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Enslaved in a Free Country: Legalized Exploitation of Native Americans and African Americans in Early California and the Post-Emancipation South

Abstract: In 1850, California joined the United States as a free state. However, one of its first laws, the 1850 Law for the Government and Protection of Indians, legalized the enslavement of California Indians. Drawing comparisons between early Californian and Southern statutes that maintained racialized political economies, we argue that the institutionalized oppression perpetrated against Native Americans in California bears important legal similarities to that perpetrated against African Americans in the South, both before and after Reconstruction. This similarity is not a coincidence; the presence of both African and Native American populations in Southern legislation, the movement of Southerners to the West to participate in California's development, the regional history of Mexican and Spanish systems of Indigenous enslavement, and a political economy reliant on racialized underpaid or unpaid labor, all created the conditions for California to legally retain *de facto* systems of slavery in a context of *de jure* freedom.

Keywords: slavery, California Indian, apprenticeship, emancipation, justice, African American, Indigenous

I. Introduction

In the nineteenth and twentieth centuries, prevailing sociopolitical norms and influential economic interests empowered white male settlers to legally institutionalize the effective, or *de facto,* slavery of African Americans and Native Americans, despite federal and state guarantees of freedom. We recognize that slavery took different forms and occurred in different contexts for African Americans

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and Native Americans in North America. We offer a series of parallels and attention to key actors to illuminate the ways in which laws enabling unpaid labor were central to the operation of a racialized political economy that attempted to institutionally exclude African Americans and Native Americans, respectively, from access to capital, specifically in the form of ownership of their own labor.

We define slavery broadly as unpaid labor, situated within a context of lack of civil rights, including but not limited to citizenship, freedom to marry and keep one's family together, and the right to own property (Pope 2018; Saito 2015). Further, we define *de facto* slavery as the existence of these conditions when slavery is formally illegal. We build on the innovative work of scholars including Waite (2016), Smith (2013), and Dunbar-Ortiz (2014) to bring California Indigenous history into conversation with the eastern and southeastern United States on the topic of slavery. We also follow Gomez's (2005) study of the history, political economy, and strategic negotiation of race relations inherent in New Mexico's adherence to Indigenous slavery under Spanish rule, its entry into the union as a free state, and its subsequent development of aggressive anti-Black codes.

Previous research in California documents the history of Indigenous slavery in the new state (Heizer [1974] 1993; Heizer and Almquist 1971; Fernandez 1968), and outlines the legal mechanisms that enabled Indigenous slavery in a free state (Johnston-Dodds 2002), but does not work to understand early California laws in the context of other similar statutes targeting African Americans to maintain the "badges and incidents" of slavery (Pope 2018). This article contributes to the exchange between scholars of Indigenous and Black legal history by investigating possible borrowing between legal regimes of labor extraction targeting Black and Indigenous peoples in different regions of the country. While the article principally focuses on early California, we offer a brief comparison of the *de facto* slavery of free African Americans and previously enslaved African Americans in contexts of freedom.

Our article is inspired by the scholarship of professor, poet, and philosopher Jack D. Forbes (1934-2011); his painstakingly detailed research on Black-Native relations throughout the hemisphere (Forbes 1993) provided the starting point for this inquiry. We build on his study of colonial political-racial classifications of both groups (Forbes 1982; Forbes 1993) to examine the ways in which these hierarchical, racialized divisions are institutionalized in law, labor, and political economy (Berger 2009; Wing 2016, 48; Ladson-Billings 2011, 1442; Harris 2017, xvi; Valdes, Culp, and Harris 2002, 1; Yuille 2018). We emphasize the ways in which racism is reflected within and enabled by the law in both subtle and direct ways, with far-reaching consequences. To this end, we highlight understudied legal similarities impacting the freedom of both emancipated African Americans within current or former slave states and "indentured" Native Americans in California (see Magliari 2012, 157, 160 for a discussion of indenture as slavery).

II. "Freedom" in the Context of Racial Capitalism

While we acknowledge that peoples around the world, including Indigenous peoples, have enslaved members of other groups throughout history, the scope, scale, wealth generation, racial basis, and impacts of slaving systems instituted by European (Spanish, English, and Portuguese) and European-derived (American) nations is unprecedented (Resendez 2016, 135). For the purposes of this article, we define slavery as unpaid labor, in a context of legal and social discrimination and outright hostility and violence, and we define slaves as human beings forced into unpaid labor who lack representation and rights (Magliari 2012, 160-161). Given these definitions, slavery was certainly present in California

for California Indians, as well as for African Americans in both Western and Southern states, both pre- and post-Civil War.

In the popular imagination, slavery is understood as confined to the southern United States, involving principally African Americans, and occurring prior to the Civil War. Despite the horrific labor and sociopolitical conditions facing Native Californians from the mid-nineteenth century to the early twentieth century, scholarship on California Indian slavery after the Mission period only began to take shape in the late 1960s (Heizer [1974] 1993; Heizer and Almquist 1971; Fernandez 1968; Johnston-Dodds 2002; Lindsay 2012; Resendez 2016; Trafzer and Hyer 1999; Gunther 2006; Madley 2016; Magliari 2004, 2012; Smith 2013; Waite 2016). This gap in the literature may be explained by several factors, including the fact that California entered the Union in 1850 as a "free" state in which slavery would not be tolerated (Resendez 2016; Costo and Costo 1987; Nokes 2018); a framing of California Indian unpaid labor in terms other than "slavery;" a perception of slavery as a lifelong or multigenerational experience (Patterson 1982), rather than the often shorter terms of slavery endured by California Indians; denial that Indian people were forced to work in humiliating conditions for no pay, following Euro-American efforts to hierarchically separate Indian people from African-descended people (Ablavsky 2011); and the divergent social contexts and forms of slavery of Native Californians and Southern African Americans.

Yet, California Indians suffered conditions of slavery well into the twentieth century. According to historian Robert Heizer, between 1850 and 1863, at least 10,000 Native Californians were enslaved under apprenticeship laws which enabled unpaid labor by "apprentices" for lengthy terms of service to European American masters (Heizer [1974] 1993, 219). Early scholars who acknowledged slavery in Native America separated Native Californians by observed characteristics, using pseudoscience to argue that they were more vulnerable to enslavement. For example, according to nineteenth-century traveler A. Delano, California Indians were "more gentle in their natures, and become willing slaves to those who will feed and clothe them," compared to those "on the great plains west of the Missouri" (Delano 1857, 218). Delano's argument exemplifies the use of racialized pseudoscience to strategically seed division between Native Americans of different nations, effectively preventing alliances to combat forced unpaid labor of certain populations and subpopulations (Forbes 1982). As historian Brendan Lindsay shows in painful detail, the enslavement of California Indians was an aspect of a broader campaign of attempted extermination of Indigenous Californians—settlers wanted Indian land, and they wanted to subjugate and remove Indian people as part of a Manifest-Destiny-driven expansion that reached a cruel zenith on the Western coast (Lindsay 2012, 13).

