FUGITIVE SLAVES AND SHIP-JUMPING SAILORS: THE ENFORCEMENT AND SURVIVAL OF COERCED LABOR

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In 1840, a future abolitionist and leader of the Boston bar named Richard Henry Dana[1] recorded the flogging he witnessed during a two-year absence from his studies at Harvard, and lamented: "A man—a human being, made in God's likeness—fastened up and flogged like a beast!"[2] Dana noted that one of the victim's fellow laborers who protested the beating was next.[3] As the second man was beaten, his master called out, "If you want to know what I flog you for, I'll tell you. It's because I like to do it! -- because I like to do it! It suits me!-- That's what I do it for!"[4] As the second victim writhed in pain he called out, "O Jesus Christ! O Jesus Christ!"[5] To this his master responded, "Don't call on Jesus Christ. . . . Jesus Christ can't help you now!"[6]

This scene of cruelty that Dana witnessed did not take place on a plantation, and the flogging was not administered by a slave owner. Rather, it occurred on board the brig *Pilgrim,* an American ship out of Boston.[7] The victims of the floggings were not slaves of African descent,

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1. *See generally* CHARLES FRANCIS ADAMS, RICHARD HENRY DANA: A BIOGRAPHY (1890) (reproducing the written memoirs of Richard Henry Dana).

2. RICHARD HENRY DANA, TWO YEARS BEFORE THE MAST 104 (Random House 1936) (1840).

3. *See id.* at 104-06 (describing the flogging of the second victim, John the Swede).

4. *Id.* at 106.

5. *Id.*

6. *Id.*

7. *Id.* at 11. I do not mean to imply that Dana was opposed to the use of corporal

but free men, one an American of European descent and the other a Swede, who had signed on to the vessel of their own will.[8] The treatment to which they were subject, however, is the type of treatment that most do not associate with any form of labor other than chattel slavery. By the nineteenth century, American sailors had the questionable distinction of being the only wage laborers in the United States who were, like slaves, subject to the sort of abuse Dana witnessed aboard the *Pilgrim*.[9]

Some observers in the nineteenth century noted the similarity between the lots of slaves and sailors. Thus, the first of the two seamen, whose flogging Dana narrated, protested, "I'm no Negro slave," to which the captain responded as he started to beat the man with a rope, "Then I'll make you one."[10] When on his travels through the "cotton kingdom," Frederick Law Olmsted heard a plantation overseer say that he "wouldn't mind killing a nigger more than [he] would a dog."[11] Olmsted wrote that the comment about killing slaves "was exactly like what [he had] heard said, again and again, by Northern shipmasters and officers, with regard to seamen."[12] Nonetheless, modern historians have generally ignored the similarities between the status of maritime laborers and the status of slaves.[13]

With the exception of slave labor, historians have viewed the nineteenth century as a time in which at-will employment, where the employer has nothing more than economic power over employees, triumphed over the concept that employment involves the literal

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punishment on sailors. This passage illustrates, however, that Dana was opposed to *undeserved* corporal punishment. *See id.* at 106 (noting Dana's disgust at the undeserved flogging of the two men).

8. DANA, *supra* note 2. at 103.

9. *See generally* MYRA C. GLENN, CAMPAIGNS AGAINST CORPORAL PUNISHMENT (1984) 1-23 (discussing writings on punishment written by seamen in the nineteenth century). To be sure, there were others in the nineteenth century who were subject to physical discipline in addition to slaves and seamen, notably convicts, women, and children. *See id.* (contemplating legal, religious, and customary reasons for physical discipline against women and children). The purpose of this article is not to dispute the fact that these categories of people were engaged in labor, however defined. Rather, the relevant point is that they were not considered employees by nineteenth century ideology. *See* AMY DRU STANLEY, FROM BONDAGE TO CONTRACT: WAGE LABOR, MARRIAGE AND THE MARKET IN THE AGE OF SLAVE EMANCIPATION 28-29 (1998).

10. DANA, *supra* note 2, at 104.

11. FREDERICK LAW OLMSTED, THE COTTON KINGDOM: A TRAVELER'S OBSERVATIONS ON COTTON AND SLAVERY IN THE AMERICAN SLAVE STATES 452 (Arthur M. Schlesinger ed., 1953) (1861).

12. *Id.* at 453.

13. *But see* PETER LINEBAUGH & MARCUS REDIKER, THE MANY-HEADED HYDRA: SAILORS, SLAVES, COMMONERS, AND THE HIDDEN HISTORY OF THE REVOLUTIONARY ATLANTIC (2000) (discussing the harsh treatment of sailors between the seventeenth and eighteenth centuries within the context of the spread of Atlantic capitalism through the maritime state).

submission of servants to a master's physical control.[14] However, throughout the nineteenth century, decades after the ratification of the Thirteenth Amendment had declared an end to involuntary servitude,[15] seamen on American vessels were subject to physical coercion by their masters in addition to capture, summary rendition, and imprisonment if they attempted to leave their work.[16] Indeed, the provisions of the notorious Fugitive Slave Act, which required the rendition of runaway slaves and provided for the punishment of those who aided them,[17] appear to have been modeled on provisions in the Merchant Seamen's Act of 1790, which dealt with the problem of ship-jumping sailors.[18]

There is no denying that the legal regimes under which enslaved Africans and merchant seamen toiled were very different. The horrors suffered by Africans on the middle passage from Africa to North America and the subsequent sufferings they and their descendants endured in the fields, shops, and households of the eastern seaboard and the Caribbean were far greater than those inflicted on seamen.[19] Seamen were bound to a single voyage and had some legal protections.[20] Nonetheless, there are interesting similarities between the two groups.

Like slaves, merchant seamen stand out as an anomaly in the nineteenth century, an era otherwise supposedly devoted to the ideal of free labor. Like slaves, merchant seamen (along with fishermen) were subject to federal laws providing for their forced return to their toils if they deserted.[21] However, the source of Congress' power to so legislate is not apparent on the face of the Constitution. In the nineteenth century, the Supreme Court ostensibly resolved this difficulty by deciding that both the

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14. *See generally* ROBERT J. STEINFELD, THE INVENTION OF FREE LABOR: THE EMPLOYMENT RELATION IN ENGLISH AND AMERICAN LAW AND CULTURE, 1350-1870 (1991) [hereinafter FREE LABOR] (arguing that contractual servitude in America was redefined as a form of involuntary servitude in the late nineteenth century by running afoul of the new American anti-slavery tradition and thereby leaving free labor as the sole legitimate employment relationship among white adults).

15. U.S. CONST. amend. XIII.

16. 3 JAMES KENT, COMMENTARIES ON AMERICAN LAW, at *177 (1873).

17. Fugitive Slave Act of 1793, ch. 7, 1 Stat. 302 (repealed 1864).

18. Act of July 20, 1790, ch. 29, 1 Stat. 131 (1790). The provisions of the Merchant Seamen's Act were made applicable to sailors in the fisheries in 1792. Act of Feb. 16, 1792, ch. 6, 1 Stat. 229 (1792).

19. *See* NIGEL TATTERSFIELD, THE FORGOTTEN TRADE: COMPRISING THE LOG OF THE DANIEL AND HENRY OF 1700 AND ACCOUNTS OF THE SLAVE TRADE FROM THE MINOR PORTS OF ENGLAND, 1698-1725, at 155-91 (1991) (describing the passage of one vessel engaged in the slave trade and estimating that out of 452 slaves taken aboard, 206 had died in the middle passage). *See generally* HUGH THOMAS, THE SLAVE TRADE: THE STORY OF THE ATLANTIC SLAVE TRADE: 1440-1870 (1997) (detailing the history of the Atlantic slave trade).

20. 3 KENT, *supra* note 16, at *181-97.

21. *See infra* Part I.

Fugitive Slave Clause[22] and the grant of admiralty jurisdiction[23] implied that Congress has legislative powers not specifically included in the various grants found in Article I, Section 8 of the Constitution.[24]

This Article explores the relationship between the law of maritime labor and the law of slavery. In the eighteenth century, both were part of a whole range of unfree labor relations. In the nineteenth century, both remained unfree labor even as the rest of the working world increasingly depended on monetary and contractual relations. Additionally, both slaves and sailors labored in a world subject to federal legislation.

Part one of this Article examines the Fugitive Slave Act and the Merchant Seamen's Act. Part II looks at the history of labor prior to the founding of the United States of America. Part III looks at the problems of the maritime labor market and the problems of slave labor, noting the similarities between the two. Part IV looks at nineteenth century developments in the control of both maritime labor and fugitive slaves. Part V demonstrates some connections between the legal regimes governing slave and maritime labor.

I. THE MERCHANT SEAMEN'S ACT AND THE FUGITIVE SLAVE ACT.

A. The Merchant Seamen's Act

In 1790, Congress enacted a bill that provided for the summary seizure of laborers fleeing from their work and for their return to their place

22. U.S. CONST. art. IV, § 2, cl. 3 (providing that "[n]o Person held to Service or Labour in one State, under the Laws thereof, escaping into another, shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, but shall be delivered up on Claim of the Party to whom such Service or Labour may be due").

23. U.S. CONST. art. III, § 2, cl. 1 (extending the judicial power of the United States to "all Cases of admiralty and maritime Jurisdiction").

