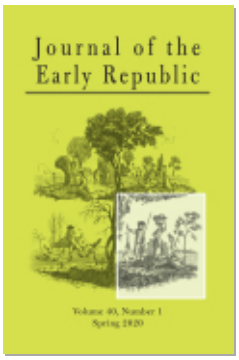
Patchwork Nation: Racial Orders and Disorder in the United States, 1790–1860



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Patchwork Nation

Racial Orders and Disorder in the United States, 1790–1860

VAN GOSSE

In contrast to views that prevailed for much of the last century, racial formation is now understood as determinative in the republic's early history. Major syntheses by Sean Wilentz and Daniel Walker Howe acknowledge its centrality, and many historians concur with the political scientists Rogers Smith and Desmond King that a "white supremacist . . . racial institutional order" dominated the nation until finally challenged by a competing "transformative egalitarian" order. Race has also become crucial to other areas of historical inquiry. Legal scholars and cultural historians have focused on the fluidity of racial definitions, and how race was performed rather than presumed.[1]

Van Gosse is a professor of history at Franklin & Marshall College. His book, *Native Sons: Black Politics in America, From the Revolution to the Civil War*, will shortly be published by the University of North Carolina Press. He thanks David Waldstreicher for the intellectual engagement that made this essay publishable. Thanks also to the anonymous readers for the *JER* and the *American Political Science Review* (an earlier version). Scott C. Smith, a colleague in Anthropology at Franklin & Marshall, created the superb maps, for which he is deeply grateful.

1. Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York, 2005); Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (New York, 2007); Desmond S. King and Rogers M. Smith, "Racial Orders in American Political Development," *American Political Science Review* 99 (Feb. 2005), 75–92, quotation on 75 (by "racial institutional order" they mean the laws, institutions, partisan actors, and jurisprudence defining political relationships in a racialized state); Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven, CT, 1997); Ariela J. Gross, "Litigating Whiteness: Trials of Racial Determination in the Nineteenth-Century South," *Yale Law Journal* 108 (Oct. 1998), 109–88; Gross, "Beyond

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This article uses these different historiographies to upend our understanding of racial politics in 1790–1860, posing it as a field of *dis*-order, contestation, and persistent opportunity for Americans of African descent. It puts the concept of racial order to new uses, arguing that rather than exhibiting any long-term racial consensus, the early republic contained many orders operating at different levels or scales, ranging from the local to the national. Seen from above, a sharply defined White Republic gathered force after 1800, dominated by the Jeffersonian Republicans and their Jacksonian successors. Many scholars have presumed this *herrenvolk* democracy reproduced itself down through the states, counties, and towns at the same time that the divide between "free" and "slave" territory hardened. In contrast, a newer scholarship focused on unpacking both racial identities and jurisprudence suggests the fragile, contested character of racialism itself. From the bottom up, rather than a white republican monolith built on constitutional guarantees of slaveholder power, the early United States resembles what Ira Berlin, tracing the status of southern free people of color, called a "patchwork," an assemblage of irregular pieces stitched together. Indeed, given the number of jurisdictions involved, the United States comprised *many* patchworks, a "Patchwork Nation," and these arrangements, even when intended to bolster white social control, created openings for persons of African descent.[2]

Black and White: Cultural Approaches to Race and Slavery," *Columbia Law Review* 101 (Apr. 2001), 640–90; Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge, MA, 2008); Trina Jones, "Shades of Brown: The Law of Skin Color," *Duke Law Journal* 49 (Apr. 2000), 1487–1557; Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787–1861* (Chapel Hill, NC, 2003); Daniel J. Sharfstein, "The Secret History of Race in the United States," *Yale Law Journal* 112 (Apr. 2003), 1473–1509; Sharfstein, *The Invisible Line: Three American Families and the Secret Journey from Black to White* (New York, 2011).

2. Alexander Saxton, *The Rise and Fall of the White Republic: Class Politics and Mass Culture in Nineteenth-Century America* (London, 1999); Don E. Fehrenbacher, *The Slaveholding Republic: An Account of the United States Government's Relations to Slavery*, ed. Ward M. McAfee (New York, 2001); Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York, 1974), 90–91; see also Douglas Bradburn's description of the Union's "patchwork decentralization" as "precisely what the American citizenry wanted"; Bradburn, *The Citizenship Revolution: Politics and the Creation of the American Union, 1774–1804* (Charlottesville, VA, 2009), 2; and Patrick Rael, *Black Identity and*

Untangling these many sub-orders requires that we examine each over time. As Steven Hahn has argued, the processes of emancipation and reconstruction began at the Founding and evolved unevenly, starting as early as 1780 in Pennsylvania and 1783 in Massachusetts, but considerably later in New York (1799) and New Jersey (1804). Certainly tensions increased between African- and European-descended Americans as the North moved toward "slaveless societies," but substantive challenges to normative white supremacism also arose much earlier than usually presumed. Unresolved tensions over slavery had been present at the Founding via some northern white men's commitment to the classical republican ideal of public equality regardless of a man's "complexion," especially among northern Federalists as they declined in national power after 1800. A racialism negating that possibility had to be *made*. As James B. Stewart has argued, it was a relational project, a modernizing ideology, rather than an assumed norm, in part because jurisprudence based on race rather than nativity challenged Blackstonean common law premises in a postcolonial confederation just departed from the British Empire. In that sense, from the 1790s to 1860, the United States was between emancipations and reconstructions, each premised on a revolutionary civil war.[3]

The argument herein is not merely descriptive. An unstable pyramid

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Black Protest in the Antebellum North (Chapel Hill, NC, 2002), 26, that "Alone among New World slave societies, the United States abolished slavery disparately across regional lines."

3. Steven Hahn, *The Political Worlds of Slavery and Freedom* (Cambridge, MA, 2009); James Brewer Stewart, "Modernizing 'Difference': The Political Meanings of Color in the Free States, 1776–1840," *Journal of the Early Republic* 19 (Winter 1999), 691–712. The classic studies of Federalism are David Hackett Fischer, *The Revolution of American Conservatism: The Federalist Party in the Era of Jeffersonian Democracy* (New York, 1965); James M. Banner, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789–1815* (New York, 1970); Linda K. Kerber, *Federalists in Dissent: Imagery and Ideology in Jeffersonian America* (Ithaca, NY, 1980). Two recent works capturing Federalism's class-based republicanism are Padraig Riley, *Slavery and the Democratic Conscience: Political Life in Jeffersonian America* (Philadelphia, 2016), 35, arguing that "[o]verall, Federalists were less inclined toward racism than Republicans, as they believed in an organically ordered society in which 'respectable' African Americans could find a legitimate place, and in which deference, rather than race, governed social difference"; and Rachel Hope Cleves, "'Hurtful to the State': The Political Morality of Federalist Antislavery," in *Contesting Slavery: The*

of racial orders facilitated challenges to, and more often evasions of, racial hierarchies. In the disorder produced by this asymmetrical patterning, individuals and family groups pursued new racial identities to evade the binary of white versus black. As we shall see, the easiest way to organize that escape was to claim an identity other-than-black, most commonly as "red," but sometimes an ethnicity connoting a "dark" but not "negro" phenotype, like Portuguese, Moorish, Turkish, or "gypsy."

It will not do, however, to see the antebellum patchwork entirely through the lens of black people's potential agency. Emphasizing disorder risks a presentist fallacy; most antebellum political leaders would not have characterized their societies thus. What now seems like chaotic heterogeneity appeared then as a complementary arrangement of order-in-diversity, harmonious until disrupted by the interstate pursuit of fugitives or a war requiring united action. When antebellum whites considered the role of the state, they assigned most of its authority to their own "State" rather than the federal Union, which was understood as "the creature of the states and a powerful tool for the realization of their interests." The right of the white majority in a locality to govern as they saw fit, whether making free persons of color a despised caste or acknowledging their juridical equality, was the most natural kind of order, the best understanding of the law. That slaves, free people of color, and their allies exploited this arrangement, rendering it profoundly unstable, was unexpected and unintended.[4]

This investigation therefore begins with the fundamental problem of the post-revolutionary state, which had two aspects: first, and familiar, the structure of federal governance, with its allocation of power between different levels of the Union; second, less evident, that any version of

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Politics of Bondage and Freedom in the New American Nation, ed. John Craig Hammond and Matthew Mason (Charlottesville, VA, 2011), 207–26.

4. Max M. Edling, "'A Mongrel Kind of Government': The U.S. Constitution, the Federal Union, and the Origins of the American State," in *State and Citizen: British America and the Early United States*, ed. Peter Thompson and Peter S. Onuf (Charlottesville, VA, 2013), 150–77, quotation on 167. See also David Hendrickson's insight that "there was no effective monopoly on the use of legitimate violence in the American system of states but rather . . . a duopoly whose boundaries were uncertain"; Hendrickson, "Bringing the State System Back In: The Significance of the Union in Early American History, 1763–1865," in *State and Citizen*, ed. Thompson and Onuf, 113–49, quotation on 125.

the state had limited authority, given the modest resources available for governance (well into the Jacksonian period, large cities had no standing police forces). But the now-discredited notion of a "weak state" confuses a political project with a settled reality. Certainly, Democrats from Van Buren to Buchanan sought a minimalist federal government, but Jackson's conquest of the Old Southwest in the 1810s, the removal of that region's Native populations in 1830–1850, and the total war waged in 1861–1865 demonstrated that the American national state could exert enormous force when it chose.[5]

An observation by the Glasgow-trained physician James McCune Smith highlights the significance of this distinctive confederative system for African Americans. Writing as "Communipaw" ("Our New York Correspondent") in *Frederick Douglass' Paper* in 1854, he identified

> the main reason we are not united is that we are not equally oppressed. . . . You cannot pick out five hundred free colored men in the free States who equally labor under the same species of oppression. In each one of the free States, and often in different parts of the same State, the laws, or public opinion, mete out to the colored man a different measure of oppression. . . . The result is that each man feels his peculiar wrong, but no hundred men together feel precisely the same oppression; and, while each would do fair work to remove his own, he feels differently in regard to his neighbor's oppression.