Political and economic policies that enabled violence, labor coercion, and displacement of American Indians and African Americans exemplify fundamental aspects of Robinson's ([1983] 2000) concept of racial capitalism, in which the economic system employed by Western powers incorporates racialized social ideologies. According to Robinson, capital is defined through racial organization, and the resultant economic structure hinges upon such social paradigms (Thomas 2013). A fundamental feature of racial capitalism is drawing from the well of racialism to invent, modernize, and implement a capitalist system that relies upon disparities in social and political power and economic control (Robinson [1983] 2000). Through racial distinctions such as skin color, skull size, European habits, and religion, white policymakers designated specific roles for racial groups within an evolving capitalist system. The linkages of race and economics are made possible through legal frameworks that seek to rely upon, and legitimize, both concepts.

The lack of widespread recognition of the slavery of California Indians is also linked to the "management of memory" (Mills 2017, 64), in which some histories are foregrounded to compose a national memory and narrative, and others are suppressed. Drawing on Loewen (1996) and Du Bois (1995), Mills differentiates the operation of these processes for Native Americans—"downplaying Indian wars . . . help[ing] us forget we wrested the continent from Native Americans" (Loewen 1996, 133 in Mills 2017, 65; see also Williams 2012)—from those for African Americans—"whitewashing the atrocities of slavery . . . and minimizing the extent to which [slavery] . . . shaped the national economy, polity, and psychology" (Loewen 1996, 137-70, in Mills 2017, 65). This deliberate "forgetting" of the scope and impact of slavery affects the accurate recounting of histories and the development of reparations for both African-descended and Indigenous populations in the United States.

In order to unsettle this acceptance of settler narratives of governance and political economic development in California (Bauer 2017), we turn to groundbreaking work on the scale of Indigenous slavery in the Spanish empire by historian Andres Resendez (2016). California was part of the Spanish and then the Mexican empire prior to American colonization. Resendez traces the "cognitive dissonance" (Bell 1992) that enabled Indian slavery in the vast Spanish empire after the Spanish crown prohibited Indigenous slavery in 1542. Despite this legal pronouncement, effective slavery of Native Americans continued in the colonies through a variety of methods, particularly debt peonage and convict labor. The same was true in the Mexican empire, which prohibited slavery in 1823, yet still functioned to extract unpaid labor from Indigenous peoples and others. Across Spanish, Mexican, and English settler colonization in the Americas, categorizing groups (Indian and Black) as inherently enslaveable enabled the production of concentrated wealth that laid the foundation for contemporary wealth inequality. Sensitive ecologies and specific groups of human beings were seen as expendable for the extraction of minerals and timber, and the production of cash crops such as cotton, tobacco, and sugar (Beckert 2015; Mintz 1986). Race-based discrimination was encoded in legal practice, if not direct legal terminology. Future research should examine the resulting intertwined environmental, socioeconomic, and cultural legacies, perhaps through a lens of political ecology (Watts 2000), or Indigenous political ecology (Middleton 2015). A political ecology lens would be particularly helpful, because it requires examining political economy, ecology, and differentiation (by race, gender, epistemology) simultaneously to obtain a multidimensional understanding.

Southern political economy in the mid-nineteenth century relied heavily on racialized labor, a practice notoriously defended by North Carolina slaveholder, governor, representative, and senator James Henry Hammond in a speech to the Senate in 1858 (Hammond 1858). In order to maintain a racialized social hierarchy, states attempted to maintain the "badges and incidents of slavery" (see Pope 2018), even among free populations of color. Following the Civil War and the short-lived hope of Reconstruction (Foner 1988), numerous efforts were made to maintain the African American unpaid labor force that formed the bedrock of the Southern agricultural and mining economy (see Blackmon 2008 for an exploration of the law and political economy of the post-Emancipation US). Similarly, the California ranching economy had long been dependent upon unpaid Native labor under Spanish and then Mexican rule, and ranchers were keen to maintain similar arrangements after statehood (Magliari 2004, 352; Lindsay 2012, 146-147). In the American period, many early Californians came from smallholder agricultural backgrounds in states such as Missouri and Ohio, in which they kept small numbers of slaves to perpetuate family farms, and they tried to maintain a slave economy on the California agricultural frontier (Magliari 2012, 162; Smith 2013, 8). As Waite (2016) compellingly argues, California was central to national efforts by pro-slavery politicians to both retain the institution

of slavery, and to offer global markets for products produced via a forced labor economy through the development of California ports.

We trace the history, context, and ambitions of politicians who enacted Native California-specific forced labor statutes in order to maintain the socio-economic-political exclusion and labor exploitation of Native Americans in the new, free state of California. California's first governor, Peter Burnett, transplanted racist practices from the Upper South to California and Oregon (Nokes 2018). Through an examination primarily of California's 1850 Act for the Government and Protection of Indians, we trace the statutes that constituted the legislative "alchemy" that "transformed Missouri slaves into California wards" (Smith 2013, 110).

Oppression of both Native Americans in early California and African Americans in the post-emancipation South was driven by the intersections of settler colonial epistemic frameworks of Europeans' superiority and Manifest Destiny, economic dependence on coerced labor, and assertion of states' rights. Racism justified and enabled a virulent "misallocation of resources" that enriched settlers intent on colonizing the Americas (López 2011, 1018-1019; Williams 1992). Racist narratives of violent or docile Native and African Americans fostered settler fear of and contempt for both groups, and scientific theories helped justify violence against them (Lindsay 2012, 40-41, 316; Blackmon 2008, 107, 200). As Lindsay explains in *Murder State: California's Native American Genocide*:

> Euro-American culture shaped the views and opinions of white citizens about Native Americans as savage animals. The core belief created within many Euro-Americans that this was the essential nature of Indians was the foundational step to genocide in California. The surety of the savagery of Indians was the nucleus for the "guilt-free massacre". . .
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> In 19th-century California, Euro-Americans continued to find, identify and codify as inferior the non-white population as part of the process of claiming all of California for themselves. "Kanakas," "Greasers," "Niggers," "Celestials," and "Diggers" were shunted aside through the use of democratic processes, republican institutions, and laws acceptable to the white majority. The "Digger," the pejorative name Euro-Americans gave to California's Native American population, was the most ubiquitous hindrance of all, for he possessed most of the land in California. (Lindsay 2012, 40-41)

Philosopher Charles Mills generously argues that the assumption that non-whites were racially inferior "block[ed] the vision" of whites, enabling them to sustain oppression in the face of evidence to the contrary (2008, 63). Clearly, however, material self-interest and fear of losing power also played powerful roles in fostering white desires to maintain an unjust status quo. Despite the national abolition of slavery (following a civil war) and the founding of California as a "free" state, many whites refused to conceptualize African Americans and Native Americans as having equal rights to them. In fact, according to Blackmon (2008, 41), recognizing the freedom of African Americans fundamentally challenged the meaning of whiteness in the South. The status of being white was associated with private property ownership, making whiteness itself a form of property (Saito 2015; Harris 1993; Bhandar 2014; Berger 2021). If other groups racialized as inferior were able to become property owners, this would depreciate property in whiteness. These concerns were compounded by the specter of Haiti/San Domaigne/St. Domingo, the first free African republic in the hemisphere, where former slaves had overthrown their masters in 1804. As early California governor Henry Haight said in his analysis of Reconstruction policy and the question of whether its more inclusive approach to African Americans should apply in California: "Neither our gallant soldiers nor the northern people ever

cherished any design to oppress the southern people, nor to erect another St. Domingo on our southern border" (Haight 1867).

