Introduction

In January, 1845, the British brig *Comet* sailed into Charleston harbor from its home port in Bermuda. Local officials boarded the vessel, inspected the cargo, the crew, and the shipping articles and manifests. This cursory examination would have been familiar to anyone conducting long-distance travel in the nineteenth century, as port authorities, customs officials, and taxing agents had long served as bureaucratic gatekeepers of Atlantic port cities. As part of the filtering process, Charleston officials forcibly removed John Joel, a "coloured cabin boy … of 12 or 13 years," from the *Comet* and escorted him to the municipal jailhouse, a place renowned by locals and foreign visitors alike for its deplorable conditions. State law required the adolescent's immediate imprisonment as his very presence in the state was thought to pose a threat to the safety and welfare of the citizenry.[1]

According to many white South Carolinians, John Joel suffered from a "moral contagion" that demanded a host of specific actions, including incarceration, to prevent an epidemic of lawlessness. In the era of the Second Great Awakening, seamen's aid societies and sailors' homes emerged in various port cities, including Charleston, in hopes of controlling maritime workers and curbing their drinking, gambling, cursing, and fighting. In the eyes of middle-class critics, historian Paul Gilje tells us, "the stereotypical sailor represented … the antithesis of the rising bourgeois values that became the hallmark of the Age of Revolution": temperance, frugality, restraint, politeness. But the moral

[1] [Sir Richard] Pakenham to [Foreign Secretary George Hamilton-Gordon the Earl of] Aberdeen, January 29, 1845, FO 84/596, pp. 60–61; Consul [William] Ogilby to Pakenham, February 6, 1845, FO 85/596, pp. 66–70. On Charleston's antebellum jailhouse generally, see Francis C. Adams, *Manuel Pereira; or The Sovereign Rule of South Carolina* (Washington, DC, 1853), 142–151, 165–167; "Charleston County Jail," Historic American Building Survey, SC-688, National Park Service (Washington, DC, 1995); Maurie D. McInnis, *The Politics of Taste in Antebellum Charleston* (Chapel Hill, 2006), 222–230.

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contagion that led to John Joel's incarceration did not conflict with the "values of the Age of Revolution"; instead, it was a central feature of it. What made John Joel dangerous was his alleged infection of liberty. Free black sailors posed a direct threat to the safety and welfare of Southern society, so the argument went, because they would inspire slaves to resent their current station and ultimately revolt. In this way, the infection of liberty would spread if not checked, and the resulting pandemic would be race war. Thus, regulating the moral contagion of John Joel and other itinerant free blacks was essential to "safeguarding the social organism" of antebellum South Carolina.[2]

Over time, other Southern states enacted similar restrictions. North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas all passed laws like the one that mandated John Joel's detainment in Charleston.[3] These laws remained in force in varying degrees until the Union blockade during the Civil War made their enforcement moot. Until then, the South maintained a legal regime of exclusion that specifically targeted the black seamen of the Atlantic world. From Wilmington down to Savannah, around the Florida Keys to Pensacola, Mobile, and New Orleans, free black maritime workers could not legally enter the port cities of the South for a significant portion of the antebellum era. While exact numbers are impossible to pinpoint, the number of arrests certainly reached more than ten thousand and likely double that.[4]

[2] Paul Gilje, *Liberty on the Waterfront: American Maritime Culture in the Age of Revolution* (Philadelphia, 2004), 6–7. On the revolutionary politics and actions of the multiracial maritime workforce, see Peter Linebaugh and Marcus Rediker, *The Many-Headed Hydra: Sailors, Slaves, Commoners, and the Hidden History of the Revolutionary Atlantic* (Boston, 2000), 328–329. Historian Rosser H. Taylor used the phrase "safeguarding the social organism" to describe the regulation of slaves, abolitionists, and free blacks in general. See Rosser H. Taylor, *Ante-Bellum South Carolina: A Social and Cultural History* (Chapel Hill, 1942), 171. On the ideology of the American Revolution, see Bernard Bailyn, *The Ideological Origins of the American Revolution* (Cambridge, MA, 1966). Bailyn's final chapter is entitled, "The Contagion of Liberty." On the connection between moral and biological contagions, see Martin Pernick, "Contagion and Culture," *American Literary History*, 14 (Winter 2002), 858–865.

