In July 2016, Donald Trump spoke to the Republican National Convention in Cleveland. He was accepting their nomination as their candidate to sit in the chair once occupied by Abraham Lincoln. For 75 minutes, citing recent attacks on the police by two African-American military veterans, as well as #BlackLivesMatter protests, the new nominee treated the delegates and the watching nation to variations on his claim that order had broken down in the United States. “I am the Law and Order candidate,” he bellowed, insisting that Americans should be terrified by the “images of violence in our streets and chaos in our communities.”

Trump’s words invoked Richard Nixon’s 1968 campaign. In the immediate present, of course, like other speakers at the convention, Trump wanted his audience to think that #BlackLivesMatter protests against police killings were somehow responsible for all of that.  

I was particularly intrigued to hear this. This meant that, emerging as a central theme of the Republican Party’s national convention, was the assumption that any critique or resistance to white policing of black life and mobility would necessarily represent an existential threat to law and order in the United States of America. (Such alleged threats to law and order are also usually presented as threats to freedom itself, or at least to the freedoms of some.) In effect, the party and its supporters’ chosen candidate had built their platform on an invocation of the emerging thesis of my new book project. Or rather, that they were, in a sense, invoking the historical continuity that I propose to study. For this project is a historical investigation of a claim which has been bandied about with greater and greater frequency recently, and especially since the hunting and murder of Trayvon Martin in 2013. Here’s the claim: the policing of African Americans in the contemporary U.S. has been shaped by the policing of African Americans in slavery. To this I would add that part of what drives this policing is the belief that only the control and surveillance of black people can allow white people to have freedom.

Many people are making this claim, and it is an interesting one for a historian to think about. This claim has clear contemporary relevance, but I think it also offers certain new ways to investigate enduring questions. These include questions about enslavement’s long-term effects on American society and culture, about the use of antiblack propaganda in American
politics to create white solidarity across class and regional lines, and about the causes of the massive (and racialized) growth of incarceration as both political-economic force and lived experience in the country’s political economy.

An approach to studying the long history of racialization, exploitation, violence, and social control that emphasizes policing and resistance to policing is also interesting because it offers new opportunities to understand what happened, and why. Such an approach may be helpful both not only in understanding the past in the present, but also, perhaps, in shaping our collective future. A key implication of how enslaved people, presumed-enslaved people, and their presumed descendants were policed is the following idea: that the control of \textbf{black movement and black fugitivity was seen as one of the biggest problems to be solved by the leaders of colonial and early national societies}. I can’t call this paper a test of that thesis, per se. But I will, in the following pages, try to map out some of the ways in which European settlers and their descendants surveilled, punished, and policed Africans and African Americans as presumed potential fugitives. I will argue that over time, many whites in the North American colonies and then in the early U.S. came to see the policing of people of African descent as if they were all potential fugitive slaves as a social and political commitment necessary to and constitutive of white freedom.

Much previous scholarship has focused on the idea that colonists created legal and social definition of blackness because they needed to do one or more of the following things. They needed to make sense of difference. Or, they needed to subvert challenges to elite authority by generating cross-class solidarity among people who could claim to possess “whiteness” even if they possessed no other property. Or they desired to discipline the performance of gender and sexuality. And of course, enslavers and others with capital hoped to discipline, punish, and control labor.\textsuperscript{3}

What I am suggesting here would not replace these accounts of the founding history of race in the United States. If any subject is overdetermined, this one is and will continue to be. And another word of caution: the focus on policing as the conceptual engine (or of the engines)
at the heart of American paradoxes of race and slavery is not original to me. The reader will see here that I draw heavily on existing work. So, for instance, my attention to North American enslavement as a process in which European “white” people tried to control African people’s movement—without which no other features of slavery were possible—draws heavily on the work of many scholars, most obviously to me upon that of Stephanie Camp. My understanding of enslaved Africans’ deduction of new concepts of freedom through the experience of marronage (in the broadest sense) draws on thinkers like Neil Roberts, Cedric Robinson, W.E.B. DuBois, and above all the hundreds of 19th century memoirs by (and thousands of twentieth-century interviews with) survivors of enslavement.4

My thoughts about the role of violence as a form of power permitted to some to exercise, but not to others, and how various actors might use violence to constitute race in the contexts of slavery, fugitivity, and policing owe much to the work of Kali Nicole Gross.5 Work on policing, incarceration, and race by literally dozens of scholars—most but not all of whom write on the twentieth and twenty-first centuries—has also been very important to me as begin thinking about this project. Although no list is adequate, the projects of Khalil Gibran Muhammad, Ruth Gilmore, Luther Adams, Michelle Alexander, Daniel Berger, Elizabeth Hinton, Julilly Kohler-Hausmann, and Dan Berger are pushing me to think about the long-term consequences of policing-in-slavery in more rigorous ways.6 Finally, the project Freedom On The Move (freedomonthemove.org), of which I am a co-director along with Mary Niall Mitchell and Joshua Rothman, is among other things one of the spinal structures that undergirds my own personal attempt to understand the long-term impact of policing-in-slavery. This project aims to gather, digitize, and analyze—using crowdsourcing for the last part, especially—all runaway ads published during slavery’s long North American history in a publicly accessible database.7

In this paper, I’m simply going to try to understand some of the outlines of the map, primarily as they are already understood by scholars and others who have already written. But even where I am talking about things which we already know, I will be trying to synthesize them into new compounds. My focus will be on the years from 1619 to 1840, or so. This discussion
will thus close before sustained pressure by anti-abolitionist Southerners, angry at what they perceived as growing Northern tolerance of public “runaways” like Frederick Douglass and others, pushed the U.S. Supreme Court and Congress to attempt to resolve what was in many ways a new, post-1830s political situation. I could characterize my working hypothesis as this: the surveillance and hunting of enslaved Africans as fugitives and potential fugitives helped European settlers in early America to discover that they were white, and free. This policing also was a fundamental building block of the institution of slavery, one that exported the commitment to both slavery and race from those whose material benefits were most clear to nonslaveowning whites throughout the North American colonies. Enslaved people challenged, in both retail and wholesale fashions, the growing white consensus behind the containment of black movement. White former colonists followed up their victory in the American Revolution with a new national agreement to pursue and hand over fugitives. Their white descendants, whether Southern or Northern, came to see the enslavement of African Americans and the policing of free ones as if they were fugitive slaves as necessary to their own freedom.

