THE SHADOWS OF AMERICAN LAW: ENMITY, INTERSECTIONALITY AND POLICE

by

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DISSERTATION ABSTRACT

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This dissertation explores the concept of public enmity and its deployment at the founding, in the nation's most pivotal state-building arenas: the courts, the military, and the emerging institutions of internal security. The Black Seminole people represented a perennial enemy bent on destroying the fabric of the fledgling nation through violence and atrocity. American tabloids valorized every act of violence committed for the sake of liberation as an act of heinous murder against innocent people. Jackson furthered these tropes in his few public speeches, utilizing the specter of Afro-Native violence to win the southern vote in 1828. Abraham, though never directly named, emerged as a scourge on American society bent on upending civilization. Jackson used his experiences as a military commander to justify the burgeoning of the militia system, which would give way to both slave patrols and the genocidal atrocities of the US Marshals during the frontier wars.

This project seeks to accomplish three goals: establish a concrete definition of public enmity; identify how it operates as an invitation for a specific kind of state-building; highlight the work that it performs in specific institutional or policy spaces. I am motivated by what I argue is a missed opportunity to connect the development of police authority in the United States to the historical roots of public enmity. I argue that

the conceptual work on police in American law would benefit from identifying the central role that enmity played in development of police authority in the Jacksonian era. I bridge policing to the public enmity narrative by presenting cases from the Jacksonian era and highlighting the crucial links between the development of a white nationalist ideology on the one hand, and the role of police authority in combatting national threats in the form of "internal enemies (Taylor, 2013)." I trace the debates on public authority during the Jacksonian era highlighting what prompted these debates, what populations were identified as enemies or threats to national sovereignty, and what institutions were mobilized to defend the nation. In the two cases that follow I highlight the relationship between enmity, sovereignty, and police authority.

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I. A Parable of Two Nations

Not much exists in the archive about the strange and brutal life of Abraham Tustunnagee. Like his Maroon compatriot Dutty Boukman[1] who would lead the first wave of the Haitian revolution to its fatal end, the collection of tales of Abraham's life exists myth-like in the backdrop of the Jacksonian era. Accounts tell us that he was born and enslaved in 1790 in the Georgia colony. By the early 1800s he was a servant in British Florida, where he was manumitted the during the war of 1812. In 1814 he joined the British Colonial Marines under the command of Edward Nichols. From 1812 until his dispossession and removal to Oklahoma territory in 1853, Abraham Tustunnagee would become the stuff of Jacksonian nightmares. In his 2-year career with Nichols and the Colonial Marines he would raid southern plantations, free enslaved comrades, and arm and train them to fight against the United States.

After the war and Nichols' return to the Caribbean, Tustunnagee would remain at the small fort on Prescott Bluff that Nichols had used as his base of operations. There he helped develop a thriving community of Black and Indigenous tradespeople and farmers. He organized the remaining colonial marines into a militia and aided escapees and Indigenous refugees from General Jackson's assault against the Creek in 1813. From his base of operations, Abraham would continue to raid southern plantations and train freed Black and Indigenous people in Western warfare. His raids would provide fodder for Southern papers' insistence that British Colonial Marines were trying to destabilize the American south by provoking a massive uprising of enslaved and Indigenous people (Clavin, 2019). On July 27, 1816, Major General Andrew Jackson

[1] Dutty Boukman himself would be cast in a much larger role than his compatriot. The tradition tells us that it was Dutty on the hillside in Camp Nois', Haiti who would call forth the revolution with hellfire and brimstone sermon. "I am done with the god that only wants my tears. Bring me the god who wants my vengeance." See CLR James Black Jacobians for a full account of Dutt Boukman and his role in the Haitian Revolution (C L R James, 1989)

arrived at Prescott, now referred to only as “the Negro Fort”, in order to “restore property to its rightful place” (Jackson et al., 1926, vol. 2 pp. 238-239). Jackson slaughtered most of the inhabitants at the Fort by firing heated canon shots at the it’s magazine until it exploded, a move which served as the opening scene in the Seminole War. Abraham escaped to a Black Seminole village in North Florida where he again faced off against Jackson’s militia during its bloodiest campaign against the Native inhabitants of Florida and Georgia.

During the Seminole campaign, Jackson committed numerous crimes of war and crimes against humanity. He declared himself the military governor of the territory and instituted a harsh punitive system against the Seminole people living in the area, executing them for the slightest infractions. He ruled the territory through military tribunal, trying. and executing Seminole civilians as combatants. Abraham survived the final onslaught of the Jacksonian militia and remained with the Seminole people, marrying into the tribe and fathering two children with a formerly enslaved woman Named Hagan. He served as a translator for Chief Osceola in 1832 and in that capacity continued to protect the Seminole from Jackson’s unrelenting attacks by rejecting Jackson’s relocation plan, which required the Seminole to relocate beyond the Mississippi. This sparked Abraham’s third military engagement, which he fought exactly as he had in the past, with an unwavering commitment to defeat Jacksonian violence. In 1835 he helped initiate slave uprisings in northern Florida at the Depeyster plantation at New Smyrna. There, 250 enslaved people rose and joined the Black Seminoles against relocation. Abraham’s leadership at New Smyrna forced General Thomas Jessup to begin negotiations with Abraham in the hopes of abating his sizable forces and the Seminole warriors. As part of their agreement, Jessup emancipated the enslaved members of Abraham’s battalion. Abraham served as General Zachary Taylor’s scout and translator in the territory until Seminole dispossession in 1839. Despite his pivotal work, Abraham died in Oklahoma territory with no record of his death, and no tombstone to remember his leadership or service.

Abraham Tustunnagee’s treatment by history, his near erasure from memory despite his lifelong commitment to liberating enslaved peoples, is a story shared by many great

leaders who worked on behalf and alongside of dispossessed communities. While Abraham's heroics became erased from history, Abraham and the many others who fought the tides of U.S. racial apartheid, were recast, for white leaders, as an idea, as an emissary of violence. White leaders required a narrative hook to cultivate their continued annihilation of Black and Indigenous communities. In these narratives, the many Abrahams who fought as stalwarts against white barbarism themselves are portrayed only, in a tortured butchering of history, as the villains of the American conscience. Abraham's story is an exemplar of a key element of white nationalist regime-building, what I refer to as public enmity.

II. Public Enmity and Public Authority

It is tempting to read Abraham's struggle as another story of opposition to white settler colonialism. Certainly, the Jacksonian settlers of Abraham's era saw him and his nation as an obstacle to the future of their own. The story is also illustrative, however, of the co-constitutive relationship between public enmity and public authority. Abraham existed as a specter of violence in the antebellum mind because he and liberation fighters like him were not only violently subdued by the American state, but they were also brandished by Jackson and Jacksonian Democrats alike to justify the genocidal policies of removal and enslavement. Maroon encampments, and the narrative of their destruction would highlight the stark contrasts of the racial hierarchy in the American mind, vivifying the bravery and judicious nature of the white settlers in the face of endless violence. Jackson, from the battlefield to the campaign trail, and finally from the Oval Office would utilize stories of Indigenous and Maroon hostilities towards white settlers to justify war crimes, martial law, and ultimately wholesale dispossession and removal of Native peoples to ensure the safety of the southern half of the new republic. He would do so by weaving a myth of violence around Maroon and Native communities such as Abraham's.

This dissertation explores the concept of public enmity and its deployment at the founding, in the nation's most pivotal state-building arenas: the courts, the military, and the emerging institutions of internal security. The Black Seminole people represented a perennial enemy bent on destroying the fabric of the fledgling nation through violence and atrocity. American tabloids valorized every act of violence committed for the sake of liberation as an act of heinous murder against innocent people. Jackson furthered these tropes in his few public speeches, utilizing the specter of Afro-Native violence to win the southern vote in 1828. Abraham, though never directly named, emerged as a scourge on American society bent on upending civilization. Jackson used his experiences as a military commander to justify the burgeoning of the militia system, which would give way to both slave patrols and the genocidal atrocities of the US Marshals during the frontier wars.

This project seeks to accomplish three goals: establish a concrete definition of public enmity; identify how it operates as an invitation for a specific kind of state-building; highlight the work that it performs in specific institutional or policy spaces. I am motivated by what I argue is a missed opportunity to connect the development of police authority in the United States to the historical roots of public enmity. I argue that the conceptual work on police in American law would benefit from identifying the central role that enmity played in development of police authority in the Jacksonian era. I bridge policing to the public enmity narrative by presenting cases from the Jacksonian era and highlighting the crucial links between the development of a white nationalist ideology on the one hand, and the role of police authority in combatting national threats in the form of "internal enemies (Taylor, 2013)." I trace the debates on public authority during the Jacksonian era highlighting what prompted these debates, what populations were identified as enemies or threats to national sovereignty, and what institutions were mobilized to defend the nation. In the two cases that follow I highlight the relationship between enmity, sovereignty, and police authority.

III. Defining Public Enmity

The idea of a public enemy, national enemy, or an enemy of the people is deeply rooted in the development of the American consciousness. The racial understandings of nationhood espoused during the Jacksonian period are sedimented into current understandings of national identity in such a way as to valorize white American national identity as something in need of perpetual defense by the state. Public enmity as a conceptual frame, would develop around the idea of a larger-than-life enemy requiring the whole of the nation to defend it. As we have seen in current American politics, these tropes abound. Beginning with his announcement for candidacy in 2015, Trump began to wield white American fears of joblessness and poverty at the hands of immigration and globalization of the job market. His "bad Hombres" speech, delivered from the doorway of his golden elevator in Trump Tower ignited the flames of white enmity against immigrants of all kinds, Trump closed the American borders to people coming from Latin America, Muslim and African countries, as well as China, all in the name of an "America first" approach to executive authority. Ron DeSantis and Christian Right groups like Alliance Defending Freedom, utilize the fear of sexual violence to galvanize the Florida conservative public. DeSantis leveraged moral panic over queer and transgender people to push forward the Florida "Don't Say Gay" bill (HB 1557).

Most prominently, however, we see the deployment of public enmity in the context of policing. The concept of public enmity activates a certain need for and deployment of police. Public enemy narratives that center on a racialized other have historically shaped not only the narrative of police power in this country, but also institutions of national policing such as the Marshals, the Militia, the Pinkertons, and the FBI. While these narratives of enmity persist in national discourse, their development and maintenance ~~are~~ woefully under theorized in current conceptual histories of both national identity and the police.

This dissertation traces the development of public enmity as a critical rhetorical tool for state building. The United States would come to authorize its constitutional and

institutional priorities through the lens of supposed Indigenous and Maroon enemies.[2] Public enmity's explicit marrying of state-building with racialized threat leverages the development of a specific national identity and the development of threat-based internal security measures (de Sousa Santos, 2007, pp. 85–89). Current conceptual histories tend to omit the relationship between enmity and preface the development of orderly public policy. For instance, regarding public enmity and police (the most prominent space where scholars explore state-building implications of "enemy" rhetoric) the dominant narratives tend to preface the role of police in producing orderly political subjects through legal power. This power is often viewed as value neutral authority to direct the public through the force of law. As I will argue in more detail throughout, while these conceptual histories are correct, they are also incomplete. As such, they are ill-equipped to capture the dynamics of modern policing, because they fail to highlight the very specific populations that were targeted by public authority. By omitting the development of racial hierarchy of property and labor in the United States, these histories fail to analyze how federal police institutions developed along a racialized axis of internal security and national belonging.[3]

Public enmity, as I use it here, refers to the spirit of animosity that seems to run through public policy directed at ensuring internal security. Beginning with the Jackson administration, we see a particular focus on internal security, specifically frontier settlement security, and the role of public authority, namely the federal police power to mitigate threats to American expansion (Jordan et al., 2012). That this focus was

[2] See for example the definition provided by legal lexicographer John Bouvier in 1856 "This word, used in the singular number, designates a nation at war with the United States, and includes every member of such nation. Vatt. 1. 3, c. 5, 70. To make a public enemy, the government of the foreign country must be at war with the United States; for a mob, how numerous soever it may be, or robbers, whoever they may be, are never considered as a public enemy." (Bouvier & Kelham, 1839)

[3] Both Cheryl Harris and Eileen Morton-Robinson are instructive here. Harris points to a deep connection between the development of whiteness and the legal understanding of property in early American jurisprudence. This connection manifest itself as a legal assumption of white ownership. Morton-Robinson refers to this assumption as the white possessive, noting that this assumption of European ownership runs legal thought during the colonial period.(Harris, 1993; MORETON-ROBINSON, 2015)

racialized in the Jacksonian period is not necessarily surprising. What is surprising, perhaps, is that these racialized norms shape modern policing in similarly brutal ways.

I view public enmity as the nexus of internal security, public authority and racial hierarchy. As we will see below, Jackson wielded public animus towards the Native inhabitants of the southern states like a sword during his tenure as Major General. He would use this distrust to justify war crimes during the Creek and Seminole campaigns. During his congressional trial for violating the "laws of civilized warfare," Jackson would argue for a hierarchy of legal responsibility that afforded Native people little recourse, as the laws of civilized warfare were only binding on civilized nations (Rosen, 2015). Congress would agree with Jackson's legal opinion and open the door for removal. It would be President Jackson who would exact the removal of Native peoples to the western side of the Mississippi, after making removal a preeminent part of his campaign platform (Opal, 2017).

The question of internal security, as we will see below is a primarily a political question, revolving around parceling out membership and ownership in the new nation on the one hand, and pathologizing marginalized communities in a variety of ways. At question in discussions of internal security is how the law views these marginalized members, and what methods are used to manage them. This question has been raised by Black and Indigenous scholars of criminal justice policy alike and are formative in my understanding of the term. See for example Simone Browne's work in security studies tracing the emergence of the Black body as a necessary site of state surveillance (Browne, 2015) . Andrew Weheliye too interrogates the ways in which blackness as an idea traverses the sociolegal space, and what regimes of social and legal practice have been used to mark them as outside the pale of law (Weheliye, 2014). Indigenous scholars too have highlighted the pathologization of Indigeneity as a matter of state practice. Claudio Saunt, as an example traces a distinct shift in discourse surrounding the Creek Indians during the Creek War (Saunt, 1999). This shift highlighted the treachery and criminality of the Creek people, as allies of the British in the War of 1812. Debora Rosen marks a similar shift in relations with the Seminole peoples during the subsequent Seminole war (Deborah A. Rosen, 2008). I

highlight these discursive shifts under the rubric of public enmity. Contained within that rubric, as the above scholars each argue, is a question of innate criminality and threatening presences in the American community. Threats to the state that required martial vigilance.

While I argue for it as a separate concept, public enmity is also rooted in the work of both Richard Hofstadter and Michael Rogin. Hofstadter, for his part, begins highlighting what he calls the 'paranoid style in American politics during the McCarthy era. He traces this style to Jacksonian politics, as he finds, the paranoia of American politics is rooted in the creation and maintenance of a conspiratorial framework. This framework is typically built around the idea of "…The existence of a vast, insidious, perpetually effective. international conspiratorial network designed to perpetrate act of the most fiendish character (Hofstadter, 1967, p. 70)." I read these foundational theories of paranoia in American politics and read them through the lens of Intersectional and queer of color theory. Doing so shifts the gaze of my archival work. Here I retrace the history of political paranoia back through the cultural record of Jacksonianism, highlighting the specific targets of paranoid rhetoric. That this paranoia most often takes on the form of scapegoating marginalized communities is unsurprising. In doing so, I take pains to highlight the narratives of people like Abraham, and other brave fighters who have been relegated to the ephemera of history.[4]

For Hofstadter conspiratorial networks began as anti-Masonic organizations during the Jackson administration but morphed into anti-Catholicism during the Jacksonian era and emerged as a rudimentary form of the kkk during Reconstruction (Hofstadter, 1967, pp. 79–82). The historical antecedents of paranoia are quite important for Hofstadter's historiography. He traces the rise of a particular type of thinking on the part of political elites beginning with Jackson's paranoia about both the national bank

[4] I attempt to follow Haitian historian Michel Rolph Trouillot's historiographic method in this regard. For him, it is the privilege of the academy to build a robust national narrative. The role of the individual historian is one of excavating the forgotten and/or silenced narratives contained within official history and bring them to bear on the cultural record. See Trouillot *Silencing the Past.*

and Indigenous people. For Hofstadter, Jacksonian suspicion of "others" was wielded by policy agents in such a way as to drive a cleft in between Indigenous subject and the "American public". This trope would be used again by HUAC to drive a similar cleft between "communists" and the same "American public" during the McCarthy Era (Hofstadter, 1967, p. 85).

Hofstadter's "paranoid style" is a tactic deployed by policy actors to develop public support for the security state (Hofstadter, 1967, pp. 90–91). This "style" entails the creation and maintenance of scapegoats that justify a particular set of policy preferences. This policy platform is presented as the only means of saving American civilization from nefarious conspiracies that lurk in the shadows of society. These conspiracies are apocalyptic in nature for the paranoid spokesman, thus failure to act drastically and decidedly is tantamount to a return to the savagery of the state of nature.

> Apocalyptic warnings arouse passion and militancy, and strike at susceptibility to similar themes in Christianity. Properly expressed, such warnings serve somewhat the same function as a description of the horrible consequences of sin in a revivalist sermon: they portray that which impends, but which may still be avoided. They are a secular and demonic version of Adventism (Hofstadter, 1967, p. 91).

This apocalypse comes at the hand of an enemy. The conspiratorial thinking about the national bank and the Masonic lodge during the Jacksonian era, he finds, emerges in the anti-Black conspiracies that forged the ku klux klan during Reconstruction, for example. The extant conspiracies against the American people, on the reading of the Paranoid Spokesman, transcend class, gender, and racial divides of American history, and act on the American populace by destabilizing the constitutional foundations of the nation state. As we will discuss in the next chapter, this manufactured enemy would be the central focus of debates on internal security during the Jacksonian era. Jackson himself would utilize anti-Native fearmongering to drive the southern vote in

1828 by calling for stringent internal security measures against free Native and Black people living in the southern states. Police power, I will argue below developed out of these first attempts at securing the American state from systemic threats.

The grandiose nature of the apocalyptic enemy is a result of its transcendence of the intersections that make up American political life. Hofstadter's focus is on the political psychology of paranoia, and he attempts to provide a general mechanics of political motivations behind this style of politics. As such he focuses on the interactions between political elites and their publics. Specifically, his analysis is a comparison of the use of paranoia and conspiratorial thinking during Jacksonianism and McCarthyism. As such, Hofstadter's shy's away from the anti-Black, Indigenous, and queer foundations of the kkk in order to focus on the conspiratorial origins its anti-Catholicism (Hofstadter, 1967, pp. 97–98). In doing so, his analysis remains tightly focused on the relational nature of national paranoia and the deeply rooted nature of apocalyptic thinking in the general American public.

DB Davis famously takes up this question of paranoia and the modern right and groups it under the category of "countersubversion (Davis, 1960)." On his reading of Hofstadter, countersubversion is best understood as the object of the paranoid style of demagogues. Demagoguery emerges precisely in moments of peril to the American state. The discourses provided, as with Hofstadter, identify a singular threat to the national identity and galvanizes the American public (Davis, 1960, pp. 206–208). They fixate on the presence of supposed conspiracies to undermine or overthrow the American state and its concomitant rights based political culture. That these conspiracies typically emerge from marginalized communities seems to speak to the fragility and uniqueness of White Christian Democracy. The public mythos of anti-American conspiracy, on this reading, emerges as an explanation of social ills suck as crime and economic instability through the rubric the destabilizing effect of "anti-American groups and beliefs (Davis, 1960, pp. 210–211)."

While Both Hofstadter and Davis' analysis give us piece of the puzzle, and both do much to highlight the fever pitched nature of American political discourse, both focus on the conspiratorial aspects of anti-subversion, without sufficiently analyzing the

historical roots of this thinking. Both place the emergence and the focus of conspiratorial thinking in the anti-Masonic and anti-Catholic movements of the late 1800's. These movements belong to the history of the modern right, to be sure, but they are not original. I place the emergence of these tactics in the Jacksonian era. In doing so, I link anti-subversive thinking to the development of racial democracy in the United States.[5] In their attempts to focus first on the political relationship of paranoia broadly, as with Hofstadter, and then on the general political utility of conspiratorial thinking as Davis has done, both focus on the development of a mass psychology of nativist resentment without fully recognizing the racist lineages of these state tools.

Black Studies scholars focused historicizing the discourse of criminality, however, tend to avoid seeking the universal when studying the relationship between scapegoating and the pathologization of race. Kahlil Gibran Muhammad, for example, traces out the development of the pathologization of Black people by metropolitan police early on in their development. So much so that when the Chicago police were modernized in the early 1900's, Black people were specifically excluded from diversity hiring pools. By roundly excluding them from criminal justice policy he finds, Metropolitan policy makers ensured that Black communities would be the subject of police authority in the city (Muhammad, 2019). Native Criminal justice scholars find a long history of criminalizing discourses about Native Communities that recast Native peoples as the primary subjects of the developing police authority of the American state. Indigenous Ethnographer Launa Ross, points to a deep archive of pathology about native peoples, which provided the foundation for policing measure such as the "Code of Indian Offenses" in 1883 (Ross, 1998).

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[5] For a robust account of racial democracy as I am using it here, see CW Mills. Mills provides a working definition. Of racial democracy, through the lens of the "racial contract." This unspoken social contract, he argues, assumes the subjugation of Black and Indigenous people as the foundation of American democracy (Mills, 1997, 2017). Aziz Rana builds off this assumption, positing the existence of a separate legality for marginalized peoples in the United States (Rana, 2010) . As we will see in the following chapter, in the work of Marcus Dubber this secondary legality develops in and through the development of the police power (Dubber, 2005).

Contemporary studies, however, have continued using the above rubric to describe the phenomenon of political scapegoating in American politics. In doing so, they have attempted to develop a better understanding of the racial lineages of counter-subversive discourse. Michael Rogin, for example, brings racial antipathy to the fore of modern American politics by tracing the historical origins of late Cold War paranoia during the Raegan administration. He centers his historical focus on the ostracization and demonization of non-whites during the Jacksonian Era as the historical locus of the tactics highlighted by Hofstadter and Davis. Demonology as a political enterprise is one of the main tools of the counter subversive tradition in American politics as Rogin understands it. Demonology, like the "paranoid style" highlighted by Hofstadter has historically been used in times of national crisis to galvanize the population against a common enemy (Rogin, 1988a).

Historically these narratives emerge in times of crises in national identity as a means of unifying the nation. It is accomplished by pointing to elements inside American society that threaten to destabilize or derail the American project. As each generation faces a new enemy, it relies on the discourses of previous generations in order to understand the nature of the enemy and the scale of the threat to American civilization. These historical enemies also become connected through motif. The language of the Red Scare during McCarthyism, for example was derived from the political language of the Frontier Wars of the late 1800's (Rogin, 1988a, pp. 67–68). As new enemies emerge in the American psyche, they are stratified into legality and political culture by analogous connection to previous public threats. The creation of resonate threat narratives is the primary function of the counter subversive agent. This agent acts on behalf of the nation to both identify and combat the threat by any means. The dire nature of the public threat justifies extraordinary measures on the part of the agent to ensure the survival of the nation (Rogin, 1988a, pp. vi–vii).

While the paranoid style of American politics appears as an almost path dependent mechanic of the state designed to eliminate threats, as Rogin points out, these discourses emerge from different agencies, Presidential platforms, motivations, and

policies. It is more proper to think of it as a unifying principle of state that emerges, most often as an argument about what "needs to be done" in the face of a threat to the national identity. These threats are as diverse as their responses, and the American state has historically utilized a diversity of tools to effectively combat them. As Rogin argues, while the history of racial and class demonization is similar, one cannot reduce the history of racial oppression in the U.S. to class antagonism, or vice versa. One needs, rather to draw out the subtle differences in the state's motivations and tactics.[6]

As I said above, extant studies of political paranoia suffer from a fundamental deficit when read through the lens Black and Indigenous studies. Most glaringly, they attempt to avoid the development of racial hierarchy during this period, and the intimate connection between racialization and demonization in the American mind historically. While Hofstadter and Davis avoid the question of race altogether, proffering instead a paltry history of anti-Catholic and anti-Mason groups in early America as the historical bedrock.

Jackson's capacity to instill fear on the campaign trail becomes key to his success in executing Removal policy as president. For Rogin, this is due to his capacity as a storyteller. Specifically, it lays in his ability to create an image of the Native other as a hostile force of rape and pillage bent on looting and burning southern settlements. The archival record certainly merits this reading, as we shall see below. One simply must read the carefully cultivated tales of General Jackson presented in Duff Green's party organ *The Globe* to see the centrality of Duff Green's mythmaking to both the election policy program and of President Andrew Jackson (Ewing, 1978). It is these myths about the "red Savage" found in Jackson and Green's discourse that animate the concept of the "Red Menace" in the McCarthy, Nixon, and Reagan era anti-

[6] Julie Novkov echoes this warning as well in her comparison of anti-miscegenation and DOMA laws. As she points out it does a disservice to the developmental narrative of both sets of legal restrictions, by assuming a commonality of ends for the state. While it seems easy to collate the social movements to upend these bigoted laws by assuming a common set of state ends, which give rise to them, these laws were based in differing state ends. See (Novkov, 2008)

communist propaganda. In rooting the question of demonology in the history of racial identity in the United States, Rogin seeks to draw out the extent to which white status anxiety has the capacity to shift policy against marginalized populations Such as Native peoples in the Jacksonian south or "communism" during the Nixon administration (Rogin, 1988b, pp. 278–279).

IV. Project Overview and Methodology

This project is a continuation of the above histories of the American right. My goal is to add an account of race and white nationalism to research on political scapegoating—such as those introduced by Hofstadter, Davis and Rogan, among others. I accomplish this by introducing the term public enmity as a means of tracing a) the political consequences of scapegoating and b) the ways in which they ultimately become imbedded in law, public policy and institutional practice. To support my analysis, I offer an account of Jacksonian state-building, including innovations established by the Taney Court, that specifically pertains to the security of the American nation against "internal enemies" (Taylor). Here, I focus on the importance of race, white identity, and nationalism in ways that are relatively absent from these other accounts. I end my analysis with some articulations of how public enmity as a concept can be used to understand other forms of marginalization that are similarly connected to state-building, including current and visceral attacks on Queer and Trans communities. As I will demonstrate in my conclusion, while I focus exclusively on racial othering in the substantive chapters, I argue that public enmity—as with other similarly deployed concepts ("paranoid style" (Hofstadter) or "political demonology" (Rogin))—has the capacity to endure, evolve and expand.

To support my argument, I analyze narratives imbedded in archival documents, including Jackson's letters, official papers, testimony before Congress, and articles from the Globe newspaper, along with documents[7] from Taney's tenure in the

[7] I was unable to review letters from Taney because Taney burnt all his correspondence before his death. The only ones that exist are the ones published in his official biography.

Treasury Department, correspondence in his biography and his judicial opinions. I demonstrate how Jackson wields specific narratives that leverage racialized and white nationalist sentiments that he deploys using military, and then executive, power as he grows the state and his legacy. I demonstrate how Taney, in turn, created a legal framework that incorporate these demonizing discourses.

I begin by analyzing the nature of the threat that Native peoples posed to the American project in both the congressional and court records. This allows me to trace the development of these discourses as they emerge in the public record. Secondly, this project centers the debates on national identity and otherness as they emerge in these records and become stratified in the legal framework of national identity. I use the term public enmity to denote these discourses of material threats to national identity during the Jacksonian era and the legal infrastructures that, consequently, developed to combat this threat under Taney. I address this in the following manner.

This perspective is important, as I shall argue more fully in the next chapter, because I use public enmity to explain the development of the concept of police authority and policing institutions in the Jacksonian Era. Public enmity developed as a tool of discursive power alongside the burgeoning hierarchy of race and ownership that was emerging in the new nation. By reading these developments against the development of policing institutions, I can draw out a concomitant relationship between national identity, marginalization, and the mobilization of state violence. In order to fully highlight this relationship, the remainder of this book breaks down in the following ways.

As we will discuss more this work contributes to the ongoing debate on the development of police institutions in the united states. It does so by reading the critical histories of criminality found in Black and Indigenous studies bac into the conventional historical record provided by legal history. As I have said above and will go into in more detail in the next chapter, none of these histories are specifically wrong. They are in fact incomplete. Just as it was necessary to understand developmental accounts of right-wing ideology through the lens of Black and Indigenous studies. Doing so, I argue, allows us to understand the development of

police against the background of the racial hierarchies that animate both traditional American conservativism and white nationalism by appealing to questions of ownership and sovereignty which animate it. In doing so, this account adds to the burgeoning literature in the disciplines American Political Development and Legal History seeking to read the history of intuitions through the lens of racial hierarchy.

