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## No Taxation Without Discrimination: The Racial Politics of American Property Taxes

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LOYOLA UNIVERSITY CHICAGO

NO TAXATION WITHOUT DISCRIMINATION:

THE RACIAL POLITICS OF AMERICAN PROPERTY TAXES

A DISSERTATION SUBMITTED TO

THE FACULTY OF THE GRADUATE SCHOOL

IN CANDIDACY FOR THE DEGREE OF

DOCTOR OF PHILOSOPHY

PROGRAM IN SOCIOLOGY

BY

KASEY HENRICKS

CHICAGO, ILLINOIS

AUGUST 2016

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kase

June 2016

For my mothers and their sacrifices

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## CHAPTER ONE

### WHEN QUESTIONS DO NOT YIELD ANSWERS

Studies on racism are like a barber shop. The conversation does not begin when we enter the door; rather, we enter into a dialogue that has been in progress for some time. Its rules and content are structured. Once there, we may exert some influence, add our “two cents,” and stir the discussion. To a certain degree, however, it takes on a life of its own. The conversation will carry on long after we have left. A funny thing about barber shop talk, however, is that it almost always assumes a presentist state of mind. Past questions and ideas do not cease to exist entirely, but they do quickly fade from memory. Though unspoken, they become internalized. As sociologist Emile Durkheim ([1904] 1977) once noted:

For the truth is that the present, to which we are invited to restrict our attention, is by itself nothing: it is no more than an extrapolation of the past, from which it cannot be served without losing the greater part of its significance. The present is composed of an infinite of elements which are so closely intertwined that it is difficult for us to see clearly where one begins and another ends, what each of the elements is by itself and what are the relationships which hold between them. (p. 15)

Those who study racism would do well to know the history of our barber shop.

Sociologist Charles Tilly (1981) claimed that to understand the past’s effect on the present, we must move beyond our tendency to treat the present as eternal. Embedded within our disciplinary histories are presuppositional categories that set the parameters for what can be known—racial knowledge included. Studies on racism are often left to

frame the work within prevailing frameworks of the day. The questions sociologists ask filter information in ways that are relevant to established interests of the discipline.

Rather than open up new possibilities of knowledge, this effectively forecloses upon alternative questions we might otherwise ask. Sociologist Margaret Somers (1996) has put it another way: “Questions, then, are the linchpins of theory construction” (p. 72).

Knowingly and unknowingly, questions shape the conceptual boundaries and vocabularies we have to develop our research problems as well as the methods we have to go about solving them (see also Bourdieu, Chamboredon, and Passerson [1968] 1991; Harding 1987; Smith 1987).

### **What We Know about Racism**

Borrowing the words of sociologist William Julius Wilson (1973), racism refers to “an ideology of racial domination or exploitation that (1) incorporates beliefs in a particular race’s cultural and/or inherent biological inferiority and (2) uses such beliefs to justify and prescribe inferior or unequal treatment for that group” (p. 32). Identifying racism as an ideology of racial domination or exploitation implies these ideas are tied to matters of power and group position. Only those who occupy dominant positions can be racist because they possess the capacity to propagate ideas and practices that preserve a hierarchal racial order (see also Wellman [1977] 1993).<sup>1</sup> Sociologist Eduardo Bonilla-Silva (2003) has explained that those racialized as “white” (itself a shifting category)

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<sup>1</sup> The idea that only whites have the capacity to be “racist” runs contrary to sociologists Michael Omi and Howard Winant ([1986] 1994) who have argued “[t]here is nothing inherently white about racism” (p. 72).

inhabit “*the visible uniform of the dominant racial group*” and possess an “*embodied racial power*” (p. 271, emphasis original). Sociologist Amanda Lewis (2004) has further noted that this means that all whites, by virtue of forming a collectivity, develop an ideology to promote their group interests. This is true even as whites do not constitute a “real,” mobilized group of people.

Because race operates systemically, all individuals are implicated in the rationalization of racial affairs (i.e., racial ideology)—though not to the same extent (Bonilla-Silva 1997). Proslavery advocates, for instance, tended to overtly promote their racial interests and defend their peculiar institution outright, while their antislavery foes who may be well-meaning and “tolerant” often advanced their interests in discretely nonracial terms (see also Hughey 2012; Lewis 2004). Even those who were members of manumission societies chose to support government nonintervention of slave-based commerce, allow slave enumeration in apportioning congressional members, and support reparations for slavemasters in exchange for emancipation—all by following the logics of “abstract liberalism” (see Bonilla-Silva [2003] 2014 and Chapter Five). Nevertheless, this broad-sweeping implication does not mean that whites share a singular or coherent identity (Lewis 2004). What they do share is a social position within the racial order, one that confers common racial interests. As Joe Feagin (2000) has written, “A *group interest* can now be seen as a relation of being objectively concerned in something, of having a stake in something. . . . [W]hites are strong *stakeholders* in a centuries-old hierarchal structure of opportunities, wealth, and privileges that stems from a long history of exploitation and oppression” (p. 19, emphasis original; see also Harris 1993).

A case can be made that sociologists of racism, despite our disagreements, agree upon the importance of the following questions: What is the content, form, and style of racism, and how has it changed in patterned and resilient ways over time? Theoretical orientations from assimilationist (e.g., Park 1950) to psychological (e.g., Sears and Kinder 1971; Kinder and Sears 1981) to formational (e.g., Omi and Winant [1986] 1994) to structural (e.g., Bobo, Kluegel, and Smith 1997; Bonilla-Silva 1997) interpretations converge on this question, and their answers pervade our field's habitual thought. These answers regard transformation, emphasizing a rupture between the racial past and present. With vocabularies that consist of words like "new racism" (Barker 1982), "post-Civil Rights era" (Omi and Winant [1986] 1994), and "modern racism" (McConahay 1986), as much is implied within the common language of the field. Reading even among the more critical interpretations of racism, one gets the sense that times have changed but not necessarily for the better.

*Marching Toward Change, Obsessions with Novelty*

Expressions of racism during periods of slavery and Jim Crow are typically understood as an explicit endorsement of white racial domination and exploitation directed at those racialized as "other"—especially those deemed as "black" (Bobo, Kluegel, and Smith 1997; Bonilla-Silva and Lewis 1999; Bonilla-Silva 2001). Beliefs of inferiority permitted whites to rationalize racial subjugation on the basis that people of color deserved a lower social position in life, and these sentiments yielded ground to codify their white supremacy into law so that the state protected racial inequality. In virtually all areas of social life, this basis justified the enslavement of "subhumans," "separate and unequal"

institutional arrangements (e.g., schools, voting), and collective murders like hanging and lynching. Racial stratification, in these contexts, was rigid, formal, and absolute.

In contrast, today's racism is often described as loose, informal, and permeable. Social psychologists David Sears and Donald Kinder (1971) have described the changing orientation of whites' attitudes toward black folk as shifting from "old-fashioned" to "symbolic" racism. That is, key beliefs of biological racism have eroded due to suffering a cultural assault. They suggest new forms of anti-black prejudice have arisen in place of biologized and segregationist views, ones that blend a Protestant ethic-inspired ethos that emphasizes individuality, self-determination, and meritocratic ideals with racial apprehensions, fears, and stereotypes toward black people (see also Bobo, Kluegel, and Smith 1997; Bonilla-Silva [2003] 2014; Bonilla-Silva and Forman 2000). Key components of symbolic racism include the beliefs that blacks: 1) no longer face discrimination, 2) should work harder for social mobility, 3) need to quit being too demanding, and 4) have already received more than they deserve (Henry and Sears 2002; Sears and Henry 2004).

Racism's expression, in other words, has transitioned from formal to informal, overt to covert, and explicit to implicit. In the words of Eduardo Bonilla-Silva ([2003] 2014):

Unlike Jim Crow, the new racial order that emerged—the 'new racism'—reproduces racial domination mostly through subtle and covert practices that are often institutionalized, defended in coded language ("*those* urban people"), and bonded by the racial ideology of color-blind racism. Compared to Jim Crow, this new system seems genteel, but it is extremely effective in preserving systemic advantages for whites. The new regime is, in the immortal lyrics of Roberta Flack's song, of the 'killing me softly' variety. (p. 260, emphasis original)



Sociologists Lawrence Bobo, James Kluegel, and Ryan Smith (1997) have described it as a “kinder, gentler” anti-black ideology than that of the past. According to linguist Teun van Dijk (2000), “contemporary forms of racism are different from the ‘old’ racism of slavery, segregation, apartheid, lynchings, and systematic discrimination, of white supremacy feelings, and of explicit derogation in public discourse and everyday conversation” (p. 33-34). The old racial dawn has ended and another has begun going by these perspectives.

*Just how colorblind is today’s racial world?* Preoccupations with racism’s novelty may obscure more than it elucidates. Sociologists Adia Harvey Wingfield and Joe Feagin (2012) have argued “that since Obama’s election there has been a dramatic increase in public incidents, statements, and commentary [e.g., editorial caricatures portraying Obama as a monkey, a rise in hate group membership, and a few political candidates formally endorsing white supremacy] that reflect a strong reliance on the old and hard racist framing” (p. 147). In fact, many whites still associate blacks with apes and use these associations to justify today’s racial violence (Goff et al. 2008). These so-called “fringe” occurrences are not limited to highly visible media spectacles, nor are directed only at the nation’s first “black” president. In fact, they are much more mainstream than is often acknowledged.

Racist discrimination persists across an array of institutional domains (Feagin and Eckberg 1980; Reskin 2012). These include, just to name a few, militarized immigration and deportation policies (Douglas and Sáenz 2013; Golash-Boza 2015), surging participation in white supremacist organizations (Daniels 2009), and the mass

incarceration of black men (Alexander 2010). Laws like New York City's "Stop and Frisk" or Arizona's "SB1070" (i.e., the "show your papers" law) and state-sanctioned white-on-black police brutality from Ferguson, Missouri to Staten Island, New York to Waller County, Texas are hardly of the colorblind or kinder, gentler variety. In what kind of colorblind world can the centrality of racial violence persist? "Perhaps in the quest to identify a wholly new post-Civil Rights form of racism," as sociologist Moon-Kie Jung (2015) has claimed, "many analysts tend to gloss over the glaring continuities" (p. 45).

A preoccupation with ideological change, for example, misses discrepancies between the colorblind discourse people espouse and the racist practices they pursue. The state-sanctioned killing of black people, for instance, is more akin to legal lynch mobs of the past than it is the present-day pretense of colorblindness and formal, juridical equality (see also Bracey 2015; Feagin and Elias 2013). This is not to say that change has not occurred. There are fundamental differences between slave and employee relations that should not be understated. It is altogether another point to claim or imply ideological displacement. In noting the discrepancy between ideas and praxis, studies of racism are primed to move away from claims of novelty toward discerning how colorblind discourses mutually constitute color-conscious practices, working together to solidify an enduring structure of racial hierarchy.

### **A Case Study: Debates Surrounding the Three-Fifths Clause**

If overtly racist views persist in a supposedly post-racial world, perhaps the opposite could also be true. *To frame it as a question, was colorblindness a prevailing ideology when slavery was the dominant racial arrangement?* Among the provisions that helped

codify slavery into law was “the three-fifths clause.” The debates leading to what is commonly labeled “The Great Compromise of 1787,” if one can really label it a compromise at all, revolved around how to count slaves for the sake of determining congressional representation and direct tax liability. If slaves counted toward apportioning congressional representation, then states with many slaves would be advantaged. Meanwhile, if slaves counted toward the apportionment of direct taxes, then states with many slaves would assume larger tax liability. Most Northern delegates preferred a zero-fifths ratio for representation and a five-fifths ratio for taxation, and Southern delegates desired scales in the other directions. That way each could maximize their political clout and minimize what taxes would be owed.

The three-fifths clause acknowledged that some Americans were free and others were not. It imposed a ratio for valuing slave bodies and settled sectional disagreements over their worth in relation to freepersons. Questions of “worth” invariably came up in these debates because delegates centered the design of their new government around matters of private property, which made slavery a subject for discussion since the richest Americans held a bulk of their wealth in human bondage. This introduced unresolved debates that contributed to the failure of America’s first constitution.

The founding fathers found themselves asking whether slaves were property. If they were, then at what rate should they be taxed? And if they were taxed, how come other forms were not subjected to the same treatment—like the wealth Northern farmers held in livestock? Other delegates asked whether slaves could be considered people? If

they were, then should their vote be valued at the same rate as freepersons? And if they were to be represented, then why should Northern cows and horses not get their vote too?

These debates took years to sort out, but were ultimately settled by the three-fifths “compromise.” It fractioned the personhood of slaves, reduced them to the status of property, and endorsed slavery as the basis for a formal racial state. These are among the factors that make it a counter-intuitive case for the study of colorblindness. After all, what need is there for subtle, covert, and implicit racism when whites agreed, with proportional exactitude, that slaves were valued at 60 percent the rate of freepersons? They would be enumerated as such for congressional representation and direct taxation.

The three-fifths clause is about much more than representation and taxation. Debates surrounding these issues, as the work of historian Robin Einhorn ([1991] 2001, 2006) has revealed, shaped the structure of American political institutions for generations to come. Because representation and taxation inherently involve questions about what kinds of political demands can be imposed on commerce and property as well as which citizens are empowered to make such demands, they help mold the fundamental rules of government and what political actors can and cannot do. Slavemaster politicians and their complicit accommodators designed a constitution that pulled the national government in two opposing directions.

Government was granted expansive powers that protected the institution of slavery, while at the same time it was stripped of most capacities that could interfere with the institution. Whereas the representation side of the three-fifths clause granted the South political clout that ensured their peculiar institution would endure, the taxation side

of the clause put in place barriers that prevented antislavery forces from indirectly regulating slavery out of practice. My dissertation documents how these outcomes unfolded through debates that spanned more than a decade and culminated in the enactment of the U.S. Constitution. My discussion centers the many faces of racial ideology, and perhaps counter-intuitively, it shows how “new,” “modern,” and “contemporary” racism played a salient role in justifying old racist arrangements.

*Did “New,” “Modern,” or “Contemporary” Racism Justify Old Racist Arrangements?*

“Why would a study historicize racism, don’t we know this already?” I do not think so. Let me suggest that the tendency to juxtapose today’s “kinder, gentler” antiblack ideology with yesterday’s harsh and violent racism is quite tempting. It does not, however, permit analyses to detect the substantive “kinder, gentler” antiblack ideology that is embedded within yesterday’s racism. Rather than get caught up in methodological chauvinism, and declare one absolute method reigns supreme (see also Jung 2015), how sociologists answer our research questions depends on what we are asking. Each method yields “different kinds of data to answer different kinds of questions” (Trow 1957:33). That said, it is clear that some scholars of racism insist upon advancing arguments that exceed the scope of what their data support. Observing whether change in racism over time has occurred, by definition, requires an analytic orientation that is sensitive to history. Time is the medium through which these changes occur.

There is a tendency within sociology and other social sciences to advance broad historical claims about racism without empirically anchoring these claims within a historical context (e.g., Barker 1981; Kinder and Sears 1981; McConahay 1986; Omi and

Winant [1986] 1994; Sears and Kinder 1971).<sup>2</sup> Sociologist Karen Fields and historian Barbara Fields (2012) have noted that interrogating ideology at one point in time can lead to misleading results, since it can appear as unquestioned “common sense” when observed in a cross-sectional context. Historicizing racial ideology of the past and present can help denaturalize it so that its depth and application can better be comprehended (Hall 1996; Jung 2015). The fact that much of our work has shied away from historical inquiries has undermined our ability to grasp the impact and reach of the past in all its complexities. At worse, historical claims in an ahistorical empirical context is a source of interdisciplinary amnesia that blocks our understanding of how racism endures over time. How can we truly contrast whether “new” or “modern” racism in the “post-Civil Rights” era is new or modern if our studies do not interrogate the past for comparative reference?

*Foreshadowing: The Organizational Roadmap of “No Taxation without Discrimination”*

The dissertation is divided into three sections: 1) the context, 2) the discourse, and 3) the implications. Comprising two chapters, the first section contextualizes the broader analysis within its proper sociohistorical backdrop. A major point of this discussion is to acknowledge the particularities of slavery, so I do not trivialize distinct legacies of oppression (see also Thomas 2010). In Chapter Two (“An Agreement with Hell”), I

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<sup>2</sup> Like much of historical sociology in general (see Stanfield 1993), those who historicize racism have exhibited a reluctance to formalize a methodological strategy (e.g., Collins 2005; Feagin 2010). They do not speak to fundamental issues of how the analysis was performed, what motivations were considered for sampling, which sites and subjects were appropriate for study, what coding decisions were made, and what precautions were taken to ensure the validity and reliability of the analysis. Instead, these studies have prioritized theoretical development. Placing data and theory on equal planes is important, however, because it can specify under which circumstances a framework can be applied and more carefully distill its comprising elements.

discuss slavery in colonial America and the early republic as well as how the institution influenced state-making through the Articles of Confederation and the U.S. Constitution. Chapter Three (“The Three-fifths Clause, A Genealogy”) traces the three-fifths clause from its origins through what evolved into over a decade long debate over not just representation and taxation but slavery.

In the second section, I thematically analyze the discourses that drove the three-fifths debates—with each chapter drawing historical parallels with today’s racism and how scholars conceptualize it. This section is divided into three chapters. Chapter Four (“Innocence Constitutes the Crime”) shows the ways in which the founding fathers diminished the significance of slavery and presumed racial progress followed a linear, unidirectional path. Chapter Five (“Colorblind Discourse, Color-conscious Context”) reveals how delegates used the content and style of colorblindness to advance their political interests within debates over congressional representation and direct taxation. Chapter Six (“Principled Conservatism or Principled Racism?”) highlights how racism cannot be reduced or explained away by conservatism. In fact, disputes over localism, liberty, and small governance were often contradictory ploys for an expansive federal government that protected slavery.

In the concluding section, I relate the empirical findings offered in Chapters 3 through 6 to contemporary discussions of theory within the sociology of racism. The point of Chapter Seven (“When the Present Becomes Past”) is to serve as a critical conscious of sorts to the field. Many of my findings run counter-intuitive to expectations set out by our dominant theoretical frameworks that contrast the present racial moment

from the past. Studying features of contemporary racism within the early republic provides pathways for understanding how American institutions are, in part, byproducts of the very racial ideology that many within the social sciences and humanities claim as novel today.

### **The Need for Questioning Our Questions and Asking New Ones**

What is the content, form, and style of racism, and how has it changed in patterned and resilient ways over time? Answers to this question may vary, as do the perspectives and interests they advance, but in many ways, the substance remains the same. Narrow focus on a question or subset of questions preemptively sets boundaries for what answers can be offered. We fit empirical facts within the frameworks that our questions inherently necessitate, the frameworks that I suspect some take for granted. Too often these frameworks are bent on the idea of racial transcendence (e.g., Park 1950), claiming ideology has shifted from a biological to cultural basis (e.g., Sears and Kinder 1971; Kinder and Sears 1981), and contending that racism today is substantively unique from the past (e.g., Bobo, Kluegel, and Smith 1997; Bonilla-Silva 2001; Bonilla-Silva and Lewis 1999). These themes represent a routinized convergence of intellectual thought: Change is prioritized. Rather than debate if this emphasis is correct, my suggestion is that there are other meaningful questions worth asking. In the case of this case study, that question is: how well does colorblind ideology transplant into historical soil that some presume it does not belong?

Asking unasked questions has the potential to introduce an inventory of topics that have otherwise been neglected, and it probes at the fundamental structures that shape



how some topics become relevant while others do not. “[T]here is no sociology worthy of the name, which does not possess a historical character” (Durkheim [1895] 2013:160).

Key assumptions we bring with us when entering the field should be questioned not as self-evident, but as products forged from broader dynamics of the established academic field. As philosopher Karl Marx ([1851] 1972) warned, “Men make their own history, but they do not make it just as they please; they do not make it under circumstances chosen by themselves, but under circumstances directly found, given and transmitted from the past” (p. 437). Acknowledgment of this point requires historicized knowledge not to be thought of as mere products of the past, shaping what questions are worthy of attention. Instead, knowledge becomes seen as a verb, from historicized to *historicizing*, so that agency is explicitly restored to the knowledge production process.

Our questions map out the parameters of scientific inquiry and represent partial perspectives by definition. Sociologist Patricia Hill Collins ([1990] 2000) has spelled out the implications of what this means in that research questions are laden with basic assumptions about what should be asked and how they should be answered. Therein lies much power to shape both blind spots and lines of sight. Being conscious of our assumptions places researchers in a better position to undo their effects. These assumptions are indicative of preconceptual frameworks that shape unfolding pathways of the “barbershop conversation.” New pathways become available when we discard what Emile Durkheim ([1895] 2013) referred to as “ghost-like creatures [that] distort the true appearance of things, but which we nevertheless mistake for things themselves” (p. 31). In place of these things, an ontological and epistemological break walks away from

taken-for-granted truths, reflexively questions intellectual habits of what we know, and offers the opportunity to systematically develop alternative ways of knowing (Hunter 2002). Since what we ask shapes what can be known, a good starting point to begin is questioning our questions. That way we can start to see what we are not seeing.

## CHAPTER TWO

### AN AGREEMENT WITH HELL

The United States Constitution was an “agreement with hell,” declared abolitionist William Lloyd Garrison ([1845] 1995:114). These are his words:

Tyrants of the old world! contemnors [sic] of the rights of man! disbelievers [sic] in human freedom and equality! enemies [sic] of mankind! console [sic] not yourselves with the delusion, that REPUBLICANISM and the AMERICAN UNION are synonymous terms—or that the downfall of the latter will be the extinction of the former, and, consequently, a proof of the incapacity of the people for self-government, and a confirmation of your own despotic claims! (Garrison [1845] 1995:112, emphasis original)

Like some (but not all) abolitionists of the early republic, Garrison thought American democracy was bankrupt to its core (see also Jung 2015). There could be, he argued, “NO UNION WITH SLAVEHOLDERS!” (Garrison [1845] 1995:115, emphasis original) so long as slavery was the foundational rock upon which the nation stood.

The nation was born out of violent revolution. Penning the Declaration of Independence, Thomas Jefferson (1776) of Virginia wrote, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness” (p. 1). This bold vision helped lay the groundwork for a developing nation, one that asserted its independence from others and established a government that derived its powers from consent (Arendt [1963] 1990). Our “founding fathers” called out to liberty and disavowed slavery under the rubric of natural law. The slavery they forsake,

however, was more of the metaphorical variety. Actual slavery that reduced those of African descent to human bondage, which every state of the union practiced on the revolution's eve, did not concern them.

Unseen were the connections between (white) political and (black) slavery. This is less a failure of the white imagination, and more an indication of its interests. At a fundamental level, whiteness represents a social position that cannot exist outside a persisting racial order of white supremacy (Lewis 2004; see also Bonilla-Silva 1997; Mills 1997). When white supremacy is the frame of reference from which one sees the world, contradictions between slavery and universal declarations of life, liberty, and happiness do not represent a paradox at all. “[T]he paradox dissolves,” as historian William Wiecek (1996) has written, “when we recall that American slavery was racial. White freedom was entirely compatible with black enslavement. African Americans were, as the framers of Virginia’s first Constitution determined, simply not part of the Lockean body politic” (p. 1791; see also Baum 2006).<sup>1</sup> Black enslavement made for a more perfect white union beyond Virginia’s borders. Even antislavery advocates like John Adams of Massachusetts and Roger Sherman of Connecticut failed to draw distinctions between black freemen and slaves, and interchangeably referred to all black people as property.

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<sup>1</sup> In addition to Virginia’s constitution, black slaves did not belong to the Lockean body politic in the Carolinas either. A passage of the *Fundamental Constitutions of Carolina* claims, “Every Freeman of Carolina shall have absolute power and authority over his negro slaves”—a document that philosopher John Locke, himself, helped write in 1669 (qtd. in Armitage 2004:619).

The covenant these young Americans would agree to under the Constitution centered around the protection of property, defined by what American studies scholar George Lipsitz (1998) has labeled a “possessive investment in whiteness.” Through reification, which social theorist Georg Lukács ([1923] 1971) described as a process of mystification that inverts subjects into objects,<sup>2</sup> it vested an actual property interest in whiteness where property was defined not as a “thing” but a right. Slaves could not possess, by contrast, property because they became defined as such. Legal scholar Cheryl Harris (1993) has elaborated this point further:

Because whites could not be enslaved or held as slaves, the racial line between white and Black was extremely critical; it became a line of protection and demarcation from the potential threat of commodification, and it determined the allocation of the benefits and burdens of this form of property. White identity and whiteness were sources of privilege and protection; their absence meant being the object of property. (p. 1720-1721)

Slaves enjoyed no rights to possess, use, or dispose of property. Instead, property rights were entrenched in slavery so that slaves’ rights deferred to their master as his own. And property was broadly defined, to adapt the words of James Madison of Virginia ([1792] 2006), as something that “embraces every thing to which a man may attach a value and have a right” (p. 223).

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<sup>2</sup> In his own words, social theorist Georg Lukács ([1923] 1971) described the process of reification as follows: “Its basis is that a relation between people takes on a character of a thing and thus acquires a ‘phantom objectivity,’ an autonomy that seems so strictly rational and all-embracing as to conceal every trace of its fundamental nature” (p. 83). He applied the concept, drawing from close readings of philosopher Karl Marx, to describe how capitalism strips humanity from human beings and treats them instrumentally not like people but “things.”

Legal scholar Derrick Bell (1987) reminded us that America's "founders" subordinated others to their own social, political, and economic interests, defining the boundaries of full personhood by race so that some stood outside of its lines.<sup>3</sup> These ideas of exclusion offered an intellectual edifice, one supported by even the most sophisticated philosophers of the day (e.g., Hume [1752] 1826; Kant [1764] 1960; Locke [1689] 1920, [1690] 2009; Mill [1859] 1986; Rousseau ([1762] 2008), to justify oppressive practices of conquest, colonization, genocide, and enslavement (Takaki 1993). Among black American experiences, slaves were separated from their humanity, and by consequence, alienated from self-dignity. Whites stripped from them control over the self, in terms of body, life choices, and possible future. Slaves may have stood in plain view on lands north or south of the Mason-Dixon Line, but they were invisible behind blue eyes and pale white skin. To adapt the ever-relevant words of the late poet Eduardo Galeano (1992), they were "los nadies" (translated as the nobodies):

The nobodies: nobody's children, owners of nothing.

The nobodies: the no ones, the nobodied, running like rabbits, dying through life, screwed every which way....

Who are not, but could be.

Who don't speak languages, but dialects.

Who don't have religions, but superstitions.

Who don't create art, but handicrafts.

Who don't have culture, but folklore.

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<sup>3</sup> In tracing white attitudes over several decades during the latter part of the twentieth century, political scientist Jennifer Hochschild (1995) has observed much of the same as legal scholar Derrick Bell. White Americans today, like their founding predecessors, have no problem endorsing broad-reaching definitions of freedom so long as it was reserved for those considered like themselves. This, however, is not total but truncated freedom that can be ideologically weaponized to preserve unequal relations.

Who are not human beings, but human resources.  
Who don't have faces, but arms.  
Who do not have names, but numbers.... (p. 73)

### **Modernity, the Promise of Emancipation Yet to Come**

A new world system, partly made possible by the emerging Age of Enlightenment fueled by Reason, provided foundational justification for restructuring society in the name of progress. Revolution in Colonial America, for example, can be seen as historical events exemplifying some Enlightenment ideals, ones that might displace European-style feudal societies with a more just alternative. This epoch ushered in emancipatory universalisms like individualism, egalitarianism, and meliorism, signaling a shift from “incarnated narrow-mindedness, dogmatism, and above all constraints of authority” (Wallerstein 1995:127). Reason became the privileged mode of truth and basis for systematic knowledge that would reorganize society (Best and Kellner 1991). Whereas religion, tradition, and mysticism were sources of knowledge and authority during the Middle Ages, Enlightenment promised revolutionary social progress and a new egalitarian order in which Reason would dominate.

Epochal shifts of Enlightenment were coupled with the nascent beginnings of capitalism. The mode of production was radically transformed by technological innovation and centralized organization, but with this new system came an inherent contradiction. Its chief crisis, claimed philosophers Karl Marx and Friedrich Engels ([1848] 2002), is one of class conflict and implicit domination. In an uneven trajectory, capitalism displaced a system that was more rigidly oppressive and caste-like; it “put an end to all the feudal, patriarchal, idyllic relations” (p. 222). It revolutionized production

so humankind could satisfy all its needs. In previous epochs, this undoubtedly “would have seemed an absurdity” (p. 226).

For classical thinkers, these transformations embodied beacons of hope that were impossible before. They represented not just a victory of humanity over nature, but “a triumph of humanity over itself, or over those with privilege” (Wallerstein 1995:127). Feudal rule could no longer impede substantive democracy as it had before, and universal interests could be served by government truly vested in the masses. The American Revolution testified to these promises and yielded opportunity for their fulfillment, as people had a “capacity for self-improvement and self-government, that progress might be a reality instead of fantasy, and that reason and humanity might become governing rather than merely critical principles” (Gay 1977:555).

*Racism and the Regressive Character of “Progress”*

As much as modernity was a racial project of global development (Smedley 1993; Winant 2001),<sup>4</sup> more specifically it is one of a racist variety (Fields 1982; Jung 2015). Despite emancipatory promises of Enlightenment, modernity’s progress entails a regressive character. Never have these promises been inclusive of all groups. Philosopher Jean-Jacques Rousseau ([1762] 2008) argued humanity possesses an innate capacity for compassion and empathy, but thought people must have freedom forced upon them to “see objects as they are, and sometimes as they ought to appear” (p. 43). Philosopher

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<sup>4</sup> That said, the origins of racism are debated. Others like historian George Fredrickson (2002) describe race and racism as outgrowths of antisemitism during the late Middle Ages, in which Jews were seen as the pale of the earth under European expansionism—especially by the Spanish (see also Thomas 2010).



Charles Mills (1997) has pointed out that a careful reading reveals the only “noble savages” Rousseau provides examples of are nonwhite savages from countries outside Europe. Never does he ask, as social theorist Herbert Marcuse (1964) noted, why do people have to be unfree in the first place? And how is it that he uncritically accepts the presumed liberators as benevolent? Perhaps they are not liberators, but invaders. The point is Rousseau assumes to know other peoples’ interests better than the people themselves.

Known for his thoughts on morality, philosopher Immanuel Kant ([1764] 1960) built a lesser known theory where he attributed perceived racial differences to inherent biological distinctions between whites and blacks. He said race determines intellectual ability: “So fundamental is the difference between that two races of man, and it appears to be as great in regard to mental capacities as in color” (Kant [1764] 1960:111). On several occasions, Kant pinpointed what he saw as shortcomings of other groups too. Asians lack the capacity for abstract thought, he thought, and Native Americans are incapable of education and generally hopeless (Eze 1995). To this end, Charles Mills (1997) has argued, “*the embarrassing fact for the white West (which doubtless explains its concealment) is that their most important moral theorist of the past three hundred years is also the foundational theorist in the modern period of division between Herrenvolk and Untermenschen, persons and subpersons, upon which Nazi theory would later draw*” (p. 72, emphasis original).

The Declaration of Independence professed the ideals of equality, but in Orwellian (1945) fashion, some were more equal than others. It would be more accurate, as historian Barbara Fields (1990) has explained, if it declared from the beginning:

Those holding liberty to be inalienable, and holding Afro-Americans as slaves were bound to end by holding race to be a self-evident truth. (p. 101)

This was not only the position of Thomas Jefferson, but Rousseau, Kant, and other Enlightened thinkers too (e.g., Hume [1752] 1826; Locke [1689] 1920, [1690] 2009; Mill [1859] 1986).<sup>5</sup> What conjoins these thinkers together is less about individual predispositions of prejudice and more about a common racialized worldview—one characterized by relations of power and domination. Modernity introduced the possibility of emancipation. It also introduced the formation of a racist rule, one that resolved the paradox brought about by Reason. Racial ideology offered justification for how a society that prided itself upon freedom and liberty could, at the same time, hold a significant portion of its population in bondage (Fields 1982, 1990; Fields and Fields 2012). Once persons of color were deemed racially inferior, or less than human to be specific, exceptions to a democratic rule warranted no further discussion.

### **Before Slavery was Slavery**

Slavery unfolded along racial lines, but as Barbara Fields (1990) has argued, this unfolding was not inevitable. Americans were cognizant of racial distinctions during the 1600s, but its boundaries were blurred. Historian George Fredrickson (2002) explained that even among American slave societies, Africans varied in their status from slaves,

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<sup>5</sup> Other examples of racist tendencies among philosophers are not explored here to avoid belaboring the point (see Eze 1997).

indentured servants, and freepersons. There is little evidence to suggest that white-on-black animus was developed at this time (Jordan 1968). Race served more as a religious marker than a distinction between those who were chained to human bondage and those who were not. Many social activities were integrated up to that historical moment, and some lower-class whites even participated in urban slave revolts (Roediger 1991). When the planter class needed laborers for large-scale agricultural operations, mostly white indentured servants supplied this need at first (Jordan 1968). During early seventeenth century Virginia, for example, white indentured servants were preferred to black slaves because they were more profitable. As historian Edmund Morgan (1975) has argued, short life spans combined with the costly expense of slave purchases made such investments risky.

To maximize profits, Virginia's planter class pursued a variety of strategies to control indentured servants (Morgan 1975). They created artificial land scarcity, extended terms of service, levied taxes, fees, and rents, and imposed severe penalties for preying on livestock for food. While economic opportunity seemed to grow scarcer and scarcer, the number of indentured servants multiplied. When the burdens placed on them ran too high, the whole colony was on the verge of anarchy. The largest colonial revolt to precede the revolution erupted in 1676 (Webb 1995). Not only was Governor William Berkeley driven from Jamestown, but the capital was torched. This was "Bacon's Rebellion." Unlike the later experiences of slaves, total domination over indentured servants was impossible and the threat of racial violence unavailable. These white folks were servants, but they had legal status and protections recognized by colonial courts

(Galenson 1981). They were not debased in the same ways as slaves. During the latter part of the century, as historian Winthrop Jordan (1968) explained, their social status would largely improve because they were neither black nor slave.

In the words of Cheryl Harris (1993), “The construction of white identity and the ideology of racial hierarchy also were intimately tied to the evolution and expansion of the system of slavery. The further entrenchment of plantation slavery was in part an answer to a social crisis produced by the eroding capacity of the landed class to control the white labor population” (p. 1717). A gradual displacement of white indentured servants with slaves would go a long way to calm these white servants’ rebellions (Morgan 1975). Numerous factors culminated during the latter half of the seventeenth century to make slavery more economically appealing. These included factors like the dwindling supply of indentured servants, more favorable economic conditions for labor in England, westward colonial expansion though often violent displacement of indigenous peoples, an ever-increasing demand for agrarian work in the Southern colonies, declining mortality rates, and reduced costs in training slaves (Galenson 1981). These shifts made the purchase of slaves a more worthwhile investment to line the pockets of slavemasters.

#### *Racialized Expansion of Slavery*

The change in the slavemaster’s business model was simple: exploit the whole slave population and drive them to the limits of their existence. According to sociologist W.E.B. Du Bois ([1920] 2006), this is among slavery’s features that achieved novelty under modernity:

The using of men for the benefit of masters is no new invention of modern Europe. It is as old as the world. But Europe proposed to apply it on a scale and

with an elaborateness of detail of which no former world ever dreamed. The imperial width of the thing—the heaven-defying audacity—makes its modern newness. (p. 41)

Unlike the old world, enslavement of African men, women, and children was commercialized under expanding plantation capitalism (Blackburn 1997; Feagin 2000, 2006). Slavemasters needed insurance they could reproduce a slave-driven labor force if this developing world market was to be possible. During 1662 in Virginia, for example, elite white men passed a statute at large, commonly referred to as “the birthright law,” for the specific purpose of sexually exploiting black women (Giddings [1984] 1996). They reformed British common law so that a child’s slave status was determined by the mother, not the father.

No longer did slavemasters value female slaves strictly for their labor. This made slavery what sociologist Erving Goffman (1961) would have described as a “total institution,” an enclosed social system that controlled most every aspect of black bodies in general and black women’s bodies in particular. In a letter to John Jordan of Kentucky, for example, Thomas Jefferson later observed, “[Other slavemasters] saw their value as the 1<sup>st</sup> object and the raising of their children as secondary, [but he] consider[ed] the labor of a breeding woman as no object, and that a child raised every 2 years is of more profit than the crop of the best laboring men” (qtd. in Takaki [1979] 1990:44). White slavemasters saw black women as, in their own words, “breeders” that would multiply their fortunes (see also Harris 1993). Children were no longer children. They were profits. For these reasons, among others, as many as two-thirds of the Virginia electorate would own slaves by the mid-eighteenth century (Sydnor 1965).

What made slavery unique from previous forms of oppression was its totality, “its permanency and the total commodification attendant to the status of the slave” (Harris 1993:1720). In contrast to indentured servants, women were sent to the fields (Morgan 1975). Their children entered work at earlier ages. Slavemasters no longer felt compelled to provide education as with indentured servants. Nor did they feel the need to make pastors and ministers available for spiritual guidance. Some made sure slaves received less food than required for survival, forcing them to upkeep their own livestock and gardens on the side for basic sustenance. When slaves lost the incentive to work, slavemasters resorted to the lash. Those that were unproductive by their master’s standards would be beaten just short of death. “No matter how degraded the factory hand,” explained W.E.B. Du Bois ([1935] 1992), “he is not real estate. The tragedy of the black slave’s position was precisely this; his absolute subjection to the individual will of an owner” (p. 10). Slaves of color were not people under this system. They were “things” that could be bought, sold, and otherwise treated in the same manner as livestock. In these kinds of ways, slavery maximized profits by means that indentured servanthood never did.

