

AFROFUTURISM IN PROTEST: DISSENT AND REVOLUTION

*Etienne C. Toussaint**

In an era of reckoning and resistance, this Symposium Piece journeys through the rich terrain of Black protest and Afrofuturist imagination, uncovering a radical legal tradition rooted in historical defiance and visionary possibility. By analyzing Black resistance—from insurrections against slavery to today’s racial justice movements—through an Afrofuturist lens, it identifies three key dimensions of Black protest in the United States: perversion, subversion, and revolution. The Piece begins by contextualizing Black protest within the founding contradiction of American freedom—a nation proclaiming liberty while bound to the yoke of slavery. It charts the evolution of protest rights in early American jurisprudence, revealing how legal interpretations narrowed those rights, particularly for Black Americans. From there, it turns to the philosophical foundations of Black protest, highlighting the right of revolution and the moral duty to resist injustice. The seeds of Afrofuturist thought emerge in the writings of nineteenth-century Black activists like David Walker, Martin R. Delany, and Frederick Douglass, who envisioned alternative futures centered on Black liberation. As these visions unfold, the Piece connects the Black radical protest tradition to modern movements like Black Lives Matter, highlighting Afrofuturism’s role in reimagining law, society, and racial justice. By combining legal analysis, historical research, and literary criticism, this Piece reveals a distinctly Black radical vision of protest law—one that frames protest as not merely a right but a moral imperative. Ultimately, it contends that protest is more than a catalyst for change. It is the heartbeat of democratic society.

* Associate Professor of Law, University of South Carolina Joseph F. Rice School of Law. I am grateful to the many people who provided helpful comments and constructive feedback on drafts of this Symposium Piece, including Deborah Dinner, Bernard E. Harcourt, Karuna Mantena, and Dylan C. Penningroth. I thank Joseph McNeila and Virginia Nickles Osborne for research assistance and Vanessa McQuinn for editorial assistance. I am especially grateful to the editors of the *Columbia Law Review*—particularly Chris Aranda, Alexandria Iraheta Sousa, Nicole Morote, and Shaunak Puri—for their exceptional editing and support throughout the publication process. Finally, I thank Ebony, Etienne, Edward, and Erwin—I am, because we are. Any errors or omissions are my own.

INTRODUCTION	1377
I. THE HISTORICAL CONTEXT OF BLACK PROTEST.....	1383
A. Slavery Revolts, Black Resistance, and Legal Subjugation.....	1384
B. The Paradox of the Revolution and Slavery	1393
C. Reconstruction and the Black Codes	1403
II. THE PHILOSOPHICAL FOUNDATIONS OF BLACK PROTEST.....	1411
A. The Demands of Dignity.....	1412
1. Frederick Douglass	1412
2. Sojourner Truth	1419
3. Harriet Tubman	1420
B. The Right of Revolution	1422
1. David Walker's <i>Appeal</i>	1423
2. Martin Delany's <i>Blake; or The Huts of America</i>	1427
III. THE EVOLUTION OF BLACK PROTEST.....	1432
A. Perversions of Law and Democracy.....	1433
1. Social Perversions: Racial Terrorism and Jim Crow.....	1433
2. Political Perversions: Disenfranchisement and Coups.....	1437
3. Economic Perversions: Exploitation and Destruction	1439
B. Subversive Strategies in Black Protest	1443
1. Intellectual and Cultural Resistance	1444
2. Economic and Labor Activism	1446
3. Grassroots Organizing and Youth Movements.....	1450
C. Revolutionary Movements and Radical Black Thought	1453
1. Urban Uprisings and Organized Action.....	1453
2. Modern Civil Disobedience and Protest.....	1459
3. Student Protests and the Question of Palestine	1461
CONCLUSION	1464

“Are we MEN!!—I ask you, O my brethren! . . . Are they not dying worms as well as we?”

— David Walker.¹

INTRODUCTION

The Stono Rebellion of 1739, one of the largest revolts in colonial America,² exemplifies the subversive nature of Black protest. Sparked by the brutal conditions faced by enslaved Africans in South Carolina, the revolt temporarily liberated its participants and directly confronted the authority of the slavocracy.³ By asserting their agency against systemic dehumanization, the revolutionaries expanded the boundaries of protest, proving that resistance need not conform to the legal norms of an oppressive order. Their defiance called into question the legitimacy of liberty and democracy as framed by White supremacy, revealing the radical potential embedded in Black protest traditions.⁴

The persistence of Black protest throughout the eighteenth century, driven by ongoing oppression, exposed the glaring hypocrisy of American democracy.⁵ The American Revolution—heralded for its ideals of liberty and republican self-governance—was paradoxically built atop the enslavement and subjugation of African people racialized as Black.⁶ This contradiction underscored the radical potential of Black protest traditions to destabilize dominant civic ideals and recast the distorted meaning of political participation. Though the Revolution proclaimed inalienable

1. David Walker, *Walker’s Appeal*, in *Four Articles 21* (Univ. of N.C. Press 2011) (1830) [hereinafter *Walker’s Appeal*].

2. See Daniel C. Littlefield, *Echoes of Liberty: Historians, the Stono Rebellion, and the Atlantic World*, *S.C. Hist. Mag.*, July 2019, at 186, 186 (“In the twenty-first century, historians regard the Stono Rebellion as the largest, deadliest servile insurrection to have taken place on the mainland of British North America prior to the American Revolution.”).

3. See *id.* (noting that the historical treatment of the Stono Rebellion has “shift[ed] away from the effect of imperial influences on the rebels and towards [participants’] own agency”).

4. Resistance is often framed as politically threatening unless it seeks to redeem dominant American values like individualism, limited government, and private property. See Alex Zamalin, *Struggle on Their Minds: The Political Thought of African American Resistance 2* (2017) [hereinafter *Zamalin, Struggle on Their Minds*] (“[F]or many white Americans, black resistance often signifies not political agitation but an unwillingness to accept cultural norms of upstanding citizenship . . .”). The Stono Rebellion threatened White enslavers’ liberty interests and private property rights, which were viewed as foundational principles of American democracy. See Littlefield, *supra* note 2, at 187–90 (noting late nineteenth- and early twentieth-century historians’ reduction of the “struggle for liberty among enslaved Africans . . . to a necessary action on the part of slaveholders for containing and controlling an unthinking labor force” as a way of undermining some Stono observers’ recognition of the “enslaved and their enslavers’ kindred humanity”).

5. See *infra* section I.B.

6. See *infra* section I.B.

rights,⁷ the U.S. Constitution enshrined slavery.⁸ Even more, the Three-Fifths Clause and slave codes denied Black Americans the most basic of freedoms, restricting their movement, assembly, speech, and education.⁹

Across generations, Black protest in America has been a continuous assertion of individual and collective agency.¹⁰ Enslaved Africans resisted not only through open revolts and flight via the Underground Railroad, but also through intimate acts of defiance—preserving ancestral traditions, practicing forbidden religions, and cultivating cultural memory.¹¹ These acts offered alternative visions of freedom, challenging legal and political structures that silenced Black voices and upheld a liberal republicanism rooted in White supremacy. As Black protest traditions emerged, they directly contested the narrow legal concept of protest inherited from English common law, a tradition that recognized only limited rights to petition the government for grievances.¹² Though the right to protest gained prominence during the American colonists' resistance to British rule and was later enshrined in the Declaration of Independence and the First Amendment,¹³ these protections were unevenly applied, especially in cases involving slavery, abolitionism, and Black protest.¹⁴

7. The Declaration of Independence para. 2 (U.S. 1776).

8. U.S. Const. art. 1, § 2, cl. 3 (counting each enslaved person as three-fifths of a person for purposes of determining states' congressional representation), repealed by U.S. Const. amend. XIV, § 2.

9. *Id.* For a discussion of slave codes across the United States, see *infra* text accompanying notes 72–80.

10. For stories of Black protest in response to American slavery during and immediately after the Revolution, see Gary B. Nash, *Race and Revolution* 69–72 (Rowman & Littlefield ed., 2001) (1990) (describing African Americans' "quest for place and self-definition" after the Revolution and the attempt to create a sense of peoplehood by reconciling "their consciousness of being African and their consciousness of being American").

11. See *id.* at 72 (arguing that African Americans maintained their identities by creating "a culture of alternative institutions," such as independent churches, where they could create a sense of peoplehood beyond the White vision of America (internal quotation marks omitted)); see also John Hope Franklin & Loren Schweninger, *Runaway Slaves: Rebels on the Plantation* 1, 2–6 (1999) (noting that, in some instances, enslaved persons "demanded concessions, rejected orders, threatened whites, and sometimes reacted with violence").

12. See Katherine Hessler, *Early Efforts to Suppress Protest: Unwanted Abolitionist Speech*, 7 *B.U. Pub. Int. L.J.* 185, 186 (1998) (noting that in 1836, Congress attempted to "quiet abolitionist dissent and limit their use of petition by passing a gag rule . . . forbidding legislators from discussing or receiving petitions from citizens regarding the issues of slavery and abolition"); see also *A Necessary Evil? Slavery and the Debate Over the Constitution* 11–12 (John P. Kaminski ed., 1995) (discussing a 1777 petition by a group of Black Americans to the Massachusetts legislature, requesting "the same rights that the colonists were fighting for in their conflict with Great Britain" (emphasis omitted)).

13. See The Declaration of Independence para. 2 ("Governments are instituted among Men, deriving their just powers from the consent of the governed . . . [W]hensoever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it . . ."); see also U.S. Const. amend. I.

14. See, e.g., Nash, *supra* note 10, at 27 (noting James Madison's belief that slavery made the Union fragile, particularly in light of South Carolina delegate John Lynch's alleged

For example, the Supreme Court's 1857 decision in *Dred Scott v. Sandford* denied citizenship to Black people and, with it, the protections of free speech and assembly.¹⁵ Even after emancipation, rulings like *United States v. Cruikshank* in 1876 eroded federal protections of Black citizens' rights to assemble, leaving them exposed to racial terrorism and the machinery of White supremacy.¹⁶ Thus, while early American law professed to enshrine the right to protest and assemble, it often did so selectively, restricting those rights for non-White Americans to preserve the racial hierarchy. The tensions laid the groundwork for future advocacy, from the civil rights movement to today's social justice struggles, as Black communities and their allies have labored to reclaim, expand, and redefine the constitutional promise.

Throughout these shifting landscapes, Black protest has remained dynamic, continually evolving in response to both legal reforms and their absence. Resistance has taken many forms, not only through direct action—such as the open defiance of rebellions during the antebellum era¹⁷—but also through the beauty of cultural expressions like music, dance, and storytelling that subverted dominant norms and conjured new worlds.¹⁸ In the twentieth century, Afrofuturism emerged as a powerful intellectual and artistic tradition, seizing upon the contradictions of American protest to envision alternative Black futures beyond the margins of the law.¹⁹ Though the term “Afrofuturism” was not coined until 1993 by

ultimatum—given twenty-six days after the Declaration of Independence—that any debate over the issue of enslaved persons as property would be an end of the Confederation).

15. See 60 U.S. (19 How.) 393, 454 (1857) (enslaved party), superseded by constitutional amendment, U.S. Const. amend. XIV.

16. See *United States v. Cruikshank*, 92 U.S. 542, 552, 557–59 (1876) (holding that the right of assembly under the First Amendment applies only to the federal government and that the Fourteenth Amendment's Due Process and Equal Protection Clauses, while offering protection against state governments, did not bind private actors), abrogated in part by *De Jonge v. Oregon*, 299 U.S. 353 (1937).

17. See Stephanie M.H. Camp, *Closer to Freedom: Enslaved Women & Everyday Resistance in the Plantation South* 33–116 (2004) (discussing how enslaved women would resist slaveowners' control by temporarily escaping, attending secret parties, and displaying abolitionist materials); Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South From Slavery to the Great Migration* 57–61, 64–65 (2003) (considering different forms of slave rebellion, including the power of running away, spreading rumors that scared enslavers or energized fellow enslaved people, and joining the Union's fight against the Confederacy's rebellion). For a broader history of enslaved people's manifestations of rebellion, see generally Eugene D. Genovese, *From Rebellion to Revolution: Afro-American Slave Revolts in the Making of the New World* (Vintage Books ed. 1981) (1979).

18. See, e.g., Robin D.G. Kelley, *Race Rebels: Culture, Politics, and the Black Working Class* 168–82 (paperback ed. 1996) (describing “the capacity of cultural politics, particularly for African American urban working-class youth, to both contest dominant meanings ascribed to their experiences and seize spaces for leisure, pleasure, and recuperation”).

19. See Mark Bould, *The Ships Landed Long Ago: Afrofuturism and Black SF*, 34 *Sci. Fiction Stud.* 177, 178–80 (2007) (critiquing early science fiction works as “avoid[ing] direct

Mark Dery,²⁰ its roots stretch far earlier to the prophetic works of David Walker's 1829 *Appeal to the Coloured Citizens of the World*, Martin R. Delany's 1859–1862 serialized novel *Blake; or the Huts of America*, and Frederick Douglass's stirring oratory and writings.²¹ These thinkers did more than critique slavery and racism: They also imagined futures for Black Americans anchored in alternative legal and political theories of liberty, dignity, and self-determination—laying the intellectual groundwork for modern Afrofuturism.

Twentieth-century figures like Sun Ra, Octavia Butler, and Samuel R. Delany expanded this lineage through speculative fiction and sonic experimentation, challenging the rigid legal and social systems that have long sought to constrain Black cultural expression and the right to peaceful assembly.²² Their works envisioned worlds where systemic oppression had been dismantled, creating stark contrasts to prevailing realities.²³ In so doing, these Afrofuturist visions illuminated the chasm between the ideal of American freedom and the lived experiences of Black Americans,²⁴ often turning the very constitutional tools once denied to them into instruments of radical critique and social transformation. In his searing reflections, James Baldwin framed Black rage as a profoundly human response to racial violence and systemic betrayal—a moral force capable of exposing the nation's contradictions and demanding accountability for its unfulfilled democratic promises. Through literature, music, and visual art, Afrofuturists crafted intellectual sanctuaries and insurgent platforms

engagement with the realities of racialized hierarchies and oppressions” and discussing Afrofuturism’s impact on twentieth-century science fiction).

20. See Mark Dery, *Black to the Future: Interviews With Samuel R. Delany, Greg Tate, and Tricia Rose*, in *Flame Wars: The Discourse of Cyberculture* 179, 180 (Mark Dery ed., 1994) (“The notion of Afrofuturism gives rise to a troubling antinomy: Can a community whose past has been deliberately rubbed out, and whose energies have subsequently been consumed by the search for legible traces of its history, imagine possible futures?”).

21. See *infra* section II.B.

22. See Dery, *supra* note 20, at 736, 738.

23. See, e.g., Octavia E. Butler, *Kindred* (Beacon Press 2003) (1979) (narrating the story of an African American woman who is transported in time from 1976 Los Angeles to a nineteenth-century plantation in Maryland, where she meets her ancestors).

24. See, e.g., I. Bennett Capers, *A Afrofuturism and the Law: A Manifesto* 112 *Geo. L.J.* 1361, 1369–72 (2024) (arguing that legal scholars often “fall short of imagining the ideal” and that the Afrofuturist legal scholar should imagine the ideal, “just as they should imagine how future technologies might contribute to a more egalitarian world,” while also recognizing that “current inequities are only fully intelligible through past inequities”); Jon-Christian Suggs, *African American Literature and the Law*, 43 *Stud. L., Pol. & Soc’y* 153, 154 (2008) (“[Afrofuturist literature] has as its central concern matters of American law [U]sing lenses ground of African American narrative[,] a reader can begin to see the outlines of an alternative text of American legal history.”).

for Black political thought, transcending traditional frameworks and leveraging the power of free speech to summon futures unbounded by oppression.²⁵

Through an exploration of the Afrofuturist literary tradition, this Symposium Piece argues that Black protest movements are not merely expressions of civil unrest—they are critical sites of political theory and legal imagination, challenging and enriching the very concept of democracy. While mid-twentieth-century historians like Louis Hartz and Richard Hofstadter posited a liberal consensus as the foundation of American political life,²⁶ Black thinkers were revising core American principles, exposing how White supremacy subverted both Black dignity and freedom.²⁷ In this way, Black protest traditions not only reflect the centrality of individual agency to freedom, they also clarify the necessity of direct actions—whether whispered in spirituals or shouted in the streets—in fostering a robust practice of democratic citizenship.

This Piece explores the intersection of Black protest traditions, legal theories of speech and assembly across U.S. history, and the speculative insights of Afrofuturist thought to articulate a Black radical conception of the law of protest. By examining historical instances of Black resistance,

25. See Alex Zamalin, *Black Utopia: The History of an Idea From Black Nationalism to Afrofuturism* 10–12 (2019) (“[B]lack utopians needed to seize a space of imagination from which they were barred and imagine a new humanity from which they were excluded.”).

26. See Louis Hartz, *The Liberal Tradition in America* 58 (2d ed. 1991) (arguing that, from its founding, the United States has been a society in which the liberal tradition has been “one of the most powerful absolutisms in the world”); see also Richard Hofstadter, *The American Political Tradition and the Men Who Made It*, at vii (1948) (referring to “the rudderless and demoralized state of American liberalism” following Franklin D. Roosevelt’s death).

27. See, e.g., Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education*, at xx (2004) (“The forms of citizenship I advocate here tend to support some forms of liberalism more than others[,] . . . but in general these forms straightforwardly complement institutional politics based on equal human dignity and the protection of the liberty of citizens.”); James Baldwin, *Many Thousands Gone*, in *James Baldwin: Collected Essays* 19, 33–34 (1998) (noting that, at the end of *Native Son*, those in the courtroom do not want to forgive Bigger and he does not want to forgive them because “[i]t is . . . only death which will allow him a kind of dignity or even . . . a kind of beauty”); Eddie S. Glaude Jr., *In a Shade of Blue: Pragmatism and the Politics of Black America* 120 (2007) (“Demands for recognition in light of state-sanctioned apartheid might take the form of broad-based claims to American citizenship or they may take the form of racial pride, insofar as that pride affirms the dignity and humanity of an otherwise degraded people.”); Tommie Shelby, *We Who Are Dark: The Philosophical Foundations of Black Solidarity* 111 (paperback ed. 2007) (“Black Power was meant to be a direct challenge to white privilege, to white paternalism, to white power.”); Jack Turner, *Awakening to Race: Individualism and Social Consciousness in America* 1–13 (2012) (reconstructing democratic individualism in America, arguing that Ralph Waldo Emerson, Henry David Thoreau, Frederick Douglass, Ralph Ellison, and James Baldwin show that personal responsibility entails rejecting complicity in injustice and actively opposing its conditions); *infra* sections III.C.1–2.

from slavery revolts to contemporary movements, and analyzing them through an Afrofuturist lens, this Piece reveals three core dimensions of Black protest: It is (1) an act of subversion—the disruption of the authority of dominant legal and political systems—that is (2) triggered by perversion—the distortion of foundational principles undergirding the political system—and (3) oriented toward revolution—the imagining and creation of alternative social and political systems, shaped by a renewed vision of justice rooted in the lived experiences of the oppressed.

While this Piece is grounded in legal and political discourse, it adopts a broader lens. Black Americans have often resisted outside the formal spaces of electoral politics and legislative reform, precisely because the same structural inequities that degrade social and economic equality also erode political inclusion. Movements within the Black radical tradition have long reimaged central political concepts such as citizenship, liberalism, and civic republicanism, while also calling for the abolition of institutions born of slavery and sustained by racial domination. These ideas have often found their most powerful expression in art—through poetry, fiction, music, and film—demonstrating the critical utility of Afrofuturism in rethinking protest law.

This Piece proceeds as follows: Part I traces the historical terrain of Black protest and the contested boundaries of civility, beginning with slavery revolts and resistance movements and the legal architecture designed to suppress them. It lays bare the central paradox of the American Revolution—a fight for liberty built atop the edifice of bondage—and shows how this contradiction not only informed legal justifications for slavery but also sowed the seeds of rebellion. This Part concludes with the Reconstruction era, showing how Black Codes and newly erected legal barriers to freedom spurred new forms of protest and community solidarity.

Next, Part II turns to the philosophical foundations of Black protest, anchoring them in the revolutionary promise of the Declaration of Independence and its radical reinterpretation by Black activists. Drawing on Frederick Douglass's vision of protest as a form of dignity, it introduces the intertwined concepts of the right to speak and the duty to resist. Through the lives and legacies of Sojourner Truth and Harriet Tubman—and through seminal texts like David Walker's *Appeal* and Martin R. Delany's *Blake*—this Part reveals how Black protest has always been a site of political theory, contesting dominant narratives and envisioning emancipatory futures.

Finally, Part III maps the evolution of the Black radical tradition, illuminating how the promises of the Reconstruction Amendments expanded the possibilities for resistance. It examines how Black communities responded to post-Reconstruction oppression through intellectual resistance, labor activism, and grassroots organizing. Figures like James Baldwin, Martin Luther King, Jr., and Malcolm X take center stage,

alongside movements such as the Black Panther Party and the urban uprisings of the 1960s. This Part also considers how these protest traditions continue to reverberate in contemporary activism—from Black Lives Matter to student-led mobilizations—and how they intersect with global justice movements, including protests responding to the Israeli–Palestinian conflict. Together, they reveal the enduring moral imperative of Black protest traditions.

Through its interdisciplinary approach—blending legal analysis, historical research, and literary criticism—this Piece illuminates the rich interplay between Black protest traditions, Afrofuturist imagination, and the evolving contours of U.S. law. It shows how Black activists have persistently challenged and reimagined the scaffolding of American democracy, offering alternative visions of law and political economy shaped by the lived experiences of the oppressed. Revisiting the history of Black protest enriches contemporary debates about speech, assembly, and civic resistance. Even more, by uncovering a distinctly Black radical conception of the law of protest, this Piece affirms protest not simply as a constitutional right but as a duty—a moral imperative to transform the present and claim a future grounded in justice, dignity, and collective liberation.

I. THE HISTORICAL CONTEXT OF BLACK PROTEST

On a scorching September day in 1739, a group of enslaved Africans in South Carolina launched the Stono Rebellion, one of the earliest and most significant uprisings against slavery in colonial America.²⁸ Driven by a desire for freedom and rooted in the cultural memory of their African heritage, the so-called rebels marched southward, torching plantations in a bold quest for liberation.²⁹ Though ultimately suppressed, the rebellion stands as a defining early moment in the long arc of Black resistance to slavery and racial injustice.

To grasp the full weight of such early protests and their echoes in today’s political and legal debates, this Part traces the origins of Black protest traditions, from slavery to the contradictions of the American Revolution to the unfinished project of Reconstruction. Section I.A examines forms of resistance to slavery, from full-scale uprisings like the Stono Rebellion to the subtler, everyday acts of defiance that chipped away at the system from within. Section I.B explores the paradox of the American Revolution, spotlighting the glaring dissonance between its lofty ideals of liberty and the enduring reality of human bondage. Finally, section I.C turns to the aftermath of emancipation, charting how Reconstruction-era

28. See Littlefield, *supra* note 2, at 186.

29. See Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina From 1670 Through the Stono Rebellion* 314–17 (1975) (describing the Stono Rebellion’s progression, including the violence and property damage that ensued).

gains were undermined by the swift rise of Black Codes that enforced racial segregation and deepened structural inequality.

Seen through this historical lens, Black protest emerges not merely as reactive resistance but as a tradition of radical subversion, undermining the legitimacy of legal authority to expose the betrayal of the law's professed principles. It is a call not for reform alone, but for a revolutionary remaking of justice, one grounded in the lived experiences and aspirations of the oppressed.

A. *Slavery Revolts, Black Resistance, and Legal Subjugation*

The institution of slavery in antebellum America was characterized by both overt revolts and more covert, everyday acts of resistance by the enslaved population. These acts of protest embodied a powerful tradition that simultaneously subverted established power structures, exposed the perversion of democratic principles, and envisioned revolutionary transformation. While large-scale uprisings on plantations were among the most visible forms of defiance, they were part of a broader spectrum of opposition that also included subtle, persistent acts of sabotage and subversion.³⁰ Notable revolts, such as the Stono Rebellion of 1739, Gabriel's Rebellion of 1800, and Nat Turner's Rebellion of 1831, exemplify the era's ongoing acts of visible resistance.³¹

The Stono Rebellion, also known as Cato's Conspiracy, took place in South Carolina in 1739 and stands as one of the largest uprisings of enslaved people in British North America.³² Colonists struggled to establish agricultural centers, but in the decade before the rebellion, malaria, smallpox, and yellow fever outbreaks devastated the colony. By 1738, enslaved persons outnumbered White inhabitants.³³ Led by Jemmy, an enslaved man likely of Kongolese origin (and possibly a former soldier), the rebellion began on September 9, 1739.³⁴ Jemmy and about twenty fellow enslaved Africans raided a warehouse, seized weapons and

30. Franklin & Schweninger, *supra* note 11, at 2 (discussing "day to day" acts of resistance such as damaging property, setting fires to barns and stables, ruining clothing, and vandalizing wagons (internal quotation marks omitted)).

31. See, e.g., John Samuel Harpham, 'Tumult and Silence' in the Study of the American Slave Revolts, 36 *Slavery & Abolition* 257, 258 (2015) (noting that scholars examining slavery revolt narratives understand that these narratives "obscure rather than reveal the historical truth" and distort reality by suggesting enslaved persons could only speak "through the murky and uncertain medium of their . . . masters").

32. See Littlefield, *supra* note 2, at 186.

33. Jack Shuler, *Calling Out Liberty: The Stono Slave Rebellion and the Universal Struggle for Human Rights* 67–69 (2009).

34. See *id.* at 77. Historians have reconstructed details about Jemmy and the Stono rebels. According to Professor John K. Thornton, they were likely Kongolese (from modern Angola, not the Portuguese colony) with military experience and training in modern weapons. John K. Thornton, African Dimensions of the Stono Rebellion, 96 *Am. Hist. Rev.* 1101, 1103, 1109 (1991). The leader remains unidentified. Colonial-era historian Alexander

ammunition, and then marched south toward Spanish Florida, where they hoped to find freedom.³⁵ Their numbers quickly grew to nearly one hundred as they traveled from plantation to plantation, killing several White planters and burning numerous plantations along the way.³⁶ The rebellion's motivations were multifaceted: Not only did the rebels oppose the harsh conditions of slavery in South Carolina, they were lured by the promise of freedom in Spanish Florida and the opportunity to exploit the geopolitical dynamics of the War of Jenkins' Ear (1739–1748), a strategic subversion that demonstrated their sophisticated understanding of political vulnerabilities.³⁷ Despite their initial success, the rebels were ultimately suppressed by colonial militias, leading to numerous deaths and the executions of the participants.³⁸

Despite brutal repression, planned revolts continued, such as Gabriel's Rebellion, also known as Gabriel's Conspiracy, in Richmond, Virginia, in 1800.³⁹ Although the rebellion was thwarted before it could begin, its planning and aftermath had significant repercussions. Gabriel, a literate and skilled blacksmith, devised a sophisticated plan involving thousands of enslaved people that went beyond mere resistance to envision a revolutionary transformation of society. His strategy involved capturing the capital city of Richmond, taking Governor James Monroe hostage, and negotiating for the enslaved people's freedom.⁴⁰ Gabriel's

Hewatt described the "captain" as an elected member of the group. 2 Alexander Hewatt, *An Historical Account of the Rise and Progress of the Colonies of South Carolina and Georgia* 72–75 (London, Alexander Donaldson 1779). Professor Ulrich Bonnell Phillips attributed the rebellion to "a score of Angola blacks with one Jonny as their leader." Ulrich Bonnell Phillips, *American Negro Slavery* 473 (1918). Physician and historian David Ramsay referred to the leader as "Cato." 1 David Ramsay, *The History of South Carolina From Its First Settlement in 1670 to the Year 1808*, at 112 (Charleston, David Longworth 1809). Professor Peter Charles Hoffer notes that "Jemmy" was a name reported in 1739 to James Oglethorpe, governor general of Georgia, as a supposed rebel, planner, and plotter. Peter Charles Hoffer, *Cry Liberty: The Great Stono River Slave Rebellion of 1739*, at 74 n.15 (2010). Hoffer argues that "Jemmy" has become an archetype, "simply standing for all slave rebel leaders." *Id.*

35. Shuler, *supra* note 33, at 67–69.

36. *Id.*

37. Spain, seeking to undermine British control, had offered freedom to enslaved people escaping from the British colonies. See Littlefield, *supra* note 2, at 189.

38. See Littlefield, *supra* note 2, at 187.

39. Douglas R. Egerton, *Gabriel's Rebellion: The Virginia Slave Conspiracies of 1800 and 1802*, at 55 (1993).

40. *Id.* at 50–56. After taking Governor Monroe hostage, the rebels planned to set fire to the warehouse district and fortify the city. *Id.* While awaiting reinforcements from other Virginia towns, they would seize the state treasury and divide the money. *Id.* Capturing or killing enough townspeople would pressure local leaders into making concessions, with freedom as their demand. Gabriel's brother testified that when this moment arrived, the rebels would "hoist a white flag, and [Gabriel] would dine and drink with the merchants of the city." *Id.* (alteration in original) (internal quotation marks omitted) (quoting Gabriel's brother). Though Gabriel did not reveal the next steps, the seizure of the capital likely signified the intended end of slavery in Virginia—and perhaps beyond. *Id.*

plot was inspired by revolutionary ideals from the American, French, and Haitian Revolutions, as well as by the relative freedom of movement and assembly enjoyed by some enslaved people in urban areas, drawing on these principles to expose the perversion of America's foundational promises of liberty.⁴¹ The conspiracy was exposed when an enslaved man revealed the plot to his enslaver, leading to the arrest and execution of Gabriel and many of his fellow conspirators before the rebellion could take place.⁴²

Nat Turner's Rebellion, or the Southampton Insurrection, was among the deadliest slavery revolts in U.S. history. Taking place in Southampton County, Virginia, in August 1831, the rebellion was led by Nat Turner, a literate and devoutly religious man who believed he was divinely chosen to lead his people out of slavery—a revolutionary vision rooted in both spiritual conviction and the lived realities of oppression.⁴³ On August 21, 1831, Turner and his followers initiated the revolt, moving from plantation to plantation, killing White inhabitants and freeing enslaved people. The rebels ultimately killed approximately fifty-five White people before being suppressed by local militias and federal troops.⁴⁴ The rebellion had a profound impact on Southern society, inciting widespread fear and panic among White Southerners. The response was brutal. White mobs and militias immediately sought revenge, killing hundreds of free and enslaved Black people, many of whom had no direct connection to the rebellion.⁴⁵ This extreme reaction underscored the deep-seated anxieties about potential uprisings and the lengths to which White Southerners were willing to go to maintain social control.

While large-scale revolts drew significant attention, everyday acts of defiance were a more common and pervasive form of resistance among the enslaved population.⁴⁶ These acts of resistance, though less visible,

41. *Id.* at 52.

42. *Id.* at 70–73. Pharoah, a twenty-seven-year-old enslaved man involved in Gabriel's conspiracy, reconsidered after thinking of his young family. *Id.* Fearing the consequences if discovered, he followed a fellow bondsman's advice and informed his owner. *Id.* Patrols were organized to capture those linked to the plot, and Gabriel was later captured in Norfolk and executed. *Id.*

43. See Patrick H. Breen, *The Land Shall Be Deluged in Blood: A New History of the Nat Turner Revolt* 25 (2015). Convinced of his messianic calling, Turner told four fellow bondsmen that a February 12, 1831, solar eclipse "was a sign from God that he should lead a slave revolt." *Id.*; see also Henry Irving Tragle, *The Southampton Slave Revolt of 1831: A Compilation of Source Material 27–170* (Vintage Books 1973) (1971) (collecting newspaper articles and other sources about Nat Turner's revolt).

