

“over and above . . . there broods a portentous shadow,—the shadow of law”:

HARRIET BEECHER STOWE'S CRITIQUE OF SLAVE LAW IN *UNCLE TOM'S CABIN*

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Southern proslavery writers recognized that the powerful imagery employed by abolitionist writers such as Harriet Beecher Stowe was among the abolitionists' most potent weapons in fighting slavery.¹ Southern reviewers of Stowe's 1852 novel *Uncle Tom's Cabin* criticized Stowe most frequently for mischaracterizing the harshness of slavery. William Gilmore Simms, who published his novel *Woodcraft* as a proslavery answer to Stowe in 1854, thought her novel was a gross misrepresentation of the South:

There is a work of fiction, recently published by Mrs. Stowe, which is just now the rage with the abolitionists; the great error of which, throughout, consists in the accumulation of all the instances that can be found of cruelty or crime among the slaveholders. . . . She shows us a planter of Louisiana, as one of the most heartless, bloody, brutal, gross, loathsome and ignorant wretches under the sun. . . . [B]ut in doing so, *she herself isolates him*. She shows that *he resides in a remote, and scarcely inaccessible swamp region, where his conduct comes under no human cognizance*. How is society answerable for his offenses? How

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I would like to thank my teachers Alan Heimert, Alan Hodder, and Morton J. Horwitz, as well as Victor Cook, Paula J. Dalley, Eva Gasser, and an anonymous referee for the *Journal of Law and Religion* for their comments on this essay. The comments of Mary Bilder, Daniel Hulsebosch, Arthur LeFrancois, and John O'Keefe on a related essay have been useful in revising this one. The Woodrow Wilson Foundation's Mellon Fellowship in the Humanities and OCU's Robert S. Kerr Faculty Research Fund provided financial support while I wrote this essay.

The quote in the title is from Harriet Beecher Stowe, *Uncle Tom's Cabin* 19 (NAL Penguin, 1966) (Signet Classic Edition).

1. See, for example, [George Frederick Holmes], Book Review, *Uncle Tom's Cabin*, 18 S Literary Messenger 721, 723 (Dec 1852) (*Uncle Tom's Cabin* “has obtained an unhappy notoriety When, in the course of a few short months, a quarter of a million of the readers of the English tongue manifest their readiness to welcome . . . a lie, it is useless for the injured party to disprove the statement. . . .”); *Richmond Enquirer* (Sep 8, 1835) (editorial urging that Southerners rebut the immediate emotional appeal of abolitionist writings).

does he represent the condition and character of the slaveholder?²

But also distressing to the Southerners and to other critics of the abolitionists was the effect of *Uncle Tom's Cabin* on respect for law. One North Carolina reviewer of the novel recognized its potential for destroying not just slavery but the legal system surrounding slavery as well. He protested:

When we defeat the execution of the law, constitutionally and regularly administered, we may *benefit an individual*, but we certainly *wrong society itself*, the welfare and *stability* of which depend upon the stability of law. We have no right to do a positive *good to the few*, when our act involves a positive *injury to the many*.³

This essay discusses the ways in which Stowe's religious background drove her critique of slave law and how Southerners responded to her critique. It tries to recover the context of abolitionists' view of law along with that of their proslavery responders. It interprets the novel as part of the struggle between evangelical religious thought and legal thought for control of the American mind before the Civil War and assesses Stowe's contribution to the struggle.

The essay argues that Stowe's religious background, which accented the importance of individual, passionate concern for humanity over a cold, logical approach to law and religious doctrine, nourished her position in the novel. Part I shows the general struggle of evangelical and Unitarian religious thought against slavery and how that generalized critique of slavery indicted the legal system surrounding slavery as well. Part II turns to *Uncle Tom's Cabin* to detail the ways that Stowe critiqued law. Through her scenes, readers learned that laws forced even kind masters to sell their slaves and that laws released cruel masters from liability for their cruelties. To reveal the reaction to Stowe's ideas and to illuminate the "legal mentality" that clashed with Stowe's passions, Part III examines Southern responses to *Uncle Tom's Cabin*. Those positions represented different conceptions of law's role in society. Abolitionists sought a jurisprudence based on love, while

2. W. Gilmore Simms, *The Morals of Slavery*, in Chancellor Harper, et al, *The Proslavery Argument as Maintained by the Most Distinguished Writers of the Southern States* 175, 217 (Walker, Richards & Co, 1852, Negro U Press, reprint 1968) (emphasis in original).

3. James A. Waddell, "Uncle Tom's Cabin" Reviewed; or American Society Vindicated from the Aspersion of Mrs. Harriet Beecher Stowe 45 (Southern Weekly Post Office, 1852) (emphasis in original).

the proslavery responders emphasized the role of law in maintaining order. Together, Parts II and III, describing the debate over humanity and law fueled by the novel, demonstrate that Stowe's novel, which has benefited in the last decade from an extraordinary scholarly renaissance, contained an attack on law that scholars have failed to consider.⁴ Part IV turns to the implications of Stowe's critique of law for our understanding of the nature of law reform in antebellum America. It suggests that there was a close connection between religious beliefs and respect for law in antebellum America and indicates how popular literature might have influenced respect for law. Then it suggests that the formal style of judicial reasoning may have resulted in part from proslavery thought.

I. EVANGELICAL RELIGION, SLAVERY, AND LAW: THE STRUGGLE BETWEEN HEART AND HEAD

In his 1965 book, *The Life of the Mind in America from the Revolution through the Civil War*, Perry Miller showed that a central theme of intellectual life in antebellum America was the struggle between "heart" and "head" for control of American ideology.⁵

4. Stowe has been the beneficiary of attention from scholars, culminating in Joan D. Hedrick's Pulitzer Prize winning, *Harriet Beecher Stowe: A Life* (Oxford U Press, 1994). The scholars have examined her work from a seemingly inexhaustible number of vantages, including particularly the role of women as reformers and the status of blacks, from the language of her black characters to their representativeness in American society. See generally Eric Sundquist, ed, *New Essays on Uncle Tom's Cabin* (Cambridge U Press, 1986); Mason I. Lowance, Jr., Ellen E. Westbrook, R.C. DeProspero, eds, *The Stowe Debate: Rhetorical Strategies in Uncle Tom's Cabin* (U of Massachusetts Press, 1994). But they have devoted surprisingly little attention to what Stowe said about law. For the few accountings of Stowe's critique of law, see Brook Thomas, *Cross-Examinations of Law and Literature Dialogics*, in *The Stowe Debate* at 40 (cited in this note) (identifying law as "ubiquitous signifier of patriarchal language"); Thomas F. Gossett, *Uncle Tom's Cabin and American Culture* 183 (S Methodist U Press, 1985) (Republican Party distanced itself from the novel's radical approach to the Fugitive Slave Act); compare Hedrick, *Harriet Beecher Stowe* at 202-04 (cited in this note) (analyzing Fugitive Slave Law as prime motivating factor for the writing of *Uncle Tom's Cabin*). Some recent scholars have emphasized that Stowe advocated an ideology of domesticity to replace the patriarchal world of slavery. That ideology is closely related to Stowe's critique of law. See Jane Tompkins, *Sensational Designs: The Cultural Work of American Fiction* 121-46 (Oxford U Press, 1985); Gilliam Brown, *Domestic Individualism: Imagining the Self in Nineteenth-Century America* 13-38 (U California Press, 1990).

5. Perry Miller, *The Life of the Mind in America, From the Revolution to the Civil War* 105 (Harcourt, Brace, 1965) (employing image of "heart" and "head"). The tension between head and heart appeared in Miller's earlier work as well. See, for example, Perry Miller, *The New England Mind: The Seventeenth Century* (Macmillan Co, 1939, Harvard U Press, 1954) (depicting piety and reason in thought of early New England). See also Elisha Bartlett, *The Head and the Heart; or, The Relative Importance of Intellectual and Moral*

On one side of the struggle were revivalists, who, according to the lawyer-turned-minister Charles Grandison Finney, had a passionate eloquence: "that gushing, impressive, persuasive oratory, that naturally flows from an educated man whose soul is on fire."⁶ The evangelical heritage, Miller wrote, included "concepts of sublimity, of the heart, of benevolence, of the millennium."⁷ On the other side of the struggle were lawyers whose central concern was the control of passion through law. The cold, restrained approach to law made particularly strong appearances in judicial opinions related to slavery. For example, in *State v. Mann* Justice Thomas Ruffin of the North Carolina Supreme Court overturned the conviction of a white man for abusing a slave in his care.⁸ Ruffin, confessing his "sense of the harshness" of the result, emphasized the importance of a cool, legal response: "[I]t is criminal in a Court to avoid any responsibility which the laws impose."⁹

Stowe had long been interested in the conflict between law and humane feelings. One of her first published essays, *Love versus Law*, centered around an old man, Uncle Jaw, who was obsessed with his legal rights.¹⁰ Uncle Jaw refused to allow his son, Joe, to marry an orphaned neighbor, Susan Jones, with whom he had a property dispute. But Deacon Enos, who had a legally valid claim to Susan's land, offered to give the land to Susan and Joe if Uncle Jaw allowed the marriage. The incredulous Uncle Jaw asked why the Deacon would do that. He did so to make peace. Simi-

Education; (W.D. Ticknor, 1838); Note, *Swift v. Tyson Exhumed*, 79 Yale L J 264, 305-08 (1969) (employing Miller's categories—and refining them—to understand Supreme Court jurisprudence).

6. Finney quoted in Miller, *The Life of the Mind* at 31 (cited in note 5).

7. *Id.* at 95.

8. *State v. Mann*, 13 NC (2 Dev) 229, 233 (1829).

