ohio Supreme Court in 1843 as applying to claims for crewmen’s wages. In a dissenting opinion in *Lewis v. the Schooner Cleveland*, the suit that led to this ruling of law, even Matthew Birchard, a former Democratic party official under Jackson, had argued that the Watercraft Law conferred “a power derogatory to private property.” According to Birchard, the law should have been “construed strictly” since it led to steamboats being sold over and over again for “limited value.” But Judge Nathaniel Read, another Jacksonian Democrat who wrote the majority opinion in an earlier decision, had already determined that the statute was “equitable in its object,” and should “receive a liberal construction to carry the design of its enactment into effect.” Now, Walker

---

warned, “every boat carries with her a secret lien, for all the debts contracted by her, not only for labor and supplies in building or repairing, but also for running her.” With steamboats the linchpin of Cincinnati’s river economy, lawyers that brought cases under the Watercraft Law were carrying on the work of Democratic radicals like James Gazlay and Robert Lytle. Rather than performing the Whig function of helping to balance relations between Timothy Walker’s “Haves” and “Have-Not,” they were supposedly diminishing riverboat values all over the Buckeye State. “Who, under such circumstances,” he asked, “would ever date to purchase a boat which had been running for any length of time?”92

***

With a legal practice increasingly serving the interests of the river’s working class, Salmon P. Chase did not share Timothy Walker’s critique of Ohio’s Watercraft Law. Instead, the statute became an immediate favorite of Chase & Ball. Starting in 1841, Chase and his partner Flamen Bell began employing the same procedures that Chase once used to transfer property into the coffers of the Second Bank of the United States for a new hardscrabble clientele. “We seem, in our practice designed as it is,” Ball wrote to Chase while singling out the firm’s work under this statute, “to be in the way of making the first moves under new laws.” Just as he had when interpreting the Bank of the United States charter, Chase worked to extend the law’s ability to appropriate other people’s possessions. The idea that the Watercraft Law created a “secret lien,” for instance, had originated from a case brought by Chase & Ball in 1841 on behalf of an Ohio storekeeper who was seeking payment for articles furnished to an Ohio-Mississippi River steamer. There, in Steamboat Monarch v. Finley, Judge Peter Hitchcock, a

---

92 See Lewis v. The Schooner Cleveland, 12 Oh. 341, 342-51 (1843) (application to crewmen’s wages, majority and dissenting opinions); Canal-Boat Huron, 11 Ohio 458, 461 (“equitable in its object”); Timothy Walker, “Ohio Reports, Volume Twelfth,” id. (“secret lien”).
twenty year veteran of the court whose service predated the state’s Jacksonian transformations, ruled against Timothy Walker’s motion that Chase & Ball had named the wrong party by suing the *Monarch* itself through an *in rem* proceeding. The venerable Hitchcock, who opined in a later case that the law’s *in rem* provisions indeed “introduced a new principle into the existing jurisprudence,” reluctantly wrote that “this law gives a lien upon such crafts for certain claims against them.” “The owner of the *craft* is not a party to the suit.” It may seem unfair, but the *Monarch*’s owner would never have his day in court. Instead, the suit could proceed against the *Monarch* itself. And the vessel could be sold to satisfy the claim of Chase’s client.\(^93\)

Following Chase’s lead, subsequent plaintiff’s attorneys pushed Ohio’s Watercraft Law even further. By the end of the 1840s, Timothy Walker could report to his readers in the *Western Law Journal* that the statute had broad application. There was, of course, the extension of the law to crewmen’s wages. But there were also the problems that judges had determined that the law applied to *local steam ferries* in addition to interstate steamboats, that it applied to *all bills* held against a vessel even if they were unrelated to navigation, that it placed these claims *ahead of all mortgage-backed security interests* in the underlying vessel, and that it guaranteed that *all of these claims survived, even if the underlying vessel was voluntarily sold to a new owner.*\(^94\)*

In *Goodrich v. Strader*, an 1846 case concerning a Mississippi River steamboat collision that pitted Chase as plaintiff’s attorney against Walker for Jacob Strader and other steamboat owners, Chase even successfully applied a claim under the Watercraft Law to multiple steamboats at once,

---

\(^93\) See Ball to Chase, July 19, 1845, Reel 6, Chase Papers, UPA (“first moves”); *Steamboat Monarch v. Finley*, 10 Ohio 384 (1841); *Kellogg v. Brennan*, 14 Ohio 72, 90-92 (1846) (“new principle”).

\(^94\) See Timothy Walker, “Supreme Court of Ohio: Lucas County, August Term, 1847,” *Western Law Journal*, Oct. 1847: 8. The cases cited by Walker in this article were the following: *Butler v. Steam Ferry Boat*, 1844 (local steam ferries); *Lewis v Schooner Cleveland*, 1843 (seamen’s wages); *Steamboat Arkansas Mail v. Fox*, 1847 (all bills); *Kellogg v. Brennan*, 1846; *Provost v Wilcox*, 1849 (priority ahead of all mortgage-backed security interests in the underlying vessel), *Jones v. Watkins*, 1846 (debts surviving a past voluntary sale).
arguing that fault for the underlying collision could not be allocated between the vessels. “It is the right of every citizen to use the great highway of the Mississippi river to travel from port to port,” the judge reasoned. “If there was a joint violation of this rule of law by the two pilots, there was a joint tort committed, for which their owners are jointly liable.”

Those attorneys not representing plaintiffs under Ohio’s Watercraft Law during the 1840s found themselves experiencing Ohio debt collection law from the perspective of steamboat financiers, a very lonely place in Jacksonian Ohio. From this end of things, Timothy Walker continued his attempts to constrain the law’s impact for his clients through his work in court, and through editorials for the Western Law Journal. Meanwhile, Timothy D. Lincoln, the lawyer that had worked alongside Walker while representing the other steamboat owners in Goodrich, attempted to convince the state’s judges and legislators that the Watercraft Law turned his steamboat-owning clients into an oppressed social class. Both Walker and Lincoln apparently lost more of these debates than they won. In 1846, for instance, when Lincoln argued that the claim of storekeeper Sheldon Kellogg and other creditors against the steamboat Walnut Hills constituted a lien against the vessel that had expired under “the general maritime law,” Judge Hitchcock questioned whether the Watercraft Law created a “lien” in favor of watercraft law plaintiffs at all. “It is a matter of little consequence what name we give to the interest of claim of the creditor,” Hitchcock wrote. The legislature’s intent in passing the law was plain: to allow the creditors of steamboats to sue a debtor steamboat by name and to have its ownership readjusted. Whether or not the seizure occurred at the moment the debt was accrued, as required for a maritime “lien,” or much later, as the Walnut Hills plaintiffs claimed, the craft could be “seized

and sold for the satisfaction of the debt or claim.” “It may not be technically a lien,” Hitchcock explained, “but it is something which appropriates the property as effectually.”

Elsewhere, when an old statesmen like Hitchcock seemed more sympathetic to arguments from defense attorneys like Lincoln and Walker, Ohio’s state legislature demonstrated that it was prepared to intervene. In December 1847, when Walker defended against another watercraft law claim arising from a collision on the Mississippi, he fixed upon language in the statute that seemed to limit liability to vessels “navigating the waters within and bordering upon this state,” arguing that the law did not reach claims that originated beyond those limits. If claims under the law could not be constrained in terms of subject matter or claimants, Walker reasoned, surely they could be limited in terms of their geographic scope. This time Hitchcock agreed, ruling for Walker in *Steamboat Champion v. Jantzen*. The ink had barely dried on Hitchcock’s ruling, however, when Ohio’s legislature filed an angry response, passing a statute that purported to be “explanatory” of the Watercraft Law. According to a preamble in their new enactment, the legislature was concerned that the 1840 Watercraft Law had “been so construed as to limit its beneficial operation.” In response, the legislature’s explanatory act confirmed that “any person or persons” could bring a claim against “any” watercraft under the state statute, “notwithstanding [that] the cause of action may have accrued beyond or out of the territorial limits of jurisdiction of this State, and although such craft may not have been, at the time such cause of action accrued, navigating the waters bordering upon this State.” Hitchcock’s decision in *Jantzen*, as one commentator put it in the *Western Law Journal*, had been “overruled by legislation.”

---

conclusion which the state Supreme Court also affirmed. According to the state’s highest tribunal, the Watercraft Law now had extraterritorial effect.\textsuperscript{97}

Diligently recorded into Timothy Walker’s \textit{Western Law Journal}, each distinct ruling seemed to speak to two larger facts. First, Ohio’s Watercraft Law was a people’s statute that would be enforced by the state’s elected legislature even when the judges they appointed wavered. Second, the purpose of the statute was to enable the collection of debts from steamboat owners and steamboat financiers within the Buckeye State in a way that was difficult to evade. Because of gaps in Ohio’s extant docket book and case file record, it is not possible to offer a precise number of claims that were successfully brought under the Watercraft Law. But the number was likely very large, especially in Cincinnati, the nation’s second most-active inland port (after New Orleans) at the time. In Louisville, a comparable but slightly less busy port across the river, 818 separate cases were brought against steamboats by name in law and equity before 1865 under a more vessel-friendly Kentucky version of Ohio’s law.\textsuperscript{98} Meanwhile, along the banks of Lake Erie in Cleveland, a town less than 15% the size of the Queen City by 1850, 117 separate cases were brought against steamboats and schooners under the Watercraft Law between 1848 and 1857, 82 of which were successful. True to form, the majority of these claims were working class in nature, seeking to recover payments for such items as “wages,” “labor,” or manual “repairs.” And consistent with the concerns of steamboat defense counsel like Timothy


\textsuperscript{98} These figures have been compiled by referring to the following materials: Jefferson County Clerk, Circuit Case Files, Common Law, Defendants List, 1785-1865, Microfilm Reel 987224; Jefferson County Circuit Court Case Files, Chancery, Defendants Index, A-Z, 1782-1842, Reel 987255; Jefferson County Circuit Court, Louisville Chancery Court, Defendants List, S-Z, Apr. 1835-1860, Reel C987228, Kentucky Department of Libraries and Archives, Frankfort, Ky.
Walker and T.D. Lincoln, the threat of court-ordered sale was real; of the 90 vessels sued in Cleveland’s Cuyahoga County during this period, nearly all were seized by court officers, and 21, or nearly a quarter of all vessels sued, were eventually “struck off” to someone else, the proceeds primarily covering the vessel’s debts.99

**

Reflecting on this tide of working class litigation, even a Jacksonian jurist like Nathaniel C. Read could find himself torn. On one hand, he was the Presiding Judge of the Hamilton County Court of Common Pleas and a member of the state’s Supreme Court, owing allegiance to the idea that the state’s courts functioned as an independent institution with plenary authority to interpret the state’s laws and to delineate their reach. On the other hand, he was a Jacksonian Democrat, committed to what historians have labeled the concept of “popular constitutionalism,” wherein a polity’s laws, foundational or otherwise, could be interpreted and rewritten “by the people themselves.”100 In December 1848, this tension played out in Read’s first attempt to review the Watercraft Law’s new exterritorial application in Schooner Aurora Borealis v. Dobbie, a case involving a Lake Erie vessel that was subject to at least nine other suits in Cleveland courts for unpaid wages and other bills and that would eventually be sold under court order as a result. To the extent that the state legislature’s explanatory act operated “prospectively,” Read stated, it had “from the time of its passage, the force and effect of a law,” and would be “enforced.” To the extent that state legislators attempted to change the construction that the Court had placed on the Watercraft Law in previous cases, in turn

---

99 These figures have been compiled by referring to the following records: Cuyahoga County Justice of the Peace Civil Docket, 1848-1849; Cuyahoga County Justice of the Peace Civil Docket, 1851-1857, State Archives Series 6473, Ohio Historical Society and State Archives, Columbus, Ohio.

attempting “to encroach upon the province of the court,” their legislation was void. “The legislature has no power to enact a law declaring what construction or decision the court shall make upon acts under which rights and liabilities have already been acquired or incurred.”

Six years after writing the majority opinion Schooner Cleveland, where he signaled that the Court would give the Watercraft Law a “liberal construction” to meet its legislative objectives by opening the door to wage claims, Read was distancing himself from its implications. In readjusting too many “rights and liabilities” that had “already been acquired,” perhaps his earlier decision was allowing the river’s “unterrified democracy” to take things too far, too fast.

Implicit in the line-drawing exercise of Judge Read was a concern that limits needed to be placed on the use of Ohio commercial law by the state’s lowest orders. In 1848, Europe’s Year of Rebellion, it was easy to look at state watercraft statutes and see the ingredients for revolution. At its core, the theory of property supporting the statute was John Locke’s old “labor theory of appropriation,” the prime concept behind the riverfront’s own notions of “equitable commerce.” By including more than boatbuilders or mechanics in its plaintiff class, the law distributed steamboat assets even more widely than earlier “working men’s” organizations predicted, doling them out to common boathands, dockworkers, storekeepers, even to male and female passengers that did not work onboard. In the context of a legal-commercial world carefully managed by Whig lawyers on behalf of an elite banking class, the law subverted the

---

river’s normal modes of social organization, upending its “marine ladder.” By appropriating the legal process that wealthy lenders had allegedly used to turn the Buckeye State’s humblest members into debtor-slaves, Ohio’s “Have-nots” became “Haves.” And Ohio’s traditional “Haves” suddenly became, in a small but notable way, the state’s “Have-nots.”

By the late 1840s, defense attorneys had refined their critique of Ohio’s Watercraft Law into two related arguments. First, the statute was a public intervention in the naturally-occurring contract law of the steamboat economy, where consensual property transfers between parties were supposed to decide how a steamboat was owned. A court order leading to the involuntary seizure and sale of watercraft, boat lawyer Clement Vallandingham warned in 1848, “tends to embarrass or diminishes inland commerce and navigation, especially the transfer of boats.”

Like other forms of “private property,” Timothy D. Lincoln added in a pamphlet attacking the Watercraft Law, steamboat ownership interests should be considered “inviolable” under the United States and Ohio constitutions. If they changed hands at all, this could only happen voluntarily, only where a seller obtained the best price and the buyer took title of the vessels unencumbered by any of the seller’s old debts. The Watercraft Law overturned this system. It allowed a steamboat’s debts to survive past its sale to a “bona fide purchaser,” and authorized the involuntary seizure and sale of the vessels for their past debts for a fraction of the vessel’s overall market value. In his pamphlet, Timothy Lincoln admitted that Ohio’s constitution allowed its legislature to take someone’s private property for a “public purpose” so long as it paid compensation to the owners (even this, he added, was an “extreme outrage”). But the state constitution did not permit lawmakers to reallocate property between private parties without the

consent of each side. Yet, Lincoln argued, this was precisely the result that the Watercraft Law accomplished – it allowed “the Legislature of Ohio… to take the steamboat of A… to pay B’s debts.” As such, Lincoln considered the law unconstitutional. Proceedings under the statute “take the property of citizens of Virginia and pass it coolly over to citizens of Pennsylvania for private purposes, and without even the pretense of compensation, to the owners.” If private property was truly “inviolate” in the Buckeye State, how could this be done? By what right had steamboats become “outlaws” in Ohio’s courts, “deprived of that protection given to all other property?” And, he added, “If this can be done in reference to vessels, can it not be done in reference to any other property?” Rather than encouraging the acquisition of private wealth, a key ingredient to well-ordered Buckeye society, Ohio law seemed to be punishing the practice.103

The legal argument that the Watercraft Law violently overturned “inviolate” property rights led opponents of the statute to their second claim. The law, critics asserted, was bringing economic and social disorder to the Buckeye State. In his pamphlet, Lincoln argued that with so many steamboats changing hands at public sales below their market value, steamboat owners were being deprived of obtaining a “reasonable price” for their vessels at private sales. Since public sales were “throwing much of this immense commerce into less responsible hands,” the vessels were apparently no longer considered a safe form of investment. Meanwhile, Clement Vallandingham added, plaintiffs’ attorneys like Salmon P. Chase were attempting “to put boat owners within the power of every dishonest hand in employ of the boat,” filing wage claim after wage claim on their behalf.104


When describing what he considered to be the most pernicious social effects of open-ended working class claims under the Watercraft Law, Timothy Lincoln went for the jugular, detailing *Brooks v. the Golden Gate*, a case from Hamilton County’s District Court that he assumed most judges would find morally reprehensible. While the *Golden Gate* was plying the Mississippi River near Memphis, Lincoln related, a man named Brooks, “a colored hand upon the boat, became involved in a quarrel with the engineer. In the quarrel, the engineer struck him a blow with his knife, which greatly injured him.” The engineer, “a peaceably disposed man,” claimed that he acted in self-defense to ward off Brooks, described by Lincoln as “a much larger and stronger man.” Nevertheless, even after he was discharged, the African-American boatman had the temerity to bring a claim for damages under Ohio’s Watercraft Law against the *Golden Gate*, a Cincinnati-to-New Orleans boat wholly owned by a man from Indiana, for actions that occurred beyond the state. And applying the statute as written by the state legislature and interpreted by the state’s highest courts, a local judge ordered the boat “seized and held for that injury.” More astonishingly, the judge also instructed jurors that they could include “compensation for mental agony and bodily suffering and pain” in their verdict. “The effect of the statute,” Lincoln’s pamphlet howled in derision, is “to produce insubordination among the crew and deck passengers.” Riding at the literal bottom of the vessel, these lowly souls, black and white, were once subject to orders from the boat captain or her mate under the law. No longer. “They feel quite independent, since they can sue the boat for any difficulty between them and the commanding officers, and prove what they wish, especially as neither the boat or her officers can stop to defend against these small claims… They to be ordered by the mate? They are as good as he!”\(^{105}\)

\(^{105}\) See Lincoln, *id.*, at 41-49.
In presenting their arguments against the state’s watercraft law in this way, attorney critics were ignoring several key components of the long legal history of the river’s steamboat economy. First, they were dodging the fact that steamboat property was never a form of “inviolate” private property held on an absolutely exclusive basis in river jurisdictions; even before the Watercraft Law, interests were divided up and reallocated almost continually on a voluntary basis at the edge of the river. Second, they were gliding over the key role that involuntary sales of property had always played in Ohio’s economy, especially in the way that such sales subsidized the state’s banking sector in the previous decade for litigants like the Second Bank of the United States. But even if their arguments rested on dubious legal analysis and a shaky grasp of economic theory, they were still designed to be effective when they reached their intended audience of judges like Peter Hitchcock and Nathaniel Read, people who were already wringing their hands over how much they should step aside and let the river’s “unterrified democracy” disrupt the state’s social fabric through their own reading of Buckeye law. For white men in elite positions within Ohio society, Timothy Lincoln’s image of Brooks, an out-of-state African-American deck hand seeking to appropriate white property under Ohio law, would have been especially instructive as to where the line had to be drawn.

If Salmon P. Chase were still relying on business from the city’s financial elite to support his legal practice in the 1840s, *Brooks v. The Golden Gate* may have also forced him to rethink his own expansive reading of Ohio’s Watercraft Law. But that Chase had died with the liquidation of the Second Bank of the United States. In the early 1840s, without changing his identity as a commercial lawyer specializing in debt collection, Chase’s new book of business was pivoting to the river and serving the interests of Ohio’s most “subaltern” litigants. By the time of *Brooks v. Golden Gate*, Chase was drawing clients from the same social order that
produced deckhands like William Cairncross, people who would just as soon walk off their employer’s vessel and file a claim for unpaid wages than they would agree to serve as the “slave to any man.” And by this point, it was also easy to see him taking on legal work for someone like Charles Dimmig, a white deckhand who believed that the river’s working class was capable of mastering a form of Buckeye law that stood not only for “equal rights” among whites, but “to all men without distinction of color or descent.” 106 Indeed, by the 1840s it was easy to see Chase, himself blocked from his own “just earnings” by a powerful former employer, as sharing the anxieties of both Cairncross and Dimmig that forms of “slave-like” coercion were creeping across the color line in Cincinnati, impacting the commercial prospects of rivergoing whites and blacks alike.

**

As a matter of rhetoric, the struggle of white workers for economic security within the Ohio River corridor had occasionally been framed as a battle against “slavery” for some time. While some whites at the high end of the commercial spectrum may have seen human bondage as a system of racial control reserved for African-Americans, others further down the “marine ladder,” with memories of apprenticeship extortions or wage swindles more fresh in their minds, could imagine that “slavery” was something that might happen to them. According to one white Kentuckian studying to become a lawyer in Cincinnati, the South’s peculiar institution could be crudely defined as the process of “making a n----- work and paying him nothing for it.” 107 If this was the case in the eyes of many white men, what happened when their own labor went undercompensated as well? Organizations and newspapers catering to white laborers on both

---


sides of the Ohio had a consistent answer: “We have long seen and felt that the working classes of this Republic have been regarded as inferiors, and too often made the slaves of the rich,” posited the constitution of a “Workingmen’s Association” founded in Covington, Kentucky in 1842. Directly across the river in Cincinnati a similar message could be heard. If you do “not have the privilege of setting a price on your own labor,” the editor of Cincinnati’s *Working Man’s Friend* instructed his readers in 1836, “you will be slaves, for what is slavery, but compulsion to labor without having the privilege of setting our own price on the value of our labor?” Looking out at a “base and degrading” economic system that supposedly kept “the few in affluence at the expense of toil-worn many,” another writer in this same publication claimed that there were few white men that could genuinely escape the “slave” designation.108

Invoking the specter of white “slavery” was an effective tactic for working class organizers attempting to mobilize their fellow white men to elect men of their “own class.” In a few instances, moreover, it even created intellectual space for a small number of “equitable commerce” thinkers to question whether any form of slavery was tolerable from a working class perspective. “Slavery is an evil,” James Gazlay argued in Cincinnati’s *Western Tiller* as early as 1827; it was an institution built by people that were “too fond of ease” to work for themselves, human parasites that had instead seized control of the law to force other people “to labor in their stead.” According to Gazlay, the same system that led to “the present impoverished and degraded state of the white industrious classes” thus was at fault for the “miserable condition of the sable race.”109 As “Captain Chapman,” one white ex-boatman formerly operating on the

---


109 See *Western Tiller* (Cincinnati), May 18, 1827 (“slavery is an evil”); “Lecture Delivered Before the Cincinnati Society for Mutual Instruction,” *Western Tiller*, Dec. 7, 1827 (“impoverished and degraded”).
Great Lakes saw it, the same people subsisting on the labor of African-Americans also expected poor white men to do their bidding. For Chapman, refusing to become complicit in the extension of anti-black institutions became a matter of self-respect. “In the emancipation of the Negro, your own [emancipation] is secured,” he reasoned at one point to an incredulous crowd of fellow white men near Lake Erie.110

By the early 1840s, Gazlay’s Jacksonian prescription for how to resist white “slavery” – a democratic society where “the people” made their own laws” – seemed to be paying dividends for white workers on the river’s edge. But the river’s larger interstate economic regime, still tolerating the enslavement of African-American people just a steamboat crossing away, also remained. Driven by his own moral concerns, one white Queen City merchant named Levi Coffin (best known for helping to finance the migration of some Kentucky slaves out of the Bluegrass State) attempted to sketch what the steamboat economy might look like without bondage in place, selling cotton-based products whose entire supply chain adhered to strict rules of “free labor.” But even though it operated for more than a decade, Coffin’s “Free Labor Store” was a money loser from the beginning, relying upon Quaker capital from New York to stay afloat.111 Meanwhile, among whites with fewer elite connections within the river economy, interracial solidarity – when and where it existed at all - remained even more contingent. As one white steamboat man explained it, racial barriers could sometimes melt away on the decks of steamboats as “poor white drash [sic]” labored beside free and enslaved African-American roustabouts in the “rain all night.”112 Often stumbling in their own attempted ascents of the

112 See John Habermehl, Life on the Western Rivers (Pittsburgh: McNary, 1901), 95 (also noting that among white crew this realization could be “offensive to some”).
marine ladder, frequently becoming what Levi Coffin considered “the wronged party” in commercial encounters with more commercially powerful men, some white boatmen gained the capacity to analogize their condition to that of their African-American colleagues, granting them enough empathy to lend a hand in moments on distress. “I am poor myself,” one captain of a small vessel allegedly told Josiah Henson, a Kentucky slave, in 1830. Henson was seeking to cross the river against his master’s will; this white man agreed to transport him. “I have nothing to give you,” he explained. “I only sail this boat for wages, and want you to get freedom.”

Pulled from a sinking vessel by a black steward he was working alongside, another former white crewman even claimed that this experience turned him into an “abolitionist” by the time he obtained enough capital and connections to command his own boat.

At times this may have been enough to sustain the occasional “abolitionist boat” or “abolitionist captain” operating on the Ohio River or Lake Erie. But it would be overstating things to say that, standing alone, situation-specific feelings of solidarity formed the bulwark of an organized white working class movement to end color prejudice or the institution of slavery before the Civil War. Instead, obtaining actual “equal justice” within the antebellum steamboat economy still remained a task delegated to private actors largely operating on a decentralized basis without much coordination. Often, once someone like Josiah Henson was assisted for a

---


114 See, e.g., Pettit, Sketches, 28, 58-68 (relating “conversion” moments of several white boatmen on the Great Lakes who eventually provided some form of aid to African-American refugees).

115 See, e.g., “Interview with George W. S. Lucas (Colored),” Aug. 14, 1892, Wilbur Siebert Underground Railroad Collection, Columbus, Oh. (referring to several “abolitionist captains” operating out of Cleveland in the 1850s); “Deacon Allen Sidney Takes His Family From Kentucky to Canada,” Slave Interviews, Notes, and Data on Kentucky Slavery, Mar. 1939,” p. 132-3; Interview with Horace Washington, Aug. 2, 1895, pp. 165-166; J. Winston Coleman Papers, University of Kentucky Special Collections, Lexington, Ky. (referring to the May Queen, reputed to be an “abolitionist boat” on Lake Erie).
moment at the river’s edge, the white boatman’s support seemed to end. Interviewed in 1863, the Detroit River steamboat captain Balfour Averill admitted, for instance, that “colored men do very well for deck hands, and firemen” on his boats, adding that they were the “best men” he had. On the Canadian side of the river, they were even paid the same wages as white men. But even in this particular place and time, equality had its limits. “We have to keep them separate from white sailors,” Averill continued, choosing not to explain the precise reason why. And, he added, he never allowed any of his black crewmen to rise to officer status. As one white steamboat engineer with antislavery leanings noted in his diary, even within the “equal justice” framework of the river’s working class there was the general expectation that all “able bodied men,” regardless of their color, “must earn their own way” without further aid, even if some of them occasionally faced special obstacles that sometimes made this a particularly difficult thing to ask.  

By suggesting that labor-time could be converted into a price roughly equivalent to an interest in a riverboat, Ohio’s Watercraft Law provided one way that African-American boatmen could attempt to solve the puzzle of “earning their own way” within the special constraints that the river economy imposed upon them. “The n----s on the river are intelligent and take care of themselves,” one white Louisville observed to federal interviewers in 1863. While many white river workers may not have accompanied free black boatmen like the Golden Gate’s “Brooks” in all of the steps they took to create this impression, the “equal justice” arguments

---


they championed nevertheless lingered on the river as an open source technology, subject to
further elaboration and evolution in black peoples’ hands. Shortly after Levi Coffin departed
Indiana to start his “free labor store” in Cincinnati, for instance, a “black abolitionist” opened a
similar establishment in the county Coffin left behind.\textsuperscript{118} And in 1845, near the same time Chase
received his second letter from Charles Dimmig inquiring about a potential clerkship position in
Chase’s office, he received a different letter from William Cuthbert Whitehorne, a self-described
“colored man” from Jamaica, asking precisely the same thing. The son of a former lawyer on his
home island, Whitehorne was on the verge of graduating from Oberlin with superior marks, and
hoped to join the family profession within the confines of the United States. \textit{Can I pursue my
studies with Mr. Chase?}, he asked\textsuperscript{119}

As with Charles Dimmig’s two letters, there is no evidence that Chase ever directly
responded to William Whitehorne’s “clerkship application” in 1845. Rather than apprenticing
for Chase, Whitehorne instead ended up in Central America, earning a living as a merchant and
newspaper editor for the next thirty years. His final choice of venue made perfect sense. As of
1845, the Buckeye State’s statute books still featured a set of “Black Laws” placing special
disabilities on the state’s African-American residents. And for another decade, Ohio’s bar would
remain an all-white preserve. Indeed, a few years after the Jamaican’s query to Chase, a second
Oberlin graduate of partial African descent, a man that Whitehorne had once tutored named John

\textsuperscript{118} See Letter from A. Worth, Jay County, Indiana, to Wilbur Siebert, Feb. 16, 1893, Wilbur Siebert
Underground Railroad Collection, Columbus, Ohio (mentioning John Williams, described as a “black
abolitionist” operating a “free labor store” in Economy, Indiana).

\textsuperscript{119} See Letter from W. Cuthbert Whitehorne to Salmon P. Chase, Jan. 1845, Reel 5, Chase Papers, LC.

165
Mercer Langston, was denied entry to the Cincinnati Law School by Timothy Walker, Chase’s old law partner, who cited the prejudice of his white students as the reason why.\(^{120}\)

Like John Mercer Langston at a slightly later date, it is possible that William Whitehorne was turned away from studying the law in 1845 because he was simply asking too much of the Buckeye State’s legal system at the time. But it is also possible that Whitehorne was not asking enough. When writing about his fellow people of color in the United States, Whitehorne spoke with unvarnished condescension, similar to the way Dimmig first described his fellow German-speakers in 1842 before landing at the bottom of the marine ladder a few years later himself. The majority of Ohio’s people of African descent, Whitehorne stated in 1845, “maintain a rather inferior grade in society.” According to Whitehorne, this was partially their fault. “Their highest aspirations,” the Jamaican claimed, “appear to be none other than the flourishing of wagons, the burnishing of boots, and the attendance on a table of the hotel.” For Whitehorne this was something to be lamented. As he saw it, becoming a lawyer in Ohio offered a way for him, as an exceptionally educated man of color, to reject being consigned to a future of manual “vassalage.” As a bonus it would also demonstrate that not every black person in the Buckeye State was destined to become a “hewer[] of wood and drawer[] of water.”\(^{121}\) If Whitehorne had actually ended up in Chase’s office, however, he would have found that practicing law in 1840s Ohio actually seemed to have the reverse effect. Rather than being pushed away from the river’s working class, practicing law in Cincinnati had a way of pulling commercial attorneys like Chase

---


\(^{121}\) See Letter from Whitehorne to Chase, *supra* note 119.
into closer alignment with the working class’ legal demands. And as Brooks v. The Golden Gate suggested, black “hewers of wood and drawers of water” were playing a far greater role in this development than even Chase himself may have anticipated a few years before.
Chapter 3
The Freedom Trade

It was 8:30 am on a Saturday, February 20, 1841. Even though it was a weekend, and the Cincinnati law firm of “Chase & Ball” was in the throes of losing the Second Bank of the United States as its leading client, business was humming. As soon as Salmon P. Chase entered his law office’s doors at Third and Broadway, a local pork packer was pulling him outdoors for a meeting with a fellow merchant, possibly at the Public Landing three blocks away. When Chase finally returned, it was only a few moments before he was back out on the street again, this time for a walk up Main Street to Cincinnati’s Court House, where he filed papers in a foreclosure case. Reappearing at Chase & Ball, he was met by another man asking him to resolve a debt dispute with the Lafayette Bank a few doors down. After speaking with that bank’s cashier and walking back to his office, Chase’s diary noted that he was still besieged by “various interruptions,” including one man asking him for a loan of $45. Later in the day, before prayer and bed, there were still more field trips to be had: a jaunt across the street to pay a bill at the Cincinnati Gazette; a three block walk to meet with attorneys at “Riddle & Roll,” a rival law firm; and an evening strategy session with his father-in-law, equipping him with a power-of-attorney to prosecute a patent claim for a new type of steamboat paddle during a visit to Washington, D.C.¹

Sometime after his visit to Riddle & Roll, Chase’s diary also recorded a meeting with another client, described in his notes as “Griffin Watson, a cold. man.” Like most of the business meetings Chase chronicled in his diary, he left few clues on the precise legal issues at play, simply noting that he satisfied Watson “as well I could.” A few weeks later he revealed a

little more. Griffin Watson, his notes stated, was the steward onboard the Ohio Belle, an Ohio River steamer running from Cincinnati to New Orleans. When he visited Chase again on March 15, he offered to carry a letter that Chase had written to Chase’s wife, who was currently visiting New Orleans. In exchange, Chase promised to inquire about the status of Watson’s case.\(^2\) After this second appearance, however, Griffin Watson permanently vanished from Chase’s notes.

With no case bearing Griffin Watson’s name in Timothy Walker’s Western Law Journal, and with casefiles from Cincinnati’s Court of Common Pleas long destroyed during a race riot in 1884, it is likely that later generations may never learn what Watson’s case was precisely about, or its final outcome.\(^3\) Still, it is clear that his matter related in some way to an ownership claim over property within the Buckeye State, the bread-and-butter of Chase’s Cincinnati law practice. Although lacking in detail, Chase’s diary did note that an action for “ejectment” had been filed in Cincinnati Common Pleas Court, meaning that at least one party was in possession of real estate (most likely as a lessee) that another party claimed as her or his own. To block this action, an injunction request had also been filed. Given this, it is possible that Watson was a party facing eviction, and had sought out Chase to file the injunction. In Cincinnati city directories for the years 1839 through 1842, Watson was listed as living on McAllister St., an alleyway a few blocks from Chase’s office. Between 1843 and 1848, however, he was not listed at all, only to reappear in 1849 at a different address.\(^4\) The fact that Watson’s location changed following his meeting with Chase, and did so only after failing to appear in the city directory for a number of

\(^{2}\) See Entries for Feb. 20 and Mar. 15, 1841 in Chase Papers, Volume 1: Journals, 1829-1872, 152, 156.

\(^{3}\) On the near-complete archival destruction of antebellum court records in Cincinnati caused by the “Courthouse Riot” of 1884, including records of the Hamilton County Court of Common Pleas, see Works Progress Administration, Inventory of the County Archives of Ohio, Vol. 31 – Hamilton County (Columbus: Historical Records Survey, 1937), 25-26.

years, indicates a possible reversal of economic fortune on his part, the potential loss of his property claim in court.

And yet, for every sign seeming to brand Griffin Watson the weaker party, there is counter-evidence. The fact, for instance, that Watson was one of a small number of people of some African descent chosen to be included in special “colored” sections of Cincinnati’s City Directory indicates that he was a man of some social standing within the Queen City. Listed in a federal census reports as “mulatto” and a Virginia native, he may have floated away from a life of slavery while working on a steamboat launched from Wheeling or Point Pleasant, in present day West Virginia. Or he may have arrived in the Buckeye State in another way, perhaps through an association with white people in his own family tree, maybe through an earlier manumission of a parent, or the self-purchase of himself. Regardless of how he first arrived in Cincinnati, he clearly had staying power and some financial wherewithal. By 1850, the federal census listed Watson as the head of a household of eight; by 1880, he was listed as the widowed patriarch of a living unit of ten, still living in the Queen City. As W.H. Gibson, one African-American resident of the Louisville would recall, Griffin Watson’s occupation of steamboat steward, sometimes yielding $150 to $200 per month, was a “position of rank” within river towns at the time, even allowing a select number of African-Americans to out-earn white deckhands while working above them in the “cabin” section of their common river vessel employers. “These men were highly respected by the citizens generally,” Gibson explained, adding that “most of them acquired property and lived comfortably in their homes.”

---


6 See W.H. Gibson, Semi-Centennial of the Public Career of W.H Gibson (Louisville: Bradley and Gilbert, 1897), 30-32 (“position of rank” and “acquired property”). For comparative data on wage distribution for steamboat crew by race and specific occupation, focused upon census return materials.
Given what we know about Griffin Watson, whether he was defending against an eviction, or seeking to repossess a parcel that a different tenant claimed as their own, he quite possibly entered “Chase & Ball” with a good deal of self-assurance, ready to assert a property claim against the rest of the world. Nevertheless, other attorneys working in Cincinnati would have likely shown him the door. During his interview with Alexis de Tocqueville in 1831, Chase’s old law partner Timothy Walker recounted a similar instance when he “was consulted by a negro who had furnished a great number of foodstuffs” to the white master of a steamboat, a person who was now denying the debt. Citing the state’s so-called “Black Laws” preventing “negro testimony” against whites, Walker felt powerless to intervene. “In Ohio,” Walker summarized to Tocqueville, “a negro has no political rights.” Although his prospective client could draw upon a number of his African-American workmen to speak on his behalf, their words were meaningless in the eyes of Buckeye law. Even if this generated “the most revolting injustices,” Walker was supposedly compelled to turn the man away.\(^7\)

Chase came to disagree with his old law firm colleague when it came to the capacity of Ohio law to produce just outcomes for African-Americans. According to Chase, the state’s discriminatory Black Laws were an illegitimate attempt to introduce “the Aristocratic principle” into the Buckeye State, particularly because these statutes mandated a series of “privileges for the higher classes, and restrictions for the inferior.” At the early stages of his break from the Bank of the United States, through means such as the state’s new Watercraft Law, Chase’s work for white working class clients had pioneered ways that equitable commercial reasoning could

---

instead turn Ohio law into a weapon that supposedly “inferior classes” could manipulate to their advantage. By the mid-1840s, his work had crossed the city’s color line. Accompanying people like Griffin Watson as they asserted property claims within existing Ohio’s existing commercial order, Chase viewed himself by the early 1840s as helping to undermine the discriminatory regime Timothy Walker described to Tocqueville in the 1830s, supposedly restoring true “equal justice” principles to the Buckeye State as a matter of law. “Every law on the statute book,” he lectured in 1845, that is “so wrong and mean that it cannot be executed, or felt, if executed, to be oppressive and unjust, tends to the overthrow of all law, separating in the minds of the people the idea of law from the idea of right.”

When historians mention Chase’s representation of African American clients, free people of color like Griffin Watson grappling with everyday economic disputes seldom play a role. Instead, when the names “Watson” and “the Ohio Belle” appear, they relate to a more high-visibility case involving the contested status of a separate man with the same surname a few years later. The different emphasis is partly of Chase’s doing. In early 1864, while still Lincoln’s Treasury Secretary and contemplating a potential presidential run of his own, Chase compiled a list of seven cases that apparently summed up his early legal career for his campaign biographer. Neither his work for the still-notorious Second Bank of the United States, nor his less conspicuous work under Ohio’s Watercraft Law for river laborers, made his final cut. Instead, although four of the matters actually involved white clients accused of aiding people of some African descent, Chase classed all his top seven matters under the same heading, as his

---

8 All quotations here are from “Reply of Mr. Chase,” The Address and Reply on the Presentation of a Testimonial to S.P. Chase by the Colored People of Cincinnati (Cincinnati: Sparhawk, 1845), 22-25. This aspect of Chase’s law practice is further discussed in Matthew Axtell, “What is Still ‘Radical’ in the Antislavery Legal Practice of Salmon P. Chase?” Hastings Race & Poverty Law Journal 11.2 (Summer, 2014): 269-320.
“fugitive slave cases.” There were more, he promised; so many, in fact, “that in Kentucky they gave me the title of Attorney General for runaway negroes,” a post which he claimed came with “neither nor perquisitions nor salary.”

According to Chase, one of the matters earning him the nickname “Attorney General for runaway negroes” was “The Case of Watson,” stemming from a voyage of the *Ohio Belle*, Griffin Watson’s old employer. In early 1845, in a matter that would eventually be reported in Timothy Walker’s *Western Law Journal* as *State v. Hoppess*, Chase filed a writ of *habeas corpus* in Cincinnati’s Court of Common Pleas challenging the detention of Samuel Watson, an African-American passenger onboard the *Ohio Belle*. Watson had been found on Cincinnati’s Public Landing during a short steamboat layover, and had been proactively imprisoned by Henry Hoppess, the white chaperone tasked with escorting him from Arkansas back to a man named “Floyd,” Watson’s putative master in Virginia. Relying heavily on the Northwest Ordinance’s prohibition against “slavery or involuntary servitude” north of the Ohio, Chase argued that being a slave – i.e., having one’s labor-time owned by someone else – was not an observed legal status under Buckeye Law. He supplemented this by arguing that the legal process Hoppess used to bring Samuel Watson back to the *Ohio Belle*, tying into the federal Fugitive Slave Act of 1793 while relying on the complicity of local officials in Ohio, was “unconstitutional” as well. As was frequently the case, he lost all of these points in court; Samuel Watson was sent back to

---

In private correspondence with one of his white college friends, however, Chase attempted to reframe the case as a moral victory. After he delivered his closing argument, he reported, he was met with “spontaneous applause” from the audience. Moreover, the “obnoxious” white constables that ushered Samuel Watson back to the river were now facing opposition during re-election. Twenty years later, he repeated this narrative for his biographer. Although he lost *State v. Hoppess*, his work was supposedly significant for the effect it had on Cincinnati’s white population, particularly in the way that it seemed to win white people over to Chase’s color-blind reading of the U.S. Constitution. “The result,” he recalled to Trowbridge, “was that prejudice was not so powerful as it had been.”

Seen in this way, Chase’s very public representation of Samuel Watson would seem to have little in common with his mysterious behind-the-scenes work for Griffin Watson a few years before. As it turns out, however, it could also be argued that the cases were actually quite similar, performed for the same clientele seeking the same things. Indeed, shortly after delivering his closing argument in *Hoppess*, Chase’s diary noted that a “colored committee” visited him in his office, seeking to compensate him for his work. The group settled upon presenting a silver drinking pitcher to Chase, a token which Andrew J. Gordon, the Pennsylvania-born man of “mulatto” complexion chosen to present the prize, called a “trophy of freedom.” Even though Samuel Watson was sent back to slavery, Chase’s argument that the putative slave became “a man, under the protection of the constitution and laws of Ohio, and beyond the reach of the law which enslaved him” once he reached Cincinnati’s waterfront

---

resonated with Gordon and his black merchant colleagues. According to Gordon, Chase had helped in a small way to protect the city’s Public Landing, the workplace of men like Griffin Watson, against “further pollution from slavery.” Only a few years earlier, Andrew J. Gordon had claimed in 1845, “it was of common occurrence to witness at our public landing, in their transmigration to a Southern market, coffles of human beings, manacled and chained like beasts of burden.” Now, with African Americans like Griffin Watson entering Chase’s law office and attempting to turn aspects of Ohio’s legal system in their favor, Cincinnati’s waterfront was promising to become a different place. As a barber who worked less than a block from the Ohio River, Andrew J. Gordon was in a special position to appreciate this. A legal system that would not re-enslave Samuel Watson could also potentially operate to promote the interests of Cincinnati’s “colored” population as members of this group followed commercial pursuits beyond the framework of bondage. As a new generation of Griffin Watsons drew upon the river “in the uncontrolled pursuit of those objects which would… conduce to their individual happiness,” their gains, Gordon predicted, would soon be fully protected under Buckeye law.11

**

Back in 1837, when Chase took on his first publicized case for a person of color, he heard one of his older white colleagues whispering that the once-“promising young man” was ruining his career. A few years later, however, with African-American residents of the Queen City entering the office of the man they called “Lawyer Chase” and paying modest fees to perform a variety of summary tasks, Chase’s move seemed prescient. Standing officially at 2,240 people

by 1840, nearly 5% of the city’s total, Cincinnati’s “colored” population was a modest growth market for a young attorney seeking to rebuild his practice after the banking crises of the late 1830s. Like the “humbler classes” of whites who helped to supplement his income following his break from the Second Bank of the United States, a sizeable number of the city’s African-Americans lived and worked near or on the river, with one-fifth to one-quarter of all men listed as “colored” in census reports directly listed as working in such occupations as “deck hand,” “steward,” “steamboat cook,” “river leader,” “river character,” or “steamboat laborer.” Unlike Cincinnati’s white riverboat workers and vessel owners, who generally either hailed from New England, Pennsylvania, New Jersey or points overseas, the overwhelming majority of this group (74% of the city’s African American heads of household) came from jurisdictions in the US South, from places where the bondage of people of African descent was actively practiced. While a significant number listed Griffin Watson’s home state of Virginia as their place of birth, the largest number was perhaps even more local, born and raised in Kentucky, a separate jurisdiction just across the river from the Queen City.12

More than any other subgroup working within the steamboat economy, the lives of African-American river laborers from Kentucky were enmeshed in law. Starting in Louisiana and stretching far upstream, legislation written by white people targeted rivergoing people of color as a suspect class. “The laws [are] the principle thing that trouble us,” one unnamed black Kentuckian that had made his early living “running the river” explained to federal interviewers in 1863. Twice in his steamboat career, for instance, this man was imprisoned upon arriving in

New Orleans, merely because of the color of skin. In the Crescent City, he encountered a state legal system that empowered judges and magistrates to issue warrants to search any vessel lying at the New Orleans levee suspected of harboring a slave. Other statutes required vessel commanders to produce written proof, affidavits, and live witnesses testifying that any “negro, mulatto… or other person of color” found onboard was either free, or had their master’s permission to leave the Bayou State.¹³

Meanwhile, when black crewmen were lucky enough to emerge from New Orleans, paddle up the Mississippi and Ohio, and then approach Louisville, this waterborne *code noir* also followed them upstream. As in Louisiana, state statutes and city ordinances in Kentucky policed ports of entry and departure for people of color as they moved into and out of the Bluegrass State. In Louisville, an urban area claiming municipal boundaries that extended as far out onto the water as was necessary for justices of the peace to serve legal papers, the enforcement of a state law titled “an Act to prevent future passage of free negroes into the state” began on the Ohio River itself. Even when they reached the shore, African-American river laborers continued to be objects of regulation. Overseen by the city’s mayor, Louisville’s police court regularly heard cases involving slaves and free people of color haled before authorities for such infractions as “being out at a later hour of night,” “lounging around the market house,” “being a person of suspicious character,” and “buying and selling fish in the market.” If they did not voluntarily choose to leave what some of them called “the Big Jail” of the shore and return to the river in response, the commercial options for those impacted by these regulations were similarly limited.

There were plenty of men in Louisville, one African-American steamboat worker informed federal interviewers, “who could do business here if the laws would allow them.” But, as he saw things, local ordinances prevented him from reinvesting his wages in a dry goods or grocery store, businesses where his earnings could multiply. Instead, when the river was frozen or low, he found work as a mechanic. During the river’s slow seasons, he claimed that others started secondary careers working in white-owned tobacco factories lying at the edge of town, smoky facilities that one ex-slave said made Louisville look like a Biblical scene straight from “the Torment.”

As early as 1832, in the first volume of his *Statutes of Ohio*, Salmon P. Chase posited that the world looked much different once someone crossed the Ohio River and touched Buckeye soil. The Northwest Ordinance’s slavery prohibition meant that when the first US settlers crossed the Ohio River, they supposedly found a pre-existing legal order that compressed into the land “an incapacity to bear anything but free men.” At the same time Chase wrote this, however, many of Ohio’s black emigrants experienced it to be an empty theory. Appearing on the Queen City waterfront by boat in 1831, one year after Chase arrived on the *Paragon*, the African-American boatman John Malvin witnessed a different set of legal facts. The son of a freeborn African-American woman and an enslaved carpenter, Malvin recalled that he “found every door closed against the colored man excepting the jails and penitentiaries, the doors of

---

which were open wide.” What he confronted immediately upon arrival in 1831 was the same hostile legal system that Timothy Walker had introduced to Tocqueville in their colloquy that same year, characterized most clearly by Ohio’s “Black Laws.” These were a set of statutes that prevented any “black or mulatto person” from residing in Ohio without posting a bond and producing documentary evidence (certified by a federal court) of “his or her actual freedom.” The laws placed further restrictions on the ability of “black” or “mulatto” persons to trade and go to court after their residency had been established. As recently as 1829, municipal authorities had invoked these laws during an enforcement sweep of the Queen City, convincing a number of black Cincinnatians to pull up stakes and leave, primarily for Canada. For Malvin, Ohio’s Black Laws turned the Buckeye State into an extension of Virginia, a place where as a putatively free man of color he was the near-equivalent of being an outlaw. After spending a short time in Cincinnati, for a time he even opted to return to a so-called “slave state,” settling downstream in Louisville. As one former black Ohioan who left the state in 1838 put it, the laws on the Buckeye State’s books seemed to treat a person of color as a “nobody,” or as an invisible person of “no weight.” In his 1831 interview with Tocqueville, Walker explained that this was precisely the intent. The same policy driving “anti-negro” legislation in Kentucky was behind Ohio’s version: rather than welcoming putatively free African-American migrants into a putatively “free state,” Walker explained, “we are trying to discourage them in every possible way.”

Taken together, the apparent goal of the system of discriminatory legislation targeted at rivergoing people of color was to push them away from the urban waterfronts of the Ohio-

---

15 Chase, Statutes of Ohio, Vol. 1 (Cincinnati: Fairbank, 1833), 48; “The Ordinance of 1787,” Box 20, Chase Papers, HSP (Chase on the effect of the Northwest Ordinance); Malvin, Autobiography of John Malvin, a narrative (Cleveland: Leader, 1879), 12 ("open wide"); Nikki Taylor, 203-205 (reprinting the “Black Laws” and documenting 1829 enforcement sweep); “Testimony of Mr. Foster,” Testimony Taken in Kentucky, Tennessee, and Missouri - No. 9 (Nov. and Dec. 1863), pp. 148-155, Roll 201, M619, Letters Received by the Office of the Adjutant General, NARA, Washington, D.C (“no weight”); Tocqueville, Journey to America (New Haven: Yale, 1960), 94-98 (“discourage them in every way”).
Mississippi river system, strongly suggesting (with the occasional threat of imprisonment) that they go somewhere else. Stowing away on Mobile-to-New Orleans steamboat in an attempt to escape an abusive apprenticeship to a white “plasterer” in the 1840s, the Virginia-born slave John Parker described this as an interstate legal regime where “law and society w[as] organized to catch any misguided wretch who thought he could slip through the net spread for him.” According to Parker, this regulatory system extended up the Mississippi River Valley to the Ohio River, where it thrived on both sides of the river. Although Parker’s life as a steamboat runaway was short-lived, by 1845 he was back on the river and headed to Cincinnati, having purchased his freedom. Even after settling in the river town of Ripley, fifty river miles from the Queen City on the Buckeye side of the Ohio, he experienced the Ohio River Valley as a “danger line full of traps and snares,” a semi-militarized “Borderland” originating in the Deep South, swallowing Kentucky, and creeping into Ohio. Near Ripley, he claimed, white slaveholder associations patrolled the wharf, skiffs were padlocked to trees, and white sheriffs returned slaves to their masters on both sides of the river.16

At the same time, however, that the public law of John Parker’s “Borderland” classed many rivergoing African-Americans with criminals, the private law Parker used to purchase his freedom in 1845 sent a more ambiguous message. Within limits, an enslaved black presence was tolerated within the Borderland, especially among white traders doing business on the river’s Kentucky side. Explicitly sanctioned under that state’s 1792 constitution, the right to hold property interests in someone else’s body or labor-time was openly practiced in the Bluegrass State, with 24.7% of Kentucky’s population classified as being enslaved people of African descent by 1830. Considered under state law from 1798 to 1852 to be “real property,” only

---

subject to sale to satisfy their deceased owner’s lifetime debts if no other personal property was available, slaves were also classified by Kentucky jurists as being part of their master’s “personal estate.” As a highly valuable capital investment in their own right, they could be pledged as security or mortgaged for additional capital, like land. Or, as assets capable of easy locomotion, they could also be carried to the river and transported great distances like livestock, household goods, and the river vessels they rode upon. As one 1824 state court ruling explained, enslaved Kentuckians were thus best conceptualized as “moveable property,” permitted to “attend the person of the proprietor wherever he went,” including to the river if that was what their master preferred. Not surprisingly, throughout most of the antebellum years the state’s largest urban concentration of enslaved African-Americans resided in Louisville, Kentucky’s largest and most commercially advanced river town.17

In the 1810s - at the dawn of the steamboat era - land, steamboats, and “negroes” were regarded as interchangeable property interests by white Louisville residents, sometimes divided up and rearranged in the very same transaction. As such, by the early 1820s, with the demand for enslaved labor surging in the sugar and cotton fields of the Lower Mississippi Valley, Kentucky’s designation of slaves as “moveable real property” briefly turned Ohio River towns into convenient collection and distribution points for people of color being sent on Kentucky steamboats for sale downstream. “This day shipt on board of the barge Eliza belonging to James Douglas a negro man named Majon, in the care of James Douglas and Joseph Hough,” began one bill of lading executed in Newport, Kentucky, directly across from Cincinnati, in 1816. Upon

reaching New Orleans, the commanders of the Eliza were equipped with a power of attorney to sell their human cargo “for such price as they think proper,” as if Majon were a barrel of wheat or a hogshead of tobacco, other articles they were shipping downstream. By the 1820s, one white steamboat owner named Fountain Perry was deciding between whiskey, pork, bacon, tobacco, and slaves as items to carry, rendering his decision by comparing the respective prices each commodity was fetching in Mississippi or Louisiana. His choice was occasionally easy. “Negroes,” he was advised in 1825, “would be the best thing to bring,” especially during “picking season” where they could be sold in Mississippi or Louisiana for “extravagant prices.” Later that year, rather than charging any freight for carrying “two male negroes” down the Mississippi, Perry agreed to transport the two men for free. In exchange, he would manage their sale in Natchez, and charge a healthy commission once the deal was closed.18

By the early 1830s, the image of Kentucky slaves being sent “down the river” for sale had become a trope in travelers’ narratives. Churning down the Mississippi on the Huntress, a vessel he had boarded in Louisville, the British author Thomas Hamilton claimed to have encountered a slave trader with the “soul of a brute” transporting a “poor gang of slaves” for sale to New Orleans sometime around 1830. The men, he wrote, were “loaded with heavy chains.” The women were clothed “with scarcely rags enough to serve the purposes of dignity.” For the university-educated Scot, the entire “revolting” scene was unworthy of polite elaboration. For other writers, similar scenes sent a powerful message. Writing at the same time as Hamilton,

18 See, e.g., sale of Steamboat Gov. Shelby, May 20, 1817, Deed Book “O”; Sale of Steamboat Vesta, Dec. 25, 1818, Deed Book “P”; Transaction dated May 14, 1819, Deed Book “Q”; and Transaction dated June 27, 1819, Deed Book “T,” all in Jefferson County Deed Books, Filson Historical Society, Louisville, Ky. (Louisville transactions mixing property interests); Letter from D. Klgour, Dec. 4, 1816, Klgour Papers, Cincinnati History Library and Archives (CHLA) (“Majon” sale); Letter from Thomas Buckner to Fountain Perry, Feb. 17, 1824; Letters from Robert Berry to Fountain Perry, Feb. 17, 1824; Charles Haring to Fountain Perry, July 24, 1825; Bond Dated Nov. 24, 1825, Box 1, Perry Family Papers, University of Kentucky Special Collections, Lexington, Ky.
another British traveler observed a white man approaching a different Ohio-Mississippi River steamer with “a heart as thin as flint” and cudgel in his hand, pushing “a female slave and her two boys” onboard. Over the woman’s “scream of agony,” her sons – speculated to be the offspring of this same man – were being shipped to the Crescent City’s slave market. “An American gentleman onboard said it was enough to make him forswear his country forever.”

Others agreed. For one white flatboatman named Calvin Fairbank, seeing evidence of human beings transformed into “a matter of commerce” in the 1830s sparked a crisis of conscience. First taking to the Ohio River to transport lumber downriver, Fairbank’s business interests excited an inner “hatred and disgust for the slave master and the ‘poor white trash’ who assisted him,” eventually convincing him to take up a clandestine life as a riverborne abolitionist. Between 1837 and 1842, he later claimed, he welcomed forty-eight runaway slaves onto his flatboat, ferrying them across the river to Ohio without charge in defiance of their masters’ wishes.19

As of 1833, an American Anti-Slavery Society was in existence, hoping to create an army of Calvin Fairbanks striking blows at the peculiar institution within the heartland of the United States. One of the organization’s methods was to recreate Fairbank’s conversion experience on the written page. In one tract published in 1840, for instance, the organization claimed that “at specific times of the year, there is scarcely a steamboat bound for New Orleans which does not take down a cargo of slaves.” The society’s pamphleteers followed this by quoting from steamboat travelers’ narratives published a decade earlier, written by Britons like Thomas

---

Hamilton and white northerners with antislavery leanings. Similar images carried into the late 1840s and 1850s, occasionally found in narratives related by ex-slaves themselves. In an autobiography published in 1849, the Kentucky-born William Wells Brown recalled being hired out to a St. Louis steamboat operator transporting cargoes of “human flesh” downstream in the 1830s. Brown’s task was “to prepare the old slave for market,” by plucking out their gray hairs before they reached Natchez or New Orleans. A decade later, Josiah Henson – born a slave in Maryland and carried to Kentucky as a youth – related a similar story. In 1829, he explained, his master sent him downriver on a flatboat loaded with agricultural produce alongside the master’s son, who was tasked with disposing all of the vessel’s contents – including Henson himself - “to the best advantage” in New Orleans. Writers of antislavery tracts were making a particularly efficient choice when focusing upon boat-driven slaves being transported for sale downstream. Here, packed into small vignettes taking place on self-contained modes of transportation often called “worlds in miniature,” the full perversity of the peculiar institution was apparently on display. Steamboats like the Huntress – symbols of technological progress– were being pressed into the service of a supposedly archaic, “feudal” institution. Families were being torn apart for private gain, with children being transformed, in the words of William Wells Brown, into “human merchandise.” And, as seen in the attention paid by white Victorian writers to the complexion and suspected parentage of some of this cargo, all of this occurred amidst the occasional suggestion of illicit intimate relations between white and black. The moral indictment

---

was plain: within the slave-holding inland river South, Josiah Henson concluded, “the laws of property and self-interest, not of humanity and love, bore sway.”

Ironically, by the time such images first appeared in print, they were becoming less commonplace on the river itself, in part because of changes within the law. Starting in 1833, a statute in Kentucky barred the importation of slaves into the Bluegrass State with the specific intent to sell. By 1841, a similar law was in operation in Mississippi. In essence, such measures were designed to protect the value of marketable slaves already held within each of these respective jurisdictions from being watered down by out-of-state competition. The statutes could also be given a conservative antislavery gloss, at least in the Bluegrass State, where statesmen like Henry Clay occasionally expressed “gradualist” abolitionist views. As Kentucky’s own slaves were sold downstream, the theory went, they would not be replaced by slaves carried in from beyond state lines.