### **What is so Racial about Racism?**

Race cannot be reduced to any other basis for social relations—like class, ethnicity, and so on—despite claims otherwise (Omi and Winant [1986] 1994). Within the U.S. context, for instance, sociologist Oliver C. Cox (1948) explained that under a capitalist nation built upon racial oppression the so-called “American Creed,” or morality in general, is shaped by a material base (see also Marx and Engels [1846] 1970, [1848] 2002).

“Probably it may be said rather conclusively,” Cox (1948) wrote, “that the Negro problem cannot be solved ‘in principle’ because it is not basically an ideological problem” (p. 512). Racial antagonisms are byproducts of class from his vantage point.<sup>6</sup> “If we attempt to see race relations realistically,” Cox (1948) elaborated, “the meaning of the capitalist function is inescapable” (p. 537). Meanwhile, economist Gunnar Myrdal (1944) claimed racism was a temporary aberration to a young American democracy. Taking a moralist position, he thought internal tension over the mistreatment of blacks (e.g., slavery, Jim Crow) and principled ideals of equality or freedom would be a great source of guilt among whites. This guilt would eventually overwhelm any prejudices they held, and achieve a racial democracy where there was no “American dilemma.”<sup>7</sup> Both attribute race and racism to some other underlying principles.

According to sociologists Michael Omi and Howard Winant ([1986] 1994), race is simply defined as “a *fundamental* axis of social organization” (p. 13, emphasis original). It is not a cohesive identity to be formed or possessed among collectivities but *a*

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<sup>6</sup> Sociologist Eduardo Bonilla-Silva (1997) has elaborated this critique more fully, and extends it to neo-marxian analyses (e.g., Bonacich 1980; Miles 1989, 1993; Solomos 1989) that privilege “class dynamics as the real engine of racial dynamics” (p. 466).

<sup>7</sup> Some studies have empirically tested economist Gunnar Myrdal’s “white guilt” proposition, only to find little to no support (e.g., Cummings and Pinnel 1988; Williams 1964). Instead many whites have become overwhelmed with what sociologist Tyrone Forman (2004) has described as indifference (see also Forman and Lewis 2006, 2015; Pettigrew and Meerten 1995). This is evident in growing response rates on surveys in which whites answer “no response” or “don’t know” to most any question related to race. Similarly, sociologist Matthew Hunt (2007) has observed that whites who reject all General Social Survey-provided accounts for racial inequality has increased from 5 to 15 percent between 1977 and 2004. That is, they contend that racial differences have nothing to do with “lack of will,” “lack of education,” “discrimination,” or “inborn ability.”

*relation* between socially defined groups (Lewis 2004). This axis arbitrarily organizes how rewards and penalties of social value (i.e., consensus agreements linked to material and symbolic power) are distributed within a particular historical context. Though race is fluidly articulated, as seen by census categories that change nearly every ten years as well as discrepancies between self-identification and ascription processes (e.g., Vargas 2015), it typically divides groups of people by markers like skin tone, eye shape, hair texture, and so on. This emphasis on physicality gives race some sense of recognition that divides people “by some notion of stock or collective heredity of traits” (Anthias and Yuval-David 1992:2). As essayist James Baldwin ([1962] 1991) forewarned, however, race is about much more than appearance. “[C]olor is not a human or a personal reality,” he reminded us, “it is a political reality” (p. 139). This is among the reasons why processes of racialization, which refer to when previously unclassified social relations, practices, or groups take on racial meaning, have the capacity to acquire autonomy and independence (Omi and Winant [1986] 1994; see also Bonilla-Silva 1997).

Though embedded within other forms of hierarchy, race takes on a unique character that cannot be attributed to any other social category. It has the capacity to lead a life of its own. Consider, for example, how W.E.B. Du Bois ([1933] 1995) distinguished class from race. Writing on asymmetrical relations between those who own the means of production and everyone else, he observes:

The *class struggle* of exploiter and exploited is a reality. The capitalist still today owns the machines, materials, and wages with which to buy labor. The laborer in America owns little more than his ability to work. (p. 539, emphasis original)

Workers go on to legitimate this relation when they advance a bootstrapping ideology that presumes individual liberty, equal opportunity, and self-determination are available



to all. Such ideas have thwarted potential revolutions against democratic capitalism in the U.S. because common labor “has been blinded by the American vision of the possibility of layer after layer of the workers escaping into the wealthy class and becoming managers and employers of labor” (Du Bois [1933] 1995:542).<sup>8</sup> Resistance within bourgeois logic, in other words, offers no real solutions to the fundamental conflict of capitalism: class struggle.

While class conflict is fundamental in its own right, it would be mistaken to presume racial conflict plays “second fiddle.” It cannot be subsumed under other bases for social organization (Omi and Winant [1986] 1994). Preemptively responding to claims that the colorline would be undermined by changes in the political economy like industrialization (e.g., Wilson 1978), sociologist Harold Blumer (1965) foresaw that “industrial imperatives accommodate themselves to the racial mold and continue to operate effectively in it” (p. 236). Since at least the 1700s, extracted surplus value from capitalism has been built upon the backs of exploited labor (Marable [1983] 2000).<sup>9</sup> “In

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<sup>8</sup> The logic outlined here follows what philosophers Karl Marx and Friedrich Engels ([1846] 1970) highlighted in *The German Ideology*: “The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of material production are subject to it” (p .64).

<sup>9</sup> A similar argument can be made with respect to gender. American capitalism, much like capitalism throughout the world, was (and continues to be) organized by a gendered division of labor, making it what sociologist Charlotte Perkins Gilman ([1848] 2007) labeled a “sexuo-economic arrangement.” Among other arrangements, this economic subordination is rooted in the institutions of marriage and family (Coontz 1992). Women’s labor has largely been excluded from the formal economy, as women are relegated to perform much domestic and emotion work such as upkeep and socialization for children. In the words of sociologist Juliet Schor (1992), “As

the case of race relations,” wrote Oliver Cox (1948), “the tendency of the bourgeoisie is to proletarianize a whole people—that is to say, the whole people is looked upon as a class—whereas white proletarianization involves only a section of the white people” (p. 344). The racial ideology deployed to rationalize these labor arrangements is not an anachronism of American capitalism. Paths to this country’s modernization ran through the full-fledged development of an antiblack racism under slavery.

The relative prosperity and liberty for some parts of the population came, and continues to come, at the subjugated expense of others. Racial distinctions of cultural value, ones that oppositionally define groups along a hierarchy, reach beyond the market to matters of mere personhood (Glenn 2002). People of color have had their human dignity questioned in ways unique from any other form of exploitation. Even to the poorest of the poor among whites, for instance, racial oppression provides what sociologist Lillian Rubin (1994) described as a status safety net. It can be captured in comments like “at least I’m not black.” These expressions serve as a reminder that “[n]o matter how low they may fall, there’s always someone below them, someone who serves as a reminder that they remain a step above any person of color, even a rich one” (Rubin 1994:38). This is what W.E.B. Du Bois ([1935] 1992) spoke of when referring to “wages” of the dominant group (see also Roediger 1991). Afforded forms of symbolic compensation, “[whites] are given public deference and titles of courtesy” solely on the basis of their social identity (Du Bois [1935] 1992:700). Race is about recognition of

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any woman can attest, the query, ‘Do you work?’ is meant to distinguish between those who are employed in the market economy, and those whose labors are confined to the home” (p. 84).

people as such, and people of color have been subjected to a status of subpersonhood that cannot be attributed to anything else (Omi and Winant [1986] 1994).

### **The State as a Pre-eminent Site of Racial Conflict**

The making of American Empire<sup>10</sup> has long been about who belongs to what political scientist Benedict Anderson ([1983] 2006) called the “imagined political community,” which is by definition a struggle over state-sanctioned rewards and penalties of social value. Karl Marx and Friedrich Engels ([1846] 1970) argued that “the State is the form in which the individuals of the ruling class assert their common interests” (p. 80). In this way, a state’s primary role is to promulgate laws, and the normative values behind them, that preserve a dominant group’s position within a stratified political, social, cultural, and economic order (see also Arjomand 1992). Among the stratified lines this order follows in the United States, to sociologist Joe Feagin’s (2000, 2006) point, is a racial one designed to systematically serve white interests (see also Bonilla-Silva 1997).

According to Michael Omi and Howard Winant ([1986] 1994), the state is “the pre-eminent site of racial conflict” because of its ability to unequally distribute social resources and liabilities through laws, court decisions, and other legal actions (p. 82; see also Goldberg 2002). These sociologists claim a state becomes racialized (i.e., a “racial state”) when it shapes the trajectory of an unstable but enduring racial hierarchy through

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<sup>10</sup> I follow the lead of sociologist Moon-Kie Jung (2015) in labeling the United States as an empire-state rather than nation-state for sake of precision. As he has explained, “nation-states imply politically homogeneous populations of *citizens*, or state members” (p. 58, emphasis original). Empire-states are, on the contrary, hierarchal and entail usurpation of sovereign territories and their inhabited populations (see also Cooper 2005; Jung and Kwon 2013).

cycles of conflict (e.g., abolition) and accommodation (e.g., the 13<sup>th</sup> Amendment). This means the state is neither a closed-off, banal instrument of power (e.g., Adorno et al. 1950) nor is it comprised of its own independent and autonomous structure (e.g., Skocpol 1980). Elaborating ideas about the state from social theorist Antonio Gramsci ([1946] 1971) and extending them to racial matters, Omi and Winant ([1986] 1994) have claimed the state is an openly-contested terrain embedded within racial conflict that connects a host of public institutions.<sup>11</sup>

Unlike much of the work on state theory, an area filled with no shortage of seminal works (e.g., Miliband 1969; Skocpol 1985), ideas about the state offered by Michael Omi and Howard Winant ([1986] 1994) have placed racial dynamics front and center. They take serious the deep history and ongoing practices of racial discrimination that the government either sanctions or seeks remedy. However, political scientists David James and Kent Redding (2005) have identified at least one problem with Omi and Winant's conception of a racial state. It places emphasis on outcomes over the state's internal structure. Such a narrow focus obscures how the racial state varies by transaction, composition, and web of interconnected institutions (Lieberman 1998). There could plausibly be, for instance, many racial states, from a racial neoliberal state (Hohle 2015) to a racial mass incarceration state (Alexander 2010) to a racial welfare state (Brown 1999) to a racial segregation state (Massey and Denton 1993) to a racial

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<sup>11</sup> Whereas sociologist Michael Omi and Howard Winant ([1986] 1994) have claimed the state's function is to equilibrate racial conflict, my focus stresses how access to and control over the state is not neutral. It has long been a white enterprise (see also Feagin 2000; Harris 1993).

representation state to a racial tax state and so on, all operating under unique circumstances with their own functional particularities. A missed opportunity to pinpoint these variations means we do not know how to specify causally the state's role in sustaining the racial order. "If all states are racial states, knowing that a state is racial provides no analytical leverage to understand how it creates racial inequalities and identities" (James and Redding 2005:193-194).

*From the Racial State to a Racial Representation and Tax State*

Because the American empire was built on slavery, so was its governing document. The Constitution represents, in the words of historian Herbert Aptheker (1976), a "bourgeois-democratic document for the governing of a slaveholder-capitalist republic" (p. 55). This means the questions that give rise to the role of government in American "democracy," as well as the state's basic architecture, are foremost racial questions. In his last book before his death, civil rights leader Dr. Martin Luther King, Jr. (1967) observed: "When the Constitution was written, a strange formula to determine taxes and representation declared that the Negro was 60 percent of a person" (p. 6). This strange formula is evidence that the framers of U.S. government, from its very inception, had political interests in defining races and distributing rewards and penalties accordingly.

With regard to the three-fifths clause, these rewards and penalties regarded how to fractionally value slave bodies to determine allocate congressional representation and direct taxation among the states. Whereas representation determines the political voice to shape government policy, taxation represents the financial "lifeblood" that makes possible what services and protections the state provides. Each is a fundamental

component of legitimate civic authority embodied in “the social contract” (Rousseau [1762] 2008), and both have the capacity to formalize group relations of inequality.

Matters of the political participation, bureaucratic administration, and distributions of public and private capital all run through representation and taxation.<sup>12</sup> Representation is important because, without the vote, disenfranchised groups lack a formal means of protecting their legally proscribed rights. As much was evident to slaves during the early republic. Though each slave counted as 60 percent a person in determining the number of representatives each state would receive, slave votes were not portioned at a 40 percent lesser rate than their voting counterparts. These votes went to slavemasters and were restricted to only white property-owning men in many states (Redding, James, and Klugman 2005), so the condition of slaves was “enumeration without representation.” Exclusionary laws surrounding the franchise deepened the formation of whiteness as a power position, one that paid real dividends like participating in government. On the contrary, disenfranchisement sealed the fate of exclusion. Even representatives sympathetic to antislavery causes, as we will see, were primed to ignore the plight of people of color generally, and slaves specifically, since holding office depends upon responding to and acting on behalf of constituents (i.e., other white people) who cast votes on their behalf (Richards 2000; see also Lawson 1985). Implicit in the

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<sup>12</sup> This point draws much insight from works on taxation within “the new fiscal sociology” (Martin, Mehrotra, and Prasad 2009; Martin and Prasad 2014), and expands it to encompass political representation. The term “fiscal sociology” is one coined by sociologist Joseph Schumpeter ([1918] 1991), though the field is quite interdisciplinary.

systematic disenfranchisement of certain groups is the normative judgment of whose interests should be represented by the state.

Part of the determination of who should access the democratic polity and have their political voice heard was shaped by perceptions of who pays taxes. When slavemaster politicians and accommodators labelled slaves a “public charge,” these groups were redefined as economic burdens rather than a source of white wealth. Slaves are not contributing citizens but helpless dependents incapable of self-determination. Seen this way, whites articulated a representative tax state akin to a “herrenvolk democracy” (van den Berghe 1967)<sup>13</sup> or “white republic” (Saxton 1990; see also Roediger 1991). As historian Camille Walsh (2016) has explained, taxes become the currency for citizenship and a pretext for exclusion. A false presumption by whites of the early republic is that they are the only ones to pay into the system—a point they used to justify sole discretion of budgetary spending.<sup>14</sup> By making these claims, founding fathers across the sectional aisle created entrenchment strategies of taxation that protected what resources and infrastructure they already possessed. It was slavery in the case of Southern states, and industry and maritime interests in regard to Northern states.

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<sup>13</sup> “Herrenvolk democracy” refers to a government installed under the pretense of inclusion, equality, and other emancipatory ideals but nonetheless uses race as an organizing principle for citizenship and political participation.

<sup>14</sup> These discourses foreshadowed those heard in the post-Reconstruction era. “[R]edemption governments, often describing themselves as the ‘rule of the taxpayer,’” wrote historian C. Vann Woodward (1971), “frankly constituted themselves champions of the property owner against the property less and allegedly untaxed masses” (p. 59). To some extent, these narratives align with those that surrounded desegregation orders following the *Brown v. Board* decision and the nation’s neoliberal turn (Hohle 2015).

Slavery was an institution that implicated all of white America. It made the economy go round, with shipments of raw materials like tobacco and cotton from Massachusetts to the Chesapeake to Charleston. Wealthy planters of the low country and the industrial manufacturers of New England alike rested their entrepreneurship upon stolen slave labor—either directly or indirectly. In both degrees of engagement, a rigid color line was drawn. Slavery made for a more perfect union, and the three-fifths clause helped codify this arrangement into law. Once enacted the law conceded the point that some Americans were free while others were not, and from this basis should flow how political representation and taxation are distributed across the union. If slavery was the “agreement with hell,” as William Lloyd Garrison ([1845] 1995) claimed, then the terms of this agreement were set by the three-fifths clause.



## CHAPTER THREE

### THE THREE-FIFTHS CLAUSE, A GENEALOGY

Reading the final text of the three-fifths clause, one might conclude that constitutional debates over taxation and representation unraveled simultaneously. They did not (cf. Rossiter [1966] 1987). They occurred on their own terms and did not converge until the ending days of the Constitutional Convention in Philadelphia. The infamous ratio did not originate, however, out of the constitutional debates. Rather, the lineage of the three-fifths clause began about a decade earlier. Its roots were planted during the Articles of Confederation in discussions over how to apportion taxes among states. From 1775 onward, the three-fifths clause failed to become law many times over for two primary reasons. Firstly, unresolved conflicts over slavery between North and South were a persistent factor, and secondly, the rule-making procedures of the Articles prevented its own salvage. Both these problems would be more squarely addressed under the United States Constitution, and the three-fifths clause would finally come into full bloom under “The Great Compromise of 1787.”

At stake was the matter of how to count slaves for the sake of determining

congressional representation and direct tax liability.<sup>1</sup> If slaves counted toward apportioning congressional representation, then states with many slaves would be advantaged. Meanwhile, if slaves counted toward apportioning direct taxation, then states with many slaves would assume larger tax liability. This positioned Northerners to prefer a zero-fifths ratio for representation and a five-fifths ratio for taxation, and Southerners to desire scales in the other directions. This chapter is a genealogy of how these political conflicts were reconciled as “the three-fifths clause” (see Table 1), at least until the “cotton states” seceded in 1860 and 1861.<sup>2</sup>

Table 1. Text of the Three-Fifths Clause in the U.S. Constitution

| <i>Provision</i>     | <i>Legal Text</i>   |
|----------------------|---|
| Article I, Section 2 | Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons. |

### **America’s First Constitution, the Articles of Confederation**

The U.S. declared its independence from Great Britain about 16 months before the Continental Congress was ready to submit its first constitution for ratification, the Articles of Confederation. By design, the Articles required unanimous consent before any

<sup>1</sup> Though “Indians” enter into the final text of the three-fifths clause, generally they were not mentioned throughout the debate. This reflects what should be considered an appalling omission by a self-proclaimed cosmopolitan group of politicians, one that denied the longstanding presence of Native Americans in favor of Eurocentric visions of civilization.

<sup>2</sup> Secession was prompted in December of 1860 when the South Carolina legislature met in Charleston to adopt the “Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union.” In January and February of the following year, Alabama, Georgia, Florida, Mississippi, Louisiana, and Texas followed suit.

national laws could be enacted or amended. Sensing some urgency since “none of the European powers will publicly acknowledge [the states] free and independent, until they are confederated” (LDC-VIII [1777] 1976:99), Congress requested the states offer their swift approval upon receipt. What they got, however, was far from swift. Many states requested amendments, causing new drafts to be completed and re-submitted for undisputed approval. Several drafts later and more than three years thereafter, Maryland was the last state to ratify in February of 1781.

If the adoption process was any indication, the Articles were a failure by most measures (Robinson 1971). Special majorities were required to accomplish even minimal tasks, and unanimity across the states was to be achieved before the national government could be conferred additional powers. These rules did not enable effective governing. They prohibited it. Government under the Confederation got nothing done, and the nation was left in chaos after the revolution. Once the ink had dried on the Treaty of Paris, many Americans feared economic turmoil. They thought it threatened to tear their nation apart faster than an invading foreign army would. Massive debts were owed to creditors, both domestic and foreign. Thirteen unique states followed their own trade policies and court systems. They even circulated their own currencies. Inflation rose as commodity values declined. On top of these problems, the state lacked an adequate mechanism to generate revenue. Debates over taxation stalled because representatives from the North and South could not agree whether slaves should be taxed, and if so, by how much.

*Early Tax Debates of the Articles*

Among the first passages regarding taxation proposed divided fiscal responsibility among the states by their corresponding population. New Englanders, and Northerners generally, wholeheartedly supported the plan, while Southerners found it unacceptable. Both sides agreed the purpose of government was to protect property. They followed the conventional wisdom of philosopher Adam Smith ([1766] 1978), who claimed: “Till there be property there can be no government, the very end of which is to secure wealth and to defend the rich from the poor” (p. 404). Where they disagreed was the issue of how to measure “property.” Counting the population to determine taxation, Southerners claimed, did not fairly distribute the fiscal responsibility. When property determined taxation but was measured by population only, they claimed Dixie would be penalized for their abundance of slaves.

Rather than throw the baby out with the proverbial bathwater, Samuel Chase of Maryland sought to salvage the tax proposal. He thought population could be a suitable measure of property pending one qualification.

Mr. CHASE moved that the quotas should be fixed, not by the number of inhabitants of every condition, but by that of the ‘white inhabitants.’ He admitted that taxation should be always in proportion to property; that this was, in theory, the true rule; but that, from a variety of difficulties, it was a rule which could never be adopted in practice. The value of the property in every state could never be estimated justly and equally. Some other measures for the wealth of the state must therefore be devised, some standard referred to, which would be more simple. (ED-I [1775] 1836:70-71)

Dissenting from this argument, John Adams of Massachusetts argued since most everyone agreed that population was a proxy for wealth, it only made sense to include black labor, enslaved or not, in the apportionment. They, too, contributed to each state’s

generation of wealth. James Wilson of Pennsylvania added that if black labor contributed so little then why not consider their emancipation. This argument did not bode well with slavemaster politicians.

Thomas Lynch of South Carolina articulated what was on the minds of many Southerners. “If it is debated, whether their slaves are their property,” he replied, “there is an end of the confederation” (JCC-V [1776] 1906:1080). Either the confederation accommodates slavery, or there would be no confederation at all. That was the price to be paid for a union with slaveholders. After giving Northerners an ultimatum, Lynch reiterated the point made earlier by Samuel Chase. “Our slaves being our property, why should they be taxed more than the land, sheep, cattle, horses, &c.?” (JCC-V [1776] 1906:1080).<sup>3</sup> Benjamin Franklin of Pennsylvania remained unconvinced.

Sidestepping whether slaves and sheep were equal, Benjamin Franklin observed a crucial difference between the two:

Slaves rather weaken than strengthen the State, and there is therefore some difference between them and sheep; sheep will never make any insurrections. (JCC-V [1776] 1906:1080)

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<sup>3</sup> Telling Northern representatives to accommodate slavery or watch the union dissolve was among the most repeated strategies of Southern representatives. This exhortation can be seen in the beginning debates of the Articles of Confederation, as seen by the comments of Thomas Lynch of South Carolina and Samuel Chase of Maryland, all the way to the enactment of the Constitution. In late July of 1787 for example, when the Constitutional Convention was finalizing a final draft of the Constitution, Charles C. Pinckney of South Carolina “reminded the Convention, that, if the committee should fail to insert some security to Southern States against an emancipation of slaves, and taxes on exports, he should be bound by duty to his state to vote against the report” (ED-V [1787] 1845:357).

His rebuttal offered an alternative to “happy slave” narratives that romanticized antebellum South as a racial utopia (see also Douglass 1845) and stroked Southern anxiety over disaffected slaves who were organizing revolutionary action (Aptheker 1943).<sup>4</sup> Franklin’s point held Southern racism accountable, claims like these did not advance the debate. They derailed it.

No longer was the debate chiefly about taxation, but the moral politics of slavery. Reminiscent of charges of racism today (Blauner [1972] 2001; Doane 2006; Essed 1991), the founding fathers would oscillate between accusations and counter-accusations of being “racist”—or its eighteenth century equivalent. These exchanges trivialized racial conflict as prejudice, ignorance, or a disease. Meanwhile, structural dimensions of slavery were obscured. Southern delegates like John Rutledge of South Carolina would preface his views with comments like “I shall be happy to get rid of the idea of slavery” but then defend the peculiar institution from government intervention (JCC-V [1776] 1906:1080). These exchanges personalized conflicts over slavery while concealing the

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<sup>4</sup> The example of opposition from Benjamin Franklin of Pennsylvania does not imply he consistently endorsed antiracism. He was obsessed with white purity, like other contemporaries of his time. Consider, for example, James Otis of Massachusetts—the same man who strongly rebuked slavery but was dismissed by his colleagues as erratic. Writing to a general English audience, he demanded respect for colonists on the basis that they, too, were free-born white subjects of Britain (Robinson 1971). He insisted his patriot brothers and sisters were untainted by blood of the indigenous or Africans. Meanwhile in *Observations Concerning the Increase of Mankind*, Franklin (1751) declared his desire for America to be a white country. More specifically, he encouraged migration of Anglo-Saxons and discouraged migration of Asians, Africans, and Germans. These groups, he thought, degraded the developing colonies as a whole (see also Feagin 2006, 2010).

institution's structural dimensions. It left the intertwined issues of slavery and taxation unresolved, and therefore sustained.

*Spoilers: A Precursor to the Three-fifths Formula*

Over a decade before the three-fifths clause was enacted under the Constitution, a version of it was introduced in debates over the Articles. It did not concern representation but taxation, even though the nation was born out of a revolutionary slogan that linked the two (Wills 2003). Under the Articles, representation was determined by equal votes across the states. They followed one vote for one state scheme that can be traced to the Stamp Act Congress of 1765 (Robinson 1971).<sup>5</sup> It was evident to the Continental Congress that the same representational plan could not be adapted and applied to taxation. This would mean less populous states like Rhode Island, Connecticut, and South Carolina would be subjected to the same tax liability as populous states like Virginia and New York. Congressional members knew no such confederation would occur under such terms. A population-based plan seemed to be the most practical alternative, so long as delegates could resolve their differences over how to value slave labor.

Representatives across the sectional aisle bought into pejorative stereotypes about slave labor, and black labor in general. They agreed that it produced less than white labor. That was, however, where their agreement ended. The question that remained was how

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<sup>5</sup> Though the Stamp Act Congress determined a representational rule that in part survives to this day (the U.S. Senate), their primary concerns for meeting in 1765 did not regard these matters. They were more interested in strategizing ways of resisting British Parliament and what they saw as oppressive taxation.

much? Benjamin Harrison of Virginia offered a compromise between the two sides in late July 1776, suggesting that slaves should only be partially considered:

he affirmed that slaves did not do so much work as freemen, and doubted if two effected more than one. that [sic] this was proved by the price of labor, the hire of a labourer [sic] in the Southern colonies being from 8 to 12 £, while in the Northern it was generally 24 £. (JCC-V [1776] 1906:1100)

Since slave labor was only half as productive as white labor, Harrison reasoned that “two slaves should be counted as one freeman” (JCC-V [1776] 1906:1100). James Wilson opposed the proposal. It cut taxes too much for slavemasters and in the process encouraged the expansion of slavery. The plan also reduced Southerners’ obligation to pay for the war (i.e., requisitions) as well as the number of soldiers they would provide for common defense (see also Einhorn 2006).

Aside from James Wilson’s dissent, no one else engaged Benjamin Harrison’s proposal. It was disregarded without debate. Instead, the delegates reconsidered Lynch’s original plan, which would apportion taxes by the white population only. When voted upon, states divided along sectional lines<sup>6</sup> and tax debate stalled for more than a year. Nonetheless, Harrison’s idea unknowingly foreshadowed the three-fifths law to come. During the meantime, the Continental Congress opted for a makeshift compromise that would not last and almost plunge a nation to ruin.

*From a “One-Halves” Clause to Article VIII*

In October of 1777, John Witherspoon of New Jersey introduced an alternative that would eventually be adopted as Article VIII. His plan was to set tax quotas for each state

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<sup>6</sup> Georgia’s vote was divided.



based on land- and house- values. Representatives from all five New England states opposed the plan, at least at first. They felt the plan was not evenhanded, as their land was appraised at much higher value than the rest of the country. Compound that bias on top of letting slaves go untaxed altogether, New Englanders felt they would be carrying everyone else's tax burden. The plan was amended slightly before being taken to a vote:

That the proportion of the public expence [sic] incurred by the United States for their common defence [sic] and general welfare, to be paid by each State into the treasury, be ascertained by the value of all land within each State granted to, or surveyed for any person, as such land, and the buildings and improvements thereon shall be estimated, according to such mode as Congress shall, from time to time, direct and appoint. (JCC-IX [1777] 1907:801)

Five votes to four approved the plan, and this text became ratified (eventually) under the Articles.

Roger Sherman of Connecticut predicted Article VIII would end in miserable failure. He was right on most counts. The plan was virtually unenforceable because it lacked a centralized administrative capacity to carry it through. Article VIII called for a tax plan based on a census of land and home values that had yet to be collected.

“[However] only a few states,” as historian Robin Einhorn (2000) has written, “had the capacity to supply Congress with population totals, much less comprehensive data on real estate values” (p. 159). The plan relied upon voluntary compliance from states to develop a standardized means of taxation, reconcile divergent land valuations across the nation, and deliver the proceeds upon congressional request.

To accomplish this deed, “We must imagine them doing one of the following: (1) sending a corps of trained assessors into the states, (2) relying upon state officials to observe uniform rules, or (3) letting state officials proceed and then agreeing on how to

equalize incommensurate results. Not only must we imagine one of these scenarios unfolding, but ... we must imagine it unfolding during the Revolutionary War” (Einhorn 2006:124-125). Article VIII would likely have been unworkable during times of peace. The War of Independence made it impossible. Real estate values not only fluctuated, but were under constant occupation or devastation. Most all states could not develop standardized means of survey and evaluation even if they wanted to. Among the political advantages, however, of a real estate-based over a population-based tax plan was that it permitted statesmen to skirt the sensitive issue of slavery.

What the plan possessed in political savvy, it lacked in deliverable results. Article VIII provided no adequate means to generate revenues for the confederation. As the conflict with Britain waned, American soldiers were on the verge of mutiny. Many had served their country and willingly sacrificed their livelihood without pay. Meanwhile, American politicians made promises they did not keep. Soldiers’ patience grew thin and escalated into violence in some circumstances (Finkelman 1996; Robinson 1971). Article VIII was fundamentally defective and did not alleviate this situation. It made it worse. As an unfollowed tax plan, it structurally set up the government for fiscal failure (Brown 1993; Rakove 1979).

*Should a Government that Cannot Pay for Itself be Kept?*

In diplomatic correspondence to Gouverneur Morris of Pennsylvania, Benjamin Franklin remarked, “Our people certainly ought to do more for themselves. It is absurd the pretending to be lovers of liberty while they grudge paying for the defence [sic] of it” (RDC-VI [1782] 1889:160). Nearly five years after the introduction of a land- and house-

based tax, a growing consensus among Congress realized they needed an alternative (Rakove 1988).<sup>7</sup> War-making, after all, depends upon the state's ability to locate more capital and resources (Tilly 1985, 1990). Inherently this meant the establishment of a federally recognized currency, stripping states' powers to regulate national commerce, making arrangements with domestic and foreign creditors, financing military efforts with supplies and support, and devising a tax scheme to help pay for it all.

In a circular letter to the states, the delegates wrote:

Had it not been for the aid of Money granted by our generous Ally—for the providential arrival of his Fleet in the Chesapeak [sic] and almost a miraculous coincidence of fortunate Circumstances, which by the blessing of God, were happily improved, our public Affairs must now have been in the most distressing Circumstances. (LDC-XVIII [1781] 1976:386)

Questions of how to effectively finance a central government weighed on the delegates, as did the specifics of these policies (see also Rakove 1979). Delegates needed to depart from the Articles, which respected state sovereignty to its own detriment. One-by-one states began to default on their war debts as conflict with Britain abated (Robinson 1971).

No mechanism was in place for the national government to hold states accountable. The delegates went on to write:

This inattention in the States has almost endangered our very existence as a People, and indeed it is to the overruling providence of the great Governor of the Universe, that we must ascribe our political Salvation at this Day, amidst so many Tryals [sic], difficulties & distresses as have been struggled with in this complicated & bloody War with one of the first Powers in the Universe. (LDC-XVIII [1781] 1976:386)

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<sup>7</sup> A group of dissenters, led by Richard Henry Lee of Virginia and George Clinton of New York, preferred to keep the Articles. They appreciated the emphasis on state sovereignty and restrained government. Rather than scrap it altogether, these delegates preferred amendments that granted temporary powers so that national government could generate revenue and regulate commerce.

It had become clear a stronger central government was needed. The founders needed to frame one with the capacity to develop, implement, and administer an assessment and appraisal system for collecting taxes, as well as offer assurance to European financiers like France so that additional loans could be procured (Einhorn 2006).<sup>8</sup> The livelihood, functionality, and security of America depended upon it.

American nationalism was the child of the revolution, not its parent. A deep desire to accommodate political differences—ones rooted in region, religion, economy, and above all slavery—served to cement an otherwise loose group of independent colonies. This spirit of accommodation was, in part, a matter of security and self-preservation. As Benjamin Franklin remarked at the signing day of the Declaration of Independence, “we must, indeed all hang together, or most assuredly we shall all hang separately” (qtd. in Huang 1994:52). These words may seem glib now, but when they were said everyone knew of potential validity of such a pronouncement. The memory of the War of Independence further fostered a sense of common history and shared experiences. It also set a tone of urgency for state-building. Differences between North and South, though making for variation and complexity, helped knit together an interdependent socio-political country whereby slavery was at the center.

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<sup>8</sup> Early state formation of the U.S. represents, on many counts, what sociologist Charles Tilly (1985) described as a “protection racket.” This refers to when states trade or sell security to its citizens in exchange for revenues, or at least the negotiated consent to extract these resources.

*From Article VIII to Taxes by Impost and Population*

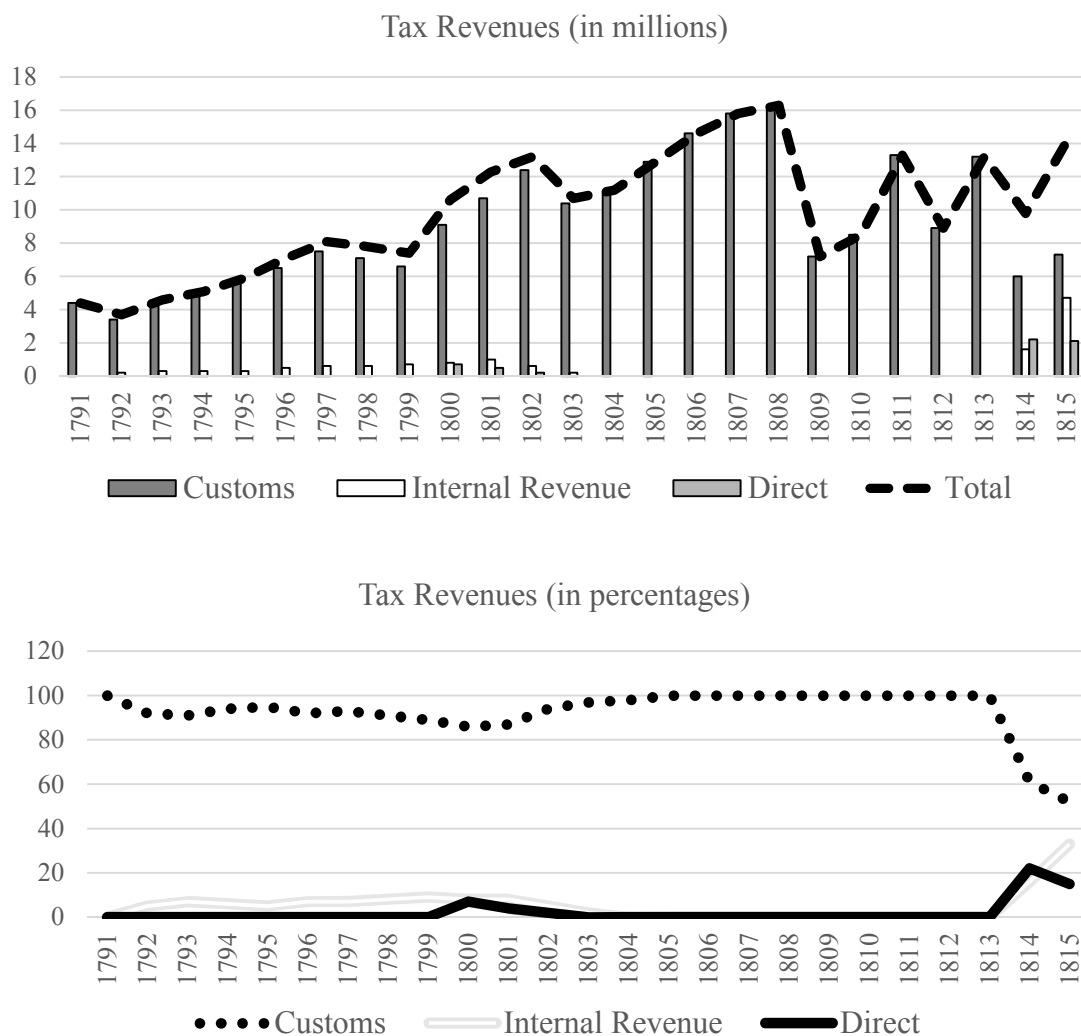
America was on the brink of ending before it began. In 1783, James Madison of Virginia and Alexander Hamilton of New York jointly designed an alternative tax plan they thought might save the nation (JCC-XXV [1783] 1922). It introduced a two-pronged strategy that relied upon 1) an impost and 2) a population-based tax. The former half of this blueprint was adopted after nine congressional sessions, most federal revenues would be generated by the impost during America's formative years (Einhorn 2000). Basically, this was an ad valorem duty of 5 percent that would be levied on imports, with higher duties on certain goods like wine, spirits, tea, coffee, sugar, pepper, and molasses. These compiled about 90 percent of federal revenue in any given year during the 1790s, and about 100 during the 1800s (see Figure 1). Whereas tax plans for the real estate option needed a standardized assessment plan to be devised, tax revenues could be immediately generated with the impost wherever imported goods were exchanged.

Delegates from the North and South liked the idea for its practical ingenuity (at least at first). Jean-Baptiste Colbert, the finance minister of Louis XIV before the French Revolution, once declared,

The art of taxation consists in so plucking the goose as to obtain the largest amount of feathers with the least possible amount of hissing. (qtd. in Evans [1665] 1968:680)

The impost was ingenious in this way. It was an implicit tax that did not impose the will of the people, and no one was certain from whom these revenues would come. There were no reliable data available to inform such debate.

Figure 1. Composition of Federal Taxation by Dollars and Percents, 1791-1815



Source: Dewey [1903] 1934.