9. *Id.* at 230. Other cases involved cold application of law to slaves, but judges did not acknowledge the concerns of humanity. See, for example, *Commonwealth v. Souther*, 48 Va (7 Gratt) 673 (1851) (holding a master who tortured a slave to death liable only for second-degree murder). See also Thomas R. R. Cobb, *An Inquiry into the Law of Negro Slavery in the United States of America* (T. & J. W. Johnson & Co, 1858) (drawing upon history of slavery to illustrate the importance of its continuance in United States and the problems caused by abolition). Several recent analyses emphasize the conflicting obligations of humanity and law pulling on judges. See, for example, William Wiethoff, *A Peculiar Humanism: The Judicial Advocacy of Slavery in High Courts of the Old South, 1820-1850* (U Georgia Press, 1996) (recovering ways that Southern jurists melded classical ideals with proslavery thought); Ariela Gross, *Pandora's Box: Slave Character on Trial in the Antebellum Deep South*, 7 Yale J L & Human 267 (1995); Reuel E. Schiller, 78 *Conflicting Obligations: Slave Law and the Late Antebellum North Carolina Supreme Court*, 78 Va L Rev 1207 (1992).

10. See Harriet Beecher Stowe, *Love versus Law*, in Harriet Beecher Stowe, *The Mayflower; Or, Sketches of Scenes and Characters Among the Descendants of the Pilgrims* 19-79 (Harper & Brothers, 1843).

larly, in her second antislavery novel, *Dred: A Tale of the Great Dismal Swamp*, Stowe addressed in detail the separation between feelings of humanity and law; she asked why a fictional judge, who recognized the inhumanity of the slave law and opposed slavery in private, failed to reform the law.¹¹ Her work advocated a world governed by humane values rather than law.

An important part of the evangelicals' fervor came from their optimistic belief that perfection was within the realm of human power to achieve. Legislators, motivated by the periodic religious revivals that dominated American religious experience between 1800 and the Civil War, strove for reform of laws in areas ranging from domestic relations to temperance, from prostitution to education.¹² They believed that laws could reshape morality. Abolitionism was one of the religiously inspired reform movements that attempted to reform morals through religious piety, as well as through direct action and legislation.¹³ Abolitionists often em-

11. See Harriet Beecher Stowe, *1 Dred: A Tale of the Great Dismal Swamp* 450 (Riverside Press, 1896) (abolitionist lawyer Edward Clayton asks his father, Judge Clayton, who was modeled on Ruffin, "[W]hy could you not have been a reformer of the system?"); Harriet Beecher Stowe, *A Key to Uncle Tom's Cabin* 79 (John P. Jewett & Co, 1853) (asking why Ruffin was "merely an *expositor*, and not a *reformer* of law"). See also Mark Randall Grüner, *Stowe's Dred: Literary Domesticity and the Law of Slavery*, 20 *Prospects* 1, 2 (1995) (examining how "militant, sentimental, and ironic rhetorics clash, combine, and, regenerate" in *Dred*); Alfred L. Brophy, *Humility, Utility, and Logic in Southern Legal Thought: Harriet Beecher Stowe's Vision in "Dred: A Tale of the Great Dismal Swamp,"* forthcoming, 78 *Boston U. L. Rev.* (Oct. 1998).

As Perry Miller wrote, "[E]vangelical and Unitarian piety reacted against the elevation of law into an intricate system of reason by insinuating that lawyers, like the overintellectualized theologians of New Haven, separated substance from form, spirit from letter, and sacrificed justice to technicality." Miller, *The Life of the Mind in America* at 188 (cited in note 5).

12. Daniel Walker Howe, *The Political Culture of the American Whigs* 18-20 (U Chicago Press, 1979) (discussing connection between evangelical religion and Whig political agenda). On specific areas of reform inspired by evangelical religion, see Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (Alfred A. Knopf, 1986) (movements for relief of poverty and prostitution); Richard H. Chused, *Married Women's Property Law: 1800-1850*, 71 *Georgetown L J* 1359, 1419-23 (1983); Charles Sellers, *The Market Revolution: Jacksonian America, 1815-1846* 364-69 (Oxford U Press, 1991) (education); id at 262-66 (temperance). See generally Ronald G. Walters, *American Reformers, 1815-1860* (Hill & Wang, 1978); Robert H. Abzug, *Cosmos Crumbling: American Reform and the Religious Imagination* (Oxford U Press, 1994).

13. See generally James Brewer Stewart, *Holy Warriors: The Abolitionists and American Slavery* 33 (Hill & Wang, 1976); Robert H. Abzug, *Passionate Liberator: Theodore Dwight Weld and the Dilemma of Reform* (Oxford U Press, 1980); William E. Gienapp, *Abolitionism and the Nature of Antebellum Reform*, in Donald M. Jacobs, ed, *Courage and Conscience* 21-46 (Boston Athenaeum, 1993). See also Waddell, *Uncle Tom's Cabin Reviewed* at 14-15 (cited in note 3) ("There is a kind of religious obliquity of mind . . . , the tendency of which is to exalt the second above the first table of the divine law, and to square the letter of the gospel by what they think should be its spirit. It is to this widespread error in the religious portion of some communities that we are inclined to trace

ployed sentimental stories to evoke an emotional response from their audiences. They hoped in that way to create a passion in their audiences that would overcome cold proslavery thought.¹⁴

Many of the early abolitionist writings, such as Horace Binney's *The American Churches the Bulwark of Slavery*, attacked churches for their support of slavery.¹⁵ Boston Unitarian minister, William Ellery Channing, whose religious beliefs often placed him at odds with Stowe, articulated much of the religious critique of slavery in his 1835 pamphlet, *Slavery*. Written when the American antislavery movement was undergoing a fundamental transformation, dividing those advocating immediate emancipation and those favoring gradual emancipation, Channing boldly began his tract by pronouncing that "[t]he first question to be proposed by a rational being is, not what is profitable, but what is Right."¹⁶ Channing then established the basis for evaluation of what was Right: "fidelity to the Everlasting Law written on the heart, and rewritten and republished in God's Word."¹⁷ From there Channing evaluated the morality of slavery according to the spirit of Christianity:

The spirit of Christianity . . . is distinguished by universality. It is universal justice. It respects all the rights of all beings. It suf-

much of that *rabid philanthropy* that has begun to curse society with its rash and meddling innovations.").

14. See 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); Philip Fisher, *Hard Facts: Setting and Form in the American Novel* 92 (Oxford U Press, 1985) (characterizing sentimental literature as the primary medium for radical reform in antebellum America).

15. James G. Birney, *American Churches, the Bulwarks of Slavery* (C. Whipple, 2d ed, 1842). See also John R. McKivigan, *The War Against Proslavery Religion: Abolitionism and the Northern Churches, 1830-1865* (Cornell U Press, 1984) (explaining why, despite attempts by abolitionists, churches frequently failed to oppose slavery); Albert Barnes, *The Churches and Slavery* (Parry & McMillan, 1856).

Although the abolition movement drew important strength from evangelical religious leaders, some churches were also instrumental in supporting slavery. See generally Larry E. Tise, *Proslavery: A History of the Defense of Slavery in America, 1701-1840* (U Georgia Press, 1987) (examining proslavery thought through writings of ministers); Eugene D. Genovese, *The Slaveholders Dilemma: Freedom and Progress in Southern Conservative Thought* 35-39 (U South Carolina Press, 1992) (discussing proslavery thought among Southern religious leaders); James Oscar Farmer, Jr., *The Metaphysical Confederacy: James Henley Thornwell and the Synthesis of Southern Values* 195-233 (Mercer U Press, 1986) (same).

Evangelical religion's emphasis on emotion and perfection lead adherents in many directions. Bertram Wyatt-Brown has re-emphasized the connections between evangelical thought and the proslavery movement. See Bertram Wyatt-Brown, *From Piety to Fantasy: Proslavery's Troubled Evolution* in Bertram Wyatt-Brown, *Yankee Saints and Southern Sinners* 155, 156 (Louisiana State U Press, 1985).

16. William E. Channing, *Slavery* 1 (James Munroe & Co, 1835).

17. *Id.* at 2.

fers no being, however obscure, to be wronged, without condemning the wrong doer. Impartial, uncompromising, fearless, it screens no favorites, is dazzled by no power, spreads its shield over the weakest, summons the mightiest to its bar, and speaks the conscience in tones, under which the mightiest have quailed.¹⁸

Against that standard, Channing found slavery wanting.

By the early 1850s, evangelical religious leaders, such as Harriet Beecher Stowe's husband, Calvin Stowe, who served as President of Lane Theological Seminary in Ohio, had developed a comprehensive antislavery religious doctrine, which asserted that slavery is inconsistent with Christ's teaching, demanded that human-made laws supporting slavery should be disobeyed, and claimed that slavery depressed the wages and quality of life of free workers.¹⁹ John Lawrence's 1854 survey of *The Slavery Question*,²⁰ effectively an introduction to evangelical thought on law and slavery, defined slavery in terms of law: slavery is "property in a human being."²¹ The slaves' status as mere property showed the connection between American slavery and the Roman slave code, "which was conceived in the dark night of heathenism . . . before

18. Id at 10.

19. On religion and abolitionism, see David Brion Davis, *The Problem of Slavery in the Age of Revolution, 1770-1823* (Cornell U Press, 1975); Ronald G. Walters, *Religion: Evangelical Protestantism and the Reform Impulse*, in Ronald G. Walters, *The Antislavery Appeal: American Abolitionism After 1830* 37 (Johns Hopkins U Press, 1976). Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834-1850*, 78-117 (Pantheon Books, 1967) (discussing the religious critique of slavery). Kraditor divides the critics into two groups, those who believed that slavery could be extirpated from American society without radical changes in society itself, and the radicals, led by William Lloyd Garrison, who attacked all of American government. Stowe fell somewhere between those two poles. Her critique of both slave law and patriarchy suggested the need for radical reform, although she was wary of Garrison's radicalism. Garrison was, on the other hand, wary of the lack of active resistance to slavery in *Uncle Tom's Cabin* and of Stowe's advocacy of colonization in Africa. See 22:13 *Liberator* 50 (March 26, 1852).