As I have intimated already, studies such as these are the theoretical foundation of the concept of enmity that I put forward here. Black and Native Studies research into criminality such as Kahili Muhammad's, Ross's, Browne's and Weheliye's analyze the role of racial hierarchy in the formation and maintenance of police as an ideological stalwart of American public policy. Legal historical Research Such as Sally Marry Engle and Laura Gomez have highlighted the intimate relationship between racial hierarchy. Engle's tracing of the legal colonization of Hawaii highlights the extent to which racial hierarchy was sewn into the fabric of the American project, by highlighting the distinct role racial difference played in the restructuring to the Hawaiian legal system as part of its colonization (Engle, 2000). Gomez's persistent analysis has focused in on the extent to which racial hierarchy is stratified in American Legality. As she finds, racial hierarchy infects legal understandings in almost every avenue of law necessitating a priori outcomes that are often at odds with contemporary rights understandings. As such, She argues Race and law become mutually constitutive in the sense that one's position in the racial hierarchy often determines legal outcomes (Gomez, 2010). Her intersectional understanding of the differing legal relationships extant in American political life is important to this project as it allows for a reading of legal history that requires a careful analysis of the racial narratives that drive legal development.

I read these literatures together in the historical record in the following ways Chapter Two analyzes the relationship between public enmity and the development of the concept of police in American law. Here I review literatures on police and police powers to develop a theoretical overview of the object of police historically and develop a reading of police development along the lines of racial enmity through

contemporary Black and Indigenous political thought. The chapter concludes with an introduction to the racial and political tensions in Jacksonian America.

Chapter Three traces the development of Jackson's discourse of public enmity from his military career through his presidency. It begins by analyzing the racial tensions of early American. It charts the development of a national sense of fear regarding Black and Indigenous subjects, that animates both the Creek and Seminole wars, Jackson's two major campaigns as General of the southern militia forces. It analyzes the development of Jacksonian sovereignty jurisprudence from his war crimes hearings through his candidacy and presidency. It details the development of popular mobilizations programs in favor of removal by Jackson's image maker, Duff Green, before going into his administration, and ultimately the Removal Act of 1833. The final section of the chapter traces the of Jackson's legal philosophy on his presidency and his management of the displacement of the Cherokee, Chickasaw, Choctaw, Creek, and Seminole people.

Chapter Four continues to examine the discourse of public enmity as it takes shape during debates on emancipation during after the Jackson administration. It takes this up through an analysis of the development of the police power in early American jurisprudence. It does so by following the career of Roger B. Taney from his time as a member of Jackson's "kitchen cabinet" through his career as the Chief Justice of the United States Supreme Court. In doing so it highlights the dire threat that Taney thought emancipation posed to the union. It highlights his creation of the legal architecture of policing by coordinating the roles of the federal courts, the US Marshals, and Slave Patrols in *Prigg v Pennsylvania (1826).* It further traces the development of the abolition movement, and the Taney Court's response in *Dredd Scott v Sanford (1857)* stripping Black people of the possibility of citizenship or rights and nullifying the Missouri Compromise, opening the US up to enslavement. It further analyzes his final attempt to stimy the abolition movement in *Ableman v Booth (1859)* which ended haven in free states in the buildup to the Civil War.

The final chapter reads these two cases together, analyzing the development of police power and infrastructure as an act of defining and defending white national identity in the US. It will begin by theorizing the relationship between enmity, police and nationalism as it appears in Jacksonian politics. I will then trace out the salient features of white nationalism and use them to posit a historical trajectory of white nationalism based in the concept of police as it emerges in these debates. I end by positing the durability and transmissibility of public enmity in the context of other state-initiated threats against a minoritized other. Specifically, I connect the characteristics of Jacksonian white national identity—and the concomitant development of policing--to current state-based attacks on Queer and Trans communities.

CHAPTER 2: PUBLIC ENMITY AND POLICING

The events of 2020 brought the question of police authority to the forefront of the American mind. The Black Lives Matter movement ignited young Black and Brown Americans to stand up to racialized police violence in America. Protests flooded the streets of every major city in the world demanding accountability for police violence. "I can't breathe" became a national rally cry against excesses of police power, and the police killings of George Floyd and Breonna Taylor sparked national outrage at the impunity with which police killed unarmed Black civilians.[8] Protests not only heightened interest in police brutality among white citizens, but also raised questions about police funding and the extent to which policing was sewn into the fabric of national identity.

I. Police and Police Science

The concept of police is deeply engrained into American Law. Thomas Jefferson endowed the first chair of police science at William and Mary as governor in 1779 (Tomlins, 2010). His understanding of police/policing was centered on the capacity of the state to train and develop its citizens. In its original usage the term denoted the policy power of the state, or the capacity of the state to manage social order through law. This capacity was separated between the federal and state governments through the commerce clause. The Commerce clause of the constitution relegates all interstate commerce to federal authority. The earliest cases surrounding the police power of the state dealt with the limitations of state police power to regulate the flow of goods and services between states. Police power emerges in *Brown v Maryland* (1827) as the ability of states to regulate contracts that are deleterious to free trade. The economic logic of police provided by the Court in *Brown* would guidee Indigenous treaty law,

[8] Police killed 1,144 people in 2020. Black people were 2.9% more likely to be shot by a police officer than any other demographic. Black and Native American people made up more that 50% of police killings in 2020 despite protests shining light on police brutality.

interstate contracts, and imminent domain understandings, all of which shaped the nature of federalism under the new constitution, by creating a judicial preference for federal rather than state power.

As will be seen in detail in Chapter 3, the Taney Court gutted this logic in a series of rulings which culminated in the License Cases. Police, for Taney, was not a matter of economic management. It is the cornerstone of state sovereignty. The capacity to police, or to protect the citizenry from dangerous elements, is the cornerstone of a state's constitutional obligations and authorities. It is only the state, he goes on, because of its proximity to and composition of local citizens, that can adequately police the American community.[9] Metropolitan police divisions in the United States developed as the discourse of states' rights was developing. Taney, however, would expand the logic of a state's police authority to include African and Indigenous people as subjects of federal policy power in *United States v Rogers* (1842) and *Prigg v. Pennsylvania* (1842). These two cases expanded the reach and the practice of federal police power to include the adjudication of criminal law on Native territory (*Rogers*) and the apprehension and return of "fugitives from slavery" across state lines (*Prigg). B*oth cases expand the jurisdiction and mandate of the first federal investigative agency, the US Marshals.

Modern police science emerges out of the development of the investigative capacities of the Marshalls, the militia, and slave patrols post-Prigg (Hadden, 2001). Each of these crafted specialized divisions of labor in their investigation and apprehension of fugitives from slavery (Hadden, 2001). The patrol had members who investigated potential uprisings and searched quarters for weapons and other contraband as well as tactical units that searched the swamps, forests, and mountains of the rural U.S for Black people to sell into bondage in the South. The militia guarded against uprisings, and the Marshalls returned captured people to the plantations who filed affidavits in federal court for their return to bondage.

[9]*License Cases 46 US 504 (1847)*

During the Gilded Age, Police science would focus almost exclusively on investigation. Business titan Alan Pinkerton developed the idea of police to include guarding against foreign and class enemies until the demise of his agency at the end of the century. For Pinkerton, police investigation served as a guard against plots that threatened the very fabric of American society. The Pinkerton Detective Agency stunned the American serial reader with tales of plots of domination by anarchists, unionists, and the Mollie McGuires. Pinkerton develop his rather meager tales of pedestrian corporate espionage into classic police yarns, that gave rise to the "hard-boiled" detective novel (Morn, 1982). He used the specter of anarchist violence in the late 1800's to press the federal government to develop a federal investigation force to combat these threats. Policing as we know it today is arguably different from the jurisprudence of police power highlighted above. Today, policing deals with the adjudication of criminality in a locality, and generally speaks to municipal police forces rather than the broad coercive powers of a state. Thus, the history of modern policing in the United States begins with modernization.

Chicago's Metropolitan Police force of the Gilded Age was patterned after the newly formed London Metropolitan Police in 1879 (Morn, 1982; Shelden, 2008a). Its focus was primarily poverty governance and petty crime, and, as such, it instituted a system of patrols based on the city guard model of colonial times, with an emphasis on education, poverty reduction, and vocational training. This model was replicated throughout culminating in the development of the juvenile justice system in Chicago, which developed policing structures specific to impoverished youth. While police technologies traversed the early American state as localities modernized along the Chicago model, national investigative agencies emerged, and the penitentiary system began to solidify, a national police system never emerged (Shelden, 2008b). The power to police remained a local or state affair as both Jefferson and Taney had advocated. National police power remained largely a matter of legal discourse, with the Court making minor interventions in local police practice.

The above accounts of police development in the United States focus almost exclusively on the legal/policy discourse as it emerges in the Anglo-European

archive. These accounts are of two types. First, genealogical accounts of American police, which highlight its growth during the Gilded Age and tie its evolution to the professionalization of metropolitan policing in Victorian Europe. These connect the history of policing in the United States to the development of police science in France, Germany, and London. The second, critical theory, focuses on the development of police power. These explanations offer historical analyses of the development of the police power in constitutional law, tracing it through European legality to its religious origins. Together, they offer a detailed textual history of the emergence and propagation of police power as a form of administrative law designed to manage impoverished citizens in the European metropole.

These accounts are not wrong. There is an obvious bridge between European and American police science. Developmentally, European class administration offered an obvious lure. Jefferson, Franklin, and Jackson each lauded the capacity of the state to manage its citizenry through police practice. As discursive histories they provide an excellent foundation, covering the early American archive thoroughly, and mapping the connections between European and American police development. They are deficient, however, in at least two ways. First, they fetishize the European police discourse, focusing almost exclusively on the formation of the discipline in France, Germany, and England, then grafting it onto American policing. Policing emerges in these accounts as a benign form of state power, which manages impoverished classes through the value neutral medium of administrative law (Tomlins, 2010, pp. 5–6). Lacking is any connectivity to the historical debates on police authority in the United States.

By giving strong preference to the metropolitan conceptualization of police and police power respectively, the extant historical accounts of police development ignore the very debates that shaped the structure of policing in the US. Worse still, by specifically ignoring these debates, they sidestep the central role of racial enmity and national sovereignty played in the development of policing in the US. The strong preference for high legal discourse among conventional histories of police authority also seems to ignore the role of police as a locus of popular mobilization. I read these

two frames back into the extant histories of police by focusing on the functionaries who carved out an understanding of public authority in the law. Doing so reveals a deep connection between the idea of nationhood, public security, and enmity embedded in the exercise of police power.

Jefferson, as an example, viewed police as another aspect of public education; providing support and training to impoverished Americans through workhouses, poorhouses, and residential schools. Police as a bureaucratic agent of the state was viewed as a means of training poor citizens and vagrants for property owning citizenship in the US. Police develop out of Jefferson's passion for public education, training, and civic service (Tomlins, 2010, pp. 8–10). These institutions are not aggregate, but are a function of state and local power, as Jefferson argued for them in the 1700's. Tethering police discourse to discursive developments in the early enlightenment produces a faulty model of modern police bureaucracies in the following ways. First, centering the discussion on European class structures limits our field of vision to a single set of discrete variables that supposedly override other social divisions such as race, gender, and sexuality. Social divisions are fed into the rubric of police as unfree labor, whose liberation is tied to its capacity to be governed by newly emerging institutions (Tomlins, 2010).

Secondly, these legal categories are not value neutral theories about the best management practices for a given population. Police discourses emerge precisely as responses to threats against the state. As such they are risk specific and typically mark the expansion of coercive infrastructures to regulate and constrain populations that deviate from state-mandated sociality. Police legality emerges as a specific tailoring of the state to shape or mold an errant population and bring them in line with policy goals and social expectations. We can understand police, then, as one of the general powers a state utilizes to coerce its people.

We can also see policing as a specific set of power operations that targets deviant populations for control by the state. This requires a reading of police that traces the high discourse of administrative law alongside changes in police institutions over time. Police history might then account for rich exchange of power

and social discoure extant in the emerging works of both Continental and American police science.

I attempt to do so here by tracing the emergence of police at the intersection of power and otherness. Pursuing police as both a technology of the state *and* a product of debates about national belonging requiring us to trace power, in this case sovereignty, as it permeates the national political system. This requires reading police history at a national level, and analyzing the relationship between enmity, internal security, and public authority as I defined then in the previous chapter. I do so here by tracing the development of police authority by reading the connections between sovereignty, legality, and public authority in the Jacksonian era through the policies and debates that took place around governing outsiders or "strangers" to the new American nation.

Police logics are almost exclusively built around the management of specific groups that have been deemed "inferior" to colonial culture (Fanon et al., 1988, pp. 12–13). Derrida locates police at the line between two forms of law, Police emerge in a social order, he finds, precisely at the point when the dominant legal order feels threatened. Police are the material force that protects the dominance of a given legal order from competing legal discourses that may threaten to undo it. Using the example of the general strike, Derrida motions to an array of legal and material forms of state power that emerge in and around the strike to curtail it. Therefore, policing is as much conceptual as it is legal. Siding with critiques of liberalism from the right, Derrida argues that attacks on the legal order are treated as systemic threats that must be combatted to preserve the rule of law (Cornell et al., 1992).

Boaventura de Sousa Santos, following the work of both Fanon and Derrida, identifies police logics as an "abyssal line" in law and knowledge production that separates civilization and the possibility of justice and knowledge from the savage world of the other, who, finding itself outside of the line of civilization, has no legal agency or capacity for knowledge and, therefore, must be managed through violence. This "abyssal line" threads the metropole with the colonies. The managerial use of

violence, prevalent in the colonies since the English colonization of Ireland, turns inward against the internal other (De Sousa Santos 2007).

The management of this "internal other" and the deployment of violence as a method for maintaining social order is what is missing from the accounts of policing referenced above. And so, it is here that this project begins. What follows is a mapping of the contours of the development of police and the logics of policing through the managerial practices applied to America's internal enemies (Taylor, 2013). Relying on public enmity narratives, this project traces the development of police at the national level. Each of the public enemies highlighted in this project: Native peoples resisting relocation, escaped enslaved people living in Maroon communities, enslaved and free Africans were characterized as a larger-than-life enemy looming just at the edges of American society. Each of these narratives was developed by legal architects who then deployed these manufactured threat-based frameworks to legitimize the expansion of internal security in specific areas.

I parse these two issues in the historical record by reading Black and Indigenous political thought back into the above theoretical framework in such a way as to highlight the concomitant development of racial hierarchy and internal security institutions during the Jacksonian regime. The question of physical presence and threat mitigation has been thoroughly parsed by Black and Indigenous Political thought. George Yancy reminds us that the level of threat assessment associated with the Black body takes place at the pre-rational, pre-legal, affective portion of interactions, sparking defensive actions as an *a priori* part of Black, white interactions (Yancy, 2008). Simone Browne points to the presence of free and enslaved Africans in the early colonies as a catalyst for the development of supervisory and containment aspects of policing (Browne, 2015). Andrew Weheliye too , finally, posits that it is the presence of the Black body, a looming threat of uprising and violence, are subjected to the violence of the state as a means to mitigate this presence (Weheliye, 2014). Barnor Hesse and Juliette Hooker are especially instructive on this point. They ask us to view the entirety of Black politics as existing outside the pale of legality. The basis of Black political action, they argue automatically

carries with it the stain of fugitivity and slavery. In this context, the first Black political act in the new nation was escaping enslavement (Hesse, 2017; Hesse & Hooker, 2017).

Reading this problematized subjectivity back into the legal history of police reveals the extent to which threat mediation and racial hierarchy became blurred, producing a doctrine of internal security that was based largely on the perceived threat of the Black and Indigenous body. This doctrine, as I shall argue below is largely based on the problematic relationship of Enslaved, Marooned, and Indigenous people to territorial sovereignty, property, and national identity. As we will see directly below, the question of national identity and internal security become intimately conjoined in debates about both Aboriginal title and African enslavement.

II. Jacksonianism and the Government of the Inferior

Jackson's use of racial enmity throughout his career is a particularly salient example of the fabrication of a "threatening other" as the foundation for policing. As we will see below, Jackson proved particularly adept at manipulating racial and legal lines to suit a range of objectives. As a Major General, Jackson utilized the racially mixed nature of Louisiana society to create a broad base defensive coalition to repel the British in the Battle of New Orleans. After the city was secured, the racially mixed nature of the city would be the primary reason Jackson would cite for the illegal extension of martial law over New Orleans.

After the Battle of New Orleans, Jackson turned all his newfound power as the military governor of the territory against the Black, Native, and Mulatto communities, and ended Lafitte's control over the Louisiana gulf. As we see in the next chapter, as a presidential candidate, Jackson and Duff Green carefully cultivated his image as a staunch defender of the American nation against the very communities that had brought him to power. As President he relied on the narrative of Native massacres of settlers in the southern states in executing the Removal Act of 1832, justify the razing of Native villages by state, local, and private militias.

As we shall see later in Chapter 3, Jackson's caustic relationship with the judicial nationalism of John Marshall paved the way for militia-based removal efforts. Jackson specifically interpreted the Marshall Court's rulings on Indigenous sovereignty to empower state governments to adjudicate treaty relations with tribes in absence of federal oversight. Jackson interpreted *Johnson v McIntosh* (1823) to allow for the removal of Native people. Citing persistent threats to settlers, and generally poor conditions of Native inhabitants, Jackson promoted removal as a humane alternative to military intervention to Congress, well and local Tribal Councils.

As the military governor of both New Orleans, Jackson wielded his power over the Native and African inhabitants to terrible effect—using the cover of military law to exact harsh penalties for minor infractions of curfew laws, executing Mulatto, Creek, and Seminole inhabitants for the slightest breaches of protocol. As a candidate for President, Jackson relied on the tumultuous relationship between southern settlers and the Natives whose lands they were encroaching upon, to promote his version of total relocation of all Native peoples, citing Native hostilities against expanding settlements including murder, rape, pillage and kidnapping of white citizens. Then, as president, Jackson along with John Easton wielded these same tropes as the justification for forcible relocation in 1830. Jackson personally re-engineered the relationship between Native peoples and the United States from one of equals (as envisioned by the founding generation) to one of total usurpation and domination of tribal agency.

Jackson became the first public official to authorize the creation of a national security apparatus to combat the persistent threat of African and Native uprisings. As a general and a candidate, he worked closely with then Secretary of War John C. Calhoun to bolster both the training and the armament of the state militias in the south as a means of expanding southern settlements inside Native treaty lands in the Spanish holdings of Western Florida and Florida. He simultaneously led these forces on murderous rampages against Creek and Seminole villages in these areas, bolstering the Patriots and other irregular militia movements in clearing the land for settler development.

At every stage in his career Jackson wielded military, administrative, and treaty law to create a legal pathway for the violent removal of Native people. By continually citing the internal threat of Afro-Indigenous uprisings in the South, and hinting at the possibility of a second Haiti, in both public speeches and the press, he manufactured the first perennial enemy the United States would face(Clavin, 2010). He also developed a federalist framework allowing for national policy goals to be executed through state police powers. Jackson solidified this framework, and his policy of militaristic removal and containment, through his appointments of John McLean, Henry Baldwin, James Wayne, Philip Barbour, and Chief Justice Roger B. Taney to the Supreme Court. It is in the Jacksonian era that the American state develops an understanding of nationhood built primarily on territoriality and protecting the interests of white settlers.

III. White Nationalism and State-Building

White Sovereignty, or the territorial dominance of white settlers, is best understood as a series of assumptions and power relations operating on American culture in such a way as to ensure that white management of society is assumed, and threats to this sovereignty are dealt with as systemic threats that must be removed (Hesse, 2017). This reading of the racial nature of sovereignty has roots in Native legal theory as well. Both Black and Native political theories of sovereignty converge on the question of property and dispossession. As Aileen Morton-Robinson and Cheryl Harris have both pointed out, Anglo-European cultural assumptions about sovereignty are deeply tied to notions of possession and discovery. For Harris, the legal conceptualization of property was intimately tied to race, and the European capacity for seizure and management of both Black bodies and Indigenous lands in the colonial world (Harris, 1993).

Robinson, too, notes that white sovereignty is rooted in “the rule of the king and the masculine capacity to possess property and bear arms.” These masculine attributes are “…embodied in nation states… and displayed in bodily form as the police, the

army, and the judiciary (MORETON-ROBINSON, 2015).” By reading racial logics back into accounts of sovereignty, Hesse, Harris, and Morton-Robinson each point to police as a conceptual question of white sovereign logic operating to secure Indigenous land and appropriate Black labor. While conventional discursive accounts such as Tomlin’s or Dubber’s do much to highlight the economic nature of police in the Early republic, they miss the extent to which the explosion of police science in the United States was as much a function of securing racial dominance for white settlers colonizing the southern and southwestern states, and that property was a racial line that required continual defending, both discursively and institutionally by police (MORETON-ROBINSON, 2015). Queer of Color legal critic Jasbir Puar expands the idea of white sovereignty to include a conception of nationalism. As she finds, white American identity is not based solely in control of territory and the administration of property. White nationalism emerges in public discourse as a violent answer to cultural difference in turbulent political times.

Nationalism is the capacity of the state to mobilize white Americans around shared cultural values like constitutional rights and capitalism. This nationalism is most often applied at the nexus of race and culture. Nationalism mostly relies on the draw of American values, allowing whiteness to operate in the background in the form of moral assumptions about the centrality of white people to the American enterprise (Puar, 2007, pp. 17–18). As a result, American white nationalism functions as the backdrop for apprehending national tragedies such as the Pulse Night Club shooting in 2016—when Omar Mateen killed 49 and injured 53 (predominantly Queer and BIPOC) customers at the gay nightclub in Orlando. Public discourse about Pulse quickly antagonized white middle class Queer Americans against their Muslim American counterparts by pointing to the foreign and backwards nature of Muslim beliefs. Doing this quickly racialized anti-Queer violence in ways that acquitted the nation for its own anti-Queer agenda (Puar, 2007).

It is white nationalism’s capacity to mobilize a white public for state ends that we see the reemergence of the populist white supremacy of the Ku Klux Klan during their second and third dynasties. Extremist white supremacist violence emerges

precisely at the point at which white values and assumptions about their position in the hierarchy of labor and property. While white supremacist extremism is normally seen as fringe political violence, scholarship in the post-Trump era has in fact found that these movements draw their ideas of whiteness directly from public enemy discourses coming from institutional actors and political elites (Newton, 2014). Threat doctrines used to mobilize the public for self-defense, political, and/or economic gain have shown a disturbing tendency to trickle down to these groups and sediment themselves in American identity politics. Recent scholarship on white supremacist movements has found that these movements emerge out of the colonial nature of the American project, valorizing whiteness and erasing Black, Indigenous, and queer subjects (Belew and Gutierrez 2021). This research speaks to an alarming overlap between white nationalist groups and the police power of the state, whose institutions are often co-opted into the white supremacist project (Belew, 2018).

III. Public Authority, Policing and Social Dominance

In the above I have identified white nationalism is a virulent ideology of political and territorial dominance of the United States by Anglo-Europeans and their descendants. I did so by weaving Hesse's understanding of white sovereignty as the series of background assumptions about who administers the American state into Harris and Morton-Robinson's understanding of the connection between whiteness and the legal framework of property [1] (Harris, 1993; Hesse, 2017; MORETON-ROBINSON, 2015). I added Puar's understandings of how threats to this national consciousness emerge and are maintained by the American state. I further argue that nationalism in this form becomes centered on whiteness in at least two ways during its ideological development (Puar, 2007).

First, nationalism secures the rights and privileges associated with sovereignty and ownership exclusively to the distinctly American class of white people, and the concomitant relationship between the development of whiteness as an in group. Second, it removes whiteness from the hierarchies that it produced as an ideal subject

position that could both be identified, refined, and redefined in relation to Black, Indigenous, Queer, poor, and immigrant bodies that make up the object of police power (Browne, 2015; Weheliye, 2014). White nationalism, I argue, is a specific relationship of power to marginalized and ostracized subjects that develops a need for security apparatuses such as police force. We might understand police as a material response of white nationalism to populations that have been deemed threatening to national identity(Hesse & Hooker, 2017; Muhammad 2019) . I argue here for a developmental account of that national identity based on the expansion of police power to encompass newly identified threats.

This project intervenes in debates about the conceptualization of police in two distinct ways. First, as I argued above these conventional accounts are sanitized. These accounts attempt to derive a general analytic of police power by identifying where it emerges in high debates over public authority and law. While these debates are critical, they also miss a large portion of the policy development around these debates that gave birth to police science. Further, their insistence on the high discourse of police science, whether found in the eloquence of the founders or the high analytic of the Victorian metropole erases debates about the development and role of actual police in American society. As a result, while these analyses produce thick descriptions of police discourse and/or power, these histories ring hollow because they in no way seek to connect the discourse to the institutional development of policing.

In doing so, conventional legal history, despite the privileged position of the academy to trace the origins of the legal structures that govern is today, fails to adequately describe how police authority emerged as a legal tool of the state specifically in and through the sources that shape the debate. By avoiding the development of police science as it emerged within the United States, these accounts do not adequately describe the relationship between police as a concept, as an institution, and as a political culture. In so doing, this research eschews questions racial hierarchy and the emerging legal tensions over property, ownership, and race as they mar the pristine narrative of policy development.

Tracing a history of police through historical debates about public authority reveals that they too developed along intersectional axes. Racial lines emerge in the policy debate of police power in the Court and Congress, as we shall see below, nestled within broader debates about political culture and belonging. The development of police, when viewed through the lens of marginalization and domination reveals key aspects about the social relationships that make up public authority, and how these relationships are wielded by policy actors in both the public and private sphere to define national enemies and defend territorial integrity. This is exemplified under Jackson, where police practices emerge in and around debates about Indigenous sovereignty and authority. We also see this in the Taney Court, where policing authority is concretized through cases involving individuals and political movements fighting to free enslaved people and those who remained steadfastly committed to enlisting national support to surveille and recapture freed or "fugitive" slaves.

Questions of police authority emerge in presidential papers, court records, decisions, congressional debates and bills, and above all in public debates in newspapers across the country. American police authority develops in a rather inchoate fashion across historical eras. Actors in different historical times have built upon the advances in previous generations. Each new public enemy, I argue represents the growth of policing logics, in that police authority comes to act on a new subject in the reciprocal fashion highlighted above.

Second, as both police authority and the institutions that comprise it springboard from the knowledge production of previous endeavors, these logics are sedimented in each new iteration of police authority. There is no escaping political enmity once you are marked as an enemy or threat. If these cases are any example, to be marked as an enemy of the public is to be permanently removed from full participation in American society.[10] Indigenous and African peoples have been identified as fitting subjects for

[10] Though he references a different arena in the development of Black politics, the work of Richard Iton animates this question of power and belonging as I understand it here. Iton challenges us to see Black politics, or even the possibility of it as emergent, existing

state violence since the Colonial Era. Each new villain that is identified is read through the lens of historical threats and then woven back into the fabric of police authority. This is not to say that new threats are the same or read as similarly constituted by state power. Rather, each marginalized group comes to be sedimented in police power in such a way as to patchwork an enemy of near apocalyptic proportions.

These expansions of police authority are typically driven by institutional actors who have the capacity to amplify the marginalized identities as enemies of the public writ large. These institutional actors, who are the locus of the case studies below, each expanded the internal security apparatus of the state. Each did so by recasting an outside group as a larger-than-life enemy that would stop at nothing to destroy the American nation. As we saw above, Jackson created and wielded an image of the "savage Indian" to justify wartime aggressions. He furthered this image to drive public support for relocation programs, culminating in the Indian Removal Act of 1830. At every step of his policy program, Jackson maintained tight control over both the public image and the public response to Native peoples living in the southern United States. In doing so, he was able to leverage state militia force. Jackson utilized the militia, congress, the national press, and even the Court to create a theater of Native atrocities against white settlements. He then utilized the organs of national government to bolster the power of states to dispossess, jail, and kill their Native inhabitants.

As we will see in Chapter 3, Chief Justice Taney shifted the infrastructure of constitutional law to develop a framework of police power, which gave states almost total sovereignty over Black and Indigenous populations within their territories, effectively securing the foundations of modern policing. After his interventions, the police power came to represent a near total domination of Black and Indigenous communities within the territorial boundaries of the United States, carried out under the newly emerging constitutional regime of 'states rights'.

