Dear Readers,

Thank you in advance for giving this chapter a read. As some context, this is part of a larger book project that explores the historical development of legal aid, indigent defense, and their unexplored relationships to race. In short, the book argues that, contrary to popular understandings of legal aid, which conceive of this service as primarily about class and poverty, race has been a central feature of American legal aid efforts. Throughout American history, racial politics and dispositions—which have ebbed and flowed between hostility, paternalism, altruism, and neglect—have influenced the development of legal aid organizations, and as a consequence, shaped the nature of American inequality.

The first chapter, which is attached, describes the relationship between race and abolitionist lawyering. It focuses primarily on New York (although there is a similar institutional trajectory found in Philadelphia and Boston that this chapter for the most part leaves out, but I am trying to figure out how to work in more).

The next chapter describes the work of the Freedmen’s Bureau, which was designed by the federal government to help African Americans transition into citizenship and undertook legal aid efforts that have been undertheorized by legal scholars and historians.

The following two chapters describe the Progressive Era development of legal aid organizations and public defender offices. First, I discuss how they were developed due in part to concerns about Southern and Eastern Europeans (who were understood as racial minorities and prone to political dissidence). I then describe how this attention to ethnic whites contributed to the development of alternative legal aid schemes within black, Latinx, and Asian American communities.

The remaining two chapters take a jurisprudential. First, I examine how the Supreme Court’s treatment on the right to counsel during Jim Crow (focusing specifically on the period between Powell v. Alabama (1931) and Gideon v. Wainwright (1963)). Then I describe the post-Warren Court racial curtailment of the right to counsel.

Since this is a chapter of a book project, I have a general academic audience in mind in addition to scholars of law, history, race, and criminal justice. I welcome any feedback and am looking forward to the discussion.

Best,
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Racialized Help: Legal Aid and the Institution of Slavery
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I. Introduction
In 2013 the film 12 Years a Slave, an adaptation of Solomon Northup’s slave narrative of the same name, rocked the cinematic world. Northup was an African American man who was born in New York and lived in the state with his wife and three children as part of a free family. He was a skilled violinist and was approached in March of 1841 by entertainers who offered him temporary employment in Washington, D.C. Northup accepted the offer and while he was in the nation’s capital, woke up one day drugged, chained, and kidnapped. He was eventually sold into slavery in Louisiana. Northup spent twelve years on various plantations experiencing the cruelties and violence of human bondage. During his time in captivity, Northup told no one about his formerly free status but yearned for some way to reach his family and friends in New York. One day Northup witnessed a conversation that would spur legal advocacy on his behalf and lead to his freedom.¹

Solomon Northup overheard an argument between two white men that eventually provided his pathway to freedom. On one side was Edwin Epps, the vicious cotton-planter for whom Northup toiled and simultaneously despised. On the other end was Samuel Bass, a nomadic, Canadian-born white carpenter who contracted his services to Epps. Bass, whom Solomon described in his memoir as “liberal to a fault” argued with Epps about the inhumanity of slavery. Bass claimed that there was “no reason nor justice in the law, or the constitution that

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allows one man to hold another man in bondage...And what difference is there in the color of the soul? Pshaw! The whole system is as absurd as it is cruel. You may own niggers and behanged, but I wouldn’t own one for the best plantation in Louisiana.” After noticing these anti-slavery proclivities, Northup confided in Bass. Northup penned, “I spoke of my wife and children, mentioning their names and ages, and dwelling upon the unspeakable happiness it would [bring] to clasp them to my heart once more before I died. I caught him by the hand, and with tears and passionate entreaties implored him to befriend me - to restore me to my kindred and to liberty - promising I would weary Heaven the remainder of my life with prayers that it would bless and prosper him.” A sympathetic Bass agreed to send a letter to Solomon’s family and friends in New York, an action that could be more easily completed with stealth by a white person. At this point in the film version of the story, attorneys come to the plantation, retrieve Solomon, and he is happily reunited with his family in a few minutes. But there is more nuance at this point of Northup’s tumultuous journey that has gone unexplored.²

In Northup’s case, as was the case for many individuals who were able to escape slavery, attorneys were integral to his return to freedom.³ His letter informed his friends and family of his enslavement and requested his freedom papers. In its early treatment of this case, the New York


Daily Times noted that Henry B. Northup—a white New York attorney whose family held Solomon Northup’s father in bondage and was akin to a “relative”—was crucial to Solomon’s legal assistance. Henry assisted by “procuring evidence” and “retaining counsel as were [sic] necessary to secure the freedom of Solomon.” Henry Northup met with several government officials, including New York State Supreme Court Justice Samuel Nelson. They provided him with “strong letters to gentlemen residing in Louisiana, urging their assistance in accomplishing the object of restoring the man to freedom.” Future Supreme Court Justice Salmon P. Chase, who had a reputation for being an abolitionist lawyer and provided legal aid to people who were formerly in bondage, also assisted in securing Solomon Northup’s freedom. The film’s audience would know little about these details. Similarly, scholars who have familiarity with the narrative might underestimate the importance of this legal assistance. Abolitionist lawyering provided played significant roles in challenging the law of slavery. More specifically, legal aid—the organized provision of legal information, assistance, and representation to individuals who are unable to afford it—is an underappreciated feature of this chapter in American legal history. This inattention is compounded by the fact that legal aid scholarship focuses primarily on class and indigence in ways that obscure its important racial dimensions. Accordingly, the inextricable relationship between race, slavery, and legal aid is central to the themes that are examined in the following pages.4

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This chapter seeks to accomplish a few things. First, it argues that contrary to the scholarly doxa that understands organized legal assistance as emerging exclusively from class-based concerns during the Progressive Era, race played a crucial role in the creation of early aid institutions. The chapter does this by detailing the legal advocacy of abolitionist organizations and lawyers. Some of this legal labor has been ably described by historians of abolitionism and African American history, whereas other aspects of legal aid have been overlooked or under-theorized. Accordingly, the other goal of this chapter is to provide a more cohesive account that addresses some of the racial oversights of previous legal aid scholarship as well as provide more legal analysis to previous treatments of race and abolitionism. By focusing specifically on groups that have been understudied in legal aid scholarship—anti-slavery societies, abolitionist lawyers, and lay black folk—the chapter highlights the centrality of race in the development of incipient legal assistance schemes.  


There is much at stake when analyses of legal aid start a century before traditional accounts, move beyond an exclusive focus on indigence, and center the discussion on race, bondage, and abolitionism. Historiographically, this reinterpretation creates space for new kinds of scholarly inquiry. Post-slavery analyses of legal aid that overlook human bondage miss significant developments, patterns, and motivations in legal assistance efforts—all of which have enduring reverberations in today’s legal system. Practically, an investigation into the work of abolitionist legal aid offers distinct insights into the slavery-segregation-mass incarceration continuum that scholars have pinpointed. 6 Abolitionist lawyers were the occupational antecedents of attorneys who challenged Jim Crow laws and contemporary public defenders. The foundational examples offered in this chapter can reshape conversations about successful and failed attempts to challenge these systems of domination. This exploration also provides a window into the travails of today’s public defenders—a group of attorneys that are, in theory, the only bureaucratic allies of the criminally accused and like their nineteenth century predecessors work primarily with marginalized populations. A better comprehension of the shortcomings of abolitionist legal advocacy can identify similar problems in contemporary public defense that often go unnoticed because they are attributed to presentist politics as opposed to potential trends.