24. *Compare* Prigg v. Pennsylvania, 41 U.S. 539, 615 (1842) (concluding that the Fugitive Slave Clause carried with it the implicit power of Congress to enforce it), *with* Butler v. Boston & Savannah Steamship Co., 130 U.S. 527, 557 (1889) (concluding that the grant of admiralty and maritime jurisdiction implies congressional authority to legislate in the area of admiralty law). The Supreme Court indicated that the implied legislative power pursuant to the grant of admiralty jurisdiction was first recognized in Waring v. Clarke, 46 U.S. (5 How.) 440 (1847). *See, e.g.*, O'Donnell v. Great Lakes Dredge & Dock Co., 318 U.S. 36, 41 (1943) (asserting that the Supreme Court had, since *Waring v. Clarke*, sustained Congress' amendments to maritime law). Professor David Robertson, however, has argued that *Butler* was the first case in which that recognition took place. *See* DAVID W. ROBERTSON, ADMIRALTY AND FEDERALISM 144 (1970) (stating that Justice Bradley, in *Butler v. Boston*, held that "[a]s the Constitution extends the judicial power of the United States to all cases of admiralty and maritime jurisdiction . . . the power of legislation on the same subject must necessarily be in the national legislature and not in the state legislature").

of work.[25] The Act also provided for the punishment of anyone attempting to aid a laborer who was fleeing his master.[26] The laborers subject to the Act were not slaves or indentured laborers, but sailors.[27] The Act was not the Fugitive Slave Act, which would later be passed by the Second Congress in 1793,[28] but the Merchant Seamen's Act.[29]

The Merchant Seamen's Act originated just over a year after the new federal government came into being. On April 29, 1790, the House of Representatives appointed a committee to prepare a bill for the government of seamen in the merchant service.[30] The bill was presented to the House and, after some minor amendments, was passed without debate on June 25th.[31] On June 28th, the Senate received and read the bill and assigned it to a committee.[32] The committee proposed three amendments with which the Senate agreed.[33] The House agreed to all but one of the amendments, from which the Senate then receded.[34] The bill was then signed by the Speaker of the House and the Vice President.[35] On July 20, 1790, President Washington signed it into law.[36]

This scant legislative history[37] may not be sufficient to create a clear picture as to what prompted the passage of the Merchant Seamen's Act, but the terms of the Act indicate the importance of preserving maritime labor for the new republic. Those engaged in maritime labor were protected so long as they were working; if they tried to avoid their work, they were punished.[38]

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25. Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 134 (1790).

26. *Id.* at § 4.

27. *Id.* at § 1.

28. Fugitive Slave Act of 1793, ch. 7, 1 Stat. 302 (1793) (repealed 1864).

29. Act of July 20, 1790, ch. 29, § 1, 1 Stat. 131 (1790).

30. *See* 3 DOCUMENTARY HISTORY OF THE FIRST FEDERAL CONGRESS OF THE UNITED STATES OF AMERICA, 1789-1791, at 389 (Linda Grant De Pauw ed., 1977) [hereinafter DOCUMENTARY HISTORY].

31. *Id.* at 476-77.

32. *Id.* at 478, 491.

33. *Id.*

34. *Id.* at 506-09.

35. DOCUMENTARY HISTORY, *supra* note 30, at 506-09.

36. *Id.* at 521.

37. Perhaps one reason why Congress had no real interest in debating the Merchant Seamen's Act was that, at the same time, it was considering the much more hotly contested issue of whether to leave New York. *See* WILLIAM J. MACLAY, JOURNAL OF WILLIAM MACLAY, UNITED STATES SENATOR FROM PENNSYLVANIA, 1789-1791, at 304-06 (Frederick Ungar Publishing Co., 1965) (1890) (recording the following entry: "Committed the Settlement bill and one for the regulation of seamen. And now came the residence," followed by a detailed account of the discussion on moving the residence of Congress out of New York along with a less than flattering description of contemporary New Yorkers).

38. *See* Act of July 20, 1790, ch. 29, § 5, 1 Stat. 131, 133 (1790) (stating that seamen may be imprisoned for refusing to go to sea).

Much of the Act was devoted to protecting maritime labor. Section one required a written contract and provided that seamen without a contract were to be paid the highest wage shipping from the same port within three months' time.[39] Section three provided that a ship's mate, along with the majority of the crew, had the right to have their vessel inspected for its seaworthiness.[40] Section four prohibited debts in excess of one dollar from being collected from seamen while engaged in a voyage.[41] Section six provided for regular payment of wages and for penalties for the non-payment of wages.[42] Section eight required vessels that weighed over 150 tons and were manned by more than ten sailors to have ample medical supplies,[43] and section nine specified the minimum provisions per person that the ship must carry on transatlantic voyages.[44] These provisions arguably protected the personal safety of seamen and, by giving them a certain amount of economic security, may have encouraged them to join the merchant service.

These beneficent provisions were, however, balanced by coercive ones.[45] Section two set out penalties for seamen who failed to put themselves on board at the appointed hour.[46] Section three provided that any seaman who failed to sail on a vessel that had been deemed seaworthy after inspection would be subject to both imprisonment without the rights of bail, main prize, or habeas corpus, and a fine in the amount of twice the seaman's advance.[47] Section four set out a penalty for harboring fugitive seamen of ten dollars for each day the seaman was kept in hiding, with half the penalty going to the person prosecuting the action and the other half to the United States.[48] Section five provided that if a seaman was absent without leave for any period less than forty-eight hours, he would forfeit three days' wages for every day that he was absent.[49] Moreover, if a seaman was absent longer than forty-eight hours, he forfeited all of his

39. *Id.* at § 1.
40. *Id.* at § 3.
41. *Id.* at § 4.
42. *Id.* at § 6.
43. Act of July 20, 1790, ch. 29, § 8.
44. *Id.* at § 9.
45. Many of these coercive provisions appear to have been taken from the British Act for the Better Regulation and Government of the Merchants Service of 1729. *See* MARCUS REDIKER, BETWEEN THE DEVIL AND THE DEEP BLUE SEA: MERCHANT SEAMEN, PIRATES, AND THE ANGLO-AMERICAN MARITIME WORLD 140-41 (1987) (describing how the act "limited [the] prerogatives" of seamen).
46. Act of July 20, 1790, ch. 29, § 2, 1 Stat. 131, 131-32 (1790).
47. *Id.* at § 3. The question of how this provision of the Merchant Seamen's Act related to, or passed muster under, the Non-Suspension Clause of the United States Constitution, U.S. CONST. art. I, § 9, cl. 2, has not been discussed.
48. Act of July 20, 1790, ch. 29, § 4, 1 Stat. 131, 133 (1790).
49. *Id.* at § 5.

wages, as well as all of his goods and chattels that were already onboard the vessel; he was also required to pay the master of the vessel for any damages sustained in hiring a replacement as a result of his absence.[50] Section 7 provided that the master of a vessel could obtain the arrest of an absent or deserting seaman simply by demonstrating that the seaman had signed a contract; upon proof of contract and desertion, the arrested seaman would then be confined until the vessel on which the seaman had agreed to sail was ready to leave or the master requested his discharge, with all costs of confinement taken from the seaman's wages.[51] In 1792, without any real controversy,[52] Congress extended the provisions of the Merchant Seamen's Act that provided for the capture, return, and punishment of ship-jumping seamen to fishermen.[53]

During the first years of the republic, Congress regularly considered the constitutional basis for each bill it enacted into law. However, neither the Merchant Seamen's Act nor the Act regulating fisheries was prefaced with any finding as to the basis of congressional power to legislate.[54] This aspect of the Acts is discussed later in this article.[55] It is worth noting, however, that while the Merchant Seamen's Act, which applied only to ships in the oceanic and interstate coasting trades, could have been enacted under Congress' power to regulate commerce,[56] the Act regulating fisheries did not apply only to the movement of fish among the states or between the United States and foreign nations or the Indian Tribes, but also to the relations on ships that brought fish to a single state for processing and sale.[57] Therefore, it was not within the constitutional power to regulate commerce.[58]

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50. *Id.*

51. *Id.* at § 7.

52. No source records any Senate debate on this topic. The *Annals of Congress* records some discussion on the propriety of subsidizing the fisheries, but they do not discuss the propriety of subjecting workers in the fisheries to summary seizure and return. *See* 3 ANNALS OF CONG. 362-401 (1792) (discussing subsidy of fisheries).

53. *See* Act of Feb. 16, 1792, ch. 6, § 4, 1 Stat. 229, 231 (1792) (providing that [f]ishermen deserting their vessels "shall be liable to the same penalties as deserting seamen or mariners . . . and upon the like complaint and proof, be apprehended and detained").

54. *See* Act of July 20, 1790, § 1, 1 Stat. 131, 131 (1790); Act of Feb. 16, 1792, ch. 6, § 1, 1 Stat. 229, 229 (neglecting to include findings of constitutional authority).

55. *See infra* text accompanying notes 208-12.

56. *See* U.S. CONST. art. I, § 8, cl. 3 (defining Congress' commerce power).

57. Act of Feb. 16, 1792, ch. 6, §§ 2-4, 1 Stat. 229, 230-31 (applying the provisions of the act to ships based on their weights, but making no distinction based on whether or not the ships actually were engaged in interstate travel). For a good account of the cod industry and the method by which fish were processed and then sold, see MARK KURLANSKY, COD: A BIOGRAPHY OF THE FISH THAT CHANGED THE WORLD (1997).

58. *See* U.S. CONST. art. I, § 8, cl. 3 (granting Congress the power to regulate interstate commerce).

Whatever the presumed constitutional basis for regulating sailors and fisherman, several provisions of the Merchant Seamen's Act were nearly identical to provisions of the Fugitive Slave Act, passed by Congress two and a half years later.