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on the margins of white society while being expressly subject to its authority. See *In Search of the Black fantastic* (Iton, 2008)

I consider these two cases to be a unique period in the development of police discourse in the United States because they bring the question of security into Early American debates about territorial sovereignty, public authority, and state violence in Congress and the Court. In no small way, as I shall take up below, the congressional hearing regarding Jackson's war crimes shaped his understanding of public authority and the use of force as he manipulated the tone and tenor of debates concerning the positioning of Indigenous subjects in American law. Jackson entered those hearings as a staunch advocate of the idea that territorial sovereignty implied legal sovereignty, making Native peoples subjects of state law rather than state treaty. While Congress, at the time, adhered to the treaty relations program laid down by the first generation of American leaders, they would emerge from these hearings siding with Jackson, creating a tiered system of treaty relations that relegated treaties with Native tribes to a lesser category of obligation than those with "civilized nations." This tiered system of treaty relations would ultimately give way to the Marshall Court's ascription of "domestic dependent nations" in *Cherokee Nation v Georgia (1831),* which Jackson would famously use to justify the deployment of state militias in the forceable relocation program.

While Jackson would never specifically speak to the notion of police, he spoke at great length about the role of national governments in protecting its citizens from aggression. In doing so, he continually tied the importance of this role to the instability of the southern settlements. It would be Taney, in his role of Chief Justice, who specifically tailored existing police power adjudication to include the capacity of the states to protect its citizens. He would also articulate a federal power to police Native territory in *US v. Rogers* (1846), and the primacy of the federal role in the kidnapping and return of "fugitives from slavery" to their owners in *Prigg v. Pennsylvania* (1842). Taney secured the federal infrastructure of enslavement, and the restated authority of the federal government to capture and re-enslave former enslaved people in *Dred Scott v Sandford* (1842) and ensured that African people could not escape the shadow of enslavement anywhere in the territorial United States in *Ableman v. Booth* (1858). The Taney Court, as we shall below, created a federal

infrastructure of policing that connects the U.S marshals to both the state militia and the local slave patrols (Hadden, 2001). Importantly, these cases reveal that Jackson and Taney each separately influenced the expansion of police power on the shoulders of a marginalized other, and thereby cementing the racialized notion of a national threat into both the legal scaffolding for policing institutions and the institutions themselves.

Jackson and Taney's accounts point to the targeted usage of public authority, and conflict with the value-free managerial model provided by conventional accounts of American police authority. Jacksonian sovereignty, and the authority he believed it granted him over inhabitants of the American territories, was much less benign than the treaty-based sovereign recognition model adhered by the Founding Generation.[11] As we will see below, the unitary nature of public authority and national security would become the hallmark of candidate Jackson's visions of federalism. Jackson refashioned the fledgling American state's security bureaucracy to make way for his relocation program. Taney would expand this foundation into a legal infrastructure of policing that incorporated the need for national security and state sovereignty simultaneously. While the Civil War and Reconstruction would break up the slave patrol system, the militia and emerging local police would remain permanently stratified as local forces of social control, securing enormous police power for the state and federal executive branches who controlled them.

These accounts also point to the emergence of the idea of public security that was quickly developed into a network of standing patrols for escaped enslaved people, US Marshals, and the militia, each of which were buttressed by federalism. While Jackson might be credited with being the first leader in the United States to experiment with racializing and politicizing public enmity, he would do so only vaguely. Jackson gave few public speeches. Most of his use of public enmity revolved around galvanizing white settlers against Indigenous inhabitants by scapegoating and fear mongering. Jackson, with Duff Green, cast himself as the lone hero of "frontier wars", battle-hardened and ready to protect innocent white settlers at all costs,

[11] *Annals of Congress,* House 15th Con. 2nd session.

especially when they broke international treaties. But it was Jackson's appointment of Taney that solidified a legal infrastructure to specifically excluded Black and Indigenous inhabitants from the federalist framework, which emerged around Jacksonian ideals of white ownership and white enfranchisement.

The Jacksonian legal framework would remain firmly in place for the next 30 years, thanks largely to Jackson's court-packing, and Taney's leadership. The enforcement of this framework in no small way would have lasting effects on the Constitutional system, before, during and after the Civil War. The Taney Court's rulings in *Prigg v Pennsylvania (1842), US v Rogers (1846), the License Cases (1847),* and *Dred Scott v Sandford (1857)* would permanently remove African and Indigenous subjects from the veil of law and placed them firmly within the territorial control and sovereign authority of both in their respective states and the federal system. He did so by opening space in *Prigg* for the development of hybrid forces of state and federally controlled militia groups.

What emerges from these debates on public authority and territorial control during the Jacksonian era is a relational understanding of nationalism based in the idea that Anglo-Europeans naturally constituted the nation, as it was built specifically by and for them. In this phase of national development, I argue, African and Indigenous subjects could only appear as existential threats. As such, we see the development of a public security apparatus designed to protect the nation against internal enemies. The original institutional framework develops out of various state and local militia groups being connected to federal authority as a matter of law, which in turn allows these local forces to be trained up and developed by extant federal agents like the U.S. Marshals. This reciprocal relationship of state and federal authority would become the hallmark of institutional understandings of federal police authority.

Yet, as I articulate above, these cases are not incidental. And neither are they an artifact of the founding era. These techniques and operating philosophies are picked up by later policy actors, each developing a specific understanding of the constitution of the American nation, each developing a specific public enemy that must be

combatted against, each spearheading a specially trained force of operatives to combat national enemies, and each authorizing the expansion/reallocation of government power set on diminishing the threat. This project brings these two cases, and the debates about public authority together and reads them as the emergence of the concept of police. In other words, the concept of public security becomes central to the American consciousness during the Jacksonian era. This centrality is based on fear to be certain, but more perniciously, it is deeply rooted in the colonial project and the questions of sovereignty and enmity that emerged from conquest. This project traces the development of that consciousness, by reinserting the sovereign claim back into American state development.

CHAPTER 3: BIRTH OF A NATION

It would not be fair to credit Andrew Jackson, or even Jacksonian democracy with the creation of racialized public enemy doctrines. As we have seen, they are sedimented to some degree in the legal record. The need to protect white ownership and territorial dominance emerged from challenges made to the legal frameworks of property and sovereignty by the presence of African and Indigenous peoples within the territorial boundaries of the new nation. In both aboriginal title and slavery, the onus of the Court was twofold: first, developing a legal framework for white agency over and against African and Indigenous subjects; secondly, by ensuring that the law confined the legal agency of Black and Indigenous subjects to that of dependency and servitude. Police as a concept is more than a discourse of power, it is a relationship to the law built on enmity. While the discursive enmity of the Court appears quite benign, it also refined police power to contain Black and Indigenous people. Ironically, the Marshall Court 's rulings on aboriginal title that pave the way enforcement of the Indian Removal Act of 1830, by gutting both aboriginal title and Indigenous sovereignty.

In this chapter I will trace public enmity as it emerged during the Jackson regime. In doing so, I highlight the more overt processes of political demonization of Native and African inhabitants of the new nation (Rogin, 1988a, p. xiii). I trace out the propaganda machine that emerges around Black and Native presences as it develops into a national threat doctrine of an impending Afro-Indigenous uprising in the US. Public enmity would become central to Jacksonian politics, as we will see. Both Jackson and his political progeny would utilize public enmity almost exclusively to drive militia development, expand the slave patrol system, and empower the national government to combat its internal enemies.

I. A Nation Under Siege

The Jacksonian Democrats expanded U.S. territory to its full continental breadth in 1859 by waging extensive anti-Native militia campaigns. In doing so, they doubled the number of slaves holding states (Lynn, 2019; Opal, 2017). As I noted above, however,

the threat doctrine used by the Jacksonian party engine was a response to the burgeoning freedom movements of Maroon societies and Indigenous communities. Jackson himself, as a military commander, Tennessee Supreme Court Justice, representative for Tennessee, a candidate, and President would continually wield the threat of free Black and Native people to fuel this expansion. This section will provide a racial geography of the early American nation beginning with the Haitian revolution and ending with Jackson's 1813 assault on Fort Prescott in Spanish Florida. It will do so to trace out the racial strife Jackson embroiled himself in during the War of 1812. As we will see, Major General Andrew Jackson wielded preexisting racial tensions of the new nation to terrifying effect.

English colonists viewed both Native and African people through the legal rubric of "stranger" or "dangerous foreigner". This rubric was developed in and around first contact with Africans on their continent. It stems directly from the western Christian relation of the color Black with evil. Slavery fit rather well into the English Common Law rubric, as the criminal code in England already made allowances for slavery as a punishment for crimes (Jordan et al., 2012). As captive peoples, they were seen as a workforce to be administered by white Christian settlers in perpetuity. Early colonial documents cite the regular attempts of colonists to secure Native peoples in order to trade them for African captive as early as 1645. Captured African peoples were seen as more robust workers than English servants and more docile as captives than enslaved Native peoples by early colonial officials. As business leader Edmond Downing pointed out to Governor John Winthrop:

> "If upon a Just warre [with the Narragansett Indians] the Lord should deliver them into our hands, we might easily have men woemen and children enough to exchange for Moores, which will be more gaynefull pilladge for us then wee conceive, for I doe not see how wee can thrive untill wee get into a stock of slaves sufficient to doe all our business, for our children's children will hardly see this great Continent filled with people, soe that our servants will still desire freedome to plant for themselves, and not stay but for verie great wages. And I suppose you know verie well how wee shall maintain 20

> Moores cheaper than one English servant (Donnan, 1930)." (original spelling preserved)

The categorization of "strangers" had further dehumanizing effects on the lives of Black and Native peoples in the new nation. The question of their presence and management was most often dealt with through the rubrics of animal husbandry. Enslaved people were legally viewed as "livestock". The categories of law applied to them were that of the "diodande", an English common law category meaning "property with the capacity to kill." This term was most often applied to oxen, and other livestock that had killed a person (Dayan, 2011).

Native people were viewed largely as wildlife. They were not seen as affecting any agency on the territorial holdings of the new nation. Rather they were understood as part of the environment, to be managed like other natural resources (Harris, 1993). Even as this view became ensconced in law, the new nation was besieged by uprisings and revolts both on the plantation and the newly acquired territory. San Dominique, a small French Island colony would be the first successful revolt of enslaved Africans. Haiti would cast a long shadow over the American conscience until the end of the Civil War. The fear of a second Haitian uprising in the American south filled the popular presses, as revolt after revolt in the south would become conspiratorially linked to Haiti and the French refugees of Louisiana and Florida (Clavin, 2010).

By 1791, the United States had already begun developing a siege mentality regarding both its African and Native subjects. Indigenous resistance to the new nation's bid for territorial dominance were immediate and ongoing beginning in 1776 with the first Cherokee uprising, which lasted until 1794. It overlapped with the uprising of the Northwest Nations from 1785-1795, and the Nickajack expedition of 1794. The Cherokee uprising was a 20-year guerrilla campaign against the expansion of the Northern Territories, and in response to the development of territories west of the Ohio River, the bloody Nickajack Expedition in 1794, colloquially known as the Last Battle of the Cherokee. It began a series of defeats for the Cherokee Nation which resulted in the ceding of the Southwest Territory to the U.S. in the Treaty of Tellico in 1798 (Clavin 2010, 29–30).

The settlers also had experience with resistance from African subjects as well. Two separate Africans communities rose during the colonial period. The Stono Rebellion, beginning in the fall of 1739, was the largest rebellion in the Southern Colonies. Twenty enslaved Congolese people took up arms and made south for Spanish held Florida. Enslaved people in the British Colonies were promised freedom by the Spanish Crown, who was then at war with England (Aptheker, 1970). The other was more rumor that uprising. In 1741 several fires in New York gave rise to a belief among the city's gentry that a vast conspiracy existed of enslaved Africans and poor whites bent on burning the city and taking control of New York. Over 100 enslaved people were apprehended on charges of burglary, arson, and insurrection, after a grand jury found that the fires must have been started by the plot. Despite torture, interrogation, and executions, no real evidence emerged of the plot. Dispute this fact, New York banned the import of enslaved peoples from the Caribbean citing the potentiality of revolt (C L R James, 1989; Aptheker 1970, 255–56).

These early uprisings existed against a backdrop of regular escape of enslaved peoples and the formation of Maroon societies in the American colonies. Maroon societies existed in the colonies beginning as early as 1684. The largest and best-known community in the territorial United States, the Great Dismal Swamp of Virginia and North Carolina was home to an estimated 2000 people trying to escape slavery (Taylor, 2013). It was a vibrant and active community of formerly enslaved Africans. reports of small, isolated bands of escapees began to emerge in both colonies, beginning with reports in Virginia of a rebellion being planned by maroons in the swamp. The fear of uprisings and rebellions emerging from the Swamp would be cited as the reason for the first laws urging and rewarding the apprehension of free Black people. In Middlesex County, for example, an enslaved person named "Mingoe", and an unspecified number of followers raided farms in and around Middlesex County, commandeering weapons, livestock, and foodstuffs for the swamp (Price, 1979, pp. 502–503).

South Carolina reported numerous plots and raids emerging from their side of the swamp as well. In June of 1711, an enslaved person named "Sebastian" and an unspecified number of formerly enslaved people waged a guerrilla campaign in South Carolina robbing houses and freeing enslaved people on plantations (Price, 1979, pp.

508–509). In 1729, Lieutenant Governor Gooch asked that the militia be trained in the prevention and apprehension of African subjects citing growing communities in both the swamp and the mountains, and the dire effect they were having on settlement. In 1733, the governor began offering a reward for returned African people "dead or alive" to curtail the growing escapee population. By 1765 the number of escaped people was so high that fears of rebellion permeated South Carolina society. The militia was called into regular service by the governor in order to destroy the burgeoning Maroon communities in the state. They would be called up a total of 6 times to fight against Maroon groups from 1756-1786. Continual raids on Maroon camps in the swamp and mountainous regions of South Carolina and Virginia led to a continual fear of an African uprising, especially in states with large populations of enslaved peoples (Taylor, 2013).

The Haitian revolution took place in the context of the constellation of hierarchical racial administration and the ensuing racial anxieties in the Early American nation. News of the uprising exploded in the popular press, enflaming the passions of the abolitionists and advocates of slavery alike. It was the continual fear of a second Haitian revolution occurring in the United States that in no small way drove the Civil War, by providing visceral context for enslaved and Afro-Indigenous uprisings from Fort Prescott to the Nat Turner Rebellion in 1831 (Clavin, 2010, pp. 16–17; Dun, 2016). By the end of the revolution in 1802, it occupied a central place in the American psyche.

Fears of further uprisings were fueled by popular press accounts of the "Insurrection of the Negros <*sic*> of. St. Domingo" From firsthand accounts of American naval Captains Newton and Edwards (of the *Polly* and *Three Brothers* respectively) they were widely printed and reprinted in newspapers throughout New England (Clavin, 2015, pp. 18–23; Dun, 2016; Edwards, 1797). For instance, Bryan Edwards' account of the uprising, which appeared in the Southern press in 1801, featured gruesome accounts of the rape, torture, and execution of white owners and colonial officials (Clavin, 2015, pp. 16–18). While these tales of horror are mostly just dime story fictions, stories like Edwards, came to shape the panic narrative of a second uprising in the United States, by providing gruesome example of the stakes of slavery.

The Haitian revolt exacerbated existing fears of racial uprising in slave holding states. This increased concern especially in states like Virginia and South Carolina, both

of whom increased fugitive patrols in the wake of the uprising, as plot upon plot emerged in the two states (Hadden, 2001; Taylor, 2013). Haiti was used as a dramatic example of the violence and savagery of Black people for both abolitionist and pro-slavery camps in the US House. The fear of rebellion was used by abolitionists in Congress to justify the moratorium on the import of slaves from Africa, with representatives from bordering free states like Pennsylvania. David Bard, a Republican from the 10th District of Pennsylvania warning of an impending uprising in his defense of a tax on illegally imported enslaved people. Urging against South Carolina's continued import he noted:

> " …But when the powers of State, though Constitutional, operates against the public interest, then the exercise of those powers are politically wrong, because it is contrary to the fundamental principle of society, the public good, which is paramount to the constitution itself. And in my opinion, the importation of slaves is hostile to the United States: to import slaves is to import enemies into our country; it is to import men who must be our natural enemies, if such there can be. Their circumstances, their barbarism, their reflections, their hopes and fears, render them an enemy of the worst description. One only needs look at what happened in San Domingo" [12]

The successful Haitian revolution would utterly change the geographic and cultural landscape of the US. Fears of uprising from among the Haitian refugees in Louisiana territory would prompt the Louisiana Purchase to stabilize the culture of the South. It would further the annexation of Western Florida by the Louisiana Territory's first governor William C. C. Claiborne in 1804, fearing a destabilization of southern slave owning culture by Maroons in Spanish Florida. Most importantly, Haiti would be directly linked to the largest uprising of enslaved people in US history on Louisiana's German Coast in 1811 (Rasmussen, 2011, pp. 75–77).

On January 9, 1811, over 500 enslaved people rose and marched from St. Charles and St, John the Baptist Parishes to New Orleans, roughly 35 miles away beating drums

[12] (Annuls of Congress 8th Congress, 1st session 995)

and demanding freedom to draw other enslaved and free Black people into their struggle along the way. They were led by Charles Deslondes who was described as an enslaved person of mixed heritage from St. Domingo. Governor Claiborne and Major Andry organized a militia of the planter class who attacked, murdered, tortured, and decapitated the enslaved participants. Major Andry, on whose plantation the original revolt started, and whose son had been killed roasted Charles Deslondes alive, and placed the heads of the enslaved participants on pikes leading from his plantation to New Orleans (Aptheker, 1970, pp. 467–468).

As Hofstadter, Davis, and Rogin all point to, Major Andry provides justification for his brutality, by pointing to the supposed monstrous nature of the enemy. The German Coast uprising looked far more like a modern labor rally, than a revolt, Andry's child was killed in the initial struggle, and the enslaved men seemed to be largely unarmed. The continual fear of an Afro-Indigenous uprising in the United States would haunt the American consciousness in the buildup of the War of 1812. The years in between Haiti and America's ill-advised war with England, fears of Indigenous uprising and revolts of the enslaved people would evolve into a fever dream of besiegement and intrigue by British agents fueled in part by the implosion of the Spanish empire.

Beginning at end of the Revolution, the new republic began expunging Loyalist Americans. The British crown used this expulsion to build a loyalist colony just inside Canada. The hope was that the new colony would be a bastion of democracy in commerce in the face of the inevitable decline of the American experiment. Beginning in 1783, some 38,000 loyalists would be relocated to Britain's northern Colonies. In order to bolster the new colony, the Crown provided loyalist subjects with land and planting supplies for two years, canceled debt, and imported grain and food stuffs during famine and lean years. By 1791, the British crown actively promoted Canada as sharp contrast to the brutality of market led politics in the new republic (Taylor, 2010).

Beginning in the early 1800's the British Crown would begin to extend its paternal concern to its enslaved subject, becoming the leading voice for the abolition of the global trade in African peoples, again mostly for political gain. This time by drawing a sharp distinction between itself and the brutality of French colonialism. On January 1, 1808, Parliament withdrew from the global market of enslaved people, but did not see fit to

liberate the 600,000 enslaved people already in the West Indies until August 1, 1834, (Taylor, 2010, pp. 467–468). In the period between 1808 and the beginning of the War of 1812, the Crown would utilize strategic emancipation against the American side by interrupting the global slave trade using its navy and pressing liberated slaves into service with the promise of manumission. This program of conscripted liberation would play heavily into English strategy during the War of 1812, as the English would garrison and arm, fleeing Black people at Fort Prescott, in the hopes of utilizing insurrection as a means of destabilizing the southern US (Clavin, 2015, pp. 41–43; Millett, n.d., pp. 6–9; Taylor, 2010, pp. 161–164).

The British Abolitionist movement had gained strong foothold in parliament by then, and Abolitionist elements in the military were used to sow fear in the American south. General Edward Nichols of the British military would utilize Fort Prescott Bluff in Spanish Florida to recruit, arm, and train escaped enslaved people and the Creek to people to wage a guerrilla war against US plantations in the South. During the regular war Nichols and the fighters of Fort Prescott would be used to annoy and upset the social fabric of southern life to turn the War against the very southern Hawks who had started it. He would do so to great success until the Battle of New Orleans vaulted another larger-than-life character into the national conscience.

Major General Andrew Jackson emerged from the War of 1812 as the commander who saved the republic and gave the United States its first military victory since the Revolution. It would be his conduct at Fort Prescott in 1814, however, that would begin the long chain of controversy connected to his political career. The Battle of New Orleans would make the Major General a national legend as he utilized militia, Native, Free Black, and smuggler elements to defeat the English and turn the tide of the war, before the U.S. ceded any more sovereign territory.

Jackson took the lessons of Fort Prescott as a blueprint for the management of subaltern subjects going forward. As earlier chapters highlight, Fort Prescott was not Jackson's first brush with the dangers of Afro-Indigenous resistance. The stories of British soldiers arming both Native and African allies would lead Jackson's Tennessee Militia into the Creek war throughout West Florida and ultimately Fort Prescott. At the end of War of 1812, Nichols would garrison free Black soldiers and Native allies in Fort

Prescott. Fort Prescott would emerge as the largest Maroon community in the South. The Fort would become a beacon to escapees in the Deep South who sought refuge in the frontiers of the Spanish colony (Clavin 2019, 47–48; 2015, 42–43).

The Fort came to house a garrison of refugee fighters from local tribes and the British ranks, led by a Maroon named Abraham (Clavin, 2019). These fighters spent the years between the end of the war and the massacre conducting guerrilla operations against small plantations in neighboring Georgia and Western Florida territories. The fighters at Fort Prescott took full advantage of the waning Spanish Crown's inability to populate the reaches of its frontier. The instability of the Spanish empire, and its inability to manage the hostile elements within its borders had previously prompted Gov. Claiborne to seize Western Florida clandestinely. The overt threat of Maroons causing a full-scale uprising, incited the overt seizure of Spanish Florida by the Major General, who would ultimately name himself the military governor of the pacified territory until annexation.

Major General Jackson and his troops sacked the Maroon camp on July 27, 1816. They destroyed the Fort using heated cannon balls. One struck the magazine of the Fort, causing a large explosion that killed most of its defenders. This engagement would begin the first of the Seminole Wars, which would come to define Jackson as a military leader and public figure. As described in chapter 1, Jackson learned to efficiently wield the militia to remove unwanted populations from the territory of Florida, in doing so he would ignite a deep partisan divide by becoming the first American general to be tried and censured by Congress for his treatment of prisoners of war during the engagement (Clavin, 2019, pp. 47–48; Rosen, 2015, pp. 128–129).

II. The Seminole War

The Seminole War remains the longest running U.S. internal conflict, happening in two phases, and lasting from 1818 until the forcible relocation of the Seminole people to Oklahoma in 1858 (Rosen, 2015, pp. 19–20). It was the culmination of three wars with foreign sovereigns and their allies for territorial dominance in the southern states, the War of 1812, the seizing of West Florida in 1812, and the Creek War of 1813-1814. Each of

these wars were waged for control over other sovereign nations' territory in the Americas (Rosen, 2015). These wars, each in no small way, fought to defend slavery from British and American abolitionists, Maroon fighters, and the Spanish Crown. They would not only shape the geographical makeup of the United States, securing American control of the Southern Coast, but also institutionalize the legal connections between territorial dominance, individual property, and the deepening racial hierarchy emerging in the American concept of nationhood.

Jackson did not have immediate authority in the war. He attained his leadership only after the existing general refused to enter Spanish territory, believing it would constitute a violation of international law (Rosen, 2015, pp. 29–30; 99–100). Once in power, though, Jackson exploited his position to attack the Seminole under the pretext of protecting American farmers from raids being conducted by Maroon bands and their Native allies in Western Florida. Calhoun authorized Jackson's attack on the Seminole people in sovereign Spanish Territory to secure the territory from Spain in the collapse of their empire (Jackson, Bassett, and Matteson 1926, vol. 2). The Hawks of 1812 saw the acquisition of the territory as part of an overall program to secure American territorial dominance across the continent. Claiborne's successful clandestine operations in Western Florida, and the ensuing ethnic cleansing of the Creek people had convinced them that the territory was easily taken. Jackson saw the engagement as a continuation of securing the territories that had been ceded by the Spanish and Creeks. for Jackson. By this point in his career the general openly considered treaty law to be an absurdity. In his view, Native peoples were subjects of US law, and as such could not negotiate as sovereigns. It was Congress's job to make laws directing them and their territories.[13]

Jackson would pacify the territory with brutal resolve, attacking Spanish forts as well as Seminole villages, Jackson seized control of the Florida territory and instituted

[13] Native peoples were seen to be "wholly subject to American law" as they live within her borders and are subject to state and federal jurisdiction as such. This small quip from him to Secretary of state Monroe would in fact create large ripples, it would be the reason that President Elect Monroe would seek his advice in creating his cabinet (see below). As we shall see in the next chapter, it would also summarize the entirety of Justice Story's understanding of legal sovereignty in *Cherokee Nation v. Georgia (1831).* See Letter to President Monroe March 4, 1817, (Jackson, Bassett, and Matteson 1926, vol. 2).

martial law, declaring himself the Military Governor of Florida. Jackson would Use the military tribunal system to great effect during the Seminole war, executing Seminoles and Maroons in the region for the slightest infractions of the law. In April of 1818 he executed two British soldiers, Alexander Arbuthnot and Robert Armbrister, for aiding the enemy.

Discourse around the war became equally important. For instance, the congressional hearings that ensued from January 18th to February 8th, 1818, regarding Jackson's military operations, would itself become a public debate over the universal nature of American rights, centering on Jackson's treatment of prisoners of war and his use of martial law and military tribunal to execute prisoners (*Annals of Congress,* House 15th Cong. 2nd session). Jackson justified his actions by placing the United States on the world stage and arguing for the need for a vigorous defense against hostile elements in the southern territories. I take up each component in the following sections.

III. The War of 1812

The War of 1812 was in no small way fought to assuage the United States growing anxieties about large populations of enslaved people in the wake of the Haitian Revolution. As noted above, the British withdrew from the global market of enslaved people in early 1808. In doing so the crown authorized the British Navy to interrupt said trade in international waters. Britain would begin using its Navy against American importation enslaved people almost immediately. The Navy would conscript freed people into the Royal Colonial Marines and sends them to military service in the Caribbean. Further, it would gradually free the three hundred people in its Canadian colonies of Loyalist Americans, making the Upper Canada Territory free of enslaved people. Its colony would again be contrasted to the failings of the Americans, by positing yet another positive attribute of the paternalistic "rational Liberty" offered by the British crown in comparison to the harsh economics of individual liberty in the United States (Taylor 2010, 152–54; Clavin 2010, 43–45).

These developments linked Congressional abolitionism to an international network of activists in the British government. The story of Haiti traversed the international press,

with the uprising being heralded as proof of the equality of Black people to Europeans. The international strength of the growing abolitionist movement, the growing alarm over the British Crown arming free Africans would ultimately lead slavery sympathizing "Hawks" such as John C. Calhoun to press for an ill-advised war with the British starting in 1811. Southern States also saw the opportunity to seize East and West Florida from a waning Spanish empire, who having gone broke and unable to populate their vast holdings had also encouraged the development of Maroon communities on its American border, these fugitives would be taken in by the Seminole people as full tribesmen and come to form what is today known as the Black Seminole (Clavin, 2015, pp. 38–40).

The War of 1812 turned out to largely be a losing affair for the nation. U.S. victories would be small and few in the first years of the War, and their losses culminated in the sacking of Washington DC and the burning of both the Capitol and Presidential Mansion on August 24, 1814. Major General Jackson, by this point, had already raised a Tennessee militia to fight the British allied Creek people (Clavin, 2019, pp. 43–45). During the War of 1812, the General hand the US Army its first ever victory at the battle of New Orleans, by bringing together a multi-ethnic force of Louisianans and the French pirate Jean Lafitte in 1814 (Taylor, 2013, pp. 155–156). The winter of that year, Jackson, for the first time, instituted martial law during war, at the behest of Governor William C.C. Claiborne, to protect the city from Native allies of the British and the colonial marines who were engaging in cross border actions from Spain's Western Florida Territory. The Creek War would be Jackson's first major campaign as acting general. It would be his first in three engagements with the Muscogee people.

The Creek people are a confederation of tribes who originally occupied the Georgia and West Florida Territories. They are members of the Muscogee family of tribes which includes the Seminole. The Muscogee tribes practiced racial slavery but had adopted several free Black and fugitive enslaved people. Several their warriors and elders were of mixed decent. The Creek People would remain in western and northern Florida, until 1830, when they would be moved to Oklahoma Territory during the Trail of Tears as a "civilized nation" with the Chickasaw, Choctaw, Cherokee, and Seminole people (Wright, n.d.).