44. See Tragle, *supra* note 43, at 1.

45. John W. Cromwell, *The Aftermath of Nat Turner's Insurrection*, 5 *J. Negro Hist.* 208, 212 (1920); see also Breen, *supra* note 43, at 94–95 (noting that, in the "aftermath of the revolt[,] whites killed [dozens of] blacks indiscriminately").

46. See Franklin & Schwenger, *supra* note 11, at 2.

were deeply impactful and played a crucial role in undermining the institution of slavery through consistent subversion of its economic and social foundations. Enslaved individuals frequently engaged in work slowdowns, deliberately reducing their productivity to protest the harsh conditions and exploitative labor demands imposed upon them.⁴⁷ They also feigned illnesses to avoid work, using this tactic to gain brief respite and exert some control over their daily routines.⁴⁸ Sabotage of crops and equipment was another form of resistance in which enslaved people intentionally damaged tools, spoiled crops, or otherwise hindered the plantation's productivity as a way of fighting back against their exploitation.⁴⁹ Theft of essential goods, such as food or tools, was also a common practice. By appropriating these items, enslaved people could address their immediate needs or deprive their enslavers of valuable resources.⁵⁰ These acts, while subtle, were deeply symbolic and practical ways for the enslaved to assert a measure of autonomy and challenge the system that sought to control every aspect of their lives. Collectively, these everyday acts of resistance not only disrupted the operations of plantations but also reinforced the resilience and agency of those who fought for their dignity and freedom under the constant threat of severe punishment.

The Underground Railroad was another crucial form of organized resistance. This clandestine network of secret routes and safe houses, operated by both Black and White abolitionists, represented both a subversive undermining of the legal slavery system and a revolutionary vision of interracial cooperation for freedom.⁵¹ The Underground Railroad was not a single pathway but a complex system stretching from Southern slave states to Northern free states and Canada. Key figures included Harriet Tubman, who made multiple trips to rescue enslaved people, and William Still, who documented and assisted numerous escapees.⁵² Although estimates suggest that tens of thousands of enslaved individuals successfully fled through the Underground Railroad, the exact number remains unknown due to its secretive nature.⁵³ The network's operations were carefully concealed to protect both the escapees and those involved in their

47. See *id.*

48. See *id.*

49. *Id.* at 2–3.

50. See *id.* at 80 (“For slaves, stealing was not considered theft, merely appropriating their due.”).

51. *Id.* at 116.

52. See William C. Kashatus, *William Still: The Underground Railroad and the Angel at Philadelphia* (2021) (telling the story of a key free Black abolitionist who led the Eastern Line of the Underground Railroad, worked with Harriet Tubman, and became a central figure in early civil rights and antislavery activism); Milton C. Sernett, *Harriet Tubman: Myth, Memory, and History* 2, 7–9 (2007) (exploring how the icon of Harriet Tubman compares with Harriet Tubman as a historical figure).

53. See Franklin & Schweningen, *supra* note 11, at 367 n.49 (“Estimates of the number of slaves who made it to freedom in the North vary considerably.”).

rescue. The Underground Railroad was instrumental in exposing the perversion of American laws by creating an alternative system of justice rooted in human dignity rather than property rights.

As resistance to slavery persisted, so did the legal mechanisms designed to maintain the so-called “peculiar institution.”⁵⁴ The Constitution already had enhanced the political influence of Southern slaveholding states through the Three-Fifths Clause,⁵⁵ which determined state representation by counting enslaved individuals as three-fifths of a person for population calculations.⁵⁶ This provision exemplified the perversion of democratic principles, not only disregarding the equal humanity of enslaved Black individuals but also perpetuating their status as property.⁵⁷ Enslaved people’s marginalization was exploited to bolster the political power of White Southerners, given the substantial enslaved population in the South compared to the North. Additionally, their dehumanization protected Southern economic interests by reducing tax liabilities.⁵⁸ Some Northerners criticized any inclusion of enslaved individuals in the population count for representation purposes as unfair,⁵⁹ citing comparisons to Northern property ownership of horses and oxen; others exemplified the pervasiveness of White supremacy by protesting any perceived equivalence between Black and White Americans.⁶⁰

Additionally, the Constitution already had extended the slave trade for at least two more decades beyond its formation, representing yet

54. See Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Ante-Bellum South* 86–97 (Vintage Books 1989) (1956) (exploring slavery as a method of regulating race relations and as a system of controlling and exploiting labor).

55. See Thurgood Marshall, Commentary, Reflections on the Bicentennial of the United States Constitution, 101 *Harv. L. Rev.* 1, 2 (1987) (“‘We the People’ included, in the words of the framers, ‘the whole Number of free Persons.’ On a matter so basic as the right to vote, for example, Negro slaves were excluded, although they were counted for representational purposes—at three-fifths each.” (footnote omitted) (first quoting U.S. Const. pmbl.; then quoting *id.* art. I, §2)).

56. U.S. Const. art. I, § 2, cl. 3, repealed by U.S. Const. amend. XIV, § 2.

57. It rendered them, in the words of Jefferson Davis, a “class of persons as property . . . not put upon the footing of equality with white men—not even upon that of paupers and convicts; but, so far as representation was concerned, were discriminated against as a lower caste.” *Cong. Globe*, 36th Cong., 2d Sess. 487 (1861) (statement of Sen. Davis).

58. See, e.g., Thomas Jefferson, *Notes on the State of Virginia* 143 (William Peden ed., 1982) (1788) [Jefferson, *Notes on the State of Virginia*] (suggesting that African Americans were “inferior to the whites in the endowments of both body and mind”).

59. Jan Ellen Lewis, *What Happened to the Three-Fifths Clause: The Relationship Between Women and Slaves in Constitutional Thought, 1787–1866*, 37 *J. Early Republic* 1, 4 (2017).

60. Gouverneur Morris of Pennsylvania declared that his constituents “would revolt at the idea of being put on a footing with slaves.” *Notes of James Madison* (July 11, 1787), in 1 *The Records of the Federal Convention of 1787*, at 578, 583 (Max Farrand ed., 1911) [hereinafter 1 *Federal Convention Records*].

another perversion of the nation's proclaimed commitment to liberty.⁶¹ Article 1, section 9 stipulated that Congress could not prohibit the importation of enslaved individuals until 1808,⁶² allowing Southern slaveholding states, particularly South Carolina and Georgia, to maintain their economic interests.⁶³ Some delegates of the constitutional convention voiced moral objections to the slave trade,⁶⁴ while others feared its grave implications for political power dynamics⁶⁵ and the potential for slavery revolts.⁶⁶ Despite these concerns, the delegates prioritized the preservation of slavery over immediate abolition,⁶⁷ denying enslaved Black Americans

61. See Notes of James Madison (Aug. 22, 1787) [hereinafter Madison's Aug. 22 Notes], *in* 2 *The Records of the Federal Convention of 1787*, at 369, 374 (Max Farrand ed., 1911) [hereinafter 2 *Federal Convention Records*] (recording remarks by Edmund Randolph, who noted the need for compromise on the issue of the importation of enslaved people).

62. U.S. Const. art. I, § 9, cl. 1.

63. See Letter from James Madison to Thomas Jefferson (Oct. 24, 1787), *in* 3 *The Records of the Federal Convention of 1787* at 131, 135 (Max Farrand ed., 1911) [hereinafter 3 *Federal Convention Records*] (noting the compromises made to preserve unity among states, particularly regarding the slave trade); Notes of James Madison (Aug. 21, 1787), *in* 2 *Federal Convention Records*, supra note 61, at 355, 364 [hereinafter Madison's Aug. 21 Notes] (recording remarks by Charles Pinckney (SC), who asserted, "South Carolina can never receive the plan if it prohibits the slave trade," underscoring the state's economic dependence on slavery).

64. See Notes of James Madison (Aug. 8, 1787), *in* 2 *Federal Convention Records*, supra note 61, at 215, 222 [hereinafter Madison's Aug. 8 Notes] (recording remarks by Gouverneur Morris (PA) describing the slave trade as violating "the most sacred laws of humanity"); Madison's Aug. 21 Notes, supra note 63, at 364 (recording remarks by Luther Martin (MD) describing the Constitution's protection of the slave trade as "inconsistent with the principles of the revolution and dishonorable to the American character").

65. See Notes of James Madison (July 9, 1787), *in* 1 *Federal Convention Records*, supra note 60, at 559, 561 (recording remarks by William Patterson (NJ) discussing how the Three-Fifths Clause encouraged the international slave trade); Madison's Aug. 8 Notes, supra note 64, at 215, 222 (recording remarks by Gouverneur Morris expressing concern regarding the consequences of the slave trade and the Three-Fifths Compromise). But some delegates noted that Virginians opposed to the international slave trade stood to benefit from a domestic slave trade. See Madison's Aug. 22 Notes, supra note 61, at 369, 371 (recording remarks by Oliver Ellsworth (CT), who argued that "slaves . . . multiply so fast in Virginia & Maryland that it is cheaper to raise than import them, whilst in the sickly rice swamps foreign supplies are necessary"); see also Paul Finkelman, *Slavery and the Founders: Race and Liberty in the Age of Jefferson* 12–13 (3d ed. 2014) [hereinafter Finkelman, *Slavery and the Founders*] (discussing, for example, Massachusetts delegate Elbridge Gerry's argument against increasing Southern representation based on the enslaved population because Southern voters would have more political power than their Northern counterparts).

66. See Madison's Aug. 8 Notes, supra note 64, at 215, 222 (recording remarks by Gouverneur Morris: "What is the proposed compensation to the Northern States for a sacrifice of every principle of right, of every impulse of humanity . . . to march their militia for the defence of the S. States . . . [against] those very slaves of whom they complain").

67. See Madison's Aug. 21 Notes, supra notes 63, at 355, 364 (recording remarks by John Rutledge: "If the Northern States consult their interest, they will not oppose the increase of Slaves which will increase the commodities of which they will become the

the liberty to pursue their own economic interests. As John Rutledge argued, national interests, driven primarily by economic considerations, overshadowed ethical or humanitarian considerations in shaping constitutional provisions related to slavery.⁶⁸

Apart from perpetrating equality-based and liberty-based dignitary harms against enslaved Black individuals by denying their equal humanity and restricting their individual agency, the Constitution also inflicted integrity-based dignitary harms by hindering social acknowledgment of the inherent worth of Black people.⁶⁹ This systematic perversion of fundamental human rights would become a key target of Black protest movements. The Fugitive Slave Clause, though it did not explicitly mention slavery, required that individuals who escaped from the state where they were held to labor or service be returned to their claimed owner upon request.⁷⁰ Despite minimal debate during the Constitutional Convention,⁷¹ this clause profoundly impacted the lives of both nominally free and escaped Black individuals in non-slaveholding states.

As Black protest persisted, slave codes, which regulated the treatment and behavior of enslaved Black Americans from the seventeenth to the nineteenth century, became increasingly restrictive and punitive.⁷² These

carriers”); *id.* (recording remarks by Oliver Ellsworth: “What enriches a part enriches the whole, and the States are the best judges of their particular interest”).

68. *Id.* (recording remarks by John Rutledge: “Religion & humanity had nothing to do with this question—Interest alone is the governing principle with Nations”).

69. For a discussion of this framing of dignity, see Etienne C. Toussaint, *The Abolition of Food Oppression*, 111 *Geo. L.J.* 1043, 1101–05 (2023) (“The arc of dignity as a legal concept in U.S. jurisprudence begins with the notion of one’s institutional status as their dignity.”).

70. U.S. Const. art. IV, § 2, cl. 3, repealed by U.S. Const. amend. XIII; Notes of James Madison (Aug. 28, 1787), *in* 2 *Federal Convention Records*, *supra* note 61, at 437, 443 (recording remarks by Pierce Butler and Charles Pinckney, who “moved ‘to require fugitive slaves and servants to be delivered up like criminals’”).

71. See Paul Finkelman, *Story Telling on the Supreme Court: Prigg v. Pennsylvania* and Justice Joseph Story’s Judicial Nationalism, 1994 *Sup. Ct. Rev.* 247, 260 [hereinafter Finkelman, *Story Telling*] (noting the “paucity of debate over the Fugitive Slave Clause”); Sandra L. Rierson, *The Thirteenth Amendment as a Model for Revolution*, 35 *Vt. L. Rev.* 765, 791 (2011) [hereinafter Rierson, *Model for Revolution*] (noting that the Constitution initially said nothing about the slave trade).

72. See, e.g., *An Act Concerning Free Persons of Colour, Their Guardians, and Coloured Preachers*, § 5, 1833 *Ga. Laws* 226, 227–28 (preventing Black enslaved and free people from preaching, receiving credit, or owning a firearm); *An Act to Punish the Crimes Therein Mentioned*, § 2, 1830 *La. Acts* 271, 271 (making the “use of language in private discourses . . . having a tendency to produce discontent among the free colored population of this State” punishable by death or between three and twenty-one years of hard labor); *An Act Respecting Slaves, Free Negroes, Mulattoes and Mestizoes*, No. 1745, 1800 *S.C. Acts* 36, 36–38 (placing restrictions on “unlawful assemblage[s] of persons of colour” and restricting the emancipation of slaves); *An Act Further Declaring What Shall Be Deemed Unlawful Meetings of Slaves*, ch. 119, § 1, 1804 *Va. Acts* 108, 108 (defining “all meetings or assemblages of slaves” as unlawful assemblies); Justin Hansford, *The First Amendment Freedom of Assembly as a Racial Project*, 127 *Yale L.J. Forum* 685, 692 (2018),

expanding legal restrictions revealed how the system responded to both overt revolution and subtle subversion with increasingly perverse uses of law to maintain control. Early slave codes, such as the Virginia slave codes of 1705, primarily focused on defining the legal status of enslaved people as property.⁷³ But, as fear of slavery revolts grew, these codes expanded to include specific provisions aimed at preventing and punishing rebellion.⁷⁴ These codes were expanded alongside further restrictions on enslavers' ability to free their enslaved laborers, driven by fear that free Black people might incite rebellion.⁷⁵ For example, South Carolina's Negro Act of 1740, enacted in response to the Stono Rebellion, imposed severe restrictions on the rights and activities of enslaved people, including prohibiting group assemblies, literacy, earning money, and traveling without written passes.⁷⁶ This law was part of a broader trend in the South during the Antebellum Era to limit the population of free Black people and maintain the racial hierarchy.

After Gabriel's Conspiracy was exposed in 1800, the Virginia government, already concerned about potential insurrections, enacted stricter laws to curtail the freedoms of enslaved individuals. These legal reactions demonstrated how each act of revolutionary resistance prompted new perversions of law to suppress future uprisings. Virginia's 1806 law required freed slaves to leave the state within twelve months or face re-enslavement.⁷⁷ Other regulations targeted activities such as congregation, travel, and communication, particularly in urban areas.⁷⁸ Following Nat Turner's Rebellion in 1831, the Virginia General Assembly debated the

https://www.yalelawjournal.org/pdf/Hansford_qqek3ose.pdf [<https://perma.cc/38GW-PB79>] (discussing measures taken to eliminate freedom of assembly for the enslaved).

73. An Act Concerning Servants and Slaves, ch. 49, § 15, 1705 Va. Acts 218, 221 (stating that "no person whatsoever shall buy, sell, or receive of, to, or from, any servant, or slave, any coin or commodity whatsoever, without the leave, license, or consent of the master or owner of the said servant, or slave").

74. See Eric Burin, *Slavery and the Peculiar Solution: A History of the American Colonization Society* 12 (2005) (noting the repeal of the Virginia Manumission Act of 1782; widespread bans on emancipations, which had allowed freed persons to remain in their home state; and increased restrictions on both enslaved persons and free African Americans).

75. *Id.*

76. See An Act for the Better Ordering and Governing Negroes and Other Slaves in This Province, No. 695, 1740 S.C. Acts 163.

77. See An Act to Amend the Several Laws Concerning Slaves, ch. 63, § 10, 1806 Va. Acts 35, 36 (amending the Virginia Manumission Act of 1782, which allowed freed persons to remain in their home state).

78. See Mitchell F. Crusto, *Enslaved Constitution: Obstructing the Freedom to Travel*, 70 *U. Pitt. L. Rev.* 233, 256–57 (2008) (describing the historical shift in Black freedom of movement—from confinement on plantations, to slave patrols, to limited movement for freed people, to "the right to travel freely as a citizen without restriction").

future of slavery in the state. Although there was some discussion of gradual emancipation, the prevailing sentiment favored increased repression.⁷⁹ Consequently, the Assembly enacted stricter slave codes that severely limited the rights and movements of both enslaved and free Black people.⁸⁰ These new laws prohibited teaching enslaved individuals to read and write, restricted their ability to gather for religious services without a White minister present, and increased patrols to monitor and control Black people.

As the nineteenth century progressed, other Southern states enacted laws that banned the education of enslaved people, and restricted their assembly for education, leisure, worship, or political expression.⁸¹ These restrictions revealed the system's fear of how literacy and assembly could fuel both revolutionary consciousness and subversive organization. An 1831 North Carolina law, for example, imposed penalties on those who taught enslaved individuals to read or write.⁸² Even more, state-sanctioned slavery patrols became more prevalent, with broad authority to stop, search, and punish enslaved people found off their plantations without proper passes.⁸³ Punishments for infractions grew more severe, including whipping, branding, and execution for serious offenses.⁸⁴ The federal Fugitive Slave Act of 1850 extended slave codes into free territories, compelling citizens to assist in capturing escaped slaves.⁸⁵ This Act represented the ultimate perversion of federal authority, forcing free states to become complicit in maintaining slavery. The Act's enforcement often involved

79. See Breen, *supra* note 43, at 1–2 (“[T]he Virginia legislature took up the question of emancipation. For the first time since the eighteenth century . . . a number of people in Virginia urged that the state legislature adopt a plan of graduate emancipation and colonization for Virginia’s slaves . . . [but] proslavery conservatives dominated the special committee . . .”).

80. See, e.g., Alan Watson, *Slave Law in the Americas* 66 (1989) (“Penalties were laid down for each offense of running away; if . . . the master did not inflict them the state would. The government declared that . . . it might even determine what clothing was appropriate. The state intervened in the education of slaves[,] . . . prohibiting teaching them to read or write.”).

81. *Id.*

82. See *An Act to Prevent All Persons From Teaching Slaves to Read or Write, the Use of Figures Excepted*, ch. 6, 1830 N.C. Sess. Laws 11 (noting that “the teaching of slaves to read and write, has a tendency to excite dissatisfaction in their minds, and to produce insurrection and rebellion”).

83. See Crusto, *supra* note 78, at 262–63 (“Out of all the black travel rules, the state’s sanctions against black travel through the patrol system and the passport system combined to form a formidable network to prohibit the mobility of enslaved blacks.”).

84. See *id.* at 266.

85. See *Fugitive Slave Act of 1850*, ch. 60, § 6–10, 9 Stat. 462, 463–65 (repealed 1864) (imposing a \$1,000 fine and up to six months in prison for anyone “who shall knowingly and willingly obstruct, hinder, or prevent” the capture of an escaped enslaved person); see also Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850–1860*, at 110–47 (1970) (discussing enforcement of the Fugitive Slave Act by the Filmore, Pierce, Buchanan, and Lincoln Administrations).

the cooperation of local authorities and private citizens,⁸⁶ further entrenching the reach of the slaveholding system.

Increased surveillance and other stringent legal measures reflected the heightened fears of large-scale slavery revolts and underscored the determination of the White ruling elite to prevent any challenges to the status quo. Each new restriction revealed both the power of Black resistance to threaten the system and the system's willingness to further pervert legal principles to maintain control. The legal system became a crucial tool in sustaining the institution of slavery, reinforcing the cycle of repression and rebellion that characterized the era, and curtailing the autonomy and education of Black communities. By codifying the restrictions and punishments associated with resistance, slave codes sought to deter any actions that could undermine the economic and social foundations of the slaveholding South. Despite these efforts, however, resistance continued in various forms, highlighting the enduring spirit of defiance among enslaved people and the influence of revolutionary rhetoric.

The history of slavery revolts and Black resistance in antebellum America demonstrates the enduring quest for freedom and dignity in the face of dehumanizing oppression. Through acts of subversion that undermined power structures, resistance that exposed legal perversion, and revolutionary visions of a more just society, enslaved people maintained a powerful tradition of protest. From large-scale uprisings to everyday acts of defiance, enslaved people consistently challenged the institution of slavery and sought to assert their autonomy. The evolving legal responses to these acts of resistance, characterized by increasingly restrictive slave codes, highlight the complex interplay between defiance and the legal apparatus designed to uphold the institution of slavery. Despite the harsh punishments and severe restrictions imposed by slave codes, the persistent resistance of enslaved Black Americans underscores their resilience and determination. Their actions, both large and small, contributed to the eventual dismantling of slavery and established enduring principles of protest that continue to expose injustice, subvert oppressive systems, and envision revolutionary change in the ongoing struggle for civil rights and equality today.

B. *The Paradox of the Revolution and Slavery*

To understand the goal of abolition, one must confront the ideological clash between the ideal of political liberty and the reality of chattel slavery during the nation's founding. This fundamental contradiction

86. See Peter Karsten, Revisiting the Critiques of Those Who Upheld the Fugitive Slave Acts in the 1840s and '50s, 58 *Am. J. Legal Hist.* 291, 294 (2018) ("It should be understandable that these justices were reluctant to yield to anti-slavery advocates, counseling defiance of the statutes and the judicial precedents.").

would become not just a powerful weapon but a central force in the Black radical tradition, as enslaved people exposed and exploited these inconsistencies to advance their cause. Professor Sandra Rierson argues that this conflict created a “distortion” in the American democratic process following the Revolutionary War, wherein the South’s disproportionate political power and dominant plantation economy produced laws incongruent with the social norms of non-slaveholding states.⁸⁷ As John Adams suggested in 1818, the American Revolution reflected an ideological shift in the people’s “principles, opinions, sentiments, and affections,”⁸⁸ rejecting the aristocratic model of Great Britain and advocating instead for the egalitarianism of Enlightenment philosophers like John Locke and Montesquieu.⁸⁹ Indeed, Thomas Jefferson weaved natural law theory into the Declaration of Independence, asserting that “all men are created equal” and possess unalienable rights to life, liberty, and the pursuit of happiness.⁹⁰

The hypocrisy of championing liberty while preserving slavery was evident in foundational documents and the actions of revolutionary leaders.⁹¹ These contradictions provided fertile ground for Black protest movements to expose the perversion of democratic principles. While the Declaration of Independence proclaimed equality, the Constitution tacitly accepted slavery through the Three-Fifths Compromise and the Fugitive Slave Clause.⁹² Beyond Jefferson, figures like George Washington, despite his eventual emancipation of his slaves, and Benjamin Franklin, who

87. See Rierson, *Model for Revolution*, supra note 71, at 770 (“Free state politicians complained loudly about over-representation of the ‘Slave Power’ in the federal government, particularly when its influence was wielded to enable passage of federal legislation that they did not support, such as the Fugitive Slave Law of 1850 and the Kansas–Nebraska Act.”).

88. Bernard Bailyn, *The Ideological Origins of the American Revolution* 160 (50th anniversary ed. 2017) (emphasis omitted) (quoting Letter from John Adams, Former President, United States, to Hezekiah Niles, Editor, *Wkly. Reg.* (1818)).

89. See *id.* at 27 (emphasizing the incompatibility of individualism and racial hierarchy); Mark S. Weiner, *Black Trials: Citizenship From the Beginning of Slavery to the End of Caste* 18 (2004) (identifying Locke’s “political liberalism” as comprising “the dominant conception of American civic life today”).

90. The Declaration of Independence para. 2 (U.S. 1776).

91. Jefferson’s ownership of nearly two hundred enslaved Black Americans during the Revolutionary War raises doubts about his ideological commitments. See Finkelman, *Slavery and the Founders*, supra note 65, at 134 (“Nor is there any evidence that either Jefferson or any of the other leaders of Virginia had any interest in actually ending slavery.”).

92. See U.S. Const. art. 1, § 2, cl. 3, repealed by U.S. Const. amend. XIV, § 2; Lewis, supra note 59, at 1–3 (“The [Constitution’s] silence on slavery was not accidental. The purpose of the Convention was to frame a government Fortright discussions about slavery could only have made compromise more difficult.”); see also Finkelman, *Story Telling*, supra note 71, at 250 (“Story lived in an age when federal power meant federal support for a proslavery Constitution implemented by a proslavery national regime.” (footnote omitted)).

became an abolitionist late in life, also grappled with this paradox.⁹³ Their struggles reflected the broader societal tension between Enlightenment ideals and the economic realities of a political economy reliant on enslaved labor and land expropriation.

These contradictions would later be powerfully weaponized by Black protesters who used the founders' own words to subvert the system of slavery. To be sure, Jefferson was not unique in his failure to extend the Declaration's ideals to those who were not White and male.⁹⁴ While he expressed moral reservations about slavery and included a condemnation of the slave trade in his initial draft of the Declaration,⁹⁵ Jefferson later omitted this clause to appease slaveholding states like South Carolina and Georgia.⁹⁶ The writings of Jefferson and other Virginia planters suggest that opposition to the slave trade stemmed more from fear of slavery rebellions than genuine concern for enslaved Africans' welfare.⁹⁷ This fear reflected the revolutionary potential that enslaved people wielded, even in the minds of their oppressors. The 1775 proclamation by Virginia's Royal

93. See Alan Houston, *Benjamin Franklin and the Politics of Improvement* 7 (2008) ("Existing interpretations do not reveal the fine-grained details that give Franklin's political thought its distinctive cast."); Philip D. Morgan, "To Get Quit of Negroes": George Washington and Slavery, 39 *J. Am. Stud.* 403, 405 (2005) ("Washington's life was inextricably entwined with slavery.").

94. See Sandra L. Rierson, *Race and Gender Discrimination: A Historical Case for Equal Treatment Under the Fourteenth Amendment*, 1 *Duke J. Gender L. & Pol'y* 89, 90 (1994) ("Sexism and racism in American society have prevented women of all races and Black men from enjoying the rights—civil, social, and political—to which they are entitled under the Constitution.").

95. Thomas Jefferson, *The Autobiography of Thomas Jefferson, 1743–1790*, at 39 (Paul Leicester Ford ed., 1914) [hereinafter *Jefferson, Autobiography*] (condemning George III for waging a "cruel war against human nature itself" and violating the "most sacred rights of life and liberty" by establishing the slave trade); Jefferson, *Notes on the State of Virginia*, supra note 58, at 163 ("Indeed I tremble for my country when I reflect that God is just: that his justice cannot sleep for ever The Almighty has no attribute which can take side with us in such a contest [regarding the existence of slavery].").

96. See Robinson Woodward-Burns, *The Lost Clause: Reinterpreting the Declaration's Silence on the Atlantic Slave Trade*, 55 *Polity* 59, 60 (2023); see also Julian P. Boyd, *Editorial Note: The Declaration of Independence*, in 1 *The Papers of Thomas Jefferson: 1760–1776*, at 413, 414 (Julian P. Boyd ed., 1950) ("The Committee itself apparently made few changes, but Congress excised about a fourth of the text, including the famous passage concerning Negro slavery.").

97. Jefferson, *Notes on the State of Virginia*, supra note 58, at 163 (noting that "considering numbers, nature and natural means only, a revolution of the wheel of fortune, an exchange of situation is among possible events: that it may be come probable by supernatural interference"). Other Virginians expressed similar concerns. In 1767, Virginian planter Arthur Lee observed that civilizations such as Athens and Rome were "brought to the very brink of ruin by the insurrections of their Slaves; what powerful[] reasons have not we, to fear even more fatal consequences." Nash, supra note 10, at 94–95.

Governor, Lord Dunmore, encouraging enslaved Black people to join the British, amplified these concerns.⁹⁸

Many early Americans, including some enslaved Black people, denounced slavery as antithetical to the Revolutionary ideals of liberty and equality.⁹⁹ These denunciations represented a powerful form of protest that exposed the perversion of democratic principles while articulating a revolutionary vision of genuine equality. Figures like George Mason and Luther Martin, despite being enslavers, condemned slavery on moral grounds.¹⁰⁰ Others, such as Benjamin Rush and James Otis, approached the issue from a pragmatic perspective, highlighting how slavery undermined the long-term political and economic interests of White Americans.¹⁰¹ This pragmatic framing often reflected and reinforced White supremacy, as it reduced the moral urgency of abolition to questions of national self-interest rather than justice for the enslaved. For example, Mason argued that the slave trade discouraged White immigration, which he believed was essential to enriching and strengthening the nation.¹⁰² Some critics contended that abolishing slavery would enhance the nation's prosperity and moral integrity,

98. See Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia 137* (1999) (“Neither Dunmore’s April 1775 threat to free Virginia’s slaves nor his November 1775 proclamation . . . would have carried much significance if black Virginians had remained entirely passive But slaves were not passive. . . . [T]he slave resistance of 1774 and 1775 was only the culmination of a tradition of black resistance . . .”).

99. See David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World 144–47* (2006) (telling the stories of two enslaved men, Prince and Felix, who drew attention to the disparity between the guiding principles of the American Revolution and the institution of slavery).

100. See Madison’s Aug. 22 Notes, *supra* note 61, at 370 (recording remarks by George Mason (VA), who claimed that enslavement would “bring the judgment of heaven on a Country[,] [a]s nations cannot be rewarded or punished in the next world they must be in this”); Remarks of Luther Martin, Att’y Gen. of Md., at the Maryland Constitutional Convention (Nov. 29, 1787), *in* 3 *Federal Convention Records*, *supra* note 63, at 172, 211 (“[T]he continuance of the slave-trade [under the Constitution] . . . ought to be considered as justly exposing us to the displeasure and vengeance of Him, who is equally Lord of all, and who views with equal eye the poor African slave and his American master.” (emphasis omitted)).

101. See, e.g., Bailyn, *supra* note 88, at 239 (calling slavery “a vice which degrades human nature” and warning that “[t]he plant of liberty is of so tender a nature that it cannot thrive long in the neighborhood of slavery” (internal quotation marks omitted) (quoting Benjamin Rush)). Even Thomas Jefferson would attempt to ban slavery in the Western territories, but some historians doubt his motives. See William G. Merkel, *Jefferson’s Failed Anti-Slavery Proviso of 1784 and the Nascence of Free Soil Constitutionalism*, 38 *Seton Hall L. Rev.* 555, 582–83 (2008) (“[W]hite property rights simply meant more to Jefferson than to black claims to liberty.”).

102. See Madison’s Aug. 22 Notes, *supra* note 61, at 369–70.

suggesting that ceasing the oppression of Black people would benefit not only the oppressed but also secure the unity and stability of the republic.¹⁰³

Regardless of whether these concerns stemmed from moral convictions or practical considerations, states outside the South began to move toward gradually abolishing slavery.¹⁰⁴ This gradual pace reflected the pervasive influence of slavery not only on Southern plantations but also across the social, political, and economic landscape of Northern states.¹⁰⁵ For example, in the mid-eighteenth century, enslaved individuals were integral to New York City's labor force, with Kings County (Brooklyn) having one of the highest concentrations of enslaved people in the North.¹⁰⁶ In addition to its economic reliance on slavery, Northern society maintained deeply ingrained racial hierarchies in which Black individuals were often viewed by White society as morally inferior and temperamentally vengeful,¹⁰⁷ justifying their exclusion from mainstream society.¹⁰⁸ Nonetheless, driven by shifting political and moral considerations, Northern states began to challenge slavery, even as economic dependencies and entrenched racial prejudices hindered full commitment to racial equality.¹⁰⁹ The persistence of Black protest, both overt and subtle, helped drive this transformation despite institutional resistance. The pace of abolition, therefore, reflects the tension between economic interests, racial

103. See, e.g., Burin, *supra* note 74, at 19, 31 (discussing figures such as Charles Fenton Mercer and Henry Clay, who championed the emancipation and expatriation of enslaved persons as a means of both modernizing the Southern agrarian society and strengthening the economy and establishing an independent colony of former bondsmen to ultimately trade with slave-free America).