B. The Fugitive Slave Act

In 1788, three Virginians went into Pennsylvania and took John Davis, a former slave who was free under Pennsylvania law, to Virginia where he was claimed as a slave.[59] Later that same year, a Pennsylvania court indicted the three Virginians for kidnapping.[60] In 1791, the governor of Pennsylvania requested that Virginia return the fugitives pursuant to the provision in the Constitution requiring that those fleeing from justice in one state to another state be returned to the state from which they had fled.[61] The governor of Virginia referred the matter to the attorney general of Virginia.[62] The attorney general advised the governor not to extradite the fugitives to Pennsylvania because the Constitution had not provided any method for putting the Fugitive from Justice Clause into effect, and the governor of Virginia could not comply with the mandate of the Constitution without some affirmative provision of law.[63] As a result of Virginia's refusal, the governor of Pennsylvania wrote to President Washington seeking legislation that would enable the states to deliver fugitives to other states.[64] In October 1791, Washington transmitted the various communications of the officials in Virginia and Pennsylvania to Congress.[65] Congress referred the issue to a committee.[66]

The House of Representatives' committee proposed "a bill respecting fugitives from justice and from the service of masters."[67] As originally

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59. PAUL FINKELMAN, SLAVERY AND THE FOUNDERS: RACE AND LIBERTY IN THE AGE OF JEFFERSON 84-86 (2d ed. 2001). As Finkelman explains, the Virginians thought they had some claim to the slave, who had gained his freedom as a result of a Pennsylvania law requiring all slaves be registered by their master. *Id.* at 85-86. Because of a border dispute between Pennsylvania and Virginia, the master's failure to register the slave may have been due to the fact that he believed that he was a resident of Virginia, which had no such requirement. *Id.* at 85. When Davis rented the slave to Miller in Virginia, he was already a legally free man and subsequently returned to Pennsylvania with the help of some alleged abolitionists. *Id.* Therefore, the attempted recovery of John was considered a kidnapping and not the return of a slave. *Id.* at 86.

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.* at 86-87.

64. FINKELMAN, *supra* note 59, at 87-88.

65. *Id.* at 89.

66. *Id.* Washington's letter, along with the various communications are reprinted in 1 AM. STATE PAPERS MISC. 38, 38-43 No. 22 (1791).

67. FINKELMAN, *supra* note 59, at 89.

proposed, the bill contained three sections.[68] Section one required the executive authority of any state or territory to arrest and turn over fugitives who were wanted in another state or territory.[69] Section two provided that "fugitive slaves" could be seized by their masters and taken before any judge or magistrate, "based on 'the depositions of two or more credible persons, that the person so claimed doth owe, under the laws of the state from which he fled, service or labor to the person claiming' the slave."[70] The second section also allowed a master unable to seize a fugitive to apply to any judge or magistrate for a warrant to effect the arrest of the fugitive.[71] The bill also provided for unspecified fines against officers refusing to arrest, and anyone hiding or obstructing the arrest of, a fugitive from labor; these fines could be recovered by the master through an action in either the federal circuit or district court.[72]

After it left the committee, the bill was further amended. In its final form, it included a new section two, which provided for punishment of any person who freed a fugitive from justice who was being transported to the state from which he had fled by a fine of not more than $500 and a term of imprisonment of not more than one year.[73] The third section contained no provision for the issuance of warrants for the arrest of fugitives from labor whom their masters had been unable to seize.[74] The final section, now the fourth, contained no penalties for interfering with the arrest of a fugitive from labor and set the fine for helping a fugitive at $500, recoverable by the master in an action for debt in any court (not just the circuit and district courts).[75] The final bill was signed into law on February 12, 1793.[76]

Read together, the provisions of the Merchant Seamen's Act, designed to prevent the desertion of seamen and to provide for the recovery of those seamen who did desert, and the provisions of the Fugitive Slave Act, dealing with the recovery and return of runaway slaves, are strikingly similar.

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68. Paul Finkelman, *The Kidnapping of John Davis and the Adoption of the Fugitive Slave Law of 1793,* 56 J. S. HIST. 397, 408-10 (1990).

69. *Id.* at 409, n.37.

70. *Id.* at n.38.

71. *Id.*

72. FINKELMAN, *supra* note 59, at 91 (comparing the rights of fugitives and slaves under the House Bill of 1791).

73. Fugitive Slave Act of 1793, ch. 7, § 2, 1 Stat. 302, 302 (1793).

74. *Id.* at § 3.

75. *Id.* at § 4.

76. *Id.*

MERCHANT SEAMEN'S ACT OF 1790

SEC. 7. *And be it [further] enacted,* That if any seaman or mariner, who shall have signed a contract to perform a voyage, shall, at any port or place, desert, or shall absent himself from such ship or vessel, without leave of the master, or officer commanding in the absence of the master, it shall be lawful for any justice of peace within the United States (upon the complaint of the master) to issue his warrant to apprehend such deserter, and bring him before such justice; and if it shall then appear by due proof, that he has signed a contract within the intent and meaning of this act, and that the voyage agreed for is not finished, altered, or the contract otherwise dissolved, and that such seaman or mariner has deserted the ship or vessel, or absented himself without leave, the said justice shall commit him to the house of correction or common goal of the city, town or place, there to remain until the said ship or vessel shall be ready to proceed on her voyage, or till the master shall require his discharge, and then to be delivered to the said master, he paying all the cost of such commitment, and deducting the same out of the wages due to such seaman or mariner.

FUGITIVE SLAVE ACT OF 1793

SEC. 3. *And be it also enacted,* That when a person held to labour in any of the United States, or in either of the territories on the northwest or south of the river Ohio, under the laws thereof, shall escape into any other of the said states or territory, the person to whom such labour or service may be due, his agent or attorney, is hereby empowered to seize or arrest such fugitive from labour, and to take him or her before any judge of the circuit or district courts of the United States, residing or being within the state, or before any magistrate of a county, city or town corporate, wherein such seizure or arrest shall be made, and upon proof to the satisfaction of such judge or magistrate, either by oral testimony or affidavit taken before and certified by a magistrate of any such state or territory, that the person so seized or arrested, doth, under the laws of the state or territory from which he or she fled, owe service or labour to the person claiming him or her, it shall be the duty of such judge or magistrate to give a certificate thereof to such claimant, his agent or attorney, which shall be sufficient warrant for removing the said fugitive from labour, to the state or territory from which he or she fled.

SEC. 4. *And be it [further] enacted,* That if any person shall harbor or secrete any seaman or mariner belonging to any ship or vessel, knowing them to belong thereto, every such person, on conviction thereof before any court in the city, town or county where he, she or they may reside, shall forfeit and pay ten dollars for every day which he, she or they shall continue so to harbor or secrete such seaman or mariner, one half to the use of the person prosecuting for the same, the other half to the use of the United States.

SEC. 4. *And be it further enacted,* That any person who shall knowingly and willingly obstruct or hinder such claimant, his agent or attorney in so seizing or arresting such fugitive from labour, or shall rescue such fugitive from such claimant, his agent or attorney when so arrested pursuant to the authority herein given or declared; or shall harbor or conceal such person after notice that he or she was a fugitive from labour, as aforesaid, shall, for either of the said offences, forfeit and pay the sum of five hundred dollars. Which penalty may be recovered by and for the benefit of such claimant, by action of debt, in any court proper to try the same; saving moreover to the person claiming such labour or service, his right of action for or on account of the said injuries or either of them.

To be sure, the above comparison reveals some notable differences. The Merchant Seamen's Act gave jurisdiction to the justices of the peace for proceedings to seize runaway seamen, while the Fugitive Slave Act gave jurisdiction to any state or federal court for proceedings to recover runaway slaves.[77] Moreover, the penalty for harboring runaway seamen could only be recovered after a criminal conviction in state court, with half the penalty going to the party bringing the prosecution (presumably the United States attorney), and the other half going to the United States.[78] The penalty for hiding runaway slaves was payable to the person owning the slaves.[79] Also, the Merchant Seamen's Act required that a party seeking

77. *Compare* Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 133-34 (1790), *with* Fugitive Slave Act of 1793, ch. 7, § 3, 1 Stat. 302, 302-05 (1793).

78. Act of July 20, 1790, ch. 29, § 4, 1 Stat. 131, 133 (1790).

79. Fugitive Slave Act of 1793, ch. 7 § 4, 1 Stat. 302, 305 (1793).

the return of a seaman first go to a magistrate before seizing the seaman;[80] the Fugitive Slave Act, on the other hand, allowed a master to seize his putative chattel first and then go to a magistrate.[81] These differences, however, are not as great as they might seem at first glance.

While the Merchant Seamen's Act did not specifically provide for federal jurisdiction, those attempting to enforce seamen's articles of shipping had the option of going into the federal district courts under those courts' admiralty jurisdiction.[82] Even prior to the Merchant Seamen's Act, the federal district courts had jurisdiction to enforce shipping articles.[83] Also, while the masters of vessels seeking the return of their seamen pursuant to the act were not able to get any money from the penalties imposed on persons aiding the seamen's flight, they were able to recover penalties from the seamen themselves,[84] something that the owners of fugitive slaves could not readily do as slaves had no property of their own. Finally, while masters of vessels were required to go to a justice of the peace to obtain warrants for seamen who had fled their vessels, and masters of slaves seeking slaves' return were not required to obtain warrants, a warrant was issued as a matter of course to any ship master in possession of a written contract binding the seaman to his vessel.[85] Because the Merchant Seamen's Act required masters of vessels to issue written contracts, masters in conformity with the law would have had contracts and therefore could have readily obtained warrants.[86]

III. LABOR IN THE EIGHTEENTH CENTURY

From medieval times through the eighteenth century, the relationship between individuals and their labor was judged to be one that interested the community.[87] Thus, workers could be forced to labor at the harvest even if

80. Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 134 (1790).

81. Fugitive Slave Act of 1793, ch. 7 § 3, 1 Stat. 302, 302-05 (1793).

82. Act of Sept. 24, 1789, ch. 20, § 9, 1 Stat. 73, 76-77 (1789) (establishing the admiralty and maritime jurisdiction of the United States district courts).

