

## “AN OUTRAGE UPON OUR FEELINGS”:

### THE ROLE OF LOCAL GOVERNMENTS IN RESISTANCE MOVEMENTS

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*After the election of 2016, many who opposed President Trump and his policies argued that local governments and local power would be the best tools to resist those policies and strengthen democracy. Among the most prominent acts of local resistance in the last decade have been resolutions that declare a town or a city a “Sanctuary” and refuse to cooperate with federal authorities in the deportation of undocumented immigrants. This Article situates these resolutions in a long tradition of local opposition to state and federal laws that towns and cities deem unjust by examining local opposition to the Fugitive Slave Law of 1850. Drawing on original archival research, this Article exposes striking similarities between contemporary tactics of local resistance and the tactics of local governments in 1850–1851 that passed formal resolutions opposing the Fugitive Slave Law. This examination of how local governments responded to the Fugitive Slave Law poses two broad questions: what did local governments think they were doing when they passed these resolutions? And how much power did local governments really have to achieve those goals? The answers to these questions are complex and context specific. The local struggles that resulted in these resolutions were part of an ongoing political struggle against the seemingly intractable problem of slavery. The local resistance chronicled here is exceptional neither in its heroism nor its effectiveness. Rather it is striking in its familiar messiness and ambition. In some cases, towns seemed to have modest expressive goals that could be met by their resolutions. In other cases, the towns’ resolutions seem to suggest a much broader set of substantive goals that were beyond the power or capacity of the town to achieve. Examining these responses to the Fugitive Slave Law offers a new analytical perspective on local responses to the*

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*deportation crisis. Examining what local governments think they are doing when they pass sanctuary ordinances and comparing that with what they are empowered or willing to do helps us think more clearly about how and by what means local governments can resist national policies and engage in broad political struggles.*

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## INTRODUCTION

In the spring of 1851, the residents of Marshfield, Massachusetts met in their annual town meeting and passed a set of resolutions that were a stinging rebuke to their most famous neighbor: Daniel Webster. Webster had been a long-serving senator from Massachusetts and one of “the Triumvirate” of American statesmen who shaped the course of American politics in the decades leading up to the Civil War.<sup>1</sup> For the better part of the first half of the nineteenth century, Webster had been a political hero at home in Marshfield and across the North. But by 1850, he had become a villain across the increasingly anti-slavery North for his role in the “Great Compromise” of 1850—the centerpiece of which was the Fugitive Slave Law of 1850. Across the North, anti-slavery activists gathered to revile and reject the new law as a craven capitulation to the slave power. Webster, as a primary architect of the compromise and one of its staunchest defenders from his post as Millard Fillmore’s Secretary of State, became one of the principal villains for these protestors. Writing in his journal, Ralph Waldo Emerson summed up the feelings of much of the anti-slavery North: “Liberty! Liberty! Pho! Let Mr. Webster for decency’s sake shut his lips once & forever on this word. The word *liberty* in the mouth of Mr. Webster sounds like the word *love* in the mouth of a courtesan [sic].”<sup>2</sup>

Webster was not a passive target. As a vocal and prominent proponent of the compromise in general and of the Fugitive Slave Law in particular, Webster saw the protests against the law as dangerous to the public peace and as a potential threat to the fragile union.<sup>3</sup> He also

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<sup>1</sup> The other two members of the Triumvirate were Henry Clay and John Calhoun. See generally MERRILL D. PETERSON, *THE GREAT TRIUMVIRATE: WEBSTER, CLAY, AND CALHOUN* (1987).

<sup>2</sup> See Geoffrey R. Kirsch, “So Much a Piece of Nature”: Emerson, Webster, and the *Transcendental Constitution*, 91 *NEW ENG. Q.* 625, 639 (2018). Discovering that Emerson used the delightful expletive “Pho!” in his journals is a perfect example of the unexpected joys of scholarship.

<sup>3</sup> Webster complained that:

There is evidently, abroad, a spirit of disunion and disobedience to the laws which good men ought to meet, and to check if they can. Men are to be found who propose as their own rule of conduct, and recommend the same rule to others, ‘peaceable resistance to the laws’; that is to say, they propose to resist the laws of the land so far as they can do so consistently with their own personal safety. . . . A still more extravagant notion is sometimes advanced, which is, that individuals may judge of their rights and duties,

took them personally. Not only was Webster's compromise condemned by his neighbors, but only weeks later the Mayor and Board of Aldermen of Boston voted to deny him access to the famous lectern at Faneuil Hall.<sup>4</sup> Webster understood these protests as paroxysms of political mania aimed at his legacy—but he also sought to dismiss these rebukes as passing fancies soon to be overcome by the reasoned patriotism of good “union men.”<sup>5</sup>

Webster's new-found infamy was widespread, but it had special symbolic meaning when expressed in his hometown. The Marshfield town meeting convened in March of 1851 to do the town's business. For a small New England town, the annual meetings were the site of nearly all vital governmental decisions. It was at town meeting that budgets were set, infrastructure projects were proposed and approved, committees were staffed, school governance was overseen, etc. Town meetings were serious, if often mundane, business. Decisions were more likely to be made about how the year's crop of barley would be stored than how the town would engage in the national political questions of the day. There was, in other words, no reason or expectation that the Marshfield meeting should bring up the Fugitive Slave Law or Daniel Webster. Most town meetings across New England ignored these national political issues as irrelevant.

But Marshfield's citizens made a different choice. On March 3, 1851, the town meeting voted overwhelmingly to declare publicly that the Fugitive Slave Law that Webster had endorsed was in violation of the Constitution and that it was “a disgrace to the civilization of the age, and clearly at variance with the whole spirit of the Christian faith.”<sup>6</sup> Following from this condemnation, the town resolved “that until we are prepared to repudiate the principles of Independence, & abjure all our

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under the Constitution and the laws, by some rule which, according to their ideas, is above both the Constitution and the laws.

Letter from Daniel Webster to B.F. Ayer (Nov. 16, 1850), *in* LETTERS OF DANIEL WEBSTER 442, 442 (C. H. Van Tyne ed., 1902).

<sup>4</sup> See *There Is Quite an Excitement in Boston*, MIDDLESEX FREEMAN (Concord, Mass.), Apr. 18, 1851, at 2.

<sup>5</sup> Seemingly referring directly to Marshfield's resolutions, Webster wrote that “[f]olly and fanaticism may have their hour. They may not only affect the minds of individuals, but they may also seize on public bodies, of greater or less dignity.” Letter from Daniel Webster to George C. Smith and Others (Apr. 15, 1851), *in* 2 THE PRIVATE CORRESPONDENCE OF DANIEL WEBSTER 429, 430 (Fletcher Webster ed., 1857) (emphasis added). The body of greater dignity was probably Boston, where he had been denied permission to speak. But the body of lesser dignity might well have been Marshfield, where the town meeting's resolutions had been passed only a month earlier.

<sup>6</sup> 1 LYSANDER SALMON RICHARDS, HISTORY OF MARSHFIELD 163 (1901).

ideas of Justice and humanity, of truth & duty, we can be under no voluntary obedience to this act.”<sup>7</sup> Rejecting obedience to the act meant more than refusing to help enforce it, it meant that “our houses shall be open to welcome the hunted Fugitive as he passes our doors in his flight from the national bloodhounds, who are baying on his tract.”<sup>8</sup> Even more than offering sanctuary, the citizens of Marshfield went on to send a message to all fugitives that they should resist the Fugitive Slave Law and the national imperative of recapture that it stood for with all means necessary—including violence.<sup>9</sup>

Daniel Webster was an apostate to opponents of slavery because he had once been a political hero who had betrayed them in service of compromise. Stephen Douglas was not so interesting a villain. To most anti-slavery Northerners, the famous senator from Illinois was a straightforward political enemy. Before he barnstormed Illinois debating Abraham Lincoln, Douglas had been a consistent opponent of abolitionism and a defender (if a tepid one) of Southern slave interests. Even more than Webster, Douglas had been a primary architect of the Compromise of 1850. Thus, it was that in October of 1850, in the fevered aftermath of the law’s initial passage, the Chicago Common Council approved a set of resolutions attacking the new law and targeting Douglas by implication. By a vote of 9-2, the council passed a set of proposed resolutions that promised to resist the law because it was in blatant violation of the Constitution.<sup>10</sup> The Council pilloried the legislators who voted for the law (and the men, like Douglas, who avoided the vote), ranking them “with the traitors Benedict Arnold and Judas Iscariot, who betrayed his Lord and master for thirty pieces of silver.”<sup>11</sup> Because of the law’s fundamental cruelty and injustice, the

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<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 164.

<sup>9</sup> *See id.* The town meeting commended fugitives to choose death over recapture:

[W]e commend to every Fugitive from Slavery the glorious sentiment of Patrick Henry, ‘Give me Liberty, or give me death.’ Seizing upon this idea, let him use all the means which God will justify to protect his freedom; and if he shall perish in the struggle for his birth right, as his last sigh mingles with the common air, and goes out over the world, and up to heaven, a swift witness against the nation which so foully murders him, let him breath it to the wind that murmurs by him, and bequeath as an inspiring influence to the panting fugitive he leaves behind him.

<sup>10</sup> *See* Charles W. Mann, *The Chicago Common Council and the Fugitive Slave Law of 1850, Address Before the Chicago Historical Society 70–71* (Jan. 29, 1903) (transcript available in the University of Illinois Library).

<sup>11</sup> *Id.* at 70.

Council prohibited the police from “render[ing] any assistance for the arrest of fugitive slaves.”<sup>12</sup> These proposed resolutions triggered weeks of heated political debate but a month later, in November, the Council stuck mostly to its guns and condemned the law as “revolting to our moral sense and an outrage upon our feelings of justice and humanity.”<sup>13</sup> Having disapproved of the law so resolutely, the Council affirmed that Chicago would offer no assistance “in the arrest of fugitives from oppression.”<sup>14</sup>

The stories of Marshfield and Chicago are two examples of the local resolutions at the heart of this Article. In the aftermath of the Fugitive Slave Law of 1850, citizens called meetings in public and in private condemning the law. Anti-slavery conventions were convened, diatribes were delivered, proclamations were proclaimed. Among this public outpouring of opposition were a small but significant number of local governments that chose to lend their official municipal voices to the opposition to the law. All but two of these local governments turn out to have been Massachusetts towns governed by the classic form of the New England Town Meeting.<sup>15</sup>

The towns that spoke out in resistance were vastly outnumbered by those who did not. Even in communities where antislavery organizing was strong and abolitionism was popular, town meetings, boards of aldermen, city councils, and county commissioners remained silent on the question of the Fugitive Slave Law, preferring to focus on traditional local questions.<sup>16</sup> Still other Northern towns and cities felt compelled to pass resolutions promising to *assist* the federal government in enforcing the law.<sup>17</sup>

Given the choices before these towns and cities, the question posed by the stories of formalized resistance to the law is: why? What did the towns and cities who voted to condemn the Fugitive Slave Law hope to accomplish? This may seem like a simple question: the citizens of Marshfield and Chicago and other places like them disagreed with the

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<sup>12</sup> *Id.* at 71.

<sup>13</sup> *Id.* at 85.

<sup>14</sup> *Id.*

<sup>15</sup> I have been unable to come up with a fully satisfying explanation for why I have found no equivalent resolutions from other places where the town meeting form of government was prevalent. Although abolitionism was somewhat less politically powerful in states like Maine, New Hampshire, and Vermont, there were many vocal opponents of slavery in those states. Despite this, I have not found any evidence of anything beyond subtle anti-slavery gestures in the other New England states where the town meeting was the dominant form of government.

<sup>16</sup> See discussion *infra*, Sec. II.C.2.

<sup>17</sup> See discussion *infra*, Sec. II.C.3.

law and so they voted to condemn it. But a deeper investigation reveals that the question touches on a two-pronged puzzle at the heart of the study of local power, past and present: what role *can* local governments play in resistance movements and struggles for social change? And what role *should* they play?<sup>18</sup>

We take for granted that local governments have limited powers and indeed there are many things that the cities and towns discussed here were *not* empowered to do (e.g., outlaw slavery). But just focusing on limited power narrows the question of capacity too far. In the 1850s, as today, there are many things that local governments had the power to do that they would still understand as beyond their capacity. In 1850, for instance, the town of Marshfield could have ordered its militia to protect any alleged fugitives in the town. So too could it have expelled any town resident from town meeting for cooperating with the federal law. In the present, towns and cities could likewise order their police to stand between federal agents and the humans that they are seeking to deport. The choices not to flex the full extent of local authority are as much about pragmatism as they are about power. In the 1850s, every local government that acted understood their capacity to be limited by a suite of pragmatic concerns (political caution, limited enforcement power, etc.). The result was that no local government offered sanctuary to fugitives in any more robust form than a collective, non-binding, promise that its citizens would not cooperate with federal law.

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<sup>18</sup> As I discuss further below, the question of who is acting and how in the context of these local governments is more complicated than it might seem on the surface. Like any public enactment, these resolutions were the result of a political process embedded in compromise, contingency, and the specific structural background rules of the local jurisdiction. Thus, when I say that Marshfield sought to resist the Fugitive Slave Law of 1850, I am conflating the town meeting's enactment with something like a collective attitude of the town. Although I account for nuance as deeply as possible, I have chosen to accept this blunted idea of agency for two reasons. First, in many cases, the only evidence of the resolution in the archive is in the official records of the town. Even in those records it is difficult to trace the arguments and procedural maneuverings that led to the resolution, meaning that we are left with an imperfectly flattened picture of the political process that resulted in the resolution. Second, and more substantively, the central question in this Article is whether and how local governments can engage as *public institutions* with resistance movements. The structural and procedural details of local lawmaking differ hugely across jurisdictions, but that background variance drops away when you look at the official acts of those governments. To illustrate this consider: does it materially change our views of two comparable Sanctuary City ordinances to know that one was the product of a place like Somerville, Massachusetts with a "strong mayor" form of government (where the mayor is the dominant force in local politics) while the other was the product of a place like neighboring Cambridge, Massachusetts with a weak mayor and a strong city council (where the council is the dominant force)?

How much assistance local governments *can* offer structures the analysis of how much they *should* offer. Here the stories of the resolutions reveal, for the most part, that the local governments who passed resolutions opposing the Fugitive Slave Law did not give deep or systematic consideration to a careful balance of local power and pragmatism. All but one of the cities and towns that acted in resistance seemed to do so as an act of reactive rather than strategic resistance. They chose to speak up rather than to be silent. While there is power in expression and alignment, most of the resolutions read as unsure or unspecific about what role they hoped that expression would play in the context of a larger political struggle against slavery.

The primary exception that stands out is the town of Acton, Massachusetts. There the members of the town meeting and the drafters of its resolution thought carefully about both the questions of what Acton could do and what it should do. The result of this public introspection was a resolution that sought to stake out a modest place for the town both within the struggle to protect alleged fugitives and within the struggle against slavery. That modest resolution sought to make space for civil resistance to the Fugitive Slave Law within the framework of town politics, but it did not seek to make the town itself the principal vector of that resistance. To the extent that there are lessons for the present to be drawn from the past, I argue that Acton is the place to look for them.

The question of how local governments can and should participate in resistance movements is of obvious present concern. This kind of local action is evident today across the political spectrum.<sup>19</sup> The most salient example—and the one that has cropped up most often in the last few years—is that of sanctuary cities for undocumented immigrants.

I am not the first to note a parallel between the national political crisis triggered by the Fugitive Slave Law of 1850 and the present political crisis over the detention, mistreatment, and deportation of immigrants.<sup>20</sup> This comparison has usually been made at a high level of

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<sup>19</sup> For example, there is a vibrant movement among conservative local governments to declare towns and cities “Second Amendment Sanctuaries.” This means that these towns and cities formally oppose and threaten to nullify federal and state laws that they perceive as threats to their Second Amendment right to bear arms. See Jay Stooksberry, *Colorado’s Growing Second Amendment Sanctuary Movement*, REASON (May 23, 2019), <https://reason.com/2019/05/23/colorados-growing-second-amendment-sanctuary-movement> [<https://perma.cc/7J3L-39PF>].

<sup>20</sup> In recent years, a number of articles have been published laying out similarities between the present regime of deportation and the Fugitive Slave Law. The articles range from scholarly, to journalistic, to think piece, to propaganda. See, e.g., Karla Mari McKanders, *Immigration*



generality that has failed to appreciate the texture and complexity of such a comparison.<sup>21</sup> As such, we have missed both cautionary and inspirational tales lying in the archives. It is undoubtedly true that the collective outrage and resistance that our current deportation regime has sparked is reminiscent of the collective outrage and resistance that anti-slavery activists leveraged against federal efforts to return alleged fugitive slaves to slavery. Moreover, given the present moral consensus that slavery was a monstrous evil, drawing connections between slavery and deportation has obvious strategic political power.

The problem with these flattened comparisons, however, is that the totalizing evil of our view of slavery makes it hard to see the complexity and texture of the real and rich historical comparisons. It is easy (and often productive) to grant hero-status to present-day resisters by casting the glow of comparison with abolitionists over their actions. But abolitionists, like present day anti-deportation activists, did not operate in a world of moral consensus. The struggles against slavery and the Fugitive Slave Law were not always as simple as good versus evil or freedom versus slavery. Rather, they were political struggles between conflicted community members operating within a polarized national political struggle. In other words, the struggle against slavery was a version of “normal” political struggle. Thus, while comparisons between past and present resistance can inspire present activists to

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*Enforcement and the Fugitive Slave Acts: Exploring Their Similarities*, 61 CATH. U. L. REV. 921 (2012); Harold Meyerson, *There Are Echoes of the Fugitive Slave Act in Today's Immigration Debate*, THE AM. PROSPECT (Mar. 6, 2018), <https://prospect.org/article/there-are-echoes-fugitive-slave-act-today%E2%80%99s-immigration-debate> [https://perma.cc/CUK7-XY4J]; Shikha Dalmia, *How Today's Pro-Immigrant Activists are Adopting the Tactics of Abolitionists*, THE WEEK (Mar. 7, 2017), <https://theweek.com/articles/676729/how-todays-proimmigrant-activists-are-adopting-tactics-abolitionists> [https://perma.cc/CUK7-XY4J]; Andrew Delbanco, *The Long Struggle for America's Soul*, N.Y. TIMES (Nov. 2, 2018), <https://www.nytimes.com/2018/11/02/opinion/the-long-struggle-for-americas-soul.html> [https://perma.cc/HB3G-TAT5]; Kate Masur, *Commentary: Chicago's Resistance to ICE Raids Recalls Northern States' Response to the Fugitive Slave Act*, CHI. TRIB. (July 15, 2019), <https://www.chicagotribune.com/opinion/commentary/ct-opinion-ice-raids-fugitive-slave-law-20190715-puz4oclc4nczxtotfjvhxj5idjq-story.html> [https://perma.cc/C65K-LWYF]; Manisha Sinha, *The New Fugitive Slave Laws*, THE N.Y. REV. OF BOOKS (July 17, 2019), <https://www.nybooks.com/daily/2019/07/17/the-new-fugitive-slave-laws> [https://perma.cc/BE7P-3HTR].

<sup>21</sup> I do not mean to condemn all of these comparisons as flat. In many cases the comparisons are forthrightly tactical, while in others, they are helpfully specific on a particular axis. One example here is the way that Allan Colbern and S. Karthick Ramakrishnan use the comparison between the present and 1850 to highlight commonalities in the way that states and localities struggle to protect ideas of state and local citizenship. See ALLEN COLBERN & S. KARTHICK RAMAKRISHNAN, *CITIZENSHIP REIMAGINED: A NEW FRAMEWORK FOR STATE RIGHTS IN THE UNITED STATES OF AMERICA* 137–140 (2021).

reach beyond the morass of normal politics, a more detailed set of comparisons may also be drawn to show the common difficulties endemic to that struggle. If these comparisons are less inspiring on their surface, they may actually promise a thicker and more productive connection between past and present resistance when considered closely. There is at least as much to be learned from the struggles against intractable politics in the past as there is to be learned from past heroism.

This Article offers a focused comparison between past and present anchored in a specific form of local resistance. By excavating the stories of local governments that acted officially to resist the Fugitive Slave Law, this Article provides a vantage point from which to assess the actions of towns and cities in the present as they struggle to express their disapproval of federal law and their desire to protect undocumented immigrants living within or passing through their borders. As different as the balance of capacity and strategy is between past and present, the shape of the question is familiar enough to merit tracing. If the resolutions against the Fugitive Slave Law are often inspiring, they are also sometimes futile and even troubling.

While I do not shy away from holding the past up to the present in the hope of seeing the present more clearly, I want to be clear about the shape and force of the comparison I am offering. The central comparison in the Article is not between slavery and deportation (interesting as that comparison may be). Rather, it is the comparison between local governments past and present struggling with the question of what role they can and should play in resistance movements—and specifically in resisting the force of an oppositional federal legal regime. It is in the crucible of the Fugitive Slave Law and mass deportation that the underlying questions of local governments' purposes and powers arise.<sup>22</sup>

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<sup>22</sup> It is for this reason that I do not devote much effort to defending the comparison between the enforcement of the fugitive slave law and deportation. Such comparisons are interesting and frustrating. As my colleague Dan Kanstroom argues, “many procedural aspects of the Fugitive Slave Law were later to be adopted by the Congress and accepted by the Supreme Court as legitimate components of the deportation regime. Of course, the repugnant but consistent classification of fugitive slave cases as matters of property renders comparison with the deportation system difficult.” DAN KANSTROOM, *DEPORTATION NATION* 83 (2007). Still, I do persist in my belief that it is a mistake to suggest that slavery was such a higher-order evil that it cannot be compared with any present injustice. Although many saw it as the moral horror that it was at the time, many others held divergent and conflicted political positions around it. It is not hard, in the present, to find examples of issues where some people hold absolute and clear

Part I offers a brief account of the historical and political backdrop for these local reactions. This backdrop has two important elements. First, to understand the resolutions in 1850 and 1851, it is necessary to understand something about the history of local governance in the United States. In particular it is necessary to place these resolutions within a longer tradition of local government resistance to state, federal, and even colonial law. The resolutions in opposition to the 1850 law were innovations in some ways, but they were also part of an ongoing tradition which continued through the 1850s, through the Civil War, and to today. Second, to understand the actions of these cities and towns, it is necessary to sketch out the political forces pushing, pulling, and straining the fabric of the United States' legal order in the decades before the rupture of Civil War in 1861. While in no way a full history of slavery or of the struggle over fugitive slaves, Part I tells enough of the backstory of the Fugitive Slave Law of 1850 to make the resolutions' resistance legible.

Part II then compiles as complete a catalog as possible of the local responses across the North to the Fugitive Slave Law.<sup>23</sup> Some of these resolutions have been discussed elsewhere, most have not. Upon analysis, these responses break down into four rough categories. The first category is my primary focus here. In that category are places like Marshfield, Chicago, and Acton where the town or city spoke clearly to condemn and nullify the law. In the second category are towns and cities where the city government offered tacit support to abolitionists and opponents of slavery who took measures to resist the law. The third category (and the least well-defined) includes all the towns and cities where the local government simply took no position on the law. Finally, the fourth category includes those Northern towns and cities that took affirmative steps to actively support the Fugitive Slave Law of 1850 and offered local resources to aid in its enforcement. These four categories lay out a taxonomy of possible roles for local governments to play where the question of resisting a federal legal regime arises. Thinking about

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moral views and where others are more politically conflicted. It is difficult to see in the present what we will come to understand as anathema through the filter of history. This is no apology for slavery, but rather a charge against political complacency that can feed off of the thought, "at least it isn't slavery."

<sup>23</sup> By "North" I mean broadly states where slavery was illegal in 1850. This is not to say that local government in the South was silent on the question of the Fugitive Slave Law or slavery more broadly. It was relatively common to see resolutions passed at the town, city, or county level opposing abolitionism and proclaiming the necessity of Northern comity. While these resolutions are interesting, they are not the primary subject of my study here.

the second, third, and fourth categories helps to cast light on my primary focus: the resolutions in the first category.

Finally, Part III turns to the present to hash out some of the ways in which the history in Part II may help us understand the actions, intentions, and powers of local governments today responding to the deportation crisis in the United States today. Here I pose the twinned question of what role local governments can and should play in the struggle. Without drawing a direct line between past and present, I suggest that the history provides a new lens through which to understand the present complexity of the sanctuary movement. As was true in the 1850s, local governments today vary in how much power they feel they have to resist and how carefully they have considered the role of their actions within the broader framework of the struggle. For those inclined to be critical of portions of the mainstream sanctuary movement, there is undoubtedly ammunition in the past to be drawn upon. But my hope is that the turn to the present does more than raise questions about the effectiveness of local sanctuary ordinances. Rather, I hope that those questions may offer a historical prism for reflection that local governments may use not to withdraw from the struggle, but to more strategically engage and magnify it.