104. See Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* 41–44 (1981) (describing the abolition of slavery in Vermont, New Hampshire, Pennsylvania, Connecticut, and Rhode Island).

105. See, e.g., Burin, *supra* note 74, at 6–7 (noting that one in five Americans were enslaved at the beginning of the Revolution but that discussions of natural rights and human liberty, egalitarian messages from evangelical Christianity, and resistance from bondspersons “slowly disintegrated slavery in the northern states”).

106. See Graham Russell Hodges, *Root & Branch: African Americans in New York & East Jersey, 1613–1863*, at 164–65 (1999) (describing how the presence of enslaved laborers contributed to large Black populations in New York and New Jersey); Rierson, *Model for Revolution*, *supra* note 71, at 783 (“Indeed, in 1770, more [enslaved people] were reported living in New York than in Georgia.”).

107. See, e.g., Stanley K. Schultz, *The Making of a Reformer: The Reverend Samuel Hopkins as an Eighteenth-Century Abolitionist*, 115 *Proc. Am. Phil. Soc’y* 350, 359 (1971) (noting Hopkins’s portrayal of African Americans as “imprudent, ignorant creatures . . . given over to vice”).

108. Jefferson, *Autobiography*, *supra* note 95, at 77 (“Nor is it less certain that the two races, equally free, cannot live in the same government.”).

109. See Burin, *supra* note 74, at 7. By the early nineteenth century, all Northern states had made some moves toward the abolition of slavery, however, “Northern slaveholders and their allies littered the path to freedom with numerous obstacles. . . . The institution’s supporters claimed that economic necessity, private property rights, and the Bible itself justified the continuation of chattel bondage.” *Id.* Moreover, Northern enslavers argued that “liberated, propertyless, black men and women would become a burden on society.” *Id.*

prejudices, and emerging moral and political ideals that conflicted with slavery.

Southern enslavers resisted dismantling the plantation economy, instead seeking to prolong the institution of slavery.¹¹⁰ While the Constitution affirmed the Framers' commitment to liberal republicanism, it also sanctioned chattel slavery and entrenched White supremacy within American democratic citizenship.¹¹¹ Although the original Constitution did not explicitly mention slavery, it conferred specific rights to Southern states and enslavers, effectively institutionalizing slavery as a national political and economic system.¹¹² The founders established a legal, political, economic, social, and cultural framework whose repercussions extended well beyond the boundaries of Southern plantations.

Southern enslavers developed elaborate legal and economic justifications for maintaining slavery. Economically, they argued that slavery was essential for the plantation system and, by extension, the entire Southern economy.¹¹³ Legally, they pointed to historical precedents and property rights.¹¹⁴ These arguments were bolstered by racial theories and pseudoscientific claims of African inferiority, exemplified by works like Samuel Morton's *Crania Americana*, which attempted to provide scientific justification for racial hierarchies.¹¹⁵ These increasingly elaborate defenses revealed how effectively Black resistance had exposed the moral bankruptcy of slavery, forcing its defenders to construct ever more complex justifications. Such theories sought to reconcile the glaring contradiction between the ideals of liberty and the practice of enslavement.

110. See *id.* at 32 (“[P]roslavery partisans . . . offered increasingly bold arguments, hoping to convince white waverers of bondage’s virtues. The institution’s defenders also tried to reopen the Atlantic slave trade Whether wrangling over fugitive bondspersons, the Atlantic slave trade, Kansas, or the lands farther west, proslavery southerners were determined to protect the perimeters.”).

111. The abolitionist William Lloyd Garrison would deem it a “covenant with death, and an agreement with hell.” Walter M. Merrill, *Against Wind and Tide: A Biography of Wm. Lloyd Garrison* 205 (1963) (internal quotation marks omitted) (quoting Garrison’s Resolution at the Eleventh Annual Meeting of the Massachusetts Anti-Slavery Society, Jan. 1843, *in* *The Liberator*, Feb. 3, 1843).

112. See Marshall, *supra* note 55, at 2 (“Southern states acceded to the demands of the New England states for giving Congress broad power to regulate commerce, in exchange for the right to continue the slave trade. The economic interests of the regions coalesced The perpetuation of slavery ensured the primary source of wealth in the Southern states.”).

113. 2 John Ashworth, *Slavery, Capitalism, and Politics in the Antebellum Republic* 104–11 (2007) (discussing the integral role of slavery in the antebellum Southern economy).

114. *Id.* at 121 (referring to “protection for our slave property” as a “sacred constitutional right” (internal quotation marks omitted) (quoting *Staunton Vindicator*, Jan. 1860)).

115. Samuel George Morton, *Crania Americana* 1 (Phila., J. Dobson 1839) (“From remote ages the inhabitants of every extended locality have been marked by certain physical and moral peculiarities, common among themselves, and serving to distinguish them from all other people.”).

Notwithstanding these contradictions, the revolutionary rhetoric of liberty had a profound impact on enslaved individuals. Black protesters brilliantly subverted the language of the revolution, turning slaveholders' own principles against them while articulating a more radical vision of freedom. Many were inspired to petition for their freedom, citing the very principles espoused by their enslavers. For instance, in 1779, a group of enslaved people in New Hampshire submitted a petition to the state legislature, arguing that the "God of nature" granted them the same rights to freedom as White Americans.¹¹⁶ This strategic use of natural rights theory demonstrated how Black protest could expose the perversion of democratic principles while advancing revolutionary claims to freedom. The Revolutionary War also saw an increase in escape attempts, with many enslaved individuals seeking freedom by joining either the British or American forces.¹¹⁷ An estimated six thousand Black Americans fought for the Continental Army,¹¹⁸ while the British actively recruited enslaved people with promises of freedom, as seen in Lord Dunmore's Proclamation.¹¹⁹

To be sure, some non-slaveholding states enacted personal liberty laws to afford legal recourse to enslaved individuals who were fleeing bondage and apprehended in Northern states.¹²⁰ These laws emerged in response to sustained Black resistance and represented a partial recognition of the revolutionary vision advanced by Black protesters. But the Supreme Court's decision in *Prigg v. Pennsylvania* nullified such measures under

116. Petition to the New Hampshire Government: 1779, reprinted in *The New-Hampshire Gazette*, July 15, 1780; see also Isabelle Laskaris, 'Thousands Now Unhappy': Slave Petitions in Eighteenth-Century Connecticut, 44 *Slavery & Abolition* 26, 30 (2023) (discussing late eighteenth-century petitions for the abolition of slavery submitted by enslaved persons in Connecticut).

117. See Cassandra Pybus, *Epic Journeys of Freedom: Runaway Slaves of the American Revolution and Their Global Quest for Liberty*, at xvi (2006) ("From the moment that hostilities commenced in 1775, enslaved men and women took to their heels, with rhetoric about the inalienable rights of free people ringing about their ears, entrusting their aspirations for liberty not to their Patriot maters, but to the king's men.").

118. See, e.g., Philip D. Morgan & Andrew Jackson O'Shaughnessy, *Arming Slaves in the American Revolution*, in *Arming Slaves: From Classical Times to the Modern Age* 180, 198 (Christopher Leslie Brown & Philip D. Morgan eds., 2006) (noting that "in North America, about five thousand black Americans served in the Continental Army, [and] another thousand or so in the navy and on privateers"); Matthew Spooner, *The Problem of Order and the Transfer of Slave Property in the Revolutionary South*, in *The American Revolution Reborn* 231, 240 (Patrick Spero & Michael Zuckerman eds., 2016) ("Some six thousand black men did serve in American forces during the war, representing about 3 percent of total patriot enlistment.").

119. Proclamation of the Earl of Dunmore (Nov. 7, 1775) (declaring "all indentured Servants, Negroes, or others, (appertaining to Rebels,) free that are able and willing to bear Arms, they joining his MAJESTY'S Troops as soon as may be").

120. See Ashworth, *supra* note 113, at 39 (noting that, in response to the passage of the 1854 Kansas-Nebraska Act, which repealed the Missouri Compromise, "a string of northern states responded by passing Personal Liberty Laws, which were ostensibly intended purely to safeguard the rights of free blacks against kidnapping").

federal supremacy,¹²¹ bolstering the Fugitive Slave Act once more.¹²² Scholars attribute Justice Joseph Story's proslavery stance in *Prigg* to the pressures of maintaining national unity amidst the growing tensions between the North and South over slavery.¹²³ The Court's decision revealed how deeply the system would pervert constitutional principles to maintain slavery in the face of growing Black resistance. This ruling curtailed the already limited rights afforded to Black Americans under the Fugitive Slave Act, further undermining their human dignity and individual autonomy.¹²⁴ Nine states responded to *Prigg* with new personal liberty laws that aimed to sidestep its restrictions while safeguarding the rights of fugitive Black individuals,¹²⁵ escalating tensions between Northern abolitionists and Southern enslavers.¹²⁶

Congress sought to address these ideological conflicts and sectional uncertainties, particularly regarding slavery in Western territories, through the Compromise of 1850, which included the Fugitive Slave Act of 1850.¹²⁷ This Act represented yet another perversion of federal authority

121. *Prigg v. Pennsylvania*, 41 U.S. (16 Pet.) 539, 612, 625 (1842) (“[W]e hold the power of legislation on this subject to be *exclusive* in Congress.” (emphasis added)); see also Finkelman, *Story Telling*, supra note 71, at 256–59 (explaining Justice Joseph Story’s argument that, if the Fugitive Slave Clause “was indeed *fundamental*, then perhaps it required extraordinary—and exclusive—enforcement by the federal government”).

122. See *Prigg*, 41 U.S. (16 Pet.) at 673 (McLean, J., dissenting) (“We can no more, under such circumstances, administer a remedy un the Constitution, in disregard of the act . . . This view respects the rights of the master and the rights of the state.”).

123. See Finkelman, *Story Telling*, supra note 71, at 285–88 (theorizing that Justice Story intended the *Prigg* decision to give the North more of a voice in the debate over fugitive slaves); Rierson, *Model for Revolution*, supra note 71, at 811 (“Many explanations for Story’s decision in *Prigg* have been pro[f]fe[red], including his desire to preserve peace and the Union in the face of welling sectional conflict and to create and implement a uniform federal common law.” (footnote omitted)).

124. See *Prigg*, 41 U.S. (16 Pet.) at 667 (McLean, J., dissenting) (explaining that both the Constitution and the Act of 1793 required the fugitive to be delivered to the claimant through a summary process, with a judge certifying the claim based on proof of owed labor).

125. See Rierson, *Model for Revolution*, supra note 71 at 812–13 (describing the passage of new personal liberty laws by nine states following the decision in *Prigg*); see also Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North 1780–1861*, at 107–29 (1974) (arguing that personal liberty laws reflected a social and ethical commitment to ending slavery that was foundational for the passage of the Fourteenth Amendment).

126. See Morris, supra note 125, at 130 (describing personal liberty laws as “one of the most fatal blows ever received by the South and the Union” (internal quotation marks omitted) (quoting 6 *The Works of John C. Calhoun* 292 (Richard K. Cralle ed., N.Y., D. Appleton & Co. 1870))).

127. See Fugitive Slave Act, ch. 60, § 6, 9 Stat. 462, 463 (1850) (“[W]hen a person held to service or labor in any State or Territory of the United States, has heretofore or shall hereafter escape into another State or Territory . . . the person . . . to whom such service or labor may be due . . . may pursue and reclaim such fugitive person . . .”) (amending Act of Feb. 12, 1793, ch. 7, 1 Stat. 302) (repealed 1864); Ken Drexler, *Compromise of 1850: Primary Documents in American History*, Libr. of Cong.: Rsch. Guides (Apr. 5, 2019), <https://guides.loc.gov/compromise-1850> [<https://perma.cc/5YCY-YGME>] (last updated

in response to the growing effectiveness of Black resistance movements. It undermined the rights of fugitives and bolstered those of enslavers, penalizing anyone aiding a fugitive Black individual while compelling others to assist in their capture as posse comitatus under threat of fines and imprisonment.¹²⁸ Here, one of chattel slavery's lesser-known harms was the indignity thrust upon White Americans opposing slavery, legally prohibited from aiding fugitives and instead coerced to assist in their capture.¹²⁹ The Act's extreme measures revealed both the power of Black protest to threaten the system and the lengths to which that system would go to maintain control. Free Black individuals in non-slaveholding states risked false accusations, capture by slavery patrols, and shipment to Southern plantations, further stripping away their dignity.

In 1857, the Supreme Court would cut off Black people's access to the courts altogether in *Dred Scott v. Sandford*, with Chief Justice Roger Taney asserting their incapacity for citizenship and declaring their lack of rights.¹³⁰ This dramatic judicial perversion of constitutional principles came in direct response to the revolutionary potential demonstrated by Black legal challenges to slavery. This constitutional framework entrenched slavery as a national political and economic institution, permeating the nation's bedrock principles and governing mechanisms. These concessions to Southern enslavers and White supremacists perpetuated dignitary harms against Black Americans, both within and beyond plantation confines. The rise of a Southern "Slave Power" in law and politics, fueled by their disproportionate representation in Congress and the

Apr. 11, 2019) ("The Compromise of 1850 consists of five laws passed in September of 1850 that dealt with the issue of slavery and territorial expansion.").

128. Fugitive Slave Act § 5; see also Gautham Rao, *The Federal Posse Comitatus Doctrine: Slavery, Compulsion, and Statecraft in Mid-Nineteenth-Century America*, 26 *L. & Hist. Rev.* 1, 2–3 (2008) (describing the antebellum American posse comitatus—"uncompensated, temporarily deputized citizens assisting law enforcement officers"—as a power that states and localities exercised "with little apparent difficulty").

129. See *Ableman v. Booth*, 62 U.S. (21 How.) 506, 507, 526 (1858) (upholding the constitutionality of the Fugitive Slave Act against a White defendant who had been convicted of aiding a fugitive slave); see also *Cong. Globe*, 31st Cong., 1st Sess. app. 2 at 1301 (1850) (statement of Rep. Julian) ("If I believed the people I represent were base enough to become the miserable flunkies of a God-forsaken southern slave hunter by joining him or his constables in the blood-hound chase of a panting slave, I would scorn to hold a seat on this floor by their suffrages . . .").

130. See 60 U.S. (19 How.) 393, 407 (1857) (enslaved party) ("They had for more than a century before been regarded as beings of an inferior order, and altogether unfit to associate with the white race . . . they had no rights which the white man was bound to respect."), superseded by constitutional amendment, U.S. Const. amend. XIV; see also Stephen J. Safranek, *Race and the Law, or How the Courts and the Law Have Been Warped by Racial Injustice*, 48 *Wayne L. Rev.* 1025, 1035 n.55 (2002) ("The basic holding of *Dred Scott* was: '[F]irst, that no Negro could be a United States citizen . . . "within the meaning of the Constitution;" and second, that Congress had no power to exclude slavery from the federal territories' (first alteration in original) (quoting Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* 2 (1978))).

Senate, sculpted antebellum America into a slavery society, setting the stage for abolition in the aftermath of the Civil War.¹³¹

Scholars largely agree that Southerners wielded significant influence in Congress during the antebellum era, not only shaping political discourse to stifle abolitionist debates¹³² but also swaying the political inclinations of the executive branch¹³³ and molding the Supreme Court's interpretation and application of laws safeguarding slavery.¹³⁴ This consolidation of power represented a systematic attempt to crush both the revolutionary vision and practical resistance of Black protesters. Historian Herbert Aptheker characterized Southern enslavers as a ruling class, highlighting their vast economic holdings and profound influence on the nation's socioeconomic fabric.¹³⁵ Despite resistance from abolitionists driven by moral opposition to slavery and the constant pressure created by enslaved people's uprisings and everyday acts of subversion,¹³⁶ many White Americans acquiesced to the Fugitive Slave Law.¹³⁷ Without the catalyst of the Civil War, the dominance of the South's political power fueled by slavery might have persisted unabated.

131. See Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War 87–98* (1970) (exploring the role of ideology in the formation of the Republican Party and discussing idealism and social consciousness in terms of sectional conflicts in the late antebellum period); Letter from Abraham Lincoln to Joshua F. Speed (Aug. 24, 1855), in 2 *The Collected Works of Abraham Lincoln* 320, 322 (Roy P. Basler ed., 1953) (“The slave-breeders and slave-traders, are a small, odious and detested class, among you; and yet in politics, they dictate the course of all of you, and are as completely your masters, as you are the masters of your own negroes.”).

132. See Paul Finkelman, *The Root of the Problem: How the Proslavery Constitution Shaped American Race Relations*, 4 *Barry L. Rev.* 1, 11 (2003) (detailing the “southern power in the House of Representative[s],” such as the “gag rule,” which tabled all petitions over slavery in the House); Rierson, *Model for Revolution*, supra note 71, at 804 (“The South actively used its legislative dominance to influence the course of legislative debate regarding slavery.”).

133. See Rierson, *Model for Revolution*, supra note 71, at 805–06 (“The South’s legislative dominance also resulted in a disproportionate share of power in presidential elections.”).

134. See *id.* at 806–07 (“Supreme Court Justices who were nominated and appointed for life by southern (or southern-sympathizing) Presidents vigorously interpreted and enforced laws designed to protect slavery.”).

135. See Herbert Aptheker, *The Abolitionist Movement*, *Pol. Affs.*, Feb. 1976, at 29, 29–30 (“Their ownership of some 3,500,000 slaves worth perhaps three and a half billion dollars, plus their ownership of the cotton, tobacco, rice, sugar, hemp, [and] lumber-products that they produced . . . made of that interrelated, highly class-conscious oligarchy by far the greatest single vested interest in the nation as a whole.”).

136. See Campbell, supra note 85, at 116 (noting that, by the end of 1850, “public hostility [to the Fugitive Slave Act] in many communities had begun to decline, and attempts to recover fugitive slaves were fraught with fewer hazards”).

137. See Rierson, *Model for Revolution*, supra note 71, at 817–18 (“Many northern citizens, often leaders in the community, openly and publicly agreed to respect and obey the Fugitive Slave Act of 1850, however distasteful.”).

The contradiction between America's founding ideals and the reality of slavery shaped the nation's early development and set the stage for future conflicts. Through their persistent protest, enslaved people exposed these contradictions, subverted the system's power, and articulated revolutionary visions of genuine freedom. While revolutionary rhetoric inspired enslaved people and abolitionists, it also prompted slaveholders to develop more elaborate justifications for the institution. Enslaved people's resistance, ranging from individual acts to organized rebellions, continually challenged the system and contributed to the growing tensions that would eventually lead to the Civil War and emancipation. Their multifaceted protest tradition—simultaneously exposing perversion, enacting subversion, and advancing revolution—would provide a powerful model for future movements for justice and equality.

C. *Reconstruction and the Black Codes*

On January 1, 1863, President Abraham Lincoln issued the Emancipation Proclamation, a landmark decree that aimed to end chattel slavery in the so-called Confederate States of America.¹³⁸ Despite this significant move toward freedom, Southern Confederates refused to acknowledge Lincoln's presidential authority.¹³⁹ Their rejection was not merely a refusal to accept a policy; it was a profound challenge to Lincoln's authority over the Southern states.¹⁴⁰ For many in the Confederacy,

138. Proclamation No. 17 (Emancipation Proclamation), 12 Stat. app. at 1268 (Jan. 1, 1863); see also Freedom's Eve: Awaiting the Passage of the Emancipation Proclamation, Nat'l Park Serv., <https://www.nps.gov/articles/000/freedoms-eve.htm> [<https://perma.cc/7Y8U-2BQ4>] (last visited May 25, 2025) (explaining the historical context surrounding the Emancipation Proclamation).

139. See William L. Barney, *Rebels in the Making: The Secession Crisis and the Birth of the Confederacy* 111 (2020) (“[T]he response to Lincoln's victory in 1860 was largely a reflexive one demanding resistance. His victory was a call to action.”).

140. During his 1860 campaign, Lincoln assured the border states that slavery would be protected and, after his election, he proposed a gradual, compensated emancipation plan with the goal of resettling manumitted in a foreign location such as Liberia. See 2 Ida M. Tarbell, *The Life of Abraham Lincoln* 77 (1900) (discussing Lincoln's interest in an eventual plan that would free enslaved people and send them to Liberia); Allen C. Guelzo, *Lincoln, Race and Slavery: A Biographical Overview*, *OAH Mag. Hist.*, Oct. 2007, at 14, 15 (“[Lincoln] would, therefore, colonize them out of the United States, ‘send them to Liberia, to their own native land.’” (quoting Abraham Lincoln, *Remarks at Peoria, Ill.* (Oct. 16, 1854), in 2 *Collected Works of Abraham Lincoln*, supra note 131, at 247, 255)). In 1861, Lincoln requested funds from Congress to relocate freed enslaved persons from the border states and argued for extending diplomatic recognition to Haiti and Liberia in furtherance of this plan. See Henry Louis Gates, Jr., *Lincoln on Race & Slavery*, at xxxiii (Henry Louis Gates, Jr. & Donald Yacovone eds., 2009). In 1863, Lincoln unsuccessfully attempted to resettle a group of freedmen to the island of Ile-a-Vache, off the Coast of Haiti, but, by this point, he was already considering the possibility of equal rights for African Americans. See Gates, supra, at 210–11 (noting that Lincoln had “no intention of reversing the principled stand that had resulted in his election”); William C. Harris, *Lincoln and the Border States: Preserving the Union* 218 (2011) (“Based on his long-time support for colonization—and

Lincoln's presidency was viewed as entirely illegitimate, particularly in the context of the Southern secession and the Civil War.¹⁴¹ They contested his authority not just on the question of slavery but over any governance of the seceded states.¹⁴² This refusal to recognize Lincoln's authority meant that slavery continued unabated in the Confederate States for another two and a half years.¹⁴³ It wasn't until June 19, 1865, when Union Army Major General Gordon Granger arrived on Galveston Island, that approximately 250,000 enslaved individuals in Texas were finally informed of their freedom.¹⁴⁴ The ratification of the Thirteenth Amendment on December 6, 1865, further cemented the abolition of slavery, extending freedom to the remaining enslaved individuals in border states.¹⁴⁵ This delay underscores the resistance to acknowledging federal authority and highlights the complexities of enforcing emancipation in a nation deeply divided over the issue of slavery.

The end of the Civil War ushered in the era of Reconstruction, a period of immense promise for newly freed Black Americans. This promise was embodied in three pivotal constitutional amendments. The Thirteenth Amendment abolished slavery in 1865, with Section 1 unequivocally stating, "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."¹⁴⁶ The Fourteenth Amendment, ratified in 1868, granted citizenship and equal protection under the law to all persons born or naturalized in the United States.¹⁴⁷ The Fifteenth Amendment, ratified in 1870, prohibited the denial of voting rights based on race, color, or previous condition of servitude.¹⁴⁸

his relatively conservative racial views—Lincoln probably sincerely believed that both races would benefit from the resettlement of blacks in a tropical land, though he did not consult blacks as to whether they wanted to emigrate."); Richard Striner, *Lincoln and Race* 43 (2012) (describing the "colonization experiment" at Ile-a-Vache).

141. See Barney, *supra* note 139, at 111 (noting that Lincoln's election immediately converted some moderates to secessionists, as one Alabama man who had voted for Bell claimed he was "not willing to submit to a Black Republican President" (internal quotation marks omitted) (quoting William H. Ogbourne)).

142. *Id.*

143. Other than "as a punishment for crime whereof the party shall have been duly convicted," which persists to this day. U.S. Const. amend. XIII, § 1.

144. DeNeen L. Brown, *After Juneteenth, Many Black People in Texas Remained Enslaved*, *Wash. Post* (June 19, 2022), <https://www.washingtonpost.com/history/2022/06/19/juneteenth-texas-black-still-enslaved/> (on file with the *Columbia Law Review*); *Juneteenth and General Orders, No. 3*, *Galveston Hist.* (June 13, 2021), <https://www.galvestonhistory.org/news/juneteenth-and-general-order-no-3> (on file with the *Columbia Law Review*).

145. See U.S. Const. amend. XIII.

146. *Id.* § 1.

147. *Id.* amend. XIV, § 1.

148. *Id.* amend. XV, § 1.

The Thirteenth Amendment's Enforcement Clause, granting Congress the authority "to enforce this article by appropriate legislation,"¹⁴⁹ aimed to resolve the inherent conflict between liberal republicanism and chattel slavery.¹⁵⁰ Slavery had engendered a political-economic system that inflicted dignitary harms not only upon enslaved and free Black Americans but also on White abolitionists.¹⁵¹ Contrary to the *Dred Scott* ruling,¹⁵² abolitionists contended that enslaved Black people were already citizens of the United States, entitled to the privileges and immunities of citizenship under the Constitution.¹⁵³ They argued that slavery violated the Constitution's Due Process Clause by depriving each enslaved person of liberty, property, and "all that life makes dear" without any legal process.¹⁵⁴ As constitutional law scholar Brandon Hasbrouck explains, "If a person cannot be deprived of life, liberty, or property without due process of law, then a process—such as slavery—that lacked the fundamental power of law could not be due process of law."¹⁵⁵

The Freedmen's Bureau, established in 1865, provided food, housing, medical aid, and education to formerly enslaved Americans and poor Whites in the South.¹⁵⁶ It also helped negotiate labor contracts and resolve disputes between White landowners and Black workers.¹⁵⁷ The Bureau played a key role in founding schools for Black children and adults, laying

149. Id. amend. XIII, § 2.

150. See Dorothy E. Roberts, *The Supreme Court, 2018 Term—Foreword: Abolition Constitutionalism*, 133 *Harv. L. Rev.* 1, 63 (2019) ("The language of the Fourteenth Amendment can be traced to specific speeches and writings of leading antislavery advocates who developed an abolition constitutionalism in the preceding decades.").

151. See Robert J. Kaczorowski, *Revolutionary Constitutionalism in the Era of the Civil War and Reconstruction*, 61 *N.Y.U. L. Rev.* 863, 866–67 (1986) ("The most important question for the framers [of the Reconstruction Amendments] was whether the national or the state governments possessed primary authority to determine and secure the status and rights of American citizens.").

152. *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 454 (1857) (enslaved party), superseded by constitutional amendment, U.S. Const. amend. XIV.

153. See Joel Tiffany, *A Treatise on the Unconstitutionality of American Slavery* 95–97 (Cleveland, J. Calyer 1849) (arguing that slavery is unconstitutional and void because enslaved individuals are entitled to the privileges and protections guaranteed by the Constitution, such as personal security and liberty).

154. *The Address of the Southern and Western Liberty Convention, Held at Cincinnati, June 11 and 12, 1845, to the People of the United States*, in *Anti-Slavery Addresses of 1844 and 1845*, at 75, 87 (Salmon Portland Chase & Charles Dexter Cleveland ed., London, Sampson Low, Son, & Marston 1867).

155. Brandon Hasbrouck, *The Antiracist Constitution*, 102 *B.U. L. Rev.* 87, 131–32 (2022) (emphasis omitted) ("Thus, abolitionists believed that due process included procedural rights, substantive rights, and limits on legislative authority . . .").

156. Richard Fleischman, Thomas Tyson & David Oldroyd, *The U.S. Freedmen's Bureau in Post-Civil War Reconstruction*, 41 *Acct. Historians J.* 75, 79–81 (2014).

157. Id. at 82–84.

the foundation for public education in the South.¹⁵⁸ These educational efforts were closely linked to Black protest movements advocating for equal learning opportunities as a means of social and economic advancement. The Bureau's work also intersected with the broader struggle for economic independence and labor rights, reflecting the fight to dismantle exploitative systems. In this sense, the Bureau exemplified the government's duty to protect citizens from political-economic systems that undermined their rights to life, liberty, and property.¹⁵⁹

The Reconstruction Acts of 1867 aimed to reshape the South by dividing the former Confederacy into military districts and requiring Southern states to ratify the Fourteenth Amendment, draft new constitutions, and extend voting rights to Black men.¹⁶⁰ But members of Congress disagreed on what protections should be afforded to formerly enslaved Black Americans. Two main camps emerged: the "labor theory" proponents, who focused on protecting Black Americans from coerced labor and ensuring basic workplace rights, and the "equal rights theory" advocates, who sought to secure full legal equality and civil rights for Black Americans.¹⁶¹

Some, like Senators Edgar Cowan and William Saulsbury, viewed the Thirteenth Amendment narrowly as ending literal slavery,¹⁶² while others,

158. See H.R.J. Res. 28, 40th Cong., 15 Stat. 28 (1867) (requiring the Freedmen's Bureau to provide "supplies of food sufficient to prevent starvation and extreme want to any and all classes of destitute or helpless persons"); James W. Fox Jr., *Citizenship, Poverty, and Federalism: 1787–1882*, 60 U. Pitt. L. Rev. 421, 544 (1999) ("The supporters of the resolution understood, much as had James Madison before them, that starvation and destitution were special situations, that freedom and citizenship had a basic threshold below which governments should not let people fall." (footnote omitted)).

159. See Theodore Dwight Weld, *The Power of Congress Over the District of Columbia* 43–44 (New York, Am. Anti-Slavery Soc'y 4th ed. 1838); see also Cong. Globe, 38th Cong., 2d Sess. 141 (1865) (statement of Rep. Ashley) (arguing that abolishing slavery would not only ensure a "system of free labor" but also empower a government that would protect the rights and secure the liberty and equality of its people, aligning with the Freedmen's Bureau's mission to support formerly enslaved individuals through labor and legal protections).

160. See, e.g., Kurt T. Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship* 223 (2014) (noting that the Act divided the Southern states into districts under the control of military commanders, directed states to elect delegates who were not former confederates to draft new state constitutions, and required the states to ratify the Fourteenth Amendment as a condition of being readmitted to the Union).

161. Rebecca E. Zietlow, *James Ashley's Thirteenth Amendment*, 112 Colum. L. Rev. 1697, 1701, 1707 (2012).

162. See Cong. Globe, 39th Cong., 1st Sess. 499 (1866) (statement of Sen. Cowan) (declaring that the Amendment was "simply made to liberate the negro slave from his master," and nothing more); Zietlow, *supra* note 161, at 1701–02 ("[The Amendment] does not itself declare . . . that the Congress . . . shall invade the States and attempt to regulate property and personal rights within the States any further than refers simply and solely to the condition and *status* of slavery." (quoting Cong. Globe, 39th Cong., 1st Sess. 476 (1866) (statement of Sen. Saulsbury))).

such as Representative John Bingham and Senator Henry Wilson, interpreted it as abolishing all forms of coercive, exploitative labor.¹⁶³ A smaller group, including Representative John F. Farnsworth and Senator James Harlan, argued for broader protections against racial discrimination, advocating for Black Americans' political and economic rights.¹⁶⁴ Some even called for Congress to use its powers to combat White supremacy by ensuring Black access to education, public institutions, and juries.¹⁶⁵

Despite initial progress, Reconstruction faced significant challenges. Black Codes were enacted by Southern states between 1865 and 1866 to restrict Black American freedoms and maintain a cheap labor force.¹⁶⁶ For example, vagrancy laws allowed for the arrest of unemployed Black people, forcing them into labor contracts, while apprenticeship laws enabled former enslavers to force Black children into unpaid labor.¹⁶⁷ Additionally,

163. See Cong. Globe, 39th Cong., 1st Sess. 343 (1866) (statement of Sen. Wilson) (“[W]e have advocated the rights of the black man because the black man was the most oppressed type of the toiling men of this country.”); Cong. Globe, 34th Cong., 3d Sess. app. 140 (1857) (statement of Rep. Bingham) (arguing that “no man shall be wrongfully deprived of the fruit of his toil any more than of his life”).