The effect of Stowe's critique of the law of slavery awaits further study. See generally Lewis Perry, *Radical Abolitionism: Anarchy and the Government of God in Antislavery Thought* (Cornell U Press, 1973) (discussing anarchy in abolitionist movement and suggesting that the abolitionist ideas influenced the Civil War). Some writers tracked Stowe's critique closely, although it is by no means clear that she was responsible for the content of their critiques. See, for example, William Goodell, *The American Slave Code in Theory and Practice: Its Distinctive Features Shown by its Statutes, Judicial Decisions, and Illustrative Facts* (American and Foreign Anti-slavery Society, 1853, reprinted Negro U Press, 1968).

20. John Lawrence, *The Slavery Question* (United Brethren Printing Establishment, 4th ed, 1857).

21. Id at 30-40 (citing, among others, Judge George Stroud, whose views on slavery may be found in George Stroud, *A Sketch of the Laws Relating to Slavery in the Several States of the United States of America* (Kimber & Sharpless, 1827)).

that empire had been enlightened and conquered by the peaceful"²² Lawrence cataloged the evils of the slave system using examples drawn largely from the codes of the slave states and from lawyers' writings, including the denial of education for slaves and the failure of the slave system to recognize slave marriages.²³ Slavery also disregarded family relations. Only Louisiana had a law prohibiting the separation of families, and its law seemed to be a "dead letter." Moreover, slaves were left without any of the fruits of their labor because they were prevented by law from owning property or making contracts. Finally—and most important—slavery subjected slaves to the tyranny of their masters. Lawrence told the story of a minister visiting a prison in New Orleans where fugitive slaves were incarcerated and where masters could, for a fee, have their slaves punished. The minister witnessed a young woman being viciously whipped and crying out to her owner to spare her life. The minister reminded Senator Charles Sumner, the recipient of his report, that the woman had been convicted of no crime. "She was brought by her master to be whipped by the common executioner, without trial, judge or jury, just at his beck or nod, for some real or supposed offense, or to gratify his own whim or malice." As Lawrence grimly recalled, "All this is done according to law."²⁴

The religious basis of antislavery, which was associated with the belief that moral reform could cure all of society's ills, was impelled by moral outrage over slavery. Particularly influential was *American Slavery As It Is*,²⁵ an 1838 book written by the Presbyterian minister Theodore Weld, based on Southern newspaper accounts of slavery. Fundamental religious sentiments, combined with the Reverend Henry Ward Beecher's belief that "none but the Law-giver himself . . . [could] make exceptions to his own laws,"²⁶ made for a strong religious attack on slave laws.

22. Lawrence, *The Slavery Question* at 38 (cited in note 20).

23. After quoting an address from the Synod of Kentucky rejecting slave marriage as inconsistent with the master's absolute right of property in his slaves, Lawrence continued: "The laws intend to make slaves absolute property, and hence no relation is legalized which would detract from the value of that property. The interest of the *owner* alone is consulted. These laws, horrible as they appear, are entirely consistent with *chattel slavery*." *Id.* at 48 (emphasis in original).

24. *Id.* at 79.

25. Theodore Dwight Weld, *American Slavery as It Is; Testimony of a Thousand Witnesses* (American Anti-Slavery Society, 1839). See also Clark, "The Sacred Rights of the Weak" (cited in note 14) (analyzing effect of sympathy for slaves on law).

26. *Letters of the Rev. Dr. Beecher and Rev. Mr. Nettleton, on the "New Measures" in Conducting Revivals of Religion* 93 (G. & C. Carvill, 1828), cited in William E. Nelson, *The*

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A natural corollary to the abolitionists' beliefs in the immorality of slavery was the conviction that people should follow God's command, even if it opposed laws made by people. Despite setbacks for this belief in the courts, it gained increasing strength among abolitionists after 1835.²⁷ When the Fugitive Slave Act was passed as part of the Compromise of 1850,²⁸ abolitionists frequently asserted they had a duty to obey the "higher law" rather than an Act of Congress. William Hosmer's book, *The Higher Law in its Relation to Civil Government*, proclaimed that "[s]lavery is the creature of law. It originates in the law, and depends upon it for its existence."²⁹ Hosmer articulated a general theory that human-made laws inconsistent with biblical teachings should not be obeyed. Many Northerners applied such a theory to the Fugitive Slave Act, which commanded Northern law enforcement officers to aid in the return of fugitive slaves. The Act was vilified by antislavery advocates for requiring Northern states to cooperate in the return of fugitive slaves to their masters; particularly offensive were the provisions allowing a slaveowner to track a slave into a free state, then either personally arrest the slave or enlist the aid of local law enforcement officers to recapture the slave. Under the law, the slave was brought before a local magistrate for a summary proceeding. The owner needed only to show proof of the identity of the slave and proof of ownership (an affidavit from the owner's home jurisdiction sealed by a magistrate in the owner's jurisdiction sufficed). No defense was possible, nor was the alleged slave allowed to testify. Through the Act, the hand of the federal government reached into Northern states, and federal law superseded local law and commanded local law enforcement officers to take action.³⁰

Impact of the Antislavery Movement upon Styles of Judicial Reasoning in Nineteenth Century America, 87 Harv L Rev 513, 526 (1974).

27. See William M. Wiecek, *Latimer: Lawyers, Abolitionists, and the Problem of Unjust Laws*, in Lewis Perry and Michael Fellman, eds, *Antislavery Reconsidered: New Perspectives on the Abolitionists* 219-37 (Louisiana State U Press, 1979).

28. Fugitive Slave Act, 9 Stat 462 (1850). See generally David M. Potter, *The Armistice of 1850*, in David M. Potter, *The Impending Crisis* 90-120 (Harper & Row, 1976) (discussing the Compromise of 1850).

29. William Hosmer, *The Higher Law, in Its Relations to Civil Government* 93 (Derby & Miller, 1852).

30. Fugitive Slave Act at § 6 (cited in note 28). On responses to the Fugitive Slave Act, see Eric Foner, *Free Soil, Free Labor, Free Men: Ideology of the Republic on Party Before the Civil War* 82-89 (Oxford U Press, 1970); Stanley W. Campbell, *The Slave Catchers: Enforcement of the Fugitive Slave Law, 1850-1860* (U North Carolina Press, 1968).

Many radical abolitionists rebelled against the thought that they would be required to enforce proslavery law. One such person was Henry David Thoreau, whose works illustrate the beliefs of radical abolitionists regarding the extent to which they were bound (or actually not bound) by laws made by humans. Because of his extensive writings on slavery, Thoreau serves as a means of exhuming the attitudes of the abolitionist ranks that Stowe occupied, even though Stowe came from a different religious background. Thoreau explicitly attacked the formal law in such works as his 1847 essay *Resistance to Civil Government*, which explained his opposition to the government because “[i]t is not desirable to cultivate a respect for the law, so much as for the right.”³¹ In his address, *Slavery in Massachusetts*, delivered on the fourth of July 1854, Thoreau assailed the use of the Massachusetts militia to return fugitive slave Anthony Burns to his master. Thoreau recognized that the “so-called” “courts of justice,” relying upon the Constitution, had ordered the return of Burns. Yet the courts were worthy only of contempt. Thoreau looked to higher law than the Constitution and argued that “[t]hey are the lovers of law and order who observe the law when the government breaks it.”³²

Against this background of religious zeal and dedication to “higher law,” this essay turns to an examination of how Stowe depicted law in *Uncle Tom’s Cabin* and the lessons that she likely intended her readers to draw from it.

II. *UNCLE TOM’S CABIN* AND THE CRITIQUE OF SLAVE LAW

The Fugitive Slave Act, which was passed by Congress to quiet debate over slavery, failed in its intended purpose. By the winter of 1850, abolitionist papers were filled with stories of blacks living in Northern states who were recaptured and returned to slavery. Many Northerners made repeated attempts to see that the odious law was followed, through speeches delivered from the pulpit and the bench and editorials printed in newspapers.³³ Sermons with titles like *The Duties Men Owe to God and Government* urged re-

31. Henry David Thoreau, *Civil Disobedience [Resistance to Civil Government]*, in 4 *Writings of Henry David Thoreau* 356, 358 (Houghton Mifflin, 1906).

32. Henry David Thoreau, *Slavery in Massachusetts*, in *id.* at 388, 396. Thoreau countered arguments that those who opposed the law failed to use reason. “This law rises not to the level of the head or the reason; its natural habitat is in the dirt.” *Id.* at 394. Like Stowe, he appealed to the “sentiment of the people,” rather than to the judge who relied on precedents. *Id.* at 395.

33. See generally Campbell, *The Slave Catchers* (cited in note 30).

spect for the law.³⁴ Even the moderate antislavery lawyer Benjamin R. Curtis, a future dissenter in the *Dred Scott* decision, warned that “[i]f there is a case for forcible resistance of law . . . it can be nothing less than a case for revolution, and in a revolution it must end, if its progress be not checked.”³⁵

By early 1851 Harriet Beecher Stowe was growing frustrated with such “exceedingly cool” arguments justifying cooperation in the return of slaves. She asked her brother in February, “Must we forever keep calm and smile and smile when every sentiment of manliness and humanity is kicked and rolled in the dust and lies trampled and bleeding”³⁶ By then her family was already urging her to act. Her sister, Isabella Beecher, encouraged her: “Hattie, if I could use a pen as you can, I would write something that would make this whole nation feel what an accursed thing slavery is.”³⁷ Surrounded by agitation over the Fugitive Slave Act, heated to boiling by the cool, legal reasoning around her, Stowe set out to write several sketches “to hold up in the most lifelike and graphic manner possible Slavery”³⁸ Before she was done, the few sketches had grown to a novel of more than forty chapters.