Even Adam Smith ([1776] 2007) praised the qualities of consumptive taxes that the impost seemed to embody:

the circumstance that every man's contribution is altogether voluntary; it being altogether in his power, either to consume, or not to consume, the commodity taxed. Where such taxes, therefore, are properly assessed, and upon proper commodities, they are paid with less grumbling than any other. When they are advanced by the merchant or manufacturer, the consumer, who finally pays them, soon comes to confound them with the price of commodities, and almost forgets that he pays the tax. (p. 583)

The impost represented a “hidden,” yet effective means of state finance. It maximized revenue and minimized protest at the same time. Despite these advances over the previous system, the impost’s administrative capacity remained vulnerable. State finance could be brought to a screeching halt, for example, should an enemy blockade port cities and interrupt commerce. As much happened during the War of 1812. These revenues dwindled to nearly half the federal tax composition.

*The Three-fifths Clause that Almost Was*

Out of concern for protection, James Madison and Alexander Hamilton pitched a second option for moments of national emergency: direct taxation. The plan rehashed earlier questions earlier debates had not answered. Namely, should slaves be counted? And if so, how much? This time around, however, Benjamin Franklin did not stir Southern fears over slave insurrections. As Franklin crossed the proverbial pond to England and France for diplomacy during his last decade on Earth, multiple times at that, “father time” had run its course. His political influence over the Constitution waned in comparison to his presence during the Articles, with him often having James Wilson read his arguments aloud because he lacked the strength. In fact, political fatigue had grown on the debate as a whole while massive war debts loomed overhead. Southern and Northern representatives may have disagreed over whether slaves should be counted, but these factors were compounded by the experience of a failed government. This made for a context of compromise. Northern representatives were more open to reconsider Benjamin Harrison’s proposal introduced years before: counting slaves as half the value of free persons.

Delegates from the North and South disagreed with Benjamin Harrison's original calculation. Southerners said slave productivity was lower, and Northerners said it was higher. The deadlock between the two sides caused it to fail. When tensions lingered over how to count slaves, James Madison offered an alternative:

[I]n order to give proof of the sincerity of his professions of liberality, he would propose that slaves should be rated as five to three. (ED-V [1783] 1845:79)

He and others thought this to be a fair compromise between North and South over taxation. They thought the plan to be among the only feasible alternatives for generating revenue outside the impost.

Writing a letter to the states, members of Congress urged a swift passage:

The ratio ultimately agreed on was the effect of mutual concessions; and if it should be supposed not to correspond precisely with the fact, no doubt ought to be entertained that an equal spirit of accommodation among the several legislatures will prevail against inequality which may be calculated on one side or the other. (ED-I [1783] 1836:98-99)

The three-fifths proposal gained a majority votes two times over, first with a vote of five to three and later eleven to two (see also Einhorn 2006; Wills 2003). Because it was advanced under the Articles, however, unanimous approval was required for an amendment. Nonetheless, the majority approval of a three-fifths ratio set an important precedent that would be carried over to the Constitution.

### **From the Articles to the Constitution**

The Articles described the union but did not empower it. That is why it failed. Learning from experience, American statesmen gathered at the "Annapolis Convention"<sup>9</sup> in 1786

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<sup>9</sup> The "Annapolis Convention" as it came to be known was formally titled "Meeting of Commissioners to Remedy Defects of the Federal Government."



to entertain the possibility of revising the constitution. They wanted something with broader capacity for regulating commerce and providing for national defense. The urgency for reform was made clear by rebellions across the nation. From 1786 to 1787 in Massachusetts, for example, revolutionary veterans-turned-farmers threatened violence upon merchants, bankers, and the courts (Richards 2002). Many of these veterans were never compensated for their services in the War of Independence, and rather than receive relief for delinquent tax bills and outstanding debts their properties were foreclosed upon. They took action into their own hands as a result, and attempted to occupy a national weapons arsenal. Some died in their resistance; others were hanged. Eventually, the rebels were driven out by militia. This was Shays' Rebellion. It sent ripples throughout the nation large enough to draw George Washington of Virginia back into political life, and ultimately the nation's first presidency. Many politicians knew the nation was on the brink of collapse.

Elite white men knew their own security, as well as their fortunes, rested upon the establishment of a stable political order (Brown 1987). The Annapolis Convention of 1786 set in motion the Philadelphia Convention for the following year. State delegates met in the summer of 1787, though they were authorized only to amend the Articles. Replacing them, however, was the unspoken intent. Led by supporters of a new constitution, namely James Madison and Alexander Hamilton, these statesmen moved to replace rather than revise the old government with a new one. The Convention lasted from May to September, and the most contentious debates surrounded matters of slavery (Feagin 2000)—representation and taxation included. Representation was among the first

items debated, and taxation among the last. Both were essential in devising a government that represented “the people” and generated enough revenue to sustain itself.

### *The Representation Side of Debate*

Among the first debates of the new Constitution regarded how political voice should be divided (Rossiter [1966] 1987). Less populous states like New Jersey preferred representatives to be divided equally among all states. That way the influence of larger states would not drown out the voices of smaller ones. More populous states like Virginia preferred a population-based plan. Claiming population was a proxy for wealth, and wealth was the basis of the body politic, delegates from these states asked why they should disproportionately commit resources to a union that was reluctant to offer a corresponding share of political influence (see ED-V [1787] 1836:178). Then there were outliers like Georgia and South Carolina. Even though Georgia was the least populous state of the union and South Carolina’s population compared more to Connecticut than Virginia, representatives from these states insisted political representation ought to be proportional to population not property value. Their insistence on this point was adamant and immovable. Rather than negotiate this point, they were ready to walk away from the union altogether.

Upon first glance, debates over representation seemed to sort out between states with and without many people. That first glance would be wrong. Delegates from Georgia and South Carolina were political opportunists. Conceding representation to population would have undercut their interests initially, but as they imported more people through the slave trade, these politicians were sure to gain political sway. James Madison

observed “that the states were divided into different interests, not by their difference of size, but by other circumstances ... principally from the effects of their having, or not having, slaves. These two causes concurred in forming the great division of interests in the United States” (ED-V [1787] 1845:264). That is, conflicts over representation were not really about representation. They were mainly about slavery (see also Feagin 2000).

Table 2. Southern Congressional Representation by Varied Enumeration Plans\*

| <i>Representation Plan</i>                                | <i>Total Units</i> | <i>Southern Portion</i> | <i>Southern Percentage</i> |
|---|--------------------|-------------------------|----------------------------|
| Articles of Confederation<br>(1 representative per state) | 13                 | 5                       | 38.0 %                     |
| Total Inhabitants<br>(slaves equal to freepersons)        | 3,929,000          | 1,962,000               | 49.9                       |
| Freepersons Only<br>(slaves not counted)                  | 3,231,000          | 1,304,000               | 41.0                       |
| Three-fifths Ratio<br>(5 slaves equal 3<br>freepersons)   | 3,651,000          | 1,700,000               | 46.5                       |
| <i>Actual Apportionment</i>                               |                    |                         |                            |
| Senate  |                    |                         |                            |
| in 1789   | 13                 | 5                       | 38.0 %                     |
| in 1792   | 15                 | 6                       | 40.0                       |
| House of Representatives                                  |                    |                         |                            |
| in 1789   | 65                 | 29                      | 44.6                       |
| after 1790 Census   | 105                | 47                      | 44.8                       |

\* Adapted from Solberg 1958.

All population estimates derive from the 1790 Census and are rounded to the nearest thousand.

Consider the representation plans discussed thus far (see Table 2). The “one state, one vote” rule under the Articles left Southern states with only 38.0 percent of the vote. By switching to a proportional plan that counted slaves and freepersons, they stood to gain about 12 points in political influence. Estimates from the 1790 Census indicate that 49.9 percent of the U.S. population resided in the South. Were the plan only to consider freepersons, Southern representation would dwindle to 41.0 percent of the union.

Meanwhile, the plan that would be later introduced, the three-fifths ratio, would place Southern representation at 46.5 percent. Whichever strategy pursued, it was clear to Southern delegates they had more to politically gain by linking representation to population and counting slaves within this number.

By June 30, 1787, those who supported the population-based plan had enough votes of support for passage. They worried, however, that this would alienate delegates from smaller states and make a delicate union in the making even more fragile. Nearly two weeks earlier William Paterson of New Jersey had introduced another representation scheme otherwise known as “the New Jersey Plan.” Rather than use population as the basis for representation, it reverted back to the one state, one vote rule of the Articles. James Madison acknowledged the divide, between both small and large states as well as slaveholding and non-slaveholding states, and offered an alternative: a bicameral congress. In the Senate branch, no slaves would be counted toward representation and states could have an equal distribution of senators. In the House, slaves would be counted alongside freepersons to determine the congressional representation of each state. “By this arrangement,” Madison remarked, “the southern scale would have the advantage in one House, and the northern in the other” (ED-V [1787] 1845:265). The whole matter of how to count slave, and to what extent, still lingered.

Wanting unity over division, an unlikely candidate proposed what became the three-fifths “compromise” over representation. It was James Wilson, the same Pennsylvanian politician who dismissed Benjamin Harrison’s one-halves tax enumeration plan under the Articles and helped formalize the 1808 slave trade ban (see also

Finkelman 1988). Now Wilson and other Northern representatives stood on the same political sideline as slavemaster politicians like Charles Pinckney, who had lobbied the motion and motioned to second its adoption. Dissenters from the North included Elbridge Gerry of Massachusetts and Gouverneur Morris of Pennsylvania, but their motivations hardly stood on the right side of history. Gerry claimed “that three fifths of the blacks are to be represented, as if they were freemen” (ED-V [1787] 1845:553).<sup>10</sup> He was against the three-fifths clause because it degraded freepersons of the North. Similarly, Morris said “that the people of Pennsylvania would revolt at the idea of being put on a footing with slaves. They would reject any plan that was to have such an effect” (ED-V [1787] 1845:298). Perhaps these arguments were convincing enough for the vote on July 11. The three-fifths plan failed with four in favor and six against the proposal. What difference can a day make? A great deal, it seems. On July 12, a similar provision prevailed with a six-to-two vote. This time it linked representation and taxation.

*Linking Representation and Taxation, Acknowledging Slavery as the State's Bedrock*

On July 12 of 1787, Gouverneur Morris suggested a “clause empowering the legislature to vary the representation according to the principles of wealth and numbers of inhabitants, a proviso, ‘that taxation shall be in proportion to representation’” (ED-V [1787] 1845:302). He was met with resistance from Pierce Butler of South Carolina, as well as George Mason of Virginia, that regurgitated, yet again, protests over how to

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<sup>10</sup> The opposition of Elbridge Gerry of Massachusetts echoed the same concerns voiced earlier by Gouverneur Morris of Pennsylvania, who claimed “the people of Pennsylvania will never agree to a representation of negroes” (ED-V [1787] 1845:303).

classify and value slaves (see also FR-II [1787] 1911:222). Are they persons? Should they get to vote? Are they property? If so, how come no other property was considered in determining representation? When Southerners felt these questions were taken too far, they threatened to turn their back on the union. This time it was William Davie who objected. He “said it was high time to now speak out. He saw that it was meant by some gentlemen to deprive the Southern States of any share of representation for their blacks. He was sure that North Carolina would never confederate on any terms that did not rate them at least as three fifths” (ED-V [1787] 1845:302-303).<sup>11</sup>

Gouverneur Morris later qualified his proposal, suggesting that any objections “would be removed by restraining the rule to direct taxation” (ED-V [1787] 1845:302).<sup>12</sup> Making this amendment in the spirit of accommodation, he assured slavemasters they would no longer have to worry about indirect taxes on Southern staples like tobacco, rice,

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<sup>11</sup> Like many other representatives, William Davie of North Carolina used the terms slaves and blacks interchangeably to refer to the same group. This suggests he overgeneralized all black Americans to hold a status of slaves, ignoring free black Americans altogether.

<sup>12</sup> Though I am less concerned with the definition of direct taxation than I am the racial politics surrounding it, let me offer a cursory definition since the term centers the discussion at hand. On several occasions, representatives from the North and South use the term interchangeably with a “capitation” (per head) tax that was based on population. The term, though, was not so straightforward to all representatives. Rufus King of Massachusetts, for example, asked, “what was the precise meaning of direct taxation” but “[n]o one answered” (ED-V [1787] 1845:451). A few years later its meaning became even more unclear when the case of *Hylton v. United States* (1796) was heard before the U.S. Supreme Court, as judges divided between defined carriage taxes as a direct or indirect tax. Direct taxation turned out to be a more contested term than perhaps the founding fathers realized (Einhorn 2006). Its definition has been revised or clarified many times over (e.g., *Pollock v. Farmers’ Loan and Trust Company* [1895], *Pacific Insurance Company v. Soule* [1868], *Springer v. United States* [1881], the 16<sup>th</sup> Amendment of 1913, *Graves v. People of the State of New York* [1939], *South Carolina v. Baker* [1988]) during the past three centuries (Ackerman 1999).

sugar, indigo, and later cotton. These were the same taxes on exports, imports, and consumptions that slavemasters and their sympathizers thought would discourage the peculiar institution or the slave trade.

The amendment would not be enough, however, unless slaves were also counted toward representation. Rufus King of Massachusetts acknowledged as much. “This inequality in the appointment of representatives,” he said, “was not misunderstood at the adoption of the constitution” (FR-III [1818] 1911:429). Northern representatives chose to concede because that was the only option the South offered. King went on to say:

the states in which slavery is prohibited, ultimately, though with reluctance, acquiesced in the disproportionate number of representatives and electors that was secured to the slave-holding states. The concession was, at the time, believed to be a great one, and has proved to have been the greatest which was made to secure the adoption of the constitution. (FR-III [1818] 1911:430)

Without extra protections for slavery, there would be no United States. Upon its adoption, the three-fifths clause implicitly acknowledged slavery, sanctioned the institution by the state, and rewarded everyone not subjected to it.

Though the three-fifths clause sanctioned slavery, it transformed how the founding fathers discussed it. Conflicts over slavery were no longer waged on the battleground over morality, more or less. These debates shifted to other terrains, like procedural arguments over whether taxes were uniform and if representation was equal across states. A challenge to slavery was off the table when the issues were discussed this way. Instead, the question that concerned these elite white men was how to count slaves. What increment of the black slave body would be appropriate to appease elite white men of both sections of the union? After more than ten years of debate, three-fifths a person settled that argument.

## CHAPTER FOUR

### INNOCENCE CONSTITUTES THE CRIME

Writing to his nephew 100 years after Emancipation, essayist James Baldwin ([1962] 1991) warned, “[T]his is the crime of which I accuse my country and my countrymen, and for which neither I nor time nor history will ever forgive them, that they have destroyed and are destroying hundreds of thousands of lives and do not know it and do not want to know it.... But it is not permissible that the authors of devastation should also be innocent. It is the innocence which constitutes the crime” (p. 5-6). Over a half-century before Emancipation, slavemasters and accommodators alike saw themselves as irreproachable for the peculiar institution of slavery—guilty of no crime. They practiced habitual misrecognition, akin to what philosopher Charles Mills (1997) has described as “an agreement to *misinterpret* the world, an inverted epistemology, an epistemology of ignorance” (p. 19, emphasis original).

Many of the founders believed conflict was absent from their racial world, and there is no need for reconciliation or restoration among unequal races (Jackman 1994). There is no history of enslavement in which they were active participants, as the narrative goes, so how could they be implicated otherwise? Dominance is secured through the practice of white invisibility, or what sociologist Jennifer Pierce (2012) has labeled as “the race for innocence” (p. 64). Early white Americans proclaimed their innocence even



as they were politically sensitized to matters of slavery. This sensitivity was blind to actual slaves however. Their visions of liberty were more of the metaphorical kind, where they were the ones in chains and tyrannical Britain was the slave driver. On the subject of chattel slavery, however, founding fathers like John Adams of Massachusetts admitted that they had never given it much thought (Robinson 1971). It was a tacit nonrecognition of strategic ignorance or marginal consideration that routinized a disregard for slaves' humanity (Jung 2015; Mills 1997).

### **Everyone is to Blame, Except the Slavemasters**

Most times Americans looked outward not inward. They absolved themselves from slavery as though the institution was propagated by everyone else but themselves. Those who cast aspersions on this claim were ostracized as erratic and dismissed as irrelevant, similar to how contemporary history textbooks characterize abolitionist John Brown if they acknowledge him at all (Loewen [1995] 2007).<sup>1</sup> When James Otis of Massachusetts and Benjamin Rush of Pennsylvania, for example, pinpointed the hypocrisy of crying liberty from British despotism while defending slavery on the home front, their fellow

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<sup>1</sup> John Brown was a visionary abolitionist intent on freeing the slaves, with violence if necessary (Du Bois [1909] 2001). In October of 1859, on the eve of the Civil War, he led a multiracial group in attempt to raid the U.S. arsenal at Harpers Ferry, Virginia. Standing alongside 21 people, Brown and his insurgents were met with force by Colonel Robert E. Lee and a platoon of marines. Brown would be captured, as would several others, and 10 of his men died in battle or shortly thereafter due to fatal wounds (two of his sons included). He was convicted of treason and sentenced to death by hanging. In his last words, Brown (1859) left the earth with these prophetic words: "Now, if it is deemed necessary that I should forfeit my life for the furtherance of the ends of justice, and mingle my blood further with the blood of my children and with the blood of millions in this slave country whose rights are disregarded by wicked, cruel, and unjust enactments,—I submit; so let it be done!" Just over a year later, the first shots of the Civil War were fired at Fort Sumter.

Americans dismissed them as unfit for political leadership. Others like Henry Laurens of South Carolina worried about the ramifications that would occur should others learn he was sympathetic to dangerous doctrines like abolition (Robinson 1971).<sup>2</sup> Like other patriots from the South, however, he later amended this position to blame the British for the horrid of American slavery. They were to bear the blame, never mind inconvenient facts of the colonial-sponsored slave trade, a booming industry of slave dealers in Boston, New York, and Charleston, and a burgeoning planter class across the South.

According to John Tyler of Virginia, “[Slavery] was one cause of the complaints against British tyranny, that this trade was permitted. The revolution had put an end to it; but now it was revived. He thought nothing could justify it” (ED-III [1788] 1836:454). In an early draft of the Declaration of Independence, Thomas Jefferson of Virginia ([1776] 1950) blamed King George III for slavery. The king was waging, he argued, a “cruel war against human nature itself, violating its most sacred rights of life and liberty in the persons of a distant people who never offended him, captivating them and carrying them into slavery in another hemisphere, or to incur miserable death in the transportation thither” (p. 426). Jefferson ([1776] 1950) went on to claim the king would block the colonists’ noble efforts of abolition. “Determined to keep open a market where MEN should be bought and sold, [the king] has prostituted his negative for suppressing every

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<sup>2</sup> It is worth noting, however, that the opposition to slavery from Henry Laurens of South Carolina was not because he valued the integrity of black lives. Rather it was because he worried about slavery’s effects on “the moral development of young white men” (Robinson 1971:471, fn90).

legislative attempt to prohibit or to restrain this execrable commerce” (Jefferson [1776] 1950:426).

The passage prompted much debate over slavery among delegates, and was later dropped for an ambiguous phrase that indicted King George III for inciting “domestic insurrections among us.” This revision was agreed upon, in part, because the colonists saw the king as stirring up slave revolts with the alluring promise of liberty. Elsewhere in the early draft, Thomas Jefferson ([1776] 1950) declared,

[the king] is now exciting those very people to rise in arms among us, and to purchase that liberty of which *he* has deprived them, by murdering the people upon whom *he* has obtruded them; thus paying off former crimes committed against the *liberties* of one people with crimes which he urges them to commit against the *lives* of another. (p. 426, emphasis original)

These words were scratched from the final draft, according to Jefferson’s reflections, out of consideration for his fellow statesmen in the Deep South.

George Mason of Virginia echoed John Tyler and Thomas Jefferson. He claimed slavery “was one of the great causes of our separation from Great Britain. Its exclusion has been a principal object of this state, and most states in the Union” (ED-III [1788] 1836:452). The British government, he claimed, “constantly checked the attempts of Virginia to put a stop to it” (FR-II [1787] 1911:370). Not one to hoard culpability, Mason also faulted Africans for slavery:

Under the royal government, this evil was looked upon as great oppression, and many attempts were made to prevent it; but the interest of the African merchants prevented its prohibition. (ED-III [1788] 1836:452)

Projecting blame elsewhere, John Tyler, Thomas Jefferson, and George Mason implied they were products of circumstance at worst and lovers of liberty at best. This love of

liberty was made evident, they argued, by a collective agreement to ban slave trade beginning in 1808.

### **Progress Otherwise Known as Status Quo**

Now that the revolution was over, not even states where human bondage was a stronghold wanted the slave trade anymore. The exception was South Carolina and Georgia. According to George Mason,

Maryland & Virginia he said had already prohibited the importation of slaves expressly. N. Carolina had done the same in substance. All this would be in vain if S. Carolina & Georgia be at liberty to import. The Western people are already calling out for slaves for their new lands; and will fill that Country with slaves if they can be got thro' S. Carolina & Georgia. (FR-II [1787] 1911:370)

While singling out the two states who remained vested in the slave trade, Mason condemned the slave trade in no uncertain terms. “Every master of slaves is born a petty tyrant,” he claimed. “They bring the judgment of heaven on a Country” (FR-II [1787] 1911:370). He almost went as far as a full frontal on the institution—almost. In a speech-turned-tirade against slavery, he concluded with the suggestion that government only have the power to end the slave trade but not the institution.

Why? Though George Mason’s attack on the slave trade was of biblical proportions, his cardinal sin was lying by omission. What he failed to mention was that Southern states like Virginia did not need any more slaves. They were plentiful. By cutting off supply to where the wealthiest of the wealthy vested their capital (i.e., human bondage), the value of slaves was sure to increase. So would Mason’s wealth portfolio. It is as though the more he clung to claims of liberty and freedom, the further he stood from empathizing with slaves. The point was not lost on everyone. James McHenry of Maryland, which also had a slave surplus, observed “a prohibition of Slaves into S.

Carolina George etc [sic]—would be a monopoly in their favor. These States could not do without slaves—Virginia etc would make their own terms for such as they might sell (FR-II [1787] 1911:378). Charles C. Pinckney of South Carolina also noticed. “As to Virginia, she will gain by stopping their importations,” he said. “Her slaves will rise in value, and she has more than she wants” (ED-V [1787] 1845:459). An end to slave importation would bolster the value of slaves, and by extension, it would deepen the pockets of Virginian slavemasters.

Nonetheless, most delegates outside of Georgia and South Carolina shared George Mason’s enthusiasm to see an end to the slave trade. James Iredell, Sr. of North Carolina thought of the possibility more like an unattainable dream. It was almost certain never to come true.

[W]ere it practicable to put an end to the importation of slaves immediately, it would give me the greatest pleasure; for it certainly is a trade utterly inconsistent with the rights of humanity, and under which great cruelties have been exercised. When the entire abolition of slavery takes place, it will be an event which must be pleasing to every generous mind, and every friend of human nature; but we often wish for things which are not attainable. (ED-IV [1788] 1836:100)

An end to slavery was unattainable, he argued, because of the strong-armed politics of representatives from Georgia and South Carolina. Oliver Ellsworth of Connecticut “was afraid we should lose two States, with such others as may be disposed to stand aloof, should fly into a variety of shapes & directions, and most probably into several confederations and not without bloodshed” (FR-II [1787] 1911:375).

Any time the threat of slavery loomed, Georgia and South Carolina simply threatened to abandon the union. James Iredell, Sr. continued with his apologetic support of slavery: “It was the wish of a great majority of the Convention to put an end to the

trade immediately; but the states of South Carolina and Georgia would not agree to it.... I heartily wish more could have been done” (ED-IV [1788] 1836:100-101). With rhetoric like this, Southern delegates like George Mason and James Iredell, Sr. and Northern delegates like Oliver Ellsworth painted a romanticized picture that most states opposed slavery and sought ways to end it. Therefore, any possibility of transcending this obstructionism and putting an end to the slave trade would be cause for celebration.

Before letting anyone else enter into celebration, James Iredell, Sr. asked, “Where is there another country in which such a restriction prevails?” (ED-IV [1788] 1836:101).

Then, he answered his own rosy question with a rosy answer:

We, therefore, sir, set an example of humanity, by providing for the abolition of this inhuman traffic, though at a distant period. I hope, therefore, that this part of the Constitution will not be condemned because it has not stipulated for what was impracticable to obtain.... (ED-IV [1788] 1836:101)

Others shared in the self-congratulatory sentiment. James Madison of Virginia said, “Under the Articles of Confederation, it might be continued forever; but, by this clause, an end may be put to it after twenty years. There is, therefore, an amelioration of our circumstances” (ED-III [1788] 1836:453).

*Northern Accommodation, Hearing What They Wanted*

The spirit of progress crossed sectional borders. Northern delegates thought slavery’s days were numbered, so they preferred not to intrude. Roger Sherman of Connecticut, for example, offered the following advice to his Northern colleagues: “he thought it best to leave the matter as we find it. He observed that the abolition of slavery seemed to be going on in the U.S. & that the good sense of the several States would probably by degrees compleat [sic] it” (FR-II [1787] 1911:370). Oliver Ellsworth reiterated these

sentiments. “Let us not intermeddle. As population increases; poor laborers will be so plenty as to render slaves useless. Slavery in time will not be a speck in our Country. Provision is already made in Connecticut for abolishing it. And the abolition has already taken place in Massachusetts” (FR-II [1787] 1911:371).

In both cases, Roger Sherman and Oliver Ellsworth preferred a do-nothing style of politics when it came to the peculiar institution. Such inaction and lack of engagement might be labeled as what sociologist Tyrone Forman (2004) has termed “racial apathy” (see also Forman and Lewis 2006, 2015; Pettigrew and Meerten 1995). These statesmen were not overwhelmed by a sense of urgency or wrongdoing. They were not torn between upholding freedom or slavery. By contrast, their disposition was a non-dilemma (DiTomaso 2013) and an indifference for black humanity altogether (Forman 2004; Forman and Lewis 2006).

It is not as though Roger Sherman and Oliver Ellsworth denied slavery’s existence, or endorsed white supremacy through direct participation in human bondage. When told to keep their hands off slavery, their responses fell silent. The way silence works in this context, to adapt the words of social theorist Michel Foucault (1978), “is less the absolute limit of discourse ... than an element that functions alongside the things said” (p. 27). Alongside endorsements of slavery, the absence of words from Sherman and Ellsworth qualified as their own compliance. A general lack of concern meant the outcome remained the same. They resolved whatever problems they may have had with

slavery by evading it.<sup>3</sup> The national government would have few regulatory powers of slavery, aside from the ban on slave trade.

Stopping the slave trade would not end the institution of slavery. Commenting on the 1808 agreement to ban the slave trade, an accord formalized under Article 1, Section 9 of the Constitution, Charles C. Pinckney explained:

The intention was, to give Congress a power, after the year 1808, to prevent the importation of slaves either by land or water from other countries. The word import, includes both, and applies wholly to slaves. Without this limitation, Congress might have stopped it sooner under their general power to regulate commerce. (FR-III [1787] 1911:443)

Though Pinckney alluded to no end in sight to slavery, Northern apologists insisted its elimination was inevitable. Even some contemporary historians (e.g., Melish 1998) share this position. They blindly presumed that Americans were on steady pace for gradual emancipation from slavery.

Thomas Dawes of Massachusetts claimed slavery “has received a mortal wound, and will die of a consumption” (ED-II [1788] 1836:41). Isaac Backus of Massachusetts agreed. He said:

no man abhors that wicked practice more than I do; I would gladly make use of all lawful means towards the abolishing of slavery in all parts of the land. But let us consider where we are, and what we are doing. In the Articles of Confederation, no provision was made to hinder the importation of slaves into any of these states;

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<sup>3</sup> Even those who opposed slavery *outright* were at least silent enough to consent to it. Samuel Adams of Massachusetts, for example, was known to defend the freedoms of slaves in private, and was regarded among black communities as an ally within the legislative corridor (Locke [1901] 1965). Throughout the formations of the Declaration of Independence and Articles of Confederation, however, his silence on slavery was deafening. He opted for noninterference outside of Massachusetts, and pursued a strategy that prioritized national unity and left slavery untouched.



but a door is now open hereafter to do it, and each state is at liberty now to abolish slavery as soon as they please. (ED-II [1788] 1836:149)

James Neal of Massachusetts shared these sentiments. “[T]he step taken in this article,” he said, “towards the abolition of slavery was one of the beauties of the Constitution” (ED-II [1788] 1836:107). Even one of the most ardent opponents of slavery, James Wilson of Pennsylvania, said much of the same. He thought of the ban “as laying the foundation for banishing slavery out of this country; and though the period is more distant than I could wish, yet it will produce the same kind, gradual change, which was pursued in Pennsylvania” (ED-II [1787] 1836:452).

The mantra of progress armed Northern empathy with purpose and meaning. It also dulled sensibilities to critically discern the political stakes at hand. Isaac Backus and others wrongly assumed states would act upon their own volition and end slavery as soon as possible. They failed to understand what direct interests whites of the North and South had in preserving the institution. Slavery did not present a challenge to their political, social, or economic imagination. Supporting a ban on slave trade did not end slavery altogether, it merely ended the legal importation of African bodies. The flipside of banning slave trade but not slavery meant the institution could be preserved indefinitely—as it did until the mid-nineteenth century.

### **“Caring” Racism for the Whole Family**

Not all delegates projected blame elsewhere, or naively believed the institution was moments away from collapse. Some embraced slavery as idyllic. They thought it to be not only righteous but humane. Rawlins Lowndes of South Carolina “thought this [slave] trade could be justified on the principles of religion, humanity, and justice; for certainly

to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles....” (ED-IV [1788] 1836:272). These words deemed slaveowners as good stewards, like they had saved slaves from wretched origins. James Madison recalled some delegates bolster, “Slaves were not put to labour [sic] as young as the children of laboring families” (LDC-XX [1783] 1976:121). Arguments like these implied master-slave relationships were more caring than parent-child relationships. They conflated exploitation with compassion and permitted, to borrow the words of sociologist Mary Jackman (1994), “masters’ control to become a benevolent shroud of having slaves’ needs and interests at heart (p. 10).

Fugitive slave Jermain Wesley Loguen, who had escaped bondage through the Underground Railroad, called out the hypocrisy in comments like these. Writing a reply to his former master in 1860, Mrs. Sarah Logue, he offered the following remarks:

You say you have offers to buy me, and that you shall sell me if I do not send you \$1000, and in the same breath and almost the same sentence, you say, ‘you know we raised you as we did our own children.’ Woman, did you raise your own children for the market? Did you raise them for the whipping-post? Did you raise them to be driven off, bound to a cofle in chains? Where are my poor bleeding brothers and sisters? Can you tell? Who was it that sent them off into sugar and cotton fields, to be kicked and cuffed, and whipped, and to groan and die; and where no kin can hear their groans, or attend and sympathize at their dying bed, or follow in their funeral? Wretched woman! (qtd. in Aptheker [1933] 1968:450)

Saying a master-slave relationship is as caring as a parent-child relationship, or even less exploitive, denies the underlying conditions experienced by slaves. Slavemasters did not appraise their white children with a market price, strap them to the whipping-post, place them in chained coffles, separate them from their siblings, send them to the fields, or isolate them from others in their dying moments.

Unlike some of his contemporaries, Thomas Jefferson ([1783] 1999) offered a more nuanced view of doing slavery in a “humane” way. “There must doubtless be an unhappy influence on the manners of our people produced by the existence of slavery among us,” he wrote. “The whole commerce between master and slave is a perpetual exercise of the most boisterous passions, the most unremitting despotism on the one part, and degrading submissions on the other” (p. 168). Jefferson worried slavery would have moral defects on slavemasters that might undermine America’s values of civility. His solution to slavery was not to end it however. The experiences of black slaves were more or less invisible to him in this context. Instead, he preferred that slavemasters be kinder to their subjects and spare the lash when possible. This kindness was not for the sake of slaves, but impressionable children with a watchful eye who might imitate what they see.

Other delegates like James Jackson of Georgia insisted slaves “were better off in their present situation than they would be if they were manumitted” (DPCUS-I [1789] 1834:12). Seen through their eyes, slaveholders were gentle masters who gracefully imparted upon slaves some “culture” (see also Blauner 1969). The peculiar institution was maintained out of a noble, nonprofit concern of civilizing the racially uncivilized. Slaves’ forced labor was simply fair compensation for their masters’ care and consideration. Historian Eugene Genovese ([1972] 1974) described this relationship as Southern paternalism. Slavemasters disguised their oppression toward slaves, at least to themselves and those apathetic to the slave’s condition, as a relation without hostility, which makes compatible both affection and exploitation, kindness and cruelty, affection and hatred.

### **“Better not to Stain the Constitution”**

Only once does the word “slavery” appear in the Constitution: Section 1 of the 13<sup>th</sup>

Amendment. The passage reads:

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.

The amendment was intended to end slavery, or at least most its forms. The phrase “except as a punishment for crime whereof the party shall have been duly convicted” implies that there remain exceptions for which it is permissible. This loophole was later exploited through a convict leasing system,<sup>4</sup> especially in Jim Crow South, through “pig” and vagrancy laws as well as other “black codes.” Whites were able to create what journalist Douglas Blackmon (2008) has called “slavery by another name.” It was unlike slavery of antebellum South, whereby a slave’s status was conferred upon birth, but it nonetheless represented a form of bondage whereby black men, in particular, were compelled to provide their labor without compensation.

Despite absence of the word slavery, its presence can be felt throughout the Constitution. This is no coincidence. Abraham Baldwin of Georgia recalled how Southern delegates insisted on inserting the words “slave” or “slavery” when debating the three-fifths clause, so the preservation of this institution was not implied but expressed.<sup>5</sup>

Others resisted this language:

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<sup>4</sup> Convict leasing refers to practices of forced penal labor, whereby prisoners would be leased out to private parties in exchange for money. These private parties would then feed, clothe, and house prisoners often times throughout the person’s sentence of punishment.

<sup>5</sup> An exception to this trend is James Madison of Virginia, a slavemaster and “father” of the Constitution. He “thought it wrong to admit in the Constitution the idea that there could be

[They] had objections to the use of the word ‘slaves,’ as Congress had hitherto avoided the use of it in their acts, and not acknowledged the existence of such a condition. It was expressly observed at the time, that making use of the form of expression as it now stands, instead of the word slaves, would make the meaning more general, and include what we now consider as included. (FR-III [1798] 1911:378)

William Paterson of New Jersey claimed that members of the Continental Congress “had been ashamed to use the term ‘slaves,’ and had substituted a description” (ED-V [1787] 1836:289).

Instead, Northern representatives (and some Southern ones too) preferred racial code words such as “importation,” “quotas of contribution,” “held to service or labor,” or three-fifths of “all other persons.” These terms indicate the topic of slavery’s sensitivity. Delegates like Jonathan Dayton, also of New Jersey, thought,

it would be better not to stain the Constitutional code with such a term, since it could be avoided by the introduction of other equally intelligible words ... where the same sense was conveyed by the circuitous expression of ‘three fifths of all other persons.’ (FR-III [1798] 1911:377)

When debating the slave trade ban, Gouverneur Morris of Pennsylvania wanted to “avoid the ambiguity,” single out those who supported the unpopular practice, and name the word (ED-V [1787] 1845:477). James Madison met these words with opposition. He “thought it wrong to admit in the Constitution the idea that there could be property in men” (ED-V [1787] 1845:478). Though avoiding direct invocation, these substitute words implied the same meaning. After all, free people migrate and “unfree” people are imported.

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property in men. The reason of duties did not hold, as slaves are not, like merchandise, consumed, &c” (ED-V [1787] 1836:478).

James Iredell, Sr. of North Carolina observed, “the Eastern States, who long ago have abolished slaves, did not approve of the expression slaves; they therefore used another, that answered the same purpose” (ED-IV [1788] 1836:102).<sup>6</sup> Race-explicit terminology was frequently heard throughout debates surrounding the Constitution, though these words never made it into the final draft. Regardless of the code words that were eventually used, it was understood what these terms meant. Delegates knew they permitted slavery to continue.

### *Anything but Slavery*

Rather than address slavery, some delegates like Alexander Hamilton of New York preferred denial and redirection.<sup>7</sup> They insisted other sources of conflict cause the division between North and South. “[T]he natural situation of this country,” Hamilton said, “seems to divide its interests into different classes. There are navigating and non-navigating states. The Northern are properly navigating states: the Southern appear to possess neither the means nor the spirit of navigation. This difference of situation naturally produces a dissimilarity of interests....” (FR-III [1788] 1911:332-333). Slavery

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<sup>6</sup> To say that most Eastern states had abolished slavery is an overstatement in 1788. Massachusetts declared the institution unconstitutional in 1783, and a handful of other states (e.g., Connecticut, New York, Rhode Island) had approved gradual plans for emancipation that incrementally rid human bondage for later generations. Despite these gradual plans, slaves were present in each of the original British colonies except Massachusetts according to the 1790 Census. The most populous slave state was Virginia (292,627), followed by South Carolina (107,094), Maryland (103,036), and North Carolina (100,783). Slave populations were smallest in other Northern states like Connecticut (2,648), New Hampshire (157), and Rhode Island (958).

<sup>7</sup> Other delegates like James Madison differed from Alexander Hamilton of New York. They would acknowledge slavery as the divisive factor between North and South, but they stop short of calling for its end.

was not the dividing factor, claimed Hamilton, that separated North from South. Some Southerners like Joseph McDowell of North Carolina followed similar logic, but he did not point toward navigation as a divisive faction. Instead, he emphasized how the regions “differ in climate, soil, customs, manners, &c.” (ED-IV [1788] 1836:211). Charles Pinckney echoed these sentiments. “There is a real distinction [between] northern and southern interests. North Carolina, South Carolina, and Georgia in their rice and indigo had a peculiar interest which might be sacrificed” (ED-V [1788] 1845:270).