The control of enslaved people’s movement was always essential to slavery in the New World, as Stephanie Camp’s profound Closer to Freedom reminds us. One functionalist thesis about the emergence of systems of chattel slavery holds that the historical combination of “open” land—land whose original inhabitants are being conquered and displaced—with expensive labor, creates incentives for powerful actors to establish institutions of unfree labor. This is an interesting idea, even if fraught with the typical cart-before-horse problems of all functionalism. This idea, associated with the Russian historian V.O. Kliushensky and the Russian-émigré economist Evsey Domar, doesn’t mean what emerged in the 17th-century North American colonies—and here I will talk particularly about Virginia and South Carolina—had to be chattel slavery per se. Indentured servitude was a possibility, and was of course the dominant system of labor in the Chesapeake colonies from shortly after 1607 until the two decades on either side of Bacon’s Rebellion in 1676. Slavery then replaced indentured servitude—but not just any slavery. Whether rooted in functionalist assumptions or not, many historical accounts, concur,
what emerged next was a heavily racialized system of enslavement that assigned degraded permanent chattel status to virtually all people with any visible African ancestry. Even those visible Afro-Virginians who were not born of enslaved mothers would be tasked with many of the same social and legal debilities as the enslaved. Upon this status difference, white Virginians built their own claims to solidarity, freedom, and equality. Much of the characteristic pattern of North American racism was built on this pattern.¹⁰

Many scholars now agree that for the enslaved Africans present in colonial Virginia and Maryland after 1619, the 1662 legislative codification of chattel slavery as a permanent condition restricted to people of African descent represented no more than the official recognition that their status was already fundamentally different from that which had been imposed on indentured servants from Europe. Already, local and other court decisions had established that African slavery was heritable, and conversion to Christianity did not free the convert. African women were accounted differently in colonial tax procedures, marking them as field laborers in a fundamentally different way than European women.¹¹

Perhaps historians’ discussions of running away and fugitivity as sites and occasions of conflict that impelled early Chesapeake settlers to “make” whiteness and blackness have been less prominent than the taxation of labor, inheritance, or sex in the debate over American racism’s peculiar origins. Yet in early laws and cases, Virginia’s lawmakers also marked out African fugitives as fundamentally different from European ones. They asserted the perpetual status of recaptured African runaways’ servitude, while adding time to the terms of runaway “white” indentured servants. In one case in which “six servants and a negro” were recaptured as fugitives in 1640, the colony’s General Court assigned a various set of punishments to the runaways. Some of the whites had time added to their terms of bound labor, some were whipped, one was branded with an “R” on his cheek, and one was returned to his master and told to behave better. Emanuel “the negro,” however, was given the worst of everything: branded with “R,” given thirty lashes, and told to work the next year in shackles “as his master sees cause.” And then, it seems, his servitude would continue for life.¹²
The Emanuel case suggests that slavery existed as a de facto and de jure legal institution in the early Chesapeake, and that lawmakers thought about the difference between servant and slave, and between white and black as we now understand them, as they dealt with fugitives. Whiteness and blackness may have already been distinct to English settlers before 1619. But in the early Chesapeake, the evolving legal and political focus on policing of all Africans as potential runaways was one of the levers that ripped away incipient links of solidarity that might have bonded together different classes of bound people. Policing, in other words, gave whites rewards for their whiteness. Indeed, legal attempts to control mobility began by highlighting the different incentives and choices faced by different kinds of unfree people. Lifelong slaves couldn’t be expected to care if more years were added to their terms, and the “frontier” beckoned in many different ways and from many directions. So Virginia lawmakers quickly defined specific disincentives that applied to people held as perpetual chattel. Of course, they also, relatively soon after the emergence of indentured servitude and African slavery, established much of the legal framework and practices that would be used to try to control unfree people’s mobility: the requirement that unfree people only travel with written passes from their “masters”; that county jails house captured runaways until their “masters” could be found; and that certificates asserting fugitive status be issued as masters’ demand, recorded, and distributed. These systems would evolve over time, with experience, increasing social complexity and geographical density of settlement, and information technology. (Mass-reproduced runaway ads would begin to circulate in the 1720s, in the first colonial newspapers in Pennsylvania and Virginia.)

But the law established in mid-seventeenth-century Virginia seemed not only to reveal existing differences in status between European servants and African slaves. The laws and the practices they commanded also actively helped create those differences. A 1660 statute added time to the terms of servants who tried to escape in company with the enslaved, saying that the former “shall serve for the time of the Negroes’ absence.” This was a powerful disincentive for servants not to run with slaves, but the equations thus established also surely gave leverage for
servants’ negotiation for leniency if they turned on the enslaved. White freedom could be made out of black unfreedom, an exchange based on a distinction which anyway the law acknowledged.  

Further, in 1668, we see an early invocation of the idea that black resistance to authority was of a different nature than that of whites, and that the need to suppress black “crime” meant that black life could not be allowed to matter. This law said that while it is possible to add time to punish a servant who strikes a master, such a penalty “cannot be inflicted upon negroes, nor the obstinacy of many of them by other than violent means suprest.” Africans, said the law, are obstinate—whether because of despair driven by their enslavement’s perpetual nature, or because of some internal tendency—or because of both, it did not matter. What mattered was preventing enslaved Africans from striking back. Thus when a slave died under correction, such a murder was no crime, and in any case “it cannot be presumed that prepensed malice (which alone makes murther ffelony [sic]) should induce any man to destroy his owne estate.” Since you can’t threaten a resisting black slave by threatening to treat them like they are a black slave, all you can do is kill them or convince them that you are willing to do so if they do not comply.  