In constructing *Uncle Tom's Cabin*, Stowe used the materials around her, primarily fugitive slave narratives and abolitionist collections of testimonies about slavery. She later wrote that she slept with a copy of Theodore Weld's *American Slavery As It Is* under her pillow until it crystallized into the story of Uncle Tom.³⁹ Stowe tells us in the Preface that she is trying to “awaken sympathy and feeling for the African race, as they exist among us; to show their wrongs and sorrows, under a system so necessarily cruel and unjust

34. See John Chase Lord, “The Higher Law,” in its *Application to the Fugitive Slave Bill. A Sermon on the Duties Men Owe to God and to Governments* (Union Safety Committee, 1851); William Adams, *Christianity and Civil Government* (C. Scribner, 1851). But see John G. Richardson, *Obedience to Human Law Considered in Light of Divine Truth* (H. A. Cooke, 1852). Perhaps 150 sermons were written in defense of the position that no law superseded the Constitution. See Victor B. Howard, *Conscience and Slavery: The Evangelistic Calvinist Domestic Missions, 1837-1861* 95 (Kent State U Press, 1990).

35. Benjamin R. Curtis, ed, 1 *A Memoir of Benjamin Robbins Curtis, LL.D. With Some of His Professional and Miscellaneous Writings* 126-27 (Little, Brown, and Company, 1879). See also Earl M. Maltz, *The Unlikely Hero of Dred Scott: Benjamin Robbins Curtis and the Constitutional Law of Slavery*, 17 *Cardozo L Rev* 1995-2016 (1996) (interpreting Curtis' opinions as only mildly antislavery and attributing Curtis' dissent to his view of federalism rather than slavery).

36. Harriet Beecher Stowe to Henry Ward Beecher, February 1, 1851, quoted in Hedrick, *Harriet Beecher Stowe* at 205 (cited in note 4).

37. Isabella Beecher to Harriet Beecher Stowe, quoted in *id* at 130.

38. Harriet Beecher Stowe to Gamaliel Bailey, March 9, 1851, quoted in *id* at 208.

39. John R. Adams, *Harriet Beecher Stowe* 57 (Twayne Publishers, 1963).

as to defeat and do away the good effects of all that can be attempted for them, by their best friends, under it."⁴⁰

All of *Uncle Tom's Cabin*, like abolitionist writings generally, can be viewed as an indictment of slave law with the express purpose of undermining support for slaveholders' property rights. Many commentators on law in the antebellum period have focused on such antilegal implications of abolishing slavery.⁴¹ Like much abolitionist writing, especially that published after 1840, Stowe attacks the law explicitly as well as implicitly.⁴² First, she portrays the harshness of the law itself, not just the practice of slavery, attributing the harshness of slavery to bad laws, rather than to bad people. Second, in a few places she advocates (or at least depicts as noble) the breaking of law in favor of some higher justice. One overarching theme of *Uncle Tom's Cabin*, as a supporter recognized, is that "in an institution based upon the principle of one man being the property-holder of another . . . there must naturally be gross wrongs, and if the local powers overlook them it becomes those who are enlisted in the good of a common cause to point them out."⁴³

A. Indictment of Slave Law

Stowe links slavery with law—and contrasts religion and law—from the beginning of the novel. In the Preface she predicts that "every influence of literature, of poetry, and of art" is bringing society into accord with Christian principles. Law, however, is not humanizing; it is part of the structure holding the slave system together. Nevertheless, Stowe "disclaim[s] any invidious feelings towards individuals who, often without any fault of their own, are involved in the trials and embarrassments of the legal relations of slavery." (vi)

Stowe develops the links between law and slavery by several examples indicating that the law makes it impossible for even

40. Harriet Beecher Stowe, *Uncle Tom's Cabin* v-vi (NAL Penguin, 1966) (Signet Classic Edition). Because of the frequency of citation of *Uncle Tom's Cabin*, subsequent page references will be included in the text in parentheses. References in the text to *Key* are to the first edition of Stowe, *A Key to Uncle Tom's Cabin* (cited in note 11).

41. See, for example, William W. Fisher, *Ideology, Religion, and the Constitutional Protection of Private Property: 1760-1860*, 39 *Emory L J* 65 (1990) (religion-based abolitionism considered as attack on private property); Nelson, 87 *Harv L Rev* at 558 (cited in note 26).

42. See generally Robert M. Cover, *Justice Accused: Antislavery and the Judicial Process* 149 note (Yale U Press, 1975) (discussing categories of abolitionist attacks on law).

43. F. C. Adams, *Uncle Tom at Home. A Review of the Reviewers and Repudiators* 46 (W.P. HAZARD, 1853, reprinted Books for Libraries Press, 1970).

“kind” masters to make slavery humane, and that the law releases the worst impulses of unkind masters. She uses law as a weather-vane to gauge Southern society. In *A Key to Uncle Tom's Cabin*, which she published the year after the novel to provide factual underpinning for it, she wrote, “The only means of understanding precisely what a civil institution is, are an examination of the laws which regulate it.” (*Key* 120) The *Key* leaves no doubt that it is law that causes harm. She likens law to “elegant surgical instruments for the work of dissecting a living human heart;—every instrument wrought with exactest temper and polish and adapted with exquisite care, and labor with the name of the nerve or artery . . . it is designed to sever.” (*Key* 182) The laws worked their evil by permitting the breakup of families, preventing kind treatment, and releasing masters from liability for harm to their slaves.

1. Law Fails to Protect Slaves

Stowe develops her critique of law in the novel's first chapter by showing that even a kind slaveowner is unable to preserve a slave family. The novel begins in the household of Master Shelby, where the saintly slave Uncle Tom lives with his wife, Aunt Chloe, along with the slave Eliza, and her son, Harry. Master Shelby, though “good natured and kindly,” is forced because of his debts to sell Harry and Tom to the slave trader Haley. (19) It is the legal enforceability of debt, as well as the legal system's treatment of slaves as property, that turns the dream of the “oft-fabled poetic legend of a patriarchal institution,” into a Gothic nightmare:

[O]ver and above the scene there broods a portentous shadow,—the shadow of *law*. So long as the law considers all these human beings, with beating hearts and living affections, only as so many *things* belonging to a master,—so long as the failure, or misfortune, or imprudence, or death of the kindest owner may cause them any day to exchange a life of kind protection and indulgence for one of hopeless misery and toil,—so long it is impossible to make anything beautiful or desirable in the best-regulated administration of slavery. (19)⁴⁴

44. In her final chapter, Stowe again refers to the shadow of the law: “Nothing of tragedy can be written, can be spoken, can be conceived, that equals the frightful reality of scenes daily and hourly acting on our shores, beneath the shadow of American law, and the shadow of the cross of Christ.” (471) Professor Bilder, providing illumination from a different angle, depicts the shadow cast by slaves over the law. See Mary Sarah Bilder, *The Struggle over Immigration: Indentured Servants, Slaves, and Articles of Commerce*, 61 *Mo L Rev* 743, 748-50 (1996) (employing image of shadow).

The imaginative world of the antebellum judges was composed of light, dark, and shadows. See, for example, *Davis v Ballard*, 24 *Ky* 563, 571 (1829) (“If such be the result,

One of the first pictures Stowe presents for the reader is the interrelationship of law and slavery, and the ability of the legal juggernaut to wipe out any humanity in the institution.⁴⁵

George Harris, Eliza's husband who is owned by an unkind master, expresses concern about the inability of law to protect families when he explains why he is running away. "Kind families get in debt, and the laws of *our* country allow them to sell the child out of its mother's bosom to pay its master's debts . . ." (128). Harris' own father, who was also his owner, "didn't think enough of [him] to keep [him] from being sold with his dogs and horses, to satisfy the estate, when he died." (126) Harris, his mother, and his six siblings were each sold to different masters. (126)

To further drive home the point of the power of estate sales (which settle the debts of an estate) to divide families, Stowe includes a chapter on a "select incident of lawful trade." In the incident, Haley attends an estate sale held by "order of the court," which takes place in "front of the Court-house door." (132) At the sale Haley gruffly rebuffs the plea of the mother of a boy he had purchased, to purchase her, too, "for de dear Lord's sake!" (135) Notwithstanding the promise of her owner that he would let her keep her last child, debt forced the complete breakup of her family after the owner's death. (135)

The harshest lessons on the capricious impact of the law on the slave are yet to come. Stowe sets up her lessons in New Orleans, where Tom works for several years with his kind master, Augustine St. Clare, and where Tom develops a close relationship as guardian of St. Clare's abolitionist daughter, Eva. In recognition of Tom's

the substance has been lost in the pursuit of a shadow."); *McMullen v Hodge*, 5 Tex 34, 74 (1849) ("With us the source of titles to land is as different as light from darkness."); *Bloodgood v Cammack*, 5 Stew & P 276, 279 (Ala 1834) ("The right, and the remedy, through the medium of which its enjoyment may be obtained, are as certainly separated, by a line of partition, as light is separated from darkness . . ."). They sought to view issues "in every light." *Jones v Crittenden*, 1 4 NC (1 Carolina L Repository) 55 (1812). When precedent failed to illuminate an answer, the judges "grope[d]" their "way through a labyrinth, trying to lay hold of sensible objects to guide" them. *Green v Biddle*, 21 US (8 Wheaton) 1, 101 (1823) (Johnson, dissenting). The power of the light of reason was strong. It not only allowed the judges to see; the "rays of the genius" could melt the "frost-work of mere abstractions, constructed" by political theorists. *Proceedings and Debates of the Virginia State Convention of 1829-30* 124 (Samuel Shepherd & Co, 1830) (remarks of John Scott, Oct 31, 1829).