Accordingly, there is much at stake ideologically. This repositioning highlights the promises and perils of white legal altruism. As this chapter demonstrates, white beneficence

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sometimes served as an independent driving force in the eradication of black subjugation. But it was occasionally wedded to naïve commitments to legal formalism and often complicit in the hardening of racial assumptions and hierarchies. By examining these forms of late eighteenth and early nineteenth century lawyering, the chapter attempts to highlight issues that might be considered relics of the past but are prominent in twenty-first century social justice lawyering.

Section II of this chapter investigates the legal work and advocacy of the Pennsylvania Abolitionist Society (PAS), the first anti-slavery organization in the United States and an unacknowledged pioneer in legal aid work. While the focus of the chapter is on the state of New York, PAS is important to highlight because it was the first abolitionist organization to provide legal aid, and it served as a model for the New York Manumission Society (NYMS). The remaining part of Section I describes the work of NYMS. Both PAS and NYMS were part of an early iteration of abolitionist societies from the 1780s to 1810s. Some of the country’s Founding Fathers participated in these organizations. Both were primarily concerned about manumission—the technical and sometimes cumbersome legal process of freeing the enslaved—and though interested in abolition, were less immediate about it than their predecessors.7

Section III focuses on American Anti-Slavery Society (AASS), which was most vibrant between the 1830s and the 1860s. AASS had chapters across the country and was headquartered in New York City, which is given particular attention in this section. This organization and the one’s that splintered from it, were more interracial in nature, as opposed to their homogenously

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7 One scholar has noted how the focus on manumission was misguided, particularly in this moment of American history. “Although the movement for voluntary manumission lingered on, deluding those who supported it into thinking that they were having a serious impact on slavery as a whole, it was becoming clearer that slavery was not going to disappear. Even as states passed legislation limiting the transatlantic slave trade, the actual number of slaves in the United States continued to grow steadily. Voluntary manumissions freed thousands, but they were merely a drop in the demographic bucket as the total number of slaves swelled due to natural increase from just under 900,000 in 1800, to about 1.2 million in 1810, to slightly more than 2 million in 1830, more than doubling in just thirty years.” See Fergus M. Bordewich, Bound for Canaan: The Epic Story of the Underground Railroad, America's First Civil Rights Movement (New York: HarperCollins, 2006), 43.
white predecessors. It also thought about black freedom beyond manumission, and utilized litigation, fundraising, and journalism in attempts to change black legal life.

Section IV focuses on the New York Committee of Vigilance (NYCV), which also emerged in the 1830s. This organization, like other vigilance committees in Philadelphia and Boston, was also interracial, but led primarily by black people. It served both as an auxiliary and alternative to AASS and focused on providing more granular direct services to fugitive, free, and enslaved blacks who made their way to New York. By focusing on these different versions of abolitionist legal advocacy, the chapter seeks to give racial character to untold narratives as well as familiar narratives that are devoid of either legal heft or racial theorizing.

II. Early Incrementalist Abolitionist Societies

The post-revolutionary moment and the beginning of the American nation, provide an excellent starting point for the development of legal aid schemes and organizations. The most influential analyses of legal aid societies and associations tend to start slightly before the Progressive era, with the development of the Der Deutsche Rechtsschutz Verein (German Law Association) in 1876, which was designed to offer legal aid to German immigrants in New York City. Legal historian Felice Batlan has importantly disrupted this chronology and highlighted existence of legal aid organizations beginning in the 1860s. Abolitionist scholarship and legal history point to earlier iterations of legal aid. Most notably, Richard Newman has argued that the Pennsylvania Abolitionist Society (PAS) provides an earlier example of a documented American

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9 Felice Batlan, *Women and Justice for the Poor*. 8
institution that offered organized legal aid. The organization focused its energies on offering assistance to free and fugitive blacks, as well as abolitionist sympathizers accused of helping fugitives. Twenty-four men, the majority of whom were Quakers, founded the *Pennsylvania Abolition Society for the Relief of Free Negros Unlawfully Held in Bondage and for Improving the Condition of the African Race* in 1775 in Philadelphia. Up until this point, legal aid manifested itself through the individual work of lawyers and philanthropists.

The case of a woman of color named Dinah Nevil galvanized the organization in 1773. There is a historical uncertainty about whether Nevil was black or Native American but what is more established is that she was previously enslaved in New Jersey. In 1773 she traveled from New Jersey to Philadelphia and declared that she and her children were free. A group of Quakers provided Nevil’s legal defense but a judge ruled against her. The outbreak of the War, coupled with post-revolutionary “arguments about the right to property,” frustrated PAS’ efforts and led them to purchase Nevil’s freedom. Although the Society lost two years as well as the case, the incident had a profound impact on the group and created a template for future organized legal efforts. The American Revolution interrupted the development of the Society and it suspended its regular meetings during the war. The Society’s activity resumed in 1784, with Benjamin Franklin serving as a notable member in 1787. Like many of the anti-slave societies

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11 Pennsylvania Abolition Society, *Centennial Anniversary of the Pennsylvania Society, for Promoting the Abolition of Slavery, the Relief of Free Negros Unlawfully Held in Bondage, and for Improving the Condition of the African Race* (Philadelphia: Grant, Faires & Rodgers, 1876).

12 Kirsten Sword has written the most recent and complete story of Nevil and explains this uncertainty. “Those who claimed Nevil as property insisted that she was a ‘mulatto’ whose mixed African ancestry justified perpetual slavery.” To win freedom, Nevil had to be an ‘Indian,’ on terms that made this identity a matter of race rather than of tribal membership. The legal status of Dinah Nevil and her children ultimately rested on a loophole in a 1727 Pennsylvania law against ‘making slaves of the Indian Natives.” Kirsten Sword, “Remembering Dinah Nevil: Strategic Deceptions in Eighteenth-Century Antislavery” *97 The Journal of American History* (2010): 315-343, 319.


14 Sword, “Remembering Dinah Nevil,” at 333.
that it paved the way for (e.g. New York Manumission Society, Wilmington Abolitionist Society, Boston Female Anti-Slavery Society) PAS is typically noted for its anti-slavery legislative lobbying; dissemination of anti-slavery literature; investigations of anti-slave trade law violations; and advocacy of blacks’ social, political and economic interests. But an underappreciated aspect of their work was their legal aid, much of which dealt with black freedom claims and kidnapping cases. This legal advocacy represents an early instantiation of cause lawyering.\(^\text{15}\) In the decades leading up to the Civil War, the courtroom was an important battleground between the North and the South. Abolitionist legal aid and slavery were undeniably central features to this struggle. Accordingly, understanding abolitionist lawyering adds complexity to lay and scholarly understandings of law and inequality, the origins of legal aid, the relationship between race and bondage, and the legal underpinnings of the Civil War.

Abolitionist legal aid was particularly important because Pennsylvania was the first state to pass a substantive piece of anti-slavery legislation with its 1780 Gradual Abolition Act. The Quaker State was flanked by two states that did not pass similar legislation until almost two decades later (New York in 1799 and New Jersey in 1804) as well as the state of Maryland, which did not end slavery until 1864. West Virginia and Delaware did not end slavery until 1865. Ohio was a free state when it entered the Union in 1803 but it was vigilant in its exclusion of black migrants and imposed fees on blacks entering the state.\(^\text{16}\) Consequentially, Pennsylvania’s geographical position near these states and the Mason-Dixon Line made it a place of refuge for

\(^{15}\) Cause lawyering usually connotes a form of legal practice where lawyers attempt to use their skills to promote a particular cause that they are invested in and consider necessary for societal improvement. This is in contrast with traditional lawyering, which focuses primarily on interests of clients. Of course there are instances where the larger cause and immediate needs of the client are not necessarily opposed. See Austin Sarat and Stuart Scheingold, _Cause Lawyering: Political Commitments and Professional Responsibilities_ (New York: Oxford University Press, 1998).

escaped black people. African-American abolitionist and businessman James Forten proclaimed that it was “the only state in the union wherein the black man is treated equally to the white.”