In order to continue to profit from hyper-extraction of both agricultural land and labor in the context of legal freedom, white settlers developed systems of oppression that obeyed the letter, but not the spirit, of state commitments to freedom and emancipation. Detailed historical legal scholarship on Virginia (Ablavsky 2011; Miller 2020) and New Mexico (Gomez 2005) reveals the ways in which legal rules were differentially applied to Indigenous peoples and African Americans, depending upon the relative populations of African American or Indigenous peoples, the regional political economy of labor and production, and the history of relationships between European Americans and Native or African Americans, respectively. The shifting terrain of settler colonialism and its regional specificities led individual states and the federal government to variously refuse to provide African Americans and Native Americans with protection under the law (Blackhawk 2019; Berger 2009). In the second half of the nineteenth century, in both the western and the southern US, virulent and strategic assumptions about the enslaveability of African Americans and Native Americans were supported by state and local statutes that encouraged and entrenched persistent and socioeconomically profitable racist norms (Gomez 2009).

We argue that the presence of slavery in California during the American period was largely facilitated by the influence of white southern politicians in California who sought to maintain plantation-like institutions, even in a formal context of emancipation (for example, see Magliari 2012, 162; Smith 2013, 8, 39-42, 46; Waite 2016, 132). These institutions were facilitated not by outright slavery, but by systems of bonded labor and indenture of both children and adults that approximated slavery in practice and law.

Following Tuhiwai Smith's methodology of a decolonizing project (1999)—one that explicitly counters colonial narratives that accept European epistemologies and frameworks—we argue that it is important to recognize and share the history of labor depredations in California, and to reveal the mutually constitutive links between maintaining systems of unpaid labor—explicitly *not* officially termed slavery—in both California (a "free state") and the post-Emancipation South. In this way, we can consider the ways in which legal systems illegally enabling slavery in practice are transported across geographies to re-entrench racialized power imbalances.

III. Slavery in a Free State: California Indian Slavery

Most students and scholars of California Indian history associate any reference to slavery of California Indians with the Spanish Mission period. During the Mission period (1769-1833), California Indians were captured, transported to the missions, and forced into manual unpaid labor on mission grounds, often constructing missions and producing the crops that sustained them (Costo and Costo 1987; Miranda 2013). This article focuses, however, on the slavery of California Indians that occurred after the Mission period. In 1826, Governor José María Echeandía decreed partial emancipation of Mission Indians and, in 1829, slavery was officially abolished in California by the Mexican administration. However, dependence on the labor of Native Americans continued. Under both Echeandía's administration (1825-1831) and then José Figueroa's administration (1833-1835), each mission was to transition into a self-governing Indian pueblo, with each Indian receiving rights to some of the land (Forbes 1969, 39-40). In Southern California in 1835, Indian people were released from the missions

and allowed to relocate to the Pueblo of Los Angeles. At this time, Father N. Duran observed the following:

> They live far more wretched and oppressed than those in the missions. There is not one who has a garden of his own, or a yoke of oxen, a horse, or a house fit for a rational being. . . . All in reality they are slaves, or servants of white men, who know well the manner of securing their services by binding them a whole year for an advanced trifle. (Hutchinson 1969, 222)

Indeed, in the mid-1830s it was common for Native Californians to work for white ranch owners in exchange for food, shelter, and protection. An example of legal codification of this norm is an 1847 regulation promulgated by a "Lt. Sherman," requiring that Indians leaving their place of employment carry a certificate issued by their employer confirming their status or be arrested (Ellison 1913, 43).

In the late 1840s in northern California, James Clyman reportedly described California Indians as being kept "in a complete state of Slavery" at Sutter's Fort in Sacramento (Heizer and Almquist 1971), and Resendez describes them as having "little choice but to put themselves under the protection of overlords" (Resendez 2016, 249). Near Chico, California, prominent settler and politician John Bidwell was known to pay Native workers "with food and clothing rather than cash," offering them protection from white vigilantes (Resendez 2016, 251-253). The similarities to conditions in the antebellum South were clear even at the time—as evidenced, for example, by historian Hubert Howe Bancroft's description of Tennessee transplant Cave Couts's San Diego property as "having the air of the home of a wealthy southern planter" (Magliari 2004, 351). Even in a state where the constitution included an explicit antislavery clause (California Const. 1849, Sec. 18), political and economic elites in early California conspired to maintain relationships of unpaid labor and extreme vulnerability. For example, between 1847 and 1849 (just before statehood), Lake County settler-ranchers Andrew Kelsey and Charles Stone, who were known for their cruelty (Radin and Benson 1932), extracted forced labor from Pomos around Clear Lake, and meted out violent punishments for resistors, before Pomos rose up and killed them in December 1849 (Resendez 2016, 261-262; Radin and Benson 1932).

Given that California was on the verge of statehood and joining the Union, the debate over slavery was particularly salient. The Missouri Compromise of 1820 determined that, while Missouri would be admitted to the union as a slave state, no other states admitted in the area north of the 36/30° parallel would be admitted as slave states. Initial debates over California's admission considered dividing the state into two states—a northern half that would be a free state, and a southern half that would be a slave state (Finkelman 1980, 439). In the series of bills known as the Compromise of 1850, Congress accepted California as a free state and allowed the recently acquired Utah and New Mexico territories to vote on whether to enter the union as free or slave states. In 1854, Congress officially repealed the Missouri Compromise, enabling Kansas and Nebraska territories to vote on whether they would allow slavery. These contested shifts reflected a fierce political struggle between Northern merchants and Southern planters, and generally between abolitionists, businessmen, labor interests, and pro-slavery landholders throughout the nation. Although California was recognized as a free state, the lack of an abolitionist majority, and the presence of an influential group of southern, pro-slavery politicians who had relocated there, meant that California would turn a blind eye to both Indian slavery and the cautious perpetuation of African American slavery (see Finkelman 1980, 438).