In the face of moral outrage, a scream is better than silence. In the end, I conclude that it was better for a place like Marshfield to speak than to demur like so many of its neighboring towns. But even better than a scream for its own sake is conversation, solidarity, and strategy. The history and the shadows that it casts on the present suggest that there is space for local governments to take advantage of their public fora to do this constructive work. We are too saddled with the sense that all that we do in public spaces is futile or worse. This Article concludes with cautious optimism, drawn from the past through the present, that local governments can, in the right circumstances, be effective parts of resistance movements.

I. THE SECTIONAL CRISIS, LOCAL GOVERNMENT, AND THE PRELUDE TO  
1850

A. *A Brief History of Local Government Resistance*

In the mythology of the New England town, independence from the grasp of state and federal control has always loomed large.<sup>24</sup> Thomas Jefferson romanticized the power of the town to impose a brake on tyrannical centralization, proposing that the New England townships had “proved themselves the wisest invention ever devised by the wit of man for the perfect exercise of self-government, and for its preservation.”<sup>25</sup> Building on Jefferson, Hannah Arendt argued that the virtue of robust local government was to push back against “degenerate” government—a tyranny of centralized power that squandered the collective spirit of participatory self-government and allowed for creeping political oppression.<sup>26</sup>

Whether this mythology has its facts entirely straight, there is a long history of local governments, and especially New England town governments, enacting their mythologized role to resist federal and colonial laws that they understood to be oppressive. A summary of this tradition of resistance shows that the resolutions passed in 1850 and 1851 were an extension of past practice. Saying this does not mean that these kinds of resolutions were frequent or conventional. For every example of a town meeting resolving to oppose the king, resolving to work to abolish slavery, or resolving to protect fugitive slaves, there are more examples of town meetings that chose to take no action on these controversial issues or even to resolve actively to *support* the king and to *preserve* slavery.

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<sup>24</sup> One of the most famous cheerleaders for the New England town, Alexis de Tocqueville, documented what he understood to be a fierce and sovereign independent spirit residing in the town body politic. “In everything that pertains to themselves alone, towns remain independent bodies. I do not believe that there is a single resident of New England who would grant the state government the right to intervene in matters of exclusively local interest.” ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 73 (Arthur Goldhammer trans., Library of America 2004) (1835).

<sup>25</sup> Letter from Thomas Jefferson to Samuel Kercheval (July 12, 1816), *at* TEACHING AM. HIST. <https://teachingamericanhistory.org/library/document/letter-to-samuel-kercheval> [<https://perma.cc/YQQ5-87KW>].

<sup>26</sup> See HANNAH ARENDT, *ON REVOLUTION* 254 (Penguin Books 1990) (1963).

## 1. Revolutionary Town Meetings

Local agitation plays a large role in the story that is commonly told about the movement for American independence in the second half of the 18th Century.<sup>27</sup> In one dominant story, it was the anti-monarchist (or anti-tax) agitation of New England towns that sparked the fuse of the conflict which resulted in the United States' independence. Contested as this story may be, it had permeated deeply enough into the popular imagination that it had become part of the self-regarding mythology of New England's role as the catalyst of independence.<sup>28</sup>

This mythology had its roots in true events. In the decade leading up to the signing of the Declaration of Independence, local resistance to the empire was a prominent factor in the increasingly hostile relationship between the colonies and the Crown. In Massachusetts, opposition to British oppression commonly manifested at the level of the town. In 1767, the British government passed the Townshend Acts which levied new taxes on goods imported to the colonies such as paint, lead, paper, glass, and, most famously tea. In response to these taxes, town meetings in Boston and beyond resolved to boycott the taxed British goods. Seeing these boycotts as acts of hostility—and seeing the towns and their town meetings as forces of disorder and revolution—the British sent troops and ships to occupy Boston in 1768. In anticipation of this occupation, the Boston town meeting convened and called for a “convention of towns” to gather in Boston to discuss whether or not to forcibly resist the British.<sup>29</sup> While this convention did

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<sup>27</sup> No less august an authority than the Princeton Encyclopedia of American Political History summarizes that “the American Revolution itself [was] a result of town meetings in eastern New England.” Maurice Isserman, *New England*, in 2 THE PRINCETON ENCYCLOPEDIA OF AMERICAN POLITICAL HISTORY 534 (2010).

<sup>28</sup> Harvard Law Professor Joel Parker gave a speech in 1866 that was emblematic of this view, arguing that it was the towns that were “prepared for resistance, not only in sentiment, but in material. . . . Great Britain rightly judged that a portion of the country so organized was the most dangerous. . . . But for these towns, New England could not have been prompt to meet the crisis, and to assert the rights of the colonies by an armed resistance which made itself felt and respected from the very moment of the onset.” Joel Parker, *The Origin, Organization, and Influence of the Towns of New England*, in 9 PROCEEDINGS OF THE MASSACHUSETTS HISTORICAL SOCIETY 62–63 (1866–67). The romantic view of the town as the fount of American democracy enjoyed a renaissance during the Civil War and the early years of Reconstruction as Northerners saw the opportunity to remake the political order from the ground up. See generally Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413 (2017).

<sup>29</sup> See MERRILL JENSEN, *THE FOUNDING OF A NATION: A HISTORY OF THE AMERICAN REVOLUTION 1763–1776*, 291–96 (Oxford Univ. Press 1968). For a full and masterful recounting

not end up advocating for armed resistance to the British troops,<sup>30</sup> many of the towns that participated in the convention passed individual resolutions condemning the actions of the imperial government and supporting the towns' rights to resist those actions through the convention.<sup>31</sup>

In the years between 1768 and 1774, tensions between the colonies and Britain ramped up through a series of now-mythologized clashes: the Boston Massacre, the Boston Tea Party, etc. As the conflict intensified, the British Parliament identified local government as a primary cause of the unrest in the colonies. It was for this reason that Parliament made suppressing local power a central part of its strategy for staunching rebellion in 1774. That year, Parliament passed the "Coercion Acts" which American patriots renamed the "Intolerable Acts."<sup>32</sup> A linchpin in the plan of these enactments was the "Massachusetts Government Act" which forbade any town in Massachusetts from convening a town meeting without the express consent of the royal governor, and forbade the discussion of anything beyond the local business of the town at any such town meeting.<sup>33</sup>

These restrictions on local power proved to be a flashpoint in colonial resistance to British rule. In town after town in Massachusetts, meetings convened to condemn the new laws. Having convened these meetings in violation of the law, many towns passed resolutions expressly declaring their intention to disregard and nullify that law. For example, a meeting in Pepperell resolved "that we have a just [and] lawful right to meet together, when and so often as we shall have occasion to cultivate harmony and transact our Town affairs and that we will hold, use, improve that privilege and never give it up or quit the

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of this episode, see Nikolas Bowie's forthcoming study of the place of local power in the free assembly clause of the First Amendment. See Nikolas Bowie, *The Constitutional Right of Self-Government*, 130 YALE L.J. (forthcoming 2021), <https://ssrn.com/abstract=3676811> [<https://perma.cc/A8MS-JR8H>].

<sup>30</sup> See JENSEN, *supra* note 29, at 295.

<sup>31</sup> See Richard D. Brown, *The Massachusetts Convention of Towns, 1768*, 26 WM. & MARY Q. 94, 99 (1969).

<sup>32</sup> See RAY RAPHAEL & MARIE RAPHAEL, *THE SPIRIT OF '74: HOW THE AMERICAN REVOLUTION BEGAN* 23–31 (2015).

<sup>33</sup> See MICHAEL ZUCKERMAN, *PEACEABLE KINGDOMS: NEW ENGLAND TOWNS IN THE EIGHTEENTH CENTURY* 248–49 (1970). Annual town meetings to elect public officials were allowed, but everything else had to go through the Crown. See Bowie, *supra* note 29, at 29.

usual practice of meeting together.”<sup>34</sup> Similarly, a meeting of the towns on Martha’s Vineyard resolved “[t]hat Town-meetings ought to be held in this county as hath been Usual according to the Directions and Laws of this Province.”<sup>35</sup>

The resistance to the laws went further than direct nullification. When the “Intolerable Acts” threatened the status quo of local control in Massachusetts, those towns themselves became bastions of resistance. Where previously the bulk of town business had been local, after 1774 towns increasingly devoted their attention at meetings to national (and revolutionary) affairs.<sup>36</sup> The threat to town meetings, perhaps unsurprisingly, inspired many towns to hold *more* of them in open defiance of the governor and the imperial laws.<sup>37</sup>

Whether or not this building spirit of local resistance was the “real” cause of the Revolutionary War, the events of 1774 reveal an important backstory for the resolutions of 1850–51. Many (though by no means all) local governments understood themselves to be defenders of the political rights of their citizens. Corollary to this, those towns understood themselves to have the political, legal, and moral authority to nullify a law that they understood to be oppressive. In the context of the Massachusetts Government Act, nullification consisted of the simple act of meeting.

If the American Revolution was a resistance movement, it is worth asking what the towns could and should have done in furtherance of that movement. Michael Zuckerberg has argued persuasively that Massachusetts towns in the 18th century were primarily concerned with internal affairs and orderly and peaceable self-government.<sup>38</sup> But a local focus should not be confused with a submissive attitude or powerlessness. The towns’ reactions in 1774 suggested that town residents understood the towns to be bastions of self-determination and that threats to that self-determination would be met with resistance and defiance. Moreover, the towns were willing to flex their powers to

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<sup>34</sup> *Resolutions by the Inhabitants of the District of Pepperell, June 27, 1774*, TOWN OF PEPPERELL, <https://town.pepperell.ma.us/147/Revolutionary-War--2> [<https://perma.cc/27NU-PD28>]. The Pepperell meeting also resolved to boycott British goods in protest and violation of the other Coercive Acts.

<sup>35</sup> RECORDS OF THE TOWN OF TISBURY, MASS. 208 (1903).

<sup>36</sup> See ZUCKERMAN, *supra* note 33, at 249.

<sup>37</sup> See *id.* at 250. While not a town meeting, a convention of towns in Middlesex County in Massachusetts concluded that the Massachusetts Government Act was a direct threat to the right of self-government and that it reduced colonial subjects to a “most abject state of vassallage [sic] and slavery.” See Bowie, *supra* note 29, at 33–34.

<sup>38</sup> See *id.* at 220–25.



achieve that resistance. Their collective and concerted nullification was the explicit product of a broader statewide strategic initiative.

The galvanizing effect of the towns' nullification was both outward and inward facing. Outwardly, the towns' resolutions communicated to other towns and to the British authorities their intent to defy the laws. This was local resistance as outward political expression, rooted in the belief that what a town meeting says should and can have an impact on policy and discourse beyond the town's borders. Inwardly, simply by calling the meetings in defiance of the law's prohibition, the towns' citizens communicated to *each other* that they valued their allegiance to the town over their allegiance to the governor or the king. This local public expression reaffirmed the collective commitments underlying town governance.

The fact that all it took for a town to nullify and resist in 1774 was to convene a town meeting threatens to obscure the full extent of local government power at their disposal. At the same time that these nullification meetings were being convened, towns were flexing their police power muscles to back their words with punishment. In the town of Medway, a 1773 town meeting ordinance condemned the purchase or consumption of tea subject to British taxation in the town. Anyone found buying or drinking such tea would "be viewed as enemies to the Country and will be treated with disrespect by this town."<sup>39</sup> This was no empty threat. The town ordered that licenses be withheld from innkeepers and sellers of "strong liquors" if they were found buying or drinking tea.<sup>40</sup>

This law in Medway is an instructive reminder of how many tools of local power towns had and retained until the 1850s. Towns could back their acts of resistance with the strength of the power to issue licenses, regulate liquor, and approve roads and infrastructure. When Medway named tea drinkers enemies of the state, the town used its power to back that condemnation with consequences. We shall see that when Weymouth made a similar condemnation in 1850, the town chose not to back it with enforcement.

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<sup>39</sup> EPHRAIM ORCUTT LOWELL, *THE HISTORY OF MEDWAY, MASS.* 54 (1886).

<sup>40</sup> *Id.*

## 2. Local Governments Against Slavery

There is another set of precedents that the towns in 1850–51 could also have been drawing on: the role of local governments in advocating for the abolition of slavery.

During years before and immediately following the Declaration of Independence in 1776, a number of towns across New England convened town meetings in support of the abolition of slavery as part of the formation of the United States. In Massachusetts, town meetings in Worcester in 1765 and then in Boston in 1766 instructed the town delegates to agitate for state legislation abolishing slavery. Worcester's town meeting instructed the town delegate to "use your influence to obtain a law to put an end to the unchristian and impolitic practice of making slaves of the human species."<sup>41</sup> Boston followed suit a year later, instructing its town representatives to the state legislature to advocate for "the total abolishing of slavery from among us; that you move for a law, to prohibit the importation and purchasing of slaves for the future."<sup>42</sup> Neither the resolution in Worcester nor the one in Boston, nor the other resolutions across the state in favor of gradual emancipation<sup>43</sup> ended slavery in the towns themselves by force of municipal law.<sup>44</sup> Rather, these resolutions were collective public expressions by the towns' citizens of a broader desire that slavery should be abolished.

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<sup>41</sup> ALBERT ALONZO LOVELL, *WORCESTER IN THE WAR OF REVOLUTION* 18 (1876).

<sup>42</sup> A REPORT OF THE RECORD COMMISSIONERS OF THE CITY OF BOSTON, VOL. 16, 183 (1886). Ten months later, the town meeting seemed to vote for the "total abolishing of Slavery among us." *Id.* at 200.

<sup>43</sup> Other towns that framed such resolutions were: Salem, Sandwich, Medford, and Leicester. Leicester like Providence (below) resolved that any black child born after a fixed date would become free upon reaching a fixed age. See MARY STOUGHTON LOCKE, *ANTI-SLAVERY IN AMERICA FROM THE INTRODUCTION OF SLAVES TO THE PROHIBITION OF THE SLAVE TRADE (1619–1808)* 69 (1901).

<sup>44</sup> Indeed, slavery persisted in Boston and across the state of Massachusetts at least until 1783, when the *Quock Walker* cases ostensibly abolished slavery across the state. Those cases arose in Worcester, emphasizing that seventeen years after the Worcester town meeting, slavery persisted in that town. See Elaine MacEacheren, *Emancipation of Slavery in Massachusetts: A Reexamination 1770-1790*, 55 J. OF NEGRO HIST. 289, 289 (1970). In Boston, there is evidence that slavery likely persisted even after the Walker cases. See *id.* at 294–95. See also PAUL FINKELMAN, *AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY* 41 (2000) ("Although some slaves were held in Massachusetts after the Quock Walker Cases, the 1790 census reported none in the state. By that date community pressure militated against anyone who admitted he owned a slave.")

The resolutions in Massachusetts were likely inspired by the growing revolutionary spirit there. In 1765 James Otis, a leading patriot and important figure in Boston politics, published a pamphlet condemning slavery and arguing that the presence of slavery in American culture is corrosive to political liberty.<sup>45</sup> As 1776 approached, this argument gained strength as advocates for revolution in the colonies started to see the dissonance between their own cries for liberty from oppression and the system of chattel slavery. In 1774, the town of Danbury, Connecticut resolved that “we cannot but think it a palpable absurdity, so loudly to complain of [British] attempts to enslave us, while we are actually enslaving others, and that we have great reason to apprehend the enslaving of *Africans* is one of the crying sins of our land, for which Heaven is now chastising us.”<sup>46</sup> That same year, a town meeting in Providence, Rhode Island voted to emancipate six slaves owned by a man who had died intestate. More than freeing these slaves, the town meeting resolved:

Whereas the inhabitants of America are engaged in the preservation of their rights and liberties; and as personal liberty is an essential part of the rights of mankind, the deputies of the town are directed to use their endeavors to obtain an act of the General Assembly, prohibiting the importation of negro slaves into this colony; and that all negroes born in the colony should be free, after attaining a certain age.<sup>47</sup>

Unlike the responses to the Massachusetts Government Act in 1774, these anti-slavery resolutions were not in specific response to any law casting a shadow over local power. Rather, these resolutions seem to have sprung from a moral anxiety manifesting within the town meeting. As towns gathered to discuss whether or not to resist the power of Britain, some found themselves forced to ask whether or not the practice of slavery could be sanctioned within the new moral framework of the impending revolution. Where towns experienced that dissonance strongly, they resolved to oppose slavery in rhetoric (if not in deed).

Between the resolutions against the Massachusetts Government Act and the resolutions against slavery from the Revolutionary era, a clear tradition of local resistance to oppressive laws and local moral

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<sup>45</sup> See GARY B. NASH, *THE UNKNOWN AMERICAN REVOLUTION: THE UNRULY BIRTH OF DEMOCRACY AND THE STRUGGLE TO CREATE AMERICA* 63 (2006).

<sup>46</sup> Bernard C. Steiner, *History of Slavery in Connecticut*, in *LABOR, SLAVERY, AND SELF-GOVERNMENT* 400 (Herbert B. Adams ed., 1893).

<sup>47</sup> WILLIAM D. JOHNSTON, *SLAVERY IN RHODE ISLAND, 1755-1776* 23–24 (J. Franklin Jameson ed., 1894).

advocacy emerges. These are the strands that the local governments acting against the Fugitive Slave Law of 1850 would pick up. Before skipping ahead this far, however, it bears noting that this tradition of local resistance was not as actively in use against slavery in the intervening years as one might expect. In fact, there is surprisingly little evidence that local governments were active agents either in protecting the personal liberty of fugitive slaves or in the various political movements opposing slavery.

While Northern states actively legislated to protect alleged fugitive slaves against being returned to slavery without any due process (and to protect free blacks against kidnapping), these personal liberty laws were nearly universally state enactments. There is no evidence that local governments played any substantial role in the Northern effort to limit the recapture of fugitive slaves before 1850.<sup>48</sup>

Another struggle that one might expect to see spawn town resolutions was the movement to abolish slavery in Washington, D.C. This struggle was built on a flood of petitions from groups of northern constituents that Northern lawmakers, most notably John Quincy Adams, sought to introduce in the Congress.<sup>49</sup> These petitions were drafted and coordinated not by towns but rather by the separately organized Anti-Slavery Societies that were cropping up all across the North in the second half of the 1830s.<sup>50</sup> These antislavery societies were non-governmental organizations which frequently included prominent town leaders and that occasionally met within town halls. Their resolutions were the collective words of private citizens, not the official enactment of any local government.<sup>51</sup> While the Congressional Record

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<sup>48</sup> I will discuss Northern personal liberty laws further *infra* in Part II.B.1. I would hasten to add here that I cannot say with any certainty that there were no local enactments protecting personal liberty or supplementing state laws. Rather, I can say that my research has revealed none. Proving a negative, especially amidst an archive that is nearly impossible to search with any exhaustive certainty, is impossible. All I can say with some certainty is that there was no groundswell of local action ancillary to the personal liberty laws that was at all equivalent to the local resolutions around the Revolution or the Fugitive Slave Law of 1850.

<sup>49</sup> See James M. McPherson, *The Fight Against the Gag Rule: Joshua Leavitt and Antislavery Insurgency in the Whig Party, 1839-1842*, 48 J. NEGRO HIST. 177, 177 (1963).

<sup>50</sup> *Id.*

<sup>51</sup> This distinction will be all the more important in response to the Fugitive Slave Law of 1850 where many of those same anti-slavery societies would draft and pass resolutions condemning the law. It is my argument that these resolutions were categorically different from the official enactments of local governments undertaken by towns like Marshfield.

is replete with references to these private petitions,<sup>52</sup> I have found only one instance where a local government passed any official enactment in support of the petition campaign.<sup>53</sup>

Alongside this predominant silence from local governments on anti-slavery concerns a number of local governments did speak up *against* abolitionism and racial justice. For example, in 1833 the town meeting in Canterbury, Connecticut convened and resolved to block Prudence Crandall from establishing a school for black girls.<sup>54</sup> Just two years later, in 1835, a town meeting in Canaan, New Hampshire convened to reject and remove the Noyes Academy, another school designed for the education of black children.<sup>55</sup> The story of Nantucket, a decade later is more equivocal. In 1845 the town meeting voted to prevent the integration of the island's public schools. Just two years later, however, after a spirited public battle, the town meeting elected a slate of integrationist school committee members who acted to integrate the schools.<sup>56</sup>

In some cases, local governments took it upon themselves to condemn abolition out of a perceived patriotic anxiety about the survival of the union. For example, in 1837, the town of Brighton, Massachusetts (later to be annexed by the city of Boston) passed a set of resolutions declaring "our abhorrence of any interference tending to affect *in the least degree the interests of the Slaveholding States*, or that

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<sup>52</sup> Many of the petitions were clearly the product of the American Anti-Slavery Society's massive petition drive. See OWEN W. MUELDER, THEODORE DWIGHT WELD AND THE AMERICAN ANTI-SLAVERY SOCIETY 62–63 (2011).

<sup>53</sup> This resolution came from Deerfield, Massachusetts in 1838. Deerfield's resolutions were drafted to protect "the citizens of free states while passing through or sojourning in the slave states." Among the resolutions deemed necessary to effectuate these protections was that "Congress is required without delay to [abolish slavery in the District of Columbia] equally by the principles of justice, benevolence and national faith, and a wise regard for the welfare, integrity and permanence of the union." 2 GEORGE SHELDON, A HISTORY OF DEERFIELD, MASSACHUSETTS 822 (1896).

<sup>54</sup> See *More Barbarism!*, LIBERATOR (Boston, Mass.), May 18, 1833, at 78.

<sup>55</sup> See James Arvin, William Marden, & Sylvanus B. Morgan, Letter to the Editor, *To the Editor of the Register and Observer*, LIBERATOR (Boston, Mass.), Sept. 5, 1835, at 1. The resolutions at Canaan went beyond merely rejecting the school, they also condemned all abolitionists as "[a] combination of disorganizers, led on by an Englishman, sent to this country to sow seeds of discord and contention between North and South—may he be removed from this continent as suddenly as the 'Noyes Academy' has this day been removed from the control of the Abolitionists." *Colored School at Canaan*, LIBERATOR (Boston, Mass.), Sept. 5, 1835, at 1.

<sup>56</sup> See KYLE G. VOLK, MORAL MINORITIES AND THE MAKING OF AMERICAN DEMOCRACY 122–25 (Oxford Univ. Press rev. ed. 2017).

may produce any excitement among the slaves, or that in any way or manner shall cause any alarm on the part of the owners of such slaves.”<sup>57</sup>

Taken together, these examples from the first half of the nineteenth century are somewhat haphazard and equivocal. To the extent that there is a clear takeaway, it is that the tradition of local engagement with national politics and with slavery specifically had not gone entirely dormant, but that local enactments and local power did not occupy center stage in the growing political struggles over slavery. One obvious reason for this is that, for the most part, those struggles did not implicate local concerns in concrete ways. From the Massachusetts Government Act through the lead-up to the Revolution, local governments had understood themselves as bound to act where their moral and political autonomy was threatened by oppressive laws. Where local governments periodically acted in the intervening years, the same pattern of implication applied. When Deerfield’s citizens felt that their fundamental right to petition was threatened, they passed a resolution resisting the gag rule in favor of abolition in Washington, D.C. Conversely, when the citizens of Brighton perceived that the union and thus the town’s peace was at risk, the town meeting resolved to condemn abolitionists and reaffirm its support for protecting the property of slave owners.

If towns and cities did not feel themselves immediately implicated by the national struggles over slavery and abolition before 1850, the Fugitive Slave Law of 1850 changed the story. Similar to the Coercive Acts, the new law brought the struggle over slavery into the backyards of Northerners and spurred a set of local responses as part of a broader national political upheaval.

#### B. *The Problem of Fugitive Slaves and The Compromise of 1850*

Since the first days of the new nation, the problem of fugitive slaves was a flashpoint for political contestation between Southern states increasingly dependent on slave labor and Northern states where slavery was steadily being abolished. Much excellent recent work has been done describing the outlines of the role that slavery and the problem of fugitive slaves played in the growing sectional conflict that

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<sup>57</sup> *Preamble and Resolutions, Adopted at a Town Meeting of the Inhabitants of Brighton, Legally Called for the Purpose, on the 24th of August, 1835*, LIBERATOR (Boston, Mass.), July 28, 1837, at 123 (emphasis in original).

would eventually grow into the Civil War.<sup>58</sup> It is neither necessary nor possible in the context of this Article to rehearse the story here beyond the most basic of outlines.