It is hard not to see clear parallels between some contemporary attitudes and those baked into the 1668 law. We should remind ourselves that almost 350 years have intervened, as well as emancipation and other such matters, and perhaps their relationship to the present is complex. We should also remind ourselves that those colonial laws offered not only punishments but also rewards. The right to kill without consequence, for instance, which “masters” received in the 1668 law, is a profound sort of empowerment. It made all the owners of that species of property, a class which by the early 18th century was probably as many as a third of all white Virginians, their own sovereigns. And this power was extended in various steps, with some caveats for the protection of property rights, to all whites: by 1705, the formal slave code of Virginia empowered all whites to kill any outlawed runaway slave. The South Carolina colony’s 1690 code already permitted whites to kill a runaway.  

This was a dehumanization of the target, but also a coronation of the persons thus granted the power to kill: to judge and convict and execute.
If the European social-science conception claims that the modern state arrogates to itself a monopoly over violence, the emerging right of white Virginians (and indeed, white Carolinians, Marylanders, and so on) to kill black ones suggests a different concept of a different vector of modernization. The decision to make the unpermitted mobility of black fugitives punishable by death meant not that the state replaced the capricious law of the sovereign (and perhaps of the devolved authority of the nobility.) It meant not that all citizens were equal before the state, the impersonal new sovereign, but that all whites were all equally the sovereign state. Indeed, the developing situation in the New World meant that regardless of property ownership, every equal and now-defined-as-white citizen had become a king.\textsuperscript{17}

Increasingly, through the late 1600s, colonial laws defined a more systematic surveillance of the enslaved, who would all have to prove that they were not runaways. (A 1663 Virginia statute required all “servants,” including slaves, to carry passes. Later versions would focus specifically on the enslaved.) Meanwhile, the declining number of white indentured servants meant that fewer of the Englishmen and women wandering the paths and roads of the Chesapeake were required to carry passes, while the rising number of the enslaved made it more likely that every African one passed was a potential fugitive. By 1712, South Carolina would require whites to exercise their suspicion: “every person who shall not (when in his power) apprehend every negro or other slave which he shall see out of his master’s plantation, without leave [i.e., a pass] and after apprehended, shall neglect to punish him with moderate whipping, shall forfeit twenty shillings.”\textsuperscript{18} One should note that New England colonies had moved in the same direction, requiring enslaved Africans to carry passes outside of their enslavers’ property, and enlisting the entire white population in the effort to check permissions and corral all who could not prove that they were not fugitives.\textsuperscript{19}

White settlers and their children thus came very early on to experience a negative freedom, a \textit{freedom from}, that was directly attached to their phenotypical possession of “whiteness.” This was the freedom, growing in scale as servitude declined, to move without automatic surveillance of their status. By contrast, Africans and their children (including free
ones) did not possess this *freedom from*. For whites, soon added to the other *freedoms to* mentioned above, to those privileges, were still more advantages to participating in the policing of the enslaved. Laws established rewards for the capture of runaways and payments out of county or colonial treasuries for the costs of recapture. Patrolling laws also began to appear in the late 17th century. Some of these paid patrollers, or named captains for districts—opening offices to more elite and aspirant-elites. Less concrete rewards—-the ability to bully, to search through and steal the possessions of enslaved people, to beat, to cause chaos in the middle of the night like a mounted and armed roving fraternity party, and to coerce sex—these were also part of patrolling. And as is well known, all of these powers leveled distinctions between whites by legalizing the treatment of all Africans and African Americans as prey.

Above all, it was not the presence, but the uncontrolled mobility of black folks that roused suspicion—and likewise, was supposed to rouse white people to police people of African descent. By the early 1700s, in fact, the law of North American colonies represented African people as perpetual possible fugitives. It also represented their fugitivity not just as a threat to property owners’ profits, but as a phenomenon pregnant with existential social threat. A 1691 Virginia law empowered sheriffs to raise forces to attack “outlying slaves” and offered a rewards of 4000 pounds of tobacco to the owner of any slave killed in the process. (Rebel slaves were perhaps more valuable dead than alive.) The 1722 updating of the Virginia slave code opened by stating the goal of “restrain[ing] their [slaves’] tumultuous and unlawful meetings…detecting and punishing all such dangerous combinations for the future.” Recent insurrection scares may have impelled the passage of this statute. But the law created, or reaffirmed, what became a structure of reactive violence, investigation-by-torture, and implied further executions with information to be gained from torture. Alleged insurrection plotters would suffer death without benefit of clergy, often assigned by summary courts of “oyer and terminer” from which there was no appeal—and from which the accused were typically marched to the gallows. So that “such Negros, Mulatos, or Indians, not being Christians, as shall hereafter be produced as evidences….may be under greater obligation to declare the truth” about such doings, the law also
enabled these ad hoc courts to carry out public torture of the disenfranchised—who were presumed to side against the law with forces of disorder. Those enslaved or free black or Indian witnesses whom the members of such a court believed to be lying were to be nailed through the left ear to the pillory for an hour, then have the ear cut off. Then the other ear was to be nailed to the pole of the pillory, they were to stand thus nailed for another hour, then suffer that right ear to be cut off. Of course they were to get 39 lashes.  

In such a context, it is almost unnecessary to remind the reader that those witnesses who survived were thus marked for life. Or additionally marked, for African descent already marked them. Likewise, it is almost excessive to report that the same 1722 Virginia code mandated “dismembering”—in this case, castration—for male slaves caught running away for the fourth time. Or that the South Carolina code had the same provision in place for ten years already by that point. But such policies also make it clear that black people were considered internal enemies against whom society must be defended. As laws, practices, and opportunities opened up new freedoms for many white Virginians, the quotidian suppression of the crime of walking-while-black, plus the less mundane and highly sanguinary suppression of organized fugitivity and resistance made the meanings of whiteness and blackness clear. White were police, blacks were perpetual criminals. Black fugitives were thus—at least in the eyes of the law—not individual freedom-seekers, but by definition, dangerous criminals whose uncontrolled mobility threatened the entire structure of law and order in colonial society.  