An example of this uneasy situation of allowing *de facto* slavery in the free state California is the California Fugitive Slave Law of 1852. This statute mirrored the federal Fugitive Slave Law of 1850 in allowing the capture and return of runaway slaves, even within the boundaries of a free state. The

California law allowed slaveholders to capture formerly enslaved African Americans in California and take them out of the state within one year. When challenged in the case of *In re Perkins*, 2 Cal. 424 (1852), the two Southern-born Justices (Smith 2014) affirmed state police power to "arrest . . . and restrain fugitive slaves" who had arrived prior to statehood, regardless of California's newfound status as a free state. The statute was again tested in *In re Archy*, 9 Cal. 147 (1858), when a slaveowner named Charles Stovall was found to have illegally made a permanent residence with an enslaved young man, Archy Lee, in California. Although Lee's release was ordered by a county court judge, the California Supreme Court ordered him to be returned to Stovall, issuing a convoluted and widely derided opinion (Franklin 1963). Lee was finally determined not to be a fugitive slave and released from custody by a federal commissioner (ibid., 153).

In contrast to *Perkins* and *Archy,* there are not similarly prominent courtroom challenges to the forced labor of California Indians. The lack of recognition of Indian slavery in California as also violating its identity as a "free state" exemplifies how slavery was seen as a "Black and White" issue—that is, limited to African Americans and whites—rather than as including Native Americans and other ethnic minorities working under various degrees of exploitative, unpaid labor for white landowners. Refusing to recognize California Indian slavery required one to ignore the actual conditions under which Indian people lived, underscoring the power of applying the term "indenture" to *de facto* slavery (Heizer and Almquist 1971, 20). In 1850, the following statement was made by an unnamed observer regarding the incongruity of the actual practice of forced, unpaid California Indian labor, and the designation of California as a free state:

> The process is to raise a posse and drive in as many of the untamed natives as are requisite, and to compel them to assist in working the land. . . . A pittance of food . . . fed to them in troughs . . . is the only compensation which is allowed for their services. Their condition is worse than that of the Peons of Yucatan, and other parts of Mexico, and yet there are no slaves in California! (Quoted in Heizer and Almquist 1971, 20)

The 1850 Act for the Government and Protection of Indians, 1850 Cal. Stat. 408-10 ("1850 Act"), is the California statute that most clearly articulates provisions enabling, allowing, and encouraging enslavement of California Indians. Resendez calls it "like a pinata with something for everyone who wished to exploit the Natives of California" (2018, 264). The 1850 Act was composed of 20 sections, paraphrased as follows:

- Section 1 gave justices of the peace jurisdiction over all cases by, for, or against Indians. Justices of the peace were locally elected officials with jurisdiction over local civil and criminal matters, per the California Constitution of 1850, Article VI, § 14. The first version of the Act proposed to the California Legislature created Indian justices of the peace, to be elected by Indian people. The final version of the Act removed this provision, maintaining justices of the peace as locally elected, and noting that Indians did not have the right to vote in California, per the California Constitution of 1849, Article II, § 9.

- Section 2 required landowners to allow Indians to continue to live on lands now claimed by settlers, as well as requiring them to apply to justices of the peace to demarcate lands for specific Indian habitation. However, in the same year the Act passed (1850), the state legislature also passed two other Acts (An Act Concerning Volunteer or Independent Companies, 1850 Cal. Stat. 54, and An Act Concerning the Organization of the Militia, 1850

Cal. Stat. 76), which provided the parameters for organizing militias. These local defense companies were principally deployed against California Indians. In fact, in 1850, Governor Burnett himself ordered militias to "punish the Indians" in the vicinities of San Diego, Los Angeles, and El Dorado County (Johnston-Dodds 2001, 17; Burnett 1851, 13). Given this context, it seems unlikely that California Indians would find a receptive ear from locally elected officials tasked with demarcating lands for their continued and safe habitation.

- Section 3 enabled slavery of Indian children, under the guise of indenture and adoption. It required that settlers who "obtained a minor Indian . . . and wishing to keep it" go before a justice of the peace, who would first determine that the child was not taken by force, and then issue a certificate to the settler stating that he had "care, custody, control and earnings" of the child until the child was 18 (if a boy) or 15 (if a girl). Newspaper articles from the time note instances of slaughtering the parents and then taking the children as an act of "charity" (for example, see *Sacramento Daily Union* 1853). In 1862, Colonel Francis Lippett described to his commander frequent instances of white settlers killing Indian parents, kidnapping their children, and selling them for "hundreds of dollars apiece" (Johnston-Dodds and Supahan 2020).

- Section 4 established penalties for settlers that mistreated Indian children entrusted to their care. The settler could be fined, or the child could be taken away and placed in the care of another "master." Johnston-Dodds notes that the first version of the law stated that Indian children so mistreated could return to their families, but this statement was removed from the final version (2002, 28).

- Section 5 stated that any settler wishing to hire an Indian had to submit a contract for the terms of the hire to be approved by the justice of the peace. Section 19 built on Section 5 by requiring that settlers pay a fee for each negotiated contract. However, given the lack of citizenship or self-representation of Indian people during this time, there is a high likelihood that Indian interests would not be protected in these negotiations. Specific studies of this period, such as that by Frank and Goldberg (2011) focusing on the Tule River Tribe in the southern Central Valley, document labor abuses and land theft, indicating that if contracts were made, they were rarely upheld in the interests of Indian peoples.

- Section 6 permitted Indians to enter complaints with justices of the peace, but established that no white person could be convicted based on the word of an Indian.

- Section 7 established that any settler caught kidnapping an Indian or forcing him or her to work could be fined by a justice of the peace.

- Sections 8 and 18 stated that all fines collected regarding Indians, per the provisions of this Act, would be reported regularly and kept in an Indian Fund. Future research is required to discern what happened to revenues deposited in the Fund. If the Fund was anything like the Individual Indian Monetary accounts managed by the federal government and examined in the *Cobell* cases in the early twenty-first century, *Cobell v Salazar,* 573 F.3d 808 (D.C. Cir. 2009), it is likely that revenues never reached Indian communities.

- Section 9 required justices of the peace to convey the terms of the law to Indians in their jurisdiction, and to "chastise" them if they did not comply. Given the multitude of languages spoken across Native California at this time, it is unclear whether or if this information was actually conveyed to Indigenous Californians. Previous research on the theft and sale of Indian allotments in northeastern California in the 1890s and early 1900s revealed a marked lack of communication on the terms and timing of sale of lands (Middleton Manning 2018), so it stands to reason that half a century earlier, communication would be lacking between these settler justices and the local tribal members whose homelands were suddenly under these justices' jurisdiction.

- Section 10 established that any person who set lands on fire was subject to fine. It is reasonable to assume that this provision targeted Indian people, for whom fire was an important tool of land stewardship and subsistence (Anderson 2005, 135-137).

- Sections 11-13 explained the process of convicting an Indian accused of a crime against a white person. The white person was empowered to bring the Indian before a justice of the peace, who could determine a punishment. Further, justices of the peace could require leaders in Indian communities to bring accused parties before the justice.