What Smith understood, often forgotten now, is that prior to 1865 the "United States" really were a grouping of semi-sovereign entities. As Douglas Bradburn has recently argued, "American nationhood remained a highly ambiguous affair," with the states "the preeminent force in the lives of the American citizenry," underscoring Barbara Fields's thesis

5. As Peter Onuf notes, "the capacity of all levels of government compared favorably with that of European counterparts, despite constitutional constraints on central government and the libertarian, antistatist legacy of revolutionary ideology. The federal presence may have [been] inconspicuous to most Americans but was amply in evidence at the peripheries, whether in trade regulation or at the 'waterfront' or in administering Indian policy or public land sales in the West," stimulating "an expansive free-trade zone," and the "proliferation of federal post offices and post roads" circulating information remarkably quickly. Onuf, "Introduction: State and Citizen in British America and the Early United States," in *State and Citizen*, ed. Thompson and Onuf, 13.

that the Civil War's main result was a unitary national state. From 1790 on—as individual states, sometimes coalitions—this old "United States" pursued a unique form of development linking territorial, demographic, and economic expansion. "The Union" was strong when needed, a tool to be wielded by whichever sectional or partisan grouping could command it. This de-centered form of nation-building resulted in a remarkably pluralistic array of customs, laws, and quasi-legal practices in which race was constantly re-made.[6]

American historians have often treated the decentralized operations of the antebellum political and judicial system, in which states, counties, and municipalities interpreted federal and state law as they saw fit, as organically rooted in the frontier's localist traditions; one example is how the Northwest Ordinance, intended to ban slavery entirely, was stretched and remade so that various forms of bound and chattel labor survived long past 1800. In fact, these traditions were no more immutable than England's "rotten boroughs" before the nineteenth century's Reform Bills. An effective national state could, if it desired, root them out. Instead of mythologizing "States' Rights," we should look to the thirteen original colonies' legal histories, especially how they regulated the relations between the races, subjectship, and slavery. The heterogeneity of the U.S. state system owed much to Britain's imperial policy, especially in the first half of eighteenth century when many colonies were founded or grew rapidly. Unlike the rest of the Atlantic world, where slavery had a relatively uniform institutional character, during that crucial period the British metropole practiced *laissez-faire* across its vast periphery. There was no equivalent to Spain's imperial slave code governing slaves' treatment and granting them certain rights, including *coartación*—the right

6. Untitled, *Frederick Douglass' Paper*, May 12, 1854; Bradburn, *Citizenship Revolution*, 1, noting that the Eleventh Amendment, passed in 1795 to overrule Chief Justice John Jay's decision in *Chisholm* v. *Georgia* putting the "nation . . . before the states" (81), ensured the judicial immunity of the states from federal review and "that states would set the parameters of citizenship" (97). Divided sovereignty was engrafted into national politics via the Jeffersonian "vision that raised state citizenship and individual rights to an equally exulted height," defining "a model of nationhood which eschewed 'national character' " and saw the United States as "a collection of contracting peoples" (192); Barbara J. Fields, "Ideology and Race in American History," in *Region, Race, and Reconstruction: Essays in Honor of C. Vann Woodward*, ed. J. Morgan Kousser and James M. McPherson (New York, 1982), 143–77.

to self-purchase—and legal marriage. The autonomy permitted Britain's colonies helps explain the range of political statuses available to black people after the Revolution. The centrifugal tendencies rooted in separate colonial histories were compounded by the U.S.'s vertiginous physical, economic, and imperial growth in 1790–1820: Slavery had been formally excluded north of the Ohio by the 1787 Northwest Ordinance, while it expanded spectacularly into the Old Southwest. As indenture was rapidly supplanted by wage labor in the North, the Chesapeake's plantation system waned, and whites flooded into new territories, new particularisms took the place of older ones.[7]

At personal and sometimes group levels, the irregular character of the laws governing race and citizenship provided persons of color with constant opportunities to flee slavery, to acquire property, and to claim citizenship, just as state sovereignty and Jeffersonian politics allowed

7. Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC, 2009) traces how local readings of the common law ignored state law into the nineteenth century; Paul Finkelman, "Evading the Ordinance: The Persistence of Bondage in Indiana and Illinois," *Journal of the Early Republic* 9 (Spring 1989), 21–51; and Finkelman, "Slavery and the Northwest Ordinance: A Study in Ambiguity," *Journal of the Early Republic* 6 (Winter 1986), 343–70, document the suborning of the Northwest Ordinance. A notorious example of violating federal comity was how, after 1822, southern states imprisoned all black mariners who entered their ports, regardless of state citizenship; see W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, MA, 1997). James H. Kettner, *The Development of American Citizenship, 1608–1870* (Chapel Hill, NC, 1978) examines how British subjectship was modified in British North America, while Albert Edward McKinley, *The Suffrage Franchise in the Thirteen English Colonies in America* (Philadelphia, 1905) and Chilton Williamson, *American Suffrage From Property to Democracy, 1760–1860* (Princeton, NJ, 1960) remain indispensable on colonial voting restrictions focused on religion rather than race or class. Peter Onuf strips this narrative of its nationalist mythos presuming the proto-Americans prior to 1775 were always already becoming "autonomous, self-reliant subjects" because of their "radically simplified social order," pointing out that to the British, the colonies remained "unstable, incoherent, and ungovernable," since "as provincial hierarchies were radically simplified and stripped down of civilizing restraints and reciprocities, characteristically brutal forms of exploitation emerged. . . . From the metropolitan perspective, the barbarous and despotic rule of colonial masters over their slaves came to be seen as the antithesis of a civilized social order. . . . Slavery thus presented, in microcosm, the problem of *imperium in imperio*—of a government within a government—that

ordinary white men remarkable personal liberty. For persons of African descent, however, the absence of a consistent nationwide regulation of the terms of freedom, slavery, and citizenship was a decidedly mixed blessing. Even when born free or formally manumitted, their rights existed on sufferance; unsurprisingly, free people of color early showed a marked preference for the more authoritative national government proposed by Federalists. Instead, what they got was a bewildering array far more complicated than the polarity of "free" or "slave." The life of an enslaved artisan in Richmond, who paid his master a weekly rent and moved around relatively easily, was vastly different from the life of a field hand in the cotton belt. The life of a free man of color in upper New England, who could vote, go to court, and organize militant street parades, was equally different from the nominally same man in Georgia, who could not come or go freely from the state, and was legally barred from defending himself physically against whites.[8]

Georgia and the two Carolinas suggest the variety encompassed within this judicial patchwork. In 1853, a Georgia judge ruled that the free black man lived in "a condition of perpetual pupilage or wardship" with "no civil, social, or political rights whatsoever, except such as are bestowed on him by statute; that he can neither contract, nor be contracted with." As one scholar concluded, given that free people of color were "tried under the same laws as slaves and were hailed before the same court," they were "not citizens of this state." Similarly, in South Carolina, free people of color were legally "subject to the white community in general," and any white person could administer corporal punishment to sanction "'words of impertinence or insolence.'" In North

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colonial rights claims more generally provoked"; Onuf, "Introduction," in *State and Citizen*, ed. Thompson and Onuf, 5, 7.

8. The original account of black Federalism is Dixon Ryan Fox, "The Negro Vote in Old New York," *Political Science Quarterly* 32 (June 1917), 252–75. Much better is Paul J. Polgar, "'Whenever They Judge It Expedient': The Politics of Partisanship and Free Black Voting Rights in Early National New York," *American Nineteenth Century History* 12 (Mar. 2011), 1–23. David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776–1820* (Chapel Hill, NC, 1997) offers a subtle perspective on Federalism's appeal, especially in New England; and John Saillant, *Black Puritan, Black Republican: The Life and Thought of Lemuel Haynes, 1753–1833* (New York, 2003) examines the life of a well-connected black Federalist.

Carolina, however, free people of color "could secure a great deal of protection," including habeas corpus, the right to a jury trial, and full property rights. Until 1835, black men regularly voted on the same terms as whites. Even in 1838, the state's senior jurist, William Gaston, declared that, "'if born within North Carolina [they] are citizens of North Carolina.'" These differences in the rights extended to free blacks between three contiguous states undercut the assertion of any binary order.[9]

One way to make sense of these wide-ranging differences in racialization is to map them. Analyses of race in the American colonies and states usually begin with the now-classic distinction between "societies with slaves" and "slave societies." Through the colonial period, the Middle Atlantic and New England colonies (with the exception of some plantation-style agriculture in Rhode Island) fit into the former category. Southern colonies, from Maryland to Georgia, by contrast, had begun a complex evolution. By the Revolutionary decades, the Chesapeake colonies were becoming "societies with slaves," as free populations mushroomed. At the same time, South Carolina and Georgia were entrenched as "slave societies," while Virginia and North Carolina were pulled in both directions, a tendency aggravated after 1800 as the Lower South expanded to the Mississippi. Meanwhile, nascent abolitionism and economic change spurred a new category of "societies without slaves" in the northern states.[10]

In 1790, however, the thirteen states were still divided primarily between slave societies south of Pennsylvania's border, and societies with slaves to its north (see Figure 1). The slave-less exceptions clustered in

9. Edward Forrest Sweat, "The Free Negro in Ante-Bellum Georgia," PhD diss., Indiana University, 1957, 95, 97; Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color In The Old South* (New York, 1984), 48; John Hope Franklin, *The Free Negro in North Carolina, 1790–1860* (1943; repr. Chapel Hill, NC, 1995), 81, 89.

10. See T. H. Breen, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640–1676* (New York, 2004); Edmund S. Morgan, *American Slavery, American Freedom* (New York, 2003); Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, MA, 1998); Berlin, *Generations of Captivity: A History of African-American Slaves* (Cambridge, MA, 2004); Edward E. Baptist, *The Half Has Never Been Told: Slavery and the Making of American Capitalism* (New York, 2014).