Attack on the Redstick Creek

Jackson left Fort Strother on January 16, 1814, to pursue the Redstick Creek People who had allied themselves with the British. A party of Redstick Creek had attacked and killed a family who had begun a settlement just inside Redstick territory and Jackson saw this as an opportunity to demonstrate the full force of his military power. Jackson's destruction of the Redstick Creek was as full as it was fast. On January 21, Jackson took control of the Mississippi militia, on the 24th he defeated Creek warriors at the battle of Enitachopoko, By March 17the, he authorized Thomas Pinckney and Benjamin Hawkins to negotiate treaties with the Upper Creek peoples. On March 27, Jackson's militia broke the Creek forces at the battle of Horseshoe Bend. On April 17 Jackson accepted surrender from William Weatherford. The remaining Upper Creek Redstick people would be taken in by the Seminole people at the end of the War, swelling their ranks in 1814. Jackson would be promoted to the rank of Major General of the Southern Militia for his quick work pacifying the Indigenous population of the Mississippi and Georgia Gulf Coast territories, which had been part Spain's West Florida territory which extended the North Florida Coast to Baton Rouge (Jackson 1980, vol. III 24-26; Saunt 1999, 255–60).

IV. Western Florida

The Territory of Western Florida was already hotly contested by the time Jackson's troops began running operations against Native people in that territory. Louisiana Governor William Claiborne saw the Wester Florida Territory as central to the security of Louisiana. Claiborne feared that a weakened Spanish authority had allowed hostile maroons and Natives to populate the territory, in 1810, he began clandestine operations to seize the area. With the blessing of President Madison, Claiborne drafted a New Orleans planter to move to the territory and raise a militia loyal to the United States. In September Wykoff's militia of Western Florida planters took The Spanish fort at Baton Rouge killing the Spanish Governor and declaring the independence of the Republic of West Florida (Rasmussen, 2011, pp. 89–91). Claiborne immediately declared American authority over the seized costal territory from Baton Rouge to Fort Prescott on the Eastern Bank of the Apalachicola River separating the two territories (Rosen, 2015, pp.

34–37). On December 10, 1810, Governor Claiborne would proudly oversee the handover of power from the newly formed republic to the United States, and the rich southern coast to the present-day boundary of Florida was added to the territorial holdings of the United States.

The annexation of Western Florida would show the War hawks the vulnerabilities of the Spanish Crown to American expansion into Florida, even if the territory proved ultimately ungovernable until after the War of 1812. The chaotic nature of French racial society compared with the regimented hierarchy of American whiteness proved difficult to manage, leading Claiborne to opt for "a firm hand." After the German Coast uprising and through the battle of New Orleans Claiborne would rely heavily on the U.S. army and the Louisiana militia to maintain order in the new territory (Rasmussen, 2011, pp. 94–96). It was to this end that Gen. Jackson would declare martial law in the Louisiana territory after his victory at New Orleans in order to keep the British from entering the southern territories and inciting insurrection.[14] Jackson used the threat of racial uprising, so fresh in the minds of the Louisiana Militia, to draw a distinction between American and British liberty, by calling up the dire threat that the British crown posed to the American system of liberal property:

> "Fellow citizens of every description! Remember for what and against whom you contend. for all that life render desirable—for a country blessed with every gift of nature— for property, for life, for those dearer than either, your wives and children— and for liberty, dearer than all, without which country, life, and property are no longer worth possessing… You are to contend for all this against an enemy whose continued effort is to deprive you of the last of those blessings—who avows a war of vengeance and desolation, proclaimed and marked by

[14] "Fort Bower will be their point of attack, and if carried, they will endeavor to penetrate the Indian country and there make a stand, excite the Indians to War, our Negroes to insurrection, penetrate to the. Left bank of the Mississippi, and cut communication between the upper and lower Country…" Andrew Jackson to Secretary of War James Monroe December 10, 1814, (Jackson et al., 1926, vol. 2 pp. 110-111)

cruelty, lust, and horrors unknown to civilized nations (Jackson et al., 1926, vol. 2 pp. 111-118)."

V. The Battle of New Orleans

While not formally a part of the Seminole War, the Battle of New Orleans similarly showcases Jackson's early penchant for brutality against Indigenous peoples as a tool of the state. On January 5, 1815, British and American Forces clashed in the French Quarter. The Battle of New Orleans would last until January 26, when the British gave up the fight on January 19th and withdrew their last troops to Fort Mobile on Jan. 27, 1815. The Battle of New Orleans would be the United States Army's first victory over a foreign sovereign since the American Revolution. While it would vault Major General Jackson and his Tennessee militia into the folklore of American history, Jackson was only beginning to feel his military prowess. Jackson would be promoted to the commander of the forces in the Southern Territories by Secretary of War Alexander Dallas after his victory over the British and the Creek (Jackson et al., 1926, vol. 2 pp. 190-191).

During his occupation of New Orleans, Major General Jackson learned to wield military jurisprudence. After a small mutiny broke out in his New Orleans camp Jackson refused to suspend martial law in New Orleans after the British retreat. The extension of martial law caused a breakdown in his relationship with Claiborne, as Jackson continued to subject the culturally, and largely nationally French/Haitian population of New Orleans to strict control. The Chevalier de Toussard and Claiborne both attested to the patriotism and trustworthiness of the French inhabitants to no avail (Jackson et al., 1926, vol. 2 pp. 155-156). Toussard pressed for the unrestricted mobility of French subjects living in the city. But Jackson refused, citing the growing danger that the French population represented (Jackson, Bassett, and Matteson 1926, vol. 2 pg. 182). Claiborne too tried in vain to have the Louisiana militia returned to their duties as the enforcers of slavery along the German Coast, only to be similarly rebuffed by Jackson. The militia would remain in the service of the Army for the duration of martial law.

During this time, Jackson honed his skills as a military judge and presided over the trials of enlisted men who helped foment the mutiny. The Major General asked Brigadier General Edmund P. Gaines for clarification on his role as a tribunal judge under the articles of War, specifically referencing his ability to try citizens, after the state legislature sent agents to broker the exchange of enslaved people from the British despite his express written orders to the contrary.[15] The Brigadier General reminded Jackson that the articles of war and the uniform code of military justice only authorized military trials during hostilities, and only against military personnel. Jackson remained steadfast, however, arresting members of the Louisiana Legislature and attempting to try them for treason along with mutinous soldiers. Jackson disregarded opposing opinions and reorganized the city's criminal justice and security apparatus' through the military tribunal system. In doing so he turned both the tribunals and the city militia against inhabitants he deemed threatening to the nation in a time of war and learned his first lessons about wielding racial enmity. Here, Jackson presents an image of the Mulatto and Indigenous population as openly hostile to American control of the city and thus requiring extended and intensive supervision. Jackson creates a discourse of threat directed at a minoritized other in order to legitimize the expansion of his power over the city—which then becomes institutionalized through state action. This is public enmity in action.

Jackson's main source of ire became the free Black, Mulatto, and Native inhabitants of New Orleans. He utilized the military tribunal system to exercise harsh control over these inhabitants over and beyond his abysmal treatment of the French subjects under his command. After the Battle of New Orleans, Jackson severely hampered the movement of the free Black militiamen he had extorted to fight. He also broke his treaty and arrested the pirate, Jean Lafitte. Jackson used his control over the New Orleans to exact punishment on the Native allies of the British, seeing them as an open threat to the security of the Southern US. Jackson also staved off complaints about

[15] *"Brigadier General Edmund P. Gaines to Jackson March 6, 1815. For context on French negotiations with British see Governor Claiborne February 3, 1815; February 6, 1815, and Jackson's response asking for the names of the House members who had sent the agents lest he investigate the matter himself* (Jackson, Bassett, and Matteson 1926, vol. 2 pp. 160-162; 185-186).

his treatment of the Native inhabitants of Louisiana from Claiborne, Toussard, and even the Secretary of War, citing recent raids on settlements in Western Florida. Ultimately, Jackson used New Orleans as a staging ground for his first incursions in the Seminole war (Clavin, 2015, pp. 30–32; Rosen, 2015, pp. 19–22).

Jackson maintained military control of New Orleans until three months after the signing of the treaty of Ghent on March 7, 1816 (Jackson, Bassett, and Matteson 1926, vol. 2 pp. 188). Jackson maintained total control over the city's civil and legal life until then, despite appeals from Gaines. His expansion and use of the military code of justice on civilians would be the subject of much criticism from federal and state officials. Despite these criticisms, he would maintain his commission and be promoted to the general of the Southern Forces. He and his volunteers returned to Tennessee until Secretary of War John C. Calhoun placed him in command of the forces engaged against the Seminole people of southeastern Georgia and Northwestern Florida, as part of the drive to seize Florida from the Spanish Crown (Clavin, 2015, pp. 30–32; Rosen, 2015, pp. 20–22).

VI. Congress Intervenes

Jackson's break with the rule of law in the newly seized territory prompted a House investigation into the Seminole war. The House hearings on the Seminole war would be the first time that American lawmakers would interrogate the differences between constitutional and international law and ask what legal responsibilities the United States had over foreign powers and "hostile" tribes. In separating constitutional law from international and human rights obligations, House members put forward an exceptionalism model of American law based on its unique situation as a civilized nation in the colonial world (Rosen 2008; 2015, 57–59).

There were essentially two questions before the House in these hearings. First whether Jackson (under President Monroe's authority) had engaged in hostile activities against a foreign sovereign, and second what the United States' obligations were towards prisoners of war under the constitution and international law. The House Select Committee reported that Jackson acted without legal authority in calling the general court

martial against two British subjects. T. M. Nelson representative of Virginia's 8th District would deliver the report which separates legal authority on two counts. First, it separated out the responsibility that the United States must have vis-a-vis "civilized" (versus "savage") nations, even in times of war. In this regard, Jackson had usurped his constitutional authority by acting as judge, jury, and executioner against agents of a recognized foreign government. Second, the Committee chastised Jackson's understanding of the laws of international, as he illegally tried the two soldiers under the authority of international piracy laws.[16]

Regarding the attacks on Spanish forts, the committee found that Jackson had not violated the law of nations, nor were his actions hostile towards the Spaniards. They were justified by the United States' sovereign right to protect its citizens from hostile Natives acting across national boundaries. This special position of the United States between civilized and "savage nations" who did not honor national boundaries justified incursions into Spain's sovereign territory, especially as Spain was treaty bound to prevent its subject from attacking across borders. The report argued that these nations posed an ongoing threat to both the economic interests and border integrity of the United States by capitalizing on the weakness of the Spanish empire and using the 'lawless" areas of Northern and Western Florida as a staging ground to incite a rebellion among enslaved people in the South (Rosen, 2015, pp. 63–66).

Further, the waning power of the Spanish Empire had necessitated the incursions. The Committee cited the total neglect of the crown for its colony in previous years and listed the previous incursions into Spanish Florida during the War of 1812 as proof. As a result of the chaos on its border, the House Committee reasoned, General Jackson did not violate the laws of civilized warfare. Rather, he enforced them.[17]

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[16] " Your committee find in the generals order of the 29th of April in which General Jackson orders the execution this *remarkable* reason, intended as a justification….' It is an established principle of the law of nations, that any individual of a nation who making war against the citizens of another nation, they are being at peace, forfeits his allegiances, and becomes an outlaw and a pirate.' It may be asked what system of interpretation the offenses charged could be considered as piracies…" (Annuls of Congress 15th Cong. 2nd Session pp. 516-517).

[17] Annuls of Congress 15th Cong, 2nd Sess. Pp. 977-978

While foreign nationals from civilized nations were to be accorded the rights and responsibilities of civilized nations, so-treated "savage" nations were owed no recognition, nor quarter as they refused the rules of civilized war. The report identified Native nations and Maroon communities as "Savage nation[s] which observe no rules, and never give quarter." Thus, they argued "we may punish them in the person of *any* of their people and endeavor by this rigorous proceeding to respect the laws of humanity."[18] Indian and Maroon inhabitants occupied a permanent state of conflict with the United States. Because the U.S. was engaged in a defensive war against the Seminole people the president had a twofold obligation. Jackson needed to repel the Maroons and he had to ensure that they were unable to attempt further invasions. As such, the Committee found, the United States had different obligations to control/repel "savage nations" than they did towards prisoners of war from legitimate nations such as Britain and the Territorial authority of other civilized nations(Rosen, 2015, pp. 70–72).

The Congressional hearings on the Seminole War would mark a turning point in American law. It would be the first time in US history that Congress would weigh out the difference between constitutional and international law and set clear parameters on each. The laws of sovereignty issuing from the metropole were seen as commensurate with international law. As we saw above, the Congressional Subcommittee argued that Jackson had upheld sanctity of both international and constitutional law by carting to defend American citizens from harm issuing from across a sovereign border. Further, they found no fault with Jackson's heavy-handed use of the military tribunal against Native peoples, as these tribes were seen as permanently hostile and as a result outside the pale of both international and constitutional law.

VII. The Emergence of Public Enmity

These hearings would further refine the US treaty relationship to Native tribes, by limiting the human rights considerations owed to Native peoples as members of "savage nations." It would be here that the US would first begin to debate the nature of a public

[18] Annuls of Congress 15th Cong, 2nd Session Committee on military affairs report from Mr. T.M. Nelson. Pp515-516

enemy, highlighting the hostile nature of Indigenous people. As nations who refused to abide by the rules governing "civilized warfare", these tribes were seen as existing outside of the pale of civilized protections from crimes of war. Indigenous hostility to settlement was seen as a perennial threat to American development. That their tactics did not meet with the civilized view of warfare only added to the threatening nature of their presence. Indigenous people were deemed de facto hostile nations who rejected civilized warfare and treaty relations in favor of raids on American settlements in the southern states. As such, they were owed no human rights considerations, but could be massacred, if need be, in order to protect the American state.

This is directly evidenced in the archival record, as I have shown above, but it is also intimated in the subject of the hearings themselves. Jackson was not brought before congress for his misuse of the military tribunal system against Seminole people, nor his numerous executions of Native peoples under his command for the slightest breach of decorum. It wasn't even the utter destruction of Fort Prescott or the killing of 200 Maroon and Indigenous people that caused congress to question the military governor's actions. It was the execution of two British soldiers under the color of federal authority that had provoked the war crimes hearing.

This debate would also have a deep impact Jackson's understanding of the law of sovereignty and its political relationship to public enmity. Jackson would emerge from these hearings a hero of the south. As we will see below, Candidate Jackson would build on the racial enmity emerging in the south, by citing Native tribes as perennial hostiles in his scant campaigning for the 1824 election. In the intervening period before the 1828 election, Jackson would utilize the threat of Native insurgencies to push for relocation, and it would become a central feature of his 1828 platform.

VIII. Jackson's Rise

Andrew Jackson's legend would only rise after his war crimes in Florida. In 1823 he resigned his commission and was elected to the Senate in preparation his presidential nomination. True to custom of the day, he would not campaign for the presidency, trusting the state legislatures in the south to elect him over his opponent, John Quincy

Adams. Duff Green, owner/editor of the *St. Louis Enquirer* began supporting Jackson bid for presidency in his paper during the 1823-24 election. Green himself was a veteran of the revolutionary war and fought at the battle of Bunker Hill. He began taking an interest in Jackson's exploits as the military governor of Spanish Florida, justifying his actions to pacify the new territory as early as 1821.[19] Green's paper would help vault the senator on the national scene by regaling the reading public first with the Maj. generals exploits as governor, outsmarting the Spanish officials and securing the American annexation of Western Florida. It would be green's capacity to captivate the voting public that would endear him to Jackson, who appears as a larger-than-life superhero in these embellished tales.[20]

By the election of 1824, Duff Green and the paper were squarely in the Jacksonian camp. Duff Green kept a close eye on the race, and the candidate's multiplying victories in state legislatures in Ohio, Maryland, Virginia, and New York. Green's Jacksonian myths would begin developing an idea of the Jacksonian public as a group of discerning voters who avoided the double talk of career politicians and choose someone for themselves, who represented their own goals.

> "The people have willed it, and they must be heard. They have turned their faces against every species of dictation, and who would control them? We talk to politicians and *leading men*— but the people have resolved to remain no longer in leading strings. The people believe they are capable of judging for themselves and have determined to support a candidate of their own. Mark their progress."[21]

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[19] *St. Louis Enquirer Oct. 6, 1821. "Louisiana Courier of the 7th Infantry."*

[20] See for example "the Case of Col. Callavs." A story appearing in the Saturday edition of the Enquirer on Oct. 27, 1821. an affidavit was reported to the paper by a courier from the Spanish Col. in which the Col. Tries to defend his defeat by Jackson at the battle of Pensacola. The Col. Appears as a bumbling amateur against the reveal resolve of the general. he loses his horse in battle, as well as his uniform. When he finally meets Jackson on the field Jackson has no idea of his station and treats him like a common soldier. *St. Louis Enquirer Oct. 27, 1821.*

[21] *St. Louis Enquirer "The People have willed it and they must be heard."* Monday, May 3, 1824.

During the 1824 election cycle, Duff Green would cultivate the legend of" Old Hickory". The Globe would be filled with praises for the general's prowess, both on the battlefield and in the ballot box. Poems, stories and articles focused on connecting the political arena with the battlefields that the general had mastered.[22] Through his reimporting on the election, Green would create an image of future president Jackson as a battle-hardened hero who was ready to take the fight to Washington insiders on behalf of the common American who they had lost touch with. Articles would feature his love for his soldiers, his readiness for action, and his cool resolve in the face of the enemy. Green would sanitize the Major General's record of genocide and war crimes and replace these stories with a narrative of a victorious general who saved the nation from British invasion and rendered the wild frontiers safe for settlement. Jackson was presented as a people's soldier and friend to the common man. Duff Green would use the legend of Old Hickory and his constituents "the People" to drive a wedge in between the popular voters and the Washington elites. Noting that though Jackson was winning the popular election, Legislatures in States like New York, were reluctant to certify the victories, because Jackson was a political outsider. The politicians and leading men of the day were lambasted by the paper for failing to "get with the People" and elect Jackson.[23]

Jackson's status as an outsider, and his carefully sanitized public record would indeed be the cause of him losing the election of 1824. The election was a runoff in the House, with Jackson winning a plurality of the popular and the electoral votes. Jackson was heavily favored in the popular vote in the West, which caused many to assume that Speaker of the House Henry Clay would vote with the rising star. Clay would side with John Quincy Adams the election would go to him. Clay, acting despite his Kentucky Legislature's support of Jackson felt that the young general was unfit for government, based on his use of martial law in New Orleans and Florida, and would thus act to keep him out of the presidency, fearing the rise of a military dictatorship (Howe, 2007).

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[22] See for example the satirical poem "The Famous Political Horse Race" Dec. 1, 1823, which likens Jacksons surprise victories in the state election to his famous performance in the Battle of New Orleans. *St. Louis Enquirer 12/1/23 vol. 3 issue 388 pg. 288.*

[23] *ibid May 10, 1824 "At a Meeting of the friends of the General Held in the Town of St. Louis 10 of May 1824.*

The election of 1824 was the first time that the popular vote for president would be tabulated and published. The final count would come in with Jackson gaining 152,901 (42.5%) and Adams coming in second with 114,023 (31.5%) while Adams would take 51% of the House electors to Jacksons 29%. Henry Clay had cost Jackson the election by placing it in the hands of the Washington political elite that Jackson had lambasted, and thus was unpopular. As a result of what would become known in the Jacksonian party organs as "the Corrupt Bargain", John Quincy Adams was named the sixth president of the United States, as the issue of slavery was beginning to take center stage in electoral politics(Howe, 2007, pp. 666–667). As a result of the heavily contested election Duff Green would Leave the St. Louis Enquirer to start a national newspaper for the Jacksonian democrats The United States Telegraph. The Telegraph would become the main voice of the rising Jacksonian Democrats and would help turn the tide in the presidential election of 1828.[24]

The birth of the U.S. Telegraph would mark the end of conventional electoral politics. The 1824 election had largely been governed by the norms set down by the founding generation. The first generation of elected officials did not run for presidency. They were elected from the Senate, and typically gave no stump speeches. Rather they campaigned on the senate floor in their debates and speeches to the gallery. Duff Green's mythmaking during the 1824 election would mark the first steps towards candidate centered popular elections, in 1826, he would buy small paper on Pennsylvania Avenue and leverage the burgeoning legend of "Old Hickory" against the Adams political machine. Jackson would use this organ to develop his ideology of democracy. The Jacksonian Doctrine of territorial sovereignty, valorization of private property (i.e., the practice of chattel slavery), and the strengthening of the militia to defend the nation against her internal enemies would become the hallmark of his 1828 campaign, and as we will see below the lasting legacies of his presidency.

Duff Green would set about capitalizing on the voting discrepancy with the first issue of the *Telegraph.* The opening article of his first issue was an editorial justification

[24] *Duff Green Papers.* National Archives online biographical information page. Accessed March 26, 2022. Permanent link: https://www.archives.gov/nhprc/projects/catalog/duff-green. See Also Howe 2007 pp. 668-669.

for purchasing the paper in which he cites the corrupt bargain as being the cause of the papers acquisition. The paper takes issue with Speaker of the House Clay both having a preference in the presidential race and acting to secure that preference. Green accused Clay of violating of the constitution and against the spirit of democracy in that it clearly violated the express wishes of the people, as could be seen by the popular vote. Green could only conclude that such a corrupt chain of events was possible because Washington lacked the watchful eyes of a popular press. As such, he purchased the paper to ensure that Jackson would have a clear voice in the Washington press, and to deprive the House of representations of any undue agency in further elections.[25]

Green's iconoclastic style of writing, bombastic stories, and self-marketing would brand the senator from Tennessee as a strong leader with a tough military record defending the US from hostile Native tribes. The Jackson of Duff Green would appear as a protecting leader whose primary concern was the ability of the US government to protect its citizens from harm. As a stalwart supporter of Vice President John C. Calhoun, it would be the *US Telegraph* that would seed the possibility of a Jackson-Calhoun ticket 1828 (Green, 1947).

Green would begin the long-standing tradition of mudslinging in the popular press. He attacked both President Adams and Mr. Clay citing their corrupt usurpation of the 1824 presidency, and their inability to maintain the institutions of power, at the same time he was developing Jackson's legend through vigorous defenses of Jacksons character around gambling, adultery, and dueling. Green and Jackson would publish his biography and serialize it for public consumption, furthering the larger-than-life stature of Gen. Andrew Jackson as a counterweight to the corruption and conniving means of the President and the Speaker.[26] Green would use the image of the battle hardened general to defend him from charges, and to assert his honor in the face of detractors. He would

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[25]United States Telegraph March 6, 1826. *Vol. 1 Issue 1. Pg. 1 "To the Public"*

[26] " I was willing to undergo the risk of all expenses incurred in the publication—but I had a greater than profits than any profit from the publication. Your biography was necessary to a proper estimation of your public services which form as much a part of the history of the country as it does your own life and are essential to our public character as to a proper estimate of your claims on public gratitude." "Duff Green to Andrew Jackson July 18, 1827. *Correspondence of Andrew Jackson 3:374*

become the most vocal defender of the gambling, fighting, philandering general. He would provide a shield for the General by attacking his detractors at every turn. Even going so far as to impugn the character of First Lady Louisa Catherine Adams in retaliation for the assertion that Ms. Jackson was an adulterous woman, until Jackson reigned him in.

> "The course of my friends ought now to be as heretofore on the defensive; should the administration continue its course of slander, it will be well now and then to throw a firebrand into their camp by the statement of a few facts, but female character is never to be introduced or touched by my friends, unless a continuation of attack should continue to be made against Mrs. J and then and only then by way of *just retaliation* upon the *known guilty… never war against females* (Jackson et al., 1926, vol. 3 pp. 376-377). *"* (italics in original*)*

Candidate Jackson would himself affect the folksy facade of a frontiersman and use his experiences in genocide to spin battle wisdom in his few campaign speeches. Jackson's platform rested on three doctrines. Territorial sovereignty by which he meant to ensure the control and security in the frontier territories, private ownership of property, meaning the capacity to own land and produce goods directly through the labor of enslaved people, and a strong security apparatus to protect the nation against attacks from Maroon and Indigenous fighters. Jackson would use his Campaign speech to put the finishing touches on Duff Green's character. Presenting himself as "only and old Indian Hunter" his campaign speech drove home the points of the Jacksonian doctrine.

> "I am only an old Indian hunter, but it seems to me we cannot protect the frontier from savages and brigand negroes who threaten our farms and steal our women… and how will you eat when the federal government deprives you of your labor? I say let a man keep his property, and protect his home from harm… (Jackson, 1980 pp 410-411)"

These three prongs of Jackson's candidacy: territorial sovereignty, protections for private property, and settlement security through the militia would become the hallmarks of Jacksonianism. And each is specifically tied to his pitches for his relocation program, his preferred solution to hostile Natives in American territory. These platforms would win him the presidency of 1828, and he and Vice President Calhoun would enact this program by developing and professionalizing the militia, forceable relocation of the five major tribes in the Eastern United States to Oklahoma, and the protection of slavery. Each of his campaign prongs was built on the foundation of removal that he had laid down in his 1824 bid. He built his presidential bid on his capacity to protect the vulnerable states in. the South from attack. His ability to do so was grounded in his record of ensuring that white American settlers had access to cheap land and enslaved labor in the south. This created a buffer between fledgling states and the Native tribe's private property encroached on.

IX. Defining the Nation

It is difficult to summarize the impact of Major General Jackson on the physical territory of the nation. His bloody incursions into Native territory and sovereign colonies would ultimately reshape the southern half of the country. His bloody path of war extended from Lexington to Pensacola, to New Orleans. As a general he was responsible for almost half of the territorial United States, second only to Jefferson's Louisiana Purchase, which he himself secured in the Battle of New Orleans. Just as these events would shape the legend of "Old Hickory", they would scar his body and mire his health for life. President Andrew Jackson, veteran of four wars, two duels, and countless physical altercations would arrive in Washington DC with an inflamed abscess from a gunshot wound that never healed. While the inauguration itself would be a riotous affair, coming close to burning down the presidential mansion for a second time, Jackson would be a shadow of the character painted by Duff Green. His beloved wife Rachel had passed, and he was in the process of arranging for her tomb to be built on his plantation (Opal, 2017, pp. 207–208).

Jackson's inaugural address would broadly outline the goals of his government. after the appointment of his cabinet, Jackson posits three main jobs of the executive. First among these was the execution of laws and foreign relations, followed shortly by providing for the general safety of the state. Jackson promised his administration would provide for a strong national defense and ensure that the means of war were available for the defense of the nation. Regarding the general welfare Jackson proposed just tariffs in order to protect the economy from foreign trade but spoke directly against the excesses of the federal Tariffs of 1828, promising instead tariffs that promoted fair trade while respecting states' rights and laws. Jackson would promise a federal government strong enough to protect citizens and secure the means to do so through just taxation and tariff. Above all he promised to respect states' rights and the rights of the people, and to make sure that the federal, state, and local laws were working with each other.[27]

Pursuant to this, Jackson would cultivate a cabinet of close advisors to help him. Specifically, John H. Eaton his Secretary of Defense until 1831, Roger Taney his Attorney General and Secretary of the Treasury until his appointment to the Court in 1833, and his Vice President and former commander John C. Calhoun would help the aging general acclimate to his new leadership position. Each would help develop a key prong of Jacksonian federalism during his two terms as president, and each would have lasting impact on the shape of public enmity by providing key arguments for maintaining territorial dominance through a mixture of legality and military force, chattel slavery and the sanctity of private property and states' rights, and the need for a strong professional militia for maintaining security and returning absconded enslaved people.

Despite the middle-class scandal surrounding his marriage, and the subsequent chaos it would reap on the first Jackson administration, Secretary of Defense John Eaton largely spearheaded the administration's dispossession and forced removal of Native peoples in the southern states built around the Marshall Court's 1823 gutting of aboriginal title. *McIntosh* as we will see in the next chapter would open a flood gate of speculation on Native territory. As settlers to the new states encroached more and more on remaining Native lands, States began to allow for the sale of land between tribal

[27]Jackson, 1829 Draft of Inaugural Address March 4, 1829, Library of Congress online. https://www.loc.gov/exhibits/treasures/trr075a.html

members and state citizens in order to capture it through legal title. Southern States began passing laws granting them the power to assess and boundary these territories, and to place them on the general grid of land management within the state's rather than the federal government's power to administer. The states, in short, should use their surveying power to parcel off Native territory still protected by federal treaty and to push state boundaries into Cherokee territory. Legislative activism was spearheaded by Jackson and Easton and had been patterned of Georgia's 1827 law. Over the next 5 years, Alabama, Mississippi, and Tennessee would follow suit, effectively wresting federal treaty power with Native tribes and giving it to the southern states by 1831 (Jackson, 1980 Oct. 4, 1869; Opal, 2017, pp. 208–209).