83. By the latter part of the nineteenth century, the scope of the district courts' admiralty jurisdiction had become considerably greater than it had been at the time of adoption. *See* Ins. Co. v. Dunham, 78 U.S. (11 Wall.) 1, 35-36 (1870) (expanding the admiralty jurisdiction of the federal district courts to include all maritime contracts consistent with the view of Justice Story in *De Lovio v. Boit*, 7 F. Cas. 418 (C.C.D. Mass. 1815)); Jackson v. Steamboat Magnolia, 61 U.S. (20 How.) 296, 302 (1857) (expanding the admiralty jurisdiction to include all torts on waters navigable in interstate or international commerce).

84. Act of July 20, 1790, § 7, 1 Stat. 131, 134 (1790).

85. *Id.*

86. *See id.* at § 1 (requiring master or commander of ship to enter into an agreement in writing with every seaman or mariner aboard).

87. *See* STEINFELD, FREE LABOR, *supra* note 14, at 15-54 (discussing the labor statutes

they were free men.[88] There were laws from the medieval and early modern periods requiring workers to labor under the threat of physical punishment.[89] These regulations, which were based on the statutes of workers, were understood to be no different than the regulation of other hierarchical relationships.[90]

In the eighteenth century, the understanding of the relationship of the worker to his master changed from a relationship based on status to one based on voluntary contract.[91] However, the subject of the contract included not just labor, but also the person of the laborer.[92] This was most apparent in the cases of slaves, indentured servants, and apprentices.[93] However, even unbound servants and laborers were viewed as having more than a contract for labor with their masters.[94] For example, maritime laborers, from the first mate to a ship's boy, whether they were slave, bound, or free, were tied to their vessels and were, with few exceptions, entirely subject to the will of their vessels' masters.[95]

Peter Linebaugh and Marcus Rediker have argued that the development of imperialism and capitalism preceding and during the eighteenth century spawned new methods of coercing and exploiting workers.[96] Specifically, they assert:

> [T]he many expropriations of the day—of the commons by enclosure and conquest, of time by the puritanical abolition of holidays, of the body by child stealing and the burning of women, and of knowledge by the destruction of guilds and assaults on paganism—gave rise to new kinds of workers in a new kind of slavery, enforced directly by terror.[97]

Linebaugh and Rediker's description of the construction of labor in the early modern period is both provocative and convincing. However, the fact that various sorts of expropriation and exploitation resulted in the

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that operated outside of the individual master-servant contracts).

88. *See id.* at 22 (stating that the mid-fourteenth century Ordinance and Statute of Laborers included a compulsory duty to work).

89. *See id.* at 16 (identifying corporal punishment as an enforcement mechanism available to masters of household servants).

90. *Id.*

91. *See id.* at 4-5 (discussing the evolution of contractual unfree labor in the United States and England).

92. STEINFELD, FREE LABOR, *supra* note 14. at 4.

93. *See* WILLIAM E. NELSON, AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830, at 50-51 (1975) (discussing the masters' property interest in slaves, indentured servants, apprentices and children).

94. RICHARD B. MORRIS, GOVERNMENT AND LABOR IN EARLY AMERICA 208-25 (1946).

95. *See* REDIKER, *supra* note 45, at 207-12 (discussing the autocratic control the captain of the ship exercised over all levels of a ship's hierarchy).

96. LINEBAUGH & REDIKER, *supra* note 13, at 40.

97. *Id.*

oppression, or, as Linebaugh and Rediker describe it, the enslavement of workers during this period does not explain why seamen were singled out by federal legislation for exceptionally oppressive treatment. Nor does it explain why the maritime labor market continued to be regulated by physical, as opposed to economic, coercion and why that coercion remained even after slavery had ended.[98]

A. Slave Labor and Maritime Labor

Slaves were, of course, regarded as a form of property.[99] Slavery as an institution was recognized throughout the colonies' early states.[100] Evidence indicates that from the earliest period of colonization, claims by masters in one colony for the return of their fleeing slaves from another colony appear to have been allowed.[101] To be sure, slavery was not monistic, but the expectation of slave owners in English-speaking North America was that they could seek the aid of the government in the capture of any of their human chattel who ran for freedom. [102]

Most maritime labor was free; however, by entering into a particular voyage, a seaman subjected himself to labor discipline more severe than any other type, with the exceptions of slaves and men in the army and

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98. The work of Linebaugh and Rediker is nevertheless relevant to this discussion. Their work centers on the oppression of maritime labor through physical coercion in the British Empire during the eighteenth century, a period and place in which labor was, according to Linebaugh and Rediker, generally subject to physical coercion and oppression. *Id.* However, they do not explain why in the United States during the nineteenth century, when the coercion of labor was increasingly left to economic forces, sailors remained subject to capture and penal sanctions for leaving their jobs.

99. NELSON, *supra* note 93, at 50.

100. *See* PAUL FINKELMAN, AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY 46 (1949) (noting that until the 1830s the slave states and the free states attempted to accommodate each other's ideologies and interests).

101. *See* 2 JOHN CODMAN HURD, THE LAW OF FREEDOM AND BONDAGE IN THE UNITED STATES 405 (1862) (identifying the status of slaves and indentured servants as the only form of debt of service or labor that was universally maintained between the colonial jurisdictions).

102. *See* FINKELMAN, *supra* note 59, at 83 (noting that the records of the Constitutional Convention show that the framers assumed that the state and local governments would return fugitive slaves to other states). The literature on slavery is vast. Some useful recent works include: DON E. FEHRENBACHER, THE SLAVEHOLDING REPUBLIC: AN ACCOUNT OF THE UNITED STATES GOVERNMENT'S RELATIONS TO SLAVERY (Ward M. McAfee ed., 2001); SAIDIYA V. HARTMAN, SCENES OF SUBJECTION: TERROR, SLAVERY AND SELF-MAKING IN NINETEENTH-CENTURY AMERICA (1997); THOMAS D. MORRIS, SOUTHERN SLAVERY AND THE LAW, 1619-1860 (1996); SLAVERY & THE LAW (Paul Finkelman ed., 1997). For an interesting discussion of the experience of some free Africans in the early colonial period, see T.H. BREEN & STEPHEN INNES, "MYNE OWNE GROUND": RACE AND FREEDOM ON VIRGINIA'S EASTERN SHORE, 1640-1676 (1980).

navy.[103] The vessel's master could discipline a seaman through confinement or beating.[104] Any effort to break the contract on the part of the seaman would subject him not only to forfeiture of wages, as might be expected in a breach of contract, but also to imprisonment at the hand of civil authorities so that his master could reclaim him.[105] This right to physically coerce the person of the seaman was embodied in acts of Britain's Parliament, the laws passed by several of the colonial legislatures, and the customary law of the sea that was applied by both colonial courts and the Royal Vice Admiralty Courts.[106] Furthermore, in the colonies, both the local courts and the courts of vice admiralty used the local jails to force seamen to stay with their ships.[107]

B. Other Land Based Labor

When describing the law of England in the eighteenth century, Blackstone divided servants into four categories: menial servants, who lived within the master's household and were hired for a year; apprentices, who were bound to their masters to learn a trade; laborers, who lived on their own and were hired by the day or week; and stewards, factors, and bailiffs, who managed other servants.[108] In addition, North America had a large population of indentured servants who provided much of the labor for the Southern plantations until the eighteenth century.[109] Employers had a proprietary interest in their employees, and all forms of labor were subject

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103. *See* Jonathan M. Gutoff, *Original Understandings and the Private Law Origins of the Federal Admiralty Jurisdiction: A Reply to Professor Casto*, 30 J. MAR. L. & COM. 361, 394-95 (1999) (comparing the liberal contract enforcement law for mariners with the severe duty enforcement law, which was only surpassed in severity by the military).

104. MORRIS, *supra* note 94, at 262-63.

105. *See* Gutoff, *supra* note 103, at 395 (identifying imprisonment as a threatened punishment to force seamen to do their duties and to bind them to their ships).

106. *See, e.g.*, REPORTS OF CASES IN THE VICE ADMIRALTY OF THE PROVINCE OF NEW YORK AND IN THE COURT OF ADMIRALTY OF THE STATE OF NEW YORK, 1715-1788, at 5 (Hon. Charles Merrill Hough ed., 1925) (noting a 1717 case to enforce a claim for wages in the Vice Admiralty Court of New York).

107. *See* REDIKER, *supra* note 45, at 141.

108. WILLIAM BLACKSTONE, 1 COMMENTARIES *425-28.

109. *See* MORRIS, *supra* note 94, at 315-90 (describing the sources and extent of bound labor in the colonies and specifically noting the demand for redemptioners on tobacco plantations). For descriptions of how a society based on bound labor was transformed into one based on slavery, see RICHARD S. DUNN, SUGAR AND SLAVES: THE RISE OF THE PLANTER CLASS IN THE ENGLISH WEST INDIES, 1624-1713 (1972), and RICHARD B. SHERIDAN, SUGAR AND SLAVERY: AN ECONOMIC HISTORY OF THE BRITISH WEST INDIES, 1623-1775 (1973).

to physical coercion.[110] Courts regularly required specific performance, and there were statutes providing for the return of indentured servants.[111]

IV. SLAVERY AND MARITIME LABOR RELATIONS: THE NEED FOR PHYSICAL CONTROL

The need for physical control of slaves requires no explanation. If slaves could escape, they would. While seamen were not subject to the same physical constraints as slaves, there were very real incentives to leave one vessel for another because maritime labor was a scarce and valuable commodity.