Figure 1: The Status of Slavery in 1790

Upper New England: Massachusetts (then including Maine), wherein slavery was ruled unenforceable in the *Walker* v. *Jennison* and *Commonwealth* v. *Jennison* decisions in 1781–1783; New Hampshire, where it had vanished by 1790; and still-independent Vermont, whose 1777 revolutionary Declaration of Rights abolished slavery. Some Lower North societies-with-slaves had initiated gradual emancipation, beginning with Pennsylvania in 1780 and Connecticut and Rhode Island in 1784, but all three retained substantial enslaved populations after the Founding, and New York and New Jersey even longer. Finally, the shaded territories

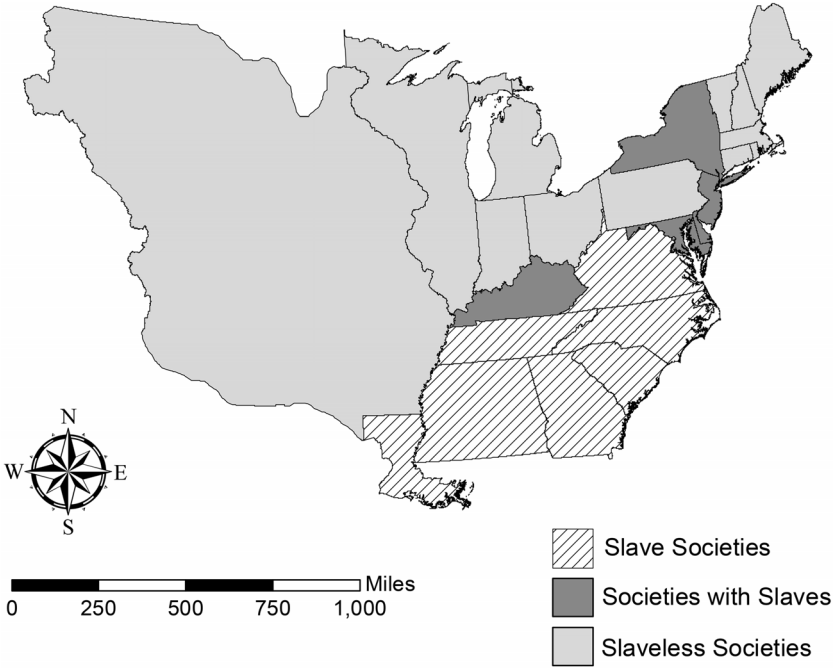

Figure 2: The Status of Slavery in 1810

indicate the divergent status of the two western expanses under federal jurisdiction: North of the Ohio River was the Northwest Territory, the original "free soil"; to its south was the Old Southwest (originally claimed by Georgia and Virginia with a "Southwest Territory" later denominated the "Mississippi Territory"), opened to slavery by Congress in 1798.

By 1810 (see Figure 2), there was considerable change. The five New England states, Pennsylvania, and Ohio (granted statehood in 1803) were now effectively slaveless, while New York and New Jersey still incorporated many chattels; New York only emancipated its remaining four thousand slaves in 1827, and the institution persisted legally until 1846 in New Jersey. Slavery had meanwhile spread westward into new states, including Kentucky (1792), Tennessee (1796), and Louisiana (1812), followed shortly by Mississippi (1817), and Alabama (1819).[11]

11. In 1810, Rhode Island, Connecticut, and Pennsylvania included 108, 310, and 795 slaves, respectively, but by 1820 nearly all were liberated (in that year, Rhode Island contained 48 slaves, Connecticut 97, and Pennsylvania 211).

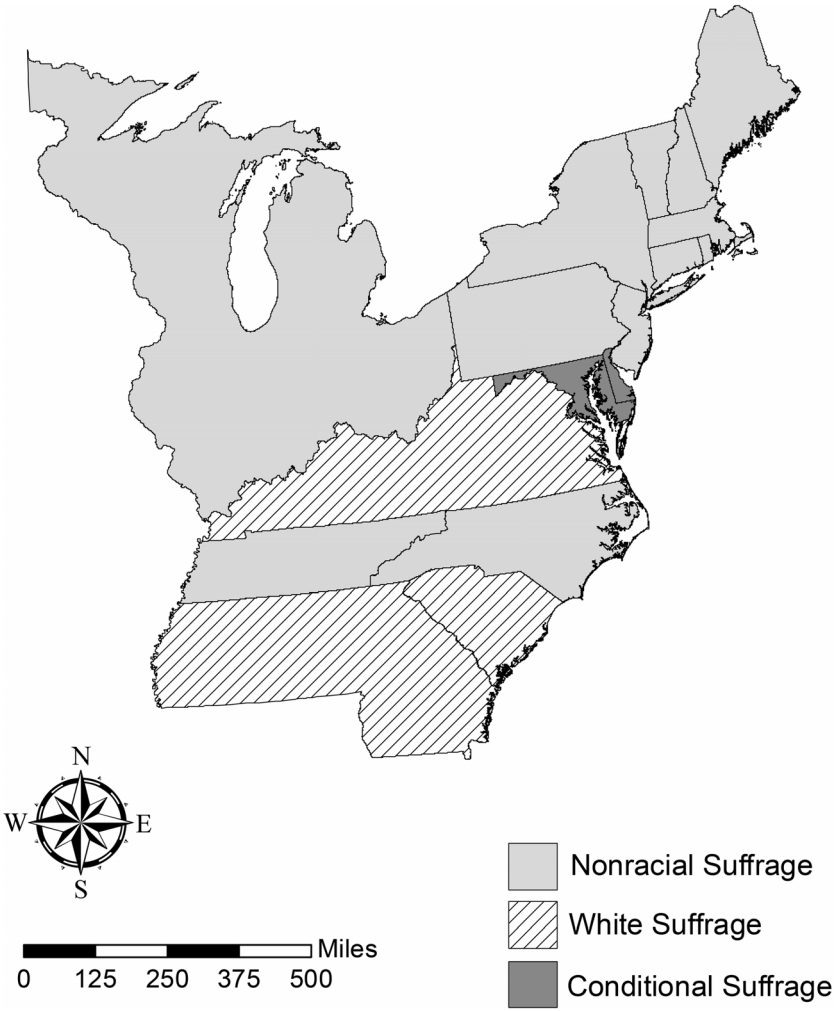

Figure 3: Citizenship and Race in 1790 ("Conditional Suffrage" for Freeborn Black Men)

Merely rehearsing slavery's gradual disappearance in the North and rapid expansion in the South will not suffice. It is equally important to map how citizenship was racialized. Initially (see Figure 3), only Virginia, South Carolina, and Georgia affirmatively restricted voting to white men, although Maryland in 1783 and Delaware in 1787 limited voting to black men who had been born free as of those years. By the early 1800s, however, racial disfranchisement had entered national life

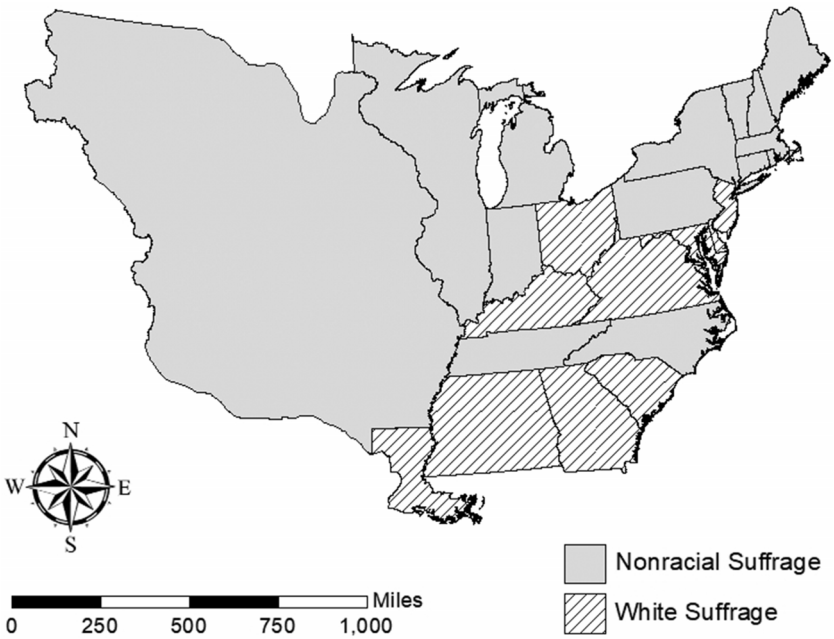

Figure 4: Citizenship and Race in 1810

(see Figure 4), whether via states adding "white" to their constitutions' suffrage clauses (Delaware in 1792; Kentucky in 1799; Maryland in 1802; New Jersey in 1807), or founded on the basis of white suffrage (Ohio in 1803; later Indiana in 1816 and Illinois in 1818).[12]

By the late 1820s, a distinctly new map had taken shape (see Figure

12. The best single compendium for the acts of Congress and state constitutions establishing suffrage in the territories and states is Benjamin Perley Poore (comp.), *The Federal and State Constitutions, Colonial Charters, and Other Organic Laws of the United States*, Parts I and II (Washington, DC, 1877). Bradburn, *Citizenship Revolution*, argues this postrevolutionary whitening constituted the national "denization" of free blacks, the "Increasing clarity that white men were the only proper political citizens of America . . . a functioning political consensus" expressing "a vision of Union intended to guarantee the fundamental rights of white citizens and govern the status of all others" (13–14). I posit that no national–racial consensus ever formed. His assertion that "they could obtain an approximation of citizenship within a particular state," with "their status . . . liable to change with the whims of politics" (237) is contradicted by the history of Upper New England, 1775–1861.

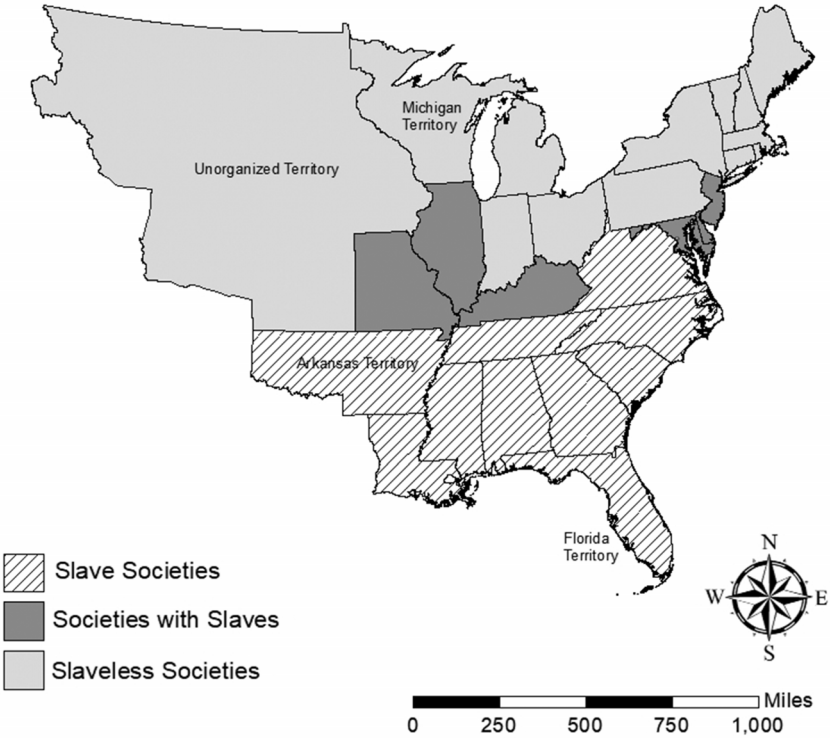

Figure 5: The Status of Slavery in 1828

5). The entire North was now a *society without slaves*, excepting parts of New Jersey and Illinois. In contrast, south of the Mason–Dixon and the Ohio River stretched a phalanx of slave states, though those states were divided in key ways. The border states of Maryland, Delaware, Kentucky, and Missouri comprised a zone of *societies with slaves* whose free black populations steadily expanded. Virginia, North Carolina, and Tennessee occupied a liminal status, but the most dramatic change since the Constitution's ratification was the Deep South's emergence as a *slave society* from South Carolina and Georgia through Alabama, Mississippi, and Louisiana. By 1820, these states already contained 571,888 chattels, giving them considerable weight in national politics, and they grew rapidly, from 830,304 enslaved people in 1830 (now including Arkansas) to 1,246,112 by 1840. At the same time, the terrain of black citizenship had significantly contracted (see Figure 6). As of 1822, a clear distinction obtained between Upper New England (the new state of Maine plus New Hampshire, Vermont, and Massachusetts), which maintained nonracial