Across the sectional divide, American statesmen agreed slavery was not the fundamental problem at hand. It was navigation for Alexander Hamilton, and climate, soil, customs, and manners for Joseph McDowell and Charles Pinckney. By avoiding conflicts over slavery in such ways, the un-naming of the peculiar institution leaves it hidden, inoculated, and removed by at least one degree from contention. This leaves whiteness, at least its idealized form (Hughey 2012), as the unquestioned standard against which all else is judged (Doane 1997; Frankenberg 1993). In the late 1970s, sociologist David Wellman ([1977] 1993) offered a novel observation to most others in the discipline: “prejudiced people are not the only racists in America” (p. 27). These words apply to the late eighteenth century as much as they do the late twentieth. Whites like Hamilton, McDowell, and Pinckney need not push racial animus on others to promote their collective interests. A refusal to problematize slavery while claiming the sectional divide is rooted in other conflicts accomplishing the same result.

## Racist Antiracism

Beneath the surface of antiracism was more racism, at least among some Southerners who claimed they desired an end to slavery. Proposing revisions to Virginia's constitution, to purge "principles inconsistent with republicanism," Thomas Jefferson ([1783] 1999) offered a radical resolution: "emancipate all slaves born after passing the act" (p. 144). These seemingly radical words are captured in what some (e.g., Bernstein 2003) consider as the most important American book published before 1800: *Notes on the State of Virginia*. The seven pages of prose that immediately follow, however, hardly sound like a ringing endorsement of abolition. Worried that freed black folks would annihilate whites after emancipation, or vice versa, Jefferson ([1783] 1999) thought it best if former slaves were "colonized to such place as the circumstances of the time should render most proper" (p. 145). An apartheid state was most appropriate for political reasons, which included "[d]eep rooted prejudices entertained by the whites; ten thousand recollections, by the blacks, of the injuries they have sustained" (p. 145).

Thomas Jefferson's ([1783] 1999) objections were more than political. He offered "physical and moral" objections to integrating the races:

The first difference which strikes us is that of colour [sic]. Whether the black of the negro resides in the reticular membrane between the skin and scarf-skin, or in the scarf-skin itself; whether it proceeds from the colour [sic] of the blood, the colour [sic] of the bile, or from that of some other secretion, the difference is fixed in nature, and is as real as if its seat and cause were better known to us. (p. 145)

From the contrast of black and white, Jefferson ([1783] 1999) reasons, flows a host of other differences. White beauty was superior to that of black, so was intelligence, work ethic, hygiene, and so on.



They seem to require less sleep. A black after hard labour [sic] through the day, will be induced by the slightest amusements to sit up till midnight, or later, though knowing he must be out with the first dawn of the morning. They are at least brave and adventuresome. But this may perhaps proceed from a want of forethought, which prevents their seeing a danger till it be present. When present, they do not go through it with more coolness or steadiness than the whites. They are more ardent after their female: but love seems with them to be more an eager desire, than a tender delicate mixture of sentiment and sensation. Their griefs are transient. Those numberless afflictions, which render it doubtful whether heaven has given life to us in mercy or in wrath, are less felt, and sooner forgotten with them. In general, their existence appears to participate more of sensation than reflection. (p. 146)

Whereas Jefferson began his thought with emancipatory intent, his subsequent words were like a verbal stiletto that sliced into pieces his call for emancipation. These words carved a vision of society in which no other alternative could be seen. It is not as though Jefferson simply preferred a white supremacist racial hierarchy. He saw it as the only option within the realm of possibility (see also Davis [1975] 1999; Freehling 1990).

Thomas Jefferson's desire to abandon slavery can be interpreted as expressions of "impression management" (see Goffman [1956] 1959). As historian John Hope Franklin (1976) pointed out, he was someone so adamant about the inferiority of blacks and who insisted whites and blacks cannot live together peacefully, so why should we expect him to hold sincere convictions about his self-proclaimed racially progressive views? Perhaps Jefferson was telling his audiences what he thought they wanted to hear. After all the *Notes* were initiated as a response to queries François Barbé-Marbois, the secretary of French legation to the United States, sent to governors of all the former colonies. His commentary packaged slavery in digestible ways for European audiences who were in the process of gradually emancipating their own. If slaves were deficient compared to whites in both biology and culture, but well-suited for grueling work in Southern regions hotter

than the hinges of hell, then Jefferson's unasked question was straightforward: Is slavery so perverse an institution?

The answer lay hidden in his qualifications. "I advance it therefore as a suspicion only, that the blacks, whether originally a distinct race, or made distinct by time and circumstances, are inferior to the whites in the endowments of both body and mind" (Jefferson [1783] 1999:150-151). To advance suspicion in this context, however, is not to be suspicious at all. Elsewhere, Thomas Jefferson was quite clear that whites were superior to blacks by natural distinction. Therefore, equality among the races is a fleeting illusion that may be pursued but never attained. Qualifying these claims with "suspicion," after having articulated them so forcefully, allowed him to "save face" in front of audiences that could have sanctioned him over unpopular views on race. It was also his way of saying that slavery, in one form or another, was inevitable and could not be evaded.

### **Legacies of Innocence, the Gospel of "Feel-Good Sociology"**<sup>8</sup>

Ghosts of the past haunt us. A central theme of the American Enlightenment is that racial dynamics follow a liberalizing, unidirectional trajectory of progress. Racial conflict, on the other hand, is diminished, dismissed, or denied. Standing in the shadows of America's founding fathers, these are the claims of social scientists who study racism—past and present. Political scientist and historian Alexis de Tocqueville ([1835/1840] 2007), writing when "cotton was king," claimed each new generation creates its own

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<sup>8</sup> The reference to "feel good sociology" pays homage to sociologist John Stanfield (2008) and his book chapter partly titled by the same phrase.

unique way of seeing the world. This new vision of the world transcends “shortcomings” of those that preceded it, so that “every fresh generation is a new people ready for the care of the legislator” (de Tocqueville [1835/1840] 2007:75).<sup>9</sup> A sense of wrongdoing paired with a commitment to freedom will inevitably overwhelm what economist Gunnar Myrdal (1944) called “the American dilemma.” Taking the moralist position, he thought internal tension over the black mistreatment (e.g., Jim Crow) and principled ideals like freedom would cause great remorse among whites. This remorse would eventually overcome any prejudices they held, and achieve a racial democracy that fulfilled “the American Creed.” From the standpoints of both de Tocqueville ([1835/1840] 2007) and Myrdal, prejudice and discrimination are presumed to be diminishing. Inevitably in their place will be more tolerant stances on racial dynamics.<sup>10</sup> The steady-forward march of progress is a gospel many spread throughout the social sciences (Stanfield 2008; see also Steinberg 2007).

Consider “the Chicago School” for example. According to sociologist Lewis Coser (1978), “It seems no exaggeration to say that for roughly twenty years, from the first world war to the mid 1930’s, the history of sociology in America can largely be

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<sup>9</sup> Using the ideas of political scientist and historian Alexis de Tocqueville ([1835/1840] 2007) as a springboard, some survey analysts have shown that younger people are more likely to adhere to liberal views on race (see also Smith 1981; Steeh and Schuman 1992). The presumption is that they have been socialized during eras of greater tolerance. Meanwhile older, less tolerant generations phase out of the population as their lifecourse expires. For a critique of the “cohort replacement” thesis, as well as an alternative interpretation of liberalizing racial views, see “Beyond Prejudice?” by sociologists Tyrone Forman and Amanda Lewis (2015).

<sup>10</sup> Of course, these trends can vary by political issue and region (Firebaugh and Davis 1988).

written as the history of the Department of Sociology at the University of Chicago” (p. 311; see also Bulmer 1984). Core members like sociologists Robert Park, Ernest Burgess, and others drew from anthropology to bring field methods to the discipline of sociology.<sup>11</sup> They conceptualized the city as “a social laboratory” in which social processes, and perhaps human nature itself, could be clinically studied (see Smith and White 1929). “There is at least one important difference,” wrote Burgess (1929), “between the laboratory of the physical scientist and that of the social scientist. In chemistry, physics, and even biology the subjects of study can be brought into the laboratory and studied under controlled conditions.... The objects of social science research, as persons, groups, and institutions, must be studied if at all in the laboratory of community life” (p. 47). Park (1929) shared these sentiments: “The city always has been a prolific source of clinical material for the study of human nature” (p. 12).

Like scientists experimenting on animals, hoping to extrapolate their findings to broader humanity, ethnographies like those of the Chicago School perpetuate what sociologist Victor Rios (2011) has called “jungle-book tropes.”<sup>12</sup> This “research” often consists of rogue accounts, if trustworthy at all, that reinforce well-established

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<sup>11</sup> Consider sociologist Robert Park’s ([1915] 1967) own words on applying field methods to urban research. “The same patient methods which anthropologists like [Franz] Boas and [Robert] Lowie have expended,” he wrote, “on the life and manners of the North American Indian might be even more fruitfully employed in the investigation of the customs, beliefs, social practices, and general conceptions of life prevalent in Little Italy on the lower North Side of Chicago, or in recording the more sophisticated folkways of the inhabitants of Greenwich Village” (p. 3).

<sup>12</sup> Similarly, historian George Fredrickson (1971) labeled the views of Park and other members of the Chicago School as accommodationist racism.

stereotypes that demean entire groups of marginalized people as hopeless, savage, and subhuman. Many readers will likely interpret the narration as related here:

I got lost in the wild, the wild people took me in and helped me, made me their king, and I lived to tell civilization about it! (Rios 2011:174)

Self-glorifying storylines like these put words into the subjects' mouths, in ways that speak for the masses without the masses having much agency to speak for themselves (see also Bonilla-Silva, Lewis, and Embrick 2004; Young 2004). Jungle book sociology rearticulates ethnography as a colonial enterprise, like when early anthropologists (e.g., Conrad [1899] 1990) ventured into so-called "primitive" spaces to draw racialized comparisons between "civilized" and "savage" civilizations.

The contrast between civility and savagery can obscure the role of power and domination in relationships of inequality and bolster unquestioned mantras of progress. Robert Park (1950) argued that the incorporation of minority groups into the mainstream occurs through the adoption of "American" norms, values, and general way of life (see also Alba and Nee 2003; Myrdal 1944).<sup>13</sup> This adoption is, according to him, desirable and prescriptive. "Now that the Negroes are free and have become race, if not class, conscious," wrote Park (1950), "they are in a position to state their case in a more articulate fashion. However, the authors of the Declaration of Independence and the United States Constitution have provided them with a ready made ideology" (p. 307).

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<sup>13</sup> More specifically, Robert Park (1950) claimed that groups progressed through historical stages of development, from lower to higher (contact → competition → conflict → accommodation → assimilation). Assimilators will inevitably achieve upward social mobility in terms of education and occupational status as well as demonstrate less distinctiveness in terms of language use, intermarriage patterns, and general social distance.

Once this ideology is successfully adopted, the flow of rewards become progressive and irreversible. Never mind the structural barriers of discrimination that may stand in people's way. Similar to Herbert Spencer's notion of (1864) "Social Darwinism," this position follows an evolutionary, "survival of the fittest" logic of social order (p. 474).<sup>14</sup>

Decades after Robert Park, sociologists Alejandro Portes and Min Zhou (1993) modified "the race relations cycle" with their model of "segmented assimilation" (see also Portes and Rumbaut 2001). They began by acknowledging the presence of much diversity in America, and go on to posit that immigrants do not always follow a straight-line path of upward mobility. Instead, mobility among immigrants might follow divergent paths, which can include upward assimilation, downward assimilation, or upward mobility infused with biculturalism. A problem with this modification, as sociologist Margaret Hunter (2002) has pointed out, is that "it is still assumed that this so-called downward assimilation is undesirable and that assimilation toward the dominant group is best. Researchers rarely question the value of socializing our newest citizens to be more like Whites, both culturally and structurally" (p. 134; see also Jung 2015; Steinberg 1981). They naturalize inequality as inevitable, if not desired, and obscure the role of power and domination. Instead, they assume mobility toward whiteness should be sought-after and is available to all.

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<sup>14</sup> Sociologist Auguste Comte espoused similar views through a series of texts published between 1830 and 1842 (see Martineau [1896] 2000). In justifying a need for historical research, he claimed analysts should only focus on European civilizations. The reason being that analysts ought to only be interested in those who supposedly experienced progress under modernity.

Other social scientists allude that America has transcended race altogether (or is in the process of transcending it). Sociologist Seymour Lipset (1996) has pointed to the legal prohibition of discrimination. Economist James Heckman (2011) has argued that discrimination in the workplace is no longer a first order cause of racial inequality. Economists James Smith (2001) and Finis Welch (1989) have identified the narrowing gap between occupational status. Economists Edward Glaeser and Jacob Vigdor (2012) have argued segregation levels are at their lowest since 1910. Economist Roland Fryer, Jr. (2007) has found steadily increasing rates of interracial marriage. Economist Richard Freeman (1976) has stressed the formation of a highly visible black professional class. Political scientists Paul Sniderman and Edward Carmines (1999) have suggested antiblack racism plays a diminishing role in contemporary politics. As early as the 1970s, when the ink on various civil rights acts had barely dried, demographers Ben Wattenberg and Richard Scammon (1973) called shifts in whites' racial attitudes "revolutionary."

Of course declarations of revolutionary change say as much, if not more, about the implicit and explicit assumptions behind statements about racial oppression in America. In the case of the founding fathers, their naïve assumptions about slavery permitted them to decouple the reproduction of racial inequality from their own (in)actions that implicated them as beneficiaries of it. Delegates involved in three-fifths debate accomplished this feat through a variety of strategies, from projecting blame elsewhere ("the British and African merchants caused slavery") to romanticized progress ("an end to slave trade will eventually be an end to slavery") to declarations of benevolence ("those slaves have it good") to avoidance in terminology ("let's call it

something besides slavery”) to insincere calls for emancipation (“let’s substitute colonization for slavery”). They eliminated their own agency within the racial hierarchy by willfully unseeing slavery for what it was, all the while they protected their self-proclaimed innocence by bemoaning the “unfortunate” institution.

Contemporary social scientists follow in the footsteps of these statesmen.

Consider the words of sociologists Jerome Harris and William McCullough ([1973] 1998):

[I]n recent years whites have begun to prepare statistical studies demonstrating Black progress and achievements. Statistics are emerging showing Black progress in education, employment positions, income, etc. The irony of these studies is that they, too, are done in the interest of whites rather than Blacks. For it is only since Blacks have begun to assert themselves on a massive scale during the last decade that these statements of progress have emerged. *Their real purpose has not been to show Black progress but to attempt to dampen Black fervor for change by implying that effective change is already taking place.* It is ironic that while absolute gains are being made, the same data frequently reveal that relative ground is being lost. (p. 336, emphasis added)

In this context of misinterpreting racial change, these studies diminish past and present racism as if it is no longer a problem (see also Ladner [1973] 1998; Pinkney 1984; Steinberg 2007; Zuberi and Bonilla-Silva 2008). The scholars who advance this research, many of whom are considered seminal figures of their field, edify a structure of white racial dominance and reaffirm, in the name of science, the mantra of racial progress and declarations of white innocence. Doing so, they inadvertently answer the questions of “a sociology for whom?” (Lee 1976) and “a sociology for what?” (Lynd 1939).



## CHAPTER FIVE

### COLORBLIND DISCOURSE, COLOR-CONSCIOUS CONTEXT

“I’m not racist, but...”. Odds are what follows this phrase will be racist. Otherwise, there would be no need for the disclaimer. These words may be a “kinder, gentler” expression of ideology than the biological racism and segregationist views of the slavery and Jim Crow past, not to mention the fire hoses, dog bites, and lynchings that went with them (Bobo, Kluegel, and Smith 1997). This is colorblind racism. It is a racial ideology that is less overt and direct, but just as effective in preserving the racial order (Bonilla-Silva 2001; Bonilla-Silva and Lewis 1999). Colorblindness does not ignore race altogether (Bonilla-Silva [2003] 2014; Brown et al. 2003; Crenshaw 1997; Gallagher 2003). It affirms universal ideals of liberalism, both in a political and economic sense. It presumes that equal opportunities are available to all regardless of racial background. And it even condemns overt expressions of bigotry and prejudice. The world of racial inequality is understood in ways that deny how circumstances, resources, and opportunities of social value are historically, institutionally, or circumstantially derived.

Individuals are assumed to be makers of their own destiny, and one’s social position is a measure of character and self-worth. Those who “fail” at life have no one to blame but themselves. In fact, they are likely “tangled in pathologies” that create their own cycles of inadequacy (see Moynihan 1965:29). It is as though, as sociologist William Ryan (1971) explained, “‘these people’ think in different forms, act in different

patterns, cling to different values, seek different goals, and learn different truths” (p. 10). Cynics see them as spending the “milk money” on lottery tickets, for example, out of impulsiveness, short-sighted rationale, outright ignorance, or lack of workmanship. When racial inequality, and poverty generally, is thought to result from pathologies located within the individual, the oppressed are seen to lack self-respect and ambition to better themselves. “Which is to say that they are strangers, barbarians, savages” (Ryan 1971:10; see also Steinberg 1981). When whites deny race is an organizing principle that structures how socially-defined rewards and penalties are distributed, they eliminate their own agency within racial hierarchy by willfully not seeing race. Colorblindness then becomes, in the words of sociologist Eduardo Bonilla-Silva ([2003] 2014), a “racism without racists” (p. 4).

### **Origins and Implications of Racial Change**

A fundamental difference between the racial days of yesterday and today is that no longer do whites need to insist upon state-sanctioned, compulsory inequality to preserve their advantage. According to sociologists Lawrence Bobo, James Kluegel, and Ryan Smith (1997) as well as sociologists Eduardo Bonilla-Silva and Amanda Lewis (1999), broad social transformations have caused the racial caste system to lose its persuasive appeal among the white masses. Some of these transformations include a modernizing political economy and collapse of the South’s agrarian society, demographic transitions of black populations out of the South to newly-developed urban centers, expanded black political power coupled with social movement mobilizations, and civil rights reforms in voting, housing, and employment. As a result of these changes, sociologist Lincoln Quillian

(2006) has said that whites “became increasingly unwilling to express their prejudicial feelings and beliefs candidly because of the development of social norms against blatantly racist statements” (p. 311; see also Bobo 1999; Bobo and Hutchings 1996; Bonilla-Silva and Forman 2000; Jackman and Muha 1984; Wodtke 2016). No longer is it acceptable for them to publicly profess comments like “segregation now, segregation tomorrow, segregation forever.”<sup>1</sup> New norms surrounding how people discuss race has rendered these views taboo and illegitimate before the court of public opinion.

What do these changes substantively mean? Some sociologists like Howard Schuman and his colleagues ([1985] 1997) have labeled them as “a fundamental transformation of social norms ... at the individual level (p. 306). Pointing to contradictory views, they show how whites endorse principles of equality in the abstract but reject practical strategies that would accomplish them. Moreover, policies aimed at ameliorating racial inequality—ones like affirmative action—remain widely unpopular (Bobo et al. 2012; Kluegel and Smith 1986; Hunt 2007; Wodtke 2016). This gulf between belief and action is known as “the principle-implementation gap,” an attitudinal gulf that leads Schuman and colleagues ([1985] 1997) to conclude whites’ views are paradoxical.<sup>2</sup>

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<sup>1</sup> The phrase “segregation now, segregation tomorrow, segregation forever” was said by George Wallace, the segregationist governor of Alabama, during his 1963 inaugural gubernatorial address.

<sup>2</sup> Among sociologist Howard Schuman’s co-authors is Lawrence Bobo. It is worth noting that in other works Bobo does not emphasize paradoxical views among whites. Instead he has articulated a notion of “laissez-faire” racism (see Bobo and Hutchings 1996; Bobo et al. 1997). It stresses the permeability among whites’ racial views, and how they often blend seemingly impersonal, rational, and nondiscriminatory free market views with implicit cultural stereotypes that denigrate people of color. Aside from methodological orientation, Bobo’s laissez-faire racism maps onto

Other sociologists like Mary Jackman and Michael Muha (1984) have contended that whites' liberalizing racial views, at least those measured by surveys, do not indicate a decline in racism as much as they suggest something substantively different (see also Bobo 1999; Bobo and Hutchings 1996; Bonilla-Silva and Forman 2000; Wodtke 2016). Because racist views have become stigmatized and policed by so-called "political correctness," sociologists Leslie Houts Picca and Joe Feagin (2007) have maintained that these views have gone underground. They have not faded into the night. They have become hidden from plain view, tucked away in the "backstage."<sup>3</sup> The idea is that whites speak more freely among fellow whites and are less likely to self-censor racist views in private.

In most public places, however, white racism cannot be served raw. Those who unabashedly endorse negative stereotypes run the risk of identity spoilage, and subject themselves to social sanction (see Goffman 1963). Colorblindness offers whites a variety of politically-savvy strategies to make racism palatable, including an expansive menu of rhetorical devices and discursive maneuvers that permit racial views to be expressed in subtle, implicit, and seemingly nonracial ways (van Dijk 1997; Wetherell and Potter 1992). The idea is to communicate a positive self-image and prevent undesirable inferences. This requires living "inside the minds" of others, to paraphrase the words of

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the conceptual cartography of colorblindness—as outlined by sociologists Eduardo Bonilla-Silva ([2003] 2014) and Charles Gallagher (2003) as well as legal scholar Kimberlé Crenshaw (1997)

<sup>3</sup> Schuman and colleagues ([1985] 1997) have countered claims like these. They have suggested that because public norms have potential to impact behavior, they are significant in and of themselves.

philosopher and social psychologist George Herbert Mead (1934), and strategically manage whatever impressions one projects. Regarding racial interactions, the goal is to avoid the violation of public norms and being labeled a “racist.” This label extends beyond mere description. To call someone a racist implies a normative judgment of moral contempt. Linguist Teun van Dijk (1984) has explained, for example, that “sounding racist” can be among the greatest public insults a person can dish out—especially when applied to whites (see also Doane 2006). Eduardo Bonilla-Silva ([2003] 2014) has elaborated that colorblind ideology permits whites to “enunciate positions that safeguard their racial interests without sounding ‘racist.’ Shielded by color blindness, whites can express resentment toward minorities; criticize their morality, values, and work ethic; and even claim to be victims of ‘reverse racism’” (p. 4; see also Gallagher 2008; Lewis 2004). So long as racism is cooked to the proper temperature and has the appropriate plate presentation, whites can espouse racist views that defend their racial advantage.

### **Particularity and Overlap, Colorblindness in the Context of Slavery**

So what does colorblind ideology have to do with the three-fifths clause? Quite a bit actually. In place of words like “I’m not racist, but...”, the “founding fathers” used stylistic parallels like “I’m principled against slavery, but...” (LDC-XX [1783] 1976:120). This hallowed preface, like today’s discursive style of colorblindness, rarely underwent further development or elaboration. Instead, it served as an appetizer for the main course of racism to come. The arguments following disclaimers like these, which were deployed by Northern and Southern delegates alike, propped up slavery to justify tax or representation policies that benefitted their constituents. Ending slavery was rarely

a point of contention. The contraction “but” signaled as much, as well as a degree of awareness on the speaker’s behalf. They were conscious of their misdirection. Pattern usage of this discourse indicates that it was calculated. The phrase “I’m principled against slavery, but...” signposts an acknowledgment that, indeed, the forthcoming claim will not be principally against slavery. Indeed, it would principally be for slavery. When Hugh Williamson of North Carolina said these words, he followed them with pleas for low taxes for slavemasters and their wealth. “[H]e thought slaves an incumbrance [sic] to Society instead of increasing its ability to pay” (LDC-XX [1783] 1976:120). Like many of his Southern colleagues, he preferred if slaves were enumerated at one-quarters or one-halves a person if taxes were to be distributed by population count. Hardly a rejection of slavery, Williamson advanced fiscal policy that would subsidize it with foregone tax revenue.

Common ideological currents of colorblindness can fundamentally justify different racial arrangements. Though slaves were denied basic rights of citizenship and subjected to total white domination, the peculiar institution was colorblind to the extent that slavemasters and accommodators alike affirmed universal appeals to liberalism and diminished slavery when it conveniently served their interests. Many even condemned overt expressions of bigotry and prejudice. Never mind that American capitalism was built on the back of stolen black labor (Marable [1983] 2000). Statesmen from the North and South did not believe their new world was a closed system where social status was inherited upon birth. Borrowing observations from philosophers like Adam Smith ([1776] 2007) and sociologists like Max Weber ([1905] 1930), many of the framers thought of

America as a place that values hard work, prudent spending, and delayed gratification. Unlike overbearing policies of the British Crown, ones that gave unearned advantages to the agrarian aristocracy, Americans desired a system that did not subvert the liberty of those belonging to the body politic. They wanted an alternative that helped those that help themselves. People had equal opportunities to develop their own talents and abilities. However, those considered unworthy like slaves were denied these same opportunities and reduced to bondage. The logic of white supremacy was that they deserved this position in life. A racial caste system was an exception to the liberal rule on at least three counts. One, slavery represented a benevolent arrangement and perfection of the human condition to many Southerners. Two, it was not significant enough to demand much attention let alone acknowledgment for many Northerners. And three, statesmen from across the sectional aisle prioritized liberalism in the abstract over liberalism in practice.

When abstracted from a material contingency, the language of liberalism can be channeled for illiberal ends. According to Eduardo Bonilla-Silva ([2003] 2014), “abstract liberalism” is the cornerstone of colorblind ideology. It infuses decontextualized ideas of political and economic liberalism to explain away racial inequality and oppose practical solutions that could address it. Debates over the three-fifths clause centered on two notions of liberalism: “tax uniformity” and “representational equality.” The former regarded even tax distribution with consideration given to wealth, whereas the latter referred to regional balance within the realm of congressional representation. Wanting to impose “uniform” taxes and proportionally allocate representation among the states, the question of these debates was how to count slaves. Some claimed the work of four slaves

equaled that of one freeperson. Others said it was more like three slaves to every four freepersons. On both sides of the debate, the framers justified their valuations by relying upon a host of pejorative stereotypes about slaves that were rooted in both culture and biology. All agreed, for example, that white labor was superior to slave labor regarding quality and production. What they disagreed on was how much.

### **Taxation in the Name of Uniformity**

A government undergirded by slavery and property comes with a seemingly paradoxical challenge. In order to protect these rights, the state must interfere with them. Taxes, by definition, are revenues generated by the government through levies on property, income, sales, and so on. A just government, as far as the founders were concerned, was one that imposed taxes that upheld principles of uniformity so that everyone would be taxed at fair rates. This was among the reasons for dissent from Great Britain. They claimed the British knew these principles in the abstract, but hardly respected them in practice when dealing with the colonies.

With laws like the “Stamp Act of 1765,” the Parliament of Great Britain imposed taxes onto Americans without their consent (Morgan and Morgan [1953] 1995). The act, itself, required colonists to print materials on paper produced in London that carried a revenue stamp. The stamp was a high tax that could only be paid in British currency. Specifically, it targeted products commonly used by college students and lawyers in efforts to limit the size of a colonial professional class. The revenues collected from these taxes were expended on the colonies, although not for economic development. Most this money was channeled to finance their own military oversight by the British Army.



British rule evolved into a tax tyranny from many colonists' perspectives—a form of political slavery that subjected Americans' will to another's whims. Their possessions and livelihood were at the mercy of English rule, who could subject their property to imperial taxation or even commandeer it through outright confiscation. With these experiences fresh on the founders' minds, they approached the task of constitution-making under the agreement that taxes should be uniform. That is, they should be apportioned according to wealth held by all Americans.

The tax uniformity principle follows philosopher Adam Smith's ([1776] 2007) labor theory of value. In his treatise *An Inquiry into the Nature and Causes of the Wealth of Nations*, he claimed an ideal tax system should follow the dictum of "ability to pay":

It is not very unreasonable that the rich should contribute to the public expense, not only in proportion to their revenue, but something more than in that proportion. (p. 547)

Americans from the North and South thought that taxes should be about sacrifice, country, and duty—all notions that were colored in their own white racial image. Foreshadowing the words of Supreme Court Justice Oliver Wendell Holmes, Jr. by nearly a century and a half, they agreed that: "Taxes are what we pay for a civilized society" (qtd in. Slemrod and Bakija [1996] 2008:3).<sup>4</sup> The point of contention, however, was over the importance of slavery and how slaves ought to be counted.

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<sup>4</sup> Justice Oliver Wendell Holmes, Jr., who sat on the Supreme Court from 1902 to 1932, wrote these often quoted words in his 1927 dissenting opinion of *Compania General De Tabacos De Filipinas v. Collector of Internal Revenue*.

*Putting a Number on their Worth: The Tax Value of Slaves to Freepersons*

Congress was left with the question of how to “fix the proper difference between the labor and industry and of all other inhabitants” (ED-I [1783] 1836:98). One-to-four, said Daniel Carrol of Maryland. One-to-three, said John Rutledge of South Carolina. One-to-two, said Benjamin Harrison of Virginia. These were the ratios Southern delegates suggested when they compared the value of free and slave labor. Three-to-four, said Oliver Wolcott of Connecticut as well as Stephen Higginson, Samuel Holton, and Samuel Osgood of Massachusetts. This was the ratio upon which Northern delegates agreed. A vote was taken between these positions, counting slaves according to a two-thirds ratio. It would fail, and setting up James Madison of Virginia to bridge the divide. Bolstering about “the sincerity of his professions of liberality,” he suggested “that Slaves should be rated as 5 to 3” (LDC-XX [1783] 1976:121). He had enough clout to sway his Southern brethren while still assuring Northern representatives Dixie would make good on its commitment to the union. This kept slavery intact but taxed it fairly, he thought.

Both sides agreed some tax privileges were to make up the difference for what they perceived as poor workmanship on behalf of the slaves, and black folks generally. Slavemaster politicians claimed they and their constituents were on the losing end of slavery. According to William Hooper of North Carolina:

A gentleman of three or four hundred negroes don't raise more corn than feeds them. A laborer can't be hired for less than twenty four pounds a year in Massachusetts Bay. The net profit of a negro is not more than five or six pounds per annum. I wish to see the day that slaves are not necessary. (JCC-V [1776] 1906:1080)

Seeing black labor in general, and slave labor in particular, as neither diligent nor productive, others repeated similar claims:

- The young and old Negroes are a Burthen to their owners. (LDC-IV [1776] 1976:569)
- having no interest in their labor, they did as little as possible, & omitted every exertion of thought requisite to facilitate & expedite it. (JCC-XXIV [1783] 1922:949)
- It is far from being a desirable property. (ED-III [1788] 1836:270)

Owning other human beings, these delegates argued, caused more financial cost than gain, and in making this claim, the 1700s became a version of novelist George Orwell's ([1949] 1961) dystopian *Nineteen Eighty-Four*.

Freedom was redefined as slavery when slaveholders proclaimed themselves victims of their peculiar institution. No longer did slavery refer to a relation in which slaveowners subjugated slaves. The institution was misrecognized as oppressive to white slavemasters but tolerable for black slaves. This is the 1700s version of what is known today as "reverse racism," an idea that whites see discrimination as more of a problem for themselves than minority groups (see also Norton and Sommers 2012; Pierce 2012). Political actors of the early republic, to historicize the words of sociologist Jennifer Pierce (2012), "disavow[ed] responsibility for racist practices at the same time they practice[d] racially exclusionary behavior" (p. 65). Through ontological distortion, which is the negation of what "is," slavery was decontextualized and transplanted into a racial nightmare whereby whites embraced the mantle of victimhood for their self-serving gain. It permitted them to retain a general sense that slavery was undesirable at the same time they advanced tax code that sponsored black enslavement.

*Shifting Shades of Meaning*

Whereas George Orwell ([1945] 1963; [1949] 1961) directed attention to the degeneration of language with his concepts of “doublethink” and “Newspeak,” the founding fathers were actually accomplishing the opposite with their words. They were expanding the meaning of their existing vocabulary by redefining words in some cases and absorbing new definitions in others. By contrast, Orwell ([1945] 1963) suggested the language of domination eliminates antonyms and synonyms altogether, so that, for example, freedom can no longer be contrasted by slavery. Making this shift, words and their meanings part company and the concept of freedom is whitewashed.

The word *free* still existed in Newspeak, but it could only be used in such statements as ‘The dog is free from lice or ‘This field is free from weeds.’ It could not be used in its old sense of ‘politically free’ or intellectually free,’ since political and intellectual freedom no longer existed as concepts, and were therefore of necessity nameless. (Orwell [1949] 1961:246-247)

Because freedom and slavery are oppositional concepts, substituting one for the other creates positive associations between once contrary words. This abridges meaning in ways that squash subversive thought and forsake resistance. “[T]he fact that the prevailing mode of equality is servitude,” explained social theorist Herbert Marcuse (1964), “and that the prevailing mode of equality is super-imposed inequality is barred from expression by the closed definition of these concepts in terms of the powers which shape the respective universe of discourse” (p. 88).

Depoliticized words lack their comparative points of reference, but during the three-fifths debate, it is not as though James Madison, William Hooper, and others stopped using the word slavery because it was heretical. Their discussion of slavery occurred within the confines of portraying slaveholders on the losing end, which

immunes slavery from criticism since relations associated with the institution are reworked altogether. This means they retained politically ambiguous words that embodied semantic layers and re-inscribed their meaning so that they no longer signified the conventional group: slaves. Slaveowners inverted the concept of slavery to frame themselves as slaves, and in the process made the word's primary meaning secondary. When Southerners and Northerners alike affirmed their innocence of slavery and professed commitments to freedom, these diversions, or what sociologist Emile Durkheim ([1912] 2008) called transgressions, strengthened the racial order (see also Doane 2014). These politicians gave the appearance that slavery was being contested, or at least critically interrogated, but this was smoke and mirrors. The system of slavery remained operational.

*The North Agreed, Slavery was a "White Man's Burden"*

Not all Northern delegates agreed with Southerners' line of argument. Critics like Gouverneur Morris of Pennsylvania thought slavemasters would recoup their tax costs by driving slaves to the edge of their existence. He complained "for the bohea tea used by a northern freeman will pay more tax than the whole consumption of the miserable slave, which consists of nothing more than his physical subsistence and the rag that covers his nakedness" (ED-V [1787] 1845:393). Elbridge Gerry of Massachusetts agreed and said Southerners could absorb whatever loss unproductive slaves caused by reducing their standard of living. According to the notes of James Madison:

The Arguments used by those who were rating slaves high were; that the expence [sic] of feeding & cloathing [sic] was as far below that incident to freemen, as their industry and ingenuity were below those of freemen: and that the warm climate within wch. [sic] the States having slaves lay, compared wth. [sic] the

rigorous climate & inferior fertility of the others, ought to have great weight in the case & that the exports of the former were greater than the latter. (LCC-XX [1783] 1976:122)

These counter-arguments did not challenge negative black stereotypes. They reinforced them. When Northern delegates responded by highlighting how Southerners could recover losses from unproductive slave labor, they reinforced the presumption that the value of labor followed racial lines. They upheld the premise that slaves were idle, lazy, and unmotivated to begin with, and thus did not contribute to the generation of local wealth in the ways that white workers did.

Conceding to negative stereotypes about unproductive black labor led other Northern delegates, like Francis Dana of Massachusetts, to agree Southerners were made slaves out of slavemasters. He empathized with his “burdened” Southern brethren, and thought the predicament demanded compensatory treatment:

the negroes of the Southern States work no longer than when the eye of the driver is on them. Can . . . land flourish like this, which is cultivated by the hands of freemen? and [sic] are not three of these independent freemen of more real advantage to a state than five of those poor slaves? As a friend to equal taxation, [Dana] rejoiced that an opportunity was presented, in this Constitution, to change this unjust mode of apportionment. (ED-II [1788] 1836:38)

Defining slaves as a source of poverty rather than wealth, the enterprise became a “white man’s burden” (Kipling 1899:12) for Southerners, which made policy privileges for taxation sound reasonable and just. White Southerners’ willingness to “civilize” slaves at their own expense was an enterprise that demanded compensatory treatment. So their “good” deeds did not go unnoticed, at least from their view, they “deserved” expanded exclusive tax breaks Northerners did not. Several Northerners agreed. Slavemasters and their accommodators had inverted meaning in ways that speakers no longer said the

opposite of what they thought but believed the opposite of what was true—culminating to rationalize proslavery tax policy.

*If Slaves are Property, Why are they the only Property Taxed?*

Samuel Chase of Maryland “admitted that taxation should always be in proportion to property” (ED-I [1777] 1836:70). Drawing out the implications of this proposition, though, he worried that Northerners would escape taxes on their wealth that his Dixie constituents could not.

There is no more reason, therefore, for taxing the Southern States on the farmer’s head, and on his slave’s head, than the Northern ones on their farmers’ heads and the heads of their cattle; that the method proposed would, therefore, tax the Southern States according to their numbers and their wealth conjunctly, while the Northern would be taxed on numbers only. (ED-I [1775] 1836:71)

The South’s distribution of wealth was unique in comparison to the North because of the dual status of slaves as person and property. For farmers of the North, much of their wealth was tied to personal properties such as investments, land, and livestock. All these items would not be enumerated, however, in a tax plan based on population only. Chase went on to claim “that negroes, in fact, should not be considered as members of the state, more than cattle, and that they have no more interest in it” (ED-I [1775] 1836:71). Since cattle are not members of the state, he claimed, then why should slaves be considered as such? The presumption behind his rhetorical question was that one was just as valued as the other.

When figures like James Madison suggested a ratio that equated five slaves to three freepersons for purposes of direct taxation, Edward Rutledge of South Carolina remained troubled. He agonized that such an apportionment rule would levy much heavier taxes on free populations of the South:

In the Northern States the labor is performed by white people, in the Southern by black. All the free people (and there are few others) in the Northern States are to be taxed by the new Constitution; whereas only the free people, and two fifths of the slaves, in the Southern States, are to be rated, in the apportioning of taxes. (ED-IV [1788] 1836:277)

Hypothetically speaking, Rutledge was correct. Had a \$1.00 direct tax apportionment been imposed according to the 1790 Census, for example, per capita taxes would have hovered around an even \$1.00 for most all the Northern states (see Table 3). Meanwhile, residents of Southern states would pay \$1.06 on the low-end (Tennessee) and \$1.45 on the high-end (South Carolina).