The American slavery/whiteness complex did not only grow from the local conditions of the seventeenth-century North American colonies, of course. Racialized slavery, including legal and social structures that actively monitored all the enslaved while also marking all “black” people as potential fugitives in the minds of whites, appeared throughout most if not all of the European colonies in the Atlantic world. It appeared first in the Ibero-Atlantic settlements. Many of the enduring foundations of antiblack racism had already been laid down before slavers brought enslaved Africans to Virginia in 1619. Yet these phenomena were not merely reproduced from earlier, Ibero-Atlantic models in the Chesapeake or in North America as a
whole. The Chesapeake’s situation was general, but also specific. So was its demography, and this is one more enduring lesson we can draw from Edmund Morgan. It produced a large, relatively egalitarian polity of white enslavers and their white allies. By the late seventeenth century, it seems, most of the whites in those colonies were equally committed, (if not always for the same reasons) to a society in which whiteness made full membership, blackness made one an enemy insider. Indians would be counted as enemy outsiders. A sort of citizen-run surveillance state, staffed by all those who could call themselves white, had emerged.

Nor does this describe only the Chesapeake colonies. While local differences existed, and shaped (and were shaped by) the way individual people lived their lives, the laws regarding slavery and runaways in New England and the Middle Colonies were broadly similar to those of Virginia and South Carolina by the early eighteenth century. (South Carolina practices seem to have been particularly brutal, of course.)

If we turn to eighteenth-century New England, however, we see two key and specific historical elements which I suspect have also shaped the long-term history of policing throughout the United States. These two appear to work against each other, but perhaps we could think equally usefully about them as existing in dialectical tension.

First, let’s briefly consider a specific genre of eighteenth-century black public testimony of which we have several examples. In fact, they form some of the earliest examples of African “voices” in English. These are pamphlets published in the northern colonies, which purport to be the dying confessions of black fugitives who were recaptured, tried for various crimes, and then publicly executed. For instance, there was “The Life, And Dying Speech of Arthur, a Negro Man, Who was Executed at Worcester, October 20, 1768.” These confessions were hardly unique to fugitives form enslavement; criminal confession pamphlets were a significant genre of the popular press in eighteenth-century Britain and the colonies. Yet outside of Phyllis Wheatly’s poetry, almost every other published representation of a black “voice” in the 18th-century northern colonies was a confessional pamphlet. In these, the doomed and condemned who described their crimes typically were runaways. At least in the realm of text, the public face of
runaways in the 18th-century North was that of the criminal. Runaways were dangerous. Their actions supposedly confirmed the need for their suppression and control. No countervailing narrative about fugitives from slavery as freedom-seeking individuals would emerge until well into the post-Revolutionary era. Indeed, it is possible that no “fugitive slave narratives” as we understand them today would be published in the U.S. until the 1820s.27 Throughout what would become the United States, ideologies and socio-legal structures together marked African difference as permanent, dangerous, and requiring surveillance and constraint.

Yet runaways, or “self-liberating people,” as the historian Graham Hodges recommends we call them, did, on the other hand, force their way into the public consciousness in other ways.28 Their actions, in fact, were one of the single biggest factors in creating the first free North. There are two categories of action, at least, that seem especially significant. The first is the phenomenon of escape during wartime. Here, historians have written the most about people enslaved by “Patriots” and others, who escaped to British lines. At the beginning of the war, thousands of enslaved Virginians attempted to join forces led by the British governor Dunmore. During periods in which the British controlled New York, lowcountry South Carolina, and Savannah, tens of thousands escaped to British lines. Some lived in urban areas as free people, others worked in British army camps, and still others served alongside the redcoats as soldiers. At the end of the war, some were reclaimed by their enslavers. Others, who had gone to Philadelphia or New York—or anywhere far enough not to be found—were able to assume new identities and live among the small communities of free people of color that clustered, in particular, in port cities.29

When the British left, meanwhile thousands were evacuated. Many ended up in the Maritimes, the Bahamas, and eventually in Sierra Leone. Some became part of the black population in Britain.30 The black population in Britain itself was, by the beginning of the Revolution, officially free because of the political actions of African American runaways—most notably James Somerset, believed to have been born in Africa and brought on a slave ship to Virginia at age eight. Somersett’s case, decided in 1772, began with his attempt to escape from
Charles Stewart, a British Army officer who had purchased Somersett in Boston. James Somersett allied himself with the British antislavery activist Granville Sharp, and the two fought against the self-emancipating man’s return to Stewart’s control. Their insistence that Britain was “free soil” convinced Justice Mansfield of the Court of King’s Bench to rule that under the common law, slavery did not exist except where positive statutes made it so. In Britain, no such law had been passed, but of course, in the colonies things were different. Somersett was free.31

Ironically—since this was a runaway slave case—Mansfield’s ruling may have left undecided the question of what non-slaveholding jurisdictions should do when enslaved people escaped to their “free soil.” International law that linked different countries together in community, and more certainly realms of deeper comity like the British Empire or, soon, the United States, were bound to some extent to respect property claims that were legal in other sub-jurisdictions of a larger national political and legal structure of sovereignty.32 The dialectical logic of this set of contradictions would, in its way, be the nut of legal principle at the core of the U.S. sectional crisis of the 1850s. Such were the issues raised by runaway people precisely because they created and then took advantage of opportunities that might permit them to self-emancipate. (While it might be hard to make the case that the Somersett ruling was a primary accelerant to the onrushing momentum of elite North American colonists’ independence movement, it certainly didn’t slow down the train.)