At the time of the founding, "the only significant form of commerce [for North America] was maritime commerce."[112] Prior to the introduction of the railroad, inland travel was far too cumbersome to move goods, and, prior to the introduction of the steam-powered vessel, travel upriver was not a practical means of importing goods into the various states.[113] While the economy of the United States would eventually turn inward,[114] at the end of the eighteenth century maritime trade was the life-blood of the country.[115] Of course, this maritime commerce depended on a steady supply of skilled maritime labor. John Adams noted that the English recognized the importance of trained seamen.[116] This importance is reflected in Chancellor Kent's *Commentaries on American Law*, which introduces thirty-one heavily footnoted pages on the rights and duties of seamen by noting that seamen were "usually a heedless, ignorant, audacious, *but most useful* class of men."[117]

Today, the supply of maritime labor is not as much of a problem; indeed, in this country, skilled merchant sailors go looking for jobs.[118] Nonetheless, in the eighteenth century maritime labor was at a premium because the skill required to man a merchant vessel was difficult to acquire

110. *See* NELSON, *supra* note 93, at 50-51 (specifically discussing imposition of corporal punishment on all kinds of bound laborers).

111. *Id.*

112. Gutoff, *supra* note 103, at 391.

113. *See* JAMES M. MCPHERSON, BATTLE CRY OF FREEDOM 11-12 (C. Vann Woodward ed., 1988) (describing the state of transportation in the United States before the coming of steam power).

114. *See* GORDON S. WOOD, THE RADICALISM OF THE AMERICAN REVOLUTION 137-39 (Vintage Books ed. 1993) (1991) (detailing the expansion of domestic trade in the U.S.).

115. RICHARD BUEL, JR., IN IRONS: BRITAIN'S NAVAL SUPREMACY AND THE AMERICAN REVOLUTIONARY ECONOMY (Yale University Press 1998).

116. Letter from John Adams to Thomas Jefferson (Aug. 4, 1785), *in* 1 THE ADAMS-JEFFERSON LETTERS, 1735-1826, at 48-49 (Lester J. Capon ed., 1959).

117. 3 KENT, *supra* note 16, at *176 (emphasis added).

118. *See generally* JOHN MCPHEE, LOOKING FOR A SHIP (1990) (describing the problems associated with making a living as a merchant mariner).

and the trade was highly dangerous.[119] The various functions that are now mechanized and, in many cases, computerized on a merchant vessel or naval ship required the joint and trained efforts of the ship's crew.[120] Thus, the control of vessel's propulsion, navigation, and, on a man-of-war, weapons, which are today mechanized and, often, computerized, was accomplished manually by individuals who needed years to become fully adept at their various skills.[121] In addition to requiring many skills, maritime labor was uncomfortable,[122] dangerous,[123] and subject to the severe discipline of the ship's master.[124]

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119. *See* Gutoff, *supra* note 103, at 392-93 (detailing the skills and difficult conditions of sailors).

120. *See* DANA, *supra* note 2, at 5 (describing a new sailor's bewilderment at the preparations involved in preparing to set sail).

121. *Id. See also* GREG DENING, MR. BLIGH'S BAD LANGUAGE: PASSION, POWER AND THEATRE ON THE BOUNTY 57 (1992) (describing the seamen's precise language and coordinated control over their dangerous environment); Gutoff, *supra* note 103, at 392 n.129 (detailing the need for highly skilled actions). For some idea of the complexity of sailing a square-rigged vessel, see Samuel Eliot Morison's description of tacking; that is, turning a vessel through the wind, in SAMUEL ELIOT MORISON, JOHN PAUL JONES: A SAILOR'S BIOGRAPHY 73-75 (1959). Today, a novice sailor would learn how to tack on his or her first day on a small pleasure craft. Morison's description, along with an explanation of a set of eighteenth century notes for staffing the maneuver, runs for nearly two pages, and it does not include an explanation of technical terms or what the individual sailors would have to do.

122. The sailors of a vessel had their quarters in steerage, the part of the vessel in front of the main mast, from which Dana's famous book describing his service as a sailor takes its title. *See* DANA, *supra* note 2, at 5 (describing his living quarters on the *Pilgrim*). This was the part of the vessel most exposed to the action of wind and water. Despite the sailors' constant efforts to caulk the space between the vessel's planks with tar and strands of hemp fiber picked from rope, it was almost always leaky and, in the North Atlantic, cold. In addition, for many of the men, who were mostly in their teens and twenties, the confinement in a single-sex environment for months at a time could hardly have been desirable. *But see* BARRY R. BURG, SODOMY AND THE PIRATE TRADITION: ENGLISH SEA ROVERS IN THE SEVENTEENTH-CENTURY CARIBBEAN, at xxxviii (2d ed. 1995) (stating that "one of the most unusual homosexually oriented groups in history" was that of seventeenth-century Caribbean pirates). For a discussion of the scholarly trend to view pirates as countercultural heroes, see Laurence Osborne, *A Pirate's Progress: How the Maritime Rogue Became a Multicultural Hero*, LINGUA FRANCA, Mar. 1998, at 40.

123. *See, e.g.*, DANA, *supra* note 2, at 369 (giving a graphic description of the effects of scurvy on various seamen); DENING, *supra* note 121, at 162-63 (noting the nutritional problems faced by crews). Especially hazardous to the health of crews was the slave, or Guinea, trade to the west coast of Africa. As one contemporary ditty admonished: "Beware and take care/ Of the Bight of Benin/ For one that comes out/ There are forty go in." REDIKER, *supra* note 45, at 47. While the mortality rate may not have been quite that high, one historian estimates that, by the time a slave ship had finished trading along the African coast and was preparing to depart for the westward "middle passage" across the Atlantic to the Caribbean or North America, it could have lost somewhere between two-thirds and three-quarters of its crew. TATTERSFIELD, *supra* note 19, at 25-26; *see also* REDIKER, *supra* note 45, at 47-48 n.82 (noting extraordinary death rates among seamen).

124. *See, e.g.*, DENING, *supra* note 121, at 113-14 (tabulating the percentage of crew

Because of the highly-skilled nature of the work and its harsh conditions, maritime labor was relatively scarce.[125] As Samuel Johnson observed to James Boswell when the two took a short trip by boat off the Scottish coast, "No man who can contrive to get himself into jail would go to sea. For going to sea is like going to jail, except that at sea you can drown."[126] One scholar has disputed this view of life at sea, or least life in the eighteenth century Royal Navy.[127] However, it is clear that finding sailors, especially in time of war when sailors were required by both navies and merchant fleets, was a problem.[128] A reasonable conclusion is that other labor markets must have been more attractive.[129]

The shortage in skilled maritime labor gave sailors the great opportunity to jump ship in search of higher wages and better conditions. Thus, at least according to some participants in the industry, sailors in the transatlantic trade were expected to jump ship in New York if the wages for seamen were higher there than they had been when the sailor signed his contract.[130] Similarly, ship jumping was viewed as a common problem in São Tomé, where ships in the slave trade stopped to prepare for their westward passage.[131]

Because ships were highly mobile, a sailor successfully jumping from one ship to another was unlikely to be caught by his old master, and his new master would be more than happy to have him take on the nearly endless labor of working a ship. The records of the advertisements in newspapers in colonial and early federalist Rhode Island[132] indicate that the

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members who were flogged on the British voyages of discovery in the Pacific); REDIKER, *supra* note 46, at 205-53 (describing how authority and violence were used to discipline seamen).

125. *See* Gutoff, *supra* note 103, at 392-93 (discussing the scarcity of maritime labor).

126. James Boswell, *Journal of a Tour to the Outer Hebredies with Samuel Johnson, LLD, in* JAMES BOSWELL & SAMUEL JOHNSON, BOSWELL'S JOURNAL OF A TOUR TO THE OUTER HEBREDIES WITH SAMUEL JOHNSON, LLD AND JOHNSON'S JOURNEY TO THE WESTERN ISLANDS OF SCOTLAND 247 (R. Chapman ed. 1924)

127. *See generally* N.A.M. RODGER, THE WOODEN WORLD: AN ANATOMY OF THE GEORGIAN NAVY (1986) (detailing the social history of the British Navy in the eighteenth-century). For a view of the Navy during the later Georgian period contrary to Rodger's, see JONATHAN NEALE, THE CUTLASS AND THE LASH: MUTINY AND DISCIPLINE IN NELSON'S NAVY (Pluto Press 1985).

128. *See* REDIKER & LINEBAUGH, *supra* note 13, at 161 (discussing the increased demand for sailors in time of war).

129. *See* Gutoff, *supra* note 103, at 395 (describing laws enacted to encourage people to enter the maritime industries).

130. *See* Lamb v. Two Trunks of Merchandize (N.Y. Ct. Adm. 1785), *in* REPORTS OF CASES IN THE VICE ADMIRALTY OF THE PROVINCE OF NEW YORK AND IN THE COURT OF ADMIRALTY OF THE STATE OF NEW YORK, 1715-1788, at 254 (Hon. Charles Merrill Hough ed., 1925)).

131. *See* TATTERSFIELD, *supra* note 19, at 117-18 (describing one man's ship jumping experience in São Tomé).