[3] The following statutes represent the first iterations of the laws in every state that passed a Seamen Act, though nearly every state later amended these initial laws. *Acts Passed at the Annual Session of the General Assembly of the State of Alabama* (Tuscaloosa, 1838), 134–136; *Acts of the Legislative Council of the Territory of Florida* (1832), 143–145; *Laws of the State of Mississippi Passed at a Regular Biennial Session of the Legislature, Held in the City of Jackson in January and February ad 1842* (Jackson, 1842), 65–71; *Acts Passed at the Second Session of the Fifteenth Legislature of the State of Louisiana: Begun and Held in the City of New-Orleans, December 13, 1841* (New Orleans, 1842), 308–318; *General Laws of the Sixth Legislature of the State of Texas, Passed at Its Adjourned Session, Convened July 7, 1856* (Austin, 1857), 48–49; *Acts and Resolutions of the General Assembly of the State of South Carolina, Passed in December, 1822* (Columbia, 1823), 11–14; *Acts of the General Assembly of the State of Georgia Passed in Nov. and Dec. 1829*, 168–171; and *Acts Passed by the General Assembly of the State of North Carolina at the Session of 1830–1* (Raleigh, 1861), 29–31.

[4] Historian W. Jeffrey Bolster estimates that at least ten thousand sailors were affected by the laws. See W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge, MA, 1997), 206. My tabulations offer a higher total. See Appendix.

The enactment of laws barring the ingress of free black sailors, the so-called Negro Seamen Acts,[5] occurred simultaneously with the proliferation of proslavery ideology across large swaths of the slave South. Between the culmination of the Haitian Revolution and Nat Turner's revolt in 1831, white elites in the South closed ranks around a more generous appraisal of their peculiar institution. They argued that slavery was not a retrograde or even benign social system, as the aging Revolutionary generation had often remarked, but one that was beneficial to both master and slave and far preferable to the industrial work relations that were developing in parts of Europe and the northern United States. As this proslavery ideology developed, the continued incidence of slave insubordination caused a dilemma. No longer was it palatable to ascribe insurrection as an inevitable outcome of slavery's denial of man's inherent desire for freedom. If slavery was a "positive good," the cause of discontentment and insubordination required a new rationalization. Some offered idiosyncratic explanations – slave resistance was the result of a particularly egregious slaveowner or unique set of circumstances – but many others chose to externalize the origins of the menace. Galvanized by Denmark Vesey's alleged conspiracy in 1822, Southern ideologues implicated outside agitation and foreign corruption – or moral contagion – as the primary culprits for slave rebellion. This ideological move exonerated white slaveholders for their part in creating the context that inspired slave revolts. The concept of "moral contagion" helped sustain proslavery ideology by explaining how a supposedly obedient, happy, and docile slave population could come to resent and subvert slaveholder authority. Dangerous outsiders and foreign ideas were the culprits.[6]

And white Southerners were convinced the dangers were mounting. Rumors of slave revolts – both real and imagined – regularly circulated throughout the South, abolitionism was gaining new adherents around the Atlantic world, and new nations and old empires were eliminating slavery wholesale. With each new slave revolt, with the creation of each new abolition society, with every emancipation, Southern lawmakers increasingly obsessed over the threats that

[5] Throughout this volume, I equate the terms "Negro Seamen Acts," "race quarantines," and "Seamen Acts," and therefore use them interchangeably.

[6] Edlie L. Wong, *Neither Fugitive nor Free: Atlantic Slavery, Freedom Suits, and the Legal Culture of Travel* (New York, 2009), 193–195. On the development of proslavery ideology in the United States, see Drew Gilpin Faust, ed., *The Ideology of Slavery: Proslavery Thought in the Antebellum South, 1830–1860* (Baton Rouge, 1981); Alfred Brophy, *University, Court, and Slave: Pro-Slavery Thought in Southern Colleges and Courts and the Coming of the Civil War* (New York, 2017); Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York, 2009), 5–10. On the importance of the Haitian Revolution in this ideological refashioning, see Ashli White, *Encountering Revolution: Haiti and the Making of the Early Republic* (Baltimore, 2010), especially 124–165. On the importance of free blacks and the colonization movement to the development of proslavery ideology, see David Brion Davis, *The Problem of Slavery in the Age of Emancipation* (New York, 2014).

might penetrate their borders and foment abolitionism or slave insurrection.[7] Antislavery tracts and abolitionist newspapers were obvious areas of concern, as their primary message was demonizing slavery and clamoring for its eradication. So, Southern legislatures banned their publication and circulation.[8] Free black sailors, with their "moral pestilence" and "leperous [*sic*]" principles, were yet another "evil which comes from a distance" to "destroy subordination in the slave, and with it, the State itself," as one Charleston editorialist put it.[9] These actions of a few black sailors "from a distance," lawmakers deduced, was evidence enough that all itinerant free people of color sought the end of slavery, that all of them were infected with moral contagion.[10]

In fact, the architects and enforcers of the Seamen Acts so relied on the concept of free blacks' "moral contagion" that they often referred to the laws as quarantine measures. Banning the ingress of free black sailors was akin to banning someone infected with cholera; both were necessary precautions against imminent threats. But the Seamen Acts did not resemble other quarantine measures. First, some white sailors were also abolitionists, conveyed

[7] On the relationship between abolitionism, emancipation, and Southern politics, see Edward Bartlett Rugemer, *The Problem of Emancipation: The Caribbean Roots of the American Civil War* (Baton Rouge, 2008). Investigating the politics of slavery in regards to American foreign relations is a new and budding realm of inquiry. See Matthew Karp, *This Vast Southern Empire: Slaveholders at the Helm of American Foreign Policy* (Cambridge, MA, 2016) and Brian Schoen, *The Fragile Fabric of Union: Cotton, Federal Politics, and the Global Origins of the Civil War* (Baltimore, 2009).