Regardless of the precise reason or reasons for which they were passed, state anti-importation statutes were genuine restraints of trade, capable of altering where and how the domestic slave trade occurred within America’s interior. This was especially the case in Kentucky. There, although allowances were made for the importation of slaves acquired by

---


22 For the Kentucky anti-importation law, see C. S. Morehead and Mason Brown, *A Digest of the Statute Laws of Kentucky of a Public and Permanent Nature, Vol. 2* (Frankfort: Hodges, 1834), 1482-1484. Mississippi’s law was the subject of a non-conclusive “commerce clause” challenge before the Supreme Court of the United States. *Groves v. Slaughter*, 40 U.S. 449 (1841). The attorney challenging the law before the Court was Kentucky’s Henry Clay, who elsewhere occasionally exhibited “gradual abolition” views. For anti-slavery theory in Kentucky, including Clay’s involvement, see Asa Earl Martin, *The Anti-Slavery Movement in Kentucky Prior to 1850* (Louisville: Standard, 1918). By incorporating the likely restrictive effects of anti-importation laws in both upstream and downstream jurisdictions through the 1840s, my analysis differs from another recent historian of the steamboat era, who portrays the steamboat as playing a more comprehensive role in the interstate slave trade. See Robert Gudmestad, *Steamboats and the Rise of the Cotton Kingdom* (Baton Rouge: LSU, 2011), 56-57.
marriage or inheritance, or that had been temporarily brought in by “travellers or sojourners making only a temporary stay in the state,” it could no longer be presumed that every slave on the river was automatically an article of merchandise being shipped downriver. Between 1833, when the law was passed, and 1849, when it was repealed, slave transport-and-sale businesses would have to operate on more dubious legal grounds in Louisville, where merchants would have to shoulder the additional burden of having to prove that the slaves they were preparing for sale had initially been acquired or imported for “personal use.”

Doing business along the Kentucky River, Fountain Perry’s business associate found that the costs of compliance under this new system were enough for him to quit “the Negro business.” By this point, the center of gravity for Kentucky’s slave trading sector had shifted to Lexington, nearly 80 miles away from Louisville within the state’s interior. There, nestled within the state’s Bluegrass plantation region, at least a dozen firms continued to draw upon an ample supply of in-state slaves acquired through intrastate foreclosures or estate sales. Once assembled in Lexington, slave gangs could be marched overland into Tennessee or states further South, evading the port wardens and wharf masters they would have likely encountered if they had traveled by water. Meanwhile, on the river itself, according to the recollections of some former Kentucky slaveholders and slaves, being carried “down the river” seemed to become an extraordinary form of punishment reserved for a master’s most “troublesome” or “unruly” charges, intended to inflict a sort of public shame that exceeded its strict monetary value.

---

23 See Morehead and Brown, id., 1483 (“travellers and sojourners”); “Pattyrollers” Notes, Slave Trade Folder, Box 1, J. Winston Coleman Papers on Slavery, University of Kentucky Special Collections, Lexington, Ky.

24 See Letter from Thomas Bucker to Fountain Perry, Mar. 6, 1827, Box 1, Perry Family Papers, University of Kentucky Special Collections.

Given this regulatory shift, if an Ohio River traveler encountered a bondsperson on a riverboat between 1833 and 1849, there was a strong possibility that the people they witnessed were serving as hired-out laborers rather than simple cargo. By 1850, the historian Thomas Buchanan has estimated, the labor-time of 13% to 20% of all those working onboard steamboats in the Ohio-Mississippi River system - or between 2,000 to 3,000 people at any moment – was considered to be the property of someone else. Given the regular turnover in any steamboat crew, and the parallel turnover in the river system’s steamboat flotilla itself, Buchanan further estimates that “as many as 20,000 African Americans” cycled through the steamboat labor market between 1840 and 1850 alone.26 Some of these workers were owned by steamboat officers or their families, serving as nursing maids or body servants for a master’s river-going family. Others performed more specialized business tasks like William Wells Brown, whose title was held by Enoch Price, steamboat captain of the Chester.27 Many more, however, were hired under fixed terms by vessel officers, white men that had entered agreements with white masters living onshore.

For an urban slaveholder in river jurisdiction, hiring one’s young adult slaves to a steamboat heading downstream could be a winning business proposition. In Kentucky, slave hire gave masters a way to retain most of the monetary benefits of mastery while shedding some of their financial and social obligations. One contract passing between the captain of a

---


steamboat and a white Louisville resident named Henry Churchill laid out terms for a typical agreement: in exchange for binding sixteen of his slaves to work as “hands” onboard the *Frank Lyon*, Churchill received $30 in wages per month for each man’s service. In addition, he received personal assurances from the *Lyon*’s captain that he would “treat the said negroes well,” the same as if they were his own. Finally, Churchill also received a financial indemnification from the *Lyon*’s owner for the full value of the vessel itself if any aspect of their agreement went unmet. Here, on a rolling monthly basis, Churchill guaranteed a return of $480 on his property, all while retaining his title – something he could still borrow upon or sell now or at a later date. His plan was not unique. Between the 1852 and 1858 river seasons, for instance, James Rudd, the owner of around 40 Louisville slaves, hired a number of them, including “George” (valued in 1853 at $700) and “Charley” (valued the same year at $600), to a long list of steamers at monthly rates between $20 and $35 per month. Rudd apparently collected wages directly from these two men, and from the captains of their vessels. Around the same time, the father-and-son Lexington mercantile team of Calvin and John Hunt Morgan hired out large teams of slaves (ten to thirty of them at a time) to work as “firemen” and deckhands on steamers in the lower Mississippi. In 1860, one monthly return showed the Morgans realizing a $417 profit from a single steamer, the *New Uncle Sam*, for just some of the riverborne bondsmen they rented out.28

People like Henry Churchill, James Rudd, and the Morgans contracted away some of the possessory aspects of their mastery because they were confident that state law continued to protect the rest of their underlying ownership interests. Kentucky’s anti-importation law did not

---

apply, for instance, to slaves that had been “hired to any person or persons out of the state.” So long as a master maintained their slaves in their own possession “at the time of hire,” their human property could be brought back and forth across Kentucky state lines at will. And, as seen in Churchill’s deal with the Frank Lyon, Kentucky’s standard common law rules of breach of contract could be called upon if a river steamer did not deliver a slave’s wages, payable on the master’s order “as he may wish,” in a timely way. Indeed, Churchill’s contract even purported to hold the Frank Lyon itself liable for any successful claim for slave injuries or back pay. “In making out your bill, charge from Dec. 14, 1846 and $40 per month, and allow no deduction whatever,” one merchant advised an upstream relative that had hired out “Frederick,” her slave, under a similar contract. If the debt was denied by the steamboat’s captain, she was advised to take Frederick off the boat before it left town, and then sue the vessel immediately.29

With such threats hanging over every transaction, slave labor suppliers like the father-son Morgan team could readily convert the labor of their Lexington slaves from “property in possession” into “property into expectation,” operating within the same legal system that facilitated this identical process when it came to grain, wheat, and other inanimate goods on Cincinnati’s Public Landing. Equipped with the power to enforce their labor contracts under Bluegrass law, the Morgans could also send their agents from Kentucky on debt collection trips downstream, pressuring steamboat captains to settle their “labour bills” even before those vessels tallied their profits and losses from the freight they carried.30 In Kentucky, the wage claim

29 See Morehead and Mason Brown, A Digest of the Statute Laws of Kentucky, Vol. 2 (Frankfort: Hodges, 1834), 1483; Churchill contract, id.; Letter from William Carr Lane, New Orleans, to Anne Lane, St. Louis, Mar. 13, 1847, Lane Collection Papers, Missouri History Library, St. Louis, Mo.

benefits seized by river workers under Ohio’s Watercraft Law thus automatically accrued to leading members of the Bluegrass State’s master class. No new legislation was necessary to confirm that labor suppliers – in the form of slave owners rather than slaves – held the upper hand within Kentucky.

**

If Bluegrass law pushed the absolute title to the bodies of slaves away from the riverbank, it therefore had a reverse effect when it came to white ownership claims over slave labor-time, pulling limited pieces of this lesser property right back onto the river as a commodity for short-term purchase. In agricultural regions of the sugar and cotton-producing South, the majority of enslaved people of color no doubt performed agricultural tasks, incorporated into the lower Mississippi’s plantation complex. But as some from this region later recalled, it also was not unusual for slaves to be rented to steamboats before or after the main planting or harvesting seasons. Even in rural stretches of the Mississippi, slave labor quite literally fueled the steamboat economy. As one former slave named Henry Clay later testified, many enslaved “negro boys” worked as “roustabouts” at the confluence of the Red and Mississippi Rivers in Louisiana, hewing and hauling wood to steamers while helping to unload various riverboat shipments when they reached shore. After spending time “cutting cordwood for steamboats” himself, Clay was eventually “hired off to work on one,” assigned to “keep the fire going” by shoveling lumber into the vessel’s engine. Below Cincinnati, the job of steamboat “fireman” was customarily performed by bondsmen like Clay. While it was the inherent danger of this occupation that probably kept most free white Southerners from voluntarily signing up, pseudo-scientific justifications also developed to explain the occasional color-coding of occupations, including the theory that people of African descent were naturally better disposed to absorb the
physical stress of working in an engine room’s high-heat environment. “If you can get Will or Nick, as he is col[ored], or indeed all the slave fire men at $25,” wrote one Kentucky riverboat steamboat captain that prescribed to this theory, “I will take them.” Once he got these “negro firemen” working on his new vessel in Louisville, he predicted, it would be “worth $1,000 dollars more than she was when she left Cincinnati.”

As can be inferred by the high-stress work that this captain expected his enslaved crewmembers to perform, being hired out to a riverboat did not necessarily lessen the physical toll of being a slave. For those rented out to a steamer, one former slave named Boston Blackwell would later explain, there was “no time to rest.” As the people working the closest to the vessel’s boiler in the lower Mississippi, enslaved “firemen” were usually some of the first to be injured or killed when something went awry. Working as a deckhand rather than a “fireman,” Blackwell claimed that his entire time was taken up with loading and unloading, and otherwise doing what he was “told to do.” When a riverboat was in a particular rush, recalled Alex Boss, a Virginia-born white man from Cincinnati that piloted and captained Ohio River steamers from 1824 through the 1870s, directions would be administered in hyper-speed. “Firemen would exert themselves to full capacity,” Boss recounted, “heaving fuel into the furnaces under the boilers, raising all the steam pressure possible.” Then, at the very point when the engine itself was “straining all joints,” white passengers would sometimes yell out that the

---


32 This observation is made with graphic force in Walter Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge: Harvard, 2013), 113-119.

engineer should take an extra step and “throw in a n-----.” Boss had first learned how to steer a steamboat under the tutelage of “Uncle Charley,” an African-American man from Mississippi who had been “hired… out to the Captain,” a man that had imparted to Boss a type of encyclopedic knowledge of the river’s contours. The respect Boss showed for his piloting mentor did not carry into his assessment of the other African-American workers he encountered. The suggestion to sacrifice black steamboat workers to an open flame appears in Boss’ memoirs (transcribed sometime during the days of Jim Crow) as a harmless joke passing between whites.34

If Alex Boss’ riposte came from a steamboat’s officer corps rather than its passenger class, it would have been heard even by rivergoing whites as a physical threat. Indeed, according to Boss, “it was customary to allow no back talk, nor any threatening gestures, from Negroes” employed on river vessels. Like free white crewmembers, enslaved steamboat crewmen could expect physical punishment if they ran afoul of the vessel’s discipline system, typically administered by steamboat mates. “They used to kick the roustabouts about and run them,” one former slave recalled. Others provided more graphic details. Serving as a white deckhand onboard the Dr. Franklin as it headed up the Mississippi in 1849, William Cairncross remembered the vessel’s mate turning on a “negro cook” with a knife, yelling “I’ll cut the black heart out of you!” as retribution for preparing a supposedly subpar meal. Hardly an abolitionist, Cincinnati’s Alex Boss told a different riverboat story that was grimmer still. One day on the steamboat Jacob Strader, the vessel’s mate became “involved in a dispute with a sassy Negro deckhand.” The mate, Bob Richardson, resolved things in a simple way: “He just hit him over

the head with a club and knocked him overboard into the river. Here he sank and that was the last that was heard of him.”

Despite all of this evidence of shipboard abuse, and the fact that it may have been “customary” for white steamboat officers to beat, harass, or even kill some of the African-American members of their crew, the law actually sent a more nuanced message. Chances are, for instance, that the “sassy Negro deckhand” Alex Boss claimed to have seen murdered onboard the *Jacob Strader* was not a slave. If he were, the slave’s owner could have drawn upon their contract with the vessel to assert a private law claim for the loss of their slave’s services, or the slave’s entire fair market value. Even if there were no written agreement running between slave owner and steamboat, it is equally likely a similar claim would have also existed under special legislation operating in Kentucky. Moreover, as noted by economic historian Jenny Bourne Wahl, judges in some slave-holding states regularly held steamboat owners and employees to a higher degree of care when handling slaves versus carrying free blacks, white passengers, or non-human merchandise, more quickly assigning steamboats responsibility if slaves were injured while being transported as cargo or while working within their employ.

The same legal system that pulled bondsmen onto steamboats as fungible units of labor thus also had a way of regulating the excesses of slavery while they performed their work. Within this system, for instance, the Morgan family slaves hired to the *New Uncle Sam* could relay disputes about their food and clothing to the agents of their master, who was authorized to

---


address their complaints with the vessel’s captain. As they paddled down the river, unscrupulous mates like Bob Richardson would need to think twice before treating the human property of powerful merchants like Charles and John Hunt Morgan in a rough way, much less tossing some of their valuable assets overboard. On some steamboats this message was communicated to the white traveling public at large. “No passenger will be allowed to strike or otherwise abuse the servants,” read a portion of the “Rules and Regulations” posted on a handbill onboard the Lexington, a St. Louis-to-Louisville steamer in the 1850s.37

Such legalistic admonitions – fashioned to defend vessels from slaveholder suits while also protecting the right of slave masters to receive a continued stream of income from their human property even when it was out of their physical possession - could occasionally be aggregated to a riverborne slave’s advantage. Take, for instance, a time in the early 1840s when John Parker briefly escaped from his master and boarded a Mississippi River flatboat as a stowaway, but was soon discovered by the vessel’s white crew. One of his white captors, “a river bully with a reputation for cruelty and meanness,” advocated strangling Parker and throwing him overboard. If detected and reported by one of their flatboat competitors, however, the murder would have triggered a suit by Parker’s master against the vessel, exposing the white boatmen to what Parker called “the vengeance of the law.” Parker notified his captors of this fact, adding that he was now valued to be worth $1,800, meaning that their flatboats and tobacco could be seized under formal judicial process. For one of Parker’s captors, this changed the calculus. “Every damn cent I have in the world is in this boat,” the white man reasoned, “and

37 See Letters from J.C. Hawkins to C.C. Morgan, Dec. 28, 1860; Lunsford Yandell to Morgan, Apr. 5, 1861, Box 15, Hunt-Morgan Papers, University of Kentucky Special Collections, Lexington, Ky.; “Rules and Regulations for the Steamboat Lexington,” ca. 1855, Broadside, Steamboats and River History Collection, Missouri History Library, St. Louis, Mo.
I’m not going to lose it for a lazy worthless n---.,”

Parker, he argued, should be allowed to leave unharmed. When his colleagues objected, Parker’s erstwhile captor broke an adjacent flatboat free, placed Parker onboard, and provided cover as Parker stepped onshore.

The law of the river may have given people in Parker’s position a single role to play - as moveable, marketable, valuable units of labor. But within this role there were certain contradictions. Played in the right way before self-interested whites, the role could occasionally open subversive pathways to freedom that were inherently legal in form. When he arrived in Cincinnati in 1845 after formally purchasing his own freedom, John Parker was only one of many people of color in various stages of emancipation now trickling into Salmon P. Chase’s hometown that had already mastered this lesson.

**

On the river, Mark Twain recalled in his 1883 book *Life on the Mississippi*, “[n]egro firemen, deck hands, and barbers” belonging to the stateliest crafts “were distinguished personages in their grade of life, and they were well aware of that fact too.” Twain illustrated this by relating a tale about a black man who ran into difficulty at an African-American gathering in New Orleans. Accused of “putting on a good many airs,” the man silenced his critics by pointing out that he held a position of honor: he “fired the middle door” on the grand Aleck Scott. A licensed river pilot whose literary Mississippi River was navigated by larger-than-life white men, Twain may have inserted this story for comic effect on the brink of the Jim Crow era. But it also helped to illustrate the mindset of African-American river workers like Griffin Watson in the mid-1800s. For Lucinda Vann, a former slave whose master was related to a well-known Mississippi River steamboat owner, enslaved “steamboat men” were within a privileged class of

---

38 *See* Parker, *His Promised Land*, 54-55
bondspeople, slightly below the “first class” slaves that worked in her plantation’s “Big House” but well above the “low class” working in the fields. In urban areas, they ranked even higher. In the late 1820s, at the same time that William Wells Brown was being given the chance to hire out his time to St. Louis steamboats heading downstream, his mother was suffering one of slavery’s darkest indignities, being separated from her family and sent downriver “to die on a cotton, sugar, or rice plantation.” Compared with the limited horizons that his kin faced, Brown considered his steamboat life, where he was occasionally empowered to find the best price and location for his service, to be one of true “privilege.” 39

Once they reached the river, slaves like John Parker, the Aleck Scott fireman, and William Wells Brown could all begin leveraging their position by sometimes dodging, and sometimes redeploying, the same legal system that their masters believed operated solely in their own interests. Indentured to a flatboat captain as a “cabin boy” for the first time at age seven, the life story of one former slave named George Taylor Burns provides a prime example. Burns’ life began in a social abyss, born around 1836 to two Missouri slaves who toiled “from morning until late at night” cutting and hauling wood in a forest at the edge of the Mississippi. While still a toddler, his family was sold by his owners’ heirs to a “slave dealer,” and he was permanently separated from his parents. Around the same time, during a particularly cold winter, he lost his toes, and was sold to a man known for his “harshness toward his slaves.” But then his luck turned; his master died and his title passed to his master’s wife, who decided to move to Indiana, where she was expected under state law to set George Burns free after a term of years. Rather than simply selling Burns before she left Missouri or apprenticing him when she arrived in

Indiana, she decided to hire him out to a string of riverboats, receiving $15 for his service. Here began Burns’ life as a self-proclaimed “river rat,” wherein he came to know “steamboats from wood box to stern wheel.” At some point he stopped remitting his wages back to Indiana, and started to consider himself more or less self-employed. In about 1845, when the brother of Burns’ putative master escorted him down to New Orleans, selling him at an auction to pay off that man’s debts, he was able to overturn the sale by revealing that he was crippled for life. Eventually more or less free to go as he pleased, he would still carry a pass on his person signed by his putative master. This slip of paper, he found, could ward off “the horror of the patrol” if he ever needed to leave the boat. After the Civil War, he would marry a freedwoman and move onshore, finally deciding to apply his steamboat skills to landed life on the Indiana side of the river. By the time he met his white WPA interviewer, a white former music teacher living out of a series of Evansville boarding houses, Burns owned a substantial mixed-use building where he lived alongside “a number of negro families” directly across town.40

Burns’ story - of structured dependencies unraveling on the river, of masters being revived on paper long enough to ward off threats from hostile whites, and of property being acquired and black families being rebuilt near the water’s edge - was in fact the hidden story of many African-American river town dwellers during the steamboat era. When federal investigators set out to survey Louisville’s free African-American residents in 1863, for instance, a significant portion of the people they interviewed explained that they had “followed the river” in some way. Several of them served as steamboat stewards, earning what one man called

“tolerably good wages” even while he was enslaved. One man, a “Mr. Cox,” testified that he paid $2,100 to purchase himself in 1850. He then bought land in Louisville for $1,800, while buying two of his nephews out of slavery (paying $1,200 and $900, respectively), sending one of them to college at Oberlin. He had earned this money, he stated, by “stewarding and trading on the river.” While a slave, he had brought his master “good wages,” enough to drive up his own sales price, which he paid in $250 increments, remitted annually.41

Upstream and across the river in Cincinnati, similar stories could be told. In 1834, one man canvassing the Queen City counted 476 people that had purchased their own freedom at a combined cost of $215,522. That year, reported one newspaper, it was possible for a black man to pay $5,000 to purchase himself and his family, and then between $800 and $1,000 to buy a home in town. As in Louisville, proximity to the river only sped up this process. Passing through the Queen City by steamer in 1847, for instance, an African-American Baptist minister named William H. Gibson stayed at the home of Robert Gordon, a free man of color known to be one of the city’s leading merchants. This man, Cincinnati visitors would learn, was a former Virginia slave who had purchased his own freedom for $1,700 and arrived in Ohio with $15,000 in his pocket, acquired by selling coal gathered from his master’s estate.42

Some of the economic successes of people like Robert Gordon were by a master’s design; as economic historians have noted, granting a slave a portion of their wages, even holding out the

41 See “Testimony of Mr. Cox,” Freedmen Inquiry Commission, Testimony Taken in Kentucky, Tennessee, and Missouri - No. 9 (Nov. and Dec. 1863), p. 88, Roll 201, M619, Letters Received by the Office of the Adjutant General, NARA.

possibility that these earnings could be pooled to purchase one’s own freedom, could give slaves a type of financial stake in the work they preformed, creating a type of “rewards structure” to direct a slave’s behavior. And, as the historian Juliet E.K. Walker has surmised, in certain cases the early self-purchase and commercial success of ex-slaves like Robert Gordon, described in census records as “mulatto,” may have been expedited by sanguinary ties with a white master’s family. Regardless of the precise intention, however, it was not surprising to learn that side payments were occasionally being made to slaves as they “followed the river.” In the 1850s, for instance, at the same time that Louisville’s James Rudd garnished most of the pay of the slaves he had hired out, his account book also contained notations that at least one of his slaves, “George,” was permitted to retain some of his wages. When no arrangement like this was ever formalized, it could still develop by more covert means. In 1839, for instance, one Kentucky steamboat captain asked another to “call on Mrs. Hatton’s Charles” to “see what he will charge per month.” Charles, the captain noted, preferred that steamboat agents not talk directly with his mistress when arranging for his employment. Instead, they were first to approach Charles on his own, and then to “[l]et him make his bargain with her.”

Here was evidence of what the historian Jonathan D. Martin has called “divided mastery” taking shape at the water’s edge: the otherwise extortionary relationship between master and


slave was being transformed into a “triangular” negotiation between three parties, with hard-trading slaves like “Mrs. Hatton’s Charles” being equipped with the most information. Assuming that the plan mentioned in the steamboat captain’s letter worked, Charles would have been able to secure two different prices for his time – a low one with his mistress, and a higher one with his steamboat employers. He could then pocket the difference. In 1846, one St. Louis river trader suspected that “Lewis” and “Abram,” two of his uncle’s slaves, may have been playing this game. A mistake had been made, he told his uncle, in permitting Lewis and Abram to barnstorm up and down the Mississippi and Ohio, allowing them to enter into short-term contracts with any steamboat they pleased. “As they now are,” he reported, “they work a few days on one boat and are then off to another, so that you in reality don’t get wages for more than two thirds of their time.”

While Kentucky law sent mixed signals when it came to slaves being allowed to trade their own labor-time in the marketplace, Bluegrass jurists had arrived at a rough consensus by the 1830s: so long as a slave was serving effectively as the “agent” of their master’s own direct commercial interest, slave-executed marketplace transactions would have a chance of being honored and enforced under the law. Similarly, Kentucky law also found a way to sanction a bondsperson purchasing their freedom with their master’s consent, allowing them to go to court to enforce such agreements through the mechanism of what some called a “freedom suit.”

45 See Jonathan D. Martin, Divided Mastery: Slave Hiring in the American South (Chapel Hill: UNC, 2004).
46 See Letter from J.R. Lackland, St. Louis, to James Lackland, St. Charles, Sept. 1, 1846, Lackland Family Papers, Missouri History Library, St. Louis, Mo.
47 See, e.g., Morehead and Brown, A Digest of the Statute Laws of Kentucky, vol. 1, p. 608; Lucas, A History of Blacks in Kentucky, 101-117; Letter from Edgar Needham to Chase, Feb. 9, 1850, Reel 7, Chase Papers, LC (reports on “freedom suits” brought in Louisville, Kentucky); George Amos Petition, Fayette, Kentucky, Mar. 8, 1856, Box 1, Black History Collection, LC (documentation from one such suit).
Both processes could be justified as supporting a master’s overarching right to extract value from their slave property, using a reward and incentive structure as they saw fit. Over time this became more clearly spelled out in formal manumission papers running between master and slave. In the 1820s, for example, one Kentucky master presented the decision to release his slave and her children as a simple gift, resting only on his “good will.” By 1850, with the steamboat economy at the height of its powers and the self-purchasing process in full swing, papers purporting to release another slave struck a more commercialized tone: Margaret Graham, a “mulatto woman,” was being emancipated and “set free” in consideration not only for “many moral considerations,” but for $500 in cash.48

By the time Margaret Graham went free, similar deals were being struck that were structured as pure financial transactions, dispensing with any formal gestures at sentiment or morality. The case of the African-American steamboat steward Aaron Siddles is illustrative. Born in South Carolina but eventually carried into Kentucky, Siddles ran away from his next-to-last master in Baton Rouge, a man he described “one of the worst negro traders there ever was.” Hiding out in the woods, Siddles sent word to Timothy Guard, a white man that had previously hired Siddles to work as a foreman on his estate, that he would reappear so long as Guard agreed to purchase him, hire Siddles out, and then give him a chance to buy himself with the proceeds he generated. Guard agreed, and within six or seven years, their deal was closed: at the price of $1,600 (the original “sales price” of $1,000 plus interest, earned from working for as much as $100 a month on the river), Siddles received signed paperwork from Timothy Guard stating that he was a free man. It is possible that when Guard signed Aaron Siddles’ manumission papers, he

48 John Filene Manumission Doc., June 12, 1820, Box 1, Black History Collection, LC (“good will”); George Sutton Manumission Doc., May 25, 1850, Box 1, J. Winston Coleman Papers, University of Kentucky Special Collections, Lexington, Ky. (Margaret Graham).
also framed the transaction as a gift awarded out of his own kindheartedness, or in vague
collection of Siddles’ “exemplary conduct.” But such a master’s-eye view did not always
capture everything that was going on. Once he was hired out, the value of Siddles’ labor-time as
a slave was brought out into the open, made public to everyone including Siddles himself. By
withdrawing himself temporarily from the market, Siddles had found a way to convert this
information into a price that could be paid for his own freedom. His labor-time, a commodity
that was once held by white people on an exclusive basis, was therefore converted into a range of
marketable entitlements that could be divided up and then re-aggregated partly on his own terms.
To the extent that possessing these entitlements formed the core of what it meant to be
considered a “master” in the antebellum age, this meant that Siddles had appropriated aspects of
his putative master’s identity for himself. The integration of Siddles’ labor into the steamboat
economy, a system that specialized in the breaking up, distribution, and reallocation of other
marketable property interests on the water’s edge, catalyzed this process while giving it
continued legal legitimacy as it gathered steam.

Other slaves working within the Ohio-Mississippi River riverboat corridor recalled
experiencing similar moments of empowerment, sometimes more fleeting than sustained. Milton
Clarke was one of them. The Kentucky-born son of a white overseer and a woman that was of
no more than a quarter African descent, the light-skinned Clarke spent many of his formative

49 See “Aaron Siddles” in Benjamin Drew, A North-side view of slavery: Narratives of Fugitive Slaves in
Canada (Boston: Jewett), 271-4. For a reference to “exemplary conduct,” see Joseph Taylor
Manumission Doc., Exhibit A, Oct. 27, 1836, in Dennis, of color v. Beard, Case No. 3522, Louisville
Chancery Court, Jefferson County Chancery Case Files, Kentucky Department of Libraries and Archives,
Frankfort, Ky.

50 See, e.g., Jonathan D. Martin, Divided Mastery. On the concept of “partial ownership” in the labor of
other people, see Robert Nozick, Anarchy, State, and Utopia (New York: Basic, 1974), 172. On the
identity of masters being in part built out of their control over their slaves, see Walter Johnson, Soul by
Soul, 78-116. Hiring out may have inverted, blurred, or fragmented aspects of the master identity.
years as the putative slave of a white man named Archibald Logan, a man that had inherited Clarke from Logan’s indebted son. Rather than choosing to maintain Clarke in his household, Logan granted Clarke the opportunity to take charge of his own labor-time, hiring himself out as a drummer and bugle player to steamboats plying the Ohio. When Clarke learned that Logan was in fact pocketing some of his proceeds, he first threatened to quit, but quickly reconsidered, instead successfully negotiating for a “raise.” In a deal struck with Logan, he would own his own instruments, and he would keep half of what he earned. For Clarke himself, the experience of negotiating directly with Archibald Logan was transformative. The transaction had thinned out the social ties connecting him to his master, briefly allowing him to follow a formalized marketplace script where, with Logan-as-buyer and Clarke-as-seller, the two men were theorized as dealing with each other at arm’s length, on equal moral footing. From that moment on, he claimed, “I then began to lay up money, and had a shrewd notion that I could take care of myself.”

On the river, Milton Clarke had become directly aware of the market value of his labor-time. Now, despite the funds that he was earning, he could never escape the feeling that his master lacked “any right to the annual rent which I paid for my own body.” In the words of one white Kentuckian who described “Henry,” “George,” and “Reuben” – three of Clarke’s enslaved musician colleagues that soon came to a similar realization – slaves with this feeling became “dangerous property,” contracting “bad notions” about their own market power.” And over


52 See Clarke, Narrative of the Sufferings of Lewis and Milton Clarke, at 81-5; Deposition of John W. Russell, Official Transcript of Record, U.S. Supreme Court Records and Briefs, Jacob Strader, James
time, these “bad notions” allegedly had a way of maturing to more radical thoughts. During his trading mission down the Mississippi on his master’s flatboat, for instance, Kentucky’s Josiah Henson gained a different marketable skill than Milton Clarke, quickly learning the art of “steering and managing” the vessel better than any of its white crew. When the captain became sick, he was installed as the full-time steersman, becoming aware that he was “in fact master of the boat from that time till our arrival at New Orleans.” Coupled with the information that his master’s son intended to sell him when they reached their destination, Henson claimed that his position of actual riverboat authority turned him into “a savage, morose, dangerous slave.” Rather than bargaining for his freedom, Henson briefly drew up a more summary business plan, listed out in the following way: “kill my four companions, take what money there was in the boat, then to scuttle the craft, and escape to the north.” These steps, he believed for a moment, were necessary to punish his master’s family for “their utter disregard of my claims upon them.”

Josiah Henson eventually chose a different path, deciding in 1835 to board a steamboat in Kentucky, to cross the river into Ohio, and then to pass into Canada. By 1841, Milton Clarke as well as his musician colleagues George, Henry, and Reuben were taking an identical approach, alighting on Jacob Strader’s General Pike in Louisville, traveling upstream to Cincinnati, and then pushing further North. After settling in Indiana for a time, Aaron Siddles eventually followed suit. They were not alone; a notable amount of Canadian emigrants of African descent seemed to have spent time hired out to vessels in the river trade, eventually becoming

Gorman, and John Armstrong, Plaintiffs in Error v. Christopher Graham, 51 U.S. 82, File Date February 12, 1848, Term Year 1850, p. 136.

53 See Josiah Henson, Truth Stranger Than Fiction: Father Henson’s Story of His Own Life (Boston: Jewett, 1858), 83-9.

54 See Henson, id., 102-112; Clarke, Narrative, 77-83; Drew, A North-side view of slavery, 271-4.
convinced that their masters had been stealing from them. One resident of Canada West named Joseph W. Brown spent decades as a hired-out steamboat cook running between St. Louis and New Orleans, stewing over the fact that “he was a slave, and that the money for he worked went into the hands of his master.” Eventually he used the small earnings he had acquired through tips and selling kitchen scraps to finance his own emancipation, stepping off his boat with his fiancé near Cairo, crossing into Illinois, and then heading to the Great Lakes. Once north of the border, it is possible that Brown came across another African American river character named Allen Sidney following a similar career path. Born a slave in North Carolina and mortgaged to a Tennessee slave trader, Sidney had been sold without proper title to a Memphis riverboat captain in the early years of the steamboat era. In workshops along the Mississippi, Sidney was trained as a riverfront mechanic and steamboat engineer, eventually being considered “too valuable a man” for heavy physical labor. Transferred back to one of his earlier owners, he then managed to be consigned to a Pittsburgh-to-New Orleans vessel as an engineer, a role in which he became deeply dissatisfied. Once again, his primary grievance was economic: “Here was a man,” he explained when speaking of his master, “taking all my wages and giving me only my board and clothes.” Shortly after Lincoln’s election he and his wife stepped off a steamboat in Pittsburgh, crossed Lake Erie, and departed the United States.55

By crossing into Canada, a place where he heard he could be “as free” as any white man in the U.S., Allen Sidney was seeking to ascend a black version of the “marine ladder” that his

55 See William Troy, Hair-Breadth Escapes from Slavery to Freedom (Manchester: Bremner, 1861), 87-92 (on Brown); Interview with Deacon Allen Sidney, Windsor, Ont., Aug. 3, 1895; “Perils of Escape: Allen Sidney Tells the Story of His Life (Aug. 12, 1894), Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Oh.; “Deacon Allen Sidney Takes His Family From Kentucky to Canada,” Slave Interviews, Notes, and Data on Kentucky Slavery, Mar. 1939,” p. 132-3, Box 2, Coleman Papers, University of Kentucky Special Collections, Lexington, Ky. For an attempt to quantify the number of refugees of African descent to Canada during this period, see Robin Winks, The Blacks in Canada: A History, 2d. ed. (Montreal: McGill, 1997), 484-5.
white riverboat counterparts were trying to climb at the same time. So long as they were not assigned to the drudgery of roustabout or deck work, there was a chance African-American crewmen in Sidney’s position may actually gain enough social or monetary capital of their own as firemen, cabin boys, or stewards to finance a transition to a less oppressive status, with or without their master’s formal consent. At the margins of the inland river west, they could even draw upon a few examples of free men of color that had risen to full officer status in the eyes of their white counterparts. As early as 1821, for instance, one white riverman heading down the Lower Mississippi recounted finding a New Orleans steamboat called the Aetna, captained by “a Negro named Jesse Wilson, born free, a bright mulatto and good boatman.” At the opposite end of the western waters there was John Malvin, another free-born man of color described in census materials as sharing a “mulatto” complexion. Initially operating out of Louisville, Malvin eventually pooled earnings he had accrued while selling rafts in Pittsburgh and working as a cook on a Lake Erie steamer to purchase a boat called the Grampus. By 1840, after another stint as a “steamboat hand,” Malvin earned enough to buy the Auburn, a canal boat on the Ohio River-Erie Canal. When he sold the vessel back to its earlier white owners, he stayed on as captain, where he had become, in his words, a leading “property owner” in Cleveland, his adopted hometown.\(^{56}\)

Within the heart of the Ohio-Mississippi system between Cincinnati and Natchez, the region that produced everyone from George Taylor Burns to Allen Sidney, it would have been difficult to find many other men of color equaling all of the professional accomplishments of Jesse Wilson or John Malvin. Malvin, for instance, benefited from a number of factors that not every person of African descent could replicate in America’s antebellum years. First, there was

---

the fact that his mother had been a free woman of color in Virginia, meaning that he had been born free under that state’s law even though his father, with whom he lived and worked, was considered a slave. Second was the fact that the Virginia family owning his father had allowed him to apply for and obtain official “freedom papers” from a local court, giving him the legal rudiments of what he needed to leave Virginia and enter Ohio in formal compliance with the laws of both of those states. Finally, there was the fact that he had decided to settle in Cleveland rather than Cincinnati. There, from a base in the “Capital City of the Western Reserve,” Malvin could ply his boatmen’s trade in the international waters of Lake Erie, where he could more easily receive protections from British authorities and form commercial alliances with Northern merchants with abolitionist leanings. In Cleveland, Malvin was able to finance the purchase of his first steamboat in part through a loan from a white canal builder, and then to obtain a captain’s license from a sympathetic customs officer who, in Malvin’s words, “believed I had as much a right to own and sail a vessel on the lakes as I had a right to drive a horse and buggy through the streets.”

If Malvin had applied for the same document in Cincinnati, it is unlikely it would have been obtained; Charles Larabee, that city’s federal customs officer, did not even believe he was authorized to pay the medical fees of any sick or disabled “coloured seamen”

57 See Malvin, 1-26 (“horse and buggy” quote on p. 22); Allen Peskin, ed., North into Freedom: The Autobiography of John Malvin (Cleveland: Case Western, 1966), 1-24. Meanwhile, as a “bright mulatto” man operating a vessel out of New Orleans in the early 1820s, it is possible that Jesse Wilson maintained a connection to the Crescent City’s free Afro-Creole population, a group that occupied a separate class position from enslaved people of African descent under French and Spanish rule, a group that was able to defend elements of its distinct status even following the Louisiana Purchase. For more on this ethnic group during this period, see Paul Lachance, “The Limits of Privilege: Where Free Persons of Color Stood in the Hierarchy of Wealth in Antebellum New Orleans,” Slavery and Abolition 17 (1996): 65-83; Loren Schweninger, “Socioeconomic Dynamics among the Gulf Creole Populations,” in Creoles of Color of the Gulf South (Knoxville: Tennessee, 1996), 53-62.
(their white counterparts were covered), much less issue captain’s certificates to people of “negro” or “mulatto” extraction.58

South of Lake Erie, where anti-black racism was more systemically embedded into the dominant cultures of white people on both sides of the Ohio River, African-American commercial success within the steamboat economy would have to overcome a sharper set of local objections. For whites living and working at the edges of slavery’s floating “Borderland,” there was always something deeply unsettling about encountering free African-American boatmen, on the river or off. Working on the Upper Mississippi, for instance, the white deckhand William Cairncross was once offered a promotion to assist the vessel’s African-American engineer. He refused, informing the mate he “did not like to work for a negro,” and instead quit at the next stop. Having mastered Kentucky laws that had allowed him to purchase his freedom, ex-steamboat steward Aaron Siddles found white people even more hostile when he left the river and tried to establish himself onshore in Indiana. “I had a good deal of property there,” he told an interviewer in the 1850s, but “it was not safe.” Because of the Hoosier State’s own “Black Laws” restricting African-American testimony against whites, Siddles found that “any loafing white” might destroy or steal his acquisitions, something they frequently attempted to do. “Unless a white man were by to see it,” he recalled, “I could get no redress.” 59

Given the social and legal restrictions that people of color like Aaron Siddles faced as they attempted to ascend the higher rungs of the Ohio River Valley’s marine ladder, it was not surprising that some of the most commercially successful African-American river entrepreneurs found ways to beat their opponents at their own game, claiming aspects of a white person’s

58 On Larabee’s position on this issue, see Letter from Dr. William Barnes to Robert Lytle, Apr. 6, 1834, Lytle Family Papers, CHLA.
identity as their own. When he first began selling riverfront coal from his master’s estate in Virginia, Robert Gordon did not apparently need to hide the fact that he was at that point someone’s slave. Once he reached the Queen City as a free man, however, his business model changed. According to later generations of Gordon’s family members, he occasionally sent out a squad of particularly light-skinned “mulatto” employees (chosen because of the possibility they would be mistaken for being “white”) to buy up the supplies of his white competitors. In this way, and perhaps in this way only, Gordon was able to corner the city’s coal market, forcing even the most racist steamboat owners to do business only with him. Gordon’s objectives for hacking into Cincinnati’s commercial system seemed to be larger than private gain: when he died, he bequeathed much of his earnings to establish shelters for African-American widows and orphans in the Queen City.60

Stopping in Cincinnati in 1849 while on a “western tour” taken as the co-editor of Frederick Douglass’ North Star newspaper, Pittsburgh’s Martin R. Delany observed other African-American riverfront entrepreneurs following Gordon’s lead. “Several of the green groceries and steamboat provisions shops are kept by colored men,” Delany noted, “with whom many of the steamers of the upper and lower trade deal.” One of their most prominent was Samuel T. Wilcox, a man “formerly trading on the river” who was now investing in real estate, including the construction of a new hotel for African-American steamboat travelers named after Alexander Dumas. By 1850, Wilcox had acquired land holdings valued at $20,000, enough to support a household of nine people, and had taken stock in several banks in an activist’s spirit, “so that there may be one colored man there to vote.” In a self-published book two years later, 

Delany revealed the secrets to Wilcox’s success. Born free, penniless, and “mulatto” in Ohio, Wilcox had started as a cabin-boy on a steamboat, eventually graduating to steward and establishing his own line of accounts within the Cincinnati-to-New Orleans riverboat trade. At some point he decided to transition to the shore. He did so, Wilcox would later explain, as a radical “experiment” to prove that “colored people could do something” - that free people of color, in the words of the day, could “take care of themselves.” The long-distance nature of the interstate river trade, Delany suggested, made some of this possible, allowing Wilcox to avoid dealing with many of his white buyers and sellers face-to-face. “There are doubtless now many merchants in New York, Boston and Baltimore cities,” Delany observed, “who have been dealing with S.T. Wilcox, and never until the reading of this notice of him, knew that he was a colored man.”

In a 1993 essay, the historians Henry Louis Taylor, Jr. and Vicky Dula counted both the “Colored Children’s Orphanage,” endowed by Robert Gordon, and “Hotel Dumas,” financed in part by Samuel Wilcox, as two of the principle “focal points” for African-American social life in pre-Civil War Cincinnati. Taylor and Dula wrote that these institutions, centered in a factory district known as “Bucktown” or “Little Africa” lying just three blocks uphill from the city’s Public Landing, formed a type of “‘commons’ for black Cincinnati during the pre-ghetto era.” If so, like the city’s waterfront landing, Cincinnati’s “black commons” owed a great deal of its

---


existence to private exchange, in this case from the earnings of African-American river traders like Gordon and Wilcox. And as it turned out, just as the “public” status of the city’s waterfront at first needed to be asserted by individual white citizens banding together in the night, the legitimacy and continued survival of this black commons had to be enforced on a private basis as well. Interviewed in 1840, one African-American resident of Cincinnati explained that “he did not feel any interest in laying up property” on his own, fearing that any house he built “would be pulled down over [his] head by a mob.” His concern was not misplaced; in September 1841, in a disturbance known as “the Bucktown Riots,” a white crowd armed with a cannon attacked African-American residents on the street (killing at least two) while looting their homes. In response, recalled one recent arrival to the Queen City, African-American residents were forced to fight back, supposedly led by property-owning free men of color inspired to defend their “own rights as well as those of the people [they] led.” By the mid-1840s a select number of the city’s African-American residents had organized themselves into a private “Vigilance Committee,” prepared to take action at any future “signal of danger” in the further protection of their homes, businesses, churches, and schools.63

If the private institutions of the “black commons” were funded and defended by Cincinnati’s leading white merchants instead of their African-Americans counterparts, it would have been reasonable to expect that at least some of the functions of Cincinnati’s black “Vigilance Committee” would eventually be incorporated into formal government institutions under state or municipal law. This, after all, was the pattern that had been established on

---

Cincinnati’s Public Landing, which had passed from private hands into the city’s equitable possession. The same script had been followed by the city’s white working class: by the 1840s, out-of-doors “equitable commerce” claims to a greater share of the profits of the steamboat trade had been given public recognition in the form of the state’s Watercraft Law, broadening the range of people who could use the Public Landing as a launching ground for their own advancement up the marine ladder. When it came to Cincinnati’s black commons, however, the possibility that a second “governmental” step would ever be taken was slim at best. Instead of coming to the defense of Cincinnati’s Little Africa in 1841, for instance, the city’s political leaders organized a “military guard” that disarmed 300 “male negroes” within the vicinity, marching them to jail as further white-on-black attacks only intensified. From the offices of Chase & Ball a few blocks away, Chase’s law partner Flamen Ball depicted this all-white crowd as consisting of a handful of “river loafers” acting out of racial hatred rather than any legitimate legal justification. By facilitating their efforts, the actions of the city government sent a different message: it was the city’s African-American residents that were marked as acting outside of Ohio law. Their crime was choosing “to protect their persons and property and to protect their rights” within the legal frame of Cincinnati’s black commons.64

Analyzing the more-or-less spontaneous crowd events surrounding the so-called “Bucktown Riots” of 1841 allows us to see people like Robert Gordon or Samuel T. Wilcox – African-American river traders who deliberately rejected a transparently “black” identity in the marketplace – in a new light. The hard-won private commercial triumphs of men like Samuel Wilcox, no matter how they were accomplished, had a not-so-hidden subversive public

64 See Letter Ball to Chase, Sept. 4, 1841, Reel 5, Chase Papers, UPA (“river loafers”); Letter from Chase to Cleveland, Oct. 22, 1841, Reel 4, Chase Papers, LC. On the full scope of the 1841 events, see “Dreadful Riot and Loss of Life,” “The City-The Mob,” “Reign of Terror Again in Cincinnati,” “Riots and Mobs, Confusion and Bloodshed,” The Philanthropist (Cincinnati) Sept. 8, 1841.
dimension; they helped to fund versions of the black commons across the steamboat-going west, creating institutions where people of color, their possessions, and their wealth could be deposited and defended in lieu of (and sometimes in opposition to) formal state action. Without any meaningful government support to draw upon, trading with whites, and perhaps slipping on a “white” identity in the process, was the only option remaining for those seeking to build private estates or community institutions during the mid-1800s. Given this, when Griffin Watson conferred with Chase about his claims to a parcel of land on McAllister Street, the same one-block alleyway that would later house Samuel Wilcox’s Hotel Dumas, itself a collection point for many a Kentucky slave rejecting their servile status, it is easy to surmise that there were larger stakes at play. “Excluded from the witness box, you have sought that security which the law denies,” Salmon Chase observed in his address to Cincinnati’s “Colored Citizens,” further referencing the schools and churches they had financed on their own. Individual residences maintained by free blacks like Griffin Watson were smaller achievements in the same process, and could play similar institutional roles. Upstream in Pittsburgh, the home of Thomas Arthur Brown, a different African-American steamboat steward and an ex-slave himself, was known as a place where “[m]any a hunted slave found food, shelter, and encouragement.” Around the same time, John Malvin was drawing upon some of his own capital to post bail for people of color when they were imprisoned, referring their cases to white attorneys friendly to his cause. And in Malvin’s vicinity, William Wells Brown was using his position as a steward on the Great Lakes to shuttle runaways to Canada “without charge.”

---

65 Harvey Johnson, “Romance and Realities of the Underground Railroad,” Apr. 1887; James Freeman Clarke, “Anti-Slavery Days,” ca. 1883, in Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Oh. (mentioning Dumas Hotel role); Reply of Mr. Chase,” The Address and Reply on the Presentation of a Testimonial to S.P. Chase, 33 (“excluded from the witness box”); Hallie Q. Brown, Homespun Heroines, 74 (the Brown home); Autobiography of John Malvin, 31-33; William Wells, Brown, Narrative, 109.
commercial apparatus of the steamboat economy – an apparatus that included some of this economy’s lawyers – was being collaboratively redirected by black riverboat entrepreneurs for emancipatory ends.

In the 1850s, when Martin R. Delany sat down to write a serialized novel about a runaway slave laying the groundwork for a separate black nation in the New World, it was not surprising to find that “Henry,” the mastermind of this plot, shared the same professional background as Griffin Watson, Samuel Wilcox, and William Wells Brown, an African-American subversive that worked as a steamboat steward by day. The white-run police state that people of color in the United States faced, Delany’s protagonist explained in the pages of Blake, or the Huts of America, was like “an elevated obstruction, a mighty hill, a mountain.” But through that mountain, Delany’s hero further counseled, “there is a gap, and money is your passport through that White Gap to freedom.” The metaphor went further: the “gap” was in fact a water route, a “White River” navigated by steamboats, ferries, and rafts, the modes of transport that both Wilcox and real-life runaways used. Through the arm’s-length formalities of the market, Delany was suggesting, river trading people of color could use the universal solvent of commercial exchange to gain the confidence of otherwise unsuspecting whites. At the time he was writing, after all, the best way to catch a glimpse of a real-life confidence man (“polite in his deportment, suave in his manners… never supposed to be the villain he really is,” according to the detective Allan Pinkerton) was to hop aboard a steamboat. Indeed, it was a Mississippi River steamboat, “always full of strangers” continually being replaced “with strangers still more strange,” that was also the vehicle of choice for Herman Melville’s titular anti-hero in the Confidence-Man, a novel about a sinister “mysterious stranger” who takes multiple shapes while onboard the fictitious
steamer *Fidèle*, liberating the vessel’s passengers of their most prized assets, one-by-one.

Martin Delany’s heroes carried on in Melville’s river trickster tradition, helping to extract wealth out of an enemy civilization even as they framed their work as being in some white person’s self-interest.

As symbolized by Delany’s fictional runaway slave “Henry,” African-Americans with formal freedom papers were not the only people of color who could find “gaps” within the riverboat economy to exploit. Sometime in 1835, for instance, an “unusually smart” black man calling himself “Weller” arrived in Louisville and presented himself as a free man to Junius J. James, the white captain and reputed owner of the steamboat *Splendid*. Inspecting his papers, which after-the-fact turned out to be forged, James decided to hire Weller as a fireman on his vessel. Once the *Splendid* arrived in Cincinnati, and only after Weller had been paid his wages and had left the boat, James received notice that he was facing suit from a white Kentuckian named Bailey Riley. The true name of “Weller,” Bailey Riley claimed in court papers, was “Bailey” as well. And he was supposedly Mr. Riley’s slave. Now, however, Weller/Bailey was gone for good, principally because he had chosen a particularly strategic time and place to go missing. In Cincinnati or Louisville, for instance, if Riley sought to recover the value of Weller/Bailey’s time from Junius James out of that man’s share in the *Splendid*, Riley would have faced several layers of difficulty. As a man known to be deep in debt with little credit of his own, some of the vessels that Junius James claimed as his property were actually not his property at all. Instead, they had been secretly purchased and owned by his brother, a wealthy

---

lawyer. Like “Weller” himself (and unbeknownst to Weller’s putative master), Junius J. James was thus also a shape-shifting creature of the steamboat trade, seeking to leverage its magical capacity to transform “property in expectation” into “property in possession” to come out ahead. Although uncoordinated, the river obfuscations of James and Weller had operated in concert; Weller had used a short-term steamboat labor contract with James, a faux steamboat owner, to bypass the longer and more contingent process of negotiating a self-purchase contract with Bailey Riley, his putative master. With its tendency to split up and distribute property interests over great distances, sometimes without the consent of all of the parties whose rights were implicated, the western waterfront was a perfect place for a transaction like this to occur, allowing permanent fissures in a Kentucky master’s chain of title to begin to form.

**

Kentucky law may have labeled Weller a “fugitive from service” or a “runaway slave,” branded those who assisted him as criminals, and threatened Junius J. James with property loss or prison time. But Weller no doubt saw things differently. “I was not born free,” a different ex-slave from Kentucky who followed a similar path once explained, “but freed myself.” So-called fugitive slaves, argued the Afro-Canadian publisher Henry Bibb, were actually following a recognizable legal process of their own, something that Bibb called “self-emancipation.” Bibb was not only a theorist of this process; he was also an active user, having first fled his Kentucky master and crossed the Ohio River in the late 1830s. “I am naturally and necessarily free by the laws of the living God,” Bibb lectured the man claiming him as his own, “and this being true I

also have right to the fruits of my own labor.” Rejecting one’s enslaved status and running away was the fastest way to make out this claim, Bibb later wrote, a type of self-help legal remedy to offset years of “service without compensation.” By 1844, Milton Clarke was stating this in more formal terms, circulating an itemized “demand” against the estate of his putative master in a string of abolitionist newspapers. “I worked for Mr. Logan for about ten years, for which he has never paid me the first dollar,” Clarke’s notice insisted. As a result, Archibald Logan was in fact in debt to him for at least $1,000, representing ten years of labor for $100 per year. “I consider the above a very moderate charge,” Clarke wrote, “and actually due me, and intend to collect it if I can.” Self-emancipating slaves, argued Clarke’s brother Lewis at one point, were not interfering with anyone else’s legitimate legal interests. It was Kentucky’s “slaveholding tyrants” that were the real “robbers of the worst kind.” In contrast, runaways like his brother were simply transferring their remaining labor-time into the possession of its “true owner” – themselves.68

This interpretation of slavery as a type of wage theft, and of running away as a type of legitimate debt collection claim to disgorge slaveholders from the profits of their illegal act, had the capacity to resonate with the radical Lockean theories of “equitable commerce” that were circulating among working class whites within the Ohio River basin and Great Lakes at the time. For John Fairfield, a working class white man from Louisville, slavery was a form of illegal economic extortion. Like a riverfront swindle or an unfair business deal, it made his blood boil.

Thus, while trading in western Virginia, Fairfield once posed as a slave dealer to finance the construction of a fleet of flatboats, only to allow the vessels to be piloted away by the very same collection of slaves that was ostensibly playing the role of Fairfield’s marketable “gang.” Because the freedom of the people now benefiting from his mortgaged boats had been “stolen” in the first place, Fairfield believed that it was an honor to assist their clandestine escape, permitting them to “steal” his vessels in return for a lump sum payment they sent directly to him.69

Lewis Tappan, a Wall Street financier with accounts along the Ohio River, similarly contended that runaways were acting under the color of law. A credit reporting entrepreneur, Tappan occasionally received reports from debt collection agents that depicted white Southern businessmen as a mix of “irresponsible cotton buyers and “transient adventurers,” people lacking “the means, or the skill to sustain themselves.” At the same time, Tappan was an antislavery organizer, and at one stage in the early 1840s introduced one of the Clarke brothers at an antislavery meeting. By this point Tappan had apparently become convinced that Milton Clarke’s legal critique of slavery was correct: slaveholding Kentuckians were indeed invested in an indebted form of property subject to immediate liquidation. Quibbling with abolitionists who used the euphemistic term “fugitives from service” when describing runaway slaves, Tappan therefore offered the following retort in an 1842 letter to Salmon P. Chase, then one of his debt collectors in the west: “I contend that no services are due from a slave. Due?! Let them show a contract by which a slave has agreed to serve.” By 1844, Chase wrote to Tappan that he now also considered himself a “full convert” to Clarke’s contract-based view. If he ever became a

judge in Ohio, Chase promised, “and a fugitive slave in Ohio should bring an action against his pursuing master for wages during his whole time of his servitude, he [w]ould have judgment.”

If Milton Clarke was right, and Kentucky masters were properly viewed as a group of people that had been illegally enriched by passing off the profits generated by other people as their own, the slaves of these same Kentuckians could in turn be seen as a new creditor class. Needless to say, free people of color within the steamboat economy saw this legal justification of “self-emancipation” as extremely compelling, immediately transferrable to their own situation. In places along the river, if they had otherwise attempted to throw off the debtor’s role and defend their claims in open court, there would have been trouble. As discussed in the previous chapter, a single attempt by Brooks, a “colored hand” on the steamboat Golden Gate, to use Ohio’s Watercraft Law to his advantage had drawn published protests from T.D. Lincoln, one of the stalwarts of Cincinnati’s commercial bar. Traveling between Louisville and Cincinnati at one point, a different free man of color named J.C. Brown found Brooks’ legal tactics to be unavailing. A free mechanic living in the Queen City, Brown attempted to pay his steamboat fare in cash, something which deeply offended the vessel’s white clerk, who instead had Brown chained up on the vessel’s deck as a fare evader. Once back in the Queen City, Brown attempted to bring a claim against the vessel, but the justice of the peace refused to serve his complaint on the steamboat’s captain. Brown finished his tale with the typical black creditor’s lament: under

70 See Sheldon Church, Credit Reports of Merchants Throughout the West, South, and Southwest (New York: Central Intell. Ag., 1844-1847), Vol. 3, Dun and Bradstreet Corp. Records, Baker Library, Harvard Business School (“transient adventurers”); Letter from Tappan to Chase, Mar. 13, 1842, Reel 5, Chase Papers, UPA (“show a contract”); Letter from Chase to Tappan, Apr. 3, 1844, Reel 5, Chase Papers, UPA (“have judgment”). On the debt collection and credit reporting work of Chase & Ball for Tappan, see Letter from Lewis Tappan to Chase, Oct. 7, 1837, Reel 3; Letterpress Memo on Tappan work, Feb. 1845, Reel 27, Chase Papers, LC. On Tappan’s antislavery work generally, see Bertram Wyatt Brown, Lewis Tappan and the Evangelical War Against Slavery (Cleveland: Case Western, 1969). For Tappan’s introduction of one of the Clarkes at an antislavery event, see Lewis Clarke, “Narrative Extracts ‘Leaves from a Slave’s Journal of Life,’” n.d., Helen Thoreau Scrapbook, Concord Public Library in Black Abolitionist Papers, 1830-1865, available online from ProQuest LLC.
Buckeye law, he recounted, “I got no recompense nor justice.” John Hatfield, a “mulatto” man born in Pennsylvania but operating for a time out of Cincinnati, experienced similar treatment. At one point while serving as barber onboard a riverboat, he was placed in jail as a suspected slave, and then charged an $11 fee for the privilege to go free. Like the Clarke brothers, he considered this “a complete system of robbery.” At the time, he believed that there was nothing he could do. In the eyes of the law, he was simply an imprisoned black man now owing an $11 debt.71 Despite its new working class edge, Ohio law also had the tendency to typecast black riverfront workers in the way experienced by Hatfield, as being denizens of the state’s debtor rolls. While John Malvin may have been a builder of Cleveland’s version of a “black commons” and “a man of property” in his own right, court filings indicate that Buckeye law seemed more adept at placing him in a precarious financial position when claims were asserted against him. From the 1830s through the 1850s, for instance, several collection cases that Malvin brought for small amounts in Cleveland’s Court of Common Pleas were dropped or dismissed. At the same time, a sizable claim against him was allowed to proceed, even leading to one party seeking to force a court-ordered sale of Malvin’s “lands” for an unpaid bill.72

For all of its radical potential in positing a give-and-take commercial relationship between master and slave, Kentucky’s self-purchasing system also had the potential to place similar burdens on people of color seeking to move towards emancipation. The self-purchasing system, after all, automatically assigned slaves to the debtor’s side of the ledger, as people that “owed” something to someone else, namely to their master. While some prospective self-


72 See Malvin v. Martin & Fuller, Oct. Term 1835, vol. 15, pp. 391-2; Bullock v. Malvin, Mar. Term 1836, vol. 16, pp. 55, 256-7, Court of Common Pleas Record, Cuyahoga County Archives, Cleveland, Oh. (suits dropped at some stage before judgment); Fregent v. Malvin, Filed May 26, 1847, Cuyahoga County Justice of the Peace Civil Docket, 1851-1857, p. 35, Ohio Historical Society and State Archives, Columbus, Oh. (case vs. Malvin’s “lands”).
purchasing slaves could overcome starting out in the red in this way, others could not. Within Louisville, many instead felt the need to turn to Washington Spradling, the wealthy Kentucky-born son of a white overseer and a black plantation slave, himself self-purchased in 1825, to make up the difference. Louisville’s leading barber, Spradling counted the city’s most prominent lawyers and judges as his clients. While he cut white men’s hair and shaved their beards, he supposedly loved to converse with them “on law.” Leveraging the know-how he gained, by the time of his death in 1868 he had established a real estate empire that made him one of the ten richest people of color in the United States, also claiming to have purchased 37 people out of bondage using his own funds. When facing steep self-purchasing bills in Louisville before the Civil War, people of color sought Spradling by name, known as one of the city’s “best lawyers” even if he could never join the bar because of his race. According to one black Louisvillian, the illiterate Spradling would prepare their cases himself, then handpick a white attorney to take them to court. For all of these achievements, Spradling deservedly became what one attorney in court filings called “a class leader” about town. Nevertheless, there was a darker side. Interviewed in 1863, Spradling complained that many of the people that he assisted were still in debt to him, for a total of $3,337.50. To keep his own investment in the river’s incipient “freedom trade” from sending him into bankruptcy, Spradling oftentimes felt compelled to manage his self-purchasing business like a loan shark, or a labor trafficker. Until a self-purchaser paid back the money Spradling loaned to them, for instance, he would retain their “bill of sale,” something that white creditors could call upon to satisfy debts that he owed to

them. Moreover, to allow self-purchasers to pay off their “debts” more quickly, Spradling also offered to “hire” the self-purchasing slaves whose sales he had financed to himself, or to someone else. In at least one case, the steamboat steward husband of one woman “purchased” using a loan from Spradling (and then “hired back” to Spradling himself) accused the financier of “exceeding his control” with his wife in an intimate way. Although the steward’s wife was supposedly “free” from her white master, she was still allegedly in thrall to yet another male patriarch that was not her husband, in this case Kentucky’s first black millionaire.74

The legal theory of self-emancipation articulated by Milton Clarke and other runaways promised to avoid the debt traps that even self-purchasing agreements with potentially sympathetic middle-men like Washington Spradling could sometimes become. In contrast to a self-purchasing model, self-emancipation allowed slaves to jump to the final steps of manumission with little legal process, and with no additional debt being accrued. It did so by turning the theorized ledger running between master and slave on its head. Repackaged as “creditors” collecting a “debt” from their putative owners, runaways like Milton Clarke could construct themselves as favorites before the law.