By placing territorial control of the tribes in the hands of the states, the Jackson administration would effectively strip Native peoples in the southern states of legal jurisdiction as well. Southern states also passed laws effectively limiting a tribe's ability to sue white southerners, and for those southerners to be tried or sued Native constitutional laws. These laws would firmly wrest control of aboriginal title from both the tribes and the federal government by ensuring that the tribes had no legal avenues through which to enforce their laws either in the states or in their own territory against white settlers, further, the federal government had been removed from territorial authority through careful moving of the boundary lines separating state and federally controlled territory. By the beginning of Jackson's second term the legal impasse had made its way to the Supreme Court in *Cherokee Nation v. Georgia.*

Specifically at question in *Cherokee Nation*, as we will discuss in more detail in the next chapter, was the question of whose legality was preeminent in the territories. Predictably, the Marshall Court again limits the jurisdiction of Native people in their own lands, this time designating their legal status as domestic defendant nations of the United States. The Marshall court relegated Native legal status to that of being dependent on the laws of the state and the federal government, both for sovereignty and territorial control. As such, tribes whose territories were located within the bounds of an organized state were subject to the laws of that state and locality, tribes who occupied unorganized

territories were thus primarily subject to US. laws.[28] The ruling allowed the Jackson administration to expand relocation efforts utilizing the state militias to dispossess tribes internal to southern states, and the Army to remove tribes in unorganized territories (Opal, 2017, pp. 211–213).

The Petticoat Affair would come to a head in 1831. Led by Calhoun's wife Florida, John Easton and his wife Peggy would not be allowed at any Washington social function as they found her conduct unbecoming of a lady of Washington. She was a tavern worker who had had a previous marriage to an alcoholic soldier who was killed in action in the Mediterranean. The affair would claim Easton's career, end John C. Calhoun's career in national politics, and secure the rise of Martin van Burren while restructuring of Jackson's Cabinet. Due to the affair, He would replace Calhoun in the next election as VP, Roger Taney would become attorney general, and Lewis Cass would execute Jackson and Easton's dispossession program. Cass was the former US Marshall for Ohio before participating in the War of 1812 as a brigadier general. The retired general would waste no time utilizing the federal military to enforce the Indian Removal Act signed by President Jackson in 1830.

The Removal Act gave the president express authority to remove Native tribes in the southern states "beyond the Mississippi" into Oklahoma territory. The Jackson administration would negotiate with the Cherokee and the Chickasaw first and forcibly relocate them to Oklahoma. The act further authorized the surveying and development of those lands by the various states or organized territories they existed in.[29] On Sept. 28,1830 President Jackson ordered the removal of the Cherokee and Creek people from Alabama and Georgia, The Chickasaw and Choctaw people from Alabama and Mississippi, and the Seminole people from Florida. All told the dispossession project would take 20 years for the Jacksonian to remove Native people to Oklahoma Territory. Roughly 60,000 Native peoples, would be forcibly moved along the Trail of Tears. 11-14000 people would die of exhaustion and starvation along the way. Some 6000 Native people would remain scattered in the states of Mississippi, Alabama, Florida, and

[28] Cherokee Nation v Georgia 30 US 1 1831.
[29] Annuls of Congress 2nd Congress first session pg. 411-413.

Georgia. The land would be opened to surveyors and prospectors considering the Georgia gold rush of 1829-32.

Though not on his cabinet. Vice President John C. Calhoun was someone the president trusted. The former general had a long history with the former Secretary of War, and Calhoun had come to his defense during the Seminole War hearings. Calhoun was a fellow nationalist and had been part of the War Hawks during 1812, and as Secretary of War had worked tirelessly pressing congress for military supplies during Jacksons campaigns.[30] The two were brought together as a campaign ticket by Duff Green. Green had initially got into the paper business to support Calhoun's bid for the presidency in 1824. Green would switch allegiances to Jackson during the election but facilitate the Jackson Calhoun ticket in 1828. Green, a Missouri business owner and land speculator felt a large amount of kinship with Calhoun and Jackson and their position on states' rights and the development of US territorial holdings. From 1826 until the election, he would feature articles praising the two men and their capacity to lead in the *Telegraph,* seeking to keep both men in the public eye until the election (Jackson et al., 1926, pp. 129–130).

While Jackson's focus had primarily been on meting out Indigenous hostilities, Vice President Calhoun's concerns centered primarily on the conception of property and its relevance to the institution of slavery. It would be Calhoun who would link the concepts of racial slavery, property, and states' rights—thus furthering the nation's institutional and doctrinal investments in racial hierarchy. Calhoun's vision of federalist democracy was heavily reliant on a slave owning class of aristocrats. Calhoun was adamantly against the Missouri compromise of 1820, as he saw it threatening the power of slaveholding states in the new federal government. It would be Calhoun who expanded the Jacksonian racial hierarchy to include enslaved and free Black people in the southern US. While, as we will see below, he ultimately became a sectionalist icon or the failed confederacy, in his position as VP he would expand Jackson's understanding of public enmity to include enslaved people, He would use his position as VP to ensure the continuity of Slavery by calling the Missouri compromise into question.

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[30] Rosen *Border Law. See Also Correspondence of Andrew Jackson vol. 3; Annuls of Congress 15th Congress 2nd Session.*

The Missouri compromise, to his mind was also responsible for the flight of enslaved people and the violent strain of abolitionism as was witnessed by Nat Turner and the battle of Fort Prescott. Most states in the union would be non-slave holding states, and this numerical majority would be used to further radical abolitionist goals, by enacting laws that hampered the state's authority over private property inside its territorial boundaries. Fearing that a tyranny of majority abolitionist states would slowly but surely erode the instituting of slavery through restrictive law making and taxation (Calhoun, 1851, pp. 207–209). The Nullification Crisis of 1832 would be a precursor to Calhoun's abolitionist fears. Stemming from his home state of South Carolina's Tariffs of 1824, the nullification would shape Calhoun's position on states' rights, and strain his tense relationship with President Jackson.

In 1824 South Carolina declared the Tariff acts of 1828 and 1832 null and void and refused to pay them. The Tariffs protected Northern Manufacturing interests, by placing high Tariffs on imported manufactured goods, by as much as 50%. Agricultural goods were not subject to the high Tariffs leading to a trading frenzy in cheaper products from abroad. This threatened the agroeconomic bedrock of slavery, at a time when the Cotton and Tobacco industries were experiencing shortfalls due to overuse of the land. South Carolina attempted to get other states to nullify the tariff as well leading to deep divisions between Northern and Southern States (Ericson, 1995, pp. 249–270). The congressional debates lead to the passage of the force bill, which asserted the primacy of federal law and granted Jackson the power to enforce the Tariffs. Calhoun believed that Jackson was on the side of nullification, as he had spoken out against the Tariffs on the Campaign trail, and in his first inaugural address. Jackson instead sided with the nationalists and threatened military action in South Carolina to enforce compliance with the tariffs (Ericson, 1995, pp. 257–258).

Though Jackson sided with the federal government in the Nullification crisis, he remained adamantly pro-slavery. He was a plantation owner and wrote frequently to his overseer about the state of his plantation. Even firing an overseer for excess cruelty after too many enslaved people died on his plantation in a single year (Jackson, 1980, vol. 4 pp. 480-481). During the Pamphlet Crisis of 1835 in which he would extend the police powers of the United States to include censoring the mail, after abolitionist elements in

the North began a program of mailing Christian anti-slavery pamphlets about the sin of slavery to southern homes. Then Senator John c. Calhoun of Southern Carolina would again push a version of nullification pressing southern states to censor the federal mail after over 100,00 pieces of abolitionist literature were mailed in 1835. Georgia, Mississippi, Virginia, and South Carolina passed laws censoring the papers and pamphlets fearing they would cause new uprisings in the South. A mob broke into the post office in Charleston and took the materials and staged a public bonfire on the edge of the city (Mercieca, 2007). Jackson would publicly decry the action and censor the federal mail, making it a crime to mail abolitionist literature to the south.

Jackson's most stalwart support for the institution of racial slavery, as we will see in the next chapter, would come from his appointment of Roger Taney to replace John Marshall on his death in 1835. Taney was an ardent supporter of Jackson during the 1828 election and had been made attorney general after the petticoat affair in 1831. Though not a slave owner himself, having manumitted the enslaved people in his possession in 1818. He felt slavery was a necessary evil if Africans remained in the United States and like Jackson was a member of the African Colonization society in the Baltimore area. Taney himself viewed African subjects as unfit for democratic citizenship and thus were best kept in chattel bondage unless they were returned to Africa. Taney was a corporate lawyer who was an ardent believer in industry and states' rights. he was vehemently against the national bank, and in 1833 he was moved to the secretary of the treasury where he dismantled the second national bank (Huebner, 2003). Taney's rulings in *Prigg, Rogers,* and *Dred Scott* would solidify slavery in the republic by nullifying the Missouri compromise. His rulings would also be instrumental in the development of the militia as a response to fugitivity in the decade after *Prigg v. Pennsylvania.*

Jackson himself would take primary responsibility for modernizing the militia system. The militia of Jackson's day was a leftover from the revolutionary period, and the Militia acts of 1791 and 1795. Under these acts every able-bodied man was responsible for reporting to general muster in the center of town when called up by the mayor, governor, or president. The militia was seen as an extension of the president's executive authority and was charged with protecting the peace, public order, and executing the law. Each able-bodied person was required to own a musket, and to have two dry bags of

powder and shot at the ready should the muster be called up. When called up for duty, the militia received the same pay as regular military, and were subject to the same chain of command and code of military conduct (Huebner, 2003, pp. 6–10).

As a practice policing, as un understanding for the need of security against internal enemies would return during this time. When called for general muster, the militia would be comprised of the most able-bodied men at general muster, and the remainder would be assigned city guards duty. City guards were the precursor to local Police departments, their essential function was enforcing city code and arresting offenders. In general, the irregular soldiers of the militia were ill armed and ill trained but were responsible for the defense of the township against Native raids and uprisings.

Jackson would spend both of his terms as president pressing Congress to modernize militia forces. Jackson would press for regional supplies, training and better pay for the militia during his time in office. As result of his pressing Congress authorized the development of militia depots that would provide armaments to militia fighters rather than relying on farmers to provide their own weapons and ammunition. Regular supplies had a dramatic effect on the militia and its concomitant "slave patrol system" in the south (Hadden, 2001, pp. 53–55). The stable supplies allowed for the patrol system to become a permanent feature of militia service running through the civil war. Patrols were linked up across state lines with patrol groups working in tandem to return escaped enslaved people to plantation owners. by 1844 there was a dense network of patrols and militia groups working to police plantations and remove the remaining Maroon camps in the south.

This system would be bolstered by *Prigg,* as we will see in the next chapter, by inserting the US Marshalls office directly into the apprehension of fugitive enslaved people. These patrols would link directly with city guards and form the network that county and local police forces would emerge from after the civil war as well as the first dynasty of the ku klux klan in 1865 (Hadden, 2001, pp. 207–208). In no small way it would be Taney who solidified the security infrastructure of early America by focusing the entirety of the court and militia apparatus on free Black people living in the territorial boundaries of the United States.

X. National Legacy

As stated above, there is no easy way to measure the effect Jackson and Jacksonianism has had on the ideological makeup of the nation. as a military leader, military judge, territorial governor, senator, and president during the early republic he literally conquered or pacified roughly half of the territorial United States. His political campaigns changed the face of American politics forever and centered the presidential election on public discourse rather than senatorial debates, giving birth to arguably the first political pundit in the country Duff Green. His career as a military leader, judge, and territorial governor would provoke congressional hearings on the relationship of constitutional law to international human right law and the laws of war. His candidacy and his presidency would shape the military role of the executive by expanding the discretion of the department of war in Native relocation, expanding the training and securing federal funding for the state militias, and utilizing state forces to carry out relocation programs in the southern states.

Arguably, however, his relationship to the rule of law and the judiciary were his most lasting legacies. First, as a military judge in the Creek Wars, then as a military governor in New Orleans, as a candidate, and as the president, Andrew Jackson developed a legal institutional pathway for policing. While most of the reforms to the militia would come from later generations of Jacksonian, Jackson was the first to identify a role for the militia beyond filing in the ranks of the American army. General Jackson would utilize the militia to pacify the southern territories. As a president he would utilize the state militia system to enforce relocation in the face of minor opposition from the Court, in the form of *Worcester v. Georgia (1832).* His military and public carriers became focused on the question of territorial dominance of white Americans over Native inhabitants, which he used the local militias to brutal effect both as a commander and as their commander-in-chief to ensure.

He did so, largely by creating an object for militia service. Whereas the militia of the founders had been the world of the minute men, able bodied male citizens who answered the call of political violence during the revolutionary war. Jackson's militia was the last line of defense of the white settler. The militia would be called into service to defend the expanding territory of white Americans into Cherokee, Chickasaw, Creek,

Choctaw, and Seminole lands. Jackson would identify these nations, and their African kinsmen in Maroon forts throughout the southern territories as marauding enemies requiring a specialized military response. In his time as Major General and General of the Southern forces during the Seminole War, Jackson would forge a nation that spanned half of a continent, he would wrest this territory from three sovereign European nations and five Indigenous nations, reaping thousands of Indigenous and African lives during conquest.

Jackson created the image of the American nation as distinctly white Christian through genocide and enslavement. It would be his longest lasting contribution to the political institutions of his time, as we will see in the next chapter. While Jackson can be credited with the discourse of the white citizen in sharp relief to the Indigenous occupants and enslaved Africans that threatened them, and the decisive role of the military in ensuring their freedom from marauding enemies (Jackson et al., 1926, vol. 2 pp 278-279). His policy of Native dispossession and military enforcement of slavery would become a legacy of Jacksonian Democracy. It would take full shape at the direction of Roger Taney, appointed ted to replace John Marshall as Chief Justice in 1836. Taney, by this time a stalwart Jacksonian, having served in several positions in his "Kitchen Cabinet" of close advisors. Taney was an ardent supporter of private property and unfettered free trade. In his 28 years as Chief Justice, he would ensure the legal infrastructure of the nation was tightly bound up in the question of racial hierarchy. His decisions would expand enslavement, control over Native territories and people, and he would develop a legal structure for federalism based in white property ownership and its security.

Jackson, more than any other president, would also develop the infrastructure of public enmity and wield it to secure his policy ends. As a major General Jackson would wield the power of the military tribunal to genocidal effect. He would use his understanding of the requirements of law to argue for a sovereignty-based response to Native tribes rather than the treaty-based approach of the British Crown or the Founding Generation. In doing so, Jackson and Duff Green would galvanize the American public with the fear of Indigenous uprising. Jackson would use his prowess as a storyteller and a folk hero to weave a mythological presence around Native people. They would emerge as a total enemy of American civilization, one bent on the destruction of American

settlements and property development. Jackson would wield the enmity he sewed into the American consciousness to expand the authority and reach of state militias. He would utilize the professionalized service to exact forceable removal of the Cherokee, Chickasaw, Cree, Creek, and Seminole people in 1833. The relationship of public enmity towards Indigenous peoples would be a lasting effect of his political career. As we will see in the next chapter, his strengthening and training of the militia would put a key piece of police infrastructure in play, the militia. Chief Justice Roger Taney would spend the next 30 years of his career solidifying and networking the sovereign power of the executive, to encompass escaped enslaved people. In doing so he would develop Jackson's militia scheme into a full-scale security network that linked the federal courts, the state militia, and executive authority.

CHAPTER 4: THE LEGAL ARCHITECTURE OF POLICE AUTHORITY

It is difficult to estimate the contributions that Jackson made to the development of the American state. As a military leader and president, Jackson expanded the militia system into a networked defense against Native and African rebellions, and the looming threat therein, by expanding the reach and scope of the state militias duties. As president he utilized this public defense network to dispossess and remove Native tribes west of the Mississippi, by relying on individual militia leaders and the relationships he made rather than the traditional instruments of federal law. Arguably Jackson's main contribution, however, was the lasting impression he made on the executive's relationship to the rule of law and the federal court system.

His tactical use of martial law, flouting of international and human rights law as a major general were only a preface to his troubled relationship to the rule of law, and would come to define the relationship between the executive and the courts in two ways. First, Jackson learned and utilized the extreme reaches of American law, by placing territorial sovereignty at the center of his administration. Jackson leveraged the seams of federalism and placed Native peoples in a point of slippage between state and federal power, which allowed for the forced relocation of nations at the hands of state militias and property surveyors. He used the interstices of treaty law and constitutional authority to develop a dense network of internal security, which would later affect the dispossession, removal, and death of Native peoples living East of the Mississippi.

Second, Jackson strategically changed the makeup of the Court to reflect his understandings of the rule of law and the role of executive authority. The appointment of Roger B. Taney to the Chief Justice position would move the court decidedly away from judicial nationalism and would amplify Jackson's state-building priorities. Taney would shape the nature of federalism by asserting the dominance of states' rights and slavery. In defending these, Taney would reshape the legal concept of police by connecting the police power to sovereign authority. In defining police power in terms of sovereignty, Taney opened institutional pathways for the growth of the militia, the US Marshals service, and the fugitive posse system of plantation society.

I. Police Power, Nationalism and the Marshall Court

We saw earlier that nationalism as an ideological framework, emerges in the historical record as a means of galvanizing the public against a perceived national threat. As nationalist sentiments begin to emerge in the early republic, they became centered on white sovereignty or territorial administration, white property or territorial development through white ownership, and white security or the buttressing of the above by irregular military force and extraordinary executive authority. Historically, Jacksonian nationalism emerges in the Court as a means of rolling back the national variant of federalism that the Marshall Court had begun carving out through its understanding of police authority.

While this project credits Taney with amplifying Jacksonianism through a legal framework, it was the Marshall Court that established the concept of state police powers and first sought to distinguish state and federal power. The Marshall Court defined state police power at the matrix of territory and property. Initially viewed as a general power to regulate and license reserved to the states in *Gibbons v. Ogden (1824).* Gibbons v Ogden was a case dealing with the regulation of waterways that cross state lines. In 1798 Roberts Livingston and fuller were given exclusive navigation privileges by the New York State Legislature. They petitioned other state governments in the hope of developing a national steamboat network. They then sold a franchise to Thomas Gibbons from Georgia and Aaron Ogden from New Jersey, which quickly dissolved. When Gibbons tried to navigate the New York water Ways, Ogden filed suit to block him, citing the original NY franchise given to Livingston and Fuller.

Police power wouldn't be specifically defined until *Brown v. Maryland (1827).* In 1821 Maryland passed a law requiring an import license for the sale of outside goods in the state. Brown was charged will illegally selling imported goods, and filed suit citing the Commerce Clause, arguing that it was the role of Congress to regulate the flow of interstate goods. Attorney General for Maryland, Roger B. Taney would successfully argue that congress was given the authority to regulate interstate traffic, but the regulation of intrastate goods was a matter of state discretion. Whereas in Gibbons, the Court established the context for federal v. state supremacy in the context of a conflict between the maritime licensing capacities of federal vs. state governments under the new

Constitution. The Marshall Court ordered that, in this specific context, federal licensing authority superseded that of the state because it fell within the capacity of Congress to regulate interstate commerce.

The Constitution authorizes Congress to direct the flow of goods and people between the states and thus authorizes Congress to make rules governing the navigation and transport of goods between states via river. This power is best understood as the power to regulate (Brown v. Maryland, 210). In distinguishing between federal and state regulatory power, Marshall explains that police power, is the power of states to govern internal commerce, people, and traffic. Congressional authority cannot override the police power of a state, or the purely internal relationships that comprise it. Federal power reigns only in cases where law speaks to the commercial relationships between states, and even then, there are limitations on what Congress can do. Citing the 1808 ban on importing enslaved people, the Court found that while Congress has the authority to ban the importation of slaves from foreign ports, it does not have the authority to ban the trading and/or employment of enslaved people across state lines. This power was reserved to state laws governing the possession of people for labor, as a function of the state's power to govern its subjects without federal interference (Brown v. Maryland 208-210).

In *Brown v Maryland (1827)* the Marshall Court examines the difference between the regulatory power of the individual states to prohibit and remove dangerous articles, and the power of Congress to levy taxes and duties on imports. Maryland had placed an extra tax on imported liquors and other goods to generate revenue and protect the state economy. The Court found that this was an overreach of their police power, because only Congress could tax foreign goods. Once taxes had been paid on imported property, argued the Court, they were in effect no longer distinct from the importer's extant property.

The police power of the state, as Marshall identifies it here, becomes the capacity to not only regulate but to prohibit certain articles from entering its boundaries. This included, but was not limited to goods, services, and people. The state further has the capacity to mitigate the presence of harmful agents within its borders through the taxation of intrastate trade. The state power of taxation, the court finds, ends at its borders,

whereas Congress' authority to regulate and tax governed both interstate and foreign commerce including taxation for the territory. This included war making capacities, treaty authorizations, and the power to levy duties (Brown v Maryland pg.448).

Ultimately, the separation of police powers between federal and state governments would extend to the management of Indigenous people and the administration of their lands. Marshall would extend white settler sovereignty over the territories of the United States first in *McIntosh v Johnson (1823),* by erasing Indigenous title to the land by pointing to the long chain of conquest, treaty, and sale of the land by Native peoples to European settlers. One of the Court's first justices, Thomas Johnson, bought land from the Piankeshaw Tribe from 1773-1775 which he leased. When he passed the lessees of the land who were set to inherit the land, but William M'Intosh had received title to the land from the Federal government. Johnson's lessees sued for relief, and the court found for M'Intosh, finding that a private citizen could not acquire land from a foreign nation, only the national government could do so. At stake in *McIntosh* was the establishment of white ownership and a chain of legality authorizing its firm hold over the new territory.

Marshall set to the task by first identifying the three instruments through which control was ceded to the new nation: Christian discovery, treaties between civilized nations, and deeds of sale between Native tribes and European nations. Christian discovery amounts to the conquest of the new world by various European nations, and the subsequent parceling off the territory into new colonies. These new territorial boundaries were often in dispute, and as a result treaties between warring European nations came to define and solidify the territorial boundaries of each, on the one hand. On the other, treaties with the Natives themselves also defined the shape of the new world.

At question before the Court was who held title, or capacity to dispense with territory inside US borders. Marshall, in contravention to trends in European jurisprudence, utilized the disfavored idea of Christian discovery to anchor US territorial aims within the law of nations. Citing a long chain of treaties and purchase, Marshall notes that European peoples had both controlled and administered the land in question since the 1609 land grant from James I. In that time, the Court argues, Native peoples had been little more than a fixture on the land, taking little or no agency in the exchange of the territory itself (McIntosh v Johnson, 1823; pp. 544). Further, as a conquered people,

Native peoples had given up their inherent title to the land to the conquering race. Control, he argues and the capacity to govern and administer the territorial holdings of a geographic area, he argues, are the spoils of a "victorious nation", and it is only within the power of the conqueror to prescribe the limits. Territorial dominance, he argues is an inherent right of sovereignty that has been upheld by civilized nations. The US inherits these rights upon winning the war with England (McIntosh v Johnson, 1823; Pg. 589).

The inheritance of territorial sovereignty through war and conquest, gives way here to an idea of legal sovereignty, one that is enshrined in the idea of inheritance of title rather than conquest. As we will see below, the measured judicial nationalism of John Marshall, by which the dispossession and reordering of the territory Native peoples occupied, was the natural outcome of a long series of treaty exchanges. Unlike the harsh militarism of Jacksonian sovereignty. Legal sovereignty, at least as Marshall described in in *McIntosh,* is built on the regular and ordered operation of treaty law. In this case, it was these seemingly natural outcomes of treaty exchanges that led to the US gaining territorial control over Native peoples.

The title given to the US as a conquering people was further evidenced for Marshall in the distinct differences between the social systems of the tribes, and the burgeoning American nation. That the ways of Indians were "savage", and thus outside the community of civilized nations, made it impossible for Native people to truly lay claim to their territory, noting that the legal concepts of territory and title emerge in western, rather than Indigenous legality. As such, he argued the doctrine of discovery rendered moot the Indians' claim on territory by severely limiting Native people's autonomy over the land (McIntosh v Johnson, 1823; pp. 601-602).

As we saw earlier, *McIntosh* began the process of removal by depriving Native people of legal title to their ancestral lands. However, while it subordinated Native rights of occupation to the territorial sovereignty of the US, allowing for the proliferation of private and state encroachments on Native land, Marshall's rulings also limited state interference with tribal territory. *McIntosh* specifically required the federal government to view these nations as treaty nations, exclusively the province of Congress. This placed Native nations on equal footing with the federal government, an idea that then Senator Jackson found utterly preposterous, largely because the ruling directly interfered with his

own state-based relocation treaties and private dealings between state surveyors and Native nations.

By the early 1820's Jackson had brokered several arrangements between the Cherokee nation and the state of Tennessee (Jackson, 1980, vol. II. Pp. 300-308). Several of these deals, such as with Chief Pathkiller were in direct contravention to federal treaty mandates, and thus required brokerage with the federal government, to allow concessions in the treaty language. In the case of the Cherokee Nation, they intent was to trade their lands in Tennessee Kentucky for reservation land in Arkansas. Chief Pathkiller sought to deal directly with the people of Tennessee but required federal brokerage and federal funds to purchase the exchange. Jackson brokered the sale and the exchange and purchased the land from the Cherokee.

Jackson found the primacy of federal jurisdiction in Native treaties to be an affront to state sovereignty on two fronts. First, it required states to get federal and Native input about the disposal of land within their territorial boundaries. Jackson himself had already argued for relocation of the Seminole people out of Florida after annexation to open the land up to proper development. As governor of the territory, he sought to relocate the Seminole because their pastoral life in upper Florida directly impeded territorial development schemes (Jackson et al., 1926).

The primacy of federal treaties made transactions such as forced and paid removal harder. State functionaries were limited in their ability to make treaties that would secure settler land in established states, and the militia was hampered from full removal of these nations from their homeland by the equal footing of sovereignty that *McIntosh* implied. From 1814 until his candidacy in 1824 Jackson would be central in negotiating nine out of the eleven treaties that divested the southern tribes of their territories, as well as oversee the voluntary relocation of the Creeks, Cherokee and Choctaw people from Georgia, Tennessee, Mississippi, Kentucky, and North Carolina (Opal, 2017).

Beginning with his campaign in 1828, Jackson had become a vocal proponent of the dispossession of Native peoples and their removal to the territories west of the Mississippi River. In 1829 he began pushing for forcible removal of the southern tribes as federal policy

> "…but observation proves that the great body of the southern tribes of Indians, are erratic in their habits, and wanting in those endowments, which are suited to a people who direct themselves, and under it be happy and prosperous. Whit these disabilities to free and self -government existing, our tribes on this side of the Mississippi have been told, that while the u. states are kindly disposed towards them, and anxious for their prosperity, it cannot be conceded to them to continue their efforts at independence within the any of the states…" (Jackson et al., 1926, vol. IV pp. 97-104).

In many ways the Removal Act of 1830 was the culmination of Jackson's career as Governor General in the southern territories. Having first advocated for removal of Muskogee peoples as the commander in both the Creek and Seminole Wars respectively. First, relocating Southern Redstick Creek people in Seminole territory in Northern Florida and Southern Georgia so that their southern Florida territory could be surveyed and sold on the commodities market in prearranged portions. After the relocation of the Redstick Nation, Jackson urged the sale of the territory as fast as possible in order to secure the southern coast through American settlement.

He urged that development of the southern Florida coast by settlers despite both the negative effects on the market and the fear it may cause a mass migration south. The development of the Florida coast was of central importance to the security of the union (Jackson et al., 1926, vol. II pg. 272) . He was an open advocate of voluntary relocation and revisited the federal government's insistence on treaty law. He himself advocated for voluntary relocation of the Cherokee in 1817-1818 and brokering their removal to reservation land in Arkansas territory. The brokerage of these treaties, like the one with the Pathkiller Cherokee above were made to allow illegal settlers to keep their lands in the under the federal treaty regime (Jackson et al., 1926, vol. II pg. 227).

While advocating for voluntary relocation of the Cherokee and Creek peoples as a regular part of treaty negotiations. Jackson also advocated for the forcible relocation of the Chickasaw and Choctaw people as a means of securing the frontier line at the Mississippi River in both the northern and southern territories.