- Section 14 enabled bonded labor, by noting that any white person could pay the fine levied against a convicted Indian person, and then have the Indian person work for them for an indefinite period to pay off the fine. An 1858 newspaper article describes this practice in Mariposa, California, near Yosemite: "[W]hen an Indian gets drunk and disorderly, he is arrested, fined, and, not having the necessary funds to liquidate, is put up at auction, the bidder paying the amount into the County Treasury, and the Indian working for him till the debt is canceled" (*Trinity Weekly Journal* 1858). Abuse of this article was commonplace, involving settlers repeatedly bringing complaints against an Indian person, paying the required fine, and then having the offender work for them to pay it off.

- Section 15 established that anyone convicted of furnishing Indian people with alcohol would be fined.

- Sections 16-17 enabled corporal punishment (lashing) and high fines for any Indian person caught stealing. The offended settler was empowered to mete out the beating.

- Section 20 was a vagrancy law, requiring that any able-bodied Indian "found loitering and strolling about" be subject to arrest and determination of vagrancy by a mayor, recorder, or justice of the peace. If determined vagrant, the Indian person would be hired out to the highest bidder for up to four months. Newspaper articles of the time document abuse of this law, with settlers facilitating the arrest of Indian people, then posting bond, and using them for free labor repeatedly.

This Act, we suggest, was written and supported by men with experience in how to engineer and reinforce a system of racialized oppression that enabled the extraction of unpaid labor. According to historian Vanessa Gunther, in the 1850s, pro-Southern Democrats formed the majority of California's leadership and, by the 1860s, nearly half of California's population had emigrated from southern, slave owning states (2006, 31; see also Waite 2016 and Smith 2013). The Act was drafted by a committee of

early settler-politicians, including General Mariano Guadalupe Vallejo and John Bidwell, both of whom had long benefited from Indian labor to develop their respective landholdings, and by David F. Douglas, who hailed from Tennessee and had owned African slaves (Resendez 2016, 264). Moreover, the Act was passed at a time when the governor of the state, Peter Burnett, a former slaveowner from Missouri, was calling for the "extermination" of Indian people (Burnett 1851) as well as the exclusion of African Americans, and was on the fence about whether California should enter the union as a free or slave state.

As California's first governor, Burnett is a key figure in early California history. Burnett was virulently racist and is remembered for his (sometimes successful) attempts to institutionalize violence against Native Americans and African Americans. Burnett came to Oregon from Missouri in 1843. In Missouri he owned two slaves, according to the 1840 census (Nokes 2018, 4). In 1844, he was elected to Oregon's first legislature. That year, he and his colleagues amended the Oregon 1843 organic law that outlawed slavery in the territory, in order to allow slaveowners to retain their African slaves for three years after arrival. Burnett was specifically associated with a provision of these 1844 amendments that not only required former slaves to leave after they were emancipated, but threatened them with severe whipping if they remained. Later in 1844, an opposing committee member removed "Peter Burnett's lash law" and replaced it with involuntary servitude. In 1845, the anti-slavery language was reinserted, but not enforced (Nokes 2018, 67-69).

In 1848, Burnett departed for California, following the lure of the Gold Rush. After participating in the development of the City of Sacramento and the formation of the state government, he was elected governor in 1849, even before California formally became a state. Among his first actions was to call (unsuccessfully) for California to exclude African Americans (Nokes 2018, 147-149). His 1851 address to the legislature "expected" a "war of extermination . . . between the races until the Indian race becomes extinct" (Burnett 1851). Indeed, as noted above, he was known to call out the militia to "defend" settlers against California Indians (Nokes 2018, 157). Such "defenses" were really massacres of Indigenous Californians accused of vague and unsubstantiated crimes (see Lindsay 2012, 182 on multiple "overreaches of vengeance"). Even if a crime was committed by an Indian person against a white, the response far exceeded the injury. For example, an 1851 article in the *Marysville Daily Appeal* describes "an Indian expedition" to avenge the life of a miner trespassing on Indian lands that culminated in a full "slaughter" by "killing all [Indian] men who did not escape and taking captive the squaws and children" (*Marysville Daily Appeal* 1851). Even after Burnett's tenure, expeditions against California Indians were funded liberally by the state (Ellison 1913, 100-102; Johnston-Dodds 2002, 16-19). Burnett resigned from the governorship in 1851, but was appointed to the state s]Supreme Court in 1857. There, he is remembered for the 1858 ruling discussed above, upholding the enslavement of an African American named Archy Lee in California even though California was a free state.

A. Exploitation of Indian Children under the 1850 Act

The Act for the Government and Protection of Indians was passed and enforced during Burnett's tenure as governor. A particularly egregious aspect of the Act is the exploitation of Indian children. In Humboldt County between 1860 and 1863, data from Heizer and Almquist (1971) indicates that some children were indentured at three or four years old, and the majority of those indentured were between seven and twelve years old. An 1854 article in *Alta California* reported on the commonality of the theft of Indigenous children: "This practice has become quite common. Nearly all the children

belonging to some of the Indian tribes in the northern part of the State have been stolen. They are taken to the Southern parts of the state and there sold" (*Alta California* 1854). In the following year, an article in the *Humboldt Times* (1855) cited the attempted theft, abuse, and sale of thirteen children from regional Indian reservations. These Indian youth were taken from their families and forced to labor if they were convicted of an infraction, which could include the general category of "vagrancy." This "indentured servitude"—a period of unpaid labor to make up for a debt—amounted to slavery. As the *Ukiah Herald* reported in 1862:

> Here is well known there are a number of men in this county [Mendocino] who have for years made it their profession to capture and sell Indians, the price ranging from $30 to $150, according to quality . . . there are men engaged in it who do not hesitate, when they find a rancheria well stocked with young Indians, to murder in cold blood all the old ones, in order that they may safely possess themselves of all the offspring. (Quoted in *Alta California* 1862)

This violence extended to the taking of children and their placement in wealthy, urban homes:

> It has for years been a regular business to steal Indian children and bring them down to the civilized parts of the state, even to San Francisco, and sell them—not as slaves, but as servants to be kept as long as possible. Mendocino County has been the scene of many of these stealings, and it is said that some of the kidnappers would often get the consent of the parents by shooting them to prevent opposition. (Farquhar 1966, 493)

Whites could also obtain Indian "apprentices," or unpaid laborers, in California at this time. According to Heizer and Almquist: ". . . white slave dealers . . . did a thriving business providing 'apprentices' to farmers and miners, who in turn legitimized these indentures by obtaining the local justice court's permission as provided through [the 1850 laws]" (1971, 40).