164. See Cong. Globe, 38th Cong., 2d Sess. 200 (1865) (statement of Rep. Farnsworth) (“What vested rights so high or so sacred as a man’s right . . . to the fruits of his own industry? Did not our fathers declare that those rights were inalienable? . . . [H]ow can another man alienate them without being himself a robber of the vested rights of his brother-man?”); Cong. Globe, 38th Cong., 1st Sess. 1439–40 (1864) (statement of Sen. Harlan) (arguing for the end of other “incidents of slavery,” such as interference with familial relationships, infringement of the right to testify in court and participate on juries, and barriers to property ownership); see also Alexander Tsesis, *The Thirteenth Amendment and American Freedom: A Legal History* 97 (2004) [hereinafter Tsesis, *The Thirteenth Amendment and American Freedom*] (examining the history of the Thirteenth Amendment); William M. Carter, Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. Davis L. Rev. 1311, 1324 & n.33 (2007) (giving background on the debate over the scope of the Thirteenth Amendment); Priscilla A. Ocen, *Punishing Pregnancy: Race, Incarceration, and the Shackling of Pregnant Prisoners*, 100 Calif. L. Rev. 1239, 1297 (2012) (arguing that, during the Reconstruction Era, “Congress understood that reproductive subordination and exploitation were constitutive elements of slavery and that racialized policies that touch on reproductive capacity could constitute badges or incidents of slavery”).

165. See Alexander Tsesis, *Interpreting the Thirteenth Amendment*, 11 J. Const. L. 1337, 1339 (2009) (“During those debates, many congressmen described the Thirteenth Amendment’s potential for ending any forms of oppression associated with slavery, not merely the exploitation of forced labor.”); Zietlow, *supra* note 161, at 1717 (discussing the views of James Ashley, who urged Congress to use its Enforcement Clause powers to secure “free schools and colleges, and a free press, with churches no longer fettered with the manacles of the slave-master, . . . and [to] secure the liberty and equality of the people” (quoting James M. Ashley, *Speech in the House of Representatives: On the Constitutional Amendment for the Abolition of Slavery* (Jan. 6, 1865), *in* Duplicate Copy of the Souvenir From the Afro-American League of Tennessee to Hon. James M. Ashley of Ohio 333, 352 (Benjamin W. Arnett ed., Phila., Publ’g House of the A.M.E. Church 1894))).

166. See Fleischman et al., *supra* note 156, at 82–83 (“The Black Codes severely limited the rights of former slaves to vote, to move freely, to be gainfully employed, and to acquire property.”).

167. *Id.* at 82–84.

these laws placed restrictions on property ownership and the right of Black Americans to testify in court against White people, and they existed alongside prohibitions on interracial marriages and limitations on freedom of movement.¹⁶⁸ The Black Codes effectively created a system of neo-slavery, severely impacting the lives of freed Black Americans. They faced limited economic opportunities, restricted civil rights, and constant threats of arrest or forced labor. Nevertheless, Black Americans actively resisted these oppressive measures by organizing mutual aid societies and churches to support their communities, establishing schools and pursuing education despite limited resources, participating in politics, including electing Black representatives to state legislatures, and engaging in labor strikes and boycotts to protest unfair treatment.¹⁶⁹

The unraveling of Reconstruction accelerated in the mid-1870s due to several factors. First, waning Northern support for Reconstruction policies was fueled by growing exhaustion with the long, costly effort of enforcing civil rights protections for formerly enslaved people and rebuilding the South.¹⁷⁰ As the North's commitment to protecting Black rights diminished, the region's focus shifted toward economic recovery, particularly in light of the depression that followed the Panic of 1873.¹⁷¹ This shift set the stage for increased violence by White supremacist groups like the Ku Klux Klan.¹⁷² Second, the growing political strength of "Redeemer" Democrats, who opposed Reconstruction in the South, influenced political discourse as well as judicial decisionmaking.¹⁷³ Indeed, the

168. William J.F. Meredith, *The Black Codes*, *Negro Hist. Bull.*, Feb. 1940, at 76, 76.

169. See, e.g., Stephen Robinson, "To Think, Act, Vote, and Speak for Ourselves": Black Democrats and Black "Agency" in the American South After Reconstruction, 48 *J. Soc. Hist.* 363, 368 (2014) (describing participation in Black Democratic Clubs, social events, and election campaign processions as a means of informally contributing to the political discourse).

170. See Nicolas Barreyre, *The Politics of Economic Crises: The Panic of 1873, the End of Reconstruction, and the Realignment of American Politics*, 10 *J. Gilded Age & Progressive Era* 403, 419–20 (2011) (discussing how "the money question . . . helped Democrats reconquer the South . . . [and] eroded Republican support for Reconstruction").

171. See *id.* at 416–17 (highlighting the importance of money in the political realignment).

172. See Otto H. Olsen, *The Ku Klux Klan: A Study in Reconstruction Politics and Propaganda*, 39 *N.C. Hist. Rev.* 340, 361–62 (1962) (noting the "amnesty and pardon" programs instituted by conservatives toward Klan members (internal quotation marks omitted)).

173. See Eric Foner, *The Supreme Court and the History of Reconstruction—and Vice-Versa*, 112 *Colum. L. Rev.* 1585, 1588–89, 1593–96 (2012) [hereinafter Foner, *The Supreme Court*] (arguing that the courts "played a crucial role" in the country's "retreat from the ideals of Reconstruction" and that jurists' decisions during this period "reflected a resurgence of racism . . . and an emerging national . . . consensus (among whites at any rate) that Reconstruction had been a serious mistake").

Supreme Court took specific actions to narrow the interpretation of the Thirteenth Amendment, significantly impacting Reconstruction efforts.¹⁷⁴

For instance, in 1873, in the *Slaughter-House Cases*, the Court evaluated the constitutionality of a Louisiana regulation restricting butchery to designated slaughterhouses in the state.¹⁷⁵ Rejecting the application of the Reconstruction Amendments, the Court concluded that these amendments aimed to abolish all forms of slavery rather than regulate broader workplace conditions.¹⁷⁶ Similarly, in 1883, in the *Civil Rights Cases*, the Court invalidated the Civil Rights Act of 1875, which aimed to safeguard Black Americans from racial discrimination in public transportation, accommodations, and jury service.¹⁷⁷ Justice Joseph Bradley, reluctant to adopt a broader interpretation of the Thirteenth Amendment, asserted that it merely abolished slavery,¹⁷⁸ suggesting that once freed from slavery, individuals should transition to the status of ordinary citizens whose rights are protected through standard legal means.¹⁷⁹ While Bradley's opinion provided language for future court rulings recognizing Congress's authority to pass laws eliminating vestiges of slavery,¹⁸⁰ the Court remained hesitant to extend the Thirteenth Amendment beyond literal slavery and indentured servitude until the Civil Rights era.¹⁸¹

The Compromise of 1877 effectively ended Reconstruction.¹⁸² This informal agreement resolved the disputed 1876 presidential election between Republican Rutherford B. Hayes and Democrat Samuel J.

174. See Tsesis, *The Thirteenth Amendment and American Freedom*, supra note 164, at 3 (“After Reconstruction, . . . a series of Supreme Court decisions substantially diminished the amendment’s significance in achieving genuine liberation.”).

175. See, e.g., Ronald M. Labbé & Jonathan Lurie, *The Slaughterhouse Cases: Regulation, Reconstruction, and the Fourteenth Amendment* 1–4 (2003) (noting that the *Slaughter-House Cases* required the Supreme Court to decide if an act of Louisiana legislation regulating the New Orleans slaughterhouse industry was prohibited by the Fourteenth Amendment).

176. *Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 69 (1873).

177. 109 U.S. 3, 25–26 (1883).

178. *Id.* at 25.

179. See *id.* (“When a man has emerged from slavery . . . there must be some stage in the progress of his elevation when he takes the rank of a mere citizen . . . and when his rights as a citizen . . . are to be protected in the ordinary modes by which other men’s rights are protected.”).

180. See *id.* at 20 (declaring “that the power vested in Congress to enforce the article by appropriate legislation[] clothes Congress with power to pass all laws necessary and proper for abolishing all badges and incidents of slavery in the United States”).

181. See, e.g., *Corrigan v. Buckley*, 271 U.S. 323, 330 (1926) (“The Thirteenth Amendment denouncing slavery and involuntary servitude, that is, a condition of enforced compulsory service of one to another, does not in other matters protect the individual rights of persons of the negro race.” (citing *Hodges v. United States*, 203 U.S. 1, 16, 18 (1906))); *Hodges*, 203 U.S. at 16–17 (“While the inciting cause of the Amendment was the emancipation of the colored race, . . . it is not an attempt to commit that race to the care of the Nation. It is the denunciation of a condition and not a declaration in favor of a particular people.”).

182. Foner, *The Supreme Court*, supra note 173, at 1587–88.

Tilden.¹⁸³ In exchange for removing federal troops from the South, appointing at least one Southerner to his cabinet, and providing federal support for Southern infrastructure projects, Hayes won the support he needed to become President.¹⁸⁴ This compromise carried far-reaching consequences: It marked the end of federal intervention in Southern affairs, leaving Black Americans vulnerable to increased discrimination and violence;¹⁸⁵ it allowed Southern states to fully implement Jim Crow segregation laws, which led to the disenfranchisement of Black voters through various means such as literacy tests, poll taxes, and grandfather clauses;¹⁸⁶ and it solidified the Democratic Party's control over the "Solid South" for decades to come.¹⁸⁷

The post-Reconstruction era witnessed a dramatic erosion of the civil rights advances achieved during the early years of Reconstruction, paving the way for nearly a century of entrenched racial segregation and systemic discrimination in the South. This regression was solidified by the Supreme Court's 1896 decision in *Plessy v. Ferguson*, which endorsed Jim Crow laws by permitting racially segregated but ostensibly "equal" facilities for White and non-White passengers.¹⁸⁸ This decision institutionalized racial segregation and became a legal foundation for the systemic disenfranchisement and marginalization of Black Americans. Justice John Marshall Harlan's dissent in *Plessy*, which critiqued the decision's endorsement of segregation,¹⁸⁹ would later influence debates on colorblind constitutionalism, affecting race-conscious policies such as affirmative action in higher education.¹⁹⁰

183. See Allan Peskin, Was There a Compromise of 1877?, 60 J. Am. Hist. 63, 63–65 (1973).

184. See *id.* ("There, in the traditional smoke-filled room, emissaries of Hayes agreed to abandon the Republican state governments in Louisiana and South Carolina while southern Democrats agreed to abandon the filibuster and thus trade off the presidency in exchange for the end of Reconstruction.").

185. See Foner, *The Supreme Court*, *supra* note 173, at 1588 (noting the retreat of federal protection for former slaves).

186. See, e.g., Peter Coclanis & Bryant Simon, Exit, Voice, and Loyalty: African American Strategies for Day-to-Day Existence/Resistance in the Early-Twentieth-Century Rural South, *in* African American Life in the Rural South 1900–1950, at 189, 198 (R. Douglas Hurt ed., 2003) ("Jim Crow . . . ruled the South in the early twentieth century. Aided by the poll tax, the understanding clause, and the grandfather clause, white southerners . . . disenfranchised most African Americans . . .").

187. *Id.*

188. 163 U.S. 537, 543–44 (1896), overruled by *Brown v. Bd. of Educ.*, 344 U.S. 1 (1952).

189. See *id.* at 552–64 (1896) (Harlan, J., dissenting) ("[S]uch legislation, as that here in question, is inconsistent not only with that equality of rights which pertains to citizenship, National and State, but with the personal liberty enjoyed by every one within the United States.").

190. See *Brown v. Bd. of Educ. (Brown II)*, 347 U.S. 483, 495 (1954) ("We conclude that in the field of public education the doctrine of 'separate but equal' has no place.").

But the Court's actions were not the sole force shaping this era. By systematically narrowing the scope of the Reconstruction Amendments, the Court diminished the impact of early civil rights gains and set the stage for a new chapter in Black protest—one that would address the entrenched segregation and discriminatory practices of the Jim Crow era. The historical foundations of Black protest, from the antebellum period through Reconstruction, provide essential insights into how early resistance laid the groundwork for future struggles. This historical perspective reveals a resilient response to evolving systems of oppression and highlights the continuous fight for justice.

To fully grasp the evolution and significance of Black protest, it is essential to delve deeper into its philosophical underpinnings. Understanding how early activists conceptualized resistance can enrich our appreciation of contemporary movements. Afrofuturist literature, with its visionary narratives and speculative frameworks, offers a unique lens through which to explore these philosophical foundations. By examining how Black thinkers and creators envisioned alternative futures and critiqued existing systems, we gain a deeper understanding of the enduring quest for equality and identify how philosophical ideas have shaped and continue to inspire Black protest.

II. THE PHILOSOPHICAL FOUNDATIONS OF BLACK PROTEST

Building on the historical foundation of Black protest, this Part turns to its philosophical roots, tracing the revolutionary ideas that have long animated both past and contemporary struggles for justice. This Part weaves the early writings of Black intellectual thought into the broader tapestry of Afrofuturism, positioning these visions of resistance, empowerment, and imagined alternative futures as prophetic blueprints for the radical futures now articulated by contemporary Afrofuturist thinkers. Like modern Afrofuturism, these early philosophies did not merely critique the contradictions of American democracy. They reimagined justice itself, envisioning Black futures beyond the confines of oppression.

Section II.A begins with Frederick Douglass's evolving political philosophy, charting his shift from the rhetoric of moral suasion to the insistence on active, radical resistance. Douglass linked Black dignity to broader currents of social justice, weaving together threads of gender equality, labor rights, and collective liberation. The section also explores the protest philosophies of Sojourner Truth and Harriet Tubman—two figures who moved with force and clarity between the word and the deed. Truth's oratory carved space for Black women's voices in public discourse, asserting the right to confront oppression in all its forms. Tubman's defiant actions—from leading fugitives through the shadowed paths of the Underground Railroad to her service in the Civil War—embodied the moral duty to resist racial subjugation through direct action.

Section II.B shifts focus to the radical literary visions of David Walker and Martin R. Delany, who each laid the groundwork for revolutionary resistance. Walker's *Appeal* sounded a moral alarm, asserting Black Americans' right—and indeed, their obligation—to challenge systems of injustice. Delany's *Blake*, with its vivid depictions of rebellion and sovereignty, imagined a world in which Black people seized control of their destinies. These works did not simply critique. They conjured. They envisioned rupture. They offered blueprints for revolution. Together, the thinkers and revolutionaries explored in this Part reveal how foundational Black protest philosophy continues to animate modern justice movements and Afrofuturist imaginaries, each insisting that a different world is not only possible, but necessary.

A. *The Demands of Dignity*

1. *Frederick Douglass*. — To understand the intricate relationship between Black protest, political theory, and Afrofuturist conceptions of dignity, it is crucial to examine the contributions of Frederick Douglass. As a former enslaved person who became one of the most prominent abolitionists and public speakers of his time, Douglass carried immense weight and influence.¹⁹¹ His firsthand experience of slavery provided him with unparalleled credibility and authority in critiquing the moral and legal contradictions of American democracy. Douglass's evolving thought, from his early focus on constitutional principles to his later, more radical views on active resistance and civic duty, reflects the dynamic nature of Black radical thought during his era. His writings and speeches not only challenged prevailing notions of racial inequality but also offered profound insights into the nature of justice and human dignity. Given his pivotal role in shaping abolitionist discourse and his impact on subsequent political theory, a dedicated exploration of Douglass's political philosophy is essential for comprehending how Black protest has historically engaged with and influenced American democratic ideals.

Douglass's philosophy centered on human dignity as an inalienable right, profoundly shaping his critique of slavery and his vision for American society. Crucially, Douglass interpreted slavery as both a physical and psychological experience. In his 1855 autobiography *My Bondage and My Freedom*, he wrote, "Reason is imprisoned here, and passions run wild[.]"¹⁹² referring to the psychological trauma of enslavement. Douglass believed that resistance to slavery was difficult principally because the

191. See L. Diane Barnes, *Frederick Douglass: Reformer and Statesman* 104 (2013) (discussing Douglass's success in overcoming his role as America's most famous formerly enslaved person and solidifying his reputation as a leader in the African American freedom and reform movement).

192. Frederick Douglass, *My Bondage and My Freedom* 96 [hereinafter *Douglass, My Bondage and My Freedom*] (Floating Press 2009) (1855).

enslaved were conditioned to deny their own humanity.¹⁹³ A pivotal moment in Douglass's development occurred at the age of sixteen when he resisted his overseer, Mr. Covey. In *My Bondage and My Freedom*, Douglass recounted this moment of defiance, describing how it rekindled his sense of self-worth: "I was nothing before; I was a man now."¹⁹⁴ This powerful assertion underscored Douglass's belief that dignity was intrinsically tied to one's ability to assert and defend one's humanity, even amidst despair.¹⁹⁵ He argued that "[h]uman nature is so constituted, that it cannot *honor* a helpless man," emphasizing the crucial link between personal agency and human dignity.¹⁹⁶

Douglass's account of physically resisting a beating from his master illustrated the way resistance can carve a path toward liberty: "The fighting madness had come upon me, and I found my strong fingers firmly attached to the throat of my cowardly tormentor; as heedless of consequences, at the moment, as though we stood as equals before the law. The very color of the man was forgotten."¹⁹⁷ This passage revealed that it is the twin emotions of anguish and madness, not reason, that drove Douglass to resist. It is through the act of resistance, alongside the experience of existential dread, that enabled Douglass to begin to identify and deepen his understanding of equal human dignity.¹⁹⁸ This act of resistance inspired within Douglass a new vision of liberty.¹⁹⁹ He wrote, "it brought up my Baltimore dreams . . . and inspired me with a renewed determination to be A FREEMAN. . . . After resisting him, I felt as I had never felt before. It was a resurrection from the dark and pestiferous tomb of slavery, to the heaven of comparative freedom."²⁰⁰ Douglass also reimagined the meaning of collective accountability in the context of individual liberation,

193. See *id.* at 107–10, 117–19 (recalling how the songs enslaved people sang on Lloyd's Plantation provided a glimpse into "the dehumanizing character of slavery").

194. *Id.* at 291 (emphasis omitted).

195. Eric J. Sundquist, *To Wake the Nations: Race in the Making of American Literature* 30, 124 (1993) ("Douglass's negation of the condition of slavery . . . is first of all an act of consciousness, a refutation of the social death imposed upon him as a slave."); Zamalin, *Struggle on Their Minds*, *supra* note 4, at 50–51 ("[F]or Douglass, perceiving oneself as an actor in the world gave rise to the recognition of human dignity.").

196. Douglass, *My Bondage and My Freedom*, *supra* note 192, at 291.

197. *Id.* at 286.

198. See Lewis R. Gordon, *Existential Africana: Understanding Africana Existential Thought* 45, 50 (2000) ("Radically understood, we can also argue that Douglass began his humanizing path at the moment he could imagine an act that exceeded his masters' will. Punishment, however ineluctable, only intensifies that realization: 'being' a literate slave was an act of disobedience."); Zamalin, *Struggle on Their Minds*, *supra* note 4, at 52 ("Douglass's words capture how the very experience of volitional action creates the psychological reality that one possesses inviolable self-worth.").

199. As Douglass wrote, "this battle with Mr. Covey . . . was the turning point in my 'life as a slave.' . . . A man, without force, is without the essential dignity of humanity." Douglass, *My Bondage and My Freedom*, *supra* note 192, at 290–91 (emphasis omitted).

200. *Id.* at 291.

writing, “We were all in open rebellion[] that morning,” underscoring the significance of solidarity to the pursuit of democratic citizenship.²⁰¹

In his early years as an abolitionist, Douglass primarily advocated for moral suasion and political engagement as forms of protest against slavery. He believed in the power of reasoned argument and appealed to the nation’s conscience, critiquing moderate reformers who advocated for gradual change. For example, in his 1846 *Reception Speech at Finsbury Chapel*, Douglass declared, “I feel it my duty to cry aloud and spare not.”²⁰² He emphasized that this duty superseded personal comfort and outweighed individual interests, stating he was “bound by the prayers, and tears, and entreaties of three millions of kneeling bondsmen, to have no compromise with men who are in any shape or form connected with the slaveholders of America.”²⁰³

In 1847, Douglass unequivocally stated in his address *Bibles for the Slaves* that it is “the all commanding duty of the American people to make him [the slave] a man,” asserting that recognizing the humanity and dignity of enslaved individuals was a collective national responsibility.²⁰⁴ In his letter to politician Henry Clay, Douglass declared that “the slave holder is the every day robber of the slave, of his birthright to liberty, property, and the pursuit of happiness,” invoking the Declaration of Independence to underscore the grave injustice of slavery and its impact on the individual self-perception of enslaved Black Americans.²⁰⁵ In 1848, Douglass extended this duty to all citizens in his speech *The Blood of the Slave on the Skirts of the Northern People*, chastising those who remained complicit in the face of slavery’s brutality: “You continue to fight against God, and declare that injustice exalteth a nation, and that sin is an honor to any people.”²⁰⁶ This rebuke implied that failing to act against injustice was not merely passive but an active perpetuation of harm.

As Douglass grew frustrated with the slow pace of change, his approach evolved significantly, becoming more radical. In September of 1850, his newspaper, the *North Star*, included the text of *A Letter to the American Slaves From Those Who Have Fled From American Slavery*, an open

201. Id. at 289.

202. Id. app. at 499.

203. Id.

204. Frederick Douglass, *Bibles for the Slaves*, in 1 *The Frederick Douglass Papers* 11, 14 (John R. McKivigan ed., 2021).

205. Letter from Frederick Douglass to Henry Clay (Dec. 3, 1847), reprinted in *Frederick Douglass: Selected Speeches and Writings* 91, 94 (Philip S. Foner ed., 1999).

206. Frederick Douglass, *The Blood of the Slave on the Skirts of the Northern People*, in *Frederick Douglass: Selected Speeches and Writings*, supra note 205, at 122, 124 (emphasis omitted).

letter presented at the Cazenovia Fugitive Slave Law Convention that predicted a violent uprising if emancipation is not voluntarily granted.²⁰⁷

When the insurrection of the Southern slaves shall take place, as take place it will, unless speedily prevented by voluntary emancipation, the great mass of the colored men of the North . . . will be found by your side, with deep-stored and long-accumulated revenge in their hearts, and with death-dealing weapons in their hands.²⁰⁸

In 1851, Douglass's *Change of Opinion Announced* crystallized his evolving political philosophy. He asserted that "it is the first duty of every American citizen, whose conscience permits so to do, to use his *political* as well as his *moral* power for its overthrow."²⁰⁹ This statement elevated the fight against slavery from a moral choice to a fundamental civic responsibility. In his 1851 speech *Is Civil Government Right?*, Douglass challenged the notion that passive submission is an effective response to oppression. He argued, "The present condition of the slave population of this country is a striking illustration of the fallacy that submission is the best remedy for the wrongs and injustice to which they are subjected."²¹⁰ This statement underscored his belief that maintaining one's dignity often requires active resistance against systems of oppression.

Douglass's 1852 speech, *The Fugitive Slave Law*, further cemented his more radical position. He boldly asserted, "Slavery has no rightful existence anywhere. The slaveholders not only forfeit their right to liberty, but to life itself."²¹¹ He even suggested that violent resistance against so-called

207. The Fugitive Slave Convention was held in Cazenovia, New York, on August 21 and 22, 1850. Stanley Harrold, *The Rise of Aggressive Abolitionism: Addresses to the Slaves* 123 (2004). Gerrit Smith presented "A Letter to the American Slaves From Those Who Have Fled From American Slavery," an open letter informing enslaved persons about conditions for fugitive slaves in the North and encouraging attempts to escape bondage. Bryan LaPointe, *A Right to Speak: Formerly Enslaved People and the Political Antislavery Movement in Antebellum America*, 13 *J. Civ. War Era* 3, 12–13 (2023). In addition to appearing in the *North Star*, this letter was reprinted in the September 28, 1850, edition of the *Anti-Slavery Bugle* and ultimately attributed to Smith. See Deborah A. Rosen, *The Concept of Piracy in Nineteenth-Century American Abolitionist Rhetoric*, 38 *Slavery & Abolition* 697, 716 n.21 (2017) ("The letter was reportedly drafted by Gerrit Smith but edited and approved by the dozens of former slaves who attended the Cazenovia Convention.").

208. Gerrit Smith, *A Letter to the American Slaves From Those Who Have Fled From American Slavery* (1850), reprinted in Stanley Harrold, *The Rise of Aggressive Abolitionism: Addresses to the Slaves* 189, 191 (2004).

209. Frederick Douglass, *Change of Opinion Announced*, reprinted in Frederick Douglass: *Selected Speeches and Writings*, supra note 205, at 173, 174.

210. Frederick Douglass, *Is Civil Government Right?* (Oct. 23, 1851), reprinted in 5 *The Life and Writings of Frederick Douglass: Supplementary Volume 1844–1860*, at 208, 213 (Philip S. Foner ed., 1975).

211. Frederick Douglass, *The Fugitive Slave Law* (Aug. 11, 1852), reprinted in Frederick Douglass: *Selected Speeches and Writings*, supra note 205, at 207, 207.

slave catchers could be an effective deterrent: “The only way to make the Fugitive Slave Law a dead letter is to make half a dozen or more dead kidnappers.”²¹² Perhaps most strikingly, Douglass argued that “the lines of eternal justice are sometimes so obliterated by a course of long continued oppression that it is necessary to revive them by deepening their traces with the blood of a tyrant.”²¹³ This statement represented a dramatic departure from his earlier, more moderate positions, reflecting his growing conviction that when systems of oppression are deeply entrenched and resistant to peaceful reform, violent resistance may become not just justifiable but necessary to restore justice and human dignity.

In his seminal 1852 address, *What to the Slave is the Fourth of July?*, Douglass boldly declared, “I will, in the name of humanity which is outraged, in the name of liberty which is fettered, in the name of the constitution and the Bible which are disregarded and trampled upon, dare to call in question and to denounce . . . everything that serves to perpetuate slavery . . . !”²¹⁴ This statement underscored Douglass’s view that slavery was not merely a moral failing but a direct contradiction to the nation’s professed values and legal foundations. He further asserted the right and duty of citizens to challenge such contradictions, stating, “I hold that every American citizen has a right to form an opinion of the constitution, and to propagate that opinion, and to use all honorable means to make his opinion the prevailing one.”²¹⁵

By 1857, Douglass’s political philosophy, particularly regarding the necessity of active resistance against oppression, crystallized in his *West India Emancipation* speech. His assertion that “[p]ower concedes nothing without a demand” formed the cornerstone of his argument for vigorous protest against slavery and injustice.²¹⁶ Douglass understood that dismantling entrenched systems of oppression requires more than moral suasion; it demands concerted action and sacrifice. He elaborated on this, stating:

Men may not get all they pay for in this world, but they must certainly pay for all they get. If we ever get free from the oppressions and wrongs heaped upon us, we must pay for their removal. We must do this by labor, by suffering, by sacrifice, and if needs be, by our lives and the lives of others.²¹⁷

212. *Id.*

213. *Id.* at 208.

214. Frederick Douglass, *The Meaning of July Fourth for the Negro* (July 5, 1852), reprinted in *Frederick Douglass: Selected Speeches and Writings*, supra note 205, at 188, 195.

215. *Id.* at 204.

216. See Frederick Douglass, *West India Emancipation* (Aug. 3, 1857), reprinted in *Frederick Douglass: Selected Speeches and Writings*, supra note 205, at 358, 367 [hereinafter *Douglass, West India Emancipation*].

217. *Id.*

This powerful declaration underscored Douglass's belief that meaningful change requires not just intellectual or moral opposition to injustice but a willingness to endure hardship in pursuit of liberty.

Douglass presented a nuanced view of resistance, suggesting that it "may be a moral one, or it may be a physical one, and it may be both moral and physical, but it must be a struggle."²¹⁸ This perspective aligned with his broader political philosophy, which recognized the multifaceted nature of the fight against slavery. He argued, "The whole history of the progress of human liberty shows that all concessions yet made to her august claims, have been born of earnest struggle."²¹⁹ This statement underscored his belief that protest and struggle are not just options but necessities in the pursuit of freedom and equality. He challenged the notion of gradual change, asserting that those who profess to favor freedom while deprecating agitation are "men who want crops without plowing up the ground, they want rain without thunder and lightning."²²⁰

Douglass's conception of civic duty and protest were intrinsically linked. As he stated in his *West India Emancipation* speech, "The general sentiment of mankind is, that a man who will not fight for himself, when he has the means of doing so, is not worth being fought for by others"²²¹ This view emphasized that those who benefit from the protection and privileges of a society are obligated to defend its principles, particularly when they are under threat. In his later years, Douglass's political philosophy expanded to address broader issues of civic responsibility and the role of government in protecting the rights of all citizens. His 1869 speech, *Our Composite Nationality*, reflected this evolution as he argued for an inclusive and just society that transcends race and ethnicity.²²² Douglass's vision of America as a composite nation was one where every individual, regardless of background, had a stake in the nation's future and a duty to contribute to its progress. He stated, "We are a country of all extremes, ends and opposites; the most conspicuous example of composite nationality in the world."²²³ Here, Douglass acknowledged the diversity of the American people and insisted that this diversity is not a weakness but a source of strength. He emphasized that the nation's future depends on recognizing and embracing this plurality while ensuring that all citizens are treated with dignity and respect.

218. Id.

219. Id.

220. Id.

221. Id. at 365.

222. See Frederick Douglass, *Our Composite Nationality* (Dec. 7, 1869), reprinted in *The Speeches of Frederick Douglass: A Critical Edition* 278 (John R. McKivigan, Julie Husband & Heather L. Kaufman eds., 2018).

223. Id. at 285.

In advocating for this inclusive vision, Douglass also addressed the issue of immigration, which was a contentious topic in the post-Civil War United States.²²⁴ He opposed the exclusionary policies and xenophobic attitudes prevalent at the time, arguing that all immigrants, including formerly enslaved Africans and Black Americans, had a right to pursue the American dream.²²⁵ Douglass stated:

Gathered here from all quarters of the globe, by a common aspiration for national liberty as against caste, divine right government and privileged classes, it would be unwise to be found fighting against ourselves and among ourselves, it would be unadvised to attempt to set up any one race above another, or one religion above another, or prescribe any one account of race, color or creed.²²⁶

Douglass's later writings and speeches also demonstrated an awareness of the intersectionality of various forms of oppression. He understood that the struggle for racial equality was deeply connected to other social justice movements, including those advocating for gender equality, labor rights, and immigrant rights.

This inclusive approach to social justice is evident in his support for the women's suffrage movement and his argument that the rights of women and African Americans were inextricably linked. Douglass famously stated:

When women, because they are women, are hunted down through the cities of New York and New Orleans . . . dragged from their houses and hung upon lamp-posts; when their children are torn from their arms, and their brains dashed out upon the pavement . . . then they will have an urgency to obtain the ballot equal to our own.²²⁷

This powerful statement underscored Douglass's belief in the interconnectedness of all struggles for justice and his conviction that true equality could only be achieved when all forms of oppression were dismantled.

In his final years, Douglass remained an outspoken advocate for justice, equality, and human dignity. His political philosophy, shaped by his experiences as a formerly enslaved person and his lifelong commitment to social justice, was a powerful testament to the enduring struggle for civil

224. See *id.* at 285–303 (“The great right of migration and the great wisdom of incorporating foreign elements into our body politic, are founded not upon any genealogical or ethnological theory, however learned, but upon the broad fact of a common nature. Man is man the world over.”).

225. See *id.*

226. *Id.* at 295.

227. Frederick Douglass, *We Welcome the Fifteenth Amendment* (May 12–13, 1869), reprinted in *The Speeches of Frederick Douglass: A Critical Edition*, *supra* note 222, at 267, 271.

rights in America. His political philosophy evolved over time, marked by an evolving commitment to human dignity, active resistance against oppression, and the civic duty to protect the rights of all. This shift—from moral suasion to a more radical stance on resistance and civic responsibility—reflects the broader evolution of Black radical thought during his time. Central to Douglass’s vision of protest was the belief in two key conceptions of democratic citizenship: the right to speak out against injustice and the duty to actively resist oppression. Rooted in moral responsibility and active engagement, his philosophy, informed by his personal experiences and unwavering commitment to abolition, provided a framework for challenging systemic inequalities—one whose influence continues to resonate far beyond his era.