Beginning in the early nineteenth century, Northern states that had abolished slavery became increasingly uncomfortable with the rights asserted by Southerners over the reclamation of their allegedly fugitive slaves. Under the Fugitive Slave Law of 1793,<sup>59</sup> Southerners understood themselves to be empowered to travel north and “reclaim” the human beings that they claimed as property without any recourse to legal process. In operation, Northerners began to see these “self-help” reclamations as kidnapping and accordingly passed a series of laws intended to guarantee due process to any alleged fugitive claimed by a Southern slaveholder. In turn, Southerners saw these “Personal Liberty Laws” as an existential threat to their property rights and thus to their status as equal citizens in the union.<sup>60</sup>

As the anti-slavery political movement in the North grew between 1830 and 1850, Northerners’ commitment to opposing the rendition of fugitive slaves transitioned from abstract to immediate politics. At the same time Southerners also magnified and personalized their own pro-slavery politics. In 1842, these tensions reached the United States Supreme Court when the State of Pennsylvania sought to prosecute Edward Prigg for kidnapping and enslaving Margaret Morgan and her children. *Prigg v. Pennsylvania* was a hideous case on its facts.<sup>61</sup> Morgan had been living as a free woman with her family in Pennsylvania when Prigg and his associates took her and her children to Maryland by deception and force and thereupon sold the entire family “down the

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<sup>58</sup> For just two examples of books published in the last few years covering this ground, see generally ANDREW DELBANCO, *THE WAR BEFORE THE WAR: FUGITIVE SLAVES AND THE STRUGGLE FOR AMERICA’S SOUL FROM THE REVOLUTION TO THE CIVIL WAR* (2018); R.J.M. BLACKETT, *THE CAPTIVE’S QUEST FOR FREEDOM: FUGITIVE SLAVES, THE 1850 FUGITIVE SLAVE LAW, AND THE POLITICS OF SLAVERY* (Randall Miller, Zoe Trodd & Robert E. Wright eds., 2018).

<sup>59</sup> The Fugitive Slave Law of 1793 was passed five years after the ratification of the United States Constitution to effectuate the so-called “Fugitive Slave Clause” of the Constitution and provide a procedural framework for slave owners seeking to reclaim alleged fugitive slaves after they had escaped. For a more detailed description of the law and its provisions, see Daniel Farbman, *Resistance Lawyering*, 107 CALIF. L. REV. 1877, 1891 (2019). See also DELBANCO, *supra* note 58, at 105–06.

<sup>60</sup> See THOMAS D. MORRIS, *FREE MEN ALL: THE PERSONAL LIBERTY LAWS OF THE NORTH 1780–1861* 59–71 (1974).

<sup>61</sup> Jamal Greene said that “*Prigg v. Pennsylvania* could easily be called the worst Supreme Court decision ever issued. The human tragedy of the decision is breathtaking.” Jamal Greene, *The Anticanon*, 125 HARV. L. REV. 379, 428 (2011). It is hard to dispute this claim.

river” into slavery and away from home.<sup>62</sup> *Prigg* has been discussed widely, and a full account of the case is beyond the scope of this Article. For my purposes it is important to note two baseline conclusions in Justice Story’s opinion for the Court. First, Story held that the Fugitive Slave Law of 1793 was a constitutional exercise of congressional power granted under the Fugitive Slave Clause of the Constitution.<sup>63</sup> This meant not only that Congress had the authority to create a federal system for arresting and enslaving alleged fugitives, but that state laws (like Pennsylvania’s anti-kidnapping law) were preempted by that federal law. Even more importantly for the stories that follow was Story’s holding that while states were free to choose to assist federal authorities in apprehending fugitives, they were under no affirmative duty to do so.<sup>64</sup>

*Prigg* thus set the terms for federal intervention in apprehending fugitive slaves both by authorizing federal action to enslave alleged fugitives and by giving states permission not to remain bystanders and not provide assistance. This very right of abstention would become an important part of what made the enforcement of the new law so offensive as local citizens watched federal officers and even the federal military march through their streets in service of Southern slave owners.

The simmering sectional conflict that flared in *Prigg* was the backdrop for the Fugitive Slave Law of 1850. The so-called “Compromise of 1850” has been covered from nearly every angle by historians.<sup>65</sup> Again, it is beyond the scope of this Article to tell a full

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<sup>62</sup> Morgan herself had a strong argument that she was free, and her children were almost certainly free as a matter of Pennsylvania law and not “fugitives from service” under the terms of the Fugitive Slave Law of 1793. For a thorough account of *Prigg*, see PAUL FINKELMAN, SUPREME INJUSTICE: SLAVERY IN THE NATION’S HIGHEST COURT 140 (2018).

<sup>63</sup> See *Prigg v. Pennsylvania*, 41 U.S. 539, 620–22 (1842).

<sup>64</sup> See *id.* at 625. The fact that Justice Story had left room for states to refuse to cooperate with federal authorities was something that Chief Justice Taney complained about in his concurring opinion. See *id.* at 627–28 (Taney, C.J., concurring). It was also something that his son William would famously celebrate when arguing that his father’s opinion in *Prigg* should not tarnish his legacy. See R. KENT NEWMYER, SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC 372 (G. Edward White ed., 2004).

<sup>65</sup> For a microcosm of the range of views that have been covered, compare ROBERT V. REMINI, AT THE EDGE OF THE PRECIPICE: HENRY CLAY AND THE COMPROMISE THAT SAVED THE UNION (2010) (adopting, as the title suggests, the view that Clay, Douglas, Webster, and the moderates championing the compromise should be credited with saving the union), with Paul Finkelman, *The Appeasement of 1850*, in CONGRESS AND THE CRISIS OF THE 1850S 36 (Paul Finkelman & Donald R. Kennon eds., 2012) (arguing, again as the title suggests, that the compromise was, in fact, no compromise at all and that the North capitulated to Southern demands while receiving nothing in return).



history of the negotiations or results thereof. The broadest of outlines is this: In 1850 a group of moderates in Congress brokered a “compromise” that nominally resolved an interconnected morass of political stalemates that had arisen in the fraught interplay between slavery and western expansion. Along with the Fugitive Slave Law, California was admitted as a free state, the slave trade (but not slavery itself) was abolished in Washington, D.C., and the territories of New Mexico and Utah were established while giving each territory the freedom to adopt or ban slavery by vote under the doctrine of “popular sovereignty.”<sup>66</sup>

Although the totality of these measures was sold as a compromise, many Northerners felt as though they had gained little and lost much in the bargain.<sup>67</sup> They felt this in large part because the linchpin of the bargain was a law which had sparked immediate and vigorous opposition: The Fugitive Slave Law of 1850.

The Fugitive Slave Act infamously appeased the South by creating a brand-new federal infrastructure for processing and enforcing slave owners’ claims against alleged fugitives. This infrastructure included newly empowered federal marshals who were authorized to deputize civilians and arrest alleged fugitives without cooperation or approval from local police. It also required the appointment of federal commissioners who would preside over summary proceedings intended to approve the slave owners’ claims. These commissioners were appointed by federal judges but not themselves judicial officers under Article III of the Constitution. Nor were the hearings they presided over “trials” in any recognizable sense. The process was summary requiring very little evidence from alleged slave owners and making it prohibitively difficult for alleged fugitives to confront that evidence with evidence of their own. To see the bias baked into the system, one need look no further than the commissioners’ compensation. Commissioners were to be paid \$5 in cases where they found an alleged

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<sup>66</sup> See Finkelman, *supra* note 65, at 49–56. Popular sovereignty asserted that states had the right to decide whether or not to allow slavery and that the Congress could not establish a territory on the condition that slavery not be allowed (which was the entire premise of the Missouri Compromise of 1820, dividing the American West between North and South/slave and free). It would come to be associated with Stephen Douglas and his support of the Kansas/Nebraska Act and opposition to the Free Soil policies of the Republican Party. See generally CHRISTOPHER CHILDERS, *THE FAILURE OF POPULAR SOVEREIGNTY: SLAVERY, MANIFEST DESTINY, AND THE RADICALIZATION OF SOUTHERN POLITICS* (2012).

<sup>67</sup> See Finkelman, *supra* note 65, at 60 (quoting William H. Seward’s view that “the compromise was ‘radically wrong and essentially vicious, involving the surrender of the exercise of judgment and conscience.’”).

fugitive to be free and \$10 in cases where they returned her to slavery. Not only was the process summary, but it was exclusive—the law forbade the use of habeas petitions as a way to collaterally attack proceedings before the commissioners.<sup>68</sup>

Northerners were outraged by this new federal regime because it subjected people that many of them saw as neighbors and citizens to a legal process that fell far short of due process before enslaving them. This meant that state courts and state constitutional protections were removed as obstacles. For Southerners, this was precisely the point. But for Northerners, this was an attack on their sovereignty and by extension, on democratic self-government. To make matters worse, the Fugitive Slave Law included new and stiffer punishments for any person who rescued or harbored an alleged fugitive. In doing so, the new law not only told local actors in the North that they could not protect the due process rights of their black neighbors, but also reached into the homes and churches of anti-slavery Northerners to criminalize their religious and humanitarian convictions.<sup>69</sup>

Thus, as opposition to the new law exploded across the North,<sup>70</sup> much of the outrage was rooted not only in substantive opposition to the law but also in a sense that Northern political and moral autonomy was being subrogated to the protection and perpetuation of slavery. It was under these conditions and pressures that local governments began to ask whether and how they should respond to the new law. The lessons of 1774 and common sense suggest that the more a local government perceived a threat to local autonomy, the more likely that government would be to act to condemn the law.

## II. LOCAL RESPONSES TO THE FUGITIVE SLAVE LAW OF 1850

After the Fugitive Slave Law was passed in the fall of 1850, towns and cities across the North engaged the machinery of their local governments to respond to the law. The most striking of these responses

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<sup>68</sup> This description essentially restates a longer description of the law from a previous article of mine. That description, in turn, is nothing more than a synthesis of a much larger body of scholarly work. See Farbman, *supra* note 59, at 1889–95.

<sup>69</sup> See *id.* It is worth noting that these punitive provisions were not brand new. The Fugitive Slave Law of 1793 also included punishments for providing aid and comfort to fugitives. See *id.* Still, in the new political context and combined with the newly empowered federal enforcement mechanism, these punishments seemed all the more invasive to an increasingly anti-slavery Northern population.

<sup>70</sup> See BLACKETT, *supra* note 58, at 16–18.

came from places like Chicago and Marshfield, where the municipal governments passed clear resolutions condemning the law and promising to resist it. Many more towns and cities took subtler steps to express opposition to the Fugitive Slave Law and solidarity with the growing momentum of Northern anti-slavery politics. More common than either of these responses were the towns and cities that chose silence over engagement with the question. Finally, a few towns and cities in the North chose to weigh in on support of the Fugitive Slave Law, either as a result of national pressure, or simply as a reflection of local support for the South and compromise and local opposition to abolitionism.

Although I am interested in all four types of response, it is the first category that is my primary focus. The towns and cities that acted officially on their outrage staked out the boundaries of what a response to the Fugitive Slave Law *might* look like. The other local responses are defined by their distinction from these town actions. For example, only in the context of Marshfield's town meeting's action does Concord's town meeting's silence seem significant.

#### A. *Defining Terms*

In order to understand the range of local government reactions to the Fugitive Slave Law, it is necessary to take a step back and consider what it meant to be a local government in 1850. The corollary (though no less broad) question is, how did local governments understand themselves in 1850? In practice, these two questions collapse into each other because then, as today, local governments are primary and active agents in defining the terms of their own public role.

Without some baseline consideration of these questions, it is impossible to think clearly about what local governments could or should do to resist the Fugitive Slave Law. In towns and cities where local government was understood as a minimal and managerial institution, the question of resisting the law would simply not have been germane. By contrast, in towns and cities that defined themselves as active political communities engaged in discourses that stretched beyond their borders, it may not have seemed to be an option to remain neutral in the face of a pressing national political crisis.

If these two approaches reveal themselves in retrospect, the granular stories of the resolutions themselves illustrate just how dynamic and contingent local self-definition was and remains in practice. The difference between, for example, Acton's choice to speak

out against the Fugitive Slave Law and neighboring Concord's choice not to likely came down to a complicated mixture of institutional culture, local relationships, and the idiosyncratic individual stories of citizen participants in the town meeting. The political energy that coalesced in the form of these resolutions was frequently ad hoc and it is difficult in most cases to tell a clear story of how and why they came to be. While a given resolution could have represented the product of long and concerted debate, it could also have simply been an afterthought or a passing political concession to a particularly loudmouthed abolitionist neighbor.

All of these messy contingencies make it more difficult to reach sweeping conclusions about the intentions or political philosophy of towns or cities as unitary entities. Still, it would be a mistake to allow the messiness of local lawmaking to keep us from treating those resolutions as meaningful objects of analysis. In the first place, the description of local law making in the 1850s is no less chaotic or contingent than a description of local law making in the present. For anyone who has ever attended a planning commission, school board, or town council meeting, the power of local relationships, community culture, and individual personality will be entirely familiar. And yet the zoning variance, school funding decision, or even the sanctuary city policy that emerges from these processes are no less explicit as statements of local government law. This is the best reason to not get lost in the morass as we look back on the resolutions in response to the Fugitive Slave Law. Whatever the chaos of their provenance, they emerged as public enactments that thrust the towns and cities that adopted them into a unitary public position that changed the way that the town residents understood their town from the inside and the way that observers saw the town from the outside.

This partially justifies the effort to understand what local governments could and should have done to resist the law by looking at their enactments alone. It is also true, however, that in most cases these public enactments exist in the archive without any record of the messy context of their passage. To this extent, the shape of the narrative and the lessons to be drawn from it are inescapably defined and constrained by what is and is not recoverable through archival research. In the research for this Article, I have scoured searchable online newspaper databases, scrolled through pages of microfilm, searched in antiquarian

archives, and been in quite a few dusty town hall basements.<sup>71</sup> In some cases, the archive reveals enough texture to understand some of the circumstances that led to the ultimate resolution.<sup>72</sup> In most of the cases, however, all there is to build from is the language of the resolution itself. Even knowing that there must have been complex social, political, and personal stories behind this language, the resolutions themselves have much to tell us about the public projections of these towns and cities and how those projections engage with the question of what role local governments could or should play in resisting a hated federal law.

### B. *Local Resolutions of Resistance*

The Fugitive Slave Law of 1850 was signed into law by President Fillmore on September 18, 1850. Almost immediately, Northern opponents of the law began to convene to express outrage and resist the law. While community meetings were called as soon as September 19, the official machinery of local government responses engaged more slowly. Between October and January, a first wave of towns and cities met in special session to pass resolutions and ordinances condemning the law. Then, in the spring of 1851, a second wave of town meetings passed similar resolutions at their regularly scheduled town meetings.<sup>73</sup> During this window, I have found at least<sup>74</sup> nine examples of local

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<sup>71</sup> Towns in Massachusetts and around New England have generally kept handwritten records of town meetings in large leather-bound books that usually live on dusty shelves in cluttered basements.

<sup>72</sup> In Weymouth, for example, there were three resolutions: a first resolution condemning the law in 1850, a second resolution retracting that condemnation in 1851, and then, decades later, a third resolution retracting the retraction and reinstating the condemnation. These three data points and the common participation of Elias Richards allow for fairly robust speculation about what the shape of the political struggle in the town had been. *See infra* Section II.B.1.a. In Chicago, by contrast, much of the struggle over the city's ordinance was reported on in the contemporary press. *See infra* Section II.B.1.b.

<sup>73</sup> Traditionally, annual town meetings in New England were held in March and April. For towns that did not call meetings immediately after the law was passed, this would have been the first time for the town to officially respond to the law.

<sup>74</sup> I have sought these resolutions in multiple ways. I have used the now-standard digital tools at my disposal: digitized newspaper archives and book and article databases. I have also chased down leads in the paper archives that languish in the basements of municipal libraries and town halls. From what I have found, I suspect that my list is not exhaustive. That said, I also do not believe that there is a huge trove of resolutions that I am missing. Because these resolutions were intended to be public, most of them were well reported in the press. More often than not, where there is one reference to a resolution in the press, there is more than one, as these reports would

resolutions passed repudiating the Fugitive Slave Law.<sup>75</sup> Of these, seven were resolutions passed at town meetings while two were passed by elected city or town councils. Each of these resolutions shared a baseline argument: that the Fugitive Slave Law was unconstitutional and should be resisted. They differed, however, in what form that resistance should take.

### 1. Explicit Nullification

The most strident local resolutions opposing the law sought to accomplish two primary goals. First, they condemned the Fugitive Slave Law completely, using the local government's collective expressive power to call for the law to be repudiated, disobeyed, and nullified. These condemnations seemed expressly designed to convince other local governments to join in the condemnation and contribute to a broader political movement to overturn the law. More than just expressing outrage, however, these resolutions professed the substantive goal of nullifying the law within the town or city's boundaries. For some of these towns, the rhetoric of nullification was focused on protecting alleged fugitives from being recaptured. For others, the rhetoric of nullification was more focused on protecting the white residents of the town from prosecution under the criminal provisions of the law.

#### a. Weymouth, Massachusetts

The story of Weymouth's response to the Fugitive Slave Law of 1850 spanned three decades. It was an illustration of just how contested and complex local politics were and what the stakes of local resistance

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be syndicated regionally and even nationally. Still, there are enough of these resolutions that do *not* seem to be well-reported to suggest that there are towns (though less likely cities) where such resolutions were passed. In short, while I do not claim that these nine resolutions were the only such resolutions passed, it is unlikely that there are a large number of other resolutions out there as yet undiscovered.

<sup>75</sup> In some instances, it has been difficult to determine whether or not an "official" local government action was taken. Sometimes this is because a news report merely mentions that a public meeting was held in a town hall without noting whether that meeting was official town business. See *Fred Douglas and Abby Kelly Outdone*, DAILY UNION (Washington, D.C.), Nov. 24, 1850 (reporting on a meeting in Wilmington, Ohio). In other instances, news reports suggest an official resolution, but I have been unable to find the text of the resolution or confirm that the news reports were, indeed, accurate. See *New Bedford*, CHRISTIAN CITIZEN (Worcester, Mass.), Apr. 5, 1851 (reporting on an "official" town meeting in New Bedford that other records do not corroborate).

were both at the moment and in retrospect. Weymouth was the first town in Massachusetts to pass resolutions opposing the law in November of 1850. Just months later, in March of 1851, Weymouth's town meeting reconsidered the November resolutions and had them expunged from the town records. Three decades later, long after the salience of the issue had passed, Weymouth voted to expunge the 1851 expungement, thereby reinstating the 1850 resolutions and erasing their erasure.

The details of this melodrama are revealing of the degree to which each of these resolutions was a product of contingent local circumstances. In Weymouth's case, those idiosyncrasies are particularly well laid out in the archive. The battle over the resolutions was an extended political struggle waged at the town meeting between the leaders of the town's abolitionist cohort and a more conservative establishment faction. More specifically, the battle was waged by a single leading abolitionist named Elias Richards for the support of his neighbors to make the town an agent in the movement that he and his allies had committed to.

Weymouth was one of the largest towns on the South Shore of Massachusetts in 1850.<sup>76</sup> Large as it was, like most of its neighboring towns, it was predominantly white. Only sixteen of its 5,369 residents were listed as free people of color. Like many other towns in the area, Weymouth was home to a cadre of abolitionists who had periodically made use of the town meeting's infrastructure to speak out against slavery. In a town meeting called in November 1842, Elias Richards introduced a set of resolutions protesting the imprisonment of alleged fugitive slave George Latimer in Boston and condemning the decision of Judge Story on the Massachusetts Supreme Court sanctioning that imprisonment.<sup>77</sup> The town meeting approved these resolutions, staking out a clear anti-slavery position.<sup>78</sup>

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<sup>76</sup> The 1850 census reported that at 5,369, Weymouth was the third largest town in Norfolk County behind the cities of Dorchester and Roxbury, which were soon to be annexed into Boston. In Plymouth County, the next county south on the South Shore, only Plymouth itself was larger, and then by only 600 residents. See U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: MASSACHUSETTS 52 (1850).

<sup>77</sup> See *Another Voice from Weymouth*, LIBERATOR (Boston, Mass.), Nov. 18, 1842, at 183. Manisha Sinha reports that similar town meeting resolutions opposing Latimer's imprisonment were also passed in Lynn, Salem, and Sherburne around the same time. See MANISHA SINHA, THE SLAVE'S CAUSE: A HISTORY OF ABOLITION 392 (2016).

<sup>78</sup> The resolutions began by quoting the Declaration of Independence and asserting that Latimer was "a citizen of these United States . . . incarcerated within the walls of a loathsome

Richards was a cobbler and leatherworker in Weymouth who had been a leader of the local abolitionist movement since at least 1836.<sup>79</sup> He seems to have been a prominent citizen of Weymouth, well known to his neighbors and politically active.<sup>80</sup> On November 12 of 1850, Richards seized the opportunity presented by a town meeting that had been convened to finish the business of a November 11 meeting that had been called to nominate candidates for state representative.<sup>81</sup> Apparently the November 11 meeting had run long and the meeting had adjourned until November 12 to finish its business. The town records do not include information about attendance, but it is not hard to imagine that a meeting called to tie up loose ends, where no other local concerns would be subject to decision would be more sparsely attended than other regularly scheduled meetings.

Whether it was premeditated or lucky, Richards seized on the opportunity presented by the short extra meeting to take the floor and propose a set of resolutions opposing the Fugitive Slave Law. The resolutions began not by making local policy or even by advocating to other towns or the state legislature. Rather, Richards's resolutions began by speaking directly to a group that was highly unlikely ever to read them: enslaved people. The first resolution exhorted all enslaved people to avail themselves of their rights guaranteed by the Declaration of Independence. In fact, the exhortation was more command than invitation: "Resolved [t]hat all slaves owe it as a sacred duty to themselves[,] their posterity[, and] their God to escape from Slavery."<sup>82</sup> In Richards's view, it was a human duty to pursue and secure the "inherent [and] inalienable right to liberty and the pursuit of happiness" guaranteed by the Declaration of Independence.<sup>83</sup>

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prison . . . for no other crime than availing himself of the liberty and pursuit of happiness therein set forth." *Another Voice from Weymouth*, *supra* note 77.

<sup>79</sup> Richards is listed as the president of the Weymouth and Braintree chapter of the Anti-Slavery Society in 1836. See PROCEEDINGS OF THE MASSACHUSETTS ANTI-SLAVERY SOCIETY, AT ITS SIXTH ANNUAL MEETING xliii (1838).

<sup>80</sup> Weak proof of Richards's notoriety can be gleaned from his inclusion in a volume summarizing the genealogy of prominent Weymouth families. See 4 GEORGE WALTER CHAMBERLAIN, HISTORY OF WEYMOUTH MASSACHUSETTS, IN FOUR VOLUMES, 600 (1923).

<sup>81</sup> It seems to have been common for Massachusetts towns to convene official town meetings to do the towns' state and federal electoral business in November. While most of the towns' local issues were discussed and decided in March or April, towns also played a role in the nomination and balloting process in broader elections and that role required meetings in November around election day.

<sup>82</sup> *Proceedings of the Weymouth Town Meeting of November 11, 1850*, in RECORDS OF THE TOWN OF WEYMOUTH.

<sup>83</sup> *Id.*



On the one hand, this kind of exhortation from a white Northern activist to enslaved black people strikes of high-handed paternalism. Indeed, it *is* inescapably paternalistic. It is unlikely that any person who had actually escaped from slavery would so cavalierly claim that other slaves had a moral duty to risk their lives and families on the slim chance of escape. This romanticized view of the nobility and moral duties of the suffering slave was not unique to Richards or Weymouth. Nor was the prospect that white political elites would be using oppressed subjects as pieces in a broader political struggle unique to Weymouth or even the past.<sup>84</sup>

Still, beyond the privilege and paternalism, Richards's exhortation served another important rhetorical purpose. By exhorting slaves to avail themselves of their fundamental human right to liberty, Richards proposed to put Weymouth on the record as recognizing and respecting slaves' claims both to humanity and citizenship.<sup>85</sup> By claiming civic and human kinship, the resolutions both justified themselves morally and made a subtle argument for why a local government might feel called to act. The plight of the fugitive slave touched every town in the North because the new law compelled every Northerner to be complicit in holding them enslaved. Richards's resolution rejected that complicity, advocating that because no human should be enslaved, every slave should become a fugitive.<sup>86</sup>

Having humanized fugitive slaves, albeit through a somewhat clumsy privileged paternalism, Richards's second resolution targeted his fellow citizens. At Richards's urging, Weymouth voted that "any man who officially or unofficially shall aid or abet the execution of the Fugitive Slave Law, is a deadly enemy to the virtue[,] peace[,] and]

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<sup>84</sup> As I discuss more fully below and in Part III, many of the local resolutions both in the 1850s and today could be understood as, at least partially, political maneuverings of white elites around an explosive and racialized national political dispute. Protection for fugitive slaves and undocumented immigrants might well be *one* goal of elite local politicians, but especially in places where relatively few fugitive slaves or undocumented immigrants live, the very *pledge* of protection has a political meaning and importance that has nothing to do with the actual protection offered and everything to do with a salvo in a national political struggle. See *infra* Part III.