[8] As historian Clement Eaton phrased it, "Throughout the Southern states arose a movement to establish a *cordon sanitaire* against the invasion of inflammatory [abolitionist] propaganda." This censorship at the borders was part of a larger "intellectual blockade," as Eaton termed it, to limit the exposure of abolitionism and other radical philosophies from reaching slaves and poor whites. This assault on the freedom of expression, Southern regulators posited, was a necessary prophylactic against the "moral treason" committed by those who introduced slaves to antislavery ideologies. Clement Eaton, *The Freedom-of-Thought Struggle in the Old South* (1940; New York, 1964), 199, 335. For a more recent study of the Southern battle against free expression, see Michael Kent Curtis, *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham, NC, 2000), 117–270.

[9] *Charleston Mercury*, September 3, 1823.

[10] While paranoia motivated Southern lawmakers to target all free black sailors, they had legitimate reasons to be wary of at least some of them. Some black mariners were bona fide abolitionists, circulated the very antislavery publications Southern lawmakers loathed and banned, and even secreted away slaves, conducting them along the maritime equivalent of the Underground Railroad. Still others passed their freedom papers on to slaves, hoping they might use them to slip north of the Mason–Dixon Line. On the activities of free black sailors on the Charleston waterfront, see Michael D. Thompson, *Working on the Dock of the Bay: Labor and Enterprise in an Antebellum Southern Port* (Columbia, 2016). On the "Saltwater Railroad," see Irvin D.S. Winsboro and Joe Knetsch, "Florida Slaves, the 'Saltwater Railroad' to the Bahamas, and Anglo-American Diplomacy," *Journal of Southern History* 79, no. 1 (Feb. 2013), 51–78. For an example of the use of black sailors' freedom papers, see Frederick Douglass, *Life and Times of Frederick Douglass: His Early Life as a Slave, His Escape from Bondage, and His Complete History to the Present Time* (Hartford, 1881).

antislavery literature into the South, and abetted the runaway of Southern slaves. Yet the Seamen Acts did not regulate the ingress of white maritime workers. Similarly, no Seamen Act targeted seafaring slaves even though they were also quite capable of transmitting abolitionist literature or speech. Second, nearly all of the Seamen Acts required law enforcement officials to imprison free black sailors in local jailhouses, the same places that often held delinquent slaves. But if the goal of the Seamen Acts was to segregate the morally contagious from local slaves, why take free black sailors off their vessels and put them in confinement alongside slaves already incarcerated, some of them for disciplinary reasons?

Beyond regulating abolitionist speech, the Seamen Acts targeted something intrinsic to being free, black, and a traveler of Atlantic waters. White Southerners routinely used law and custom to marginalize local free African Americans, but sojourning free black sailors lived outside the everyday interactions and legal mechanisms that set white above black.[11] They worked beyond the routinized and local racial-power structure of Southern cities.[12] Thus, free black sailors were not just dangerous because they were likely purveyors of dangerous words; they literally embodied an alternative social order, one that granted them mobility and, with it, a degree of autonomy. The dangerous message – the moral contagion – was actually inscribed on the bodies of free black sailors and not on the bodies of seafaring slaves or white mariners.[13] The mobility and autonomy of free people of color were part of their threat, and the Seamen Acts accounted for this exact danger. Enforcers of the laws brought free black workers ashore in chains, whipped them at slave whipping posts, sexually assaulted them, forced them to work on plantations, and even enslaved them.

[11] This study builds on the recent work of historians who have described legal systems in the South that afforded free people of color a large degree of autonomy and were "secure enough to deal fairly and even respectfully" with them. See Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s through the Civil War* (New York, 2004), quote from page x; Kirt van Daacke, *Freedom Has a Face: Race, Identity, and Community in Jefferson's Virginia* (Charlottesville, 2012). Their school of thought challenges earlier works that emphasized the precariousness of Southern free people of color. See Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York, 1974); John Hope Franklin, *The Free Negro in North Carolina, 1790–1860* (Chapel Hill, 1943). While this book describes many instances in which free people of color escaped the harsh letter of the law by exploiting their connections to power, it also illustrates some of the limits to the elasticity of the Southern legal order regarding free people of color. White elites in the rural areas of Virginia might have allowed a significant degree of autonomy for well-known free blacks, but the exertion of autonomy by anonymous free black sailors in urban port cities only exacerbated the harsh treatment doled out by Southern officials.