2. *Sojourner Truth*. — Sojourner Truth’s life and speeches embodied the right to protest that Douglass championed,²²⁸ demonstrating the transformative power of speech as an act of resistance. Born into slavery and later freed, Truth became a formidable orator despite her illiteracy, using her voice to advocate for both abolition and women’s rights. Truth’s bold oratory embodied this principle, turning speech into resistance against oppressive systems that sought to silence marginalized voices.

Her most famous speech, *Ain’t I a Woman?*, delivered at the 1851 Women’s Rights Convention in Akron, Ohio, stands as a powerful challenge to societal norms. In this address, Truth directly confronted prevailing notions of gender and racial inequality, asserting women’s equality through the rhetorical question: “Then that little man in black there, he says women can’t have as much rights as men, because Christ wasn’t a woman! Where did your Christ come from? From God and a woman! Man had nothing to do with Him”²²⁹ Truth’s brilliant use of religious argumentation not only affirmed women’s equality but also dismantled the common justification of women’s subordination through religious doctrine. By highlighting the essential roles of both women and God in Christ’s creation, Truth repositioned women as powerful figures in both spiritual and societal contexts, emphasizing their inherent dignity and equality.

Beyond *Ain’t I a Woman?*, Truth’s oratorical influence continued to grow, particularly in her 1867 address at the American Equal Rights Association.²³⁰ There, she boldly challenged the notion that Black men

228. See, e.g., Frederick Douglass, *The American Constitution and the Slave* (Mar. 26, 1860), reprinted in *The Speeches of Frederick Douglass: A Critical Edition*, supra note 222, at 151, 178–80 (arguing that those protected by the Constitution have the right to demand their liberty).

229. Sojourner Truth, *AR’N’T I a Woman?*, reprinted in *Lift Every Voice: African American Oratory, 1787–1900*, at 226, 228 (Philip S. Foner & Robert James Branham eds., 1998).

230. The first anniversary of the American Equal Rights Association was held at the Church of the Puritans in New York on May 9 and 10, 1867. H.M. Parkhurst, *Proceedings of*

should receive voting rights before Black women, asking, “[I]f colored men get their rights, and not colored women theirs, you see the colored men will be masters over the women, and it will be just as bad as it was before.”²³¹ Truth’s intervention demonstrated the intersectionality of her advocacy—she understood that racial and gender equality were deeply interconnected and could not be separated. Her direct, extemporaneous speaking style, necessitated by her illiteracy, became a tool of powerful advocacy.²³² Unable to read from prepared texts, she developed the ability to communicate complex ideas through simple, vivid language and metaphors, ensuring that her message resonated across social classes and backgrounds. This approach exemplified Douglass’s belief that the right and power to speak out against injustice should be accessible to all, regardless of education or societal status.²³³

Truth’s impact on both the abolitionist and women’s rights movements was profound. She not only challenged broader society but also pushed the movements themselves to reconsider their assumptions—urging abolitionists to advocate for women’s rights and women’s rights activists to include Black women in their vision of equality. Truth’s advocacy demonstrated that speech was not just about the right to be heard but about using that voice to educate, challenge, and transform society. Her life’s work exemplified how speech could serve as both a tool of resistance and a catalyst for social change.

3. *Harriet Tubman*. — While Truth wielded the power of speech to confront injustice, Harriet Tubman embodied a different dimension of Douglass’s philosophy: the duty to resist through direct action. Tubman’s work with the Underground Railroad was a direct-action protest against slavery,²³⁴ embodying Douglass’s belief that resistance to oppression is a moral imperative. Her repeated missions to free enslaved people mirrored Douglass’s assertion in his *West India Emancipation* speech that “[i]f there

the First Anniversary of the American Equal Rights Association 1 (New York, Robert J. Johnston 1867).

231. Sojourner Truth, Address to the First Annual Meeting of the American Equal Rights Association—May 9, 1867, Iowa St. Univ.: Archives of Women’s Pol. Comm’n, <https://awpc.cattcenter.iastate.edu/2017/03/21/address-to-the-first-annual-meeting-of-the-american-equal-rights-association-may-9-1867/> [https://perma.cc/LZ46-VDYB] (last visited May 28, 2025).

232. See Neil A. Patten, The Nineteenth Century Black Woman as Social Reformer: The “New” Speeches of Sojourner Truth, *Negro Hist. Bull.*, Jan.–Mar. 1986, at 2, 2–4 (“Sojourner Truth could not read, and it was this distinction that determined her uniqueness.”).

233. See *id.* (“As an American orator, Sojourner Truth is most noteworthy in that she proved that while rhetorical competence may be achieved through careful study, true eloquence is obtained only through conviction.”).

234. See, e.g., Vivian M. May, Under-Theorized and Under-Taught: Re-Examining Harriet Tubman’s Place in Women’s Studies, 19 *Meridians* 463, 469 (2020) (arguing that Tubman’s varied forms of action across time and place and her ability to fight the state and work within it require scholars to approach her as an agent of history).

is no struggle[,] there is no progress.”²³⁵ Tubman’s courageous acts—freeing herself and then returning to slavery territory to help others—demonstrated her commitment to active resistance as necessary for change.²³⁶

One of Tubman’s most daring acts of resistance was her role in the Combahee River Raid during the Civil War.²³⁷ On June 2, 1863, she guided Union soldiers up the river, liberating over seven hundred enslaved people in a single night.²³⁸ This not only freed individuals but also disrupted the Confederate economy, showing the strategic power of Tubman’s resistance.

Tubman’s resistance evolved during the Civil War. She served as a Union spy, gathering intelligence and scouting behind Confederate lines, directly contributing to Union victories.²³⁹ She also worked as a nurse, caring for both soldiers and liberated enslaved people,²⁴⁰ fighting against the disease and suffering that disproportionately affected Black communities.²⁴¹ These actions reflected Douglass’s belief that in the face of grave injustice, direct forms of resistance were not only justified but essential.

In her later years, Tubman advocated for women’s suffrage,²⁴² demonstrating that she shared Douglass’s belief that the fight for justice was ongoing and multifaceted. Her transition from antislavery activist to suffragist paralleled Douglass’s own evolving understanding of human rights.

235. Douglass, *West India Emancipation*, supra note 216, at 367.

236. Although there are only educated guesses as to the time and place of Tubman’s birth, she was probably born in Dorchester County, Maryland, possibly at the Brodess plantation near Bucktown in what Tubman believed to be 1825. See Catherine Clinton, *Harriet Tubman: The Road to Freedom* 4 (2004); Sernett, supra note 52, at 15. She self-liberated from Maryland in 1849 and committed to work with the Underground Railroad until December 1851, after which she returned to the South at least once a year to rescue parties of enslaved persons. See Sarah H. Bradford, *Harriet: The Moses of Her People* 61 (1901); Kerry Walters, *Harriet Tubman: A Life in American History* 47 (2020).

237. See Edda L. Fields-Black, *Combee: Harriet Tubman, the Combahee River Raid, and Black Freedom During the Civil War* 283–315 (2024) (recounting this history).

238. *Id.*

239. *Id.* at 174–75 (describing how Massachusetts Governor John Andrew asked Tubman to be “prepared to go south at a moment’s notice to ‘act as spy and scout for our armies, . . . in short, to be ready to give any required service to the Union cause’” (quoting Bradford, supra note 236, at 93–94)). Following the “Gun Shoot at Bay Point,” Andrew asked Tubman to go to Port Royal, South Carolina, as he believed she would be useful in gathering intelligence for the Union military and recruiting scouts from among the freed people. See Walters, supra note 236, at 123–24.

240. Walters, supra note 236, at 123–24.

241. See Chulhee Lee, *Socioeconomic Difference in the Health of Black Union Soldiers During the American Civil War*, 33 *Soc. Sci. Hist.* 427, 432–33 tbl.1 (2009) (showing the number of deaths of liberated enslaved people in the military).

242. See May, supra note 234, at 470 (“Tubman’s work in alliance with the Black women’s club movement and her labors for women’s suffrage are under-acknowledged . . .”).

Her activism embodied Douglass's assertion that "[p]ower concedes nothing without a demand,"²⁴³ showing that resistance is not just a right but a duty—a necessary response to systemic injustice.

The legacies of Truth and Tubman stand as powerful testimonies to Douglass's philosophy of protest. Their lives exemplify how the right to speak and the duty to resist manifest in diverse yet equally impactful ways. As we continue to confront issues of justice and equality today, their stories remind us of the transformative power of voice and action in the face of oppression, inspiring those who seek a more just and equitable society.

B. *The Right of Revolution*

The nineteenth century was a period of profound contradiction in American history. While the nation's founding documents espoused ideals of freedom and equality, the brutal reality of slavery starkly contradicted these principles. This dissonance rang loudest in the voices of Black writers, who turned to literature as a battleground—using it to expose, critique, and reimagine the American Revolution's unfulfilled promises. Alongside Douglass, figures like David Walker and Martin Delany engaged deeply with the ideals of revolution, wielding the pen as both scalpel and sword to dissect the social order and envision a world rebuilt on genuine freedom.

The Declaration of Independence—with its soaring claim that “all men are created equal” and endowed with “unalienable Rights”—offered more than rhetoric; it became a weapon of critique.²⁴⁴ Black abolitionists seized upon these ideals as a revolutionary blueprint, arguing that when a government “becomes destructive” of the people's rights, the people not only possess the right but the moral duty “to alter or to abolish it.”²⁴⁵ Through this lens, slavery was not merely a moral failing; it was a systemic betrayal that demanded radical redress.²⁴⁶ This interpretation exposed the hypocrisies between America's professed ideals and its reality, a nation founded on liberty was sustained by chains, and the parchment that promised equality bore the fingerprints of slaveholders.

Both Walker and Delany embodied this approach, crafting what Africana Studies scholar Alex Zamalin describes as a “nationalist argument about natural rights.”²⁴⁷ Both men highlighted the tension between the American ideal of democracy and the immorality of slavery, exposing how slavery hollowed out those democratic ideals, even as they insisted on

243. Douglass, *West India Emancipation*, supra note 216, at 367.

244. The Declaration of Independence para. 2 (U.S. 1776).

245. *Id.*

246. See infra section II.B.2.

247. Zamalin, *Struggle on Their Minds*, supra note 4, at 24.

reclaiming them as aspirational tools in the fight against racial tyranny.²⁴⁸ But their approaches differed. Walker, in his *Appeal*, adopted a militant stance, calling for resistance to slavery by any means necessary.²⁴⁹ Often seen as one of the first Black nationalists, he championed self-determination, urging Black Americans to recognize their collective strength and demand their freedom—not as a benefit, but as a birthright.²⁵⁰ In contrast, Delany looked beyond American borders for liberation. In his emigrationist vision, true Black freedom required the establishment of sovereign Black nations, free from the corrosive weight of White supremacy.²⁵¹ While both critiqued America’s failure to uphold its democratic ideals, Delany’s vision extended beyond reform, advocating for a political exodus in search of fertile ground where Black autonomy could thrive.²⁵²

Together, these divergent paths illuminate the complexity and dynamism of Black political theory. Unified in their condemnation of America’s foundational hypocrisies, Walker and Delany—like so many others—offered different maps toward a shared horizon: a world in which the ideals of equality, liberty, and justice are not merely declared, but lived.

1. *David Walker’s Appeal*. — Walker’s *Appeal to the Coloured Citizens of the World* stands as a seminal work in the history of Black protest literature. Published amidst increasing controversy over rapid westward expansion and the evolving national market economy, Walker’s pamphlet emerged in the wake of the 1819 Missouri Compromise, which had limited the spread of slavery in new territories while maintaining it below the Mason–Dixon line.²⁵³ The *Appeal* directly confronted the hypocrisy of American democracy, calling for immediate and radical resistance against slavery. It boldly challenged White supremacy, arguing that Black people had a moral right and duty to fight for their freedom, even if it meant violent uprising.

248. Id.; see also Peter P. Hinks, *To Awaken My Afflicted Brethren: David Walker and the Problem of Antebellum Slave Resistance* 111–12 (1997) (describing the impact of Walker and the *Appeal* in uplifting the fight against slavery).

249. See Peter Thompson, *David Walker’s Nationalism—And Thomas Jefferson’s*, 37 *J. Early Republic* 47, 62 (2017) (noting that Walker “argued that if America’s blacks transcended white racism through self-improvement they would create a race pride and unity that would not only destroy slavery in the United States but also help conjure into being the global colored citizenry alluded to in the title of the *Appeal*”).

250. Id.

251. See, e.g., Grant Shreve, *The Exodus of Martin Delany*, 29 *Am. Literary Hist.* 449, 451 (2017) (arguing that, through *Blake*, Delany illustrates how “emigrationist thought expanded the field of view in black . . . politics to question what kind of social world needed to be established to sustain an independent black nation after liberation”).

252. Id.

253. Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* 96–99 (2007) (exploring the congressional debate around prohibiting slavery in certain territories).

Walker ingeniously mirrored the rhetorical structure of the Constitution to highlight the contradictions in America's founding documents and "to awaken . . . a spirit of inquiry and investigation respecting our miseries and wretchedness in this *Republican Land of Liberty!!!!!!*"²⁵⁴ Drawing parallels to Jefferson's acknowledgment of arbitrary political power in the Declaration of Independence, Walker argued that American democracy had sanctioned tyranny for Black people. He wrote, "Compare your own language . . . from your Declaration of Independence, with your cruelties and murders inflicted by your cruel and unmerciful fathers and yourselves on our fathers and on us—men who have never given your fathers or you the least provocation!!!!!!"²⁵⁵

Walker begins his *Appeal* by noting the wretchedness of slavery,²⁵⁶ urging his readers, including both enslaved and free Black Americans, to imagine new conceptions of liberty beyond the gaze and strictures of White supremacy.²⁵⁷ His use of the word "citizen" to describe enslaved Black Americans was revolutionary. It not only established them as political agents "capable of critical reflection" but also enshrined Black protest as an act of democratic discourse.²⁵⁸ He challenged the notion that freedom merely required the removal of chains, foreshadowing Professor Orlando Patterson's concept of "social death."²⁵⁹ Walker emphasized the importance of one's ability to engage in democratic discourse and perceive oneself as an equally dignified human being.²⁶⁰

254. Walker's *Appeal*, supra note 1, at 9.

255. *Id.* at 75.

256. Walker wrote, "Would we not long before this time, have been respectable men, instead of such wretched victims of oppression as we are?" *Id.* at 17.

257. Addressing free Black Americans, Walker wrote:

Do any of you say that you and your family are free and happy, and what have you to do with the wretched slaves and other people? . . . Look into freedom and happiness, and see of what kind they are composed!! . . . If any of you wish to know how FREE you are, let one of you start and go through the southern and western States of this country, and unless you travel as a slave to a white man . . . or have your free papers . . . if they do not take you up and put you in jail, and if you cannot give good evidence of your freedom, sell you into eternal slavery . . .

Id. at 32.

258. Zamalin, *Struggle on Their Minds*, supra note 4, at 29; see also Melvin L. Rogers, David Walker and the Political Power of the *Appeal*, 43 *Pol. Theory* 208, 210 (2015) ("[C]onnecting citizenship exclusively to legal status will bind us to the fact that through activities of contestation African Americans have sought to model a vision of citizenship alongside their plea for inclusion.").

259. See Orlando Patterson, *Slavery and Social Death: A Comparative Study* 38 (1982) ("On the cognitive or mythic level, one dominant theme emerges, which lends an unusually loaded meaning to the act of natal alienation: this is the social death of the slave.").

260. Walker wrote: "[W]e are men as well as they. God has been pleased to give us two eyes, two hands, two feet, and some sense in our heads as well as they. They have no more right to hold us in slavery than we have to hold them . . ." Walker's *Appeal*, supra note 1, at 17 n.*.

To Walker, moral principles granted enslaved Black Americans the right to resist unjust laws and engage in dissent. This view anticipated later thinkers like Henry David Thoreau, Malcolm X, and even Martin Luther King, Jr., in his *Letter From Birmingham City Jail*, in which he argued there is a moral responsibility to disobey unjust laws.²⁶¹ To be sure, Walker's approach was tinged with cynicism,²⁶² reminiscent of the Anti-Federalists' warnings about self-interested political elites.²⁶³

By confronting these ideas, Walker called into question the very premise of White supremacy promoted by figures like Thomas Jefferson.²⁶⁴ Walker urged his readers to refute such racist arguments, stating, "Do you believe that the assertions of such a man, will pass away into oblivion unobserved by this people and the world? . . . [U]nless we try to refute Mr. Jefferson's arguments respecting us, we will only establish them."²⁶⁵ In so doing, Walker's call for dissent reflected an embrace of disagreement rather than consensus in political discourse. Unlike moderate figures like President Abraham Lincoln, who framed abolition in pragmatic terms,²⁶⁶

261. See, e.g., Martin Luther King, Jr., *Letter from Birmingham City Jail* (Apr. 16, 1963), reprinted in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.* 289, 293 (James Melvin Washington ed., 1986) [hereinafter King, *Letter from Birmingham City Jail*] ("[T]here are two types of laws: there are *just* and there are *unjust* laws. I would agree with Saint Augustine that 'An unjust law is no law at all.'"); Henry David Thoreau, *Civil Disobedience* 30–31 (Per Bregne ed., Green Integer 2002) (1849) ("It costs me less in every sense to incur the penalty of disobedience to the State than it would to obey. I should feel as if I were worth less in that case."); Malcolm X, *Any Means Necessary to Bring About Freedom* (Dec. 3, 1964), in *Malcolm X Talks to Young People: Speeches in the U.S., Britain, and Africa* 16, 16–17 (Steve Clark ed., 1991) [hereinafter Malcolm X, *Any Means Necessary*] (arguing people are justified in resorting to any means necessary to achieve justice when society will not enforce its own laws).

262. See, e.g., Walker's Appeal, *supra* note 1, at 9 ("I do not only expect to be held up to the public as an ignorant, impudent and restless disturber of the public peace . . . [and] a mover of insubordination—and perhaps put in prison or to death, for giving a superficial exposition of our miseries, and exposing tyrants.").

263. As one prominent Anti-Federalist wrote:

[R]ulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another.

Brutus No. II (Nov. 1, 1787), in 2 *The Complete Anti-Federalist* 372, 373 (Herbert J. Storing ed., 1981). Additionally, Walker was deeply suspicious of proposals to colonize emancipated Black Americans in another country. See Walker's Appeal, *supra* note 1, at 51–52 (questioning the motives of Henry Clay in supporting Black colonization efforts in Africa).

264. See Jefferson, *Notes on the State of Virginia*, *supra* note 58, at 143 ("I advance it therefore as a suspicion only, that the blacks . . . are inferior to the whites in the endowments both of body and mind.").

265. Walker's Appeal, *supra* note 1, at 20–21.

266. As Lincoln declared, "My first impulse would be to free all the slaves, and send them to Liberia But a moment's reflection would convince me, that . . . in the long run, its sudden execution is impossible. . . . What then? Free them all, and keep them among us as underlings?" Abraham Lincoln, *First Lincoln-Douglass Debate*, Ottawa, Illinois (1858), in

Walker sought to incite moral outrage.²⁶⁷ He focused on the individual indignities inflicted upon Black Americans and their families, declaring, “[W]e, (coloured people of these United States . . .) are the *most wretched, degraded, and abject* set of beings that *ever lived* since the world began”²⁶⁸

Importantly, the denial of education among the enslaved class was recognized by Walker as a tool of subordination. He declared, “Ignorance, my brethren, is a mist, low down into the very dark and almost impenetrable abyss in which, our fathers for many centuries have been plunged.”²⁶⁹ But scholars like Zamalin have noted the limitations in Walker’s view,²⁷⁰ particularly his questionable attribution of slave-on-slave violence to ignorance rather than physical compulsion or necessity.²⁷¹ Further, Zamalin notes that alongside adopting racial naturalism by suggesting biological and heritable characteristics among Black people, Walker’s endorsement of violence as a form of Black dissent may reflect a narrow conception of masculinity.²⁷²

Despite its militant tone, Walker’s vision of a future beyond slavery was ultimately hopeful. He envisioned a world where Black Americans could aspire to “higher attainments than *wielding the razor and cleaning boots and shoes*.”²⁷³ Even more, Walker’s concept of patriotism reflected not only love for one’s country but also a responsibility for collective liberation and thriving. As he described his goal in writing the *Appeal*: “I shall

Abraham Lincoln: Speeches and Writings 1832–1858, at 495, 510–11 (Don E. Fehrenbacher ed., 1989).

267. Walker declared:

[I]f he is not a tyrant, but has the feelings of a human being, who can feel for a fellow creature, he may see enough to make his very heart bleed! He may see there, a son take his mother, who bore almost the pains of death to give him birth, and by the command of a tyrant, strip her as naked as she came into the world, and apply the cow-hide to her, until she falls a victim to death in the road!

Walker’s *Appeal*, supra note 1, at 26.

268. *Id.* at 6 (emphasis added).

269. *Id.* at 22.

270. Zamalin, *Struggle on Their Minds*, supra note 4, at 43.

271. Referring to an enslaved woman who saves a White slaveholder during a rebellion, Walker declared, “Was it the natural *fine feelings* of this woman, to save such a wretch alive? I know that the blacks, take them half enlightened and ignorant, are more humane and merciful than the most enlightened and refined European that can be found in all the earth.” Walker’s *Appeal*, supra note 1, at 28–29.

272. See Zamalin, *Struggle on Their Minds*, supra note 4, at 43–44 (noting that “Walker’s example of black treachery centered on a black slave woman raises the question of whether the *Appeal* is narrowly concerned with liberating black men”); see also Walker’s *Appeal*, supra note 1, at 30 (“[I]t is no more harm for you to kill a man, who is trying to kill you, than it is for you to take a drink of water when thirsty . . .”).

273. Walker’s *Appeal*, supra note 1, at 33.

endeavour to penetrate, search out, and lay them open for your inspection. If you cannot or will not profit by them, I shall have done *my* duty to you, my country and my God.”²⁷⁴ In other words, as Zamalin argues, “Patriotism here was measured not by uncritical love of country but directly by the kind of emancipatory value it had for oppressed citizens, who themselves were endowed with the authority to scrutinize patriotic claims.”²⁷⁵

The impact of the *Appeal* was profound and far-reaching. Its publication sent shockwaves through both Black and White communities. Southern states banned its distribution and increased restrictions on enslaved people’s activities, fearing its potential to incite rebellion. Among abolitionists, the *Appeal* sparked intense debate about the most effective methods for ending slavery, with some embracing Walker’s militant approach while others advocated for more gradual change. Walker’s work influenced subsequent generations of Black activists and writers, helping to shape a tradition of radical protest literature that would continue throughout the nineteenth century and beyond. Walker’s *Appeal* remains a pivotal text in the history of Black protest literature. Its confrontational approach, revolutionary ideas about citizenship and freedom, and call for active resistance against slavery challenged the foundations of American society. By intertwining moral arguments with a critique of the nation’s founding principles, Walker created a powerful manifesto that continues to resonate in discussions of race, freedom, and justice in America.

2. *Martin Delany’s Blake; or The Huts of America*. — By the mid-nineteenth century, Black authors increasingly turned to fiction as a platform for engaging with revolutionary ideas and imagining alternative futures. This early form of Afrofuturism allowed writers to challenge the constraints of their present reality, using speculative narratives to critique existing power structures and inspire hope for change. Martin Delany’s *Blake; or The Huts of America: A Tale of the Mississippi Valley, the Southern United States, and Cuba* stands as a groundbreaking example of this approach, offering a direct philosophical challenge to the legal foundations of American slavery and racism, particularly as articulated in the Supreme Court’s *Dred Scott* decision.²⁷⁶

274. *Id.* at 9.

275. Zamalin, *Struggle on Their Minds*, *supra* note 4, at 47.

276. See Floyd J. Miller, Introduction to Martin R. Delany, *Blake; or The Huts of America*, at xxiv–xxv (Floyd J. Miller ed., Beacon Press 1970) (1859) (discussing how Delany “recognizes in *Blake* the potentially crippling effects of slavery” and stresses self-reliance, Black-led rebellions, and avoiding undue dependence upon White people and White institutions, demonstrating “the strength of his commitment to nationalism”). Toward the end of the novel, Delany writes:

Of the two classes of these communities, the master and slave, the blacks have everything to hope for and nothing to fear, since let what may take place their redemption from bondage is inevitable. They must and

Serialized in fragments in the *Anglo-African Magazine* in 1859, and continuing in the *Weekly Anglo-African* during the early part of the Civil War, the novel tells the story of a successful slavery rebellion that leads to the establishment of a free Black nation. As scholar Gregg D. Crane notes, “*Blake* constitutes Delany’s rejoinder to the official version of citizenship expressed in Chief Justice Roger B. Taney’s *Dred Scott* opinion, which upheld the constitutionality of slavery and concluded that black Americans did not possess the rights of citizens” that White Americans were bound to respect.²⁷⁷ Where Taney’s opinion framed racial oppression as an inevitable natural order, Delany’s novel offered a radical reimagining of power, rights, and community, exposing contradictions within American democracy.

Delany’s critique of American exceptionalism is not only a rejection of its claims to moral superiority but also a direct challenge to the legal structures that uphold such claims. In *Blake*, Delany framed the character’s rebellion against slavery as a microcosm of the larger struggle against the United States’ hypocritical foundation, in which ideals of freedom coexisted with systemic oppression. This mirrors modern critiques of American exceptionalism, which argue that the United States has historically justified its racial policies by invoking an idealized vision of itself as a liberal democracy, despite its material conditions of inequality.²⁷⁸

Delany’s work directly challenged Taney’s historical interpretation of citizenship and rights. Beyond critiquing Taney’s reliance on historical precedent, Delany proposed an alternative: citizenship rooted in moral and civic equality, not in oppressive power dynamics. Taney argued that citizenship was inherently tied to the possession of political power, suggesting that those historically subjugated in America could not be full members of the sovereign body.²⁷⁹ He justified his position with historical precedent, asserting that the Constitution precluded Black citizenship because White Americans had never embraced Black people as their

will be free; whilst the whites have everything to fear and nothing to hope for, “God is just, and his justice will not sleep forever.”

Delany, *supra*, at 305.

277. Gregg D. Crane, The Lexicon of Rights, Power, and Community in *Blake*: Martin R. Delany’s Dissent From *Dred Scott*, 68 *Am. Literature* 527, 527 (1996).

278. See, e.g., Aziz Rana, The Two Faces of American Freedom 326–27 (2010) (tracing how the United States’ self-image as a liberal democracy has coexisted with exclusionary and imperial practices); Daniel T. Rodgers, As a City on a Hill: The Story of America’s Most Famous Lay Sermon 247–63 (2018) (exploring the ideological foundations and enduring power of American exceptionalism); Keeanga-Yamahtta Taylor, From #BlackLivesMatter to Black Liberation 219–22 (2d ed. 2021) (critiquing liberalism’s failure to address structural racism).

279. See *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393, 394 (1857) (enslaved party), superseded by constitutional amendment, U.S. Const. amend. XIV.

equals.²⁸⁰ In a striking scene in the novel, the character Henry Blake reflects on the contrast between British and American justice, proclaiming:

It is indeed a sad reflection . . . to contrast the difference between British and American jurisprudence. How sublime the spectacle of the colossal stature (compared with the puppet figure of the Judge of the American Supreme Court), of the Lord Chief Justice when standing up declaring to the effect: that by the force of British intelligence, the purity of their morals, the splendor of their magnanimity, and aegis of the Magna Charta, the moment the foot of a slave touched British soil, he stood erect, disenthralled in the dignity of a freeman, by the irresistible genius of universal emancipation.²⁸¹

Delany's reference to Lord Mansfield's opinion in *Somerset v. Stewart*, which held that slavery was unsupported by English law and that an enslaved person became free upon reaching British soil, highlights the contrast between abolitionist and proslavery legal philosophies.²⁸² Abolitionists invoked *Somerset* to argue that Dred Scott had been emancipated by residing with his master outside the Southern slave states.²⁸³ According to *Somerset*, legal authority derives from both the moral principles of natural rights and the will of the sovereign expressed in legislation.²⁸⁴ Delany's character Judge Ballard embodies Taney's jurisprudence, declaring, "It was a just decision of the Supreme Court . . . that persons of African descent have no rights that white men are bound to respect!"²⁸⁵

Delany exposes the tensions between Mansfield's and Taney's legal reasoning by juxtaposing Judge Ballard's deference to historical precedent with conversations among Black characters in the novel about rights, power, and community. This contrast underscores broader philosophical tensions between abolitionist ideals—rooted in universal moral principles—and proslavery legal reasoning, which codified racial hierarchies. As Crane explains, these discussions "develop an African American alternative—creating a pluralistic community and determining individual rights

280. See *id.* at 426 ("No one . . . supposes that any change in public opinion or feeling, in relation to this unfortunate race . . . should induce the court to give to the words of the Constitution a more liberal construction in their favor than they were intended to bear when the instrument was framed and adopted.").

281. Delany, *supra* note 276, at 263 (internal quotation marks omitted).

282. See *Somerset v. Stewart* (1772) 98 Eng. Rep. 499, 510 (K.B.).

283. Crane, *supra* note 277, at 537 ("[*Somerset*] provided abolitionists with an argument that the Constitution permitted slavery only as it existed by the authority of local law Two . . . Justices hearing Dred Scott's case argued that, under the *Somerset* rationale, Scott was emancipated when he resided with his master outside of the slave states.").

284. See *id.* at 537–38 (asserting that *Somerset* "recogniz[ed] the coexistence of dual sources for legal authority—the moral principles of the natural rights tradition and the will of the sovereign expressed in legislation").

285. Delany, *supra* note 276, at 62.

through a present dialogue that discovers and establishes a civic consensus.”²⁸⁶

Delany’s work was revolutionary in several ways. First, the novel’s revolutionary philosophy emerges through its exploration of alternative forms of community and sovereignty. Unlike his contemporary, Douglass, who emphasized individual rights within the existing American framework, Delany developed a more radical vision centered on group rights and Pan-African identity, calling for entitlement not of the individual but of the collective.²⁸⁷ Drawing from African communal traditions, Delany incorporated “African-inflected cultural forms” like the ring shout and call-and-response that had fueled resistance to slavery.²⁸⁸ These practices were so powerful that slaveholders actively suppressed them, recognizing their potential to nurture organized rebellion.²⁸⁹

Delany’s philosophy also anticipated Critical Race Theory’s (CRT) rejection of the supposed neutrality of law. Just as CRT scholars like Derrick Bell would argue that laws are often designed to maintain the interests of dominant groups rather than to uphold justice for marginalized populations,²⁹⁰ Delany critiques American legal structures as tools that perpetuate racial and economic subjugation. In *Blake*, the law becomes an instrument of colonialism and oppression, symbolized by the violence of the legal system and the failures of legal institutions to recognize Black humanity. Delany’s revolution, then, is not simply about reforming these structures but dismantling them entirely, echoing CRT’s call to deconstruct systemic racism.

Additionally, the novel portrays enslaved people as active agents of their own liberation, capable of organizing and carrying out complex revolutionary plans. Through Blake’s journey, the novel replicates African kinship patterns, with characters referring to non-relatives as “cousins” and “brothers,” building a network of resistance through these communal bonds.²⁹¹ By imagining a pan-African alliance, Delany connects the struggles of Black people across the Americas and Africa, challenging the narrow nationalism of American democracy.²⁹²

286. Crane, *supra* note 277, at 540 (emphasis omitted).

287. See *id.* at 541–42 (explaining how Delany emphasized “the entitlement not of the individual but of the group”).

288. *Id.* at 542.

289. *Id.*

290. See Derrick A. Bell, Jr., *Serving Two Masters: Integration Ideals and Client Interests in School Desegregation Litigation*, 85 *Yale L.J.* 470, 479–80 (1976) (discussing varying national responses to “[t]he basic civil rights position that *Brown* requires maximum feasible desegregation”).