<sup>85</sup> This is consistent with Richards's rhetoric from the Latimer Resolutions in 1842. There the town approved his assertion that Latimer was "a citizen of these United States" and went even further, calling him "our oppressed brother." *Another Voice from Weymouth*, *supra* note 77.

<sup>86</sup> Lewis Cass, a leading moderate, understood this part of Weymouth's resolution as a threat to the union and an "invitation to murder" because it would force the federal government to reject the fugitives' claims to freedom with violence. See WILLARD CARL KLUNDER, *LEWIS CASS AND THE POLITICS OF MODERATION* 254 (1996).

security; and should be regarded [and] treated accordingly.”<sup>87</sup> Note first that this resolution was targeted neither at the Fugitive Slave Law itself nor at legislators or activists seeking to resist the law. Rather, this resolution was a moral condemnation of any person who might respect, obey, or execute the law. And the condemnation was extreme, tarnishing any friend of the law as an enemy of the public. Still, stringent as this condemnation was, it did no more than put the weight of the town’s public voice behind a scolding. The town did not outline any criminal or civic punishment for enforcing the law, nor did it propose to exclude any of these “enemies of virtue, peace, and security” from their role in town governance.<sup>88</sup> Richards’s resolution sought to condemn his neighbors, but it stopped short of employing any official government action to back that condemnation.

Instead, the third resolution continued to condemn without consequence. It concluded (without argument) that the Fugitive Slave Law was “highly obnoxious to the people of this Town” because it was “unconstitutional” as well as “arbitrary, unjust, and cruel.”<sup>89</sup> Just as moral outrage did not trigger consequences, neither did the fact that the law was “highly obnoxious.” Rather than command that the citizens of Weymouth protect fugitives and resist the law, the resolutions merely “*trust* that the Citizens of Weymouth will never . . . become bloodhounds for slaveholders and return the Fugitive; but will protect him, as they would protect their own citizens.”<sup>90</sup>

This third resolution again emphasizes the common humanity and citizenship of the townspeople of Weymouth and fugitive slaves. It also contemplates and trusts that every citizen of Weymouth will nullify the law when given the chance. And yet it creates no binding governmental consequences to back its rhetoric. A resident of Weymouth who assists in the enforcement of the law may be a “deadly enemy” and a “bloodhound” but the official legal and enforcement machinery of the town government would be still.

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<sup>87</sup> See *Proceedings of the Weymouth Town Meeting of Nov. 12, 1850*, *supra* note 82.

<sup>88</sup> There would have been nothing unusual about Weymouth or any other local government in 1850 imposing local civil or criminal regulations to keep the peace or to regulate public morality. Remember, for instance the example of Medway in 1773, where the town meeting refused licenses to anyone who bought or drank British tea. See LOWELL, *supra* note 39, at 54. For a more general depiction of the extent and power of local regulations during this period, see WILLIAM J. NOVAK, *THE PEOPLE’S WELFARE: LAW AND REGULATION IN NINETEENTH-CENTURY AMERICA* 21 (1996).

<sup>89</sup> *Proceedings of the Weymouth Town Meeting of Nov. 12, 1850*, *supra* note 82.

<sup>90</sup> *Id.* (emphasis added).

In place of enforcement, the only explicit actions taken by the town on these resolutions were to record the resolutions “on the town record” and to offer them for publication.<sup>91</sup> Even these relatively weak actions seem not to have been carried out. I have found no record in contemporary newspapers that Weymouth’s resolutions were ever published—and they certainly would have been published in Garrison’s *The Liberator* had they been sent to him. Moreover, the resolutions survived in the town’s records for only four months before they were expunged by the vote of the town meeting in March 1851.

Before turning to the expungement, however, I want to step back and ask what Weymouth’s November resolutions can tell us about the capacity and wisdom of local resistance. First, what did Weymouth think it was doing with these resolutions? One facile answer to this is that the townspeople assembled on November 12 were humoring their passionate neighbor Richards. Whatever the real possibility of this kind of personal politics at the local level, once the resolutions were voted on and approved, they spoke in the official voice of the town—one of the largest towns in the state. From this perspective, there are two accounts of what Weymouth was up to. On the one hand, because the town took no official action beyond recording the resolutions, one could argue that Weymouth thought only that it was making an “official” statement condemning the law, excoriating any who would enforce the law, and exhorting slaves to escape. In other words, despite the radical language suggesting nullification, Weymouth was doing nothing more than exercising the town’s right to public expression.

Another view looks past the weakness of the actual enforcement and toward the rhetoric of the resolutions for a more substantive intention. The resolutions as adopted clearly called for nullification of and resistance to the Fugitive Slave Law. If anyone enforcing the law is an “enemy of [the] peace” it is hard to conclude anything else than that the resolutions are demanding that the law and its enforcement be explicitly resisted. Moreover, the resolutions seem to promise (again, without the town’s enforcement power) that any fugitive who finds themselves in Weymouth would be protected from capture and rendition. This view of the resolutions better comports with their radical rhetoric, though it leaves open the pregnant question of how either that nullification or protection would be delivered.

If both of these intentions are plausible from the resolutions, it helps to ask who was the audience and who was helped and how? On

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<sup>91</sup> *Id.*

their face, the resolutions had three audiences: enslaved people, the white citizens of Weymouth, and the wider world. If we take the first resolution's exhortation that enslaved people escape seriously, then it is at least possible that one hope for the resolutions would be that they would be published and disseminated for the attention of present or potential fugitive slave. This makes the third resolution's promise of protection seem more than rhetorical. Is not Weymouth promising that any enslaved person who declares herself free might find sanctuary in the town? The trouble is that it stretches credibility to suggest that Richards or anyone else in Weymouth really thought that their resolutions would be disseminated throughout the plantations of the South.<sup>92</sup> Rather, the order that the resolutions be recorded in the town records and sent to the press suggest a narrower audience: the people of Weymouth and people active in the political contestation in the North over slavery.

This audience makes more sense given Weymouth's implicit admission that it had very little capacity or willingness to provide robust protection to a person fleeing slavery. Reading Weymouth's resolution carefully, no fugitive would or should conclude that she would be protected by anything more than backslapping public sentiment in Weymouth. The resolutions offer no mechanism for actually providing sanctuary to fugitives or for resisting the law. Richards had convinced his neighbors to agree that the Fugitive Slave Law was "obnoxious" and that complicity with slavery made a person an "enemy of virtue." But he had only won a skirmish in a rhetorical war—there is no evidence or reason to believe that his victory had any impact on the life of any alleged fugitive or free black person.

By concluding that the primary force and purpose of Weymouth's November resolutions were rhetorical within the space of elite political contestation in Massachusetts, I do not mean to diminish either their power or their effect. The town of Weymouth was now on record condemning a law duly passed by the U.S. Congress and tarring any person complicit in enforcing that law as an enemy of the state. Many residents of Weymouth were clearly unhappy about this. In March of

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<sup>92</sup> Richards and his neighbors certainly knew of the extent to which Southern state governments and pro-slavery mobs had worked to keep abolitionist arguments out of Southern discourse. The most famous martyr to this struggle was abolitionist minister publisher Elijah Lovejoy was attacked by a mob and killed by an antiabolition mob in Indiana in 1837. See MICHAEL KENT CURTIS, *FREE SPEECH*, "THE PEOPLE'S DARLING PRIVILEGE," 216–18 (2000). After Lovejoy's murder, antiabolition suppression of speech became increasingly prevalent across the South—a fact that did not go unnoticed among Northern opponents of slavery. See *id.* at 260–62.

1851, in advance of the primary and largest annual town meeting, a local lawyer named Edmund Thomas requested a place on the agenda “to see if the town will rescind and cause to be expunged” the November Resolutions.<sup>93</sup> When the meeting convened on March 10, Thomas’s new resolution prevailed and the November record was “hereby expunged from the records of the town.”<sup>94</sup> Richards did not go down without a fight. He immediately sought and failed to have the town reconsider its vote to expunge.<sup>95</sup>

Edmund Thomas represented a faction in Weymouth for whom the November resolutions were a threat that needed to be expunged. If they had been taken by surprise on November 12, at the March meeting, Thomas’s faction had been able to organize and change the political dynamics at the March 10 meeting.<sup>96</sup> But the vote to expunge was misleading. By voting to reject the resolutions, Thomas and his allies did more than return to a status quo silent neutrality, in practice they affirmatively condoned the Fugitive Slave Law and its adherents. They confirmed that the force and purpose of the resolutions had been as a salvo in an ongoing political struggle in Weymouth and across the North and they had wrested public control of the town’s meeting to reverse the force of that salvo.

Nearly thirty years later, there was one final symbolic chapter of Weymouth’s story. In 1880, at the end of his life, Elias Richards had

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<sup>93</sup> *Warrant for the Weymouth Town Meeting on March 10th, 1851*, in RECORDS OF THE TOWN OF WEYMOUTH. The items to be discussed at town meeting are generally set out in advance of the meeting in a document called a “warrant.” Massachusetts law required that the warrant for every meeting be recorded as well as the proceedings of that meeting. *See id.*

<sup>94</sup> *Proceedings of the Weymouth Town Meeting on March 10th, 1851*, in RECORDS OF THE TOWN OF WEYMOUTH. In practice, expungement meant that the town clerk would write over the older record in colored pen (in the archive, the pen color appears purple, but it may well have originally been red or blue). The original text is clearly visible, but the text in colored pen reads: “In town meeting March 10th 1851. Voted the resolves passed November 12th 1850 on the subject of Slavery and the fugitive slave law be expunged from the Record.” *Id.* Of course, because the 1851 resolutions were subsequently ALSO expunged in 1880, a similar halo of purple text hovers over the 1851 record as well.

<sup>95</sup> After the entry describing the vote to expunge, the next entry in the record of the March meeting states that the meeting “[v]oted not to reconsider the above vote.” *Id.*

<sup>96</sup> Votes in town meetings represent the will of the townspeople present, not the entire population of the town. Whether or not Thomas commanded a majority of the entire town, the vote in March indicates that he had been able to whip a majority of the voters *in the meeting* to his side.

remained a central figure in the public life of Weymouth.<sup>97</sup> On March 1 of 1880, Richards was the author of a new resolution at the Weymouth Town Meeting. This resolution expunged the 1851 resolution and reinstated the November 1850 resolution in the official records of the town.<sup>98</sup> In 1880, thirty years after the first resolution and fifteen years after the end of the Civil War and emancipation, nothing was at stake for Richards beyond his old political battle for the soul of Weymouth. That rhetorical battle must have been important enough for Richards to return to it three decades later and put Weymouth on the right side of history.<sup>99</sup>

The story of Weymouth's resolutions is instructive. Stretched across thirty years, three sets of resolutions, and a double-negative expungement, Weymouth's public enactments tell as full a story as possible about the dynamics of the background political struggle in the town. Because they were never published, it is unlikely that Weymouth's resolutions were actually a model for other towns. Still, the other towns' resolutions were sufficiently similar that Weymouth's story lays out a scaffolding of common strategies and questions to build from.

#### b. Chicago, Illinois

Chicago is, of course, not a Massachusetts town. Unlike every other local government that I discuss here, Chicago in 1850 was a small city run by a mayor and a city council. Despite their many differences, Chicago and Weymouth's stories are ultimately parallel in many ways—and reveal push and pull of local radicals against more moderate forces.

Chicago was the first town or city in the country to speak out officially against the Fugitive Slave Law. The Chicago City Council's

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<sup>97</sup> Richards had become a founding member of the Weymouth Historical Society and had been active in preserving town records and other documents in that role. See WEYMOUTH HISTORICAL SOCIETY, *WEYMOUTH TOWN GOVERNMENT: ITS BEGINNINGS AND DEVELOPMENT* 34 (1941) (noting that “[t]he Weymouth Historical Society was organized in 1879, with Elias Richards, President.”).

<sup>98</sup> See *Proceedings of the Weymouth Town Meeting on March 1st, 1880*, in RECORDS OF THE TOWN OF WEYMOUTH.

<sup>99</sup> Richards's resolution may have been something more than merely nostalgic. 1880 was a time when the fires of abolitionism and racial equality were briefly rekindled after the waning of Reconstruction. James Garfield was elected president in November of 1880, partly on a platform of pushing back against Southern impositions on the rights of freed blacks. See JAMES MCPHERSON, *THE ABOLITIONIST LEGACY: FROM RECONSTRUCTION TO THE NAACP* 104–06 (1995). It is at least plausible that Richards, himself a veteran political agitator, seized the moment in 1880 not only to settle an old score, but to help advance the new manifestation of the old cause as well.

first resolutions against the law were passed less than a month after the bill was signed on October 15, 1850. Chicago in 1850 was a rapidly growing city. According to the 1850 census, there were 29,963 people living in Chicago, 323 of them free black residents.<sup>100</sup> In addition to those 323, it is likely that there were a significant number of uncounted black residents who evaded the census.<sup>101</sup>

Unlike the Massachusetts towns, Chicago's free black community was large and organized. Just days after the Fugitive Slave Law was signed by President Fillmore on September 30, more than three-hundred abolitionists convened at Quinn Chapel A.M.E. Church on the South Side of the city.<sup>102</sup> The meeting was led by leaders of the black abolitionist movement, and the resolutions passed were targeted explicitly at protecting black Chicagoans. The meeting resolved that "we must abandon the hope of any protection from government, and cannot rely upon protection from the people, [and] we are therefore left no alternative but a resort to self protection."<sup>103</sup> With this attitude, the meeting argued that "the tendency of the Fugitive Slave Bill . . . [was] to enslave every colored man in the United States."<sup>104</sup> To resist the bill, the meeting resolved to create a set of private "patrols," each composed of six abolitionists who would keep watch for any sign of slave catchers in the city.<sup>105</sup>

Strikingly, the Chicago meeting, like the Weymouth resolutions and the Marshfield resolutions exhorted slaves and fugitives to resistance and even violence if necessary. The participants in the meeting resolved to avoid violent resistance to the extent possible, but that when faced with the choice between liberty or death, the meeting

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<sup>100</sup> U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: ILLINOIS (1850). By 1860, the population had exploded to 109,260, 955 of whom were free black citizens. See U.S. BUREAU OF THE CENSUS, CENSUS OF 1860 90 (1860).

<sup>101</sup> It is not hard to imagine why it might have been difficult for the census authorities to make an accurate count of fugitives from slavery for reasons that parallel the salient questions about the accuracy of the count of both documented and undocumented immigrants in the present. The problem was not unlike the problem of counting the "maroons" who had escaped into the swamps and wildernesses of the South. About this population, abolitionist Edmund Jackson remarked, "From the character of the population it is reasonable to infer that the United States Marshal has never charged himself with the duty of taking the census of the swamp." SYLVIANE A. DIOUF, *SLAVERY'S EXILES: THE STORY OF THE AMERICAN MAROONS* 211 (2014).

<sup>102</sup> See CHRISTOPHER ROBERT REED, *BLACK CHICAGO'S FIRST CENTURY, 1833-1900* 101 (2005).

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* (bracketed alteration and ellipsis in original).

<sup>105</sup> *Id.*

advised alleged fugitives to choose to die resisting.<sup>106</sup> There is, of course, a marked distinction between a gathering of black abolitionists pledging to resist capture and kidnapping with their lives and predominantly white towns in Massachusetts exhorting black fugitives to do the same. This distinction ends up being crucially important when we think about who a local action is intended to help and who the audience for that action is.

Although the meeting of activists had despaired of any help from the government, the City Council convened a meeting on October 21 to adopt resolutions in sympathy with the abolitionists and against the Fugitive Slave Law. Staunch abolitionist Alderman Amos Throop introduced a series of scorching resolutions condemning the Law. Throop, like Elias Richards in Weymouth, was a fervent and well-known abolitionist.<sup>107</sup> And, as with Richards, it was clear that the resolutions were part of a broader political project.

As most of the other local resolutions would, the first two of these resolutions condemned the Fugitive Slave Law as in violation of the Constitution. Unlike Weymouth, Throop's resolutions articulated a legal argument against the law consistent with broader abolitionist arguments: it unconstitutionally deprived alleged fugitives of the right of habeas corpus and a jury trial.<sup>108</sup> In Throop's formulation, he highlighted the injustice of the law by pointing out that in the language of the law, "not only fugitive slaves, but white men, owing to service to another in another State . . . may be captured and carried off summarily and without legal recourse of any kind."<sup>109</sup> There is no proof that the law was ever intended to be used that way or that it ever was, but Throop was likely trying to highlight the risk posed to *everyone's* constitutional rights should anyone's rights be constrained. Moreover, Throop's effort to draw common threads of oppression was a cognate of Richards's universalizing rhetoric in Weymouth. His argument, in simplified terms, was that enslaved people were human beings and that if the law could treat them this way, there was nothing to stop the law from

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<sup>106</sup> See *id.*; see also Mann, *supra* note 10, at 68.

<sup>107</sup> *Id.* at 70–71. One further resolution was introduced by Alderman Sherwood which was also included in the vote. *Id.* at 71. Amos Throop was a leader in the anti-slavery political movement in the city. Pro-slavery mobs would later burn his likeness in effigy for his role opposing the Fugitive Slave Law and the Kansas Nebraska Act. See THE AMOS GAGER THROOP COLLECTION 8 (Shelley Erwin & Carol H. Bugé, eds., 1990). Later in life, Throop would emigrate to Pasadena and become a principal founder of the California Institute of Technology (originally called "Throop University"). *Id.* at 12–13.

<sup>108</sup> See Mann, *supra* note 10, at 70.

<sup>109</sup> *Id.*



oppressing white Chicagoans. Common humanity implied a common peril in oppressive legal regimes.

The third and fourth resolutions hashed out the consequences of the Law's unconstitutionality by advocating for nullification. "No law can be legally or morally binding on us which violates the provisions of the Constitution."<sup>110</sup> If legal argument were not sufficient, the fourth resolution held that "the laws of God" should trump "all human compacts and statutes."<sup>111</sup> Thus introduced, the Fugitive Slave Law of 1850 was both in violation of the Constitution and in opposition to the commands of Christian morality. It followed from this, in the fifth resolution, that all of the politicians in Washington who voted for the law "richly merit the reproach of all lovers of freedom, and are only to be ranked with the traitors Benedict Arnold and Judas Iscariot."<sup>112</sup>

This was a powerful prelude to nullification and, it seemed, a response to the Quinn Chapel meeting pledging the kind of public support and protection that the activists had despaired of. And yet, Throop's sixth resolution failed to realize this suggested promise. Throop did not pledge the police department's help in protecting fugitives from slave catchers, nor did it threaten to withhold city services, condition licensing, or take any other affirmative action to prevent kidnappings or recapture. Rather, the resolution merely proclaimed that "the citizens, officers and police of this city" will "abstain from any and all interference in the capture and delivering up of the fugitives of unrighteous oppression."<sup>113</sup>

To this promise, Alderman Sherwood's seventh resolution added that because the law was "cruel and unjust [it] ought not to be respected by an intelligent community."<sup>114</sup> As with the sixth resolution, this lack of respect was to be manifest only by the council declining to "require the police to render any assistance" to slave catchers.<sup>115</sup>

Contrast the actual actions demanded by these resolutions with the actions that emerged from the meeting at Quinn Chapel weeks before. The abolitionist activists had pledged mutual aid and support to defend their community and created a patrol infrastructure to keep watch for and protect against slave catchers. For all the fiery rhetoric, Aldermen Throop and Sherwood promised nothing more than that the city would

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<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.* at 70–71.

<sup>114</sup> *Id.* at 71.

<sup>115</sup> *Id.*

take no steps to help slave owners recapture their slaves. This was nothing more than the law allowed under *Prigg* and a recommitment to the city's status quo nonparticipation. At its most generous, it could be read as license to private actors to engage in protection. But even there, the city offered no protection to any Chicagoan who acted on their private initiative to protect alleged fugitives.

Weak though the actual nullification was, as in Weymouth, the rhetoric was inflammatory enough to set off a local firestorm of pushback. The Council had voted 9-2 to provisionally approve these resolutions and put them forward for public discussion. A first public meeting on the question, held the next day, expressed overwhelming support for the resolutions and opposition to the Fugitive Slave Law.<sup>116</sup> But, perhaps not by accident, the famous and popular Illinois Senator who was a leading advocate for the Compromise of 1850, Stephen Douglas, was in town.<sup>117</sup> Two days after the resolutions had passed, on Wednesday October 23, Douglas convened a rally against the resolutions and in support of the Union and the congressional compromise. Shrugging off the personal attacks in the resolutions (it was almost certainly Douglas that Throop was referring to when he mentioned Benedict Arnold and Judas), Douglas's main argument was that the resolutions amounted to "naked, unmitigated nullification."<sup>118</sup> Douglas argued that cities in general and Chicago in particular have no power to interpret nor nullify the Constitution.

Whence did the Council derive their authority? I have been able to find no such provision in the city charter, nor am I aware that the Legislature of Illinois is vested with any rightful power to confer such authority. I have yet to learn that a subordinate municipal corporation is licensed to raise the standard of rebellion, and throw off the authority of the Federal Government at pleasure.<sup>119</sup>

While he would go on to defend the Fugitive Slave Law as constitutionally and morally defensible, the most interesting part of Douglas's challenge was his diagnosis of the city's powerlessness. In the first instance, having seen how weak Throop's nullification was in the first place, what did Douglas think amounted to "naked" nullification?

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<sup>116</sup> See *id.* at 71-73.

<sup>117</sup> The record is equivocal on whether the City Council's resolutions were timed to pass while Douglas was in town. So too is it unclear about whether Douglas had returned to town expressly for the purpose of quelling an abolitionist uprising. *Id.* at 73.

<sup>118</sup> *Id.* at 75.

<sup>119</sup> *Id.*

The new law placed towns and cities under no affirmative obligation to assist in the capture and rendition of alleged fugitives, and so when the Council promised not to command the police to cooperate, that promise was not in conflict with any federal legal command. Rather, the nullification seems to reside in the resolution that the Fugitive Slave Law was not worthy of respect or obedience because it was unconstitutional and unjust. For Douglas, then, a city's official pronouncement declaring a law unjust posed some larger and more concrete risk than the declaration of a group of private citizens. Something about the "official" nature of the city's enactment transformed rhetoric into naked nullification.<sup>120</sup>

Douglas closed his speech with a slate of his own, competing, resolutions. These resolutions proclaimed the legality, legitimacy, and moral rectitude of the Fugitive Slave Law and declared that the safety and perpetuation of the union depended on its enforcement.<sup>121</sup> For the next month, the city and the Council debated the issue. Senator Douglas was a popular figure and some Council members hoped to pass a resolution agreeing with him and expunging the October resolutions from the record. When the Council met again on November 29, they took up the issue again and they toned down their rhetoric without conceding.

The Council voted by a margin of 11-3 to modify the October resolutions without entirely repudiating them. The Council substituted two new resolutions drafted by Alderman Dodge for those of Throop and Sherman.<sup>122</sup> These new resolutions were no gentler than Throop's had been in their condemnation of the Fugitive Slave Law. Dodge began by proclaiming that the law "is revolting to our moral sense and an outrage upon our feelings of justice and humanity."<sup>123</sup> Strong though this was, Dodge shied away from Throop's direct language of nullification. Rather than proclaim that the law should not be obeyed, Dodge's resolutions offered an argument about the nature of the harm caused by the law. The real evil of the law lay in its perversion of the Constitution, which has the "direct tendency . . . to alienate the people

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<sup>120</sup> Douglas's response is consistent with Lewis Cass's alarm at the Weymouth resolutions. Both reactions suggest that the mere *rhetoric* of nullification posed a threat almost as great as aggressive substantive nullification.

<sup>121</sup> See MANN, *supra* note 10, at 79–80.

<sup>122</sup> *Id.* at 85.