[12] W. Jeffrey Bolster argues, "Embodying black freedom of movement and black–white equality in the workplace, northern sailors subverted local racial mores with their very presence." Bolster, *Black Jacks*, 213.

[13] On the body as a site of ideological and legal contests over race, slavery, and authority, see Ariela Gross, *Double Character: Slavery and Mastery in the Antebellum Southern Courtroom* (Princeton, 2000), especially chapter 5.

In other words, the Seamen Acts stripped the seamen of the very autonomy that made them dangerous. The Seamen Acts were as concerned with curing the moral contagion of liberty within their borders as they were with quarantining it. Like other antebellum border controls, they were instrumental in creating and maintaining a particular vision of the social order.[14]

These draconian actions did not keep free people of color from being active agents in their own lives or in the story of the Seamen Acts. They fought in court. They eluded arrest. They refused to submit to authority. They claimed various racial or national monikers in hopes of shirking the laws. They complained to their captains, to commercial and diplomatic agents, and to their families back home. They sought legal counsel and contacted abolitionist groups in various places. They invoked discourses of free labor, of Christian chastity, of citizenship. Their continued presence in Southern port cities testifies to both their resilience and vulnerability. Like most histories of black resistance in the antebellum period, this one surely misses many of the most successful individual resistors. Nonetheless, stories of resistance do abound, both by individual sailors and by the various communities who claimed them as their own.

In patrolling their borders in this fashion and subjecting free blacks to imprisonment and worse, the Southern states initiated a decades-long constitutional crisis over the meaning of citizenship and the boundaries between federal and state authority. The laws' opponents posed two interlocking and vexing legal questions. First, when local and state governments imposed border controls on individuals, did they infringe on Congressional authority to regulate interstate and international commerce? Second, did citizenship carry with it a set of rights – anchored in natural rights, international law, or the Constitution itself – that protected an individual from border control measures? In reconstructing the various ways antebellum commentators answered these two questions, this study argues the Seamen Acts both reflected the ambiguities in and informed the development of federalism and citizenship in the Early Republic.

Though the Seamen Acts remained on the periphery of formal doctrinal developments of the Commerce Clause and police powers, from that distance they exerted a powerful gravitational pull. Several important antebellum decisions on the interface between federal commercial authority and state police powers – *Gibbons v. Ogden*, *New York v. Miln*, the *License Cases*, the *Passenger Cases* – were adjudicated with an eye towards the effects on the

[14] Antebellum state immigration restrictions have garnered much recent attention from scholars of American law and politics. See, for example, Hidetaka Hirota, *Expelling the Poor: Atlantic Seaboard States and the Nineteenth-Century Origins of American Immigration Policy* (New York, 2017). The call for historians to investigate antebellum border control regulations came from Gerald Neuman, "The Lost Century of American Immigration Law (1776–1875)," *Columbia Law Review* 93, no. 8 (Dec. 1993), 1833–1901. For a similar observation on the importance of border controls in the shaping of the social order, though for a later period, see Mae Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton, 2004).

Seamen Acts. Because the Seamen Acts both existed in a constitutional gray area of federalism and exposed regional rifts over the politics of race, Congress and the antebellum Supreme Court found it difficult to draw distinct lines around or through them. In part, the tortuous and convoluted doctrines on the Commerce Clause and police powers that emerged from the Court were attributable to the Seamen Acts' existence. But these inconsistent doctrines only exacerbated debates over the laws' constitutionality. Commentators far and wide readily applied conflicting notions of federal authority and state police powers from case law to condemn or defend the laws.[15]

A tangent to John Joel's story provides a quick example. During his confinement in South Carolina, the US House of Representatives received resolutions from the Alabama state legislature proclaiming South Carolina's unqualified right to "prohibit the ingress of free negroes, and provide for the detention … of those who may enter her ports." To prove its case, the Alabama legislature cited the Supreme Court's 1837 decision in *New York v. Miln*. With the language from *Miln* in quotes, the resolution read,

> The State of South Carolina has the same authority for the enactment of these [Seamen] laws, as she would have "to provide precautionary measures against the moral pestilence of paupers, vagabonds, or convicts;" or, to "guard against the physical pestilence which may arise from a ship, the crew of which may be laboring under an infectious disease."