On the other hand, the publication of the colonial rebels’ own central statement of justification for their revolt would dovetail in unexpected ways with enslaved people’s resistance. The Declaration of Independence was incorporated into the 1780 Massachusetts state constitution. The first case that used the Declaration’s natural-rights claims for human freedom was that argued in support of Elizabeth Freeman’s claim for personal freedom from enslavement. She won this in 1780, and the Massachusetts Supreme Court may have considered it as a partial precedent in 1781 when it formally reviewed the case in which Quock Walker had sued for his freedom. Walker had run away from his enslaver and, with the help of white allies and lawyers, made a claim that his detention in slavery was incompatible with the 1780 state constitution.
The state supreme court agreed with him. Massachusetts never abolished slavery by statute, and evidence seems to suggest that many of the state’s slaveowners took a decade or so to relinquish their hold over many of the individuals and families. Yet the tide had turned, and the state—along with the rest of northern New England, became by the early 1790s a place of refuge in which runaways from enslavement might find practical freedom from everyday chattel status.33

Yet the formal end of slavery in northern New England, which often proceeded at an informal pace, did not destroy the impulse to police black movement. These states modified their already existing parallel system of policing and punishment for African Americans. Similar phenomena, including even more protracted and confusing emancipation practices, would emerge as formal abolition slowly spread across the states north of the Mason-Dixon Line and the Ohio River. And in both law and practice, what evolved in the northern states of the new nation would be as much the precedent for today’s inequities as would be the system of slavery that persisted, deepened, and expanded in the southern ones. We should understand, I would suggest, what evolved in the northern states as the policing of all African Americans as fugitive slave “suspects,” not only as the surveillance of a “suspect” free population. In this way we see the resonance of Malcolm X’s insistence that the real Mason-Dixon Line is the Canadian border, and we understand that this line on the map was drawn not just by social prejudice but by the agreement of virtually all whites to police African-American differently.

Before closing this paper, let me suggest how the northern states treated free black people as fugitive slaves before 1860. And here, I am thinking especially about the years between independence and the mid-to-late 1830s, when the abolitionist movement began to confront some Northern whites with the way that fugitive slave recaptures across state lines exposed Northern whites to direct and indirect insult. In the years from the beginning of Northern emancipation process and the late 1830s, the “free states” imposed and perpetuated patterns of surveillance and constraint by creating legal/law enforcement/incarceration practices, and by deepening cultural patterns of exclusion and suspicion. All of these treated black people as a special category of people whose movement needed to be watched and, at times, prevented.34
In Ohio, for instance, a set of “black codes” attempted to ban African-American movement into the state, and closely regulated those who were present. African-Americans in Ohio and other Northern states, especially those along the north-south border, were in particular danger because the United States was to no small extent a union founded on the pursuit of alleged runaways from slavery. One of the bargains of the 1787 Constitutional Convention in Philadelphia was Article IV, Section 2, Clause 3, an agreement that became known as the “Fugitive Slave Clause.” South Carolina delegates argued that the constitution should include a provision that “fugitive slaves and servants be delivered up like criminals.” The delegates adjusted the wording, but in the end they agreed to a clause that committed states to return to their owner or master those “persons held to service or labor” who had escaped from other state. Enslavers soon tested the national commitment. In 1790, a group of Virginia bounty hunters invaded Pennsylvania and recaptured by force an African American man named John Davis whose owner had kept him in the northern state long enough for him to claim emancipation under state laws. In response to the resulting state controversy, in which some Pennsylvania authorities attempted to charge the Virginia men with kidnapping Congress operationalized the Constitutional clause with the “Fugitive Slave Law of 1793.”

The 1793 law, which passed the House 46-7, interlocked with existing laws in states both south and north of the Mason-Dixon Line. It required the executive branches of states to which fugitives had fled to help arrest the escaped slaves. Once seized, the fugitive could be held for up to six months, and if any person interfered with the process, they would be fined $500. The latter fee would buy a couple of new slaves in the 1790s, by the way. (The interfering party would also get a prison term of up to a year, a provision clearly designed to intimidate the alleged “Negro Club” of white do-gooders who—in what may have been the persecution fantasies of Virginia enslavers—“enticed” “happy” slaves to run away as they were being transported from their homes and families to clear western woods and plant the fields of Kentucky.) This law contained no clear provision for determining the free or slave status, or the identity, of the alleged fugitive, except that a private bounty hunter or individual enslaver who seized a black
man, woman, or child was supposed to go before a judge and prove by oral testimony or affidavit that this was indeed the person wanted in another state. 37

The 1793 law bound states with growing free black populations not to interfere with the seizure of allegedly fugitive African people. Not surprisingly, enslavers and their allies abused this law to seize even people born free or emancipated by legal process, and claim them as fugitives. 38 Over the next half-century a significant number of kidnappings perpetually destabilized life for African-Americans in the “free” North. The uncertainty and risk to which this perpetual vulnerability to arrest and extradition, and/or kidnapping, can be demonstrated by the actions of Ned and Lucy Page, a legally free black couple who were in a Dayton, Ohio tavern in 1806 when bounty hunters arrived. Ned drew a pistol, and in this case some of the whites in the tavern came to his defense. 39

Despite the long popular-historical tradition of praising white defenses of black freedom in the North, the commitment of the whites who came to the Pages’ defense was—for most of the antebellum years—the exception and not the rule. In fact, this 1806 incident led the legislators who represented Ohio’s white people in the state capital to amend its already-restrictive “Black Law” in order to make free African-American movement into the state even more difficult. 40 The laws had first passed in 1804 to ensure, among other things, Ohio’s compliance with the federal law of 1793. They required all African-American resident to register their status and carry a certificate. The law also bound state officials to support the recapture of alleged fugitives. In fact, just as in Southern states, they were incentivized to do so: law enforcement officers were paid to return alleged fugitives. Ohio had thus formally instituted a regime that treated all African Americans as fugitives from justice. Some, who carried certificates, could be safe from seizure, perhaps. But all were suspects. 41

Similar laws structured black life in other free states in the early 19th century, and even where there were exceptions, white people’s practices constrained black movement and black life under a heavy blanket of suspicion. In the Ohio case, some of this was driven by a fundamental dislike, on the part of many whites, of African-descended people, something that
looks familiar to us as an exclusionist racist hysteria. As Stephen Middleton documents, white lawmakers and commentators described free blacks as “worse than drones to society.” If allowed to remain peacefully in Ohio, they would multiply “like locusts” and perhaps conquer white Ohio (for some unknown reason.)