<sup>123</sup> *Id.*

from their love and reverence for the government and institutions of our country.”<sup>124</sup>

By shifting the register from nullification to democratic legitimacy, Dodge’s first resolution subtly rechanneled the “outrage upon our feelings” from a declaration of overt resistance to a more cautiously framed political objection. In this, Chicago shifted away from the nullifying localities like Weymouth and Marshfield toward towns like Acton and Needham (discussed below) whose objections were framed locally and whose prescriptions involved individual conscience and political persuasion more than overt resistance.

Dodge’s second resolution did little more than elaborate on Throop and Sherman’s promise that Chicago would not help to enforce the law. Drawing on *Prigg*, the resolution concludes that the Supreme Court “has solemnly adjudged that State officers are under no obligations to fulfil duties imposed upon them as such officers by an act of Congress, we do not, therefore, consider it our duty to counsel the city officers . . . , to aid or assist in the arrest of fugitives from oppression.”<sup>125</sup> Although more expressly rooted in *Prigg*, this promise was no stronger or weaker than the one the council had proposed weeks previous.

In the end, these new resolutions appeared to be a compromise because the council had walked back their nullifying rhetoric and replaced it with handwringing about democratic legitimacy. This shift was directly responsive to Douglas’s concerns that rhetoric denying the force of the law altogether threatened secession and revolution—a rupture of the finely balanced political order. Simply decrying the law as dangerous and wrong was more consistent with the fraught *détente* upon which national politics rested in 1850.

The reason for this conciliation may be revealed in the last portion of Dodge’s second resolution. Aiming to assuage some in the city who had been concerned about federal retaliation, the resolution proclaims that the city does “not believe that our harbor appropriations will be withheld, our railroads injured, or our commerce destroyed, or that treason could be committed against the Government.”<sup>126</sup>

This last declaration is fascinating, especially in light of the political and legal struggles over sanctuary city status today in which questions of commandeering and withheld federal spending are front and center.

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<sup>124</sup> *Id.*

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 85–86.

It is not clear from the record just how serious the threat to Chicago's federal funding for harbors and railways was or was perceived to be. Still, the threat may have been present enough that, when combined with Douglas's pressure, it gave some council members pause enough to justify the new, less inflammatory rhetoric.

When we ask what the Chicago City Council could and should have done in the face of the Fugitive Slave Law, the answer comes down to the power and value of rhetoric. In both sets of resolutions, the Council forcefully denounced the law as both immoral and unconstitutional. The emotional register of this rejection was clear from the second resolution's deeply personal objection that the law was "an outrage upon our feelings of justice and humanity."<sup>127</sup> From this *cri de couer*, as well as from the attack on Douglas and his allies as traitors and "judases" there is little doubt that the resolutions were motivated by a pressing desire to speak out and be heard resisting the law. Douglas was certainly among the intended audience. It is tempting to imagine that the black activists that had met just weeks before the resolutions were passed were also among the audience. After all, they explicitly complained that they could expect no help from the city or the people. One could imagine Throop's resolutions as intended to answer that doubt with support.

But while the Council clearly had the capacity to speak out and align themselves politically against Douglas and the Fugitive Slave Law, they did not feel (for reasons either pragmatic or structural) that they had the capacity to do more. Juxtaposed against the risks and sacrifices that the activists had committed to at the Quinn Temple meeting, we are forced to ask whether the Council's resolutions were effective, and for whom. As was the case in Weymouth, there is a strong case to be made that speaking was better than staying silent. After all, Chicago was the only city of any significant size in the United States to take any sort of official stand against the enforcement of the law. Throop's resolutions were a kind of bravery—and their political power was evident in Douglas's response. On the other hand, the bravery of the resolutions was bravery within a national political discourse and not directly connected to the kind of bravery being shown by abolitionist activists who were patrolling the streets to protect against kidnappers. Even if Throop himself was in solidarity with those materially protecting the human beings threatened by the operation of the law, neither slate of the Council's resolutions committed the official

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<sup>127</sup> *Id.* at 85.

resources of the city to that effort. If this limitation of the power of the resolutions is not a condemnation, it is at least an important context through which to understand the extent to which Chicago really did seek to resist or nullify.

c. Marshfield

While some towns took up the question of the Fugitive Slave Law in specially called meetings in the last months of 1850, others waited to address their resolutions against the law until the regularly scheduled town meetings in the spring of 1851.<sup>128</sup> Because it was Daniel Webster's hometown, Marshfield, Massachusetts was one of the most prominent towns to take this course.

Apart from Webster, Marshfield was an otherwise unremarkable town. Marshfield is located on the South Shore of Massachusetts, south and east of Weymouth and just a few miles north of Plymouth. In 1850, it was a medium sized town with a population of 1837, 16 of whom were listed as "free colored" on the census.<sup>129</sup> It was and remains a place whose connection to the first Puritan settlers in Plymouth is strong. One can hear the echoes of Puritan moral rigor in the language of Marshfield's strident resolutions.

On March 3, 1851, 154 residents gathered at Marshfield's annual town meeting. Of these, 120 voted to approve a set of resolutions condemning the Fugitive Slave Law, while 34 voted against.<sup>130</sup> These resolutions were among the most strident and radical proposed by any town. They made a set of now familiar moves: condemning the law as unconstitutional and immoral, promising that the residents of Marshfield would not obey the law, and exhorting enslaved people and fugitive to resist bondage by any means necessary. Strident though its language was, Marshfield offered nothing more concrete than Weymouth or Chicago to alleged fugitives in the way of substantive protection.

While the record does not indicate that the Marshfield resolutions had an individual advocate parallel to Richards or Throop, it is likely that they were introduced and advocated by a member of the town's

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<sup>128</sup> Weymouth, of course, addressed the question both in the fall and the spring—voting to expunge its fall condemnations in the sober light of spring moderation.

<sup>129</sup> See U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: MASSACHUSETTS 52 (1850).

<sup>130</sup> RICHARDS, *supra* note 6, at 163–64.

active abolitionist community.<sup>131</sup> Unlike Weymouth, however, the resolutions in Marshfield were brought before the full town meeting and then approved by a resounding four to one margin.

The preface to the resolutions began familiarly by arguing that the Fugitive Slave Law of 1850 was in violation of both the Constitution and public morality. It was anathema to “moral sense, a disgrace to the civilization of the age, and clearly at variance with the whole spirit of the Christian faith.”<sup>132</sup> The constitutional argument explicitly linked the Declaration of Independence to the Constitution—arguing that human equality was at the root of the American legal system.<sup>133</sup> Building from this foundation, Marshfield’s meeting declared that the Law was in violation of constitutional principles set out in the preamble to the Constitution,<sup>134</sup> as well as the express protections of the Fifth, Sixth, and Seventh Amendments (the guarantee of due process and the right to a jury).<sup>135</sup>

Like Chicago, Marshfield unified constitutional and moral arguments to create a justification for nullification. The Constitution, on the town’s view, could not support a law that stood in such stark

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<sup>131</sup> As early as 1834, Marshfield sent representatives to the New England Anti-Slavery Convention. Silas Ripley is listed as the delegate. See PROCEEDINGS OF THE NEW-ENGLAND ANTI-SLAVERY CONVENTION HELD IN BOSTON ON THE 27<sup>TH</sup>, 28<sup>TH</sup> AND 29<sup>TH</sup> OF MAY, 1834 4 (1834).

<sup>132</sup> RICHARDS, *supra* note 6, at 163.

<sup>133</sup> See *id.* (“Whereas the government of the United States is professedly based on the great truth that all men are free and equal . . .”). By linking the Declaration of Independence with the Constitution, the framers of Marshfield’s resolution aligned themselves with a specific strain of anti-slavery legal argument which argued that the Constitution could and should be read as consistent with the broad principles outlined in the Declaration. Although this argument was widespread, a particularly clear instance of it appears in Lysander Spooner’s influential book outlining an anti-slavery interpretation of the Constitution. Spooner argued that the Declaration was essentially foundational or “constitutional” law in the United States, law that was incorporated rather than undone by the Constitution of 1787. See LYSANDER SPOONER, THE UNCONSTITUTIONALITY OF SLAVERY 42–45 (1853). By 1850, Southern proponents of slavery had repudiated the Declaration as a source of constitutional authority or law of any kind because of the danger to slavery they saw in the high-flying rhetoric of Jefferson’s promise that “all men are created equal.” This view was widespread among Southern political elites. Perhaps the most forceful expression of this view was offered by the pro-slavery theorist George Fitzhugh who argued that the Declaration was a dangerous and false document whose words were “at war with all government, all subordination, all order.” GEORGE FITZHUGH, SOCIOLOGY FOR THE SOUTH, OR THE FAILURE OF FREE SOCIETY 175 (1854).

<sup>134</sup> RICHARDS, *supra* note 6, at 163 (“[The U.S.] Constitution was ordained for the purpose of establishing Justice, ensuring domestic tranquility providng [sic] for the common defense, promoting the general welfare . . .”).

<sup>135</sup> See *id.* (“[The Constitution] declares that no man shall be deprived of life or liberty without due process of law, and that men charged with crime or whose interests are at stake in suits at common law involving a sum equal to twenty dollars, shall be entitled to a trial by Jury . . .”).

opposition to justice. In the town's eyes then, faith with the nation's fundamental law mandated rather than prohibited the town from questioning the validity of a law passed by the national legislature: "until we are prepared to repudiate the principles of Independence, & abjure all our ideas of Justice and humanity, of truth & duty, *we can be under no voluntary obedience to this act.*"<sup>136</sup>

Although the rhetoric of nullification in this sentence is explicit, it was less clear *who* was making the promise to nullify. The town as a governing entity, speaking through its official municipal voice, denied the force of a federal law and claimed to be bound instead by "principles" with more compulsive force than the federal legislature. And yet, the "we" of the resolution more likely referred to the town residents in their collective personal capacity rather than the town government itself. Just like Weymouth and Chicago, Marshfield's resolutions pledged no affirmative assertion of town power to give force to the rhetoric of nullification.

And yet, this was precisely the kind of nullifying rhetoric that had been so inflammatory in Weymouth and Chicago. Moderates in those places argued that refusing to acknowledge the legitimacy and security of Southern property claims would trigger a Southern backlash that would end in secession. Marshfield's residents knew of these arguments because their own neighbor Webster was fond of making them.<sup>137</sup> But they were unmoved by them (in fact it is likely that they were motivated by Webster to speak against them). Instead, they next resolved that, "while we love & defend the Union . . . we are not to be deterred by any threats of disunion."<sup>138</sup> No threat to the union or any other potential catastrophe would deter the townspeople from "using all just and lawful means to aid & assist those who have the manliness & courage to escape from their prison house of bondage."<sup>139</sup>

In this promise, Marshfield came as close as any town to offering substantive protection to fugitives within its borders. Marshfield as a town seemed to contemplate the consequences of its action and, weighing the costs, determined to follow its course. In the balance, the resolutions concluded that the political risk was worth the faith that the town was keeping with its core moral and legal principles which demanded disobedience to the law. And yet, despite the strident pose,

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<sup>136</sup> *Id.* (emphasis added).

<sup>137</sup> Indeed, it is likely that some of the thirty-four residents who attended the meeting and voted against the resolutions made a version of these arguments.

<sup>138</sup> RICHARDS, *supra* note 6, at 163.

<sup>139</sup> *Id.* at 164.



nothing about Marshfield's promise bound the town government to any action. Rather, the sanctuary that Marshfield offered was nothing more than collective private good will. The citizens of Marshfield declared that "our houses shall be open to welcome the hunted Fugitive as he passes our doors in his flight from the national bloodhounds."<sup>140</sup>

Just as Weymouth's resolutions failed to add the coercive force of the state to its attack on the "enemies of the peace" who supported the law, Marshfield likewise declined to offer any of its available public muscle to its promise of open houses. Given this, for a fugitive slave seeking sanctuary or a Northern accomplice helping her, the town's promise was no more or less protective than any other private citizen's declaration that they would not turn them in.

It may be that the Marshfield citizens understood the underlying frailty of their promise, because the last resolution turned from the town's own actions to an exhortation that fugitives actively struggle for their own freedom. Drifting into an uncomfortably racialized paternalism, the last resolution recommended that every fugitive "use all the means which God will justify to protect his freedom."<sup>141</sup> If God could be understood to authorize the use of force in self-defense (and if slavery was a mortal sin), then this resolution seemed to countenance armed resistance in the face of enslavement. Indeed, the resolution twice recommends that fugitives adhere to Patrick Henry's famous saying: "give me liberty or give me death."<sup>142</sup>

While the exhortation to violent resistance was striking, the exhortation to martyrdom that followed was more unsettling:

[A]s his last sigh mingles with the common air, and goes out over the world, and up to heaven, a swift witness against the nation which so foully murders him, let him breathe it to the wind that murmurs by him, and bequeath as an inspiring influence to the panting fugitive he leaves behind him.<sup>143</sup>

In isolation, one could read this last resolution as nothing more than a spasm of sentimentality. But in the context of white abolitionist rhetoric more broadly, the spectacle of a meeting of white Northerners imagining the noble deaths of heroic black fugitives raises familiar problems of race and exploitation. Over the course of the radical abolition movement in the middle of the nineteenth century, the

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<sup>140</sup> *Id.*

<sup>141</sup> *Id.*

<sup>142</sup> *Id.*

<sup>143</sup> *Id.*

suffering of enslaved humans was both a political inspiration, but also a nearly titillating object of sentimental fascination.<sup>144</sup>

Perhaps Marshfield's town meeting really did hope to reach out to the "panting fugitives" that its resolutions imagined. More likely, however, Marshfield hoped to shout resistance in the ears of a more local audience including native son Webster and the pro-compromise moderates in Massachusetts. Righteous condemnation, coupled with the promise of nullification but unsupported by enforcement, was consistent with the rhetorical resistance that we saw in Chicago and Weymouth. Given the choice between silence and speech, there is little doubt that Marshfield's choice was worthy of celebration. But it is no more clear in Marshfield than in the other towns whether the town had found a means of strategically and effectively advancing the broader political resistance movement against the Fugitive Slave Law.

d. Princeton, Southborough, and Blackstone

Three other towns in central Massachusetts also passed resolutions condemning and espousing nullification of the Fugitive Slave Law in the six months after it was passed. I treat all three together and more briefly not because they are inherently less interesting, but rather because they follow familiar patterns and prompt familiar conclusions.

Princeton is a town in Worcester County in central Massachusetts. In 1850, Princeton was a middling-size town of 1,318 residents, only eight of whom were black.<sup>145</sup> Just a few towns east of Princeton, Southborough is also a small town in the general orbit of Worcester. In 1850, Southborough's demographics looked much the same as Princeton's, except that instead of a small free black population, there were no black residents at all recorded among the 1,347 inhabitants of the town.<sup>146</sup> Another twenty-five miles south and east of Southborough on the border with Rhode Island is the town of Blackstone. In 1850, Blackstone was a significantly larger town of 4,391 residents, eleven of

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<sup>144</sup> More has been written about the power of the imagery of the "suffering slave" to the growth and success of white abolitionist politics than I can responsibly gloss in a single footnote. For a classic summary of the power of this image, see generally, Elizabeth B. Clark, *"The Sacred Rights of the Weak": Pain, Sympathy, and the Culture of Individual Rights in Antebellum America*, 82 J. AM. HIST. 463 (1995).

<sup>145</sup> U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: MASSACHUSETTS 52 (185). In 1850, many of the towns in Worcester County were roughly this size. While Worcester itself was comparatively large with more than 17,000 residents, the second biggest town in the county was Fitchburg with 5,120 residents, and most other towns ranged between 1,000 and 2,500 residents. *Id.*

<sup>146</sup> *Id.*

whom were free black citizens.<sup>147</sup> Blackstone was also a comparatively new town, having been carved out of the town of Mendon to its north in 1845.<sup>148</sup> None of these three towns were remarkable as hotbeds of radical politics or social foment. Like nearly every town in Massachusetts, all three towns had abolitionist activists living there,<sup>149</sup> but all three towns had comparatively small (or non-existent) free black communities and very little evidence of prior activism.<sup>150</sup> In short, there was nothing immediately apparent on the surface to explain why these three towns would pass some of the most strident condemnations of the Fugitive Slave Law in the State.

i. Princeton

On November 25, 1850, the Princeton town meeting met in a specially scheduled official meeting to discuss the Fugitive Slave Law. The preamble to the resolutions passed at that meeting sounded two familiar notes: it called the Fugitive Slave Law unconstitutional (“a palpable violation of our Bills of Rights”) and immoral (“abhorrent to all the feelings of humanity, and in contravention of the express commands of God.”).<sup>151</sup>

Princeton’s argument that the law was unconstitutional began as Marshfield’s had by linking the ideals of the Declaration of Independence with the “purposes” of the Constitution. Unsurprisingly, Princeton concluded that the Fugitive slave law was “contradictory” and “inconsistent with” that hybrid constitutional order.<sup>152</sup> More specifically, Princeton’s resolutions joined a familiar argument that the Fugitive Slave Law violated the Fifth Amendment’s Due Process clause

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<sup>147</sup> *Id.*

<sup>148</sup> Among the reasons for Blackstone becoming a separate town was the fact that the residents of “Blackstone Village” lived six miles south of the Mendon town meeting house, making it a hardship to attend town meetings. See DUANE HAMILTON HURD, HISTORY OF WORCESTER, MASSACHUSETTS 613–14 (1889). Mendon seems to have been among the many towns that did not take up the question of the Fugitive Slave Law of 1850 at all in their town meeting. See JOHN G. METCALF, ANNALS OF THE TOWN OF MENDON 610–15 (1880). The town meeting *would* convene to condemn the Kansas and Nebraska Acts in 1854. See *id.* at 622.

<sup>149</sup> Princeton had an active chapter of the American Anti-Slavery Society at least as far back as 1837, as did Mendon (the town that would give birth to Blackstone in 1845). See PROCEEDINGS OF THE MASSACHUSETTS ANTI-SLAVERY SOCIETY, *supra* note 79, at xliv–xlv.

<sup>150</sup> It seems that most towns in Worcester County had small free black populations. Some, such as Mendon (35 out of 1,265), had larger percentages than others. *Id.*

<sup>151</sup> D.H. Gregory, Letter to The Editor, *Another Noble Town Example*, LIBERATOR (Boston, Mass.), Dec. 27, 1850, at 3, <http://theliberatorfiles.com/wp-content/uploads/2015/10/The-Liberator-1850-12-27-Page-3.png> [<https://perma.cc/9T2A-9Y5E>].

<sup>152</sup> *Id.*

to a more novel argument that it violated the Fourth Amendment right to be free from unreasonable seizures: “[The law] takes away the right of the people to be secure in their persons against unreasonable seizures,—and deprives men of their liberty, without due process of law.”<sup>153</sup>

The due process argument subtly served the function of asserting that the townspeople of Princeton shared common rights and duties of citizenship with fugitive slaves. As it had in other towns, this rhetorical move to cloak every human being in common constitutional rights helped to explain why the Fugitive Slave Law had anything to do with a predominantly white town in central Massachusetts.

Having declared the law legally and morally bankrupt, Princeton resolved to nullify it and to “disregard and condemn the provisions of this law.”<sup>154</sup> Like Marshfield’s would a few months later, Princeton’s residents promised to flaunt the law’s threatened penalties and to “tender to the panting fugitive the hospitalities of our dwellings.”<sup>155</sup> Generous as the offer was, it was no more substantive than Weymouth’s or Marshfield’s. Princeton was also unable or unwilling to engage the machinery of its own governmental powers to offer any more than a promise that its residents would act generously. In fact, the town seemed to acknowledge its own powerlessness in its final resolution. There, the town meeting exhorted the state government to do all possible “for the protection and defence [sic] of all our citizens whose rights may be assailed or endangered by this law.”<sup>156</sup> This call encompassed the rights of free blacks threatened with kidnapping as well as the rights of white citizens who might be charged criminally for providing aid and comfort to fugitives. In brief, Princeton exhorted its state government to reinstate personal liberty laws in spite of the Court’s holding in *Prigg* and the obvious intent of the Fugitive Slave Law of 1850. It was, it seemed, the responsibility of the state to give something more than rhetorical teeth to nullification.

## ii. Southborough

A few months later, in January of 1851, Southborough convened a special town meeting to discuss the Fugitive Slave Law. On the 20th of January, that “legal town meeting” voted forty-nine to twenty-nine to

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

adopt a series of resolutions condemning the law and promising to nullify the law as far as possible within the town's boundaries.

Unique amongst the nullifying towns, Southborough's resolutions focused primarily on resisting the portions of the Fugitive Slave Law that criminalized providing aid to alleged fugitives. Although Southborough had no permanent black residents, it does seem to have been an occasional waystation on the Underground Railroad.<sup>157</sup> Perhaps that is one reason why the town's meeting would be offended by a law "making it a penal and a criminal offence to assist a fellow-man to walk the earth and breathe the air of freedom."<sup>158</sup>

The Southborough meeting proceeded to make an exhortation and then a promise. First, echoing the awkward paternalism of Marshfield, the resolutions held that because "liberty is the birthright of every man," the town resolved that an enslaved person has a duty "to himself, and to posterity, and to God, to take and to defend his liberty."<sup>159</sup> To this exhortation, the town added a familiar promise to nullify the operation of the law. The town collectively promised "to help [the fugitive] and to maintain his freedom."<sup>160</sup> To that end, the citizens of Southborough promised "to do all we can to make the soil of Southborough truly free."<sup>161</sup>

In some ways, Southborough's promise was the most substantively protective that any town had offered. Rather than specifying *only* that the town's residents would open their homes, Southborough promised to make the town's soil "truly free." A robust pursuit of this promise might have included some of the muscular local regulation and enforcement that other towns had been reluctant to offer. Still, it does not seem that the residents of Southborough contemplated such a wide-ranging or robust course of action. Not only is there no record of any subsequent local legislation in this vein, the final resolution suggested, like Princeton's had, that the ultimate responsibility for this kind of nullification rested in the lap of the state legislature. The meeting concluded that the legislature was "under moral obligations" to "help

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<sup>157</sup> See Wilbur H. Siebert, *The Underground Railroad in Massachusetts*, 9 N.E. Q. 447, 453 (1936). To be clear, nothing about Southborough's role in the underground railroad suggests that there was anything to distinguish the town from its neighboring towns, whose town meetings ultimately remained silent.

<sup>158</sup> *The Right Action*, LIBERATOR (Boston, Mass.), Feb. 28, 1851, at 3, <http://theliberatorfiles.com/wp-content/uploads/2015/10/The-Liberator-1851-02-28-Page-3.png> [<https://perma.cc/G6YY-QRPX>].

<sup>159</sup> *Id.*

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*

the oppressed and rebuke the oppressor.”<sup>162</sup> Should they fail in this duty, “they are unworthy of the name of men.”<sup>163</sup>

iii. Blackstone

On April 7, 1851, at its regular spring meeting, Blackstone’s town meeting met and voted to approve a set of resolutions written by Daniel Hill, Moses Southwick, and Thomas Davis repudiating the Fugitive Slave Law.<sup>164</sup> Although Hill, Southwick, and Davis were named as authors, there is little record of any of the three of them as activists more broadly beyond their role in the 1851 meeting. Blackstone’s resolutions followed a familiar script. They were strident in their condemnation of the law, yet weak on substantive protections.

The first resolution began by aligning the Declaration of Independence to principles of patriotism and moral duty. Blackstone’s resolution argued that the principle that “all men are born free and equal” was more than “a sentiment, solemnly declared by our fathers, in defense of which they pledged ‘their lives, their fortunes, and their sacred honor.’”<sup>165</sup> Rather, the town’s residents were bound by moral principle more than by law. Equality was “a self-evident truth, applicable to every age and to every race” and to deprive “the African” of the “God-given birthright” of freedom was possible only for those lost souls “who have sacrificed their convictions on the altar of ambition or self-interest.”<sup>166</sup>

The second resolution built on this base by arguing that the real evil of the Fugitive Slave Law was not only its unconstitutionality,<sup>167</sup> but that the law conscripted Northern whites into the machinery of slavery. What made it truly offensive was that it “attempt[ed] to transform us into slave catchers, requiring us to sacrifice the noblest feelings of our nature, which prompt us to aid the weak rather than the strong, and by no means to strengthen the arm of the oppressor.”<sup>168</sup> Blackstone thus refused to be complicit in the regime created by the law, seeking to return its white citizens to the status quo ante, where they were under no obligation to collaborate with Southern slave owners.

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<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> HURD, *supra* note 148, at 617.

<sup>165</sup> *Id.*

<sup>166</sup> *Id.*

<sup>167</sup> *See id.* (“That the Fugitive Slave Law, recently enacted by Congress, is not only contrary to the fundamental principles of our government, . . .”).

<sup>168</sup> *Id.* at 617.