Table 3. Burden of a \$1 Direct Tax Apportioned by the Three-fifths Clause\*

| <i>Northern</i> |         | <i>Southern</i> |         |
|-----------------|---------|-----------------|---------|
| Connecticut     | \$ 1.01 | Delaware        | \$ 1.11 |
| Maine           | 1.00    | Georgia         | 1.33    |
| Massachusetts   | 1.00    | Kentucky        | 1.12    |
| New Hampshire   | 1.00    | Maryland        | 1.29    |
| New Jersey      | 1.04    | North Carolina  | 1.21    |
| New York        | 1.04    | South Carolina  | 1.45    |
| Pennsylvania    | 1.01    | Tennessee       | 1.06    |
| Rhode Island    | 1.01    | Virginia        | 1.39    |
| Vermont         | 1.00    |                 |         |

\* Adapted from Einhorn 2000.

Calculations are per capita estimates of the tax burdens for free persons within each state, as enumerated by the 1790 Census.

Samuel Chase moved to carve out an exception to the tax rule. He agreed that a population-based tax plan was more practical than other alternatives that invited debate on how to appraise and value disparate forms of wealth. Surely these would go unresolved. Chase “observed that negroes are property, and, as such, cannot be distinguished from the lands or personalties [sic] held in those states where there are few slaves; that the surplus of profit which a northern farmer is able to lay by, he invests in cattle, horses, &c., whereas a southern farmer lays out the same surplus in slaves” (ED-I [1775] 1836:71). His solution to this problem was to tax white freepersons only. That



way taxes would be levied on whites of the North and South by the same unit of measure, or so Chase thought. Northern representatives like Nathaniel Folsom of New Hampshire complained that this violated the “ability to pay” dictum.

If labor was the source of all wealth, Nathan Folsom reasoned, then white Southerners would forego taxes on the very thing that made them rich. He claimed:

it appears to me that one third part of the welth [sic] of the Southern States which consists in negroes, is entirely left out and no Notice taken of them, in determining their ability to pay taxes, notwithstanding it is by them that they procure their wealth. (LDC-VIII [1778] 1976:299)

James Wilson of Pennsylvania echoed these sentiments, knowing that his antislavery constituents of Pennsylvania would resent shouldering taxes that Southern slavemasters escaped. These Northern representatives were less concerned about their moral reservations over slavery than they were about taxation being a zero-sum gain. If Southern slavemasters evaded their monetary obligation to the country, then this meant Northern states would make up the difference and face a tax penalty for not owning slaves. Some Northern statesmen thought it more than odd that the wealthiest region in the country resisted taxes on the source that brought them such great fortune.

*Condemning and Defending Slavery in the Same Breath*

A small minority of Virginians, particularly Patrick Henry but also George Mason, worried federal taxation would trample over state sovereignty and create a national government too powerful for its own good. Offering a rhetorical arc that gradually meanders from one position to another, which is typical of colorblindness, Patrick Henry made a seemingly contradictory argument that first condemns slavery but then goes on to indirectly defend it by banning national taxation altogether. His first comments

ambiguously speak across multiple audiences in an attempt to establish credibility for his later, more controversial, argument:

it would rejoice my very soul that every one of my fellow-beings was emancipated. As we ought with gratitude to admire that decree of Heaven which has numbered us among the free, we ought to lament and deplore the necessity of holding our fellowmen in bondage. (ED-III [1788] 1836:591)

By invoking religion with the words “decree of Heaven,” Henry offers a moral rendering of the relationship between freeperson and slave under G-d. He invokes religious-inspired ideals over who is a constituent member of the body politic as it relates to the legal status of slaves. The religious diversity of his audience, which included churches that followed varied doctrines and different stances on slavery, allowed him to communicate a single message that bundled at least two competing theological interpretations: one as natural and the other as sinful (see also Jordan 1968).

To his fellow statesmen who believed divine right ordained the racial order, Patrick Henry’s invocation of heaven paired with his comment on the “necessity” of slavery represents an acknowledgment that G-d intended whites to rule the so-called “lesser races.” Henry may have “detested” the institution “with all the pity of humanity” (ED-III [1788] 1836:590), but he and other Southerners believed slavery to be inevitable. They claimed there was nothing they could do about the “natural” differences between the races. Black folks in general, and slaves in particular, were not equal to whites before the eyes of G-d. Therefore, a racial hierarchy like slavery could go unquestioned and thought of as ineradicable arrangement. To other statesmen, especially those who believed slavery sinful, Henry’s invocation of heaven acknowledged slaves as near equals (“fellow-beings”) and showed sympathy toward manumission. As they were all children

of G-d, there were no special capacities granted to freepersons that were not also extended to slaves. Both these possible interpretations could help establish rapport with Henry's audiences, and they permitted him to follow a moral dualism that challenged slavery on one hand and permitted new ways of defending it on the other.

White supremacy was about to be dressed in socially acceptable clothing, ones that adorned their colorblind texture from the sequenced structure in which they appeared (see also Bonilla-Silva and Forman 2000; van Dijk 1997; Wetherell and Potter 1992). After rejoicing at the thought of emancipation, which enabled Patrick Henry to stand on firmer moral ground to speak on a controversial subject, he endorsed slavery's preservation by asserting the autonomy of localities and their self-determination:

Let me not dwell on this subject. I will only add that this, as well as every other property of the people of Virginia, is in jeopardy, and put in the hands of those who have no similarity with us. This is a local matter, and I can see no propriety in subjecting Congress to it. (ED-III [1788] 1836:591)

That is, those who "understood" the local conditions ought to govern them without intervention. Any outsiders who meddled in their affairs were infringing upon a way of life only insiders could understand. Southerners like Patrick Henry were apprehensive to federalism that had the capacity to override their local jurisdiction over slavery. The possibility was, according to them, an encroachment worse than tyranny itself.

#### *Compromise and the Politics of Spin*

The three-fifths agreement was a truce between both sides of the tax debate, with representatives from the North and South claiming political victory. Rufus King of Massachusetts told his constituents "that five negro children of South Carolina are to pay as much tax as the three governors of New Hampshire, Massachusetts, and Connecticut"

(ED-II [1788] 1836:37). This appeased some Northern constituents who thought the South claimed all the benefit of slavery without any of its liability. Before the federal ratio was adopted under the new constitution, their slave wealth escaped taxation altogether under the Articles of Confederation (Article VIII). Furthermore, many thought slaves were a threat to national security. Representatives like Oliver Ellsworth of Connecticut claimed slaves could not be trusted on the battlefield, and those that were disaffected would easily turn to arms in support of the enemy. Subjecting slavemasters to taxation on their peculiar institution was a step in the right direction of the South paying its way.

The application of direct taxes, or more precisely the lack thereof, would prove Rufus King wrong through the course of history. Gouverneur Morris of Pennsylvania warned of this possibility. He said that direct taxes were too impractical: “It is idle to suppose that the general government can stretch its hand directly into the pockets of the people, scattered over so vast a country” (ED-V [1787] 1845:393). Morris was correct. During most years, direct taxes never were a vital source of revenue. They generated zero percent of federal revenue during the 1790s, and only a fraction of taxes collected until the 16<sup>th</sup> Amendment of 1913 (the federal income tax) was enacted (Dewey [1903] 1934).

Slavemaster representatives welcomed the theoretically progressive tax structure for political reasons. By considering slaves in the distribution of tax liability, they could claim they exempted lower class whites from direct taxation (Thornton 1982). In fact, these elites replicated this strategy at lower levels of government. States of the antebellum South set a precedent for among the most progressive tax structures to date in

America, though they were more progressive in theory than practice. Local governments in the South generated few revenues, as those who controlled them were more interested in limiting state capacity in all areas except protections over slavery. Nonetheless, claiming that they carried the tax burden of their respective states helped insulate class conflict between slavemasters and lower-class whites while justifying their own overrepresentation in politics (Einhorn 2006; Robinson 1971).

*When Economic Interests in Private Property Trump Moral Outrage over Slavery*

An end to slavery took a backseat to questions on how to tax private property. Southerners were quick to remind Northerners they stood to lose much capital investment should slavery be ended (see also Finkelman 1995). Without some compensation, statesmen from the North and South thought emancipation would be an unjust evaporation of wealth. Taxation was a vehicle that could make it possible, hence the reason why many slavemasters were apprehensive of a centralized national tax system. George Mason of Virginia agonized that “by laying taxes too heavily on slaves, [Northern delegates] might totally annihilate that kind of property” (ED-III [1788] 1836:452-456). Joseph McDowell of North Carolina worried, “The tax-gatherers will be sent, and our property will be wrestled out of our hands.... At such a distance from their homes, and for so long a time, they will have no feeling for, nor any knowledge of, the situation of the people” (ED-IV [1788] 1836:87-88).

Among the property these no-good outsiders would confiscate were slaves, so the storyline goes (see Bonilla-Silva, Lewis, and Embrick 2004). George Nicholas of Virginia went further and told “the committee that the people of our country are reduced

to beggary by the taxes on negroes” (ED-III [1788] 1836:457). The out of touch, overreaching government they feared was the one that would ruin their peculiar institution. Pierce Butler of South Carolina said it plain. “The security the Southern States want is, that their negroes may not be taken from them, which some gentlemen within or without doors have a very good mind to do” (ED-V [1787] 1845:309).

Quakers like Anthony Benezet (1773) of Pennsylvania, whom historian Winthrop Jordan (1968) considered among the foremost critics of slavery, took complaints like these serious. He and others devised gradual strategies of emancipation that included a reparations component for slavemasters as well slaves, though the former group was envisioned as the primary beneficiary.<sup>5</sup> The goal of emancipation was to avoid any radical shake-up of the social order, as well as to offset the losses of whatever wealth slavemasters stood to lose. This idea of reparations for slavemasters never gained currency, and one might imagine the backlash if it had become law. Those north of the Mason-Dixon Line would be subjected to pay Southern elites for the formerly enslaved. Even if Northerners wanted to, which most did not, such proposals were beyond the capacity of their developing economies (Robinson 1971).

Were economic capacity a non-issue, the question still left open was what would happen to the slaves once freed? James Galloway of North Carolina asked, “If we must manumit our slaves, what country shall we send them to? It is impossible for us to be happy, if, after manumission, they are to stay among us” (ED-IV [1788] 1836:101). He

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<sup>5</sup> Some plans for reparations devised by Quakers intended to compensate slaves for back wages (Jordan 1968). These were rare.

and many others could not even imagine a world in which former masters and slaves lived alongside one another as equals. The thought was unfathomable. Some entertained the idea of returning slaves to Africa or setting aside native-occupied land on the frontier, but none of these options were seriously pursued. A more feasible compromise, they thought, would be to settle their dispute over taxation and devise a fair plan for whites of whatever region.

With the possibility of taxing slavery out of existence, Northern delegates worried they might impose the same tyranny on their Southern brethren that the British had imposed on the colonies. The dream of America would be soiled under these circumstances. “I always consider the settlement of America with reverence and wonder,” wrote John Adams ([1763] 1851) of Massachusetts, “as the opening of a grand scheme and design in Providence for the illumination and emancipation of the slavish part of mankind all over the earth” (p. 452). Adams’ slavery metaphor was not to be taken literally, as it disregarded the chattel slavery facing many black lives. For many white Americans, the new world represented an opportunity to fulfill philosophers Jean-Jacques Rousseau’s ([1762] 2008) and John Locke’s ([1690] 2009) visions of the social contract. Liberty was defined by the unfettered pursuit and attainment of private property—slaves included. These ideas were ones in which “men” could improve their situation without interference from others. They were rights that existed before a person’s entrance into society, making them universal and inalienable. A violation of tax uniformity would break these tenets.

### Representation in the Name of Equality

America is a country born out of tax rebellion, the revolutionary spirit captured by the phrase “no taxation without representation.” When these words were uttered by Minister Jonathan Mayhew in 1750 at Old West Church in Boston, Massachusetts, they weighed heavy on the colonial consciousness (Beneke 2008).<sup>6</sup> His sermon was of the commemorative variety (see Mayhew 1750). Reminding his church members of the English Revolution that occurred one hundred years earlier, as well as the execution of Charles I, Mayhew spoke of their Christian duty to resist the government when it no longer served their interests. He reminded them that, as the British gentry before them, they had an obligation to resist taxes imposed on them against their will and without Parliamentary representation.

The message resonated among those throughout America. John Dickinson of Pennsylvania, for example, offered these reflections:

*Those who are taxed without their own consent, expressed by themselves or their representatives, are slaves. We are taxed without our own consent, expressed by ourselves or our representatives. We are therefore—SLAVES.* (qtd. in Feagin 2000:13, emphasis original)

Other patriots like John Adams and James Otis claimed the government had no standing to impose taxes for endeavors many of Americans saw as tyrannical and a violation of England’s own Bill of Rights (McCullough 2001). The absence of representation meant

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<sup>6</sup> The sermon given by Jonathan Mayhew (1750) is entitled, “A Discourse concerning Unlimited Submission and Non-Resistance to the Higher Powers: With some Reflections on the Resistance made to King Charles I. And on the Anniversary of his Death: In which the Mysterious Doctrine of that Prince’s Saintship and Martyrdom is Unriddled.”



colonial consideration or consultation did not exist. Like slaves, American consent mattered none. They were to pay obedience to master Britain.

When Americans came together under their own independence and sovereignty, they returned to their revolutionary slogan of “no taxation without representation.” They asked themselves, “How will we determine the latter?” Above all branches of government, answering this question mattered most to the legislature. As James Madison ([1788] 1999) wrote in Federalist Paper No. 51, “the legislative authority necessarily predominates” (p. 319). This is where elite interests are interfered with as property, in all its carnations, is regulated (see also Federal Paper No. 10). Therefore, figuring out its composition was of utmost importance to the founders. They learned by trial and error with the Articles of Confederation. Under this constitution, states had equal representation that followed a “one vote, one state” plan. Disputes over uneven distributions of population, wealth, and slavery proved it unworkable.

The richest and most populous states would not support such a union moving forward. From their view, a republican government that respected the will of the people was one that put lawmaking in their hands. A populous rule or a rule by wealth meant power would be vested in the very districts where they reside. The criteria that made many states both rich and populous revolved around slavery, which made debates over representation not really about representation at all (cf. Ohline 1971). Like the tax debates that preceded them, these debates were over the importance of slavery and how slaves ought to be counted (see also Feagin 2000). “The institution of slavery & its

consequences,” observed James Madison, “formed the line of discrimination” separating Southern states from Northern ones (FR-II [1787] 1911:10).

*Count Them Whole: The House that Slaves Built but Could Not Reside*

When it came to taxes, slavemaster politicians denigrated slave labor, and its lack of productivity, as causing slaveholders to incur more cost than profit. That way they could claim slavemasters deserved some consideration of relief should taxes be distributed by population. When it came to representation, they argued the opposite. James Jackson of Georgia “knew this business was viewed in an odious light to the eastward, because the people were capable of doing their own work” (DPCUS-I [1789] 1834:350). He saw the South through different eyes. The peculiar institution was a destined social order:

“however slavery may be condemned in the Eastern States, it is impossible to cultivate the Southern country without their assistance” (DPCUS-I [1789] 1834:240). Charles C. Pinckney of South Carolina agreed:

the nature of our climate, and the flat, swampy situation of our country, obliges us to cultivate our lands with negroes, and that without them South Carolina would soon be a desert waste. (FR-III [1787] 1911:254)

For the areas in which blacks excelled, at least according to those like Jackson and Pinckney, these tasks were regarded as inconsequential to whites’ sense of personhood.

Whites of the early republic prided themselves upon their industry and sense of workmanship, but thought these talents and abilities were better left for more intellectual and cognitive enterprises.

Sociologists Joe Feagin, Hernán Vera, and Pinar Batur ([1995] 2001) have labeled mythologies like these as “sincere fictions of the white self,” whereby whites see themselves as well-meaning, tolerant people but nonetheless advance antiblack ideas (p.

186). These views bolstered how elite Southerners envisioned a racialized division of labor. Whites could not perform arduous labor required for an economy built upon tobacco, rice, sugar, indigo, and later cotton. Only black slaves were capable of those tasks. More than that, they were preordained. It was as though the peculiar institution was natural, inevitable, and unstoppable. These ideas can seem counter-intuitive to colorblindness, but as Bonilla-Silva ([2003] 2014) has explained, “they are actually used to reinforce the myth of nonracialism”; they suggest differences “are almost biologically driven and typical of all groups in society” (p. 76).

Other South Carolinians demanded that slaves be counted five-fifths for representation too. Consider the argument offered by Pierce Butler:

[He] insisted, that the labor of a slave in South Carolina was as productive and valuable as that of a freeman in Massachusetts; that as wealth was the great means of defence [sic] and utility to the nation, they were equally valuable to it with freemen. (ED-V [1787] 1845:296)

This followed the same logic also used by James Jackson and Charles C. Pinckney. It was the only valid alternative, in their minds, that slaves be counted whole for representation. Stressing political equality, Butler reasoned: “consequently, an equal representation ought to be allowed for them in a government which was instituted principally for the protection of property, and was itself to be supported by property” (ED-V [1787] 1845:296).

When James Jackson, Charles C. Pinckney, and Pierce Butler claimed slaves offer valuable economic contributions and ought to be considered for congressional representation, they did not argue for the franchise of slaves. Rather they clung to decontextualized notions of democratic representation that exclusively served their own

racial interests. Southerners demanded slaves' contribution to the union be respected with extra legislative representation. Otherwise, the scale of political balance between elite whites of the North and South would be violated.

*If Slaves are to be Represented, Why Not Horses and Cattle Too?*

Some from the North opposed any enumeration of slaves at all. Elbridge Gerry of Massachusetts argued that if property determines representation, then Northerners should not be penalized for their lack of slaves. "Blacks are property, and are used," he argued, "to the southward, as horses and cattle to the northward; and why should their representation be increased to the southward, on account of the number of slaves, than horses or oxen to the north?" (FR-I [1787] 1911:206). Those who agreed insisted Southerners should have their enumeration reduced or Northerners ought to be placed on equal footing. As is, a resident of Massachusetts who owns 500 horses gets one vote. A slavemaster of South Carolina who owns 500 slaves gets 300 votes, plus his own. "Horses and Cattle," contended Gerry, "ought to have the Right to Representn [sic]" (FR-I [1787] 1911:208). This would be one way that political voice would commensurate with the wealth that made government possible, implying that all propertied interests need protection.

William Davie of North Carolina took Elbridge Gerry's argument as a sign of envy. Speaking to his constituents back home, he said:

The Eastern States had great jealousies on this subject. They insisted that their cows and horses were equally entitled to representation; that the one was property as well as the other. It became our duty, on the other hand, to acquire as much weight as possible in the legislation of the Union; and, as the Northern States were more populous in whites, this only could be done by insisting that a certain

proportion of our slaves should make a part of the computed population. (FR-III [1787] 1911:342)

Rawlins Lowndes of South Carolina thought much of the same. He claimed:

Without negroes, this state one of the most contemptible in the Union.... Negroes were our wealth, our only natural resource; yet behold how our kind friends in the north were determined soon to tie up our hands, and drain us of what we had! (ED-IV [1788] 1836:272-273)

Meanwhile, other delegates from the North, like Alexander Hamilton of New York and Roger Sherman of Connecticut, suggested the population plan refer to “free inhabitants” only. Southerners did not take kind to this proposal. Rather than engage in give-and-take compromise, they reverted to their preferred style of negotiation: hold the debate hostage.

The message was implicit but unmistakable. Count slaves toward congressional representation (without the franchise), or watch Southern states break any dreams of a more perfect union. It seemed like the Articles all over again. This time, however, Southerners shifted the tune of their argument (see also Wills 2003). Slavemaster politicians like James Madison worried a population plan that counted whites only would mean Northern issues and concerns would dominate the legislative agenda:

The great danger to our general government is the great southern and northern interests of the continent, being opposed to each other. Look to the votes in congress, and most of them stand divided by the geography of the country, not according to the size of the states. (FR-I [1787] 1911:476)

Likewise, Charles C. Pinckney of South Carolina said slaves ought to be counted on the principle of “equality” (FR-I [1787] 1911:567). His South Carolinian cousin, Charles Pinckney, agreed. “There is a real distinction between the northern and southern interests,” he claimed. “North Carolina, South Carolina and Georgia, in their rice and indigo, had a peculiar interest, which might be sacrificed” (ED-V [1787] 1845:270). Most

freepersons lived in the North, so he and other Southern statesmen preferred that slaves count at least partially toward representation. That way political influence between the two regions could be balanced.

*Once They Get a Taste of Power...*

Without a balance of power, Southerners worried about the likelihood of Northern usurpation. By underrepresenting slaves or worse, not counting them at all, slavemaster politicians argued they would inevitably become politically disenfranchised. George Mason elaborated,

If the Southern States should have three fourths of the people of America within their limits, the Northern will hold fast the majority of representatives. One fourth will govern the three fourths. The Southern States will complain; but they may complain from generation to generation without redress. (ED-V [1787] 1845:294)

The wealthiest and most populous districts would not rule under such circumstances, rather they would come under rule. The idea that power begets power was a source of much anxiety for Southerners. They thought once Northern states got a taste of power, their representatives would not want it relinquished and would do whatever they could to expand it. “Is it to be expected,” Mason rhetorically asked, “that [Southern states] will deliver themselves, bound hand and foot, to the Eastern States?” (ED-V [1787] 1845:490).

Charles C. Pinckney thought this inevitably meant domestic and international commerce, the slave trade included, would be regulated by the national government, which would cause Southern states to become “nothing more than overseers for the Northern States” (FR-I [1787] 1911:567). Without a representation plan that counted slaves, Southerners (and some Northerners) warned of the autocratic dangers that came

with a minority-ruled interventionist state. John Tyler of Virginia lambasted the slave trade, for example, as “disgraceful” and “wicked,” but guarded against designing a government that could do anything about it. Granting national regulatory powers to a small group of legislatures, many of whom were unfamiliar with the interests of those they supposedly represented, would set a precedent for a government too powerful for its own good.

John Tyler asked the founders to remember Caesar:

From the combined operation of these unlimited powers he dreaded the most fatal consequences.... He called to the recollection of the committee the history of the Athenian who, from small beginnings, had enslaved his country. He begged them to remember that Caesar, who prostrated the liberties of his country, did not possess a powerful army at first. Suppose, says he, that the time should come that a king should be proposed by Congress. Will they not be able, by the sweeping clause, to call in foreign assistance, and raise troops, and do whatever they think proper to carry this proposition into effect? He then concluded that, unless this clause were expunged, he would vote against the Constitution. (ED-III [1788] 1836:454-455)

Implying a domino effect, Tyler asked where the unilateral action of their national government would end?

The power of prohibiting [the slave trade] was not expressly delegated to them; yet they would have had it by implication, if this restraint had not been provided. This seemed to him to demonstrate most clearly the necessity of restraining them, by a bill of rights, from infringing our unalienable rights.... From the combined operation of these unlimited powers he dreaded the most fatal consequences. (ED-III [1788] 1836:454)

Tyler insinuated that Northern representatives may start from humble beginnings, but like Athens and Caesar, they, too, would only gain in power and inevitably trade liberty for tyranny. It would set the country’s course straight toward its own bloody demise, so he foretold.

Many statesmen thought a disproportionate representational rule that did not consider the presence of slaves threatened laissez-faire-inspired pursuits of life, liberty, and property. This is especially true if the federal government also possessed the power to tax. Hugh Williamson claimed, “The southern interest must be extremely endangered by the present arrangement. The Northern States are to have a majority in the first instance, and the means of perpetuating it” (ED-V [1787] 1845:291). Outsiders could levy whichever taxes they preferred, on whatever objects they deemed, and for however much they desired. Southerners perceived “Northern aggression” as violating tenets upon which the republic was founded, and considered their own situation as “taxation without representation.”

*Quid Pro Quo, Accommodating a More Perfect Union*

The costs of ending slavery were too high for Northern delegates who worried a lack of compromise would sever the union. Alexander Hamilton thought it was “the unfortunate situation of the Southern States, to have a great part of their population, as well as property, in blacks” (ED-II [1788] 1836:237). Recalling slavery this way, he committed what sociologist W.E.B. Du Bois ([1935] 1992) labeled “the propaganda of history.” The institution was discussed “so impartially, that in the end nobody seems to have done wrong and everybody was right. Slavery appears to have been thrust upon unwilling helpless America, while the South was blameless in becoming its center” (p. 714). Hamilton’s words transformed the institution of slavery so that slavemasters were removed from culpability. Rather than being active agents who propagated human bondage onto others for the sake of profit, these elite white men were described more as



victims of circumstance. This is not to say that Hamilton or other Northern representatives advocated slavery in a direct manner.

“It will, however, by no means be admitted that the slaves are considered altogether as property,” declared Alexander Hamilton. “They are men, though degraded to the condition of slavery” (ED-II [1788] 1836:237). Insisting slaves of their humanity but wanting to bridge the sectional divide, he went on to qualify:

But representation and taxation go together, and one uniform rule ought to apply to both. Would it be just to compute these slaves in the assessment of taxes; and discard them from the estimate in the apportionment of representatives? (ED-II [1788] 1836:237)

Hamilton contradicts his original position with this statement. He was caught up in what Howard Schuman and colleagues ([1985] 1997) have labeled the “principle-implementation gap,” whereby whites profess beliefs of racial equality on paper but reject it in practice. The idea that slaves were people, deserving recognition as such, was sacrificed for abstract principles of “representational equality” among elite white men in the North and South.

Most Northern politicians did not belong to manumission societies like Alexander Hamilton,<sup>7</sup> but they recognized conflicts over slavery had to be minimized to avert a sectional clash. Hamilton pleaded for a spirit of compromise by appealing to Northern

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<sup>7</sup> Alexander Hamilton belonged to the New York Manumission Society. In many ways, these organizations were conservative precursors to the radical abolitionist societies of the nineteenth century. Rather than advance an outright end to slavery through government action, they preferred individual slavemasters to give up slaves out of their own volition or in exchange for some form of compensation (Bernstein 2009). Other members of manumission societies that are featured in this dissertation include Anthony Benezet, George Clinton, Benjamin Franklin, John Jay, Benjamin Rush, and Melancton Smith.

representatives' economic interests. He asked, "Would it be just to impose a singular burthen, without conferring some adequate advantage?" (ED-II [1788] 1836:237). Posing this question, he reminded his sectional colleagues that a portfolio tied to slavery permitted wealth in other forms of capital and real property to escape taxation. Siding with Southerners, he and others like Francis Dana argued slaveholders were saddled with unfair taxes. The market should determine, they contended, how resources are allocated and principles of tax uniformity should reward hard work and initiative rather than penalize it.

Slavery was gradually falling out of favor among Northern states beginning in the 1780s. Though Massachusetts was the only state in the union to have ended slavery by the Constitutional Convention, one-by-one states like New York were putting in place gradual plans for abolishment. Knowing this and wanting to convince the undecided, Alexander Hamilton filled out his argument to show how slavery benefitted the interests of "everyone" (except slaves):

The first thing objected to is that clause which allows a representation for three fifths of the negroes. . . . The regulation complained of was one result of the spirit of accommodation which governed the Convention: and without this indulgence no union could possibly have been formed. But, sir, considering some peculiar advantages which derive from them, it is entirely just that they should be gratified. The Southern States possess certain staples, tobacco, rice, indigo, &c., which must be capital objects in treaties of commerce with foreign nations; and the advantages they necessarily procure in those treaties will be felt throughout all the states. (ED-II [1788] 1836:237)

Human bondage bolstered national prosperity through an agrarian economy that yielded raw materials that filled textile mills, generating wealth for Northern shopkeepers and laborers and making possible trade that primed domestic and international commerce

(Baptist 2014; Marable [1983] 2000). Seen this way, it is rational for Northern delegates to give a pass to slavery.

The Northern economy was intertwined with the South, and the peculiar institution served their welfare too. Others like James Wilson agreed that a quid pro quo was in order, and said the South should be conceded their “indulgence” with extra representatives. “These are the difficulties however which [Wilson] thought must be overruled by the necessity of compromise” (FR-I [1787] 1911:587). Gouverneur Morris said, “This country must be united. If persuasion does not unite it, the sword will. He begged this consideration might have its due weight. The scenes of horror attending civil commotion cannot be described; and the conclusion of them will be worse than the term of their continuance” (ED-V [1787] 1845:276).

Rufus King agreed with Gouverneur Morris and urged his colleagues to consider what sacrifices Southerners had made to Northern industry when casting their vote.

Mr. KING had always expected that, as the Southern States are the richest, they would not league themselves with the Northern, unless some respect were paid to their superior wealth. If the latter expect those preferential distinctions in commerce, and other advantages in return. (ED-V [1787] 1845:290)

Northern politicians forged alliances across the sectional aisle, uniting those who opposed and favored slavery. Oliver Ellsworth asked Northern delegates for deference. “The morality or wisdom of slavery,” he claimed, “are considerations belonging to the states themselves. What enriches a part enriches the whole, and the states are the best judges of their particular interest” (ED-V [1787] 1845:457). By the time the Constitution was ratified, most delegates from the North had convinced themselves a union with slavery trumped no union at all.

### **Colorblind Discourse, Color-Conscious Context**

Passage of the three-fifths clause, and the Constitution in general, required alliances across the sectional aisle. Jumbles of a colorblind racism, in both content and form, that *moves* across the contexts of taxation and representation helped to develop these bonds by overcoming, or at least diminishing, political dissymmetry that could have otherwise thwarted white solidarity. Politicians of the early republic could have easily followed divergent paths given their unique particularities, like sectional factions over religion or economy, but colorblindness helped facilitate empathy for Northerners who could adopt the racial causes of Southerners and vice versa. Even those who opposed slavery accommodated and absorbed subaltern worldviews of racism as their own when they prioritized abstract ideas of tax uniformity and representational equality over an institution that stripped people of their humanity and reduced them to bondage. With colorblind comments like “I’m principled against slavery, but...”, they even condemned and defended slavery in the same breath.

Patterned attacks on slavery by slavemasters and accommodators alike were rhetorical during the three-fifths debate, but they indicate an internal dialogue regarding a shared code of ethics—a “white habitus” if you will (see Bonilla-Silva [2003] 2014; Bonilla-Silva, Goar, and Embrick 2006).<sup>8</sup> A common European cultural heritage among

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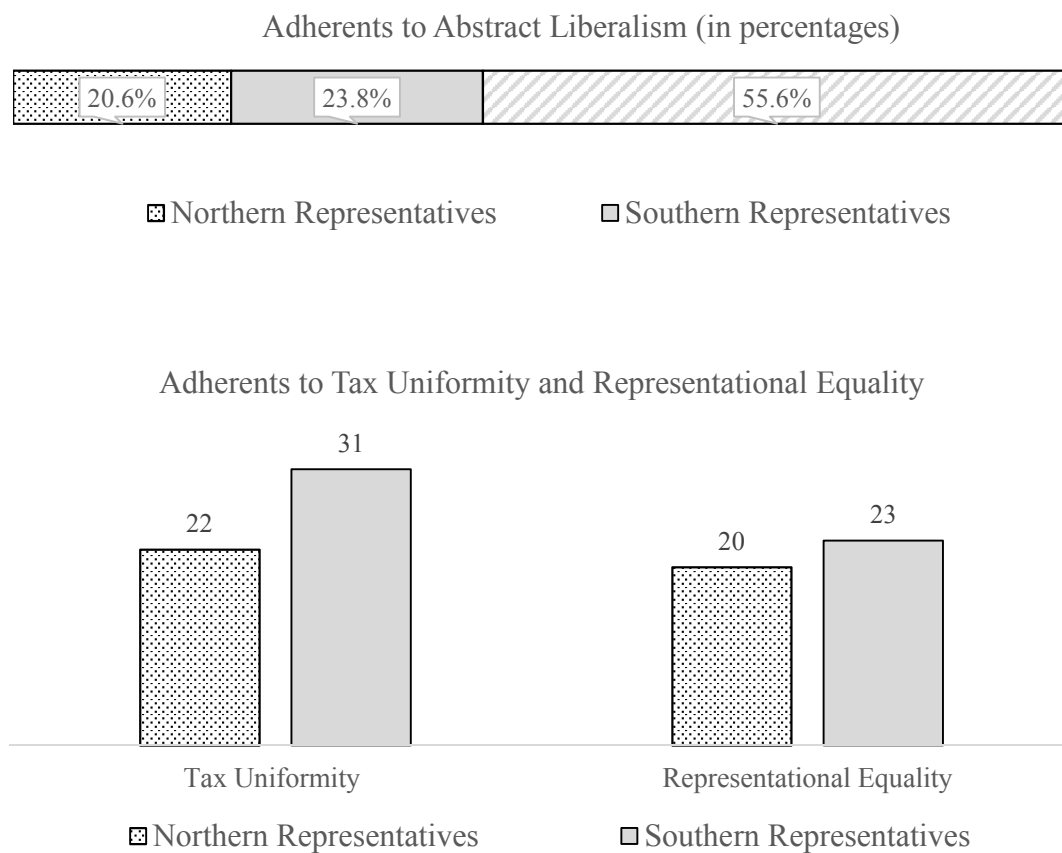
<sup>8</sup> Sociologists Eduardo Bonilla-Silva, Carla Goar, and David Embrick (2006) have extended sociologist Pierre Bourdieu’s ([1979] 1984) notion of “habitus” to racial dynamics. The concept of “white habitus” refers to socially acquired predispositions of thought and action among those racialized as white that become habitual, so much so that routinized behaviors go unnoticed and unexamined (see also Bonilla-Silva [2003] 2014).

the framers worked to reinforce this sense of groupness (see Lewis 2004). Most could trace their origins to Britain, and to a lesser extent Scotland, Ireland, and Germany, and a vast majority followed politics loosely subscribed to Lockean liberalism (Robinson 1971; see also Locke [1690] 2009). Protection of property rights was foundational to their political understandings, which embedded beyond question ideals of what they thought republican government should be. Race colored all of these meanings. At some level, members of both sides acknowledged slavery was incongruent with commitments to freedom. Outright endorsements of slavery, even during the 1700s, violated a shared civic etiquette and ran risk of social sanction. This is, in part, why proslavery views were routinely prefaced with lamentations over the institution's existence. These discursive strategies provided them a means to defend the indefensible. For instance, George Mason could lambast the slave trade as "diabolical in itself, and disgraceful to mankind" (ED-III [1788] 1836:452), but nonetheless go on to advocate procedural barriers (the three-fifths clause) that prevented slavery from being regulated out of existence.

Northerners and Southerners transcended their differences during the three-fifths debate to share a configuration of practices and meanings that asserted a common social location within the racial order: whiteness. Internal tensions did not prevent, as Amanda Lewis (2004) has explained with her notion of "hegemonic whiteness," a fluidly tentative consensus agreement that cemented a recognition of shared racial interests (see also Hughey 2012). This finding belies narratives, as social geographer Alastair Bonnett (2010) has described, that discretely cast whites in oppositional terms of "heroes and villains: pure racists versus anti-racists, good against evil, [proslavery versus

antislavery]” (p. 10). Whiteness is not an identity in other words, but a power bloc comprised by coalitions of differentiated subgroups. This is true even as white Northerners and Southerners did not constitute a coherent group of people.

Figure 2. Analytic Summary of Colorblind Adherence (n = 160)



Summarizing the degree of colorblind adherence (see Figure 2), nearly half of those I observed (71 out of 160 or 44.4 percent) deployed the frame of abstract liberalism. The margin of difference between North and South was marginal, however, with the latter holding a slight edge (33 compared to 38). Many more Southerners than Northerners framed the three-fifths debate under the guise of tax uniformity (31

compared to 22), while the two regions were fairly balanced when it came to representational equality (23 compared to 20). The delegates formed a collectivity across the sectional aisle by partaking in racism that promoted common racial interests.

Through working negotiations and agreements, colorblindness helped forge a common bond of whiteness among founding fathers so that they could build an empire in their own lasting image. It tapped into the logics of government nonintervention and free markets (see Bobo, Kluegel, and Smith 1997), as well as its slippery and seemingly nonracial style (Bonilla-Silva [2003] 2014), to guard against slavery's vulnerabilities. In part, this is because America's wealthiest capitalists were unlike the European bourgeoisie (Einhorn 2000). They were a slavemaster class with many sympathizers. Their converging interests drove them to develop a state-sanctioned market that denied and endorsed the salience of race, entrenching a color-conscious, quasi-feudal society in the process. The fact that colorblind ideology played a salient role in shaping the three-fifths clause merits attention because it shows how contemporary ideology was not created out of whole cloth in post-1960s America. This complicates straightforward narratives of temporal change in racism, ones that point to a distinct break from the past. Racial ideology of the early republic transpired within experiences, interests, and structural circumstances different from today's colorblind era. Looking beyond broad historical brushstrokes that dichotomize racism between classical and modern forms, however, it becomes apparent, to extend the words of W.E.B. Du Bois ([1903] 2005), that the problem of the colorline has long been a problem of the colorblind.

## CHAPTER SIX

### PRINCIPLED CONSERVATISM OR PRINCIPLED RACISM?

“Do blacks on welfare really need it?” Social psychologists David Sears and Tom Jessor (1996) have used this question to measure “symbolic racism,” what they define as belief system that fuses meritocratic ideas defined by individualism and self-reliance with stereotypes that blacks are culturally inferior (see also Brandt and Reyna 2012; Kinder and Sears 1981; Sears and Kinder 1971). Political scientists Paul Sniderman and Thomas Piazza (1993) have interpreted responses to questions like these as having less to do with race and more with beliefs of “principled conservatism” (see also Sniderman and Carmines 1997; Sniderman et al. 2000). It is as though the two are independent.