At the same time, Pennsylvania was also a primary destination for ravenous slave-hunters, traders, and owners seeking to retrieve escaped blacks as well as free African Americans. This was especially true after the Fugitive Slave Act of 1793 and the 1808 prohibition on the international importation of slaves. Kidnapping (or “negro stealing”—a term both abolitionists and slaveholders levied on each other) certainly created a culture of illegality, but Pennsylvania’s relatively sympathetic position toward abolition allowed it to create legal mechanisms to protect escaped and free blacks. These legal mechanisms invited intense litigation. PAS “hired more lawyers and represented more blacks in court at the close of the eighteenth century than any other abolitionist organization” and from 1800 to 1830, a third of PAS’ cases were related to kidnapping.18 The Society eventually developed a national reputation for providing legal aid to blacks in a state that was a literal and figurative battleground around the issue of slavery.

Abolitionist legal aid was also a crucial service because much of the nation did not have empathy for fugitives and free blacks. In his discussion of kidnapping cases involving formerly enslaved and free blacks, Union Army officer Edward Needles notes:

> In such cases, ignorance or inability to prosecute their claim to freedom, unable to plead for themselves, and perhaps, none to plead for them, their chance for redress was very uncertain. Funds also were requisite, of which they were destitute; legal characters in general were not over forward in pleading for them before magistrates. ‘They were only negroes’ - poor and despised - their cause unpopular, and nothing to be gained by advocating their rights, but the ill-will and malice of their surrounding enemies.19

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Indeed, as Needles’ comments indicate, despite the existence of abolition societies and some whites’ commitment to racial egalitarianism, anti-black attitudes did not have the geographical boundaries that the typical antebellum North vs. South binary might suggest. Consequentially, there was a generally unsympathetic environment for blacks’ legal woes. Indeed, even if individuals did sympathize with the plight of escaped blacks, fugitive slave laws would stymie action. White apathy to the legal plight of free and enslaved blacks was exacerbated by the latter’s absence from juries, as witnesses in cases where a white man was a party, and from the bench and the bar—all of which essentially made voluntary legal aid an essential resource for African Americans. The general assumption of black criminality, coupled with the increasing existence of black “fugitives” helped foment an environment that required various forms of systematized legal aid in criminal law as well as other realms legal life.

PAS’ legal assistance efforts, along with the work of comparable abolitionist organizations, included and arguably exceeded the kind legal aid offered in contemporary American law. For plaintiffs, abolitionist lawyers investigated violations of the slave-trade (after the national 1808 prohibition) and aided black family members and friends attempting to liberate loved ones who were kidnapped. On the defense side, abolitionist lawyers for PAS negotiated (and in a few instances outright bought) escaped blacks’ freedom or bargained it down to indentured servitude. PAS bureaucrats also traveled to other states to deliver kidnapped persons’ freedom papers, as was the case in Solomon Northup’s Twelve Years a Slave, and even created a

20 This geographical indifference at best and hostility at worst is also evidenced by the scores of antebellum race riots in free northern and frontier cities (e.g. Philadelphia in 1834 and 1842, Cincinnati in 1836, 1841, and 1843). The populist sentiment of maintaining a system of racial domination of non-WASP’s existed across the ante-bellum country and was undergirded by a commitment to maintaining the economic status quo; in the South it was animated by a commitment to slavery whereas in the North it was driven by the prevention the economic competition from free blacks. See Litwack, North of Slavery; Edward Pessen, “How Different from Each other Were the Antebellum North and South?” 85 The American Historical Review (1980): 1119-1149; Thomas Paul Slaughter, Bloody Dawn: The Christiana Riot and Racial Violence in the Antebellum North (New York: Oxford University Press, 1994); Patrick Rael, Black Identity and Black Protest in the Antebellum North (Chapel Hill: University of North Carolina Press, 2002).
collated master file of indentured contracts to protect black servants from masters who attempted
to duplicitously break their agreements.²¹ PAS also held the manumission, birth, and marriage
certificates of free blacks and paid for the expenses of witnesses who were traveling to testify for
blacks attempting to maintain their free status.²²

Despite their engagement in innovatively humane legal work, PAS lawyers espoused a
more conservative approach to attacking racial inequality that varied from the immediate,
“militant abolitionism” that characterized anti-slavery mobilization closer to the Civil War.²³
Indeed, in one case, a Pennsylvania court noted, “it was no part of the design or objects of this
benevolent society, to protect or rescue runaway slaves from the claims of their masters…So far
as has come to our knowledge or information, this society has acted on the philanthropic
principles of its institution, and none other, never interfering with the rights of property” (my
emphasis).²⁴ Rather than push the limits of the law, these attorneys worked within legal
frameworks, respected southern property rights and fugitive slave laws, and instead focused on
“using loopholes, technicalities, and narrow legal opinions to liberate African Americans on a
case-by-case basis.”²⁵ Along with PAS, abolitionist societies in Delaware, Maryland, and
Virginia helped address kidnapping by certifying that manumissions were appropriately

American Abolitionism.

²² Norman B. Wilkinson, “Papers of the Pennsylvania Society for Promoting the Abolition of Slavery” 68 The


²⁵ Newman, The Transformation of American Abolitionism, 62. As we will see much later in the book, this strategic
operation within the law has different expressions and interpretations throughout history. In the Progressive and
Gilded Ages, lawyers used a similarly conservative approach—attempting not to upset the legal regime.
The development of the criminal justice system and the bureaucratization of legal aid facilitated further use of these
strategies (e.g. focusing on technicalities and loopholes) and led to negative characterization of public defenders’
(along with criminal defense lawyers more generally) as shysters who got criminals off based of legal technicalities
as opposed to factual innocence.
documented. They also maintained their own records in case they were needed for future kidnapping cases and freedom suits, and, in the instance of the Society in Delaware, publicly listed manumissions each month in the Wilmington newspaper, the *Mirror of the Times and General Advertiser*.26

The New York Manumission Society, which borrowed from PAS’ template and mirrored its more incremental approach to abolitionism, is noteworthy. The Society began in 1785 as the New York Society for Promoting the Manumission of Slaves, and Protecting Such of Them as Have Been or May be Liberated. Despite the organization’s presumptively anti-slavery stance, it did not prohibit ownership of slaves as a condition of ownership and allowed a slave owner, John Jay, to serve as its president.27 Understanding the organization through Jay provides insights into some of the productivity and problematics of early abolitionist societies that provided legal aid as well as abolitionist lawyering more generally. In 1786, a year after the organization’s founding, Jay responded to a story communicated to him by R. Lushington, a South Carolina Quaker who complained a black person who was kidnapped in New York City and sold into slavery in South Carolina. Lushington expressed a hope that “some mode might be adopted to prevent a d[evenous] [sic] a practice.” Jay responded, “It is much to be wished that slavery may be abolished. The honour of the States, as well as justice and humanity, in my opinion, loudly call upon them to emancipate these unhappy people. To contend for our own liberty, and to deny that blessing to others, involves an inconsistency not to be excused.”28