Blackstone's focus on the way that the law conscripted Northerners into accomplices of the slave power is the most forthright statement of an idea which had been latent in many of the nullifying towns' resolutions. The problem with the Fugitive Slave Law was not precisely that it was unjust to alleged fugitives. The problem was that it brought slavery home to Massachusetts. It was this personalization of oppression that had and would continue to trigger so many newly fervent outbursts of opposition. It was in response to seeing his hometown of Concord as complicit with the slave power that Henry David Thoreau would famously declare: "It is not an era of repose. We have used up all our inherited freedom. If we would save our lives, we must fight for them."<sup>169</sup>

Just as Blackstone's resolutions were clear on why the Fugitive Slave Law was the town's business, so too were they clear that nullifying the law was no act of disunion or rebellion. This was because to assert this would be to accept that "this Union cannot exist on the principles of Justice, Humanity and Righteousness (and therefore is not worth preserving)."<sup>170</sup> Blackstone overtly rejected this premise.<sup>171</sup> By implication, however, Blackstone's resolutions suggested that were one to accept that the only terms of the Union were compromise with slavecatchers, then perhaps the radical abolitionists had the right of it and the Union was not worth preserving on such terms.<sup>172</sup>

Given the radicalism and political clarity of the lead up, one might expect a forthright statement of nullification. And yet, while speaking *the language* of nullification, Blackstone's resolutions promise no more official local action than any of the others that we have seen. Rather, like Marshfield and Chicago, the resolutions promise (without any threat of government enforcement) that the town residents would never "render[ ] aid [to the slave owner] in returning [a slave] into bondage."<sup>173</sup>

The town's felt powerlessness is again revealed by the final resolution which puts the onus on the state legislature to act. As with other towns, Blackstone closes by charging the state legislature to pass

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<sup>169</sup> HENRY DAVID THOREAU, *Slavery in Massachusetts, in WALDEN AND OTHER WRITINGS* 712 (1992).

<sup>170</sup> HURD, *supra* note 148, at 617.

<sup>171</sup> *Id.* ("[This is] a declaration which we are unwilling to admit.").

<sup>172</sup> The classic statement of this Northern anti-slavery secessionism ran in bold text across the banner of William Lloyd Garrison's *The Liberator*. The motto of that flagship paper of radical abolition was, "No Union with Slaveholders."

<sup>173</sup> HURD, *supra* note 148, at 617. This promise comes couched in a flowery package. The drafters profess that they abhor slavery *so* much that they would refuse to provide aid even had the fugitive in question "basely sold himself to Southern slave holders." *Id.*

an act nullifying the Law and protecting fugitives and free black residents by preserving the right to habeas and guaranteeing a trial by jury.<sup>174</sup>

#### iv. Lessons

The resolutions in Princeton, Southborough, and Blackstone all differed from each other slightly. Where Princeton focused on the Declaration, Southborough focused on the rights of Northerners to provide aid to the oppressed and Blackstone focused on the iniquity of conscripting Northerners into the machinery of slave rendition. Still, all three followed the same rough pattern that was evident in Weymouth, Chicago, and Marshfield. In all three towns strident condemnations of the law were paired with bold declarations that the law would be nullified. But in all three towns actual substantive protections for alleged fugitives were hard to find.

In these nullifying towns and cities, the local governments seemed driven by a need to speak out against a law that they despised. Precisely what role this speech was to have in the broader movement against the Fugitive Slave Law and slavery was less clear. At least superficially, there was certainly an appeal to the most direct and proximate audience for statements of resistance: other white Northerners in neighboring towns and political elites. Simply by speaking, these towns transformed their neighbors' silence into complicity. And yet, whatever service to the broader movement was achieved by these towns seems more accidental than strategic. If the towns' resolutions sometimes made it into the papers, there was no evidence of a concerted organizing campaign to bring other towns along as there had been in 1774. Moreover, as these towns proclaimed their intention to nullify the laws, they offered no account of how that nullification would be affected. Without any robust promises of town aid or concrete provision of sanctuary, these places offered nothing to those who were resisting the law at risk of life and freedom beyond what the private networks of resistance were already providing.

## 2. Local Introspection

While most towns that passed resolutions against the Fugitive Slave Law followed the model of brash nullification, at least two

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<sup>174</sup> See *id.*



Massachusetts towns took a different and more measured approach. Resolutions passed in Needham and Acton were no less critical of the law, but they sought to more carefully balance what the towns were able (or willing) to do with an awareness of the towns' place in the architecture of the broader movement. In doing so, these towns modeled a different idea of what the purpose of these resolutions might be.

a. Needham

On April 7, 1851, Needham's town meeting took up the issue of the Fugitive Slave Law at the end of its annual spring town meeting. All of the issues laid out on the meeting warrant had been resolved, and yet the townspeople stayed late to consider and adopt a preamble and resolution disapproving of the law.<sup>175</sup> Needham is a town in the western suburbs of Boston. In 1850, Needham looked similar to towns like Princeton and Southbury. It was an average-sized town of 1,944 residents, only three of whom were listed on the census as free blacks.<sup>176</sup> There is little in Needham's profile or history to suggest that it was a particular hotbed of anti-slavery sentiment.<sup>177</sup>

In the preamble, Needham's resolution began in a familiar vein. The meeting proclaimed bluntly that the Fugitive Slave Law "is in direct violation of the Constitution of the United States."<sup>178</sup> Needham also echoed other towns' specific arguments that the law was inconsistent with the principles of the Declaration of Independence as well as with the protections in the Constitution—specifically the right to a jury trial.<sup>179</sup> Nor was the Needham meeting meek in their condemnation. The Fugitive Slave Law was a "flagrant Outrage on the rights, and liberties of the citizens of all the free States of the Union."<sup>180</sup> Moreover, echoing some of the towns that passed resolutions in the Revolutionary period condemning slavery, Needham suggested that the new law was a

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<sup>175</sup> See *Proceedings of the Town Meeting of Needham, Massachusetts*, in RECORDS OF THE TOWN OF NEEDHAM, MASSACHUSETTS (on file with the Town Clerk of Needham, Massachusetts).

<sup>176</sup> See U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: MASSACHUSETTS 52 (1850).

<sup>177</sup> In fact, while most of the towns that passed resolutions had active Anti-Slavery Societies, I have found no record of any chapter operating in Needham the earliest years between 1833 and 1839.

<sup>178</sup> *Proceedings of the Town Meeting of Needham*, *supra* note 175. Interestingly, and uniquely, Needham also argued that the law was in violation of the terms of the Massachusetts Constitution. See *id.*

<sup>179</sup> See *id.*

<sup>180</sup> *Id.* (emphasis in original).

betrayal of the heroes of American independence, trampling on the principles “which caused the Patriots of our town to shed their blood and sacrifice their lives on the field of Lexington.”<sup>181</sup>

While Needham’s outrage was explicit, a careful reading also reveals that it was a carefully cabined outrage. The Fugitive Slave Law was an outrage on the rights of free citizens, not primarily because it helped enslave people, but because it violated political and civic rights guaranteed by the Declaration of Independence and the Constitution. Morality and natural justice were mostly absent from the rhetoric. Rather, the Needham meeting emphasized that the law betrayed the sacred civic compact at the root of our national virtue. The implicit claim, then, called back to the eighteenth-century town meetings by asserting that towns had the authority and responsibility to speak out against impingements on citizens’ fundamental rights to self-government.

Needham’s careful focus on political opposition was cashed out in the single resolution that followed its preamble. The townspeople of Needham studiously avoided any promise or threat of nullification. Instead, they committed to “on all suitable occasions express our hostility to [the Fugitive Slave Law].”<sup>182</sup> Lest a reader mistakenly construe this commitment to be a promise to nullify the law or harbor alleged fugitives, the resolution made it clear that these expressions of hostility would be strictly political. “[A]s citizens of a Republic, we feel called upon to use all constitutional and peaceable means in our power to cause its immediate and unconditional repeal.”<sup>183</sup>

On the one hand, the carefully cabined political protest in Needham’s resolution seems dry and moderate compared to the more strident and exuberant language of nullifying towns like Marshfield. Needham’s residents made no promises to shelter fugitives. Indeed, by implication, they suggested that they *would* obey the terms of the law, protesting it only by “all constitutional and peaceable means in our power.”

On the other hand, however, Needham’s almost exclusively white townspeople drafted a resolution that was refreshingly free of paternalistic exhortations that slaves free themselves and promises of protection without the backing of town enforcement. On this view, Needham’s resolution seemed a careful and studied reflection on what

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<sup>181</sup> *Id.* (capitalization in the original).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

the town of Needham was able and willing to do to further the residents' agreed-upon disagreement with the law. The vision of the power, promise, and capacity of local government was much narrower in Needham—it was limited to peaceable political protest and ruled out nullification or revolution. And yet the resolution was designed to operate fully within that power. Moreover, the resolution promised something that the town might actually be able to deliver: a robust public forum for the private forces engaged in a powerful movement of political protest and resistance.

b. Acton

Just a few days later, on April 11, 1851, the town meeting of Acton met and passed a set of resolutions vigorously opposing the Fugitive Slave Law of 1850. Acton is a small town in western Middlesex County—east of the towns in Worcester County, but west of Needham and Boston. In 1850, Acton was home to 1,605 residents, all of whom were white.<sup>184</sup> Acton borders on its more famous neighbor, Concord, which was the home of Ralph Waldo Emerson, Henry David Thoreau, Nathaniel Hawthorne, the Alcotts, and other luminaries of the American Renaissance. But where Thoreau's neighbors in Concord remained silent on the Fugitive Slave Law,<sup>185</sup> Acton spoke out. In speaking, however, Acton set forth the most thorough and thoughtful account of what a town was willing and able to do effectively to resist the law.

Many elements of the Acton resolutions were familiar from other towns' enactments. The resolutions condemned the Fugitive Slave Law as unconstitutional and inconsistent with the ideals expressed in the Declaration of Independence. They also promised that the residents of the town would provide aid to any fugitive who should come to their door. Moreover, Acton's resolutions were rooted in a thorough and pointed political analysis that condemned the Fugitive Slave Law as a

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<sup>184</sup> See U.S. BUREAU OF THE CENSUS, CENSUS OF 1850: MASSACHUSETTS 52 (1850).

<sup>185</sup> It is always more difficult to prove inaction than action, but a close examination of Concord's town records reveals no reference to the Fugitive Slave Law at any town meeting between 1850 and 1854. Confirming this absence is the fact that Concord's silence is actually famous. In Thoreau's scorching 1854 speech, *Slavery in Massachusetts*, he begins by savagely mocking his neighbors for meeting to pass resolutions opposing the Kansas and Nebraska Acts in 1854, but for remaining meekly silent about the state's complicity with the Fugitive Slave Law. Thoreau reports that it was not until 1854 that Concord would meekly condemn the Fugitive Slave Law as an ancillary addendum to the town's concern over Kansas. Rejecting this meekness, Thoreau argues: "There is not one slave in Nebraska; there are perhaps a million slaves in Massachusetts." Thoreau, *supra* note 169, at 697.

morally and politically corrupt “compromise and agreement between the advocates of chattel slavery and the monied interest.”<sup>186</sup> Clear and condemnatory though they were, Acton’s resolutions advocated not for nullification, but rather for a very specific form of local resistance: civil disobedience and political protest.

The preamble to the resolutions laid out the town’s case against the Fugitive Slave Law. Acton argued that it was passed “at the bidding of the slave holders and apparently for the promotion of slavery.”<sup>187</sup> Founded as it was in corrupt compromise, it was perhaps no surprise that Acton’s meeting concluded that the law was “manifestly iniquitous and unconstitutional.”<sup>188</sup> Rooted in slavery, unconstitutional, and immoral, it would seem to follow that the law should be nullified and openly resisted. And yet Acton took a more complex approach. The preamble merely argued that the law’s hideousness “create[d] doubts in the minds of lovers of freedom as to their duty in sustaining said law.”<sup>189</sup> Acton’s resolutions, then, were the embodiments of those doubts. The wrongness of the law was destabilizing, and the town’s resolutions staked out the town’s role in the political life of its residents who had to live with that destabilization.

More than any of the other towns, Acton’s resolutions demonstrated purposeful introspection about the proper role for the town in the struggle. In the preamble, the Acton meeting acknowledged the question that Stephen Douglas had challenged the Chicago City Council with: what right or duty did the town have to speak out against the law? In answer to this, the preamble put forward a clearly articulated theory of the expressive role that local government do and should play in national political debate. “[P]ublic opinion” the preamble argued, “is the expounder of all laws enacted by an Elective Government.”<sup>190</sup> This meant that every citizen (and every town) had a “duty to express in [a] public manner” their views when a law is “as we believe, unjust and despotic.”<sup>191</sup>

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<sup>186</sup> TOWN OF ACTON, *Resolutions at 1851 Acton Town Meeting in Response to Federal Fugitive Slave Act*, in APRIL 11, 1851 TOWN MEETING RECORDS (1851), [https://www.actonmemoriallibrary.org/civilwar/documents/acton\\_town\\_meeting/1851\\_resolutions.html](https://www.actonmemoriallibrary.org/civilwar/documents/acton_town_meeting/1851_resolutions.html) [<https://perma.cc/MG85-942V>].

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

Thus framed, Acton made it clear that these resolutions were compelled by the political context. Neither the town's citizens, nor the town itself (which was merely the collective expression of its citizens) had the luxury of remaining silent in the face of an "unjust and despotic" law. One primary reason for this was to keep faith with the promise and principles of the Revolution. The meeting declared that "[we] feel it to be a duty we owe to the memory of our Fathers that we owe to ourselves, to our descendants, to our Country and to our God, to record our solemn protest against said law."<sup>192</sup> Not only does this callback to the Revolution stake a claim to political legitimacy, but it also serves as an implicit reminder of the role that towns and town meetings had played in stoking the political fires that led to independence. Speaking out was thus, not only a right secured by independence, but a powerful tool of political organizing and resistance when employed effectively.

But the invocation of Redcoats and Minutemen was not intended as a literal call to arms. Instead, in the second resolution, the town meeting expressly disavowed "advocating forcible resistance to our government or any of its despotic laws."<sup>193</sup> Rather than resistance or open nullification, Acton argued that there was still hope for change through the democratic process: "there is still power with the People at the ballot box to cause their rights to be respected and to effect repeal of all unjust and oppressive laws."<sup>194</sup>

This caution with respect to nullification should not be understood as a damper on the strength of Acton's opposition to the law. Instead, it provides a lens through which to understand the force and purpose of that opposition. The third resolution listed the outrages of the law and condemned it as "an abomination without a parallel in the annals of our government."<sup>195</sup> Even worse, the abomination was a betrayal of Massachusetts's values and the result of a corrupt compact "between the advocates of chattel slavery and the monied interest."<sup>196</sup> The force of

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<sup>192</sup> *Id.*

<sup>193</sup> *Id.*

<sup>194</sup> *Id.*

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* In this, Acton was echoing an abolitionist argument that condemned Northern economic elites who relied on Southern cotton and commerce for supporting and perpetuating the system of slavery. Charles Sumner famously called this "an unhallowed union—conspiracy let it be called . . . between the lords of the lash and the lords of the loom." CHARLES SUMNER, Speech for Union Among Men of All Parties Against the Slave Power, and the Extension of Slavery, in a Mass Convention at Worcester, June 28, 1848, in CHARLES SUMNER, ORATIONS AND SPEECHES, VOL. 2 256–57 (1850).

tying the abomination of the law to the hated politics of Southern appeasement was, Acton hoped, to stimulate active political resistance to the status quo order of power in Washington, D.C. Rather than continue to compromise in the cowering fear for the survival of the union, voters should “unit[e] to sustain all measures which tend to advance the cause of human liberty and maintain our inalienable rights.”<sup>197</sup>

This was the vision of political resistance that drove one of the outcomes that Acton’s meeting hoped would come from their resolutions. In the sixth resolution, the town warned that “a rigorous enforcement of this law” will not “stop[] all agitation on the subject of slavery” and thereby preserve the Union.<sup>198</sup> Just the opposite, enforcement of the law would tend to awake agitation against the law and *weaken* the bonds of the union and hasten the oncoming of a civil war.<sup>199</sup> In this, Acton’s resolutions actually agree in part with Lewis Cass, Daniel Webster, and Stephen Douglas. Nullification and outraged resistance *do* pose an existential threat to the union. The conclusion, however, is not to tighten the law’s grip and enforce it by any means. Rather, those who wish to save the union and keep the peace should “use all the means in our power for the repeal of this as we believe unwise and wicked law.”<sup>200</sup>

Striking a balance between seeking the repeal of the law with “all the means in our power” and nullifying the law was no easy task. Acton’s resolutions made it crystal clear that Acton residents had no intention, in their private capacities, of refusing aid to a fugitive in their midst or becoming complicit in the evils of slavery by complying with the law. And yet this refusal to obey the law was not quite a rejection of the law’s power or legitimacy. Rather, the resolutions imagined a choice between compliance with the law and punishment for not complying. Given that choice, it “would be in opposition to all our cherished ideas of the Declaration of Independence, our Bill of Rights, and our moral duties as accountable beings” to refuse aid to a fugitive.<sup>201</sup> Rather, the townspeople “would sooner suffer the pains and penalties that might be inflicted upon us [for protecting] that liberty which we believe to be of more value than gold.”<sup>202</sup>

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<sup>197</sup> Resolutions at Action, *supra* note 186.

<sup>198</sup> *Id.*

<sup>199</sup> *See id.*

<sup>200</sup> *Id.*

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

To put it succinctly, Acton's middle ground between revolutionary nullification and silent compliance was one that they might well have heard about from their neighbor, Thoreau, just a few years earlier: civil disobedience. This promise of civil disobedience was both consistent with the political advocacy at the root of Acton's resolutions and feasible within the boundaries of the town's understanding of its powers. Identically to the nullifying towns, Acton's resolutions offered a collective *private* promise that fugitives would be safe in their town. Also, identically, Acton offered no coercive municipal protection to back that promise. What was different was that Acton *recognized its limitations*<sup>203</sup> and staked out a role for the town in support of the kind of collective private action that the meeting approved of. Should residents provide aid to fugitives and not be caught, excellent. Should they be caught, prosecuted, and imprisoned, so much the better. In the words of Thoreau, "[u]nder a government which imprisons any unjustly, the true place for a just man is also a prison."<sup>204</sup> By implication, any such punishment would not be private or isolated. Instead, Acton's resolutions promise that anyone enduring such a punishment would have the support of their neighbors and fellow townspeople.

Indeed, the connections between Acton's resolution and Thoreau go deeper. Thoreau famously argued, "that if one thousand, if one hundred, if ten men whom I could name—if ten *honest* men only,—aye, if one HONEST man, in this State of Massachusetts, *ceasing to hold slaves*, were actually to withdraw from this copartnership, and be locked up in the county jail therefor, it would be the abolition of slavery in America."<sup>205</sup> Acton's resolutions and Thoreau share a common core logic: that there is a political "co-partnership" between Northern interests and Southern slave holders. This partnership is at the heart of the political order. Acton's resolutions target this same corrupt compromise and pledge the town's energies to the political struggle of

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<sup>203</sup> As I have argued above, Acton and the other towns almost certainly had more power to nullify the law than they came close to claiming. In this sense, the limitations of Acton's power were self-imposed, pragmatic limitations rooted in what the town meeting was willing to do both as a matter of public will and movement strategy.

<sup>204</sup> Henry David Thoreau, *Resistance to Civil Government*, in *THE RADICAL READER: A DOCUMENTARY HISTORY OF THE AMERICAN RADICAL TRADITION* 83 (2011). While any overt connection would be mere speculation, it bears noting that Thoreau's original oration "Resistance to Civil Government" (which was later published as "Civil Disobedience") was delivered at the Concord Lyceum in 1848. *See id.* at 79. Given the proximity between Acton and Concord, it is not hard to imagine that some in the Acton town meeting might have been familiar with and influenced by Thoreau's essay.

<sup>205</sup> *Id.*

untangling it. If that means that one, ten, or one hundred of Acton's residents need go to prison, the town's resolutions are aligned with Thoreau in the hope that doing so would be worth the cost.

What makes Acton's resolutions so striking is the degree to which they reflect a thoughtful local intervention in a complex social and political struggle. Acton's resolutions neither pound the table nor do they temporize. Instead, they apply the same sharp radical edge to the strategic question of what a town can and should do in support of a resistance movement. Ultimately Acton's resolutions offered no public protection to individual fugitives and accomplices. Nor did they promise to nullify or repeal the Fugitive Slave Law. Rather, Acton's resolutions sought to create context, encouragement, and support for organizing against the corrupt political order that gave birth to the law. Through maintaining space and support for civil disobedience and organized political resistance within the boundaries of the constitutional order, Acton suggested that local governments can and must play a crucial role in that struggle.

### 3. Conclusions

While these eight local governments were likely not the only ones to take official action against the law, they are a large enough sample to draw some conclusions from.<sup>206</sup> Most of the places that passed resolutions framed them according to the pattern seen in Weymouth, Chicago, and Marshfield. They condemned the law as a violation of the Constitution and the townspeople's civic and moral principles. They exhorted slaves and fugitives to struggle for their freedom and even give

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<sup>206</sup> The uncertainty of the sample springs from two sources. First, there are a few places where my research has uncovered what seems to be evidence of an official local resistance to the law that I have unable to confirm or expand upon. For example, it appears that the town council of Lancaster, Indiana passed a resolution opposing the law in 1852, but I have not been able to find further evidence it. See Richard Clough, *Eleutheran College: A Sustainable Heritage*, EARTHCHARTER INDIANA (Sept. 21, 2016), <https://www.earthcharterindiana.org/sustainable-indiana-solutions/2017/1/7/eleutherian-college-a-sustainable-heritage> [<https://perma.cc/DF3Z-NU6H>] (indicating that there is a plaque in Lancaster commemorating the passage of this resolution by town council in 1852). Second, my experience researching these resolutions in the basements of Town Clerk's offices leads me to believe that a thorough search of the archives of all 351 towns and cities in Massachusetts would yield at least one or two more examples. When you add the archives of all of the other towns in New England and all of the other towns and cities across the North, it is hard to imagine that there are not more resolutions out there to be discovered. As I argued above, however, there is reason to think that while there are a few examples that I have missed, there is not a hidden trove of them.



their lives for that struggle. They promised to resist the law and refused to enforce it. And yet these nullifying towns uniformly failed to offer any substantive protections either for alleged fugitives or for men and women accused of helping those fugitives.

Except for Chicago, all of these local governments were towns in Massachusetts with comparatively few black residents. Their resolutions were often written by and advocated for by individual white anti-slavery activists who sought to use the bully pulpit of a town meeting resolution to advance the cause of abolitionism. When it came to the expressive role of local resistance, the towns maximized their voices, seemingly in the hopes of influencing other towns and political actors. But when it came to the substantive protection of the people subject to the enforcement of the hated law, the towns could offer only collective private promises of sanctuary (without any enforcement mechanism) and occasionally an exhortation to the state legislature to act where the town could not.

These nullifying resolutions are characterized by this dissonance between rhetoric and performance. Compare, for example, the forceful pragmatic protections enacted by the organized black activists of the Quinn Chapel meeting in Chicago with the City Council's subsequent thin promise not to cooperate with the federal authorities. The work of helping human beings escape slavery and preserve their freedom was hazardous and those who did it risked their lives and livelihoods. If any town or city had enlisted its public resources to aid in that work, it would indeed have amounted to an act of open rebellion—as Stephen Douglas phrased it: “rais[ing] the standard of rebellion and throw[ing] off the authority of the Federal Government.”<sup>207</sup> But the fact that the consequences of such a rebellion might be dire, perhaps involving armed suppression from the federal authorities, does not mean that it would have been impossible for a town or a city to take those actions. Indeed, the nullifying towns seemed to promise precisely this level of commitment to the cause. If Weymouth could encourage every slave to escape, or if Marshfield could encourage every fugitive to defend her freedom with her life, why could they not match those stakes and risk their own liberties and safety?

Ultimately more muscular overt resistance would likely have been counterproductive. Openly and notoriously shielding fugitive slaves would have been an excellent way to encourage the defenders of the law to crack down on any town offering public sanctuary. This calculus

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<sup>207</sup> Mann, *supra* note 10, at 75.

would change if enough cities and towns joined together in the strategy. But failing such a collective uprising, the critique of the disconnect between the nullifying towns rhetoric and substantive protections is not that they did too little, but rather that they promised too much. They seemed more interested in the rhetoric of their promises than in the protection of those who they professed to be concerned about.