45. The illustrations in the first edition further connected law with slave sales. An illustration in an 1852 edition shows the auction of Emmeline in a courthouse. A statute of blindfolded Justice is in the background. See Gossett, *Uncle Tom's Cabin*, a 10th illustration following page 212, "Emmeline about to be sold to the highest bidder," (cited in note 4) (reprinting illustration by George Cruikshank from the Cassell edition of 1852).

loyal service and to fulfill Eva's deathbed request, St. Clare promises Tom his freedom and begins the "legal steps necessary to [effect his] emancipation . . ." (299; 328)

Later that same day, St. Clare's abolitionist cousin, Ophelia, convinces him to transfer ownership of a young slave, Topsy, to her so that she can "take her to the free states, and give her her liberty . . ." (332) Ophelia insists that he transfer ownership immediately, because he might "die or fail, and then Topsy [would] be hustled off to auction, spite of all I can do." (332) St. Clare draws a "deed of gift," signs it and (once again, thanks to Ophelia's watchfulness) has it witnessed, so that Topsy is Ophelia's property, at least, "by a fiction of law." (332, 333)

St. Clare and Ophelia discuss the need to do "positive good." He resolves to free his slave, in keeping with his belief that Christianity is inconsistent with "this monstrous system of injustice that lies at the foundation of all our society." (337) Before he effects Tom's emancipation, however, St. Clare is mortally wounded at a cafe. (340-42) On the day that he promises Tom freedom and resolves to free his slaves and crusade against slavery—but before he accomplishes those tasks—St. Clare dies.

On this stage, Stowe can then play out the saga of the "Unprotected." The slaves had no protection; the law regarded them "in every respect, as devoid of rights as a bale of merchandise . . ." (342) Augustine's wife, Marie, contemptuously refuses to free Tom despite Ophelia's special plea that Marie complete the "legal process" that Augustine had begun. (348) Even if Marie had wanted to free him, which she certainly did not, financial constraints prohibited it: "Tom is one of the most valuable servants on the place—it couldn't be afforded, any way." (348)

As part of the liquidation of St. Clare's estate, Tom was brought to the slave market in New Orleans and sold to Simon Legree, a short, bullet-headed man. (359) One can imagine an allegorical fork in the road for the South when Ophelia liberates Topsy, but the rest of Augustine's slaves are sold following his death. Legree represents the direction that Augustine's noble South is headed. Legree's once-noble plantation resembles the lush surroundings of Augustine's estate. The plantation's former owner "bestowed some considerable attention to the adornment of [its] grounds." But he "died insolvent," so the property came into Legree's hands in the way that all descent seemed to take place in the novel, through a sale to clear debts. Legree purchased it "at a

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bargain," and promptly stopped maintaining its manicured grounds, "us[ing] it . . . merely as an implement for money-making." (369) Thus, Stowe draws a line of steep descent from St. Clare to Legree. It was the same line that the South was traveling.

In case the religious implications of failing to work against unjust laws were lost on readers who failed to take action, Stowe explicitly cautioned them of the dangers in *A Key To Uncle Tom's Cabin*. The *Key* advises that in the final judgment:

Another court will sit upon these trials, when the Son of Man shall come in his glory. It will be not alone Souther,⁴⁶ and such as he, that will be arraigned there; but all those in this nation, north and south, who have abetted the system, and made the laws which MADE Souther what he was. In *that* court negro testimony will be received, if never before; and the judges and the counsellors, and the chief men . . . will say to the mountains and the rocks, "Fall on us and hide us from the face of Him that sitteth on the throne, and from the wrath of the Lamb." (*Key* 107)

For Southerners, according to the *Key*, one primary avenue for action is changing the law. And those who did not act to alter the law are guilty, just like those who mistreat slaves. "Nor will . . . God hold *them* guiltless who, with the elective franchise in their hands, and the full power to speak, write and discuss, suffer this monstrous system of legalized cruelty to go on from age to age." (*Key* 115)

2. Law Prevents Kind Treatment

Those who refuse to take action against slavery are guilty because the law prevents kindness towards slaves. Even when not forced, as Shelby was, to sell their slaves to pay debts, the law prevents owners from treating slaves kindly. Stowe explains in the *Key*, in a chapter entitled "Men Better Than Their Laws," that "if left to itself, individual humanity would . . . practically abrogate the slave-code." (*Key* 110) But to shut off the humanity, the slave-code prohibits masters from teaching their slaves to read and write, limits the slaves' access to education, and prohibits them from acquiring property, raising their own animals, or hiring themselves out

46. Souther was convicted of murdering his slave, Sam. Sam died after Souther tortured him for twelve hours. See *Commonwealth v Souther*, 48 Va (7 Gratt) 673 (1851) (affirming conviction of second degree murder). See also Stowe, *Key* at 79-82 (cited in note 11) (criticizing Virginia court for convicting Souther of only second degree murder instead of first degree, because twelve hours of torture indicated premeditated intent to kill Sam).

for their own benefit, as Chloe did when she went to Louisville to work in a confectionery to raise money to buy Tom's freedom. (277; *Key* 110-13)⁴⁷

Stringent slave laws also hinder emancipation and thereby often prevent owners from freeing their slaves. (*Key* 118) Stowe encourages observers of Southern slavery to redirect their attention (and scorn) from the individual actors, from the "person of the slave-holder" towards "the horrors of the legal system." (*Key* 115) Thus, Stowe advocates changing laws as one of the few ways to mitigate the harshness of slavery: "In some slave states it seems as if there was very little that the benevolent owner could do which should permanently benefit his slave, unless he should seek to *alter the laws.*" (*Id.*)

Substantial reforms are needed. Stowe thought that the law's ability to foil even kind masters came partially from the cold, calculating mentality of the Anglo-American legal system. She elaborates in the *Key*:

Slavery, as defined in American law, is no more capable of being regulated in its administration by principles of humanity than the torture system of the Inquisition. Every act of humanity of every individual owner is an illogical result from the legal definition; and the reason why the slave-code of America is more atrocious than any ever before exhibited under the sun, is that the Anglo-Saxon race are a more coldly and strictly logical race, and have an unflinching courage to meet the consequences of every premise which they lay down, and to work out an accursed principle, with mathematical accuracy, to its most accursed results. (*Key* 82)⁴⁸

Logic, the domain of law, is a primary culprit in Stowe's view. In the *Key* she points to cases to show the "severe, unflinching accuracy of logic." The judges are not inhuman, but are rather so "logical and truthful that they announce from the bench, in the calmest manner, decisions which one would think might make the

47. Stowe's supporters also pointed to the slave code to show that "the darkest part of it is possible within the law." Louisa McCord, *Uncle Tom's Cabin*, 7 S Q Rev 81, 87 (Jan 1853) (quoting *Contemporary Literature of America* in the July 1852 volume of the *Westminster Review*). William Goodell's *The American Slave Code*, a four-hundred page compilation of the laws of slavery and examples of punishments meted out under them, likewise supported the abolitionists' argument that the law itself is part of the problem. Goodell closed many of his chapters with an allusion to Joseph Priestley's statement that "[n]o people were ever yet found who were better than their laws, though many have been known to be worse." See, for example, Goodell, *American Slave Code* at 17 (cited in note 19).

48. See also Stowe, *Key* at 71-72; 104; 64-65 (cited in note 11).

earth shudders and the sun turn pale.” (Key 82) “It is believed that there is no code of laws in the world which contains such a perfect cabinet crystallization of every tear and every drop of blood which can be wrung from humanity, so accurately, elegantly and scientifically arranged, as the slave-code of America.” (Key 82). It appeared to Stowe in 1851 that if she could only make people feel right, if she could reach their sentiments, she could overcome slave law. In her 1856 novel *Dred: A Tale of the Great Dismal Swamp*, she pessimistically acknowledges that law, religious institutions, and political parties together conspire to overcome individuals’ sentiments in favor of abolition.⁴⁹ But when writing *Uncle Tom’s Cabin*, it appeared to Stowe that reform was possible.

Stowe recognizes the dilemma that judges face in choosing between following the law and following humane feelings:

Such decisions do not commend themselves to the professional admiration of legal gentlemen. But in the workings of the slave system, when the irresponsible power which it guarantees comes to be used by men of the most brutal nature, cases sometimes arise for trial where the consistent exposition of the law involves results so loathsome and frightful, that the judge prefers to be illogical, rather than inhuman. Like a spring outgushing in the desert, some noble man, now and then, . . . throws out a legal decision, generously inconsistent with every principle and precedent of slave jurisprudence, and we bless God for it. (Key 71-72)

Stowe has a strong reason for establishing that slavery could not be humane under any circumstances. She needs to contest the common belief, nurtured by proslavery novelists, that slavery is, or at least can be, a benign patriarchal institution. (19) The Southern characters in the novel believe that it was the veneer of respectability that preserved slavery. One gentleman planter acknowledges that “[i]f there were no characters except such as [Legree] the whole system would go down like a mill-stone.” (365) For that reason, it is important to demonstrate that law prevents kind treatment by masters. For the slaves burdened with unkind masters, the laws offer little hope.

49. See Stowe, 1 *Dred* at 102 (cited in note 11) (examining reasons why antislavery ministers and politicians failed to act to end slavery).