> "It might be asked how this land be obtained…the Indians are subjects of the United States, inhabiting its territory and acknowledging its sovereignty, then is it not absurd for the sovereign to negotiate by treaty with the subject. I have always thought that Congress had as much right to regulate by acts of Legislation, all Indian concerns, as they had of the territories; there is only this difference that the citizens. of the territories are citizens of the United States and entitled to the rights thereof, the Indians are Subjects and entitled to their (congress) protection and fostering care." (Jackson et al., 1926, vol. II pp. 279-280)

Having stripped Native peoples of legal agency under the Constitution, the Court eventually permitted Jackson to carry out his commitment to remove Native peoples through both of his candidacies and throughout his administration. The Removal Act of 1830, fueled in no small way by the primacy of territorial sovereignty granted in *McIntosh* was met with a proliferation of prospecting and settlement in Native Territory. Secretary Eaton's twin pronged approach of land speculation and militia based forced removal of refusing nations would spark the second test of aboriginal title in the Marshall Court. In *Cherokee Nations v. Georgia (1831),* the Court affirmed the primacy of federal authority over Native lands, by rendering them "domestic dependent nations" subject to the sovereignty of US law. Georgia had become one of the first states to agitate for the removal of Native peoples from their borders in 1823. Predictably candidate Jackson would pick up this call and use it to galvanize the southern vote, before losing the election in a House vote. In 1828, the state of Georgia passed a series of laws stripping Cherokee people of their rights and their legal property. This set off a wildfire of land speculation in the ancestral lands of the Cherokee, and the tribe filed suit for relief. The Nation asked for an injunction, citing the genocidal nature of the Georgia program of removal. The Court refused to hear the cased but ruled on its merits, finding that the Cherokee nation had no legal recourse as they were not sovereign nations, but "domestic dependent nations" subject to the laws of the US.

The Marshall Court seemingly agreed with Jackson's understanding of the Subject nature of Native peoples. As opposed to being seen as full citizens of the new republic, both Jackson and Marshall understood Native peoples to be merely inhabitants of the states and federal territories. Both saw their presence on these lands as a barrier to development. As such, both sought a means to protect white settlement of the new world. While Jackson would focus on the military prowess of the United States as a means, Marshall would focus on creating a dense chain of legal reasoning, which removed Native agency and left them vulnerable to removal. First, as we saw above, by severing their legal title to the land in *McIntosh, Cherokee Nations* would begin the process of severing the legal agency of Native tribes by making them wholly dependent on American law for their existence and recognition.

As McIntosh secured the territorial dominance of the new nation, *Cherokee Nations* would solidify US legal dominance over the new territory by clearly defining its relationship of Native peoples to American law. As Marshall again points out, Indian nations are not foreign states in the traditional sense of the term. Rather, they are "domestic dependent nations" within the United States. In answering the question of standing, namely if Cherokee nations could sue, and foreign nation, Marshall begins the process of stripping Native peoples of any vestige of sovereign identity and replacing it with a legal dependance on the US government for territorial allotments (Cherokee Nation v. Georgia, 1831).

Concurring with the rights of the conqueror argument, Justices Baldwin and Johnson take this logic one step further in concurring opinions and argue that the rights of conquering people were given full authority over both territory and people. As Baldwin finds, conquest and government of a territory implies the capacity of the concurring nation to administer said holdings through the smooth and orderly operation of law (Cleveland, 2002). It wasn't merely the capacity to dispense with property that the US exercised as its sovereign, but it also marked the legal domination of that group by the conquering nation. As Baldwin points out, the capacity to administer law is found not only in its capacity to establish title and property within a territory, but also to enjoin the people of that territory with a unitary system of law. At question for Baldwin and Johnson was not the capacity of Native tribes to sue as a foreign nation, but where

conquered peoples fit within the new rubric of constitutional law. Theirs was an answer of total rather than partial dependency.

Authority over local affairs in much the same way as a state. Local tribes were free to make rules and laws that governed their social world, but these laws were subordinate to and drew their ultimate authority from US laws. Thus, Native peoples were still allowed a measure of sovereignty, but this sovereignty was not seen as rising to the level of a "foreign nation" Cleveland, 2002; pg. 27). For Baldwin and Johnson, however, this is at odds with contemporary understandings of sovereignty, which mandated that one exercise government over all territory and people. There was no room for multiple legalities inside the constitutional system, rather the United States exercised sole legal authority over Native peoples and any territory given to them (Cleveland, 2002; pg. 27).

Cherokee Nations, as the administration understood it, greatly expanded the authority of the removal program, and brought the law in line with Jackson's position on the legal sovereignty of Native peoples. The Marshall court's finding of domestic dependency was in keeping with the policy of relocation Jackson had put in place after *M'Intosh.*

> *"*The Case of Johnston and McIntosh has settled, that the North American Indian tribes east of the Mississippi and a conquered and dependent people—They are dependent; not on the Federal power in exclusion to the state authority, when they reside in the limits of a state, but to the sovereign power of the state within whose sovereign limits they reside." (Jackson et al., 1926, vol. 4 pg. 220).

The *Cherokee Nations* decision was in large part viewed by the administration as a rubber stamp. President Jackson and John Coffee began immediately utilizing state militia forces to remove resistant members of the Chickasaw and Choctaw nations.(Jackson et al., 1926, vol. 4 pg. 224) The use of state militia and authority to enforce the removal act would again run afoul of the Marshall Court in *Worcester v. Georgia (1831).*

Samuel Austin Worcester was the principal agent sent to Georgia by The American Board of Commissioners for Foreign Missions (ABCFM) to conduct missionary work in Cherokee Territory. He was one of their senior pastors and had helped translate parts of

the Bible into the Cherokee syllabary (Miles, 1973). ABCFM itself was founded in 1810 as a means of evangelizing the "non-Christian world" starting with the Indigenous people of North America. By 1828 it stood second in income among the thirteen leading religious organization. Its early iterations remained true to its German Congregationalist roots and focused primarily on preaching in Native communities. Worcester's generation utilized a wholistic approach of living in Native communities. They focused their energy mostly on assimilation through Christianity. Worcester himself was considered the Board's most successful agent in Native territory. He had lived among the Cherokee in North Texas and Arkansas and had learned a considerable portion of the Cherokee language. As Mentioned above, he had helped develop the Cherokee syllabary and used it to translate Greek passages of the Bible into the Cherokee syllables (Zdanowski, 2018).

Worcester was arrested in Cherokee territory inside Georgia for violating a statute that required all white citizens moving into Cherokee lands to first register with the state of Georgia and swear an oath of allegiance to its laws (Garrison, 2001). Worcester challenged the statute in federal court. Upon review, Marshall used his decision in *Worcester* to mitigate the damage done to Native sovereignty by his previous decisions. He would do so by placing Native tribes completely under federal purview. He severely limited the capacity of both Jackson and Georgia to dispossess Cherokee people under the veil of law, by reasserting founding generation treaty law. Under *Worcester* legal authority over Native tribes reverted to Congress under the treaties that were ratified with the Cherokee people. As such, removal authority reverted to Congress and was to be exercised through treaty relations rather than the violent force of state authority.

The consequences of the decision would be dire for the Court as the Jackson administration ignored the ruling and continued to support the Georgia Guard's forced removal program (Garrison, 2001; pp 4-7). The Georgia Guard, buttressed by the US Army, forcibly removed the Cherokee nation to Arkansas Territory in 1835, after a series of local rulings in the wake of *Worcester,* completely severing Cherokee title to their lands in the southeastern US (Garrison, 2001; pp. 5-6). Jackson's refusal to enforce *Worcester,* and free the missionaries from Georgia hard labor camps, also challenged the authority of the Court to declare policies enacted by Congress or the states

unconstitutional, a power that Marshall had singularly cultivated during his tenure as Chief.

By simply ignoring the court, Jackson had created a vacuum in federal checks and balances that was quickly filled by the Southern states' tribunals. *Georgia v. Tassels (1830)* and *Caldwell v. Alabama (1831).* Two murder cases that took place on Cherokee and Creek land respectively would be tried by state courts in contravention of the Court's understanding of domestic dependence. It would also strip the Cherokee and Creek Nations in the Southeast of their legal authority over territories in Alabama and Georgia, *Tennessee v. Forman (1835)* would set the final stage of removal by state forces holding that the Cherokee tribes were subject to the laws of the territories they live, hence each state had the power to abolish title and force ably remove them from the territories. By allowing the states to interpret the legal relationship of Cherokee Nations to state sovereignty bereft of the influence of the Court. Jackson rendered the Marshall Court's in both W*orcester* and *Cherokee Nations,* by nullifying their status as semi-independent nations within the federal system. When John Marshall passed in 1833, Jackson would appoint Attorney General Roger B. Taney to lead the Court. Taney, a self-avowed "Jacksonian jurist" would restructure the nature of federalism in order to secure the rights of states to police both Native and African inhabitants.

II. The Rise of Taney

Roger B Taney had become a supporter of Jackson during the election of 1824 and joined the party in support of him. At the time he was one of the leading attorneys in Baltimore and became a passionate advocate for Jackson. in 1826 he was appointed Attorney General of Maryland, where he argued *Brown v Maryland* in 1827, and served in the election of 1828. After the Petticoat affair gutted Jackson's original cabinet, Taney was appointed Attorney General in 1831. Taney responded to the appointment that he would accept the position after the 1831 session of the Supreme Court of Maryland, where he was engaged in litigation. Taney considered his responsibilities to the state of Maryland to be of primary importance (Tyler, 1876; pp. 160-161).

Taney was born into plantation wealth in Baltimore in 1777. He attended Dickinson in Pennsylvania in 1792. He finished his legal training under Charles Nisbet and Jeremiah Chase before beginning his career in 1806. He was elected to the Maryland Senate in 1816, where he backed a central figure in the Maryland Federalist Party, where he remained until his appointment to the Maryland Attorney General Position in 1827. During this time, with the fading of the Federalist Party, Taney became enamored with Jackson, specifically because of his position on private industry, territorial dominance, and private property.

While he had manumitted the enslaved people in his family's employ, he remained a vigorous advocate of the practice. Like Jackson, Taney was a member of the Baltimore Colonization Society. He believed that colonization to be a key step in the gradual emancipation of enslaved people. While in the Maryland senate he consistently voted to limit the growth of the institution, He even defender abolitionists minister Gruber after he lambasted slavery as a national sin at a public sermon in 1818. Taney also believed that slavery was the most humane means of governing the Black bodies that remained in the United States and saw it as a fit practice until such time as enslaved people could be repatriated to Africa. By late in his career, he had come to see "sudden emancipation" as a terrible evil, that would only bring ruin to both races (Huebner, 2010 pp. 20-22).

It was during his time as Attorney General of Maryland that he was tapped by Jackson to lead the Justice Department in 1833, where he would help Jackson shut down the national bank system, Jackson's second largest campaign plank. Like Jackson, Taney viewed the bank as a breach of private property, and a detriment to the system of free exchange. In his first address to Congress, Jackson had already called for the dismantling of the bank, arguing that its constitutionality was disputed by the American people therefore it should not have its chapter renewed. Jackson's states' rights-based understanding of federalism, and his refusal to expand the reach of the federal government beyond its constitutional confines where why Taney agreed to join the kitchen cabinet (Jackson et al., 1926, vol. 2 pp. 1828-1832).

Like Jackson, Taney believed in a federated system of governance based on the consent of the many states who made it up. Primary sovereign authority remained with the states whose constitutions and institutions of government predated the Federal

constitution. The Federal Government in turn existed as a neutral arbiter between these states. It also operated as the unified voice of the states in matters of foreign relations and internal security (Tyler, 1876; pp.147-148). The United States Bank expanded the reach of federal authority by granting it the authority to dictate currency rates between the states, and thus acted as an extra layer of executive control over interstate commerce not specifically authorized to the Federal government by the Commerce Clause. Taney saw the decertifying of the bank in the same light as well as vetoes of federal public works by Monroe, Madison, and Jefferson. Like Jackson he repudiated nullification as an affront to all federal authority, whereas the Bank of the US merely represented a gross overreach of that authority (Tyler, 1876; 187-188).

Taney began with the withdrawal of all federal deposits from the US Bank. in August of 1833 he began by urging the president to withdraw the funds and deposit them in state level banks while congress was in recess and members were in their district. Taney trusted that they would come back from their newly flush districts and sustain the decision (Jackson et al., 1926, vol. 2 pp.147-149). Taney considered the monopoly on federal deposits, and the authority the bank wielded on monetary policy as a result were a corrupting influence on the delicate balance of power that federalism had developed into since ratification:

> "My mind has for some time been made up, the continued existence of that powerful and corrupting monopoly will be fatal to the liberties of the people, and that no man but yourself is strong enough to meet and destroy it… I am every day more sensible of the power of the Bank, and I should feel deeply mortified if after so many splendid victories, civil and military you should in the last term of your public life meet with defeat. You have already done more than any other man has done or could do to preserve the simplicity and purity of our institutions, and to guard the country from this dangerous and powerful instrument of corruption." (Jackson et al., 1926, vol. 2 pg. 148)

In dismantling the US bank that Taney would become instrumental in building the Jacksonian republic. For Jackson and Taney unlike Marshall and the old guard

federalists, the autonomy and sovereignty of the individual states was the foundation of Constitutional authority. Taney would develop this understanding of states' rights working directly with Jackson to craft policy that would break the central bank's hold on monetary policy. AG Taney would be directly involved in crafting the public statement about the withdrawal of funds and decertification of the Bank with Jackson (Jackson et al., 1926, vol. 2 pg. 192-202).

Taney and Jackson attacked the bank's deleterious effects on federalism, which they find to be of two kinds. First, that the bank us an unconstitutional extension of Congressional authority over both the federal purse and interstate commerce. On the one hand, they argued, because of the large number of federal deposits in the bank, the bank exercised an undue control over interstate currency markets, outside of the statutory control given by the Commerce Clause (Tyler, 1876; pg.192). Controlling the currency market allowed the Bank a large measure of authority in federal economic policy. The bank thus exhibited a large measure of control over both the public and private sectors which it wielded in benefit of its own shareholders creating, secondly, a permanent landed/monied gentry (Morrison, 2015).

The emerging aristocracy, and its parasitic relationship to the institutions of Congress and the Court, exerted a corrupting influence on liberal government. As a direct result of the influence of this aristocracy, the federal government had sought to enact tariff schemes that favored the northern states and levied additional fees for southern products. They likened the corrupting influence of the bank and its shareholders on interstate financial policy to that of the feudal lords of England's hold over individual freedom by securing the ends of property to themselves, rather than the sharecroppers that worked it (Jackson et al., 1926, vol. 2192-202). Under director Nicholas Biddle, the Bank had acted as a counter measure to the charges Jackson and Taney leveled at it.

Biddle used his market power to carefully create a stable equilibrium between the national and state markets that ensured stable prices and paper money backed by head currency from the Southern mines. Furthermore, by maintaining a stable monetary system, the Bank ensured smooth trade between states by making sure that goods and commodities were sold at stable prices across the states (Govan 1958). Jackson would ultimately veto the Bank's charter and remove the federal deposits killing the bank and

depositing the federal reserves in State banks. Their signaling in the Bank War, and the economic instability that ensued from the veto would trigger the Nullification Crisis, which would force Jackson and Taney to defend the authority of the Federal government from militant states' rights slavery advocates like Jackson's Vice President and trusted friend, James C. Calhoun.

Though not on his cabinet. Vice President John C. Calhoun was someone the president trusted. The former gen. had a long history with the former secretary of war, and Calhoun had come to his defense during the Seminole War hearings. Calhoun was a fellow nationalist and had been part of the War Hawks during 1812, and as Secretary of War had worked tirelessly pressing congress for military supplies during Jacksons campaigns (Jackson et al., 1926, vol. 3 pg. 108-109; Rosen, 2015). The two were brought together as a campaign ticket by Duff Green. Green had initially got into the paper business to support Calhoun's bid for the presidency in 1824. Green would switch allegiances to Jackson during the election, but old facilitate a Jackson Calhoun ticket in '28. Green, a Missouri business owner and land speculator felt a large amount of kinship with Calhoun and Jackson and their position on states' rights and the development of US territorial holdings. From 1826 until the election, he would feature articles praising the two men and their capacity to lead in the *Telegraph,* seeking to keep both men in the public eye until the election (Ewing, 1978, pp. 129–130)

It would be John Calhoun who would link the concepts of racial slavery, property, and states' rights. His vision of federalist democracy was heavily reliant on a slave owning class of aristocrats. Calhoun was adamantly against the Missouri compromise of 1820, as he saw it threatening the power of slaveholding states in the new federal government. The Missouri compromise, to his mind was also responsible for the flight of enslaved people and the violent strain of abolitionism as was witnessed by Nat Turner and the massacre at Fort Prescott. Most states in the union would be non-slave holding states, and this numerical majority would be used to further abolitionist goals, by enacting laws that hampered the state's authority over private property inside its territorial boundaries. Fearing that a tyranny of majority abolitionist states would slowly but surely erode the institution of slavery through restrictive law making and taxation (Calhoun, 1851, pp. 207–209). The Nullification crisis of 1832 would be a precursor to

Calhoun's abolitionist fears. Stemming from his home state of South Carolina's Tariffs of 1824, the nullification would shape Calhoun's position on states' rights, and strain his tense relationship with President Jackson.

In 1824 South Carolina declared the Tariff Acts of 1828 and 1832 null and void and refused to pay them. The Tariffs protected Northern Manufacturing interests, by placing high Tariffs on imported manufactured goods, by as much as 50%. Agricultural goods were not subject to the high Tariffs leading to a trading frenzy in cheaper products from abroad. This threatened the economic bedrock of slavery, at a time when the Cotton and Tobacco industries were experiencing shortfalls due to overuse of the land. South Carolina attempted to get other states to nullify the tariff as well leading to deep divisions between Northern and Southern States (Ericson, 1995, pp. 249–270). The congressional debates led to the passage of the force bill, which asserted the primacy of federal law and granted Jackson the power to enforce the Tariffs. Calhoun believed that Jackson was on the side of nullification, as he had spoken out against the Tariffs on the Campaign trail, and in his first inaugural address. Jackson instead sided with the nationalists and threatened military action in South Carolina to enforce compliance with the tariffs (Ericson, 1995, pp. 257–258).

It would be the pamphlet crisis of 1835 in which he would extend the police powers of the United States to include censoring the mail, after abolitionist elements in the North began a program of mailing Christian anti-slavery pamphlets about the sin of slavery to southern homes. Senator John C. Calhoun of Southern Carolina would again push a version of nullification pressing southern states to censor the federal mail after over 100,00 pieces of abolitionist literature were mailed in 1835. Georgia, Mississippi, Virginia, and South Carolina passed laws censoring the papers and pamphlets fearing they would cause new uprisings in the South. A mob broke into the post office in Charleston and took the materials and staged a public bonfire on the edge of the city (Mercieca, 2007). Jackson would publicly decry the action and censor the federal mail, making it a crime to mail abolitionist literature to the south.

Taney came to side with Calhoun on the permanence of both states rights and slave holding society and emerged from the kitchen cabinet an ardent supporter of both. As Chief Justice, Taney recast the nationalism of the court. He reversed the polarity of

federalism by grounding constitutional authority in state sovereignty. In doing so, he would emerge as an ardent protector of the institution of slavery. The Taney Court almost single handedly developed the legal infrastructure of chattel slavery in his 30 years as Chief Justice. As we will discuss in the next section, he also created a federal policing infrastructure for escaped enslaved people in *Prigg v. Pennsylvania (1842).* In 1832 Margret Morgan, a free Black woman living in Pennsylvania was kidnapped and returned to a plantation in Maryland where she had supposedly escaped, in violation of a Penn. Law requiring that fugitive possess show proper documentation to local magistrates proving both the identity and enslaved status of the person in question before they could be removed from the state. Prigg was hired by the Maryland plantation to capture Morgan and was arrested. He appealed to the Court citing the 1793 Fugitive Slave act. The Court would free Prigg, enslave Morgan, and strike down the Penn law, paving the way for the Fugitive Slave act of 1850.

The Court would ensure the permanency of enslaved status for African people living in the United States in *Stanford v Dred Scott (1857).* Scott was the enslaved attendant of Dr. John Emmerson. After purchasing Scott's life, Emerson moved him to Illinois, a free state. Emerson hired Scott out in Illinois, a violation of the Missouri Compromise of 1820. In 1846, Scott attempted to sue for his freedom noting the violations of the Missouri compromise. Scott was the enslaved attendant of Dr. John Emmerson. After purchasing Scott's life, Emerson moved him to Illinois, a free state. Emerson hired Scott out in Illinois, a violation of the Missouri Compromise of 1820. In 1846, Scott attempted to sue for his freedom noting the violations of the Missouri compromise. The court nullified his legal agency and his personhood, as well as nullifying the Missouri Compromise. The court nullified his legal agency and his personhood, as well as nullifying the Missouri Compromise.

Taney completed the security apparatus he built in *Ableman v. Booth (1859)*, which ensured that enslaved people could not escape to freedom anywhere in the territorial boundaries of the nation. In response to the strengthening of the Fugitive Slave Act in 1850 tensions over slaver had reached a fever pitch in the US. Sherman Booth was arrested for violating the act by allegedly helped a mob free an enslaved man Joshua Glover in Wisconsin from a US marshal returning him. Booth Was arrested and sought a

writ of *habeas corpus* from the Wisconsin supreme court, which was granted. Booth was released on the grounds that Wisconsin was a free state. The Court however ruled that a state court could not usurp federal law.

III. Jacksonianism Under Taney

Jackson named Taney to replace Marshall in 1836. He would become Jackson's most prominent appointment to the federal bench. As noted in the introduction, Jackson's effect on the court system was monumental. From 1829 to 1837, he nominated 23 people to the Federal bench, only three were rejected, and one declined. By the time of his death, John Marshall had found himself surrounded by Jacksonians. Justices Henry Baldwin, Philip Barbour, John McLean, James Wayne, and John Cantron would all be appointed to the Court, to break the judicial nationalism of John Marshall. Roger B. Taney was selected to replace him after his deft handling of the Bank War, and his shared understanding of state-based federalism. Taney would prove to be a stalwart defender of Jacksonian democracy. In his 30 years with the Court, he would create a legal framework for state-based federalism and buttress the legal infrastructure of racial slavery. Most importantly, the Taney court is responsible for developing a rather extensive understanding of the police power, based on the security needs of the Jacksonian state.

Much of Taney's jurisprudence centered on his principled belief in territorial sovereignty and private property. Specifically, Taney valorized private property as the linchpin of state power. In *Charles River Bridge v. Warren Bridge.* Again, dealing with the police power of the state, this Case dealt with the capacity of the state of Massachusetts to allocate building contracts on the Charles River. The city charter two toll bridges from two companies in proximity of each other. Charles River Bridge co. sued for breach of contract, the Court sided with Warren Bridge and Mass. Noting that it was within the police power of the state to organize the flow of goods and people. he sets up a distinct relationship between the individual states and their constituents based on the former's power over the latter's property inside their territorial bounds. This relationship was sacrosanct to the social compact, and therefore could not be within the bounds of the federal legislature to violate.

> "It is admitted that the right of eminent domain is an incident of sovereignty and cannot be alienated. And it is also admitted that all the property of the citizens of the state is liable to the exercise of this paramount authority. No matter by what title it is held, it is alike subject to be taken for public use. The exercise of this power, however, is restricted by an express provision in the state constitution, that compensation shall be made. This fundamental law is inserted in the constitution of the United States, as well as in that of many of the states; and the following cases show how fully this principle has been recognized and acted upon, by the judicial tribunals of the country."9Charles River Bridge v Warren Bridge, 1837; 420)

The relationship between territory and property was an aggregate relationship for Taney's deep anti-federalist sentiments. It would be these three things that would come to define the court's relationship to the governing authority of the Federal System. While this ruling opened the floodgate for settler expansion, by linking acquisition directly to the American system of government, it also ensured a permanent foothold for slavery in the US, by linking racial slavery to the hierarchy of legal property.

Sovereignty became an aggregation of power from below such that the federal government was there to ensure that states did not unduly burden private ownership, and states ensured that private enterprise did not unduly burden the public good. Outside of administering property relationships between territories, the constitution did not apply. This understanding of the natural relationship between the state and individual property would guide Taney's understanding of both Indigenous and Black belonging in the budding American nation. The principles of property and state sovereignty that Taney sets up in Charles River Co., would ultimately come to define his understanding of citizenship, personhood, and the role of law in stabilizing these social features. Taney would apply the Charles bridge principles to questions of Native sovereignty and slavery. The Taney Court's schema of federalism, in which states mediate the authority of the federal government, wrote out Indigenous sovereignty and aboriginal title to the land.

Taney doubled down on the Marshall's doctrine of Christian discovery provided by the previous court, by expanding the spoils of discovery to include the lives and legality of conquered peoples in *United States v. Rogers (1846).* Another murder case on Cherokee lands, this time in Arkansas territory, where a white man, William S. Rogers stabbed another. As the Case took place in Cherokee Territory, and Rogers Claimed to have been adopted by the tribe, he argued that Cherokee Courts had Jurisdiction for the trial. The Court disagreed and further diminished the Legal Sovereignty of the Cherokee. The Court also utilized this schema to valorize and protect slave ownership in the southern states. In doing so, the Taney Court both valorized and stratified the racial nature of property and ownership. While Charles River sets up a distinct system of membership on the American nation based on property ownership protected by state law and the constitution. In its handling of the slavery question, however the Court ensured people of African descent remained permanently removed from the schema of ownership and membership.

In 1839, the Taney Court first weighed in on the question of legal property and enslaved Africans. On June 30, 1839, kidnapped African aboard the schooner Amistad overtook their captors, killed them and took control of the ship on its journey from Cuba to the United States, hoping to return to the Maroon communities of the Caribbean. The ship got caught in gale force winds and ultimately drifted north until it reached Long Island in August. Reports in American newspapers of the events depicted it as an uprising on a ship with the kidnapped crew roaming the Atlantic as pirates. On August 26, the crew was arrested and thrown in the brig at the New York harbor (Hill, 1998). The American Abolitionist movement would quickly seize on the case, recasting it from a simple question of spoils on the high sea for the prize court to solve into a national call to action against the evils of African Slavery. `

The Abolitionists contested the jailing of the Amistad mutineers, arguing that as both Spain and England had formally agreed to end their trade in African people, the mutineers were not slaves, rather they were people who had been kidnapped in Africa, and illegally enslaved in Cuba before attempting to bring them to the US. Lewis Tappan, Roger S Baldwin, Simeon Jocelyn, and Joshua Levitt from New York began a literature campaign seeking to free the Amistad mutineers and return them To Sierra Leone (Jones,

1987; pp 8-10). Henry D. Gilman, Roger S. Baldwin, and John Quincy Adams would defend their free status, citing the illegality of the international slave trade in international law and casting aspersion on the idea that these men had been legally enslaved prior to their transport to the US. The court agreed with their logic, and in a 7-1 decision freed the men, with Justice Baldwin dissenting on the grounds. (US v. The Amistad, 1841; pg. 408).

Prigg v. Pennsylvania further tested the Jacksonian Court by asking them to weigh in on Africans who were formerly enslaved in the US. In 1842 Margaret Morgan, who's Kafkaesque journey through the law found her born into slavery but never formally enslaved and allowed to leave the Ashmore family plantation with her son, only to be kidnapped by Edward Prigg and sold into slavery when John Ashmore's children decided that they wanted Morgan returned. Prigg himself would become the plaintiff in the Supreme Court case that bears his name, a case which struck down a Pennsylvania law making it illegal to kidnap free Blacks in the state without court documentation proving fugitive slave status. Margaret Morgan would remain the property of the Ashmore family without ever being allowed to testify on her own behalf before either the Pennsylvania, or federal Supreme Courts that heard the *Prigg* dispute.

The nature of federalism and the rights of property lay at the center of the *Prigg* controversy. In response to the kidnapping of free Black people in Pennsylvania, the state enacted a law making it illegal to apprehend Black people for the purposes of transporting them across state lines in absence of a court affidavit. Edward Prigg was arrested and convicted under the law after being hired by Margaret Ashmore to kidnap Margret Morgan and return her to the Maryland plantation she left. The Court strikes down the Pennsylvania statue on the grounds that it is within the powers of the federal government to direct interstate commerce. In doing so, however, Justice story valorized the racial line of Durante Vida slavery by asserting owners have absolute property or total control over the life and movements of their slaves (Prigg v. Pennsylvania 1842). Justice Story emphasizes the importance of slavery to the nation in his reading of the fugitive from labor clause. Without the guarantee of a protection of human property, Story notes, the southern States would not have agreed to the new constitutional system.