To state this in starker terms: too often the nullifying towns used the victims of the law as tools in a political struggle. This is what makes the resolutions in Needham and Acton stand out as different. These resolutions were no more substantively protective of the victims of the law, but they did not promise to do more than they could, nor did they resort to exploitation and exhortation to support their expressive goals. Acton's clear and thorough condemnation of the Fugitive Slave Law, paired with a clear plan of political resistance rooted in advocacy and civil disobedience emerges as the most honest and the most strategically promising to our eyes today.

But all of the foregoing presupposes that the goal of local resistance is consistency and respect for the victimized. A different set of questions arises if we ask which of these resolutions did the most to actually help fugitives? A still different set of questions emerges if we ask which of these resolutions did the most to actually help enslaved people and end slavery?

As to the first question, it is extremely unlikely that any of these resolutions had a substantial impact on the migration patterns, freedom, or bondage of any actual fugitive slaves. What we do know about free black support networks across the North suggests that people fleeing slavery were likely to be drawn to cities and communities (like Chicago) where they had robust social networks and where there was a thriving free black community.<sup>208</sup> In fact, there were some places where fugitives were virtually safe from apprehension not because of any official local government statement or action, but simply by virtue of such a strong and settled local opposition that the law was dead letter

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<sup>208</sup> For example, there were more than ten times as many free black residents in Cincinnati Ohio in 1850 than there were in Chicago. See JULIE WELCH, *BETWEEN SLAVERY AND FREEDOM: FREE PEOPLE OF COLOR IN AMERICA FROM SETTLEMENT TO THE CIVIL WAR* 85 (2014). Cincinnati had a large and active abolitionist community and a powerful network of black anti-slavery activists, but it was a city on the border between North and South whose local government would never have promised any modicum of official protection to fugitive slaves. Rather free blacks and fugitives in Cincinnati were protected by their organized social networks and by a cadre of vigilant and resourceful private actors. See NIKKI MARIE TAYLOR, *FRONTIERS OF FREEDOM: CINCINNATI'S BLACK COMMUNITY, 1802-1868* 138-60 (2005).

on the ground.<sup>209</sup> Given this, any well-informed fugitive traveling the Underground Railroad would be much more likely to trace her steps to a place with a strong community and on-the-ground protections against recapture than she would be to seek out a town proclaiming itself safe. Furthermore, it would strain credulity to suggest that any enslaved person, upon reading or hearing of Weymouth's resolution, would have been convinced by the town's exhortation to escape. So too would it strain credulity to suggest that any fugitive, hearing Marshfield's exhortation to defend their liberty to the death, would have changed their behavior in the face of recapture.

As to the question of what role these resolutions had in the larger struggle against slavery, all we have is speculation. It is simply impossible to gauge whether the strident overreach of Marshfield's chastisement of Webster was more politically effective than the reasoned political strategy of Acton. What is clear is that all of the local resolutions aspired to intervene against slavery, and it would be perverse to hold every act of resistance or attempt to make social change hostage to an empirical assessment of whether or not "it worked" under one or another definition. Rather, these questions and their uncertain answers affirm that these resolutions were not ultimately targeted at the pragmatic goal of protecting alleged fugitives from being returned to slavery. The resolutions are best understood instead as honest, if flawed, attempts to use the power and voice of local government to engage in the messy, entrenched, and intractable political struggle over slavery in the United States.

### C. *Other Local Responses*

Although the towns and cities that passed resolutions condemning the Fugitive Slave Law raise the most interesting questions for the past and the present, they represented a tiny minority of the local responses to the law in the first years after its passage. Most local governments followed Concord's lead and simply remained silent. Some places took small or oblique actions signaling opposition to the law without openly repudiating it while other places expressed open support for the law. This range of responses is cast into relief by the places that *did* speak

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<sup>209</sup> For example, for the most part, the Fugitive Slave Law went unenforced in states like Michigan both because of private resistance and the sheer practical difficulty of tracking alleged fugitives that far away from the South. See Roy E. Finkenbine, *A Beacon of Liberty on the Great Lakes*, in *THE HISTORY OF MICHIGAN LAW* 91 (Paul Finkelman & Martin J. Herschok eds., 2006).

out. When Chicago passed resolutions opposing the law, it stripped other cities of the neutrality of silence. Once the option of nullification was on the table, not choosing that option had meaning. So too with towns in Massachusetts. Just as Weymouth's repudiation of their November resolutions was not a return to neutrality but a tacit endorsement of the Fugitive Slave Law, so too were Marshfield, Princeton and Blackstone's neighbors' silence put into a new light when held up against those towns' resolutions.

Although I address each category of response only briefly here, each represents a contending view of what the power and possibility of local action in the face of federal law can be. Seeing the full spectrum, then, helps to articulate the complexity of the choices made by nullifying towns.

### 1. Tacit Opposition to the Fugitive Slave Law

Although it is much harder to isolate clear examples, there were many places where local officials took actions that expressed sympathy with critiques of the Fugitive Slave Law without explicitly condemning the law. This kind of response was more common in larger cities, though it was also evident in smaller towns.

It is no accident that nearly every example of official local resistance came from a town meeting rather than a town or city council. In a town meeting the functions of governance and collective expression are unified at one place and time. Town meetings, at least in theory, govern *through* collective expression. Thus, a town meeting is a more fertile forum for official expressions of outrage than a city or town run by a council and a mayor where collective expression is funneled through the prism of elected representatives. Beyond this, there is the more mundane point that larger cities are more politically diverse and thus less likely to converge on consensus around any kind of moral position. In more diverse political communities, it may be safer simply to avoid a contentious question if possible than to confront it.<sup>210</sup>

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<sup>210</sup> Here is a place where the distinction between resistance to the Fugitive Slave Law and present-day resistance to the deportation crisis is apparent. Many of the most prominent localities proclaiming themselves "sanctuaries" or "welcoming cities" are in fact larger cities. As I discuss in more detail in Part III, this is partly because of a change in how we think about political diversity that grows out of the United States increasingly balkanized and regional political culture. See *infra* Part III.

Perhaps for these reasons, it was more common in cities governed by the council/mayor model for the mayor or councilors to make direct or oblique political statements opposing the law without committing any specific resolution or policy to an official decree. A prime example is Worcester, Massachusetts. When the new mayor of Worcester, Peter C. Bacon, was inaugurated in April of 1851, he devoted part of his inaugural address to the Fugitive Slave Law. Without expressly condemning the law or advocating nullification, Mayor Bacon affirmed that the Worcester police would take no part in enforcing the law. Falling back on *Prigg* and echoing Chicago's final resolution, he argued that "[t]he government of the Union is clothed with all necessary authority, and to them should be left the enforcement of this law."<sup>211</sup>

Another example was Syracuse, New York. On October 4, 1850, just weeks after the Fugitive Slave Law had been signed, a huge public meeting was called and convened in Syracuse City Hall to draft resolutions opposing the law. The meeting was not "official" and the resolutions that were passed were the resolutions of a gathering of private citizens rather than the official act of the city. Still, the man presiding over this mass meeting (and thus implicitly sanctioning its proceedings) was Mayor Albert Hovey.<sup>212</sup>

Worcester and Syracuse were hardly alone. A close look at towns and cities across the North reveals a myriad of small measures taken to express opposition to the law. For example, the town meeting of Fall River, Massachusetts voted in April 1851 to instruct its state legislative delegation to support noted abolitionist and critic of the Fugitive Slave law Charles Sumner in his bid to become U.S. Senator.<sup>213</sup> That same April, the town meeting in Plymouth, Massachusetts voted to instruct their state legislators to support a bill that would impede the operation of the law.<sup>214</sup> Occasionally the expressions of disapproval were purely symbolic. In 1854, the town meeting of Waterville Maine, voted to ring the church bells in solidarity with the famous alleged fugitive Anthony Burns to mark the town's disapproval that he had been marched back to slavery under federal military guard in Boston.<sup>215</sup>

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<sup>211</sup> HERBERT SAWYER, HISTORY OF THE DEPARTMENT OF POLICE SERVICE OF WORCESTER, MASSACHUSETTS 45 (1900).

<sup>212</sup> See Letter to the Editor, *Opposition to the Fugitive Slave Law*, N.Y. TRIB., Oct. 9, 1850, at 2.

<sup>213</sup> See *A Sign*, LIBERATOR (Boston, Mass.), Apr. 25, 1851, at 3.

<sup>214</sup> See *The Fugitive Slave Law in Plymouth*, N.Y. EVENING MIRROR, Apr. 10, 1851, at 3.

<sup>215</sup> See A CHRONOLOGY OF MUNICIPAL HISTORY AND ELECTION STATISTICS, WATERVILLE, MAINE, 177–1908 100 (1908).

In one sense, these many tacit disapprovals of the law were unavoidable outcomes in a Northern political culture where anti-slavery was becoming an increasingly strong political force. In another sense, they highlight the fact that local opposition to the Fugitive Slave Law did not always manifest as an explicit act of local government repudiating the law. The mayor of Worcester, for example, addressed his opposition to the law purely in the context of a local question: would the city's police help to enforce it. By and large, towns that took this approach seemed to see the fight over the Fugitive Slave Law as something taking place beyond their local borders. Where the law touched their local lives, they might respond. Where it did not, they left it alone.

## 2. Local Silence

Most cities and towns never concluded that the law had touched their local concerns. The most common local government response to the Fugitive Slave Law was official silence. It is, of course, difficult to prove an absence. Still, my experience in town archives confirms that silence was the norm and not the exception. As discussed above, Concord's silence on the law in 1850 and 1851 was conspicuous and made infamous by Thoreau.

In addition to Concord, let me offer two more examples, simply by way of illustration. First, the town of Mendon, Massachusetts. Mendon was the town that Blackstone split off from in 1845. Thus, in 1850, the split between the two towns was relatively fresh. When Blackstone passed its resolutions in the spring of 1851, the people of Mendon were surely aware of it. And yet there is no record of Mendon's town meeting making any mention of the Fugitive Slave Law during the relevant time period.<sup>216</sup> Second, the town of Dedham. Dedham borders on Needham and had an active abolitionist community.<sup>217</sup> Dedham was among the many towns whose records I checked, and I was able to find no mention of the Fugitive Slave Law in its town meeting.

It is difficult to say too much about this silence beyond noting that while government silence is never neutral, silence where other local

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<sup>216</sup> See JOHN G. METCALF, *ANNALS OF THE TOWN OF MENDON, FROM 1659-1880* (1880).

<sup>217</sup> In the spring of 1851, Dedham was home to the annual meeting of the Norfolk County Anti-Slavery Society. That gathering passed a set of scorching resolutions (these meetings nearly always passed resolutions far more scorching than anything passed at any town meeting). See *The Dedham Meeting*, *LIBERATOR* (Boston, Mass.), May 2, 1851, at 70.

governments have chosen to speak can be read all the more clearly as a town or city's affirmative decision to remain on the sidelines. In some instances, this decision could be driven by a sincere belief that the Fugitive Slave Law and the political struggle over slavery were simply not local issues. In other instances, this decision might be a product of local disagreement that made silence easier than a public battle over what kind of position the town or city might take.

What makes the silent towns most interesting, however, is not what their silence says about them, but rather how their silence contrasts with the strident expression of the nullifying towns. Even where those towns tacitly agreed with their silent neighbors that there was little of substance they could do to intervene against slavery or to protect fugitives, they still acted to use their public voice to engage in the political struggle rather than abstain. This choice, between active engagement and abstention—and between a conception of “local interest” that includes national politics and one that does not, is vibrantly alive in the present.

### 3. Local Support for the Fugitive Slave Law of 1850

Finally, a small number of Northern towns took official actions that either tacitly or expressly supported the legitimacy and enforcement of the Fugitive Slave Law.<sup>218</sup> By 1850, these resolutions were seldom as forthrightly supportive of slavery as Brighton's 1837 resolution had been when it abjured “any interference tending to affect *in the least degree the interests of the Slaveholding States.*”<sup>219</sup> Still, in a number of towns and cities, local politics and the exigencies of local events pressed local governments into affirmative actions supporting the law.

Perhaps the most infamous of these was in Boston. In the first years after the Fugitive Slave Law was enacted, Boston was the scene of two famous escapes where alleged fugitives slipped out of the grasp of their putative owners and the process of the new law. The first of these escapes involved William and Ellen Craft in February of 1851.<sup>220</sup> President Fillmore, Webster, and the moderates who supported the

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<sup>218</sup> There were a number of Southern local governments that passed resolutions supporting and demanding support for the Fugitive Slave Law.

<sup>219</sup> *Preamble and Resolutions, Adopted at a Town Meeting of the Inhabitants of Brighton*, *supra* note 57, at 123.

<sup>220</sup> See BLACKETT, *supra* note 58, at 396–408 (a full account of the Crafts' case and escape).

Fugitive Slave Law were furious that the escape had been allowed to happen and they put pressure on the city government to promise that it would not repeat itself. Under that pressure, the Board of Aldermen passed a resolution promising to offer the city's assistance to any federal officer who fears that "there is a danger that he shall be unlawfully obstructed in the performance of his official duties by a mob."<sup>221</sup> Although the Aldermen did not promise to enforce the law directly, this promise to support federal officers enforcing the law amounted to the same thing.

It was under similar circumstances that the city government of Syracuse passed resolutions supporting the enforcement of the law there. In late 1851, an alleged fugitive named William Henry (commonly known as Jerry) was rescued by a group of anti-slavery activists from federal custody in Syracuse.<sup>222</sup> In the wake of this rescue, the federal authorities again put pressure on the city government to promise that the law would be enforced in the future. Despite the fact that Syracuse's previous mayor had openly supported an anti-slavery meeting in 1850, the new mayor and council succumbed to pressure and passed a set of resolutions promising to prevent future anti-slavery mobs.<sup>223</sup>

In other cities, support for the Fugitive Slave Law was more covert. For example, in Springfield, Massachusetts, the city government voted in the spring of 1851 to close the town hall to speeches by abolitionists, protesting that they were too disruptive to the public peace.<sup>224</sup> Because the anti-slavery movement was reliant on public speaking to win converts, a ban on abolitionist speech amounted to a tacit endorsement of the status quo and ongoing validity of the Fugitive Slave Law.

These examples are more consistent with the local governments that tacitly opposed the law than they are with the nullifying towns. In all three of these cases, the cities acted in support of the law not because they sought to make an expressive political point, but rather because they were forced by local political circumstance to take a position.

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<sup>221</sup> *The Following Ordinance was Passed by the Board of Aldermen on Tuesday Last*, LIBERATOR (Boston, Mass.), Feb. 21, 1851, at 30. This ordinance did not prevent a second escape from occurring just days later. Shadrach Minkins escaped from the custody of the federal marshal at the hands of a mob of anti-slavery allies. See BLACKETT, *supra* note 58, at 409–10. Boston's municipal support of the Fugitive Slave Law would become more overt, however, when the city assisted in the rendition of Thomas Sims in 1851 and Anthony Burns in 1854.

<sup>222</sup> See BLACKETT, *supra* note 58, at 85–86.

<sup>223</sup> See *The Jerry Rescue Celebration*, LIBERATOR (Boston, Mass.), Oct. 15, 1852, at 165.

<sup>224</sup> See *A Cowardly Manifesto*, LIBERATOR (Boston, Mass.), Mar. 14, 1851, at 41.



When it was no longer possible to remain silent, and under pressure from supporters of the law and the South, these local governments put their thumb on the scale in support of the law. Their actions were not meant as catalysts to political action. Rather, they were minimalist gestures seemingly designed to move local government away from the national political question as quickly and quietly as possible.

### III. THE SANCTUARY MOVEMENT AND THE FUGITIVE SLAVE LAW OF 1850

It should be clear by now that the stories of the towns and cities that resisted the Fugitive Slave Law cast overlapping shadows on questions that face towns and cities in the present. The chasm between past and present is wide, and any historian must be cautious when proposing to bridge that chasm by drawing explicit lessons from the past into the present.

Still, I write these words in present gripped by political and moral crisis over immigration. In 2020, the United States removed an average of more than five hundred human beings a day across its borders,<sup>225</sup> many of them to conditions of poverty and imminent physical danger. Even now, months into the Biden administration hundreds of unaccompanied children are detained at the border every day,<sup>226</sup> although conditions have improved from the nadir of Trump's family separation policy, many of these children remain isolated from their parents in shocking conditions.<sup>227</sup> In 2019, the horrifying images and

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<sup>225</sup> See ICE Statistics, IMMIGRATION AND CUSTOMS ENFORCEMENT (last updated May 12, 2021), <https://www.ice.gov/remove/statistics#> [<https://perma.cc/4D4J-34JT>] (reporting that 185,884 people were removed in 2020). This number is a marked *decrease* from previous years. ICE reported that more than 267,000 people were removed in 2019. See *ERO FY 2019 Achievements*, IMMIGRATION AND CUSTOMS ENFORCEMENT (last updated Feb. 10, 2021), <https://www.ice.gov/features/ERO-2019> [<https://perma.cc/2FSW-U24X>].

<sup>226</sup> See Franco Ordonez, *Hundreds of Migrant Children Held in Border Detention for More than 10 Days*, NPR.ORG (Mar. 18, 2021, 10:19 PM), <https://www.npr.org/2021/03/18/979014713/hundreds-of-migrant-children-held-in-border-detention-for-more-than-10-days> [<https://perma.cc/5Q7K-WAF8>].

<sup>227</sup> On the shocking conditions children faced in 2019, see Dara Lind, *The Horrifying Conditions Facing Kids in Border Detention, Explained*, VOX (June 25, 2019, 1:10 PM), <https://www.vox.com/policy-and-politics/2019/6/25/18715725/children-border-detention-kids-cages-immigration> [<https://perma.cc/N9HJ-JMAT>]. On the long-term effects of the trauma those children experienced, see Laura C. N. Wood, *Impact of Punitive Immigration Policies, Parent-Child Separation and Child Detention on the Mental Health and Development of Children*, BJM PAEDIATRICS OPEN, Sept. 26, 2018, at 1 (summarizing the “significant body of research demonstrating the extensive harm” of detaining children for immigration purposes).

stories coming from the border sparked protests fueled by moral outrage, demanding—often under the banner of “Never Again”—that the federal government “close the camps.”<sup>228</sup> Nor is the crisis new. There are more than ten million undocumented immigrants living in the United States, nearly seven million of them have lived here for more than a decade.<sup>229</sup> These people are long-term residents, living peaceful lives, paying taxes, and raising children who are American citizens. By labeling them “illegal” our federal deportation policy places them in a constant state of existential insecurity.<sup>230</sup> The conditions of suffering and uncertainty facing undocumented people at and within our borders are the explicit product of federal laws and their enforcement. Moreover, they are situated within a culture of political crisis in which partisans are litigating fundamental disputes over the American project through their fights over immigration and the human beings subject to our immigration laws.

My historical inquiry has emerged from within this years-long political crisis. Like every historian, I am bound to write history in and to the present. To the extent that the stories of local government resistance in the 1850s are interesting, it is because they help us see the present more clearly. Given this reality, and the present stakes, I feel bound to make an effort to trace the lines of connection between the 1850s and today, despite the yawning chasm that divides them.<sup>231</sup>

Having said this, this Article is not and cannot be a thorough investigation of the ways in which local governments are resisting

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<sup>228</sup> See Leila Ettachfani, *The Jews Organizing Against ICE to Stop Concentration Camps*, VICE (Aug. 20, 2019, 2:12 PM), [https://www.vice.com/en\\_us/article/3kxqqw/the-jews-organizing-against-ice-to-stop-concentration-camps](https://www.vice.com/en_us/article/3kxqqw/the-jews-organizing-against-ice-to-stop-concentration-camps) [<https://perma.cc/WU6E-HZLG>].

<sup>229</sup> See Jens Manuel Krogstad, Jeffrey S. Passel, & D’Vera Cohn, *5 Facts About Illegal Immigration in the U.S.*, PEW RESEARCH CTR.: FACT TANK (June 12, 2019) <https://www.pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s> [<https://perma.cc/NV3K-EWDV>].

<sup>230</sup> My colleague Dan Kanstroom refers to this looming threat of deportation as “post-entry social control” pointing out that the possibility of deportation impacts not only individual undocumented immigrants but their children, families, and extended social networks. See DANIEL KANSTROOM, *DEPORTATION NATION: OUTSIDERS IN AMERICAN HISTORY* 5–8 (2007). Ethnographer Ines Hasselberg has more recently documented the daily stresses and sufferings of human beings subject to the threat of deportation in the United Kingdom and the United States. See INES HASSELBERG, *ENDURING UNCERTAINTY: DEPORTATION, PUNISHMENT AND EVERYDAY LIFE* (2016).

<sup>231</sup> This is neither the first, nor the second time that I have risked an explicit investigation of the present implications of my historical research. See Farbman, *supra* note 59; Daniel Farbman, *Reconstructing Local Government*, 70 VAND. L. REV. 413, 482–83 (2017) (summarizing the professional perils of presentism and a defense of my obstinate practice of braving those perils).

federal immigration policy.<sup>232</sup> Rather, among the many threads that I might trace into the present, I will discuss only three here in conclusion. First, observing the parallels between the political crises of 1850 and the present is a powerful reminder that the local actions in the past, like those in the present, are the products of a messy, contingent, and uncertain political struggle. Those struggling against laws that they despise, however flawed or complex that struggle, are usually doing nothing more than the best they can within a morally complex political morass. Second, having acknowledged how difficult it is to assess the virtues and vices of strategies for social change, it remains true that this history should serve to bolster the arguments of those who are concerned that the rhetoric of sanctuary as increasingly employed by local governments may not provide as much protection for the people under threat of deportation as the proclamations suggest. Third, and finally, I argue that despite these concerns, the history suggests ways that local governments can productively engage in the political struggle over deportations while balancing a broad social change agenda with a specific set of commitments and supports for the people threatened with deportation.

#### A. *Intractable Political Struggle Past and Present*

There is a temptation to idealize and rarify the struggle against slavery. The cataclysmic cruelty of the American system of plantation slavery cannot be understated, nor can the extent of the wounds that slavery has inflicted and continues to inflict on American political life.<sup>233</sup> There is no question that those who struggled against slavery were frequently moral heroes. And yet our tendency to flatten the story of slavery into crisply defined categories of “good” and “evil” actually

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<sup>232</sup> I am happy to say that this work is already vibrantly engaged by a number of thoughtful scholars. See, e.g., Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 U.C. DAVIS L. REV. 549 (2018); Pratheepan Gulasekaram, Rick Su, & Rose Cuison Villazor, Essay, *Anti-Sanctuary and Immigration Localism*, 119 COLUM. L. REV. 837 (2019); Nestor M. Davidson, Essay, *The Dilemma of Localism in an Era of Polarization*, 128 YALE L.J. 954 (2019); Toni M. Massaro & Shefali Milczarek-Desai, *Constitutional Cities: Sanctuary Jurisdictions, Local Voice, and Individual Liberty*, 50 COLUM. HUM. RTS. L. REV. 1 (2018).

<sup>233</sup> The New York Times’ explosive *1619 Project* is just the most recent project seeking to document this lingering legacy. Despite the politicized pushback on that project, it is hard to imagine anyone seriously arguing that the legacy of slavery has not shaped the reality of American life and politics in the present.

minimizes the moral heroism of the abolitionists who fought against slavery.

The struggle against slavery was, in its own time, a political struggle that took place between deeply conflicted political actors struggling to balance seemingly incommensurable political and moral imperatives on the playing field of conventional politics. The specifics of the positions and debates in the past are nearly impossible to recreate—moreover, it is pointless and unedifying to try decide which side of any given debate would align with any present political position.<sup>234</sup> All of this is to say I have no interest in defending the proposition that the struggle to end slavery was “like” the struggle against deportation either in its details or magnitude.<sup>235</sup> But even if the specifics of the struggle against slavery are not parallel to the present, the reverberating echoes across time can change the way we understand both the past and the present.

Anyone paying attention to the political culture of the United States today knows what a crisis of political morality *feels* like. We know how the complex ways in which individual moral and civic struggles are embedded within a political system. We know how issues like immigration and abortion, precisely because of their moral vapor trails, are weaponized in our partisan electoral politics. We know how that same partisan electoral process helps to explain the competing shouts of state and local actors eager to situate themselves politically and advance their substantive goals. We also know how political and moral

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<sup>234</sup> Here I gesture with a dispirited sigh at the vapid and pyrrhic debate over whether it was “Republicans” or “Democrats” that opposed slavery. Even asking the question reveals a failure to engage thoughtfully with the complexities of the past. See Dinesh D’Souza, *The Secret History of the Democratic Party*, FOX NEWS (July 26, 2016), <https://www.foxnews.com/opinion/dinesh-dsouza-the-secret-history-of-the-democratic-party> [https://perma.cc/YY2D-83QQ]; Michael Tomasky, *Betraying Their Name: The Republican Party was Founded to Fight White Supremacy. Here’s How It’s Embraced It Now*, THE DAILY BEAST (July 21, 2019, 8:41 AM), <https://www.thedailybeast.com/the-republican-party-was-founded-to-fight-white-supremacy-heres-how-its-embraced-it-now> [https://perma.cc/Q52X-8GQ3].