132. These advertisements have been compiled in MAUREEN ALICE TAYLOR, 1

maritime trades provides an unusual level of geographic mobility both for those engaged as seamen and for those wishing to leave other forms of bound labor, whether as indentured servants, slaves or members of the military. Throughout the eighteenth century masters and owners of vessels were placing advertisements for the return of sailors who jumped ship,[133] and numerous advertisements seeking the return of apprentices, slaves and other servants warned, undoubtedly in vain, masters of vessels not to take on the fugitives.[134] The ready mobility of sailors may be seen in one notice, in which the lieutenant of one vessel, the *Providence*, identified a ship-jumping sailor by noting that the sailor claimed that he had previously jumped ship from "the Phoenix Man of War."[135]

In colonial times, the problem of slaves running to freedom was minimal.[136] Similarly, while all of North America was under British control, it was possible to maintain a uniform regime for the control of, if not actual control over, maritime labor.[137] This changed with the development of distinct sovereigns in the former British colonies and the growing move toward abolition of slavery in the northern colonies.[138]

By the time the First Congress concluded, the slave economy of the south was under threat from a growing abolitionist movement in the north, especially in Pennsylvania.[139] At the same time, the maritime economy of the United States was feeling pressure on several fronts. The new United

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RUNAWAYS, DESERTERS, AND NOTORIOUS VILLAINS FROM RHODE ISLAND NEWSPAPERS: THE PROVIDENCE GAZETTE, 1762-1800 (1994) [hereinafter 1 RUNAWAYS] and MAUREEN ALICE TAYLOR & JOHN WOOD SWEET, 2 RUNAWAYS, DESERTERS, AND NOTORIOUS VILLAINS FROM RHODE ISLAND NEWSPAPERS: ADDITIONAL NOTICES FROM THE PROVIDENCE GAZETTE, 1762-1800 AS WELL AS ADVERTISEMENTS FROM ALL OTHER RHODE ISLAND NEWSPAPERS FROM 1732-1800 (2001) [hereinafter 2 RUNAWAYS].

133. *See* TAYLOR, 1 RUNAWAYS, *supra* note 132, at 1, 12, 131; TAYLOR & SWEET, 2 RUNAWAYS *supra* note 132, at 19, 21, 37, 57, 61, 81, 115; *see also Id.* at 106 (seeking six merchant sailors who had sailed away with their master's vessel).

134. *See generally* TAYLOR, 1 RUNAWAYS *supra* note 132; TAYLOR & SWEET, 2 RUNAWAYS *supra* note 132, at ; *see also* TAYLOR, 1 RUNAWAYS 129 (seeking the return of "three NEGROES" and speculating "as they all went away in a Canoe, that they probably may be taken up at Sea by some Vessel or other.")

135. *See* TAYLOR, 1 RUNAWAYS *supra* note 132, at at 43.

136. To be sure, those fleeing slavery, if they felt comfortable doing so, could try to go to sea, but for those removed from the major seaports with no experience or knowledge of seagoing traffic, this may not have been an option. *See* FINKELMAN, *supra* note 100, at 46 (explaining the predicament of slaves who had no means of political participation or enforcement of favorable laws).

137. *See* REDIKER, *supra* note 45, at 119-21 (describing the proliferation of the vice-admiralty courts).

138. *See* FINKELMAN, *supra* note 100, at 41-46 (explaining the growing prohibition of slavery in the northern colonies, through banning the importation of slaves from Africa and restricting the importation of slaves from other states).

139. *See id.* at 46-55 (detailing how Pennsylvania dealt with slavery).

States was cut off from supplying the British sugar plantations.[140] It was this trade that provided the livelihood of the great cod fisheries off New England, which were, in the words of John Adams, a nursery of "seamen."[141] Moreover, the fact that hostilities between France and England were imminent would have directly driven up the price of maritime labor both by making maritime labor more dangerous and by reducing the number of maritime workers available for the merchant service.[142] In addition, there was the problem that seamen signing onto vessels in one state might try to jump ship in another.[143] Of course, one explanation may be that American merchants simply wanted the same protections they had had under imperial British law.

In colonial times, the problem of fleeing slaves had not been much of a problem. To be sure, in *Somerset v. Stewart*, the Court of King's Bench had held that a slave brought into England from the colonies could not be held as a slave in England.[144] According to the court, the right of slave owners to hold slaves had no basis in natural law, and therefore this right could be enforced only as a matter of positive law.[145] Because there was no positive English law recognizing slavery, there was no basis for holding a slave in England.[146] However, the northern colonies respected the southern colonies' laws and interests. Because of comity principles and the recognition of slavery in both the northern and southern colonies, masters from one state had no problem seeking the return of slaves from other states.[147] After independence, however, the northern states began to move toward the abolition of slavery.[148] The Fugitive Slave Clause in Article IV of the Constitution was a direct response to this concern.[149]

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140. *See generally* BUEL, *supra* note 115 (discussing the British Navy and the American revolutionary economy).

141. KURLANSKY, *supra* note 57, at 100.

142. *See* REDIKER & LINEBAUGH, *supra* note 13, at 146-48 (describing plans to acquire and retain maritime labor during times of war).

143. This problem was also noted during the framers' debates on the Constitution. *See* 4 DEBATES IN THE SEVERAL STATES ON THE ADOPTION OF THE FEDERAL CONSTITUTION 19 (Jonathan Elliot ed., 2d ed. 1941) (noting the problem of the "contemptible state of Rhode Island" refusing to turn over a seaman who had stolen a vessel from its Dutch owner).

144. Somerset v. Stewart, 98 Eng. Rep. 499 (K.B. 1772).

145. *Id.*

146. *Id.* For discussions of *Somerset*, see William M. Wiecek, Somerset: *Lord Mansfield and the Legitimacy of Slavery in the Anglo-American World*, 42 U. CHI. L. REV. 86 (1974); Jerome Nadelhaft, *The* Somersett *Case and Slavery: Myth, Reality, and Repercussions*, 51 J. NEGRO HIST. 193 (1966).

147. *See* FINKELMAN, *supra* note 100, at 21 (describing how slavery was affected by the full faith and credit and the privileges and immunities clauses).

148. *See id.* at 41-46 (discussing the individual approaches towards abolition taken by the northern states).

149. *See* U.S. CONST. art IV, § 2, cl. 3, *amended by* U.S. CONST. amend. XIII ("No Person held to Service or Labour in one State, under the Laws thereof, escaping into another

V. THE SLAVE POWER AND THE MARITIME POWER

While the regulation of servile and maritime labor may have been necessary and unexceptional in the eighteenth century, the nineteenth century saw a dramatic change in relations between master and servant. As the nineteenth century progressed, bound forms of labor such as indenture and apprenticeship declined, and more and more workers became free laborers.[150] All forms of labor, with the exceptions of seamen and slaves, increasingly became a purely contractual, monetary relationship between employer and employee.[151] Employers lost the right to compel the performance of their employees.[152] Up until the Emancipation Proclamation, however, the power of slave owners to compel the work of slaves increased. With the passage of the Fugitive Slave Act of 1850, it became easier for slave catchers to return slaves to, or capture free persons of African descent for, slaveholders.[153] Similarly, the power of merchant captains over the seamen on their vessels remained nearly absolute.[154]

Throughout the period, courts approved of brutal and humiliating treatment of seamen, and the Merchant Seamen's Act of 1790 and its successor, the Shipping Commissioners Act of 1872, continued to allow masters to have fleeing seamen summarily seized, imprisoned, and returned to their vessels.[155] Indeed, even after the Civil War, the Emancipation Proclamation, and the Thirteenth Amendment had ended slavery, federal law continued to provide for the summary return and imprisonment of

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shall, in Consequence of any Law or Regulation therein, be discharged from such Service or Labour, But shall be delivered up on Claim of the Party to whom such Service or Labor may be due").

150. *See generally* STEINFELD, FREE LABOR, *supra* note 14, at 147-72 (discussing the early American development of free labor). Recently Steinfeld has argued that because of economic coercion labor remained unfree throughout the nineteenth century in spite of rhetoric to the contrary. ROBERT J. STEINFELD, COERCION, CONTRACT, AND FREE LABOR IN THE NINETEENTH CENTURY 39-84 (2001) [hereinafter COERCION & CONTRACT]. The question remains, however, why seamen were not included in the rhetorical change; that is, assuming that labor was largely unfree in the nineteenth century, why were maritime laborers unfree in a different way than their land-based counterparts?

151. STEINFELD, FREE LABOR, *supra* note 14, at 147-72.

152. *Id.* at 172.

153. Fugitive Slave Act of 1850, ch. 60, § 6, 9 Stat. 462, 463-64 (1850).

154. *See infra* Part V.A.2 (comparing treatment of slaves and sailors during the nineteenth century).

155. Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 134 (1790); Shipping Commissioners Act, ch. 322, § 51, 17 Stat. 262, 273-74 (1872).

runaway seamen,[156] "somewhat as runaway slaves were in the days of slavery."[157]

A. *The Rise of Free Labor and the Anomalous Position of Slavery and Maritime Labor*

During the nineteenth century, the relationship between labor and management became increasingly monetary; the simple exchange was work for money. Neither worker nor employer had any further obligation, and when the worker ceased to give labor, the employer's only recourse was to stop giving money.[158] Neither employers using corporal punishment, nor courts using the jails, could or would specifically enforce labor contracts.[159]

The exceptions to this trend in labor were slaves and seamen. As is well known, up until the end of the Civil War, the federal government made it increasingly easy for slave owners and putative slave owners to claim fugitive slaves and, indeed, any person of African descent claimed to be a slave.[160] As may be less well known, the lot of sailors remained much the same as it had been when Congress passed the Merchant Seamen's Act.[161] While the flogging of merchant sailors was prohibited in 1850,[162] sailors continued to be subject to the physical correction of their masters and to summary seizure, jailing, and return to their vessels should they attempt to flee.[163] Even after involuntary servitude, and with it chattel slavery, had been eliminated by the Thirteenth Amendment, Congress

156. *Id.* (providing for terms of imprisonment of up to three months for desertion and one month for being absent without leave, and providing for the summary return of deserting sailors and the forfeiture of their wages).

157. Robertson v. Baldwin, 165 U.S. 275, 288 (1897) (Harlan, J., dissenting).

158. *See* STEINFELD, FREE LABOR, *supra* note 14, at 147-73.

159. *Id.* at 147-53.

160. *See* FEHRENBACHER, *supra* note 103, at 231-51 (discussing the treatment of fugitive slaves from 1850 to 1864).

161. *See generally* Act of July 20, 1790, ch. 29, 1 Stat. 131 (1790) (providing minimum working standards for seamen and setting penalties for dereliction of duties and desertion).