Jay acknowledged the incompatibility of the American ideal of liberty on one hand and the fact of bondage of the other. Notwithstanding that recognition—which may have come by way of intellectual honesty or the fact that he analogized the British treatment of colonialists with that of master/slave dyad a decade earlier\(^{29}\)—an even deeper hypocrisy existed: Jay owned slaves. When prompted to account for his taxable property by Albany assessors in 1798, Jay responded: “I have three male and three female slaves… five of them are with me in this city, and one of them is in the city of New York. I purchase slaves and manumit them at proper ages, and when their faithful services shall have afforded a reasonable retribution.”\(^{30}\) Jay was not alone; other members had backgrounds that ostensibly betrayed the abolitionist ethos. Henry Rutgers, the namesake of Rutgers University, owned slaves three decades into his membership with the Society whereas Aaron Burr counseled a slave-owning client on how to work around an emancipation statute that he helped get passed.\(^{31}\)

Pointing out that the leader of one of the country’s earliest abolitionist legal organizations (and a person who would go on to be the Supreme Court’s first Chief Justice) was a slaveowner could easily introduce the charge of historical and/or moral presentism. The basic ideas are that, “these were men of their times” and it is unfair to condemn historical actors based contemporary mores; alternatively some argue that it is unreasonable to judge early abolitionists based on the ideology of more radical abolitionists. These are somewhat reasonable claims made by scholars


who either genuinely strive for neutrality, nuance, or unconsciously sanitize history.\textsuperscript{32} But as James Horton has noted, we cannot excuse historical actors with the argument that they were simply conforming to the norms of the times because many of their contemporaries understood the noxiousness of slavery, and in the statement above, Jay did himself.\textsuperscript{33} Jay’s implication in the business of human bondage provides a platform for discussing the contradictions of slavery, the paternalism of abolitionist efforts, and the ways legal rhetoric often trumped substance. Jay’s involvement in slavery, and its relationship to the work of NYMS, also offers insights into the restrictive nature of the legal aid. NYMS did offer, which was explained by his son William when he noted that “the society neither expected nor attempted to effect any sudden alteration in the laws relating to slavery.” Instead, its energy was “chiefly directed to the protection of manumitted slaves and to the education of coloured children.”\textsuperscript{34} The organization’s focus on manumission gestures toward a certain conception of freedom that influenced its legal aid efforts.

Throughout the early eighteenth-century New York, and in many other states, manumission was a transactional event with the trappings of other kinds of property or economic exchange, such as selling a house or a boat.\textsuperscript{35} Manumission was subject to contract law and a legal process that

\textsuperscript{32} In an otherwise important contribution, one scholar criticizes recent scholarship’s trend of critiquing the compromise and paternalism of early abolitionists, stating “this scholarship's implicit historical measuring stick of immediate emancipation and unconditional black equality has obscured the underlying philosophy of early national slavery, along with the movement's corresponding hope for African American rights and incorporation within greater society.” See Paul J. Polgar, “‘To Raise Them to an Equal Participation’: Early National Abolitionism, Gradual Emancipation, and the Promise of African American Citizenship,” 31 Journal of the Early Republic (2011): 231.


\textsuperscript{34} William Jay, The Life of John Jay: With Selections from his Correspondence and Miscellaneous Papers (New York: J & J. Harper, 1833), 235.

\textsuperscript{35} As Judge A. Leon Higginbotham noted, “New York courts tended to strictly construe the manumission agreements, by applying the technical common law contract doctrines and their related burden of proof to manumission transactions.” See A. Leon Higginbotham, In the Matter of Color: Race and the American Legal Process, The Colonial Period (New York: Oxford University Press, 1990), 130. See also Conklin v. Havens, 12 Johnson's N. Y. Rep. 314 (1815) (ruling that “slaves are considered, on questions in relation to the right of property in them, as goods and chattels, and consequently, such questions must be decided by the same legal principles as are
betrayed the humanitarian aspect often used to describe it.\textsuperscript{36} Accordingly, the Society’s vision was gradual, ordered, and though forward-looking for its time, relatively moderate when compared to the self-determination of vigilance committees that emerged in the 1830s as well as their insistence on fugitivity if necessary. As Shane White has correctly noted, “the appropriate context within which to view its activities is not the abolitionist crusade of the 1830s, but the genteel and paternalistic reform movement of the 1790s and of the early years of the nineteenth century.”\textsuperscript{37} Despite NYMS’ moderate and graduate approach to slavery, it created spaces for blacks to be extricated from slavery.

The Society’s early notable efforts were in the legislative sphere. It took its gradual abolitionist efforts to the New York Legislature, which partially responded in 1788 when it prohibited the purchase of a slave with the intent to export and sell. But this law also included a general slave code with other encumbrances (e.g. voiding contracts made by slaves without the consent of the master, prohibiting slaves from being witnesses in civil cases).\textsuperscript{38} New York politicians’ disagreement about the scope emancipation should take led to a legislative stalemate for almost a decade. On July 4, 1799, with John Jay serving as governor of the state, New York passed its Gradual Emancipation Act, which counterintuitively did not emancipate any slaves but

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\textsuperscript{36} Joanne Pope Melish, sums it up nicely: “By simultaneously defining freedom as an entitlement and requiring slaves to earn it by supervised good conduct over a substantial period of time, gradual emancipation plans reassured white colonists that the manageability and containment offered by enslavement were transferable to the state of freedom, that a desirable degree of dependency could be maintained and an undesirable excess of it disciplined effectively; gradual emancipation thus promised a continuation of the benefits of slavery while eliminating its spiritual costs. Remove the stain of sin and the fear of just reprisal but retain the control: such was the allure of gradual emancipation.” See Joanne Pope Melish, \textit{Disowning Slavery: Gradual Emancipation and “Race” in New England, 1780–1860} (Ithaca: Cornell University Press, 1998), 63-64.


provided that children born after that date would be free at the age of 25 for females and 28 for males. This law did not include individuals born before 1799. In January of 1817, NYMS member and New York state governor Daniel Tompkins gave his last message to the state legislature. Tompkins was preparing for his new role as Vice President to James Monroe but implored the state legislature to close this statutory loophole, which it did. This amendment only concerned slavery within the state. It did not apply to visitors who brought slaves to the state temporarily; they were permitted to engage in interstate transit with their slaves (which presented a different set of legal issues years later). Notwithstanding these shortcomings, in a state where free and enslaved blacks did not have equal access to political process and limited advocacy, NYMS’ legislative successes were meaningful. As African American activist William Hamilton put it in one speech, “the manumission society have labored hard and incessantly, in order to bring us from our degraded situation, and restore us to the rights of men. It has stood, a phalanx, firm and undaunted, amid the flames of prejudice, and the shafts of calumny.”

The organization’s legislative work helped set the context for subsequent legal aid efforts.