These themes echoed the practices and anxieties of colonial Virginia, at least as implied by the expository language of its evolving slave laws. They would also be repeated in northern white political arguments over the next half-century. In Ohio, for instance, such statements were quite common as rhetoric deployed against the state’s tiny and embattled abolitionist minority in the 1830s. Undergirding all was the theme that uncontrolled, freely mobile black people were criminals whose presence fundamentally undermined law and order: fugitives were criminals, wrote the Scioto Gazette in 1827. “Among the great mass of the ‘colored people,’ as they call themselves, there are a few who are civil, honest, and industrious; but a large majority of them are precisely the reverse. Of this, our streets, our Court-houses, and our jails, furnish ample testimony.” Without strict enforcement of the Black Law, wrote one white Ohioan, “we shall be overrun with blacks, and those of the most worthless kind. Are the people living in the Southern counties of Ohio prepared for this?”

There was also, however, an commitment to suppressing free black movement and policing fugitives as a national project, i.e. one that made the nation strong, and kept it from falling into weakness. In 1806, Ohioan Philemon Beecher had urged the state legislature to make the Black Law more oppressive (they did) in order to protect the union with the South: “it is reasonable that the owners of these persons will take measures to reclaim them, and by the event may involve our frontiers, and perhaps our nation, in troubles which prudent measures, in proper season, may prevent.” Union was the basis of freedom, at least for white Americans. As a more active antislavery movement began to emerge in the North in the 1830s, white Ohio commentators warned the state that “the abolitionists are sorely afflicted at the idea of [Kentucky and Ohio] remaining at peace” The Fugitive Slave Act of 1793 and the Black Law represented an interstate comity, by which “Ohio has manifested her willingness to do right, and Kentucky
asked no more than was necessary for her own security.” Despite the claims of abolitionists to have God on their side, to break the law by assisting fugitives from slavery would be the opposite of “obeying the command to ‘render unto Caesar the things that are Caesar’s,’ nor observing the spirit of union and compromise that established this confederacy.”

The theme of maintaining the national union by giving Southern slaveowners what they wanted in order to stave off any threat of white secession was a frequent theme in Northern politics from the Constitutional Convention until at least Fort Sumter. But white defenders of a national commitment to policing African American movement were also sure to remind their fellow citizens that uncontrolled blackness was its own threat, as well. Also in 1839, the Ohio Statesman played the old theme of prevention of disorder, but connected black rebelliousness (always incipient) to existential threats to the nation’s existence. The author claimed that runaways who made it all the way to Canada (slavery in the British Empire had been ended by Parliament in 1834) were armed and made part of the local military, replacing the Indians “what is to supply their place with the tomahawk and scalping knife, and with the barbarous murders of helpless women and children? The negroes, most assuredly.” The writer claimed he went to Canada and met uniformed “runaways”—“One even went so far as to say that he had belonged to Wm. S. Bryant, a saddler in Paris, Bourbon county, Kentucky; and expressed a desire to meet his master in Canada…What a comment upon the British Government! Black troops to keep an intelligent people in awe!” “Free” white Canadians, the author implied, lived in a state of vassalage enforced by black soldiers who should be slaves. This fate (or perhaps worse, the imagery invoked Indian raids and slave revolts) could be the fate of Ohio whites. Or so the author seemed to imply.

As of 1840, the policing of black people in what was now the United States had probably always been different, and certainly had been different from that of whites for two centuries. And the two kinds of policing certainly meant different things. Of course, this text can only claim to have scratched the surface, particularly with regards to practice. Yet it still seems clear
that for most of that time, Africans and African Americans had been treated, presumptively, not just as slaves but as potential fugitive slaves. Fugitives were understood in the law and in the popular imagination (and treated in practice) as criminals. And not just as criminals, but particularly destabilizing ones whose freedom from constraint and ability to move was a threat to law, order, and to white freedom itself. Black freedom and white freedom were understood by many whites, it seems, as opposite terms linked in an inverse or zero-sum relationship. It was the job of the law, of law enforcement, and all white citizens to police black people so that white people could be free.

By the late 1830s, of course, growing communities of free black northerners and some white allies had begun to question the treatment of actual and presumed fugitive slaves. They critiqued southern slavery, as well as Northern whites’ complicity in that slavery and its dramatic post-Revolutionary expansion. Some of the white allies (but not all) even joined with free Northern blacks to question the disfranchisement and pervasive dishonoring of African Americans in the public and political cultures of the “free” North. The abolitionism of 1830s would be the template for virtually all future progressive movements in the U.S. Its radicalism came from the engine of black survival, resistance, and articulation of the intellectual causes and transformative possibilities of antiracism. Its expansion into even supportive white audiences brought as many challenges and incorporated as many systemic flaws as it brought the possibilities which came along with greater numbers and resources. Some of its momentum quickly ran out into the channels of liberatory impulses that mostly helped white radicals. Of course, for all the weakness, the abolitionist movement represented a fundamental challenge to slavery, and helped to spark the war that brought an end to one of the most powerful formations of wealth and power in the world.

Yet the end of slavery did not bring an end to the fundamental difference between how both authorities and populations policed black movement. There’s obviously neither the time or the space to talk about Jim Crow in the postbellum South, it’s cousins in the North and West. Nor is there time to talk about the racialized rise and expansion of mass incarceration, a century
after Civil War and First Reconstruction, on the ruins of Jim Crow. Nor to connect it all to the patterns of policing that have given us the present situation. But the resonances seem clear to many. Much work, of course, has to be done to evaluate the apparent connections that stretch from 1863 to 2016. They may be less direct than they appear. Or, perhaps, they are not only direct, but more significant than we have realized.