It is the protection of slavery, found in the agreements of the Articles of Confederation that bound the states together in a loose sense before ratification. Each state guaranteed the return of servants found within their territories Prigg v. Pennsylvania, 1842; pp. 616). This reciprocal protection of property was carried through to the new republic in the fugitive slave clause. Further, Story finds, the Pennsylvania law erred in viewing slaves as a distinct species of property governed by different laws. Slaves, he points out are a normal part of property enshrined by law in certain states and avoided all together in others. That these two states allow for different limitations on property, did not change the fundamental nature of a slave's situation. This was a point that even the federal government adhered to by ensuring that fugitive slaves were returned to their respective states of origin. The sacrosanct nature of property, Story argues compiles even the federal government to uphold in its protection of interstate commerce.

As such, the Court struck down the Pennsylvania law, and returned Morgan to the Ashmore Plantation. In doing so, the Court also set strong guidelines for how the Federal Government was to protect the property going forward. This included enlisting both the federal courts and the US Marshals service into the apprehension and return of fugitive slaves, as will be seen below. What Is important to us here is the development of a racial line of ownership in the American nation built upon the capacity of white southerners to own people of African descent and force them into labor. This racial line of property has been highlighted by legal theorists such as Cheryl Harris as a central feature of both whiteness and American nationalism. By valorizing enslavement in this way, Story identifies in African labor in the same potential threat to the nation, namely the destabilization of the organizational schema of territorial sovereignty and ownership. As we shall see below, *Prigg* would be the first case in a long chain that would seek to forever close the door on Black citizenship and belonging in favor of white ownership and its role in the national project. As such, fugitives from labor, according to story were one of the main threats that the first national congress tried to tackle.

As Harris finds, the property line identified here is a racial line that determines who is capable of ownership and who is to be owned. The understanding that European people are more naturally fit to administer and manage natural resources than their savage counter parts in the American and African continents lead to a hierarchical system of

ownership with concomitant power differentials. People of European decent emerge in this rubric as the natural and assumed owners and administrators of a given territory. People of African descent emerged as the defect workforce and property of Europeans peoples, much as Native peoples were viewed as passive inhabitants of the land. These assumptions are sewn into the law in rulings like Prigg, precisely because Prigg reified the racial borders around labor and ownership in Antebellum America (Harris, 1993). As with Jackson's bolstering of the militia in order to combat the threat of Native peoples living within the US borders. Story would bolster the federal Court system, and the Marshall's service to combat the threat.,

Harris' rubric of whiteness equating to property, or the assumption of the natural capacities of white people to administer both territory and personal property, is useful for understanding how white settlers emerged at the top of the racial hierarchy emerging during the Jacksonian regime. As we have seen above beginning with the Marshall Court there was a steady persistent drive by both the Court and the Executive to break Indigenous sovereignty. As we saw with the military career of Jackson, however, both Indigenous and free Blacks' presence in the southern colonies were not viewed as a threat to property ownership, rather they were articulated as a threat to the stability of the public writ large. Indigenous and Maroon communities were removed from the hierarchy of property and labor altogether. These groups existed as an outside threat to American society, specifically because they threatened to usurp the codex of racial meanings bound up in property ownership (Harris, 1993). Enmity here operates at two levels just as it did with Indigenous subjects. On the one hand it emerges as a set of cultural values to be upheld and protected, in this case the value of ownership and property. On the other, it contains a built-in justification for racial hierarchy by enshrining these cultural preferences in legality.

Both African and Indigenous subjects emerge as a threat to the national project because they threaten white property ownership. They are viewed as irreconcilable to the system of ownership and administration central to the white republican project of the Jacksonian era. Afro-Indigenous subjects were not viewed as a threat to the federated system of territory and ownership because they were viewed as antithetical to that system. Racialized others existed outside the rubric of ownership and recoded as

property. They were also seen as openly hostile to the American system as we saw above, enmity was the defining feature of this relationship. Afro-Indigenous subjects were seen as not only unfit for civilization, but the natural enemies of it. In addition to lacking the capacity for property, racialized others were seen as intimately hostile to the American nation by Congress, the Court, the executive, and most importantly buy the Southern Settlers themselves.

The *Dred Scott* decision further expounded on the race/property divide highlighted by Justice Story in *Prigg.* Taney removed people of African descent from the pale of American la*w.* In answering the question of standing, the court finds that enslaved African people and their descendants had no standing before the federal court as they were not legal citizens of the United States but as a matter of both state and federal law were property and had no standing before the court. African people, Taney reasoned were the subjects but not citizens of their respective state, meaning they were subject to the laws off their respective states? but were not citizens. As such, they had no legal standing outside of their master, and could not press cases in federal court (Dred Scott v Sandford 1856; pg. 401). This racialized understanding off property and ownership put forward in *Prigg* was further elaborated and stratified by The Dred Scott decision.

As I noted in the in the first chapter and the introduction, the packing of the Taney Court would become Jackson's most enduring contribution to the development of the nation. In his thirty-year tenure, Taney alone would reshape the structures and institutions of the new nation along Jacksonian lines. *Prigg* expanded the security infrastructure of the state by identifying enslavement as a central component of American democracy. In doing so, Justice Story and the Court paved the way for the rapidly developing slave patrol infrastructure that had already developed in states with high populations of enslaved people like South Carolina and Virginia (Hadden, 2001, pp. 210–211). The Judicial nationalism of Justice Story had placed the apprehension of enslaved people within the scope of the Commerce Clause, and as a result had made it the sole province of Congress.

The decision was met with immediate pushback from the anti-slavery states. In 1843 Massachusetts, Vermont, and Ohio all passed laws forbidding state officials from participating in the process and forbade the use of state resources to aid the federal

government. Pennsylvania followed suit in 1847, as did Rhode Island in 1848. Abolitionists in Northern States organized resistance to slave possess and thwarted the southern slave owner's attempts to kidnap free Black people in their state (Maltz, 2008). The McClintock Riot of 1847 was one of the largest uprisings in response to *Prigg.* The revolt erupted during the proceedings of a *habeas corpus* case for two people accused of being run away from Carolina. A fight broke out in the Court room which spilled out into the streets of Carlisle, Pennsylvania. 35 people were arrested, only one white man a Dickinson College language professor named John McClintock. McClintock was an avowed abolitionist and had been involved in the movement since 1841. After the riot, he was dismissed from Dickinson, for being an abolitionist, even as he was found to be innocent of charges of rioting (Slotten, 2000).

The public pushback against the *Prigg* decision prompted Southern Democrats to begin pushing for separation from the North. In their argument the Mason Dixon compromise had created a power differential in favor of the Northern states. The annexation of Texas and the acquisition of California in the Mexican American war had exacerbated the problem as each contained territory on both sides of the 36° 30 lines. Both sections of the US wanted to add these massive tracts of land to their power base. These acquisitions amounted to a half of the land acquired by the US since the Revolution (Campbell 1968).[31] Several senators from both sections of the country had sponsored compromise bills to remedy the situation, but none had made it out of debate. Henry Clay pulled the fragments of those bills together into the Compromise of 1850. (Campbell, 1968).

Clay's plan to remedy the balance of power between the pro-slavery and abolitionist states contained six key points. California would be admitted as a free state as would the remainder of the territory ceded in by Mexico in the war. As Texas was entering of its own accord, it would be broken into smaller territories with all territories above the 36°30 being free territory, and everything below being open to enslavement. The US would assume Texas' public debts, and DC would not abolish slavery without

[31] by 1850 the United States had acquired approximately 2,373,046 square miles of the continent. The territories ceded by Mexico after the invasion was surveyed at 1,764,023 square miles. *Congressional Globe Senate, 31st Congress, 1st Session pg. 452.*

compensating the owners and the express permission of the state of Maryland. The final provision of the compromise was a direct result of *Prigg* and called for a more stringent fugitive slave law (Campbell, 1968 pp. 5-6).

The southern Democrats led largely by senator Calhoun, who's health was failing him by this time. He could not stand long enough to give his speech, and instead it was read aloud to the gallery on his behalf. Calhoun cited the abolitionists, operating at the behest of British abolitionists were attempting to overthrow the social regime of the south by agitating the enslaved population.[32] He cited the history of the organized abolitionist movement beginning with the Mail Crisis of 1835. The abolitionist movement from that moment had been consistently agitating the enslaved people of the south to rise. It was because of this movement, and its corollary Underground Railroad that enslaved people were leaving their plantations and trying to get to northern states. More perniciously, he argued, abolitionist elements had taken over the state congresses of the north. They had used this power to enact laws unfavorable to slavery at the national level, but as with Massachusetts, Pennsylvania, and Rhode Island above, had made it impossible for southern slavers to travel with their enslaved entourage. Beyond this, the movement was organizing average northerners against the south using enslaved people as a ruse for the Northern section to expand its power. As a result, he argued for separation of the two sections of the country and a return to a confederated style of government based on individual state sovereignty.[33]

The abolitionist movement in the United States had grown considerably since its first brush with English abolitionists in the war of 1812. By 1850, there were three distinct schools of abolitionist action. The Christian church began the first movements towards abolition during the colonial period. The earliest anti- slavery tracts began emerging in 1700's. In 1700, Samuel Seawall, a puritan minister who was involved in the Salem witch burnings, had come to regret his role, He was appalled at the rise of slavery, violence, and warfare in the Massachusetts Colony, and wrote a tract against slavery in 1700, *The Selling of Joseph,* in which he invoked biblical injunctions against kidnapping,

[32] *Congressional Globe Senate 31st Congress 1st Session pg. 452*
[33] *Congressional Globe Senate 31st Congress 1st Session pg. 452*

and refuted the myth that Africans are descendants of Noah's errant son Ham (Sinha, 2016). This tradition would continue in the Quaker movement in Pennsylvania. By 1850, multiple tracts cataloging the "sin of slavery" had been produced and smuggled into the South for distribution by abolitionist churches, working their way around mail censorship to press the Christian cause of abolition to southern churches.

By 1850, William Lloyd Garrison, and *the Liberation,* comprised another school of abolitionism, based in agitation for the abolition of slavery at the federal level. The. Political abolitionist movement, hosted meetings, public speaking events, and plied elected official for a change in the laws. Garrison and Benjamin Lundy would use *the Liberator* to push for the full and emancipation of all enslaved people within the United States. They formed the American anti-Slavery society in 1833, and by 1850 had chapters in every major metropolitan area in the north and DC (Lowance, 2000). They excerpted considerable influence in Washington and represented the strongest political force of abolition work at the time. It was through their connections to the state houses of Massachusetts, Vermont, Ohio, and other states had passed laws forbidding the use of state infrastructure to aid the Federal government in apprehension post *Prigg* (Maltz 200b; pg. 86-87).

Anti-Slavery violence, or so the called radical abolition movement took its cue from the Haitian Revolution and the numerous uprisings that had taken place in the US such as the German Coast uprising and the McClintock Riot. Northern abolitionists would play on. The fears of southern owners by giving incendiary public lectures on the life of Toussaint Louverture, evoking the specter of the uprising as a warning to southern slave owners. The owners themselves citing examples of "foreign agents" such as the Royal Caribbean Battalion waging guerrilla campaigns and arming freed Africans. The fear of a second Haiti in the American South would be cited on the eve of the Civil War, as we will see below, in the trial of John Brown (Clavin, 2010).

The Underground Railroad operated within this network of abolitionist action providing safe houses, food, and passage to free states who, according to Sen. Calhoun, were flaunting their constitutional responsibilities and refusing to return them.[34] The

[34] *Congressional Globe Senate 31st Congress 1st Session pg. 452*

Fugitive Slave Act of 1850 was intended to combat the organizational prowess of the abolitionist movement by arresting their activity at every level. In place of the general affidavit system utilized by federal courts under the 1793 Act, the 1850 act put in place a large-scale bureaucratic engine designed to surveillance, apprehend, and return enslaved people to the plantation system. Section one charged the federal courts, commissioners, and territorial commissioners with the adjudication of fleeing enslaved people. The existing territories would organize commissioners to enforce the act in their respective regions. It created new commissioner positions in the states and territories to further enforcement measures.[35]

The bill further enjoined the US Marshall's to enforce the act. This expanded their mandate from the Judicial Act of 1789.[36] The Marshall's policing power was expanded to cover both the capture of refugees from slavery, they were responsible for the execution of all warrants issuing from the act, including violations of section seven which forbade civilians from interfering with the arrest of refugees. Abolitionists arrested under the act were fined on me thousand dollars and six months imprisonment for in any way aiding a refugee.[37]

While the Compromise of 1850, and the fateful execution of the Fugitive Slave Act, would become the key rally cries of the southern states. Georgia would convene a special Caucasus declaring the 1850 act and its enforcement to be the only sure way of holding the two sections of the country together under the Federal Constitution. Other States would follow suit soon after (Maltz, 2008; pp. 88-89). While the act would hold the union together as a matter of law, the backlash against it from abolitionists and the Northern states would drive a permanent cleft between the north and the south that would not be resolved until the end of the Civil War. In the decade of enforcement of the 1850 act, as we will see below, they Taney Court would again have to define the nature of federalism, and the central role that property and police played in maintaining that system. *Dred*

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[35] *Fugitive Slave Act of 1850 Section 1-3* Yale Law Library Online Accessed My 21, 2022. Stable Link: https://avalon.law.yale.edu/19th_century/fugitive.asp

[36] *ibid. Section 3-4. See Also Judiciary Act of 1789 First Congress 1st 1789 pg. 89.*

[37] ibid section 7-8.

Scott v Stanford (1857) and *Ableman v Booth (1859)* would require the Court to weigh in on the philosophy and tactics of the Abolitionist movement.

IV. The Architect of a Nation

Taney became one of Jackson's most trusted advisors through his deft handling of the administrative state. As the Attorney General and Treasury Secretary Taney had utilized the limited control over the Bank policy that the president had to great effect. First, by withdrawing federal deposits and redistributing the funds across the state bank, Taney was able to break the bank's control over financial markets. Second, he used the veto power to negate Congress, ending its charter and effective killing the US Bank and destabilizing currency value. Jackson trusted his counsel even more after he sided with him during the Nullification Crisis and upheld the legal authority of the union. AG Taney felt strongly that the federalist system was the best system able to manage the common interests of the state such as defense (Tyler, 1876; pp 186-187).

It would be as Chief Justice that Taney would make his most lasting contributions to the nature and structure of Jacksonian nationalism. Taney would ensconce states' rights into the federalist legal framework through the police power. In doing so he would refine Marshall's understanding of both the police power and nationalism. Story, an old-line federal nationalist like John Marshall, would use the structure of the administrative state to federalize the policing of both Native and African subjects. Fugitivity, as was seen above, was made a federal manner in *Prigg* which resulted in a blowback of policy in abolitionist states refusing aid to federal Marshals. Taney himself would be more careful in his application and use of federal authority. He would articulate a vision of state-based federalism in *Charles River Bridge Co.,* and he would utilize this structure to adjudicate the questions of Indigenous sovereignty and human enslavement. In doing so, he would build a legal structure of power and authority in the federalist system still operative today.

Taney sets out the importance of private ownership to American federalism in *Charles River Bridge v. Warren Bridge (1837).* Much of Taney's ire for aboriginal title was not due to specific ire towards Native populations in the Southern Territories, so

much as it was a principled belief in territorial sovereignty and private property. Specifically, Taney valorized private property as the linchpin of state power. In Charles River Bridge, he sets up a distinct relationship between the individual states and their constituents based on the former's power over the latter's property inside their territorial bounds. This relationship he, he argued was sacrosanct to the social compact, and therefore could not be within the bounds of the federal legislature to violate. The relationship between territory and property was an aggregate relationship for Taney's deep anti-federalist sentiments. It would be these three things that would come to define the court's relationship to the governing authority of the Federal System.

> "It is admitted that the right of eminent domain is an incident of sovereignty and cannot be alienated. And it is also admitted that all the property of the citizens of the state is liable to the exercise of this paramount authority. No matter by what title it is held, it is alike subject to be taken for public use. The exercise of this power, however, is restricted by an express provision in the state constitution, that compensation shall be made. This fundamental law is inserted in the constitution of the United States, as well as in that of many of the states; and the following cases show how fully this principle has been recognized and acted upon, by the judicial tribunals of the country." (Charles River Bridge v Warren Bridge, 1837; 420)

Individuals managed private property that was allowed by the states. From its territorial holdings. Sovereignty became an aggregation of power from below such that the federal government was there to ensure that states did not unduly burden private ownership, and states ensured that private enterprise did not unduly burden the public good. Outside of administering property relationships between territories, the constitution did not apply. When it did apply, the issue was most often taken up by and forbidden in individual state constitutions again rendering federal intervention moot.[38] It would be this understanding of the natural relationship between the state and individual property that

[38] *ibid.* See also *Prigg v. Penn, Dred Scott v Stanford.*

would guide Taney's understanding of both Indigenous and Black belonging in the budding American nation. The principles of property and state sovereignty that Taney sets up in *Charles River Co.,* would ultimately come to define his understanding of citizenship, personhood, and the role of law in stabilizing these social features. Taney would continue to apply the Charles bridge principles to questions of Native sovereignty and the enslavement African people.

The Taney Court's schema of federalism, in which private property building into state territorial sovereignty, which itself mediates the authority of the federal government wrote out Indigenous sovereignty and aboriginal title to the land. Taney himself would double down on the Court's doctrine of Christian discovery provided by the previous court*,* by expanding the spoils of discovery to include the lives and legality of conquered peoples in *Rogers.* He would also utilize this schema to valorize and protect slave ownership in the southern states. In doing so, the Taney court both valorized and stratified the racial nature of property and ownership. While Charles River sets up a distinct system of membership on the American nation based on property ownership protected by state law and the constitution. In its handling of the slavery question, however the Court ensured people of African descent remained permanently removed from the schema of ownership and membership.

United States v Rogers (1846) offered up the Court's first chance to address Native sovereignty under Taney. In R*ogers,* Taney fully develops the legal sovereignty axis of the inherent power's doctrine. In a strong reassertion of both Christian discovery and powers inherent to sovereign nations, Roger Taney denies the legal authority of Native nations, by asserting that domestic dependent nations were in fact legally dependent on the host nation and the various state departments rather than having a distinct legality of their own. (US v Rogers, 1846; pg. 567) The lack of territorial autonomy necessitated a lack of legal authority, Taney finds siding with Baldwin and Johnson in Cherokee Nations. This absence of authority made domestic dependent nations reliant on the US and the various states for legality, precisely because these were the governing bodies of the territories in which they resided.

Taney further struck down the federal system of Native legality by asserting that Native peoples were residents of either states or territories of the United States and are

subject to the laws and processes of those states and territories as any other resident is. In Rogers, the Taney court closed the door on both territorial and legal sovereignty by asserting the primacy of the federalist republic and its laws. It further placed Native people in a grey area of legality in the form of a domestic dependent nation. While these cases all recognize the need for treaty making with Native nations, none of these cases recognize the capacity of Native people for legality on the level of American constitutionalism. As such, the Court centers whiteness in relation to territoriality in at least two ways.

First, as can be seen in the Marshall trilogy, the concepts of territory and government are inextricably linked to the presence of European preferences for law in interstate relations. Marshall goes to great pains to separate Native nations from the civilized nations of the world, and thus from the capacity to conceive of and administer territorial governance on the level of European conquerors (MORETON-ROBINSON, 2015). By rendering Native inhabitants invisible geographically, namely asserting that they at no point exercised any administrative authority over the land, lacked development and use of the territory, and their "savage and uncivilized ways" making them unfit for civil life, Marshall removed Native lives from the veil of legality precisely in order to exercise legal authority over their territory. Further, this geographic erasure was coupled with a legal erasure as well as seen in both the Baldwin Concurrence and *Rogers.* By ignoring the Native nations capacity for law and treaty making the Court fully erases all other forms of authority in the new nation's holdings but its own. While the questions of state versus federal management of the territory and its inhabitants remains to this day, The question of plenary power, as it appeared in the antebellum Court fully imbued the expanding nation with both territory and sole legal authority over it. The question going forward for the court would be the role and extent of ownership and property in the rubric of national law.

Dred Scott further expounded on the racial property highlighted by Justice Story in *Prigg.* Taney removed people of African descent from the pale of American la*w.* In answering the question of standing, the court finds that people African slaves and their descendants had no standing before the federal court as they were not legal citizens of the United States but as a matter of both state and federal law were property and had no

standing before the court. African people, Taney reasoned were the subjects but not citizens of their respective state, meaning they were subject to the laws off their respective stews but were not citizens. As such, they had no legal standing outside of their master, and could not press cases in federal court.

> "We think they are not, and that they are not included, and were not intended to be included, under the word "citizens" in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States. On the contrary, they were at that time considered as a subordinate and inferior class of beings who had been subjugated by the dominant race…" (Dred Scott v. Sandford, 1856; pp. 393)

Scott's lack of standing, Taney surmised, was a direct result of his African origins. Black people, as a race, Taney Argued, were seen by the founders as too inferior to be full citizens rather were seen as a permanent workforce, incapable of being civilized, thus were permanently subordinate to the dominant race. contrasting the situation of Africans living in the Americas with Indigenous inhabitants, Taney finds that there were many similarities between the two groups. Native and African Peoples, Taney finds, are both distinct from white Americans with different culture, behavior, and languages. Further he finds, they are both backwards and superstitious people who merely inhabit the territory (Dred Scott v. Sandford 1856; pp 409).

The Court then identifies crucial differences between Native and African peoples, which relegated the latter permanently at the bottom of the emerging hierarchy. Whereas Native peoples were regarded as a "noble people with their own laws and customs" with whom the US had engaged in treaty relationships with, Africans were a conquered people imported for the purposes of labor. They possessed no law or custom to speak of other than the laws and customs that affected them as enslaved people in the United States. The United States had not engaged in legal relations with Africans as equals, rather had purchased them as property. As such, unlike Native peoples who could be incorporated into white society though property ownership and "…living with whites and taking up their ways", African people were seen as outside of the law and incapable of participating

in white society as a matter of historical record. Thus the Court applied a distinct notion of enmity to African and Indigenous people which cast them as perennially outside of and incommensurate with the foundations of American Law.

The Court found that African people were always viewed as inferior and incapable of full citizenship. Native peoples were here as sovereign entities before the arrival of white people. This was not true of African peoples. They were imported as merchandise and were subject to the laws of commerce rather than people. As such, Taney finds, whereas social laws and customs were written to incorporate Native peoples into the US system, African people were written out of social life. *Durante Vida* laws, Taney finds, began to proliferate in the various colonies. These laws specifically wrote African people out of normal social arrangements and placed them firmly in the law of slavery for the duration of their life. The first of these laws emerging in Maryland in 1705, not only relegated Black bodies to perpetual labor in the form of chattel slavery, but it also further separated African people from social life by outlawing interracial marriage. These laws emerged in 1705 and were on the statutes in free states as late as 1836.

> "…the law of 1705, forbids the marriage of any white person with any negro, Indian, or Mulatto, and inflicts a penalty of fifty pounds upon anyone who shall join them in marriage, and declares all such marriage absolutely null and void, and degrades thus the unhappy issue of the marriage by fixing upon it the stain of bastardy. And this mark of degradation was renewed, and again impressed upon the race, in the careful and deliberate preparation of their revised code published in 1836. This code forbids any person from joining in marriage any white person with any Indian, negro, or Mulatto, and subjects the party who shall offend in this respect to imprisonment not exceeding six months in the common jail or to hard labor, and to a fine of not less than fifty nor more than two hundred dollars, and, like the law of 1786, it declares the marriage to be absolutely null and void. It will be seen that the punishment is increased by the code upon the person who shall marry them, by adding imprisonment to a pecuniary penalty." (Dred Scott v Sandford 1857; pg.483).

As such a natural racial hierarchy emerges around property. Namely access property, or the capacity to administer and develop a piece of land, comes to define social positioning in Taney's federalist vision, and this access is determined by a racial divide with Europeans and their descendants controlling and managing the territory of the US, as we saw in *Charles River Bridge (1837)*. The rights over property are absolute and must be protected by the federal system as we found in *Prigg.* The Taney court then develops a racial hierarchy based on access in which Native peoples possessed the possibility of property ownership, thus they were viewed as capable of citizenship, whereas African people were permanently relegated to a permanent position of property devoid of any agency under American law.

IV. "The Dark Continent of American Law"[39]

Taney would also fully refine the police power of the federal government focusing it on African and Indigenous people, as well as the abolition movement. The Court began the process of refining the police power directly in two cases, *New York v. Miln (1837)* and *the License Cases (1847).* In Miln 1824n NY passed a law requiring Ship masters to report a list of all passengers on Bord. George Miln, ship master of the Emily refused to do so and was fined $15000. Miln sought relief in the federal courts arguing that the law overstepped the Commerce Clause. *The License Cases* were three cases *Thurlow v. Massachusetts, Fletcher v. Rhode Island, and Peirce v. New Hampshire* each dealt with the state's capacity to regulate the sale of liquor. The cases were combined in 1847 and taken up by the Court as the "License Cases" In these three rulings with no clear majority in each, the Court oddly reached a unanimous decision that the power to regulate the sale of alcohol was a function of a state's police authority, and tantamount to its sovereignty.

These two cases would refine federal authority by severely limiting it and weaving the police power into the concept of state sovereignty. In doing so, they set the stage for the expansions of federal police authority in *Prigg, Dred Scott, and Rogers.* In this last section I would like to pull those cases together into a meaningful idea of police

[39] License Cases, 46 U.S. 504 (1847)

authority and power, as it developed in the early court, culminating in Taney's final ruling from the court, Ex *Parte Merryman (1861).* John Merryman was a slaver in Baltimore who was arrested as a confederate operative and held without bail or trial as a prisoner of war. Merryman sought and was granted habaes corpus by the Court, citing that only congress had the authority to suspend the rule of law during wartime.

Property, as I traced out above has a sacrosanct quality in American law. White property, as Morten Robinson and Harris remind us, is a linchpin assumption of both whiteness and legality. Central to this, I argue is the conception of security, or the power of the state to protect and defend the territoriality of law. The concept of police power in American law emerges as a general right to police or monitor and control the goods and people entering their borders. This power is developed in the early court to become the hallmark of state sovereignty, appearing most often as a wedge against federal regulation through the Commerce Clause (Gibbons v Ogden, 1824). Questions of policing also emerge during this era, specifically in enforcement questions pertaining to *Rogers* and *Prigg*, these question and their racial underpinnings come to define the concept of police in such a way as to blur the line between criminal and economic policing, especially regarding Black and Indigenous subjects living in the US.

The question of police power emerges at the matrix for territory and property for the early Court. While initially viewed as a general power to regulate and license reserved to the states in *Gibbons v. Ogden (1824).* While police power wouldn't be specifically defined until *Brown v. Maryland (1827)*, the Court first considered the question of police power in *Gibbons.* At question for the Court was licensing capacities under the new Constitution. Marshall quickly notes that the licenses in covered the river traffic between states. As Such, he found, the federal license superseded state license as they fell within the capacity of Congress to regulate interstate commerce.

The constitution authorizes Congress to direct the flow of goods and people between the states. This required congress to make rules governing the navigation and transport of goods between states via river. This power is best understood as the power to regulate (Gibbons v. Ogden, 1824, pp. 210). Police Power, Marshall offers, is the power of states to govern internal commerce, people, and traffic. Congressional authority cannot override the police power of a state, or the purely internal relationships that comprise it,

rather it can only speak to the commercial relationships between states, and even then, there are limitations on that power in re state police power. Slavery, the court finds, citing the 1808 ban on importing enslaved people, Marshall notes hasty while Congress has the authority to ban the importation of slaves from foreign ports, it does not have the authority to ban the trading and/or employment of enslaved people across state lines. This power was reserved to state laws governing the possession of people for labor, as a function of the state's power to govern its subjects without federal interference (Gibbons v Ogden, 1824; 208-209).

The police power of states would be further refined by the Marshall court in *Brown v Maryland (1827).* At question for the Court was the difference between the regulatory power of the individual states to prohibit and remove dangerous articles, and the power of Congress to levy taxes and duties on imports. Maryland placed an extra tax on imported liquors and other goods to generate revenue and protect the state economy. The Court found that this was an overreach of their police power, because only congress could tax foreign goods, and once taxes had been paid on imported property, they were in effect no longer distant from the importer's extant property (Brown v Maryland, 1827; 446-448).