By the time Milton Clarke resolved to leave Kentucky, there was already a jurisdiction within North America where “debt collection” complaints like Clarke’s could be processed. Rather than Salmon P. Chase’s Ohio, this jurisdiction lay further north, in Canada West. There, following Britain’s abolition of slavery in its colonial holdings starting in 1833, an anti-

74 See “Testimony of Washington Spradling,” Freedmen’s Inquiry Commission, Kentucky, etc. testimony No. 9 (1863), p. 77-79, 1863 O-328 (pt) – 333, Roll 201, M619, NARA (Spradling discussing debts still owed to him); Statement of D.W. Phillips, Brady v. Benedict, Filed May 11, 1854, Case No. 9729 (slave “pur chased” by Spradling called upon by creditor to satisfy steamboat debt); George Washington v. Spradling, Filed 1840, Case No. 2574 (retaining bill of sale as “security” until debt paid off); Dennis v. Spradling, Filed July 2, 1837, Case No. 797 (Spradling uses “credit and means” to purchase a slave, then “enables” her to “work for him to pay off her debt”); Spradling v. Blue, Filed Nov. 1852, Case No. 8574, Louisville Chancery Court, Jefferson County Chancery Case Files, KDLA, Frankfort, Ky. (suit accusing Spradling of “exceeding his control”).
American interpretation of British law had inspired judges to disregard any claims made by U.S. slaveholders that escaping slaves should be returned as “fugitives from labor.” As one Canadian jurist reasoned while adjudicating the case of several ex-slaves from Louisville, since slavery was no longer a valid legal relation under Anglo-imperial law, “stealing” oneself out of slavery could not be considered a punishable crime north of the border, and would not merit an extradition back to the United States under international law. For some rivergoing people of color, this turned Canada into North America’s only true promised land. “How will a slave get the law on his master?,” Lewis Clarke, Milton Clarke’s brother, once asked rhetorically while still living in the U.S. A decade later, after shifting national allegiances, he knew the answer. In Canada, “a vast unoccupied area of soil, equal to the best Agricultural lands in the Western States of the American Union,” “the impartial laws” of a foreign power applied. There, Clarke and a committee of fellow self-emancipated slaves contended, “no laws prohibit the colored man of availing himself” of nature’s abundance. There, they added, “we can literally hang as a threatening black cloud over the American Union, waiting and praying for the Lord’s day of vengeance,” preparing to collect debts long accrued over “centuries of oppression.”

Inspired by this aspirational understanding of Anglo-imperial law, Canadian versions of Cincinnati’s “black commons” began to form across the Detroit River in the late 1830s, clustered around Ft. Malden, a British military garrison where Henry Bibb often stood on the shore to welcome incoming self-emancipating slaves, and Chatham, a commercial town accessible by

---


steamboat on the Canadian Thames. Unlike further south, these iterations of the Queen City’s black commons could draw upon a degree of state protection. When Americans and some Canadian sympathizers launched steamboat-driven incursions into Canada in 1837, for instance, they were repulsed on the water, in part by armed people of African descent in a skirmish known as “the Patriot War.” Four years later, when Dr. Christopher Graham, the putative master of Milton Clarke’s colleagues Henry, George, and Reuben pursued these three men to Canada, he was pushed back by “a mob of some hundred,” many likely of African descent, people who were flanked by armed Redcoats stationed at Ft. Malden. Protected by the crowd, Henry, George, and Reuben stood on the shore playing a “gypsy waltz,” supposedly Graham’s favorite musical piece. When Dr. Graham sent an African-American associate of Washington Spradling to Canada with money to entice them back, the three men took his cash as an offset against past wrongs, but stayed put. Under the “Lion’s Paw,” their “lawful plunder” claim had already been perfected.77

By 1849, as a counterpoint to white celebrations during the Fourth of July, Cincinnati’s “Colored Citizens” were choosing August 1st, the anniversary of the “British West India Emancipation Act” as their own holiday. In comparison to its enlightened northern neighbor, argued the free African-American steamboat steward Joseph H. Perkins at one of these

77 See Fred Landon, Ontario’s African-Canadian Heritage (Toronto: Natural Heritage, 2009), 66-74, 193-195 (analyzing Ft. Malden and the “Patriot War”); Narrative of the Sufferings of Lewis and Milton Clarke, at 81-5; Official Transcript of Record, U.S. Supreme Court Records and Briefs, Jacob Strader, James Gorman, and John Armstrong, Plaintiffs in Error v. Christopher Graham, 51 U.S. 82, File Date February 12, 1848, Term Year 1850; William B. Allen, A history of Kentucky (Louisville: Bradley and Gilbert, 1872), 323-6 (the escape of Henry, George, and Reuben, and Dr. Graham’s pursuit).
gatherings, the United States was a backward jurisdiction featuring “hellish laws,” a domain where “our slightest faults are engraven on stone...”78

**

By the time John H. Perkins offered his criticisms of Ohio law, things were beginning to change. Starting in the early 1840s, for instance, members of Cincinnati’s African-American community had identified Salmon P. Chase as an attorney that was willing to explore ways to give the “Canadian” remedy of self-emancipation formal legal standing under U.S. law. Even as a bank lawyer, there were signs that Chase could be cultivated to perform this role. In his early Whig years he had developed an abstract disdain for the peculiar institution, drafting a petition for “gradual abolition” while still living in Washington, D.C. in 1828, and publishing an article on Britain’s current Lord Chancellor, lauded by Chase at the time for having “denied utterly the fundamental principle . . . that man may be the subject of property” in 1831. Still, it was not until 1836, after the death of his first wife prompted a religious reawakening on his part and a recommitment to his Christian faith, that Chase began to incorporate these sentiments into his everyday law practice. That year, while studying the life of British abolitionist politician William Wilberforce, Salmon Chase set himself on a journey that would eventually align the “worldly” law of property seizures and estate foreclosure practiced in his law office with his religious ideals by taking on Matilida Lawrence, his first client of color.79


Chase’s association with Lawrence began in the summer of 1836 when Isaac Colby, Chase’s brother-in-law and a member of Cincinnati’s Anti-Slavery Society, was challenged by a crowd threatening Colby’s friend James G. Birney, the editor of a new abolitionist newspaper called the *Philanthropist*. Timothy Walker and other leading Whig attorneys attempted to mediate the Birney dispute, with Walker himself serving as the secretary for an “Anti-Abolition Meeting” seeking to convince Birney to leave town. Chase took a different approach, standing in Birney’s doorway and shouting down the crowd. Later he drafted a resolution condemning the “mob violence” of the anti-Birney crew while also bringing a trespass action seeking money damages from prominent Democrats, allegedly “the leaders of the mob,” on behalf of the *Philanthropist*’s printer after the newspaper’s press was destroyed. By 1837, he was also representing Matilda Lawrence, an “octoroon” woman working in Birney’s home who had walked away from a lifetime of service to her biological father (a Missouri slaveholder), against a claim from a Kentucky slave catcher that she was still a slave.80

As will be discussed more fully in the next chapter, the arguments Chase made in the matter that came to be known as “Matilda’s Case” were awkward, presenting Lawrence herself in a largely passive role. Nevertheless, his choice to represent Lawrence in the first place seemed to serve as a calling card to Cincinnati’s “Little Africa.” By the 1840s, with the commercial realignment of his practice around a more working class clientele taking shape, Chase was receiving matters directly from African-American clients seeking to purchase themselves or loved ones out of slavery, as a way to escape what one of Chase’s black clients

---

80 See *Narrative of the Late Riotous Proceedings Against the Liberty of the Press of Cincinnati* (Cincinnati: Ohio Anti-Slavery Society, 1836), 25; Daniel Aaron, *Cincinnati, Queen City of the West, 1819-1838* (Columbus: Ohio State, 1992), 311 (Walker and the “Anti-Abolition” meeting); Letter from Chase to Charles D. Cleveland, Feb. 17, 1837, Box 13, Chase Papers, HSP (“leaders of the mob”); William Birney, *James G. Birney and his Times* (New York: Appleton, 1890) 261-266 (Matilda Lawrence background in Birney household).
called the “Abbitrerry power” of whites. Chase also accepted fee-paying work from manumitting Kentuckians or abolitionists who sought to sever a slave’s bonds through Buckeye law. Go to “Lawyer Chase,” “nephew of Bishop Chase,” one former master summarized to her former slave. He “lives on the 3rd street and Broadway in Cincinnati on the right side of the river” and could not be missed. For a small fee or nothing at all, he could “address a note to the clerk of the office where the colored people are set free, or their freedom recorded.”

As seen in his work for Matilda Lawrence, “Lawyer Chase” also assisted people of color lacking the formal freedom papers he was sometimes asked to prepare. When he crossed the Ohio River in 1841, for instance, Milton Clarke claimed that he first met with Chase, who arranged for his trip further north towards the abolitionist stronghold, Oberlin. Two years later, when Archibald Logan sent several men into northern Ohio to arrest Milton Clarke near Lake Erie and return him to Kentucky, Clarke claimed that Chase appeared in his defense, flouting the state’s Black Laws by placing him on the stand. “Do you owe anything to Archibald Logan?,” Clarke recalled Chase asking. “No,” Clarke replied, “the deacon owed me about eight hundred dollars; I owed him nothing.”

By the point he made arguments like this for so-called “fugitives from service,” “Lawyer

---


82 See J. Milton Clarke, “Story of a White Slave (1900),” in Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Oh. (claiming early meeting with Chase shortly after crossing the river); Narrative of the Sufferings of Lewis and Milton Clarke, 88-98 (“owed him nothing”).
Chase” was also accepting matters directly from Cincinnati’s African-American mercantile elite, people of Griffin Watson’s ilk. These were African-American folk who had already exited the status of being considered someone’s slave (or who had never experienced this legal status themselves), and who were now turning to Chase to secure a more permanent position within the city’s existing social order. In 1842, Chase supported a petition from this group protesting “the laws of Southern states which authorize the imprisonment of colored firemen, cooks, and stewards.” Under such “Negro Seamen” laws, Chase had witnessed one of his free black clients detained once reaching New Orleans and then sold for her jail fees, and another client denied steamboat passage altogether because of her “colored skin.” For Chase, such laws, restricting some of his clients from seeking out their best economic prospects within the Ohio-Mississippi system, were examples of a larger suite of discriminatory statutes which he deemed unconstitutional. As “citizens of Ohio,” he argued, the “colored persons” within his new client base were entitled by “the Constitution of the Union to the same immunities . . . as the . . . white citizens” of other states.83

Given their different freedom statuses, complexions, family histories, legal issues, and economic backgrounds, the African-Americans that entered Chase’s law office were far from homogeneous. If anything connected Chase’s black clients together, it was the fact that they were each fighting legal interpretations that channeled them, through slavery or other means, into a second-class legal status. Wary of provoking white backlash through a direct challenge of Ohio’s “Black Laws,” some of the free African-American entrepreneurs that visited Chase’s office thus could gravitate to his antislavery work, finding that it was occasionally beneficial to

83 See Letter from Chase to Tappan, Feb. 15, 1843, Reel 4, Chase Papers, LC (“colored seamen” petition); Letter Extract to Stewart Renham, Dec. 13, 1843, Box 17, Chase Papers, LC (detained upon reaching New Orleans); Letter from Chase to Cleveland, Feb. 3, 1845, Box 17, Chase Papers, HSP (client denied passage, and “same immunities”).
litigate their own status complaints by proxy, through Chase’s representation of allegedly self-emancipating slaves like Samuel Watson. By the mid-1840s, for instance, Chase had developed a working relationship with John Woodson, a free-born “mulatto” master carpenter, brother of the publisher of Cincinnati’s leading black newspaper (*The Disfranchised American*), and officeholder in a black-owned joint stock company renting property to white Cincinnatians.

Back in 1838, Woodson had been part of a group of African-Americans that had seized John Mercer Langston, a free-born, mixed-race boy raised by a white family from Virginia that was planning to move to Missouri, from a canal boat as it was heading to the Ohio River. Over the objections of Langston’s white guardians, Woodson helped to send Langston’s case to a local attorney for adjudication. Separated from his white guardians, the people Langston once considered his “family,” Langston was eventually placed into Woodson’s Cincinnati home. Meanwhile, Langston’s brother, a free man of color John Mercer Langston barely knew, was appointed the administrator of Langston’s estate. Raised to believe that he was “white,” the event traumatized John Mercer Langston for years. But for John Woodson, the episode was a smashing success: Ohio’s legal system had extricated Langston, a person of color, from potential white extortion all while adding to the financial strength of the city’s black commons. Less than a decade later, Woodson was feeding similar cases to Salmon Chase, calling upon him in 1847 to challenge an effort to send a young man living in Robert Gordon’s “Colored Orphan Asylum” back across the river to a white claimant living in Kentucky.\(^4\)

By the time Chase took on work for John Woodson, the way that he argued cases for

---

fugitive slaves – or more precisely, for clients of contested freedom statuses - had changed. Rather than passive victims seeking relief from the law, so-called “fugitives from service” were a variation of John Woodson: economic actors with stories to tell and claims to make, ready to test the extent to which the slave-developed legal theory of “self-emancipation” could be extended on free soil. In 1841, for example, around the same time that Griffin Watson entered Chase & Ball, Chase chose to defend a woman “of negro complexion” living in Cincinnati named Mary Towns. Claimed under the name of “Rose” by a Kentucky man who alleged that he had “lost her services for eleven years” since her move to Ohio, Towns had been seized and brought before a Hamilton County associate judge, and had won her own release. Right before her case was heard on appeal, Towns’ putative master offered her a chance to buy her freedom, so long as she acknowledged the merit of his claim to her body and labor. Acting through Chase, she refused. Instead, before Judge Nathaniel C. Read, the Jacksonian jurist that was playing such a large role in expanding the scope and applicability of Ohio’s Watercraft Law, Chase incorporated an argument that he apparently obtained in conversation with Towns herself, namely that she moved to Ohio with her putative owner’s written permission, and that he could not produce any contractual evidence that she now “owed” any service to him.  

Here Chase was incorporating self-emancipation arguments while subtly analogizing Towns’ case with that of a white person seeking to avoid imprisonment for not paying an alleged debt. This was a strategic move, an attempt to require her case to proceed in “strict conformity” with Ohio debtor/creditor law rather than Ohio’s less-forgiving statute regarding the recovery of “fugitives from service.” Before Towns could be deprived of her liberty and pressed back into

---

service, Chase suggested, a “debt” would need to be proven, as if her case were a garden variety suit against a white defendant. Judge Read agreed, finding that the affidavit produced by Towns’ putative owner provided “insufficient” information regarding her former status to authorize her being returned to Kentucky. Chase cheered the Towns verdict in a letter to a friend. It is likely that African American businesspeople like John Woodson, who faced a series of white people in their commercial dealings claiming similarly unprovable debts, did as well.

Representing the views of the people most likely to oppose Woodson in a business dispute, the editors of the Jacksonian Cincinnati Enquirer saw things differently in early 1841. By applying a procedural strategy used by white people in a debt collection case to a so-called “escaping servant,” the Towns verdict had supposedly awakened a “reckless spirit of fanaticism” among the city’s blacks. This, in turn, was supposedly alienating Southern traders concerned about the security of their human chattel arriving on the Ohio side of the river. The court decision in the Towns case, one white steamboat captain was heard to complain, had already taken “$100 out of his pocket.” By August, the Enquirer was complaining that the city waterfront was under siege by free blacks and runaway slaves, “laboring, when they do labor, in competition with white citizens, and when they do not, subsisting by plunder.” A short time later, Judge Nathaniel Read’s verdict would be cited by the Enquirer as one of the factors instigating the anti-black “Bucktown Riots” of 1841.

At the very time that Chase was moving to incorporate working class arguments into his antislavery representation, the white and black sides of his docket seemed to be at literal war

---

86 See “Law Case,” id. (Read’s decision); Letter from Chase to Cleveland, May 18, 1841 (Box 13, Chase Papers, HSP).

with one another, provoked in part because of Chase’s own work. In 1841, Chase saw the bloodshed, property destruction, and thefts perpetrated by the city’s white working class against the city’s black population during the Bucktown Riots as “lawless violence” taken in contravention of Ohio law. Nevertheless, as late as 1850, Flamen Ball reported that the competitors of Chase & Ball could drum up business among recent white arrivals from Kentucky who expected Buckeye law to affirm their own impression that they had “left a state of Negroes to live in a state… governed by White people.”

If Chase’s work for clients like Mary Towns sought to remove any support for such an interpretation, it would need to do so by not offending this other client pool. Ideally, it would also need to find a way to survive south of the Ohio River in the Bluegrass State. By the end of 1841, Chase’s work in translating the “self-emancipation” analysis of his African-American clients into an “equitable commerce” language that his white clientele was also bound to respect had only just begun.

---

88 See Chase to Cleveland Oct. 22, 1841, Box 13, Chase Papers, HSP (“lawless violence”); Ball to Chase, Dec. 12, 1850, Reel 7, Chase Papers, UPA (“governed by white people”).
Chapter 4:
Ocean of Topsy-Turveyism

It had been a perilous journey over land and water, but its most offensive segments were surely over. This was the hope of Pittsburgh’s Martin R. Delany in Sandusky, Ohio as he waited on that town’s wharf to board the Pacific, a steamboat headed to Detroit on July 2, 1848. Beginning earlier that year, Delany had been taking the collective pulse of free black America in the trans-Allegheny west, traveling through the inland states of Pennsylvania and Ohio and recording his observations in letters that were sent back to Frederick Douglass and duly published in The North Star, the newspaper the two men co-edited. In Ohio, Delany had met with people like Samuel Wilcox and Henry Boyd, black “capitalists” who had started their lives as manual laborers and were still regarded as second-class citizens of the Buckeye State. As Wilcox and Boyd built new institutions serving the state’s rising Black Commons “at their own private expenses,” for instance, Ohio’s “abominable black laws” compelled them to pay taxes for public institutions that served only whites. To explore Ohio further by carriage, by June 23, 1848 Delany had left the state’s capital and fallen in with Charles H. Langston, older brother and ward of John Mercer Langston, the Virginia-born young man of mixed racial ancestry who had been taken off a canal boat by an African-American crowd led in part by John Woodson, the brother of one of Delany’s Pittsburgh mentors, in 1837. Six days later, Delany and Langston arrived in Sandusky, a lakefront town on Ohio’s northern edge.¹

If Ohio was just beginning to be depicted in the speeches of some white politicians as “free soil,” with the Ohio River itself imagined as a “natural boundary” between slavery and freedom, it was not clear that either the state or its most famous river had truly achieved these

mythic statuses for Martin Delany or his traveling companion Charles Langston by 1848. Instead, as their “Western Tour” took its northernmost turn, the badges and incidents of the peculiar institution seemed to follow along. Indeed, the further he got from the semi-defensible black settlement of Cincinnati’s “Little Africa,” the more precarious Delany’s physical safety seemed to become. Take, for instance, Delany’s experience in Marseilles, an all-white one-horse hamlet that he and Langston encountered for a single night before reaching Sandusky. They had initially been welcomed by the proprietor of Marseilles’ lone hotel, a man who had attended the same political conventions as Delany in Columbus, and who had invited Delany his companion to address the town. While on their way to this meeting, however, Delany and Langston were followed by a crowd of young white men “eager for every kind of mischief.” Separated for a moment from Delany and mistaken for “what is called ‘white’” by the crowd, the light-skinned Langston was able to overhear their plans, and refused to speak at the assemblage. Delany followed Langston’s lead, and both were chased to their hotel by “all the men and boys in the neighborhood who were able to throw a brickbat.” After an initial attempt to tar and feather Delany and Langston (there was not enough tar in Marseilles to accomplish this task, Delany later scoffed in his account for the *North Star*), the group lingered outside their hotel, threatening to burn Delany and Langston out of their lodging and then sell them “immediately to the South.” “We had done nothing worthy of such treatment,” Delany insisted to Douglass. “We are not slaves, nor will we tamely suffer the treatment of slaves.” The next morning, facing a volley of stones and vows of deadly force should they ever return, Delany and his friend nevertheless left Marseilles “unfrightened… reconciled as to the course we should pursue.”

---

2 Delany: A Documentary Reader, 104-108 (reprinting Delany *North Star* article from July 1, 1848).
The message that Delany and Langston received was clear: it was time for Frederick Douglass’ friends to leave the Buckeye State altogether. From Sandusky they planned to board the *Pacific* and travel across Lake Erie to Detroit, where they would attend “a very interesting slave case pending before the U.S. Court.” This, at least, was the expectation until they actually attempted to board the *Pacific*, a steamboat whose bill of fare coldly announced that it was “built expressly for the accommodation of Southern passengers.” When the vessel’s clerk steadfastly refused to allow Delany and Langston to board without fully explaining why, the two men became “contemptuously indignant” and walked way. Appealing to the better judgment of the vessel’s captain most likely would have been useless, Delany explained in another *North Star* letter to Douglass. “There is no doubt but this is the established rule of the *Pacific,*” Delany growled. Referring to fealty of this Ohio business concern to an imagined Southern clientele, Delany added that “[t]he truth of the matter is, they are… voluntary slaves, and as such, ashamed to acknowledge it.”\(^3\)

Nearly fifty years before Homer Plessy cited the Fourteenth Amendment’s Equal Protection Clause to challenge being excluded on similar grounds from a railroad car in Louisiana,\(^4\) an argument could have been made by Delany that that the *Pacific*’s “odious rules” were in fact already illegal. As was the case in many other states at the time, passenger steamers like the *Pacific* were considered “common carriers” under Ohio law. With this designation came certain common law duties, including what one treatise writer called the general “obligation… to carry persons who apply for a passage.” In theory, this turned the process of seating passengers on a river or lake steamboat vessel into a color-blind transaction, reflecting the arm’s-length commercial ideal later articulated by John Mercer Langston, Charles Langston’s younger

\(^3\) *Delany Reader*, 109 (reprinting July 14, 1848 article).
\(^4\) See *Plessy v. Ferguson*, 16 U.S. 537 (1896).
brother: “When one goes on the market with an article for sale at reasonable rates which is in demand,” Langston observed, “it matters very little as a rule whether the vendor be Jew or Gentile, white or black.”

Around the same time Martin Delany and Charles H. Langston were seeking to board the Pacific, a few steamboat captains went out of their way to put the younger Langston’s dictum into practice. In an 1846 edition of The Mystery, a Pittsburgh newspaper Delany edited before joining with Douglass, an article appeared lauding the “noble captain” of a Cleveland-to-Detroit steamer who threatened to toss any “rascally” slave hunter looking for one of his black stewards into Lake Erie. A few years later, while serving as a captain on the Pittsburgh-to-Cincinnati steamboat Hibernia No. 2, Pittsburgh’s Capt. Charles Batchelor similarly came to the aid of one of his passengers, the “bright, intelligent” daughter of John Peck, a prominent African American resident of the Iron City, after she was struck by a white congressman from Texas for having the temerity to play a piano before a white audience while onboard. Over protests that he was running a “damned abolitionist boat,” Batchelor instructed the congressman that the Texan was in the wrong. The young lady “had paid her passage,” Batchelor recalled reasoning, “and no matter whether she was black or white, bond or free, as long as she behaved herself it [was] my duty to protect her.” Around the same time, one Austin Shepard, captain of the Lake Erie steamboat Cleveland, carried six men of color to Canada, as well three white slaveholders claiming them as their property. Once they reached their destination, Shepard helped the six black men step onshore. “As you have paid your fare,” he explained, “you may now go where

---

you please.” The three southerners refused to compensate Shepard for their ride, and were not permitted on shore.⁶

For every captain that would have likely accepted Delany and Langston on their vessel, however, there were others that felt compelled to turn them away. Under the common law as interpreted by leading jurists and treatise writers of the day, there were at least two recognized grounds they could cite for doing this. The first exception to the common carrier’s “duty to receive” arose when a passenger did not pay their fare. Leading professional men within their social circles, Delany and Langston were able to clear this hurdle with the Pacific. Other African-American passengers were less fortunate. As seen with some of the passengers on Capt’ Shepherd’s boat, if a fare was not collected from a steamboat passenger, officers were seen as acting within their rights if they detained their passengers and prevented them from leaving the boat. Because fares were often collected after a vessel was already underway, however, this created numerous problems for steamboat passengers of color, especially those who could have been mistaken for “white” when they initially boarded the boat. As seen in the case of J.C. Brown (recounted in the previous chapter), a white steamboat clerk could first allow an African-American passenger onboard, then refuse to accept their offer to pay, and then claim that the passenger was attempting to evade their fare. In such situations, many steamboat captains were not beyond seeking out help from local court officers to credit their defense. Levi Coffin, for instance, recalled an episode where “Eliza,” a “nearly white” woman started walking down the gangway of a New Orleans-based boat heading to Cincinnati’s Public Landing, believing that her

ticket had already been purchased and that she was already “free,” when she was stopped by the vessel’s captain. Since “she could produce no papers or other evidence that she was free,” the captain assumed that she was a slave. Rather than let her go, he planned to take her “across to Covington, Kentucky, and lodge her in jail till his boat was ready to start on the return trip,” delivering her back to her putative masters without a court ever hearing her version of events.7 Here was reason enough for Delany and Langston to avoid the Pacific. Through the mechanism of a fabricated fare dispute, one of the exceptions to the common carrier’s duty “duty to receive” could be leveraged to follow through on some of the threats Delany and Langston received from the white crowd in Marseilles a few days before.

If the first exception to a common carrier’s “duty to receive” contained an inquiry that was at least facially objective (i.e., “Has the passenger paid their fare?”), the second exception was subjective, delegated completely to the private judgment of vessel proprietors and the officers they employed. The most-cited statement of this exception came in 1835, in a case decided by Joseph Story while riding circuit in Massachusetts. There, in Jencks v. Coleman, Story asserted that “the right of passengers to a passage on board of a steamboat is not an unlimited right.” Instead, it was “subject to such reasonable regulations as the proprietors may prescribe, for the due accommodation of passengers and for the due arrangements of their business.” If, in the judgment of a steamboat owner or officer, a particular person could potentially cause a “disturbance on board,” they could be excluded. According to Story, an alternate rule unduly restricted the steamboat proprietors’ “right[s] of property,” possibly

7 For a general discussion of the contemporary exceptions to the “duty to receive,” see Angell, A Treatise on the Law of Carriers of Goods (1851), 496-498. For specific instances of exceptions being made in this context, see “J.C. Brown,” in Benjamin Drew, A North-side view of slavery: Narratives of Fugitive Slaves in Canada (Boston: Jewett), 239-247; Levi Coffin, Reminiscences of Levi Coffin (Cincinnati: Clarke, 1880), 375-6 (“Eliza” example).
allowing a few offensive passengers to “interfere with the interests or patronage of the proprietors, so as to make the business less lucrative to them.” On western lakes and rivers, this exception gave rise to vessels like the Pacific following written or unwritten “rules and regulations” that could be cited to draw distinctions between passengers as a way to maintain the vessel’s underlying social order, and thus to protect its status as a going business concern. As a simple matter of dollars and cents, the proprietor of one Toledo-to-Cincinnati canal boat explained to Henry Bibb in 1847 when he refused to let Bibb dine with white people on his vessel, it “was better to insult one man than all the [rest of the] passengers on board of the boat.”

After turning away a black clergyman and his family from the first class “saloon” of a Lake Ontario steamer in 1855, citing a need to “conform” to the vessel’s regulations for “treating persons of color,” a different steamboat captain offered a similar explanation. If the clergyman and his family entered the saloon, all “[w]hites would soon remove,” leaving this part of the boat – one of his best sources of revenue – vacant except for them.8

During the late antebellum period, people cut from the same cloth as Martin R. Delany, Charles H. Langston, Henry Bibb, and the America clergyman – self-styled “gentlemen” of color with the financial capacity to pay for a steamboat’s finest creature comforts – seethed at being expected to “conform” to second-class treatment on river and lake steamers like the Pacific. According to Mary Ann Shadd, the expatriate African American editor of Toronto’s Provincial Freeman, privately-enforced rules that purported to impose this treatment within the Great Lakes were simply invalid under the law of the British Empire. “The clergyman should have entered the saloons,” Shadd advised in 1855, “as he had paid to do, and if they had put hands on him, to

---

8 See Jencks v. Coleman, 2 Sumn. 221 (C. Rhode Island, 1835); Henry Bibb, Narrative of the Life and Adventures of Henry Bibb, an American Slave (New York: Bibb, 1849); [Mary Ann Shadd Cary], “The Rights of Colored People,” The Provincial Freeman (Toronto), Sept. 29, 1855.
have defended himself, and if, with their assault, there would have been battery, the law of the country would have made the villains pay for their fiendish work.” “What is needed,” posited Samuel Ringgold Ward (Shadd’s co-editor at the *Provincial Freeman*) in 1855, “is that some wealthy and respectable person of colour should give the owners of the boat a chance of testing the validity of their rule by British law,” said by recent émigrés to ignore any “complexional” differences between persons.\(^9\) Three years later, another African American expatriate, the Rev. William Howard Day, did just this in Michigan, on the American side of the Detroit River. When the Oberlin-educated Day offered to pay for cabin passage on the *Arrow*, a Detroit-to-Toledo steamer, but was turned away from the cabin on the basis of “rules and regulations” of the boat, he brought suit against the vessel’s captain in state court, citing “the common law duty of a common carrier of passengers to receive all persons who apply for transportation.” If the *Arrow* had “different modes of transportation by the same conveyance,” Day argued, the steamer’s captain was “bound” under existing American law to carry Day in the mode he preferred.\(^10\)

By 1858, Martin R. Delany was like William Howard Day, Mary Ann Shadd, Samuel Ringgold Ward, and thousands of additional African American émigrés, a resident of Canada West, and had likely heard of Day’s suit. As one of the founders of a new transnational emigrationist body called “The National Board of Commissioners of Colored People,” an organization that listed Rev. Day himself as its president, it is possible that Delany may have

---


even assisted in financing or planning the case, eventually published in law reporters as *Day v. Owen*. Given its eventual outcome, however, Delany and Langston can be excused from not bringing it a decade before. “[B]y the custom of the country,” attorneys for the Arrow’s captain argued, “colored persons” were “excluded from ordinary social and familiar intercourse with white persons,” and as such were reasonably prevented by individual captains from becoming cabin passengers on their boats. The Arrow’s internal rules merely reflected broader social norms, in effect enforcing in a more complete way the prejudices that Delany and Langston encountered on land while passing through all-white Ohio burgs like Marseilles. Michigan’s highest court agreed. Rev. Day may have possessed a “right to be carried,” but this did not include a corollary right to enjoy the same privileges of white passengers while onboard. “The duty to carry,” Michigan’s Justice Manning (a Jacksonian Democrat) explained, “is imposed by law for the convenience of the community at large.” As such, “the law would defeat its own object if it required the carrier, for the accommodation of particular individuals,” to offend the majority of its passengers. To do so would interfere with the Arrow’s attempt to increase its client base, and thus the vessel proprietor’s “control over his own property.”¹¹ Here, over the course of a few paragraphs, a white majority’s prejudices became binding “customs.” And when translated into privately-enforceable “internal or police regulations” meant to maximize a single white steamboat owner’s return on his or her investment, these customs became unassailable “law.”

In the end, *Day v. Owen* only reconfirmed in 1858 what Delany knew well before his Western Tour of the late 1840s. The Ohio River Valley’s “equal rights” revolution of the 1840s

¹¹ See *Owen v. Day* (“control over… property”). On the involvement of Delany and Day in Chatham, Canada West and within the “National Board of Commissioners,” see Simpson, 335-342; *The Black Abolitionist Papers, Vol. II-Canada, 1830-1865* (Chapel Hill: UNC, 1986), 18-46;
only seemed to go so far. As the common law was extended and transformed through a white democratic majority’s legislation and court orders, black access to egalitarian Jacksonian readings of the law was arguably in retreat. In 1838, for instance, seven years after Delany moved to Pennsylvania, a convention of white men voted 77 to 45 to amend the constitution of his home state, clarifying that the privilege of voting only applied to “every white freeman of the age of twenty-one years, having resided in the state one year.” Writing in 1846, Delany claimed in the Mystery that legal developments such as these turned all “colored male citizens” into “mere nonentities in the midst of others.” At the same time they were regulated as a nuisance, they were simultaneously “denied the right of citizenship in toto, in order thereby to exclude us from the protection of the laws, which of course we are prevented from having any part in making.”

As soon as black litigants like William Howard Day, Milton Clarke, the Golden Gate’s Brooks, or Joe Spencer attempted to leverage possibilities in the common law or its statutory extensions to claim some degree of equal treatment of their own, Delany had good reason to predict that they would be quickly branded as outlaws, with their claims ignored, denied, or simply erased.

**

For Delany, this lesson was taught at a nationwide scale in Giltner v. Gorham, the “very interesting slave case” he eventually managed to attend in Detroit with Charles Langston after boarding the General Scott, a rival of the Pacific, in July 1848. Like Day v. Owen, Giltner began with common law claims brought by persons of color against a white defendant. In the early morning hours of January 20, 1847, one Francis Troutman, a white man from Kentucky, arrived

---

at the homestead of Adam Crosswhite, an African-American farmer and carpenter living in Marshall, Michigan with Crosswhite’s wife and four children. Armed and accompanied by three other white Kentuckians and a local sheriff, Troutman unhinged the Crosswhite family’s door and demanded that they come with him, identifying himself as the nephew of Francis Giltner, a different white Kentuckian from the Ohio River jurisdiction of Carroll County, Kentucky. By the next day, Crosswhite later explained in a deposition, he had brought suit in a local court against Troutman and others “who broke into his house.” After Troutman drew a pistol on Calvin Hackett, one of many African American residents of the town that had rushed to Crosswhite’s defense, Hackett filed a separate assault and battery complaint with the town sheriff, who briefly had Troutman arrested. For a moment, the facts of *Giltner v. Gorham* unspooled in the favor of these two black litigants. While Troutman asserted that the Crosswhite family was the property of Troutman’s uncle, Hackett testified, it was apparent that Marshall’s “coloured people” had amassed sufficient resources within its own Black Commons to overwhelm the Kentuckian’s claim. Before Troutman’s arguments could be fully heard in court, this group in fact helped the Crosswhites cross over to Canada. “You can’t have them, or can’t take them, by moral, physical, or legal force,” Charles T. Gorham, a white banker and leading Jacksonian political organizer in the town, was alleged to have instructed Troutman while gesturing to this black crowd.13

By the time Martin Delany arrived in Detroit, however, the opening salvo of claims brought by the African-American litigants Adam Crosswhite and Calvin Hackett had been

---

followed by a sobering second act, capped by a court ruling that made it seem like their claims had never existed at all. As soon as he was arrested for threatening Hackett, Francis Troutman paid $100 bail and retreated to Kentucky, where he complained about his treatment to the state legislature, which passed a resolution pressing the state’s U.S. Senators to obtain stronger federal legislation “enabling the citizens of Kentucky to reclaim their runaway and fugitive slaves.” By May 1848, Troutman had returned to the Wolverine State, equipped with state funds to prosecute a claim in federal court under the Fugitive Slave Act of 1793, brought against several black and white members of the January 1847 crowd for “knowingly and willingly” obstructing and hindering his efforts to seize the Crosswhites. One month later, the black defendants had been removed from the case. By the time it was heard by Cincinnati’s John McLean, an associate justice of the Supreme Court of the United States riding circuit at the time, Charles T. Gorham and two other white men were standing trial in Detroit “to recover the value” of the Giltner’s putative property.

Deposed remotely from Chatham, Adam Crosswhite testified that he had brought his own claim “without any advice or assistance from the white defendants,” who if anything merely acted as peacekeepers between Troutman and Marshall’s “coloured people.” In their own briefs, attorneys for Gorham and his fellow white defendants argued inter alia that they did not know for certain whether Crosswhite and his family were slaves, that Troutman never provided any written proof of his uncle’s claim, and that they in fact had a “right” to presume that the Crosswhites were “in truth, free.” In lengthy instructions delivered to his jury, however, McLean dismissed all of these defenses. For McLean, “The Law” at issue was not the common law of trespass or assault and battery, but “the law of Kentucky as to slavery, and the provisions of the

---

constitution, and the act of congress in regard to the reclamation of fugitives from labor.” Under Bluegrass law as interpreted by McLean, Adam Crosswhite was a fugitive from the law rather than a victim of a home invasion. And, rather than a neutral observer, Charles T. Gorham was what Kentucky’s legislature alleged him to be: the white ringleader of an “abolition mob.” Thus assuming the legal expectations of Kentucky to be everyone’s baseline, McLean advised his jury that the Crosswhites, as “colored persons,” were presumed to be the slaves of Troutman’s uncle once Troutman asserted this claim in McLean’s courtroom. Even if they operated under their own mistaken version of the law, Gorham and the other white defendants were still on notice of this, and could not be absolved from choosing to follow their own “conscience in violation of the legal rights of others.” McLean’s jury was intoned against “disregard[ing] established principles of law” in a similar way. By late 1848, it had done its duty, finding Gorham and the other whites liable for $1,926 (the assessed market value of the Crosswhites) plus $4,500 in court costs, payable to Francis Troutman, Esq.¹⁵

Writing in his book Justice Accused, the law professor Robert M. Cover once used McLean’s jury instructions in Giltner to illustrate a supposed intellectual “conflict between conscience and judicial duty” existing within McLean’s own mind. While holding people as slaves may have been morally wrong to this Buckeye jurist, perhaps even a theoretical violation of “natural rights,” it was also sanctioned by the “positive law” of neighboring states. By the late 1840s, Cover argued, jurists like McLean had retreated to the “formalism” of giving those positive Southern state laws effect in Northern jurisdictions, convincing themselves that this was necessary to do their work as judges by preserving an alleged constitutional settlement between

the North and South, and thus to protect the consensual principles “underlying ordered society itself.” Back in 1848, Martin R. Delany had made similar observations in his own summary of *Giltner* while more urgently underscoring the human consequences of McLean’s interpretation. “It may be contended that the law is directly against the feelings of the Judge, and of himself, he can do nothing,” Delany noted. But, he continued, in denying that a “presumption in favor of freedom” applied to Crosswhite’s case, McLean was in fact rendering a subjective opinion about what the law actually was. Delany decided to hold McLean personally accountable for this. “Previous to this decision,” Delany argued, “colored persons had some slight semblance of liberty, but now every vestige has been wrested from us – each and all of us reduced to the mercy or discretion of any white man in the country, and like the colored man in the South… may at any moment be arrested as the property of another!” If this was in fact “the law of the country in which we live,” Delany concluded, “litigation for protection [was a] sham” and all judicial proceedings were “a farce… that should be immediately abolished.” McLean’s project to encourage “fidelity to the law,” had failed on its own terms, collapsing under the weight of such a chaotic set of social consequences.¹⁶ Not surprisingly, by May 8, 1858 Delany was residing in Adam Crosswhite’s new hometown of Chatham, Canada West, having finally turned his back on the republic that McLean claimed to be preserving in *Giltner*. Less than three weeks before Rev. Day’s suit against the *Arrow* was first heard, he was chairing a convention to adopt a new “Provisional Constitution for the People of the United States,” drafted by a militant white abolitionist and former tanner from Hudson, Ohio named John Brown.

As seen in Delany’s initial response to McLean’s *Giltner* instructions, and his later support for creating alternative structures of government to replace the constitution that McLean

asked the *Giltner* jury to uphold, there was something potentially artificial about the “law/conscience” conflict that McLean had purported to resolve in 1848. Nearly a decade before *Dred Scott*, was “The Law” so clearly on the side of Francis Troutman as this Supreme Court justice claimed it to be? Delany himself had his doubts. So did another man that Delany met for the first time in Buffalo later that year, at the national convention of the Free Soil Party. While sitting down during the convention’s final presidential canvas, Delany later recalled being approached by a “tall gentleman in the habiliments of a clergy-man, and of a most attractive, Christian-like countenance.” This regal fellow, Delany soon learned, was Salmon P. Chase, brandishing a copy of Delany’s *Giltner* editorial in his hand. “Did you write this article concerning Justice McLean of the Supreme Court… and the Crosswhite family?,” Chase purportedly inquired, in full cross-examination mode. Delany answered yes. “Did you hear Judge McLean deliver this decision, or did you receive the information from a third party?” Delany replied that he had sat in the courtroom each day during the entire trial, and reported only what he had heard. The white Cincinnatian had heard enough. Within minutes Chase ascended the speaker’s dais at the Buffalo Free Soil Party convention, announcing to the crowd that he had conferred with party leaders and they had agreed to strike the name of John McLean, one of Chase’s relatives by marriage but the author of the *Giltner* jury instructions, as a potential Free Soil candidate for the presidency of the United States.17

Dovetailing with Robert Cover’s legal critique of John McLean, Martin R. Delany’s scathing *Giltner* article, a piece which Delany himself claimed had circulated “like a wronged

---

and angry Nemesis” among antislavery circles until it reached Salmon Chase’s fist in 1848, does not appear in Justice Accused. But the trial-level arguments of Salmon P. Chase in a number of so-called “fugitive slave cases” similar to the Crosswhite matter do make a brief appearance. According to Cover, Chase was an “ambitious, capable man” whose grasp of the law was “largely ideological,” treading a fine line “between urging disregard of positive law” and urging incorporation of morality and “natural law” within it instead. In Cover’s estimation, Chase’s legal project had already failed by 1847, rejected by “his friend” McLean and other jurists a full year before McLean’s Gilter instructions. But if Chase were asked about this in the summer of 1848, just as he handed McLean one of his most crushing professional defeats, Chase would have begged to differ. If Chase’s antislavery politics were “ideological” at all, it was an intensely practical ideology communicated through positive law claims brought by real-life litigants like Adam Crosswhite himself, people asserting common law claims that Chase’s white colleagues on the bench and bar were structurally unable to completely ignore.

By the late 1840s Chase had made his political name in Cincinnati working on several high-profile cases similar to Crosswhite’s initial claim against Francis Troutman. As mentioned in the previous chapter, some Kentuckians even began branding him as “the Attorney General for runaway negroes.” He disliked the title. There were few cases, he once told a campaign biographer, “in which persons other than slaves themselves have had anything to do in promoting or assisting their original flight.” Here, Chase seemed to be making the same point that the historian Walter Johnson once made: within the nineteenth-century United States, it was often the case that black people brought their own interpretation of the law to bear, unmediated by anyone else. Without this spark of African American legal initiative – of people like

---

18 See Cover, Justice Accused, 162, 172-173.
19 See Letter from Chase to Trowbridge, Mar. 18, 1864, Box 14, Chase Papers, HSP.
Crosswhite, William Howard Day, Milton Clarke, or Joe Spencer acting upon their own egalitarian convictions- it is doubtful that debates over the place of slavery within America’s existing legal order would have been argued with such urgency, or even argued at all, by white people before the Civil War. Nevertheless, once someone like Adam Crosswhite decided to assert authorship over his own legal status or identity, there was still an occasional role for white lawyers like Chase to play. During the 1840s, for instance, to represent a client like Adam Crosswhite within Chase’s home state was to make overlapping arguments to a number of competing white audiences at once. First, it meant bending the discretion of elite white judges like John McLean in favor of black clients. Second, it also meant shifting the allegiance of all-white crowds by appealing to their own underdeveloped egalitarian sensibilities. Third and last, it also meant neutralizing the property claims of people like Francis Troutman. To accomplish this final task, Chase found, he eventually needed to set aside his daily work as a private lawyer in Cincinnati and head to Washington, D.C., instead engaging America’s legal system on an interstate basis within the realm of constitutional politics and the public law.

**

The first decade of Chase’s heterogeneous career in Cincinnati, wherein he received legal inquiries from everyone from bank officers to impoverished deckhands, supplied him with a diverse set of arguments that could be summoned to translate the legal claims of his black clients to a white audience. As a former bank solicitor, a onetime anti-Jackson city councilman, and a relative by marriage to Justice McLean (also a Cincinnati resident), Chase was certainly aware of what elite white jurists in McLean’s position found legally important. Appointed to the Supreme

---

Court of the United States by Andrew Jackson in 1829, McLean’s own perspective had largely become that of a northwestern “Whig” by the time Chase began appearing before him in Ohio’s federal circuit court while representing the Second Bank of the United States in the 1830s. Like his fellow Cincinnati Whig Timothy Walker, McLean was comfortable supporting his legal conclusions by referring to expansive policy considerations that made more technical legal arguments seem small by comparison. Described in contemporary credit reports as “quite wealthy (good for any amount),” McLean for example held orthodox Whig views on the Second Bank of the United States, seeing it as promoting a harmonious and broad form of economic participation across classes. “Its effects are obviously excellent,” he asserted to de Tocqueville in 1831, defending the Bank’s constitutional right to exist and flourish, “especially in the west where it furnishes a currency that is safe and portable.”

Appealing to McLean in a case like *Giltner* meant cloaking the private claims of one’s client in some issue of national importance. While some of his colleagues on the Supreme Court lingered on legislative and constitutional texts to carefully delineate the line between state and national authority in the federal republic, McLean was quick to spot interstate problems that supposedly mandated a more comprehensive solution. In 1847, for instance, the same year as the *Giltner* case, McLean used the instance of a steamboat collision suit to decry the fact that “in a voyage from Pittsburgh to New Orleans, a steamboat passes within the jurisdiction of ten states, each one having the same power as Louisiana to regulate the commerce which passes through it.” Fearing that this give rise to “collisions” between the laws of different states in the way that happened under the former Articles of Confederation, McLean ruminated in a passage unrelated

---

to the outcome of the case that the “commerce of the country would be destroyed” without some form of regulatory coordination imposed from above.\textsuperscript{22} Traveling on a steamboat, McLean wrote, “[e]very passenger sleeps and treads upon a fiery volcano, governed by the fixed laws of the most dangerous and powerful agent in nature,” in this case steam. “If he, under whose superintendence this fiery agent shall be placed, is ignorant of its laws, or does not strictly attend to them, an explosion is certain, and a destruction of life more than probable.”\textsuperscript{23}

Reading through McLean’s opinions and letters it is clear that slavery played the same dangerous and potentially explosive role as steamboats in his mind. Despite his Giltner jury instructions, the threat that slavery posed to interstate harmony in the inland river west occasionally made it difficult for McLean to always defer to local jurisdictions or state officials in questions of black equality before the law. If McLean’s Constitution was created in part to ensure “uniform commercial regulation,” it was also created in a “spirit of compromise” between some states that regarded holding human beings property as illegal, and others that viewed this as a “cherished right.” To harmonize these competing views, McLean’s Framers outlined a process that slaveholders could use to reclaim “persons held to service or labor” who had fled into jurisdictions where holding people as property was not otherwise sanctioned by law, all the while avoiding the use of the word “slave” or the concept of property in human beings in the Constitution’s actual text. Thus, if McLean’s Whig Constitution was capacious enough to approve of federal laws to govern the steamboat trade, it did not extend its reach to preempt state laws restricting the transport and sale of the human cargo that sometimes rode on these vessels. After all, McLean asserted in the 1841 case of Groves \textit{v. Slaughter}, “the necessity of a uniform commercial regulation, more than any other consideration, led to the adoption of the federal

\textsuperscript{22} See \textit{Halderman v. Beckwith}, 11 F. Cas. 172 (C. D. Oh. 1847).

\textsuperscript{23} See \textit{United States v. Taylor}, 28 F. Cas. 25 (C. D. Oh. 1851).
Constitution.” Groves, it is important to note, was a suit brought by Kentucky slave exporters challenging Mississippi’s anti-importation laws as unconstitutional restraints of trade. While using the example of Ohio’s own constitutional prohibition of holding people as property within the Buckeye State, McLean argued in a dissenting opinion that “a state may prohibit slavery, or, in its discretion, regulate it, without trenching upon the commercial power of Congress.” For McLean, this was well within the reserved power of each of the respective states to protect the public against “the avarice and intrusion of the slave dealer.” Perhaps more important, such bars to black entry were reasonably designed to regulate the supposed “inconveniences and dangers” of a floating slave population.24

In short, McLean’s understanding of the U.S. Constitution preserved the river’s status quo when it came to slavery, allowing two competing labor systems to flourish side-by-side on an interstate basis as a matter of national law. If being a slave was not a legal status given nationwide effect in the Constitution’s text, and if that document similarly failed to recognize slaves as the “property” or “merchandise” of their masters, this opened the door for states like Ohio to regulate or prohibit the practice of slavery within their boundaries as an “inducement” to white immigration.25 But at the same time, by protecting the interstate claims of slaveholders as well, it avoided the “discord and ruin” that McLean believed could be caused by blocking the recovery of any “fugitives from service” that may cross into non-slave jurisdictions. As a result, the nation’s founding text provided a “constitutional guarantee” that masters would be able to enforce their rights in a limited way across state lines. If state officers found themselves unable to implement the portions of this compromise that were less advantageous to their own


constituents in a particular case, McLean was more than willing insert himself as a way to ensure the peace. The same year as Groves, for instance, he ruled that a federal court could hear an appeal from Kentucky’s highest court challenging an attempt to recover the value of a lost slave from a Pennsylvania steamboat captain, even though state jurists refused to certify the case. “The federal government may rely upon its own agency in giving effect to the laws,” McLean wrote that year in a different case.  

Staffed by self-styled jurists/statesmen like McLean himself, a man that had once lived in Kentucky but now called Ohio home, the federal courts were apparently the national government’s principal instrument in achieving this mission.

McLean’s Whig Constitution may have been a minority variant among the different interpretations on the Supreme Court bench during the Marshall and Taney Courts. But within the courts of his own federal circuit, in the states of Kentucky, Ohio, and Tennessee from 1829 to 1837, and Illinois, Indiana, Michigan, and Ohio from 1837 until his death in 1861, it was a different story. There, as Martin R. Delany put it following the Giltner trial, McLean’s opinions, when rising from the bench, had the potential to “become the actual law of the land.” As in the Giltner matter, McLean was inclined to frame similar suits against white people accused of aiding or sheltering escaping slaves as simple Whig struggles of “law” against its negative image of “lawlessness,” or “mob rule.” For McLean, white Democrats like Charles T. Gorham, credited in Giltner as stating that he chose to follow the will of “the dear people” in shielding the Crosswhite family rather than assisting their return under the Fugitive Slave Act of 1793, played the same dangerous game as white clergymen abolitionists who instructed McLean to follow the Bible rather than “the laws of man” when deciding slavery cases. Both were worshipping at the

altar of an alternate law of their own choosing, sending the U.S. Constitution down a path that
history had already demonstrated led to “wars and bloodshed.”

McLean’s initial framing of what many white statesmen called “the slavery question”
was also typical of the initial response of Cincinnati’s Whigs to the racial disturbances swirling
around the Queen City’s waterfront of the 1830s and 1840s. If this was a question initially posed
by free people of color like residents of Cincinnati’s “Little Africa,” asking to what extent
crossing the Ohio River enlarged one’s legal status to manage one’s own affairs within a
community of one’s own choosing, in Whig minds “the slavery question” morphed for a time
into a different query: to what extent would a few allegedly demagogic white opponents of
slavery be able to undo the legal settlement that an earlier generation of Northern statesmen had
made with their Southern neighbors? Like questions concerning Ohio’s proper economic path,
McLean’s Whig colleague Timothy Walker initially believed that this was an issue best
sequestered from public view, managed quietly by Cincinnati’s economic and social elite. This,
for instance, was how Walker first approached handling the appearance of James G. Birney, the
former slaveholder-turned-abolitionist who arrived in Cincinnati in 1836 to publish The
Philanthropist, an antislavery newspaper financed by New York City’s Lewis Tappan. Amidst
anonymous threats to Birney’s safety, and rumors that a riot was being planned against the
publication, Walker in fact helped to organize a whites-only “citizens’ meeting” that convened
that year in Cincinnati’s Lower Market House, a gathering that tasked itself with resolving the
matter.

Chaired by Timothy Walker, Cincinnati’s “Lower Market House Meeting” of 1836
resolved that abolitionist papers should not be allowed to be published in town. “[T]he

27 See Delany Reader, 113 (“law of the land”); Letter from McLean to Wald, id. (“wars and bloodshed”).
28 Daniel Aaron, Cincinnati, Queen City of the West, 1819-1838 (Columbus: Ohio State, 1992), 300-314.
existence of slavery,” they admitted, may be “a great evil.” But so was “the conduct of the Abolitionists,” particularly Birney, in stirring up the Queen City. By exciting the passions of Ohio’s Southern neighbors, Birney’s publication was supposedly threatening the town’s “business and prosperity.” As a result, the meeting’s white participants resolved to “use all lawful means” to suppress Birney’s press, and to appeal to Birney’s own “patriotism and philanthropy” to leave the city. If Birney refused, and if some chose to act “without the sanction of law” to abate the nuisance, the meeting’s participants even indicated that they would not intervene. Within days, the Philanthropist’s printing was lifted up by a crowd acting in furtherance of this resolution and tossed into the Ohio River. For a moment, Timothy Walker may have believed that he and his Whig colleagues had brokered a bipartisan solution to Cincinnati’s perceived abolitionist menace, merging disorganized crowd unrest into a larger structured response that began with Whiggish invocations to “all lawful means.” But he soon had his doubts, becoming convinced that the anti-Philanthropist crowd in the end had suspended the law of free expression, perhaps setting a dangerous precedent for the future. “Today the emergency may be pressing and the motive good,” Walker wrote to the city’s Whig newspaper, “tomorrow the contrary.”

**

Walker’s misgivings were held at an earlier stage by his former law partner Salmon P. Chase, then still firmly a Whig, who counted Birney as a family friend through marriage. In the middle of 1836, at the same time that l’affaire Birney began to take shape, Chase was undergoing a religious reawakening, culminating in a moment when he “professed faith in Christ” and began

---

29 See Narrative of the Late Riotous Proceedings against the Liberty of the Press in Cincinnati (Cincinnati: Ohio Anti-Slavery Society, 1838), 23-25.
30 See Aaron, Cincinnati: Queen City, 311.
studying the biography of William Wilberforce, a British parliamentarian and former lawyer who had undergone a similar conversion experience. In his studies, Chase found that Wilberforce had made it his duty to memorize and study Psalm 119, which instructed readers to combat instances of wickedness that had been created or sanctioned by misreadings of human-made law. Chase put himself on this scholarly regimen as well. For the independently wealthy Wilberforce, adherence to Psalm 119 did not mean turning away from law or merely criticizing it, but reforming it from within; by 1833, for instance, Wilberforce had successfully championed Britain’s Slavery Abolition Act. “How his example shames me!” Chase wrote in his diary when contemplating his hero. “Our circumstances so different—He so easy in his circumstances—I comparatively poor and indebted, and obliged, besides public duties, to continue my profession.”

By late 1836, when he engaged Birney, the printer of the Philanthropist, and Matilda Lawrence, an “octoroon” woman living in Birney’s household, as new clients, Chase began the process of following Wilberforce’s example on the smaller platform of his existing legal practice. Like Wilberforce, he began searching for ways to argue that such social pariahs—considered by his Whig colleagues to be the equivalent of outlaws—were in fact attempting to follow a proper reading of the law themselves. 31

Occurring in the wake of the Market House meeting and street protests against the Philanthropist, the suits involving Matilda Lawrence and Birney were bound together, involving many of the same legal processes that were later at issue in the Giltner case. Here Matilda Lawrence played the role of Adam Crosswhite, and Birney faced the same complaints as Charles T. Gorham. The light-skinned, Missouri-born Lawrence had arrived in Cincinnati in early 1836,

when she and her master (also her father) stepped off a steamboat at Cincinnati’s Public Landing and stayed at a Queen City hotel for the night while on their way to St. Louis. She had been attending this man, supposedly a “testy invalid,” since she was a girl, and now feared that he was close to death and that she would soon be sold. After a failed attempt to secure “free papers” from him directly, she left him at the hotel and, according to Birney’s son, “found refuge in the house of a colored barber who was well known as a friend of the unfortunate of his race.”

Shielded for a moment in the protective embrace of the Queen City’s Black Commons as her father left town, Lawrence eventually found work as a nurse and chambermaid in Birney’s family. “We thought her white,” Birney’s son later recalled, but in truth “[s]he belonged to no single race.” In March of 1837 she was stopped on the street by John W. Riley, a ubiquitous slave catcher along the Ohio River who purported to be serving as the agent of her father, who had eventually secured an order from a local justice of the peace to have her seized as a runaway.