B. Indenture as Enslavement

In addition to obtaining free child labor, whites in California could obtain adult Indian people who had been convicted of a crime. If the white person gave bond for the fine, the Indian person would be indentured to him/her for an indefinite period (Johnston-Dodds 2002, 6). As Wilson explains, this law was often misused, and it was unfairly weighted towards prosecuting Indian people: "[H]e is sold out to service an indefinite period for intemperance, while the white man goes unpunished for the same thing, and the very richest . . . men . . . tempt him to drink, and sometimes will pay him for his labor in no other way" (Wilson 1852, 27). Thus, the Indian person was captured and bound to servitude for drinking, then paid in alcohol, and captured again, thus maintaining an exploitative cycle of forced labor (Lindsay 2012, 153).

Enslavement of California Indians was rampant in the state in the late 1850s. A report from the Agent for the Nome Lackee reservation, located in the upper Sacramento Valley, observed the following:

> Of the Indians residing in this neighborhood, a large number are on the ranches or farms of private individuals, who are using them as working hands, and who seem to have adopted the principle that the Indians belong to them as much as an African slave does to his master, and that they have the right to control them entirely. (Quoted in Madley 2014, 649)

To maintain a class society in California with Indians and Blacks in the underclass to provide free or nearly free labor to whites, the 1850 Act barred representation of Indian people in the courts, while the 1852 California Fugitive Slave Law made African Americans vulnerable to arrest. In these cases, racist legal theories and political economy worked hand in hand to support an oppressive, racial capitalist system. This was a practice with deep precedent in the Spanish empire, as Resendez describes: "By calling for unprovoked attacks on the Indians, [the] Governor . . . initiated a cycle of reprisals and counter-reprisals that resulted in ideal conditions for obtaining Indian workers, some of whom ended up in his . . . shop" (2016, 120). Future research is required to discern the frequency of incidents of whites testifying against another white person in support of a Black or Indian person.

In 1860, Section 3 of the 1850 Law for the Government and Protection of Indians was amended to extend the terms of indenture for Indian youth, allowing a male Indian child captured or convicted while under the age of 14 to be held until 25 years of age, and a female until 21 years of age (Johnston-Dodds and Supahan 2020). If children were captured between 14 and 18 years of age, they could be held longer: until 30 years of age for the young men, and until 25 years of age for young women. Just three years later, in 1863, Section 3 was repealed. However, slavery continued in the state, as documented by Heizer and Almquist (1971) and reflected in newspaper articles from the period. A particularly disturbing 1865 account from Mendocino County describes a settler's attempt to retain an Indian slave through extreme violence:

> Bob Hildreth . . . claimed the Indian as his property . . . he told him get out of the wagon d—d quick; that he would show him the way to come home. He made the Indian cross his hands behind, when he fastened them with his rope, swearing he would drag him to death. Then, mounting his horse, throwing the Indian eight or ten feet, with a hard fall—the Indian screaming and begging for his life. . . . The Indian was terribly mangled, his arms being twisted off in his shoulders. So much for slavery in California . . . The Legislature has done much blowing concerning the Indians in this County, but every Act hits them harder. They are held here as slaves were held in the South; those owning them use them as they please, beat them with clubs and shoot them down like dogs, and no one to say, 'Why do you do so?' James Shores, an Indian slaveholder here, shot one the other day, because he would not stand and be whipped, inflicting a severe wound, but not killing him. Hildreth is bound over in the sum of one thousand dollars for his appearance, but I have my doubts of finding a jury that will convict a man for killing an Indian up here. (*Sacramento Daily Union* 1865*)*

Heizer estimated that settlers enslaved up to 20,000 Native Americans in California well into the 1880s (Magliari 2004, 353).

IV. Legal Precedents: Institutionalized Discrimination and Exploitation

The restrictions codified in California's 1850 Law for the Government and Protection of Indians were not without precedent within the United States. In fact, nearly identical legal strategies were used to oppress African Americans over the course of North American colonial history, both prior to and after American independence. In this section, we briefly describe how similar civil and criminal laws were used both against African American populations in the South and against Indians in California.

In 1717, under British rule, the colony of Maryland's "A Supplementary Act to the Act relating to Servants and Slaves" stated, "[N]o negro or mulatto slave, free negro, or mulatto born of a white woman . . . or any Indian slave or free Indian . . . can testify where any Christian white person is concerned."[1] In addition to such rules withholding the right to testify, local and state laws effectively prohibiting Black political representation abounded throughout the South in the late nineteenth century, contributing to a reign of exploitation, violence, and terror aimed at maintaining the system of Black unpaid labor that had built the South's plantation economy, and that would build a formidable industrial economy after the Civil War (Blackmon 2008). Indeed, over 200 years after British colonial rule, the Louisiana legislature permitted only "free white male citizens" to serve on juries. 1926 La. Acts 44.

The system of racialized labor exploitation and control set out in the 1850 California law also has clear precedents in pre- and post-Emancipation labor practices involving African Americans. For example, during the Civil War, complaints brought before the Freedmen's Courts outlined the mistreatment that apprentices of color were receiving at the hands of their white employers and the community at large (War Department 1866, 237). After Emancipation, cases of children being taken from their families and bound to white employers without the consent of their parents were prevalent under apprenticeship laws—as in Mississippi, where children identified by county authorities as orphans could be placed into apprenticeship, and guardianship given to their former "owners" (Goodman 1912). Similarly, a post-Emancipation Alabama law decreed that orphans of freed slaves, and the children of African Americans deemed "inadequate parents," be apprenticed to the parents' former masters (Blackmon 2008, 53; Reid 1950, 277). Toward the end of 1865, Judge D.L. Wardlaw and lawyer Armistead Burt introduced a series of bills in South Carolina aimed at defining racial classifications, permissible relationships, and labor law in relation to people of color (Hollis 1905). Under these bills, which became part of South Carolina's Black Codes, people of color were forced into apprenticeships and barred from free movement and association while under contract to their "masters." 1875 S.C. Statutes at Large 269-85 (Hollis 1905). Under the South Carolina system, children as young as two became bound by the magistrate until adulthood if they were children of convicts, orphaned, subject to potential "moral contamination," or poor. 1875 S.C. Statutes at Large 272.

Indeed, apprenticeship was widespread throughout the South after the passage of the Thirteenth Amendment. As Mitchell explains in *Raising Freedom's Child: Black Children and Visions of the Future after Slavery:*

> Seizing on the most vulnerable members of the former slave population, planters in the US South . . . unable to slow the emancipation of adult slaves, . . . legally bound freechildren through apprenticeship contracts in an effort to guarantee themselves several more years of labor that was not free. (Mitchell 2008, 145-146)

States and localities regularly bent the parameters of federal law to maintain racialized social, labor, and economic norms. Former slaves themselves advocated for the return of their children and grandchildren, as evidenced by the case of Cyntha Nickols in 1867 Louisiana, but such advocacy was often unsuccessful and children remained with their white "guardians" (Mitchell 2008, 143-145).