In addition to legislative advocacy, NYMS also went to court in defense of blacks. Legal scholars writing about specific events or people have described some of the organization’s litigation, whereas other cases have not been chronicled. Martha Jones has detailed the case of Madame Jeanne Mathusine Droibillan, a widow from the West Indies who escaped the violence of the Haitian Revolution and held approximately twenty people in bondage in New York. In that case, the Society used a variety of legal tactics to intervene on behalf of the enslaved people:

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writ for replevin demanding that she establish her right to hold those people in question as property, a writ accusing the widow of false imprisonment and trespass; and a charge that those people held in bondage were freed by the French abolition.42 Craig Landy has also described the legal efforts of Thomas Addis Emmet, who served as counsel for the Society for almost two decades and successfully litigated a qui tam law suit under Slave Trade Act of 1794 against a Rhode Island man.43

But there is a modest amount of cases handled by NYMS that remain unearthed. Most notably, Peter Jay Munro, an officer and attorney for the Society, represented a former slave with the assistance of William Harison, a prominent attorney and law partner of Alexander Hamilton. In Fish v. Fisher, the unnamed man was a twenty-five-year-old former slave who escaped bondage from New Jersey to New York after the state passed its 1788 law prohibiting the importation of slaves. In 1795, the man’s former master came to New York and entered an “agreement” with a third-party (the defendant) that allowed the former captive to work in the state for twenty years in exchange for $225. The court found the transaction to be suspicious and described it’s striking resemblance to the sale of a human. The court noted that there was no “annual or other periodical reservation or payment, for services to be performed,” and included no deduction in case of death or disability. In ruling the for formerly enslaved plaintiff, the court concluded that these circumstances “indicate that the intent was to cover a sale, in evasion of the act.”44 Harison would go onto argue and succeed in a similar case five years later, whereas the


Society would be involved in a variety of other cases.\textsuperscript{45} As the middle of the century approached and interracial and immediate abolitionism gained ground, the Society’s legal efforts would subside and ultimately end in 1849.

III. \textit{The Emergence of Interracial Anti-Slavery Societies}

As slavery waned in New York and the role of organizations like NYMS declined, different organizations sprouted in the abolitionist space. In the context of legal aid, two in particular are noteworthy: the American Anti-Slavery Society (AASS) and the New York Committee of Vigilance (NYCV). The American Anti-Slavery Society began in 1833 in Philadelphia and was headquartered in New York City thereafter. William Garrison, Lewis Tappan and Arthur Tappan, were important leaders in the organization. In addition to having a modicum of black participation, AASS was unique from NYMS in that it advocated for \textit{the entire abolition of slavery in the U.S.}\textsuperscript{46} As one writer notes, “the U.S. anti-slavery movement was in disarray, with divergent views on several issues.”\textsuperscript{47} The \textit{Amistad Case} changed things.\textsuperscript{48} This human and legal crisis involved a nautical rebellion in 1839 by kidnapped Africans who were en route to Cuba, mutinied, attempted to have the ship sent back to Africa, but instead ended up in the States. In addition to stirring a debate about the international slave trade, the Amistad case “provided a focal point for rallying the dispersed ranks of the abolitionists, as they all came out in defense of the captives, fully convinced of their freedom.”\textsuperscript{49} Interestingly, the

\begin{thebibliography}{99}
\bibitem{birney} James G. Birney and William Lloyd Garrison, \textit{A Letter on the Political Obligations of Abolitionists}, (Boston: Dow and Jackson, 1839), 3 (emphasis in original).
\bibitem{amistadcase} \textit{The Amistad}, 40 U.S. 518, 10 L. Ed. 826 (1841).
\bibitem{id} Id.
\end{thebibliography}
case did not fall under the official aegis of the AASS, as leaders were concerned that an explicit association with the anti-slavery cause would hinder mainstream support.50 While this strategy was in tension with the organization’s immediate impulses around anti-slavery, the international nature of the affair paradoxically made it a safe cause that allowed people who were more circumspect about the immediate issue of slavery to “congratulate themselves on their liberality in supporting the Amistads.”51 The combination of the AASS’ distancing of itself from the case, coupled with the common understanding of this case as an international affair, provides an explanation for why this episode in American history has been undertheorized as a significant iteration of organized legal assistance.

The legal defense for the Amistad captives was not officially connected to the AASS but it was funded and organized by some of its members in ways that approximate the various ways legal assistance took shape during this period. Two of the organization’s members—Lewis Tappan and Joshua Leavitt teamed up with Simeon Jocelyn to form the Amistad Committee. One way that abolitionists advanced legal aid efforts was through financing. Lewis Tappan was the money man. He and his brother Arthur made fortunes through a variety of successful and failed business ventures. They funded a variety of abolitionist ventures particularly in the areas of education, literature, religion, and legal defense. He was the chief fundraiser for the defense in the Amistad case. Another way abolitionist legal aid was harnessed was through the press. In this sense Joshua Leavitt is important. In addition to being a founder of AASS he was also the editor of its weekly newspaper the Emancipator. As demonstrated in the excerpt below, Leavitt, along

50 Bertram Wyatt-Brown, Lewis Tappan and the Evangelical War against Slavery Baton Rouge (Louisiana State University Press, 1997), 209.
51 Id.
with the rest of the committee, utilized media to circulate the background of the case, garner support, and raise funds for legal counsel. They advertised:

Thirty-eight fellow-men from Africa, after having been piratically kidnapped from their native land, transported across the seas, and subjected to atrocious cruelties, have been thrown upon our shores, and are now incarcerated in jail to await their trial for crimes alleged by their oppressors to have been committed by them. They are ignorant of our language, of the usages of civilized society, and the obligations of Christianity. Under these circumstances, several friends of human rights have met to consult upon the case of these unfortunate men, and have appointed the undersigned a committee to employ interpreters and able counsel, and take all the necessary means to secure the rights of the accused. It is intended to employ three legal gentlemen of distinguished abilities, and to incur other needful expenses. Simeon S. Jocelyn, Joshua Leavitt, Lewis Tappan (emphasis added).\(^52\)

The final member of the Amistad Committee, Simeon Jocelyn, was a part of the anti-slavery community in New Haven, where the African captives were being detained. He previously worked with William Lloyd Garrison and Lewis Tappan’s brother to create a black college in 1831 that failed due to opposition from locales, the legal profession, and Yale elites.\(^53\) His own efforts coincided with the educational training that the Committee offered the captives. In fact, the Committee was intentional about melding defense with education and spiritual conversion. Ultimately, the Committee was able accomplish all of these goals by securing counsel for the defendants as well as an interpreter and proselytizers.

While the Committee procured a few lawyers, two were of particular importance throughout the various stages of litigation: Roger S. Baldwin and John Quincy Adams. Baldwin was a prestigious lawyer who publicly and bravely defended Jocelyn’s plan to open up a school for blacks in New Haven. Baldwin had previous experience representing blacks. A contemporary described him as “naturally connected with this love of the right” and as “a strong friend of that

\(^{52}\) The Colored American, September 19, 1839, 2.

\(^{53}\) Lewis Tappan, The Life of Arthur Tappan (New York: Hurd and Houghton, 1870), 149-150
race who have encountered an extraordinary share of earth’s wrongs and miseries.” Adams served as the sixth President of the United States, and at the time of the litigation was an anti-slavery Congressman. In a letter to Baldwin, Quincy noted that he “consented with extreme reluctance” to represent these “unfortunate men” but noted that his reluctance “was founded entirely and exclusively upon the consciousness of my own incompetence to do justice to their cause. In every other point of view,” he added, “there is in my estimation no higher object upon earth of ambition than to occupy that position.” While there were a few legal issues on the table, the case boiled down to whether the defendants were free and illegally kidnapped, which Baldwin and Adams argued, or if the defendants were the property of Spain and needed to be returned to that country, which was the position of the United States (representing Spain in the proceedings).