162. *See* Act of Sept. 28, 1850, ch. 60, 9 Stat. 513, 515 (1850) (appropriating money for the Navy to provide mail service with the proviso that "flogging in the navy and on board vessels of commerce, be, and the same is hereby, abolished from and after the passage of this act"). The elimination of flogging in the merchant service appears to have been placed into the proviso to eliminate flogging in the Navy by Senator Yulee, an opponent of the bill, in an effort to get northern senators to vote against it. The amendment passed without any debate. CONG. GLOBE, 31st Cong., 1st Sess. 2060 (1850); JOURNAL OF THE SENATE, 31st Cong., 1st Sess. 691 (1850). It did not, however, prevent the proviso from being adopted, nor, unsurprisingly, did it stop the naval appropriations bill that it was a part of from becoming law. For an interesting discussion of the regional politics and psychology behind the debates in Congress, see GLENN, *supra* note 9, at 113-17.

163. Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 134 (1790).

increased the penalties on ship-jumping sailors, and the Supreme Court held that the abolition of involuntary servitude had done nothing to change the conditions under which seamen labored.[164]

1. The Growth of Employment at Will

As Robert Steinfeld has explained, the understanding that employers had a proprietary interest in their employees started to fade during the nineteenth century.[165] Courts questioned, and eventually denied, the rights of employers to specifically enforce their contracts of employment and to physically correct their employees.[166] According to Steinfeld, by the end of the eighteenth century English authorities held that hired adult laborers were not subject to physical correction by their employers nor to punishment by the law if they left their employment.[167] Only poor debtors and minors bound to service or apprenticeship were subject to physical coercion.[168] By the fourth decade of the nineteenth century, courts had completely rejected the physical power of employers over their employees and had refused to specifically enforce employment relations.[169]

2. Slaves and Sailors: A Class Apart

Even as the nineteenth century moved away from the concept that an employer had the right to physically control his employees, the power of slave owners to restrain their labor force grew. Similarly, the nineteenth century saw little diminution in the power of ships' captains over the seamen under their command.

With the rise of abolitionism, many northern states passed laws making the rendition of fugitive slaves more difficult by according the purported slaves at least a modicum of due process.[170] These efforts were, however, rendered somewhat ineffectual by the Supreme Court's decision in *Prigg v. Pennsylvania*, in which the Court considered the appeal of a slave catcher who had been convicted of kidnapping in Pennsylvania for seizing a runaway slave.[171] He claimed that his conviction was contrary to the Fugitive Slave Act.[172] The Court held that Congress had the implicit

164. *Robertson*, 165 U.S.at 287-88 (1897).
165. STEINFELD, FREE LABOR, *supra* note 14, at 147-72.
166. *Id.* at 149-53.
167. *Id.* at 148.
168. 1 ZEPHANIAH SWIFT, LAWS OF THE STATE OF CONNECTICUT 218-21 (1796).
169. *See* STEINFELD, FREE LABOR, *supra* note 14, at 149-53.
170. *See* FEHRENBACHER, *supra* note 102, at 205-30 (discussing the fugitive slave legal dilemma through 1850).
171. Prigg v. Pennsylvania, 41 U.S. (16 Pet.) 539, 543 (1842).
172. *Id.* at 558.

power to legislate to enforce the Fugitive Slave Clause of the Constitution.[173] While the Court did hold that state courts were not bound to enforce the Act,[174] in 1850 Congress passed another fugitive slave act, making it even easier for masters to recover their slaves from northern states.[175]

Similarly, during the first decades of the nineteenth century, the power of masters over seamen continued unabated. The Merchant Seamen's Act continued to provide for the return of runaway sailors in a manner similar to that in which slaves were recovered under the Fugitive Slave Act.[176] A sailing master's authority to physically correct a sailor remained. In the same work in which he had expressed doubt that the physical power of an employer over an employee was "consistent with the spirit of contract,"[177] Chancellor Kent explained that the master of a vessel "may imprison, and also inflict reasonable corporal punishment upon a seaman, for disobedience to reasonable commands, or for disorderly, riotous, or insolent conduct; and his authority, in that respect, is analogous to that of a master on land over his apprentice or scholar."[178] While Dana believed that eventually public sentiment, as expressed by juries awarding damages to wrongfully or excessively punished sailors against their ships' masters, would eventually bring about an end to the punishments inflicted on seamen,[179] he was wrong.

Throughout the nineteenth century, the reported decisions of American courts continued to approve of practices that may strike the modern reader as too horrendous to read about, much less experience firsthand.[180] In 1839, the Federal District Court for the Eastern District of Pennsylvania considered the beating of a ship's cook and concluded that a "blow with a dirty frying pan" or "wiping a dirty knife" on the face of the person whose duty it was to keep those articles clean was not an aggravated or cruel assault.[181] For those who might be inclined to conclude just the

173. *Id.* at 616.

174. *Id.* at 622-23.

175. Fugitive Slave Act of 1850, ch. 60, § 6, 9 Stat. 462, 463-64 (1850).

176. Act of July 20, 1790, ch. 29, § 7, 1 Stat. 131, 134 (1790).

177. 3 KENT, *supra* note 16, at *261.

178. *Id.* at *181-82.

179. *See* DANA, *supra* note 2, at 470-71 (predicting that "the infliction of [corporal punishment] upon intelligent and respectable men, will be an enormity which will not be tolerated by public opinion, and by juries, who are the pulse of the body politic").

180. There are, of course, problems in using reported decisions as a basis for empirical findings. The point, however, is not that seamen lost personal injury actions at any greater or lesser rate as the nineteenth century progressed, but rather that, throughout the middle and latter part of the nineteenth century, when employers on land had no right to physically correct their employees, members of the bench were willing to tolerate fairly harsh physical abuse of seamen.

181. Forbes v. Parsons, 9 F. Cas. 417, 420 (E.D. Pa. 1839).

opposite, the court explained that "[n]obody will believe that the law which governs the deportment of men on shore to each other, can be applied to their habits and conduct on board of a ship."[182] Over twenty years later, the Federal District Court for the District of California ruled that it was neither cruel nor excessive punishment to keep two waiters ironed together for ten hours for fighting in the cabin of a vessel.[183] In 1876, the Pennsylvania Court of Common Pleas considered an action brought by a sailor who claimed, and apparently proved, that he had been punished by his hands being tied behind his back and being hung from under his arms so that his "toes just touch[ed] the deck."[184] The plaintiff was awarded $300 in damages, but, on a motion for a new trial, the court concluded that the punishment would not have been unreasonable if the plaintiff's hands had been fastened *before* him.[185] The court then denied the motion for a new trial, but only on the condition that the plaintiff accept a reduction of the verdict to $50.[186] Two years later, in an action for damages by a steamship chambermaid against the master of a ship on which she had served, the evidence revealed that the chambermaid had threatened the master with a lump of coal, and the master had kicked the coal from her hand and hit her in the face with sufficient force to break her nose.[187] The court held that the captain had been reasonable in his use of force.[188] Similarly, in 1891, the Federal District Court for the District of South Carolina dismissed an action by a seaman against a master who had beaten him about the head with a broomstick for being *suspected* of theft.[189]

In 1895, *The Red Record,* a publication of the sailors' union, told its readers that over the prior seven years fourteen men had been killed by shipboard discipline; it also gave numerous examples of sadistic treatment for which masters had received little or no punishment.[190] In one case where seamen had complained that their vessel was undermanned, they had

182. *Id.* at 419.
183. Lindrop v. Dall, 15 F. Cas. 556, 556 (D. Cal. 1868).
184. Flynn v. Corning, 2 W.N.C. 223 (Pa. Com. Pl. 1876).
185. *Id.*
186. *Id.*
187. Johns v. Brinker, 30 La. Ann. 241, 241-42 (1878).
188. *Id.* at 243-44.
189. Healy v. Cox, 45 F. 119, 119 (D.S.C. 1891).
190. BRUCE NELSON, WORKERS ON THE WATERFRONT: SEAMEN, LONGSHOREMEN AND UNIONISM IN THE 1930S 13 (1988) (quoting NATIONAL SEAMEN'S UNION OF AMERICA, THE RED RECORD: A BRIEF RESUME OF SOME OF THE CRUELTIES PERPETRATED UPON AMERICAN SEAMEN AT THE PRESENT TIME (Coast Seamen's Journal) (1895)). Again, this is not intended as evidence of how seamen were typically treated, but as evidence of what the authorities would tolerate. *C.f.,* HYMAN WEINTRAUB, ANDREW FURUSETH: EMANCIPATOR OF THE SEAMEN 3 (Univ. of Cal. Press) (1959) (stating that abusive treatment of sailors was an exception to the usual treatment).

been beaten, put in irons, and locked in the forecastle for two weeks.[191] The shipping commissioner had ruled that this was "justifiable discipline."[192] In another case that resulted in an acquittal, a mate had bitten a seaman so that "'a piece was bitten out of his left palm, a mouthful of flesh was bitten out of his left arm, and his left nostril [was] torn away as far as the bridge of his nose.'"[193]

The legislative sphere did not treat seamen any better than the judicial branch. In 1872, Congress added to the provisions against ship-jumping sailors by adding the penalty of imprisonment after a seaman's service had been completed to the right to summarily detain and force seamen to serve, which had been granted by the Merchant Seamen's Act of 1790.[194] In *Robertson v. Baldwin,* the Supreme Court upheld this act in the face of a challenge based on the Thirteenth Amendment.[195] Despite the dissent of Justice Harlan, who noted that sailors "were seized, somewhat as runaway slaves were in the days of slavery,"[196] the Court, after reviewing an extensive array of historical material, concluded:

> In the face of this legislation upon the subject of desertion and absence without leave, which was in force in this country for more than sixty years before the Thirteenth Amendment was adopted, and similar legislation abroad from time immemorial, it cannot be open to doubt that the provision against involuntary servitude was never intended to apply to their contracts.[197]

Seamen on American vessels were the only class of workers who would not be completely free of the threat of imprisonment for simply quitting their jobs until the second decade of the twentieth century.[198]

VI. THE RELATION BETWEEN SLAVE AND MARITIME LABOR

What was the reason for this power over maritime labor, power that was, by the middle of the nineteenth century, similar only to the power of a

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191. Nelson, *supra* note 190, at 13.