Having already assisted a suit on behalf of the *Philanthropist*’s printer against those who had destroyed that newspaper’s press, Chase accepted Matilda Lawrence as his client as well and went on the offense, filing a writ of *habeas corpus* challenging her detention. When Birney was later fined under a state law purporting to make it a crime to “harbor” a slave, Chase came to Birney’s aid as well.32

Both Lawrence’s *habeas corpus* writ and the claim against Birney were brought before Judge David K. Este of Hamilton County’s Court of Common Pleas. “Judge Este was a silver-gray Whig,” Birney’s son later claimed, “whose strongest sentiments were consciousness of his

---

32 See Birney, 262 (“friend of the unfortunate” and “thought her white”); *Speech of Salmon P. Chase in the Case of the Colored Woman Matilda* (Cincinnati: Pugh, 1837), 2-4 (reprinting papers related to Lawrence’s seizure by Riley); Letter from Salmon P. Chase to Charles D. Cleveland, Feb. 17, 1837, Box 13, Chase Papers, HSP; Letter from A. Pugh to Chase, May 19, 1840, Reel 4, Chase Papers, LC (mentioning Chase’s suit against “the leaders in the mob” for destroying the press used by the *Philanthropist*).
own supreme respectability, and veneration for the claims of slave-holders.” When the bulk of Chase’s work for the Second Bank of the United States appeared before Este or John McLean, Chase could feel fairly confident that he was addressing a sympathetic audience. But his cases for Birney and Matilda Lawrence were different. As seen in the Lower Market House resolutions, polite Whig sentiment was already aligned against Birney. According to Charles Hammond, the Whig editor of the Cincinnati Gazette, it was also gathering against Chase himself. Before his loss of his Bank of the United States representation, representing Matilda Lawrence in 1836 threatened to turn Salmon P. Chase into a new kind of lawyer. For a time, Chase attempted to keep up his Whig appearances by alleging in an editorial to Hammond’s Gazette that the movement against James G. Birney itself could be categorized as a lawless “mob,” precisely because of the way that it threatened Birney’s own property and physical liberty without any legal process. But Hammond accused Chase of the same crime. In choosing to represent Birney and his servant, Chase had declared himself to be part of a small group of lawyers who were “partially demented” in their understanding of “the legal rights and obligations created by our Constitution and laws concerning blacks and mulatto persons.” In Ohio, Hammond asserted, a process already existed on the statute books whereby any “black or mulatto” person could, upon adequate proof, be returned to people who claimed them as their “property” under another state’s laws. By complicating this process, Chase was suggesting that both Lawrence and Birney could willfully subvert the law not only of the Buckeye State, but that of “the United States, where an absolute property in a human being is recognized by the fundamental laws as a right to be acquired by one individual over another.”

33 See William Birney, 263 (“silver-gray Whig”); “From the Cincinnati Gazette, Aug. 11, 1836,” Reel 3, Chase Papers, LC (Birney’s attackers as “lawless mob”); “From the Cincinnati Gazette, dated April 5, 1837,” Box 19, Chase Papers, HSP (“absolute property”).
When gathering up and redistributing other people’s possessions for clients like the Second Bank of the United States, Chase had previously identified powerful procedural blind spots in “absolute property rights” arguments like Hammond’s. The type of legal regime that Hammond was describing in his editorials, with property rights that were clearly defined, protected, and enforced by individual owners on an exclusive basis while only being transferrable upon an owner’s free prior informed consent, was something that did not readily exist in the legal world that Chase had helped to create a few years before. Nevertheless, as seen in the “violence against property” language that Chase used when criticizing the anti-Birney movement, “absolute property” seemed to live on in the rhetoric of Chase himself. Accepting Hammond’s charge—i.e., that Chase’s arguments for Lawrence performed “violence against property” of its own—would be like asking to be excommunicated from this group. This was something that Chase was not yet ready to do.

Instead, in a colloquy with Charles Hammond in his Whig newspaper, Chase attempted to shift the terms of the debate. Despite Hammond’s assertion, the text of the U.S. Constitution did not in fact explicitly recognize a right of “property in man,” and never specifically discussed “escaping negroes and servants.” Rather, when describing people in Lawrence’s position, it used the term “persons held to service,” a designation which Chase argued could also apply “equally . . . to escaping white apprentices.” For Chase, this turned Lawrence’s case from one about “the relation of owner and property” to one about “the relation of master and servant,” something that made a “palpable difference.” While Hammond argued that the color of Lawrence presumptively marked her as “property,” Chase summoned a different body of law to create support for the opposing argument that under Ohio law, “color affords no presumption

34 On Whig defenses of “secure” property during this era, see Daniel Rodgers, *Contested Truths: Keywords in American Politics Since Independence* (Cambridge: Harvard, 1987), 120-130.
against anybody.” Seen as someone merely “owing service,” Chase would have Lawrence judged using the same laws applicable to employment relations between whites. If she ran away, she could not be compelled to return. At most, her alleged master would be able to maintain a common law money claim against her, or Birney, for a “loss of services.”

If Chase’s argument threatened to offend Whig audiences in the way that it replaced a legal interpretation that presumptively linked the condition of having darker skin with being a “slave” for a different labor law discourse about non-compulsory “service,” it also created the possibility that conservative legal minds within the city could see James Birney, his other controversial new client, as worthy of their understanding and respect. In 1830s Cincinnati it was not uncommon for elite Cincinnati families to do what Birney’s family was accused of doing, i.e., of employing people of color with contested statuses within their households. The wealthy lawyer-financier Nicholas Longworth, for instance, openly employed an ex-runaway slave in his Cincinnati home for a number of years. Like Longworth, Birney was a former lawyer that had a long history of managing servants like Matilda Lawrence in his home, having lived for decades as slaveholding plantation owner in Alabama, where he once claimed to have been a “humane master.” Representing the interests of Birney and Lawrence, Chase seemed to be saying to Charles Hammond, Judge Este, and Chase’s other Whig colleague, did not upset the city’s social order. The relationship between the “master” Birney and his “servant” Lawrence may have been different from the relationship between “owner” and “absolute property,” but it still featured a leveraged, Whig-like distribution of power between governor and governed.

---

35 See “From the Cincinnati Gazette, dated April 5, 1837,” Box 19, Chase Papers, HSP (“escaping Negroes and servants”); *Speech of Salmon P. Chase in the Case of the Colored Woman Matilda* (Cincinnati: Pugh, 1837), 11-34. Chase repeated this argument in the late half of the 1840s in a suit brought against a white man accused for aiding the escape of several alleged slaves. See Notes on Brief for *Jones v. Van Zandt*, Reel 14, John McLean Papers, LC.
Indeed, Chase’s courtroom arguments dwelled on the perceived powerlessness of Lawrence, described as a “helpless and almost friendless woman.” Hammond, meanwhile, had noted Birney’s elevated social status, describing him as a “man of property, character, and intelligence.” Removing slavery and race from the discussion, Chase’s turn back to the relationship between “master” and “servant” thus replaced slavery with another legalized form of structured inequality, familiar to those who believed, as Chase himself did as late as 1831 in his interview with Tocqueville, that only a select number of “men of talent” were entitled to manage Cincinnati in the enlightened way that Birney supposedly managed his personal household.36

With Matilda Lawrence’s case framed in this way by Chase, there was little chance for the full story of her escape from slavery – her initial “free papers” ultimatum, her incorporation into Cincinnati’s Black Commons, and her subsequent wage-earning work for Birney – to appear when Chase appeared before his former mentor David Este in court. Rather than a recent settler to Ohio seeking new economic opportunities of her own, Lawrence was instead cast by Chase in a role we may call today “the Passive Fugitive.” Instead of focusing upon anything she did for herself once she reached Cincinnati, Chase’s habeas petition focused on the question of what Buckeye law, standing alone, did to her status the moment her father brought her into the Buckeye State. If, Chase argued, federal and state law only allowed a master to reach across state lines to reclaim an “escaping” slave (a process that Chase also challenged in his Lawrence argument), there was no evidence that Matilda Lawrence had even affirmatively “escaped” at all. Indeed, as Chase noted, when Lawrence initially traveled into Ohio, it was at her master’s

request. If her labor-time was no longer the property of anyone else, it was not because she had forcefully wrested it away from a white master, or because Birney had somehow aided her in this endeavor. Instead, it was federal and state law–acting in concert with the decisions of Lawrence’s master alone - that directly transferred the ownership of Matilda Lawrence’s labor-time into her own hands. 37 Similarly, Chase later argued, if a black sailor became free the moment he left a place like New Orleans, it was merely because he had “passed from a local jurisdiction of a slave state into national jurisdiction on the High Seas,” and because the “National Constitution” that now apparently governed his vessel did not explicitly recognize being the property of someone else as a proper legal status. So too on the Ohio River with Matilda: when she floated across the Ohio River, the law of Ohio, by virtue of the slavery prohibition of the Northwest Ordinance of 1787 and its incorporation into the state constitution, took hold. By its sole operation, Chase argued before Judge Este in the passive voice, “Matilda became emancipated.” 38

Once again, Chase was attempting to frame things in a legal language that Este, a conservative Whig originally from New England, would feel inclined to accept. Like African-American boatmen such as William Wells Brown, Chase was drawing from an Anglo-American constitutional tradition that interpreted being a slave as an exceptional designation constrained in its geographic scope. In his 1834 treatise Commentaries on the Conflict of Laws, New England’s leading legal theorist Justice Joseph Story saw interstate business activity by whites, (what he

37 See, e.g., Speech of Salmon P. Chase in the Case of the Colored Woman Matilda (Cincinnati: Pugh, 1837) (Chase’s argument for Lawrence appears in full); From the Cincinnati Gazette, dated April 5, 1837,” Box 19, Chase Papers, HSP; Letter from Chase to John T. Trowbridge, March 16, 1864, Box 14, Chase Papers, HSP (discussing Chase’s theory of the case more generally).

38 See Letter from Salmon P. Chase to Lewis Tappan, Feb. 15, 1843, Reel 4, Chase Papers, LC (“passed from a local jurisdiction”); Chase’s arguments in James Birney v. The State of Ohio, 8 Oh. 230 (1837) (“became emancipated”).

262
labeled in a letter to Salmon P. Chase, “interstate intercourse”) as being national in scope and importance, with differences in commercial laws smoothed out in federal court. In contrast, Story considered questions regarding the status of people of African descent as solely questions of domestic “status,” part of a body of local laws that more generally divided people into “incapacitated” and “privileged” classes in a way that reflected municipal policy preferences that adjacent jurisdictions were free to follow or ignore as they saw fit. In support of his “localist” reading of the law of slavery in particular, Story cited the 1772 Court of King’s Bench *Somerset’s Case* decision by Lord Mansfield, which he claimed had established the legal principle, since affirmed in Britain’s colonies and possessions through its Slavery Abolition Act of 1833, that because slavery was against the laws of nature under the “Law of Nations,” England had been free to determine that “as soon as a slave lands in England, he becomes ipso facto a free man.” The “same principle,” Story maintained, “pervades the common law of the non-slave holding states in America.”

When representing self-emancipating people of color before Whig jurists in Ohio, Chase transplanted what professor William Wiecek once called Joseph Story’s “neo-*Somerset*” jurisprudence to the rivergoing west, attempting through his reference to the Northwest Ordinance of 1787 to give it firmer footing under indigenous U.S. statutory law. Arguing a case before Bellamy Storer while his former Whig colleague was serving a term as the judge of Cincinnati’s Superior Court, Chase thus understandably also used a steamboat analogy to get his

---


point across. “Suppose,” Chase began, a boat started from an Ohio port having on board something that would be regarded “a nuisance in Kentucky.” Then suppose that it landed on the Kentucky side of the Ohio River. By attaching itself to the soil of the Bluegrass State, Chase argued, the vessel would become “part of that State,” and thus subject to municipal laws equipped with abating the nuisance it carried onboard. He had seen this principle in operation in his law office, when a white steamboat captain “plying on the Ohio and Mississippi took to Louisiana free colored persons as stewards, and found to his astonishment at New Orleans, that his crew was taken from him and lodged in the calaboose and he was obliged to pay a large sum for their redemption.” As Chase reminded Judge Storer in that case, leading jurists and statesmen had long vindicated the authority of Louisiana and similar jurisdictions to enforce such local measures “without trenching on the principles of the United States,” as a way to protect themselves from “the evils of slave insurrection.” Applying like rules, Chase went on to delineate what should happen when vessels such as these returned to Cincinnati. Pursuant to the state constitution, incorporating “the perpetual interdict against slavery” first appearing in the federal Northwest Ordinance of 1787 which had prohibited slavery in jurisdictions north of the river “from the hour of their birth,” such black river workers passed into a “charmed” jurisdiction where they stood “man to man” with their vessel’s captain, beyond the reach of any law that would presume them to be slaves.⁴¹

When Chase used steamboat analogies featuring free black men working within the Ohio-Mississippi River system to illustrate his neo-Somerset points, he revealed the true identity of the parties that stood to benefit the most from his reading of state and constitutional law. The case he argued before Storer actually involved the status of two Kentuckians of color who had

stopped in Cincinnati midway through a steamboat journey they were taking from their home state to Missouri, accompanied by a white Kentuckian named “Harle” who claimed to be their owner. The case followed hard on the heels of a similar case involving the status of Rosetta Armistead, a woman of color who had been pulled off a railcar by “anti-slavery friends” in Columbus as she was traveling across the state under the watch of man who was acting as the agent of a white Kentucky man likewise claiming to be her master.42 While Chase saw the legal principles he argued for Armistead equally applying to Alfred and Emanuel, and by extension to all free men of color in the Buckeye State, it was not surprising that the African-American clients at the center of his most celebrated “fugitive slave cases” were fictitiously passive women rather than black men affirmatively asserting their own freedom. The habeas corpus petitions that Chase filed for Matilda Lawrence, Mary Towns, and Rosetta Armistead in 1837, 1841, and 1855, respectively, all started from the premise that all three women were “persons” possessing certain legal protections against false imprisonment as a matter of right. When this premise was stated on behalf of female clients still described in court papers as being the “servants” of white men, the Victorian gender biases of Chase’s day could quietly operate to soften its most radical implications.

Indeed, by featuring “lady servant” clients as his ideal “passive fugitives,” Chase was in fact deploying a rhetorical version of an actual tactic that self-emancipating men of color sometimes used when trying to throw slave catchers off their scent during the antebellum era. In 1842, for instance, Milton Clarke donned women’s attire to serve as a body-double for a woman

42 See Letter from Chase to John T. Trowbridge, Mar. 20, 1864, Box 14, Chase Papers, HSP (describing the “Harle Case”); “Rosetta Armstrong Casefile, 1855,” Reel 6, Rutherford B. Hayes Papers, LC; Letter from Chase to John T. Trowbridge, Mar. 19, 1866, Box 14, Chase Papers, HSP; William Troy, Hair-Breadth Escapes from Slavery to Freedom (Manchester: Bremner, 1861), 73-81 (description of Armistead, or “Armstrong,” case).
from Kentucky who was set to board a Lake Erie steamboat for Canada, only tossing off his
disguise when he was eventually mistaken for her and hauled into court himself. Seeking to
escape bondage with his free light-skinned wife a few years later, a different “small and
beardless” man named “Jackson,” a one-time Queen City barber who had once been claimed as a
slave by an Alabama politician and carried downstream, decided to play a similar ruse,
presenting himself as his wife’s “female attendant” as the spouses traveled back upstream on a
series of Ohio and Mississippi River steamers. It was only when Jackson crossed Chase’s
“charmed limits” and re-entered Cincinnati, Levi Coffin later recalled, that he reassumed his old
male identity, declaring himself like Milton Clarke to be a free man of color under Buckeye
law.43

To say that Chase structured arguments before white, Whig judges like David Este to
appeal to their patriarchal sensibilities - as well as to their predilection for national law, British
precedent, and Joseph Story’s theories on the conflict of laws - is not to say that he managed to
persuade them in every case. Matilda Lawrence, Chase was careful to admit to his biographer
John T. Trowbridge in 1864, was eventually “remanded to slavery.”44 Previewing Justice
McLean’s arguments in *Giltner*, Judge Este held in that case that federal law and the U.S.
Constitution recognized “the right of the master” to the service of their slave, authorizing John
W. Riley to depart Ohio with Lawrence in his custody. Moreover, not only could Lawrence’s
Missouri master bring a common law action in “replevin” to recover physical possession of
Lawrence as his property, he could also bring an action of “trover” under Ohio law against James

---

43 See “The Story of the Clarkes, From Johnson’s Lake Shore Home Magazine, Nov. 1886,” in Wilber Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Ohio (Clarke’s ruse); Harvey Johnson, “Romances and Realities of the Underground Railroad, Second Series, in Siebert Collection; Reminiscences of Levi Coffin (Cincinnati: Clarke, 1880) (Jackson’s ruse).
44 See Letter from Salmon P. Chase to John T. Trowbridge, Mar. 16, 1864, Box 14, Chase Papers, HSP (“remanded to slavery” and “juster opinions”).
G. Birney to recover compensation for the services the Missourian had lost while she was in the Buckeye State.

Chase’s defeat, however, was not as clear-cut as this outcome would seem. Este’s associated ruling in the attempt to prosecute James Birney for “harboring and concealing” Lawrence, for instance, was overturned on appeal when Chase was able to persuade the Ohio Supreme Court that Birney would have affirmatively needed to know that Lawrence was a slave at the time she was living in his house. Even Este’s own opinion in the earlier matter concerning Lawrence’s status offered some justification for Chase’s later assertion that his arguments had “perhaps contributed to the formation of juster opinions.” While the thrust of Este’s opinion addressed “the rights of owners of slaves,” he did acknowledge that Buckeye law also included a counterpoint, recognizing “the rights of free persons” as well, and thus did not “permit the employment of slaves.” The common law also contained other legal concepts, Este noted without further elucidation, that “protect persons claimed as slaves, but not legally so claimed.”

Over time, the “passive fugitive” theory Chase introduced while representing Matilda Lawrence and James Birney in 1837 had a persuasive effect on some leading Whig members of Ohio’s bench and bar. In 1838, for instance, in a moot court session Timothy Walker organized and chaired at his Cincinnati Law School, Walker altered the facts from Chase’s Birney and Lawrence cases to hypothesize a situation where rather than escaping from Kentucky to Ohio, “Matilda” had been sold from a man in Kentucky to a man in Virginia after Congress had passed a law “providing that any person held to service in any State, who should be transported and sold

\[45\text{ See Letter from Salmon P. Chase to John T. Trowbridge, Mar. 16, 1864, Box 14, Chase Papers, HSP ("remanded to slavery" and "juster opinions"); "Law of the Colored Girl Matilda," ca. 1837, Reel 31, Chase Papers, LC ("right of the master" and "not legally so claimed"); "From the Cincinnati Gazette, dated April 5, 1837," Box 19, Chase Papers, HSP ("trover"); James Birney v. The State of Ohio, 8 Oh. 230 (1837) (overturning Birney’s conviction).}
beyond the limits of such state, should henceforth be free.” Would such a law be valid under the U.S. Constitution, freeing Matilda from bondage? Citing Congress’ “power to regulate commerce among the several states,” Walker instructed his students that the correct answer was it would indeed be in effect. As a matter of common practice, Walker wrote, slaves were treated as commercial property – “they are bought, sold, and taxed.” And as transferable property, they became “subjects of commerce.” Even though the effect of the law was “wholly to destroy the slave trade between one state and another,” and possibly “to destroy all harmony between the states,” this was fully within Congress’ constitutional authority. While the main thrust of the commerce power was to promote trade, Walker reminded his students (in the same way that Joseph Story may have reminded Walker himself a few years earlier while at Harvard), “commerce is to be regarded as a whole consisting of many parts, one or more of which may be at any time interdicted for the benefit of the rest.”

From Walker’s perspective, diminishing the transferability and mobility of a slaveholder’s property interests through regulatory force was tantamount to aggressive debt collection by the Second Bank of the United States. Although it plundered the private wealth of a few, as an activity it had a basis under a Whig understanding of the law because it simply made good financial sense. Thus, even though Walker usually frowned on laws that took from society’s “Haves” and gave to its “Have-nots,” he eventually made an exception for the forced transfer of a slave’s labor from a master to an emancipated slave. In an 1840 lecture on political economy, for instance, Walker identified the expansion of “wealth” across society - through an increase in “necessaries,” “commodities,” “luxuries,” and other products “useful or agreeable to man” – as one of the primary objective of governments when they issued laws regulating aspects

46 See Timothy Walker, “Matilda Johnson, ex parte, moot court, Cincinnati College,” ca. 1838, Box 3, Timothy Walker Papers, Cincinnati History Library and Archives, Cincinnati, Oh.
of the commercial market. Because Walker further asserted that wealth was the “product of labor,” he maintained that a government which promoted wealth necessarily passed laws requiring that “labor must be free.” For such a system to work, each person had to work for themselves, rather than “lazily” working for an employer or master.47

To illustrate his argument, Walker drew a comparison between Ohio and Kentucky, something he had been doing since he arrived in Cincinnati from New England. As Walker noted in his interview with de Tocqueville in 1831, the two states shared the same soils, climate, transportation facilities, and river. Nevertheless, despite being settled later, Ohio’s population was three times greater than Kentucky’s and its “business… ten times as great.” The sole difference, Walker reasoned, was a legal one. By virtue of the Northwest Ordinance, “slavery reigns in Kentucky and not in Ohio.” In Ohio, Walker asserted to his law students, if labor was “performed by slaves, having no interest in its fruits, instead of freemen working for themselves,” there could be larger farms, costlier mansions, and more luxurious proprietors. But the “aggregate of wealth, and strength, and comfort, would have been nothing to the present.” By preventing slavery from taking root in Ohio, Congress had properly signaled through the Northwest Ordinance that striving whites could work “without shame” in the Buckeye State, each drawing forth their own fair share of the West’s natural wealth, multiplying each share through commerce into a prodigious, aggregated whole. Subsequent actions by Congress enforcing this initial signal were valid as well.48

---


48 See Alexis de Tocqueville, “Non-alphabetict notesbooks 2 and 3,” in Journey to America (New Haven: Yale, 1960), 94 (“not in Ohio”); Timothy Walker, Annual Discourse, Delivered before the Ohio Historical and Philosophical Society, at Columbus, on the 23rd of December, 1837 (Cincinnati: Flash, 1838), 17 (“nothing to the present”).
Reflecting what the historian Eric Foner later identified as an increasingly orthodox Northern “free labor perspective” during the era, such thinking eventually allowed Timothy Walker to find enough common cause with his former law partner that he actually served as Chase’s co-counsel in both the Harle and Amistead cases, spinning out antislavery arguments from his own Whig perspective. Arguing that neither Ohio nor federal law authorized Alfred’s or Emanuel’s return to Kentucky, for instance, the former secretary of the anti-Birney “Lower Market House” meeting recited Chase’s old arguments on Lawrence’s and Birney’s behalf, embroidering his presentation with references to the Northwest Ordinance, Ohio’s constitution, British precedent, and international law. Walker also appealed to Judge Storer’s philanthropic streak as a friend of western boatmen more generally. “I am here to speak for two human beings,” Walker’s Harle presentation began, “whose claim to sympathy is their utter helplessness.” Alfred and Emanuel, Walker noted, “own nothing which men value in the world, not even themselves.” Walker’s pleas for charity seemed to have a small effect on Storer, who called Alfred and Emanuel to the stand and failed to issue any final ruling on the case.49 His arguments were even more successful when it came to Rosetta Armistead, helping to convince both a New England-born state judge, and a federal commissioner otherwise known to be “notoriously venal” in enforcing the claims of masters, that her eventual release (enforced in large part by a black crowd that surrounded Columbus’ court house) in fact occurred “according to law.”50


50 See Letter from Chase to John T. Trowbridge, Mar. 19, 1866, Box 14, Chase Papers, HSP ("according to law"); William Troy, Hair-Breadth Escapes from Slavery, 75-81
Against the background of Whig conversions such as these, even John McLean showed signs of being won over. In 1843, Chase had defended a white abolitionist named John Van Zandt in a federal suit seeking to collect the same types of damages sought against Birney and John Giltner, demands seeking monetary compensation for allegedly “harboring and concealing” a slave. The bondsman in this particular case was “Andrew,” a self-emancipating man claimed by a Kentucky family, carried onboard Van Zandt’s wagon as Van Zandt traveled to market. Here Chase reintroduced many of his arguments from the Lawrence/Birney litigation. If Andrew’s putative master were entitled to reclaim anything, Chase insisted, it was not Andrew’s body as this white man’s “property,” but merely a lesser interest in Andrew’s “services.” Moreover, under settled common law precedents, it was always a “breach of the peace” for a master to compel an eloping servant to return to service by force. McLean issued an initial order against Van Zandt for $1,200, but he found some of Chase’s arguments compelling, certifying them for appeal to the Supreme Court of the United States while also encouraging Chase to publish them in pamphlet form. The Constitution, McLean had already asserted in his concurrence in Groves v. Slaughter, “acts upon slaves as persons, not as property.” The linguistic implication was that even for McLean, individuals like Andrew had some modicum of rights as “persons” against improper treatment under the law, however constrained and ill-defined in McLean’s own mind these rights continued to be. A few years later, McLean was willing to admit even more than this in a private letter. Reputed white abolitionists like Van

51 Chase’s arguments in this case, unpublished and published, are found in Casefile for John Van Zandt v. Wharton Jones, Legal File – Cases D-K, Reel 14, John McLean Papers, LC; Chase, An Argument for the Defendant, Submitted to the Supreme Court of the United States… in the Case of Wharton Jones v. John Vanzandt (Cincinnati: Donogh, 1847), 90.

52 See Letter from John McLean to Salmon P. Chase, Feb. 7, 1844, Box 7, Chase Papers, HSP; Letter from Chase to John T. Trowbridge, Mar. 18, 1864, Box 14, Chase Papers, HSP (on McLean’s initial order and certification for appeal); Groves v. Slaughter, 40 U.S. 449, 458 (1841) (“as persons, not as property”).
Zandt, he posited, were not necessarily the lawless troublemakers he once believed them to be. “In some cases,” he noted, they “believed themselves to be acting on legal or justifiable grounds.” And in the grand scheme of things, their actions were perhaps insignificant when compared to the emancipatory initiatives of the “colored persons who are found in considerable numbers in all our cities, towns and villages on the Ohio and Mississippi,” rights-bearing “persons” who were also acting upon their own interpretation of the law.⁵³

Evolving sentiments such as these were the reason why, at the same time that Van Zandt was before the Supreme Court in the 1840s, Chase briefly courted McLean as a Presidential candidate on the ticket of the new Free Soil party he was helping to organize. As seen in his maneuvering at the party’s Buffalo Convention, however, Chase eventually chose to abandon this project. McLean’s high-born Whig character, Chase later wrote, “forbids the supposition that he was controlled by any other than upright purposes.” Constrained by his self-imposed peacekeeping mission while on the bench, McLean also showed little inclination to evolve away from his bedrock conviction that America’s constitutional order could not be preserved without slaves being returned to their masters upon the bare presentation of any white person’s claim. Thus, Chase was eventually forced to agree with Martin Delany’s assessment of McLean in 1848. While a reformed Whig Constitution may have regarded slavery and even race prejudice as evil, it was still somewhat powerless to do much about it within McLean’s own judicial circuit. This was further demonstrated in how McLean ultimately decided Van Zandt’s case:

After Chase’s national law arguments were dismissed by the Supreme Court of the United States

⁵³ See Letter from John McLean to “Dear Sir,” April 19, 1851, Reel 10, John McLean Papers, LC.
and the case was remanded, Justice McLean ruled against Chase’s client, once again applying nothing but Kentucky law.\textsuperscript{54}

If what Chase was attempting to build was an antislavery constitutional jurisprudence with broad white appeal, the elite Whig John McLean was ultimately not Chase’s man for the job. “I could never help thinking that in the absence of the universal bias created by the Slave Power,” Chase later reminisced, McLean’s “decisions would have been very different.” In the end, Chase’s choice for a name to head his preferred Free Soil Party ticket in 1848 was not a Whig at all. Instead, it was New York’s Attorney General, John Van Buren, the leader of the antislavery “Barnburner” faction of the Empire State’s Democratic Party. As Chase revealed in letters written to McLean in August 1848, he had become deeply involved in a national political movement opposing slavery that was close to taking on an “exclusively Democratic character.” The more he reflected on it, Chase wrote to Lewis Tappan a few years before, the more Chase was persuaded that a “moral and political revolution” was needed in the American political system to protect personal liberty and “Republican institutions,” and that this revolution needed to originate not from “men of standing” like Tappan and himself, but had to “arise among the people.” By 1849, in fact, Chase wrote that he had decided that antislavery’s political future was in the Democratic Party, rather than the Whigs. As an attorney-activist, his goal became to “get the Democratic Party in motion [] regarding the overthrow of slavery as a legitimate and necessary result of its principles.”\textsuperscript{55}

\textsuperscript{54} On Chase’s maneuvering during the 1848 Buffalo Free Soil Convention, see Jonathan Earle, \textit{Jacksonian Antislavery and the Politics of Free Soil, 1824-1854} (Chapel Hill: UNC, 2004), 159-162; Chase’s “upright purposes” quote is from Letter from Chase to John T. Trowbridge, Mar. 18, 1864, Box 14, Chase Papers, HSP.

\textsuperscript{55} See Chase to Trowbridge, Mar. 18, 1864, Box 14, Chase Papers, HSP (“very different”); Letter from Chase to McLean, Aug. 1848, Reel 9, McLean Papers, LC (“exclusively Democratic character”); Letter from Salmon P. Chase to Lewis Tappan, May 26, 1842, Reel 4, Chase Papers, LC (“arise among the
Chase’s earlier work for the Second Bank of the United States in the 1830s may have taught him ways to communicate in a Whig’s legal language of national authority, social harmony, and tiered statuses of privilege. But by the 1840s this language did little to convince a new set of elected judges, lawyers, juries, and voters who had come of age imbibing Jacksonian counter-rhetoric, believing that Chase’s former client wielded a type of “Money Power” supposedly “enslaving” an erstwhile virtuous republic. Persuading a Whig audience was usually a narrow exercise, pointed at a few elite jurists like John McLean and David Este or upper-class lawyer/theoreticians like Timothy Walker. Convincing Ohio’s “Democracy,” on the other hand, was a multilevel and capacious pursuit, potentially engaging the legal sensibilities of the entire public at large. Here Chase quickly learned to frame his legal fights for African American clients as yeoman’s battles against an aristocratic “Slave Power” – defined, in his words, as “a great Slave Interest wielding capital in human beings” that had taught legal elites to do its bidding.56

The transformation of Chase’s own legal practice towards a more hardscrabble clientele, detailed in Chapters 2 and 3, gave his “slave power” message an added degree of authenticity. As the law professors Gerald Leonard and Larry Kramer have both explained, the party organization that Martin Van Buren helped to build in the Age of Jackson was dedicated in part to the concept of “popular constitutionalism,” a process whereby a polity’s foundational laws

---

were to be crafted on a local basis and then interpreted “by the people themselves.”

This concept accommodated more of a broad level of public participation in the lawmaking process than the Whig model, whether through the ballot box or by more spontaneous means. Reviewing the crowd that assembled around the Crosswhite house to prevent that family’s transport back to slavery, for instance, the Jacksonian Democrat Charles T. Gorham apparently determined that the gathering had already made a type of legal “ruling” on Francis Troutman’s claim. “The dear people are the law, and you can’t have the negroes,” Gorham supposedly observed. Whigs such as Timothy Walker may have dismissed Gorham’s perspective as promoting “mob law,” or simple anarchy. But when working alongside Timothy Walker in the Harle case, Chase learned to incorporate its premises into his oral arguments, wherein the “will of the people of Ohio” magically became “law.”

In the case of Rosetta Armistead, the second slavery matter Chase and Walker argued together in 1855, both men saw how this could lead to an antislavery result. Indeed, it was a crowd of free African-Americans (not Chase or Walker), that had initially met Armistead at Columbus’ rail station after receiving a tip that she was traveling across the state with her putative master, and that had chosen to employ attorneys to bring an action in habeas corpus in state court. And it was this same crowd that had assembled inside the courthouse during oral arguments and cheered when their habeas writ was successful. Moreover, when the agents of Armistead’s master tried to evade this writ’s mandate in a parallel federal action in Cincinnati, one member of this crowd - a free African American minister from the Queen City


275
named Rev. William Troy – was in fact the last person whispering advice into her ears. Finally, when Armistead ultimately went free, Troy later recalled, it was “the crowd [that] followed her on to the Little Miami Railway Station,” assuring the enforcement of the court’s ruling and her safe passage out of town.59

So far, so good. But as Delany and Charles Langston experienced while passing through the hamlet of Marseilles on their way to Lake Erie, discerning “the will of the people” within free soil Ohio, and then placing it on the side of black litigants, could at times be a daunting task. Right before Armistead’s first trial in Columbus, for instance, William Troy remembered that although “the streets were thronged with people,” it was unclear what the mass preferred. “Some were abusing the negro race as the lowest of the monkey tribe,” he recalled, “and some were praising the girl and the coloured people as fine specimens of humanity.” Understandably, when such a crowd (armed with pistols, bowie-knives, clubs, and brickbats in Troy’s recollection) entered a courtroom to hear a case argued by Chase on behalf of an African American client, and when Chase attempted to sway the crowd to his client’s side, he attempted to make the case turn on anything but the race of the parties. As discussed in the previous chapter, one of Chase’s most promising strategies when seeking to bend Democratic ears was to argue the case largely on terms familiar to most white working class audiences, casting his black clients in either the debtor’s or creditor’s role, or as poor individuals burdened with a form of unequal legal treatment statutorily imposed by well-heeled aristocrats in derogation of the common law. Framed in this way, James G. Birney confirmed in a letter to Chase, “the opposition to slavery” could be “considered so much a matter of money policy and cotton as a matter of religious duty.” Thus, in 1837, at the same time that Chase summoned Whig themes in an attempt to win over

59 See William Troy, Hair-Breadth Escapes from Slavery, 77.
Judge Este, Chase also embedded a Jacksonian “equal justice” element into his argument for Matilda Lawrence, criticizing the way that Ohio’s legal system purported to authorize her detention on the naked assertion of her captor, in effect creating “one measure of liberty for the rich and another for the poor.” By 1841, Chase’s representation of Mary Towns turned on his attempt to present her putative master’s attempt to reclaim her body as the functional equivalent of a flawed attempt “to procure an arrest for debt.” And as discussed in the previous chapter, two years later Chase was framing Milton Clarke’s escape from Kentucky as a lawful claim for “unpaid wages,” assessed against the estate of Archibald Logan, Clarke’s deceased master.  

Reviewing only Chase’s diaries and correspondence during this era, one can get the sense that such arguments were occasionally enough to win over Ohio’s Democracy on their own. Chase prevailed in the Mary Towns case in 1841, for instance, by persuading Hamilton County Court of Common Claims Judge Nathaniel C. Read that Chase’s procedural framing of the case, as a garden-variety claim for an unproven “debt” rather than a high profile “fugitive slave” affair, was in all important respects correct. Acknowledged by his contemporaries “as possessing an intellect of great native power,” Read had arrived in Cincinnati at age 25 in 1835 and quickly became a leading light of the city’s Jacksonian bar. A few years earlier, Chase had considered him his adversary. Indeed, in 1837, while serving as the city’s elected Prosecuting Attorney, Read was one of the attorneys of record opposing Chase in Matilda Lawrence’s case. For a time, Read’s opposition to Chase seemed to enhance his professional prospects, earning him election

---

60 Troy, Hair-Breadth Escapes, 75 (“specimens of humanity”); Letter from James Birney to Salmon P. Chase, Feb. 2, 1842, Reel 4, Chase Papers, LC (“money policy”); Speech of Salmon P. Chase in the Case of the Colored Woman Matilda (Cincinnati: Pugh, 1837), 38-40 (“another for the poor”). On Chase’s representation of Towns and Clarke, see Chapter 3.
as the Presiding Judge of Hamilton County’s largest court a year later.⁶¹ But as Read matured on
the job, and as Chase’s arguments became more Jacksonian in tone, Chase sensed that the
Democratic judge could be cultivated as an intellectual ally. “Judge Read,” Chase noted in his
diary at one point, “evidently is almost persuaded to be a free democrat.” The ruling in favor of
Mary Towns was an early sign that this may be the case. In a letter to a friend, Chase placed
Read’s Jacksonian reasoning alongside the verdict in *State v. Farr*, a Supreme Court case
decided at roughly the same time upholding the more Whiggish “Passive Fugitive” model of
emancipation (declaring that a slave voluntarily transported into the state by his master became
“a free man at the moment he touche[d] the soil of Ohio”) as marking a “progress of opinion”
among white lawmakers within the state. “A few years ago I maintained the same doctrines and
they were treated with ridicule and disregard,” Chase observed. Now, within Read’s court, they
were “treated as law.”⁶²

In some instances, Chase received written confirmation that his victories for African-
American clients like Mary Towns were part of a wider movement, spearheaded by Cincinnati’s
ethnic laboring class, for “equal justice” under Ohio statutory and common law. There were of
course the letters he received from Charles Dimmig, the German-speaking common “levee hand”
discussed in Chapter 2 who expressed support for the concept of “equal rights to all men without
distinction of color or descent.” A year after the Towns case, there was also a letter from John
Duffy, the Irish-American editor and publisher of the Columbus newspaper the *Ohio Freeman*,
who claimed to have found many “friends of the liberty principles… among the working class.”

⁶¹ See George I. Read, *Bench and Bar of Ohio, vol. 1* (Chicago: Century, 1897), 21; “Death of Judge
Read” and “Judge Read’s Last Speech” in Law Notebook, Vol. 1, p. 109-110, Reel 6, Rutherford B.
Hayes Papers, LC.

⁶² See Entry for Jan. 9, 1849, in *Chase Diaries*, ed. John Niven (Kent: Kent St., 1993), 202 (“free
democrat”); Letter from Chase to Charles D. Cleveland, May 18, 1841, Box 13, Chase Papers, HSP
(“treated as law”).
And in 1843, there was Chase’s correspondence with the Irish-Catholic politician Daniel O’Connell, popularly known as Ireland’s “Liberator” for supporting the cause of “Catholic Emancipation” (the removal of Anti-Catholic statutory restrictions) on the Emerald Isle. In an open letter to representatives of a committee purporting to represent Cincinnati’s Irish population, O’Connell challenged the group to “abandon all defense of the hideous Negro Slavery system” in the United States, and to instead support the cause of “those who work without wages… who spend their lives in procuring for others the splendor and wealth in which they do not participate.” Explicitly likening the struggle of Catholics in Britain to that of black servants entering Cincinnati in an attempt to escape the clutches of their Kentucky masters, O’Connell also repeated arguments championed by Chase that America’s foundational legal texts did not “limit the equality of man, or the rights of life and liberty to the white, to the brown, or to the copper-colored races.” Heading an allied committee that styled itself “The Friends of Liberty, Ireland, and Repeal in Cincinnati,” Chase co-signed a response that seconded O’Connell’s legal analysis, lauding O’Connell’s “hostility against despotism and oppression in every form, whether manifested in crushing the black man, or in depressing and impoverishing the white man.” Within river jurisdictions, Chase’s committee argued, support for an interpretation of state and national law that gave no quarter to bonded labor was in fact a matter of white working class self-interest. “A system which extracts labor without wages,” they argued, rendered the wages of other laborers similarly “insecure,” all while degrading all workers “to the level of the beast.”

---

63 See, e.g., Letter from Dimmig to Salmon P. Chase and King, Aug. 23, 1842, Reel 4, Chase Papers, LC (“equal rights”); Letter from John Duffy to Chase, May 21, 1842, Reel 4, Chase Papers, LC (“working class”); Liberty or Slavery?: Daniel O’Connell on American Slavery, Reply to O’Connell by Hon. S.P. Chase, Pamphlet, 1864 (reprinting 1843 correspondence between O’Connell and Chase).
Although Chase and O’Connell both cited the text of the Northwest Ordinance, the Declaration of Independence, and the U.S. Constitution itself, deploying a style of “strict construction” favored by many Jacksonian Democrats, there were gaps in the constitutional quilt they were patching together. Jacksonian legal theory held that foundational legal change was only legitimate if the impetus for this change came from below, reflecting the majority will of “the people.” And throughout the 1840s, it was clear that ethnic Democrats like Charles Dimmig and John Duffy held minority views among Cincinnati’s broader white working class electorate. Majority public opinion continued to judge blacks to be “an inferior race,” O’Connell had been instructed by a different organization of Queen City Catholics, “The Cincinnati Irish Repeal Association.” In Democratic Ohio, this group warned in a letter, “public opinion is the great law giver.” As a matter of law and policy in the Buckeye State, “the two races cannot exist together on equal terms under our ‘Government and Institutions.”

Despite his ruling in the Towns case in 1841, it was clear that Judge Read still agreed with these tenets. Indeed, when the Irish Repeal Association first met and approved its inaugural constitution on September 15 of that year, he was listed as its President. Two weeks earlier, a white “Citizens’ Meeting” was convened by Cincinnati’s mayor in the wake of the Bucktown riots, pledging to disarm the city’s African American residents and to enforce laws “requiring negroes and mulattoes to give bonds” if they sought to reside within the state. There, Judge Nathaniel Read played a prominent role, addressing the crowd “upon the questions under consideration.”

At first glance, the 1841 Bucktown riots and the Democratic meeting following those events seemed like a near-reprise of the anti-Birney disturbances and subsequent Lower Market

---

64 See *Liberty or Slavery?*, 4-5.

65 See *Cincinnati Enquirer*, Sept 15, 1841 (Read’s position within “Irish Repeal Association”); *Cincinnati Enquirer*, Sept. 6, 1841 (Read addressing 1841 crowd after riots).
House gathering of 1836. Both episodes, for instance, involved a crowd smashing the printing press of the Philanthropist and throwing it into the Ohio River, followed by a white gathering incorporating perorations by legal luminaries like Bellamy Storer to restore “the majesty of the law” in the Queen City. Much, however, had actually changed, particularly in the new ways in which “the law” itself was being interpreted by some Whig legal thinkers like Timothy Walker, sworn enemies of the city’s surging Jacksonian electorate. Whereas the Cincinnati Gazette accused the Philanthropist of attempting to subvert Ohio’s legal order in 1836, its Whig editor came to the defense of Birney’s publication in 1841, denouncing Birney’s new wave of attackers as being the parties that were acting upon “lawless” principles. By taking up arms to defend their homes and families, the Cincinnati Republican (another Whig paper) now reported, Cincinnati’s male black residents were acting in justifiable “self-defence.” The true cause of the disturbances, argued the Gazette’s new editor John C. Vaughan, was not agitation by ex-Kentucky slaves or white abolitionist outsiders, but unrest among Cincinnati’s homegrown white population. Within the Ohio River Valley, Vaughan argued, where there was already a great ongoing “competition between free and slave labor,” legal victories for self-emancipating slaves like Mary Towns could be seen as threatening to swell the ranks of free wage-seekers beyond what the Ohio labor market could bear. In 1841, an interpretation of Buckeye law that seemed to mandate this result may have offended “the sense of justice” of the river’s white mechanics, boat-builders, and small traders, possibly inducing them to seize upon the Jacksonian solution of attempting to “to take law into their own hands.”

66 All quotations are taken from “Dreadful Riot and Loss of Life” and “The Riot,” “The City- The Mob,” “Reign of Terror Again in Cincinnati,” “Mob Rule,” and “Riots and Mobs, Confusion and Bloodshed,” Cincinnati Philanthropist, Sept. 8, 1841. These articles contain the most complete account of the 1841 disturbances and their aftermath, reprinting articles from the Cincinnati Enquirer and Gazette newspapers as well.
If the newspaperman John C. Vaughan’s suggestions were correct, Judge Read’s participation at the 1841 “Court House Meeting” was in fact very different from the “Lower Market House Meeting” of 1836. Rather than a gathering of elites, it was more indicative of a bottom-up legal movement to restore Cincinnati’s perceived share of the river-trading steamboat economy for the city’s white working class. This was precisely the interpretation given by the Cincinnati Republican, the city’s leading Jacksonian newspaper, after that latter event. The year of 1841 began with Cincinnati’s economy already in disarray, with the Second Bank of the United States liquidating its Ohio holdings and other banks closing their doors. Then, around the same time that the Mary Towns and State v. Farr verdicts were handed down, a notable drought hit the Ohio River Valley, exacerbating the slowdown in river trading business that had already occurred during the summer’s low water season. At the same time, the historians William and Aimee Lee Cheek have noted, the Enquirer began running articles complaining how the city’s waterfront was becoming “overrun with negroes,” allegedly washed up on Cincinnati’s shores looking for employment. “Blacks were constantly coming and squatting among us,” the Enquirer later claimed, “crowding out white labor, when they worked at all, but more frequently living by plunder upon it.” Most aggravating of all, writers for the publication alleged, was the fact that the new arrivals seemed to rely upon an interpretation of Ohio law that supposedly legitimized their presence. According to the Enquirer, the “absurd” and “outrageous” holding of State v. Farr (allegedly standing for the principle “that a slave becomes free as soon as he touches the soil of Ohio”) had drawn black river workers to Cincinnati, flushed with “pretensions and privileges that they neither deserved nor could appreciate.” Language in the Farr decision had also supposedly given “color of law and right to what Southern men called stealing – the stealing of slave property.” Shortly after the Farr ruling, for instance, a letter purported to be
written to a Louisiana slave named John Ellsley was reprinted in the *Enquirer*, advising him to “Tell all your colored friends… that if they can once get to Cincinnati, they can have liberty; and that the colored men on the boats will whisper in their ears where to find abolitionists.” According to the *Enquirer*, such developments, not Ohio’s banking crisis or the river valley’s drought, was the true reason for Cincinnati’s economic troubles. Fearing that “slave labor could not safely be employed on steamboats touching at our landings,” the *Enquirer* claimed, southern boats were taking their business to Kentucky ports, avoiding the Queen City altogether.⁶⁷

From the *Enquirer*’s perspective, what was needed in early September 1841 was a correction to the “false and exaggerated notions of negro rights” that had apparently formed in the Queen City following *State v. Farr* and the Mary Towns case. The white crowd that took to the streets on September 3, 1841 during the “Bucktown Riots,” supposedly overtaken by a spirit of “mobism,” may have taken things too far for the *Enquirer*’s tastes. But the Court House meeting of September 4, 1841 reflected “organized public opinion” seeking the same ultimate results. Graced with Judge Read’s presence, participants at the gathering could reclaim the legal high ground, resolving for the city’s authorities to address “recent outrages said to have been committed by negroes” by “bringing such offenders within reach of the law,” in particular under the state’s existing Black Law restrictions. “Experience shows that the two races cannot live together on terms of equality,” participants at a similar anti-abolition meeting asserted at the end of September 1841. “While we protect the black man from inhumanity we shall firmly and steadily endeavor to fix him in his proper place.”⁶⁸


In the weeks following 1841’s “Bucktown Riots,” this “proper place” seemed to be under arrest: of the 330 African American men placed in the county jail after the Court House meeting, 73 were still being “held for further disposition under the laws” more than one week later. Over time, this “proper place” transitioned into being a zone of chronic economic insecurity. By 1845, even when the city’s black population numbers rebounded and exceeded its pre-riot numbers, the assessed value of black-owned real estate holdings within the city had diminished by $50,000 in comparison with holdings from five years before.69 Facing imprisonment or outright expulsion, holding an even more contingent set of property claims than they did before, it was hard for Salmon P. Chase’s African-American clients to emerge from 1841, the year Mary Towns went free, feeling like they were favorites under Ohio law.

**

And yet, just as Timothy Walker grew to regret his involvement in the 1836 anti-Birney meeting at Cincinnati’s Lower Market House, Judge Nathaniel C. Read would eventually second-guess his involvement in the “law and order” proceedings at the city’s court house in 1841. Days after some of the events, editors of the Philanthropist began arguing that the Bucktown disturbances had in fact been orchestrated by “citizens of Kentucky,” acting “in concert with traders on the river and some of our own citizens” in an attempt to convince Ohio to become “opposed to her own courts.” As evidence, the Philanthropist cited a letter that a group of Kentuckians from Warsaw, Kentucky (calling itself “the Warsaw Guards”) had sent to the Cincinnati Gazette, detailing how they had chartered a steamboat and landed on the Public Landing, offering their services to the Queen City mayor. One member of their group was a former steamboat captain who allegedly offered to post bail for anyone arrested for attempting to

“kill every d----d abolitionist” they found. The *Enquirer*, meanwhile, still linked the interests of the city’s white laborers with “the great interest of boat-building,” then argued that the survival of both relied upon “preserving the trade and travel of the South” with increased regulation of Cincinnati’s black population. But the resolutions of the Court House meeting, which included a pledge to fight “modern abolitionism” to placate the fears of “our Southern Brethren,” actually offered further support to the conspiracy theory that Ohio’s legal institutions were in reality being bent to the interests of a foreign entity that did not necessarily have Cincinnati’s own legal traditions or commercial interests in mind. So concluded, at least, the Whig editors of the *Gazette*, who ultimately dismissed the Court House meeting as an “ill-advised and miserable affair.”

If the Ohio River was surreptitiously being made into a type of slaveholder’s lake where unfree labor received special protection under the law on behalf of Kentucky interests, some felt that there was no guarantee that this legal-economic system would actually increase the opportunities of the river’s non-slave, white wage-earning class. A few years after his successful representation of Mary Towns, Salmon P. Chase had a chance to make this point directly to Nathaniel C. Read, who once again proved amenable to some portions of Chase’s logic. By 1845, Read was a circuit-riding member of Ohio’s Supreme Court and a player in Democratic politics on the state and national levels, chairing Cincinnati’s welcoming party as the Tennessee Democrat James K. Polk passed through Cincinnati on his way to his inauguration as President. Back when Polk was running for President, Chase and the editor of the *Philanthropist* had signed a letter to Polk urging him to oppose the annexation of a slaveholding Texas Republic by the federal government, arguing among other things that such an act would conflict with what Chase

---

70 See compilation of articles from *Cincinnati Enquirer, Philanthropist, and Gazette* published as “The City-The Mob,” *Philanthropist*, Sept. 8, 1841.
argued was settled national policy regarding new territorial acquisitions, best embodied by the slavery prohibition of the Northwest Ordinance of 1787. When Polk replied that he in fact believed that a slaveholding Texas was rightfully part of the United States “as part of the great valley of the Mississippi, directly connected by its navigable waters with the Mississippi River,” Chase turned to lobbying Judge Read that Polk’s position had grave economic consequences to Ohio’s white working class. This was an informed gamble. Early in 1845, when Judge Read was preparing a speech to welcome Polk to Cincinnati, Read wrote to the President-elect that he planned to say that Polk’s party stood for a “liberal policy… towards the down trodden of the earth, who may seek an asylum on our shores.” While the role of government was “to protect men in what they acquire,” it was not to make a select class rich at the expense of others. Government institutions, Read was planning to instruct Polk’s audience, were “to give all an equal chance by protecting all and suffering an interference with none.”

In January 1845, however, at the same time Polk rolled into town on the steamboat General Pike, a second steamboat also docked on Cincinnati’s public landing, shattering Judge Read’s narrative and unleashing a chain of events that forced the judge to balance “the peculiar institutions” of Ohio’s neighbors with the economic interests of the Buckeye State’s own “down trodden” laboring class. The second steamboat was the Ohio Belle, carrying the African-American man Samuel Watson and his white chaperone Henry Hoppess, the two parties implicated in the case of State v. Hoppess. As described in the last chapter, Watson and Hoppess had been traveling up the Ohio-Mississippi River system from Arkansas, ostensibly to deliver

---

Watson to a white man in Virginia that claimed to be his master. After Watson stepped off the Belle and onto Cincinnati’s public landing, Hoppess “arrested” him and brought him to a justice of the peace to obtain a certificate that said he was permitted to carry Watson to another state.

Chase then filed a habeas corpus petition for Watson, placing the matter in the Hamilton County Court of Common Pleas, where Read was scheduled to hear cases while riding his judicial circuit. On February 1, 1845, as crowds of white Democrats descended on Cincinnati to see their new President, and as Nathaniel Read put the finishing touches on his welcome speech, Judge Read also found Salmon P. Chase standing before him in open court, arguing that Cincinnati’s Public Landing was a free labor bastion welcoming to black men like Samuel Watson as a matter of Ohio law.72

Chase started his argument in Hoppess by casting his African American client in the now-familiar role as the “Passive Fugitive,” despite his own misgiving about this portrayal’s accuracy when it came to his client Samuel Watson. Indeed, in a letter to a friend, Chase described Watson as “a poor man who, brought to our shores by the agent of his enslaver, endeavored to escape from his power.” But before Read Chase altered the picture, arguing instead that at the moment Watson was arrested by Hoppess, he was merely “standing on the landing, near the river, quietly leaning against a post, making no attempt to escape.” As it allegedly had for Matilda Lawrence, Watson’s status had transformed not because of any affirmative act he had taken, but by operation of laws that guarded personal liberty and denied the slave laws of states like Arkansas or Kentucky any extraterritorial effect. Here, as Chase would later explain, he was attempting to leverage “the logic of Judge Read’s position,” already

---

stated in his Mary Towns decision, “that a slave taken beyond the influence of the laws which create the relation of slavery, must be free.” Once arriving on the Ohio shore, Watson became simply “a man, under the protection of the constitution and laws of Ohio, and beyond the reach of the law which enslaved him.” Now, if Read overturned Watson’s *habeas* petition and allowed him to be carried away under the federal Fugitive Slave Act, the judge would be choosing to apply a law that allowed a seizure based “upon a bare claim, unsupported by evidence.. without a warrant.” Such a law, Chase argued, was in fact unlawful under the U.S Constitution (pursuant to the Fourth Amendment - protecting against unreasonable seizures; and the Fifth Amendment, declaring, according to Chase, “that no person shall be deprived without due process of law”). If strictly applied, it would mean that “every person of every complexion might be in like manner seized and held.” Perhaps even more important for Ohio’s white river users, it could also eviscerate the proviso contained within the Northwest Ordinance, “guaranteeing to all citizens of the United States the free use of the navigable waters leading into the Mississippi and St. Lawrence,” in effect authorizing the employment of slave competitors on the Buckeye side of the Ohio River.73

An Ohioan born-and-raised, Read was one to take Chase’s reference to the Northwest Ordinance seriously, and to agree with Chase’s basic interpretation. In 1841, for instance, Read had given an “Anniversary Oration on the Buckeye Celebration” in which, the historian Peter Onuf has written, he “invited his listeners to imagine the text of the Ordinance actually superimposed on and merged with the territory’s ‘native grandeur’ and thus… part of the ‘very

73 See Letter from Chase to Charles D. Cleveland, Feb. 3, 1845, Box 13, Chase Papers, HSP (“escape from his power”); Chase to Trowbridge, Mar. 19, 1864 (“logic of Judge Read’s position”); “Supreme Court of Ohio, February 1845, at Cincinnati, before Judge Read, The State v. Hoppess, in the Matter of Watson, Claimed as a Fugitive From Service,” Western Law Journal, Mar. 2, 1845, p. 6 (reporting Chase’s courtroom arguments).
soil’ of the state.” By conceiving of the Ordinance in such an elevated way, Onuf adds, Ohio orators like Read often “directed attention away from a close reading of the document itself,” turning the statute into a “regional symbol” that could be made to serve many competing purposes at once.\(^7\) In *Hoppess*, therefore, Chase’s argument linking Watson’s freedom to “the free use of the navigable waters” by Ohio whites under the Northwest Ordinance placed Judge Read in a bind. Here, Read could follow his previous Mary Towns verdict, releasing Watson to the city’s black community (the party compensating Chase for his work), perhaps touching off another riot just as President Polk was passing through town. Or he could overturn his Towns decision, in turn signaling that non-Ohioans like Henry Hoppess and James K. Polk (himself a slaveholder) could use the facilities of Cincinnati’s Public Landing to support the institutions of an unfree labor regime.

In the end, the now-malleable nature of the Northwest Ordinance as a “regional symbol” within Ohio’s legal tradition ultimately served Read very well. If, for the purposes of navigation, the Ohio River was indeed a “common highway,” this simply meant that it was a common resource, “as free to the people of Kentucky and Virginia, as to the people of Ohio.” Thus, when the *Ohio Belle* crossed the middle of the stream, Watson’s owner, or that man’s agent Henry Hoppess, was never divested of his “right to navigate with a slave.” For Read, this was the case even if the *Ohio Belle* was in fact made fast to the Ohio shore “for the purpose of the ordinary navigation.” After all, Read explained, “[t]he right to use the shore for the purpose of navigation is incident to the right to navigate, and does not change the relation of master and slave.” Perhaps recalling the fallout from the Mary Towns case, Read further justified his decision as a Whiggish way “to preserve harmony, by observing strictly the rights of others.” If Chase’s alternate theory

\(^7\) See Peter Onuf, *Statehood and Union: A History of the Northwest Ordinance* (Bloomington: Indiana, 1987), 139-141.
controlled, “the people on one side would attempt to free the slaves on the river – the people on the other would regard it as mere robbery, and would defend their property.” As a result, the Ohio River would become a “river of blood,” a fresh site for a reprise of the disturbing events of 1841.  

**

Like John McLean in *Giltner*, Nathaniel C. Read had interpreted his role as a state judge in *State v. Hoppess* as preserving social order, which ultimately meant crediting the property claims of a white slaveholder from a neighboring jurisdiction while ignoring the competing claims of a self-emancipating black litigant. Nevertheless, even though Read’s ruling released Watson to Hoppess, Chase considered Read’s opinion a partial victory. In an editorial, Chase argued that by turning *State v. Hoppess* into a case about the “rights of navigation” rather than the property rights of masters over their slaves, Read had in fact confirmed that the master/slave relation was not absolute, but spatially restricted, ending when the act of “navigation” across the Ohio River had ceased. As one of Chase’s friends argued, once a vessel became fixed to Cincinnati’s waterfront, it became subject to the city’s full “civil authority,” subject to inspection laws and wharf tolls administered by Ohioans. “The individual who in one state is a man enslaved, on passing out of that state is a man not enslaved,” Chase summarized in his editorial, “unless the law in the state in which he comes enslaves him anew,” something Ohio law could not do.