The stakes of the Amistad case appeared high and everyone knew it. This was the first substantive case the Supreme Court would decide on slavery. In a May 1840 letter to Attorney General Henry Gilpin, who would argue the case at the Supreme Court, Connecticut Attorney General William Holabird wrote, “the case has been conducted by the course of the abolitionists from the commencement with a view to political capital.” In a separate letter to a member of the Amistad legal team, Lewis Tappan seemingly confirmed opposing counsel’s suspicions when he wrote, “We ought to make a powerful onset…to obtain the liberation of the Africans and to let

the Judge understand explicitly that we expect to carry the point.” In Baldwin’s argument to
the Court he was clear about why the case was important. He claimed:

This case is not only one of deep interest in itself, as affecting the destiny of the unfortunate
Africans, whom I represent, but it involves considerations deeply affecting our national character
in the eyes of the whole civilized world, as well as questions of the power on the part of the
government of the United States, which are regarded with anxiety and alarm by a large portion
of our citizens. It presents, for the first time, the question whether that government, which was
established for the promotion of justice, which was founded on the great principles of the
Revolution, as proclaimed in the Declaration of Independence, can, consistently with the genius of
our institutions, become a party to proceedings for the enslavement of human beings cast upon our
shores, and found in the condition of freemen within the territorial limits of a free and sovereign
State.

Ultimately the Court would agree with the defendants and rule that that the captives were never
the lawful slaves of anyone, but natives of Africa, kidnapped there, unlawfully transported to
Cuba in violation with laws and treaties of Spain and, considered free. The Africans would be
freed but repatriation duties fell onto the abolitionists. Within the abolitionist sphere and the
Amistad Committee, fears about the former captives becoming public charges (which was one of
the many logics used to oppose emancipation), surfaced. Through a variety of fundraising efforts
and support from the British government, missionaries traveled with the Africans back to Sierra
Leone in November of 1841. The Amistad case marks the first successful mainstream litigation
on slavery to make it to the Supreme Court. While previous abolitionist organizations had the
infrastructure available for the provision of legal aid, this episode of American history is a
unique example of litigation on behalf of black people. What sometimes gets lost in the scholarly
treatments of the case is this historical fact: race animated the creation of the abolitionist

57 Lewis Tappan to Theodore Sedgwick discussing a letter from Roger Sherman Baldwin, September 3, 1840, The
Gilder Lehrman Collection, 1493-1859, GLC05799, New-York Historical Society.
58 The Argument of Roger S. Baldwin, of New Haven, before the Supreme Court of the United States, in the case of
the United States, Appellants, vs. Cinque, and others, Africans of the Amistad, 1841, The Gilder Lehrman
Collection, 1493-1859, GLC06139, New-York Historical Society.
organizations and networks that provided the defense for the African captives. Racial subjugation and slavery would continue to be a galvanizing force for legal aid advocacy.

IV. Legal Aid and Black Self-Determination

The New York Committee of Vigilance (NYCV/Vigilance Committee) would represent the next iteration of abolitionist societies in New York City. Whereas the New York Manumission Society was a racially homogenous organization that took a more gradualist and moderate approach to emancipation, and the American Anti-Slavery Society was a non-violent majority-white organization with some black membership, the New York Committee of Vigilance charted its own path. This organization was interracial, emphasized immediacy, and was not as wedded to non-violence and issues of legality. To be sure, these different organizations varied in their goals and membership was quite fluid. African American ministers Theodore Wright and Samuel Cornish were not only founders of the AASS but were also prominent figures in the NYCV. The Tappan brothers also supported the NYCV.

In fact, in Lewis’ book about his brother Arthur, he neatly captures why the Committee was necessary. Tappan recounts a story where a black man implored him to go to the office of Richard Riker because a white stranger claimed that another black person was being claimed as fugitive by a stranger. Riker, who is the namesake the notorious New York City complex, was a member of what abolitionists called the “Kidnapping Club” that re-enslaved fugitive slaves as well as free blacks. Riker was also the Recorder of the City. Tappan described how “several colored persons were there ready to affirm that the person claimed had lived in the city six months or more, and they believed they could prove that he had never been in a Southern state.”

In response to these individuals and the evidence they planned on offering, the recorder pledged to adjourn the meeting until the next day. Tappan arrived early the next day with “sympathizing friends of the colored man” but the magistrate said: “I have given up that negro to his master, who told me the whole story; I believed every word he said, for he is a perfect gentleman—a perfect gentleman, sir, entitled to entire confidence.” A surprised Tappan confronted the recorder and asked him about the scheduled hearing, to which the recorder repeated the same line about the master’s trustworthiness. “While this was taking place,” Tappan writes, “the slaveholder and the victim of judicial tyranny were on their way to Virginia. The recorder listened rather impatiently to the expostulations offered and turned away from the grieved and disappointed colored persons that thronged his office…Such was the administration of the law in those days, in reference to fugitive slaves, and those claimed as such!”

Accordingly, the New York Committee of Vigilance formed on November 20th, 1835. Led by celebrated African American abolitionist David Ruggles, a white attorney named Robert Brown, and an interracial group of elites and religious leaders, the organization made the provision of legal assistance central to their work. It noted that its goal was to protect “unoffending, defenceless, and endangered persons of color, by securing their rights as far as practicable.” As Eric Foner has noted, before the emergence of the Committee, organized efforts to help kidnapping victims and fugitives were ad hoc and sporadic. Most simply, the Committee noted that slaves were often brought into the free states by their masters and did not know that they could claim their freedom. The Committee stated, “we feel it our duty to inform them of this important fact, and by our aid and counsel give them that assistance which may

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render them not only free.” Whether it be the seemingly simple act of providing these individuals with information about the fact of their free status, or physically removing them from the reach of individuals who claimed human ownership, these were, as Foner adds, public and legal pursuits that we now call advocacy work.\(^{62}\)

But the Committee was also concerned about southern blacks who escaped the horrors of slavery as well as free blacks who were “liable to be arrested as a fugitive from slavery and put upon his defence to prove his freedom” in courts of law that it described as “rendezvous of oppression.”\(^{63}\) This may not have been an overstatement since vague descriptions of an alleged slave, much like contemporary cross-racial identifications of black criminality, could be disastrous. Merely alleging, as one writer notes, the person in dispute was “5 feet 10 inches high, about 30 years of age, very dark complexion...large whiskers, and a sharp face” could lead to a magistrate to easily agree with a kidnapper and, like the story recounted by Tappan, “captives could be on a southbound ship before family or friends knew they were missing.”\(^{64}\) This attention to the variety of experiences that black New Yorkers encountered is what made the Committee distinct. It recognized the important work of other abolitionist organizations like the American Anti-Slavery Society but claimed that “there existed no organized body of men who would stand as a refuge for the oppressed” and engage in the more on-the-ground granular work that would complement the more large-scale political advocacy of mainstream organizations. The Committee noted, “we wish to bring into operation the principles of the Anti-Slavery Constitution in detail, in every individual case that may come within the sphere of our

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influence.”\textsuperscript{65} The Committee, it could be argued, was the direct-services analog to mainstream abolitionist organizations.

One episode that helpfully illustrates the contours of the Committees’ work is the case of William Dixon. Tobias Boudinot and Daniel Nash—the other two members of the “Kidnapping Club” arrested William Dixon in April 1837 and accused him of being a former slave of Walter Allender of Baltimore. Horace Dresser, a white lawyer who worked closely with the Committee would represent Dixon. In his introduction to the court, Dixon proclaimed to the judge, “I am an innocent man. I am a freeman. I have a wife that I love. It is hard to be torn from my family, and thrust into prison like a dog— merely because, being a colored man, I claim to be a freeman. I feel it to be hard, and I demand justice of your Honor.”\textsuperscript{66} On the second day witnesses for Allender and Dixon testified that they knew him for years as someone who was in bondage and as a free man, respectively. As some scholars have noted, Dixon and his witnesses were untruthful since he was formerly in bondage in Baltimore; this was confirmed by Fredrick Douglas who encountered Dixon during his own escape to New York and who he described as “a fugitive slave whom I had once known well in slavery.”\textsuperscript{67} Ultimately, this lie was successfully concealed throughout the proceedings.