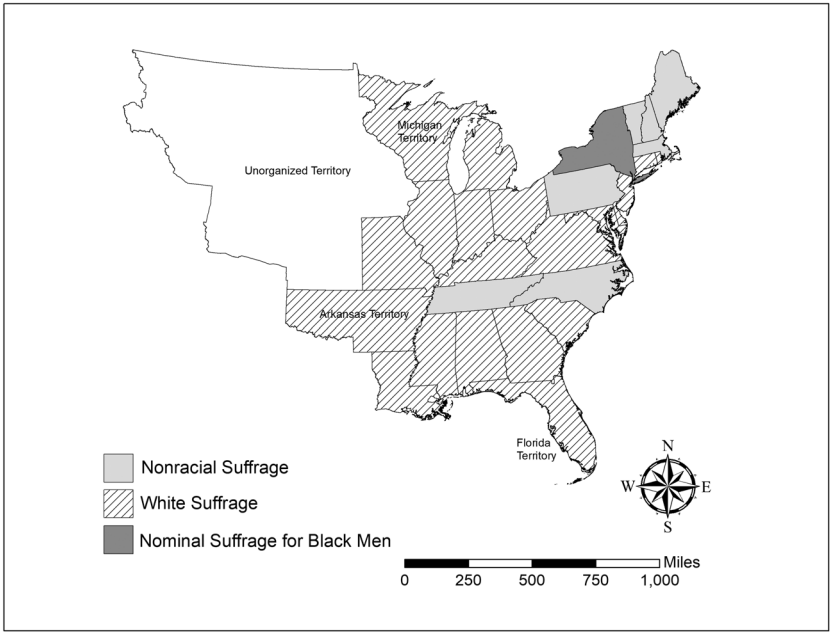

Figure 6: Citizenship and Race in 1822

citizenship since the Founding, and the rest of the North, from Rhode Island and Connecticut out to Illinois. Those latter states (excepting Pennsylvania), designated free people of color as "citizens for protection" but certainly not voters. Along with two Upper South states, North Carolina and Tennessee, Pennsylvania preserved its original nonracial citizenship into the 1830s, although black Philadelphians had been informally disfranchised since the 1790s.

By 1840, the confederation's antebellum patchwork had reached maturity. In the final prewar decades, we can anatomize *six distinct racialized political spaces* that, for an African American, would have registered with the same difference a European would have felt moving westward from the Ukraine's serf villages to London or Paris (see Figure 7).[13]

13. Kevin Phillips proposes four rather than six orders in *The Cousins' Wars: Religion, Politics, & the Triumph of Anglo-America* (New York, 1999), 367. His grouping cuts across state lines, with a "Greater New England" including upstate

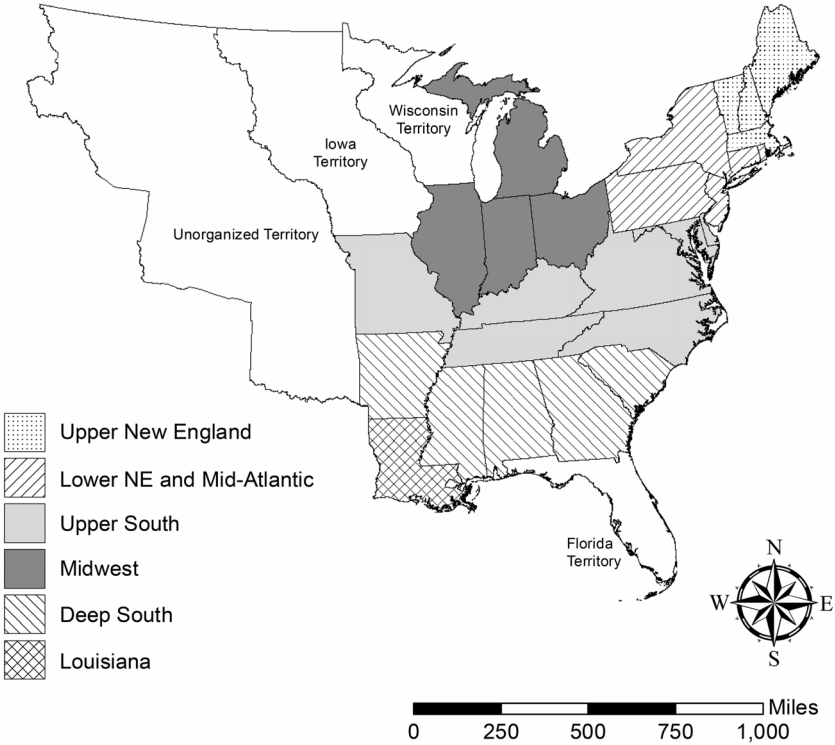

Figure 7: Racial Orders circa 1840

First was Upper New England (Massachusetts, New Hampshire, Vermont, and Maine), where slavery's early disappearance enabled a sectional practice of overt nonracialism, minus the gradual emancipation via long-term indentures of the Lower North. Colonial slavery had been more lenient in New England than elsewhere, with slaves enjoying a precarious legal personhood, and these were the only states where black men voted without interruption after the Revolution. Black men (and women) became steadily more politically active, enjoying civil rights and

New York and northern Ohio, plus a "Lower North," an "Upper South and Border," and a "Cotton South," similar to here. William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776–1854: Volume I* (Oxford, UK, 1990), 18, outlines a Border South of Delaware, Maryland, Kentucky, and Missouri; a Middle South of Virginia, North Carolina, Tennessee, and Arkansas; and a Lower South of South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

a grudging degree of social toleration. By the 1840s, the word "Massachusetts" was a metaphor for the ostentatious anti-racialism championed by some of the Anglo American elite.[14]

Second came Lower New England and the Mid-Atlantic states (Rhode Island, Connecticut, New York, New Jersey, and Pennsylvania), where slavery was both more extensive and longer lasting. Across these states, black civil rights and nonracial suffrage steadily eroded post-1800. Since Pennsylvania first authorized emancipation in 1780, New Jersey voted the nation's most radical suffrage in 1776 (even black women voted, if independent), and Philadelphia and New York contained the North's largest free black communities, these losses were profound. With a black population of 130,268 in 1840 versus 11,291 in Upper New England, the fight against the White Republic in this Lower North, especially New York, defined the emergence of a new black political class, and their electoral resurgence in Rhode Island in 1842–1860 suggested possible agency as swing voters.[15]

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14. Lorenzo Johnston Greene, *The Negro in Colonial New England* (New York, 1942) remains essential. Stephen Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic, 1829–1889* (New York, 2012) documents the complex relationships between the abolitionist sector of Boston's "Brahmin" elite, as personified by Wendell Phillips, and black activists. Most recently, Gloria McCahon Whiting, "Power, Patriarchy, and Provision: African Families Negotiate Gender and Slavery in New England," *Journal of American History* 103 (Dec. 2016), 583–605, traces the familial rights given or claimed by slaves, specifically the right to marry, and how these "networks of kin and contract that they built and formalized before Euro-American ministers, congregations, justices of the peace, and town clerks . . . constituted families, though perhaps in a new way" (605).

15. Shane White, *Somewhat More Independent: The End of Slavery in New York City, 1770–1810* (Athens, GA, 1991); Rhoda Golden Freeman, *The Free Negro in New York City in the Era Before the Civil War* (New York, 1994); Graham Russell Hodges, *Root & Branch: African Americans in New York & East Jersey, 1613–1863* (Chapel Hill, NC, 1993); Robert J. Cottrol, *The Afro-Yankees: Providence's Black Community in The Antebellum Era* (Westport, CT, 1982); Joanne Pope Melish, *Disowning Slavery: Gradual Emancipation and "Race" In New England, 1780–1860* (Ithaca, NY, 1998); Gary B. Nash, *Forging Freedom: The Formation of Philadelphia's Black Community, 1720–1840* (Cambridge, MA, 1988); Gary B. Nash and Jean R. Soderlund, *Freedom By Degrees: Emancipation in Pennsylvania and Its Aftermath* (New York, 1991); Graham Russell Hodges, *Slavery and Freedom in the Rural North: African Americans in Monmouth County, New Jersey, 1665–1865* (Madison, NJ, 1997); James J. Gigantino II, *The Ragged*

Third was the Midwest (Ohio, Indiana, Illinois, and Michigan, joined by Iowa in 1846, Wisconsin in 1848, and Minnesota in 1858), where owning and trading chattels was always formally banned. These new states steadily joining the Union after 1800 forged the settler-colonial version of "Free-Soil"—that America should be reserved for whites only. Ohio's, Indiana's, and Illinois' constitutions and legislatures either attempted to bar all black people or required registration and cash bonds—an early apartheid, and similar policies were legislated in the newer states. In none did black men vote freely before the Civil War, except Ohio, where Supreme Court rulings in 1831–1860 granted mixed-race men "white" status, producing a considerable electorate.[16]

Fourth was the Upper South of Delaware, Maryland, Virginia, the District of Columbia, North Carolina, Kentucky, Tennessee, and Missouri. This "middle ground" was home for the nation's largest concentration of free people, 203,702 in 1850 versus 198,926 in the combined free states. In these states, slavery had steadily declined in favor of small-scale, seasonal hired labor. These people enjoyed Jim Crow's "freedom": They could not be sold and could own property, make contracts, and move around, but they could not vote, testify in court against white people, or express any direct political demands. Large-scale manumissions were driven not by religious imperatives but political–economic exigency: Control over a powerless rural proletariat weighed against the capital investment in a slave-labor force. Further, on each side of the notional borderline between Lower North and Upper South, the boundaries between slavery and freedom blurred. New Jersey's slow-motion emancipation (12,422 slaves in 1800, versus 4,402 freedmen) was intended to guarantee a compliant agricultural workforce, with emancipation delayed until 1846 and *de facto* servitude persisting after. Illinois also created a new legal category of "slaves for a term," while grandfathering the "French Negroes" resident at the time of the Northwest

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Road to Abolition: Slavery and Freedom in New Jersey, 1775–1865 (Philadelphia, 2015).