---


76 See Letter from Chase to Trowbridge, Mar. 19, 1864, Box 14, Chase Papers, HSP (mentioning Read’s “rights of navigation” reasoning); Letter from William Jay to Salmon P. Chase, Aug. 22, 1845, Box 6, Chase Papers, HSP (“civil authority”); Letter from Chase to the Editors of the *American Citizen*, April 4, 1845, Box 13, Chase Papers, HSP (“enslaves him anew”).
Chase asserted that “public opinion” in Cincinnati and Ohio as a whole was beginning to side with his position. Upstream in Marietta, Ohio, when a group of white men from Parkersburg, Virginia crossed over the river in the fall of 1845 and arrested a group of abolitionists who had been trying to aid a group of Virginia slaves, local newspapers now labeled the event “the invasion of Ohio.” While Chase wrote an editorial stating that the slaves had become free once they crossed the middle of the stream, local attorneys took up his work from there, filing *habeas corpus* petitions to free the Ohioans from Virginia prison. At the same time, Ohio’s state legislature passed resolutions condemning the Old Dominion, with Ohio’s governor sending a formal request that the Parkersburg “kidnappers” be turned over to stand trial across the river.\(^{77}\) Here, Chase and his allies focused on Read’s geographic turn in *State v. Hoppess*. In turn, this permitted them to reframe their fight not as a zero-sum battle over a contested set of property rights and labor opportunities fought across racial lines, but instead as a geopolitical battle over a common resource fought entirely by white people on both sides of the Ohio River. Ohio whites may have been ambivalent or hostile to Chase’s arguments if they were interpreted as supporting black claims. But as Pennsylvania Democrat David Wilmot wrote to Chase, most of the white people of free states were abstractly “in favor of the integrity of free soil.” Calls for territorial integrity allowed Chase’s political allies to peel support in the Ohio River Valley away from Southern Democrat interpretations of the law, personified by the Polk presidency, and to draw crowds of whites to their antislavery cause. By late 1845, according to one abolitionist newspaper reporting on the Parkersburg “abduction case,” the Upper Ohio Valley region was

already on the verge of “sanguinary border warfare,” driven by competing interpretations of Read’s *Hoppess* ruling. As the Parkersburg case proceeded, evidence came to light that the Virginians who had made the arrest of the white Ohioans had already heard that a group of slaves were planning to escape, and had decided to let them make their crossing. If under *Hoppess*, slaves could only be returned from Ohio if they escaped, and if a river “escape” from Virginia could only occur after passing entirely over the Ohio, the Virginians seeking to ensure the return of the escaping slaves would have to wait for them to cross the river in order to make their case.78

By the mid-1840s, the legal expectations in the jurisdictions adjacent to the Ohio River were thus clearly changing. Trying to insulate itself from an unpopular verdict, the western Virginia county court responsible for adjudicating the Parkersburg dispute declined to release instructions in the case until the state’s “General Court,” sitting in Richmond, could issue a special verdict on whether Virginia maintained jurisdiction over both sides of the river. But the best that Virginia’s General Court was eventually able to produce was a divided decision, again resting on abstract geography. According to *Commonwealth v. Garner* plurality, a ruling that placed the riverbank in towns like Cincinnati and Marietta under Virginia’s administrative control would in turn place an area “essential to Ohio” outside of that state’s authority. Adopting the tone of cross-river conciliation that Read used in his closing paragraphs in *Hoppess*, they in turn concluded that Ohio’s control over at least one riverbank was necessary for its “purposes of police,” and was required to “enable her citizens to have free access to the river, to erect

---

wharves” and mills, and to conduct commercial navigation. Almost as an act of neighborly
courtesy, the General Court ruled in Commonwealth v. Garner that the white Ohio prisoners,
arrested above the low water mark on the Buckeye side of the stream, should also go free.\footnote{See “The Trial at Parkersburg,” Marietta Intelligencer, Sept. 4, 1845; “The Abduction Case,” Marietta Intelligencer, Sept. 11, 1845; “Trial of the Parkersburg Prisoners,” Nov. 27, 1845; Commonwealth v. Garner, Dec. 30, 1846, General Court of Virginia Court Files, West Virginia Historical Collection, Morgantown, WV.}

With the image of a “free” Ohio River repulsing slave labor at the Buckeye shore,
antislavery strategists like Chase had hit upon an apparently effective way to give antislavery
crowd actions enhanced legitimacy under the law, even occasionally in adjacent slaveholding
jurisdictions at the river’s edge. Just as in the aftermath following Cincinnati’s anti-Bank and
Bucktown crowd disturbances of 1841, the Garner decision demonstrated that yet another out-
of-doors interpretation of law held by angry Ohio whites could sway the minds of judges or
legislators when backed by the threat of force. By the election cycle of 1848, members of Ohio’s
small but active Free Soil Party were in discussion with the state’s Democrats in the state
legislature, and Judge Read was reporting directly to Chase that “the Free Soilers could [choose]
the Senator if they would give the Democrats the other offices.”\footnote{See Entry for Nov. 22, 1848 at Chase Diaries, ed. John Niven (Kent: Kent State, 1993), 197-198.}

Despite, however, the seeming attractiveness of the “Free Ohio River Theory” to
Nathaniel C. Read and other white Buckeye Democrats, Judge Read’s own final political
conversion to Chase’s camp was by no means inevitable. In a letter written in mid-February
1845, a leading Cincinnati attorney and Democrat in town named William M. Corry reviewed
Chase’s arguments in the Hoppess case and concluded that an “imminent struggle between North
and South” was on the horizon. Chase’s defense of Samuel Watson, Corry wrote, was based on
a number of “startling enquiries,” all revolving around the same basic premise that a person of color (even one claimed to be a slave of someone else) had the same rights as a free white man to challenge his or her detention under the law. After Hoppess, similar questions would be presented often, Corry predicted, “incessantly reiterated by the agitators for the purpose of sapping slavery in all the slaveholding States.” Thus, hidden behind the recognized common law procedure of the habeas corpus writ and Chase’s “Passive Fugitive” paradigm was the threat posed by Joe Spencer a few years later: for Corry, Chase was fronting a black-led legal “attack” on the “kindred tides” that otherwise supposedly flowed between the various commercial nodes of the greater Mississippi River Valley.81

Appearing in print in Timothy Walker’s Western Law Journal after Corry’s letter, Read’s Hoppess opinion reflected some of these concerns. “The presence of the negro among our people is a vast evil,” the Judge asserted. “He stands out just as distinct from our race when free, as when a slave. It is not the badge of slavery but the hand of nature that has marked the difference.” In turn, this supposedly natural racial “difference” justified enslaved African Americans like Samuel Watson as being “withdrawn,” or “excepted,” from the egalitarian principles of Read’s Jacksonian constitution. “No one,” Read further announced (referring here solely to Ohio’s white public), “scarcely would wish to confer upon him equal political rights, and none certainly would wish for social equality.” Anyone that argued otherwise was an agitator, undermining “neighborly feeling” between white residents of different states and perhaps suggesting “amalgamation of the races.”82

81 See William Corry, “The Question of Union with the South, Feb. 1845,” in Wilbur Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Ohio.
Here, expressed in stark white supremacist terms, was the final intellectual stream that Chase needed to cross in his attempt to convert Ohio’s white Jacksonians to the equal legal protection of his black clientele. Almost by definition to a white Democrat like Read, a “Free Ohio River” did not mean a floating zone of labor where blacks worked and lived alongside whites as juridical equals. By supporting the concept that the “badges of slavery” were generally incapable of operating on the Buckeye side of the river, Judge Read still was not supporting the corollary that Cincinnati’s Public Landing could be seen as a resource benefiting the Queen City’s Black Commons. Instead, the reverse was the case: Read was in fact attempting to prevent the river’s “whole slave population” from being “thrown upon” Cincinnati’s white community. The day-to-day commercial operation of the Queen City’s Public Landing, in Read’s view, was best seen as a monument to white supremacy before the law, further explained by Read as the principle that Ohio’s legal institutions were “formed by white men and for white men.” When documents like the Northwest Ordinance or the state’s constitution were handed down, neither bondsmen like Samuel Watson, nor free people of color like Martin R. Delany or Charles H. Langston, were “included or represented.” Instead, Read asserted, the assumption of Congress was that “the whole race of negroes should at some future time be removed to a country of their own, to be subject to their own government and laws.”

Making their way within the river’s greater steamboat economy, many free and self-emancipating people of color had learned to operate within the racial presumptions that Judge Read expounded in his *Hoppess* opinion. Occasionally this meant claiming aspects of a white identity as their own. In one of his attempts to reach Cincinnati by steamboat, for instance, the light-skinned Kentucky-born slave Henry Bibb boarded a Missouri steamboat headed to St.

---

Louis by posing as a servant to wealthy whites. Once onboard, however, he descended to the bowels of the vessel and “insinuated” himself among a crowd of Irish deck passengers, purchasing their drinks while keeping his own mixed racial identity hidden. “If I should get into any difficulty,” he calculated, “they would stand by me.” In that instance, his strategy worked; they agreed to purchase a ticket on his behalf.84 While moving through Ohio, the former steamboat musician Milton Clarke occasionally adopted a similar approach, leveraging the fact that he was the son of a white Revolutionary War veteran to claim that he was in fact a “white slave.” In 1843, when agents of his Kentucky master briefly had Clarke arrested in Lake County, Ohio while citing “the black law of Ohio,” Chase made Clarke’s biracial extraction a cornerstone of his client’s case. Referring to Clarke’s “straight hair” and light skin, Chase responded that his client was “not a black man” at all. The court in that instance apparently agreed, even allowing the man that white Lake County residents called a “white n----” to take the stand against his Kentucky claimants, flouting laws that supposedly prevented people of African descent from asserting such an evidentiary right in the Buckeye State.85 Viewed from a modern perspective, the evasion by Bibb and Clarke of their African heritage may appear tragic, a partial rejection of part of themselves. But within a legal system overseen by people like Nathaniel C. Read who supported a broad form of equality that was limited to “all white men,” it was a strategy of survival. In effect, it was a Jacksonian analogue to the “men in women’s clothing” courtroom strategy that Milton Clarke also employed while encountering white Whigs when


85 On Clarke’s “white slave” identity, see Lewis Clarke, A White Slave’s Experience,” Signal of Liberty, Jan. 9, 1843; J. Thompson, “Progress of Freedom,” Emancipator, Aug. 7, 1844; and J. Milton Clarke, “Story of a White Slave (1900),” in Wilbur Siebert Underground Railroad Collection, Ohio Historical Society, Columbus, Oh.. On Clarke’s “rescue” and his defense by Chase with potential assistance from another attorney named James Paine, see Lewis and Milton Clarke, Narrative of the Sufferings of Lewis and Milton Clarke (Boston: Bela Marsh, 1846), 84; Eber Howe, Autobiography and Recollections of a Pioneer Printer (Painesville: Telegraph, 1878), 51-53.
assisting another slave family’s escape. It was a way to obtain protections that would otherwise be denied to him if he instead slipped into the persona of Joe Spencer and instead self-identified as a confident, independent, law-minded black man.

For Chase, insisting that clients of color like Milton Clarke could be treated as “white” before an Ohio tribunal became a powerful thought experiment. If Chase’s African-American clients—Cincinnati’s stewards, barbers, tradesmen, and chambermaids—were capable of controlling their own lives if treated as “white,” the only thing apparently holding them back were laws consigning them to a marginal status if designated as “black.” Like slavery itself, which by the 1840s Chase saw as a regulatory social institution persisting solely by “force” based on an “inferior law” which violated “the law of creation,” Chase viewed statutes restricting the access of his free clients of color within the Ohio-Mississippi River economic system as fundamentally inconsistent with the true spirit of American law. As he had outlined as early as his preface to his Statutes of Ohio in 1832, Chase saw Ohio’s constitution as affirming principles of governance introduced in the Northwest Ordinance of 1787, a piece of federal legislation whose earlier drafts came from the pen of Thomas Jefferson, author of the Declaration of Independence, a document which Chase in turn maintained stood for “equal rights for all.” For Chase, Jefferson’s theory of “equal rights,” incorporated into the state’s constitution and a bedrock element of Jacksonian jurisprudence, ran throughout a proper reading of Buckeye law, even if some of the restrictions contained within the state’s “Black Laws” were in fact also incorporated into the text of the state’s constitution itself. In his 1845 address to Cincinnati’s “colored citizens” following Hoppey, Chase portrayed such provisions as defective features that should be removed. “True Democracy makes no enquiry about the color of the skin or the place of nativity, or any other circumstances of condition,” he asserted. “In communities of men it
recognizes no distinctions founded on mere arbitrary will.”

Three years after *Hoppess*, in a suit argued before Judge Matthew Birchard (a former Jacksonian appointee to the General Land Office and a longtime Democrat), Chase used what he called his “Jeffersonian” interpretation of Buckeye law to attack the state’s Black Laws, in the process eviscerating Nathaniel Read’s assertion that the Buckeye State was merely “a government of white men.” The occasion was *State v. Woodson*, a debt collection case involving John Woodson. Here Chase’s client was technically the estate of Woodson, the “mulatto” master carpenter responsible for incorporating John Mercer Langston into Cincinnati’s black community in 1837, a man responsible for helping to build and maintain several of the commercial and philanthropic institutions of Cincinnati’s Black Commons. When he died in 1848, Chase defended Woodson’s holdings from the claims of unnamed white creditors in a probate suit brought by the state of Ohio itself. Similar to his approach in Milton Clarke’s case, Chase sought to deploy “mulatto” testimony as part of his defense, despite laws barring the use of such evidence against “parties” that were deemed white. “Is ‘the state’” (the actual opposing party in the Woodson probate suit) “equivalent to “a white person?” Chase asked rhetorically, answering the question himself: “We think not.” Instead Ohio’s constitution endowed all people with “certain natural, inherent, and inalienable rights,” invalidating any efforts to exclude “any entire class of persons” on “grounds of race or color.”

---

86 See Chase, *An Argument for the Defendant, Submitted to the Supreme Court of the United States... in the Case of Wharton Jones v. John Vanzandt* (Cincinnati: Donogh, 1847), 215; Letter from Chase to Lewis Tappan, Mar. 18, 1849, Reel 5, Chase Papers, LC (slavery as solely persisting by “force”); Chase, *Statutes of Ohio and of the Northwestern Territory, Vol. 1* (Cincinnati: Fairbank, 1833), 1-93; Jefferson’s Birthday Speech, Mar. 29, 1839; “Lecture on Slavery, Boston, 1854-1855,” Box 17, Chase Papers, HSP; Memo on the Ordinance of 1787, Box 20, Chase Papers, HSP (connections between the Declaration of Independence and Northwest Ordinance); Chase, *Address and Reply of a Presentation of a Testimonial to S.P. Chase by the Colored People of Cincinnati* (Cincinnati: Derby, 1845), 22 (“mere arbitrary will”).

In December 1848, Chase made this argument before a white Democrat and won, presenting it as another Jacksonian triumph rooting out “Aristocratic” principles alien to the founding texts of the Buckeye constitution. By this point, his style of constitutional interpretation, associated with the fledgling “Free Soil Party” and designed to persuade Whig and Democratic audiences on different grounds, was still a minority view held statewide. But briefly, in the fall of 1848, it in fact controlled the balance of power within Ohio’s statehouse. “The antislavery feeling has assumed a strong hold upon the Ohio Whigs,” noted the Cincinnati lawyer Rufus King earlier that year, “and they have become so indignant at the long train of villainy and commotion which issues… from the domestic institution that they wish the question of its further extension to be made at once the issue.” The Whigs, however, were one vote away from controlling Ohio’s legislature, as were their Democratic opponents, whose main concern was supposedly appointing Jacksonian judges to the state bench. In between were two Free Soil representatives (“one of them Whiggish, one of them Locofo-ish”) supposedly taking direction from Salmon P. Chase, who dangled Free Soil votes in exchange for an agreement to repeal the state’s Black Laws and a side deal to select Chase himself to serve as the state’s next U.S. Senator. In November 1848, it was the Ohio Democracy that took the bait, agreeing to Chase’s terms. Leading the way was Nathaniel C. Read, who personally swore in the state’s Democrats and Free Soil lawmakers to effect the legislative bargain, apparently believing that this would also help to save his own legislature-appointed job.88

As Rufus King saw it in early 1849, Chase’s maneuvers in the fateful election of 1848, in

88 See Rufus King to Mrs. Peters, June 6, 1848, King Family Papers, Cincinnati Historical Library and Archives, Cincinnati, Oh. (“the antislavery feeling”); Stephen E. Maizlish, The Triumph of Sectionalism: The Transformation of Ohio Politics, 1844-1856 (Kent: Kent State, 1983), 121-146; (detailing Chase’s election); Carrington T. Marshall, Courts and Lawyers of Ohio, Vol. 1 (New York: American Historical Society, 1934), 244 (Read’s role).
which he successfully triangulated Ohio’s Whig/Democrat divide through a combination of back
room deals and fusionist constitutional rhetoric, came at a steep cost. His triumphs that year,
King believed, “will always carry an odor… which will not fail to remind him that they are not
the genuine article.” In the courtroom, Chase had been forced to cast his African-American
clients in unusual roles, presenting them as bound “apprentices” when some of them were wage-
earners, as women when some of them happened to be men, and as “white” when they otherwise
may have been seen as being black. Soon, as a U.S. Senator, Chase was forced to use similar
sleights of hand when arguing the cause of equal African-American rights under national law.
Meanwhile, back in Cincinnati, Rufus King groused about “the glorious ocean of Topsy
Turveyism” that Chase’s legal and political maneuvering had already unleashed.89

As of 1848, Chase may have briefly won over many powerful white Ohioans, persuading
some Whig legal thinkers that he was not a lawless agent of the “mob,” and partially convincing
some Jacksonians that supporting the claims of people of color could enhance the cause of white
“equality’ under the law as well. But even though Chase entered the U.S. Senate as a “Free
Democrat,” his Whig past and the nature of his election still made it hard for him to claim that he
was in fact representing the entirety of the Buckeye State, especially the many unreconstructed
racists within his own putative party. Moreover, nothing within his emerging agenda did
anything to win over people like Francis Troutman, white Kentucky lawyers who accurately
understood that the property claims of Bluegrass families were under collateral Buckeye attack
eyevery time they approached the Ohio River with their slaves. As of 1849, with Zachary Taylor, a
slaveholding former Kentuckian in the White House, it was the perspective of this final group
that seemed to be firmly in control of Washington, D.C., the place that Chase was heading as a

89 See Rufus King to Mrs. Peters, Mar. 11, 1849; King to Mrs. Peters, July 15, 1855, King Family Papers,
CHLA (“ocean of Topsy Turveyism”).
newly-minted Senator. And as Chase began his journey over the Alleghenies, it was people like Francis Troutman, spotted a few weeks after the conclusion of the Crosswhite affair hunting a new batch of slaves, who remained behind. Back in 1848, Henry Bibb had felt empowered enough under U.S. law to testify against Troutman in the *Giltner* case. But by the early 1850s, when Bibb stood on a wharf and welcomed free people of color like Martin R. Delany as they descended the plank from river steamers like the *General Scott*, he did so from the enhanced safety of the Canadian side of the shore. There, rather than reciting Jefferson’s Declaration of Independence, the former slave from Shelby County, Kentucky preferred to offer the following counter-salute to his freshly-arrived black brethren: “God save the Queen!”90

---

Chapter 5 –
The Fabled Styx

The Ohio River was changing for the worse, its dangers increasing in strength, and something had to be done. This was the conclusion of Allan Campbell, a civil engineer reporting to the U.S. Army Bureau of Topographic Engineers, as he surveyed a stretch of water downstream from Louisville in December 1844. There, a few minute’s ride below Anderson Creek, a tributary stream where Abraham Lincoln once earned tips as a ferryman during the late 1820s, lay a formidable natural feature known as “Anderson’s Bar,” a growing underwater mountain of sand. Barely noticeable in Lincoln’s ferrying days, the bar now stretched across the river, nearly blocking the six mile passage from the river town hamlet of Troy, Indiana to Lewisport, its tiny sister town on the Kentucky side of the shore, during the low water season. Within a few short years, Campbell wrote, the Bar had become “a serious obstruction to navigation.” In his survey of the “lower Ohio River” between Louisville and Henderson, Kentucky (a segment about 210 miles long), Campbell counted forty-two similar “bars or shoals” requiring some form of immediate fix. For Campbell, the “plan of improvement” was obvious: the flow of water between the Indiana and Kentucky sides of the river should be “equalized, the crest of the shoals worn off, and any further depositions of sands prevented.” This work, he asserted, should commence right away.¹

Shortly after receiving Allan Campbell’s report on the lower Ohio River, the river explorer and U.S. Army engineer Lt. Col. Stephen H. Long forwarded its contents to his military superiors in Washington, D.C., supporting Campbell’s plan. But others in the nation’s capital

likely disagreed with Long’s assessment. Campbell’s specific plan to “equalize” the flow of water at Anderson Bar and similar points required the construction of dams on both sides of the Ohio, at a total estimated cost of $43,759 to the U.S. Treasury. The nation’s incoming President, James K. Polk, had run on the platform that such expenditures for “internal improvements” were sources of political corruption, and nearly always unconstitutional. In the past, to avoid vetoes by Polk’s mentor Andrew Jackson on similar grounds, Army engineers had generally restricted their inland river work to removing tree debris, projects that left a smaller footprint, at less cost. As Polk settled into office in 1845, it quickly became clear that even these meager expenditures were on the way out; Long’s Federal “snagboat flotilla” was officially mothballed that year. It would be another eight years until the growing sand at points like Anderson’s Bar made another appearance in an Army report, this time in an assessment penned by Stephen H. Long himself. The entire 400 mile segment of the Ohio below Louisville, Long noted, was “obstructed at numerous points by shoals occasioned by sand and gravel bars.” Rather than repeating Campbell’s suggestion, he now suggested a cheaper option: the whole river should be dredged.  

By early 1856, the sand was continuing to roll into Anderson’s Bar, unimpeded by any form of human resistance, pinching the navigation channel into a narrow prism running at zig-zags against the Kentucky side of the shore. Around 4 a.m. on March 8, 1856, with ice still

---

floating on the river at the dawn of the new steamboating season, the inevitable happened. Overloaded with 40 passengers and 700 tons of pork and dairy products from upstream, the steamboat *Henry Lewis* was “hugging the Kentucky shore,” heading to its destination of New Orleans when its pilot James Patterson heard a loud whistle rising from a dark spot on the river. The sound belonged to the *Ed Howard*, a smaller vessel based in Nashville that was making a special trip to deliver sugar and molasses upstream. As documented in newspaper reports, neither boat was visible to the other until they were less than 100 yards apart; the sandy mountain at Anderson’s Bar had been blocking the *Howard* entirely from Patterson’s view while the *Lewis* “was so much covered up with freight around decks and on the roof” that Doc Wood, the pilot of the *Howard*, could not see the *Lewis*’ lights. Both Patterson and Wood tried to steer their respective vessels to safety, but the two men got their signals crossed. The *Howard*’s single whistle blow, indicating a right hand turn, was answered by a double whistle blow from the *Lewis*, announcing a turn to the left. This only tightened their collision course. Soon the bow of the *Howard* rammed into the starboard quarter of the *Lewis*, crushing into her hull, supposedly “square head on.”

According to the Louisville *Courier*, the collision of the *Ed Howard* and the *Henry Lewis* triggered “the wildest scene of terror and excitement… ever conceived of or experienced on the Western waters.” Upon impact, the main cabin of the *Lewis* lost part of its wooden supports and buckled under the pressure of its freight while catching fire. As a commercial venture, the *Lewis*’ trip from Cincinnati to New Orleans was a total loss. And the destruction also came with a human toll. Dodging burning crates and timber and falling livestock, at times breaking themselves free by cutting holes in the deck’s roof, some passengers and crew were able to climb

---

to the vessel’s upper “hurricane deck,” the only portion of the steamer that still remained above the water. A few others thrown overboard managed to cling to “boxes, coops, barrels, and other floating articles” above the Ohio, watching as the crew of the Howard and the river itself quickly extinguished the Lewis’ flames. But within forty five minutes, by the time all of the survivors of the Henry Lewis were gathered up and put onboard the Howard, somewhere between ten to twenty-five people were dead, including six passengers and an uncertain amount of engine room attendants, at least some of them likely of African descent. “They shipped at Cincinnati,” reported the Courier, noting this latter group. “We did not learn their names.” \(^4\) The Courier prefaced its entire account noting that the collision itself was just the latest “terrible steamboat disaster on our waters.” In fact, rather than its cause or its aggregate human or commercial impact, what made it especially noteworthy was the identity of one of the people on its casualty list. Of the three children that lost their lives, one was named Priscilla, the infant child of one Margaret “Peggy” Garner. Described by contemporaries as a “mulatta” woman in her early twenties, Peggy Garner was at the time one of the most famous people within the Ohio River Valley, and perhaps within the nation.\(^5\)

When the Louisville Courier decided to print the grisly details of the steamboat collision, it was the drowning of Peggy Garner’s child that earned headline coverage. Born and raised on a plantation in Boone County Kentucky a short carriage ride from the river, Priscilla’s mother Margaret “Peggy” Garner was herself the daughter of an enslaved woman named Mary and quite possibly a white man named John Gaines, her putative master. In late January 1856, alongside

---

\(^4\) See “Awful Steamboat Disaster,” id.

nine other slaves from a different plantation, Peggy and her mother left their home and crossed a frozen Ohio River on foot with Robert and Simon Garner, their plantation husbands, and Peggy’s four small children in an attempt to escape bondage. While their nine companions made their way further north, the Garners stopped overnight at the riverfront home of Joseph Kite, a black kinsman and petty trader supporting an extended family on the Cincinnati side of the river. Through Kite’s nephew, the Garners had been advised by the white abolitionist river trader Levi Coffin to move further upland, “to a settlement of colored people in the western part of the city.” But before making good on this plan, their location was somehow revealed to federal court officers and Archibald Gaines, the son of Peggy’s now-deceased master, who burst into the Kite home, demanding the Garner family’s return. As Robert Garner welcomed the white intruders with a hail of bullets, his wife Peggy retreated to a back room of the Kite residence with her children, vowing to kill “every one of them” rather than see them being sent back to Kentucky as slaves. First, she took up a knife to slash the throat of her three-year old daughter Mary, who bled to death. Then she raised a shovel and bashed the skull of her infant daughter Priscilla, who managed to survive.  

Eventually apprehended at the Kite home, the remaining living members of the Garner clan spent nearly a month in a Cincinnati prison while white men from Ohio and Kentucky haggled in Cincinnati courts about Peggy Garner’s fate. Was this “Modern Medea” to stand trial as a human being for murder in Ohio, or was she instead to be transferred to the possession of Gaines, her Kentucky master, under the national Fugitive Slave Act of 1850 as an article of Bluegrass “property”? Judge Humphrey Leavitt of the U.S. District Judge for the Southern

---

District of Ohio effectively decided the issue on February 28, 1856, granting a habeas corpus motion ordering Hamilton County’s sheriff to release Peggy and the other Garner adults into the custody of a U.S. marshal, who was further empowered to transfer the Garners into the possession of Archibald Gaines of Kentucky.

Within an hour of Leavitt’s ruling, the Garners were carried back across the Ohio and placed on a series of railroad trains to Louisville just as the river’s winter ice began to melt. In Kentucky’s largest city, they were then placed onboard the Henry Lewis. To reduce their flight risk and to increase their resale value further downstream, the plan was for them to be shipped to another plantation owned by the Gaines family in Arkansas. But the sudden demise of the Lewis near Anderson’s Bar disrupted this plan, at least when it came to Peggy’s youngest child, who drowned. According to some, Peggy threw “‘Cilla” into the river shortly after the collision. According to others, the infant was lost when Peggy tried to save them both from the sinking vessel. By most white press accounts, Garner was supposedly relieved to see the river finish the work that she had started a month before. “The mother exhibited no other feeling than joy at the loss of her child,” the Louisville Courier claimed. For William Lloyd Garrison’s Liberator, young Priscilla’s death was a fitting denouement to a dramatic “Fugitive Slave Case” featuring a plot that could just as well have been “wrought by some master of tragedy.” Indeed, for some white abolitionists, Peggy Garner came to be remembered as a tragic antihero of the late antebellum age, a canonical entry in the peculiar institution’s list of victims. Over time, the filicides bookending her story would even be transformed in the collective memories of some white abolitionists into a rational choice: by ushering Mary and possibly Priscilla to their deaths,

---

7 See “In the matter of Simon Garner, et. al,” order dated Feb. 28, 1856, in Reel 9, Salmon P. Chase Papers, LC (a handwritten copy of Leavitt’s decision); Mark Reinhardt, Who Speaks for Margaret Garner? (Minneapolis: Minnesota, 2010), 133-6 (press clippings documenting ‘Cilla’s last moments).
Peggy Garner had allegedly saved her two young light-skinned daughters from unspeakable horrors had they lived.  

Closer in time and location to Priscilla Garner’s death, however, Salmon P. Chase received the latest news from Anderson’s Bar in Columbus Ohio with a heavier heart. After six frustrating years as the Buckeye State’s junior member of the U.S. Senate, Chase had returned to Ohio to run for state Governor in 1855 under the banner of the new Republican Party, winning election despite losing more than 80% of the vote in his Cincinnati hometown. As he later recalled to a campaign biographer, he had been in the governor’s chair for less than fourteen days when he was visited by a Hamilton County probate judge notifying him about the Garner family’s escape and arrest, and the ensuing standoff between the city’s sheriff and John L. Pendery, the “Slave Act Commissioner” seeking to transfer the Garners back to Gaines under federal law. Although Chase still maintained that any action by national office-holders such as Pendery was invalid as a matter of U.S. constitutional law, he felt constrained, both politically and legally, in his response. As he was ready to admit, there was “an antislavery and a proslavery construction of the constitution.” While the former was “based upon the idea that all men [were] persons” and interpreted in favor of freedom, the latter rested upon the alternate view that “men may be property.” For many of his white constituents in the Queen City, adopting as they did this second interpretive view, any decision against the ownership claim of the Gaines family in the Garners “would be regarded as little better than treason to the Constitution & the Union.”

---


9 See Letter from Joseph Cooper to Gov. Salmon P. Chase, Mar. 11, 1856, Reel 9, Chase Papers, LC (receiving news of *Lewis* collision); Letter from Chase to John T. Trowbridge, Mar. 13, 1864, Box 14, Chase Papers, HSP (Chase’s later recollection of the Garner episode); Letter from Chase to “My Dear
As a result, Chase largely decided to keep the Garner crisis in Cincinnati at arm’s length. While he pledged that any decision taken by the Queen City’s state legal officers (its probate judge, sheriff, and Prosecuting Attorney) “would be sustained by the whole power of the Executive,” he stressed that the decision on whether to press a grand jury indictment against Peggy Garner (as a way to keep her physically within the state) was solely theirs to make. Indeed, it was only after the Garners returned to Kentucky under Judge Leavitt’s order that Chase took more decisive action, sending a “requisition” document to Kentucky’s governor pleading for Peggy Garner’s return as a “fugitive from justice” from the criminal law of Ohio. Even here, however, Chase agonized about his role, attaching a supplementary legal analysis by Joseph Cox, Hamilton County’s Prosecuting Attorney, suggesting that the Garners did not fit the legal definition of “fugitives” because they had not left Ohio by their own free will; instead, they had been spirited out of the state through the “overwhelming force of the United States marshal.” To this letter, Chase also attached Cox’s different explanation for why Peggy Garner’s case was important to white Ohioans. Rather than accepting how Chase viewed the case – as a referendum on whether the Garners were entitled “to equal rights and equal efforts for their protection” - Cox instead used white racial fear to frame the debate. If Peggy Garner were not returned to Ohio to stand trial for the murder of her daughter, Cox claimed, this would send the signal that “the citizens of this state hold their lives and property at the mercy of neighboring slave states, whose slaves may cross the line, burn and destroy our property and take our lives.” For Cox, *l’affaire Garner* tested to what extent Ohio possessed the necessary governmental

Sir,” Mar. 15, 1849, Reel , Chase Papers, Reel 6, LC (“antislavery and a proslavery construction of the constitution”).

309
authority to steel her borders against black criminals in the face of “any mere claim of private property” asserted by the white residents of an adjacent jurisdiction.  

Chase and Cox’s last-ditch appeal to white prejudices as a way to recover the Garners from bondage ultimately proved unsuccessful. Kentucky’s governor granted Chase’s requisition request in early March, but only after Peggy and her family had already been placed on the Henry Lewis and shipped downstream. Meanwhile, negotiations for the purchase of Peggy Garner’s children never proceeded beyond an introductory phase. In April 1856, when Chase received word that Peggy Garner may have briefly returned to Kentucky directly across the river from Cincinnati, he decided not to issue a new request for her return. The episode had already demonstrated his institutional limits as Ohio’s highest state official, circa the mid-1850s, to disrupt Garner’s status as a Kentucky slave. “I could not prevent this any more than I could prevent the commission of other outrages,” Chase insisted a few years later. “I had no power other than moral.” In the end, the legal hand Chase had been dealt by Congress and Judge Leavitt forced him to defer to Archibald Gaines’ understanding of Peggy Garner’s status under Bluegrass law. At best, he instructed Cincinnati’s Prosecuting Attorney in April 1856, Garner “sustain[ed] in Kentucky the double relation of slave and fugitive from justice.” In her latter status as an alleged child murderer, she could perhaps still be brought to Ohio. But that was only if Archibald Gaines first opted to make her available for surrender. “In the former relation,” as a Kentucky slave, Gaines still possessed the monopoly of “control.”

10 See Letter from Gov. Salmon P. Chase to Gov. Charles Morehead, Mar. 4, 1856 and Letter from Joseph Cox to Gov. Chase, Feb. 29, 1856, Reel 9, Chase Papers, LC.

11 See Letter from Gov. Salmon P. Chase to Joseph Cox, April 9, 1856, Reel 9, Chase Papers, LC (deciding against issuing a new “requisition” and monopoly of control); Chase to John T. Trowbridge, Mar. 13, 1864, Box 14, Chase Papers, HSP (“no power other than moral”).

310
From a strictly legal perspective, Chase regarded the entire Garner episode as a matter of “keen humiliation,” a total repudiation of his understanding of how the common law and the nation’s constitutional structures worked together to produce antislavery results. He had watched, for instance, as the agents of a slaveholder used a writ of habeas corpus - the ancient procedure that Chase once used as a weapon on behalf of self-emancipating people of color like Milton Clarke or Mary Towns – to transfer Peggy Garner into the custody of U.S. court officers as a Kentucky slave. For Chase, this was a “manifest abuse” of the Great Writ, converting it into a common law “summary replevin” to return an article of lost property. Moreover, the fact that this transfer was ordered and carried out solely by federal officials acting under the color of a national statute that Chase considered “unconstitutional and void” (the Fugitive Slave Act of 1850) added insult to Chase’s injury. So too did the fact that Chase was forced to turn to the “requisition” process that governors in Kentucky and Virginia often used to demand the return of slaves that had entered the Buckeye State. Kentucky’s Governor only granted his request, Chase suspected, to make a “precedent of constructive escape,” lowering the standard of proof on the question as to whether future people of color departing Kentucky also qualified as “fugitives” under national law.

On May 15, 1856, Governor Chase received word from Joseph Cox that Archibald Gaines had again slipped out of the greater Cincinnati area by steamboat, and that Peggy Garner had been taken downstream once more, this time to New Orleans. By this point Chase was liable to look at America’s legal landscape and to come to the same conclusion as Allan Campbell when he surveyed the waters of the Ohio in late 1844: things indeed were getting worse. Of particular concern was the role that national institutions had played to strengthen Gaines’ claim over Garner’s body and labor-time. While Army engineers may have been limited in what they
could accomplish on the Ohio by a “strict construction” of their own authorities, the national officials at the center of the Garner episode had taken affirmative steps to materially alter the outcome of Peggy Garner’s case. Less than a decade from Chase’s selection as Ohio’s U.S. Senator, it would have been impossible for Chase or his supporters to believe that one of the key components of his late 1840s plan – “the denationalization of slavery” – was any longer a realistic goal to pursue. Instead, as Chase argued several years earlier, under the administrative framework of a revised Fugitive Slave Act passed during his time in Congress, the nation was now “filled with swarms of federal officers acting upon the most delicate questions of personal liberty and State Sovereignty, in manifest violation of the plain sense of the Constitution.”

According to other members of her family, Peggy Garner survived for just a few more years, dying at “Gaines’ Landing” (the Gaines family’s Arkansas plantation) from typhoid fever in 1858. At the time, it would have been understandable for Governor Chase to believe that it was perhaps inevitable for her story to end this way. As the historian Walter Johnson has recently suggested, the physical dangers that people of color like Garner routinely faced in antebellum river communities - from sexual violence to disease, from steamboat disasters to infanticide – were the product of a particular legal culture pervading the greater Mississippi River Valley during the mid-1850s. For a moment in 1856, it could indeed be said that the same U.S. Constitution which could do nothing to dredge the sand at Anderson’s Bar had also forced Priscilla Garner to be placed on the Henry Lewis with a mother who had already tried to kill her

---

once, further conveying Priscilla on a collision course with the *Ed Howard*, a steamer that would be later enlisted in the Confederate Navy under the *nom de guerre* of *The General Polk*.13

And yet, a different set of interstate regulatory institutions, some private and some public (but all generally more agnostic to questions of an alleged slave’s personal status) were also beginning to govern the Ohio River at the time of Priscilla and Peggy Garner’s deaths in 1856. Within a few months, for instance, the *Henry Lewis* itself was back on the water, and would stay on national enrollment lists through 1860. Its physical and financial resuscitation began shortly after it sank, when private insurance agents and national steamboat inspectors converged at the scene to take stock of the situation. Taking the dangerous conditions at Anderson’s Bar as a settled “peril of the river” that had been the root cause of the collision, insurance adjusters allowed most of the value of the lost cargo to be reimbursed while also covering the vessel’s repairs. National steamboat inspectors also played a role in the *Henry Lewis*’ recovery, taking testimony from the crew of both vessels pursuant to a new federal steamboat safety law passed in 1852. After visiting Anderson’s Bar, they also opined that more could have been done to avoid the collision. If the channel near the collision site could not be widened, new nationwide “pilot regulations” could be amended to require approaching vessels to turn off their engines when approaching each other “in narrow channels or in the night.”14 In short, by the time Salmon P. Chase assumed his role as Lincoln’s Treasury Secretary in 1861, powers were being discovered within both public and private law quarters to alter how labor was performed within the greater

---


Mississippi River Valley, from Joseph Kite’s Cincinnati to Peggy Garner’s final resting place downstream.

**

For people of African descent living within the Ohio River corridor, however, many of the initial hard lessons learned by Governor Chase during the Peggy Garner episode in 1856 would have seemed like old news. Regardless of any changes occurring within the text of Ohio state law, national institutions still constituted a “Mountain of Prejudice” within America’s federal constitutional order, and in the end they stood supreme. This was the assessment, at least, of John Mercer Langston, future dean of the Howard University School of Law, as he stood before a crowd in Columbus in 1850 to deliver an address he titled “Actions of the Federal Government in Behalf of Slavery.” Twelve years after being lifted out of an Ohio canal boat by leading architects of Cincinnati’s Black Commons, the free-born, light-skinned Langston was at the time a 22-year old African-American graduate student at Oberlin College involved in the political struggles led by his older brothers from their base in central Ohio. Before his audience (no doubt largely white), Langston spent the bulk of his time reading off a list of the many ways that the central government headquartered in Washington, D.C., “which in the language of the Constitution was formed to establish justice and secure the Blessings of Liberty… perverts the objects of its origin.” There was, for instance, the fact that slavery was tolerated within territories under exclusive federal jurisdiction, including the District of Columbia. And across the Atlantic, there was the “limited suppression” of the African slave trade by U.S. ships of war. This mirrored the inaction of the national government at the domestic level, where this same trade was granted “toleration” and “protection” when it passed across state lines. Moreover, there was the work of the U.S. Department of State, which seemed to be bureaucratically
obligated to promote the interests of the South’s master class. In negotiations with officials in Canada and Mexico, for instance, federal officers pressed claims for the return of runaways and for the compensation of U.S. slaveholders for the value of slaves whose service was permanently lost. The disregard that federal officials showed to the interests of enslaved African-Americans as fellow human beings, Langston noted, was also carried over to their treatment of free people of color. If the body and labor-time of Langston himself were ever alleged to be a white person’s property, he would receive no jury trial to litigate his status at the federal level, per the “constitutional and wicked” provisions of the nation’s Fugitive Slave Act. And if he tried to document through the press southward of the Ohio River, Langston’s communications would likely be suppressed with the active support of U.S. postal agents. 15

After finishing this list of national abuses in February 1850, Langston turned to his audience and asserted that it brought him “to the immediate consideration of the rights and claims of disfranchised Americans in your midst.” Generally denied access to the jury and ballot box, he asserted, Langston’s African-American colleagues had little ability to influence government policy as a way to equalize their status. Such wholesale exclusion from America’s legal and political process, he argued, was a violation of U.S. constitutional law. According to Langston, all U.S.-born people of color were entitled to be considered full members of the American polity. In fact, he claimed, they were “citizens” of the United States on at least two grounds. First, since a vast majority of them had been born in the United States, they were deserving of “citizenship in the government[s] of [their] birth.” Second, they had contributed

their “capital” to the support of their government, “both general and state.” Anticipating the counter-argument that slaves and many free blacks possessed little or no accrued wealth of their own to support themselves, Langston clarified what he meant by this. “Labor demanded for which capital must be paid is equal to capital, and far more desirable,” he asserted. By building the nation’s fortifications during war and peace, by clearing out the nation’s swamps, and by cultivating the sugar and cotton that benefited the country’s balance of trade, it was clear to Langston that “such labor has been given by the colored people.” By asking for equal treatment under the national institutions they had helped to bring into being and then to protect, all they were demanding was a fair return at the back end of their investment.16 Here Langston was once more taking the Ohio River’s radical Lockean theory of property appropriation and its “equitable commerce” supplement across the color line, this time asserting familiar equal “rights and claims” on a national stage. If, he argued, his enslaved black colleagues were already awarded representation in the U.S. Congress (albeit on a 3/5 basis, in a manner determined by whites generally voting against African-American interests), free people of color within the “Free States” should be entitled to a more direct form of representation as well.17

Once equipped with voting power, Langston envisioned the political participation of free African-Americans as proceeding along two parallel tracks. On one hand, they could seek to “convert our friends and relatives in the South.” On the other, they could “elect to Congress men who will stick to Northern interests.” At the time, it could be argued that his second action item had already been partially achieved in Ohio when, as described in the previous chapter, Salmon P. Chase had been selected by Ohio’s legislature as Ohio’s junior U.S. Senator in 1848. Like

16 See Langston, “Action of the Federal Government on Behalf of Slavery,” Reel 1, Langston Papers, LC.
17 Id. This speech and Langston’s stated strategy is placed within the context of Langston’s activist politics at the time in William and Aimee Lee Cheek, John Mercer Langston and the Fight for Black Freedom, 1829-65 (Urbana: Illinois, 1989), 130-168.
Langston in central Ohio courtrooms a few years later (Langston would be sworn in to the bar in 1855 on the basis of the white blood in his family tree), Chase stood out on the Senate floor in Washington, D.C. “I accord fully with that party which is known as the Free Democracy of the United States,” Chase informed his colleagues during an 1850 speech. Also labeled by Chase as “the Independent Democracy” or “the True Democracy,” Ohio’s junior Senator imagined his political coalition as continuing the work of the earlier Liberty and Free Soil Parties, insisting that egalitarian Jacksonian principles in “money & trade” necessarily led from a fight against despotism of “the Money Power” and “the Monopoly Power” to an opposition of “the Slave Power” as well.18

As Langston would also have it, Chase’s antislavery understanding of the U.S. Constitution placed labor in all its forms on an equal footing with capital. Indeed, as a matter of “logical deduction,” Chase told a white audience in 1849, he could find no consistency between the Democratic doctrine of “no special privileges” and contrary interpretations of the law “making property of our fellow men.” To the extent that such laws existed at a state level, Chase reminded his listeners, they had no explicit support in the text of nation’s founding charter, a document that also supposedly incorporated Jefferson’s Declaration of Independence into its original meaning. Here, with a Jeffersonian “doctrine of equal rights” supposedly undermining any support for maintaining “patriarchal relations” between differently-situated people as a matter of national law, it was also significant that the document’s text adopted the euphemistic

term “persons held to service” when describing slaves rather than affirmatively identifying them as “property.” As Chase had first argued for Matilda Lawrence in 1837, this meant that a black person alleged to be someone’s slave was still entitled to the same protections of the Bill of Rights, including the admonition that their liberty could not be deprived without the same “due process of law” entitled to white laborers. As a result, under the strict construction of the Constitution championed by Chase’s so-called “Free Democracy,” national institutions were supposedly unavailable to buttress the property claims of slaveholders beyond their own jurisdiction of residence.¹⁹

In short, the 22-year old John Mercer Langston’s criticism of the Federal government was completely consistent with the views articulated by Ohio’s junior Senator Salmon P. Chase at the time: slavery was supposedly constitutionally impossible in areas under “exclusive national jurisdiction” - from American vessels plying the high seas to the nation’s western territories. Any legislation passed by the U.S. Congress that attempted to establish an alternative set of facts, including national fugitive slave laws, was ultra vires and unworthy of nationwide recognition. Instead, within its other spheres of Constitutional authority, Congress was under a competing affirmative duty to “denationalize” slavery as a commercial institution through positive legislation. In theory, as Chase recorded in his own notes, the value of slaves held within the Southern states could also be taxed by the general government pursuant to its powers to raise revenue. And, as his colleague Timothy Walker also once instructed, the interstate slave trade

could be restricted under Congress’ power to regulate commerce. Remarkably, although the
Fifth Amendment also ensured that “property” must not be deprived without “due process of
law,” the supposedly uncertain status of slavery as a nationally-recognized property regime,
coupled with Congress’ allegedly regulatory powers within the commercial arena, also meant
that Chase’s Bill of Rights essentially placed slaveholders on an equal constitutional footing with
their slaves, awarding them no special privileges or protections.20

Nevertheless, while measures to tax or regulate slavery through congressional legislation
were theoretically possible under Chase’s reading of the U.S. Constitution, these measures were
never put into direct practice during his 1850’s U.S. Senate run. Instead, seven months after
giving his “Actions of the Federal Government in Behalf of Slavery” speech, John Mercer
Langston and his brother Charles received a dour update from Washington, D.C. sent by Chase
himself, confirming Langston’s bitter assessment of the national scene only a few months earlier.
At the time, the Langston brothers were brainstorming “the best course to be pursued for the
attainment of our political rights and elevation” in advance of organizing and attending a
convention of Ohio’s “colored citizens” in Columbus. Among the U.S. white population, they
asked in a September 1850 canvassing letter to Chase, did the “public sentiment of the country”
now preclude the idea of black equality, even within the Buckeye State? If so, what were the

20 See id.; Letter from Chase to Henry B. Stanton and Elizur Wright, Sept. 23, 1845 in The Salmon P.
Chase Papers, Vol. 2 – Correspondence, 1823-1857, ed. John Niven (Kent: Kent State, 1994), 119-120;
Timothy Walker, “Matilda Johnson, ex parte, moot court, Cincinnati College,” ca. 1838, Box 3, Timothy
Walker Papers, Cincinnati History Library and Archives, Cincinnati, Oh. (interstate slave trade); Undated
Speech beginning “Civilized man is everywhere a taxpaying animal,” Box 17, Chase Papers, HSP (tax
power). Moreover, as Chase allowed in 1851, to the extent that holding property interests in slave bodies
or labor was indeed recognized at the national level, the Fifth Amendment already granted Congress the
power to abolish slavery outright through its Takings Clause, which would permit legislation that would
“take” the slaves of Southern whites (for the “public purpose” of enhancing human liberty) while
awarding former slaveholders “just compensation.” See Chase “Speech of Senator Chase, Delivered at
Toledo, Ohio, May 30, 1851, Before a Mass Convention of the Democracy of North-Western Ohio,” Reel
28, Chase Papers, LC.
prospects of asking Congress for land within the nation’s “newly acquired territories,” reserved for the settlement of free people of African descent? And, if this was not currently possible, should they instead “quit the land of [their] birth and seek asylum in a foreign clime”? Chase responded that they would do well to pursue this latter option, recommending Jamaica, Haiti, or Liberia as possible destinations. Here the Senator was careful to warn that his own conviction that the Declaration of Independence had long ago established a democracy recognizing “no classes or privileges” between people was still a minority view among the nation’s white citizens.\(^\text{21}\)

As early as 1849, John Mercer Langston had claimed that unbending prejudice “against the colored man” made the very act of his staying within the United States, his country of birth, a humiliating prospect. As Chase’s letter to him now affirmed, Congress’s legislative activity during the fall of 1850, culminating in the so-called “Compromise of 1850,” only seemed to support the imminent necessity of leaving the United States. Indeed, the bulk of the measures contained within that statutory package repudiated Chase’s legal theories. Rather than being an unconstitutional deprivation of liberty without “due process of law,” the Fugitive Slave Act of 1793 was strengthened by authorizing direct enforcement by national officials. Meanwhile, the Wilmot Proviso – modeled on the language of Chase’s beloved Northwest Ordinance and providing “neither slavery nor involuntary servitude” would ever exist in territories that were formerly claimed by the Republic of Mexico – was roundly defeated. Instead, the possibility existed for multiple new slave states to be created west of the Mississippi by popular vote.\(^\text{22}\)

\(^{21}\) See John Mercer Langston and Charles Langston to Salmon P. Chase, Sept. 12, 1850; and Chase to Langston and Langston, Nov. 11, 1850, Reel 8, Chase Papers, LC.

\(^{22}\) See Minutes and address of the State Convention of the Colored Citizens of Ohio : convened at Columbus, January 10th, 11th, 12th, & 13th, 1849 (Oberlin: Fitch, 1849), 8 (Langston’s on prejudice “against the colored man”). My understanding of the Compromise of 1850 has been chiefly influenced by David Potter, The Impending Crisis, 1848-1861 (New York: Harper, 1976), 90-120. The 1850
the time he returned home after Congress’ 1850 session, Chase further assailed that body’s recent legislative work. “It is claimed that these compromise measures were a settlement of the slavery question,” he told a crowd of white Democrats in Toledo. For Senator Chase, this was a “mere mockery.” Measures such as the revised Fugitive Slave Act made “every man’s freedom insecure,” in fact ensuring that this question was “more unsettled than ever.”

In short, Chase’s attempts to transport the interracial “equitable commerce” alchemy of his 1840s law practice to the national stage appeared to be nearly dead on arrival by early 1850. When he first arrived in Washington, D.C., opposition to his legislative proposals, even when they were tailored to serve only his white working class constituents, was instantaneous. When, for instance, he advocated for operating Cincinnati’s “marine hospital” to serve sick and disabled boatmen at federal expense (a policy once recommended by the city’s Jacksonian customs surveyor), Chase was forced by his colleagues to put this demand aside. And when he presented the petition of white carpenters, “joiners,” and factory workers from the Ohio River town of Steubenville to equalize postal rates in the west with those in the east, the document was quietly ushered to a committee to gather dust. As explained by one of Chase’s Democrat colleagues in January 1850, the problem with many of Chase’s policy proposals that benefitted white workers, traditional targets of Jacksonian patronage, was simply that they came from Chase himself. In the eyes of Senator Andrew Pickens Butler of South Carolina, Chase was supposedly a man committed to a form of “philanthropy whose center is everywhere, and whose circumference is nowhere, but whose practice is to be found in the sordid appropriation of property.” Chase was, Butler continued, engaged in a long-term confidence game with the Democracy, using support statutory package did contain at least one concession to Chase’s antislavery reading of the Constitution—a law prohibiting the slave trade within the District of Columbia, a jurisdiction under exclusive national control.

23See “Speech of Senator Chase, Delivered at Toledo… 1851,” Reel 28, Chase Papers, LC.
for the “equal rights” demands of white working class whites in the North as a way to advocate for the self-emancipating interests of Southern slaves. Moreover, by promising his vote in exchange for his Democratic colleagues, Chase was allegedly calculating that Southern Democrats would willingly submit to the organization of their national party on terms “made exclusively by another section.”

Facing such attacks on the Senate floor, Chase was pushed to admit that, as a white Buckeye, his form of Jacksonian philanthropy came with its own set of racial limits. When Butler noted Ohio’s own history of racial intolerance, Chase conceded Butler’s point. “Ohio desires a homogenous population and does not desire a population of varied character,” Chase agreed. Nor was it clear that Chase disagreed with such sentiments on a personal level. In late 1850, he even confessed to the Langston brothers that he had long believed that once blacks and whites were acknowledged as formal equals by the U.S. legal system, “the natural law which separated them previously, will separate them again.” Moreover, if a general abolition law were ever passed by Congress, Chase added in 1851, he supported the colonization of the nation’s resulting population of freedpeople overseas. Nevertheless, even statements like these coming from Chase nearly also came attached to a critique challenging the legitimacy of public institutions allocating different sets of privileges, rights, and ownership interests solely on the basis of race or color as a matter of law. This still left room for Chase to assert that the principal source of the electoral power and wealth of the U.S. South at the time – white property interests

---


25 See *Congressional Globe*, Jan. 10, 1850, p. 136 (“homogenous population”); Letter from Chase to John Mercer Langston and Charles Langston, Nov. 11, 1850, Reel 8, 1850 (“separate them again”). Chase was chastised by some African-American activists for statements in support of colonization or emigration. See Letter from Salmon P. Chase to Frederick Douglass, May 5, 1850 and Letter from Douglass to Chase, May 20, 1850, Reel 7, Chase Papers, UPA.
in black people that were forced to work against their own interests – created an aristocratic “Slave Power” that should receive no special protection under a Jacksonian Constitution. For Andrew Pickens Butler, this was enough to make Chase a mortal enemy of the Old South.

In the end, to the extent that Chase was ever able to move legislation during his first Senate term between 1849 and 1855, it was on national infrastructure issues such as “river improvements,” measures that required the support of the Democracy’s rivals in order to pass. Behind Chase’s antislavery reading of the U.S. Constitution there had always lurked an expansive set of national powers to promote and regulate commerce, holdovers from Chase’s earlier career as an Ohio Whig. As discussed in the previous chapter, this overlap occasionally allowed him to peel off antislavery support from white commercial lawyers like Timothy Walker and their judicial counterparts as a matter of sound economic policy, supposedly to benefit the prosperity of free white people within Chase’s home state. But while there were perhaps more people within the Whig party than the Democracy who supported the concept of abolition on the abstract level, Chase had come to believe that Whigs would always look at this project “as a work to be taken up or laid aside, like other measures, as expediency may suggest.” Coming from elite quarters of society, Ohio Whigs like Timothy Walker would never be able to agree that the one thing that people like John Mercer Langston demanded above all else – black citizenship on equal footing with whites – was a “legitimate and necessary result” of their own Constitutional convictions.26 As a result, by the time Chase left the U.S. Senate in early 1856, he felt that he effectively lived within a political party of one. “I have almost all my life been in a

---

minority, fearlessly battling for what I believed to be right,” Chase ruminated in a letter near the end of his first Senate term.\(^{27}\)

Over time, of course, Chase did begin to formulate a potential solution to the political puzzle he faced in the 1850s, mainly by helping to form the Republican Party, a new organization that at times appeared to stand for the idea that a Whig understanding of the broad institutional capacities of government could be used to create the social equality that was supposedly mandated by a Jacksonian reading of the U.S. Constitution. But as seen in his debut performance as Ohio’s Republican Governor in 1856 during the Peggy Garner episode, this experiment received stiff resistance from the other side of the Ohio River from its moment of inception. By the time he left the U.S. Senate and entered Ohio’s governor’s chair in 1856, it was still premature to state that the U.S. national government was already under the administrative control of the Party of Abraham Lincoln. Instead, it would have been more accurate to view its institutional structures as the work of Lincoln’s old Kentucky idol Henry Clay, a leading advocate for the Compromise of 1850.