A week after Trump’s speech this summer to the party which in some earlier, now-defunct form once ran Abraham Lincoln for president, the Democrats tried at their convention to dodge the issue entirely. They know what minefields lie deeply buried along the boundaries of white American identity. When many Americans hear “law and order,” they think that the words refer to the policing of black people by law enforcement. No one in Trump’s audience, whether they were sitting in an arena in the city where Tamir Rice was murdered, or viewing the speech on screens around the U.S., had believed that when Trump brought up “law and order” and “police killings” he was talking about white men as the threat to law, order, and the matter of blue lives. This was the case even though in 2016 so far, as in virtually every other year, white men accounted for the greatest number of murders of police officers. And no one thought that he and other speakers were thinking of white supremacist organizations as a systematic threat to police and other citizens. For in the U.S., to no small extent the law and the policing of people in the U.S. is directed at the maintenance of white-dominated political order. Threats to law come from black resistance. To restore order and protect white freedom one must get black people back in line. These architectonic assumptions undergird the nature of American culture, society, and government. It appears possible from this vantage point to have shaped the first two hundred and more years of its history. And it appears possible that these assumptions, generated in the law and practices of slavery, have also continued to shape American history ever since.
This text is an early attempt to lay out a few of the issues of one segment of a new project. It incorporates some specific primary-source research. In addition, in the background looms several years of work with other scholars and students on a much larger corpus of primary material, the “runaway slave” advertisements published in North America from 1722 to 1865. This particular text relies to a great extent on reading and re-reading the work of other scholars, some of whom wrote their work in the course of seeking to answer very different questions. Yet their research and analysis inspires still other questions, such as the ones I try to raise here. In addition, there are of course still other scholars whose excellent works I could have cited. None of the notes are meant to be exhaustive. I am thankful for the influence and support of many scholars, especially the late Stephanie Camp, Luther Adams, Kali Nicole Gross, Julilly Kohler-Hausmann, Joshua Rothman, Mary Niall Mitchell, Adam Rothman, Barbara Krauthamer, Minkah Makalani, Julia Ott, Graham Hodges, Dale Tomich, Rafael Marquese, and many other scholars, as well as the support of the Telluride House at Cornell where Minkah Makalani and I taught a summer seminar to a group of brilliant high school rising juniors, and to my staff at Carl Becker House.

An excellent and timely work on the rise and implications of the protest movements loosely grouped around the term “#BlackLivesMatter” is Keeanga Yamhatta-Taylor, From Black Lives Matter to Black Liberation, (New York, 2015).


Stephanie M.H. Camp, Closer to Freedom, (Chapel Hill, 2004); W.E.B. DuBois, Black Reconstruction in America, An Essay Towards the Part Which Black Folk Played in the Attempt to Resurrect Democracy in America, 1860-1880, (New York, 1938); Cedric Robinson, Black Marxism: The Making of the Black Radical Tradition, (2nd ed., Chapel Hill, 2000); Neil Roberts, Freedom as Marronage, (Chicago, 2015); and I also have benefited much from hearing Luther Adams interpret the work of Stephanie Camp, as well as his own ongoing scholarship. We wait in hope for his publication of what I am certain will be groundbreaking work on black resistance to police violence in the 20th-century U.S.

Kali Nicole Gross Hannah Mary Tabbs and the Disembodied Torso: A Tale of Race, Sex, and Violence in America, (New York, 2016); Gross, Colored Amazons: Crime, Violence, and Balck Women in the City of Brotherly Love, 1880-1910, (Durham, 2006); Gross, “African-American Women, Mass Incarceration and the Politics of Protection,” Journal of American History 102.1 (June 2015), 25-33. I also rely heavily on the thinkers who remind us that “whiteness” is not “natural” but made out of social relations and ideological work: DuBois is crucial here, and building in no small part from his insights about the psychological wage of whiteness. I find additional insights in the work of David Roediger, Noel Ignatiev, Theodore Allen, Ira Katznelson, and many more. Finally, I think that here as in earlier work of my own I am attempting to re-read and reframe the scholarship on honor (whether “Southern” or not, including in particular the seminal work of Bertram Wyatt-Brown) in order to consider “honor violence” as gendered, raced, and productive of social relations in both categories.

And of course many, many other scholars could be mentioned here as well. We live in an era of flourishing scholarship on the topic of incarceration and policing as roots of the present crisis.

Pamela Tilton, a young Girl of about Fourteen years of age, daughter of Mr. Tilton of Vassalborough, in the County. She appeared to be between thirty and forty years of age, but very ignorant. She was executed at Dresden, on Kennebeck.

Burglary of Stephen Smith, a Black Man, who was executed at Boston this Day being Thursday, October 12, 1790, For a Rape, Committed on the 26th Day of May Last [The Writer of This History Has Directed That the Money Arising From the Sales Thereof, After Deducting the Expence of Printing, &c. Be Given to the Unhappy Girl, Whose Life Is Rendered Wretched by the Crime of the Malefactor].


The John Punch case, described in A. Leon Higginbotham, In the Matter of Color: Race and the American Legal Process, the Colonial Period, (New York, 1978), 27-28, is the first case of which I refer; the second case, of Emanuel, can be viewed at: http://www.encyclopediavirginia.org/General_Court_Responds_to_Runaway_Servants_and_Slaves_1640


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Karen E. Fields and Barbara J. Fields, Racecraft: The Soul of Inequality in American Life, (London and New York, 2012), which summarizes and clarifies a lot of good work on the creation of race as an idea, much of which Barbara Fields is responsible for..