Conservatives who oppose a robust welfare state, for example, claim these programs hurt their beneficiaries by fostering pathological behavior and rendering them dependent rather than self-sufficient (e.g., D’Souza 1995; Herrnstein and Murray 1994). Adherents to the “principled conservatism” thesis argue that such views do not imply anti-blackness. They imply that people prefer political values of localism, liberty, and limited government. When prejudice does play a role in racial policy debate, Paul Sniderman and Edward Carmines (1997) have contended that it only pertains to certain types of policies and people (see also Feldman and Huddy 2005). Perceptions of black effort, for example, predict support for government spending on blacks, but it carries little explanatory value for equal treatment policies (e.g., affirmative action). This inconsistency, they note,



suggests the role of politics should be privileged in discerning Americans' stance on racial policy.

Historians like Merrill Jensen (1950), E. James Ferguson (1961), and Richard Kohn (1975) have offered complementary narratives. In tracing American political development, they claim the Constitution set in motion a weak federal government. The reason being, for the most part, the triumph of agrarian influences like the antifederalists and Jeffersonian democrats. Other historians like Bernard Bailyn (1967) and Gordon S. Wood (1969, 2009) have claimed state structure is a product of a republican ideology that prizes liberty and fears government abuses of power above all else.<sup>1</sup> Both these camps neglect the political context of slavery and how racial views shaped (and were shaped by) political institutions. They diminish how slavery was *the* central institution for a developing American political economy and its ensuing state formation (Einhorn 2000, 2006; Feagin 2000). Like those political scientists who advance the principled conservatism thesis, these historians compartmentalize race and politics as though the two are not intimately intertwined.

If the principled conservatism thesis is correct, then views on the role of government are more political than racial. Therefore, one could expect such conservative values to be consistent with an array of policy issues outside of policies such as welfare and affirmative action—like the scope of government. Are racial views partitioned from

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<sup>1</sup> When debating the morality of the three-fifths clause, in fact, historian Peter Wood (2003) has claimed there is nothing inherently wrong about counting slaves toward political representation they, themselves, could not partake (see also Apple 2003).

views on limited government and political development? Looking to the debates leading to the Constitution's enactment, the answer is no. Views on how government ought to be structured cannot be understood without accounting for the racialized context from which they were codified into law. Slavemaster politicians and their accommodators deployed ideals of localism, liberty, and limited government to bifurcate the structure of federalism. This bifurcation robustly protected the peculiar institution on one hand, and on the other severely limited its powers for interfering with state sovereignty. Taken together, these strategies created a Southern executive rule that rendered the institution of slavery as nearly untouchable.

### **The Constitution and Southern Executive Rule**

After details of the Constitution were worked out, slavemaster politicians boasted the good news to their Southern constituents. They knew the boogeyman of an overreaching government weighed heavy on the conscious of America, a nation that stood up to tyrannical British rule with the words "no taxation without representation" backed by violent action. Edmund Randolph of Virginia eased any hesitation his constituents may have had. He claimed the new government posed no threat to their peculiar institution. Anticipating that some may worry the 1808 ban on slave trade was too much a political sacrifice, he preemptively countered with the following:

[W]here is the part that has a tendency to the abolition of slavery? Is it the clause which says, that 'the migration or importation of such persons as any of the states now existing, shall think proper to admit, shall not be prohibited by congress prior to the year 1808?' This is an exception from the power of regulating commerce, and the restriction is only to continue till 1808. Then congress can, by the exercise of that power, prevent future importations; but does it affect the existing state of slavery? Were it right here to mention what passed in convention on the occasion,

I might tell you that the southern states, even South-Carolina herself, conceived this property to be secure by these words. I believe, whatever we may think here, that there was not a member of the Virginia delegation who had the smallest suspicion of the abolition of slavery. (FR-III [1788] 1911:334)

Slavemaster politicians from South Carolina echoed these sentiments to their constituents.

Practically bragging to the South Carolina House of Representatives, Charles C. Pinckney offered this statement:

By this settlement we have secured an unlimited importation of negroes for twenty years. Nor is it declared that the importation shall be then stopped; it may be continued. We have a security that the general government can never emancipate them, for no such authority is granted; and it is admitted, on all hands, that the general government has no powers but what are expressly granted by the Constitution, and that all rights not expressed were reserved by the several states. We have obtained a right to recover our slaves in whatever part of America they may take refuge, which is a right we had not before. In short, considering all circumstances, we have made the best terms for the security of this species of property it was in our power to make. We would have made better if we could; but, on the whole I do not think them bad. (FR-III [1788] 1911:254-255)

On the whole, Southerners were pleased with their political achievements. Passage of the Constitution represented restrained government capacities in most areas of public life except slavery. This is true for representation and taxation as seen through the three-fifths clause, but numerous other provisions too.

Table 4. The U.S. Constitution and Systemic Protection of Slavery, Articles I-II

| <i>Provision</i>     | <i>Relevant Legal Text</i>  | <i>How Slavery was Protected</i>   |
|----------------------|---|--|
| Article I, Section 2 | Representatives and direct taxes shall be apportioned among the several states which may be included within this union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and | Enumerates slaves as three-fifths a person for taxes and representation, proportions tax liability to states by population (see also Article I, Section 9) |

excluding Indians not taxed, three fifths of all other Persons.

|                          |   |  |
|--------------------------|---|--|
| Article I,<br>Section 8  | The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.....   | Erects procedural barriers against taxing slavery out of existence through uniform taxation  |
| Article I,<br>Section 9  | The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.... No capitation, or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.... No tax or duty shall be laid on articles exported from any state. No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state, be obliged to enter, clear or pay duties in another. | Prevents end of slave trade until 1808, says nothing of the abolishment of slavery; Uses the three-fifths formula to apportion taxes to the states; Exempts slave-produced products from taxes and duties (also see Article I, Section 10) |
| Article II,<br>Section 1 | Each state shall appoint, in such manner as the Legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.  | Avoids direct vote of the presidency, allotting electors by number of Congresspersons in part determined by the three-fifths clause  |

The Constitution contained at least four Articles and eight Sections that directly or indirectly defended slavery upon its enactment (see Tables 4 and 5). Provisions within these texts range broadly from limited taxation on imports and exports to the design of the electoral college to ensured federal assistance for controlling slave insurrections by force. Though my emphasis thus far has centered on the three-fifths clause, and its corresponding issues of representation and taxation, I contextualize these matters in this chapter within the broader constitutional debate. In doing so readers can gain some clarity to what extent slavery set a tone for shaping government on the whole. The three-fifths clause cuts across these provisions in some cases, as later provisions like Article I, Section 9 loop to it to prohibit capitation (per head) taxes without considering the

infamous ratio. In other cases, independent protections like a slave trade provision and the fugitive slave clause secure legal protection of the peculiar institution. Discussing these other parts of the Constitution, the aim is to show how slavemaster politicians and their accommodators created a federal government of executive rule where slavery was a focal point of its design.

Table 5. The U.S. Constitution and Systemic Protection of Slavery, Articles IV-V

| <i>Provision</i>      | <i>Relevant Legal Text</i>  | <i>How Slavery was Protected</i>   |
|-----------------------|---|--|
| Article IV, Section 2 | A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.   | Declares executive rule for Southern states, demands extradition of fugitive slaves  |
| Article IV, Section 4 | The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.  | Requires federal intervention for domestic violence, slave insurrections included (see also Article I, Section 8)  |
| Article V             | The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article;... | Eracts “supermajority” procedural barriers to banning slavery; Temporary prohibited any revisions to the slave importation and direct or capitation tax clauses until 1808 |

## Article I, Section 8: Tax Uniformity

Ideals of tax uniformity, the ones that guided so much of the three-fifths debate, were formalized even further under Article, I, Section 8. This provision ensured some forms of property were not taxed at higher rates than others, penetrating government much deeper than it may appear at first glance. Tax uniformity is not merely a peripheral function. As historian Robin Einhorn ([1991] 2001) has clarified, it determined the fundamental trajectory of political development. Tax uniformity clauses obstruct the power of future legislatures to revise old tax regimes or put in place new ones, particularly those of the progressive variety. A congress filled with a majority of slavemaster politicians surely would not have to worry about human bondage being taxed out of business, but what happens when their representation is in the minority?<sup>2</sup> Though often dressed in the language of equality and fairness, tax uniformity represents a restraint on democratic rule (cf. Fisher 1996; Horwitz 1979). It added a layer of preemptive protection for slave interests by locking in place a governing structure that lacked the capacity to tax, regardless of how antislavery a legislative body may become.

Slavemasters insisted the uniformity clause be adopted because they had profound anxieties about an all too powerful government that might interfere with private property. These anxieties stemmed from a combination of two factors: 1) Northern representatives that were hostile to their peculiar institution and 2) a national government empowered to

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<sup>2</sup> The “uniformity clause” is not strictly a national phenomenon. Its origins are rooted in the constitutional formations of slaveholding, Southern states during the late eighteenth century (Einhorn 2006). Once these laws were firmly planted, they spread branches across the nation to lower levels of government. By 1860, for example, 20 of 33 state constitutions contained a tax limitation provision. Of these 20, 15 specifically referred to them as “uniformity clauses.”

regulate commerce. Consider the comments of Rufus King of Massachusetts, for example. If the purpose of government, he argued, was to protect against foreign interests and insurrection from within, then there was no reason why slavemasters not only gained extra representation but received tax privileges for the wealth they possessed in slaves. According to him and some from the North, slavery made the nation vulnerable on both counts. Southerners got all the benefit of slavery without much of its burden. King thought this burden was one carried by Northern states. They would be required to make up the difference in supplying national defense and the revenues that would pay for it.

To make things fair, Rufus King suggested the slave trade be subject to taxation:

If slaves are to be imported, shall not the exports produced by their labor supply a revenue the better to enable the general government to defend their masters?

There was so much inequality and unreasonableness in all this, that the people of the Northern States could never be reconciled to it. (ED-V [1787] 1845:391-392)

King purposefully chose the words “inequality” and “unreasonableness” to make his case. The kind of equality and reason that concerned him did not regard the humanity of slaves. Rather, the kind he fought for was a fair tax distribution among Northern and Southern states—one where slavery was permissible as an American institution so long as slavemasters were willing to foot some of its tax bill. King “had hoped that some accommodation would have taken place on this subject... either slaves should not be represented, or exports should be taxable” (ED-V [1787] 1845:391-392).

The points made by Rufus King were exactly the kind that made Southern slavemasters fearful. George Mason of Virginia claimed, “we have no security for the property of that kind which we already have. There is no clause in the Constitution to secure it; for they may lay such a tax as will amount to manumission” (ED-III [1788]

1836:452). Mason and others worried a national government that could indirectly regulate slavery by laying taxes so heavy on slaves or the fruit of their stolen labor that the institution would no longer be profitable. Arguments like these were not exclusively Southern. John Williams of New York did not directly advocate slavery, but he indirectly supported antifederalist ideas that permitted its continuance.

John Williams warned against a strong national government with regulatory power:

In short, we can have no conception of any way in which a government can raise money from the people, but what is included in one or the other of these general terms. Every source of revenue is therefore committed to the hands of the general legislature. Not only these terms are very comprehensive, and extend to a vast number of objects, but the power to lay and collect has great latitude: it will lead to the passing of a vast number of laws, which may affect the personal rights of the citizens of the states, and put their lives in jeopardy. It will open a door to the apportionment of a swarm of revenue and excise officers, to prey upon the honest and industrious part of the community. (ED-II [1788] 1836:330-331)

Southerners and Northerners alike opposed a centralized government the Constitution seemed to be advancing, while deploying a slavery metaphor to frame themselves as victims in the process. Some of the most fatal consequences, they thought, would come from a coercively redistributive tax state. Abstract notions of local sovereignty, personal rights, and free choice would be sacrificed on the altar of what we often refer to today as “big government” (see also Bonastia 2012; Lo 1990).

### **Article I, Section 9: The 1808 Slave Trade Ban and Strained Taxation**

Some Northern delegates were willing to give slavery a pass, so long as they got something in return. The Pinckney cousins and Pierce Butler, all from South Carolina, brokered a compromise with Gouverneur Morris of Pennsylvania and Oliver Ellsworth of Connecticut. Terms of their agreement regarded the slave trade and deregulation. As a



member of the committee where the terms of this compromise were negotiated, Luther Martin of Maryland observed the following:

I found the Eastern States, notwithstanding their aversion to slavery, were very willing to indulge the Southern States at least with a temporary liberty to prosecute the slave trade, provided the Southern States would, in their turn gratify them, by laying no restriction on navigation acts; and after a very little time, the committee, by a great majority, agreed on a report, by which the general government was to be prohibited from preventing the importation of slaves for a limited time, and the restrictive clause relative to navigation acts was to be omitted. (ED-I [1787] 1836:373)

In exchange for continuing the slave trade for another 20 years, these Southern delegates agreed to support a plan that allowed for the federal regulation of commerce and lifted a procedural barrier (a two-thirds majority vote in the House and Senate) that undermined shipping and coastal-driven economy. These were otherwise known as navigations acts, which protected American shipping from foreign competition and granted American merchants monopolies over domestic commodities.<sup>3</sup>

Charles C. Pinckney preferred a national government without the power to regulate commerce, but he sympathized with his Northern colleagues. Their maritime interests had suffered much devastation from the War of Independence. Aside from this sympathy, they shared “liberal conduct towards the views of South Carolina” (ED-V [1787] 1845:489). “Liberal conduct” in this context is codespeak for accommodation toward slavery. A quid pro quo was in order. In Pinckney’s mind, he

thought it proper that no fetters should be imposed on the power of making commercial regulations, and that his constituents, though prejudiced against the

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<sup>3</sup> Not mere coincidence, South Carolina thrived on its shipping industry too. The kind of navigation laws their delegates supported were legacies of British rule, ones imposed onto the American colonies to protect their own economic interests from Dutch, French, and Spanish merchants.

Eastern States, would be reconciled to this liberality. He had himself, he said, prejudices against the Eastern States before he came here, but would acknowledge that he had found them as liberal and candid as any men whatever. (ED-V [1787] 1845:489)

With the assistance of South Carolina, an intersectional alliance was forged to promote navigation that primarily benefitted Northern states. Immediately after this vote, Pierce Butler introduced the 1808 ban on the slave trade. It passed in the spirit of reciprocity. Northern delegates who had previously gone on record opposing it were the ones to tip the scales of a majority vote. This is quite the departure from their earlier disagreements.

When Charles C. Pinckney had previously demanded outright protection of the slave trade, Gouverneur Morris made clear his opposition:

He never would concur in upholding domestic slavery. It was a nefarious institution. It was the curse of heaven on the states where it prevailed.... The houses in this city (Philadelphia) are worth more than all the wretched slaves who cover the rice swamps of South Carolina. The admission of slaves into the representation, when fairly explained, comes to this,—that the inhabitant of Georgia and South Carolina, who goes to the coast of Africa, and, in defiance of the most sacred laws of humanity, tears away his fellow-creatures from their dearest connections, and damns them to the most cruel bondage, shall have more votes, in a government instituted for the protection of the rights of mankind, than the citizen of Pennsylvania or New Jersey, who views, with a laudable horror, so nefarious a practice. (ED-V [1787] 1845:392-393)

Aside from words of contempt like “domestic slavery,” “nefarious institution,” “curse of heaven,” Morris sympathized with the condition of these “wretched beings” (ED-V [1787] 1845:392). He indicted delegates from Georgia and South Carolina, placing blame on them for crimes against humanity and political roadblocks to national unity.

Gouverneur Morris could never join a union that endorsed the slave trade and counted slaves toward representation. These factors undercut his own political interests, as well as Northern states that did not practice slavery. From his view:

[he] was compelled to declare himself reduced to the dilemma of doing injustice to the Southern States, or to human nature, and he must therefore do it to the former; for he could never agree to give such encouragement to the slave trade as would be given by allowing them a representation for their negroes; and he did not believe those states would ever confederate on terms that would deprive them of that trade. (ED-V [1787] 1845:301)

These attacks on slavery were among the harshest throughout the Constitutional Convention, but they should not be interpreted uncritically. Morris never called for emancipation, nor did he point to concrete solutions that might accomplish such ends.

There are at least two reasons to believe that Gouverneur Morris' criticisms were more rhetorical than real. As historian Donald Robinson (1971) notes, there were about 700,000 slaves in America worth \$140 million at the time of the proposal. Annual federal expenditures for the first ten years of the republic equated to about \$7 million. Morris' plan would have, therefore, doubled the tax burden on all Americans for no less than 10 years for emancipated compensation, and a whole other generation (or more) to restructure a war-torn economy foundationally structured upon slavery. And these tasks do not begin to address other social and political obstacles to be hurdled.

A second reason not to take Gouverneur Morris serious regards his not-so-subtle hints at his willingness to strike a deal. Laying out his attack on slavery, for example, Morris revealed his hand by asking the Southern delegates what was in it for him. The exact words were: "And what is the proposed compensation to the Northern States, for a sacrifice of every principle of right, of every impulse of humanity?" (ED-V [1787] 1845:393). Morris was more interested in compensation than emancipation. He desired concessions that would benefit certain sectors of the Northern economy. Among these were fixing the rule of representation to secure "the Atlantic states a prevalence in the

national councils” (ED-V [1787] 1845:279). Morris was not interested in proportional rule according to population. He was interested in the representation of property, unattached to population counts. Otherwise, there lingered possibilities for an “oppression in commerce” (ED-V [1787] 1845:308).

In a country dominated by slavemasters and farmers, not to mention the westward expansion that would develop economies different from Pennsylvania, Gouverneur Morris wanted to ensure maritime and shipping interests were protected.<sup>4</sup> He followed an economic philosophy of “a rising tide lifts all boats,” so long as elite businessmen from coastal cities captained those boats. Morris was the same politician who had earlier blamed delegates from select Southern states for slavery’s persistence. When his commercial interests converged with South Carolina, however, he compromised his stance toward emancipation and joined a political coalition with them to preserve the peculiar institution (see Bell 1980). James Madison of Virginia thought the coalition, which temporarily drove a wedge between Southern states,<sup>5</sup> to be all too convenient for “a member who on all occasions, had inculcated so strongly the political depravity of men” (ED-V [1787] 1845:298). He accused Morris of selling out his values for the sake

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<sup>4</sup> So too did his New England colleague Roger Sherman of Connecticut. Forming the compromise with Gouverneur Morris and South Carolinian slavemasters, he “said it was better to let the S. States import slaves than to part with them, if they made that sine qua non” (FR-II [1787] 1911:374).

<sup>5</sup> The wedge among Southern delegates regarded divisions over whether representation should be based on population or property. Southern states where slaves were abundant (Virginia) favored the former, while Southern states whose wealth was located more in developed real estate (South Carolina) preferred the latter. The population plan would eventually smooth over these differences, it was more explicit in its defense of slavery.

of profit, and rhetorically asked, “If the representatives of the people would be bound to the ties [Morris] had mentioned, what need was there of a Senate?” (ED-V [1787] 1845:298).

*Tax Limitations and Exemptions*

With the compromise over navigations, Virginians like George Mason and Richard Henry Lee, as well as some Northern delegates like Theodore Sedgwick of Massachusetts, worried Congress would be given too much power. Such a play emboldened the legislative body to regulate commerce (see also “the commerce clause,” Article I, Section 8), and by extension any trade that involves slaves or slave labor products. Charles C. Pinckney tried to ease such concerns by saying that was not the case:

it was an agreed point, a solemnly understood compact, that, on the Southern States consenting to shut their ports against the importation of Africans, no power was to be delegated to Congress, nor were they ever to be authorized to touch the question of slavery; that the property of the Southern States in slaves was to be as sacredly preserved, and protected to them, as that of land, or any other kind of property in the Eastern States were to be to their citizens. (FR-III [1787] 1911:443)

Pinckney reminded his Southern brethren that Northern representatives never suggested slaves be emancipated, and in all likelihood never would. Such a proposal would undoubtedly threaten any possibility of ratification. His argument did not resonate with delegates like Pierce Butler and John Rutledge of South Carolina and Patrick Henry of Virginia. They worried not of what the Constitution expressed but what it implied.

The resolution John Rutledge and Patrick Henry desired was “an exact enumeration of the powers comprehended” (ED-V [1787] 1845:139). Meanwhile Pierce Butler “repeated his fears that we were running into an extreme, in taking away the

powers of the states” (ED-V [1787] 1845:139). Henry thought the Constitution, as drafted, granted near infinite power to the federal government—nearly all of which could be directed to end slavery. “Among ten thousand implied powers which they may assume,” he argued, “they may, if we be engaged in war, liberate every one of your slaves if they please” (ED-III [1788] 1836:589). Those pushing the cause of federalism thought these concerns were blown out of proportion.

James Madison urged his Southern colleagues to reconsider. Any threat to slavery would surely end the union before it began, but he argued so would alternatives such as the one proposed by John Rutledge and Patrick Henry. Madison “brought doubts concerning its practicability” (ED-V [1787] 1845:139). With as much trouble as delegates had in agreeing upon the necessarily sketchy details of the Constitution (not to mention a previous constitution that failed), the task of explicitly expressing all powers of the federal government would almost certainly translate into death by deliberation. Henry held to his convictions and refused to sign the Constitution to the very end. He was not alone. Others like George Mason, Luther Martin, and Richard Henry Lee withheld their signatures too. What eventually came out of protests like these, however, were added layers of protection for Southerners and their peculiar institution.

Aside from the 1808 ban on slave trade clause, Article I, Section 9 linked capitation or direct taxes to the three-fifths clause.<sup>6</sup> It required that if any head taxes were

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<sup>6</sup> The direct taxation clause remains of contemporary relevance. Legal scholar Beverly Moran (2010) had proposed that to fulfill philosopher Adam Smith’s ([1776] 2007) vision of capitalism, some form of a wealth tax ought to be put in place. The purpose of this tax would be less about downwardly distributing capital, however, and more about stabilizing the economic system as well as protecting the rich from “poor people’s movements” (see also Piven and Cloward 1971).

to be levied, they must rate slaves at 60 percent the rate of freepersons. This effectively offered slavemasters a subsidy of foregone revenue on 40 percent of their wealth in human bondage (Einhorn 2006). Of course, slavemaster politicians did not frame the tax break as such. John Rutledge claimed:

In the Northern States the labor is performed by white people, in the Southern by black. All the free people (and there are a few others) in the Northern States are to be taxed by the new Constitution; whereas only the free people, and two fifths of the slaves, in the Southern States, are to be rated, in the apportioning of taxes. (ED-IV [1787] 1836:277)

From Rutledge's point of view, linking a head tax to the three-fifths clause still meant slavemasters were subjected to taxes those in the North were not. Nonetheless, paying 60 percent of a tax bill as opposed to 100 percent offered some relief.

Not only were slavemaster politicians like John Rutledge concerned about direct taxes that could be imposed on slaves, but they were troubled by the possibility of indirect taxes from Northern politicians who may be vindictive toward their interests in slavery. Rutledge went on to clarify his problem with the navigation acts:

But the principle objection is, that no duties are laid on shipping; that, in fact, the carrying trade was to be vested in great measure, in the Americans; that the ship-building business was principally carried on in the Northern States. (ED-IV [1787] 1836:277)

As discussed, slavemaster delegates were paranoid that indirect taxes might be exclusively imposed on products and goods—like tobacco, rice, sugar, indigo, and later

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An obstacle that could prevent such a tax is Article I, Section 9. As legal scholar Andre Smith (2015) has explained, antitax advocates routinely cite this provision to claim the constitution prohibits federal taxation on most forms of wealth. This includes a progressive wealth tax that might otherwise alleviate the worst racial wealth disparities on record, particularly following the housing collapse of the mid-2000s (see Kochhar, Fry, and Taylor 2011).

cotton—made possibly by slave labor. A tax structure that generates, they argued, its revenues from taxes on imports and exports migrates tax responsibilities southward.

Charles Pinckney (second cousin of Charles C. Pinckney) complained:

If, as no doubt, you will in future confine your imports to the amount of your exports of native products, and all your revenue is to be . . . raised by taxes or duties on your imports, I ask you who pays the expense, and who, in fact, enables you to go on with your Government at all, and prevents its wheels from stopping? I will show you by the papers which I hold in my hand. This, sir, is your Secretary of the Treasury's report, made a few weeks ago, by which it appears that all the exports of native products, from Maine to Pennsylvania, inclusive, for the last year, amounted to only about eighteen millions of dollars; while those among the slaveholding States, to the Southward of Pennsylvania, amounted to thirty-two millions or thereabouts, thereby enabling themselves, or acquiring the right, to import double as much as the others, and furnishing the Treasury with double the amount the Northern and Eastern States do. (FR-III [1787] 1911:442)

Southerners like Rutledge and Pinckney claimed they would be payers of import and export taxes but not the benefactors of them. They found it untenable to structure a government so that slavemasters subsidized the spoils of Northern industry.

George Mason claimed he opposed slavery, but allowing the federal government to regulate commerce would be worse. He thought such actions inevitably led to a “domino effect,” whereby tyranny would triumph over liberty. He and other Southerners worried customs officials could levy charges so high that their economies would be rendered unprofitable. It would indirectly steer agrarian-based states toward producing alternative staple goods (Alden 1961; Jensen 1950). Navigations acts were an affront to slavery. On this basis, slavemaster politicians moved to exempt certain imports and exports (Southern staples) from taxation altogether. This accomplished the same feat as the uniformity clause. The exemptions tied the hands of legislatures who might otherwise jeopardize slavery. Policymakers had a limited range of tax options at their disposal. It



was the Southern way of truncating America's political institutions from their very inception, one that left a lasting legacy of de facto government nonintervention (Einhorn 2009). Once in place, tax laws like these impeded political struggles against slavery and guaranteed its preservation.

### **Article II, Section 1: The Electoral College, an Ace in the Hole**

Why bother with a popular vote when you can have an ace in the hole? That was the logic of slavemaster politicians when it came to electing a president. To increase the odds of their man winning, they wanted some assurance. Article II, Section 1 put in place an electoral college, the same institution that determines presidential elections today. James Madison principally agreed with the popular vote. "The people generally could only know and vote for some citizen whose merits had rendered him an object of general attention and esteem," he declared (ED-V [1787] 1845:337). His support did not go unqualified, however.

There was one difficulty, however, of a serious nature attending an immediate choice by the people. The right of suffrage was much more diffusive in the Northern than the Southern States; and the latter could have no influence in the election, on the score of negroes. The substitution of electors obviated this difficulty, and seemed, on the whole, to be liable to fewest objections. (ED-V [1787] 1845:337)

In other words, Madison was troubled by the possibility that more populous states in the South would be disenfranchised by the masses of ineligible voters (slaves) and have to defer their political interests to the North. Therefore, a direct vote for the executive branch was to be avoided at all costs. The alternative Southerners devised was to apportion electors by the number of Congresspersons for each state, which in turn was

determined by the three-fifths clause. This is how Thomas Jefferson of Virginia would become known as the “Negro President” (Wills 2003).

“Slave enumeration without representation” made the presidency of Thomas Jefferson possible. Though the “Negro President” heralded the victory as democracy’s triumph of majority rule, he actually received fewer votes than his opponent John Adams (Wills 2003).<sup>7</sup> That mattered none with an electoral college that translated the slave count into Southern political clout. Jefferson received eight more delegates than Adams, but at least 12 of his total count derived from a population unrecognized as people and dispossessed from the franchise (Freehling 1990). The electoral college ensured, with help from the three-fifths clause, a minority of Southerners held a majority voting bloc that would steer the course of American history (Richards 2000). Of the nation’s first 62 years, slavemasters would dominate the presidency for 50 years, the House Speaker’s chair for 41 years, and Chair of the House Committee on Ways and Means<sup>8</sup> for 42 years. The exclusive list of re-elected presidents—George Washington, Thomas Jefferson, James Madison, James Monroe, and Andrew Jackson—included only the names of those who held others in human bondage. In many ways, the electoral college made possible

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<sup>7</sup> Aaron Burr of New York tied Thomas Jefferson of Virginia for the most electoral votes (Ferling 2004). Both were of the same party, but Jefferson had the support of the House of Representatives and public opinion. He extended the position of vice president to Burr, who accepted and then withdrew from the race.

<sup>8</sup> In many ways, the House Committee on Ways and Means is the most powerful committee in Congress. This is as true today as it was in the late eighteenth and early nineteenth centuries. Why? As sociologists Isaac Martin and Monica Prasad (2014) have explained, state capacity in its entirety runs through taxation (see also Martin, Mehrotra, and Prasad 2009). The Committee on Ways and Means is delegated most power for revenue-raising within the legislative branch.

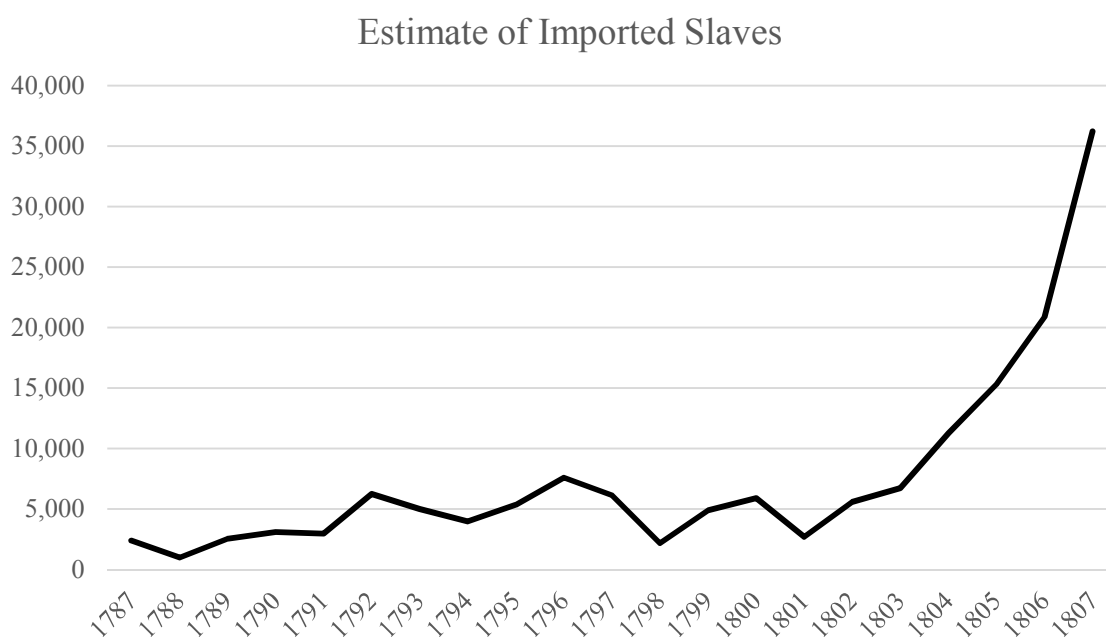
what can be characterized as a slavemaster oligarchy, or what historian Leonard Richards (2000) calls a “slaveocracy” (p. 3).

Southern political domination was not quarantined to the executive branch (Baptist 2014). With a complicit Senate, Southern presidents composed a Supreme Court that favored slavery. No less than 18 of the first 31 Justices owned slaves. As much is evident from some of the infamous decisions that were rendered, like *Dred Scott v. Sandford* (1857). A majority rule of seven justices declared, in no uncertain terms, that black residents—free and unfree—were not citizens, and the federal government possessed no power to regulate the expansion of slavery in new U.S. territories (see also Jung 2015). As sociologist W.E.B. Du Bois ([1935] 1992) recalled, “The whole legal status of slavery was enunciated in the extraordinary statement of a Chief Justice of the United States that Negroes had always been regarded in America ‘as having no rights which a white man was bound to respect’” (p. 10).

These rights were bound to be further disrespected under a political system that rewarded slavery’s expansion. Since population directly determined influence over the electoral college and congressional representation, and the slave trade was unlimited until 1808, Southerners were incentivized to import more African bodies. Figures recorded by the Trans-Atlantic Slave Trade Database (see Figure 3) indicate more than a 15-fold increase between 1787 and 1807, from 2,406 imported slaves to 36,217. Even when the ban ended the international slave trade, the Constitution said nothing of the domestic slave trade. It went on undeterred under what historian Ira Berlin (1998) has called the “Second Middle Passage,” forcibly breaking up families and relocating slaves from

everything they knew in the process (see also Kolchin [1993] 2003). When slaves decided to marry, most through custom not law, the wedding vows they took were amended to read “‘til death *or distance* do us part” (see Foster 2010). Full bloom of the cotton economy during the early nineteenth century exacerbated these trends. The more elite Southern men partook in human bondage, the more power they wielded.

Figure 3. Estimated Arrivals to the U.S. through the Slave Trade, 1787-1817



Source: *The Trans-Atlantic Slave Trade Database* (accessed March 22, 2016)

#### Article IV, Section 2: The Fugitive Slave Clause

When debating what became the “privileges and immunities” or “comity” clause (Article IV, Section 2), which reads “The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States,” Pierce Butler and Charles C. Pinckney fretted over the possibility that slavery would not be respected by those in states where the institution was not practiced. What would happen if somehow the “property” of

slavemasters “strayed” to free spaces? Do property rights upheld in some states supersede rights upheld in others? Would claims to ownership be jeopardized? What entity would mediate these processes? Like other Southerners, Pinckney desired some guarantee that slavery would be protected. That way those states without slavery could not undermine what some Southerners like Patrick Henry believed to be their birthright. The fugitive slave clause compelled extradition of fugitive slaves (as well as free black persons who had no recourse). In the words of Butler and Pinckney, it “require[d] fugitive slaves and servants to be delivered up like criminals” (ED-V [1787] 1845:487). It meant that if a person were reduced to human bondage in one state, then that status would have to be recognized in all other states.

Northern delegates like James Wilson of Pennsylvania and Roger Sherman of Connecticut opposed a fugitive slave clause. Such a provision, they claimed, placed an unfair financial burden on those north of the Mason-Dixon Line. Wilson complained, “This would oblige the executive of the state to do it at the public expense” (ED-V [1787] 1845:487). Northerners would foot the bill for monitoring, housing, and returning suspected runaways, and they pointed out that no comparable type of law existed to protect runaway livestock. Sherman would go on to say that he “saw no more propriety in the public seizing and surrendering a slave or servant than a horse” (ED-V [1787] 1845:487). Never mind that the clause put black freepersons at risk. Northern representatives like Wilson and Sherman were more concerned with their horses.

The fugitive slave clause made black freepersons of the North vulnerable to property claims from those interested in turning them into slaves. As historian Donald

Robinson (1971) explains: “the difference between free Negroes and horses was that the owners of horses in the North would counteract horse thieves from outside the state, whereas free Negroes might not have anyone interested in preventing them from being dragged into slavery” (p. 229). Adding to this vulnerability were state governments of the North that had little interest in protecting the rights and freedoms of black freepersons. Nor was there any penalty for those who stole black freepersons and reduced them to bondage. Another implicit appeal of the fugitive slave clause, one that helped garner Northern support, was that it discouraged slaves from migrating northward and free black people from living in their communities. In many ways, Northern representatives were just as reluctant to welcome black residents into their states as Southern slavemasters were to lose their property.

#### **Article IV, Section 4: Slave Revolt Suppression**

The domestic violence provision, otherwise known as Article IV, Section 4, commits the federal government to offer military support in keeping the peace among states (see also Finkelman 1996). Largely because of language, the provision had little support when first introduced. Its wording empowered the national government to intervene in cases of “domestic violence,” but delegates were hesitant to empower the national government. They were uneasy about the possibility of overreaching state sovereignty and impeding upon domestic affairs (see FR-II [1787] 1911:466-467). Once the language was revised from “domestic violence” to “insurrections,” the subtext of slavery was unmistakable. Even proslavery supporters who had long stressed localism embraced the provision. So long as it meant that slave revolts would be crushed with military might, they welcomed

the federal government's muscle of force with open arms. Writing Federalist Paper No. 43, James Madison ([1788] 1999) acknowledged the provision made "true that force and right are necessarily on the same side in republican [government]" (p. 273).

James Madison put into words the anxieties that were on many Southerners' minds. He went on to write:

an unhappy species of population abounding in some of the States, who during the calm of regular government are sunk below the level of men; but who in the tempestuous scenes of civil violence may emerge into the human character, and give a superiority of strength to any party with which they may associate themselves. (Madison [1788] 1999:273)

The looming threat of insurrections caused slavemasters to lose sleep at night, particularly those in communities within states like Maryland and Virginia where slaves outnumbered them. They anguished over the idea that slaves would rise and demand their rightful title of person not property. Madison warned such events would put an end to the nation. With laws like the domestic violence provision, he claimed "it is a sufficient recommendation of the federal Constitution that it diminishes the risk of calamity for which no possible constitution can provide a cure" (p. 274). Madison would rather squash slave resistance and protect the institution than overturn the so-called republican government that he and others had built. Perhaps the irony was lost on them. Many of these elite men had just partaken in a revolution whereby they claimed King George III had made slaves out of Americans. Now these statesmen worried slaves would allege the same complaints against them.

#### **Article V: "Supermajority" Requirements and Temporary Amendment Blocks**

By requiring "supermajorities" to amend the Constitution, the framers deepened their design of a foolproof legal document that was resistant to change. Southerners demanded

the provision be put in place out of concern for Northern encroachment. Virginians like George Mason and John Tyler as well as North Carolinians thought the national government, once in the hands of maritime interests, would silence their concerns and let them fall on deaf ears. They worried slavery would be threatened. Article V was one means to ease these concerns. It required that amendments follow one of two procedures. Either two-thirds of both the House and Senate can approve of an amendment or a three-fourths majority of all states. To give some perspective as to how effective this provision became, consider how rare amendments are throughout American history. Aside from the Bill of Rights, and the three amendments after the Civil War (the 13<sup>th</sup>, 14<sup>th</sup>, and 15<sup>th</sup> Amendments), the Constitution has been amended only 14 times during its 200+ year existence. These supermajority procedural requirements gave slavery near immunity and ensured its endurance.