Alabama endorsed the Seamen Acts by stressing the Court's protection of state laws targeting "moral pestilence." Across the South, that phrase had described sailors of the black Atlantic for fifteen years when *Miln* came down, as the court was well aware. The phrase was not accidentally placed in the decision; attorneys for the state of New York argued that Southern laws against black sailors were closely akin to laws against foreign paupers, as both sought to stem the tide of "moral pestilence." To strike down one, the argument went, was to undermine the other. When the Supreme Court sanctified state laws against the "moral pestilence" of paupers in 1837, it also gave ammunition to defenders of the Seamen Acts.[16]

[15] *Gibbons v. Ogden*, 22 U.S. 1 (1822); *New York v. Miln*, 36 U.S. 102 (1837); *The License Cases*, 46 U.S. 504 (1847); *The Passenger Cases*, 48 U.S. 283 (1849). One author has explicitly linked the context of the first Seamen Act to a push for a more robust state police power. See Kathleen Sullivan, "Charleston, the Vesey Conspiracy, and the Development of the State Police Power," in Joseph Lowndes, Julie Novkov, and Dorian Warren, eds., *Race and American Political Development* (New York, 2008). For a fine work that also situates the development of federal commercial authority within state racial policymaking and border controls, see Tony Allan Freyer, *The Passenger Cases and the Commerce Clause: Immigrants, Blacks, and States' Rights in Antebellum America* (Lawrence, 2014).

[16] *Acts and Resolutions of Alabama* (1844–1845), p. 213. The resolutions are reprinted in "Alabama vs. Amendment to the Constitution," *House Document 128*, 28 Cong., 2 sess. (February 15, 1845), 3. Also reprinted in Pakenham to Aberdeen, May 29, 1845 in FO 84/596, pp. 146–148. *New York v. Miln*, 36 U.S. 102 (1837).

Beyond federalism, the Seamen Acts and the movement of free people of color across jurisdictional boundaries illustrate the centrality of citizenship and citizenship rights during the antebellum period. Historians have long been cognizant of the precarious legal place that free people of color occupied before the Civil War, and scholars for generations have identified the geographical variations of rights exercised by free African Americans. These studies have tended to look at discrete jurisdictions to illustrate the ways that state and local officials denied rights to African Americans.[17] For them, citizenship was a stable category and the qualifications for membership were defined locally; when local officials denied rights to people of color, they denied them full citizenship.[18] This study extends these previous studies in two ways. First, building upon the works of William Novak, Kunal Parker, and others, it denies that antebellum citizenship was a stable category.[19] Rather than encompassing a fixed and uniform set of rights, citizenship evolved over time into a legal category with enforceable rights attached. Thus, the people of the antebellum period did not just fight over *who* could be a citizen, but *what* citizenship itself meant, and the Seamen Acts saga fused these two debates together. Second, with its emphasis on the mobility of free black sailors, this study illustrates that citizenship was not wholly a local affair. People of color were in motion, and their movement created legal questions that required responses from national institutions of power, invited commentary in the popular press, and exposed the disparities in race law that existed across the nation and the Atlantic world.[20]

[17] There are numerous case studies on antebellum free people of color, but the quintessential work in this regard is Berlin, *Slaves without Masters*. See also Franklin, *The Free Negro in North Carolina*; H. E. Sterkx, *The Free Negro in Antebellum Louisiana* (Rutherford, NJ, 1972); Leon Litwack, *North of Slavery: The Negro in the Free States, 1790–1860* (Chicago, 1961); Luther P. Jackson, *Free Negro Labor and Propertyholding in Virginia* (New York, 1942); Ralph B. Flanders, ""The Free Negro in Antebellum Georgia," *North Carolina History Review* 9 (1932), 250–272; Charles S. Sydnor, "The Free Negro in Mississippi before the Civil War," *American Historical Review* 32 (1927), 769–788; Marina Wikramanayake, *A World in Shadow: The Free Black in Antebellum South Carolina* (Columbia, 1973); Letitia Woods Brown, *Free Negroes in the District of Columbia* (New York, 1972);

[18] Emblematic in this regard (though hardly alone) is Rogers Smith, *Civic Ideals: Conflicting Visions of Citizenship in US History* (New Haven, 1997). William Novak makes a similar criticism of the historiography in "The Legal Transformation of Citizenship in Nineteenth-Century America," in Meg Jacobs, William J. Novak, and Julian E. Zelizer, eds., *The Democratic Experiment: New Directions in American Political History* (Princeton, 2003), 85–119.

[19] Novak, "The Legal Transformation of Citizenship in Nineteenth-Century America," 85–119; Kunal Parker, "State, Citizenship, and Territory: The Legal Construction of Immigrants in Antebellum Massachusetts," *LHR* 19, no. 3 (Autumn 2001), 583–643; Kunal Parker, *Making Foreigners: Immigration and Citizenship Law in America, 1600–2000* (New York, 2016).