3. Law Releases Harm

The laws represented the ominous release of individuals from moral responsibility—the release of cruel human nature from any outside restraints. As Stowe explains in the *Key*:

[T]he law is a direct permission, letting loose upon the defenceless slave that class of men who exist in every community, who have no conscience, no honor, no shame, who are too far below public opinion to be restrained by that, and from whom accordingly this provision of the law takes away the only available restraint of their fiendish natures. (*Key* 86)

George Harris' master illustrates how the law releases an evil master from control. George's master became jealous of his accomplishments and decided to put George back in his place; he removes George from the factory where he was working successfully, assigns him to the worst work on the farm, and then tells George to take a new wife. (23, 28) When George's master refuses to sell him, the master uses the oddly juxtaposed ideas of freedom and slavery. "It's a free country, sir; the man's *mine*, and I do what I please with him,—that's it!" (24) When Harris told Walker, his former employer at the factory, about his forced separation from his wife and the breakup of his family, Harris observes, "And all this your laws give him power to do, in spite of God or man." (127)

After one of St. Clare's slaves, Prue, is killed by a harsh overseer, Ophelia asks St. Clare why he does not take action to punish Prue's killers. He responds, "It's commonly supposed that the *property* interest is a sufficient guard in these cases. If people choose to ruin their own possessions, I don't know what's to be done." (239) St. Clare links the law with his impotence to punish Prue's killers: "If low-minded, brutal people will act like themselves, what am I to do? They have absolute control; they are irresponsible despots. There would be no use in interfering; there is no law that amounts to anything practically, for such a case." (239) Near the conclusion of the conversation, St. Clare tells Ophelia that slavery is a system based on power. He elaborates on the almost limitless power that the law confers to masters over their slaves: "[W]e would *scorn* to use the full power which our savage laws put into our hands. And he who goes the furthest, and does the worst, only uses within limits the power that the law gives him." (242)

Simon Legree is the prime example of the release of masters from moral responsibility. Legree internalizes the calculus that an

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owner's property interest in a slave is the slave's only protection against abuse. He tells Tom, "I've *made up my mind*, and counted the cost. . . . I'll *conquer you yet or kill ye*." (440) Stowe asks the reader, "Ye say that the *interest* of the master is a sufficient safeguard for the slave. In the fury of man's mad will, he will wittingly, and with open eye, sell his own soul to the devil to gain his ends; and will he be more careful of his neighbor's body?" (436) Her answer is evident because Legree proceeds to murder Tom, "done under the shadow of thy laws!" (440)

Even Legree's conscience wrestles with the question whether he should kill Tom when Tom expresses his complete devotion to work for and even to die for Legree, so long as Tom is not required to harm others. (440) But Legree's evil side wins and he kills Tom, as he planned when he asked himself the night before, "isn't he MINE? Can't I do what I like with him? Who's to hinder, I wonder?" (436)

Moreover, the law reduces even warmhearted Northerners to villains, because as Thoreau pointed out, the Fugitive Slave Law requires Northerners to return fugitive slaves to their owners and thus makes Northerners accomplices in slavery. Indeed, Stowe reports that it was after the enactment of the Fugitive Slave Act of 1850, when she "heard . . . Christian and humane people actually recommending the remanding escaped fugitives into slavery as a duty binding on good citizens" that she decided to write *Uncle Tom's Cabin*. (470)

B. Advocacy of Violation of Slave Law: "Your heart is better than your head"

The direct advocacy of violation of existing law appears in stark form in chapter nine of the novel, "In which it appears that a senator is but a man." Runaway Eliza arrives at the house of Ohio State Senator Byrd, "(or perhaps we should say Mrs. Byrd, as this lady seems to rule the household as completely as any Woman's Rights Orator could desire . . .)"⁵⁰ who has recently voted for a state statute outlawing the harboring of fugitive slaves. Just as

50. See [William Gilmore Simms?] Book Review, *Uncle Tom's Cabin*, 18 S Literary Messenger 630, 632 (Oct 1852), reprinted in Elizabeth Ammons, *Critical Essays on Harriet Beecher Stowe* 7, 11 (G.K. Hall & Co, 1980). Ammons attributes the review to George Frederick Holmes; however, Charles S. Watson advances a strong argument, based primarily on an inference from F.C. Adams' contemporaneous essay, that the review was actually written by Simms. See Charles S. Watson, *Simms' Review of Uncle Tom's Cabin*, 48 Am Lit 365-68 (1976); Adams, *Uncle Tom at Home* at 38 (cited in note 43).

Eliza appears at the door, the Senator and his wife are “twittering in an argumentative duet concerning the matter of lending ‘aid and comfort’ to runaway negroes.”⁵¹ The Senator, who wants to “reason” with his wife, acknowledges that “it would be a very painful duty” to cooperate with the law. (93-94) Mrs. Byrd’s first response is that “I hate reasoning John,—especially reasoning on such subjects. There’s a way you political folks have of coming round and round a plain right thing; and you don’t believe in it yourselves, when it comes to practice.” (94) Mrs. Byrd draws a line between duty, which bound lawyers and politicians,⁵² and feelings of humanity. She then counters that even if aiding runaway slaves leads to great public evil, the Bible commands it, and that “it’s always safest, all round, to *do as he bids us*.” (93) She vows to break the abominable law. (92) The dialogue between Senator Byrd and his wife is a clash between cold law and heated, religiously inspired passion. The lesson is that when the Byrds directly meet the immorality of slavery, their moral passion inspires a just action.

The whole family ends up breaking the law. The Byrds harbor Eliza and her child and the Senator personally drives them to the Quaker settlement. Mrs. Byrd had correctly predicted that Senator Byrd would behave as a “man” and not as a senator; as he was leaving to transport Eliza and Harry, she tells him, “Your heart is better than your head . . .” (100) Stowe optimistically believed that when presented with a personal appeal for help, a person’s humanity would emerge.

George Harris furnishes another example of affirmatively breaking the law. After relating the separation of his family and the brutalization of his sister “for wanting to live a decent Christian life,” Harris declares “[T]here isn’t *one* of all these things . . . but

51. Holmes, *Review of Uncle Tom’s Cabin* at 632 (cited in note 50).

52. For representative statements regarding the power that duty exerted on politicians, see *Congressional Globe*, 31st Cong, 1st Sess, 274 (March 7, 1850) (Senator Webster) (“Every member of every northern Legislature is bound, by oath, like every other officer in the country, to support the Constitution of the United States; and this article of the Constitution, which says to these States, they shall deliver up fugitives from service, is as binding in honor and conscience as any other article. . . . [T]he North has been too careless of what I think the Constitution peremptorily and emphatically enjoins upon it as a duty.”); *Congressional Globe* 31st Cong, 2d Sess, 312 (Feb 22, 1851) (Senator Douglas) (“If the Senator [Salmon Chase of Ohio] had obeyed that decision, and had obeyed the Constitution of the United States according to it, he would have been here the advocate of the fugitive law instead of its enemy, for that would have been his duty”); id at 310 (Senator Dodge) (“I think there is danger in permitting any law, and especially one which is but a reenactment of the Constitution itself, to be trampled under foot; and I am therefore in favor of steps being taken such as will at the threshold stop all resistance to the law.”).

your laws allow, and give every man power to do." (126, 127) Therefore, he rejects the laws of the United States. He would respect only the laws of a country that protects him: "[W]hen I get to Canada, where the laws will own me and protect me, *that* shall be my country, and its laws I will obey." (127) Harris' statement was consistent with Stowe's belief that slaves did not need to obey the laws. (127, 215) Harris learned the lesson of the Fourth of July orations well. When he vows to fight to the death for his liberty, he says, "You say your fathers did it; if it was right for them, it is right for me!" (127)

Perhaps the greatest violence in rebellion against the law takes place while George, Eliza, Harry, and two other runaway slaves are on their way to Canada. The runaways ensconce themselves at the top of a rocky hill to fend off the slave catchers. Despite a plea from a magistrate to give themselves up because the slave catchers "got the law on [their] side, and the power," they refuse. (215) George fires on Tom Lorker as Lorker is leading a charge of the slave catchers up a hill to recapture the runaways. (217) Lorker is wounded and the other slave catchers leave him. The Quakers, who are sheltering George and Eliza, nurse him back to health. Under their care, he reforms his ways and gives up slave catching. However, the scenes that most readers likely remember are the violent resistance to capture, and George's vow that he will never be captured alive. (127; 216-17)

Stowe's most memorable advocacy of disobedience to unjust authority occurs when Tom refuses to tell his owner, Legree, where the fugitive slaves Cassy and Emmeline are hiding. Here Stowe explores the boundary between resistance and obedience. Despite encouragement from the other slaves, Tom refuses to answer Legree's questions. (384) Tom does not yield, and he is murdered by Legree. Stowe explains the radical implications of Tom's actions in the *Key*. Legree is guilty of no crime when he killed Tom, according to "slave jurisprudence." "No Southern court would dare to decide that Legree did wrong to continue the punishment, as Tom continued the insubordination. Legree stood by him every moment . . . offering to let him go as soon as he . . . yield[ed]. Tom's resistance was *insurrection*." (*Key* 103-04)

The next step in Stowe's lesson—that Tom's insurrection might lead to the end of slavery—is clear to readers of the *Key* and presumably to readers of the novel as well. "If Tom had been allowed to disobey his master in this case, for conscience sake . . .