16. Ohio's formalization of white as predominantly white or "nearer a white than a mulatto," began with the little-known *State* v. *George* decision in 1821, followed by *Polly Gray* v. *State* in 1831, which was reaffirmed in 1834, twice in 1842, and again in 1846 and 1860; the language quoted above is from *Thacker* v. *Hawk* (1842), in *Reports of Cases Argued and Determined in The Supreme Court Of Ohio in Bank Printed By Authority of the General Assembly*, Edwin M. Stanton, Reporter (Albany, NY, 1887), 11: 379–80.

Ordinance. The border still mattered, however: Wilmington and Baltimore's well-organized free communities never had the freedom to meet and petition that black Jerseyans enjoyed, for instance, and over time the extra-legal character of "lifelong, uncompensated servitude contracts" provided openings for bound laborers in Illinois.[17]

Fifth was the massive Lower South of South Carolina, Georgia, Alabama, Mississippi, Arkansas, eventually Florida and Texas, dominated by the Black Belt's slave-majority counties, where plantation agriculture exploded after 1800. As the Upper South became more "northern," these states became intensely "southern," a complex of slave-capitalist societies whose whites would contemplate no alternative. In 1860 (not counting Louisiana, see below), they held 2,091,741 slaves, the world's largest concentration. Their free black populations were obscure outside of enclaves in Charleston and Savannah. The Lower South's propertied whites constituted what northerners called "the Slave Power," given the plantocracy's political weight based on "representing" their slaves in federal elections, 1.2 million votes owned by their owners.[18]

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17. Hodges, *Root & Branch*, 172; Lacy K. Ford, Jr., "Making the 'White Man's Country' White: Race, Slavery, and State-Building in the Jacksonian South," *Journal of the Early Republic* 19 (Winter 1999), 713–37; Barbara J. Fields, *Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century* (New Haven, CT, 1985); Patience Essah, *A House Divided: Slavery and Emancipation in Delaware, 1638–1865* (Charlottesville, VA, 1996); William Henry Williams, *Slavery and Freedom in Delaware, 1639–1865* (Wilmington, DE, 1996); Luther P. Jackson, *Free Negro Labor and Property Holding in Virginia, 1830–1860* (New York, 1969); Franklin, *Free Negro in North Carolina*; Christopher Phillips, *Freedom's Port: The African American Community of Baltimore, 1790–1860* (Urbana, IL, 1997); M. Scott Heerman, "In a State of Slavery: Black Servitude in Illinois, 1800–1830," *Early American Studies* 14 (Winter 2016), 114–39, esp. 118. Following the Revolution, many slaveholders freed their chattels, generating large-scale immigration into Ohio, Michigan, and Pennsylvania. Earlier, several religious communities had barred slavery, in particular Moravians and Quakers in upland North Carolina; see Claude Clegg, *The Price of Liberty: African Americans and the Making of Liberia* (Chapel Hill, NC, 2004); Jon F. Sensbach, *A Separate Canaan: The Making of an Afro-Moravian World in North Carolina, 1763–1840* (Chapel Hill, NC, 1998).

18. The scholarship on this region is vast, but compelling recent works include Baptist, *The Half Has Never Been Told*; and Walter R. Johnson, *River of Dark Dreams: Slavery and Empire in the Cotton Kingdom* (Cambridge, MA, 2013). Gary B. Mills, "Miscegenation and the Free Negro in Antebellum 'Anglo' Alabama: A Reexamination of Southern Race Relations," *Journal of American His-*

Sixth was Louisiana, whose anomalous racial order encompassed brutal sugar plantations, New Orleans' black Creoles, and networks of colored Francophone planters "publicly recognized by their white relatives." In Louisiana, free people of color (18,647 or 2.6 percent of the state's 1860 population, much lower than in 1800), although unable to vote, had rights unknown in many "free" states. An 1856 Louisiana Supreme Court decision declared, "As far as it concerns everything, except political rights, free people of color appear to possess all other rights of persons," including "they may be witnesses; they may stand in judgment, and they are responsible under the general designation of 'persons' for crimes"—meaning the same punishments as whites. They could sue whites and defend themselves by testifying, a right employed even in cases of sexual harassment, and free black men served as policemen, firemen, and slave patrollers. As a consequence, the social separation between the slave majority and free people of color, largely mulatto Catholics, remained wide.[19]

Other than the absorption of new states, both free (three more Midwestern states plus California by 1850 and Oregon in 1859) and slave (Texas and Florida in 1845), the most striking permutation to these regional sub-orders was deepening black citizenship rights. As Paul Finkelman has documented, post-1840 most northern states expanded the legal protections afforded their black citizens. Less noticed is Rhode Island's re-enfranchising black men in 1842, while in two large states,

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tory 68 (June 1981), 16–34, is a rare article dealing with free people of color in this South. Leonard L. Richards, *The Slave Power: The Free North and Southern Domination, 1780–1860* (Baton Rouge, LA, 2000) remains indispensable for understanding the political frame.

19. Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge, LA, 1977), xiv; H. E. Sterkx, *The Free Negro in Ante-Bellum Louisiana* (Rutherford, NJ, 1972), 171, 185–87. As an example of Louisiana's peculiar politics, a Haitian exile, Francis Varion, repeatedly won suits against other white men for assertions "that he was a colored man," beginning in 1836. In 1843 he was elected a New Orleans alderman but was refused his seat by the Council, running and winning twice more, until the Council finally admitted it believed "him to be a colored man." When his ballot was then refused as "not a white man," he sued the inspector for $3,000. The jury declared its "opinion that the evidence is not sufficient to establish the plaintiff a colored man" but "believe that defendant was not actuated by malice in refusing his vote, and therefore find no damages"; untitled, *Commercial Advertiser* (New Orleans), July 9, 1844.

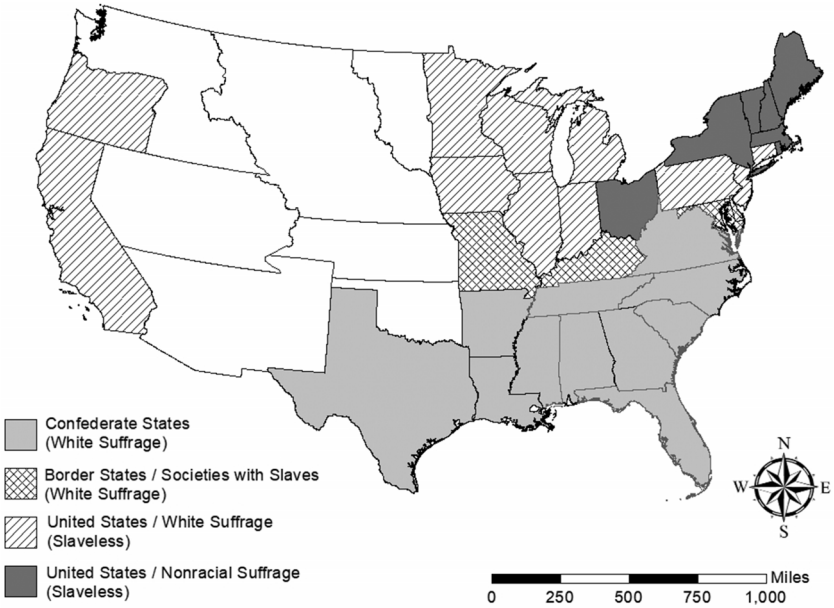


Figure 8: The Boundaries of Slavery, Freedom, and Citizenship, June 1861

New York and Ohio, conditional suffrage rights were exploited by Whigs, Liberty men, Free Soilers, and Republicans to empower black electorates. It was no afterthought that one of the Crittenden Compromises proposed after Lincoln's election was the complete disfranchisement of free blacks, while the North's Republicans, as James Oakes has argued, fought to preserve a Union in which slavery declined unto extinction and citizenship expanded (see Figure 8 for "the States" as of April 1861).[20]

Arranging the states into six orders creates a certain rationality, but it is mistaken to presume any thorough-going logic prevailed within a particular state. "One-drop" whiteness was always aspirational, at most, and

20. Paul Finkelman, "Prelude to the Fourteenth Amendment: Black Legal Rights in the Antebellum North," *Rutgers Law Journal* 17 (Spring–Summer 1986), 415–82; James Oakes, *The Scorpion's Sting: Antislavery and the Coming of the Civil War* (New York, 2014), 118 passim. My forthcoming book with University of North Carolina Press, *Native Sons: Black Politics in America, From the Revolution to the Civil War*, will document the expansion of black suffrage in Ohio and New York that justifies their inclusion in this category of states with "Nonracial Suffrage."

white southerners were acutely aware of how sex blurred the color line, sabotaging racial homogeneity. Ariela Gross has documented dozens of southern state supreme court cases in the 1840s and 50s in which white judges and juries were increasingly leery of hypodescent, the premise that a person with a grandparent or great-grandparent of African ancestry was perforce black. However valuable as ideology, an absolutist whiteness could violate community norms, whether by permitting a man to escape paternal obligations by charging he unintentionally married a "negro" or by voiding wills that granted property to descendants charged as "colored." Retreating from one-drop definitions, southern courts allowed certain people to remain "white" despite evidence of hypodescent, typically through the "performance of whiteness."[21]

In the immediate world of the *local*, where most people lived their lives, a bewildering set of options presented themselves. Throughout North and South, "race" evolved in ways defying definition. In a topography of racial niches spread across a vast rural nation, the black/white binary was a constraint, not a rule or guarantee. And always, this binary was complicated by a third category of "Indians not taxed," "red" or reddish peoples who were not citizens nor white but sometimes, in some places, could assert more rights than those denominated "black." As a consequence of this localism, between the Revolution and the Civil War, three different types of triracialism evolved, each a way up and out, provided one was in the right place at the right time.