For the many spectators of the Dixon case, the exigency created by kidnapping and potential conscriptions (back) into slavery made the use of physical force a reasonable, albeit contested strategy. Henry Clarke Wright, observer of the trial, member of AASS, and a writer for the Boston-based \textit{Liberator} complained, “the slaveowner can command the whole civil and

\textsuperscript{65} New York Committee of Vigilance, \textit{The First Annual Report}, 13.

\textsuperscript{66} Henry C. Wright, “KIDNAPPING IN NEW-YORK!!” \textit{The Liberator}, April 21, 1837, 2-3

military power of the North to him in reclaiming a fugitive” whereas black denizens were less-equipped.\textsuperscript{68} For Wright, black New Yorkers had had many reasons to be alarmed: “the city authorities against them: no trial by jury; a hoard of constables lawyers, and others to act as bloodhounds to hunt them down.”\textsuperscript{69} Large crowds of blacks would gather for the Dixon proceedings. Conjuring notions of the African American political theory of “linked fate,” Wright noted that many blacks sympathized with Dixon and “felt that their destinies were bound up in his,” with one woman lamenting “They will soon get all our husbands and children.”\textsuperscript{70} After one of the proceedings, the crowd decided to engage in self-help that was not condoned by all Vigilance members but approximated its insistence on immediacy. A few individuals assaulted court officials while Dixon escaped. One outlet noted that “the women were particularly officious and violent, and in fact seemed to be the prime movers of the whole affair,”\textsuperscript{71} whereas another was more colorful in its description of events. “A strapping negro wench extended both her arms round his neck and hugged him to her sweet face almost as violently as though one of the beasts from the Zoological Institute has had the justice in his paws.”\textsuperscript{72} While the official was on the ground, “a smart dapper looking buck negro caught hold of one of his legs, and with the aid of some others, got him down, pretty well pummeled him, and tore the coat quickly off his back.”\textsuperscript{73} Dixon escaped temporarily but was recaptured. Importantly, this melee would portend an important rift in the abolitionist movement that would have implications for legal aid after the

\textsuperscript{68} Henry C. Wright, “KIDNAPPING IN NEW-YORK!!” 2-3.

\textsuperscript{69} Id.


\textsuperscript{71} “From the New York Courier and Enquirer,’ April 17, 1837, p1g2

\textsuperscript{72} “From the N.Y. Era,” \textit{Vermont Mercury}, April 21, 1837, 2

\textsuperscript{73} Id.
passage of the 1850 Fugitive Slave Bill: the tension between working through the courts to procure legal rights and using more immediate measures.

In June of 1837, Dresser was able to get the case removed to Supreme Court of New York. This may have been to get a more neutral arbiter (which he denied) or to establish precedent-setting case law in the area of fugitive slave litigation. As the proceedings continued, Dixon would be released on bail and would leave for Canada. The general public worried, but David Ruggles made it clear that he was not kidnapped by a “gang of desperadoes, which infest our city, as has been reported, but owing to measures resorted to by a certain party, he has taken the advice of his friends, and retired to the country for a little season.” 74 In the meantime, the Vigilance Committee continued to incur legal costs for Dixon’s defense, and by July of 1837, it called “a public meeting” to relieve Dixon “of the heavy liabilities to which he is subjected in defending his liberty in our courts of law. 75 By January 1838, the Committee was more explicit and used its newspaper outlet, the Colored American, to fundraise and remind readers that the Dixon case could set important precedent by creating a right to jury for fugitive slaves. Ruggles asked, “shall we abandon the enterprise, and retire from the field for want of your aid? Shall it be told that the immense labor and expense to which we have been subjected is lost for want of abolition sympathy, energy, and vigilance?” Emphasizing its specific role as a provider of legal assistance to poor blacks, Ruggles questioned, “will the friends of humanity serve their cause, and heal the broken hearted, endangered, and defenceless poor, by affording them protection in the arm of benevolent law?” 76 Ultimately, the case never made it to the court, as the charges were dropped and Dixon remained a free man. The Dixon case demonstrates how legal aid took

74 David Ruggles, “Chairman of the N.Y. Commitee of Vigilance,” The Colored American, August 14th, 1837, 3.
shape throughout the first few decades of the nineteenth century: through fundraising efforts, journalism, and self-help. The Committee, through its fundraising efforts and emphasis on precedent, was moving from its direct-services impulse to more impact litigation; this binary would continue to be a feature of racial legal advocacy for decades and remains the case today.

That same spring of 1837, the Kidnapping Club also arrested a sixty-year-old black man Jacob Davis and accused him of being a fugitive slave from Virginia. “Having no counsel at this state of the matter, and not knowing his right in the premises,” Davis confessed that he was a slave of the claimant Henry Herman, of Norfolk, Virginia. Davis was held in custody in the Bridewell, the municipal prison in Manhattan. While Charles Bennett Ray (who was a co-founder of the Vigilance Committee and a member of the AASS) was visiting the aforementioned William Dixon, he learned about Davis’s circumstance and got the Committee’s attorney involved. Brown told Ray that his former master died and the mistress of the decedent promised she would give him freedom, but then she died. He was unsure if she completed the necessary steps for manumission, but her son would sell him to the claimant, Henry Herman, for $150. Davis lived with a child and his wife, who came to New York to raise money to purchase his freedom. Davis was allowed to follow her.77

But Harman did not want Davis back, he wanted the money. “Propositions were made to some of the colored people and abolitionists, who interested themselves in the welfare of Davis,” but Tobias Boudinot, one of the members of the Kidnapping Club, who kept Davis in custody. Boudinot told Davis and the abolitionist community that if they could raise $260 (the cost for his freedom along with municipal “fees,”), he would give Davis a deed of manumission. Abolitionists, though supportive of the idea, reasonably believed that this was “a deep laid plan

to extort money from a benevolent community.” Herman’s lawyer then proposed the fundraising idea to “colonizationists” who queried whether Davis would consent to going to Liberia if he was freed. He declined and declared he would “rather be returned again into that state of slavery in which he had been nearly all his days, than go away, at his age, to a strange land, far remote from the few friends which he had found in his pilgrimage, thus far, through the world.” Committee lawyer Dresser, as the representative for Davis, was opposed to “paying one farthing” (an old penny) but ultimately did so and Davis was manumitted. Notably, the lion’s share of much of the approximately $300 used to free Davis came from churches with expressed abolitionist stances and affiliations with Lewis Tappan.78

In an odd conclusion to this story, Ray noted that he learned from Davis’ landlord that it was his wife who informed the authorities of Davis’ fugitivity after she allegedly threatened to inform him “if he did not do something which her caprice dictated.” Ray assuredly noted that there was “no doubt” to the truth to this story and that the woman was “apart from her husband, wandering about the city in a state of mental derangement.”79 This could be plausible. Recent scholarship suggests that people sometimes threaten to deploy the power of the state to convince or coerce their partners into desirable action or to exact revenge. In this view, precarious women sometimes utilize the threat of incarceration against partners who are fugitives, on probation, parole, or are already confined, whereas men (and sometimes strangers) threaten to call child protective agencies on mothers. Perhaps Davis’ wife vindictively alerted authorities about his status and residence in New York. But several facts cast serious doubt on such a contemporary application as well as Ray’s rendition of events, particularly: the underrepresentation of women’s voices in African American journalism during this period, the normalization of intimate partner

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78 Id.
79 Id.
violence during the nineteenth century (particularly in the southern region that the couple came from and the northern region they inhabited), inattention to women’s claims, limited avenues for redress, and the general phenomena of “marital cruelty.” Ray’s conclusion raises unanswered questions about the gendered nature of legal assistance (some of which are explored in subsequent chapters), and the availability of legal aid in the context of marital strife as well as mixed-status marriages. More generally, the Brown story offers insights on the importance of churches as a fundraising auxiliary to abolitionist legal aid efforts. Although Vigilance Committee lawyer Horace Dresser played a significant part in the manumission process, Ray’s role as an intermediary underlines the importance of non-lawyers in the provision of legal help. As Ray cheerfully reported, after Davis discharge and delivery to freedom, he would call on Ray to “thank him for his attentions while in prison, and for his aid in preparing free papers.”