**

Kentucky’s legal culture had always provided the counterpoint to many of the legal arguments Salmon P. Chase had made for his clients in Ohio courts. Early in Chase’s legal career, for instance, the Bluegrass State was where the trail in many a debt collection case ran dry. In 1837, New York’s Arthur Tappan insisted that Chase settle Tappan’s account with one John H. Cotter, a commission merchant and grocer that had recently “made a bad failure” while doing business in Louisville. The first man that Tappan entrusted with the work was one of Cotter’s Kentucky competitors, who instead tallied up Cotter’s remaining inventory of goods and

\(^{27}\) See Letter from Salmon P. Chase to L.D. Campbell, June 2, 1856, Reel 9, Chase Papers, LC.
sold them at a profit on his own account. The second man tasked with the collection, a respected Louisville lawyer, developed a mysterious illness and stopped returning Tappan’s letters. It was unlikely that Chase produced a better result for Tappan. In 1841, for example, three years after taking on a claim by a different creditor against a different debtor named Nathan Mixer, Chase had not collected. Mixer’s strategy to evade Chase’s demand had been simple: move from Ohio to Kentucky. As Chase’s client eventually realized, Mixer’s change of venue effectively eliminated “any prospect of getting anything from him.” When a different defendant adopted Mixer’s strategy, Chase and one of his previous partners wrote to their client that it would simply “do no good to sue him in Kentucky.” The better strategy was to levy a judgment on any property that this man left in Ohio, and to wait for an opportunity to bring him personally into court if he ever crossed the river again.28

Chase was wise to limit his debt collection caseload to claims that could be satisfied north of the Ohio River. In comparison to Ohio, it was relatively difficult to transfer property interests out of a debtor’s possession under Bluegrass law. This had deep roots within the state’s history, dating back to when Kentucky’s legislature passed an “Occupying Claimants’ Law” in 1798, placing the rights of squatters and those holding Indian land titles above those holding “paper titles” stemming from deeds originally executed by absentee landlords from Virginia. Even after the Supreme Court of the United States ruled in 1823 that this statute violated the terms of the federal compact whereby Kentucky had become an independent state, state courts continued to be governed by “Occupying Claimant” principles in their rulings, signaling that “property in possession” would be favored over its more directly speculative counterpart -

28 See, e.g., Letter from Arthur Tappan to Salmon P. Chase, Oct. 7, 1837, Reel 5, Chase Papers, UPA (Cotter collection); Letter from A & T Hall to Salmon P. Chase, Jan. 27, 1841, Reel 4, Chase Papers, LC (Mixer collection); Letter from Caswell and Chase to Kellogg and Baldwin, Nov. 19, 1833, Letterbook – 1833 to 1837, Reel 27, Chase Papers, LC (“no good to sue him in Kentucky”).
“property in expectation.” The pattern continued following the Panic of 1819, when “Relief Party” legislators passed laws allowing defaulting debtors to place a two-year stay (called a “replevy”) on creditors such as the Bank of the United States taking property in satisfaction for an unpaid debt. When the state’s Court of Appeals held these laws to be unconstitutional impairments of contract, Kentucky’s legislature simply passed a law purporting to disband the current court, creating a “New Court” in its place.29

“Relief” advocates formally lost Kentucky’s Old Court/New Court battle in 1826 when an “Anti-Relief” majority took over the legislature and passed laws upholding legitimacy of the original Court. But the “replevy” process nevertheless continued to flourish. Laws passed in the 1830s and 1840s automatically converted any contested case about property ownership into an action for “Replevin” and allowed “the person having the immediate right of possession” to request the physical return of any chattels, goods, or slaves that allegedly had been wrongfully taken, even after a conflicting judgment had already been rendered. In cases where the owner of debtor property could not be found, one 1838 law even required judges to appoint attorneys to represent their interests. Meanwhile, Louisville’s Chancery Court, founded in 1835, could accomplish this same result even without formal statutory authority. As one “anti-Relief” judge noted in a lecture to students at Lexington’s Transylvania University, chancery judges sitting in “equity” had the power to enjoin the removal of property from a jurisdiction, to erase “fraudulent

“liens” and other encumbrances, and to implement a debtor’s “equity of redemption” – ordering the physical return of foreclosed property once their debts had been repaid.³⁰

Property laws that situated the power and authority of judges, sheriffs, and constables on the side of litigants claiming a superior “right of possession” vis a vis creditors, speculators, and others with less tangible “expectancy” claims placed commerce on Kentucky’s side of the Ohio River within a more constrained legal environment than commerce on the Buckeye side of the stream. Not surprisingly, when Kentucky’s legislature passed a statute in 1839 authorizing suits against steamboat owners or the vessels themselves, it looked very different from Ohio’s Watercraft Law. While Ohio’s law placed claims brought by passengers and anyone else who had contracted with the vessel on the same plane as boatbuilders and boathands, and gave all litigants an unlimited period to seek an interest in steamboat property as recompense, Kentucky’s version was styled as a traditional “mechanic’s lien,” targeted only at crewmembers and “tradesmen” who furnished labor directly to the vessel, and gave them only one year to bring a claim in a chancery court. And while a chancellor could order a vessel seized and sold under this law, the statute also provided that unrepresented vessels would be assigned attorneys by the court under the state’s attachment procedures, and that boat owners could always “replevy” and regain physical possession of their vessels before a decree was entered. Finally, while Ohio’s legislature extended the application of its Watercraft Law to vessels that may have never landed in the state, Kentucky’s statute was pointedly restricted to “steam boats within the jurisdiction of the Commonwealth,” geographically limited to its own waters.³¹

³⁰ See Preston S. Loughborough, A Digest of the Statute Laws of Kentucky (Frankfort: Hodges, 1842), 502-509 (replevy laws); George Robertson, Introductory Address on the History and Nature of Equity (Lexington: Bryant, 1838), 14-17 (“equity of redemption” lesson).
When put into operation, Kentucky’s watercraft law sought largely to keep steam vessels under their original owners’ physical or financial control. A claim against one owner of a vessel did not necessarily extend to the vessel’s co-owners, the Court of Appeals held in 1835 and again in 1847; the debts of owner A could not be used to take the property interests of owner B. And although the 1839 law allowed suits to be brought in rem against the vessel itself, the Court of Appeals held in 1846 that the proceedings did not follow the streamlined rules of federal admiralty law, which would have provided less notice to potential owners before a vessel was sold. Meanwhile, claimants who attempted to import the more liberal rules of Ohio’s Watercraft Law into Kentucky courts also faced obstacles. In 1852, for example, Louisville’s Chancery Court held that “liens” accruing under Ohio’s law never altered “the preferences” given to claims brought under Kentucky law. While the court decided in that instance to enforce an Ohio claim to the proceeds of a steamboat that had been sold to satisfy a Kentucky debt, it added that it was only doing so in the spirit of neighborly respect for another state’s law, and not because of any affirmative duty to do so. It also placed this out-of-state claim at the end of its distribution list. As a result, to get around the obstacle of collecting steamboat debts in Kentucky or Virginia (where a watercraft law similar to Kentucky’s applied), the Cincinnati lawyer T.D. Lincoln advised clients in Southern jurisdictions to wait until the time the offending vessels stopped in Ohio, and then to attach the boat’s cargo, or the boat itself, using the more flexible law of the Buckeye State. By bringing suit under Ohio law, Lincoln told one riverboat creditor, he promised he could make their claim “a sure fire” success. Working class creditors who could not afford to receive such sophisticated legal advice at the right time often failed to collect at all.

32 See Lyon v. Johnson, 33 Ky. 544 (1835); Patterson v. Chalmers, 46 Ky. 595 (1847) (debts of A cannot be used to take property of B); Broadwell v. Swigert, 46 Ky. 39 (1846) (not following admiralty procedures); “In the Louisville, Ky. Court of Chancery: The Ironton,” The Western Law Journal 9:(Apr. 1852), 314-317 (Ohio “liens” do not alter Kentucky preferences).
According to the Ohio-Mississippi River steamboat clerk and petty merchant James C. Way, parochial “stay laws” usually had the practical effect of preventing “the honest man from getting his just dues.” In 1841, for instance, Way complained that one stay statute had caused him to be “swindled out of half or all of [his] hard earned means,” turning him into a “complete slave” of the steamboat owners who owed him money.33

There was at least some irony in the fact that Kentucky’s legal culture, noted for its commitment to debtor relief, enforced an alternate version of Ohio’s Watercraft Law that provided few advantages to common steamboat workers like James C. Way. Kentucky, after all, was the home state of Amos Kendall, one of the lead authors of Jackson’s famous 1832 message to veto the recharter of the Second Bank of the United States. First as a newspaper editor in the 1820s and then as Jackson’s Postmaster General, Kendall had worked with another Kentuckian, Francis P. Blair (the future editor of the Washington Globe, the Administration newspaper during the Jackson presidency), to organize the Kentucky Democracy as an “efficient and universal organization” supposedly championing the cause of Jackson’s “humble classes” within the Bluegrass State. At the national level, both men also called upon the legislative assistance of U.S. Senator Richard M. Johnson, a Jackson supporter and future Vice-President of the United States under Jackson’s successor Martin Van Buren, as well as Johnson’s brothers John T. and James, themselves members of Congress for a spell.34 Indeed, back in Kentucky after the


34 See Letter from Amos Kendall to Francis P. Blair, Jan. 9, 1829, Box 14, Blair Family Papers, Rare Books and Special Collections, Princeton University Library, Princeton, N.J. (“efficient and universal organization”). For more on the central role of Kendall and Blair in fashioning “the Democracy” during the late 1820s, see Arthur M. Schlesinger, Jr., The Age of Jackson (Boston: Little, Brown, 1945), 67-70; Sean Wilentz, The Rise of American Democracy: Jefferson to Lincoln (New York: Norton, 2005), 288-291.
passage of state’s own watercraft law, one self-described Louisville “mechanic,” a recent immigrant from Scotland named with the last name of McNaughton, described the state’s largest city as in fact a hotbed of Jacksonian class war. In the Falls City, McNaughton reported, “the ‘Loco-Focos’ as they term the poorer classes… entertain more hostility to [wealthy Whig merchants] than the plebians of Britain commonly do towards the higher classes.” According to McNaughton, this had been exacerbated by a recent “depression” in the city’s economy, resulting in calls for “strike and counterstrike” between riverfront laborers and those who employed them. In theory, McNaughton and his colleagues should have been able to take the same approach as their Ohio counterparts, prevailing upon Jacksonian politicians to pass state or national legislation that could have transferred some of the fruits of their riverfront labor into their own hands.

But while Kentucky’s deep bench of “Loco-Foco” politicians fought pitched battle after pitched battle against the Bank of the United States in 1820s, their fight turned out to be a far narrower one than their Ohio counterparts. At the same time that Blair and Kendall attempted to undermine the Monster Bank’s institutional supports under national law, for instance, they were busy promoting investment in “the Bank of the Commonwealth of Kentucky,” its chief rival and eventual successor within the Bluegrass State. Meanwhile, a closer look at the business portfolio of the Johnson family revealed Richard M. Johnson and his brothers to have a great deal in common with “the aristocratic class” that Kentucky’s “Locofocos” railed against while in public office. In late 1818, for instance, while Richard Johnson was still a sitting member of the U.S. House of Representatives, his brother Col. James Johnson entered into a contract awarding him the privilege of carrying freight and nearly one thousand troops from Louisville to the present-

day border of North Dakota and Montana in support of a Federal military expedition into Indian-controlled western lands. Using his brothers’ credit to obtain a loan from the Bank of the United States, Johnson funded the construction of five steamboats to serve this mission.36

Launched in mid-1819, Col. Johnson’s steamboat project eventually placed all three Johnson brothers into direct conflict with the Ohio and Mississippi Rivers’ working class. First, there was the problem that the Johnson family steamers were equipped with weak engines incapable of performing the work required of them. This in turn required frequent stops for repairs, generating debts to independent boatwrights and mechanics along the Ohio. Meanwhile, the vessels also drew the ire of St. Louis shippers jealous of the amount of cargo they were carrying. Not surprisingly, once the first boats in Johnson’s fleet reached that city, the town’s sheriff hopped aboard, serving “attachment” papers under Missouri state law and threatening to sell the boats to answer for Johnson’s debts. Once Johnson’s vessels were under legal process, one of his St. Louis shipping rivals then allegedly spread a “clamor” among the hands on the Thomas Jefferson, one of Johnson’s boats. After the Jefferson struck a snag above the Gateway City, the rumor spread that these workers “would lose their time and labor,” and would never be paid for their work. Tipped off to this when Johnson refused to pay them cash in advance, the Jefferson’s engineer, carpenter, and assorted “firemen” and “mariners” returned to Frankfort, Kentucky’s state capital, to file papers in U.S. district court for $3,500 in unpaid wages after the vessel’s demise. Their suit was the functional equivalent of a claim under Ohio’s Watercraft Law. Rather than each member of the boat’s crew proceeding with a separate common law

contract claim, they brought a consolidated “libel” action asking to proceed directly against the Jefferson, “her tackle, apparel and furniture, according to the course of the Admiralty Courts.” They further requested that the vessel be “sold and condemned” to satisfy the full amount of their claim.\(^{37}\)

At the time, the reference of the Jefferson’s crew to Federal admiralty procedures seemed perfectly valid. Under the 1789 Judiciary Act organizing the federal courts, the first Congress had already granted federal district courts such as Kentucky’s U.S. District Court “exclusive original cognizance of all civil causes of admiralty and maritime jurisdiction.” By its text, the Act signaled that this authority applied to all seizures made on “waters that are navigable from the sea by vessels of ten or more tons burthen, within their respective districts as well as upon the high seas.” As a vessel traveling on a tributary of the Mississippi, the Thomas Jefferson seemed to meet this description. Indeed, as late as 1830 a constitutional scholar from Philadelphia named Thomas Sergeant was still advising readers in a treatise on U.S. Constitutional Law that federal courts had authority to hear “all cases of admiralty and maritime jurisdiction on all rivers of the United States, which are navigable to the sea for boats of ten tons burthen or upwards.” Savage v. The Buffaloe, one of the cases that Sergeant cited, was decided in 1819 by Robert Trimble, the same judge that heard the Jefferson claim. In that ruling, Trimble held that an agent of the steamboat Buffaloe had acquired an enforceable property interest in the vessel from work he had performed. Trimble further ordered the Buffaloe to be sold on the Louisville wharf in a U.S. marshal’s sale. That same year, a Federal judge in Pittsburgh similarly ordered the sale of a

different Ohio River vessel to compensate for the unpaid wages of a group of “hired hands” employed for a trip from Cincinnati to the Iron City.\footnote{See 1 Stat. 73 (1789 Judiciary Act); Respondent’s Brief, \textit{Steam-Boat Thomas Jefferson}, Case No. 1232, Appellate Case Files of the Supreme Court of the United States (referencing Judiciary Act); Thomas Sergeant, \textit{Constitutional Law: Being a View of the Practice and Jurisdiction of the Courts of the United States, and of Constitutional Points Decided} (Philadelphia: Nicklin, 1830), 195; \textit{Savage v. The Buffaloe}, 21 F. Cas. 547 (1819); “Sleckar and others v. The Geneva Boxer,” \textit{Niles’ Weekly Register}, Vol. 17, Sept. 11, 1819, p. 31. In issuing his maritime order in the \textit{Geneva Boxer} case, Judge Jonathan H. Walker, a Pittsburgh-based federal jurist, had claimed that he was acting under a legislative authority necessary to execute Congress’ own power to regulate commerce between the states.}

According to one national newspaper, the 1819 ruling in the \textit{Buffaloe} case had definitively settled the question of whether steamboat crew wage claims “came under the denomination of seamen’s wages,” and could be brought – in a manner “similar to those of the Atlantic waters” - through \textit{in rem} suits filed in Federal court. Judge Trimble initially concurred with this in the \textit{Jefferson} suit, ordering a U.S. marshal to seize Col. Johnson’s vessel in Louisville without attempting to locate its owners or reporting the action to the \textit{Jefferson}’s other creditors by publishing a notice in a local newspaper. But by 1822, Trimble reversed course, ruling that he had no power to hear the case, a determination that Kentucky’s U.S. Circuit Court sustained. Three years later, in a unanimous opinion authored by Joseph Story, the Supreme Court of the United States further upheld Trimble’s second ruling. According to Story, there was nothing in the text of the 1789 Judiciary Act to indicate that Congress intended to extend Federal admiralty procedures beyond the confines of British admiralty law at the time the Federal statute was passed. This in turn limited claims for “seamen’s wages” to those attached to work “substantially performed, or to be performed, upon the sea, or upon waters within the ebb and flow of the tide.” Because the work of the \textit{Jefferson}’s crew was performed “several hundred miles above the ebb and flow of the tide,” Story found that their wages were not earned in
“maritime employment” in any “just sense” of the phrase. As such, their federal admiralty claim was dismissed.\(^3^9\)

Here, Story’s 1825 *Thomas Jefferson* decision was in fact the *piece de resistance* of a successful lobbying effort by Col. James Johnson and his brothers to avoid the debts that their family owed to steamboat crews. As soon as the *Jefferson* libel was filed, Col. James Johnson’s lawyer had filed an answer that characterized the vessel’s engineer (the only officer to join the suit) as a subversive figure. This man, Johnson’s court filings maintained, was “a common disturber of the peace,” a man that had rendered himself “more than useless” through his “habitual interference” while onboard, undeserving of any compensation. If anything, he was “subject to heavy damages for his failure to perform his duty in an orderly way.” The men that he commanded were deserving of the same fate. When Judge Trimble initially ruled in the engineer’s favor, Col. Johnson’s brothers began a campaign in Washington, D.C. against Trimble’s power to hear the case at all. A few days after Trimble’s order, Richard M. Johnson introduced a motion on the U.S. Senate floor asking for that body’s judiciary committee to “define more particularly the admiralty jurisdiction of the district courts of the United States.” Two months later, he formally introduced a bill specifying that U.S. District Courts only maintain “exclusive cognizance of all civil causes of admiralty and maritime jurisdiction” to the geographic limits later cited by Story in his *Jefferson* decision. This measure was necessary,

---

Johnson asserted, to prevent the “the interior trade of the country” from being subjected to a foreign system of rules that could swell federal dockets “to an enormous bulk.”

From a perch in the U.S. House, Richard M. Johnson’s brother John T. Johnson concurred with his brother’s analysis. If left unchecked, the use of admiralty procedures to govern river disputes subjected Kentuckians to two sets of debt collection procedures - “one maritime, the other statutory,” one “demanding the pound of flesh” by making rivergoing property like the Johnson Family’s steamboats subject to rapid seizure and resale, the other “extending… charities of the law.” While creditors seeking to recover a debt from a shorebound business could have their execution delayed for three months, could not seize their debtor’s physical property, and could eventually be compensated only with commercial paper (the equivalent of an I.O.U.), the Jefferson’s common boathands would have been able to avail themselves to new courtroom rules issued by Judge Trimble, which required the immediate payments of contractual debts in gold, silver, or seized property, in effect nullifying Kentucky’s stay and “relief laws” if the Jefferson decision had been decided a different way. Not surprisingly, while that case was still pending Richard M. Johnson had already introduced legislation to grant the U.S. Senate, not the Federal courts, the final power to hear cases challenging the constitutionality of such courtroom rules. In the meantime, before Story’s Jefferson decision was issued, his friend Amos Kendall was pushing for Trimble’s impeachment from the pages of his newspaper.

---


Given the pressure Judge Trimble was facing, his decision in late 1822 to reverse his earlier ruling and to hold against the Jefferson’s crew made some practical sense, as did the later appellate rulings upholding his decision. Indeed, the entire Jefferson episode played out against the background of a constitutional crisis that Supreme Court historian Charles Warren once labeled as “Kentucky Against the Court.” As soon as the Jefferson case had reached the nation’s highest court, it was docketed alongside three additional suits called “The Kentucky Causes.” These cases had been brought by the Bank of the United States to challenge aspects of Kentucky’s stay and replevin laws, themselves passed in part in response to Green v. Biddle, the decision written by Joseph Story in 1823 that purported to hold Kentucky’s original “occupying claimant” laws invalid as an unconstitutional impairment of “the obligation of contracts.” By March 1825, the Supreme Court had rendered its decision in all four of these cases. At the beginning of the month, it found in favor of the Bank of the United States in the three “Kentucky Causes,” ruling that U.S. marshals could indeed sell the property of Kentucky residents over their objections to satisfy debts they had incurred within the Bluegrass State. A few weeks later, however, on March 25, the Court issued its unanimous Jefferson decision, ruling against the working class creditors in that case.42

The sequencing of these decisions no doubt played a key role in insulating federal judges like Robert Trimble and their orders from continued attack. While legal historians often leave Jefferson out of the “Kentucky Cause” contract law grouping, this is a mistake. As Story himself admitted, Jefferson was also about a contract, albeit one that was water-based. Rather than a

42 See Charles Warren, The Supreme Court in United States History, vol. 2 (Boston: Little Brown, 1922), 93-111 (“Kentucky Against the Court”). The three “Kentucky Causes” were the following: Wayman v. Southard, 23 U.S. 1 (1825); Bank of the United States v. Halstead, 23 U.S. 51 (1825); and Bank of the United States v. January, all decided between March 1 and March 2, 1825. The Jefferson decision was rendered shortly afterward.
mortgage note offering up land as security for a loan from the Bank of the United States, it involved labor agreements between Col. Johnson’s steamboat captain and his crew. There, through a brisk reading of alleged British precedent regarding “ebbs and flows of the tide,” Story hit upon a way for the federal courts to beat a strategic “retreat” from Kentucky just at the time they were being accused by powerful Jacksonians of “usurping” the state’s internal legal system.43 If Senator Richard M. Johnson was at all remotely accurate when he claimed that inland river admiralty cases could constitute one half of all the business of Kentucky’s U.S. District Court if allowed to proceed, Story’s Jefferson decision quietly reduced the possibility that national legal institutions could ultimately adjust the social composition of the Bluegrass State’s property rolls in a particularly broad way.

The Steamboat Thomas Jefferson decision was also a key moment in the legal history of the Ohio River Valley more generally, principally because it decentralized steamboat law within the region, eventually giving rise to competing “watercraft laws” on the state level. In Ohio, within a legal system that already prioritized the easy conversion of labor from “property in expectation” into “property in possession,” the Buckeye State’s watercraft law became a key tool to rewrite the rules of trade on an “equitable commerce” basis. But across the river, where a Bluegrass legal culture protected the possessory rights of “occupying claimants” – viewing these rights as inalienable constituents of the possessor’s identity – Kentucky’s “watercraft law” only served to strengthen the social position of well-connected elites like Col. Johnson above their creditors, rich or poor. Within Kentucky, it would be left to Anti-Jacksonian legislators to point out how this arrangement rendered distributive results conflicting with the egalitarian principles

some Jacksonians often espoused. Although he was against “extending the jurisdiction of the Federal Judiciary one jot or tittle further in the municipal concerns of the State than it was necessary to go,” for instance, one Anti-Jackson Kentucky congressman found it imperative to criticize the result eventually achieved in the *Steamboat Thomas Jefferson* case from the floor of the U.S. House. Tossing commercial river disputes out of federal court, he predicted, effectively “destroyed the specific lien of hands, and persons supplying vessels” on the Kentucky side of the Ohio.  

**

For white journeymen and mechanics, the *Steamboat Thomas Jefferson* ruling was yet more evidence of their ultimate legal powerlessness within the Bluegrass State. Struggling to describe his new hometown of Louisville, the Scottish native “McNaughton” at first depicted a town of endless “political dissentions.” In the end, however, because these debates were forced to occur within the intellectual confines of what McNaughton called “the Slave States,” a similar set of facts always prevailed in the end, seemingly always favoring the interest of slaveholder/statesmen such as Richard M. Johnson rather than the state’s working class. In the 1850s, after already having moved from Ohio to Newport Kentucky during Richard M. Johnson’s term of Vice-President of the United States to pursue his own business as a steam engine builder, one Ohio-born white man named William Shreve Bailey explained that the main

---


difference between his old and new home states was that Kentucky’s legal system made it possible “to look upon a man… as soon as he is born as a piece of property – the same as a horse or ox.” Bailey, a non-slaveholder and abolitionist, noted that Kentucky’s “system of human chattelism” relied upon the general racial prejudices of white people when offering its public justification. But then it went further, supposedly also insisting that “the laborer, everywhere, and in all time, should be a chattel, and the employer, a slaveholder.” By dominating Kentucky politics at all levels of government, and then by wielding power to “make, interpret, and execute the laws to the advantage of their own class,” Bailey alleged, slaveholders such as Richard M. Johnson were in turn able “to monopolize the profits of all labor.” As a result, they gradually degraded the white worker; “not because they have any malice against the white race, but… because, having first chattelized the black, it is necessary in order to secure him in chains, to place all other laborers as nearly as possible in a similar condition.” Indeed, according to Bailey, whenever “the non-slaveholding white laborer” was placed into direct competition with “the negro slave,” the latter was often held in higher esteem and better paid.  

Printed in *The Free South*, an 1850s newspaper subsidized in part by a network of white Cincinnati lawyers including Salmon Chase, it would be easy to argue that William S. Bailey’s inflammatory critique, circa 1858 and 1859, was overstating his case, at least when it came to analogizing the status of the Bluegrass State’s white laboring class to Kentucky’s enslaved

---

population. Nevertheless, it was true that the state’s legal institutions often secured white interests in black labor behind an impermeable doctrinal barrier of “absolute ownership” otherwise unavailable to those whose continued access to capital only hinged on their ability to market their own labor-time. As a matter of formal statutory law, the Bluegrass legal system still defined slaves as “real property” rather than “personal property” between 1798 and 1852. In practice, the state’s Court of Appeals admitted in 1824, slaves were considered by the public to be “in their nature [part of the master’s] personal estate.” But this only meant that unlike land, they were “moveable property, and as such might attend the person of the proprietor wherever he went.” Thus, unlike the entirety of moveable interests found within a non-slaveholder’s possession, slaves automatically passed to a Kentucky slaveholder’s heirs upon death, only subject to a court-ordered sale if no other personal assets were available to satisfy a debt. Similarly, while Kentucky’s 1792 state constitution also prohibited the passage of any law providing for the emancipation of a slave without an owner’s consent, Kentucky state laws required any attempt to mortgage or manumit a slave during their owner’s lifetime (or to manumit them after their death) to be explicitly placed in writing, and duly recorded in court. Within Kentucky, it may have been true that “the right of property is before and higher than any constitutional sanction,” as the state’s revised new Bill of Rights declared by 1850. But even here it was important to identify the “right of the owner of a slave to such a slave and its increase” as deserving of individual attention, and explicitly “inviolable.”47

As William S. Bailey would have known first-hand as he tried to operate a steam engine shop across from Cincinnati, Kentucky law had a way of altering the calculations of riverfront employers on the Kentucky side of the Ohio River. Within urban industrial settings in the border South, for instance, judges and lawmakers typically held white owners and operators to a higher standard when it came to ensuring the health, safety, and continued profitability of bonded laborers they had hired, forcing employers to reimburse slaveholders for losses that would have gone uncompensated if they were incurred by white laborers during the antebellum era.48 This was made particularly clear within the text of Kentucky’s statute book in 1824 when the state legislature passed restrictions on the ability of steamboat operators to carry “persons of color” outside the limits of the state. This law subjected “any master or commander of a steam-boat or other vessel” to criminal fines and imprisonment for “asporting” black passengers or employees out of the state unless the people being transported or employed could provide evidence of their own freedom, or the vessel had received written permission from a master if the people they were carrying were claimed as slaves. The statute also made steamboat captains personally liable to pay damages, including lost earnings or a slave’s full market value, to private parties “aggrieved” by a slave’s removal without his or her master’s consent. Moreover, while Kentucky law typically only permitted the seizures of property by “attachment” to assert personal jurisdiction over a living person, the 1824 statute made an exception with regard to “asported” slaves, providing that the vessel would also be made liable itself for its commander’s actions, and could be “condemned and sold” through a chancery suit to pay for the market value of a lost bondsperson. An 1828 amendment extended the same liability to a steamboat’s “owners, mate, clerk, pilot, and engineer,” also clarifying that the same liabilities accrued even if

a person of color was taken onboard “from the shores of the Ohio river, opposite to this state.”

Here, Kentucky’s 1824 statute and its 1828 revision combined with the Supreme Court’s
Steamboat Thomas Jefferson ruling and the weak reading given Kentucky’s 1839 Watercraft
Law to send another powerful message about the relative legal power of the Ohio River’s white
working class within Kentucky: while white crewmembers and boatbuilders may have been able
to assert equitable property interests in vessels that had done them wrong on the Buckeye side of
the Ohio, this remedy was reserved to the owners of slaves on the Bluegrass side of the stream.

The 1824 and 1828 laws, of course, also sent a clear message to steamboat owners and
operators, the primary target under both regulatory measures. The property interests of
steamboat owners may have been relatively insulated against white working class claims within
the state’s “occupying claimant” legal culture. But in the end they were no match for the
superior right of financial return that white Kentucky masters maintained over the labor-time and
exchange value of their slaves. This was the case even though under the common law, a
“common carrier” such as a steamboat was normally held to a lower standard of care when
transporting human passengers than fixed cargo, the latter of which was more easily placed
under a vessel’s control. In 1829, for example, a ruling by the Supreme Court of the U.S. even
held that slaves were best classified passengers, or “intelligent being[s]… in whose person
another has an interest,” rather than “inanimate property” or “package[s] of goods.”

But when similar claims arose in state court, Kentucky judges instead applied the logic of the 1824 and
1828 laws to hold steamboats to a more demanding standard of care when employing or

---

49 See C. S. Morehead and Mason Brown, A Digest of the Statute Laws of Kentucky of a Public and
50 See Boyce v. Anderson, 27 U.S. 150 (1829) (“intelligent beings”). This suit, addressing damages to a
slave during an inland river steamboat accident, was heard by the Court sitting in “diversity” rather than
“admiralty” jurisdiction because of the Thomas Jefferson decision.
transporting a slave. Not surprisingly, although white steamboat passengers had the opportunity to purchase life insurance before boarding a steam vessel along the Ohio River, it was steamboat masters rather than Kentucky slaveholders who often bought “insurance on negro lives” before departing from Louisville.\(^51\) As implemented by Kentucky’s courts, the state’s “asportation” laws effectively made steamboat operators the ultimate insurer of mobile and white-owned black labor-time on the Bluegrass side of the Ohio.

The readiness of Kentucky’s dominant “occupying claimant” legal culture to rewrite common law rules and ignore contrary signals from national tribunals when it came to the financial returns of Bluegrass masters was on full display when Louisville’s new Chancery Court assumed responsibility to enforce equitable claims under the 1824 and 1828 laws. Shortly after taking office as Louisville’s Chancellor in 1835, George M. Bibb, a former advocate for the “Relief” cause during Kentucky’s Old Court/New Court crisis, heard his first case brought under the statutes, finding against the steamboat owners in the case. There, a white Louisville man named Abram Woolley had brought suit against the Louisiana-based owners of the \textit{Lancaster}, a Louisville-to-New Orleans vessel, for carrying his slave William Gordon beyond state lines and employing him as a “second steward” while onboard. Even though Woolley had consented to Gordon working on the \textit{Lancaster} while it was docked in Louisville (and even though Gordon was eventually returned to Woolley), Bibb ordered a jury to assess damages against the \textit{Lancaster’s} owners. As Bibb explained in \textit{Riley v. James}, a contemporaneous case where Bailey Weller, a wage-earning enslaved “fireman,” stepped off an Ohio-owned vessel called the \textit{Splendid} and disappeared into Cincinnati, Kentucky’s statutes did not “intend to transfer the right

\(^{51}\) \textit{See, e.g.,} Jacob Hayden Diary, April 2, 1852, A&M 2302, West Virginia Historical Archives, Morgantown, West Virginia (noting purchase of life insurance before boarding steamboat in Pittsburgh); Letter from C.T. Taylor to Joseph Lord, April 12, 1850, Filson Historical Society, Louisville, Kentucky (noting popularity among masters for purchasing “insurance on negro’s lives” hired to steamboats).
of property from the lawful owner to the tortfeasor.” Instead, “the aggrieved owner of the slave retain[ed] his right of property,” notwithstanding a slave’s successful self-emancipation or his or her eventual return. In contrast, however, at the same time the slaveholder’s title was ensured, the “rights of property” for steamboat operators became immediately revisable under Bibb’s reading of Kentucky law. As a result of Gordon’s unauthorized sojourn on the *Lancaster*, for instance, Bibb held that Woolley had acquired a statutory “lien” against the vessel, an interest that supposedly survived the forced sale of a quarter interest of the *Lancaster* to Joseph Reed, a white steamboat clerk who had sued the boat for unpaid wages in Federal court once it reached New Orleans. Because Reed’s labor was performed on the Ohio and Mississippi Rivers above “the ebb and flow of the tide,” Bibb held, “the sentence of the court of admiralty in the eastern district of Louisiana [was] void” under the logic of *Steamboat Thomas Jeffferson*. For Bibb, Reed’s interests were clearly owned in subservience to Woolley’s superior “rights.”

Here, in Chancellor Bibb’s early decrees under the 1824 and 1828 laws, the many threads of Kentucky’s “occupying claimant” legal culture came together, expressed in a type of manifesto on the “absolute” ownership rights of Kentucky slaveholders within the Ohio River’s steamboat economy. “Those who carry or send their effects or goods within the limits of another government,” Bibb posited in the *Splendid* case, “do thereby subject such property to the laws of that government.” Within Kentucky, these laws included the statutory rule that steam vessels could be seized and sold in retribution for the civil and criminal wrong of carrying a slave out of the state without a master’s consent. According to Bibb, this was principally designed “to secure the holders of this description of property in their tenures.” At the edges of Kentucky along the

---

52 See “A.R. Woolley v. Steamboat Lancaster, Copy Chancellor’s Opinion and Decree” (Louisville: Penn, 1836); Opinion of Chancellor George M. Bibb, Apr. 22, 1836, in *Riley v. J.J. James and the Steamboat Splendid*, Case No. 70, Louisville Chancery Court, Jefferson County Chancery Case Files, Kentucky Department of Libraries and Archives, Frankfort, Ky.
Ohio River, he claimed in his *Lancaster* decision, “great portions of valuable property” were constantly at risk. The lien imposed by the 1824 and 1828 laws helped to “fence against” this danger by forcing vessel operators to use “care and diligence” when choosing to employ or transport slaves beyond the Kentucky shore. If out-of-state admiralty suits like Joseph Reed’s wage claim were allowed to wipe this equitable property interest off the books, Bibb reasoned, “this just policy of the Legislature is liable to be evaded by colored defences, by means of feigned admiralty suits in the admiralty undefended, with consent sales upon three days notice, and sentences *in rem.*” 53

As Bibb attempted to frame his decision, *Woolley v. The Steamboat Lancaster* was nothing less than a full victory for the proto-Jacksonian New Court/Relief cause within Kentucky. By invalidating a Federal court order to preserve Woolley’s claim against the *Lancaster*, the decision could also be seen as carrying on the fight that the Johnson brothers once waged against the federal courts more generally, again preventing “a dangerous consolidation of the powers of the central government” while protecting the “valuable property” of “citizens of this state.” 54 As in *Steamboat Thomas Jefferson*, this victory came at the cost of white litigants lower down the river’s marine ladder, once again preventing those litigants from leveraging streamlined debt collection procedures modeled upon admiralty law to convert “property in expectation” into their own “property in possession.” It also reversed the process seen in Ohio, where “equitable commerce” arguments gradually crossed the river’s color line and made their way into the self-emancipation claims of fugitive slaves. In the *Splendid* case, it was not surprising that Bailey Weller, described in testimony as an “unusually smart” man of color who had assumed the identity of a free man and hired himself to a steamboat while still a slave, was

53 *Id.*

last seen trekking to Canada rather than lodging in Cincinnati across the river from Kentucky. Powerful as it was in theory, the antislavery U.S. constitution that Salmon P. Chase advocated was perhaps still strongest north of Lake Erie, outside the confines of the United States itself. Years later, by the time Chase pledged on the U.S. Senate floor that he “would let slavery alone in Kentucky,” the legal regime mandating Chancellor Bibb’s Woolley decision had already convinced a generation of Bailey Wellers that there was really no other legal step that opponents of Bluegrass slavery could have reasonably been expected to take.

**

And yet, despite the seeming resistance to his ideas south of the Ohio, Chase himself remained somewhat hopeful about Kentucky. As the historian James Oakes has recently explained, Chase’s main political focus during the 1840s was to place a theorized constitutional cordon sanitaire around jurisdictions like Kentucky, supposedly backward states where certain protections for holding “property in man” were still regarded as a fact of local life. As early as 1843, Chase spelled out this strategy in a letter to a friend living in Philadelphia. “Let us establish liberty and justice in our own states and in the nation,” he proposed. “Then the slaveholding states will feel the full measure of their responsibility.” “[A]wakening to a sense of their true interests,” they could “abolish slavery by their own accord.” Chase insisted that this “restrictionist” strategy was informed by the observations of Kentuckians themselves. Chase’s former client James G. Birney, for instance, a man who once advised Chase to quantify the economic benefits of ending slavery whenever Chase recommended abolition as a political

---

55 See “Speech to Mr. President and Fellow Citizens,” ca. 1854, Box 17, Chase Papers, HSP.

56 See James Oakes, The Scorpion’s Sting: Antislavery and the Coming of the Civil War (New York: Norton, 2014) (detailing the restrictionist strategy); Letter from Salmon P. Chase to Charles D. Cleveland, May 28, 1843, Box 3, Chase Papers, HSP (“own accord”). See also Letter from Chase to Lewis Tappan, Feb. 15, 1843, Reel 4, Chase Papers, LC.
result, was an erstwhile Bluegrass slaveholder himself. In his letters to Northern correspondents, Chase also frequently cited his correspondence with Cassius Marcellus Clay, Kentucky’s “Lion of White Hall,” to demonstrate continued indigenous Kentucky support for Birney’s points. “Though a slaveholder,” Chase noted, Cassius Clay was nevertheless “friendly to emancipation.”\(^57\) By 1845, in fact, Clay was publishing the *True American*, an antislavery newspaper with a Kentucky masthead actually printed in Chase’s hometown. Four years later, Clay launched an attempt to abolish slavery in the Kentucky through an amendment to the state’s constitution. Though it was ultimately unsuccessful, this campaign was based in part on the premise that slavery was a “cancer” sapping the long-term economic vitality of Kentucky and the South, a hypothesis that some of Clay’s fellow Kentuckians shared. Writing to Chase in the 1840s, for instance, a Clay supporter named Edgar Needham lectured the Cincinnatian on the need to “take the antislavery sentiment in Kentucky as it is and not as you wish it to be.” An English-born stone mason doing business in Louisville, Needham asserted that it was essential for antislavery Kentuckians to prove that the prospects of white Kentuckians themselves “would be promoted by emancipation,” especially within the Ohio River corridor. “While Kentucky is a slave state,” Needham posited, it would be “vain for Louisville to compete with Cincinnati in manufacture, commerce, or mechanic arts.”\(^58\)

In his letters to Chase, Edgar Needham was in fact repeating a hypothesis first made famous by Alexis de Tocqueville and repeated in countless traveler’s accounts written after the

\(^{57}\) See Letter from James G. Birney to Col. Stone, May 2, 1836 in William Birney, *James G. Birney and His Times* (New York: Appleton, 1890) 423-430 (Birney’s early slaveholding background); Chase to Cleveland, May 28, 1843, Box 3, Chase Papers, HSP (Cassius Clay as “friendly to emancipation”).

French diplomat’s journey on the Ohio River. From the deck of a river steamer, a side-by-side comparison of Kentucky and Ohio supposedly provided a “final demonstration” to Tocqueville “that slavery, so cruel to the slave, was fatal to the master.” In fact, the idea that slavery turned work itself into a social “disgrace” among Kentucky’s able-bodied white population had originally been suggested to Tocqueville by Chase’s former law partner Timothy Walker, who presented it as a way to differentiate Cincinnati from the Queen City’s downstream rival of Louisville. But by the time Chase asserted in his own stump speeches that “freedom more enriches a state than slavery” – citing census figures to reveal the Buckeye State’s larger population, greater “annual product,” and higher amounts invested in “manufactures, mining, and mechanical pursuits” in comparison with the Bluegrass State – the theory had also become an article of faith among many of Timothy Walker’s Whig contemporaries in Kentucky, people like Needham and Cassius Clay.

Within Kentucky’s legal community, there had always stood the Whig adherents of Cassius Clay’s cousin Henry Clay - “Old Court” partisans of national commercial institutions like the Bank of the United States – people who also occasionally questioned the state’s commitment to the peculiar institution, albeit in a very gentle and largely ineffectual way. Planters, merchants, and lawyers who matched the Yale-educated Cassius Clay in social pedigree but who eventually parted ways over his confrontational tactics, this was a group that nevertheless flirted with ways of their own to re-conceptualize the ownership of black labor-time as something that was more mobile and transferable, and thus much less “absolute.” From the

beginning of Henry Clay’s political life in the 1790s until his death in 1852, for instance, Henry Clay himself had consistently articulated the position that slavery was “evil” in the abstract – both in the way that it robbed slaves of their personal freedom, and more importantly in the way it supposedly “injures the master too, by laying waste his lands, [and] enabling him to live indolently.” At the same time, however, Henry Clay allowed that the peculiar institution may have been “necessary” in the short term, primarily as a private police measure to preserve the continued safety of Kentucky’s white population against potential black insurrection until a better regulatory option emerged.60

As the historian Harold Tallant has written, Henry Clay’s “evil necessity” understanding of slavery – holding that “the Negro’s right to liberty must be temporarily sacrificed in order to safeguard the Caucasian’s right to self-preservation” - was widely-held within influential circles in antebellum Kentucky. In theory, it accommodated the possibility that the state of Kentucky could come to possess the legal power to abolish the peculiar institution at a later date, namely through a method that resembled the exercise of government eminent domain. So long as the government purchase of the state’s enslaved population was explicitly permitted by a new constitutional amendment at the state level, and so long as this was followed with the immediate colonization of Kentucky’s entire black population to Africa, Whig law had a way of bringing about slavery’s end in the Bluegrass State. Based as it was, however, upon an intransigent respect for the existing ownership interests of slaveholding whites (who would need to be financially compensated by the State of Kentucky for such a scenario to work), such public law

emancipation processes remained forever on hold within Henry Clay’s Kentucky, pushed to the margins as the short-term financial interests of white Kentuckians always intervened.61

During the first third of the nineteenth-century, the inability to implement any form of government-led abolition scheme left some white Kentuckians with antislavery inclinations with no other option but to implement a gradual emancipation process on a private basis. James G. Birney, for instance, began the 1830s as a conflicted slaveholder living in the interior town of Harrodsburg, Kentucky, having already liquidated his holdings in an Alabama slave plantation. By 1835, “fully convinced of the right of [his] slaves to their freedom and [his] duty as a Christian to give it to them,” he turned to Ohio law to manumit his remaining slaves, removing to Cincinnati. But as the exchange value of excess interests in slave labor continued to grow within the plantation economies further downstream, other elite Kentuckians with more ambivalent moral attitudes about the peculiar institution decided to remain in possession. Outside Kentucky’s manufacturing center of Lexington, for example, Henry Clay owned and deployed as many as sixty slaves on his tobacco and hemp plantation. As an agriculturalist, Clay was apparently convinced that he “could not compete” with planters in the deeper South without also relying upon slave labor himself, a belief he carried to his grave. Executed in 1851, his last will and testament only manumitted some of his laborers upon his own death, only after the actuarial prime of their physical working lives.62

Like Henry Clay himself, well-heeled Bluegrass Whigs often turned to the law to protect the underlying value of their commercial enterprises. Each in their own respective way, both

Kentucky plantations and Kentucky steamboats – the chief investments within Clay’s Bluegrass - were business operations that relied upon slave labor as a going concern. Moreover, they also promised rich returns if and when their respective black workforces were liquidated and sold downstream. As a result, Henry Clay’s own theoretical abolitionism was made to rest awkwardly beside practical steps he took while in Washington, D.C. to maximize the present and future worth of the slaves owned by the constituents of his home state. From the 1820s through the Compromise of 1850, for instance, Clay was the champion of Kentuckians seeking to use national institutions to recover their runaway slaves, supporting the argument of one of his Kentucky colleagues that unregulated acts of self-emancipation “much impaired the value of those slaves that remained behind.” Indeed, as an appellate lawyer in the 1841 Supreme Court case of Groves v. Slaughter, Clay successfully defended Kentucky clients seeking to export and sell Bluegrass slaves downstream within the interstate slave trade. Under Clay’s Constitution as a Bluegrass Whig, Congress’ power to tax property or regulate commerce was only valid if it served to equalize or “sustain” - rather than “annihilate” - returns on trade. For better or worse, he reasoned in his Groves argument before the Court, slaves were considered property in Kentucky and the states of the lower Mississippi. As articles of merchandise, neither national nor state laws could therefore block the valid private purchase and transfer of ownership interests in black labor-time on an interstate basis.63

For commercial lawyers working within the Ohio-Kentucky corridor, Henry Clay’s pivot in *Groves*, where his Whig imperative to “sustain” commerce was eventually put into the service of protecting the right of Bluegrass slaveowners to move and sell their human property downstream, would have seemed familiar. As businessmen in their own right, Kentucky-born lawyers often performed similar acts of down-river arbitrage. The case of John Armstrong Collins is illustrative. The son of a prominent attorney and dry goods merchant from the river town of Maysville Kentucky, Collins crossed the river in his teens to study law in Ohio with Thomas Corwin, an antislavery political leader within the Buckeye State and future U.S. Senator. As late as the 1840s, Collins described human bondage as a “monstrous superstition, founded in force, against natural law, [and] against the soundest teachings of political economy.” For a time he had even followed James Birney’s career path, breaking his personal ties with what he called “the blasting and paralyzing influences of slavery” by moving to Cincinnati to practice law. But then, with his business prospects dwindling in the Queen City by 1848, Collins had a change of heart. Even though it required him to learn the civil law, he eventually decided to relocate his practice to New Orleans, commercial entrepot of the slaveholding South. “Louisiana presents a bar less full, better fees, and a race of men more to my taste than the shallow Yankee of Ohio,” Collins explained to one of his friends before loading his law books on a steamboat and departing for the Crescent City.⁶⁴

Once within New Orleans, John Armstrong Collins likely crossed professional paths with Garnett Duncan, another attorney émigré from the Bluegass State who maintained a Canal Street law office by the late 1840s. Born in Louisville in 1800 to prominent parents who had emigrated

from Virginia, Duncan was a Kentucky version of Timothy Walker, a commercial lawyer sporting an Ivy League pedigree (Duncan graduated from Yale in 1820) who also served as the University of Louisville’s inaugural “professor of the science of law.” From the time he entered active legal practice in the 1820s in Louisville until his final departure for New Orleans in 1849, Duncan had in fact shared many of the same clients as Walker, with a particular facility for incorporating Whig arguments into his defense work for out-of-state steamboat owners attempting to do business in Kentucky’s largest river port. In 1837, for example, Garnett Duncan represented the Louisiana owners of the Lancaster during a successful appeal of Chancellor Bibb’s ruling in the Woolley case. In a decision authored by Judge George Robertson, a Whig opponent of Bibb during the Old Court/New Court struggle, Kentucky’s highest court eventually ruled in favor of Duncan’s client. As Robertson had already clarified in an 1835 decision, suits under Kentucky’s “asportation laws” were not the Bluegrass equivalents to federal admiralty procedures of Ohio’s later Watercraft Law, where vessels could be seized and sold without notice to their owners. Thus, despite the text of the 1824 and 1828 “asportation” statutes allowing in rem suits against vessels by name, Robertson held, Woolley’s suit had to be brought against the vessel’s owner, rather than the vessel itself. And as to the interest of the Lancaster’s clerk, Woolley’s suit had to be dismissed outright. According to Judge Robertson, the earlier sale of this interest to Joseph Reed, pursuant to a court-ordered admiralty adjudication in New Orleans, had fully extinguished Woolley’s later-occurring claim brought in Louisville’s Chancery Court.

---


66 See Case v. Woolley, 36 Ky. 17 (1837). The 1835 decision was Church v. Chambers, 33 Ky. 274 (1835) (successfully argued by John J. Crittenden, Duncan’s Whig colleague from Frankfort, Ky.).
In 1837, it would have been incorrect to view the verdict that Garnett Duncan procured for the *Lancaster*’s owners as directly resting on antislavery principles. Robertson’s decision said nothing specifically about A.R. Woolley’s underlying claim in the labor-time of William Gordon, the self-emancipating slave at the heart of the case. Rather, by reaffirming the right of Duncan’s clients to defend themselves in court through the mechanism of an *in personam* action, and then by deferring to an earlier adjudication on the *Lancaster*’s ownership structure rendered by a federal court in Louisiana, Robertson merely announced that Woolley’s claim sat alongside - and not above - the corollary property interests of the *Lancaster*’s owners under Kentucky law. Indeed, even though it went unmentioned in his opinion, Judge Robertson also tacitly sanctioned one of the best methods that Garnett Duncan’s steamboat clients possessed to avoid liability under the Kentucky’s asportation laws: the staged steamboat sale, consummated in the Big Easy. Such schemes took advantage of a loophole created by the Supreme Court in 1833 after its *Steamboat Thomas Jefferson* decision, wherein the Court took judicial notice that the occasional “rise and fall of the water” at the New Orleans levee was sufficient to place that location above the “ebb and flow of the tide,” giving federal judges in that location the power to issue local rulings on steamboat ownership questions with the perceived finality of national admiralty law. As one steamboat insurance agent noted when observing that an indebted steamboat in the *Lancaster*’s position had recently been sold for the low price of $1,000 at a sheriff’s sale, this opened the possibility to stage “sham sales” in the Crescent City as a way “to get rid of paying for some negroes that he had carried off.”67 In addition to satisfying Joseph Reed’s wage claim

---

67 *See Peyroux v. Howard*, 32 U.S. 324 (1833) (New Orleans loophole); Letter from Samuel F. Covington to E. G. Whitney, Feb. 6, 1852, Box 39, Folder 2, Covington Family Collection, Havighurst Special Collections, Miami University of Ohio Library, Oxford, Oh. (“paying for some negroes”).
against some of Duncan’s clients, the New Orleans-based sale of a quarter interest in the
*Lancaster* may have had this ulterior motive as well.

By relying upon alternative legal institutions to keep property in motion downstream, the
outcome of the *Woolley* appeal was perfectly tailored for Garnett Duncan’s rivergoing clientele,
and for Duncan himself. Duncan was a modest slaveholder in his own right, claiming four
people of varying ages (possibly the remnants of a slave family) as his property under the 1840
census, and hiring several more as family attendants. In 1826, he had also married into the
family of John L. Martin, a one-time Lexington-based planter who had established “Timber Lake
Place,” the first cotton plantation in Bolivar County, Mississippi. At its height, this operation
relied upon the labor of 119 slaves. By 1850, Duncan had acquired land adjacent to his father-in-law’s property and had moved to New Orleans, continuing his law practice while managing
the finances of Martin’s estate. Not surprisingly, while Garnett Duncan once wrote a “letter of
recommendation” for a family servant to marry the slave of another Louisville resident during
his days in Kentucky, there is little evidence of him taking the time to represent the interests of
runaways like William Gordon through the routine procedure of a “freedom suit” in court, even
during the Louisville portion of his career.\(^68\) Instead, Duncan’s prospective clients remained
people like the *Lancaster*’s owners and his father-in-law, white men who, through various
means, used the Falls City’s river connections with New Orleans to put what property they
owned to its most lucrative economic use downstream. When elected to Congress as

\(^{68}\) See Letters from Garnett Duncan to “Dear Sir,” Apr. 12, 1841 and Dec. 19, 1841, Duncan Letters,
Filson Historical Society (“letters of recommendation” for Nathan, a servant hired to Duncan’s Louisville
household). The commercial ties of Duncan and his family to the lower Mississippi River Valley can be
identified in “Hon. Garnett Duncan,” Duncan Vertical File, Filson Historical Society; W. Alfred
Williams, *History of Bolivar County, Mississippi* (Rosedale: DAR, Mississippi Chapter, 1976), 6-7
(“Timber Lake Place”); William T. Lewis, *Genealogy of the Lewis Family in America, vol. 1* (Louisville:
Louisville’s representative for a single term in 1846, Duncan even supported their efforts in the political arena for a time, caucusing with Alexander Stephens and George Toombs of Georgia, the leaders of that body’s “Cotton Whig” faction. There, alongside Stephens and Toombs, Duncan strongly supported the successful 1848 presidential candidacy of Zachary Taylor, a Virginia-born man with a Louisville address who in fact drew most of his income from plantations in Kentucky and Louisiana that, in all, employed more than two hundred slaves.\(^{69}\)

Duncan’s typical Kentucky clients, seeking to build investment empires on the scale of Zachary Taylor’s downstream, often found the Ohio River full of too many regulatory snags, including Kentucky’s own “asportation laws.” Within the Ohio-Mississippi corridor, for instance, statutes that punished steamboat owners and crew for carrying people of color out of state had a way of constraining the movement (and thus reducing the productive and exchange value) of both Kentucky-based vessels and Kentucky-owned slaves. As one Louisville steamboat captain testified in court, all steamboat operators employed slave laborers below the Falls. But to the extent that they chose to enter the interior waters of Indiana or Illinois, they typically applied to the owner of their hired-out slave works for special permission. And when it came to Cincinnati, some steamboat operators were known to leave the enslaved members of their workforce in slaveholding states as they journeyed upstream. Others agreed under formal or informal contract with Kentucky masters to avoid landing in Cincinnati at all.\(^{70}\) With the Falls of the Ohio and Louisville’s undersized canal already blocking direct passage from Cincinnati to


\(^{70}\) See Testimony in *A.J. Ballard v. Steamer Bunker Hill*, Case No. 7583, Filed Apr. 12, 1851, Louisville Chancery Court, Jefferson County Chancery Case Files, Kentucky Department of Libraries and Archives, Frankfort, Ky. [“KDLA”].
the Mississippi River during most times of the calendar year, and with it generally too expensive to replace black crewmembers with white counterparts once reaching Cincinnati, this essentially turned Louisville into the unofficial color line for the Ohio River trade.\(^{71}\) Indeed, from the 1820s through the mid-1840s, the connection between Louisville and Cincinnati was dominated by only a single line of steamboats owned by Cincinnati’s Jacob Strader, one of Garnett Duncan’s clients.

As Jacob Strader claimed in one “asportation” case of his own, he often instructed the officers of his boats to never trust a black passenger’s written proofs of freedom without a white person also attesting to their veracity in person.\(^{72}\) For white Kentuckians, this had the indirect result of sometimes making it complicated to transport their slaves up or downstream. By the 1850s, for instance, when a Kentucky woman named Effie Hensley attempted to send “Malinda” (her father’s slave) to St. Louis, she found the task of identifying a carrier that accepted responsibility through all legs of the trip nearly impossible. A river route through Louisville, she as advised, would be risky unless she could “go right on” to the confluence of the Ohio and the Mississippi without stopping in Cincinnati. Allowing Malinda take a train herself, meanwhile, would also be also “unsafe.” Unable to accompany the woman herself, Hensley was stuck with attempting to pay a hefty sum to a private firm, the Adams Express Company, to chaperone

\(^{71}\) See, e.g., *Order of Reference of the Supreme Court of the United States, in the Case of The State of Pennsylvania against... the Wheeling and Belmont Bridge Company* (Saratoga Springs: White, 1851), 48, 382, 413, 526, 532-3, 628, (Louisville and Portland Canal, seasonal fluctuations of the water table, and segmentation of Ohio River Trade).

Malinda to Missouri in her place. A few years earlier, several white men accompanying a group of slaves from Virginia to Missouri wrote that they had decided it was prudent to avoid Cincinnati altogether, given what they had heard about the “spirit of abolition fanaticism” in that town. Instead, they decided “to lodge the[ir] negroes at the Covington jail” when their steamboat alighted in the Queen City. The total cost was $15, charged to the owner of the slaves. To the extent that this protected their possessory interests at the time, it turned out to be a wise investment. A few years later, when a Kentuckian named Thomas Garrett attempted to cross the Ohio from Covington to Cincinnati with his family’s rented slave “Mary,” the master of a local ferry refused to let them onboard without Garrett also providing proof of ownership, something he could not produce. Instead, the two were forced to cross the icy river on foot, where after speaking with two “mulatto men” outside of Cincinnati’s Brown Hotel, Mary absconded. Even if Mary were returned, Garrett’s lawyer later advised, Garrett would still have to pay for the costs of housing her in prison, and then would be required to foot the bill for transporting Mary to the interior of the state to be sold, where as a confirmed runaway she would fetch only a nominal price.

For some, the legal predicament faced by Effie Hensley and Thomas Garrett was completely external to the law of the Bluegrass State. According to John H. James, an Ohio-based lawyer and a part-owner of steamboats that were occasionally sued under Kentucky’s “asportation laws,” the problem still stemmed from the “misapplication” of British precedents by Buckeye legal theorists. Under the neo-Somerset antislavery reading of Ohio law championed

---


by people like Salmon P. Chase, the suggestion had been made in Ohio courts that slaveholders could “forfeit their slave” merely by traveling into the Buckeye State. For James, this suggestion was legally incorrect; for him, there was no question that the U.S. Constitution regarded “slaves as property” and protected the right of Kentucky slaveholders “to pass from one state to another.” In State v. Hoppess, the Ohio judge Nathaniel C. Read had in fact called this a constitutional “right to navigate the Ohio with a slave,” a privilege that Read also explained should be seen extending to the right to land on the Cincinnati side of the shore as an incident to “ordinary navigation.”

A few years later, however, while boarding a steamboat to relocate his family’s slaves to a “new home” on the lower Mississippi, one Kentuckian named Horace Brand felt that this right was still under threat from residents from the Buckeye State. Turned away by several steamers, Brand found the one transient vessel that had eventually agreed to take him onboard with his slaves to be full of “negro steelers” and very likely underinsured (and thus unable to cover the cost of a lost slave). This in turn inspired Brand to self-insure his precious cargo the old fashioned way, “walk[ing] the deck with a revolver in one hand and a Buoy [sic] knife in the other” as a way to guard his investments.

Although Horace Brand may not have realized it at the time, such river-driven paranoia was the product of Kentucky law as well. Writing to Lexington’s Calvin Morgan a few years later, one Louisville correspondent decried state legislation that, in the name of “protection for slave property… prevent[ed] Kentucky from sending her slaves South for sale.”

---


76 See Letter from Horace Brand to Henry Duncan, December 15, 1854, Box 1, Duncan Family Papers, University of Kentucky Special Collections, Lexington, Ky.

77 See Letter to Calvin Morgan, Nov. 29, 1860, Box 15, Hunt-Morgan Family Papers, Special Collections, University of Kentucky Library, Lexington, Ky. The controlling economic understanding of merchants...
Morgan’s friend, a man who apparently sought to extract excess value from his family’s male slaves by selling or renting some of them to steamboats heading downstream, statutes like the Kentucky’s asportation laws had claustrophobic effects of their own, forcing Kentucky to “keep[] her property in her own hands” against the economic interests of its merchant class. For interstate merchants like this, the bias of Kentucky’s dominant “occupying claimant” legal culture – reifying what the legal historians Willard Hurst and Morton Horwitz would later call a “static” rather than a “dynamic” understanding of property ownership – could be a cause of professional concern.\(^78\) Thus the continued interest of riverfront lawyers like Garnett Duncan in tracking caselaw and legislative developments in downstream jurisdictions that seemed more attuned to resolving what the historian Eugene Genovese once called the “Slaveholder’s Dilemma” – the competing imperatives to protect slavery “for the sake of social and political order” on one hand, and “to reap the benefits of liberal capitalism” on the other.\(^79\) This is what made Louisiana such a particularly alluring jurisdiction for Garnett Duncan and his clients. There, for instance, some judges had labeled a similar “asportation” law to Kentucky’s as “highly penal,” and had already decided that such statutes would not to be “harshly construed” against steamboat captains or vessel owners.\(^80\)

---


Back in Kentucky, when representing the owners of steamboats sued for carrying black passengers and enslaved steamboat hands out of the state, Duncan continued to tap into the feeling among some Kentucky merchants that the “Occupying Claimant” doctrines of Bluegrass law were doing too much to restrain white mobility, and should be construed more like Louisiana’s versions of the same rules. In early 1841, for instance, when *The General Pike* (one of the vessels in Jacob Strader’s Louisville-to-Cincinnati fleet) was named in a suit in Louisville’s Chancery Court for allegedly carrying “Luke,” a Kentucky slave, out of the state, Duncan filed papers on behalf of Strader denying “the Constitutional power or authority on the part of Kentucky to subject him as a navigator of the Ohio River to damages.” Later that year, *The General Pike* was sued again, this time by Harrodsburg’s Dr. Christopher Graham, who initially sought to force the sale of the *Pike* (built in 1840 for $21,996) to recover the full value of the slaves Henry, George, and Reuben, initially claimed to be worth $1,500 as Graham’s slaves. In response, Duncan once again cited Strader’s “right to navigate the Ohio River” under the U.S. Constitution, in effect challenging the authority of Chancellor Bibb to hear the case under Kentucky law.⁸¹

Here, at the early stages of the *General Pike* cases, Duncan had deployed a legal argument that was old as steamboat navigation itself, first used by the one-time Louisville-based steamboat pioneer Henry Miller Shreve when his wildcat vessel *The Enterprise* was seized by federal marshals in New Orleans. Back in 1817, while facing off against agents of the so-called Fulton-Livingston “steamboat monopoly” that claimed exclusive charter rights over the river

---

trade, Shreve’s lawyers successfully argued that the U.S. Constitution and “repeated acts of Congress had declared the Ohio and Mississippi River… a mare nostrum of the republic, belonging equally to all citizens.” National law, they argued, had long established that each steamboat operator enjoyed “rights of free navigation” that no state, territorial, or municipal lawmaker could deny.82 As supported by no less a constitutional scholar than John C. Calhoun at the time of the General Pike litigation, this “freedom of navigation” argument relied upon language in the U.S. Constitution that explicitly granted the U.S. Congress the exclusive authority to regulate “commerce” between the states, a power which the Supreme Court later specifically affirmed included steamboat navigation.83 The argument also leveraged the proviso in the Northwest Ordinance of 1787, re-enacted by the First Congress, that the waters of the Mississippi and its tributaries were to remain “common highways and forever free” to all U.S. citizens, devoid of any “tax, impost, or duty” whatsoever.” Additional language in the U.S. Constitution underscored that no preference was to be given to any “regulation of commerce” discriminating among ports, or that required vessels to pay any duties during interstate travel, while the “citizens of each state” were entitled to the same “privileges and immunities of the several states.”84 By subjecting the Cincinnati-based Jacob Strader’s line of steamboats to

---

82 See “Memo by Judge Treat on Henry Miller Shreve written for the Democratic Review, Mar. 1848” Box 1, Steamboats and River History Collection, Missouri Historical Society Library, St. Louis (“mare nostrum”); Answer to Complaint, Jan. 22, 1816, Livingston v. Shreve Box, Mississippi Set, LeBoef Collection, New-York Historical Society, N.Y. (“rights of free navigation”).