[20] On the legal ramifications of black mobility, see Rebecca Scott "Paper Thin: Freedom and Re-enslavement in the Diaspora of the Haitian Revolution," *LHR* 29, no. 4 (Nov. 2011), 1061–1087; Martha S. Jones, "The Case of Jean Baptiste, un Créole de Saint-Domingue: Narrating Slavery, Freedom, and the Haitian Revolution in Baltimore City," in Brian Ward, Martin Bone, and William Link, eds., *The American South and the Atlantic World* (Gainesville, 2013), 104–128; Martha S. Jones, "Time, Space, and Jurisdiction in Atlantic World Slavery: The Volunbrun

Migrating free people of color transformed localized questions of race and rights into national and international debates about the very essence of citizenship. These debates played out in local, state, and national institutions, places that – during the antebellum period – were not always willing or prepared to engage them.[21]

Thus, in the United States, the act of defining federal citizenship did not begin with the *Dred Scott* decision, the Civil War, or the Fourteenth Amendment, as many legal historians suppose.[22] Instead, free black sailors made federal citizenship an important issue for nearly half a century before the Civil War. Congress debated the existence and implications of African-American citizenship, even if it skirted the issue for political reasons. The federal courts, too, wrestled with the connection between federal citizenship and the Seamen Acts. The State Department grappled with the rights African-American sailors possessed when they traveled abroad. The Seamen Acts also provoked questions for state officials regarding black citizenship and the Privileges and Immunities Clause. For example, during John Joel's stay in South Carolina, the Massachusetts legislature penned a scathing "Declaration" against South Carolina's imprisonment of "black citizens." The "Declaration" was sent to all the other state legislatures in hopes of creating a political alliance that could pressure the Southern states to rescind their Seamen Acts. Several other state legislatures responded to this Declaration and thereby created a national political dialogue that occurred outside the institutions of the federal government.[23]

Governmental officials were not alone. Abolitionist organizations, African-American communities, and Northern commercial elites publicized the harsh treatment of free black sailors, cajoled public officials to act on the sailors' behalf, and otherwise contributed to a lively public sphere that considered – at

Household in Gradual Emancipation New York," *LHR* 29, no. 4 (Nov. 2011), 1031–1060; Rebecca Scott, "Slavery and the Law in Atlantic Perspective: Jurisdiction, Jurisprudence, and Justice," *LHR* 29, no. 4 (Nov. 2011), 915–924.

[21] This study builds on recent works that examine border-crossers and the maritime workforce as they interacted with the early American state. Nathan Perl-Rosenthal has shown how black "Citizen Sailors" were instrumental in forcing the American nation-state to (temporarily) recognize African-American citizenship. Nathan Perl-Rosenthal, *Citizen Sailors: Becoming American in the Age of Revolution* (Cambridge, MA, 2015). See also Wong, *Neither Fugitive nor Free*.

[22] For example, William Novak claims that before *Dred Scott*, "citizenship simply did not figure as … particularly significant … [and] the legal ramifications of precisely demarcating who was or was not a 'citizen' were not in and of themselves determinative of much substance." See Novak, "The Legal Transformation of Citizenship in Nineteenth-Century America," 88. Likewise, Laura Edwards claims the postwar Amendments' "connection between citizenship and rights took the nation in an utterly new legal direction." Perhaps so, but opponents of the Seamen Acts pointed in this same direction for decades before the passage of the Fourteenth Amendment. See Edwards, *A Legal History of the Civil War and Reconstruction: A Nation of Rights* (New York, 2015), 106–107.

[23] "The Treatment of Samuel Hoar," *Senate Document 31*, February 3, 1845, in *Documents of the General Court of Massachusetts* (1845).

length and often with venom – the feasibility, existence, and implications of African-American citizenship and federal citizenship rights. Free people of color in Northern states joined the chorus against the Seamen Acts, and in so doing, they expanded their push for state-level rights – suffrage, the integration of schools and public conveyances, etc. – to include a national right of free movement.[24] These efforts were in full swing by the 1830s. Thus, when the Supreme Court finally entered the fray with *Dred Scott* in 1857, it was not entering unchartered waters but instead wading into a constitutional dilemma that was decades in the making. When Chief Justice Taney proclaimed that free African Americans had "no rights the white man was bound to respect," he was channeling a long line of conservative thought that denied black citizenship in defending the Seamen Acts. He was also ignoring free black sailors, the African-American communities of which they were a part, and various governmental officials, all of whom claimed the Seamen Acts deprived the mariners of the privileges and immunities of American citizenship.[25]