192. *Id.*

193. *Id.*

194. *See* Shipping Commissioners Act, ch. 322, § 51, 17 Stat. 262, 273-74 (1872) (repealed).

195. 165 U.S. 275, 287-88 (1897) (holding that the Thirteenth Amendment's prohibition of involuntary servitude does not apply to seamen's contracts).

196. *Id.* at 288 (Harlan, J., dissenting).

197. *Id.* at 287-88.

198. Steinfeld argues that the decision in *Baldwin* reflected a broader division within the United States on the meaning of free labor. Nonetheless, he acknowledges that the decision was only meant to apply to seamen, and he does not point to any other large class of workers who were subject to physical coercion. STEINFELD, COERCION & CONTRACT, *supra* note 151, at 270-75.

slaveholder over his slaves and, after the ratification of the Thirteenth Amendment, unique? At this point, it is not possible to say. Several reasons are apparent and may provide partial answers. One reason may have been racial and ethnic. As Jeffrey Bolster has shown, the maritime trades were more open than most to persons of color.[199] Similarly, as Marcus Rediker has explained, the labor market for the transatlantic trade was truly international,[200] and some may have doubted that the Anglo-Saxon concept of the purely contractual nature of labor could have been understood by other nations and cultures. Thus, even the sensitive abolitionist Richard Henry Dana, who decried the flogging he had witnessed aboard the ship,[201] was, in 1840, able to explain the need for ships' masters to have physical power over their workers:

> There may be pirates or mutineers among them; and one bad man will often infect all the rest; and it is almost certain that some of them will be ignorant foreigners, hardly understanding a word of our language, accustomed all their lives to no influence but force, and perhaps nearly as familiar with the use of the knife as with that of the marlin-spike.[202]

Six decades later, Andrew Furuseth, the maritime labor organizer, would complain that the American merchant service was "manned by the residuum of the population, not only of our country and race, but of all countries and races."[203]

Another reason may have been the continued perception of sailors as irresponsible beings who could not regulate their own labor relations. As Chancellor Kent explained, "[s]ubordination is essential to be strictly enforced, among a class of men whose manners and habits partake of the attributes of the element on which they are employed."[204]

Still another reason may have been that the solutions for land-based and sea-based labor both favored the employers because they held the political power. Whether sanctioned by law or not, land-based workers not marked by distinctive physical features (as were slaves of African descent)

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199. *See* W. JEFFREY BOLSTER, BLACK JACKS: AFRICAN AMERICAN SEAMEN IN THE AGE OF SAIL 2 (Harvard Univ. Press 1997) (stating that about one-fifth of American sailors were African-American men during the nineteenth century).

200. *See* REDIKER, *supra* note 46, at 79 (citing examples of two men who traveled internationally as privateers).

201. DANA *supra* note 2, at 122-23; *see also* DANA, *supra* note 2, at 415 (stating "no one can have a greater abhorrence of the infliction of such punishment than I have, and a stronger conviction that severity is bad policy with a crew").

202. *Id.*

203. JOSEPH P. GOLDBERG, THE MARITIME STORY: A STUDY IN LABOR MANAGEMENT RELATIONS 11 (Harvard Univ. Press 1957) (quoting the AMERICAN FEDERATIONIST 94 (1900)).

204. 3 KENT, *supra* note 16, at *182.

could always leave and disappear into the expanding population and vast landmass of North America. However, sailors had nowhere to go while they were at sea, and foreign sailors without a clear command of English had few options, even in port. If the law would allow it, a property interest could be claimed in their labor. It is not certain that there was a nineteenth century "maritime power" similar to the antebellum "slave power," which, like the slave power, may have controlled the courts and legislatures, but it is possible.

The two justices most associated with the slave power were Justice Story, who upheld the Fugitive Slave Act of 1793 and held any state laws to the contrary to be unconstitutional,[205] and Chief Justice Taney, who upheld the Fugitive Slave Act of 1850 and issued the *Dred Scott* opinion, which guaranteed the right of slaveholders to travel with their slaves, invalidated the Missouri Compromise, and denied persons of color citizenship in the United States.[206]

Story and Taney were also two of the three great proponents of the federal admiralty jurisdiction. At the start of the nineteenth century, Story advocated the expansion of the admiralty jurisdiction to include all torts within the "ebb and flow of the tide," and all contracts of a maritime nature, although the jurisdiction of the English High Court of Admiralty had been limited to waters outside the body of a country and to contracts made aboard a ship.[207] Story also drafted legislation that expanded the body of admiralty law into the Great Lakes.[208] During his tenure as Chief Justice, Taney authored several opinions that expanded the admiralty jurisdiction inland to include all waters navigable in interstate and international commerce, which rendered Justice Story's legislative program superfluous.[209] Moreover, at about the same time that the Court in *Prigg* was setting out the implied legislative power of Congress under the

205. *See* Prigg, v. Pennsylvania, 41 U.S. 539, 614 (1842) (holding that state laws that were contrary to the Fugitive Slave Act of 1793 offended the Extradition Clause found in U.S. CONST. art. IV, § 2, cl. 2).

206. Dred Scott v. Sandford, 60 U.S. 393 (1856), *superseded by*, U.S. CONST. amend. XIII, § 1 (holding that slaves were not entitled to the rights of citizens, and Congress could not change that fact).

207. *See* De Lovio v. Boit, 7 F. Cas. 418, 419 (C.C.D. Mass. 1815). The Supreme Court eventually accepted Story's views. *See* Ins. Co. v. Dunham, 78 U.S. 1, 13 (1870) (arguing in favor of a large jurisdiction over maritime contracts).

208. *See* 28 U.S.C. § 1873 (1948) (granting right to jury trials for parties to cases arising among vessels navigating lakes).

209. *See, e.g.*, Propeller Genesee Chief v. Fitzhugh, 53 U.S. 443, 457 (1851) (stating that "certainly there can be no reason for admiralty power over a public tide-water, which does not apply with equal force to any other public water used for commercial purposes and foreign trade").

Fugitive Slave Clause, it was starting to articulate a similar implied legislative power under the grant of admiralty jurisdiction.[210]

The standard explanation for the relationship between the Supreme Court's slavery and admiralty jurisprudence is the one offered by Preeble Stoltz.[211] For Stoltz, the most reasonable explanation is that the pro-slavery justices wished to expand congressional power under the admiralty jurisdiction as an alternative to expanding congressional power under the Commerce Clause.[212] According to Stoltz, the fear was that, under an expanded understanding of its Commerce Clause power, Congress could have prohibited slavery altogether.[213] While possible, this seems unlikely. The southern states had a firm grip on the Senate, and, indeed, had managed to pass the harsh (or favorable to slave owners) Fugitive Slave Act of 1850.[214] If abolitionist forces had been able to control Congress, they could have done slavery significant damage simply by prohibiting the interstate slave trade, which formed an important, if not vital, part of the southern economy.[215]

A better explanation may be that the Court's findings that the Fugitive Slave Clause and the grant of admiralty jurisdiction implied that Congress had the power to legislate on those topics were a result of the republic's need to maintain itself as a stable economic unit. This economic stability would not have been possible if slaves had been able to flee to the north without much fear of capture, or if merchant sailors in service on the great inland lakes and rivers, as well as on the high seas, had been able to leave their employment at will. Whether this explanation is accurate cannot now be determined. It is clear, however, that both the conditions of maritime labor and slavery and the jurisprudence of admiralty and the federal power over fugitive slaves have a very close relationship.

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210. *Prigg*, 41 U.S. at 622-23.

211. Preble Stoltz, *Pleasure Boating and Admiralty:* Erie *at Sea*, 51 CAL. L. REV. 661 (1963).

212. *Id.* at 676 (stating that the Court tried to disassociate the judicial power in admiralty from the legislative power over commerce to broaden the legislature's jurisdiction over inland water ways).

213. *Id.* at 674 n.53 (stating that some southern slaveholding interests were concerned that a shift in power in Congress would lead to direct congressional action against slavery).

214. Fugitive Slave Act of 1850, ch. 7, 9 Stat. 462 (1850).

215. *Compare* FREDERIC BANCROFT, SLAVE-TRADING IN THE OLD SOUTH 88-90 (1931) (arguing that the slave trade was a necessary part of the southern economy for states along the Atlantic seaboard where the plantation economy was no longer profitable), *with* MICHAEL TADMAN, SPECULATORS AND SLAVES: MASTERS, TRADERS, AND SLAVES IN THE OLD SOUTH 111-32 (1989) (arguing that an extensive slave trade existed within the old south, but that the motive for the trade was extra profit rather than economic survival).

VII. CONCLUSION

No form of labor was more abusive to workers than slave labor. None other presented such perpetual coercion and loss of hope. None other involved the same threat of losing family ties. Nonetheless, there were other forms of coerced labor in the eighteenth century. Maritime labor in particular was subject to provisions similar to those applied to slaves. Both slavery and maritime labor endured as examples of forced labor, anomalies of the nineteenth century. Forced maritime labor endured into the twentieth century. The existence of slavery until the passage of the Thirteenth Amendment can perhaps be explained by the existence of a slave power. Why forced maritime labor survived as long as it did requires further exploration.