Patrolling law and laws against black (including free) physical resistance to white violence in everyday encounters, as well laws that made non-wanting killing of any runaway black (not just outlawed ones) not a crime meant that controlling black mobility was not just a task for all white citizens but an opportunity for them to assert “sovereign violence,” to use Kali Nicole Gross’ term. Cf. Sally Hadden, Slave Patrols: Law and Violence in Virginia and the Carolina, (Cambridge, Ma., 1991); The SC law of 1690 was even more explicit. Hening, Virginia Statutes, 2, 193, 1663; David, Statutes at Large (SC), 7, 352.


Hening, Virginia Statutes, 2, 187-188, 1663; 2, 21, 1660; David, Statutes at Large (SC), 7, 353: the South Carolina rewards for runaway capture and transportation could add up to £2.5, perhaps 5% of the cost of an enslaved African, or even more.

Hadden, Slave Patrols, 6-40.


Hening, Virginia Statutes, 4, 126-129, 1722; David, Statutes at Large (SC), 7, 360.


Peter Wood, Black Majority: negroes in Colonial South Carolina From 1670 Through the Stono Rebellion, (New York, 1974); Peter C. Hoffer, Cry Liberty: The Great Stono River Slave Rebellion of 1739, (New York, 2010); Jon Butler, Awash in a Sea of Faith: Christianizing the American People, (Cambridge, Ma., 1990); S. Max Edelson, The Life, and Dying Speech of Arthur, a Negro Man, Who Was Executed at Worcester, October 20, 1768, For a rape Committed on the Body of One Deborah Metcalfe, (Boston, 1768); Joseph Mountain and David Daggett, Sketches of the Life of Joseph Mountain, a Negro, Who Was Executed at New-Haven on the 20th Day of October, 1790, For a Rape, Committed on the 26th Day of May Last [The Writer of This History Has Directed That the Money Arising From the Sales Thereof, After Deducting the Expence of Printing, &c. Be Given to the Unhappy Girl, Whose Life Is Rendered Wretched by the Crime of the Malefactor].

Confession of John Joyce, alias Davis, Who Was Executed on Monday, the 14th of March, 1808, For the Murder of Mrs. Sarah Cross; With an Address to the Public and People of Colour. Together with the Substance of the Trial, and the Address of Chief Justice Tilghman, on His Condemnation, (Philadelphia, 1808); Stephen Smith, Life, Last Words and Dying Speech of Stephen Smith, A Black Man, who was executed at Boston this Day being Thursday, October 12, 1797 for Burglary (Boston, 1797); Edmund Fortis, The Last Words and Dying Speech of Edmund Fortis, a Negro Man, Who appeared to be between thirty and forty years of age, but very ignorant. He was executed at Dresden, on Kennebeck River, on Thursday the twenty-fifth day of September, 1794, for a Rape and Murder, committed on the body of Pamela Tilton, a young Girl of about Fourteen years of age, daughter of Mr. Tilton of Vassalborough, in the County.
of Lincoln, (Exeter, ME, 1795); Abraham Johnstone, The Address of Abraham Johnstone, a Black Man, Who Was Hanged at Woodbury, in the County of Gloucester, and State of New Jersey, on Saturday the the [sic] 8th Day of July Last: To the People of Colour. To Which Is Added His Dying Confession or Declaration. Also, a Copy of a Letter to His Wife, Written the Day Previous to His Execution, (Philadelphia, 1797); Some 18th-century narratives that were neither written by fugitives or condemned criminals included those of Britton Hammon (1760); Ventreue Smith, 1798. Sympathetic fugitive narratives don’t emerge into publication until the 1820s: e.g. William Grimes, and Robert Voorhis.


28 While Hodges has communicated this to me in discussion, see the representation of his excellent work on the subject of enslaved Africans and their quests for freedom in the north: “Pretends to be Free”: Runaway Slave Advertisements From Colonial and Revolutionary New Jersey and New York, (New York, 1994); as well as his multiple monographs on the topic.


31 For a recent reading of this much-discussed case: Diana Rabin, “‘In a Country of Liberty’: Slavery, Villeinage, and the Making of Whiteness in the Somerset Case (1772),” History Workshop Journal 72 (Autumn 2011), 5-29.


34 Of course, there is an extensive scholarship on free black life in the Northern states between the Revolution and the Civil War, much of it summarized in the books and other publications of James O. Horton and Lois E. Horton, In Hope of Liberty: Culture, Community, and Protest Among Northern Free Blacks, 1700-1860 (New York, 1997) and preceding/succeeding scholarship to extensive to list here, but other recent monographs include: Julie Winch, Between Slavery and Freedom: Free People of Color in America From Settlement to the Civil War, (Lanham, Md., 2014); Erica Ball, To Live an Antislavery Life: Personal Politics and the Antebellum Black Middle Class, (Athens, Ga., 2012); Jasmine Nicole Cobb, Picture Freedom: Remaking Black Visuality in the Early Nineteenth Century, (New York, 2015); Wilma King, The Essence of Liberty: Free Black Women During the Slave Era, (Columbia, Mo., 2006). This scholarship certainly shows exclusion/segregation, as well as inequitable policing and incarceration practices. My intent is to build on the insights of this scholarship by suggesting that we reconceptualize some of its evidence and lessons to help us think about surveillance and policing of black movement as a continuous process that builds not just on white cultural hostility to blacks (and there is an extensive scholarship that shows the commitment to “whiteness” as a distinct category in the antebellum North) but on the long-standing patterns of white control over black movement through the suspicion of fugitivity.


*Scioto Gazette*, November 1, 1827:

*Columbus Ohio Statesman*, September 10, 1839.


*Columbus Ohio Statesman*, July 3, 1839

*Columbus Ohio Statesman*, November 11, 1839.

This was the case even though April 2009 was the last time in which there had been multiple politically-inspired killings of law enforcement officers in one month (even if we were to concede that Dallas and Baton Rouge were political killings). In that particular month five police officers were killed by movement-connected white supremacists distraught over Barack Obama’s election. White supremacists have always been far more dangerous to police officers than black radicals. The same cannot be said with respect to the danger of law enforcement to radicals, for being a black radical in the U.S. has often led to imprisonment or death at the hands of law enforcement.