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[t]he mulatto woman would have remembered that the command of God forbade her to take another husband. . . . There would be no end to the havoc made upon cotton-growing operations. . . ."⁵³
(*Key* 104)

III. THE PROSLAVERY REACTION

"In our author's eye, the slave-code is evidently a raw-head and bloody-bones—a monster of injustice—and she can hardly say enough against it." Edward Josiah Stearns, *Notes on Uncle Tom's Cabin*.⁵⁴

Uncle Tom's Cabin "strikes at the very essence and existence of all community among men, it lays bare and roots up all the foundations of law, order and government Pandemonium itself would be a paradise compared with what all society would become, if . . . action were accordingly regulated by it." George Frederick Holmes, *Southern Literary Messenger*.⁵⁵

By looking to the responses to *Uncle Tom's Cabin*, we can see how Stowe's ideas were received, which should then help us further understand the power of her ideas. Stowe's contemporaries realized that she attacked law as well as slavery. Southern readers were acutely aware of her condemnation of slave law. They feared her attack on law could destroy their society, and they reacted forcefully against her contribution to the debate over the law of slavery. The responders interpreted Stowe's lessons for their audience. In place of the jurisprudence of love and sentiment that she sought, they urged order.

53. In the novel Stowe used different grounds to explain the failure to prosecute Legree. George Shelby, Jr., told Legree that "this innocent blood shall have justice. I will proclaim this murder. I will go to the very first magistrate and expose you." But Legree scoffed at such threats, replying, "I'd like to see you doing it. Where you going to get witnesses?" (447) Legree did not defend his actions as legally justified, but rather believed that they could not be proven. Stowe returned to these issues again. "Let it be remembered that in all Southern States it is a principle of jurisprudence that no person of colored lineage can testify in a suit against a white, and it will be easy to see that such a case may occur, wherever there is a man whose passions outweigh his interests, and a slave who has manhood or principle enough to resist his will." (468) That injustice was "*inherent* . . . in the slave system." (468) (emphasis in original).

54. Edward Josiah Stearns, *Notes on Uncle Tom's Cabin: Being a Logical Answer to Its Allegations and Inferences Against Slavery as an Institution* xx (Lippincott, Grambo & Co, 1853).

55. Holmes, 18 S Literary Messenger at 727 (cited in note 1).

A. Head vs. Heart: The Response to Stowe

In contrast to Stowe's appeal to sentiment, proslavery writers frequently appealed to reason and practical arguments. The problems with the heart were identified by political theorist George Frederick Holmes when he wrote that "all the heresies and distempers of the day, religious, social, political, and intellectual have their roots in unsound philosophy and inadequate logic."⁵⁶ Responders to Stowe appealed to the head to overcome sympathy for slaves. For example, James Waddell asked whether "the *feeling of humanity* towards the sufferer himself, ought to have been obeyed, without regard to those great 'interests of the State' which Mrs. Stowe seems to think unworthy to be taken into account, when the question refers to fugitive slaves."⁵⁷ Waddell, like other proslavery writers, justified slavery based on its utility in ensuring the greatest good for society, a calculus that required application of reason.⁵⁸ Where abolitionists believed that emotion might lead one to the correct path, proslavery writers believed that rigorous logic and application of practical morals were necessary.⁵⁹ In their opinion, it was logical, dispassionate thought that ensured the best results for society.

56. Quoted in Drew Gilpin Faust, *A Sacred Circle: The Dilemma of the Intellectual in the Old South, 1840-1860* 63 (Johns Hopkins U Press, 1977).

57. Waddell, "Uncle Tom's Cabin" *Reviewed* at 43 (cited in note 3) (emphasis in original).

58. See, for example, *id.* at 45-46; Albert Taylor Bledsoe, *Liberty and Slavery: or, Slavery in the Light of Moral and Political Philosophy* in E.N. Elliott, ed, *Cotton is King, and Proslavery Arguments* 269, 380 (Pritchard, Abbott & Loomis, 1860) ("[T]he great practical problem of slavery is to be determined, if determined at all, not by an appeal to abstractions, but simply by a consideration of the public good."); William A. Harper, *Slavery in the Light of Social Ethics*, in E.N. Elliott, ed, *Cotton is King* at 547-626, especially 562; see note 62 (providing expressions of proslavery utilitarian thought); Daniel T. Rodgers, *Contested Truths: Keywords in American Politics Since Independence* (Basic Books, 1987) (assessing popularity of utilitarian thought in antebellum America). Weighty volumes of proslavery thought, such as William Smith's *Lectures on the Philosophy and Practice of Slavery, as Exhibited in the Institution of Domestic Slavery in the United States: with the Duties of Masters to Slaves* (Stevenson and Evans, 1856), sought to provide a dispassionate analysis of slavery based on moral philosophy and religion. Despite the popularity of utilitarian thought, few Southerners cited Bentham, as Thomas Cooper did. See Daniel Kilbride, *Slavery and Utilitarianism: Thomas Cooper and the Mind of the Old South*, 69 *J S Hist* 469-86 (1993). Indeed, there was express hostility to Bentham. See, for example, [Hugh S. Legaré], *Principles of Legislation*, 7 *Southern Rev* 261-96 (1831).

59. See, for example, Faust, *A Sacred Circle* 118-31 (cited in note 56) (discussing proslavery arguments); Neal C. Gillespie, *The Collapse of Orthodoxy: The Intellectual Ordeal of George Frederick Holmes* 178-98 (U Press Va, 1972) (emphasizing importance of slavery in supporting society). Compare Shearer Davis Bowman, *Masters and Lords: Mid-19th-Century U.S. Planters and Prussian Junkers* 184-216 (Oxford U Press, 1993) (linking slavery with conservative social thought).

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Abolitionists' appeal to feelings of humanity over respect for the Constitution served as a rallying point for proslavery writers. There, Nehemiah Adams, writing in the *South-Side View of Slavery* in 1854, cautioned against placing sympathy for the slave above respect for the Constitution. If that happened, the government would end. Adams censured abolitionist lawyers in particular:

Until we divide the Union, or procure a change in the Constitution, if we resist one of its provisions from repugnance to it, and so nullify it, we make a breach in a dam which has behind it a desolating river. That lawyers should do or counsel this, not from professional necessity, but moved by their sensibilities, fills even some clergymen with surprise. . . . [A] lawyer is supposed to discriminate between what is specially benevolent and the obligations which we owe to the social compact: from him we expect to learn that an unlawful way of seeking a supposed good is fraught with a destructive principle, before which every thing may be laid waste. That compassion for a fugitive slave which leads one to abrogate the constitution of society is not benevolent, nor does it secure respect for any but radicals—a class of men, in all ages of the world, who have uniformly failed to secure the confidence of mankind.⁶⁰

Adams, like other proslavery writers, urged adherence to a dispassionate, calculating evaluation of the merits of slavery, in place of abolitionists' sympathetic perspective. Stowe might believe that "feelings of humanity are to be universally obeyed, whenever they come into conflict with the execution of laws of which we disapprove."⁶¹ But such feelings were inappropriate in the eyes of Southern responders to *Uncle Tom's Cabin*. In their rush to embrace the heart, abolitionists failed to understand the consequences of their doctrines, proslavery writers charged.⁶²

One of the greatest virtues of slavery in the minds of Southerners who responded to *Uncle Tom's Cabin* was its consistency with nature and its ability to preserve order in Southern society. "Why was it, that the abolition excitement in the North,

60. Nehemiah Adams, *A South-Side View of Slavery* 136 (Ticknor & Fields, 4th ed, 1860).

61. Waddell, "Uncle Tom's Cabin Reviewed" at 42 (cited in note 3).

62. See, for example id at 45 ("We have no right to do a positive good to the few, when our act involves a positive injury to the many.") (emphasis in original); id at 46 ("The greatest good to the greatest number' is beyond the range of [philanthropy's] contemplation."); McCord, 7 S Q Rev at 119 (cited in note 47) ("Utopias have been vainly dreamed. That system is the best which, not in theory, but in practice, brings the greatest sum of good to the greatest number."). See also Faust, *A Sacred Circle* 61-86 (cited in note 56) (interpreting antebellum Southern thought on science and religion); Robert J. Brugger, *Beverly Tucker: Head Over Heart in the Old South* (Johns Hopkins U Press, 1978).

produced such a panic in the South," asked A. Woodward in *A Review of Uncle Tom's Cabin*. "It was the revolting and shocking doctrines, which they openly promulgated. It was their notorious disregard of the laws of God and man, and all those ties which bind us together as one great nation; their denial of the right of the South to hold slave property, notwithstanding that right had been guaranteed to them by the Federal Constitution; their advocacy of the right of the slave to arise in the night and cut his master's throat; or, else, burn his house over his head."⁶³

Order, law, and government were particularly valued qualities in the antebellum South. South Carolina Senator John C. Calhoun warned in his *Disquisition on Government* against conferring too much liberty on individuals. "Liberty . . . though among the greatest of blessings, is not so great as that of protection; inasmuch as the end of the former is the progress and improvement of the race,—while that of the latter is its preservation and perpetuation."⁶⁴ Southerners applied their belief that stability was a paramount goal of society to the lives of slaves as well. In his book, *Notes on Uncle Tom's Cabin*, Stearns argued that the life of slaves in the United States was superior to life in Africa:

Hobbes in his *Leviathan*, (Pt. i ch. 18), thus describes the condition of Europe in the Middle Ages:—"No arts, no letters, no society,—and which is worst of all, continual fear and danger of violent death, and the life of man solitary, poor, nasty, brutish and short." And it must be owned that there is too much truth in the description. Yet Europe in the Middle Ages was paradise compared with Western Africa in *all* ages that we have any knowledge of her, the present included. She is the darkest of those "dark places of the earth" which, the Psalmist tells us, "are full of the habitations of cruelty."