Elsewhere within Article V were provisions that adding temporary blockage to amendments on the slave trade ban and capitation clauses. These only further protected the already secure institution of slavery. They were added near the closing days of the Convention at the insistence of John Rutledge of South Carolina. Saying these amendment procedures did not go far enough, “he never could agree to give a power by which the articles relating to slaves might be altered by the states not interested in that property, and prejudiced against it” (ED-V [1787] 1845:532). To alleviate his concerns, he suggested the following words be added: “provided that no amendment, which may be made prior to the year 1808, shall in any direct manner affect the fourth and fifth sections



of the seventh article” (ED-V [1787] 1845:532). He got his way. Really, most all slavemasters got their way.

### **Accommodators Gave an Inch, Slavemasters Took a Mile**

“If slavery be thus fatally contagious,” asked writer Samuel Johnson (1775) of England, “how is it that we hear the loudest yelps for liberty among the drivers of negroes?” (p. 89). Northern politicians did not pathologize Southerners as racist conspirators of slavery. If they had, perhaps their representatives would not have entertained one nation under the same roof. Instead, they chose to engage their sectional counterparts and partake in give-in-take deliberation—at least they thought it would unravel that way. The problem was that Southerners did more taking than giving, and they sculpted a government in their own slaveowning image. The North offered a gamut of concessions. Not only did Southern slavemasters gain extra congressional representation for their slaves, but they also designed an electoral college for selecting presidents that tilted in their favor. The slave trade was protected for the first 20 years. Slave-produced products were exempted from taxes and duties. Federal aid would be made available for suppressing slave revolts. Supermajority requirements ensured the status quo of slavery remained intact. Preemptive exemptions were made so that slavery could not be regulated out of existence. In return, the North gained a few perks that served their commercial interests. These were few in comparison, despite Southern claims otherwise. When Northern representatives requested more, or even hinted at requests that might question slavery, the South threatened to walk away from the union.

Those who claim today's seemingly nonracial expressions of localism, liberty, and limited government are not racism so much as they are political conservatism would do well to scrutinize their claims under the microscope of history (e.g., Sniderman and Carmines 1997; Sniderman and Piazza 1993; Sniderman et al. 2000). Formation of the Constitution was less about disputes over political principle and more about designing an expansive federal when it came to protecting slavery (cf. Bailyn 1967; Jensen 1950; Ferguson 1961; Kohn 1975; Wood 1969, 2009). These contests were more a difference of degree than anything. Those delegates who opposed the peculiar institution did not do so on fundamental grounds. Instead, voices of dissent emerged when slavery did not align with their own economic interests (navigation acts, slave trade ban), political philosophy (blacks do not merit representation), and nationalist tendencies (country first). These forms of opposition do not directly contest the institution of slavery, which suggests that delegates generally lacked a consensus on how to think about it. Therefore, debates over the Constitution were more about defining the parameters of racial interests embedded within the institution of slavery.

In the name of localism, liberty, and limited government, slavemaster politicians and their accommodators designed a government that was of at least two minds. Its power was bifurcated in opposing directions, both of which served the economic interests of slavery. The Constitution codified into law a limited government that protected private property on one hand. Even if policymakers had the desire to bring about a racial democracy, which most did not, their national government was too emasculated with safeguards that stripped away any possibility of fulfilling it. On the other hand, these

statesmen created an expansive government that could intervene whenever slavery was under assault. Deeming slavery a local matter is to say the institution is beyond the jurisdiction of national government. Yet when slavemaster politicians demanded this local matter be respected by other localities, among the only ways to ensure slavery's protection was to make it the jurisdiction of national government. They demanded protectionist rights for slavery that not only disrespected but superseded the sovereignty of all other states. What seems like a paradox between "weak" and "strong" government, or local and national interests, can be seen in another light when one considers racial ideology. There was no paradox, just foolproof protections for the interests of white supremacy.

This point was as true in the late eighteenth century as it would in 1860 when South Carolina seceded from the union. States from Maine to Iowa had enacted antislavery laws that nullified federal doctrine and even protected the franchise of some African Americans. Though it is commonly assumed by members of the general public (see Loewen and Sebasta 2010) as well as some academics (e.g., McDonald 2000) that South Carolina departed because of "states' rights," these views are more political than they are accurate. The first reason South Carolinians gave for their departure was:

We assert that fourteen of the States have deliberately refused, for years past, to fulfill their constitutional obligations, and we refer to their own statutes for proof.<sup>9</sup>

These fourteen states refused to uphold constitutional provisions like the fugitive slave clause, and therefore did not accommodate America's sacred institution (see also Baptist

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<sup>9</sup> This passage derived from the secession document entitled the "Declaration of the Immediate Causes Which Induce and Justify the Secession of South Carolina from the Federal Union."

2014; Loewen and Sebesta 2010). Sociologist James Loewen (2010) has argued that “South Carolina was not *for* states’ rights, but *against* them.... South Carolina seceded because it was *against* states’ rights, that it was *outraged* at states’ rights” (p. 5, emphasis original).

If we define democracy as government “of the people, by the people, for the people,” then the Constitution fails on all counts. The Constitution’s slavery-protecting provisions hardly make it of the democratic variety, and its expansiveness violates political values of conservatism. Seeds from which the American political views of localism, liberty, and limited government blossomed are planted in the same racism that justified slavery. They did not germinate out of their volition, independent of the peculiar institution. Therefore, they cannot be understood outside of its context. Founding fathers who popularized these values are the same individuals who used them as tools to defend holding others in human bondage. For them, these values were interpreted foremost as the unfettered right to slavery. That is why we ought to reconsider labels like “lion of liberty” that historian Harlow Unger (2010) has applied to figures like Patrick Henry. After all, the same man who gave America those famous words of “give me liberty, or give me death” opposed the Constitution because it interfered with personal freedoms and states’ rights “They’ll free your niggers!”, Henry warned fellow slavemasters (qtd in Einhorn 2006:179).

## CHAPTER SEVEN

### WHEN THE PRESENT BECOMES PAST

How does racism operate across history? Does a classical/modern dichotomy accurately describe ideological change? If not, what other queries might we pursue? I do not pretend to have fully answered these questions, but introduce them as problematic beginnings for more work to come. They wrestle with ways present-day racism is commonly contrasted with the past. Rather than advance an argument that racial ideology is invariable across time, the point I wish to stress is that racism is too complicated to distil down to grand narratives of a classical-modern dichotomy. By transplanting insights about today's racism into historical soil where some presume they do not belong, my goal has been to show why sociologists need to reflexively question our conventional narratives, apply theoretical concepts to varied contexts, and refine them as new empirical insights are accumulated. The point is to draw attention to the fundamental character(s) of racial ideology, so that sociologists can offer more compelling empirical statements that capture the fluidly varied dynamics of racism. How does one get there from here?

I think a starting point for understanding racism in all its content and form begins with forsaking tendencies toward generalization. This focus represents a shift away from broad causal theories that seek to explain what governs change in racism and moves toward more in-depth descriptions of the basic qualities of racial ideology (see also Doane 2006). The conclusions I advance are akin to what sociologist Harold Blumer

(1954) described as “sensitizing concepts.” They do not stand upon definitive or invariable propositions, but offer “a general sense of reference and guidance in approaching empirical instances.... merely suggest[ing] directions along which to look” (Blumer 1954:7). Sensitizing concepts can bring into focus salient characteristics of racial ideology, and offer guidelines for how it might be studied in other settings.<sup>1</sup> The idea is to introduce substantive points that might amend broader frameworks for how those in the social sciences and humanities understand racism.

The prevailing classical/modern dichotomy introduces at least three major problems that I have identified by looking inward at the debate surrounding the three-fifths clause. A first problem regards the presumption that change in the material underpinning of racism foreshadows its change in content and form (Bobo, Kluegel, and Smith 1997). A second problem involves thinking about racism in terms of central tendency, as though those who subscribe to it share a common sense understanding (Feagin 2010; Omi and Winant [1986] 1994). And a third problem treats racism of past and present like they were ruptured from one another and discretely separated by time (Barker 1982; McConahay 1986; Omi and Winant [1986] 1994). In what follows, I present alternative interpretation to each of these points. The ideas I introduce, when isolated, are not necessarily novel nor are they controversial. Taken together, however,

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<sup>1</sup> I do not see sensitizing concepts in the same light as others in the symbolic interaction tradition. Sociologist Kathy Charmaz (2003) has referred to them, for example, as “background ideas” that “provide starting points for building analysis, not ending points for evading it” (p. 259). Because my inquiry serves as a critical conscious of sorts for the sociology of racism, I see sensitizing concepts as a provisional end point that departs from established theory.

my hope is that they hang together in a usefully cohesive way—a way that bridges gaps between our empirical and theoretical studies within the sociology of race and racism.

### **Racism as Autonomous Not Reflective**

Is racism a reflection of other social forces? Sociologists Lawrence Bobo, James Kluegel, and Ryan Smith (1997) have claimed that Jim Crow ideology lost its mass appeal because the foundational political economy crumbled beneath it. No longer did whites need a belief system bound to biological views of black inferiority and a formal apartheid society (see also Bonilla-Silva 2001; Bonilla-Silva and Lewis 1999).<sup>2</sup> The examples they use to elaborate their thesis regard shifts like: (1) the demographic and economic transitions (e.g., industrialization, “the Great Migration,” collapse of the cotton economy) that expanded black power, (2) the mobilization of newly acquired resources within black communities by civil rights leadership for political and economic gain, and (3) black economic empowerment that inhibited critical political victories over the old planter aristocracy which would inevitably lead to their demise.

In the supposedly post-racial world, Lawrence Bobo and his colleagues (1997) have maintained that whites defend their social position on new ground. They concede basic rights of citizenship to people of color but view discrimination, past or present, as

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<sup>2</sup> To be fair, Lawrence Bobo, James Kluegel, and Ryan Smith (1997) qualified their historical claim: “We do not advance a purely materialistic interpretation that would, perforce, render popular racial attitudes of little social impact. Such theorizing at once misunderstands the role of human agency and subjectivity and the highly contingent nature of the critical events and actions that helped to bring about the shift from Jim Crow racism to laissez-faire racism” (p. 31). This point becomes diminished, however, when most all the examples used to substantiate their point emphasize changes in the political economy.

playing little to no role in persisting disparities in housing, education, employment, and so on. Instead, these inequalities are viewed not as products of market- or state-driven practices organized around race but as a result of cultural inadequacies held by people of color themselves (see also Bonilla-Silva [2003] 2014; Brown et al. 2003; Crenshaw 1997; Gallagher 2003).

Presuming ideological change follows change in the political economy gives epistemic privilege to one over the other and can contradict the notion that racism “acquires relative autonomy in the social system” (Bonilla-Silva 1997:474; see also Bonilla-Silva 2015).<sup>3</sup> This fails to explain how remarkably different structures, rooted in fundamentally unique political economies, can be rationalized by common ideological currents. Within debate surrounding the three-fifths clause, “founding fathers” from the North and South did not extend the same basic rights of citizenship to slaves as they did freepersons, but they deployed seemingly antislavery discourse (“I’m principled against slavery, but...”) and decontextualized notions of abstract liberalism (“tax uniformity,” “representational equality”) to defend a rigid racial hierarchy. Even many of the same racial stereotypes overheard today about blacks being lazy and unproductive were tapped during the late 1700s to justify why slavemasters deserved relief from a tax plan that would be based on population counts.

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<sup>3</sup> The idea that racism, once developed, has the capacity to acquire independence and live a life of its own is inspired by social theorist Nicos Poulantzas ([1968] 1982) and his theory on class relations.



The vocabulary of colorblindness may be similar, but contexts in which it was deployed is dissimilar. Not to understate the broad historical brushstrokes of racial change, there are fundamentally different relations between slave and employee. As sociologist W.E.B. Du Bois ([1935] 1992) explained, the employee is “not real estate. The tragedy of the black slave’s position was precisely this; his absolute subjection to the individual will of an owner” (p. 10). At the same time, it is important to recognize that common comments overheard today, like “I’m not racist, but...” (see Bonilla-Silva and Forman 2000), have deep-seeded antecedents that whites have put to use for centuries. Even slavemasters worried about establishing their non-racist credentials, and they desired to “save face” when it came to the moral politics of slavery. The endurance of colorblindness alongside antiblack cultural tropes during debates of the three-fifths clause implies that what we often think of as contemporary racism was not created out of whole cloth in post-1960s America. Instead, the ways that racial ideology is deployed can possess a historically dualistic character.

Racism often interacts with other social forces, from an agrarian to postindustrial political economy, to justify a racial hierarchy. It can also stand outside of them, possessing a certain degree of independence from external forces. Turning the gaze back onto localized actors who have the agency to enact ideology, racism’s autonomy derives from people’s empowerment to develop, transmit, and control it (Lewis 2004). These autonomous features expand when people have the capacity to reinterpret and translate racism to new circumstances, like political economies that transition from one mode of production to another. As historian Barbara Fields (1982) has explained, the racist

vocabularies people inherit do not wither away and die even when their lives undergo radical change. Instead, these same vocabularies can be attached, often in tacitly routine ways, to new circumstances (Jung 2015). Seen this way, people implement racial ideology by means that constitute its own embodied structure (see also Bourdieu [1979] 1984:468).

When I say racial ideology takes on a life of its own, I do not mean it in a “Frankenstein” sense (see Fields 1982). To spell out the analogy, it is not as though racism is something that dies only to come alive again to lead a reckless life of a monster. This reifies racial meaning as though it has its own hereditary (see also Fields 1990). Racism takes a life of its own in a sense that it cannot be attributed to other social forces (e.g., change in the political economy). It is a running definition that is achieved through routinized activity, not through, to use the language of social theorist Louis Althusser ([1968] 1971), interpellating individuals into racial subjects through some preformed, atemporal, and logical model. Racial actors do not preserve racism in some overdetermined fashion, but because it serves some practical purpose in their lives (Hall 1984). People (re)create racism because it helps them to make sense of the world in which they live or want to live, even as their sense of the world is not totalizing or complete. That is, the reproduction of racism flows not from abstract rules that govern their action but from practical strategies in which actors strive to maintain or advance their position within the racial order (Bonilla-Silva 1997; Lewis 2004).

### **Racism as Internally Differentiated Not Dominant**

Is racism in a hegemonic moment? First, let me clarify what is meant by the term. Social theorist Antonio Gramsci ([1946] 1971) explained that hegemony refers an instant when a dominant group's ideology transcends its limits and "become[s] the interests of other subordinate groups too... to prevail, to gain the upper hand, to propagate itself through society" (p. 181).<sup>4</sup> Seen through the eyes of sociologist Joe Feagin (2010), hegemony has long been achieved through what he labels as "the white racial frame." This refers to a system of signifying that justifies discrimination against people of color. He claims:

For centuries the white racial framing of ingroup superiority and outgroup inferiority has been, to use Antonio Gramsci's term, *hegemonic* in this society—that is, it has been part of a distinctive way of life that dominates all aspects of society. (Feagin 2010:11, emphasis original)

Sociologists Michael Omi and Howard Winant ([1986] 1994) draw from Gramsci to offer a similar claim. They have argued, "Race becomes 'common sense'—a way of comprehending, explaining, and acting in the world," and that this common sense is needed so that ruling groups can "consolidate their hegemony" (Omi and Winant [1986] 1994:60, 67).<sup>5</sup>

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<sup>4</sup> For sake of historicizing the influences of social theorist Antonio Gramsci ([1946] 1971), it is worth noting that he credited social theorist V.I. Lenin with "the concept and the fact of hegemony" (p. 381). These moments of hegemony are desirable, at least to those who stand atop hierarchies, because subjugation is more effective when the ruled rule themselves and coercion is avoided (Gramsci [1946] 1971).

<sup>5</sup> Sociologist James Thomas (2014) has identified the notion of "racial common sense" as a conceptual breach. Sociologist Michael Omi and Howard Winant ([1986] 1994) have claimed their theory of racial formation represents "the sociohistorical process by which racial categories are created, inhabited, transformed, and destroyed" (p. 55). If race is "an unstable and decentered complex of social meanings constantly being transformed," as Thomas (2014) has pointed out,

Describing hegemony as an achieved moment that is synonymous with dominant ideology (Feagin 2010) or racial common sense (Omi and Winant [1986] 1994) runs counter to how Antonio Gramsci used the term. It is as though a hegemonic moment is a central tendency that occurs when adherents share a unified meaning system (see also Snow et al. 1986). On the contrary, Gramsci ([1946] 1971) described hegemony as an unfinished project because common sense is “continually transforming itself” (p. 324). When Feagin (2010) claimed the white racial frame has been hegemonic for centuries, this obscures the rarity of such moments because they are “very particular, historically specific, and temporary moment[s]” (Hall 1986:15). Another way of seeing racism, as is evident from debates surrounding the three-fifths clause, is that it is disjointed and episodic.

Racial common sense is more tentative and fleeting than it is a stable achievement. On one hand, for instance, delegates from the South and North denigrated slave labor as causing slaveholders to incur more cost than profit due to its perceived lack of productivity. On the other hand, these same delegates claimed the country could not do without slave labor. Economic growth would stop dead in its tracks, and places like “South Carolina would soon be a desert waste” (FR-III [1787] 1911:254). So which is it: Is slave labor a liability or asset? The answer is both. Racism’s durable effectiveness lies in its ability to bend to shifting contexts and volatile demands. Delegates exhibited no problem oscillating between contradictory views about slave labor so long as these views

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“[then] the mechanisms that produce racial common sense would not act uniformly, nor would common-sense remain common for long” (p. 82).

were leveraged for their own gain. They did not share a consensus racial worldview because their views (plural) were unstable, incoherent, and dependent upon the situation at hand. Hegemony in this sense is a process without end.

Backing away from claims that a hegemonic moment has been achieved because people subscribe to a dominant ideology or share a racial common sense, I think of ideology not as some central tendency but as dispersed and “multi-centered.” A lack of consensus can make racism appear as tumultuous and unable to withstand conflict. These very competing views, however, cater to cleavages among whites and keep them vested in a racial order. The capacity for varied streams of racism expands the ideological toolkit so that whichever interpretive tool is needed for a particular moment is available (Jackman 1994). Fragmentation among whites’ own ideology permits them a spontaneous repertoire that can adapt to whatever situation so that racial rule is cemented without popular consent. There is no need for a “common sense” (Omi and Winant [1986] 1994) or “dominant frame of mind” (Feagin 2010).

For three-fifths debate, the question of ideology was less about whether a racial rule should exist. Delegates across the sectional aisle agreed it should. The question was more about the terms of this racial rule and the ways they ought to be justified. These terms regarded how to maximize political clout and minimize tax liability. Sometimes delegates propped up the value of slave labor to promote these interests, other times they did not. The fractured nature of racism can blur distinctions among whites by drawing attention to what they share. Despite differences on how to justify the racial rule, they agreed that a racial rule should exist. Agreement on this point is foundational. It smooths

over what may otherwise seem like a chaotic aggregate of racisms and directs them toward a common purpose: defending their social position within the racial order (Hughey 2012; Lewis 2004).

### **Racism as Historically Continuous Not Discrete**

The heavy historical hand of colorblindness, as shown through the three-fifths debate, draws attention to the relation between past and present—a relationship our conceptual language wants to deny. Words like “modern racism” (McConahay 1986) and “new racism” (Barker 1982) denote a sequence where the present breaks from the past. This reduces history to a mere background, and does not treat “what people do in the present as a struggle to create a future *out* of the past, of seeing the past not just as the womb of the present but the only raw material out of which the present can be constructed” (Abrams 1982:8, emphasis original). Since history facilitates what ideas and actions are possible, it needs to be apprehended in theoretical and analytic terms. The terms modern racism, post-Civil Rights era, and new racism, after all, cannot be defined without referring to two points in time. To speak of one point without the other is to diminish the historically comparative reference of what is conceptualized.

The idea that racism has historical continuity implies ideological change does not follow a linear path. This parts from Michael Omi and Howard Winant ([1986] 1994) who have argued the U.S. has witnessed a rupture in racial dynamics, moving from a racial dictatorship toward a racial democracy: “It is obvious that the attitudes, practices, and institutions of the epochs of slavery, say, or of Jim Crow, no longer exist today” (Omi and Winant [1986] 1994:71). My analysis of the three-fifths clause offers a more

complicated story of slavery. It shows how the past consisted of clustering ideologies that condemned and supported the institution at the same time (see also Mignolo 1995; Thomas 2010).

Literary scholar Walter Mignolo (1995) has offered an alternative view of history that does not follow a linear path, with one stream of ideas displacing another. Instead, he argues that historical change is better understood as an unfolding process of clustering epochs. Sociologist James Thomas (2010) has extended this idea to show how racism is not a product of modernity, as is generally understood in the field (e.g., Bonilla-Silva 1997; Mills 1997), but its development precedes modernity. He has pointed to the very racialization processes that subjugated Jews during medieval times, ones that demarcated their bodies as black and deemed them a threat to Christianity (see also Fredrickson 1971; Gilman 1991), have been rearticulated to justify later racist arrangements in history. Two examples he identified to substantiate his claim regard Nazi Germany and the American Jim Crow South, eras where rights of citizenship, intermarriage, and other resources were denied on a racial basis. How does this alternative interpretation of history apply to the three-fifths clause?

Whereas Walter Mignolo (1995) and James Thomas (2010) have traced legacies of the past across epochal distinctions in which they are typically quarantined, my analysis unearths how the antecedents of colorblindness have a rich, deep history that hardly make it of the “new,” “modern,” or “post-Civil Rights” variety. It is true that delegates like Elbridge Gerry of Massachusetts equated slaves with sheep and cattle for the sake of gaining political representation. It is also true that others like James Wilson of

Pennsylvania and Roger Sherman of Connecticut worried more about equal treatment for their horses than they did about black freepersons when debating the fugitive slave act. Both accounts represent the outright denial of personhood to people of color that were typical of the antebellum period. Right alongside these arguments, however, were colorblind claims by even those who belonged to manumission societies. For example, Alexander Hamilton of New York refused to acknowledge that slaves were mere property only to reduce them as such thereafter. Principles of “uniformity” and “equality” took precedent for him, so that taxes and representation could be fairly distributed among the North and South. Even many Southerners espoused the style of colorblindness, by prefacing their defenses of slavery with claims like it was “the pity of humanity” (ED-III [1788] 1836:590) and “diabolical in itself, and disgraceful to mankind” (ED-III [1788] 1836:452). “[N]othing could justify it” in the minds of some (ED-III [1788] 1836:454). So they claimed.

Patterned use of colorblind discourse alongside denying people of color their personhood suggest a classical/modern dichotomy is misplaced because these racisms can, and perhaps often do, overlap. Present becomes past and past becomes present because the two are not sequenced but bound together (Mead 1932). It is like how quantum physicists conceptualize light as possessing dual properties (Jung 2015). Whereas light is understood as both wave and particle, racism can be thought of as both past and present. Lacking clear boundaries, its enactment across time reaches both backward to what today’s scholars think of as traditional racism and forward to what we think of as new racism. Rather than impose a distinction upon the two, an alternative



view sees racism not as a historicized noun but a historicizing verb. Racism requires constant articulations and rearticulations to retain its usefulness, in ways that racial actors filter their interpretations through past experiences and vice versa. Presuming change in racism misses an opportunity to unearth relative constancies underneath what transformations have transpired, ones that have cast a long shadow over subsequent history and ensure racial hierarchy endures.

APPENDIX  
KEY CONCEPTS, DATA, AND METHOD

Thinking about the development of the knowledge and what we know of racism, it is not as though the standards behind truth claims appeared during modernity with the introduction of the scientific method and have remained unchanged ever since. Standards of the knowledge production, as sociologist David Swartz (1997) has written, remain a work in progress, as “one does not arrive at final truths but proceeds as an ongoing project of correction and rectification of past errors” (p. 31). Seen this way, knowledge production is not so much an accumulation of snowballing truths. What was once accepted knowledge is not rejected after all. Rather advancing knowledge occurs through realignment of empirical findings that challenge taken-for-granted assumptions (see Bourdieu, Chamboredon, and Passerson [1968] 1991). This entails a process of reflexivity whereby researchers introspectively question themselves, the questions they ask, and the methods that may yield answers—a process that dynamically plays out from the inception of a project to its conclusion. Changing these taken-for-granted assumptions, I have come to conclude, requires abrupt shifts in theoretical or empirical outlook, so that new knowledge revises itself to offer more robust truth claims.

### **Why Ideology**

Ideology yields orientations to and conceptions of the material as well as the symbolic orders of social existence. Because group interests are anchored in concrete struggles over resources and opportunities of social value, the ideology that advances them is not free-floating but deliberative. It yields what sociologist C. Wright Mills (1940b) described as “vocabularies of motive,” since “acts will be abandoned if no reason can be found that others will accept” (p. 908). That is, ideology assumes a rational character for

justifying social action. Sociologist Charles Tilly (2006) echoed this point when he wrote: “[O]nly humans start offering and demanding reasons while young, then continue through life looking for reasons why” (p. 8). This broad-sweeping implication does not mean ideology is always deployed in intentional ways, nor are interactions guided by a series of “cost-benefit calculations” in the utility-maximizing sense. “[W]e all constantly make use of a whole set of frameworks of interpretation and understanding,” claimed cultural theorist Stuart Hall (1984), “often in a very practical unconscious way, and [those] things alone enable us to make sense of what is going on around us, what our position is, and what we are likely to do” (p. 7). Ideology perseveres, in other words, because it yields practical utility and purposeful meaning for people’s immediate circumstances and experiences (Gramsci [1946] 1971; Horkheimer [1937] 1972).

Possessing an emotion-laden dimension, the ideologies people advance help frame how they understand their circumstances and “*hoped-for* realities” (Platt and Williams 2002:331, emphasis original). Sociologist Joe Feagin (2010) and legal scholar Katheryn Russell-Brown ([1998] 2009) have suggested that even bodies can yield a socializing function that captures affect and emotion that does not also translate into words. In this way, ideology can entail deep structures of unelaborated meaning that need not be systematic. It can bend to a variety of circumstances in this way, and even absorb new meanings to yield people a rich array of cultural and emotive repertoires. That people have available to them an array of cultural and emotive repertoires implies the two blend in some form and fashion. Feelings can, in other words, coalesce with rhetorical representations of racial dynamics. A poignant example lies in what Russell- Brown

([1998] 1999) has labeled the “criminalblackman,” in which the sheer thought of crime conjures up images of black men and fear for one’s life. Sociologists Pamela Oliver and Hank Johnston (2000) have argued that this means ideology can carry as much (if not more) of a “nonpejorative function” or a reality-distorting function, as captured in phrases like “false consciousness” (p. 42).<sup>1</sup> Ideological interpretations should not be taken as genuine truth claims about social existence, but as interest-promoting assertions, which can manifest discursively through claims-making strategies, that maintain or advance group position within a social order like race (Bonilla-Silva 1997, 2001; Fields 1990).

In fact, discourse is among the most overt expressions of ideology (van Dijk 1984). Linguist Teun van Dijk (1993) has argued that discourse is a function of inequality reproduction, especially when “seen to express, signal, confirm, describe, legitimate, or enact ethnic dominance, as in communication *with* or *about* ethnic minorities” (p. 94). Standing in contrast to the Saussurean tradition of semiotics, which locates meaning in the structure and form of signs or semiosis, I think of discourse as transactional words that represent evolving relations between groups (see also Emirbayer 1997). It is true that discourse can follow some internal system of patterned rules. Words and the syntactic structure in which they are arranged signal ideas, but they carry little meaning when abstracted from who says them and what social position they occupy. My approach is to take these rules and show how they represent and justify the racial order. These rules are

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<sup>1</sup> A pejorative function of ideology, for example, is represented in some marxian interpretations of false-consciousness (e.g., Dant 1991).

built on the logics of inclusion and exclusion, as they yield an expressive system for drawing distinctions and ranking groups.

*Race and Racism, Are They Concepts Worth Keeping?*

Is racism a concept worth keeping? Does it offer clarity for understanding power relations between racial groups? Can it be discerned from other seemingly related terms like prejudice, stigma, and discrimination? I think the answers to these questions are yes, even while recognizing some problems that come with the term. The problem of definition is not restricted to the study of racism. This is a sociology problem. Sociologist Harold Blumer (1931) argued that within the discipline, convoluted theory has less to do with methodological precision and more to do with vague concepts:

I suspect that the milling and halting condition of our own science does not come directly from the inadequacy of our techniques, as almost everyone contends, but from the inadequacy of our point of view. The effort to rescue the discipline by increasing occupation with method and by the introduction of precision devices is, I venture to suggest, working along the wrong direction. Perhaps, like other sciences in the past, we await a conceptual framework which will orientate our activities into productive channels. (p. 528; see also Mills [1959] 2000)

Speaking to Blumer's point, racism can be as ambiguous as most any other sociological construct. Some of those who adhere to the term, like activist Stokely Carmichael and political scientist Charles Hamilton (1967), have been accused by others like sociologist Robert Miles (1989) of "conceptual inflation." This is because racism is often evoked wherever racial disparities are present, but those who evoke the term rarely pinpoint the mechanisms that (re)produce them. Historian George Fredrickson (2002) claimed that racism's analytic precision is muddled when applied this way. The term is transformed into a blanket concept loosely applied to anything construed as racist. Sociologist Loïc

Wacquant (1997) has recommended “forsaking once and for all the inflammatory and exceedingly ductile category of ‘racism’ save a descriptive term referring to empirically analyzable doctrines and beliefs about ‘race’” (p. 222). Cultural critic Paul Gilroy (1998) has suggested the continued use of racial categories, even if the intent follows antiracist leanings, not only reifies racial differences but reinforces them.

The conceptual origins of race and racism are debated. Some like George Fredrickson (2002) described them as an outgrowth of antisemitism during the late Middle Ages, in which Jews were seen as the pale of the earth under European expansionism—particularly by the Spanish (see also Thomas 2010). Others like anthropologist Audrey Smedley (1993), historian Ronald Takaki (1993), and sociologist Howard Winant (2001) have located race and racism within modernity along with the rise of Enlightened Reason, and they pinpoint its development in Western European colonialism during the fifteenth century. In many ways, as sociologist Amanda Lewis (2004) has theorized, the concepts of race and racism are inseparable. A small group of scholars, or at least those that are explicit about their views, think about race in biological terms. Geneticists Edwin van Den Oord and David Rowe (2000), for example, have defined races as “genetic entities because generations of ‘reproductive isolation’ have led to differences in gene frequency across racial groups,” (p. 286). In contrast, my views are more akin to sociologist Ann Morning (2011) who has described race as more of a folk classification system that distinguishes groups from one another on a loose basis of phenotype (e.g., skin color, eye shape, hair texture). The developing ideology that deems these ascribed differences as inherently unequal and a basis for uneven distributions of

socially-defined rewards and penalties represents what I label as racism. Because I borrow from sociologist William Julius Wilson (1973) to conceptualize racism as “an ideology of racial domination or exploitation,” I use the terms “racism” and “racial ideology” interchangeably (p. 32; see also Bonilla-Silva 1997, 2001).

*Does racism have conceptual utility?* I disagree with those who claim racism is not discernable from prejudice. In common usage and academic writings alike, sociologist Lincoln Quillian (2006) has observed “the term prejudice or discrimination can be substituted with racist or racism without a significant change in social science meaning” (p. 301). Sociologists Mustafa Emirbayer and Matthew Desmond (2009) have claimed “prejudice is in no way qualitatively distinct from racism and should not be portrayed as such” (p. 352). Consider these typical definitions:

- Prejudice is an antipathy based on faulty and inflexible generalization (Allport 1954:10).
- Prejudice is an irrational attitude of hostility directed against an individual, a group, a race, or their supposed characteristics, an unreasonable prejudgment (Better 2002:19).
- Prejudice is an unreasonable negative attitude towards others because of their membership in a particular group (Fishbein 1996:5).

With their emphasis on faulty logic, irrational attitudes, and unreasonable prejudgments, at least five problems arise with these definitions.

One, these definitions presume the language of attributes and divorce individuals from their broader context (Blumer 1958; Goffman 1963; Williams 1988). Two, they reduce prejudice to ungrounded abstractions and diminish how racial conflict regards practical battles over socially-defined resources (Bonilla-Silva 1997; Feagin 2000;



Wellman [1977] 1993). Three, they imply that prejudice involves cognitive distortion and departs from reasoned interests (Bonilla-Silva 1997; Jung 2015; Lewis 2004; Williams 1988). Four, they offer no mention of structural or power dynamics among intergroup relations that prejudice applies (Bobo and Fox 2003; Jackman 1994). And five, they stress affective disposition among dominant group members that are anchored in intergroup hostility or sense of threat and neglect how whites need not push animus on other groups to promote their collective interests (Bonilla-Silva 1997; DiTomaso 2013; Hughey 2012; Lewis 2003; Lewis and Diamond 2015; Wellman [1977] 1993).<sup>2</sup> For these reasons, among others, psychiatrist Frantz Fanon (1967) suggested resisting any “habit of considering racism as a mental quirk, as a psychological flaw must be abandoned” (p. 77).

Walking in the long shadow of Gunnar Myrdal’s *An American Dilemma*, it is as though “prejudice operates to disguise the moral conflict in the minds of whites produced by the clash on the social level between the American Creed and anti-Negro practices” (Ellison [1944] 1998:82). These definitions prioritize whites’ moral consciousness over the material advantages they receive by occupying the dominant racial position.<sup>3</sup> Fix

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<sup>2</sup> Sociologist Mary Jackman (1994) has extended this critique to survey analysts working within sociologist Harold Blumer’s (1954) “race prejudice sense of group position” tradition (e.g., Bobo 1999; Bobo and Hutchings 1996; Bobo, Kluegel and Smith 1997; Quillian 1995). Though their definition is more in-line with structural interpretations of racism, as it stresses the relational and positional character of racial dynamics, these scholars have not pinpoint how unequal relations often persist in peaceful terms. Whites can and often do reproduce racial inequality by offering preferential treatment to other whites rather than overtly discriminating against nonwhites (DiTomaso 2013; Royster 2003; see also Tilly 1998).

<sup>3</sup> Meanwhile, the emphasis on whiteness, as well the “mainstream” values, neglects black agency within racial relations, and begins from the starting point that black culture(s) is deficient and

certain problems within whites' free will and prejudice will be eradicated, so these definitions presume. By contrast, Barbara Fields (1990) has described racism as "the language of consciousness that suits the particular way in which people deal with their fellows. It is the interpretation in thought of the social relations through which they constantly create and recreate their collective being" (p. 110).

Racial ideology connects ideas and practices that systemically culminate across multiple institutional domains (e.g., housing, employment, education) to create inequality, from a material basis like wealth (Oliver and Shapiro [1995] 2006) to a symbolic basis like emotion (Harvey Wingfield 2010), which is sorted out along racial lines (see also Feagin 2006; Reskin 2012). In the words of social psychologist Margaret Wetherell (2003), the discursive medium of ideology is "intimately involved in the construction and maintenance of inequality" (p. 13). Because whites occupy a dominant position within the racial hierarchy, its group members can assert their idealized views, both consciously and unconsciously, as "the common interest of all the members of society" and "represent them as the only rational, universally valid ones" (Marx and Engels [1846] 1970:65-66; see also Bonilla-Silva 1997). These interests are grounded in practical matters, even though they manifest in unevenly orchestrated ways. That is, racism makes more sense in some white worlds than it does in others. Certain racial actors embedded within other social axes of inequality (i.e., gender, class) have the

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inferior. According to Myrdal (1944), "it is to the advantage of American Negroes as individuals and as a group to become assimilated into American culture, to acquire the traits held in esteem by the dominant white Americans" (p. 929).

potential to recognize they have much to lose by not endorsing it (Lewis 2004). This implies a certain degree of ideological inconsistency, and at times incoherence, among whites (and other racial groups too). All actors are, in other words, implicated in racial affairs to varying extents (Bonilla-Silva 1997).

#### **“A Case for the Case Study Method”<sup>4</sup>**

My decision to study discourse of the three-fifths clause assumes a case study approach that is both exploratory and descriptive. This approach is appropriate for the research task at hand for reasons outlined by sociologists Anthony Orum, Joe Feagin, and Gideon Sjoberg (1991):

1. It permits the grounding of observations and concepts about social action and social structures in natural settings studied at close hand.
2. It provides information from a number of sources and over a period of time, thus permitting a more holistic study of complex social networks and of complexes of social action and social meanings.
3. It can furnish the dimensions of time and history to the study of social life, thereby enabling the investigator to examine continuity and change in lifeworld patterns.
4. It encourages and facilitates, in practice, theoretical innovation and generalization. (p. 6-7)

My focal area constitutes a case that consists of bounded historical events comprised of patterned, coherent, and sequenced activity (Stake [1995] 2005). In fact, it possesses a degree of typicality (e.g., congressional procedure, coalition formation, desire for specific

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<sup>4</sup> The subheading “A Case for the Case Study Method” draws from sociologists Joe Feagin, Anthony Orum, and Gideon Sjoberg (1991) who edited a book by the same name.

legal actions). Sociologist Diane Vaughan (1992) has argued that this condition serves as a launching point for learning something general from the specific (see also Blumer [1969] 1998). From this methodological position, my intent has been to remain true to the particularities of the three-fifths debate and situate it within a contextual long view of how racial ideology has historically unfolded.