The first version of triracialism was once thought to be exceptional in the United States, the Caribbean or Latin American model recognizing "the mulatto" as distinct from "the black." Those states attached to the Caribbean permitted a *de facto* triracialism. This assertion contradicts the legal precedents refusing to recognize a "third caste," and our later positing a single black people. In Michael Johnson's and James Roark's classic study of William Ellison, a notably successful antebellum South Carolinian, understanding his life "requires abandoning the language of racial identification commonly used today" since "distinctions of color . . . were crucial markers of both ancestry and status to free Afro-Americans" in the antebellum South. Ellison did not "consider himself a black man but a man of color, a mulatto, a man neither black or white, a

21. Gross, "Litigating Whiteness," 112.

brown man"; he worked for decades to move his family away from blackness through attachments to whites and marriage into a different triracial group (the "Turks," so-called); by the early twentieth century his aged daughters were denominated white by census takers. As we shall see, this was hardly an exceptional strategy.[22]

The existence of brown enclaves in polities purporting to recognize only black and white remains difficult to assess, since they were sanctioned by custom, patronage, and occasionally by rulings or private bill legislation, rather than permanent legal structures of racial difference. But to the extent that some "free people of color" (in the Latin American sense of the term, meaning of mixed race) could distinguish themselves from the mass of black people, enslaved or free, they forged a "mulatto" triracialism throughout the Lower South. The best-known examples of "three-caste" societies were South Carolina and Louisiana, though more obscure instances developed elsewhere.[23]

South Carolina was the blackest place in British North America, and its colonizers practiced distinctive forms of rice and indigo-based agriculture permitting considerable leeway to slaves in organizing their work. The Palmetto State sprang from a chain migration of Barbados sugar planters joined by French and Dutch from other islands, rather than direct migration from Britain, and these would-be grandees brought with them Caribbean habits, including open concubinage between white men and independent women of color, and the concomitant growth of a free mulatto sub-class of their progeny. As a consequence, this most racially extreme state, the cradle of secession, never outlawed miscegenation, and throughout the antebellum period powerful whites publicly acknowledged that "whitening up" depended on community recognition rather than bloodlines—an admission rarely made elsewhere. In 1829 its Supreme Court declared it "dangerous and cruel to subject to [a racial] disqualification, persons bearing all the features of a white, on account of some remote admixture of negro blood." In 1846 that same court ruled "It would be difficult, if not impolitic, to define" someone's race "by . . . inflexible rules of separation," and "the question of the reception

22. Johnson and Roark, *Black Masters*, xi, xv.

23. For instances in another state, see Adelle Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789–1879* (Little Rock, AR, 1991).

of colored persons into the class of citizens must partake more of a political than a legal character, and, in a great degree, be decided by public opinion, expressed in the verdict of a jury."[24]

South Carolina was not alone. French and Spanish colonial administrations endowed Louisiana with institutional structures regulating slaves and *gens de couleur libre* profoundly at odds with British colonial practices. Ira Berlin has traced colonial Louisiana's flourishing triracial culture, especially after 1769, when "Spanish officials embraced free people of African descent as allies." After black militiamen helped suppress a revolt by French colonials, they became permanent units under their own officers, with great élan. Self-manumission, guaranteed under Spanish law, generated a growing free urban population too strong for the new American overlords to ignore. Meanwhile, Louisiana's hinterland (including the coasts of present-day Mississippi and Alabama) emerged as a slave society through proliferating sugar plantations, spawning some of North America's largest maroon communities. In different ways, then, the "lower" South along the Gulf differed radically from the more familiar model of a biracial society of free whites and black slaves.[25]

Louisiana's particular status persisted after 1803. As Caryn Cossé Bell's study of "the Afro–Creole protest tradition" documents, Louisiana remained a three-caste society, and an entrépot for European radicalism linking black and white Francophones. Prosperous "Free Men of Color" (a legal term, indicated by the initials "F.M.C.") sent their children to Paris to be educated, where they sometimes married French citizens; one example is Antoine Dubuclet, State Treasurer during Reconstruction and

24. Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York, 1974); Jack D. Forbes, *Africans and Native Americans: The Language of Race and the Evolution of Red–Black Peoples* (1988; 2nd ed., Urbana, IL, 1993), 197. Johnson and Roark, *Black Masters*, is the preeminent study of South Carolina's three-caste system.

25. Berlin, *Many Thousands Gone*, 211, 206–13, 325–33. Classic studies of Louisiana include Arnold R. Hirsch and Joseph Logsdon, eds., *Creole New Orleans: Race and Americanization* (Baton Rouge, LA, 1992); and James H. Dormon, ed., *Creoles of Color of the Gulf South* (Knoxville, TN, 1996). Recent scholarship by Emily Clark greatly adds to our understanding of Afro–Creole society; see Clark, *Masterless Mistresses: The New Orleans Ursulines and the Development of a New World Society, 1727–1834* (Chapel Hill, NC, 2007); and Clark, *The Strange History of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill, NC, 2013).

one of the wealthiest planters. Exiled Jacobins and refugees from France's 1830 and 1848 revolutions found a congenial home in the Crescent City. Distinctive patterns of interracial Catholicity, spiritualism, and freemasonry persisted under U.S. rule, as did the free men of color's military service. Augmented by battalions under mulatto officers exiled from Saint-Domingue, the Creole militia contributed to Jackson's victory over the British in January 1815, earning his praise in letters abolitionists quoted for fifty years as proof of black valor and citizenship.[26]

Louisiana and South Carolina's "brown" communities survived past the Civil War, generating considerable scholarship on Gulf Coast Creoles, although less on Charleston's class–color caste. Other instances are less well-known, like the Spanish Florida borderlands annexed piecemeal in the 1810s, where slaves had legal guarantees, including the right of self-purchase and to marry, with imperial oversight to prevent undue cruelty. In Florida, for reasons of state—to harass nearby Americans—Spanish authorities permitted armed communities of Georgia and South Carolina runaways to settle, and many joined Indian groups fleeing Jackson's conquests in the Old Southwest. A border war with Anglo American colonizers persisted after 1783, when Spain regained the Floridas from England in the Treaty of Paris. What Americans called the Seminole Wars of 1814–1858 was the final playing-out of this resistance.[27]

Despite these well-known coastal enclaves, it was long asserted that most of the United States operated along biracial lines. Whites might prefer mulattoes, and the latter might hold themselves apart, but in practical terms a single color line operated legally and socially. Yet this premise is correct only if triracialism is defined as the existence of a single people accepted as the product of two races but different from either, and thus "of color," as in Charleston and New Orleans. Premising America's racial history on a black/white binary leaps nimbly over the long

26. Caryn Cossé Bell, *Revolution, Romanticism, and the Afro-Creole Protest Tradition in Louisiana, 1718–1868* (Baton Rouge, LA, 1997). Charles Vincent, "Aspects of the Family and Public Life of Antoine Dubuclet: Louisiana's Black State Treasurer, 1868–1878," *Journal of Negro History* 66 (Spring 1981), 26–36.

27. For Florida prior to the U.S. invasion, see Kathleen A. Deagan and Darcie A. MacMahon, *Fort Mose: Colonial America's Black Fortress of Freedom* (Gainesville, FL, 1995); and Jane Landers, *Black Society in Spanish Florida* (Urbana, IL, 1999).

history of people of color who continuously undermined racial orthodoxy from the bottom up. From colonial times, dozens of distinctive mixed-race peoples proliferated everywhere south of New England, their backgrounds often deliberately mystified. While in most cases, a particular people insisted they were only white and Indian but never black, they were assumed by others to be white, black, and red. While other ethnicities like "Gypsy" or "Moorish" sometimes appeared, the commonest strategy was to claim Portuguese or Spanish descent, thus "dark" but not "colored." Because the colonial term "mustee," meaning Indian and black, was anachronistic by 1800, we have no single category for these people. They generally named themselves, drawing on some local reference: the Melungeons in the Great Smokies; the Issues, Shifletts, Poquoson, and Skeetertown peoples in Virginia; North Carolina's Haliwas; the Dead Lake group in Calhoun County, Florida; Wesorts and Guineas in Maryland; Brass Ankles and Turks in South Carolina; Red Bones in Louisiana and Texas; the Ramapo Mountain people ("Jackson Whites") in northern New Jersey, plus the Pineys, Sand Hill Indians, and Moors in its southern reaches; Jukes, Van Guilders, and Bushwhackers in upstate New York; and many more. Lately scholars have focused on the Melungeons, who migrated into Appalachia after the Revolution, where they fought for a century to repel any taint of "Negro blood" while spinning tales of descent from ancient Phoenicians. Even at the height of antebellum racial anxiety and later under Jim Crow, southern legislatures proved unable to drive such peoples to accept "colored" status. In numerous counties, they attended separate schools, although generalized confusion blocked full segregation. Often, they worked hard via intermarriage with whites and controlled endogamy to "whiten up." In other instances, groups like North Carolina's Lumbees finally gained official tribal status from the federal government. The Seminoles exemplify a triracial people compressed into a single identity who harassed the U.S. Army for decades until removed to Oklahoma in the 1830s. Beginning in the 1930s, the black historian Kenneth Porter demonstrated they were not Native Americans but an amalgam of Indian groups and black people from both mainland and Caribbean British colonies.[28]

28. In the 1950s, anthropologists appropriated from eugenicists the term "mixed racial isolates," but a social science category is of little use historically. Calvin L. Beale, "An Overview of the Phenomenon of Mixed Racial Isolates in the United States," *American Anthropologist* 74 (June 1972), 704–10; Brewton

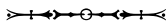
A scattershot triracialism operated in the North as well, especially along New England's seaboard. Consider John and Paul Cuffe, Massachusetts men of color who made a claim for voting rights in 1780 based on military service and taxpaying. Their petition was a crucial moment in African American political assertion, but their strategies underline the contingency of racial identity. Initially rebuffed, in 1782 the Cuffes tried a different tack, petitioning for tax relief as "Indian men and by law not the subjects of taxation," since their mother was a Wampanoag. Again getting no satisfaction, they soon reverted to speaking of themselves as "poor Negroes and mulattoes," as in their original petition. As late as 1808, Paul Cuffe (now a famous merchant mariner) moved back and forth in his self-identification, marrying a Pequot woman. His son, Paul, Jr., identified as an Indian, and his brother John became a member of the Gay Head tribe.[29]

Following the abolition of slavery, New England's triracial character faded, in part because a state-mandated insistence on color-blind civil rights in Massachusetts eroded tribal claims. The Bay State moved to tighten racial boundaries by sorting out Indians from "a vagrant race of negro paupers, idle, filthy and vicious," as an 1832 report dubbed the Narragansetts, and African American men married into Native families backed detribalization so they could claim full ownership of their wives' share in communal lands.[30]

Berry, *Almost White* (New York, 1963); Sharfstein, *Invisible Line*, 81–82; Gross, *What Blood Won't Tell*, 89. Kenneth W. Porter, *The Black Seminoles: History of a Freedom-Seeking People* (Gainesville, FL, 1996) was the culmination of this work; see also Kevin Mulroy, *Freedom on the Border: The Seminole Maroons in Florida, the Indian Territory, Coahuila, and Texas* (Lubbock, TX, 1993); and Daniel F. Littlefield, *Africans and Seminoles: From Removal to Emancipation* (Westport, CT, 1977).