<sup>235</sup> It is tempting to catalog the ways in which undocumented immigrants seem to stand in a parallel position to fugitive slaves: human beings who are seeking “life, liberty, and the pursuit of happiness” subject to the constant threat that the federal government will tear them from their homes and send them to an undesirable and possibly perilous new life. Without discounting the salience of these parallels entirely, it is more distracting than helpful to defend the details of these comparisons too closely. Chattel slavery and claims of ownership are categorically different from national borders and assertions of national belonging. Being exiled to slavery is different from being exiled to another country. Federal complicity in the property system of slavery is different from federal exclusion on the basis of national identity. I could keep going. Litigating each of these differences tends to diminish the one and most salient point of comparison: both regimes are artifacts of federal law that control the freedom and movement of entire categories of human beings.

argument pulse urgently but inconsistently through all of these complex structures.

We know, in short, what it feels like to be suspended between political paralysis and the urgency of escaping that paralysis. We know too, or at least some of us do, what it feels like to face down what appears to be an existential threat to our political system and our fundamental civic values. Knowing all of these things, I propose, helps us to better recognize the experience of those who struggled in similar conditions in the 1850s.

I am hesitant to catalogue everything that we might take away from recognizing echoes of our present crisis in the past.<sup>236</sup> What these echoes do most concretely here is contextualize the actions taken by local governments in reaction to the Fugitive Slave Law—and thus sharpen the shadows they cast on the present. When Weymouth passed its November resolutions and then expunged them the next March, the battle between Elias Richards and his moderate neighbors was a small skirmish in a much broader political struggle. Richards, like most abolitionists, saw himself as the hero of the story that he would become in the light of history. But opponents saw themselves as heroes as well. They were aligned with Webster and Douglas preserving the union and averting the cataclysm of the Civil War. As I have already argued, the contested moral and pragmatic claims at work in Weymouth make the resolutions *more* heroic in a sense because they stake out a contested position rather than simply asserting the “right” against a clearly evil opponent.

Recognizing the past as “normal” political struggle should also encourage us both to lower our expectations and be charitable when we assess these local resolutions. When the small town of Ipswich, Massachusetts voted in 2017 to declare itself a sanctuary, no one today could credibly believe that this act on its own has anything more than a

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<sup>236</sup> One tendentious example, among many, is that these echoes offer fodder for those who argue that our political system is irrevocably broken and that we stand on the brink of cataclysmic (or transformational) change. See, e.g., Ganesh Sitaraman, *Divided We Fall*, THE NEW REPUBLIC (Apr. 10, 2017), <https://newrepublic.com/article/141644/divided-fall-trump-symptom-constitutional-crisis-inequality> [<https://perma.cc/9AVD-MWBY>]; Robert Reich, *A Second American Civil War?*, THE AM. PROSPECT (June 5, 2018), <https://prospect.org/article/second-american-civil-war> [<https://perma.cc/EH86-WMBR>]. Of course, it is true that Americans living in the 1850s worried about the cataclysm of the Civil War but did not know that it was coming until it came. So too do many in the present worry about impending doom, and so too might we not see it until it comes. Still, this kind of results-oriented speculation runs against the spirit of the comparison for me. I am less interested in what doom we may face than I am in the dynamics of the political struggle that we are stuck in.

peripheral impact on either the broader political struggle or even on the experience of undocumented people in the United States.<sup>237</sup> Rather, we understand that such a vote is largely symbolic, situated within a complex network of political struggle. In turn, we assess the impact and promise of such acts in their proper context.<sup>238</sup> Is it better for Ipswich to take this symbolic position or not? What good might it do? And for whom?

By the same token, recognizing the political struggles of the 1850s in the present also raises the stakes for these questions. Small and peripheral as these local acts might be, all acts in a political struggle have the potential to shape the course of that struggle. And so, while we should read the past generously, we should not absolve any local government acts of resistance from critique simply because their “intentions were good.” Rather, we should understand these acts of resistance for what they are, small but not insignificant skirmishes in a moral and political struggle. No matter how small the skirmish, it can be prosecuted more or less strategically.

#### B. *Rhetoric and Substance in “Sanctuary” Cities*

Since 1774 and before, local actors in the United States have enacted their belief that local resistance could play a substantive role in broader political struggles. The proliferation in the last few decades of local enactments declaring towns and cities “sanctuaries,” “inclusive,” “welcoming,” or otherwise staking a claim in support of undocumented immigrants is proof that this belief remains firmly rooted in many corners of our civic life.<sup>239</sup> The modern sanctuary movement borrowed terminology from a faith-based movement in the 1980s in which religious activists offered the sanctuary of their places of worship to

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<sup>237</sup> In 2017, Ipswich’s town meeting voted to pass the Ipswich Trust Act and declare itself a “Sanctuary Town.” See Linda Greenstein, *Ipswich Votes to Become a Sanctuary Town*, BOS. GLOBE (June 9, 2017, 12:30 PM), <https://www.bostonglobe.com/metro/2017/06/06/ipswich-votes-become-sanctuary-town/qhFdO990JhiGwUM0wYFWOJ/story.html> [https://perma.cc/WAJ6-2HKT].

<sup>238</sup> Ipswich town selectman Edward Rauscher admitted as much arguing in support of the act. “It is my duty as a US citizen to send a message, no matter how small, in support of the Constitution that is the bedrock of our country.” *Id.*

<sup>239</sup> See Christopher N. Lasch, R. Linus Chan, Ingrid V. Eagly, Dina Francesca Haynes, Annie Lai, Elizabeth M. McCormick & Juliet P. Stumpf, *Understanding “Sanctuary Cities,”* 59 B.C. L. REV. 1703, 1710 (2018).

Central Americans fleeing violence that the Reagan administration refused to offer asylum to.<sup>240</sup>

Since the early years of the 21st century, local governments began using the term sanctuary to label the ordinances they were passing promising to protect undocumented people in their borders by refusing to cooperate with federal enforcement of immigration laws.<sup>241</sup> After the election of President Trump in 2016 and his increased focus on immigration enforcement, many more towns and cities took up and passed local measures adopting versions of this label as gestures of resistance to the President and his policies.<sup>242</sup>

On the one hand, these towns and cities have found many more substantive tools at hand to offer substantive protection to undocumented immigrants. Large and powerful though ICE and the FBI may be, the extent of the enforcement task posed by ten million undocumented immigrants is such that federal authorities must rely on local law enforcement to cooperate in the enforcement project. Thus, where towns and cities pass ordinances refusing their cooperation in a myriad of ways, those places are doing more than any of their counterparts in the 1850s to offer substantive protection to their residents.<sup>243</sup>

Acknowledging the substantive tools at local governments' disposal, these sanctuary policies are almost universally promises *not to* collaborate with federal immigration enforcement rather than promises to affirmatively protect undocumented people from such enforcement. In other words, towns and cities have committed not to turn their residents over to ICE, but they have not promised to place their police

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<sup>240</sup> See *id.* at 1709.

<sup>241</sup> See *id.* at 1710.

<sup>242</sup> See *id.* at 1708. Even in cities that had already declared themselves sanctuaries, it was common for mayors and police chiefs to speak out to promise that they would do their utmost to protect their undocumented residents. See Alex Kotlowitz, *The Limits of Sanctuary Cities*, THE NEW YORKER (Nov. 23, 2016), <https://www.newyorker.com/news/news-desk/the-limits-of-sanctuary-cities> [<https://perma.cc/DVJ6-F49R>] (quoting Chicago mayor Rahm Emanuel: "To all those who are, after Tuesday's election, very nervous and filled with anxiety, you are safe in Chicago.").

<sup>243</sup> A full examination of sanctuary policies and strategies is far beyond the scope of this Article. Once again, Christopher Lasch and his co-authors have offered the most thorough summary of the landscape breaking down the strategies into five broad categories: barring investigation of civil and criminal immigration violations, limiting compliance with immigration detainers and administrative warrants, refusing ICE access to jails, limiting disclosure of sensitive information, and precluding participation in joint operations with federal immigration enforcement. See Lasch et al., *supra* note 239, at 1736–52.

officers between their residents and ICE officers.<sup>244</sup> Thus it is that nearly everyone writing about sanctuary—especially since 2016—is eager to remind us that undocumented immigrants are not safe from the grasp of ICE, even in a city that has declared itself a sanctuary.<sup>245</sup>

Simply noting that sanctuary cities cannot fully protect undocumented residents from deportation need not vitiate the value of the protections they do offer. Thoughtful movement activists have sometimes used the movement for sanctuary as a tool to advance a broad range of political goals with the ultimate target of protecting the safety and livelihood of undocumented people.<sup>246</sup> Moreover, even promises not to cooperate with federal enforcement are likely more protective than silence or affirmative collaboration with federal enforcers. Indeed, even if there were no substantive protections on offer, there could well be an expressive value in a town or city speaking out against deportation and standing in solidarity with its citizens.<sup>247</sup> But this is where the lessons of history may begin to impose themselves.

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<sup>244</sup> Although not passed by explicit ordinance, there are examples of local officials taking actions that are more openly protective in this vein. The most famous is Oakland, California mayor Libby Schaaf who in February of 2018 posted a message on Twitter tipping off Oakland residents that she had heard that ICE had planned a raid in her city in the next 24 hours. See Amy Held, *Oakland Mayor Stands by 'Fair Warning' of Impending ICE Operation*, NPR: THE TWO WAY (Mar. 1, 2018, 5:36 PM), <https://www.npr.org/sections/thetwo-way/2018/03/01/589948064/oakland-mayor-stands-by-fair-warning-of-impending-ice-operation> [<https://perma.cc/WJV2-GBCD>]. Schaaf's warning was made in her official role as mayor, but it was not the official policy of Oakland that the city or its officials should interfere with ICE in this way. So too with other prominent examples of overt resistance. For example, when New York judges and police agreed to send criminal defendants to jail on Rikers Island rather than release them on bond to protect them from deportation, they were not following any explicit policy of the city. See Sonja Sharp, *The Lawyers Trying to Get Their Clients Sent to Jail*, VICE (July 4, 2017, 12:00 AM), [https://www.vice.com/en\\_us/article/qvppn7/the-lawyers-trying-to-get-their-clients-sent-to-jail](https://www.vice.com/en_us/article/qvppn7/the-lawyers-trying-to-get-their-clients-sent-to-jail) [<https://perma.cc/LP4F-NGRR>].

<sup>245</sup> See, e.g., Daniel Denvir, *The False Promise of Sanctuary Cities*, SLATE (Feb. 17, 2017, 2:39 PM), <https://slate.com/news-and-politics/2017/02/the-false-promise-of-sanctuary-cities.html> (arguing that the only way to truly protect undocumented immigrants would be for cities to “arrest[ ] and prosecut[e] fewer people.”) [<https://perma.cc/EJM8-44ZM>].

<sup>246</sup> The national organizing coalition Mijente has catalyzed this view of sanctuary as a centerpiece for a holistic protective vision under the label, “Expanding Sanctuary.” In the eyes of advocates and organizers using sanctuary as a political tool, the goal is to use local advocacy for sanctuary policies “to resist, town by town, city by city, county by county, connecting the shared fate of black and brown communities, acting from our most precious values, and sparking action to build power and make a meaningful difference in local communities.” Karina Muñoz-Pagán, *Expanding Sanctuary*, REIMAGINE!, <https://www.reimaginepe.org/22/muniz> [<https://perma.cc/9TRJ-9L9E>].

<sup>247</sup> See Massaro & Milczarek-Desai, *supra* note 232, at 72–80 (arguing that cities have First Amendment rights to political expression).



In a town or a city that promises sanctuary but cannot deliver it, the fact that its declaration is purely symbolic could be problematic as a matter of political strategy.

When the nullifying towns proclaimed the Fugitive Slave Law dead letter and encouraged fugitives to resist recapture with their lives, they promised more than was in their capacity to deliver. So too, when Rahm Emanuel promised after the 2016 election that undocumented immigrants “are safe in Chicago,” it was more than just bluster, it represented a damaging misunderstanding (or misrepresentation) of the city’s capacity and willingness to protect the very people he was reassuring. This is more than speculation. In the first six months after President Trump took office, 2,725 people were deported from Chicago.<sup>248</sup>

When towns and cities pass largely symbolic sanctuary ordinances without considering the movement strategies around those ordinances carefully, they are operating under the same theory of local resistance that the nullifying towns were. The reason for a symbolic ordinance like those recently passed in Los Angeles and Cincinnati is not to offer more substantive protection to undocumented people. Rather it is to stake an expressive claim in a political struggle.<sup>249</sup> Where the town or city’s motivation is expression—and where that expression is not rooted in solidarity with immigrant rights movement actors—there is a danger that such expression will make use of a rhetoric of substantive protection or nullification and thereby inadvertently exploit the victims of the target policy in service of a political project that they may not share.

This danger has stalked the sanctuary movement and has become increasingly public since 2016. Activists and journalists in cities like Philadelphia, Chicago, Boston, and New York have argued that immigrants are not safe in those cities—not only because the sanctuary policies are not fully protective, but often because some public

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<sup>248</sup> See Chuck Goudie & Christine Tressel, *Spike in Chicago immigration arrests, deportations*, ABC7 NEWS (Aug. 9, 2017), <https://abc7chicago.com/spike-in-chicago-immigration-arrests-deportations/2290817> [<https://perma.cc/9U3Z-4SV5>].

<sup>249</sup> See James Leggate, *City council declares Cincinnati a ‘sanctuary city’*, WCPO 9 NEWS (Feb. 1, 2017) <https://www.wcpo.com/news/local-news/hamilton-county/cincinnati/city-council-declares-cincinnati-a-sanctuary-city> [<https://perma.cc/G7NF-9Y5W>] (experts argue that the label is “mostly symbolic” because the city had already agreed not to cooperate with federal authorities); Dakota Smith & Matthew Ormseth, *It took a while, but L.A. formally declares itself a ‘city of sanctuary’*, L.A. TIMES (Feb. 8, 2019), <https://www.latimes.com/local/lanow/la-me-ln-city-of-sanctuary-cedillo-20190208-story.html> [<https://perma.cc/LT9Z-PEA2>].

employees have quietly collaborated with immigration enforcement.<sup>250</sup> Some commentators have built on these concerns, arguing that the rhetoric of sanctuary is harmful, either because it is misleading and polarizing,<sup>251</sup> or because it assuages the consciences of white liberals without offering substantive protections to people of color.<sup>252</sup>

Without indicting any specific town or city policy, the history of local resistance in the 1850s suggests that these concerns are worth taking seriously. Local governments need not (and perhaps cannot) offer true sanctuary to their residents. But where the real purposes of local action are expressive and not protective, it is incumbent on thoughtful local actors to carefully consider for whom that expression is being undertaken and what place the town or city has within the broader political movement for immigrants' rights.

### C. *Towns and Cities in Political Struggle*

The question lingers, how can local governments productively stand against laws that they believe should not be enforced? Or to state this in a thicker political context: how can local governments be productive sites for resistance movements? If towns and cities cannot or will not order their police to stand between a fugitive slave and a federal marshal, or to stand between an undocumented immigrant and an ICE officer, should they remain silent? The answer to this question, following the lines of connection between history and the present is: clearly not.

Towns and cities are more than their police powers or their expressive voices. They are rich and complex public fora where human beings struggle together in the messy and daily work of sharing space, power, resources, and government. As such, local governments are places where resistance movements can be given space, voice, and

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<sup>250</sup> See David Gambacorta, *Even in Philadelphia, One of the Most Determined Sanctuary Cities, Refuge is Elusive*, PROPUBLICA (Oct. 18, 2018), <https://www.propublica.org/article/even-in-philadelphia-one-of-the-most-determined-sanctuary-cities-refuge-is-elusive> [<https://perma.cc/9W3N-54MW>]; Liz Robbins, *In a 'Sanctuary City,' Immigrants are Still at Risk*, N.Y. TIMES (Feb. 27, 2018), <https://www.nytimes.com/2018/02/27/nyregion/sanctuary-cities-immigrants-ice.html> [<https://perma.cc/EV9G-FQ7E>].

<sup>251</sup> See Michael Kagan, *What We Talk About When We Talk About Sanctuary Cities*, 52 U.C. DAVIS L. REV. 391 (2018).

<sup>252</sup> See Christina Bolden, *I live in a sanctuary city, and it's a safe haven for white liberal anti-Blackness*, BLACK YOUTH PROJECT (Oct. 6, 2017), <http://blackyouthproject.com/sanctuary-city-safe-haven-white-liberal-anti-blackness> [<https://perma.cc/9YBF-Y6VQ>].

power (or, in the alternative, places that can be closed off to those movements.) It would be a mistake to conclude from the critiques of symbolic sanctuary policies that the best response for local governments is simply to retreat from the field and leave matters to private actors. The model for resistance in the present is not Concord's silent retreat and deferral, but rather Acton's measured public resistance.

Remember that Acton's town meeting in 1851 grounded the town's resolutions in a carefully stated expressive mandate: it was the town's duty to speak out against "unjust and despotic law[s]."<sup>253</sup> Acton made no promise to nullify the Fugitive Slave Law, rather the resolutions exposed the law's constitutional and moral infirmities and committed the town to use "all the means in our power" to repeal it.<sup>254</sup> To this public commitment to advocacy against the law, Acton added a promise to stand in solidarity with those who engaged in civil disobedience and refused to obey the law.

What makes Acton's model appealing is that it balances the exigency that local governments feel to stand up and speak out in resistance against an honest assessment of local capacity. A growing number of scholars and advocates have begun to recognize that any movement for true sanctuary in the United States must rely on collective private action in concert with public protections.<sup>255</sup> If real protection requires more than public action, then local governments are obliged not to proclaim themselves protectors, but rather to create space for collaboration and solidarity.

Another way of saying this is that if local governments want to be productive participants in a mass movement for change as part of a political and moral struggle, they would do well to articulate and understand their role within that struggle. Strident rhetoric and condemnation have power, especially when issued from the bully pulpit of a democratically accountable local government. That power is greatest, however, when it reinforces and magnifies the other voices in a political struggle.<sup>256</sup> The truth is that in nearly every place where

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<sup>253</sup> See APRIL 11, 1851 TOWN MEETING RECORDS, *supra* note 186.

<sup>254</sup> *Id.*

<sup>255</sup> Rose Cuizon Villazor & Pratheepan Gulasekaram have called this "Sanctuary Everywhere" arguing that hand in glove partnerships between state, local, and private actors have proliferated since 2016. See Cuizon Villazor & Gulasekaram, *supra* note 232, at 553–60.

<sup>256</sup> There is a vibrant literature advocating that local governments (and especially cities) should seek to become fertile gathering places for social movements and social transformation. In some cases, theorists have argued that movement actors should take the reins of the local

undocumented people are living, there are active and organized movements to protect those people from being exiled from their homes and to ensure them as robust a participation in the public life of their homes as possible. Sometimes these local actors have prioritized and aggressively advanced demands for sanctuary policies from local governments,<sup>257</sup> in many other instances, formal sanctuary policies are simply not priorities for these organized communities.<sup>258</sup> Whatever a local government's formal position on sanctuary, every local jurisdiction has tools at its disposal to provide space and resources to undocumented people and those in their community who are working to protect them.<sup>259</sup> Towns and cities that accept the limitations of their

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government. See, e.g., DAVID HARVEY, *REBEL CITIES: FROM THE RIGHT TO THE CITY TO THE URBAN REVOLUTION* (2012). This set of arguments has been the source of inspiration for a growing “municipalist” movement where social movement actors were elected and sought to remake local governance as a procedural and substantive forum for grassroots discussion and change. The most famous (and evangelical) example of this is Barcelona's Barcelona en Comu movement. See *Why Do We Want to Win Back Barcelona?*, GUANYEM BARCELONA, <https://guanyembarcelona.cat/wp-content/uploads/2014/06/principles.pdf> [<https://perma.cc/L3N3-9V5X>]. At its root, however, municipalism is built on a proposal that local government can and should provide a forum for movement—and indeed that it is the people and private movement actors within that forum whose struggle will be transformative.

<sup>257</sup> See COLBERN & RAMAKRISHNAN, *supra* note 21, at 314–15 (noting concerted efforts by local movement activists such as NDLO in Los Angeles advancing sanctuary policies).

<sup>258</sup> It is, as ever, hard to prove a negative, but a few examples may be illustrative. One is Make the Road, New York, a leading community organizing group in New York City with a strong focus on protecting undocumented residents of the city. The group makes no mention of sanctuary as part of its advocacy on its web page. See *Immigration*, MAKE THE ROAD NEW YORK, <https://maketheroadny.org/issue/immigration> [<https://perma.cc/FY2Y-V39E>]. Similarly, the Puente Movement, based in Tucson, is a powerful and radical organization protecting undocumented people in Arizona. However, sanctuary and sanctuary policy is nowhere to be found on their webpage either. See *Puente Movement for Migrant Justice*, PUENTE.AZ, <https://puenteaz.org> [<https://perma.cc/97J7-7TTL>]. As a matter of anecdotal observation, sanctuary and sanctuary policies are not central to the work of many organizers who are struggling to protect and empower people “on the ground.”

<sup>259</sup> Once again, it is beyond the scope of this project to catalogue all of the ways that local governments can provide space and resources. In place of a comprehensive list, then, a brief catalogue: Local governments can help directly fund the work of activists and organizers, see Els De Graauw, Shannon Gleeson, & Irene Bloemraad, *Funding Immigrant Organizations, Suburban Free-Riding and Local Civic Presence*, 119 AM. J. OF SOCIO. 75 (2013) (arguing that funding for immigrant organizations is not equitably distributed, but noting generous streams of funding from local governments in cities like San Jose and San Francisco). Local governments can provide their own services, and perhaps most dramatically, they can provide lawyers to residents who are in detention facing removal. See, e.g., Zoe Sullivan, *The Cities Funding Legal Defense for Immigrants*, NEXT CITY (May 21, 2019), <https://nextcity.org/daily/entry/the-cities-funding-legal-defense-for-immigrants> [<https://perma.cc/GS3V-VUGR>]. Local governments can explicitly make public spaces such as courthouses or public schools into resources for immigrant

capacity to protect can make use of their role as public fora to expand the capacity for the community more broadly to build power. In this model (drawn abstractly from Acton), local governments act not as the primary resisters themselves, but as conduits for nurturing and magnifying the role of resistance movements. To return this to the terms of this historical narrative, local governments make space for the vigilant patrols and direct protective work outlined in the Quinn Chapel meeting without claiming credit for that work or, worse, falsely promising protection without delivering it.

In the end, neither strident nullification ordinances in 1850 nor strident sanctuary resolutions in 2021 fully protect the lives and well-being of the humans for whom they are drafted and passed. When they imagine the civic space of local politics narrowly, towns and cities speak but do not strategize. But as narrow as these interventions can be when they are spasms of reactive politics, they can also be part of a rich and integrated approach that opens up local civic space for movements and activists to build the kinds of thick, cross-institutional networks aimed at long-term change. Stated this way, this sounds complex, but the model of Acton shows that it need not be. The lesson from Acton's story for the present, stated in its simplest form is this: local governments can stand in solidarity with resistance movements when they humbly and honestly leverage their capacities and resources into strategic solidarity with existing movement actors.

Despite the concerns about the present raised by concerns in the past, I find myself drawing optimism from the stories of local resistance against the Fugitive Slave Law. Even where local actors promised more than they could deliver, even when resolutions seemed to serve the drafters more than they served the victims of the law, there was moral bravery in the simple act of harnessing the machinery of local voice for the cause of anti-slavery. Moreover, when they were formulated thoughtfully, as in Acton, these resolutions confirmed that local action could be an integral part of a political struggle. In our present overlapping crises, towns and cities can take these past resolutions as inspirations, cautions, and models as they work to define their roles in the struggle before them.

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communities. Most broadly, local and state governments can open up basic features of civic life—including even the right to vote—to undocumented immigrants in their communities. See Kimia Pakdaman, *Spring 2019 Journal, Non-Citizen Voting Rights in the United States*, BERKELEY PUB. POL'Y J. (Mar. 4, 2019), <https://bppj.berkeley.edu/2019/03/04/spring-2019-journal-noncitizen-voting-rights-in-the-united-states> [<https://perma.cc/X597-8XFW>].