The police power of the state, as Marshall identifies it here becomes the capacity to not only regulate but prohibit certain articles from entering its boundaries. This included, but was not limited to goods, services and people. The state further has the capacity to mitigate the presence of harmful agents within its borders through the taxation of intrastate trade, the state power of taxation, the court finds ends at its borders, whereas Congress' authority to regulate and tax governed both interstate and foreign commerce including taxation for the territory, this included war making capacities, treaty authorizations, and the power to levy duties.

As we saw above in our analysis of the Marshall trilogy, the federal capacity to direct all relationships with foreign governments and entities, would further exacerbate the question of federal vs state regulation of aboriginal title. As I pointed out, the unpopularity of the *Worcester (1832)* decision lay largely in the fact that it stripped states of the capacity to police the Native peoples within their territory, namely, to forcibly remove the Cherokee people from Georgia. The System of domestic dependance put in place by the Marshall Court in *Cherokee Nations* and *Worcester* placed regulatory

authority firmly in the hands of the federal government. This power, as with the states capacity to regulate dangerous agents within its own borders, was a "complete and plenary power" over Native peoples living in the territorial boundaries of the US (Cherokee Nations V. Georgia. 1931)

Worcester closed the door on state authority over Native peoples and lands, even within their borders. At question in the case was the states capacity to give licenses to missionary groups living and working in Cherokee lands. Worcester and other missionaries were arrested for residing in Cherokee lands in Georgia without a license or an oath of loyalty from the state. The Marshall court sided with the missionaries, finding that it was not within the capacity of the state to regulate interactions between citizens and Native tribes, rather only the national government could regulate these dealings as Native peoples were independent sovereigns dependent on federal rather than state recognition. (Worcester v. Georgia, 1831)

The decision sought to end state involvement in forceable relocation to curtail it. The decision was met with contempt from the Jackson administration and was not adhered to. State militias continued to control and direct the dispossession of Native peoples in the nation's southern holdings. Jackson's now famous response to *Worcester* was "…Marshall has made his ruling, now let *him come* and enforce it (Opal, 2017). In truth, The decision was so wildly unpopular with the Jackson administration, one of Taney's central tasks on the court was to shore up police power in the face of federal regulatory authority(Huebner, 2003).

The first foray into police power for the Taney Court would be *Miln v. New York (1837).* At question before the Court was New York's capacity to require that all passenger ships clearly identify passengers and their places of origin. Relief was sought in the case, as the NY statute violated the commerce clause and sought to regulate both interstate trade and trade with foreign nations. The Court disagreed. As Barbour found for the Court, the power of New York to regulate entry into its territory was a power that predated the constitution. Drawing on Vattal, Justice Barbour finds that that sovereign control over its boundaries is a hallmark of western law. The police power, he finds cannot be diminished by federal regulation of commerce.

Central to the question of police power, for justice harbor is the capacity to govern populations within their borders. This especially includes the capacity of a state to restrict entrance. Justice Barbor notes that the limitations of regulatory authority are derived directly from previous cases, noting that *Ogden* dealt with navigable water between states, but limited the federal governments capacity to regulate at the State's borders. *Brown* revolved around the states capacity to levy duties but left questions of intrastate taxation and commercial policy completely in the hands of states. The flow of people within a state's borders too was a hallmark of legal sovereignty and thus could not be augmented or curtailed under the constitutional system Worcester v. Georgia, 1832; pp 130-132).

The overriding power of states to police their populations would be expanded by the Taney Court to draw boundaries around both Black and Indigenous subjects, rendering them the sole province of state authority. More fully developing the system of Federalism laid down in *Charles River Bridge Co.* (1837) Taney would develop a rubric of police power that brought these populations firmly under the sovereign governance of individual states with federal authority acting only to maintain existing legal relationships of dependency and property in place between states.

As we saw above, Taney immediately moved to limit federal authority in almost every area of law. This was especially true regarding questions of ownership and sovereignty regarding Native and enslaved people. In R*ogers,* Taney himself moves rather quickly to destabilize Indigenous legality. He further moved to remove Native peoples from the pale of federal authority all together. As he notes, while it is the federal Government's constitutional responsibility to make treaties with domestic dependent nations. They are then subject to the states and their various laws, as the states are the recognized governing authority. As such, not only were Native territories subject to federal administrative authority regarding territorial holdings, but Native peoples were also legal citizens of the territories there resided in and were therefore subject to the laws and regulations of the state they reside. Neither federal nor their own legal systems could supersede state authority, rather federal authority existed to ensure the smooth operation of law between states (US v. Rogers, 1846).

Prigg, too, shifted the balance of police power, by ensuring that enslaved African people were viewed as the legal subjects of the state they were enslaved in. Here the meaning of the commerce clause is driven to near breakage, as the Court seeks to ensure the sanctity of the state's capacity to dictate the laws of property, and the federal government's responsibility to uphold the laws of another state. In addition to freeing Prigg for kidnapping, the court also brought the federal government into direct subservience to state sovereignty and the police power. As Taney found, it was the role of the federal government to ensure the safe return of "fugitives from labor". This clause required the federal government to directly intervene in the apprehension and return of enslaved people to the plantation that purchased them. Whereas the question of fugitively and return had only been handled in the most general terms by the Fugitive from labor clause and previous administrations, with Washington only getting the Fugitive slave act of 1793 passed only after considerable pressure from southern states, Taney brings the question into direct federal oversight, by making this mandate material rather than general (Prigg v Pennsylvania, 1842; pp 542-543).

As he points out, as the return of "fugitives from labor" is a Black letter function of the constitution, it requires actual material oversight from the federal government. This means that both the federal courts and the executive branch were directly implicated in the apprehension and return of liberated Black people. The Court's decision would prompt the revamping of the "Fugitive Slave Act" in 1850, and as we will saw, opened the gates on federal law enforcement agencies by directing the US Marshals to apprehend and return freed Black people. (Huebner, 2003)What emerged from *Prigg (1842)* was a Federalized system of policing Black bodies in which local militias, slave patrols and court's policed the life of Black people within the territorial boundaries of each state, and the Federal government regulated their movement across state boundaries.(Hadden, 2001)This system of police would be fully valorized in the *License Cases (1847),* where the court defined the police power as the hallmark of state sovereignty, which the federal government was constitutionally bound to observe and protect (License Cases, 1847; pp. 504).

While Taney's vision of federalism limited federal authority severely and relegated most of the police power over to the states, the Court did not fully dispense with federal

police authority all together. As a direct result of the Fugitive Slave act of 1850, abolitionists began sabotaging Marshall's efforts to enforce the Act. In 1854 in Racine, Wisconsin a refugee from Missouri named Joshua Glover was apprehended by US District Judge Andrew G. Miller, two Deputy US Marshals and their four assistants. On March 11, 1852, a large crowd gathered outside the jail and demanded Glover's release, citing the Kansas Nebraska Act.[40]

Sherman M. Booth, an abolitionist, newspaper owner, and printer, rushed to the scene of the protest urging his fellow Milwaukeeans to come to Glover's aid. "A man's liberty is at stake! Freeman must come to the rescue (Maltz, 2008; pp. 88-90). Once on the scene Booth immediately set about organizing a vigilance committee to make sure that Glover was not removed from the state and pressed the Wisconsin Supreme Court for a writ of *habaes corpus.* The writ was directed at the local sheriff, Herman Page. Page informed Booth that he needed a writ for the Federal Marshall who was detaining Glover, Charles Cotton. Cotton ignored the writ, and the crowd broke into the jail and freed Glover, who absconded with Booth to Canada. Booth was chartered with violating the Fugitive Slave Act by Cotton and was convicted. He appealed his decision to the court, who flatly denied his position that the Act was unconstitutional and therefore unenforceable (Maltz 2008).

Chief Justice Taney would rely on his prowess as an administrative lawyer to chastise the Wisconsin Court for attempting to nullify *Prigg*, which they lacked the legal authority to do under the constitution. As he finds, the structure of federalism is such that the Court's rulings are the final word in federal law. the Wisconsin Court has a legal right and interest in deciding the constitutionality of state laws, but the constitutionality of the Fugitive Slave act was strictly a matter for the Supreme Court, who had already authorized its constitutionality in both Prigg and Dred Scott. As he had argued as the Attorney General, federal authority, while extremely limited by state bower, still

[40] The Nebraska-Kansas Act of 1854 repealed the Missouri Compromise by allowing the two states to enter the union with or without slavery based on the state's constitutions rather than the 36°30 line. This triggered the event known as bloody Kansas, a skirmish between pro and anti-slavery forces moving into the state to sway the vote. It was understood by abolitionists that the act had nullified all previous compromises, but this was untrue. See Maltz, 2008 pp. 89-90.

maintained jurisdiction over the general laws that affected the United States. The Fugitive Slave Act of 1850 was part of Congress' constitutional obligation to pass laws that both regulated interstate traffic and protected the private property of individuals (Ableman v. Booth, 1859).

Ableman had the effect of ensconcing furtive slave apprehension into federal law. It made the right of property incumbent on all states and ensured that the struggling institution of human slavery would continue unabated until the Civil War. *Ableman* served as Taney's final word on the policing of private property by both state and federal authorities. It bolstered the dense network of city guard, patrols, and militia that were used to apprehend free Black people in the United States until Reconstruction policies began after the war. Abolitionist elements in the federal government vastly outnumbered the southern democrats after the failed rebellion, and the Civil war amendments ended chattel slavery in the US excepting as criminal punishment.

Taney would have a deep impact on the concept of police, by retooling existing militia infrastructure into a fully evolved regime of capture and resale of free Black people to southern plantations. by opening space in the constitutional schema for the federal government to directly impact state police policy, Taney would blur the line between state police power and federal regulatory control. In doing so he would develop a rudiments police framework that sought to smooth state and federal interactions around the enforcement of federal law. Whereas Jackson's use of the militia continually rested on military action to combat public enemies, Taney would use the organs of administrative law to refashion the bureaucratic violence of the Jacksonian state into a thoroughly efficient means of capturing and incarcerating public threats.

Taney's rudimentary system of federalized policing of free Black people, would alter the understanding of public power in the United States. As we will see in the next section, Police functionaries such as Alan Pinkerton and Andrew Comstock, will expand the concept and infrastructure of police to combat new public enemies. Pinkerton would use this infrastructure to forge the Pinkerton Detective Agency, which would become a trusted model of national investigation against immigrants and the working poor. Anthony Comstock would again reorganize this model to bring

federal and local forces in line with each other and create a national network of censorship against queerness and contraceptives.

CHAPTER 5. REPRODUCING THE NATION

In the above, I have highlighted the role of racial enmity in directing public policy, in both the executive and the judiciary. I have also attempted to draw out how this enmity took on a public character. I argued that this was done by generating a near mythical image of the frontier General, and concomitantly the presentation of native presence in the southern territories as a dire threat to and perineal enemy of the American nation. I have shown the pathways by which this legend emerged in no small way infected the Court, through Jackson's careful replacement of constitutional nationalists with Jacksonian loyalists. I have argued that Roger B. Taney took it upon himself to continue that legacy, and in doing so, levied the racial enmity to present free Africans and abolitionism as detrimental to the legal foundations of the nation. In both cases, I have argued that this racial enmity becomes public, or state based, precisely at the point at which it is taken up by state actors as a means of driving state development, specifically security infrastructure in the Jacksonian era. In this, I have argued is the creation of larger-than-life characters to populate a threat narrative, which in turn supports the demand for internal security structures. Tacit in this is the development of a national identity, through which white American settlers learned to see themselves in an eternal struggle against forces hostile to progress and democracy.

I have also highlighted three salient features of public enmity. First, I have pointed to its narrative/cultural character. I have presented public enmity as something that emerges alongside American national identity in the Jacksonian period. In doing so, I have attempted to show the deep exchange between public projects such as militia development and the racial enmity of the period. I presented this in the form of narratives that emerged in the public press as during Jackson's candidacy. Secondly, I have shown the public nature of enmity in the debates on the limits of legal responsibility for Native Peoples, and how a national animosity towards their presence was ensconced in American jurisprudence. Jackson's enmity towards native peoples, was taken up by the Court in both the judicial nationalism of the Marshall Court and the anti-abolitionism of the Taney Court. It is through the exchange between the cultural, political, and legal forms of enmity that I argue, thirdly, that public enmity becomes sedimented in the

national identity. It does so, by presenting the American settler subject as both surrounded and contaminated with hostile elements. As such, the American state appears a noble unfolding of freedom against the ravages of human backwardness.

While doing this I have gestured towards sexuality and gender as areas of American culture that have been thoroughly imbued with a narrative of public enmity, and how this narrative too became ensconced in law, during the Jacksonian period. I have done so by pointing to a persistent narrative of sexual barbarism in narratives of the Haitian revolution, Maroon and Indigenous uprisings, and plantation revolts. I have also gestured towards an image of the American family that developed during this period, and its weapons action against native and African people on both the Seminole wars, and the removal program of 1833. In closing this dissertation, I would like to bring these two loose threads together and posit a reading of enmity as it is applied to the sexual other.

I am concluding with this for two reasons. First because there is an obvious connection between the two as Victorian sexual morality and the science that buttressed it both arose out of racial science and the image of American identity that emerged from its hierarchy of difference (Terry, 1999). Second, because as we have seen with racial enmity above, the policing of sexual minorities today has its roots in the sexual science and legal development of the Jacksonian period as well. The remainder of this conclusion will then be broken into two parts. First, I will provide a short theoretical overview of reading race and sexuality as concomitant values of American identity. Then, I will provide a trace of moral/political crisis that sexuality posed for national identity, and the legal framework put in place to valorize the American family.

I. Salient Features of Public Enmity

Before positing other avenues of public life where enmity has been used to develop a discourse of security and surveillance, I would like to briefly sketch out some of the salient, enduring aspects of discourses of public enmity. As I mentioned in the introduction public enmity manifests itself as a conceptual relationship of political belonging that carries the power of law (Cornell et al., 1992; de Sousa Santos, 2007). I mentioned that these discourses tend to emerge in times of crises as a means of signifying

the growth of grotesque discourses of power, which purport to manage the physical presence of Black and Indigenous subjects in Jacksonian America.[41] I would like to pull these traits together into an operational schema of enmity before applying it outside of racial hierarchy.

As I mentioned above, public enmity is a relationship of legal animosity. I have referred to the stratification of racial classifications in the law in the Jackson Administration and the Taney court and shown how these categories have enduring characteristics that dictate the terms of legality before the fact. We see this several times in Jackson's career. First, in his handling of Black and Indigenous subjects under his supervision during the Battle of New Orleans and during the Seminole War when he was a military judge. Jackson considered both Native and Maroon groups to be openly hostile to American Law, thus outside of its bounds. This left them subject to the full force of the American military.

It was during these hearings that line of racial enmity was used to delineate legal responsibilities between civilized and "savage" nations. As we saw above, Jackson himself had already maintained a doctrine of total sovereignty over Native people living in US borders. Congress seems to pick up Jackson's understanding of total sovereignty over native peoples. Congress found that there was a gap in constitutional law that Native peoples fell into as nations who did not respect the laws of civilized warfare. As such, Congress effectively places Native peoples beyond the pale of legal protection as they refused to honor the sanctity of American borders and American settlements, even as these settlements crossed treaty lines.

Native people were seen as both a cultural and a material threat in this regard. On the one hand, their presence on their ancestral land threatened the development of the territory into property to be parceled and sold to white settlers for development. Their presence was a threat because their use of the land ran counter to the emerging understanding of property ownership and democratic participation that was developing in

[41] Foucault identifies "grotesque discourses" as a specific form of political violence. These discourses are usually built on caricatures of marginalized classes, are incorrect about their subject matter to the point of being laughably inadequate, are typically found emanating from institutions of power, and carry the power of life and death (Foucault et al., 2003).

the new nation. The communal use of land as an open space ran directly counter to the emerging understanding of individual citizenship to the point that Chief Justice Marshal would reference Native peoples as mere inhabitants of the land, having done nothing to develop it in *M'Intosh.* Their presence as original inhabitant in no small way undermined the blossoming ideology of property, ownership, and democracy in Early America.

On the other hand, Native peoples push back on encroachments on their treaty lands were seen as a material threat to the American nation. These uprisings and raids on illegal settlements were seen as a barrier to further expansion of American democracy as the Southern states understood it. Jackson argued again and again for relocation as a Major General. He argued that it was the only way to ensure the security of American settlements in the southern states on the Campaign trail, galvanizing the southern vote and setting the stage for the early removal program put in place by the state of Georgia. Native protection of their ancestral territory became a material threat to property by first upending the possibility of its expansion, thus drawing into question the sanctity of property itself.

This enmity also emerged around the African subjects imported to the new nation as enslaved labor. As was noted, the fear of a successful uprising in the US began with the success of the Haitian Revolution. As I have shown, enslaved people were viewed as an internal enemy by both abolitionist and slaver alike. Beginning in 1801, after the success of the revolution, city and state militia groups were called up to quell a wildfire of rebellions in various plantations across the south fueling this fear even further. The presence of Maroon communities in Virginia, South Carolina, and Spanish Florida fueled fears of a mass uprising of enslaved Africans and the undoing of the American nation. Jackson's Judge Roger B. Taney would ensconce this fear in law by ensuring the permanent enslavement of Africans in the US to manage this threat until they could be repatriated to Africa.

The Taney Court would utilize the line of racial enmity to expand the infrastructure and capacity of both the militia and the federal court system in order to capture and return free Africans to enslavement. The network of fugitive possess that would develop in the wake of *Prigg* and the resulting restructuring of the fugitive slave act in 1850 would set up a network of policing of Black bodies that encompassed both federal and state

institutions to capture and adjudicate the racial line in the US. This would be further expanded by *Dred Scott* and the end of the Missouri Compromise, ensuring that fugitives could be captured in free states unimpeded by state law. *Dred Scott* would also permanently exclude African people citizenship and mark them as an inferior race as a matter of law. Inscribing the line of racial enmity into law until the Amending of the Constitution during reconstruction.

What these cases share, I argue is a preeminent concern for the protection of white settlements and the legal rubric of property from both symbolic and material threats. This required both the galvanization of the public against a common enemy, in this case both racial enemies, which threatened the stability and future of the colonization of the continent by Anglo European settlers. They were symbolic threats in that their presence on the continent, as I have argued above, called into question that dominance by endangering the expansionist nature of settler colonialism on the one hand, and on the other by threatening the symbolic division of labor and property through escape and uprising. They became a material threat as we saw with the cases above in the defense of their lives and communities. Native and enslaved uprisings threatened the stability of the American economic project of individual property. In provoking both the cultural and material fear of racialized violence turning on white settlers, these groups became a symbol of violence and savagery in Jacksonian America.

Beginning with the horror stories of the Haitian revolution and carrying through the horrors of attacks on plantations and white settlements, this specter of violence was used to justify the brutal repression of enslaved people rising on their plantations the German Coast and the atrocities of the Seminole Campaign carried out under the color of law. Public enmity, as I understand it acts as a justificatory framework for the expansion of brutal networks of state violence designed to remove these groups from the pale of American law.

At times enmity would be used to explain cultural difference, Jackson would use the threat of Native uprising to illustrate the danger southern settlements were in from groups that were inherently hostile to American expansion. Taney would argue that emancipation and racial equality would pose a grave threat to the national identity, as African people were inherently unfit for democratic citizenship. In other Places the same

discourse is used to explain material interests. Jackson saw Native People as an inherent threat to the development of the American territory. Taney would saw emancipation and Abolition as a direct threat to private property, a central component of his understanding of American Federalism. We also find distinct shifts in the language used to present these threats across the various outlets of public discourse. The boisterous fear mongering of candidate Jackson and Duff Green would give way to the more diplomatic and politically savvy language of negotiation and compromise during the buildup to the Removal Act of 1830.

Public enmity, as we have seen is fundamentally a discourse of power. On the one hand, it emerges to push policy in each direction. Specifically, it emerges as an explanatory narrative for expanding the security state in times of perceived crisis. As such, they contain the power over life and death. Their enduring characteristic is that they create a doctrine of fear around a marginal group. This relationship of fear is based in the fact that said group poses a dire threat to national identity in some way. For Jackson, native Tribes were a direct threat to American territorial sovereignty. For Taney, on the other hand, the abolitionist movement posed a threat to private property, which he viewed as a bedrock of American law. These public enmity narratives also perceived expansions in the violent authority of the state. Jackson used the threat of Native uprisings to expand the arsenal and training systems for the militia. Taney would use the threat of racial unrest to expand the scope of the US Marshals, and create a dense network of federal, state, and municipal forces to capture escaped enslaved people. While perhaps a rhetorical tool of the state, it is one with purpose. It allowed the American state to expand its capacity for violence over its own subjects, while simultaneously drawing a legal boundary around citizenship and belonging that excluded non-white people.

II. Reading Race and Sex as Mutually Constitutive

As I write this, Jackson's home city of Memphis is embroiled in anti-police protests after five members of the SCORPION anti- gang task force detained and beat 29-year-old father Tyre Nichols for an hour before allowing paramedics to render care. Nichols died three days in the hospital from extensive internal bleeding. His death would lead to the

revival of the Black Lives Matter Movement nationwide. Atlanta, Georgia, a state Jackson help found and secure as a Major General, has begun construction of the largest urban police training center in America, known colloquially as "Cop City." This complex contains a recreation of a "urban area" for police to train. Jackson, Mississippi named after him because of his role in securing the territory has instituted a largely all white police detail and separate, appointed, all white court system as part of the conservative city council's law and order platform in a predominantly poor Black city.

These events have bled into the national political rhetoric as Republican Presidential hopefuls Donald Trump and Ron DeSantis trade campaign barbs attacking African American Studies, Critical Race theory, and Queer theory, on the one hand, citing their threatening nature to the sanctity of the American nation. Both promising to actively end healthcare for trans people of all ages by any means they at their disposal due to the destabilizing effect "gender ideology" is having on "our nation's most vulnerable members." Both the public threat narrative and its corollary conceptualization of the state as being solely a defense apparatus for this narrowly construed nation endure long past Jackson's deployment of public enmity. I would like to end this dissertation, therefore highlighting some of the salient aspects of public enmity as I have traced it out in Jacksonianism, and discussing the connection between the concepts of nation, enmity, and police and their continued utility. I would like to end this chapter by discussing enduring nature of public enmity as rhetorical tool for expanding internal security policy by tracing the development of sexual othering.

As I mentioned in the introduction and the opening to this chapter, the conceptual foundations of racial and sexual science are so mutually intertwined it is easier to understand them as mutually constitutive in the same ways that Critical Race theorist, Laura E. Gomez suggests we understand race and law. As she points out, when we begin to trace the historical lines of racial hierarchy, it becomes impossible to separate the discourses of race from the legal frameworks that enshrine, uphold, and propagate them (Gomez, 2010). Jennifer Terry echo's this in her genealogy of homosexuality. The study of sexual difference emerged out of the taxonomy of racial difference that developed in the Jacksonian period. Deviation from Victorian sexual values were placed on a racialized axis of difference that placed European sexual behavior in a hierarchical

relationship with the sexual practices of African and Indigenous subjects in two ways. First, sexual values and gender practices of both groups were identified and cataloged based on their proximity to European sexual practice. Secondly, these practices were further delineated on an axis of masculinity in such a way as to valorize the same economy by presenting these values as the product of rational use of the sexual impulse and setting them in opposition to the overuse of and enslavement to the passions that were ascribed to subjects of sexual study (Terry, 1999). Victorian sexual economy would emerge in sharp opposition to the less rigid understandings of sexual desire and gender identity that was found in the study of other races. The differing sexual practices of other cultures would be pathologized by this taxonomy, specifically by attributing the "backwardness" of these cultures to their sexual license.

Sexual and racial difference, in other words, were interwoven to create a narrative of sexual savagery based in the moral valorization of Western Christian sexual economy. Racial animus came to shape sexual study in such a way as to blur the conceptual lines between race and sex. We saw this above in the narratives of Haitian refugees and military travelers such as Nathan Edwards, whose account of the Haitian revolt focused on the savage rape and murder of French women at the hands of revolting enslaved people (Edwards, 1797). The inchoate nature of racial and sexual othering leads queer of color critics like C. Riley Snorton to read both race and queer identity as mutually informing fields of discourse that inform white perceptions of both (Snorton, 2017). Reading race and sex in tandem allows us to provide an intersectional account of the development of American national identity, this is an important contribution, because it allows us to understand the development valorization of the American family as it emerged from the racial and sexual anxieties of nationalist actors. As I will trace out in this last section of this chapter, the development of Victorian sexual morality too would require the creation and maintenance of a threat to the American nation, the sexual deviant. Sexual deviancy as we will see below, would become one of the most treacherous enemies of the American nation, as its pernicious nature would not be as readily visible as racial difference.

III. Little House on the Prairie

Throughout this dissertation, I have maintained a connection between racial hierarchy and sexual othering. In closing, I would like to trace out a conceptual history of that relationship through the lens of the above theoretical sketch. In my discussion of the Haitian revolt, I mentioned the exploding popularity of revolt narratives from white travelers. This narrative maintained a particular focus on the sexual brutality of the Haitian revolution. Narrative Such as Benjamin Edwards *Historical Survey of St. Domingo*, offered American readers a brutal glimpse of the future of racial revolt in the US. Contained within it was a fear of the Nation's of control of the libidinal economy of the New World. This meant the destruction of the European Family and the sexual purity of white women. As I have also shown, the fear of sexual difference, would be weaponized and turned against native peoples in both candidate and President Jackson's persistent warnings against the possibility of native uprising. In this last section, I would like to provide a more detailed trace of the connection between race and sex.

Sexual science emerges out of racial sciences towards the end of the 1800's, as part of the catalog of differences racial science had produced about non-European people and their inherent differences. Victorian sexual science this contained both the axis of racial difference and its inherent hierarchy(Terry, 1999b). Queer people of color were categorized and distributed into a taxonomy based on behavior and viewed in sharp relief to the modest sexuality of the Victorian scientists conducting these studies. Again, Black and Indigenous Political thought is also instructive in understanding this nexus of pathologizing racial and sexual discourses that emerged in Gilded America.

Sexual policing was first introduced against native people with Spanish ecumenical law during the colonial period. These laws included prohibition on sexual license, sodomy, and included the enforcement of strict gender roles. These sexual prohibitions were later picked up by plantations as a means of controlling the sexuality of enslaved people (Mogul et al., 2011). After the Civil War, it would largely be revival societies, Christian charity societies like the YMCA, and the KKK in the south would continue to police the libidinal boundaries of American society through the Bible and the burning cross (Newton, 2014; Sohn, 2021).

Bible study leader Anthony Comstock would begin a campaign against perversion that would take him from The First Presbyterian Church of New Canaan Connecticut to the board of the NY YMCA, where he would create the New York Society for the Prevention of Vice, a group dedicated to investigating and eradicating sexual deviancy in the city. His work in as an amateur investigator in New York earned him a promotion to be the first mail inspector of the United States, also referred to as America's first Policeman (Sohn, 2021). He would use his position to censor all obscene material from the US mail, and to investigate and shut down the distribution of said material. This included, but was not limited to sexually graphic material, queer letter societies and publications, contraceptives, and other sexual health related items.

Comstock too would fill the papers with horror stories of the scourge of sexual deviancy corrupting the nation. This in turn would lead to the proliferation of "Comstock Laws" which banned sexual health supplies, severely curtailed sexual health literature under the guise of anti-pornography and banned "sodomy" at the state level. Comstock would come to be known as the Father of vice policing, as police precincts began to pattern their anti-obscenity enforcement after Comstock's postal inspector office and the Society for the Suppression of Vice.

Comstock adds nuance to my understanding of the political potency of enmity in several ways. First, it asks how enmity may work beyond the base racial enmity that is highlighted here. By bringing in more intersections, I feel this project could provide a deeper understanding of the development of policing in the US. It does so by placing questions of identity and authority at the center of the historical development of both the nation and the security apparatuses that developed to defend that nation. Secondly, this project offers a nuanced look at American national identity by asking both how that nation was defended, and against whom, as well as how the justifications and defense apparatuses changed over time. By focusing on the ways that public enmity drives and is sedimented in internal security policy, when can perhaps better understand the siege mindset and militarization of modern police.

IV. Conclusion

This dissertation has attempted to historicize the phenomenon of public ostracism of marginalized people. In doing so I have attempted to trace out the connections between public threats, public authority, and the developer of the police power. My hope is to complete this research by developing the relationship between enmity and public policy as it shifted the social relationships of queer people during the Jacksonian age. Doing so helps explain two enduring features of American identity, namely the durability of whiteness and evangelical Christianity as salient features of American power, and how these dominant cultural values shape the symbolic world of the other.

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