The three-fifths clause as a case study represents a counter-intuitive selection for my research task because I am mapping what we know of racism in the contemporary onto a context that acknowledges a formal racial rule. This provision is among the few places within the Constitution that acknowledge the existence of slavery. Like what philosopher Charles Mills (1997) has labeled as “the racial contract,” it formalizes black-white relations within the political realm of representation and taxation. Civil rights leader Dr. Martin Luther King (1967) drew upon the three-fifths clause to point out how little has changed since the summer of 1787:

When the Constitution was written, a strange formula to determine taxes and representation declared that the Negro was 60 percent of a person. Today another curious formula seems to declare he is 50 percent of a person. Of the good things in life, the Negro has approximately one-half those of whites; of the bad things of life, he has twice those of whites. Thus, half of all Negroes live in substandard housing, and Negroes have half the income of whites. When we turn to the negative experiences of life, the Negro has a double share. There are twice as many unemployed; the rate of infant mortality (widely accepted as an accurate index of general health) among Negroes is double that of whites. The equation pursues Negroes even into war. There are twice as many Negroes as whites in combat in Vietnam at the beginning of 1967, and twice as many Negro soldiers died in action (20.6 percent) in proportion to their size in the population. (p. 6-7)

Evoking the three-fifths clause, Dr. King made connections with the late twentieth century. He pointed to various socioeconomic indicators in which black folks fare worse than whites, which in truth could have been extended to most every socioeconomic

indicator available. Moving forward a half century, many of these observations remain true today.

The type of anti-black racism that causes these racial disparities, Joe Feagin (2006) has argued, cannot be understood without historicizing their origins to the institution of slavery.<sup>5</sup> I use the three-fifths clause as a case study in a similar way. Instead of using the past to understand the present, however, I use the present to better understand the complexities of the past. Pursuing a case study in this fashion permits me to scrutinize key concepts and taken-for-granted assumptions about what we know of racial ideology in America and how it has evolved over time. It permits me to transplant ideas about “new,” “modern,” and whichever word choice of novelty one prefers into historical soil some presume that they do not belong.

#### *Why Fieldwork and Not Some Other Method*

The attention to detail, with a focus on what people are doing and saying within their own contexts and an attempt to understand these things from their vantage point, positions the ethnographer to ground her or his study to capture the messiness of life—the running definitions of meaning and action that emerge out of relationships. It positions us, I think, to address novelist Ralph Ellison’s rightful concerns over privileging the general over the

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<sup>5</sup> Racial dynamics are much more complex than racial binarism (Bonilla-Silva 2004). In many ways though, black-white relations represent an archetype for relations between whites and all other minority groups (Bonilla-Silva [2003] 2014; Feagin 2000). It stands to reason then that focus on black-white relations permits a deeper, more comprehensive analysis of how race and racism works.

specific and missing the ideas and actions that define people. Commenting on how sociologists miss the complexity of black urban life, he says:

They only abstract it and reduce it to proportions which the sociologist can manage. I simply don't recognize Harlem in them. And I certainly don't recognize the people of Harlem whom I know. Which is by no means to deny the ruggedness of life there, nor the hardship, the poverty, the sordidness, the filth. But there is something else in Harlem, something subjective, willful, and complexly and compelling human. (qtd. in *Harper's Magazine* [1967] 1995:110)

This “something else” is what ethnography, perhaps more so than any other method in sociology, can capture. The richness of data complicates the task of imposing rigid sociological categories that may make for sound logic and coherence but are otherwise unrecognizable to those we study.

Some mixed-methods studies show how respondents answer surveys one way but interviews another. In their analysis of white college students' racial attitudes, for example, sociologists Eduardo Bonilla-Silva and Tyrone Forman (2000) discovered only a quarter of respondents opposed affirmative action outright when asked in a survey format. Once these students were probed further during interviews, over half the sample reversed their position. They did so indirectly with semantic maneuvers like “I support and oppose it...,” “Jobs should go to the most qualified person,” or “Racism happened a long time ago” (see also Gallagher 2003). Using these discursive strategies, whites couched their racial views in political correctness—free from the liability of “sounding racist” (see also van Dijk 1984). They treated surveys as “multiple-choice exams in which respondents work hard to choose the ‘right’ answers (i.e., those that fit public norms)” (Bonilla-Silva [2003] 2014:11), and these right answers are predetermined ones already prepackaged and filtered by the survey instrument (Weiss 1994). This has led

researchers like Bonilla-Silva and Forman (2000) to observe that higher levels of prejudice, and perhaps more authenticity, are exhibited in interviews. Stated beliefs in principle are insincere reflections of whites' willingness to institute racial change because they remain within the realm of hypotheticals and say little about conviction (see also Jung 2015). This means analysts ought to be weary of attitudes reported through surveys. By that same token, however, inferences drawn from interview data come with their own host of problems.

The gulf between what people say and do, claimed C. Wright Mills (1940a), is the "central methodological problem of the social sciences" (p. 329; see also LaPiere 1937; Merton 1940). All too often words and actions do not match. People often times, in fact, have no problem with advancing worldviews that are inconsistent and contradictory to their actions (Deutcher 1966). They are comfortable with it. At their worst, verbal accounts can be reduced to hypothetically irrelevant scenarios because the contingencies in which they are articulated become either diminished or ignored. Sociologists Lyle Warner and Melvin DeFleur (1969) explain that this is problematic because it abstracts meaning that is context-dependent and collectively negotiated among actors (see also Blumer [1969] 1998).

Within the sociology of racism, for instance, several notable studies (e.g., Bonilla-Silva 2001, [2003] 2014; Young 2004, 2010) rely upon interviews as their primary mode of data collection but go on to advance conclusions that link saying with doing. When Eduardo Bonilla-Silva (1997, 2001, [2003] 2014) asserts discourse as the crystallizing feature between ideas and praxis, his research on colorblindness implies that interview

data uncover “real” beliefs that affect how racial actors interact in a situated context.

Meanwhile, sociologist Alford Young’s (2004) has shown how marginalized black urban men make sense of labor market networks outside their local neighborhoods. Though Young stresses an interest in cognitive framing up front, he goes on to imply what people say inevitably translates into how they form personal strategies for navigating race- and class-based obstacles to achieve upward mobility. The claims of Bonilla-Silva and Young may very well be correct, but the conceptual links they claim are not directly observed.

What people say and do are situational events. Structured and semi-structured interviews as a mode of data collection constrain how people otherwise act and react outside the interview context. Even though these approaches are more spontaneous and perhaps less imposing than are closed-ended survey instruments, they do not have the flexibility to capture a fuller portrait of our subjects (Blauner and Wellman [1973] 1998). Other times people treat the interview context as “*a therapy session or confessional*” (Eliasoph 1999:482, emphasis original), and it becomes a place where interviewees can be forced to discuss topics they otherwise think little about. An interview schedule may impose a researcher’s agenda onto subjects without considering what they believe and how it is important (or unimportant) in their own lives. Furthermore, counting patterned responses can skew an analysis by placing equal weight across respondents who have well-formed, developed answers and those who do not (Jerolmack and Khan 2014). Since what is said in the context of an interview is so significantly impacted by the situation of the interview itself, then sociologists should have reasonable doubt to believe that what people say during an interview is consistent with how they act in other contexts. These



inferences may lack validity. For these reasons, among others, analysts ought to be wary of studies that use verbal accounts as a proxy for explaining social behavior (Jerolmack and Khan 2014; see also Duneier 2007; Pager and Quillian 2005).

If the purpose of a study is to understand subjects from their own perspectives, in their own language and from the situations whereby these views are articulated, then one approach is to minimize interruptions that can come from an interview schedule and avoid the introduction of a formalized research instrument altogether (Lewis 2004). That is, take an unobtrusive position in the field that samples social action across contexts over time. This permits researchers to compare and contrast how saying and doing interrelate, and more specifically, ethnography is well positioned to bridge this gulf. Observations of circumstances whereby people activate their views through in situ interactions permits the researcher to transition her or his analysis from verbal accounts that may be irrelevant to how social action unfolds to the situated discourse that rationalizes action itself.

### **Historical Ethnographic Content Analysis**

Speaking on the promise of ethnography, sociologist Gerald Suttles (1976) declared the method “is one of the ways in which abstract conceptual content of sociology has kept in touch with the available world of empirical observation” (p. 1).<sup>6</sup> Sociologists Howard Becker and Blanche Geer (1957) have described it as “the most complete form of the sociological datum” because it permits researchers to observe and compare what people

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<sup>6</sup> Here, sociologist Gerald Suttles (1976) was speaking of urban ethnography in particular, but I believe the observation extends beyond this domain to other ethnographic fieldsites. In my project, his comments speak to the importance I place on historical ethnography in linking abstract sociological framing to the social action of creating legal rules that people must follow.

say versus do (p. 31). Treating social actions as the primary unit of analysis, an ethnographic approach permits researchers to situate themselves within an interactive context (Lewis 2004). The sampling procedure is less about obtaining a representative group of individuals, and more about sampling a broad range of situations and interactions. This epistemological stance privileges observations of interaction over time as more reliable than self-reports found in either interviews or surveys (Becker 1996). The former offers verification by cross-referencing what people say against what they do, whereas the latter does not.

No clear typology specifies what is or is not ethnography. In practice, the method is used broadly to connote research that ranges from interviews and participant observation (e.g., Moore 2008) to prolonged submersion in the field (e.g., Anderson 1990). What I label “Historical Ethnographic Content Analysis” (henceforth HECA) is a synthesis of two methods: “ethnographic content analysis” and “historical ethnography.” Sociologist David Altheide (2006) has defined the former as “an integrated method, procedure, and technique for locating, identifying, retrieving, and analyzing documents for their relevance, significance, and meaning,” where “the emphasis is on discovery and description, including search for contexts, underlying meanings, patterns, and processes” (p. 93; see also Altheide 1987). Diane Vaughan (2004) has described the latter as “an attempt to elicit structure and culture from documents created prior to an event in order to understand how people in another time and place made sense of things” (p. 321). The historicizing approach through texts permits ethnographers to learn from others even when they are no longer around (see also Medick 1984; Fenske 2007).

HECA is ethnographic in the sense that it emphasizes what people do and say in context. By translating text into experience (cf. Clifford 1986),<sup>7</sup> it takes seriously what Alfred Schutz (1962) described as first-level constructs and practices that people incorporate in interactions with others. It is sensitive to the social contexts of experience in which meanings are (re)created. The data categories and analyses I apply throughout my investigation are tested against what people say and do, paying close attention to the rationales that link representation and action together. Harold Blumer (1940) noted that interaction is necessarily about the subjectivity of social action. It is a matter of inference and judgement located within specific relationships, acts, and circumstances (see also Blumer 1954, Goffman 1983). “[T]he meanings that things have for human beings are central in their own right,” Blumer ([1969] 1998) argued, and those meanings “are socially produced through interaction with one’s fellows, and that in the process of interaction, the meanings of things are interpreted and reinterpreted” (p. 2-5). These processes of making meaning, in other words, are co-constructed and derive from interpretive interactions (Becker 1996).

*An Ethnography of Text, How Does That Work?*

Unlike conventional practices of ethnography (e.g., Becker 1996; Becker and Geer 1957), HECA does not require a participatory mode of data collection whereby researchers

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<sup>7</sup> Similar methods have been well-established in Germany since the 1980s, particularly within the field of anthropology (see Eibach and Lottes 2002). Only recently has “historical ethnography” emerged onto the American sociological scene (e.g., Hunter 2013; Vaughan 1996).

directly engage those they study.<sup>8</sup> Sociologist Marcus Hunter (2013) has described it as thinking of texts as “the lasting or remaining documentary evidence that will supply the historical ethnographic data necessary to (re)construct the stakes of a given time and community” (p. 231). The method helps researchers historicize peoples’ perspectives from their own eyes, as well as describe the activities with which they have engaged. Simultaneously, it positions researchers to move beyond the surface events of their fieldsite to elaborate analytic perspectives that can be different from how people interpret their own views and actions. Borrowing from the symbolic interaction tradition, at least some of its strands that stress structure, this method does not presume the circumscribed racial hierarchy is a given—not without accounting for the interactions where these structures are anchored and negotiated (see Blumer [1969] 1998; Wellman 1988). After all, local settings can be understood only in the context of broad sociohistorical processes (Burawoy 1998; Burawoy et al. 1991).

Because HECA follows a retrospective reconstruction of discourses and events that were recorded in historical artifacts, anthropologists John and Jean Comaroff (1992) have reasoned that this means archives serve as the logical fieldsite. The data can range broadly, spanning manuscripts, pamphlets, news articles, speeches, correspondences, personal accounts, and meeting proceedings, among other items. According to sociologists Julia Adams, Elizabeth Clemens, and Shola Orloff (2005),

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<sup>8</sup> One might say the ethnographic position of being physically present for participant observation is an outdated idea, especially in light of the information age where so much social activity takes place in digital space (Hammersley and Treseder 2007).

archival documents are problematic texts, themselves in need of discursive deciphering; that explanatory accounts of history writ-large must be understood as narratives with their own rhetorical devices and plots; and that every observation and utterance makes sense only in the context of a symbolic order. (p. 27)

They should not be taken at face value. Otherwise, ethnographers run the risk of committing what sociologist Stephen Steinberg (1993) has called the “ethnographic fallacy.” This happens when researchers follow a “seeing is believing” epistemology and blindly accept observations without critical reflection. The way I think of observations recorded in historical texts is like an iceberg of data. Only the tip may be seen from the surface, but just below lurks much more. This means that implicit knowledge is most always present in these texts.

Texts are not conceptualized in an abstract manner where discourse is uncoupled from action. Paraphrasing sociologist John Heritage (1984), they are products and reflections of historically situated social activity. When seen this way, these texts permit ethnographers to adjudicate between what people say and do—discerning how the two relate to one another in the process. It allows for the accumulation of data in such a way that positions ethnographers to explain the “how” and “why” questions of when certain discourses are deployed to justify certain actions that can be verified through historical record, along with what circumstances, and which motivations drive these formations (see also Bourdieu [1979] 1984). That is, the method lends itself to building causal claims. “Ethnographers can give temporal structure to data collection that may put them as close to inherently exclusive causal contingencies as any research can” (Katz 2002:459). Rather than singular causes though, the richness of understanding the path

dependences of local actors in contexts, and what many factors they influence and are influenced by to make meaning, take into accounts multiple causal forces that are at hand.

*The Fieldsite: A Century of Lawmaking for a New Nation*

To study debates surrounding the three-fifths clause, I rely upon the archives entitled *A Century of Lawmaking for a New Nation*. This collection is held by the Library of Congress, and it is among the most robust sources of congressional record. My focus is narrowed to the timeline in which these debates unraveled, 1775-1788, and thus the data I cover span the ratification of both the Articles of Confederation and U.S. Constitution. A bulk of the text I analyze is drawn from the following sources:

- *Journals of the Continental Congress (1774-1789)*,
- *Letters of Delegates to Congress (1774-1789)*,
- *The Records of the Federal Convention of 1787*, and
- *The Debates in the Several State Conventions on the Adoption of the Federal Constitution (1787-1788)*.

Each of these titles comes with its own set of strengths and weaknesses. Most all of them are incomplete. They may not be verbatim transcripts. They may be filtered through subjective eyes. They may include inaccuracies and words taken out of context. They may range broadly in their emphasis, with some stressing parliamentary procedure and others highlighting substantive debate. Below I provide an overview of each title. The goal is to delineate the strengths of each as well as address what kinds of questions they are suited to answer.

The *Journals of the Continental Congress* (1774-1789) mostly consist of records directly transcribed from the notes of Charles Thomson. For 15 years, he served as secretary of the Continental Congress. This lent a certain degree of continuity for a political body that experienced turnover throughout the years. Thomson's records were not a solo production, though. Before many of them could be cleared for publication, parliamentary procedure subjected them to committee approval for verification purposes. To add an extra layer of validity and depth, these journals include official reports from Congress for supplemental purposes. That way the inquisitive student can cross-reference various reports for the sake of confirmation.

The *Letters of Delegates to Congress* (1774-1789) consists of letters, diaries, public papers, essays, speeches, and policy drafts written by members of the First and Second Continental Congress. The bulk of this title, however, is comprised by letters between delegates and their political constituents. Most all the letters featured were written when one of the involved parties was a member of Congress. The title was designed with the purpose of supplementing the official record with private correspondences, and the final texts featured are not randomly sampled. Texts are omitted if they were either repetitious or trivial, and did not contribute to the exhaustiveness of the final product. These omissions are noted throughout to give readers a sense of how common or uncommon some concerns were. All the documents were collected from universities, historical societies, and private parties with the assistance of the Library of Congress, U.S. Congress, and Ford Foundation.

*The Records of the Federal Convention of 1787*, also known as “Farrand’s Records,” covers the Constitutional Convention from its beginning in May to its end in September. It consists of a hodgepodge of notes from numerous sources. Some of these notes derive from William Jackson of South Carolina, who was charged with the task of keeping records for the Constitutional Convention. Historians have scrutinized his notes, and general character, many times over. They have found omission of crucial details, a lack of proper experience, and indications of his being being a more successful lobbyist than note taker (Beeman 2009; Berkin 2002; Collier and Collier 1986). Rather than rely too heavily on Jackson’s record, this title features the notes of James Madison of Virginia too. These are widely considered the most authoritative account of the Constitution Convention. This is because Madison had access to the complete records of the Convention that were confidentially kept by George Washington of Virginia, which allowed him to fill out details he had missed and cross-verify what information he had recorded. Aside from these advantages, Madison’s notes are the only ones available to cover the Convention in its entirety.<sup>9</sup> A strength of “Farrand’s Records” is that it marks

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<sup>9</sup> Legal scholar Mary Bilder (2015) has claimed there is reason to be skeptical of James Madison’s record. He did not set out to offer a comprehensive account, but fell into this role years later at Thomas Jefferson’s (Virginia) urging. Jefferson did not attend the Convention due to diplomatic service in France. Madison is known to have revised his records until his death in 1836, covering layers of revision in the process by changing his interpretation of the Convention, the role he played in these debates, and what stances he took on the Constitution. Sensitive to details he perhaps knew would mold images of an early nation to later readers, Madison left behind artifacts that represent an overt example of political posturing. Over the years, he drifted from federalist positions shared with Alexander Hamilton of New York toward what became known as the “Democratic-Republican Party.” Madison’s notes were posthumously published in 1840, after all those who signed the Constitution had perished.



discrepancies between sources. It also includes materials from other delegates in attendance, like original notes as well as direct correspondences, that allows for triangulation.

Unlike other manuscripts in the collection, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution (1787-1788)*, otherwise known as “Elliot’s Debates,” document the transitional period between the Constitutional Convention in 1787 and the First Federal Congress of 1789. It was during this time when the Constitution was dispersed among the states, and their own delegates debated its merits for ratification. Because most these proceedings were taken by an appointed person at the local level, there is much variation in their quality and depth. The case of Pennsylvania, for example, only includes commentary from those who supported the Constitution while its opponents’ commentary is omitted altogether. For other states like New Hampshire and North Carolina, these proceedings are incomplete and feature only segments of the debate. Among other states like New York, Massachusetts, and Virginia, however, the records are thick with detail and day-to-day summaries.

*The Elite Bias Justified: They are the Purveyors of Ideology*

My understanding of the three-fifths debate is filtered through the perspectives of those who chose to write about it, either through correspondences, private record, and publication. In conventional ethnographies, these types of subjects are considered informants (Fenske 2007). They play a crucial role in my study because they filter which data are available, and possibly how the discourses surrounding the three-fifths debate were (re)constructed over time. This may bias the data to certain extent, since these

delegates had their own agendas in shaping how the debates unraveled. You could say, then, that a heavy reliance upon their accounts causes my data to suffer from an elite bias that privileges their voice, or at least their recollections of the debates, over others. My argument can live with this limitation because it turns the gaze upward toward sources of ruling relations (Harding 1987). These elites exerted so much influence on constitutional content, they possessed disproportionate access to the purveyors of ideology (see van Dijk 1997). As philosophers Karl Marx and Friedrich Engels ([1846] 1970) observed, “The class which has the means of material production at its disposal, has control at the same time over the means of mental production, so that thereby, generally speaking, the ideas of those who lack the means of material production are subject to it” (p. 64).

The founding fathers had more disposable power to impose their will onto others even if there was resistance. My narrow focus on discourse among elite white men joins feminist (e.g., Smith 1987) and antiracist (e.g., Embrick 2011) approaches that insist upon “studying up” rather than “down.” The point is to render a more holistic understanding of how domination works. Consider the point made by sociologist Sandra Harding (1987) on class dynamics between employer and employee:

While employers have often commissioned studies of how to make workers happy with less power and pay, workers have rarely been in a position to undertake commission studies of anything at all, let alone make employers happy with less power and profit. (p. 8)

As she alludes, a standpoint that gazes upward at power yields a fundamentally different type of perspective. It positions researchers to look toward the source of ruling relations, which are defined as a running definition. The racial order embodied in slavery is not self-evident. Rather it requires active participation by those with the power to sustain the

institution. That said, I am not interested in understanding these individuals on their own terms as individuals. I am more interested in the “collective representations” they advanced with regards to defending slavery (see Durkheim [1912] 2008).

*Sampling Strategy, Deciding What to Study*

I focused my analytic strategy by sampling documents according to whether they contain the words “three-fifths,” “three fifths,” or “3/5s.” A purposeful sampling approach is warranted here because conceptual adequacy is prioritized ahead of frequency and representativeness (Altheide 1987). The transferability of what conclusions I offer lies in extrapolation that is “based on the validity of the analysis rather than the representativeness of the events” (Mitchell 1983:190). My sampling procedure yields a primary dataset of 1,493 pages of primary and secondary texts. When some contextualization is warranted, I also incorporate original sources outside the collection like the *Notes on the State of Virginia* written by Thomas Jefferson ([1783] 1999) and *The Federalist Papers* written by Alexander Hamilton, James Madison, and John Jay. ([1787/1788] 1999). The documents I sampled permit me to observe the discourse of 160 people of the early republic, a vast majority of whom served as a political representative in some capacity. Their participation, however, was uneven. Over one-third offered few words, simply asked clarifying questions, or restated points already well-established. The texts sampled range from 1775 to 1789. This allowed me to review what was said by the same actors said over one and a half decades, and position my analysis to stress the “how” questions of social process. That way I could detect how ideas and practices of

discourse chain onto one another and identify a conceptual link that forges with time (see also Mitchell 1983).

*Ethnography's Serendipity Factor*

John Comaroff (2009) has noted that ethnography “rests on a dialectic between the deductive and the inductive, between the concept and the concrete, between its objectives and its subjects, whose intensions and inventions frequently set its agenda. The failure to grasp this may account for the autonomic dismissal of ethnography as unrigorous, unreplicable, unfalsifiable, and the other (non)u words with which it is regularly damned” (qtd. in Becker 2009:546). Not all researchers can know what questions they want to investigate prior to doing the research, nor what theories to use to guide the data collection and analysis. Yet this does not necessarily mean these kinds of studies are less rigorous, systematic, or theoretically informed. Perhaps it is just the opposite when we consider some of the classic ethnographies of sociology, from Carol Stack’s (1970) *All Our Kin* to Elijah Anderson’s (1978) *A Place on the Corner*. These studies followed an iterative development process whereby they did not know what to study until after they had submerged themselves in the field. Only then were they able to use these early experiences to guide the formation of a question and strategy for how to answer it. These are models to which I aspire.

An alternative way of doing science regards the grounded theory approach, developed by sociologists Barney Glaser and Anselm Strauss (1967). It is unique from traditional, positivistic-leaning orientations, in that it does not begin with a discretely stated research problem, pre-specified type of analysis, and testable or falsifiable

hypotheses. Instead it often begins with a general topic, perhaps not even a developed question, and a collection of qualitative data (Charmaz 2006). From there, researchers are at liberty to pursue developing patterns, openly wrestle with unexpected findings, and perhaps even redraw or elaborate on old theoretical explanations (Vaughan 1992).

Conventional modes of science can run the risk of closing off, rather than opening up the production of knowledge. This is because they follow, as Howard Becker (2009) has described, what everyone already knows and blindly accepts. Such modes are akin to what sociologist Thomas Kuhn (1962) labeled as “normal science,” which regards an approach preoccupied with extending the prevailing paradigm rather than building knowledge that falls outside of it. Though I do not endorse Glaser and Strauss’ (1967) grounded theory for the project at hand,<sup>10</sup> my strategy incorporates one of its key tenets. I embrace the notion of keeping a research design flexible enough so that hypotheses can be adjusted, and the focus reoriented, in light of discovering unanticipated findings.

Standing in the shadows of sociologists like Michael Burawoy and his colleagues (1991),

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<sup>10</sup> Those who endorse grounded theory presume researchers begin the process with as clean a theoretical slate as possible, and then engage in theory-building that is based off one’s observations in the field (Charmaz 2006; Glaser and Strauss 1967). This stance compartmentalizes theory and data analysis as though the two are discrete processes. Another way of looking at methods is outlined by sociologists Robert Emerson, Rachel Fretz, and Linda Shaw (1995) who have argued “the ethnographer’s assumptions, interests, and theoretical commitments enter into every phase of writing an ethnography and influence decisions that range from selecting which events to write about to those that entail emphasizing one member’s perspective on an event over those of others” (p. 167; see also Bourdieu and Wacquant 1992). There is no foolproof distinction to be made between theory and observation, given that facts can be observed but these facts can neither be collected nor interpreted by themselves.

I see deviations from what might otherwise be reasonably expected as prime moments for theory building.

*Coding Decisions and the Unexpected Road Traveled*

Rather than sweep my presumptions and mistakes under the rug and present an end product of research, let me be transparent about my interpretations and how I arrived at certain analytic decisions (Becker [1986] 2007; Vaughan 2004). My analysis began with a different intent. The original purpose was to empirically test a structural interpretation of racism: the “racialized social systems” framework (Bonilla-Silva 1997). Reading this theory as an overtime thesis explaining change in racial ideology, I began with the purpose of documenting how racism shifts in patterned and resilient ways through formative tax conflicts across American history. As the data collection and analysis process unraveled, my study’s scope was scaled back from multiple tax conflicts to one tax conflict: the three-fifths clause.<sup>11</sup> This was a logical starting point as a case study. Historian Robin Einhorn ([1991] 2001; 2006, 2009) has explained that the three-fifths clause was so formative with its emphasis on uniformity and principles of “fair” taxation that it later shaped how most governments across the U.S. approach property taxes. Because the clause also regards the racial politics of representation, the analysis was expanded accordingly to account for this topical area.

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<sup>11</sup> The logic of restricting my analysis to taxation follows the lead of “new fiscal sociology” (Martin 2008; Prasad 2006; Martin and Prasad 2014; Martin, Mehrotra, and Prasad 2009; see also Schumpeter [1918] 1991). Taxes have of way of laying bare the most fundamental social arrangements, as all public institutions run through the state’s capacity to generate revenues that finance the services and protections they provide.

Once data collection and analysis commenced, I was overwhelmed by the volume of texts related to my topic and their richness. Beginning my preliminary analysis, I observed that my codebook did not mesh with the observations I made and there were other important questions to ask that precluded my original expectations.<sup>12</sup> The scope of the project was scaled back for practical and substantive reasons, shifting from several cases to one. The major substantive reason being that I entered the field with an agenda that was removed and unreflective of the activity I later observed. I began the analysis looking to record overt expressions of white supremacy during three-fifths debate. These were common but not exhaustive.

In an era where white beliefs in black inferiority were typical, a counter-intuitive finding I discovered was that even slaveowners worried about “saving face” and establishing “non-racist” credentials when debating slavery. Edmund Randolph of Virginia, for example, “lamented that such a species of property existed; but as it did exist, the holders of it would require [some] security” (ED-V [1787] 1845:304). Like many others, he transitioned back-and-forth between contradictory positions that simultaneously deplored and defended the peculiar institution. The moral politics of slavery, in other words, rendered the racial ideology that justified it a varied, contested phenomenon. Though this observation jars with literature on today’s racial ideology that

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<sup>12</sup> Many of these reflections about my own research were inspired by sociologist William Foote Whyte’s (1955) *Street Corner Society*. In his methodological appendix, he recounted a similar experience. He entered the field with expectations formed by the preexisting literature, only to learn that his focus did not reflect the pressing concerns of those he observed. Only with an extended presence in the field did he learn what his final topic would be, what questions needed to be asked, and how he should go about answering them.

stresses a sharp break from the past, it does satisfy an emphasis on discovery that is important to most all philosophies of science. Only through a research design that is open to change, however, was I able to take what was learned during early stages of the project and allow it to inform subsequent decisions on which data to look at, what to look for, how to code, and so on.

#### *Open and Axial Coding with Multiple Researchers*

Since my orientation combines a hybrid approach of induction and deduction, I entered the coding process with two goals. The first goal was to verify what extent colorblind ideology informed debates of the three-fifths clause (see Chapter Five). This consisted of identifying when delegates deployed the frame of “abstract liberalism,” what is theorized as the cornerstone of colorblindness (Bonilla-Silva [2003] 2014). The “abstract liberalism” code was designed to guide the initial analysis not trap it. As the analysis process unraveled, this code was further differentiated by topical context:

“representational equality” and “tax uniformity.” Meanwhile, my analytic second goal was to develop original codes reflective of patterns observed in the data (see Chapters Four and Six). These were developed through an open coding process, which is a grounded approach that begins with repeatedly reading the data without imposing any predetermined interpretations (Emerson, Fretz, and Shaw 1995). The analysis shifted to axial coding after preliminary themes were developed, which involves the simultaneous evaluation of the raw data and initial set of codes. The idea is to follow up on deviant observations and “miscellaneous” patterns. Not only does this permit me to capture a



fuller range of overarching themes among the data, but it positions my analysis to fulfill its emphasis on conceptual development.

After preliminary codes were established, two additional researchers were introduced into the analysis process. Whereas I coded all 1,493 pages of data, the secondary researchers reviewed about 25 percent of the dataset. These “triple-coded” documents were chosen purposefully. I arranged all texts in chronological order and divided them into twelve roughly equal segments. Then three segments at the front-, middle-, and back-ends of the dataset were selected for the secondary researchers to code. This strategy ensures they were exposed to a diverse selection of the dataset, so they could track discourse spanning the observed timeline. The role of the secondary researchers was to assist with operationalizing the final codes, adding any additional codes that I missed, and performing thematic analysis. In this study, thematic analysis refers to identifying similar and overarching patterns among the data and codes (Fereday and Muir-Cochrane 2006). Together through a reiterative and reflexive process, we referenced the open and axial codes to help identify common themes across the data that satisfied a point of saturation. This can be defined as “the point in data collection and analysis when new information produces little or no change to the codebook” (Guest, Bunce, and Johnson 2006:65). It is a point where additional data points do not tell me anything that was not already discovered.

*“Why am I to believe you?”: Concerns of Validity and Reliability*

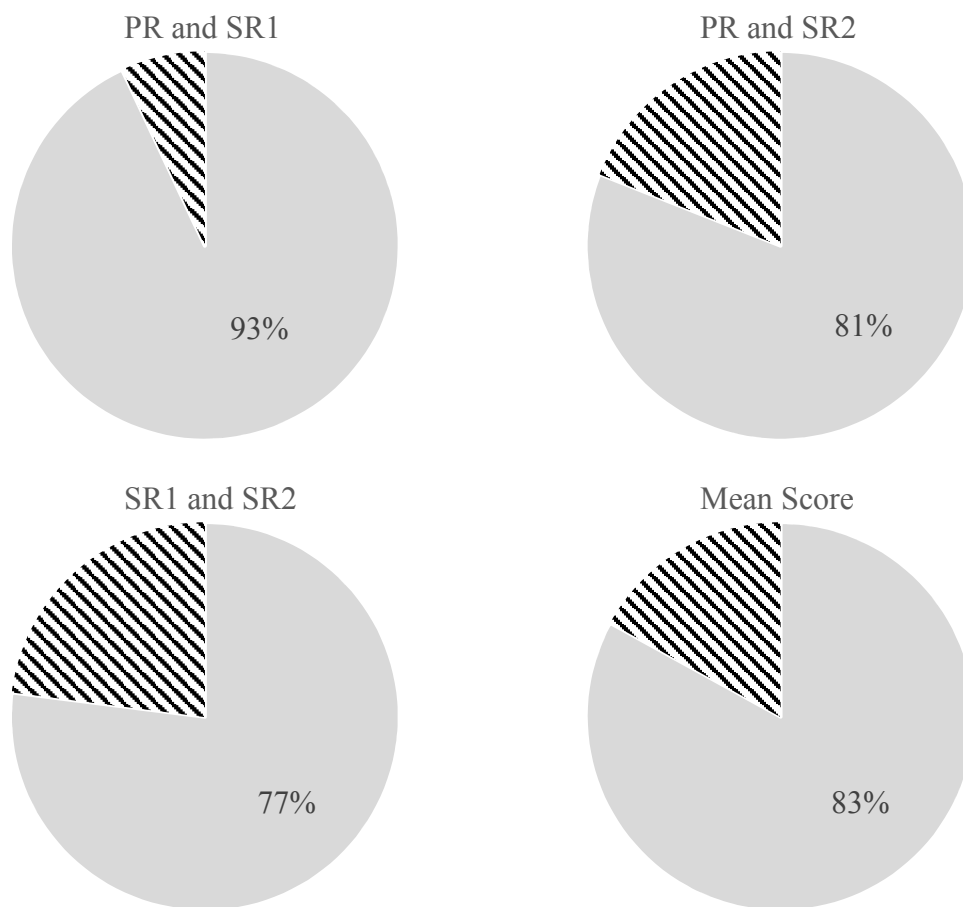
Like any scientist, I do not want my research to be inaccurate and without confirmation. My own sense of the historical situation, the ways data are coded and understood, and how the final analysis is presented all represent urgent matters of concern. To validate the reliability of both my data and analysis, I follow a two-prong procedure of triangulation. The first prong regards “source triangulation.” Paying close attention to historical texts permits the historical ethnographer to draw inferences from otherwise inaccessible interpretations and contexts of racism in the past. Yet it also places a certain degree of vulnerability in the analysis, one that regards the politics of representation.

How do I know if these accounts are accurate? What motivated their framing? Which events were distorted or withheld? Why might these be important? And how do I move the analysis beyond the immediate details shared? Being at least one degree removed from direct observation, these questions represent some of the concerns that historical ethnographers need to address (Hunter 2013; Stanfield 1993). To account for these considerations in my study, I cross-reference multiple accounts of the same events to verify what was (not) recalled, confirm patterned observations, and offer a more comprehensive narrative. The idea was to gain a sense of how reliable the recorders of history were.

The second prong of triangulation involves intercoder reliability checks. I included this strategy to measure the consistency of coding decisions between independent researchers (Krippendorff 1980). The coding decisions assigned were transformed into enumerative data (e.g., dummy variables like 1 = presence of abstract liberalism, 0 = absence of abstract liberalism) that were later used to calculate indices

indicating levels of “intercoder agreement” (Tinsley and Weiss 1975). The index I relied upon is “Percent Agreement.” It refers to the percentage of coding decisions between analysts that match, and it ranges on a “0-to-1” scale with “0” meaning no agreement and “1” meaning perfect agreement (Lombard, Snyder-Duch, and Bracken 2002).

Figure 4. Intercoder Reliability: Percentage Agreement between Coding Decisions



*Note: PR signifies primary researcher, while SR1 and SR2 signify secondary researchers 1 and 2. The minimum intercoder reliability is a coefficient level of < .80.*

The percentage agreement formula is calculated as follows:

$$PA = \frac{TA}{n}$$

whereas Percentage Agreement (*PA*) equals the total number of coded agreements (*TA*) divided by the number of coded units for potential agreement (*n*). Researches often prefer this index for its straightforward interpretation, but a major drawback is its inability to account for agreement that occurs by “chance” (Suen and Lee 1985). In other words, this index has overestimation tendencies and is a liberal measure of intercoder agreement. I set a minimum level of reliability at a coefficient level of .80 to offset this limitation, which is a high threshold for agreement but generally acceptable for most research (Lombard, Snyder-Duch, and Bracken 2002).<sup>13</sup> All coding decisions between myself and the other researchers surpassed this mark (see Figure 4).

### **Studying the Past without becoming Trapped by It**

A historicizing inquiry like my own may be anchored in past events, but its relevancy is not necessarily located in problems of the past (Adams, Clemens, and Orloff 2005). *No Taxation without Discrimination* represents my attempt of studying the racism of the past without becoming trapped by it. Clarity for understanding the present is linked to social formations that transcend the current moment, and have been shaped by the heavy hand of history. Only through an interrogation of the past can we understand these processes. Seen this way, history is more than events that have preceded us in time. History is both an epistemology and ontology, since its construction requires consideration of what it is

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<sup>13</sup> Though I offer a threshold of intercoder agreement, in most cases I refrain from offering statistics that summarize how many delegates adhered to racism. This omission is purposeful. I do not wish to impose a frequentist logic and suggest such statistics imply representativeness (see Small 2009). These are irrelevant criteria for the purposes of my argument. I do not wish to claim that these elite white men participated in the three-fifths debates to the same extent and exerted relatively similar levels of political influence. Both situations are not the case.

(we think) we know and how (we think) we know it. It is not a place located firmly in the past but a process—one of constructing previous events as they relate to the present.

HECA is a method I use to engage what we know about racism and how we know it. It allows me to problematize the classical/modern dichotomy that social scientists and historians all too often apply to distinguish racial ideology of today from yesterday. I do this by grounding the dichotomy's assumptions within a substantive historical debate, empirically scrutinizing the conceptual pillars that hold up these assumptions, and invalidating them by transitional focus from the general to the specific (see also Vaughan 1992). The point is to accumulate data in ways that build upon existing theory so that generalizability is not an endpoint but a process. The conclusions I offer move away from the tendency to explain change in racism over time. Instead, I ask readers to reconsider the fundamental question: "What is racism?" (see also Doane 2006, 2014). The answers, I think, are better clarified with history. No longer do whites claim "I'm principled against slavery, but...". Instead, they say "I'm not racist, but...". The words have changed, but the substance and style remain much of the same.

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