The combination of Black exclusion from the legal system, and a political economy built on race-based hierarchies, hampered a transition to a truly free labor economy for southern African Americans

[1] 33 Proceedings and Acts of the General Assembly of Md. 459 (1717).

post-Emancipation. Black people, whether free or enslaved, were vulnerable to all manner of crimes perpetrated by whites. Even if they were "free," they lived in a system of oppression and discrimination, barred from tribunals of justice. This created an underclass in which labor could be forced without consequence, and effective or *de facto* slavery could continue, even in a broader context of freedom. Similarly, in California, settlers were aware of the benefits of having a needy and fearful labor source: "Keeping Indigenous people desperate and willing to work for next to nothing was key to the effectiveness and profitability of the system" (Lindsay 2012, 153). One settler named Pierson B. Reading believed that having poor Natives on land granted to him was advantageous—"they could be made to work like the 'negroes in the South'" (quoted in Lindsay 2012, 183).

Entrenched planter beliefs in their own superiority and their paternalistic duties justified the use of state violence to maintain labor discipline (Foner 1988, 130-131, 149-151). White employers claimed that a fully emancipated labor force, particularly laborers of color, would not work within the parameters previously instituted under the era of enslavement, or work in any capacity, without some institutional force.[2] For example, in 1866 Georgia, Brigadier General Davis Tillson claimed that the occupying forces of the Union army were inefficient in providing stability within the state. As a result, Tillson appointed justices of the peace from local Georgia counties in order to enforce laws and ensure compliance regarding labor (U.S. Sen. 39th Congress, pp. 48-49). This claim that people of color were inherently indolent and prone to vagrancy can be understood as a violently racialized version of European class-based conflicts (Foner 1988, 133). Assumptions of laziness tied to race (in the South), Native American ethnicity (in the West, see Delano 1949) or class (in Europe and in the North) could be marshaled to justify harsh and restrictive treatment (Foner 1988, 133).

Despite the obvious similarities between legal frameworks pressing African Americans and Native Americans into unpaid, forced labor, there were also deliberate attempts to differentiate these populations in order to discourage unified resistance (Forbes 1982). For example, as early as 1793, a decision of the Court of Appeals of Virginia, *Coleman v. Dick & Pat*, 1 Va. 233, 1 Wash. 233, distinguished the category of "Free Indians" from those that were enslaveable. This ruling would ultimately lead to the creation of a vague interpretation of enslavement criteria that arbitrarily included some members of the Indian population (Jefferson et al. 1902). Indeed, the ruling in this case enabled future laws and social policies regarding forced Native labor. While Virginia has a specific history of enabling (Miller 2020) and then outlawing slavery of Indigenous peoples, while continuing discrimination against Indian people based on cultural practices (Ablavsky 2011; Berger 2009), the 1806 Virginia case of *Hudgins v. Wrights*, 11 Va. 134, Hen. & M. 134, remains illustrative. *Hudgins* interpreted the Virginia Bill of Rights as follows: "freedom is the birth-right of every human being" … that is, "white persons and native American Indians, but [NOT] native Africans and their descendants, who have been and are now held as slaves by the citizens of this state." Thus, Native Americans were construed along with whites as possessing freedom by birth, while Africans were excluded from the Bill of Rights and condemned to legalized chattel slavery. Similarly, in 1831 Texas a law stated: "Negroes, Indians, and mixed bloods (Indian or Black, down three generations) cannot be witnesses." This law was repealed soon after as to Indians, but not Blacks.

These statutes and decisions enforced a hierarchy between vulnerable populations, fostering division in a general context of oppression and colonization of both groups (Gomez 2005; Ablavsky 2011).

[2] United States. 1866. Executive documents printed by order of the House of Representatives during the first session of the thirty-ninth Congress, 1865-66. Washington, D.C. Government Printing Office.

While Indians have been perceived as gaining better treatment than Blacks, scholars have examined what is lost for Indigenous peoples who claimed similarity to whiteness and distance from Blackness (Ablavsky 2011). Although African Americans and Native Americans were placed in seeming opposition, legal frameworks and social practices in the South often subjected both communities to similar treatment within the labor structure and similar exclusion from property ownership.

Another similarity between the 1850 California Law for the Government and Protection of Indians and anti-Black legal regulation concerns vagrancy. As we have seen, the California law enabled the indenture of Indian children, and any "vagrant Indian or Indians" (Section 1). In the period following Reconstruction, many Southern states, such as Arkansas, instituted policies to limit "vagrancy" among African American populations (Goluboff 2016). The concept of vagrancy as a criminal offense was a ruse for the arrest and enslavement of people of color in nineteenth-century America. Citizens identified as vagrants would be taken into custody, fined, and then required to work off the debt incurred (Goodman 1912). Although vagrancy laws were applicable to all citizens, they were disproportionately enforced against the African American community in the state, thus reinstituting a familiar arrangement of unpaid labor. Indeed, African American men who were charged with abandonment of their families, as well as "vagrants," were contracted to labor.[3] 1875 S.C. Statutes at Large 255, 270, 284 (Hollis 1905). If a worker was deemed not to have fulfilled the terms of the contract, they could be fined or imprisoned, creating conditions for bonded labor. As such, the newly established paradigm of freedom for formerly enslaved people contrasted the previous condition in name (*de jure*), but not in practice (*de facto*).

A final similarity in the regulation of Native Americans and African Americans is state complicity with private violence, committed through acts of corporal punishment and acts of vigilantism, to secure land and labor for racial capitalism. Corporal punishment was a horrifically regular consequence threatening newly emancipated African Americans in the South, and Native Americans in the "free state" of California (Lindsay 2012; Blackmon 2008). While limiting the rights of African Americans to own or use a variety of weapons, states outlined punishments for transgressions that included whippings at the discretion of local magistrates. Violence against African Americans generally aimed to intimidate and suppress to maintain slavery-era political-economic labor relations, whereas violence against Native Americans aimed to exterminate Indigenous populations and seize their homelands. Citizens assisted in maintaining the dehumanizing conditions of effective slavery and population control; vigilantism—characterized by acts of violent beating, public lynching, or massacres of entire communities—was used to intimidate and control socially noncompliant African Americans (Blackmon 2008) and Native Americans (Lindsay 2012). In California, the state and the federal government supported militia efforts to murder Indigenous peoples and destroy their communities (Lindsay 2012; Ellison 1913, 101-102; Norton 1979).