29. Sheldon Harris, *Paul Cuffe: Black America and the African Return* (New York, 1972), 37. The text of their first petition can be found at https://www.infoplease.com/us/speeches-primary-documents/petition-relief-taxation. For a different version of the move between racial identities, see William J. Brown, *The Life of William J. Brown of Providence, R.I., With Personal Recollections of Incidents in Rhode Island* (1883; repr. Freeport, NY, 1971). Brown was a principal black leader in Providence who readily acknowledged his Indian antecedents while seeing himself as "colored."

30. Daniel R. Mandell, *Tribe, Race, History: Native Americans in Southern New England, 1780–1880* (Baltimore, 2008), 57, xvii–xviii, specifies that "Relationships between southern new England Indians and African Americans went



The deeper one probes racial particularization in the confederated states, the more it resembles a jumble rather than a quilt. Even a political geography dividing the U.S. into six racial orders with pockets of isolated triracialism exaggerates clarity about race. Anywhere, at any time, racial definitions could be trumped by community standards, and shadings in the racial spectrum produced by sexual intimacy and multigenerational familial relationships. New scholarship on the antebellum South demonstrates that, while federal and state authorities tried drawing clear lines between citizens and non-citizens, white and black, those definitions were often ignored locally, where most decisions were made. Many whites defined whiteness situationally, based on connections, behavior, and reputation, rather than by either hypodescent or phenotype. As Joshua Rothman has shown, in Virginia "even a person who appeared to be white and who legally had a claim to whiteness by ancestry might not be received as such by the white community." Instead, "a person's associations, actions, and loyalties" shaped how they were seen, so "[c]olor and ancestry were necessary but not sufficient qualities" for becoming white, or being labeled black.[31]

Far from resembling a clearly shaded patchwork distinguishing one state from another, the lived experience of race produced so many exceptions that formal specifications of color and citizenship depended largely on where one resided. On occasion, black *could* become white, or vice versa—if one's neighbors decided. "Passing," imagined by whites as

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through three distinct phases: mutual advantage through intermarriage during the eighteenth century; growing opportunities for people of color outside Indian enclaves at the turn of the century; and finally conflict when black men found they had more to gain by ending the legal distinctions that supported Indian boundaries." For the 1832 report, see John Wood Sweet, *Bodies Politic: Negotiating Race in the American North, 1730–1830* (Baltimore, 2003), 435, n. 63. On occasion, whites exploited this relationship as a way to degrade Indians; see Ruth Wallis Herndon and Ella Wilcox Sekatau, "The Right to a Name: The Narragansett People and Rhode Island Officials in the Revolutionary Era," in *Ethnohistory* 44 (Summer 1997), 433–62, documenting the re-designation of one Native group as "Negroes" and "Blacks," thus "erasing native people from the written record" to "deny the existence of people with any claim to the land" (452–53).

31. Rothman, *Notorious in the Neighborhood*, 205.

fraud, was usually a familial strategy for managing the "natural" descendants of white fathers. Men like Jefferson and the Kentuckian Richard Mentor Johnson (Vice President in 1837–1841) took different routes to either aid or tacitly permit their "mulatto" offspring's passage into whiteness. Two of Jefferson's children, Beverley and Harriet Hemings, fled Monticello and were never pursued, eventually marrying into white families who may never have known their prior status, while another son, Eston, moved to Wisconsin, where he claimed whiteness. Jefferson's comments in an 1815 letter, insisting a slave of more than three-quarters white ancestry, once emancipated, "becomes a free *white* man, and a citizen of the United States," suggests he did not consider his children with Sally Hemings "black." This was no personal quirk, as a 1785 Virginia law defined people as "Negroes" only if a grandparent was legally identified as of full African descent. The ex-president's private views did not prevent him from sloughing off his own progeny, never acknowledging them, while Johnson publicly recognized Julia Chinn, the slave he called his "bride." Together they became the nation's "most visible symbol of amalgamation, their family a topic of debate throughout the United States," since Johnson insisted his daughters, Adaline and Imogene, should participate in local society and married them to white men.[32]

Virginia's three-quarters rule was invoked by whites as well as blacks. An 1833 petition to the legislature from fifty-one Stafford County whites requested an exemption for members of the Wharton family from legislation requiring manumitted slaves to emigrate, arguing that they had more than three-quarters white ancestry, were phenotypically "white," and associated with and married inside the white community. The legislature agreed with this localist logic, in defiance of laws defining anyone enslaved as perforce "Negro," and approved them as "white persons, although remotely descended from a coloured woman." Even in 1858,

32. Ibid., 42, 47–48; on Jefferson, see also Jan Ellen Lewis and Peter S. Onuf, eds., *Sally Hemings and Thomas Jefferson* (Charlottesville, VA, 1999); for Johnson, see Christina Snyder, *Great Crossings: Indians, Settlers, & Slaves in the Age of Jackson* (New York, 2017), 9. The history of passing focuses on postbellum and twentieth-century America, but in addition to the books by Ariela Gross and Daniel Sharfstein, see Allyson Hobbs, *A Chosen Exile: A History of Racial Passing in American Life* (Cambridge, MA, 2013).

despite hardening racial lines, Lancaster County, Virginia, residents petitioned to assign legal whiteness to a dead man whom they acknowledged as of color, in order to protect the property he bequeathed to children he had fathered with a common-law white spouse. Their petition underlined how reputation trumped blood: "'they all now pass as white people and are recognized as such.'"[33]

That elasticity of whiteness is further demonstrated by a long-running legal battle. In 1833, Virginia's legislature granted a special caste-like status to free people of "mixed blood" who were "not white" but also not black, meaning less than one-quarter African. Legislation after Nat Turner's rebellion made free blacks subject to the same penalties as slaves for all crimes, but another bill exempted any "free person of mixed blood" yet somehow neither "a white person nor a free negro or mulatto." Such individuals could apply for certificates, becoming, in Rothman's words, "legally raceless . . . a third racial category without . . . any distinct content." This provision became a powerful legal fact in the 1850s, when lawyers for Richmond "mixed bloods" insisted their clients were exempted from penalties reserved for blacks, including public flogging. Though contentious, the legislation was never repealed. As late as 1857, Virginia's Supreme Court ruled that, even if recognized as not white, persons of less than one-quarter African ancestry could testify in court; the impossibility of accurately fractionating "color" was never admitted.[34]

Nor was Virginia unique in its willingness to extend the rights of whiteness. Martha Hodes has documented similar cases of ambiguous racial identity in the Deep South. In one incident, after the 1847 death of a Georgian named Joseph Nunes, who claimed Portuguese ancestry and was accepted in white society (although census-takers listed his family as of color), his neighbors spent years arguing over his provenance, since that dictated the terms of inheritance. In an 1850 Alabama rape prosecution, a judge ignored the state's requirement that "any admixture" equaled blackness, meaning a mandatory death sentence, saying that if applied to "'quadroons, then where are we to stop . . . so long as there is a drop of negro blood remaining?'"[35]

33. Rothman, *Notorious in the Neighborhood*, 212–15, 233–34.
34. Ibid., 211–12, 220.
35. Hodes, *White Women, Black Men*, 98–104, 119–20.

Why did these anomalies matter, if the federal government nearly always drew a single line of color, from the 1790 law limiting naturalization to whites and the 1792 Militia Act excluding men of color through refusing for decades to issue passports to free people of color, and finally *Dred Scott*'s complete exclusion of "Africans" from citizenship? First, the federal government was of distinctly secondary importance when citizenship was defined primarily by the "States." Until 1865, state citizenship routinely took priority, since the Constitution avoided defining national citizenship other than guaranteeing "the citizens of each state shall be entitled to all privileges and immunities of citizens in the several states." "States' rights" meant that when New England states granted full citizenship to persons of color—permitting them to vote and testify against whites in court, issuing them passports, and protecting known fugitives via "personal liberty" laws—those states' governors, legislatures, and courts were deliberately confronting the states that refused citizenship, as various northern Members of Congress stated during the Missouri Crisis' second stage.[36]

Second, focusing on the line separating citizens from everyone else occludes the more fundamental relation of each *person* to the state, which pre-dated the various racial classifications. Acknowledging the superior weight of local custom over state-level judicial decisions undermines a clear separation between citizens and others, given the weight of English common-law precedents focused on "subjects." Laura Edwards has shown that in much of the South, "the practice of law in local courts . . . routinely acknowledged not just slaves' humanity but also their identities as women and men," reflecting coexisting "conceptions of the state" that were "simultaneously oppressive and inclusive." She produces ample evidence from both Carolinas underlining how, while slaves were hardly citizens, their subjecthood was formally recognized in prosecutions of white men for trying to kill or injure slaves (and of slaves for doing the same to whites). "Common law rules, outlined clearly in justices' manuals . . . gave all subjects a recognized presence in law and a

36. See Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History* (New Haven, CT, 1997), 253–58, for the contradictions between various forms of state citizenship and the absence of any federal definition; U.S. Const. art. IV sec. 2 [Clause 1].

direct connection to the state . . . subordinating all subjects to a sovereign, public body in the same way that slaves and other domestic dependents were subordinated to their male heads of household."[37]

Slippages between "citizen" and "subject" in the postcolonial republic indicate the contingency of American racial politics, the roads not-quite-taken. State-mandated emancipations in the North and widespread manumission in the Upper South during and after the Revolution framed a potential color-caste system through which some "colored" people were elevated and others pushed down, as happened in Brazil, South Africa, and most places where whites ruled over the darker races. The triracialisms described here illustrate the possible complexional gradation through "yellow" and "brown" to "black." Instead, after 1800, African Americans collectively resisted the seductions of color caste, while some pursued private escapes. As Patrick Rael has argued, northern free people of many different hues but geographically "*close enough* to posit a unanimity of interest" with southern slaves imagined a national community of "Colored Americans." Refusing either to demarcate themselves from the enslaved or draw a map of color, they insisted that peoples of African descent constituted a nation within the nation. Increasingly, the lived experience of black politics became a circuit between Upper South and North, given how many northerners were migrants. Much of the leadership, including Douglass, Henry Highland Garnet, Samuel Ringgold Ward, William Wells Brown, John Mercer Langston, and Martin Delany traveled that circuit, in some cases returning as heroic prodigals postbellum—although long before Douglass, Langston, and Delany came home, a more formidable agent of liberation, Harriet Tubman, went south eighteen times to rescue her people.[38]

However paranoid it appears retrospectively, then, there was a logic to southern politicians' constant policing of the color line. Because of geographical contiguity and familial connections linking the Upper South's free rural proletariat to northern African Americans, the former were uniquely positioned to aid the slaves. In this context, the many triracialisms posed a different form of subversion, not political but social

37. Laura F. Edwards, "Enslaved Women and the Law: Paradoxes of Subordination in the Post-Revolutionary Carolinas," *Slavery and Abolition* 26 (Aug. 2005), 305–23, quotations on 307, 315.