Other non-lawyers were also tied to the larger network of abolitionist lawyering and provided legal aid. It is important to remember that this is a moment where African Americans were not easily admitted to the bar and legal protections for them were weak and in some moments absent. As a result, what constituted legal assistance looked substantively different and less formal than it might look today. Consider the 1860 Lemmon v. New York decision. In 1852 Jonathan and Juliet Lemmon, residents of Virginia were en route to Texas by ship and made a stop in New York, which was a more efficient and common connection point for such trips. They


81 The importance of lay attorneys in the field of legal aid is explored in Batlan, Women and Justice for the Poor.

82 Charles Ray, “Slave Case No. 4.”

83 Lemmon Slave Case, 20 N.Y. 562 (1860).
came with eight people they held as slaves: Emeline (23) and her daughter Amanda (2); Emeline’s brother Lewis (16) and Edward (13); Nancy (20) and her daughter Ann (5); and twin sons Lewis and Edward (7).84

Louis Napoleon, a black conductor on the Underground Railroad, discovered the fact that these individuals were in-transit in a state that outlawed slavery. Napoleon was a free black man who “spent a great deal of time on the New York docks, watching, among other things, for any slaves who might be brought in or out of the city.”85 Presumably knowledgeable about the fact that standing on New York ground made these individuals legally free, Napoleon petitioned for a writ of habeas corpus, which requires an arrestee to be brought before a court or judge to challenge the grounds of their detention. The petition alleged that the Lemmons were slave traders, that the captives desired their freedom and did not want to return to slavery. The legal strategy worked and the court released the captives. At this point, the story typically focuses on the entrance of attorneys John Jay (grandson of NYMSS President John Jay), future President Chester Arthur, and anti-slavery lawyer Erastus Culver, who successfully litigated and defended eight captives. But the important takeaway here is that during this period, the less glamorous but important work such as investigating the circumstances of free and enslaved blacks (as he did in the Lemmon case and in others), engaging in administrative work, and working with a network of abolitionists and anti-slavery lawyers constitutes a version of legal aid. As Sarah Gronningsater has recently argued, lay black New Yorkers like Napoleon were able to glean practical legal educations through anti-slavery meetings, courtrooms, and interracial alliances.86

85 Finkelman, Imperfect Union, 134.
V. Coda

The obstruction of the 1793 Fugitive Slave Law by organizations like the Vigilance Committee, along with some northern states’ defiance by way of personal liberty laws, further exacerbated national discord and set the stage for the Supreme Court case Prigg v. Pennsylvania (1842). This case involved Pennsylvania legislation that criminalized the kidnapping of blacks. The Pennsylvania Abolitionist Society played a substantive role in the adoption of this legislation. The Court struck down the law, but ruled that only federal officials, not state officials could enforce the law. This left the door open for state bureaucrats to refuse enforcement of the federal law. This is exactly what happened. Without the backing of federal officials, southern efforts to kidnap formerly enslaved and free blacks were eventually stymied.

Tension between the North and the South continued to fester after Prigg which led to the more punitive Fugitive Slave Law of 1850, which was part of the Compromise of 1850. The law essentially criminalized abolitionist behavior and attempted to address northern state bureaucrats’ unwillingness to enforce the earlier version of the law. One provision of the act that troubled northern whites was its seemingly undue infringements. For instance, the law made ordinary citizens susceptible to being summoned to form a posse to assist in the capturing of suspected “fugitives.” If an escaped African American was suspected of being in a certain territory, the local sheriff could summon white men in that area and force them to assist with retrieving the escapee, irrespective of the recruits’ personal positions on slavery. The act further exacerbated blacks’ due process protections by prohibiting their access to a jury trial and preventing them from testifying on their own behalf in court. These restrictions made evidentiary showings of blacks’ legal status difficult. The 1850 law made African Americans especially

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87 41 U.S. 539 (1842).
reliant on voluntary aid as they existed in a legal limbo between the status of property and persons. Ultimately, the intrusive nature of the act—which conscripted both indifferent whites and abolitionists into fugitive law—along with the increased legal obstacles for blacks, substantively influenced the nature of legal aid in the decade preceding the Civil War.

Yet, after the Prigg decision and passage of the 1850 Act, the courts became less viable options for abolitionist legal organizing for four reasons. First, the relative ease in which slave-catchers could abduct blacks reduced a portion of lawyers’ client base—escaped blacks and their abolitionist sympathizers. Second, the laxer due process protections hampered lawyers’ ability to successfully defend indigent clients. Like most voluntary institutions, insufficient funds were also a third problem. Finally, the demise of legal aid for the formerly enslaved came with the advent of a more militant abolitionism that eschewed the earlier era’s naive commitment to gradual change within a legal framework. Instead, this brand of abolitionism advocated for an immediate end to slavery and used more aggressive social movement tactics to reach that goal.

Unexplored histories can be narratively interesting, but what are we to make of these connections between abolitionist lawyering and indigent defense? Why are they important? Perhaps most instrumentally, the histories are instructive for lawyers. The emergence of legal aid institutions and jurisprudence is typically described in legal education in ways that denude these developments of their racial content. Attorneys then go into public interest law with an understanding of the criminal justice system as racially problematic but fail to reflexively understand how indigent defense and legal help can be implicated in the system of racial subordination that they seek to dismantle. This chapter and book project supply a corrective. A revised interpretation of this history contradicts the stated and sometimes implied premises in

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88 Wilson, Freedom at Risk.
which American indigent defense is understood: that it is primarily about class and ideology (while eschewing the importance of race, ethnicity, gender, political economy, and domination).

Theoretically, this history points to the moderate successes and failures of liberal legal reform as well as the variegated nature of (white) “benevolence” in the legal profession—as demonstrated by the first iteration of gradualist abolition societies. Their philosophical concerns about legal process (i.e. manumission) were pragmatic and productive but were also inattentive to the immediate concerns of black people, and in some instances, disingenuous.

As a practical matter, second-stage anti-slavery societies demonstrate that legal aid in the early nineteenth century was actually more robust than typically imagined. By way of its interracial nature, these organizations had a diverse array of legal tactics that helped shape the nature of black life (e.g. lobbying, litigation, fundraising). But that variation came with costs—specifically the absence of direct services as well as a deeper connection to on-the-ground realities of black life. The Vigilance Committee attempted to fill this gap and illustrates how legal advocacy was confrontational, performed by lay black folks, and relied on strategic interracial alliances. Subsequent legal aid institutions—mostly notably the Freedmen’s Bureau described in the next chapter—would learn from some of these lessons and fail to heed others.