291. Crane, *supra* note 277, at 541–42.

292. See Betty Harris, *Black America and Black South Africa: Ideology and Political Economy*, 142 *Présence Africaine* 93, 93 (1987) (explaining how the United States emerged as a global superpower after World War II while South Africa remained “a semi-peripheral

Delany's Pan-Africanism, as explored in *Blake*, underscored his belief that Black identity is not limited by the national borders imposed by colonial powers. For Delany, Black people's struggle for freedom is not confined to the United States; it is a global issue. He envisioned a united front of Black people worldwide, in which race and identity serve as the basis for solidarity and collective action. This global perspective on race echoes the Pan-African visions of later thinkers such as Marcus Garvey,²⁹³ who also argued that Black people's liberation is a worldwide struggle. Delany's framework of race, then, is not one of isolated national identities but rather an interconnected, transnational Black identity that challenges colonial and imperial power.

Crucially, Delany recognized that moral rights required political power to be meaningful, advocating both in his novel and in his political activism for Black Americans to emigrate. Justice without power was merely aspiration, and true freedom required not just legal recognition but the ability to enforce and protect one's rights. This philosophy is crystallized in a pivotal moment when Blake rallied his fellow revolutionaries: "What say you, brethren, shall we rise against our oppressors and strike for liberty, or will we remain in degradation and bondage, entailing upon unborn millions of our progeny the insufferable miseries which our fathers endured and bequeathed to us?"²⁹⁴ The response—"Liberty! Liberty or death!"—underscores the inseparability of rights and the power to secure them.²⁹⁵

Delany's philosophical sophistication lies in his ability to turn Taney's logic of power and rights against itself. Through its conversations between White and Black characters, the novel reveals how legal justifications for slavery mask raw power relations. This becomes explicit when, near the novel's conclusion, Blake declares to a pluralistic coalition of maroon and free Black people of various shades, classes, and national and ethnic origins in Cuba: "On this island, . . . we are the many and the oppressors few; consequently, they have no moral right to hold rule over us, whilst we have the moral right and the physical power to prevent them. Whatever we determine shall be, will be."²⁹⁶

This statement inverts Taney's equation of power and rights, suggesting that majority status creates both the moral right and the physical power to establish a new political order. By shifting the revolutionary setting to

nation" reliant on resource exports and cheap labor, with both countries exhibiting "racial discrimination" but differing significantly in demographics).

293. See Ben F. Rogers, William E. B. DuBois, Marcus Garvey, and Pan-Africa, 40 *J. Negro Hist.* 154, 158–165 (1955) (explaining Garvey's vision of an "African Republic" and how the Liberian government, fearing his movement's influence, blocked his attempt to establish an African American colony in Liberia).

294. Delany, *supra* note 276, at 287 (internal quotation marks omitted).

295. *Id.* (internal quotation marks omitted).

296. *Id.* (internal quotation marks omitted).

Cuba, where the Pan-African coalition comprised a majority, Delany explored how demographic power can transform abstract rights into concrete reality. But, as Crane argued, Delany's focus on power as a precondition for liberty ultimately leaves the question of minority rights unanswered.²⁹⁷

Through nonfiction, like David Walker's *Appeal*, and fiction, like Martin Delany's *Blake*, Black writers have long challenged the existing social order and imagined new possibilities for Black freedom and equality. Delany's contribution lies in exposing the contingent nature of American democracy's racial exclusions while articulating a revolutionary philosophy that links moral rights to political power and individual liberation to collective self-determination. His vision of a pluralistic Pan-African republic offered an alternative to both Northern integrationism and Southern slavery, contributing to a broader tradition of revolutionary Black thought that would shape American politics and culture for generations to come.

III. THE EVOLUTION OF BLACK PROTEST

Black resistance to racial injustice has long served a dual purpose: as both a searing critique of systemic oppression and a visionary call to imagine otherwise. It is within this tension—between reckoning and dreaming—that Black protest emerges not only as political action but as a generative site of political theory and legal discourse. This Part examines how Black activism reshapes American democracy from the ground up, revealing resistance not merely as reaction but as a moral imperative and a radical act of becoming. Early Black intellectual traditions lay the groundwork for what contemporary Afrofuturist thinkers now articulate: an urgent need to reimagine law and political economy from the vantage point of the marginalized.

Section III.A anchors this inquiry in the post-Civil War era, when racial terrorism, Jim Crow laws, and disenfranchisement birthed radical protest traditions that nourished the civil rights movement and continue to pulse through the lifeblood of contemporary struggles for racial justice. Section III.B moves into the mid-twentieth century, highlighting figures like James Baldwin, A. Philip Randolph, and Malcolm X, who each, in his own way, linked racial subjugation to economic exploitation, unmasking the broader architecture of injustice. Section III.C picks up the thread of revolution from the late 1960s onward, examining movements such as the Black Panther Party and Black Lives Matter. These insurgent forces channeled the ancestral energy of rebellion into both street-level direct action

297. See Crane, *supra* note 277, at 544 (suggesting that the oppressed need to acquire “political power” for their rights to be realized, as majority power transforms revolutionary rhetoric into “a framework for a new legal order” led by a united Pan-African movement against “racial oppression”).

and the digital frontlines of twenty-first-century activism. Their praxis reflects a continuity—a living archive of liberation struggle that bridges past and future, pushing against the boundaries of what the law says toward what justice demands.

Taken together, this Part frames Black protest as operating across three interlocking dimensions. First, as subversion: the strategic undermining of oppressive systems that masquerade as neutral. Second, as response to perversion: a confrontation with the distortions of foundational legal ideals that have too often been wielded as instruments of harm. And third, as revolution: a demand to rewrite the script entirely, rooted in the lived knowledge of the oppressed and reaching toward alternative futures. By interpreting these movements through the lens of Afrofuturist thought—in which time bends and new worlds are unveiled—this Part reveals Black protest as more than dissent. It becomes a force of worldmaking, transforming not just how justice is imagined, but how it might yet be lived.

A. *Perversions of Law and Democracy*

In the aftermath of the Civil War and Reconstruction, the promise of equality and justice for Black Americans was systematically undermined through perversions of law and democracy. This section examines how social, political, and economic systems were manipulated to suppress Black advancement and maintain White supremacy. Understanding these modern perversions of law and democracy is crucial for comprehending the evolution of Black radical protest traditions in the modern era, as they formed the crucible from which modern resistance movements emerged.

1. *Social Perversions: Racial Terrorism and Jim Crow.* — The post-Reconstruction era saw the rise of a new form of racial oppression, characterized by systematic violence and legal racial segregation. White supremacists employed racial terrorism to suppress Black political, economic, and social advancement, and lynching became one of the most brutal and visible methods of maintaining White dominance. Lynchings evolved into a nationwide tool of social control, with over four thousand documented cases between 1877 and 1950, though the actual number may be much higher.²⁹⁸ These acts of terror were not just spontaneous

298. See W. Fitzhugh Brundage, Introduction to *Under Sentence of Death: Lynching in the South* 1, 5 (W. Fitzhugh Brundage ed., 1997) (discussing mob violence and patterns of lynching across the United States after the Civil War); see also W. Fitzhugh Brundage, *Lynching in the New South: Georgia and Virginia, 1880–1930*, at 4–6, 10–13 (1993) (considering lynching as a social ritual that affirmed traditional White values and supremacy); Stewart E. Tolnay & E.M. Beck, “Racialized Terrorism” in the American South: Do Completed Lynchings Tell an Accurate Story?, 42 *Soc. Sci. Hist.* 677, 678 (2018) (“[T]he historical record of completed lynchings included in existing inventories does not tell the full story of the extent to which Southern blacks were subjected to terroristic social control by their white neighbors.”). For background into lynching as part of American history

outbursts of violence but were often premeditated, public events, sometimes advertised in local newspapers and attended by thousands of White onlookers, including families with children.²⁹⁹ The ritualized nature of lynching not only brutalized individual victims but reinforced a national culture of racialized fear, terrorizing entire Black communities to ensure compliance with the oppressive status quo.

Lynching was often accompanied by horrific rituals—victims were tortured, mutilated, and burned alive.³⁰⁰ The bodies of those lynched were sometimes left hanging for days as a grotesque warning to Black communities. These public spectacles of racialized violence not only punished individual Black Americans for allegedly violating racist cultural norms—such as interacting with White women or asserting their rights—but also sought to terrorize entire Black communities that dared to seek racial solidarity and collective uplift.³⁰¹ Lynching became a tool of social subjugation, designed to maintain White dominance and enforce a racialized order that kept Black people economically dependent, politically disenfranchised, and socially subordinated. It instilled fear, working hand-in-hand with Jim Crow laws to reinforce White supremacy.³⁰² The trauma of lynching reverberated through generations, reshaping the physical and social geography of racial segregation, pushing many Black families to flee

beyond the South, see generally *Lynching Beyond Dixie: American Mob Violence Outside the South* (Michael J. Pfeifer ed., 2013).

299. See, e.g., Amy Louise Wood, *Lynching and Spectacle: Witnessing Racial Violence in America, 1890–1940*, at 24–34 (2009) (noting that, as states began holding legal executions in private, public lynchings increased and mobs “appropriated many rituals of public executions—the declarations of guilt, the confessions, the taking of souvenirs and photographs”). At one public hanging in Mississippi in 1909, three thousand attendees—including women and children—who “arriv[ed] on trains and buggies from the surrounding counties, witnessed the hanging, while vendors sold soda pop, ice cream, peanuts, and watermelon.” *Id.*

300. See *id.* at 21 (citing a 1904 Georgia case in which two African American men were taken from prison to the site of the crime they had allegedly committed, where approximately 2,000 people watched the mob chain the men to a tree stump, douse them with kerosene, and burn them); see also Roberta Senechal de la Roche, *The Sociogenesis of Lynching*, in *Under Sentence of Death: Lynching in the South*, supra note 298, at 48, 48 (noting that “blacks were often lynched in mass public spectacles that featured torture and sexual mutilation by whites”).

301. See, e.g., Terence Finnegan, *A Deed So Accursed: Lynching in Mississippi and South Carolina, 1881–1940*, at 2 (2013) (“After the end of Reconstruction . . . elements of the white community, especially landowners, embraced lynching as a legitimate means to thwart the continued quest of African Americans for political and civil rights.”).

302. *Id.* at 101 (“Whites disfranchised African Americans because of African Americans’ supposed inferiority, and they lynched when African Americans refused to accept the social, economic, and political constraints that white racism demanded.”).

the South during the Great Migration in search of refuge from the constant threat of racial terror.³⁰³

Jim Crow laws codified racial segregation across the South, creating a rigid racial hierarchy enforced by both legal and extralegal means. These laws touched every aspect of daily life, from schools and public transportation to housing, marriage, and even healthcare.³⁰⁴ Local ordinances mandated separate water fountains, restrooms, and entrances for Black and White citizens, while Black people were barred from entering many public spaces, such as libraries and parks.³⁰⁵ Black schools were severely underfunded and overcrowded, ensuring that Black children received an inferior education compared to their White counterparts.³⁰⁶ Public transportation was governed by laws requiring segregated seating, with Black passengers forced to sit at the back of buses and trains.³⁰⁷ Local miscegenation laws criminalized interracial marriage and relationships, framing Blackness as something to be avoided and controlled.³⁰⁸ These laws not

303. As early as 1920, African American journalist Emmett J. Scott wrote of African American migration during the First World War that both “whites and negroes in mentioning the reasons for the movement generally give lynching as one of the most important causes and state that the fear of the mob has greatly accelerated the exodus.” Emmett J. Scott, *Negro Migration During the War* 22 (Carnegie Endowment for Int’l Peace, Preliminary Econ. Stud. of the War No. 16, 1920); see also Stewart E. Tolnay & E.M. Beck, *Rethinking the Role of Racial Violence in the Great Migration*, in *Black Exodus: The Great Migration From the American South* 20, 29 (Alferdteen Harrison ed., 1991) (exploring the possibility of a reciprocal relationship between racial violence and African American migration).

304. See, e.g., Grace Elizabeth Hale, “For Colored” and “For White”: Segregating Consumption in the South, in *Jumpin’ Jim Crow: Southern Politics From Civil War to Civil Rights* 162, 162–78 (Jane Dailey, Glenda Elizabeth Gilmore & Bryant Simon eds., 2000) (discussing the intersection between segregation and “Southern sites of consumption,” such as grocery stores, restaurants, and department stores).

305. *Id.*

306. See, e.g., Kimberley Johnson, *Reforming Jim Crow: Southern Politics and State in the Age Before Brown* 116–43 (2010) (discussing Jim Crow reforms in the 1920s and the emergence of the “golden age” of segregated education).

307. See, e.g., Raymond Arsenault, *Freedom Riders: 1961 and the Struggle for Racial Justice* 15 (2006) (noting that buses, trains, and streetcars across the South were segregated, providing “blacks with a daily reminder of their second-class status”); see also J. Douglas Smith, *Managing White Supremacy: Race, Politics, and Citizenship in Jim Crow Virginia* 69 (2002) [hereinafter Smith, *Managing White Supremacy*] (noting that 1919 segregation legislation in Virginia provided that there should be “complete separation of white and colored passengers upon all urban, interurban and suburban electric railways,” a stipulation 1930 legislation extended to buses (internal quotation marks omitted) (quoting *Va. Ry. & Power Co. v. Deaton*, 147 Va. 576, 577 (1927))).

308. See Smith, *Managing White Supremacy*, *supra* note 307, at 84 & 318 n.21 (discussing variance between states in defining “blackness” for the purpose of intermarriage and noting that, at the end of the nineteenth century, twenty-six states prohibited interracial marriage, with thirty-eight states ultimately adopting such laws); see also *Loving v. Virginia*, 388 U.S. 1, 12 (1967) (suspending a one-year jail sentence for a couple who violated the state’s law banning interracial marriage contingent on the couple leaving Virginia for twenty-five years).

only institutionalized inequality but also attempted to normalize and perpetuate racial subjugation as a core tenet of American society.

The Supreme Court's 1896 ruling in *Plessy v. Ferguson*, which upheld the constitutionality of racial segregation under the "separate but equal" doctrine, legitimized these local laws, providing a legal cover for states to expand segregation.³⁰⁹ This ruling not only entrenched segregation but also gave rise to additional barriers, such as literacy tests, poll taxes, and grandfather clauses, specifically designed to disenfranchise Black voters.³¹⁰ These legal structures, while framed as neutral, were fundamentally designed to suppress Black political power and maintain an oppressive status quo. They severely hindered both individual and collective expressions of Black dissent, with any challenge to the entrenched system often met with swift and violent retribution, whether through the courts or extralegal mob violence.

In response to this reign of terror, antilynching campaigns emerged as a powerful form of Black protest, not only challenging racial violence but also demanding a new vision for justice. Ida B. Wells-Barnett, a pioneering journalist, educator, and suffragist, spearheaded these efforts with unparalleled courage and dedication. After three of her close friends were brutally lynched in Memphis in 1892, Wells-Barnett launched her own investigations into lynching, risking her life to expose the systemic violence and racialized myths that framed Black men as criminals to justify these brutal killings.³¹¹ She published her findings in groundbreaking pamphlets like *Southern Horrors: Lynch Law in All Its Phases* and *The Red Record: Tabulated Statistics and Alleged Causes of Lynching in the United States*, meticulously documenting lynchings and debunking the myth of Black men as sexual predators.³¹² Her fearless activism not only demanded justice for the victims but also challenged the very legal and cultural structures that enabled racial violence. Wells-Barnett's efforts laid the groundwork for

309. 163 U.S. 537, 544 (1896) (holding that laws permitting or requiring racial separation do not necessarily imply the inferiority of either race and that such laws have been generally, if not universally, recognized as within the competency of state legislatures in the exercise of their police power), overruled by *Brown v. Bd. of Educ.*, 344 U.S. 1 (1952).

310. For a discussion of nineteenth-century systemic disenfranchisement tactics—including grandfather clauses, White-only primaries, poll taxes, and literacy tests—see generally Gloria J. Browne-Marshall, *The Voting Rights War: The NAACP and the Ongoing Struggle for Justice* (2016).

311. Patricia A. Schechter, *Ida B. Wells-Barnett and American Reform, 1880–1930*, at 162 (2001); see also Grace Elizabeth Hale, *Making Whiteness: The Culture of Segregation in the South, 1890–1940*, at 238 (1998) (explaining that the NAACP's escalated antilynching campaigns decreased the frequency of public lynchings but did not affect private lynchings).

312. See, e.g., Ida B. Wells-Barnett, *The Offense*, in *Collected Works of Ida B. Wells-Barnett* 14, 14–16 (2007) ("Nobody in this section of the country believes the old threadbare lie that negro men rape white women. If Southern white men are not careful they will overreach themselves . . . and a conclusion will be reached which will be very damaging to the moral reputation of their women." (internal quotation marks omitted) (quoting *The Daily Com.*, May 25, 1892)).

organizations like the NAACP, founded in 1909, which made antilynching legislation a cornerstone of its early advocacy efforts.³¹³ Wells-Barnett continued to champion the cause for decades, using both the pen and public speaking to not only demand justice but also call for a reimagining of a racially just society.

2. *Political Perversions: Disenfranchisement and Coups.* — The promise of Black political participation, briefly realized during Reconstruction, was systematically dismantled through a comprehensive and multifaceted campaign of disenfranchisement across the South. States implemented a range of legal barriers designed specifically to exclude Black voters from the political process while maintaining White political dominance. Literacy tests, which purported to assess a voter's ability to read and write, were often impossibly complex, featuring obscure legal passages or arbitrary questions designed to confuse and fail even the most educated Black individuals.³¹⁴ These tests were not mere procedural hurdles; they were deliberate instruments of legal distortion, crafted to undermine the very foundation of democratic participation for Black citizens. They were administered with gross inconsistency, allowing White registrars to pass illiterate White voters while disqualifying highly literate Black voters.³¹⁵

Poll taxes imposed an economic barrier that disproportionately affected Black citizens, many of whom lived in poverty due to the systemic economic oppression of Jim Crow.³¹⁶ Even when Black individuals could afford the tax, a poll tax receipt did not secure their right to vote. In states like Texas, Black citizens holding a poll tax receipt could vote in general elections but were explicitly barred from voting in the all-White primaries that functionally determined election outcomes, deepening the illusion of political participation while keeping the real power in White hands.³¹⁷ Grandfather clauses, which allowed those whose ancestors had voted before the Civil War permanent voter registration status, deepened this legal manipulation, ensuring that those who had historically been denied rights remained excluded from political participation, further entrenching the racial hierarchy.³¹⁸

The impact of these measures was immediate and devastating. In Mississippi, for example, the number of eligible Black voters plummeted

313. See Schechter, *supra* note 311, at 121–68 (discussing the parallel antilynching campaigns of Wells-Barnett and the NAACP).

314. See Browne-Marshall, *supra* note 310, at 105–06 (discussing literacy tests in Mississippi requiring potential voters to read and discuss a provision of the federal Constitution and the discriminatory nature in which such tests were administered).

315. *Id.*

316. *Id.* at 109 (“Although the [tax] amount was relatively nominal, for poor farmers, sharecroppers, and anyone living in poverty, the tax was a financial burden that could not be overcome.”).

317. *Id.* at 94.

318. *Id.* at 39–60.

from 147,205 in 1890 to just 8,615 in 1892—a drop of nearly 95%.³¹⁹ Similar declines occurred across other Southern states, erasing decades of hard-won political gains made during Reconstruction. The result was the complete removal of Black political voices from local, state, and federal governance, consolidating White control over legislation, law enforcement, and public policy for generations.³²⁰ This disenfranchisement not only suppressed Black political power but also facilitated the entrenchment of Jim Crow laws and racial violence, ensuring that Black communities remained vulnerable and voiceless in the face of systemic oppression. The legal systems that perpetuated these disenfranchisement practices stood in stark opposition to the promises of justice and equality that the nation purported to uphold.

The Wilmington Insurrection of 1898 is a stark example of violent suppression of Black political power. In this carefully orchestrated coup, White supremacists, led by North Carolina's Democratic Party, overthrew Wilmington's legitimately elected biracial government.³²¹ On November 10, 1898, a White mob of thousands, armed with rifles and a Gatling gun, attacked the city.³²² They first burned the printing press of *The Daily Record*, said to be the only Black-owned daily newspaper in the United States, in retaliation for its editor's challenge to racist narratives.³²³ The violence quickly escalated as the mob killed between sixty and three hundred Black residents and forced many to flee.³²⁴ White supremacists exiled Black leaders and installed their own officials, erasing Black political representation overnight.³²⁵ Largely omitted from history books for decades, this event

319. Ronald G. Shafer, *The 'Mississippi Plan' to Keep Blacks From Voting in 1890: 'We Came Here to Exclude the Negro'*, Wash. Post (May 1, 2021), <https://www.washingtonpost.com/history/2021/05/01/mississippi-constitutionvoting-rights-jim-crow/> (on file with the *Columbia Law Review*); see also Browne-Marshall, *supra* note 310, at 37 (discussing the "Mississippi Plan," a group of laws adding poll taxes, literacy tests, and other measures to the voting registration requirements with the goal of disenfranchising African Americans).

320. Browne-Marshall, *supra* note 310, at 37.

321. See H. Leon Prather Sr., *We Have Taken a City: A Centennial Essay*, in *Democracy Betrayed: The Wilmington Race Riot of 1898 and Its Legacy* 15, 15 (David S. Cecelski & Timothy B. Tyson eds., 1998) [hereinafter *Democracy Betrayed*] ("The violence in Wilmington in 1898 was the capstone of the white supremacy campaign in North Carolina and signaled its victory across the nation.").

322. *Id.* at 35–38.

323. *Id.* at 17; see also LeeAnn Whites, *Love, Hate, Rape, Lynching: Rebecca Latimer Felton and the Gender Politics of Racial Violence*, in *Democracy Betrayed*, *supra* note 321, at 143, 159 (noting that the mob burned Alexander Manly's press as the "starting point of a conflagration that left at least eleven blacks dead, and promoted a general exodus of the black population, led by Manly himself, who had fled to New Jersey sometime before the racial massacre").

324. Prather, *supra* note 321, at 37–38 (describing the flight of Black residents following the massacre).

325. *Id.* at 37 ("The second . . . chore of the victorious insurgents was to remove any residual challenge to the revolution. . . . [S]oldiers . . . walked six of the most prominent of

remains the only successful coup d'état in U.S. history, demonstrating the lengths White supremacists would go to maintain power and suppress Black advancement.³²⁶

The long-term effects of these actions were profound. Black political representation at all levels of government was virtually eliminated in the South. By 1901, George White of North Carolina, the last Black congressman from the South, left office, marking the beginning of a three-decade period without Black Southern representation in Congress.³²⁷ This absence from political office didn't just reflect a lack of representation: It reinforced a racial order that made the lived experiences and aspirations of Black citizens invisible. This exclusion sparked a desire to imagine alternative futures, fueling a vision for Black agency that found expression in literature and art, paving the way for Afrofuturism.

3. *Economic Perversions: Exploitation and Destruction.* — White Americans deliberately manipulated economic systems to perpetuate Black poverty and dependency, ensuring that Black workers remained economically and socially subordinate. Sharecropping, which replaced slavery as the dominant agricultural system in the South, entrapped Black farmers in a vicious cycle of debt and poverty.³²⁸ Under this exploitative

the black Republicans who had not already fled town to the train station. There they were ordered never to return . . .).

326. See Richard Yarborough, *Violence, Manhood, and Black Heroism: The Wilmington Riot in Two Turn-of-the-Century African American Novels*, in *Democracy Betrayed*, supra note 321, at 225, 226 (“Dubbed by Southern Democrats a ‘revolution,’ by some historians a ‘coup d’état,’ and by most blacks at the time a ‘tragedy,’ the riot that erupted in 1898 in Wilmington, North Carolina, was part of a massive wave of anti-black violence . . .”).

327. See Michael Honey, *Class, Race, and Power in the New South: Racial Violence and the Delusions of White Supremacy*, in *Democracy Betrayed*, supra note 321, at 163, 178 (discussing the North Carolina amendment that disfranchised African Americans and ultimately forced George White to leave office) (“Dubbed by Southern Democrats a ‘revolution,’ by some historians a ‘coup d’état,’ and by most blacks at the time a ‘tragedy,’ the riot that erupted in 1898 in Wilmington, North Carolina, was part of a massive wave of anti-black violence . . .”).

328. See, e.g., Robert Hunt Ferguson, *Remaking the Rural South: Interracialism, Christian Socialism, and Cooperative Farming in Jim Crow Mississippi* 3 (2018) (“Sharecropping replaced slavery as the main mode of labor in the rural South after the Civil War. It solidified a working-poor underclass, provided white plantation owners with a labor force, and laid the groundwork for its wretched sibling, Jim Crow.”); see also Ronald L.F. Davis, *Good and Faithful Labor: From Slavery to Sharecropping in the Natchez District, 1860–1890*, at 3 (1982) (explaining that sharecropping sustained “the plantation system of agriculture” and kept “White landlords [as] the South’s dominant class, and black laborers in southern farming were still, as they had been in slavery, a dependent and impoverished caste of racially oppressed people”); Louis M. Kyriakouides, “Lookin’ for Better All the Time”: Rural Migration and Urbanization in the South, 1900–1950, in *African American Life in the Rural South, 1900–1950*, supra note 186, at 10, 11 (exploring how systemic economic structures, including sharecropping and tenant farming, deliberately restricted Black farmers’ economic mobility, compelling many to seek better opportunities through migration while reinforcing a racial hierarchy of economic dependency).

system, Black farmers rented land from White landowners and paid with a portion of their crops, but high interest rates on loans for seeds, tools, and supplies—often provided by the landowners themselves—made it nearly impossible for them to break even. Landowners also engaged in rigged accounting, inflating expenses and underreporting harvests to keep sharecroppers perpetually indebted, effectively maintaining economic control through legal manipulation.³²⁹

The legal system further entrenched this exploitation. The 1935 Wagner Act, which granted many workers the right to organize and collectively bargain, specifically excluded agricultural and domestic workers—industries that employed a vast majority of Black laborers.³³⁰ This exclusion deliberately obstructed Black workers' ability to organize for fair labor practices, reinforcing a system where exploitation and control were the norm. Additionally, debtors were legally bound to the land, and any attempt to challenge the system risked violent retaliation, eviction, or blacklisting, which could lead to starvation or homelessness.³³¹ Exclusion from the Wagner Act, combined with economic dependency, kept Black agricultural workers trapped, reinforcing a system of economic control designed to maintain White supremacy and stifle any form of dissent. This legal architecture perpetuated a racialized economic system, deeply intertwining law and exploitation.

The law played a central role in entrenching systems of racial exploitation and economic oppression. Convict leasing, a system in which prisoners—overwhelmingly Black men—were leased to private companies, flourished under legal frameworks that criminalized Black life through

329. See Ferguson, *supra* note 328, at 3–4 (describing the exploitative nature of sharecropping arrangements, which made it all but impossible for sharecroppers to purchase land of their own).

330. See, e.g., Sean Farhang & Ira Katznelson, *The Southern Imposition: Congress and Labor in the New Deal and Fair Deal*, 19 *Stud. Am. Pol. Dev.* 1, 6–7, 12 (2005) (exploring how Southern Democrats, leveraging their disproportionate power in Congress, insisted on the exclusion of agricultural and domestic workers from New Deal labor protections as a means of maintaining the racial and economic order of the Jim Crow South); Katherine Rader, *Delineating Agriculture and Industry: Reexamining the Exclusion of Agricultural Workers From the New Deal*, 37 *Stud. Am. Pol. Dev.* 146, 152–53 (2023) (examining how the exclusion of agricultural and domestic workers from the Wagner Act was shaped by efforts to distinguish agricultural and industrial economies, as well as political compromises with Southern Democrats, who sought to maintain racial and economic hierarchies in labor policy).

331. See Clyde Woods, *Development Arrested: The Blues and Plantation Power in the Mississippi Delta* 151 (1998) (“When a Mississippi sharecropper stuck his head up, he got it shot off.” (quoting H.L. Mitchell, Co-Founder, S. Tenant Farmers’ Union)); andré douglas pond cummings & Calvin Graham, *Racial Capitalism and Race Massacres: Tulsa’s Black Wall Street and Elaine’s Sharecroppers*, 57 *Tulsa L. Rev.* 39, 56–59 (2021) (discussing how federal troops and “deputized posses of white men” killed unarmed Black people following organizing efforts by “a small group of Black sharecroppers”).

Black Codes and vagrancy laws.³³² These laws targeted Black men for minor or fabricated offenses, funneling them into the prison system where they were leased out as cheap labor. Described by Douglas A. Blackmon as “slavery by another name,” convict leasing not only exemplified the brutality of racialized punishment but also served as a direct extension of slavery, providing a steady supply of labor for industries such as railroads, mining, and agriculture, while subjecting prisoners to brutal conditions, back-breaking work, and staggeringly high mortality rates.³³³ The system persisted well into the twentieth century, often supported by state governments that profited from leasing prisoners to private companies, reinforcing a legalized form of racial terror.³³⁴

Discriminatory lending practices, including redlining, further entrenched racial inequality by denying Black communities access to mortgages and credit. The 1934 National Housing Act enabled the creation of the Federal Housing Administration, which adopted redlining as official policy, systematically denying loans to neighborhoods deemed “risky” due to the presence of non-White residents.³³⁵ This not only prevented Black families from accumulating wealth through homeownership but also ensured that Black neighborhoods deteriorated due to lack of investment. The legal codification of redlining functioned as a tool of spatial control,

332. See Douglas A. Blackmon, *Slavery by Another Name: The Re-Enslavement of Black People in America From the Civil War to World War II* 53–54 (2008) (“[E]very southern state enacted an array of interlocking laws essentially intended to criminalize black life. . . . [They did so by] outlawing vagrancy and so vaguely defining it that virtually any freed slave not under the protection of a white man could be arrested for the crime.”).

333. See *id.* at 4 (arguing that, while convict leasing was distinct from slavery, it nevertheless compelled large groups of free men who had not been found guilty of any crime to labor without compensation through physical coercion); see also Alex Lichtenstein, *Twice the Work of Free Labor: The Political Economy of Convict Labor in the New South* 3 (1996) (“The development of the convict lease is commonly attributed to the legacy of slavery, the destruction of southern penitentiary buildings during the Civil War, postwar fiscal retrenchment, political corruption, and a general lack of concern for convicts, most of whom were black.”); V. Camille Westmont & Cayla B. Colclasure, *An Archaeology of Convict Leasing in the American South*, 13 *J. Afr. Diaspora Archaeology & Heritage* 134, 136–39 (2024) (“Although forced prison labor had existed in the U.S. since the late eighteenth century, it took on a new, more aggressive, and more racialized form following the Civil War.” (citation omitted)).

334. See Westmont & Colclasure, *supra* note 333, at 136 (“Under the convict lease system, private companies leased prisoners from the state for a set length of time; in exchange for feeding, housing, clothing, and guarding the prisoners, lessees could force prisoners to work without pay under threat of physical violence.” (citation omitted)); see also Christopher Muller, *Freedom and Convict Leasing in the Postbellum South*, 124 *Am. J. Socio.* 367, 367–68 (2018) (discussing Georgia’s system of leasing convicts to private companies, instituted in 1868 after the state’s only penitentiary burned down).

335. See Louis Lee Woods, II, *The Federal Home Loan Bank Board, Redlining, and the National Proliferation of Racial Lending Discrimination, 1921–1950*, 38 *J. Urb. Hist.* 1036, 1036–39 (2012) (discussing redlining and other discriminatory lending practices and their effects on African American housing conditions across the country).

fostering residential segregation and creating a lasting legacy of disinvestment, overcrowding, and urban decay in Black communities.³³⁶ Together, convict leasing and discriminatory lending reflected how law was used as a tool during the Jim Crow era to preserve White supremacy and perpetuate economic inequality, locking Black Americans out of key pathways to wealth and stability.