38. Rael, *Black Identity and Black Protest*, 27.

and sexual. The more dominance slaveholders exerted, the more they bred their own race rebels—an ultimate expression of the master–slave dialectic. What should these white men do? Keep their "natural" offspring sufficiently close to home and far from blackness to ensure their loyalty? That course required recognizing their children's partial whiteness and the rights accruing therefrom, very difficult in America's version of a slave society, where most voters were slaveless whites. That road could lead to mulatto aristocrats ruling over white men, as in Latin America—and Black Belt planters could not win elections if associated with that option. However, insisting on color's immutable stain, as southern legislators attempted repeatedly in the thirty years following Turner's Rebellion, produced its own quandaries. The profusion of local racial exceptions demonstrates the color line's porousness, the many ways it could be crossed, either via entrance into the third caste of red men scattered across the South, or because of the unreliability of phenotype as a marker in a barely modern rural society operating on hearsay, reputation, and patronage.

The localized conditions sketched above, to which McCune Smith alluded in 1854, melted away after 1861, when slaves fled *en masse* and most northern free men of color went south to fight. The various black and brownish peoples merged into a single political community forged in the Union Army's black regiments and contraband camps. That was Reconstruction's promise—or its threat. Before that denouement, however, the local and state patchworks had served many purposes, aiding black people to seize opportunities from the interstices of sovereignties divided by federalism and localist political cultures. Racial exceptionalism allowed white men to rule over colored people by deciding who was "white" or not, while it permitted some "colored" people to fight out the possibility that they were, by acts of will, deceit, or through sheer confusion, "white."

A basic question remains: Why bother sorting all the complexional shadings of the antebellum caste system, wherein some whites protected their mixed-race kin and others chose to ignore biological antecedents, while triracial clan groups invented new gradations of color caste: red–brown instead of brown–black, "Moorish" instead of brown? *Pulling apart this patchwork documents the relations of power negotiated by persons of African descent.* Unlike others, African Americans have been subject to a

permanent forced cosmopolitanism, and could never afford to root themselves permanently. What signaled "belonging" *for* other Americans was for them the marker of belonging *to*, either as chattels or via the social control exercised over the nominally free people whom Frederick Douglass famously called "slaves of the community."[39]

The imperative of knowing all possible niches of skin, family, or locale in order to escape this "belonging" produced a way of seeing, a meta-politics extending over great distances and borders. One piece of this knowledge operated from the outside in. Scholars have described African Americans' utilizing the British Empire's global reach to aid themselves. Whether in Bermuda, the Bahamas, Canada West, England, or on the oceans commanded by the Royal Navy, they gained access to formidable state power. Only a small fraction could reach external free spaces under the Union Jack, however. Inside the "States," we are reminded of McCune Smith's observation that "in different parts of the same State, the laws, or public opinion, mete out to the colored man a different measure of oppression" and that, as Elizabeth Pryor has recently documented, negotiating public space within the free states was an essential act of citizenship, given "the criminalization of black mobility . . . that deputized all whites to surveil any black person in motion" and "fostered antiblack vigilantism." Every person of color seeking liberation learned these modulations, whether in moving from Georgia to Virginia, from Kentucky to Ohio, or from Pennsylvania to Maine. The North Star hung over all, for the further up the map, the more rights were available. Traversing this patchwork, black people constantly passed on knowledge of laws and customs: What did each border entail? Could a slave catcher take you from a particular county? How to find southern Illinois' free black towns? Which sheriffs around Philadelphia collaborated with kidnappers? Which railroad lines, steamboats, or stagecoaches treated persons of African descent decently, and which forced them onto freezing decks or dirty baggage cars with drunks?[40]

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39. Frederick Douglass, "An Address to the Colored People of the United States," Sept. 29, 1848, accessed June 10, 2018 at http://teachingamericanhistory.org/library/document/an-address-to-the-colored-people-of-the-united-states/.

40. Van Gosse, "'As a Nation, the English Are Our Friends': The Emergence of African American Politics in the British Atlantic World, 1772–1861," *American Historical Review* 113 (Oct. 2008), 1003–1028; Elizabeth Stordeur Pryor, *Colored Travelers: Mobility and the Fight for Citizenship Before the Civil War* (Chapel Hill,

A cursory look at New York City exemplifies how African-descended people utilized this knowledge. In the 1830s, hundreds of runaways learned of its Vigilance Committee via David Ruggles's bookstore on Lispenard Street. There, they were instructed that the city's Democratic authorities were assiduous in seizing fugitives. Ruggles knew to send the Baltimore ship caulker Frederick Bailey to New Bedford, where he could get employment from Quaker merchants. On his arrival in that fabulously wealthy port, a site of black political power, the well-off African American confectioner Nathan Johnson told Bailey was "that there was nothing in the constitution of Massachusetts to prevent a colored man from holding any office in the state."[41]

Complete political equality, including immunity from recapture, was only reached by the estimated thirty thousand exiles in Canada by the 1850s. As Samuel Ward (one-time Liberty Party vice-presidential candidate), reported in a black Albany paper, "there is no lack of negro hate in this Province. . . . But we are without tears . . . the genius of the British government . . . is as impartial as it is free; and the laws alike decree rights alike, in kind and degree to black and white." Crucially, "The number of our people is so large, now, that their votes is eagerly sought after in elections." The New York borderland often produced such frank talk about America's racial orders. In 1848, another Liberty Party leader, the Reverend Henry Highland Garnet (like his cousin Ward, he was born enslaved on the Eastern Shore of Maryland) spoke on the condition of the "colored race" to the women of his Troy pastorate. He limned the U.S.'s origins through two opposing paradigms from 1620, when "the Pilgrims landed on the cold and rocky shores of New England" and "a Dutch ship freighted with souls touched the banks of James river. . . . Wonderful coincidence! The angel of liberty hovered

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NC, 2016), 1–2, 6–7, describing how "Through a combination of social customs, racial codes, and popular culture, U.S. whites worked vigorously to construct a system that surveilled, curtailed, and discouraged black mobility. . . . Access to travel opened up economic, political, and social possibilities."

41. Graham Russell Gao Hodges, *David Ruggles: Radical Black Abolitionist and the Underground Railroad in New York City* (Chapel Hill, NC, 2010); Frederick Douglass, *My Bondage and My Freedom* (1855; repr. New York, 2003), 255. For New Bedford, see Kathryn Grover's indispensable *The Fugitive's Gibraltar: Escaping Slaves and Abolitionism in New Bedford, Massachusetts* (Amherst, MA, 2001).

over New England, and the Demon of slavery unfurled his black flag over the fields of the 'sunny south.'" Garnet was entirely worldly—as a cabin boy shipping from New York, he had "witnessed the landing of a cargo of slaves, fresh from the coast of Africa, in the port of Havanna, in the presence of the governor." He addressed the potential consequences of promiscuous mixing, including attempts by some people of color to "draw a line of blood distinction, and . . . form factions upon the shallow basis of complexion," illustrating his prediction that *"This Western world is destined to be filled with the mixed race"* by naming prominent whites with "our generous and prolific blood in their veins." His most incendiary claim was labeling David Levy Yulee, the first Jewish congressman, "that *renegade negro* of the U.S. Senate." In 1841, Yulee's seating as Florida's territorial delegate was challenged on the grounds of nonresidency at annexation, but Garnet implied he had racially suspect origins (Yulee's Sephardic family long served the Sultan of Morocco, and John Quincy Adams wrote in his diary of gossip about "a dash of African blood").[42]

Garnet was ahead of our time. He understood how racial orders were constructed and highly changeable—that men and women who peopled the national patchwork had been made white or made themselves white enough, sometimes with immediate political impact. Ohio was notable in this connection. Like New York, it was a fulcrum for northern antislavery politics. By 1848, when Garnet spoke, it was long established in law that any male Ohioan accepted as preponderantly "white" had a white man's rights, including suffrage. To us, this seems like confusion; then it appeared a precedent.

Antebellum black politics turned the distinctions between local, national, and foreign into a spectrum of possibilities: Maine was almost-Canada in the 1850s, just as New Jersey was almost-Maryland. The conclusion of the film *Twelve Years a Slave*, depicting a white New Yorker's arrival at Edwin Epps's plantation in 1853, carrying papers proving Solomon Northup a freeman, was little different from a British consul redeeming a subject from a foreign jail. The competing racial orders and

42. Untitled, *Telegraph and Journal* (Albany, NY), Mar. 10, 1853; Henry Highland Garnet, *The Past and Present Condition, and the Destiny, of the Colored Race* (Troy, NY, 1848), 13, 16–17, 18–19, 26; Adams quoted in Kurt F. Stone, *The Jews of Capitol Hill: A Compendium of Jewish Congressional Members* (Lanham, MD, 2010), 6.

jurisdictions within and around the notional national state made black politics a low-intensity war of maneuver, and, cataloging the transatlantic sensibility of the prewar black intelligentsia, men like Garnet, McCune Smith, and Ward, exemplify the possibilities of this disorder. McCune Smith began his Manhattan medical practice in 1837, after earning three degrees in enlightened Scotland. His few equals were those gentlemen who had studied law at London's Middle Temple in the late eighteenth century, including Charles Coatsworth Pinckney, Philip Barton Key, William Loughton Smith, Thomas McKean, and John Dickinson, or youths like Charles Sumner who took the Grand Tour in the 1830s. McCune Smith's kind of knowing, a resolute intellectualism mixed with partisan politics, as a Whig in the 1840s and a Radical Abolitionist in the 1850s, prefigured the "Talented Tenth" politics of another European-educated intellectual, W. E. B. Du Bois. The arc from these men to Du Bois traces the *longue duree* of black politics, maneuvering through the patchwork of multiple sovereignties.[43]

43. See Anne-Marie Taylor, *Young Charles Sumner and the Legacy of the American Enlightenment, 1811–1851* (Amherst, MA, 2001) on his touring Europe; Thomas M. Morgan, "The Education and Medical Practice of Dr. James McCune Smith (1813–1865), First Black American to Hold a Medical Degree," *Journal of the National Medical Association* 95 (July 2003), 603–14.