When Southern jurisdictions barred the arrival of free black sailors, they focused attention on the contested meaning and boundaries of citizenship. Some opponents of the Seamen Acts applied a new vision of citizenship as a concrete legal status, one endowed with substantive rights that national governments were obligated to protect, even in the face of state positive law. Whether based upon treaties (for foreigners) or the Constitution's Privileges and Immunities Clause (for Americans), this new vision articulated citizenship as a powerful shield that could protect travelers from certain border control regulations. In this way, opponents of the laws "substantivized" rights, hoping to enshrine natural law precepts of liberty into constitutional protections that courts were obligated to protect. This attempt to "constitutionalize natural rights" begged for expanded judicial review to limit state legislative action. In demanding protection of their citizenship rights, free black sailors forced governments to clarify the power and limits of citizenship.[26]

[24] As Stephen Kantrowitz has argued, citizenship was a vital issue in the political agenda of antebellum free people of color, one that carried over and through the Civil War and Reconstruction. See Stephen Kantrowitz, *More Than Freedom: Fighting for Black Citizenship in a White Republic, 1829–1889* (New York, 2012).

[25] Scholars have long battered Taney's opinion in *Dred Scott*, finding fault in his historical analysis and rhetoric. The most detailed example of these is Dan Fehrenbacher, *The* Dred Scott *Case: Its Significance in American Law and Politics* (New York, 1978). Following Fehrenbacher, most legal scholars and jurists consider *Dred Scott* to be among the worst decisions in the history of the Supreme Court, though they often disagree as to why the decision was so deplorable. See Mark Graber, Dred Scott *and the Problem of Constitutional Evil* (New York, 2006), 1–89. This study situates Taney-Court jurisprudence in the fractured political world of the antebellum period, where groups fought over the history of citizenship since the Revolution.

[26] This is not to say that the opponents of the Seamen Acts *created* this understanding of substantive rights and national citizenship. Rather, they were among the first to apply it, and the Seamen Acts controversy created the context that demanded, in these commentators' minds, their clarification. The phrase "constitutionalizing natural rights" comes from Howard Jay

This robust conceptualization of individual rights was particularly threatening to Southern statesmen, not because of any preconceived antipathy to it, per se, but because the people heralding it also applied it to people of African descent. The more forceful the pressure against the Seamen Acts in the name of the citizenship rights of black sailors, the fiercer the resistance by Southern commentators, not because they detested an expansive view of citizenship's legal power, but because free people of color were trying to wield it. Protecting the Seamen Acts, then, became shorthand for withstanding assertions of black citizenship, with the unintentional result being the marginalization of federal citizenship – with substantive rights – as a legal category. In the *Dred Scott* decision in 1857, the US Supreme Court divorced substantive rights from colorblind citizenship, thus allowing the former to be canonized in constitutional law by rejecting the latter. Following the Civil War, the Fourteenth Amendment reconnected colorblind citizenship and substantive rights and formally empowered the federal government to protect both. But histories that look to the *Dred Scott* decision and the postwar Amendments as the genesis of national citizenship rights miss the important contributions to the idea of citizenship that black sailors, African-American petitioners, and their white allies made during the first half of the nineteenth century.[27]

Despite its importance to American constitutional development, the story of the Seamen Acts is not a national tale, as John Joel's arrest makes abundantly clear. When the Seamen Acts were implemented, they applied to all free black sailors regardless of their nationality or the nationality of the vessels on which they worked. As a result, the issues of citizenship and regulation transcended the boundaries of the United States and implicated foreign governments. In fact, the British state played an essential role in the unfolding of the Seamen Acts controversy, primarily because British ships, British sailors, and British consular agents were regular fixtures in America's port cities during the antebellum era.[28] When John Joel was incarcerated in the mid-1840s, he drew

Graham, "Procedure to Substance: Extra-Judicial Rise of Due Process, 1830–1860," *California Law Review* 20, no. 4 (Winter 1952–1953), 483–500.

[27] On the antebellum origins of the Fourteenth Amendment, see Kurt T. Lash, *The Fourteenth Amendment and the Privileges and Immunities of American Citizenship* (New York, 2014), 9–66; Jacobus tenBroek, *Equal under Law* (New York, 1965), 94–115; William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine* (Cambridge, MA, 1988), 13–36.

[28] British consuls stationed in the United States and officers in the Foreign Office in London wrote hundreds of pages of letters regarding the Seamen Acts. In 1853, many of the letters were compiled into a single volume, *Correspondence relative to the Prohibition against the Admission of Free Persons of Colour into certain Ports of the United States, 1823–1851*, Series 5, Volume 579, *Foreign Office Papers*, National Archives, Kew, UK. This compilation contains many, though not all, of the British state correspondence on the Seamen Acts. Some correspondence escaped the notice of the 1853 compilers. The letters concerning John Joel were some of those not included in the compilation volume.