The destruction of Black wealth reached its apex in events like the Tulsa Race Massacre of 1921, a devastating act of racial terror that underscored the violent lengths to which White supremacy would go to hinder Black economic and social solidarity.³³⁷ In this horrific incident, a prosperous Black community in Tulsa, Oklahoma, known as “Black Wall Street,” was decimated by White mobs.³³⁸ The Greenwood District, home to thriving Black-owned businesses, churches, schools, and homes, was a rare example of Black economic independence and success in the Jim Crow South.³³⁹ White resentment toward this self-sufficient Black community had been simmering for years, fueled by racial envy and fear of Black advancement.³⁴⁰

336. *Id.* at 1048–49; see also Price Fishback, Jonathan Rose, Kenneth A. Snowden & Thomas Storrs, *New Evidence on Redlining by Federal Housing Programs in the 1930s*, *J. Urb. Econ.*, May 2024, at 1, 14 (“To the average American, the distinction between the [Home Owners’ Loan Corporation] and [Federal Housing Administration] does not change the main takeaway from this history: redlining has harmed millions of Americans and the federal government helped propagate it.”); Kevin Fox Gotham, *Racialization and the State: The Housing Act of 1934 and the Creation of the Federal Housing Administration*, *43 Socio. Persps.* 291, 311 (2000) (“[T]he Housing Act of 1934 and . . . creation of the FHA was not just a singular isolated policy responding to a major crisis in . . . housing . . . [but] [r]ather . . . part of a broader process of welfare state building organized around relations of racial privilege and subordination and implemented through racialized state structures.”).

337. See Alfred L. Brophy, *Reconstructing the Dreamland: The Tulsa Riot of 1921*, at 102 (2002) (“The city provided no public funds for rebuilding and relatively little in the way of private funds. Black Oklahomans learned that the phrase ‘Tulsa Will’ really meant ‘Tulsa Will Dodge.’” (footnote omitted)); Scott Ellsworth, *Death in a Promised Land: The Tulsa Race Riot of 1921*, at 104–05 (1982) (detailing the divergent oral traditions of the Tulsa riot: the subdued and blame-shifting White history and the one actually supported by historical evidence); Scott Ellsworth, *The Ground Breaking: The Tulsa Race Massacre and an American City’s Search for Justice 24–45* (2021) [hereinafter Ellsworth, *The Ground Breaking*] (offering a historical account of the Tulsa race massacre in the late spring of 1921).

338. See Ellsworth, *The Ground Breaking*, *supra* note 337, at 134.

339. See Chris M. Messer, Thomas E. Shriver & Alison E. Adams, *The Destruction of Black Wall Street: Tulsa’s 1921 Riot and the Eradication of Accumulated Wealth*, *77 Am. J. Econ. & Socio.* 789, 790 (2018) (detailing how entrepreneurial activities led to a distinct success for the African American community in the Greenwood district).

340. See *id.* at 791 (arguing that the “local white population felt that the success of the Greenwood community was threatening to their white privilege and the status quo . . . [and] the destruction of Greenwood provided an opening for white citizens to establish commercial development in the area”).

On May 31 and June 1, 1921, after a false accusation against a Black man, White mobs descended upon Greenwood with the support of local law enforcement, who deputized members of the mob and even provided them with weapons.³⁴¹ Over three hundred people were killed, and thirty-five city blocks were reduced to ashes, with more than twelve hundred homes and countless businesses completely destroyed.³⁴² Airplanes were used to drop bombs on the community, a shocking escalation that highlighted the extremes of racial violence. The destruction of Tulsa's Greenwood District not only erased generations of Black wealth accumulation but also left thousands homeless and permanently disrupted Black economic empowerment in the region.³⁴³ The massacre was followed by official inaction, as insurance companies refused to compensate Black property owners for their losses and the local government failed to hold anyone accountable for the violence.³⁴⁴ This event demonstrated that White supremacy was not just a social force but an economic one, determined to prevent Black communities from achieving financial independence and success. The destruction of Black Wall Street became a symbol of the violent resistance to Black economic progress, shaping Black protest strategies and fueling demands for reparations.

The perversions of law and democracy in the post-Reconstruction era created a system of oppression that touched every aspect of Black life. Social terrorism, political disenfranchisement, and economic exploitation worked in concert to suppress Black advancement and maintain White supremacy. These injustices, however, also set the stage for the continued development of Black radical protest traditions. The struggles against lynching, disenfranchisement, and economic exploitation laid the groundwork for the civil rights movement and continue to inform contemporary battles for racial justice. Moving forward, it becomes clear that the roots of modern Black protest movements lie deep in the soil of these historical perversions, drawing strength and lessons from a legacy of resistance that continues to challenge systemic oppression and push for transformative change.

B. *Subversive Strategies in Black Protest*

Building upon the foundations of resistance established in the face of post-Reconstruction oppression, the Black protest movement evolved to encompass a wide array of subversive strategies. This section examines

341. *Id.* (“The flashpoint occurred when reports of physical contact between an African-American man and a white woman surfaced. By all indications, the contact had been innocuous and accidental. Yet, the act was framed as an ‘attack[,]’ . . . and it quickly provided the impetus for a mob of angry white men . . .”).

342. See Brophy, *supra* note 337, at 24–62.

343. *Id.*

344. See *id.* at 95–102 (discussing insurance companies’ refusal to pay for property damage due to “‘riot exclusion’ clauses”).

some of the intellectual, economic, and grassroots approaches that characterized the fight for civil rights and social justice in the mid-twentieth century.

1. *Intellectual and Cultural Resistance*. — At the forefront of intellectual and cultural resistance stood Black writers like James Baldwin, whose literary works became powerful forms of Black protest against racial injustice. Baldwin's writing not only exposed the hypocrisies of American society but also served as a profound critique of the nation's failure to live up to its ideals of equality and justice. His novels, such as *Go Tell It on the Mountain*, explored the complexities of Black identity, faith, and personal struggle against the backdrop of systemic racism.³⁴⁵ *Another Country* delved into the intersection of race, sexuality, and human connection, challenging not only racial hierarchies but also the rigid and exclusionary norms of gender and sexual identity.³⁴⁶

Baldwin's essays, particularly those collected in *Notes of a Native Son*³⁴⁷ and *The Fire Next Time*,³⁴⁸ directly challenged the racial status quo by holding a mirror to America's brutal history of slavery, segregation, and racial violence. In *The Fire Next Time*, Baldwin warned that the failure to address racial inequality would result in catastrophic social unrest, a prophetic critique during the height of the civil rights movement and increasing urban rebellions.³⁴⁹ His ability to frame the Black experience as an essential lens through which to understand American democratic citizenship demanded that readers—Black and White alike—confront the entrenched and systemic racism that underpinned the nation's institutions and daily life.

Baldwin's works went beyond mere critique. They interrogated the psychological toll of racism, both on the oppressed and the oppressor, exploring how White supremacy distorted human relationships and poisoned the moral fabric of the nation.³⁵⁰ His incisive analysis of racial

345. James Baldwin, *Go Tell It on the Mountain* (Penguins Books 1991) (1953).

346. James Baldwin, *Another Country* (1962).

347. James Baldwin, *Notes of a Native Son*, in James Baldwin: *Collected Essays*, supra note 27, at 1 [hereinafter Baldwin, *Notes of a Native Son*].

348. James Baldwin, *The Fire Next Time*, in James Baldwin: *Collected Essays*, supra note 27, at 286 [hereinafter Baldwin, *The Fire Next Time*].

349. Baldwin, *The Fire Next Time*, supra note 348, at 346–47. Baldwin writes: If we—and now I mean the relatively conscious whites and the relatively conscious blacks, who must . . . insist on, or create, the consciousness of the others—do not falter in our duty now, we may be able, handful that we are, to end the racial nightmare, and achieve our country, and change the history of the world. If we do not now dare everything, the fulfillment of that prophecy, re-created from the Bible in song by a slave, is upon us: *God gave Noah the rainbow sign, No more water, the fire next time!*

Id.

350. See Baldwin, *Notes of a Native Son*, supra note 347, at 82–83 (arguing that the all-consuming nature of hatred of others is what “has driven so many people mad, both white and black”).

dynamics challenged White Americans to examine their own complicity in sustaining racial inequality and called for a radical reimagining of what true racial justice could look like. Baldwin's intellectual resistance provided a foundation for future generations of activists and thinkers, making him a towering figure in the struggle against racial oppression and a beacon for those seeking to dismantle the status quo.

Central to Baldwin's work was his articulation of "black rage," a profound and unfiltered expression of the frustration, pain, and anger that arose from centuries of racial oppression.³⁵¹ This concept, particularly prominent in *Notes of a Native Son*, was Baldwin's way of exposing the raw emotional toll that racism exacted on Black Americans.³⁵² For Baldwin, this rage was not irrational or purely destructive; it was a deeply human and justified response to the constant dehumanization and violence that Black people faced. As he declared in a 1961 radio discussion, "[T]o be a Negro in this country and to be relatively conscious, is to be in a rage almost all the time."³⁵³ This statement captured the persistent emotional burden of navigating a society that systematically denied Black humanity. But Baldwin's portrayal of Black rage went beyond mere anger—it was a galvanizing force for transformation. Rather than advocating for uncontrolled fury, Baldwin saw this anger as a legitimate and necessary reaction to centuries of oppression, a force that could compel both Black and White Americans to confront uncomfortable truths about their history and society. Baldwin warned that if America continued to ignore and suppress this rage, it would lead to devastating consequences, symbolized by the apocalyptic imagery in *The Fire Next Time*, where he famously prophesized, "God gave Noah the rainbow sign, No more water, the fire next time."³⁵⁴

Baldwin argued that Black rage had the potential to catalyze moral reckoning and societal change. In his view, it was not the rage itself that was dangerous, it was the refusal of White America to acknowledge its causes.³⁵⁵ The rage stemmed from generations of broken promises—from emancipation and Reconstruction to the civil rights movement—where the hopes of freedom and equality were continually dashed by systemic violence, segregation, and discrimination. Baldwin held a mirror up to the nation, insisting that America's survival depended on its willingness to

351. See James Baldwin, *The Devil Finds Work*, in *James Baldwin: Collected Essays*, supra note 27, at 477, 520 [hereinafter Baldwin, *The Devil Finds Work*].

352. See id. at 70 ("I . . . contracted some dread, chronic disease, the unfailing symptom of which is a kind of blind fever, a pounding in the skull and fire in the bowels. . . . There is not a Negro alive who does not have this rage in his blood . . .").

353. James Baldwin, Emile Capouya, Lorraine Hansberry, Nat Hentoff, Langston Hughes & Alfred Kazin, *The Negro in American Culture*, 11 *CrossCurrents* 205, 205 (1961).

354. Baldwin, *The Fire Next Time*, supra note 348, at 347 (emphasis omitted).

355. Baldwin, *The Devil Finds Work*, supra note 351, at 520–21 (discussing the 1967 film adaptation of John Ball's *In the Heat of the Night* and noting that it "helplessly conveys—without confronting—the anguish of people trapped in a legend").

reckon with this rage, confront its racial sins, and make genuine steps toward justice and reconciliation. For Baldwin, Black rage was deeply intertwined with love—a love for humanity, justice, and the potential of a nation that had yet to live up to its ideals.³⁵⁶ He believed that acknowledging and addressing this rage could lead to redemption, both for individuals and for the nation as a whole.³⁵⁷ Through this lens, Baldwin’s articulation of Black rage became not only a critique of the racial status quo but also a powerful call to action, demanding that America finally confront its long history of racial violence and oppression.³⁵⁸ Baldwin’s work exemplified how cultural production could serve as a form of protest, creating spaces for dialogue and challenging entrenched societal norms.

2. *Economic and Labor Activism.* — The struggle for Black liberation was deeply intertwined with the fight for economic justice and labor rights, as key figures like A. Philip Randolph and Hubert Harrison understood. These leaders recognized that true freedom required both social and economic equity and that without economic empowerment, the fight against racial oppression would remain incomplete.

Randolph, a towering figure in both the labor and civil rights movements, exemplified this intersection. In 1925, he founded the Brotherhood of Sleeping Car Porters, the first predominantly Black labor union to receive a charter from the American Federation of Labor.³⁵⁹ Randolph’s leadership was instrumental in securing better wages, working conditions, and dignity for Black workers employed as porters by the Pullman Company, a prominent and exploitative employer at the time.³⁶⁰

356. James Baldwin, *Nobody Knows My Name*, in *James Baldwin: Collected Essays*, supra note 27, at 131, 230 (“[A] country is only as strong as the people who make it up and the country turns into what the people want it to become. Now, this country is going to be transformed. . . . [Not] by an act of God, but by all of us, by you and me.”).

357. Baldwin argued:

These are extremely unattractive facts, but they *are* facts, and no purpose is served by denying them. . . . What is demanded now, and at once, is not that Negroes continue to adjust themselves to the cruel racial pressures of life in the United States but that the United States readjust itself to the facts of life in the present world.

One of these facts is that the American Negro can no longer, nor will he ever again, be controlled by white America’s image of him.

Id. at 184.

358. See “To Be in a Rage, Almost All the Time”, NPR (June 1, 2020), <https://www.npr.org/2020/06/01/867153918/-to-be-in-a-rage-almost-all-the-time> [<https://perma.cc/L6H5-UU3Q>] (drawing from Baldwin’s legacy to understand the “mourning, anger and protest after another week of racist violence in America” in the wake of the death of George Floyd).

359. Cynthia Taylor, *A. Philip Randolph: The Religious Journey of an African American Labor Leader* 38 (2006).

360. See *id.* at 86 (noting that, beginning in 1925, Randolph worked to expose the difficult working conditions for African American porters working for the Pullman Company,

Beyond improving labor conditions, Randolph confronted the entrenched racism within the broader labor movement, which often marginalized Black workers.³⁶¹ His vision for economic justice was deeply tied to racial justice, understanding that Black workers faced not only economic exploitation but also systemic racial discrimination. This intersection of racial and economic justice laid the foundation for Randolph's broader critique of American labor systems, offering a revolutionary call to dismantle both racial and class hierarchies.

Randolph's influence reached beyond labor organizing. His planned March on Washington in 1941, which aimed to demand equal employment opportunities for Black Americans in the defense industries, was a significant moment in Black protest history.³⁶² The threat of mass protest led President Franklin D. Roosevelt to issue Executive Order 8802, which banned racial discrimination in the defense industry and established the Fair Employment Practices Committee.³⁶³ This marked the first major federal action against employment discrimination, illustrating the power of Black protest to subvert discriminatory legal and economic structures by directly influencing national policy and bringing about tangible social change.

Harrison, often referred to as the "father of Harlem radicalism," similarly bridged the gap between racial and economic struggles.³⁶⁴ A powerful orator, Harrison brought socialist ideas into the conversation on Black liberation, recognizing that the capitalist system perpetuated both racial and class inequalities. His early involvement with the Socialist Party of America reflected his belief that Black liberation was inherently connected to broader struggles for workers' rights and economic equality.³⁶⁵ Harrison later became a prominent figure in Marcus Garvey's Universal Negro Improvement Association, in which he emphasized the importance of economic self-determination and collective Black solidarity.³⁶⁶ His ability to synthesize socialist principles with a fierce advocacy for racial justice helped shape the burgeoning Harlem Renaissance and influenced later Black radical thought. Harrison's work highlighted the potential of radical

including "low wages, unregulated work hours, unreasonable working conditions, tensions between white train conductors and black porters, and a poor pension plan").

361. See *id.* ("In the early twentieth century, the relationship between blacks and organized labor was tense, with deep racial animosity separating white and black workers on a number of working-class issues.").

362. *Id.* at 130–31.

363. *Id.* at 133–34.

364. Jeffrey B. Perry, *Hubert Harrison: The Struggle for Equality, 1918–1927*, at 2–3 (2021) (internal quotation marks omitted).

365. See *id.* at 85 (discussing Harrison's belief that racial prejudice had economic causes and that it was in the capitalists' interests to pit the races against each other).

366. *Id.* at 118.

economic ideologies to strengthen Black liberation movements, encouraging future generations of activists to see the struggle for racial equality as inseparable from the fight for economic justice.

Together, figures like Randolph and Harrison exemplified the essence of Black protest traditions, in which the fight for racial liberation was always connected to broader demands for economic equity. Their leadership helped carve out spaces for Black workers within both the labor movement and the broader struggle for civil rights, showing that racial and economic justice were two sides of the same coin. Navigating racism within labor movements while fighting for economic justice was a persistent challenge. Black workers often found themselves caught between racist unions and exploitative employers, forced to create their own spaces for organizing and advocacy.³⁶⁷ This struggle underscored the necessity for Black protest to challenge not only the external systems of power but also the internalized and structural barriers that hindered true economic and racial equity.

As the civil rights movement gained momentum, Martin Luther King, Jr.'s political philosophy grew into a powerful protest against not only racial injustice but also the broader structural inequities embedded in law and society. King's vision evolved beyond desegregation to a critique of the economic systems that perpetuated poverty and exploitation, recognizing that true freedom required economic justice.³⁶⁸ His later works, particularly his 1967 book *Where Do We Go From Here: Chaos or Community?*, expressed a sharp critique of capitalism, arguing that racial oppression was inseparable from economic injustice.³⁶⁹ He called for the restructuring of American society to ensure a more equitable distribution of wealth, advocating for policies that would uplift all marginalized communities, regardless of race.³⁷⁰ King's critique of capitalism, rooted in his moral

367. See, e.g., Tiamba M. Wilkerson, "A Question of Freedom": Black Workers, Union Membership, and Political Participation, 47 *Lab. Stud. J.* 408, 410 (2022) ("[D]ue to the labor-conditional nature of Black citizenship established during slavery, the fight for economic justice has long been . . . a political 'question of freedom' [D]espite racist exclusion from the mainstream labor movement, Black workers have . . . push[ed] for inclusion in or establish[ed] their own separate labor organizations." (citation omitted)).

368. See, e.g., Thomas F. Jackson, *From Civil Rights to Human Rights: Martin Luther King, Jr., and the Struggle for Economic Justice* 4 (2007) (noting that King sought equality and political power for all Americans and that "he called for world disarmament and a global war on poverty" as early as 1958).

369. See Martin Luther King, Jr., *Where Do We Go from Here: Chaos or Community?* 51 (Beacon Press 2010) (1967) ("However much we pool our resources and 'buy black,' this cannot create the . . . jobs and provide the . . . houses that will lift the Negro out of the economic depression caused by centuries of deprivation.").

370. See *id.* ("In short, the Negroes' problem cannot be solved unless the whole of American society takes a new turn toward greater economic justice. In a multiracial society no group can make it alone.").

vision of justice, called for a transformative reimagining of society that dismantled the economic and racial structures which perpetuated inequality.

One of King's most significant contributions to Black protest traditions was his philosophy of civil disobedience, which challenged the legitimacy of unjust laws. In his *Letter From Birmingham City Jail*, King eloquently argued that individuals had a moral responsibility to break laws that perpetuate injustice, declaring that "[i]njustice anywhere is a threat to justice everywhere."³⁷¹ This text served as a direct response to those who accused him of being an extremist for advocating civil disobedience, outlining the difference between just and unjust laws. For King, laws that degraded human dignity or perpetuated inequality were not worthy of obedience, and nonviolent direct action was a necessary tool to expose and resist these injustices.³⁷² King's commitment to nonviolent resistance reflected a moral and legal critique of unjust systems, elevating Black protest as both an ethical challenge to distorted legal principles and a call for a transformative vision of justice.

King's commitment to this philosophy of nonviolent resistance was further illustrated in his opposition to the Vietnam War. His speech *Beyond Vietnam: A Time to Break Silence* expanded his critique beyond domestic racial issues, linking the civil rights struggle to global economic and political injustices.³⁷³ In this speech, King condemned the United States government's prioritization of military spending over social programs, calling attention to the war's disproportionate impact on poor communities, particularly Black Americans, who were being sent to fight abroad while facing systemic poverty and racism at home.³⁷⁴ He underscored how the global dimensions of injustice were inseparable from domestic struggles for racial and economic equality, calling for a revolutionary vision that transcended national borders and reimagined the global order.

King's *Poor People's Campaign*, launched in 1968, reflected his belief that racial justice could not be achieved without economic equality.³⁷⁵ He sought to unite poor people across racial lines to challenge the economic

371. King, *Letter from Birmingham City Jail*, supra note 261, at 290.

372. See id. at 291 ("Nonviolent direct action seeks to create such a crisis and establish such creative tension that a community that has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored.").

373. See Martin Luther King, Jr., *Beyond Vietnam: A Time to Break Silence*, Address at Manhattan's Riverside Church (Apr. 4, 1967), <https://www.americanrhetoric.com/speeches/mlkatimetobreaksilence.htm> (on file with the *Columbia Law Review*).

374. See id. ("Then came the buildup in Vietnam, and I . . . knew that America would never invest the necessary funds or energies in rehabilitation of its poor so long as adventures like Vietnam continued to draw men and skills and money like some demonic destructive suction tube.").

375. See, e.g., Robert Hamilton, *Dr. Martin Luther King Jr. and the Poor People's Campaign of 1968*, at 75 (2020) ("[King] had reached a point where nothing less than an all-out assault on poverty would address the shortfalls of the previous civil rights and voting rights legislation.").

systems that kept them in poverty, demanding a federal commitment to full employment, housing, and a guaranteed income for all Americans.³⁷⁶ This campaign represented King's boldest vision for justice—a protest not only against unjust laws but against the economic order itself, which he saw as fundamentally incompatible with the values of equality and freedom. It highlighted the intersection of racial and economic justice, offering a revolutionary call to restructure American society in ways that would honor human dignity and collective liberation. King's vision was rooted in nonviolent resistance and the quest for integration, diverging from the more radical Black nationalism of figures like Delany, who called for Black self-determination and separatism in the face of persistent oppression. King's political philosophy served as a powerful form of Black protest against existing laws and systems that were unjust, calling for a complete reimagining of society where both racial and economic liberation could be realized. His work continues to inspire movements for justice that recognize the interconnectedness of racial, economic, and social struggles.

3. *Grassroots Organizing and Youth Movements.* — The energy and idealism of youth were not only pivotal in propelling the civil rights movement forward but they also actively influenced lawmaking processes that built upon long-standing Black protest traditions. The Student Nonviolent Coordinating Committee (SNCC), founded in 1960, emerged as a key force in grassroots activism, driving legal and social change.³⁷⁷ Unlike more conservative civil rights organizations that routinely sought gradual reform through legal channels, SNCC embraced direct action and community-based organizing.³⁷⁸ This commitment placed them at the forefront of radical civil rights strategies, bridging protest with the creation of new legal frameworks for justice.

SNCC's work, particularly their organization of Freedom Rides, sit-ins, and voter registration drives, directly challenged segregationist laws in the South. The Freedom Rides of 1961, in which Black and White activists rode buses together through the Deep South to challenge segregation in

376. See *id.* at 4 (“[The Poor People’s Campaign demanded] a meaningful guaranteed job with a livable wage, a secure income, the ability to access land for economic reasons, access to capital for the less well-off, and citizens to have a larger role in government.”).

377. See Iwan Morgan, *The New Movement: The Student Sit-Ins in 1960*, in *From Sit-Ins to SNCC: The Student Civil Rights Movement in the 1960s*, at 1, 2, 19 (Iwan Morgan & Philip Davies eds., 2012) (highlighting how African American students initiated mass direct action protests against segregation, leading to the formation of SNCC and a broader civil rights movement).

378. *Id.*; see also Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s*, at 19 (1981) (noting that the formation of SNCC was an important step in expanding a student group formed to desegregate lunch counters into a broader and more sustained movement to achieve social reform).

interstate travel, led to violent confrontations and widespread arrests.³⁷⁹ But these actions also forced the federal government to enforce Supreme Court rulings like *Boynton v. Virginia*, which declared segregation in interstate travel unconstitutional.³⁸⁰ In this way, SNCC's activism both protested unjust laws and helped build the legal precedent for desegregation.

During the 1964 "Freedom Summer" in Mississippi, SNCC organized massive voter registration drives aimed at dismantling the systemic disenfranchisement of Black Americans.³⁸¹ Their efforts were met with violent resistance, but they succeeded in drawing national attention to the need for voting rights protections. This activism laid the groundwork for the passage of the Voting Rights Act of 1965, a critical piece of legislation that aimed to eliminate discriminatory voting practices.³⁸² By exposing the brutality of Jim Crow through their activism, SNCC helped build legal pathways toward greater political participation for Black Americans.

SNCC's work was also groundbreaking in education. Freedom Schools, developed as part of the Mississippi Freedom Summer, provided Black students an education steeped in Black history, culture, and civil rights activism, countering the state's segregated and inadequate public school system.³⁸³ By teaching students about their constitutional rights and the power of collective action, Freedom Schools empowered a new generation to engage in civil disobedience and political organizing. The emphasis on political consciousness-raising turned education into a tool for legal and social resistance, equipping young activists with the knowledge to challenge unjust laws and advocate for systemic reform. In this way, SNCC's work not only disrupted existing legal structures but also actively contributed to the building of new, more equitable laws. Their emphasis on direct action, education, and community organizing represented a continuation of Black protest traditions that sought not only to

379. See Arsenault, *supra* note 307, at 2–3 ("Riders challenged federal officials to enforce the law and uphold the constitutional right to travel without being subjected to degrading and humiliating racial restrictions. . . . [T]hey did so knowing that their actions would almost certainly provoke a savage and violent response . . .").

380. 364 U.S. 454, 460 (1960); see also Arsenault, *supra* note 307, at 93 (noting that the *Boynton* ruling extended the 1946 *Morgan v. Virginia* decision, which outlawed legally enforced segregation on interstate buses and trains).

381. See, e.g., David J. Garrow, *Protest at Selma: Martin Luther King, Jr., and the Voting Rights Act of 1965*, at 20–21 (1st ed. 1978) (discussing the 1964 Mississippi Freedom Summer, during which organizers sought to register new Black voters).

382. See *id.* at 21 (noting that the voter registration campaign "produced almost as many acts of violence by local whites as it did new black voters," although it produced the Mississippi Freedom Democratic Party, which challenged the regular delegation at the Democratic Convention and increased dissatisfaction with federal civil rights efforts).

383. See, e.g., Jon N. Hale, *The Freedom Schools: Student Activists in the Mississippi Civil Rights Movement* 34 (2016) (discussing the foundation of Freedom Schools, their connection to organization strategies dating back to Reconstruction, and the independence from White school boards and administrators that allowed volunteer teachers to challenge segregation).

resist oppression but to embrace a duty to create lasting legal and political change.

In addition to SNCC's efforts, Malcolm X's evolving political philosophy reflected a distinct style of Black protest that directly challenged both unjust laws and conventional notions of democratic citizenship.³⁸⁴ Initially a proponent of the Nation of Islam's Black separatism, Malcolm X advocated for racial self-sufficiency, rejecting integrationist approaches that sought to work within existing American legal and political structures.³⁸⁵ His stance represented a break from the nonviolent strategies championed by leaders like Martin Luther King, Jr., offering a more militant and self-reliant path toward liberation.

Malcolm X's famous approach of pursuing justice "by any means necessary" embodied a more radical form of resistance, underscoring the legitimacy of self-defense in the face of systemic racial violence.³⁸⁶ This approach offered a sharp rebuke to the passive compliance that segregationist laws demanded of Black citizens. His insistence that Black people had the right—and indeed the duty—to defend themselves against oppression extended the definition of citizenship beyond legal recognition to include the active defense of one's rights.³⁸⁷ This vision directly challenged the conventional idea of democratic citizenship, which, in Malcolm X's view, had historically failed to protect the rights and dignity of Black Americans.

Moreover, Malcolm X's later focus on Pan-Africanism and international solidarity reframed the struggle for Black liberation as part of a global movement against colonialism and racial oppression.³⁸⁸ By linking the plight of Black Americans to struggles for freedom across Africa and

384. See, e.g., Robert E. Terrill, *Malcolm X: Inventing Radical Judgment* 24 (2004) (arguing that Malcolm X's rhetoric was informed by expectations shaped through hundreds of years of African American protest that may be described as a discourse of prophecy).

385. See Malcolm X, *The Black Revolution*, in *The End of White World Supremacy: Four Speeches* 67, 69 (Benjamin Karim ed., 1971) ("The black masses don't want segregation nor do we want integration. What we want is complete separation.").

386. See Malcolm X, *Any Means Necessary*, supra note 261, at 17 ("[W]henever . . . the government . . . proves itself unwilling or . . . unable to protect our lives and . . . property because we have the wrong color skin, we are not human beings unless we ourselves band together and do whatever, however, whenever is necessary to see that our lives and our property is protected.").

387. See *id.* at 20 (arguing that when "a society supposedly based upon law . . . doesn't enforce its own law because the color of a man's skin happens to be wrong, . . . those people are justified to resort to any means necessary to bring about justice where the government can't give them justice").

388. See, e.g., Jimmy Butts, *Malcolm X, Pan-Africanism, and the Organization of African Unity: Appealing to Shepherds on Behalf of Their Lost Sheep at the 1964 OAU Summit*, 54 *J. Black Stud.* 111, 112–29 (2023) (discussing Malcolm X's Pan-African ideology in context of his appeal to the African Heads of State at the Organization of African Unity meeting in 1964).

the diaspora, Malcolm X broadened the scope of Black protest. He questioned the legitimacy of a democratic system that perpetuated inequality and sought to challenge the very foundations of American democracy. This was a stark departure from the notion that full citizenship for Black Americans could be achieved solely through domestic legal reforms.

Malcolm X's emphasis on self-reliance and Black pride laid the groundwork for subsequent movements like the Black Power Movement and the Black Panther Party,³⁸⁹ both of which adopted his critique of traditional American democratic citizenship and his call for political and economic independence. These movements took Malcolm X's philosophy and expanded it into more structured demands for community control, economic empowerment, and the dismantling of oppressive institutions. In so doing, they continued Malcolm X's legacy of challenging not only unjust laws but also the broader systems of governance that upheld White supremacy. Through this lens, Malcolm X's approach exemplified a form of Black protest that sought to redefine the relationship between Black Americans and the state, demanding freedom and justice on their own terms.

The subversive strategies employed in Black protest movements of the mid-twentieth century represented a multifaceted approach to challenging systemic racism and inequality. From the intellectual and cultural resistance exemplified by Baldwin to the economic and labor activism of Randolph and King and the grassroots organizing of SNCC and Malcolm X, these strategies worked in concert to push for transformative changes in American society. These diverse approaches reflect the complexity of the struggle for Black liberation, acknowledging that progress required action on multiple fronts simultaneously. The legacy of these strategies continues to inform contemporary movements for racial justice, providing both inspiration and practical models for organizing and resistance.

C. *Revolutionary Movements and Radical Black Thought*

Building upon the historical foundations of Black protest and the subversive strategies developed in the mid-twentieth century, the late 1960s and beyond saw the emergence of even more radical and revolutionary approaches to Black liberation. This section examines the evolution of these movements, their impact on society, and their continued relevance in contemporary struggles for racial justice and discussion about the law of protest.

1. *Urban Uprisings and Organized Action.* — The urban uprisings of the late 1960s—especially in the Watts neighborhood of Los Angeles,

389. See, e.g., Besenia Rodriguez, "Long Live Third World Unity! Long Live Internationalism": Huey P. Newton's Revolutionary Intercommunalism, 8 *Souls* 119, 123 (2006) (examining the influence of Malcolm X on the Black Panther Party, specifically in terms of his "tricontinental tradition").