83 See Gibbons v. Ogden, 22 U.S. 1, 190 (1824) (“All America understands, and has uniformly understood, the word "commerce," to comprehend navigation”)

special penalties for daring to run a steamboat line into the Bluegrass State, Kentucky’s legal system was impairing the operation of these rights, arguably in violation of federal law.

Made in Kentucky state courts before a judge (Chancellor George M. Bibb) with a history of prioritizing Kentucky’s indigenous legal institutions over their national counterparts, Duncan’s “freedom of navigation” arguments in the General Pike litigation were for a moment unsuccessful. “The River Ohio,” the Chancellor scolded, “is not a sanctuary for wrongdoers, trespassers, felons, or murderers.” For Bibb, an individual Cincinnatian’s right to navigation was decidedly “subordinate” to the state of Kentucky’s superior “right to regulate everything which passes on the river so far as necessary to its own security and that of its citizens,” especially when this right included the power to restrict the movement of Kentucky slaves and the state’s free black population.85 Despite this setback, however, the intrepid Duncan nevertheless found ways to limit Jacob Strader’s exposure using Kentucky law. In Strader v. Fore, the first General Pike case, a later argument on appeal requiring the owners and officers of the Pike to be sued severally by name eventually led Chancellor to release Jacob Strader from the case. And in Strader v. Graham, the case General Pike case involving the “slave musicians” George, Henry, and Reuben, Duncan followed a similar approach, shifting the matter to an in personam proceeding and then implying that John Armstrong, the Pike’s captain, had gone against boat rules to let the three men onboard. Duncan also cast some of the blame back on Dr. Graham for signing a note that permitted two of the three men to study music with the bandleader Henry Williams, a free man of color in Louisville, who was in fact allowed to carry Henry, George, and Reuben across state lines and to collect wages as they performed in Indiana and Ohio while

———

exercise of federal internal improvement authorities on the Ohio and Mississippi Rivers, termed by Calhoun to be an “inland sea”).

85 See Graham v. Steam Boat Pike, Chancery Opinion and Order, Oct. 7, 1843, Case No. 3225, Jefferson County Chancery Case Files, KDLA.
performing with Williams’ interracial band. Although Dr. Graham sold the illusion of a static, shorebound agricultural order at his Harrodsburg resort for a clientele of “belles and beaux” from the Deep South, Duncan insisted that Graham was more accurately seen as having gambled with a dynamic interstate wage labor market to train his slave musicians, and having had simply lost his bet. Citing *Lydia v. Rankin*, an 1820 decision by Kentucky’s Court of Appeals that appeared to construe such arrangements as a constructive manumission, Duncan argued that Graham’s rivergoing slaves were already free by the time they boarded the *Pike* in 1841, in part because of the wages that they had already pocketed. In the alternative, Duncan argued, Graham’s liberal form of mastery, allowing Henry, George, and Reuben to earn money and travel out of Kentucky “as if they were free” had entirely liquidated their remaining exchange value as slaves.\(^{86}\)

Although Kentucky’s Court of Appeals technically ruled against Duncan’s client in *Strader v. Graham*, issuing a decree for $3,000 (the jury-assessed fair market value of Henry, George, and Reuben if they had counterfactually remained in Kentucky as Dr. Graham’s slaves instead of taking their actual path of self-emancipation to Canada), it took Kentucky’s legal system more than five years to reach this outcome. In the meantime, the original version of the *General Pike*, the vessel that Henry, George, and Reuben had boarded in 1841, was no longer in existence, having been consumed by fire in 1843.\(^{87}\) By 1847, Strader himself had cleansed himself of any remaining liability stemming from Graham’s *General Pike* claim, first by


\(^{87}\) See *Strader v. Graham*, 46 Ky. 633 (1847) (leading to final Kentucky jury verdict); “Steamboats on Western Waters,” Box 2, Folder 23, Henry W. Williams Collection, Missouri History Library, St. Louis, Mo. (listing *Pike*’s original value and date of destruction by fire).
transferring any risk of paying damages to Strader’s brother in Louisville as Jacob Strader’s surety (who then promptly assigned this interest to a third party who may have owed the Strader family money), and then by divesting himself of title to a newer version of the General Pike altogether. **

From the standpoint of Strader’s bottom line, Duncan’s courtroom tactics, at every turn resolving Dr. Christopher Graham’s personal “slaveholder’s dilemma” in a Cincinnati steamboat capitalist’s favor, were a smashing success.

**

During the lengthy Strader appeal, Garnett Duncan had also been elected to Congress in late 1846. As a Cotton Whig, he spoke out against “the alarming agitation of the slavery question” on the floor of the U.S. House, and voted down the application of the Wilmot Proviso to America’s new territorial acquisitions of New Mexico and California. For decades, the way that Kentucky Whigs had chosen to quell national debates about the peculiar institution was to support economic improvements on both sides of Ohio River while brokering what Henry Clay’s protégé John J. Crittenden once called “just compromises” between North and South on slavery itself. In Crittenden’s words, the idea was to preserve Kentucky’s status as “the balance wheel of the Union.” But by late 1840s, Duncan wrote to Crittenden that he felt that more urgent measures were necessary “to take hold of the slavery situation,” to beat back the Wilmot Proviso on its face, and thus to avoid “revolution, dissolution and civil war.” One strategy both men agreed to adopt was to quietly place the continued legal validity of the Northwest Ordinance – the textual basis for the Wilmot Proviso – itself on trial.

Duncan’s case of *Strader v. Graham*, which Duncan’s client had already “won” through delay and commercial legerdemain, eventually became their vehicle of choice. There, buried among the many arguments that Duncan had offered on Jacob Strader’s behalf was the Chase-like assertion that by crossing the Ohio River and earning wages for their work with their master’s consent, Henry, George, and Reuben had immediately “acquired a right to freedom” under the Ohio and U.S. Constitutions, two documents that were to be construed in light of Congress’ 1787 legislation barring slavery north of the Ohio River. The state’s Court of Appeals had ruled against Duncan on this issue, going so far as to overturn that court’s precedent in *Lydia v. Rankin* while holding that Ohio’s “mere general prohibition of slavery” provided no effective “means of resistance” for slaves or their agents attempting to evade a master’s rights to recapture under Bluegrass law. In October 1847, however, one month before his election to Congress, Duncan dusted off his Northwest Ordinance arguments and obtained a “writ of error” from Kentucky’s U.S. Circuit Court, in effect ordering that the Kentucky Court of Appeals decision be referred to the Supreme Court of the United States for final review.  

Although Duncan’s appeal was ostensibly made on behalf of a white man, Jacob Strader, to defend against a claim that another white man claimed in his own property, and although Dr. Graham’s slaves had already settled in Canada and successfully acquired their own freedom through British means, Duncan asked the Court to answer a question reminiscent of the slave-led “freedom suits” that occasionally made their way through Louisville’s courts. Had Graham’s slaves, “who had been permitted by their master to pass occasionally from Kentucky into Ohio,” acquired a right to

---

freedom after their return to Kentucky?” Once Strader v. Graham arrived in Washington, D.C. in February 1848, John J. Crittenden, then representing Kentucky in the U.S. Senate, made an appearance opposite Garnett Duncan to represent the other side, responding firmly with a “No.”

Within the nation’s capital, Duncan’s court-based judicial solution to the nation’s impending sectional crisis previewed a similar legislative “compromise” proposal by U.S. Senator John Clayton, a Delaware Whig and friend of Crittenden, offered a few months later. There, Clayton proposed that the U.S. Congress organize its new territorial acquisitions as it had done in the Old Northwest, but in place of legislation that either prohibited or extended bondage in that territory, he would extend automatic appeal of “all cases involving title to slaves,” as well as “any writ of habeas corpus involving the question of personal freedom,” directly to the Supreme Court of the U.S. through the same “writ of error” procedure used in Strader v. Graham. “[T]his bill,” Clayton argued on the floor, “resolves the whole question between the North and South into a constitutional and a judicial question… leaving it to be settled to silent operation of the Constitution itself.” In the next session of Congress, Henry Clay seconded this measure, arguing that similar to Strader v. Graham it secured “the power of testing in the Supreme Court of the United States the right, under the Constitution, to carry slaves into [new] Territory.” Meanwhile, white supporters of the Wilmot Proviso’s absolute slavery prohibition howled at Clayton’s proposal. In a distant territory, asked William Upham, a Vermont Whig, “how can a slave, without money, without friends, and subject to the control and dominion of his

---

master, pray out his writ of error, and travel two thousand miles to Washington to try his case in
the Supreme Court of the United States?” Apparently without first-hand knowledge of any
slaves taking even more daring steps against steeper legal odds, Upham answered his question
himself: “no sir, he cannot do it; it is out of his power, and southern Senators know it, and
consequently they have no objections to the bill.”

And yet, even in the form such a suit played out in Strader - with a white litigant with no
remaining financial stake in the case in fact standing in for three African-American musicians
who had not waited for any white person’s permission to begin living as free men– the idea of a
person of African descent using their mobility or wage-earning status to contest their status in
federal court seemed unbearable for other white men in Washington, D.C. to consider. As James
G. Birney saw it, Strader and the similar Clayton compromise were structured in the same way
as if a group of black “mariners or seamen” had been imprisoned under Louisiana or Kentucky
law, had been denied release under a habeas corpus petition, and then had filed a “writ of error”
to the Supreme Court. Back in 1832, the Court’s Chief Justice Roger B. Taney had already
written in an opinion while serving as Andrew Jackson’s Attorney General that “Negro Seamen”
could not go to federal court to assert any rights of their own because they were not properly
regarded as “citizens” under the U.S. Constitution in the first place. Instead, because they were
regarded by most white people as fungible units of labor, Taney noted that black boatmen and
other people of African descent belonged to “the only class of persons who can be held as mere
property as slaves,” a group “to which the sovereign of each state might accord or withhold such

---

91 See “The Proposed Compromise,” Congressional Globe, June 14, 1848, 30th Cong., 1st Sess., p. 950
Cong., 1st Sess., p. 899 (“power of testing”); Congressional Globe, July 26, 1848, p. 1188 (“he cannot do
it”).

92 See James G. Birney, Examination of the Decision of the Supreme Court of the United States in the
advantages as it deems proper.” Not surprisingly, as Clayton’s proposal was debated in the Senate, Chief Justice Taney showed no interest in hearing the Strader appeal. Premised as it was on a modified “freedom suit” procedure like Clayton’s compromise, it lingered on the Court’s docket for three years, unheard until after the final defeat of the Wilmot Proviso during the Compromise of 1850 was duly recorded into federal statutory law.⁹³

When Strader was finally argued before the Taney Court in December 1850, its outcome was more or less a fait accompli. In his final appellate briefs, Garnett Duncan put together a weak and outdated case, relying upon older state rulings (Lydia v. Rankin in Kentucky, similar decisions in Missouri and Louisiana) that were no longer good law in their respective jurisdictions. Having already left Congress and moved to New Orleans in 1849, he sent Walter Jones, a founding member of the American Colonization Society and journeyman Supreme Court advocate most famous for leading the U.S. Army’s retreat from Washington D.C. during the War of 1812, to make these doomed arguments in his place.⁹⁴ Meanwhile, an invigorated James J. Crittenden remained in the case, ostensibly in his private capacity as Dr. Graham’s counsel, even though he was simultaneously serving in Washington, D.C. as President Fillmore’s U.S. Attorney General. Returning to one of Garnett Duncan’s original areas of concern, Crittenden suggested in his own arguments before the Court that, if indeed authorized by Congress through the Northwest Ordinance or other means, a nationalized freedom suit process


would impair the rights of white people to transport and transfer their property across state lines. For a Kentucky slaveholder, the U.S. Attorney General warned, “the Ohio will be made like the fabled Styx, the river of death, which, if once crossed, can never be recrossed.”

Chief Justice Taney clearly agreed with Crittenden and authored a majority opinion that sided with the Attorney General’s private client Dr. Graham. The “antislavery clause” of the Northwest Ordinance, Taney wrote in January 1851, was no longer of any application even within Ohio itself, since the state had long exited its own territorial stage. Instead, Chancellor Bibb had been right all along: even though Henry, George, and Reuben had long departed the Bluegrass State, the law of Dr. Graham’s Kentucky - not U.S. law, the law of Ohio, or the law of British North America (where George, Henry, and Reuben now actually resided) - entirely controlled the question of their “status, or domestic and social condition.” At the same time, the investment-backed expectations of Dr. Graham would be honored and protected in the U.S. courts. As Taney later wrote in *Dred Scott*, an interpretation of the law that deprived “a citizen of the United States of his liberty or property, merely because he came himself or brought his property into a particular Territory of the United States, and who had committed no offence against the laws, could hardly be dignified with the name due process of law.” There, in that more famous later case, Taney referenced his earlier decision in *Strader* while echoing the ancient “occupying claimant” logic that Chancellor Bibb once used to keep ownership interests in slave labor from departing Kentucky or falling into non-white hands. Submitted to the Court as a way to resolve in a definitive way one of the issues tangentially raised by *Strader* – the question of whether black people possessed the right to access the national judicial system as “citizens” of the United States - *Dred Scott* left little doubt of where the majority of the nation’s

---

highest lawgiver stood. When the relative commercial rights of white transport moguls like Jacob Strader came into conflict with slaveholders like Dr. Graham, jurists like Taney could still be conceivably required to intervene, likely on the side of people like Dr. Graham. Meanwhile, when it came to people of color like Henry, George, Reuben, or Dred Scott, such people “had no rights which the white man was bound to respect.” Summarizing Taney’s earlier Strader decision in an open letter sent to the nation’s “free colored people” in 1852, John G. Birney suggested that such legal opinions, when expressed by the nation’s highest court, sent the clear message that any “privileges” or “rights” that this group possessed were merely “permissive,” subject at all times to white revocation.

Speaking to a Boston audience after Strader was decided but while Dred Scott was still pending before the Supreme Court, Salmon P. Chase had more or less predicted that latter case’s outcome. In Kentucky, Chase noted, the state’s highest court had already reversed the doctrine of “once free, always free” found in the case of Lydia v. Rankin and replaced it in Strader v. Graham with the new dictum “once slave, always slave.” For Chase, Taney’s decision in the Strader case, giving the Northwest Ordinance no effect while holding that “the courts of the Union” must defer to Kentucky’s own status determination, previewed how the Court would

---


97 See Birney, Examination of the Decision of the Supreme Court of the United States in the Case of Strader, 5-11.
likely decide Dred Scott’s fate. Thus, *Strader* and *Dred Scott* were both symptoms of a large “retrogression in judicial regard to human rights.” More and more, Chase complained, jurists like Taney were becoming sympathetic to the idea that “property in man” was based on a pre-political, higher order right for the “strong to control the weak.” Indeed, if the laws of James Birney’s former home state of Kentucky were dispositive on questions of black status, and as one Kentucky jurist added as early as 1837, if “color [were] prima facie evidence of slavery” under Bluegrass law, this placed the continued freedom of the residents of Ohio’s Black Commons in doubt.99

**

By Chief Justice Taney’s own reasoning, the African-American activist Charles H. Langston asserted in a letter to Salmon P. Chase in 1857, the *Dred Scott* decision apparently “swept away the last vestige of colored men’s rights, and reduced them to the pitiable condition of mere merchandise.” As a result, Langston reported to Chase, the “colored people” of Ohio were “bleeding” under this and similar legal opinions.100 Downstream from Cincinnati, however, in Southern river towns from Louisville to New Orleans, Garnett Duncan’s traditionally Whig clientele of rivergoing entrepreneurs responded to *Strader* and *Dred Scott* with cheers, imagining the new administrative possibilities the decisions seemed to create. Since the 1820s, for instance, Southern wharfmasters had long been subjected to the argument that state laws imprisoning people of color upon their entry somehow inappropriately interfered with

---

98 Dred Scott had already been determined by Missouri’s Supreme Court to be slave under state law, despite Scott having spent time living in jurisdictions where slavery was once believed to have prohibited under the Northwest Ordinance.


100 See Letter from Charles H. Langston to Salmon P. Chase, Apr. 13, 1857, Reel 10, Chase Papers, LC.
“the freedom of navigation” within America’s greater maritime economy. Now, however, by protecting the right of slaveholders like Dr. Graham to move their slave property within the Ohio-Mississippi corridor as they saw fit without losing their underlying title, and then by confirming that black travelers possessed no similar privileges, Taney’s decisions tacitly confirmed what one steamboat man had argued in the pages of a river trade publication in 1848: within the United States, “the right to navigate a river… established when the first white man put his foot on shore, and unloaded his packages of furs from a canoe,” was still only applicable to members of the white race. After the Compromise of 1850 and Strader, it no longer seemed inconsistent for Southern lawmakers to start looking for the national government to expand commercial possibilities within the lower Mississippi River Valley while at the same time continuing to expect local institutions to regulate the black workforces such economic activity set in motion without much federal intervention. In 1851, for instance, shortly after Congress began to collect payroll taxes from riverboats to fund a new national hospital to serve sick or disabled boatmen in Louisville, federal commissioners were also able to announce that no amounts would be withheld from the wages of hired out slaves. In Louisville, that city’s customs inspector once explained, this meant that a steamboat like the 548 ton Peytona, carrying a crew of fifty-five souls, only paid “hospital money” for seventeen people. The rest of the crew, thirty eight in number, were slaves. As a class, black boatmen were not served by the nation’s marine hospital system; euphemistically, they were “exempt from hospital relief.”

102 See “Wharfages,” The Western Boatman 1.5:(July 1848), 163.
It was precisely at this moment of legal consensus in the early 1850s – when serving a sick or injured black boatman in a national medical facility was against U.S. law - that white steamboat investors on both sides of the Ohio began to send petitions to Washington, D.C. to further expand what they called “the civil rights of navigators in the west.” Starting in 1848, a St. Louis steamboat captain named Davis Embree worked with the Ohio attorney Charles P. James to document their demands in a river publication called *The Western Boatman*. In the nearly five hundred pages of text that Embree and James ended up drafting, nothing addressed the health, safety, or economic wellbeing of white or black riverboat crews. Instead, the publication’s overriding concern was the chronic “want of some general laws governing the navigation of the west.” As Embree saw it, the 1825 *Steamboat Thomas Jefferson* decision had given rise to statutes like Ohio’s “unaccountable” watercraft law, creating the situation where “people of the different states” were continually “deprived of an equal right” to recover steamboats that had been seized or sold. Also of interest to Embree’s readers was the need to control the wages of steamboat crews and to equip steamboat captains with the same authority to “establish discipline, order, and system” enjoyed by vessels at sea.\(^{104}\) In one Louisville meeting of “steamboat owners and masters,” for example, the suggestion was made to resolve this problem by requiring white crewmen to sign contracts binding them for an entire voyage. As a corollary matter, they proposed that “negroes hired as firemen or deckhands should not be paid above a certain wage a month.” At another conference in St. Louis, a comprehensive federal statute was suggested to provide that whenever a crewmember failed to perform their work, they should immediately

---

forfeit “whatever money or wages” they had earned, should be “deemed guilty of mutiny,” and should be subject to be tried for this offense “in any District Court of the United States.”

For some steamboat operators within the Ohio River corridor, the most elegant legal path to implement these policies was for the Supreme Court to overrule the *Thomas Jefferson* decision and to re-extend admiralty procedures to the inland river United States. As one “memorial” drafted by Timothy Walker and submitted to Congress on behalf of a committee of Cincinnati steamboat owners put it, admiralty law had the potential of applying a “common code” to commercial disputes occurring within the Ohio-Mississippi River corridor, subjecting all vessel operators within this region to “equal responsibilities and equal protection.” Indeed, as early as the 1830s, some Louisville-based vessel owners were requesting access to admiralty “shipping papers” to block hands from quitting their employment in the middle of the voyage through the mechanism of year-long federal contracts enforceable within U.S. courts. Meanwhile, although Embree himself worried about the “host of federal courts and officers” necessary to implement such measures, and the way that these officials might collide with the “rights and privileges which belong to States,” he was nevertheless convinced that admiralty jurisdiction could be easily added to federal dockets “under the authority ‘to regulate commerce among the states.”

One of the many people who agreed with Embree’s constitutional assessment was John Catron, a steamboat-going resident of Nashville who now sat alongside Roger B. Taney on the

---


Supreme Court of the United States. A former riverboat lawyer who lobbied for an expansive judicial circuit covering Kentucky, Missouri, and Tennessee that he could reach by river whenever possible, Catron immediately grasped something that Taney could not: “the civil rights of navigators in the West” sometimes went beyond the interests of white people trying to move their slaves across state lines. Indeed, within Catron’s Tennessee, open access to the rivers by white merchant navigators was a key aspect of Southern life. As such, Catron once advised young Nashville lawyers to spend some time physically onboard the steamboats they represented as a way to learn what their clients were truly “lawing about.”

And in a concurrence to Taney’s Strader decision that was originally identified by black newspapers as a “dissent” (and at first filed by the Supreme Court clerk in the same way), Catron protested that the Chief Justice’s decision to invalidate the Northwest Ordinance as a whole went too far. The Strader opinion, Catron warned, also apparently annulled the Northwest Ordinance’s fourth article, which had designated western waters like the Ohio River “common highways and forever free.” With the Northwest Ordinance, Catron wrote in an earlier case, “[w]e have invited to come to our country from other lands all free white persons, of every grade and religious belief.” For Catron, such a right of navigation remained an important constitutional right that individual white navigators should have been able to continue accessing using U.S. statutory law.

Indeed, as Chief Judge of Tennessee’s Supreme Court, Catron had once held that a public “right

---


108 See Strader v. Graham, 51 U.S. 82, 98-9 (1851) (Catron, J., concur.); Draft Opinion by John Catron, Jan. 6, 1851, Strader v. Graham, Case. No. 2671, Appellate Case Files, Records of the Supreme Court of the United States, National Archives Building (the word “Dissent” is clearly labeled on outside of the envelope containing Catron’s draft and then crossed out); “Another Important Decision by the Supreme Court of the United States,” National Era, Jan. 16, 1851 (coverage of Catron’s “dissent” in the black press); Smith v. Turner and Norris v. Boston (collectively, the Passenger Cases), 48 U.S. 283, 440 (1849) (“free white”).
of way” to watercourses - “a natural right which the right of property does not destroy” - was insured by the Constitution’s privilege and immunities clause, allowing Tennesseans to bring private suits to defend their navigation rights, even in stretches of the Mississippi that did not even touch the shore of the Volunteer state.\textsuperscript{109}

Catron was comfortable with retaining elements of the Northwest Ordinance because he was familiar with the general idea, captured in the Ordinance’s “common highway” language, of people being on the move within the inland river west. And in contrast to Taney, to the extent this movement had the secondary effect of also placing a few people of color in motion as a by-product, he was comfortable with this as well. Although Catron was a slaveholder who fathered children with some of his slaves, he allowed some of his male colored offspring to live in Nashville “nearly as free men.” And in his last will and codicil, he also identified the various symbolic debts he owed to some of his slaves under his estate’s control, further accepting that the remaining market value of Ann Maria Brown, one of his Nashville servants, “was greatly impaired, she being strongly imbued with the idea of freedom.”\textsuperscript{110} Not surprisingly, after reading Taney’s majority opinion in \textit{Dred Scott}, Catron wrote a concurrence that once more criticized the Chief Justice, this time for failing to decide the case on narrower jurisdictional grounds that would have avoided Taney putting his own white supremacist thoughts in print. Riding his judicial circuit a few months later, Catron subsequently paid the court fees for Dred Scott to receive a copy of his former master’s will, and then met with Scott himself in St. Louis. One of the lawyers that witnessed their exchange claimed that Catron even engaged Scott with


“much friendly conversation and Christian sympathy, showing that in the opinion of the judge if they were not fellow citizens, they were at least fellow men.”

Catron’s preference was not necessarily to see additional stations of Cincinnati’s Black Commons sprouting up in places like his hometown of Nashville. But he did maintain a special affinity for Dred Scott’s St. Louis and Garnett Duncan’s New Orleans – the erstwhile French-speaking metropoles of North America’s Afro-creole population. For Catron, the Crescent City’s and its immediate river environs would have been the epitome of modern American commercial society. In 1845, for instance, when the Court heard a dispute over rights to alluvion in the lower Mississippi River, Catron considered the matter “the most important controversy ever brought before this court.” In New Orleans in particular, Catron saw a place that had apparently solved the “slaveholder’s dilemma,” where at least one enterprising Louisiana master in 1853 could think that it would be in his economic interest to seek a steamboat pilot’s license for one of his slaves, perhaps as a way to use his servant’s legal status as a shield against tort liability as this white man prepared to launch a steamer of his own. Significantly, the Crescent City was also a place where local regulations constraining the entry and exit of black boatmen stood side-by-side with national courts addressing river commerce disputes between white men under admiralty procedures. In 1836, while representing the white officer of a Mississippi River steamer in

111 See Dred Scott v. Sandford, 60 U.S. 393, 518-529 (1857) (Catron, J., concur.); Letter from John Catron to Samuel Treat, May 31, 1857, Samuel Treat Papers, Missouri Historical Society, St. Louis, Mo. (Catron’s disapproval of Taney’s Dred Scott opinion); Letter from Roswell Field to Montgomery Blair, Apr. 29, 1857, Box 73, Papers of the Blair Family, LC (“fellow men”).
one of his final cases before ascending to the Supreme Court, Catron gave another, more traditionally Jacksonian reason why the in rem processes of Louisiana’s admiralty courts should be more equally distributed on nationwide basis: Within the riverboat economy, he explained, “[t]he boat hands cannot sue… so well as by libel… where the boat certainly is detained.”\textsuperscript{113} As discussed in Chapter 2, white working class litigants – the “humblest people” occasionally championed by Jackson in his Presidential writings - could sometimes use admiralty law to come out ahead.

By 1851, Catron had apparently convinced Taney that upstream white citizens of the inland river West deserved equal access to all of the legal procedures that the white residents of New Orleans already enjoyed downstream. Admiralty law, Taney wrote in Propeller Genesee Chief v. Fitzhugh, a decision that explicitly overturned Thomas Jefferson, had been found “necessary in all commercial countries” for “the safety and convenience of commerce, and the speedy decisions of controversies, where delay would often be ruin.” As such, “it would be contrary to the first principles on which the Union was formed” to confine its access to white citizens living only below “the ebb and flow of the tide” on America’s Atlantic or Gulf Coasts.\textsuperscript{114}

**

Interestingly, although ostensibly premised on extending New Orleans’ steamboat law procedures upstream and hence achieving “equal rights among all the States,” the lawsuit giving rise to Taney’s decision in Genesee Chief may have been intended initially to block the colonizing effect of Ohio commercial law within the inland waters of the west. The case itself involved a collision on Lake Erie that had been brought in the U.S. District Court for the

---

\textsuperscript{113} See Steamboat Orleans v. Phoebus, 36 U.S. 175 (1837).

\textsuperscript{114} See The Propeller Genesee Chief v. Fitzhugh, 53 U.S. 443 (1852) (Taney, C.J.).
Northern District of New York under a statute passed by the U.S. Congress in 1845 to extend admiralty jurisdiction under Congress’ Commerce Power to the Great Lakes. In immediate practice, this new law benefited New York-based creditors of Lake Erie vessels, who now possessed a judicially-enforceable federal claim to lake-going vessels that would not expire, even after a rival judicial sale was performed in the Buckeye State under Ohio’s Watercraft Law.\footnote{See, e.g., the discussion of the Ohio Watercraft Law in Maskell Curwen, \textit{The Statutes of the State of Ohio} (Cincinnati: Morgan, 1854), 503-8; \textit{The Globe}, 10 Am. L.J. 337 (N.D. N.Y. 1851).}

But if extending federal admiralty procedures based on the New Orleans model was a stab at preempting Ohio’s Watercraft Law, it was ultimately unsuccessful. Instead, within Ohio, legal luminaries like Timothy Walker, John McLean, and Judge Humphrey Leavitt (McLean’s colleague on Ohio’s U.S. Circuit Court bench), also agreed that federal admiralty law was a way to ensure “concert of action” on the inland waterways. As Timothy Walker argued in his \textit{Western Law Journal}, several unique admiralty procedural rules provided for “equitable adjustment[s]” for river disputes in federal court, in a way “wholly unprovided for by the common law.” And for John McLean and Humphrey Leavitt, deciding a steamboat case in admiralty was in fact a way to execute Congress’ Commerce Power from the bench. Indeed, by 1852, without specific statutory authorization, Leavitt was already citing \textit{Genesee Chief} to hear an \textit{in rem} claim that Timothy Walker had brought arising from events that occurred entirely on the Ohio River’s inland waters.\footnote{See. e.g., Timothy Walker, “The Project of extending Admiralty Jurisdiction over Lakes and Rivers of the United States,” \textit{Western Law Journal}, Sept. 1845:12; Letters from Humphrey Leavitt, Steubenville, to John McLean, Washington, D.C., Mar. 19, 1845, Carl B. Swisher Papers, Box 1, Library of Congress; Letter from [illegible], Columbus, to John McLean, Washington, D.C., Jan. 29, 1845, Swisher Papers, Box 1; Letter from John McLean, Hart Springs, to Sen. Salmon P. Chase, Washington, D.C., July 10, 1850, Salmon P. Chase Papers, Reel 7, Library of Congress, Washington, D.C.; “Rules of Practice for the District Court of the United States for the District of Ohio, adopted at November term 1849, in cases in Admiralty,” Records of the U.S. District Court for the Southern District of Ohio, Western Division, Cincinnati, General Records, Journals, 1849-1854, Vol. 1, 1-5, Record Group 21, National Archives and}
Marginalized or ignored for years by courts in other states, the streamlined procedures of Ohio’s Watercraft Law quickly gained a second life in the federal tribunal of Judge Humphrey Leavitt of the U.S. District Court for the Southern District of Ohio after the *Genesee Chief* decision. A Jackson appointee from the Ohio River town of Steubenville, Humphrey Leavitt felt “compelled to give attention to the study of maritime law” at a relatively early date and to try western river cases generally without a jury in his court, even if this involved “great labor in trying and disposing” of these matters on his part. Thus, only two years before the *Genesee* decision, Leavitt had already issued admiralty rules for his own district court. Similar to Ohio’s state law, Leavitt’s rules permitted *in rem* suits against steamboats themselves while permitting all parties having an interest in seized vessels, including crewmen who could not afford to pay the normal court filing fees, to intervene in each admiralty action, heightening the chance that each libel (an admiralty claim) would culminate in a court-ordered sale. In 1854, while sitting on Ohio’s U.S. Circuit Court, Justice John McLean went out of his way to affirm Leavitt’s understanding that the authority of federal courts to hear cases in admiralty “extended to all our internal navigable waters,” including the Ohio and Mississippi Rivers. At least according to McLean, property interests asserted under its authority - most pointedly “the maritime lien for seamen’s wages”– superseded any rights asserted under varying state watercraft laws.  

By 1855, with admiralty claims supplanting complaints brought under Ohio’s Watercraft Law as the most efficient way for the river’s working class to recover wages for their labor, so many *in rem* suits were being brought in Leavitt’s district court offices in Columbus and Steubenville that Congress split the state’s national courts into two judicial districts, assigning

---


Leavitt to a new Southern District based in Salmon P. Chase’s hometown of Cincinnati. In the past, some within the rivergoing South may have accused Leavitt and the national legislature of treason. Through admiralty law, Leavitt was imposing what the Cincinnati lawyer Timothy Lincoln once called a “foreign code,” allegedly mandating a “bearing of one another’s burdens.” In the days of Strader and Dred Scott, however, Timothy Lincoln’s parallel concern, hinted elsewhere in his anecdote of Brooks vs. The Golden Gate that a “bearing of one another’s burdens” could eventually result in white ownership interests being transferred into black hands, no longer seemed particularly applicable. When concerns over the extension of admiralty jurisdiction were expressed in this period, they mostly appeared in dissenting opinions written by proto-Confederates like Alabama’s John A. Campbell or Virginia’s Peter V. Daniel, or in defense attorney’s briefs filed by Timothy Lincoln in the losing column.

**

Although itself a suit between private parties, the Supreme Court’s 1851 Genesee Chief decision also created a new fiscal framework for national powers to be exercised within the Ohio-Mississippi corridor. This was because as of 1855, the U.S. Supreme Court’s own admiralty rules, approved by Taney himself, also affirmatively entertained in rem libel actions brought directly by federal officers on behalf of the General Government for violations of the

---


nation’s “revenue laws.” As interpreted by James Guthrie, U.S. Secretary of the Treasury from 1853 to 1857 and a former Louisville commercial lawyer with experience bringing collection suits against steamboats in his private practice (and also Dr. Graham’s original attorney in *Strader*), such “revenue laws” extended beyond statutes that provided for the collection of custom and impost duties, including the collection of penalties stemming from violations of all regulatory laws arising under Congress’ Commerce Power. Indeed, they were enforceable on inland waters through admiralty procedures, included a new 1852 federal steamboat inspection law. Containing elements initially proposed by Davis Embree in the pages of the *Western Boatman* and supported by steamboat insurers and chambers of commerce as a way “to lessen the hazard” that some felt in owning or insuring “this species of property,” this statute imposed “fines, fees, and forfeitures” for not complying with various nationwide safety measures.

Enforced by a new U.S. Steamboat Inspection Service housed within Guthrie’s Treasury department, Congress’ 1852 “steamboat law” also contained amendments suggested by Salmon P. Chase to ensure that “steamboat crews as well as passengers and officers” were provided with legal accommodations. Specifically, as implemented by a commission of inspectors appointed

---

120 *Rules of Practice of the Supreme Court of the United States: Including the Rules in Equity and Admiralty, Adopted by Said Court; Also the Rules Adopted by the Circuit and District Courts of the United States for the Southern District of Ohio* (Cincinnati: Robinson, 1855). For the Supreme Court’s interesting admiralty law record during the nineteenth-century, see [Richard Henry Dana], “History of Admiralty Jurisdiction in the Supreme Court of the United States,” 5.4: (July 1871), 581-621.

121 See James Guthrie Papers, Folder 156 – Steamboats, Legal Papers, 1819-1840, Filson Historical Society, Louisville, Ky.; Guthrie, “General Regulations in respect to the Act of Congress of August 30, 1852 relating to Steamboats,” May 10, 1853, M735, Circular Letters of the Secretary of the Treasury, NARA II, Greenbelt, Md (Guthrie’s steamboat law background and revenue law determinations); *Report and Resolutions Adopted by the New Orleans Chamber of Commerce... Relative to the Causes of the Explosions of Steam Boilers* (New Orleans: Picayune, 1851), 4-5 (“lessen the hazards”).

by the President, the 1852 steamboat law gave crewmembers the power to “supersede” the orders of a captain in cases of emergency. Chase’s crew-friendly aspects of the 1852 steamboat inspection law occasionally led a few stray steamboat owners to protest that it had taken away the effective “control” of their property, having “the effect to destroy subordination and good order, so essential to the safe and successful navigation of the vessels.” But other steamboat owners who chose to comply with the regulations saw them as increasing the value of their vessel property. As Davis Embree argued in the *Western Boatmen*, following a common set of safety rules had the potential to lower insurance premiums while pushing non-compliant competitors out of the business altogether.123

Under James Guthrie’s Treasury Department, the 1852 federal steamboat law was strenuously enforced north of the Ohio River. Indeed, under Guthrie’s watch, some unclaimed proceeds from steamboat sales under the 1852 steamboat law went back into the Treasury, where in theory they could be reapplied to river improvement projects such as the enlargement of the Louisville and Portland Canal, one of Guthrie’s long-term pet projects.124 Here Guthrie could model himself on one of his predecessors, Roger B. Taney himself. As Treasury Secretary in 1833, Taney had removed federal deposits from the Second Bank of the United States and

---


transferred them to institutions like the Union Bank of Maryland. Like Taney, Guthrie was supposedly acting as the “fiscal agent” of the United States people as a whole, even when he quietly implemented a more local agenda.  

Though Louisville occasionally benefited, Guthrie had more success in implementing some of his steamboat-driven agenda in Ohio than in his home state of Kentucky. In the Buckeye State, Columbus and Cincinnati-based U.S. Attorneys, acting in concert with the Treasury’s Department’s solicitor’s office, began bringing in rem actions against Ohio River steamboats under the 1852 steamboat law and other national revenue and safety authorities. Meanwhile, in the Southern District of Ohio, Humphrey Leavitt preferred to see these suits as quasi-private admiralty suits, brought by government agents representing the disorganized public as a whole as a creditor through a “milder form of an action for debt.” Guthrie did nothing to dissuade this interpretation. With the General Government acting in a semi-private capacity to collect its fines like any other creditor, Guthrie’s agents could apply Roger B. Taney’s own theories of Jacksonian redistribution from decades before. While still serving as Jackson’s Attorney General, for instance, Taney had already argued back in 1831 that once the United States became party to a debt proceeding, it held a position of “priority” of its own.


126 See Letter from D.O. Morton, U.S. Attorney, Columbus, to F.B. Streeter, Solicitor of the Treasury, Washington, D.C., Nov. 6, 1854, Record Group 206 – Records of the Solicitor of the Treasury, Entry 42 – Letters Received from U.S. Attorneys, Clerks, and Marshals, Box 120, NARA II, Greenbelt, Md.; *United States v. Bougher*, 24 F. Cas. 1205 (1854). Leavitt’s “debt” determination ran contrary to the legal opinion of Kentucky’s U.S. Attorney, who individually determined that the United States had no standing to bring such cases.

127 Letter from Roger B. Taney, U.S. Attorney General, Washington, D.C., to Louis McLane, U.S. Secretary of the Treasury, Washington, D.C., Record Group 56- General Records of the Department of
Ten years after it was built, however, the legal machine that the rivergoing South had built to govern its steamboat trade on a nationwide basis after apparently resolving its “slaveholder’s dilemma” through *Strader v. Graham* fell finally and conclusively into Buckeye hands. In early 1861, with the nation engaged in the opening stages of Civil War, Salmon P. Chase now occupied the office of the Secretary of the U.S. Treasury, the seat once held by Roger B. Taney of Maryland in the early 1830s, and James Guthrie of Louisville more recently. If arms-bearing Mississippi and Ohio River steamboats had once been theorized by Henry Clay in 1841 as a “means of protection to the slave states” against a “servile war,” these same vessels were now apparently providing support for the Confederacy, a more dangerous form of rebellion in Lincoln and Chase’s eyes. Thus, on April 19, 1861, a Presidential proclamation placed ports within jurisdictions in active “insurrection against the Government of the United States” under a naval blockade. A parallel act of Congress, the first Confiscation Act, empowered the executive to seize property believed to be used “for insurrectionary purposes.” For U.S. Attorney General Edward Bates of St. Louis, this triggered an authority mentioned as an afterthought in Taney’s *Genesse Chief* opinion: the streamlined “prize” adjudications of federal courts sitting in admiralty. More generally, Bates received a legal opinion written in part by admiralty law experts such as Richard Henry Dana that argued that prize law could also be used as a template for federal confiscation proceedings.129

---


In theory, admiralty law’s special wartime procedures gave the General Government a way to revive the most radical edge of Ohio’s Watercraft Law, granting Union officers the procedural tools to dismantle the instruments and products of the Lower Mississippi Valley’s cotton economy. Indeed, between 1861 and 1865, lawyers appeared in the courtroom of U.S. District Court Judge Samuel H. Treat in Lincoln’s hometown of Springfield, Illinois, asking Treat to undertake prize “adjudications” to condemn, sell, and distribute the proceeds of steamboats docked at a U.S. Naval station near Joe Spencer’s old haunt of Cairo Illinois, vessels mostly seized by U.S. Navy gunboats of the “Mississippi Squadron.” While the residue of such judicial sales ended up in the coffers of Chase’s Treasury Department, by 1865 Judge Treat was setting aside some of the funds for Navy crews that had aided in the “salvage” of the steamboat or cotton in question.\(^{130}\) By 1864, with black boatmen and river laborers from Pittsburgh and Cincinnati becoming a target for the Mississippi River Squadron’s recruiting efforts, and with “the Naval bounty” being promised upon arrival, the proceeds of some of these sales could potentially end up in some black people’s hands. By 1863, in fact, the recruiting taglines of “Freedom to Slaves” and “Monthly Pay with White Men” were enough to draw Martin Delany back to the United States, where he began serving as a Union Army recruiting agent. “This is one of the measures in which the claims of the Black man may be officially recognized, without seemingly infringing upon those of other citizens,” Delany realized.\(^{131}\)


Helming the Treasury Department, a civilian executive agency whose power began where the blockade ended, Salmon P. Chase was in a position to theorize how the national government could continue transferring the fruits of black labor into black hands when the exigencies of the Civil War ended. The path began where it had for many of Chase’s former black clients within the Ohio River corridor: in Chase’s words, between white capitalists who were “willing to pay or see received by all, days wages for days works,” and “black Americans, who till the soil, or load the boats, & cars, or pursue the handicrafts.”\textsuperscript{132} By formalizing previously subversive interracial bartering arrangements that had existed before the war between Southern whites and the region’s enslaved, namely by bringing these deals aboveground and then recognizing the equal rights of each contracting party, the South could be remade into a more tropical version of Chase’s imagined antebellum Buckeye State. Thus, in July 1861, when Judge Humphrey Leavitt issued a ruling that denied the power of the U.S. Attorney for the Southern District of Ohio to confiscate suspected “insurgent” property entering Cincinnati, reasoning that a “state of war” did not extend that far up the Ohio, eliminating the possibility of prize proceedings against vessels docking in Kentucky ports, Chase did not flinch. He simply bypassed prize law and the traditional customs surveyor system altogether, assigning William P. Mellen, an itinerant debt-collecting attorney who had spent time in Kentucky and judged slavery to be a “curse” to the economic prosperity of that state, to serve as his “Supervising Special Agent of the Treasury Department for the Valley of the Mississippi.”\textsuperscript{133}

\textsuperscript{132} See Salmon P. Chase, Washington, to William Curtis Noyes, New York, April 7, 1863, Letterpress Vol. 1, Chase Papers, HSP.

Headquartered in Cincinnati and granted the authority to stop, inspect, seize, and transfer commercial property that had passed through Union river ports, Mellen set out to implement a set of inland river trading rules that effectively reversed the flow of the Mississippi River, turning U.S. Government offices in Cincinnati, rather than private trading establishments in New Orleans, into the largest “commission and forwarding” houses in the West. If seized by the military prior to passing enemy lines, Southern commodities and the vessels that transported them would be deemed “captured property,” to be transported to special agents under Mellen’s administration, who took custody of the items, transferring them to New York if cotton or putting them up for sale on the spot if something else. Mellen would then immediately place that percentage of the sale proceedings corresponding with the portion assignable to an “insurgent” owner into the U.S. Treasury. Other property, either “deserted” or voluntarily relinquished, would be considered “abandoned,” and would in turn be placed into the hands of Mellen’s special agents and sold on the open market, with its proceeds escrowed, less any processing fees due to the government and private carriers for their trouble. In doing all of this, Chase was careful to argue that Mellen was merely playing the quasi-private “fiduciary agent” role that customs surveyors had been exercising since Roger B. Taney’s time. When abandoned property passed into their possession, this did not necessarily mean that any permanent title was

Received from U.S. Attorneys, Clerks, and Marshals, Box 120, NARA II, Greenbelt, Md.; Letter from William P. Mellen, Peach Orchard, Ky., to Salmon P. Chase, Ohio Governor, Columbus, Oh., Dec. 10, 1859, Box 7, Salmon P. Chase Papers, Historical Society of Pennsylvania, Philadelphia, Pa.; Letter from Salmon P. Chase, Secretary of the Treasury, Washington, D.C., to William Mellen, Special Agent, May 4, 1861; Letter from Chase to Enoch Carson, Surveyor of Customs, Cincinnati, Oh., Apr. 4, 1863; Letter from Chase to Edward Barker, New Orleans, Oct. 23, 1863, RG 56, Entry 316 – Secretary of the Treasury Correspondence Concerning Restricted Commercial Intercourse, vol. 1, NARA II, Greenbelt, Md.
transferred. If, with the passage of time, a party “loyal” to the U.S. Government came forward, they could “replevy” their lost proceeds through a brand-new U.S. Court of Claims.\footnote{See \textit{Rules and Regulations Concerning Commercial Intercourse with and in States and Parts of States Declared in Insurrection} (Washington: G.P.O, 1864); Letter from Salmon P. Chase, U.S. Secretary of the Treasury, to William Mellen, Supervisory Special Agent, Cincinnati, Oh., Apr. 4, 1863; William Mellen, “Local Rules and Restrictions (May 11, 1863)”; Letter from Chase to Edwin Stanton, U.S. Secretary of War, May 28, 1863, RG 56, Entry 316 – \textit{Secretary of the Treasury Correspondence Concerning Restrictted Commercial Intercourse}, vol. 1, NARA II, Greenbelt, Md. Chase’s cotton program, of course, was also a way of raising revenue for the U.S. during the war. For Chase as financier, see Bray Hammond, \textit{Sovereignty and an Empty Purse: Banks and Politics in the Civil War} (Princeton, 1970); Craig Symonds, \textit{Lincoln and His Admirals} (New York: Oxford, 2008), 287-305.}

If Ohio’s debt collection law and federal admiralty law were two ways that the law could grease the wheels of commerce in the 1840s and 1850s, Chase’s system, which dispensed with court proceedings until an unknown later date, was perhaps the most efficient way of reaching a similar result. By permitting steamboats, cotton, and even slave-towing masters to pass through the Ohio-Mississippi River system,\footnote{See, \textit{e.g.}, Letter from Salmon P. Chase, U.S. Secretary of Treasury, Washington, D.C., to A.J. Howard, Surveyor of Customs, Louisville, Aug. 24, 1861, RG 56, Entry 316, vol. 1, NARA II.} it was not necessarily designed to destroy the slave economy overnight by halting all trade in its products or by emancipating every slave at once.

Instead, Ohio River commerce – a nineteenth-century social experiment whereby property titles were peaceably fragmented, disintegrated, then often rearranged on Cincinnati’s Public Landing – gradually transferred some of the fruits of black labor into the hands of the river’s black working class. In September 1862, for instance, “five negroes, formerly slaves in western Tennessee” appeared in Cincinnati with “a few bales of cotton belonging to their masters,” asking to turn them over to Mellen in exchange for a fee. Chase agreed with Mellen that “the official duty of those supervising the commerce does not require them to ascertain whether the negroes take the money back to their masters.” These men, Chase confirmed, could be paid directly for their trouble out of the proceeds of any subsequent sale, and it was “not competent for any officer of this Department to enquire into or decide upon the morals of any transaction.
connected with it previous to its shipment.” Indeed, the proceeds from such sales, one friend of Chase hoped, could eventually enable some blacks to purchase homesteads, to some extent “taking the place of the present inhabitants who are in rebellion.”

As Chase later argued during his 1865 steamboat tour, when it came to the freedpeople of this rivergoing South, it had eventually become “the duty of the National Government to assert their rights.” Part of this came with the Treasury Department playing a middle-man’s role in the interstate cotton trade, allowing freedmen to participate as formal market actors and permitting them to pocket their own earnings. Shortly after the cotton-producing South Carolina Sea Islands came into Union control in November 1861, for example, Chase sent a handpicked special agent to Port Royal to plant Mellen’s system on former rebel ground. Sea Island cotton was to be collected by Treasury agents and shipped to New York, with the proceeds, minus deductions for “colored labor,” falling into a special Treasury account. Although subject to the claims of “loyal owners,” Chase opined in 1863 that the half million dollars eventually generated through this system “belongs more rightfully to the laborers who planted, cultivated and gathered the cotton than to any other possible claimant.” By late 1862, when control over “abandoned” cotton property in South Carolina was placed under Army control, Chase searched for another way to continue the “Port Royal experiment.” The method he hit upon came from a new statutory provision that gave his agency the power to collect “internal revenue” taxes levied against certain luxury goods owned by people residing within the United States. Drawing upon un-earmarked Treasury funds that he considered at his disposal, Chase approved measures that accorded the internal revenue collection process with streamlined in rem procedures analogous to

136 Letter from William Mellen, Special Agent, Cincinnati, to Secretary Chase, Washington, D.C., Sept. 26, 1862; Letter from Chase to Mellen, Oct. 1, 1862, RG 56, Entry 316, vol. 1., NARA II.
Ohio’s old Watercraft Law, now formally operating within federal admiralty law procedures. If left unpaid by absentee planters, the amounts due could be collected out of white Sea Island plantation estates, which in turn could be converted, after passing through the Treasury Department, into black-owned land.\(^{138}\)

During Chase’s tenure as the nation’s public financier, it can be argued that the U.S. Treasury Department briefly became an antislavery version of Chase’s Second Bank of the United States, extending the old private law debt collection agenda of Chase’s 1840s clientele of self-emancipating slaves through public law means. Not surprisingly, when Chase’s agents attempted to perform this work in Roger B. Taney’s home state of Maryland, the author of the *Dred Scott* opinion fumed. In June 1863, Taney wrote a Circuit Court opinion describing Chase’s regulatory scheme as “changing the law as it stood before, as interfering “with the internal and domestic trade of a state.”” Within Maryland at least, Taney held, Chase’s regulatory system was unconstitutional - “null and void.”\(^{139}\) But less than two years later, Chase appeared to have the last laugh. After Taney died on October 12, 1864, Chase was sworn in on December 6, 1864 as Taney’s replacement, becoming the sixth Chief Justice of the United States.


\(^{139}\) *See* “Internal Trade of Maryland: Important Opinion of Chief Justice Taney,” *Baltimore Sun*, June 20, 1863 (reporting *G.W. Carpenter v. The United States*).
**Conclusion:**

**Spite Songs and Bounty Claims**

Reading through correspondence along the Ohio and Mississippi Rivers during the war, it is possible to glimpse the beginnings of a nationalized version of “equitable commerce” that was beginning to spread across the nation by water, creating tangible results that dispelled the notion that Chase’s Treasury Department stood only for “free labor ideology” and nothing more. Here, for instance, in the papers of Calvin and John Hunt Morgan, is an 1861 letter from the Morgan family’s downstream agent stating difficulties in being able to file a federal admiralty claim against the *New Uncle Sam*, a Mississippi River steamboat, to collect the unpaid wages of the Morgans’ hired-out slaves. A couple of folders later, here is a document showing John Hunt Morgan being sworn into the Confederate Army, and more documents indicating that his assets were being attached by revenue officers, then seized and sold. Meanwhile, in the papers of the Mound City Naval Station, here are papers indicating that the *New Uncle Sam* had been sold under court order to the U.S. Government and converted into the flagship of the Mississippi Squadron, rechristened the *Black Hawk*. Elsewhere, here are documents detailing the work history of “two colored men” who had performed tasks while onboard Mississippi Squadron vessels, including serving as the *Black Hawk*’s cooks, and a legal opinion by the U.S. Attorney General considering whether such “black under-cooks” were entitled to military bounties (including money gained from admiralty prize adjudications) on equal footing with their white counterparts.¹ Here also in the case files in the U.S. District Court for the Southern District of

---

Ohio, are records distributing the proceeds of a cotton sale overseen by William P. Mellen on the Cincinnati Public Landing, attaching the affidavit of the cotton’s putative “loyal” Louisiana owner alongside “the claims of negroes,” some of them rumored to be his slaves, who were seeking their own payment “for getting cotton out of the swamps” themselves.²

Lastly, here is a set of letters and memoranda passing between two white former steamboat lawyers, Salmon P. Chase of Cincinnati and Attorney General Edward Bates of St. Louis, discussing the legal status of David M. Selsey, a 47-year old “mulatto” resident of Philadelphia. The captain of the Atlantic Coast schooner Elizabeth & Margaret for more than eight years, Selsey had been detained by federal officers in Perth Amboy harbor in September 1862 because under the nation’s “coasting trade” law of 1793, no vessel could sail without a valid license, which in turn could not be issued without proof that its master was a “citizen” of the United States. As one local treasury agent explained in a letter, Selsey was definitively “a Coloured Man,” so the logic of the Dred Scott opinion (denying U.S. citizenship status to people of African descent) seemed to follow that the Elizabeth could not be licensed for departure. Indeed, for several years even prior to Dred Scott, if an enslaved riverboat navigator had ever attempted to apply for a captain’s license under Congress’ 1852 steamboat law, internal Treasury Department policy during James Guthrie’s leadership would have likely turned him away.

“There is no doubt as to competency,” one New Orleans treasury agent had reported when a

---

black bondsman had applied for a pilot’s license, “but we do not believe the law was intended to reach slaves.”

Perhaps Selsey’s case in 1862 was the same as this earlier matter in New Orleans, but perhaps it was not. After receiving papers about the Elizabeth’s detention, the Solicitor of the Treasury, an attorney hailing from the Ohio River town of Portsmouth Ohio named Edward Jordan, told Chase that he believed that the “practice of denying citizenship” should not control the Treasury Department, notwithstanding the Dred Scott decision. Chase likely agreed. But as he explained in a cover letter forwarding Jordan’s note to Edward Bates, “[a]s colored masters are numerous in our Coasting trade,” Chase felt that it was imperative to receive a final answer to the following question from the U.S. Attorney General himself: “[A]re colored men Citizens of the United States, and therefore Competent to command American vessels?” Two months after receiving Chase’s query, Bates sent a detailed memorandum replying yes. “What can there be in the mere color of a man,” Bates asked rhetorically, “to disqualify him from bearing true and faithful allegiance to his native country, and for demanding the protection of that country?” Scanning the text of the U.S. Constitution itself, Bates found nothing that made any such distinctions. So long as he was born in the United States, David M. Selsey was a U.S. “citizen,” “a member of the nation” as “politically and legally equal” as any white person born in the same way. And since Selsey was certainly otherwise qualified to manage the affairs of the Elizabeth & Margaret, he was no doubt also “competent, according to Acts of Congress, to be master of a vessel engaged in the coasting trade.”

---


Here, years before the ratification of the Fourteenth Amendment, one “colored” ship captain and three former steamboat lawyers within Chase’s regulatory realm had already lain to rest one of the most pernicious white supremacist canards that ever stained the pages of the nation’s law reports. Within the commercial world that Salmon P. Chase originated from and briefly controlled as Secretary of the Treasury – an integrated economic zone that by the time of Chase’s resignation in mid-1864 included virtually all of the navigable waters within the continental United States and along its coast – Bates’ legal opinion announced that Taney’s words in *Dred Scott* about African-American citizenship were no more. Now backed by explicit and equal government support, people like David M. Selsey were once again set loose to steer their own course within the maritime United States.

**

Sometime in mid-1866, about four years after Edward Bates couriered his legal opinion to Salmon P. Chase, Pittsburgh’s Martin R. Delany, a man known to some as a “Father of Black Nationalism” but then serving as the first recorded black officer in U.S. Army history, wrote to the new Chief Justice of the United States looking for a job. Would it be possible for Delany to serve in Chief Justice Chase’s chambers as a law clerk? Expressing regret, Chase said no. “Dear Major,” Chase’s reply began, “If I could undertake the direction of any one’s legal studies I would yours.” But as the nation’s head judicial administrator in the wake of the Civil War, Chase was simply too busy to give Delany the attention he deserved. As an alternative, the Chief Justice suggested that Delany go to Boston, where he could have “the largest advantage” in pursuing his legal studies. Delany was in fact no stranger to the Boston area, having attended the Harvard Medical School briefly in 1850 after already working as a successful black dentist in Pittsburgh during the 1840s. And in 1865, on Chase’s first day on the bench, the Chief Justice
had already sworn in another black Bostonian, John S. Rock, a different dentist-turned-lawyer, as the first African-American member of the Supreme Court Bar. So Chase’s recommendation made some sense. Nevertheless, Chase himself seemed curious to learn more about Delany’s intentions, closing with the following interrogatories: “You are I see still in the army. Do you prefer to resign? What are your present duties?”  

As it turned out, Delany’s recent duties as a “Subassistant Commissioner” within a South Carolina field office of the U.S. Bureau of Refugees, Freedmen, and Abandoned Lands already had plenty to do with the law. When initially proposed by Chase’s Treasury Department, one of the tasks of Delany’s new federal agency was to ensure that former slaves could receive an “interest in the profits of their labor,” either through wages, or through direct ownership stakes in what their labor produced. This program was to be carried out “under the same regulations” as those governing the wartime commerce of the nation’s river trade. Eventually transferred to the oversight of the War Department, some Freedmen’s Bureau officers like Delany continued to implement this same basic policy as the Thirteenth Amendment neared ratification in late 1865. Indeed, around the same time Delany was writing to the Chief Justice, Delany himself was serving as an appointed Judge Advocate in a special “Provost Court” within his Hilton Head field office, tasked with settling private disputes between ex-slaves and white employers, primarily for black complaints for wages or any other “debt which may be due.” Echoing

---


6 See United States Department of the Treasury, Rules and Regulations Concerning Commercial Intercourse within and in States and Parts of States Declared to be in Insurrection (Washington: GPO, 1864), 43-47 (“Freedmen Regulations”).

397
Chase’s “Port Royal Experiment,” Delany was also recommending that “such lands as belong to the government, by sale from direct taxation, be let or sold” to South Carolina freedmen, “and to “other poor loyal men of the South.”