attention to existing Anglo-American treaties that specifically protected British subjects and guaranteed "their rights to free ingress and egress, and occupying houses and warehouses for the purposes of commerce," apparently creating a substantive right. Joel's arrest seemingly violated the terms of the treaty, so long as he was construed as a British subject. But were black sailors born in the British Empire rights-carrying subjects of the Crown? Did their legal status create an obligation on the part of the British state to intercede?[29]

As the British government jousted with the US State Department over the exact legal status of free black British seamen, it was simultaneously reconfiguring the meaning and extent of citizenship in the empire. While most historians of British and colonial citizenship focus on the twentieth century, the British state was determining the contours of citizenship rights far earlier, as the records of the Foreign Office attest. The arrest of black sailors subject to British authority exposed the ambiguities of British citizenship in an empire with a constellation of colonial relationships. "Free coloreds" and "free blacks" in the empire exercised various sets of rights depending on colony, birth, and several other variables. The uneven enactment of naturalization and immigration laws in the empire only further complicated matters for Foreign Secretaries, consuls, and colonial administrators. In short, the British state could not decisively answer one important question: were all British subjects endowed with the same rights when they traveled outside the empire even though they were endowed with varying rights within it?[30]

[29] The applicable treaty was "A Convention to Regulate the Commerce between the Territories of the United States and of His Brittanick Majesty," 8 Stat. 228 (1815). British consular agents in the United States and their reports have been chronically understudied. This trend is changing. See, for example, Michele Anders Kinney, "'Doubly Foreign': British Consuls in the Antebellum South, 1830–1860 (Ph.D. diss., University of Texas, 2010). Some of the earliest studies of the Seamen Acts utilized British consular reports. See Philip M. Hamer, "Great Britain, the United States, and the Negro Seamen Acts, 1822–1848," *Journal of Southern History* 1, no. 1 (Feb. 1935), 3–28 and Philip M. Hamer, "British Consuls and the Negro Seamen Acts, 1850–1860," *Journal of Southern History* 1, no. 2 (May 1935), 138–168. This is not to say that historians have ignored US consular reports to examine race and federal citizenship in the nineteenth and twentieth centuries. Those studies, like this one, analyze citizenship at the boundaries of the nation-state because the boundaries are where the nation-state was asked to intercede. For example, see Eileen P. Scully, *Bargaining with the State from Afar: American Citizenship in Treaty Port China, 1844–1942* (New York, 2001) and Gerald Horne, *Negro Comrades of the Crown: African Americans and the British Empire Fight the US before Emancipation* (New York, 2012).

[30] Studies on British citizenship focus predominantly on the twentieth century. For example, see Daniel Gorman, *Imperial Citizenship: Empire and the Question of Belonging* (New York, 2006); Randall Hanson, *Citizenship and Immigration in Postwar Britain* (New York, 2000); Keith Faulks, *Citizenship in Modern Britain* (Edinburgh, 1998). Gorman makes a similar argument in Gorman, *Imperial Citizenship*, 9. While Rieko Karatani similarly focuses on the twentieth century, she offers a chapter on British citizenship prior to that period. See Karatani, *Defining British Citizenship: Empire, Commonwealth and Modern Britain* (London, 2003), 39–69.

Over time, the British Foreign Office vacillated wildly in its dedication to recognizing treaty rights for black subjects and in its posture towards the US State Department and state-level officials in the South. Ultimately, by the 1850s, British officials sacrificed black citizenship rights for the physical protection of black British sailors. Rather than demand wholesale rescission of the laws, British officers persuaded lawmakers in Georgia, Louisiana, and even South Carolina to liberalize their laws to allow black sailors to remain aboard their vessels. Black sailors were physically safe, but according to the British government, they had no right to equal protection while traveling to the United States. The Foreign Office's retreat from black citizenship vis-à-vis the Seamen Acts in the 1850s mirrored the Colonial Office's movement away from the racial progressivism of the 1830s. Antislavery efforts had secured emancipation, but race remained a powerful discriminating force in British law.[31] The British government's abandonment of equal protection for its black subjects prefaced the US Supreme Court decision in *Dred Scott*. Through the lens of the Seamen Acts, constitutionalism and diplomacy intersected and informed one another, with disastrous effects for colorblind citizenship.

In the end, the contests over the Seamen Acts reflected and exacerbated constitutional friction over the substantive rights of citizenship, the racial boundaries of citizenship, and the limits of state regulatory authority. These contests also reveal the degree to which American constitutional development was embedded in an Atlantic-wide political context, one in which the precarious social and legal position of free people of color played active roles. For these reasons, the story of the Seamen Acts needs to be integrated into the legal and political history of the United States.

[31] See Gad Heuman, *Between Black and White: Race, Politics, and the Free Coloreds in Jamaica, 1792–1865* (Westport, CT, 1981) and Richard Hussey, *Freedom Burning: Anti-Slavery and Empire in Victorian Britain* (Ithaca, 2012).