While it is important to examine the similarities, the racialization of Native Americans and of African Americans in the nineteenth century was not identical. For example, Native Americans in the late nineteenth-century South were able to assume ambiguous, and often conflicting, statuses. Despite the fact that some Native people continued to be subjected to treatment indistinguishable from their African American counterparts, others retained a level of fluidity in the social sphere (Forbes 1993). As is well known, members of Native Nations, including the Cherokee and others, owned slaves. Settlers distinguished between, on the one hand, Native Americans seen as "civilized," such as the Pueblos (Gomez 2005) or the Five "Civilized" Tribes of the Southeast, and, on the other hand, those

[3] See also 1894 S.C. Revised Statutes 392.

seen as "wild" or "savage," and thus enslaveable (Delano 1857). The intermarriage of Native American and white populations often provided proximity to whiteness and a pathway towards assimilation within white society for Native peoples in the South (Berger 2009). These differentiations both fostered divisions among Native nations, and articulated support for European theories about the ability of some Indian groups to become "civilized" (Perdue 2012). Nevertheless, even those Native Americans celebrated as civilized were still subject to cruel American policy, as exemplified by the Removal Act of 1830 forcing Eastern nations off their lands.[4]

Generally, proclamations of emancipation are met with resistance by those who benefit from the emancipated population's unpaid labor (Blackmon 2008). For example, when Spain outlawed slavery throughout its empire, leaders of specific territories refused to follow the decree.[5] In 1862, the US House of Representatives prohibited slavery in all US territories, and, in 1865, Congress passed the Thirteenth Amendment, prohibiting slavery throughout the US. However, the slavery and trade of Indian people continued throughout the South (Blackmon 2008), and the West (Resendez 2016, 297-298). States in the post-Emancipation South resisted Emancipation by promulgating Black Codes, accompanied by tactics of terror, which strove to maintain a system of intimidation, violence, and political-economic collusion that ensured the continued flow of African American unpaid labor. In a similar act of resistance, proponents of Indian slavery argued that the Thirteenth Amendment did not apply to Native Americans, despite the Amendment's clear language prohibiting slavery or involuntary servitude without restriction (Resendez 2016, 304).

The existence of *de facto* systems of slavery are borne of such resistance to political-economic change and power relations. When the law changes and an economic system is uprooted, those benefiting from that system resist forcibly—drawing, in this case, on notions of racial superiority and naturalized class hierarchies and turning to legal subterfuge and vigilante violence to maintain the *status quo ante.* When state and federal governments turn a blind eye to these activities, they leave vulnerable populations unprotected.

We have argued that white Southerners who emigrated to early California—including the state's first governor and the state's first senator, pro-slavery sympathizer William Gwin (Stanley 1971)—brought with them their views of and experiences with both the enslavement of African Americans and the transgression of federally guaranteed protections for Native American lands and rights. In our view, these experiences informed the development of laws such as the Act for the Government and Protection of Indians in the "free state" of California. Further research is required to establish the ways in which the operation of the Act in California may have, conversely, influenced the expansion of Southern laws to maintain slavery-era relations in the post-Emancipation South.

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[4] The fact that the Removal Act was followed closely by two decisions, *Cherokee Nation v. Georgia,* 30 U.S. 1 (1831), and *Worcester v. Georgia,* 31 U.S. 515 (1832), by Supreme Court Chief Justice John Marshall that articulated tribal sovereignty and the federal-tribal relationship reflects a struggle between the executive and the judiciary regarding federal Indian policy. Under these cases, the federal government has a solemn duty to protect the rights of Indigenous people—a concept known as the "trust responsibility." The trust responsibility understands Native nations as "domestic dependent nations," distinct from either foreign nations or states, and receiving protection from the United States. When the federal government did not act to protect Indigenous people subject to removal and enslavement with the Removal Act and subsequent state-specific policies like the California Act for the Government and Protection of Indians, and did not implement or uphold treaties made with Indigenous peoples, the government violated the judicially-recognized trust responsibility to protect Indian people and nations from depredations.

[5] Resendez offers an example of the Audiencia of Manila actually rescinding the king's order to free slaves in 1682, and instead ordering all slaves to return to their work (2016, 146).

V. Conclusion

Slavery has long existed in the United States, even where it is prohibited and even when it bears a different name. Wherever there are conditions of oppression of particular ethnic groups, specific exclusion from tribunals of justice, and legitimized short- or long-term unpaid labor, slavery is in force. Moreover, the practice of enacting state and local laws that, when applied, contradict established federal law did not end with the dawn of the twentieth or twenty-first centuries. Understanding how legal maneuvers enabled the unpaid, coerced labor of African Americans and Native Americans in the context of freedom helps to reveal elements of United States law and policy that are vulnerable to misuse and corruption.

Legal strategies such as indefinite "apprenticeships" and indenture as a punishment for "vagrancy" operated to maintain a racially, socially, and spatially identifiable category of exploitable and expendable labor. These strategies also operated effectively to divide African American from Native American people, as well as to divide different Native American nations from one another. Over the 400-year course of attempted European colonization of the Americas, race-based legal fictions have been differentiated, re-invented, re-introduced, re-justified, and re-produced across the Americas to disenfranchise Indigenous and Afro-descendent peoples.

To avoid continued miscarriages of justice, it is imperative that we examine our contemporary laws for traces of oppression and exclusion. It is easy to forget that African Americans, Chinese Americans, and Native Americans were once barred from citizenship in California, reminiscent of the ways certain "undocumented" populations (many Indigenous to this continent) currently face barriers to US citizenship. How might we guard against the reshuffling of institutions of injustice, and the encouragement of divisions between oppressed populations? One method is to examine contemporary legal language and its application through a historical lens, following, for example, Indigenous legal scholar Robert Wiliams's work calling attention to the history of colonial decisions that have never been overturned (Williams 2005). We must look—over time and across state and national borders—at the effects that even seemingly innocuous statutes have had on populations of color. In situations where certain populations are trapped in unpaid or under-paid labor, and divisions between oppressed populations are encouraged, what laws or statutes are enabling or have enabled these divisions? As in the examples given in this article, in many cases we may find the same legal language applied to serve similar ends in different contexts. Further, we must examine both the individual intellectual trajectories of the architects of discriminatory laws, and the institutionalized practices that enable the passage of discriminatory statutes (Freeman 1978, 1053-1054).

Attention to the history of Indigenous and African enslavement in California is particularly germane at this time. In 2019, California governor Gavin Newsom issued Executive Order N-15-19, recognizing California's history of Native genocide and forming a Truth and Healing Commission to determine next steps.[6] In 2020, Newsom signed AB 3121, establishing the nation's first Reparations Task Force to study and develop reparations for African Americans.[7] Following the May 5, 2020 police murder of 46-year-old African American George Floyd, summer 2020 saw the removal of racist statutes and the renaming of schools and monuments honoring oppressors, including former slaveholder John Sutter in California (Burris 2020). Given that oppressors have continually learned

[6] https://www.courts.ca.gov/documents/BTB25-PreConTrauma-02.pdf.
[7] https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB3121.

from one another, liberators must also learn from one another. Justice-oriented, historical-contemporary, cross-contextual legal analyses like the one presented in this article are one strategy for visionaries to learn from one another, foregrounding buried histories in order to develop opportunities for political and social solidarity. It is only through a broad, vigilant, and visionary commitment to justice *for all* that insidious violations of justice will not be continually reproduced in legal systems locally, regionally, nationally, and globally.

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