At the time, with the work of the Freedmen’s Bureau extended into the “loyal” state of Kentucky in December of 1865, the same process kept alive by Delany in the Palmetto State was simultaneously being transported back to one of its main points of origin – the banks of the Ohio River. In Louisville, a special “Freedmen’s Court” staffed by Army officers soon appeared, empowered under Congress’ 1866 “Civil Rights Bill” to adjudicate claims made by blacks against whites relying upon black testimony. In February 1866, pursuant to these new procedures, one Frank Spratt, a seemingly illiterate eighteen year-old man of color from Nashville who had “been working on steamboats as of late,” brought a claim against the Rose Hite, seeking redress for repeated beatings he had received, and compensation for the first mate’s decision to leave him onshore forty miles below the Falls City without any pay. Here, the antebellum possibility once symbolized by Joe Spencer - of African-American river workers converting expectant self-ownership claims into what Timothy Walker once called tangible “property in possession” – continued within a post-war frame.

The Chief Justice, of course, shared Frank Spratt’s vision of post-war American law. As enforced by the 1866 Civil Rights Act, the Thirteenth Amendment confirmed Chase’s long-

---


8 See Proceedings of Freedmen’s Court, Minutes Jan.-Nov. 1867, M1904, Roll 119; Complaint of Frank Spratt, Feb. 20, 1866, M1904, Roll 120, Affidavits and Records Relating to Complaints, C-S, Record Group 105 – Records of the Bureau of Refugees, Freedmen, and Abandoned Lands: Kentucky, Subordinate Field Offices: Louisville, National Archives Building, Washington, D.C.
expressed view of the unconstitutionality of slavery while also apparently supporting other elements of Chase’s antebellum constitutional platform. According to Chase, this included the principle that “colored persons equally with white persons are citizens of the United States,” and that “all citizens without regard to race or color” must be assured “full and equal benefit of all laws and proceedings… as is enjoyed by white citizens.” Chase wrote these words while issuing an opinion in a U.S. Circuit Court suit brought by a Freedman’s Bureau agent in Baltimore on behalf of Elizabeth Turner, an emancipated ten year-old African-American girl still being held under an “apprenticeship” contract under Maryland state law by a white man who once claimed to be her master. By denying Elizabeth Turner and her mother the same economic benefits that she could earn under state law if she were white, Chase held in the case of in re Turner, Maryland’s apprenticeship statute was plainly invalid as a matter of U.S. statutory and constitutional law.9 So too, Spratt likely believed, was the treatment he received on a private basis from his employers onboard the Rose Hite, white men who likely cited discriminatory Kentucky laws in their own defense.

In mid-1866, Martin Delany was no doubt looking to harness Chase’s antislavery understanding of American law for a prospective client class composed of people like Joe Spencer, Milton Clarke, David M. Selsey, Frank Spratt, and Elizabeth Turner. Found in the most obvious legal products of the Reconstruction era – the Reconstruction Amendments, the 1866 Civil Rights Act, and the in re Turner decision – this understanding in fact had deeper roots in United States legal history. Within the river trading legal environment of Chase’s Cincinnati and

---

Delany’s Pittsburgh, for instance, individual litigants had long insisted on what the constitutional theorist Jacobus ten Broek (writing in 1965) once called a fundamental “doctrine of equality” cutting across shorebound categories of race and class. For ten Broek, this was perhaps best elucidated in the following dictum, expressed in the wake of later civil rights decisions by the Warren Court, as the following: “within certain limits and for certain purposes… we should treat men as if they were the same… Within these limits and for these purposes, we must emphasize the similarities… and disregard their differences.”

Around the same time Chase was writing his *Turner* decision, this understanding was being formally integrated into the nation’s fundamental law through the language of “equal protection,” included by John A. Bingham, a fellow Buckeye lawyer and Chase correspondent, as he drafted the Fourteenth Amendment’s fledgling text.

**

Today, it may be easy to read Salmon P. Chase’s letter to Delany in 1866, reducing as it did the chance that these two men would ever join forces again, and to see it as symbolic of a larger missed opportunity in American history. The history of some of what came next is familiar, and was also being written at the same time. Directly across the river from Chase’s Cincinnati, for example, Freedmen’s Bureau agents in Covington, Kentucky were reporting as early as 1866 that self-organized white bands of “Regulators,” some of them former rebel soldiers, were terrorizing blacks in Covington, Kentucky and threatening to impose their own form of “mob law.” There, one Bureau agent reported, it was believed that since “the Freedman

---


owe that which would have been their full market value in the palmy days of Slavery, their wages are considered an equitable off-set against to what they are supposed to owe the State or to particular individuals.”

Meanwhile, back in Washington, D.C., after Chase resigned as Treasury Secretary, appointees within his former department became increasingly hostile about continuing to act as the “fiscal agent” of America’s ex-slave population. In 1864, Chase’s first successor forced William Mellen to “replevy,” or draw back, much of the remaining cotton in his hands, returning it to its original white Southern claimants. A year later, the Treasury Secretary post fell into the hands of Hugh McCulloch, a former river lawyer from Madison, Indiana who eventually called for the full and immediate “restoration” of the “vanquished” Southern states into the Union, opining that “the white race and the colored race will not live harmoniously together in terms of political equality.” As he assured a group of well-heeled New Orleans merchants, Secretary McCulloch in fact pledged to oppose any laws that allegedly undermined the Union by “subordinat[ing] the superior to the inferior races.”

Thus, when word of Delany’s “requisition upon the Direct Tax Commissioners of South Carolina” reached McCulloch’s desk in mid 1865, he referred the question of its legality to James Speed, a commercial lawyer from Louisville now serving as U.S. Attorney General. Although he was once a former supporter of Cassius Clay’s version of compensated abolition in the Bluegrass State, Speed’s verdict reached


back to some elements of *Dred Scott*. Martin R. Delany’s proposal, he determined, violated “due process” requirements under federal law by prematurely transferring property that was still subject to being returned through a presumed “right of redemption” to its original white claimants.  

Hardening by the end of the century into a new Jim Crow-era legal order, developments like these eventually caused some people to rethink the historical legacies of African-American working class litigants and their white attorney allies from a few decades before. A number of decades after the publication of *Uncle Tom’s Cabin*, for instance, Chase’s old client Milton Clarke had long maintained that he and his brother Lewis had taught Harriet Beecher Stowe all she had learned about “the slavery question.” In fact, Clarke once added, both Lewis and Milton Clarke had both served as the models for the defiant character of “George Harris” in Stowe’s novel, and deserved some sort of compensation for their assistance with that work. In 1895, however, right before his death, Milton Clarke dropped this complaint, instead asserting in a local newspaper that he had “not the slightest trace of negro blood in his veins.” In Jim Crow America, Milton Clarke’s tie to slavery and *Uncle Tom’s Cabin* could in fact complicate questions of property inheritance for his relatives, many of whom had intermarried with whites. Hoping to avoid “annoyance and embarrassment” to his kin, Clarke instead drafted a formal document purporting to control his legacy from beyond the grave, supposedly prohibiting anyone from publishing new stories about his early life.  

---


16 *See* “Story of a White Slave,” *New York Sun*, Dec. 9, 1900, *in* Siebert Papers, Ohio Historical Society, Columbus, Oh. The connection of “George Harris” to Lewis Clarke was originally made in Stowe, *The
Such accounts emerging from the final quarter of the 1800s, with an entire state-driven Reconstruction edifice dismantled nearly as soon as it was built, and with blackness once again becoming an obstacle to secure property ownership in the United States, may cause us to question the lasting significance of the moments occurring in Louisville, circa 1866. Instead, they return us once again to Taney’s *Dred Scott* decision, forcing us to see that opinion as articulating something more lasting about American history - especially where considerations of property meet considerations of racial exclusion. Falling today under the term of “legal formalism,” the era of substantive due process that came hard on the heels of the Civil War could indeed be read as an attempt by Taney’s intellectual heirs to re-establish an understanding of absolute property rights held exclusively by white citizens while wiping away the memory that there could have ever been a different story. By 1868, in fact, two years after Frank Spratt filed his papers in Louisville’s Freedmen’s Court, the Michigan jurist Thomas M. Cooley was writing that post-war laws similar to Ohio’s old Watercraft Law statute were now clearly unconstitutional. Such laws, once essential to the practice of Jacksonian “equal rights” jurisprudence and concurrently a template for Spratt’s claim, were nevertheless in Cooley’s words “adopted carelessly… without a due consideration of the proper boundaries which mark the separation of legislative from judicial duties.” Ten years later (a few years after Chase’s death), the Supreme Court of the United States reached a similar conclusion, drawing into question laws that transferred debtor property on an *ex parte* basis, without its alleged owner being physically present in the jurisdiction where the claim was brought.  

---

*Key to Uncle Tom’s Cabin* (Boston: Jewett, 1854), 18-29, although later disclaimed by Stowe’s daughter at the end of the 1800s.

17 See Thomas M. Cooley, *A treatise on the constitutional limitations which rest upon the legislative power of the states of the American union* (New York: Little, Brown, 1868), 104-106. This post-Chase Supreme Court decision was *Pennoyer v. Neff*, 95 U.S. 714 (1878).
Critical to attempts by post-war formalists to make property a conservative, exclusionary, and “secure” institution was a subtle linguistic shift in what precisely “private property” was to be made “secure” against. Before the war, in the event of a commercial deal gone awry, a white person in possession of a property interest may have sought a type of law that gave them safe harbor against claims made by other similarly-situated private parties. After the war, however, the new threat to the institution of property was public, arising from the government agents of an American fiscal state that had aided in the “redistributive” wartime experiments of Chase’s Treasury Department. African-American people like David Selsey, Frank Spratt, or the Clarke brothers, who saw themselves as commercial actors with something rightfully due them under the existing terms of American law, were entirely removed from the equation, eventually aggregated into a faceless set of “special interests” seen as drawing whatever temporary legitimacy they had gained from a corrupt, Reconstruction-era government that supposedly had acted (only briefly) beyond the normal bounds of public law.\(^\text{18}\)

For many years, a great deal of legal-historical writing has worked within this Redemption-era discursive framework, either presenting private property as a traditional safeguard against government overreach, or suggesting ways that a wider “common good” can shape or constrain the way that private property is owned.\(^\text{19}\) Through this way of seeing things, scholars can still imagine Civil War-era emancipation as “the destruction of private property

---

rights” by public actors. But at the same time, it makes it difficult to understand legal frameworks for self-emancipation in the way that black litigants like Milton Clarke first imagined them before the Civil War - as equitable transfers, consistent with the everyday procedures of debt collection law, of labor-power from one private party into another private parties’ hands. “One has to wonder why,” the historian Juliet E.K Walker has mused, that “the reconstruction of the African business tradition continues to evoke only limited interest compared to that given to the servile-labor contributions of blacks in the development of the American economy.”

In 1868, during the shadow of Reconstruction, the answer to Professor Walker’s riddle was already clear: expectant river entrepreneurs like Joe Spencer or Frank Spratt, through their ability to mesh radical social politics with the most legally defensible yet creatively destructive features that capitalism had to offer, were too much of a destabilizing force within American society as a whole to be given a lasting historical role to play. Instead, their story would need to be quickly hidden from view. For years, even in the least racist accounts, emancipation itself would become an all-white morality play about white slaveholders battling Abraham Lincoln and a faceless American state.

Now, however, with debates over how to interpret the American Civil War more than a century old, it may be perhaps be a safer time to return to Frank Spratt’s story from 1866, or the Clarke brothers’ story from the 1840s, reconsidering their historical significance on their own historical terms. Rising from the freewheeling steamboat era, their stories of self-redefinition and self-emancipation are as indigenous to the story of the United States as slavery, racism, substantive due process, debt peonage, and other stories of subjugation. Rather than a tale about Dred Scott – about property owned on an “exclusive” basis by individual actors exercising

Blackstonian “sole and despotic dominion” – these are stories of a nineteenth-century U.S. economy that grew and thrived upon confusions between absolute and fragmented property rights, and of working class legal actors seizing upon these uncertainties to reassemble disintegrating rights of mastery and “dominion” into a more equitable package. Together, their stories help to reveal the concept of property to be a human institution subject to social revision, something that could be made more democratic and inclusive through a creative leveraging of formal mechanisms already present within the commercial law of the everyday. Alongside a well-known history of prejudice and exclusion, then, may sit this lesser-known legal history as a supplement, telling of an unruly capitalist system that sometimes contained certain liberties within itself, seized and expanded upon by legal entrepreneurs who refused to accept that these opportunities were limited to only a few. Manifested at first through subversive readings of inland river commercial law, what I call “equitable commerce” came to pockets of the United States in the 1830s and 1840s, opening new constitutional vistas for government action that were eventually incorporated into the text of America’s founding charter, bequeathing a constitutional heritage of “equal protection” that continues to disrupt more exclusionary legal formulations into the present.

Like the shorebound white supremacist world of Dred Scott, the subversively egalitarian river-world that people like Joe Spencer, Milton Clarke, Salmon Chase, and Frank Spratt lived within predated Ft. Sumter and extended beyond Appomattox. During the 1839-1840 navigation season, for instance, the diary of one white storeboat owner passing between towns in Ohio, Kentucky, and Indiana noted how river-trading “saucy Negroes,” many of them enslaved, were already his most active customers, as well as some of his most tenacious competitors. Decades

later, not much had changed. In 1873, one Midwestern credit reporting agency lodged an entry for Henry G. Moses, a “colored man” from Kentucky who made a living as a steamboat porter and who had recently crossed the river from Indiana. Acquiring real estate that he had shrewdly recorded in his wife’s name, he had earned a reputation among white creditors of being “a slippery n[----].”

Upstream, while writing about African-American life along Cincinnati’s Public Landing during Moses’ time, the white journalist Lafcadio Hearn noted that “[i]t used at one time to be a common thing for some ruffianly mate to ship sixty or seventy stevedores, and, after the boat had taken in all her freight, to hand the poor fellows their money and land them at some small town, or even in the woods, hundreds of miles from their home.” Now, Hearn reported, thanks to the threat of an admiralty claim for wages and tort damages - theorized in the 1840s by vanguard fugitives like Milton Clarke and lurking behind Frank Spratt’s 1866 claim - “[t]his can be done no longer with legal impunity.”

During his social study of what he called Cincinnati’s “pariah people,” Lafcadio Hearn also noted that one could still “hear old Kentucky slave songs chanted nightly on the steamboats.” To collect all of these songs, he said, “would be a labor of months.” Many years later, however, Mary Wheeler, a white music student in Cincinnati, did just this for her master’s thesis, interviewing retired African-American riverboat workers and publishing her findings in book form in 1941. “Ain’t Got No Place to Lay My Head,” one of the songs in Wheeler’s book, was said to represent “all phases of financial loss,” “the mournful expression of a child-like

---


race.”24 Containing the line “Steamboat done put me out of doors,” however, the song in fact could have been interpreted differently, as a sort of reprise of Milton Clarke’s “demand” against the estate of Archibald Logan, or Frank Spratt’s pointed claim for redress against injustices inflicted by the white-owned Rose Hite. Heard in this way, it ceased to be a “Song of Meditation,” as Wheeler classified it, instead taking on a harsher edge, sounding faintly like a “Spite Song,” a music cluster that Wheeler collected but considered unfit to publish in the 1930s. Containing lines such as “Secesh ladies getting mighty po’,” and “You’ll never trade a n[-----] in the South no more,” Spite Songs reframed the Civil War as a revolutionary reversal of economic fortunes between whites and blacks. Wheeler had gleaned them from the lips of “Aunt Belle” Terry, a former Kentucky slave now nearly ninety years old, who informed Wheeler that after the war, “they didn’t nobody want to hear them kind of songs. They’d shot at ‘em.” But even as a child, Terry found if she “got up behin’ the white man on his hoss,” grabbed hold of reins herself, and started to sing, she could not be stopped.25

In a way, downplaying the possibility that the legal history of American capitalism contains a radically subaltern private law history of working class empowerment that eventually made its way into America’s public law tradition is a bit like failing to hear the double meaning hidden in the lyrics of the songs that Mary Wheeler collected. While writing Blake in the 1850s, Martin Delany himself transcribed lyrics and lines he drew from black boatmen songs on the Mississippi River. Upon first hearing, he wrote, some of these songs may have seemed “cheerful.” But all was not as it seemed: these tunes, Delany wrote, were sung by workers “as if in unison with the restless current of this great river on which they were compelled to toil,”

25 See “Spite Song File,” Box 3, Mary Wheeler Papers, Special Collections, McCracken County Public Library, Paducah, Ky.
communicating that “their troubled waters could not be quieted.” By focusing only on the white architects of slavery and the equally-white dismantlers of Reconstruction, critiquing the racist or paternalistic assumptions embedded within the legal work of white men like Roger B. Taney or Hugh McCulloch, we may be inclined to diminish the contributions of alternate voices like those of Delany. As a result, we may be inclined to pass over the significance of the fact that someone like Frank Spratt, an 18-year old black man from Nashville, could arrive in Louisville in 1866 with his legal consciousness fully formed, ready to make out a plea in the form of a debt collection notice, ready to go to court, and ready to succeed. Within America’s legal system, it is important to remember, the claims of people like Frank Spratt never fully went away. Abandoned as an institutionalized government project in the late 1860s, the work of Louisville’s Freedmen’s Court continued in the hands of private litigants throughout the nineteenth and early twentieth-centuries. Over time, the “equal justice” arguments they kept alive found their way into the thinking of Justice John Marshall Harlan, a former Louisville lawyer himself, as he wrote his dissent in *Plessy v. Ferguson* in 1896. And they would appear again in briefs written by Thurgood Marshall, the son of a black railroad porter and one of the reputed admirers of Harlan’s *Plessy* dissent, as he and other N.A.A.C.P. lawyers laid the precedential groundwork for *Brown v. Board of Education.*

As early as 1868, even as the work of the Freedmen’s Bureau was openly attacked on the floor of Congress by white legislators, the resiliency of litigants like Frank Spratt had already convinced Martin R. Delany that the larger “equitable commerce” cause underwriting their

---

claims was not wholly lost. After leaving the Army, Delany in the end decided to avoid Boston, choosing instead to set up shop on the border of the former Confederacy, in Salmon P. Chase’s new hometown of Washington, D.C. There, Delany began to associate himself with a law firm handpicked by Secretary McCulloch to process cases designed to return property temporarily “abandoned” during the war. While forwarding the demands of Southern white clients related to compensation for lost steamboats, plantations, and bales of cotton, Delany also attached, tracked, and personally advocated a number of bounty claims brought by former black servicemen from Kentucky, matters he collectively labeled the firm’s “Negro cases.”

Years later, one historian characterized Martin Delany’s life work – including this D.C. interregnum - as belonging to “a long, continuous” working class struggle, a movement “flowing like a river, sometimes powerful, tumultuous, and roiling with life; at other times meandering and turgid, covered with the ice and snow of seemingly endless winters, all too often streaked and running with blood.”

Here, alongside paperwork that would otherwise reverse the revolutionary tide of Radical Reconstruction, the troubled waters of Delany & Chase’s private Ohio River continued to flow, forming new gaps within an American property law that was otherwise being rebuilt on all-white terms, searching out a common harbor that was its rightful place all along.

---


28 Vincent Harding, There is a River: The Black Struggle for Freedom in America (New York: Harcourt, 1981), xix; 207-8. It can be argued that the true debt that Delany was seeking to collect remains unpaid. See, e.g., Randall Robinson, The Debt: What America Owes to Blacks (New York: Plume, 2000).
Bibliography

Primary Sources

MANUSCRIPT COLLECTIONS
Bloomington, Indiana
   Lilly Library
      Howard Shipyards and Dry Dock Co. Papers
      Hughes, Denver, and Peck Law Firm Collection
      Hugh McCulloch Manuscripts
Boston, Massachusetts
   Baker Library, Harvard Business School
      R.G. Dun & Co. Credit Reports
      Dun and Bradstreet Corp. Records
Cairo, Illinois
   Cairo Public Library
      Capt. J.S. Hacker Papers
Charleston, West Virginia
   West Virginia Historical Library
      Nelson Coleman Papers
Chicago, Illinois
   National Archives and Records Administration – Great Lakes Region
      RG 21, Records of the U.S. District Court for the Southern District of Ohio
Cincinnati, Ohio
   Cincinnati History Library and Archives
      Cincinnati Chamber of Commerce Minute Books
      Fireman’s Insurance Co. Minute Book
      General Pike Papers
      Gwynne Family Papers
      Harkness Papers
      John D. Jones Letterbook
      Nicholas Longworth Letters
      William Lytle Papers
      William Merrell Diary
      Kilgour Papers
      King Family Papers
      Timothy Kirby Papers
      Kittredge Papers
      John Piatt Letters
      Augustus Roundy Papers
Bellamy Storer Papers
Torrence Papers
Timothy Walker Papers
Public Library of Cincinnati and Hamilton County – Inland Rivers Library
E.P. Anshutz Scrapbook
*General Pike* Records

Cleveland, Ohio
Cuyahoga County Archives
Court of Common Pleas Record Books

Columbus, Ohio
Ohio Historical Society and State Archives
Cuyahoga County Justice of the Peace Civil Docket Books
David Gibson Papers
Ohio Governor’s Papers
Wilbur Siebert Underground Railroad Collection

Frankfort, Kentucky
Kentucky Department of Libraries and Archives
Jefferson County Circuit Court Case Files (Common Law & Chancery)
Kentucky Historical Society
Steamboat Bills of Lading File
Washington Spradling Vertical File
Harry Innes Todd Papers

Harrodsburg, Kentucky
Harrodsburg Historical Society
Christopher Graham Vertical File

Indianapolis, Indiana
Indiana Historical Society
John Brandenburg Papers
John Duffield Hay Papers
Short-Henry Papers
Switzerland County Materials
Indiana State Library Special Collections
A.V. Danner Papers
New Albany Mercantile Record

Indiana State Archives
Supreme Court of Indiana Case Files

Lexington, Kentucky
University of Kentucky Special Collections
J. Winston Coleman Papers
Duncan Family Papers
Hunt-Morgan Family Papers
Perry Family Papers

Louisville, Kentucky
Filson Historical Society
  Bodley Family Papers
  Robert Buckner Account Book
  John Armstrong Collins Letters Collection
  Dumesnil Family Papers
  Garnett Duncan Letters
  Garnett Duncan Vertical File
  James Guthrie Papers
  Hornbeck Family Papers
  Jefferson County Deed Books
  Louisville Mayor’s Court Record Book
  James Rudd Account Book
  Samuel Wigglesworth Papers
University of Louisville Archives
  Louisville Division of Police Records

Morgantown, West Virginia
  West Virginia Historical Collection – West Virginia University
    Jacob Hayden Diary
    Steamboat Crockett Ledger
    Wood County Court Records

Nashville, Tennessee
  Tennessee State Library and Archives
    John Catron Papers

New Orleans, Louisiana
  New Orleans Public Library
    New Orleans Commercial Court Case Files
  Tulane – Amistad Research Center
    American Missionary Association Collection

New York, N.Y.
  New-York Historical Society
    LeBoef Collection ("Mississippi Set")

Oxford, Ohio
  Miami University of Ohio Library
    Covington Family Collection
    John H. James Collection
Paducah, Kentucky
   McCracken County Public Library
   Mary Wheeler Papers
Philadelphia, Pennsylvania
   Historical Society of Pennsylvania
   Salmon P. Chase Papers
Pittsburgh, Pennsylvania
   Heinz History Center
   James Rees and Sons Co. Papers
   Way Family Papers
Princeton, N.J.
   Rare Books and Special Collections
   Blair Family Papers
Springfield, Illinois
   Abraham Lincoln Presidential Library
   Solomon Freeman Papers
   John W. Smith Papers
   Illinois State Archives
   Illinois Supreme Court Case Files
St. Louis, Mo.
   State Historical Society of Missouri Library
   Hamilton Gamble Papers
   Lackland Family Papers
   Lane Collection Papers
   Steamboats and River History Collection
   Samuel Treat Papers
   Henry W. Williams Collection
St. Paul, MN
   Minnesota Historical Society
   Fred. A. Bill Papers
Tarrytown, N.Y.
   Rockefeller Archive Center
   Social Science Research Council Collection
Washington, D.C.
   Howard University - Moorland-Springarn Collection
   John Mercer Langston Scrapbooks
   Library of Congress Manuscript Reading Room
   Black History Collection
   Blair Family Papers
   Salmon P. Chase Papers (LC and UPA Collections)
John J. Crittenden Papers
Ewing Family Papers
Rutherford B. Hayes Papers
James Johnson Papers
Richard M. Johnson Papers
John Mercer Langston Papers
Nicholas Longworth Papers
John McLean Papers
Whitelaw Reid Papers
Carl B. Swisher Papers
Roger B. Taney Papers
Zachary Taylor Papers
Nathaniel Wright Family Papers

National Archives and Records Administration
M178, Correspondence of the Secretary of the Treasury with Collectors of Customs
M210, Correspondence Relating to Enforcement of the Passenger Acts, 1852-7
M214, Appellate Case Files of the Supreme Court of the United States
M506, Letters Received by the Topographical Bureau of the War Department
M619, Letters Received by the Office of the Adjutant General
M735, Circular Letters of the Secretary of the Treasury
M869, Records of the Assistant Commissioner for the State of South Carolina Bureau of Refugees, Freedmen, and Abandoned Lands
M1904, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands
M1905, Records of the Bureau of Refugees, Freedmen, and Abandoned Lands
M2106, Master Abstracts of Certificates of Enrollment for Steam Vessels at St. Louis, Missouri, 1846-1870
RG 41, Records of the Bureau of Marine Inspection and Navigation, Steamboat Inspection Service
RG 45, Records of the Collection of the Office of Naval Records and Library
RG 56, General Records of the Department of the Treasury
RG 59, Records of the Department of State – Misc. Letters of the Department, 1789-1916
RG 60, General Records of the Department of Justice
RG 92, Records of the Office of the Quartermaster General
RG 94, Adjutant General’s Office Records
RG 206, Records of the Solicitor of the Treasury Letters Received from U.S. Attorneys, Clerks, and Marshals
COURT CASES

Ballard v. Steamboat Bunkerhill (1851), Jefferson County (Ky.) Chancery Case Files
Bank of the United States v. Halstead, 23 U.S. 51 (1825)
Bank of the United States v. Heirs and Administrators of John H. Piatt, 5 Ohio 540 (1832)
James Birney v. The State of Ohio, 8 Oh. 230 (1837)
Boyce v. Anderson, 27 U.S. 150 (1829)
Brady v. Benedict (1845), Jefferson County (Ky.) Chancery Casefiles
Brisbane v. Stoughton, 17 Oh. 482 (1848)
Broadwell v. Swigert, 46 Ky. 39 (1846)
The Canal Boat Huron v. Simmons, 11 Oh. 458 (1842)
Case v. Woolley, 36 Ky. 17 (1837)
Church v. Chambers, 33 Ky. 274 (1835)
City of Cincinnati v. White, 31 U.S. 431 (1832)
Commonwealth v. Garner (1846), General Court of Virginia Court Case Files
Corporation of Memphis v. Overton, 11 Tenn. 386 (1832)
Dennis, of color v. Beard, Case (1836), Jefferson County (Ky.) Chancery Case Files
Dennis v. Spradling (1837), Jefferson County (Ky.) Chancery Case Files
Dred Scott v. Sandford, 60 U.S. 393 (1857)
Eckert v. Colvin, 10 Ohio Doc. Reprint 54 (1843)
Ensminger v. People, 47 Ill. 384 (1868)
Fore v. Strader, 41 Ky. 123 (1841)
Gibbons v. Ogden, 22 U.S. 1 (1824)
Goodrich v. Rogers (Western Law Journal, Oct. 1847)
Gordon v. Longest, 41 U.S. 97 (1842)
Gorham v. Gilmer, 4 McLean 402 (C. Mich. 1848)
Green v. Biddle, 21 U.S. 1 (1823)
Groves v. Slaughter, 40 U.S. 449 (1841)
Halderman v. Beckwith, 11 F. Cas. 172 (C. D. Oh. 1847)
Harden v. Gordon, 11 F. Cas. 480 (Cir. D. Maine 1823)
Hefferman v. Brenham (1845), New Orleans Commercial Court Case Files
William Inman v. City of Louisville (1854), Jefferson County (Ky.) Chancery Case Files
Jackson v. The Steamboat Magnolia, 61 U.S. 296 (1858)
Jencks v. Coleman, 2 Sumn. 221 (C. Rhode Island, 1835);
Jones v. Van Zandt, 46 U.S. 215 (1847)
Kellogg v. Brennan, 14 Ohio 72, 90 (1846)
Lafayette Bank v. McLaughlin, 10 Ohio Doc. Reprint 70 (1846)
Lawler v. Walker, 18 Oh. 151 (1849)
Lewis v. The Schooner Cleveland, 12 Oh. 341, 342-51 (1843)
Lyon v. Johnson, 33 Ky. 544 (1835)
McGinnis v. The Pontiac, 16 F. Cas. 112 (D. Oh., 1852)
McGuire v. The Canal Boat Kentucky (Western Law Journal, Jan. 1849)
McLean v. Lafayette Bank, 16 F. Cas. 253 (C. Oh. 1843)
Nolan v. Urnston, 18 Oh. 273 (1849)
Northern Bank of Kentucky v. Roosa, 13 Oh. 334 (1844)
The N.W. Thomas, 18 F. Cas. 502
Ogden v. Saunders, 25 U.S. 213 (1827)
Ohio Life Ins. Trust Co. v. McCague, 18 Oh. 54 (1849)
Owen v. Day, 5 Mich. 520 (1858)
The Passenger Cases, 48 U.S. 283 (1847)
Patterson v. Chalmers, 46 Ky. 595 (1847)
Pennoyer v. Neff, 95 U.S. 714 (1878)
Perry v. Clarkson, 16 Oh. 571 (1847)
Peyroux v. Howard, 32 U.S. 234 (1833)
Plessy v. Ferguson, 16 U.S. 537 (1896)
Prigg v. Pennsylvania, 41 U.S. 539 (1842)
The Propeller Genesee Chief v. Fitzhugh, 53 U.S. 443 (1852)
Riley v. J.J. James and the Steamboat Splendid (1835), Jefferson County (Ky.) Chancery Files
Robb v. Irwin, 15 Oh. 689 (1846)
Savage v. The Buffaloe, 21 F. Cas. 547 (1819)
Schooner Aurora Borealis v. Dobbie, 17 Ohio 125 (1848)
Sherlock v. Bainbridge, Supreme Court of Indiana, Nov. Term, 1871
Spooner v. McConnell, 22 F. Cas. 939 (C.D.Oh., 1838)
Washington Spradling v. Blue (1852), Jefferson County (Ky.) Chancery Case Files
State v. Guilford, 18 Oh. 500 (1849)
State v. Hoppess (Western Law Journal, March 2, 1845)
Steamboat Champion v. Jantzen, 16 Ohio 91 (1847)
Steamboat Monarch v. Finley, 10 Oh. 384 (1841)
Steamboat Orleans v. Phoebus, 36 U.S. 175 (1837)
Steam-Boat Thomas Jefferson, 23 U.S. 438 (1825)
Steamboat Waverly v. Clements, 14 Oh. 28 (1846)
Stephens v. Ward, 50 Ky. 337 (1850)
Stevens v. Hey, 15 Oh. 313 (1846)
Strader v. Fore, 41 Ky. 123 (1841)
Strader v. Graham, 46 Ky. 633 (1847)
Strader v. Graham, 51 U.S. 82 (1851)
in re Terrill's Widow (1840), Jefferson County (Ky.) Chancery Casefiles
United States v. Taylor, 28 F. Cas. 25 (C. D. Oh. 1851).
George Washington v. Washington Spradling (1840), Jefferson County (Ky.) Chancery Files
Wayman v. Southard, 23 U.S. 1 (1825)
Webster v. The Brig Andes, 18 Oh. 187 (1849)
Woodson v. State, 17 Oh. 161 (1848)

NEWSPAPERS & JOURNALS
Annals of Congress
Argus of Western America
The Atalantian Journal
Baltimore Sun
Boston Morning Chronicle
Buckeye Newspaper
Cairo City Times
Charleston Courier
Christian Examiner
Cincinnati Advertiser and Ohio Phoenix
The Elevator (Cincinnati)
Cincinnati Commercial
Cincinnati Enquirer
Cincinnati Gazette
Cincinnati Prices Current and State of the Market
Cleveland Plain Dealer
Congressional Globe
Daily Missouri Republican
Evansville Daily Journal
The Free South (Newport, Ky.)
Kentucky Gazette
Louisville Daily Courier
Marietta Intelligencer
The Mystery (Pittsburgh, Pa.),
New England Magazine
New Orleans Herald
New York Herald
New York Times
Niles' Weekly Register
North American Review
The North Star (Rochester)
Parkersburg Gazette
The Philanthropist (Cincinnati)
The Provincial Freeman (Toronto)
Spirit of the Lakes and Boatmen’s Magazine
The Voice of the Fugitive
The Waterways Journal
The Western Boatman
The Western Citizen
Western Law Journal
The Western Pilot
The Western Tiller (Cincinnati)
The Working Man’s Friend (Cincinnati)

BOOKS, ARTICLES, & PAMPHLETS
An Act Incorporating the City of Cincinnati, and the Ordinances of Said City Now in Force (Cincinnati: Morgan, Fisher, & L’Hommedieu, 1828)
The Address and Reply on the Presentation of a Testimonial to S.P. Chase by the Colored People of Cincinnati (Cincinnati: Sparhawk, 1845)
William B. Allen, A History of Kentucky (Louisville: Bradley and Gilbert, 1872)
---, A Treatise on the Law of Watercourses (Boston: Little, Brown, 1840)
William S. Bailey, A Short Sketch of our Troubles in the Anti-Slavery Cause (Newport: Daily and Weekly News, 1858)
Charles W. Batchelor, Incidents in My Life: With a Family Genealogy (Pittsburgh: Eichbaum, 1887)
Henry Bibb, Narrative of the Life and Adventures of Henry Bibb, an American Slave (New York: Bibb, 1849)
Binn’s Justice: Digest of the Laws and Judicial Decisions of Pennsylvania, touching the authority and duties of Justices of the Peace (Pittsburgh: Kay and Brothers, 1840)
James G. Birney, Examination of the Decision of the Supreme Court of the United States in the Case of Strader, Gorman and Armstrong v. Christopher Graham (Cincinnati: Truman, 1852)
William Wells Brown, Narrative of William W. Brown, a Fugitive Slave, 2d. ed. (Boston: Massachusetts Anti-Slavery Society, 1848)
Henry Buillard, A New Digest of the Statute Laws of the State of Louisiana (New Orleans: Johns, 1842)
Salmon P. Chase, The Statutes of Ohio and of the Northwestern Territory, vol. 1-3 (Cincinnati: Fairbank, 1833-1835)
---, An Argument for the Defendant, Submitted to the Supreme Court of the United States… in the Case of Wharton Jones v. John Vanzandt (Cincinnati: Donogh, 1847)
---, Speech of Salmon P. Chase in the Case of the Colored Woman Matilda (Cincinnati: Pugh, 1837)

The Cincinnati Directory for the Year 1831 (Cincinnati: Robinson & Fairbank, 1831)
The Cincinnati Directory for the Year 1834 (Cincinnati: Deming, 1834)
Charles Cist, Cincinnati in 1841: Its Early Annals and Future Prospects (Cincinnati: Cist, 1841)
---, The Cincinnati Directory for the Year 1842 (Cincinnati: Morgan, 1842)
---, The Cincinnati Directory for the Year 1843 (Cincinnati: Brooks, 1843)
---, Sketches and Statistics of Cincinnati in 1851 (Cincinnati: Moore, 1851)

Levi Coffin, Reminiscences of Levi Coffin (Cincinnati: Clarke, 1880)
Collection of the Acts of Virginia and Kentucky Relative to Louisville and Kentucky (Prentice: Louisville, 1839)


Thomas M. Cooley, A treatise on the constitutional limitations which rest upon the legislative power of the states of the American union (New York: Little, Brown, 1868)

Maskell Curwen, The Statutes of the State of Ohio, of a General Nature (Cincinnati: Morgan, 1854)

Wayne Cutler, ed., Correspondence of James K. Polk (Nashville and Knoxville: multiple years)

Richard Henry Dana, The Seamen’s Friend (Boston: Little, Brown & Co., 1841)

Martin R. Delany, Blake, or the Huts of America (1859-62; Boston: Beacon, 1970)
---, The Condition, Elevation Destiny of the Colored People of the United States (Philadelphia: Delany, 1852)


Charles Dickens, American Notes for General Circulation, vol. 2 (London: Chapman, 1842)

Garnett Duncan, Speech of Mr. Duncan of Kentucky, on the Assumption of Power of the Executive, July 24, 1848 (Washington: Gideon, 1848)


Benjamin Drew, A North-side view of slavery: Narratives of Fugitive Slaves in Canada (Boston: Jewett, 1856)

Executive Committee of the American Anti-Slavery Society, Slavery and the Internal...
Slave Trade in the United States of North America (London: Ward, 1841)
W.H. Gibson, Semi-Centennial of the Public Career of W.H. Gibson (Louisville: Bradley and Gilbert, 1897)
Emerson W. Gould, Fifty Years on the Mississippi (St. Louis: Nixon-Jones, 1889)
Meinrad Greiner, The Louisiana Digest, Embracing the Laws of the Legislature of a General Nature, Enacted from the Year 1804 to 1841 (New Orleans: Levy, 1841)
John Habermehl, Life on the Western Rivers (Pittsburgh: McNary, 1901)
Thomas Hamilton, Men and Manners in America (Edinburgh: Blackwood, 1833)
Lafcadio Hearn, Children of the Levee (Lexington: Kentucky, 1957)
---, Truth Stranger Than Fiction: Father Henson's Story of His Own Life (Boston: Jewett, 1858)
Eber Howe, Autobiography and Recollections of a Pioneer Printer (Painesville: Telegraph, 1878)
Bradley T. Johnson, ed., Reports of Cases Decided by Chief Justice Chase in the Circuit Court of the United States for the Fourth Circuit Court (New York: Diossy, 1876)
John Mercer Langston, From the Virginia Plantation to the Nation’s Capital (Hartford: American Publishing Co., 1894)
Humphrey Leavitt, Autobiography of Humphrey Howe Leavitt: written for his family (New York, 1893)
H. Levin, The Lawyers and Lawmakers of Kentucky (Chicago: Lewis, 1897)
Timothy D. Lincoln, Liability of Steamboats Engaged in Commerce Among the Several States Under the Water-Craft Law of Ohio (Cincinnati: Bradley, n.d.)
John Livingston, ed., Portraits of Eminent Americans Now Living (New York: Craighead, 1854)
Preston Loughborough, Digest of the Statute Laws of Kentucky, of a Public and Permanent Nature (Frankfort: Hodges, 1842)
John Malvin, Autobiography of John Malvin, a narrative (Cleveland: Leader, 1879)
Herman Melville, The Confidence Man: His Masquerade (1857; Champaign: Dalkey, 2006)
Minutes and address of the State Convention of the Colored Citizens of Ohio: convened at Columbus, January 10th, 11th, 12th, & 13th, 1849 (Oberlin: Fitch, 1849)
Minutes and Proceedings of the General Convention for the Improvement of the Colored Inhabitants of Canada (Windsor: Bibb and Holly, 1853)


Narrative of the Late Riotous Proceedings Against the Liberty of the Press of Cincinnati (Cincinnati: Ohio Anti-Slavery Society, 1836)

*Narrative of the Sufferings of Lewis and Milton Clarke* (Boston: Bela Marsh, 1846)


Frederick Law Olmsted, *Journeys and Explorations in the Cotton Kingdom, Vol. 1* (London: Sampson, 1861)


J.H. Perkins, *Oration, Delivered on the First of August 1849, before the Colored Citizens of Cincinnati* (Cincinnati, 1849)

Eber Pettit, *Sketches in the History of the Underground Railroad* (Freedonia: McKinstry, 1879)

Allan Pinkerton, *Thirty Years a Detective* (New York: Carleton, 1884)


Whitelaw Reid, *After the War: A Southern Tour* (New York: Moore, 1866)

George Robertson, *Introductory Address on the History and Nature of Equity* (Lexington: Bryant, 1838)

Frank A. Rollin, *Life and Public Services of Martin R. Delany* (Boston: Lee, 1883)

*Rules of Practice of the Supreme Court of the United States: Including the Rules in Equity and Admiralty, Adopted by Said Court; Also the Rules Adopted by the Circuit and District Courts of the United States for the Southern District of Ohio* (Cincinnati: Robinson, 1855)


*Shaffer’s Advertising Directory for 1839-40* (Cincinnati: Shaffer, 1840)


Richard Smith, *A Review of the Trade, Commerce, and Manufactures of Cincinnati for*
the Commercial Year Ending August 31, 1850 (Cincinnati: Gazette, 1850)
Steamboat Wages Calculator (Louisville: Maxwell, 1857)
A Storeboat on the Ohio River, 1839-40: The Diary of Jonathan Newman Hamilton
Joseph Story, Commentaries on the Conflict of Laws (Boston: Hilliard, 1834)
Harriet Beecher Stowe, The Key to Uncle Tom’s Cabin (Boston: Jewett, 1854)
Joseph Rockwell Swan, A treatise on the law relating to the powers and duties of justices
of the peace and constables, in the state of Ohio (Columbus: Whiting, 1837)
---, Statutes of the State of Ohio, of a General Nature, in Force, as of Dec. 7, 1840
(Columbus: Medary, 1841)
Richard Taylor, Destruction and Reconstruction: Personal Experiences of the Late War
(New York: Appleton, 1879)
Alexis de Tocqueville, Democracy in America, trans. Henry Reeve (1835; New York:
Knopf, 1960)
---, Journey to America (New Haven: Yale, 1960)
Frances Trollope, Domestic Manners of the Americans (1832; New York, 2003)
William Troy, Hair-Breadth Escapes from Slavery to Freedom (Manchester: Bremner,
1861)
Mark Twain, The Adventures of Huckleberry Finn (1948; New York: Grosset, 1884)
---, Life on the Mississippi (1883; New York: Airmount, 1965)
Timothy Walker, An Introduction to American Law: Designed as a First Book for
Students (Philadelphia: Nicklin, 1837)
---, Introduction to American Law: Designed as a First Book for Students, 2d. ed.
(Cincinnati: Derby, 1846)
---, Annual discourse: delivered before the Ohio Historical and Philosophical Society, at
Columbus, on the 23d of December, 1837 (Cincinnati: Flash, 1838)
---, The Reform Spirit of the Day: An Oration Before the Phi Beta Kappa Society of
Harvard University, July 18, 1850 (Boston: Munroe, 1850)
Samuel Ringgold Ward, Autobiography of a Fugitive Negro: His Anti-Slavery Labors in
the United States, Canada, and England (London: Snow, 1855)
Robert Bruce Warden, An Account of the Private Life and Public Services of Salmon P.
Chase (Cincinnati: Wilstatch, 1874)
Josiah Warren, Equitable Commerce: A New Development of Principles for the
Harmonious Adjustment and Regulation of the Pecuniary, Intellectual, and Moral
Intercourse of Mankind, Proposed as Elements of New Society (New Harmony: Warren,
1846)
Clyde Wilson, ed., The Papers of John C. Calhoun (Columbia: South Carolina, 1979)
UNPUBLISHED RIVERBOAT-ERA RECOLLECTIONS
“Memoirs of Captain Alex F. Boss, Western Rivers Pilot from 1824 to 1880,” Inland Rivers Library, Public Library of Cincinnati and Hamilton County, Cincinnati, Oh.
“Heads and Tales a Voyage to and From America and of a tour made there in 1827 and 1828,” Abraham Lincoln Presidential Library, Springfield, Ill.
Sheldon Ingalls Kellogg Autobiography, Ohio Historical Society and State Archives, Columbus, Oh.
John Law, “Journal of a Voyage Down the River Ohio in the Fall of 1817,” Indiana State Library, Indianapolis, Indiana
“Life of Manasseh Barney Slawson,” Indiana Historical Society, Indianapolis, Indiana
“Memorandums on the Road, Journal of a Trip from Baltimore to Illinois and Missouri and Return,” ca. 1836, Lincoln Presidential Library, Springfield, Illinois
Joan G. Strader and John Jacob Strader IV Oral History Recordings Transcript, Jan. 25, 1996, Cincinnati History Library and Archives

FEDERAL PUBLICATIONS
*Official records of the Union and Confederate Navies in the War of the Rebellion: Series I -Volume 12:* (Washington: GPO, 1901)
*Order of Reference of the Supreme Court of the United States, in the Case of The State of Pennsylvania against... the Wheeling and Belmont Bridge Company* (Saratoga Springs: White, 1851)
*Rules and Regulations Concerning Commercial Intercourse with and in States and Parts of States Declared in Insurrection* (Washington: G.P.O, 1864)
“Testimony in the Case of Leftwich v. Smith, Eighth Congressional District of Tennessee,” House Misc. Doc 143, 41st Cong., 2d. sess., pp. 151-152 (June 1, 1870)
U.S. Census Materials for 1850, 1860, and 1870
The war of the rebellion: a compilation of the official records of the Union and Confederate armies, ser. 1, vol. 14 (Washington: GPO, 1885)

Secondary Sources

BOOKS, ARTICLES & COLLECTED ESSAYS
Daniel Aaron, Cincinnati, Queen City of the West, 1819-1838 (Columbus: OSU, 1992)
Bruce Ackerman, We the People, Vol. 2: Transformations (Cambridge: Harvard, 1998)
Matthew Axtell, "What is Still 'Radical' in the Antislavery Legal Practice of Salmon P. Chase?" 11.2 Hastings Race & Poverty Law Journal (Summer, 2014): 269-320
Yoam Barzel, Economic Analysis of Property Rights, 2d. ed. (Cambridge, 1997)
Derrick Bell, Race, Racism, and American Law, 8th ed. (New York: Aspen, 2008)


William Birney, *James G. Birney and his Times* (New York: Appleton, 1890)


Frederick Blue, *Salmon P. Chase: A Life in Politics* (Kent State University Press, 1987)


Bertram Wyatt Brown, *Lewis Tappan and the Evangelical War Against Slavery* (Cleveland: Case Western, 1969)


Hallie Q. Brown, ed., *Homespun Heroines and Other Women of Distinction* (Xenia: Aldine, 1926)


Brent M.S. Campney, “‘The Peculiar Climate of this Region’: The 1854 Cairo Lynching and the Historiography of Racist Violence Against Blacks in Illinois,” *Journal of the Illinois State Historical Society* 107.2: (Summer 2014), 143-170
Lewis and Richard Collins, *Collins’ Historical Sketches of Kentucky* (Covington: Collins, 1878)

[Richard Henry Dana], “History of Admiralty Jurisdiction in the Supreme Court of the United States,” 5.4: (July 1871), 581-621


Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century* (Yale: New Haven, 1985)


Henry Ford and Kate Ford, *History of Cincinnati, Ohio* (Cincinnati: Williams, 1881)


Walter Stix Glazer, *Cincinnati in 1840: The Social and Functional Organization of an Urban Community during the Pre-Civil War Period* (Columbus: OSU, 1999)


Sarah Levine-Gronningsater, “Delivering freedom: Gradual emancipation, black legal
culture, and the origins of sectional crisis in New York, 1759-1870” (PhD. Diss., Univ. of Chicago, 2014)
Daniel W. Hamilton, *The Limits of Sovereignty: Property Confiscation in the Union and the Confederacy during the Civil War* (Univ. of Chicago Press, 2007)
Daniel Walker Howe, *The Political Culture of the American Whigs* (University of Chicago)


Fred Landon, *Ontario’s African-Canadian Heritage* (Toronto: Natural Heritage, 2009)

John Lauritz Larson, *Internal Improvement: National Public Works and the Promise of*
Popular Government in the Early United States (Chapel Hill: UNC, 2001)
William T. Lewis, Genealogy of the Lewis Family in America, vol. 1 (Louisville: Courier-Journal, 1893)
David Lightner, Slavery and the Commerce Power: How the Struggle Against the Interstate Slave Trade Led to the Civil War (New Haven: Yale, 2006)
Marion B. Lucas, A History of Blacks in Kentucky: From Slavery to Segregation, 1760-1891 (Frankfort: Kentucky Historical Society, 1992)
Ivan E. McDougle, Slavery in Kentucky, 1792-1865 (Lancaster: New Era, 1919)
Gerard N. Magliocca, American Founding Son: John Bingham and the Invention of the Fourteenth Amendment (New York: NYU, 2013)
Timothy Mahoney, River Towns in the Great West: The structure of provincial urbanization in the American Midwest, 1820-1870 (New York: Cambridge, 1990)
Asa Earl Martin, The Anti-Slavery Movement in Kentucky Prior to 1850 (Louisville: Standard, 1918)
Jonathan D. Martin, Divided Mastery: Slave Hiring in the American South (Chapel Hill: UNC, 2004)
Leo Marx, Technology and the Pastoral Ideal in America (New York: Oxford, 1964)
Jerry Mashaw, Creating the Administrative Constitution: The Lost One Hundred Years of American Administrative Law (New Haven: Yale, 2012)

Cathy Matson, ed., The Economy of Early America: Historical Perspectives and New Directions (University Park: Pennsylvania State, 2006)

Ivan E. McDougle, Slavery in Kentucky, 1792-1865 (Lancaster: New Era, 1919)


Charles McCurdy, “Prelude to Civil War: A Snapshot of the California Supreme Court at Work in 1858,” California Supreme Court Historical Society Year Book 1:(1994): 3-31


David Montgomery, Citizen Worker: The Experience of Workers in the United States with Democracy and the Free Market During the Nineteenth Century (New York: Cambridge, 1995)


Thomas Morris, Southern Slavery and the Law, 1619-1860 (UNC: Chapel Hill, 1996)


R. Kent Newmyer, Supreme Court Justice Joseph Story: Statesman of the Old Republic (Chapel Hill: UNC, 1985)

---, The Supreme Court Under Marshall and Taney (Arlington Heights: Harlan Davidson, 1968)


Robert Nozick, Anarchy, State, and Utopia (New York: Basic, 1974)
---, The Scorpion’s Sting: Antislavery and the Coming of the Civil War (New York: Norton, 2014)
Peter Onuf, Statehood and Union: A History of the Northwest Ordinance (Bloomington: Indiana, 1987)
Orlando Patterson, Slavery and Social Death: A Comparative Study (Cambridge: Harvard, 1982)
U.B. Phillips, Life and Labor in the Old South (1929; Columbia: U. of South Carolina, 2007)
James Ramage & Andrea Watkins, Kentucky Rising: Democracy, Slavery, and Culture from the Early Republic to the Civil War (Lexington: Kentucky, 2011)
Matthew Taylor Rafferty, The Republic Afloat: Law, Honor, and Citizenship in Maritime America (Univ. of Chicago, 2013)
George Irving Read, et al, Bench and Bar of Ohio: a compendium of history and biography, vol. 2 (Chicago: Century, 1897)
Mark Reinhardt, Who Speaks for Margaret Garner? (Minneapolis: Minnesota, 2010)
Charles Rosenberg, The Cholera Years: The United States in 1832, 1849 and 1866 (Chicago, 1962)
Nicolaas Rupke, ed., Medical Geography in Historical Perspective (London: Wellcome Trust Centre, 2000)
Simon Schama, Landscape and Memory (New York: Knopf, 1995)
John Thomas Scharf, The History of St. Louis City and County, vol. 2 (Philadelphia: Everts, 1883)
Arthur M. Schlesinger, Jr., The Age of Jackson (Boston: Little, Brown, 1945)
Donald G. Simpson, Under the North Star: Black Communities in Upper Canada (Trenton: Africa World Press, 2005)
William and Ophia Smith, *A Buckeye Titan* (Cincinnati: Historical and Philosophical Society of Ohio, 1953)


--, “Republic of Labor,” *Dissent Magazine* (Fall 2015)


Charles Warren, *The Supreme Court in United States History*, vol. 2 (Boston: Little Brown, 1922)


W. Alfred Williams, *History of Bolivar County, Mississippi* (Rosedale: DAR, Mississippi Chapter, 1976)


Works Progress Administration, *Inventory of the County Archives of Ohio, Vol. 31 – Hamilton County* (Columbus: Historical Records Survey, 1937)


---, *Slavery and American Economic Development* (Baton Rouge: LSU, 2006)

Bennett H. Young, *History and Texts of the Three Constitutions of Kentucky* (Louisville: Job Printing, 1890)
Acknowledgments

Many riverboat pilots recalled that helming a steamboat down the Ohio or Mississippi Rivers was never a task performed entirely on one’s own. As I bring my own dissertation journey to a close, I find it easy to analogize my experience to the anonymous and bleary-eyed steersman finally rolling his river-worn boat to shore, still surrounded by a wise crew and reminded of the affable fellow travelers I met further upstream.

My dissertation’s point of departure was the Princeton History Department, where Hendrik Hartog served as my peerless captain, teaching me the tricks of the legal history trade. Through Dirk, I rethought in class what I believed I knew about legal history, and had the chance to teach undergraduate students the new routes that I had learned. My other teachers at Princeton performed important roles as well. Through seminars and conversations, Daniel T. Rodgers served as my thesis’ trusty engineer, pointing out when my arguments were running too hot, or my evidence was running too cold. Sean Wilentz and James Oakes, who co-taught my graduate survey seminar in antebellum U.S. history, exposed me to an expanded cast of characters animating the ages of Jackson and Lincoln. Further advice and comments from Emily Thompson, Martha Sandweiss, Jon McClure, Jon Levy, Stanley N. Katz, and Emmanuel Kreike also helped me choose my own path downstream. I also thank Justene Hill, Jennifer Jones, Tikia Hamilton, Maeve Herbert Glass, Farah Peterson, Sarah Seo, Rohit De, Jessica Lowe, Tal Kastner, Phil Wallach, Jane Manners, Valeria López Fadul, Lo Faber, and Dael Norwood, my graduate student colleagues at Princeton, for their comments.

Like any rivergoing enterprise, this dissertation also received financial support from a collection of upland patrons. In the Summer of 2009, Princeton’s Program in American Studies funded the exploratory research in Ohio, West Virginia, and Kentucky that led to a conference paper framing my initial dissertation prospectus. Pre-dissertation and dissertation funding from Princeton’s History Department in 2011 and 2012 also helped me dock at archival repositories in Cincinnati, Pittsburgh, Columbus, Morgantown, Chicago, Indianapolis, Springfield, Cairo, Paducah, and St. Louis. Additional travel fellowships from the Kentucky Historical Society in Frankfort, and the Filson Historical Society in Louisville, allowed me to explore the world of steamboat era sources lying south of the Ohio River. I particularly thank A. Glenn Crothers at the Filson for giving me the chance to present some of my research to audiences in the Bluegrass State. Meanwhile, a travel fellowship from the Harvard Business School allowed me to explore the R.G. Dun and Bradstreet Co. collection at the Baker Library, and hence to understand the steamboat era’s larger economic system. An additional travel fellowship from the University of Indiana at Bloomington brought me to the Hoosier State to review commercial records held at the Lilly Library. And fellowship support from Princeton’s Woodrow Wilson Fellowship of Scholars program, and the American Society of Legal History’s William Nelson Cromwell Foundation, helped to finance the written portions of my dissertation work.

Longer-term research fellowships also influenced my dissertation’s ultimate direction. As a Graduate Student Fellow at the Smithsonian’s National Museum of American History in early 2011, I received sage environmental history advice from Jeffery K. Stine. Through Jeff, I was also able to meet Leland Johnson and Jack White, two venerable Ohio River historians whose combined knowledge of the steamboat era dwarfs my own. Also at the Smithsonian, Paul Johnston helped me gain my sea legs in maritime history, while Pam Henson helped me locate scientific sources on the Ohio River during the 1800s. Later, during the Summer of 2013, an abridged version of my dissertation’s main arguments received valuable comments during the
Willard Hurst Summer Institute in Legal History at the University of Wisconsin at Madison. A special thanks is due to Ken Mack, Barbara Welke, Michael Schoeppner, Anne Fleming, Greg Ablavsky, Taja-Nia Henderson, Mitra Sharafi, Howie Erlanger, Jesse Nasta, and Lisa Eberle for their interest, questions, and comments. Later in the 2013-2014 academic year, I was also lucky to serve alongside Erin Braatz as a Samuel I. Golieb Fellow at the New York University School of Law. There, a formidable legion of legal historians led by William Nelson and Daniel Hulsebosch helped me rethink my project’s relevance to legal scholarship. In addition to Bill and Dan, special thanks is due to William Forbath, Brad Snyder, Intisar Rabb, Jeremy Kessler, R.B. Bernstein, Laura Weinrib, John Phillip Reid, and the late Norma Basch for taking the time to engage my work.

The year after my Golieb term, the companionship of three impressive lawyer-scholars - Zachary Kaufman, Derek Webb, and Isra Bhattay, my colleagues as Judicial Fellows at the Supreme Court of the United States in Washington, D.C. – gave me the strength and good humor to put the finishing touches on several of my dissertation chapters. The support of Dan Holt and Jake Kobrick, my co-workers within the Federal Judicial Center’s Office of History during that year and several summers before, also helped me evade this project’s final snags. Bruce Ragsdale and Clara Altman, the former and current directors of the FJC’s history office, respectively, also deserve special thanks, as does Jeff Minear, the Executive Director of the Supreme Court Fellows program. During my time in the nation’s capital, the following additional people have also given me encouragement in varying forms: Barry Cushman, Maeva Marcus, Michael Ross, Daniel Ernst, Betsy Mendelsohn, Randy Barnett, Risa Goluboff, Karl Brooks, Jonathan Eliot, Phil Steffen, and Jack Mahon.

I now realize that completing this dissertation was a circular journey, effectively dropping me off where I began. In the end, I am, as always, surrounded by the unconditional support of my family. Since I began working on this, my brother Mike and I have experienced life’s slings and arrows in ways that would fill a book on their own. We have also shared unexpected joy, witnessing the two most cursed teams of our San Francisco youths rise to the champion’s circle again and again. Thanks for riding with me, brother. Similar sentiments of appreciation also extend to my uncles, aunts, and cousins in California, Spain, Canada, and Oklahoma – thank you Janet, Tim, Ben, César, Erin, Jeff, Glayne, Don, Bob, and Rose for your companionship.

Finally, I thank my parents Lucretia and Lawrence Axtell for their everlasting faith in me, whatever I may try. And I thank my son Samuel Hite Axtell for arriving in the world on Father’s Day 2011, and for bringing me closer to God through his presence and love. To Mom, Dad, and Sam, I dedicate this work and my ongoing journey to you.

January 2016
Takoma Park, D.C.