California; Newark, New Jersey; and Detroit, Michigan—represented a crucial moment in the broader Black protest tradition.³⁹⁰ Far from being mere “riots,” these uprisings were responses to the persistent injustices faced by Black communities. In Watts, the uprising began after the arrest of a young Black man, Marquette Frye, during a traffic stop that escalated into a violent confrontation with police.³⁹¹ In Newark, years of police brutality, political corruption, and systematic exclusion from economic opportunities came to a head after the police brutally beat a Black cabdriver, sparking days of rebellion.³⁹² Similarly, the Detroit uprising was ignited by a police raid on an unlicensed after-hours bar, but it was fueled by long-standing grievances over housing segregation, discriminatory employment practices, and rampant police misconduct.³⁹³

Rooted in systemic racism, police brutality, economic disenfranchisement, and decades of urban neglect, these uprisings were explosive manifestations of a long history of Black frustration with America’s racial order.³⁹⁴ Yet they were not simply expressions of rage; they were acts of resistance that directly confronted the systems of power responsible for the oppression of Black communities. The intensity of these uprisings shattered the narrative of Black passivity, exposing the agency and urgency with which marginalized communities fought back against systemic inequities. These events illuminated the ways in which Black people, through direct action—however disruptive—sought to challenge deeply entrenched social and legal structures, drawing national and international attention to the ongoing failures of the United States government to

390. See Robyn C. Spencer, *The Language of the Unheard—Black Panthers, Black Lives, and Urban Rebellions*, Lab.: Stud. Working-Class Hist. Ams., Dec. 2017, at 21, 21–23 (identifying ways in which the uprisings in cities such as Watts, Newark, and Detroit “inspired and challenged a new generation of activists in the 1960s to try and transform the material conditions of their lives”).

391. See Lonnie T. Brown, Jr., *Different Lyrics, Same Song: Watts, Ferguson, and the Stagnating Effect of the Politics of Law and Order*, 52 Harv. C.R.–C.L. L. Rev. 305, 313–16 (2017).

392. See Rick Rojas & Khorri Atkinson, *Five Days of Unrest That Shaped, and Haunted, Newark*, N.Y. Times (July 11, 2017), <https://www.nytimes.com/2017/07/11/nyregion/newark-riots-50-years.html> (on file with the *Columbia Law Review*) (reporting how the arrest and injury of a Black cabdriver combined with “years of pent-up grievances” including “a white political power structure that had long ignored [Black residents’] needs” caused days of violent confrontation between the community and law enforcement); Toni Yates, *50th Anniversary of Newark Riots Remembered With Vigil*, ABC7 (July 12, 2017), <https://abc7ny.com/newark-riots-26-killed-new-jersey-1967/2210334/> [<https://perma.cc/5SKU-QSLU>] (reporting how neighborhoods in Newark went up “in violence and flames” after “an African American taxi driver, John Smith, was dragged from his cab, brutally beaten and arrested by police”).

393. See Jeffrey Horner, *Benefit of the Redoubt*, in *Detroit 1967: Origins, Impacts, Legacies* 82, 82–92 (Joel Stone ed., 2017) (examining the “quotidian circumstances, systemic discriminations, and the imbalance of resources leading up to and helping to cause the events in Detroit in July 1967”).

394. Spencer, *supra* note 390, at 21–22.

deliver justice and equality. By targeting symbols of systemic neglect, such as police stations, government buildings, and White-owned businesses, these uprisings underscored the interconnectedness of state violence, economic exploitation, and racial inequality.³⁹⁵ They forced a reckoning with the realities of urban poverty and segregation and the limits of postwar civil rights reforms, marking a pivotal chapter in the struggle for Black liberation.³⁹⁶

These uprisings resembled earlier forms of collective resistance like the Stono Rebellion, invoking a broader tradition of Black protest that emphasizes both direct action and community organizing as vital strategies for combating unjust laws. The Watts Rebellion of 1965, for example, arose from an immediate trigger—a confrontation between the police and Black residents—but the deeper causes stemmed from years of discrimination in housing, employment, and education, as well as relentless police harassment.³⁹⁷ Similarly, in Newark and Detroit, the uprisings were fueled by longstanding grievances against structural inequities and oppressive policing, underscoring the failure of local and federal authorities to address these issues.³⁹⁸ In this sense, the uprisings were also a critique of the state's failure to address its moral and legal obligations to protect all its citizens, especially those marginalized by systemic racism.

The findings of the Kerner Commission, which President Lyndon B. Johnson established to investigate the causes of the urban uprisings,³⁹⁹ reflected the gravity of these crises. The Commission's report concluded that America was "moving toward two societies, one black, one white—

395. See, e.g., Max Felker-Kantor, *Policing Los Angeles: Race, Resistance, and the Rise of the LAPD* 20 (2018) (arguing that the uprising following the arrest of Marquette Frye in August 1965, for example, was "a demand for an end to police practices that maintained white authority, control, and order in black spaces").

396. See, e.g., Srimayee Basu, *Reading Los Angeles' Urban Uprisings: From Watts to Rodney King*, 48 *Mod. Language Stud.* 56, 58 (2019) (describing the structural causes of riots in South Los Angeles as including racialized police surveillance and brutality as well as entrenched poverty).

397. See Felker-Kantor, *supra* note 395, at 19 (arguing that racist policing prompted the Watts uprising, though the protest "drew strength from a legacy of frustration with racism, employment discrimination, and residential segregation").

398. See Sidney Fine, *Violence in the Model City: The Cavanagh Administration, Race Relations, and the Detroit Riot of 1967*, at 154 (1989) ("[M]any [Black people] in the areas of the city where the riot centered were dissatisfied with the quality of their housing, . . . the quality of the education provided by the public schools, . . . and above all, the behavior of the police."); Kevin Mumford, *Newark: A History of Race, Rights, and Riots in America* 134 (2007) ("[T]o many residents of [Newark's] Central Ward the riots signified a kind of acceleration, intensification, and politicization of experience, but not wholly imperceptible as an extension of daily political conflict").

399. Malcolm McLaughlin, *The Story of America: The Kerner Report, National Leadership, and Liberal Renewal, 1967–1968*, 14 *The Sixties* 20, 21 (2021) (examining the report of the National Advisory Commission on Civil Disorders, chaired by Illinois Governor Otto Kerner, "President Johnson's bipartisan investigation into the 'long, hot summers' of ghetto protest and street violence that swept the country between 1964 and 1968").

separate and unequal,” highlighting the deep racial divides and systemic injustices that these uprisings revealed.⁴⁰⁰ This assessment confirmed the centrality of race in shaping the American social order and called for sweeping changes to address these inequalities. Yet, the failure of the government to heed these recommendations served as a stark reminder of the limits of formal legal reforms and the state’s unwillingness to fundamentally confront the systems of racial oppression. This exemplified the necessity of sustained pressure from grassroots protest movements to create real change.

The significance of these uprisings in the broader Black protest tradition lies in their direct challenge to the legitimacy of the state’s authority, particularly its failure to protect Black communities from violence—both state-sanctioned and economic. As with earlier movements, the uprisings underscored the necessity of direct action and collective organizing as tools for addressing injustices that the legal system was either complicit in or unwilling to resolve. Just as the civil rights movement had used boycotts, sit-ins, and marches to expose the moral failures of segregation and racist policies,⁴⁰¹ the urban uprisings exposed the economic and structural violence inflicted upon Black communities. By engaging in these acts of rebellion, Black communities not only resisted state-sanctioned violence but also created a vision for a different kind of political and social order.

The Black Power Movement, which gained momentum during this period, sought to channel the energy of these uprisings into organized political and economic action. The Black Panther Party for Self-Defense emerged in 1966 as a revolutionary force directly challenging state neglect and police brutality.⁴⁰² Founded by Huey Newton and Bobby Seale in Oakland, California, the Panthers represented a new phase in the Black protest tradition, one that combined militant resistance with practical community service.⁴⁰³ Their radical approach to Black liberation built upon Malcolm X’s philosophy of self-defense and Black empowerment, while also addressing the socioeconomic inequalities that underpinned

400. Nat’l Advisory Comm’n on Civ. Disorders, Report of the National Advisory Commission on Civil Disorders I (1967).

401. See Spencer, *supra* note 390, at 21 (arguing that recent rebellions, “sparked by incidents of police violence (much like their predecessors) have brought the persistence of poverty, state violence, and antiblack racism in the United States to national and international attention”).

402. See Joshua Bloom & Waldo E. Martin, Jr., *Black Against Empire: The History and Politics of the Black Panther Party* 68 (2d ed. 2016) (summarizing Newton’s argument that “Black People can develop Self-Defense Power by arming themselves,” electing political representation, and negotiating within existing political power structures (quoting Huey P. Newton, *The Functional Definition of Politics*, *Black Panther*, May 15, 1967, at 4)).

403. *Id.* at 34 (noting that, in planning to directly challenge police brutality, Newton and Seale drew inspiration from Mark Comfort and Curtis Lee Baker, organizers from civil rights organizations in Oakland who “had begun appealing to young African Americans with militant style—adopting black outfits and berets in early 1966”).

racial oppression. Through their militant resistance, the Panthers actively subverted the state's narrative about Black people's supposed victimhood, positioning themselves as architects of their own liberation.

The Panthers introduced a revolutionary model of organizing through their "survival programs," which sought to address the immediate needs of Black communities while fostering a sense of collective self-reliance.⁴⁰⁴ These programs, which included free breakfast for children, community health clinics, and educational initiatives, were groundbreaking in their direct response to the failures of the state.⁴⁰⁵ The Black Panther Party recognized that the state's neglect of Black communities, particularly in the realms of education, healthcare, and nutrition, was a form of systemic violence, and they sought to create alternative systems of support that not only filled these gaps but also permitted communities to take control of their own destinies. These programs were not simply acts of charity; they were revolutionary acts of empowerment, envisioning a world where Black communities controlled their resources and future.

The free breakfast program, perhaps the most well known of the Panthers' initiatives, had a profound impact. At its peak, it fed thousands of children each day across the country.⁴⁰⁶ But the program was about more than just addressing hunger. It was a space for political education and community building, where young people were introduced to the principles of Black liberation and solidarity.⁴⁰⁷ The breakfast program was a symbol of the Panthers' commitment to "serve the people," providing tangible support while challenging the narrative that the state was the sole, or even the most effective, provider of social services.⁴⁰⁸ This revolutionary praxis—the combination of meeting basic needs while fostering political consciousness—made the Black Panther Party's work a direct challenge to both local and federal authorities.

Furthermore, the Panthers' community health clinics provided free medical care, often in areas where state health services were lacking. These

404. *Id.* at 354 (internal quotation marks omitted).

405. *Id.* at 184. Community programs developed by the Black Panther Party eventually included:

[T]he Free Breakfast for Children Program, liberation schools, free health clinics, the Free Food Distribution Program, the Free Clothing Program, child development centers, the Free Shoe Program, the Free Busing to Prison Program, the Sickle Cell Anemia Research Foundation, free housing cooperatives, the Free Pest Control Program, the Free Plumbing and Maintenance Program, renter's assistance, legal aid, the Seniors Escorts Program, and the Free Ambulance Program.

Id.

406. *Id.* at 182, 184–85 (observing that the breakfast program grew from serving eleven children in one location on its first day to serving thousands of children in more than twenty cities).

407. *Id.* at 184.

408. *Id.* at 180, 184–86 (quoting Mumia Abu-Jamal, *We Want Freedom* 197 (2004)).

clinics offered testing for diseases like sickle cell anemia, which disproportionately affected Black people, as well as general medical services, including vaccinations and dental care.⁴⁰⁹ These initiatives not only addressed immediate health disparities but also exposed the structural racism embedded within the American healthcare system.⁴¹⁰ The Panthers' emphasis on self-reliance and community empowerment also extended to education.⁴¹¹ Their educational initiatives aimed to instill pride in Black history and culture while providing young people with the tools to critique the structures of oppression they faced. The development of alternative educational spaces, such as liberation schools, helped foster a new generation of politically conscious activists who understood the connections between systemic racism, economic exploitation, and state violence.⁴¹² By creating alternative institutions, the Panthers began to imagine and enact a radically different future—one grounded in the self-determination of Black communities.

In the eyes of the state, however, the clinics, the free breakfast programs, and the liberation schools represented a challenge to its authority and an indictment of its failure to care for its most marginalized citizens. The state recognized the revolutionary potential of these programs, particularly the threat they posed to the established order. FBI Director J. Edgar Hoover infamously described the Black Panther Party as “the greatest threat to the internal security of the country.”⁴¹³ This statement underscored how the Panthers' community-based initiatives were seen not just as acts of charity but as powerful tools of resistance. By empowering Black communities to take care of their own and engage in political education, the Panthers were challenging the state's monopoly on social services and, by extension, its claim to legitimacy. The state's response to these programs further affirmed the revolutionary nature of the Panthers' work—illustrating how deeply the state's authority was threatened by Black self-reliance and resistance.

409. *Id.* at 187–88; see also Alondra Nelson, *Body and Soul: The Black Panther Party and the Fight Against Medical Discrimination* 115–16 (2011) (describing the Black Panther Party's development of a sickle cell anemia campaign that became “a hallmark of its health politics”).

410. See Nelson, *supra* note 409, at 151–52 (“Economic and racial inequities were precisely what were at stake for the Party, and neglect of sickle cell anemia was simply the tip of an iceberg of oppression.”).

411. Bloom & Martin, *supra* note 402, at 191.

412. *Id.* at 192 (noting that the Black Panther Party “launched at least nine liberation schools,” which insisted on the inclusion of Black perspectives, experiences, and knowledge, featuring Black history and culture and “lessons in the Party's ideology, goals, and activities”).

413. *Id.* at 210 (internal quotation marks omitted) (quoting FBI Director Blasts Black Panthers, *Oakland Trib.*, July 15, 1969, at 17).

Through their survival programs, the Black Panther Party illustrated how collective-organizing and direct action could offer immediate solutions to the community's needs while also confronting the root causes of those needs—racial capitalism, police violence, and economic inequality. These efforts built upon a long tradition of Black protest, from the grassroots organizing of the civil rights movement to the urban uprisings of the late 1960s, and they further demonstrated the power of direct action in reshaping the relationship between Black communities and the state. The Panthers not only called attention to the state's failings but also reimagined the role of the community in addressing those failures. Their legacy continues to inform movements for justice today, particularly those focused on community control of resources, police abolition, and economic self-determination.⁴¹⁴ In so doing, the Panthers helped crystallize a revolutionary vision of justice rooted in community empowerment, solidarity, and liberation.

2. *Modern Civil Disobedience and Protest.* — The Black Lives Matter (BLM) Movement, which emerged in 2013 following the acquittal of Trayvon Martin's killer, serves as a powerful continuation and evolution of the Black radical protest tradition, reasserting the need to confront both systemic violence and racial injustice.⁴¹⁵ Like earlier movements, BLM centers its resistance on challenging state violence and systemic racism, but it also innovates by embracing a decentralized structure and utilizing social media to organize protests, spread awareness, and mobilize resources at an unprecedented speed.⁴¹⁶ This approach democratizes activism, allowing grassroots organizers from across the globe to participate, echoing the local organizing efforts of SNCC and other civil rights groups, while extending the reach and visibility of their efforts through digital platforms.

At the core of BLM's strategy is the longstanding tradition of civil disobedience, reimagined for the digital age. Actions like highway shutdowns and occupations of public spaces revive and expand upon tactics used by civil rights activists during the 1950s and 1960s, including sit-ins and marches.⁴¹⁷ But BLM adapts these strategies to fit the modern context of

414. See, e.g., Jane Rhodes, *Framing the Black Panthers: The Spectacular Rise of a Black Power Icon*, at xii–xvi (2d ed. 2017) (discussing similarities between Black Panther Party and Black Lives Matter and arguing that modern groups have “adapted the Black Panthers’ twentieth-century cultural politics to twenty-first-century technologies”).

415. See Laurie Collier Hillstrom, *Black Lives Matter: From a Moment to a Movement* 7, 19–22, 47 (2018).

416. See Emily Ramshaw, *A Black Lives Matter Co-Founder on Surveillance & Social Media*, *Coveteur* (Feb. 23, 2017), <https://coveteur.com/2017/02/23/opal-tometi-co-founder-black-lives-matter-social-media-power/> [<https://perma.cc/EG2Q-LBE2>] (describing the use of social media to rapidly mobilize the Black Lives Matter Freedom Ride to Ferguson).

417. See Hillstrom, *supra* note 415, at 2–5 (drawing parallels between the protest tactics used by Black Lives Matter and the civil rights movement, including boycotts, sit-ins, marches, and blocking traffic).

constant media coverage and instantaneous global communication. These modernized protests are not only visible but disrupt the routines of daily life, forcing society to confront the realities of police violence and racial injustice.⁴¹⁸ By occupying spaces typically reserved for public order, BLM directly challenges the state's authority to define the boundaries of acceptable protest, calling into question a power historically wielded to suppress Black political expression.⁴¹⁹

The criminalization of protest in response to BLM actions underscores a persistent, historical repression stretching back centuries. From the introduction of anti-literacy laws during slavery to suppress Black education, to the state-sanctioned suppression of antilynching activism in the early twentieth century, the legal system has repeatedly been weaponized to silence Black dissent.⁴²⁰ Recent legislation in several states, which increased penalties for protest-related offenses and granted immunity to drivers who injure protesters, represent a modern extension of these efforts.⁴²¹ These laws, designed to intimidate activists and discourage public demonstrations, parallel historical attempts to stifle the Black liberation struggle through legal constraints on assembly and speech.

What makes BLM's response to these legal challenges particularly powerful is its intersectional framework, which integrates racial justice with gender, sexuality, and economic justice, offering a more holistic vision of liberation. Whereas earlier movements primarily focused on the plight of Black men in the fight against police violence, BLM has explicitly broadened its agenda to include the experiences of Black women, LGBTQ+ individuals, and other marginalized groups within the Black community.⁴²² This approach reflects a deeper understanding of how systemic oppression operates, and it allows the movement to challenge gendered dimensions

418. *Id.* at 57.

419. *See id.* at x.

420. *See supra* notes 80–82 and accompanying text (describing anti-literacy laws); *see also supra* notes 311–313 and accompanying text (describing state responses to antilynching campaigns).

421. *See, e.g.,* Keith Allen, Oklahoma Passes a Law that Can Protect Drivers Who Run Over Protesters, CNN (Apr. 22, 2021), <https://www.cnn.com/2021/04/22/us/oklahoma-law-drivers-protesters/index.html> [<https://perma.cc/EE2T-498P>] (reporting on Oklahoma Governor Kevin Stitt's April 21, 2021, signing of a bill "granting immunity to drivers who unintentionally injure or kill protesters while attempting to flee" and increasing penalties for demonstrators blocking public roadways); Reid J. Epstein & Patricia Mazzei, G.O.P. Bills Target Protesters (and Absolve Motorists Who Hit Them), N.Y. Times (Apr. 21, 2021), <https://www.nytimes.com/2021/04/21/us/politics/republican-anti-protest-laws.html> (on file with the *Columbia Law Review*) (last updated June 23, 2023) (discussing Oklahoma and Iowa legislation granting immunity to drivers whose vehicles strike and injure protesters on public streets).

422. *See Hillstrom, supra* note 415, at 38–39 ("[T]he front lines in Ferguson and later BLM actions often featured black women, poor and working-class youth, and LGBTQ individuals.").

of injustice in addition to racial inequality.⁴²³ In so doing, BLM embodies the spirit of past Black protest movements while evolving to address the complexities of modern oppression.

Moreover, BLM's emphasis on abolitionist principles, advocating for the defunding of police and reinvestment in community-based services, marks a radical departure from the limited scope of reformist approaches to criminal justice.⁴²⁴ This vision draws from and extends the historical critique of the carceral state—a critique voiced by activists like Angela Davis—by advocating for transformative justice that seeks to dismantle the very institutions that have perpetuated White supremacy for generations.⁴²⁵ By linking its activism to the broader tradition of Black resistance, BLM not only confronts the urgent issue of police violence but also continues the long fight for Black liberation.

Just as the civil rights movement engaged in direct action to challenge unjust laws, BLM disrupts the status quo through direct confrontation of state institutions, while also reimagining the very concept of justice in the modern era. Their actions forcefully expose how deeply entrenched racial oppression persists within the American legal and political systems, emphasizing that the struggle for Black freedom and the right to protest is far from over.

3. *Student Protests and the Question of Palestine.* — Contemporary student protests around racial justice have increasingly linked domestic struggles with global movements, emphasizing the enduring relevance of the Black radical tradition's transnational focus and embodying the Black radical tradition's deep commitment to international solidarity. Historically, Black activists have seen their fight for justice as part of a broader global battle against oppression, connecting their struggles with mid-twentieth-century anticolonial movements and liberation struggles in Africa and the Caribbean.⁴²⁶ This tradition of internationalism is not merely rhetorical but rooted in shared experiences of systemic subjugation and mutual strategies of resistance. Recent college campus protests, particularly those addressing the war in Gaza and the Israeli–Palestinian

423. Id. at 39 (noting that BLM's "guiding principles . . . emphasize respecting and celebrating differences in sexual orientation, gender identity, economic status, immigration status, ability or disability, age, and religion").

424. See, e.g., Sheryll Cashin, *White Space, Black Hood: Opportunity Hoarding and Segregation in the Age of Inequality 202–04* (2021) (arguing that abolition "requires both the destruction of anti-Black institutions and the creation of new, humane structures of opportunity").

425. See id. at 204.

426. See generally Yohuru Williams, "They've Lynched Our Savior, Lumumba in the Old Fashion Southern Style": The Conscious Internationalism of American Black Nationalism, in *Black Power Beyond Borders: The Global Dimensions of the Black Power Movement* 147, 152–53, 165 (Nico Slate ed., 2012) (discussing the origin of Black nationalism and the international impact of Black American activists).

conflict, illustrate this interconnection.⁴²⁷ Students are drawing parallels between the policing of Black bodies in America and the militarization and occupation of Palestinian territories.⁴²⁸

These protests emphasize shared experiences of state violence, surveillance, and displacement, situating struggles against racial injustice in the United States within a broader critique of global systems of imperialism and colonialism. For instance, students have criticized the role of multinational corporations and government alliances in perpetuating cycles of oppression, linking domestic issues such as police brutality to broader systems of global exploitation.⁴²⁹ Additionally, student activists have invoked the legacy of Malcolm X, who framed the Black liberation struggle as intrinsically linked to global anticolonial and liberation movements.⁴³⁰ Malcolm X's emphasis on Pan-Africanism and solidarity with oppressed peoples in the Middle East, Africa, and Asia is reflected in today's student movements, which challenge the notion that racial justice is limited by national borders.⁴³¹

Protesters also highlight the shared tactics of resistance, such as the strategic use of social media to mobilize, amplify marginalized voices, and challenge mainstream narratives. BLM activists, for example, frequently

427. See, e.g., Rebecca Johnson, Alys Guffey, Sarah Macaraeg, Kate Armanini & Nell Salzman, Pro-Palestine Protests Sweep Across Chicago Area's College Campuses, as Students Demand Schools Divest From Israel, Chi. Trib., <https://www.chicagotribune.com/2024/04/26/northwestern-students-continue-pro-palestine-protest-for-second-day-demanding-school-divest-from-israel/> (on file with the *Columbia Law Review*) (last updated Apr. 26, 2024).

428. See, e.g., James R. Thomas, The Intersection of Palestine With Ferguson, Missouri, 55 J. Ecumenical Stud. 82, 86 (2020) (identifying parallels in the suppression of the rights to free assembly, expression, and association).

429. See Cole Nelson, Renewing Black Radicalism and Labor Militancy With *Finally Got the News* (1970): An Introduction, 15 Black Camera 12, 15 (2024) (discussing the convergence between the League of Revolutionary Black Workers, the 1970 documentary *Finally Got the News*, and the persistent racial capitalism “contested by the Movement for Black Lives as a global configuration of uprisings, protests, and demands of retribution against state, capital, and police brutality”).

430. See Butts, *supra* note 388, at 126 (observing that “Malcolm successfully linked continental African people with the African American struggle” and that SNCC became “the bearer of his legacy”).

431. See Noura Erakat, Geographies of Intimacy: Contemporary Renewals of Black–Palestinian Solidarity, 72 Am. Q. 471, 488–90 (2020) (discussing the alliance formed between Black and Palestinian students in a joint struggle against imperialism); see also Roger McKinney, What Would Malcolm X Have Thought of Black Lives Matter Protests? Here's What His Daughter Said., Columbia Daily Trib. (Feb. 23, 2021), <https://www.columbiatribune.com/story/news/education/campus/2021/02/23/malcolm-x-daughter-reflects-his-legacy-mu-audience-black-history-month/4541647001/> [https://perma.cc/R3CK-WA9V] (speaking with one of Malcolm X's six daughters, who claims her father would commend the strategic organization by young people involved in the Movement for Black Lives).

express solidarity with the Palestinian struggle, as exemplified by the slogan “From Ferguson to Palestine,” which underscores the connections between police militarization in the United States and the military occupation of Palestinian land.⁴³² This slogan is more than symbolic; it represents an intentional effort to connect local demands for justice with broader struggles for liberation worldwide. This transnational solidarity builds on the historical contributions of Black intellectuals like W.E.B. Du Bois and Angela Davis, who linked racial injustice in the United States with global liberation struggles,⁴³³ demonstrating that systemic oppression and racial injustice are part of a larger, interconnected struggle for human rights and dignity.

Historical precedents for such activism include the anti-apartheid divestment campaigns of the 1980s, which mobilized students and activists to challenge the South African apartheid regime through economic pressure.⁴³⁴ These campaigns mirrored the Black Power Movement’s commitment to global solidarity and economic justice, illustrating how historical struggles shape current transnational activism. The solidarity between Black Americans and Palestinians has a long lineage, with figures like Malcolm X framing the African American struggle as part of a broader fight against colonialism and imperialism.⁴³⁵ Malcolm’s articulation of this connection provided a theoretical foundation for contemporary global activism, emphasizing that the fight against oppression in one region is deeply intertwined with struggles elsewhere.

The links between historical decolonization movements and current racial justice campaigns are evident in the shared language and tactics of activists across borders. Concepts such as “intersectionality,” developed by Black feminist legal theorist Kimberlé Crenshaw, have become integral to

432. See Marc Lamont Hill, *From Ferguson to Palestine: Reimagining Transnational Solidarity Through Difference*, 41 *Biography* 942, 949 (2018) (recalling “the strong presence of Palestinian activists distributed throughout the crowd” at the Ferguson protests); Bill Ong Hing, *From Ferguson to Palestine: Disrupting Race-Based Policing*, 59 *How. L.J.* 559, 582–83 (2016) (“Pro-Palestinian activists have seen striking similarities between Ferguson and Palestine. Their experience with the militarization of police and brutality in Palestine is a daily occurrence.”).

433. See Angela Y. Davis, *Freedom Is a Constant Struggle: Ferguson, Palestine, and the Foundations of a Movement* 13–16 (Frank Barat ed., 2016) (arguing that Ferguson serves as a reminder of the need for a global context).

434. See Amanda Joyce Hall, *Students Are the Spark: Anti-Apartheid in the Long 1980s*, 108 *J. Afr. Am. Hist.* 369, 370 (2023) (“Economic isolation stood to weaken an apartheid state that thrived on overseas investment and create an opening for the internal resistance to secure victory through armed struggle.”).

435. Hamzah Baig, “Spirit in Opposition”: Malcolm X and the Question of Palestine, *Soc. Text*, Sept. 2019, at 47, 49 (noting that Malcolm X viewed Black mobilization in the United States as part of the global rebellion against structures of racism and colonialism).

global movements.⁴³⁶ This framework enables activists to articulate the interconnected nature of various forms of oppression, including race, gender, and class, reinforcing the idea that struggles for justice are inherently global and multifaceted.⁴³⁷ Moreover, the adoption of intersectionality by movements across regions highlights the intellectual contributions of Black feminism in shaping both local and international discourses on justice. This historical and theoretical continuity highlights the enduring legacy of Black radical traditions in shaping contemporary social movements.

In leveraging the shared language of liberation and justice, contemporary student protests articulate their demands within a global context. The global outcry against racial and state violence reflects an understanding that the fight against oppression is inherently international. By drawing parallels between the experiences of Black Americans and Palestinians, these protests not only highlight the universality of their struggles but also advocate for a more comprehensive and inclusive approach to addressing systemic injustices.⁴³⁸ By invoking the legacies of past movements and intellectuals, current student protests continue the Black radical tradition of linking domestic and international struggles for justice, offering a bold critique of geopolitical power dynamics and imagining a world where liberation knows no borders. They challenge both national and global systems of oppression and reinforce the idea that the fight for racial justice transcends borders and is deeply embedded in a broader struggle against imperialism and colonialism.

CONCLUSION

The enduring legacy of Black protest in the United States reflects not only resilience but also the visionary creativity of those who have consistently challenged legal and democratic perversions that betray the nation's founding ideals. This Piece has traced three intertwined dimensions of Black protest—perversion, subversion, and revolution—following their arc from the Stono Rebellion to Black Lives Matter, revealing a continuous thread of insurgent thought and transformative action in ongoing struggles for justice and legal debates on protest law.

The Black radical tradition has fundamentally reshaped legal conceptions of free speech and assembly, expanding protest beyond permitted marches and formal petitions to encompass cultural expression, grassroots

436. See Kimberle Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139, 140 (outlining the concept of intersectionality).

437. See *id.* at 140, 166–67.

438. See Sahar Aziz, *Racing Religion in the Palestine-Israel Discourse*, 118 Am. J. Int'l L. Unbound 118, 118 (2024) (arguing that Western inter- and intraracial social hierarchies are “defined by religious identity,” which “heighten[] anti-Muslim discrimination today”).

organizing, and acts of collective defiance. It reimagines protest not as a state-sanctioned allowance but as a moral and political necessity, a refusal to remain silent in the face of systemic harm. Afrofuturist thought amplifies this vision, offering speculative futures where Black liberation is not constrained by current legal structures but freed through imagination, resistance, and radical possibility. Through fiction, music, visual art, and theory, Afrofuturism opens emancipatory portals—spaces of becoming that transcend the inherited boundaries of law and politics.

Looking ahead, as Black protest movements increasingly converge with global decolonization efforts and transnational struggles for racial justice, Afrofuturism emerges as a vital tool for building new solidarities across borders and time zones. Yet even as strategies evolve through digital organizing and international networks, contemporary threats—surveillance, censorship, and the criminalization of dissent—echo the repressive tactics of the past, casting long shadows over the freedoms of assembly and expression, especially for Black communities.⁴³⁹ Law enforcement’s claim to protect “public order” often masks its role in sustaining racialized hierarchies rather than safeguarding dissent.⁴⁴⁰ Countering these modern perversions of law demands more than policy reform. It requires a reckoning with the deep roots of systemic injustice. That reckoning must be both collective and interdisciplinary, drawing insight from legal scholarship, cultural criticism, and social movements. It also calls for personal reflection: an acknowledgment of our positions within systems of power and our responsibilities to challenge them.

This Piece has argued that Afrofuturist literature distills the core principles of the Black protest tradition, framing dissent not merely as resistance but as a transformative civic practice, a reimagining of democracy itself. Protest, in this frame, is not just a right to be exercised, but a duty to be fulfilled—a way of honoring human dignity by demanding more from law, from society, and from ourselves. As the fight for racial justice continues, Black protest endures as a wellspring of courage, critique, and creativity. It reminds us that justice is not handed down by the powerful, but shaped and summoned by those bold enough to envision a world otherwise, and those brave enough to fight for its arrival.

439. See Hillstrom, *supra* note 415, at 58–59 (noting BLM activists’ concerns of vulnerability to electronic surveillance through the internet and cell phones).

440. See Williams Ihome, *Black Bodies in America as the Metaphors for Oppression, Poverty, Violence, and Hate: Searching for Sustainable Solutions Beyond the Black-Letter Law*, 53 *J. Black Stud.* 290, 311 (2022) (“[T]his paper is an insightful examination of oppressive acts, racial injustices, and unjust laws fostered by legislators and carried out by police officers against people of African descent as American sociocultural and socio-political trends.”).