. . . But if the slave trade were carried on without cruelty,—[t]he slave, thus brought under the control of a Christian master, would be as much better off than he was under his savage

63. A. Woodward, *A Review of Uncle Tom's Cabin, or an Essay on Slavery* 93 (Applegate & Co, 1853).

64. John C. Calhoun, *A Disquisition on Government and a Discourse on the Constitution and Government of the United States*, reprinted in Richard K. Crallé, ed, 1 *Works of John C. Calhoun* 1, 54-55 (Appleton, 1851). Senator James Henry Hammond of South Carolina expressed similar sentiments. See *Congressional Globe*, 35th Cong, 1st Sess, Appendix, 69-71 (March 4, 1858). See also William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836* 49-86 (Harper & Row, 1965).

master in Africa, as the German or Irish peasant in this country is better off than he was in his native land.⁶⁵

Other Southerners expressed similar sentiments.⁶⁶

Because Southern thinkers valued law—as well as slavery—as a way of achieving order, they argued that Stowe's attack on the subordination of the slave to the master was misplaced. "This power that slavery gives to one man over another is met with everywhere in society. Caleb Williams! Alton Locke! Mary Barton! Parliamentary Blue Books! Mining Districts! Manufacturing Districts! Combinations of Workmen! Combinations of Masters!—to which shall we point especially?" asked one Southerner.⁶⁷ He argued that individuals might abolish distinctions, but the laws had not done so. Laws did not help labor against capital, nor did they "make the hard man lay down the power that he feels over his neighbor."⁶⁸ Some reformers sought to "unhinge these 'false relations'" but "Plato's model lives only in the brains of dreamers."⁶⁹

It was against this background of regard for order and control that George Frederick Holmes published his review of *Uncle Tom's Cabin*. Holmes recognized the impact that Stowe would likely

65. Stearns, *Notes on Uncle Tom's Cabin* at 70-71 (cited in note 54). Stearns reprinted an article from the *Charleston Courier*, which depicts the connection between ordered liberty and progress as enabled by the extraordinary "English race":

The true question is, what is to be the destiny of this quarter of the world: what *race* is to inhabit and possess it? Shall it be given up (as to a great part of its surface) to barbarism—its inevitable fate under the dominion of the black race—or shall it continue to be possessed by the most improving, enterprising, active and energetic breed of men that have ever founded empires . . . —by that English race, whose conquests more extensive, whose power more gigantic, and whose Government more perfect than that of Rome . . . —that English race, of which the original stock has made itself the wonder of mankind—a people entirely peculiar in combining whatever is most dazzling in opulence and power, with well regulated liberty, and mild and equal administration of law—the most magnificent manifestations of the might and the grandeur of civilized life, that the world in any age of it, has ever beheld. Look at Hayti, and contrast it with New Holland!

The slave revolution in Hayti in 1798, in which the slaves freed themselves, overthrew the French government, and established the first state in the Western Hemisphere run by free blacks, was used in antebellum America as an example of what might happen in the South if there were a successful slave revolt. See generally Freehling, *Prelude to Civil War* at 16 (cited in note 64).

66. See William G. Simms, *The Morals of Slavery* (cited in note 2); *Reflections Elicited by Judge Harper's Anniversary Oration Delivered Before the South Carolina Society for the Advancement of Learning*, 2 S Literary J and Monthly Mag 375 (1836); Harper, *Slavery in the Light of Social Ethics*, reprinted in *Cotton is King* 547-626 (cited in note 58).

67. A Carolinian [Edward J. Pringle], *Slavery in the Southern States* 20 (John Bartlett, 1852).

68. *Id.* at 21.

69. *Id.*

have on the order that he and other Southerners so desperately sought. He believed that Stowe's main thesis was "any social institution, which can by possibility . . . generate such examples of individual cruelty as are exhibited in this fiction, must be criminal in itself, a violation of all the laws of Nature and of God" ⁷⁰ That proposition, Holmes thought, "[s]trikes at the very essence and existence of all community among men, it lays bare and roots up all the foundations of law, order and government."⁷¹ The primary evil of *Uncle Tom's Cabin*, in Holmes' mind, was its attack on laws and, consequently, Southern institutions. Other reviewers expressed similar concerns. James Waddell's *Review of Uncle Tom's Cabin* described the entire novel as "a tirade against American law."⁷²

Even if the slave laws produced inequality, Holmes did not want them changed, for they provided security to society. "It is no distinctive feature of the servile condition that individual members of the class should suffer most poignantly in consequence of the crimes, the sins, the follies, or the thoughtlessness of others The same results, with concomitant infamy, are daily produced by the operation of all penal laws, and the same anguish and distress are thereby inflicted upon the helpless and innocent, yet such laws remain and must remain upon our statute books for the security and conservation of any social organization at all."⁷³ Louisa McCord, the important proslavery political theorist and wife of a wealthy South Carolina planter, exemplified the sentiments of many Southern commentators on *Uncle Tom's Cabin* when she predicted dire consequences from the changes in the law that Stowe advocated:

Make your laws to interfere with the God-established system of slavery, which our Southern States are beautifully developing to perfection, daily improving the condition of the slave, daily waking more and more the master to his high and responsible position; make your laws, we say, to pervert this God-directed course, and the world has yet to see the horrors which might ensue from it. The natural order of things perverted, ill must follow. The magnitude of that ill, may heaven protect us from

70. Holmes, 18 S Literary Messenger at 727 (cited in note 1).

71. Id.

72. Waddell, "Uncle Tom's Cabin" Reviewed at 49 (cited in note 3).

73. Holmes, 18 S Literary Messenger at 728 (cited in note 1). Holmes devotes substantial attention to slave law, to demonstrate its humanity. Such arguments appeared frequently in public discourse. In debate over the proposed repeal of the Fugitive Slave Law in 1852, Senator James of Connecticut wondered "how the cause of philanthropy and humanity is to be promoted by a process tending to produce anarchy, strife, and, perhaps civil war and bloodshed." *Congressional Globe*, 32nd Cong, 1st Sess, 1123 (Aug 23, 1852).

witnessing! . . . As the ocean to the wave—as the rill to the torrent—as the zephyr to the whirlwind—would any such scenes, if possible among us, be to those of Hayti, fearful as they were; and as ocean's gulf to a rain-puddle, would be the ensuing barbarism.⁷⁴

Stowe's responders agreed that slavery served the needs of Southern society by maintaining order.

B. Responses to Stowe's Criticisms of Slave Law

Besides expressing their fear that Stowe's ideas would destroy their society, Stowe's responders claimed that Southern slaves were no worse off than free workers, that Southern society should not be charged with responsibility for the evils of slave law, and that slavery (and the law) were not as bad as Stowe depicted.

1. Law Not Responsible for Hardships

In response to the abolitionist critique that "the great objection against slavery is that the power of one man over another is so irresponsible, so little restrained by law or nature,"⁷⁵ proslavery writers argued that hierarchy was inherent in nature. Such natural distinctions could not and should not be abolished. Edward Pringle, writing under the pseudonym A Carolinian, in the 1852 pamphlet *Slavery in the Southern States*, a widely circulated response to Stowe, argued that no legislation "provide[s] altogether against

74. McCord, 7 S Q Rev at 109 (cited in note 47). McCord and her ideas about law and slavery deserve an extensive essay. In several essays on slaves and free workers, she constructed a comprehensive picture of the role she envisioned for law in regulating society. See id; Louisa McCord, *British Philanthropy and American Slavery*, 14 DeBow's Rev 258-80 (1853). Together, the writings of Stowe and McCord may help to add depth to our understanding of the ideas about law in circulation in antebellum society and how those ideas were received—and influenced—by members of society usually overlooked when historians discuss legal thought. See Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* 142 (U North Carolina Press, 1988) (analyzing McCord's thoughts on political economy); Richard C. Lounsbury ed, *Louisa S. McCord: Political and Social Essays* (U Virginia Press, 1995). Attention to McCord's legal thought may also help continue the process of recovering an understanding of the complex functions white women served in Southern slave society, see generally Catherine Clinton, *The Plantation Mistress: Woman's World in the Old South* (Pantheon, 1982), and how legal ideas are connected to larger culture. See, for example, G. Edward White, *The Marshall Court and Cultural Change, 1815-1835* (Macmillan, 1988) (using ideas of political ideology to understand Marshall Court); Hendrik Hartog, *The Constitution of Aspiration and the "Rights that Belong to Us All,"* 74 J Am Hist 1013 (1987) (examining how ideas expressed in culture interact with judicially recognized rights).

75. Pringle, *Slavery in the Southern States* at 22 (cited in note 67) (characterizing abolitionist critique).

itably applied.”⁸¹ Others also believed that Legree could be punished. In opposition to Stowe’s charge in the *Key* that “in the free states Legree is chained and restrained by law; in the slave States, the law makes him an absolute irresponsible despot,” (*Key*, 40)⁸² Stearns wrote that Legree could be convicted of murder. Legree’s statement to George Shelby that “I gaved him the crudest flogging I ever gave the nigger yet” might be used in court, Stearns argued, because it was said to a white person.⁸³

Stearns devoted fifteen pages to refuting the *Key*’s contentions that the law inadequately protected slaves.⁸⁴ He criticized her interpretation of such famous cases as *Souther v Commonwealth*.⁸⁵ It was the jury, not the judge, Stearns argued, that voted for second degree murder. In response to Stowe’s use of Justice Thomas Ruffin’s decision in *State v Mann*⁸⁶ to show that a master may not be punished for disciplining a slave, Stearns quoted from the opinion: “[T]his dominion is essential to the value of the slaves as property, to the security of the master and the public tranquility, greatly dependent upon their subordination, and, in fine, as most effectually securing the general protection and comfort of the slaves themselves.” He argued that the last phrase of Ruffin’s statement showed Ruffin’s concern with protection of slaves.⁸⁷ In defense of a North Carolina statute allowing magistrates to kill runaway slaves, Stearns suggested that it was preferable to “roo[t] out” the “pests” rather than allow them to continue to “pre[y] upon the community, increasing daily in numbers and sinking deeper and deeper into barbarism.”⁸⁸ Stearns included another twelve pages in the Appendix, reminiscent of the *Key*, with extracts of statutes and decisions from slave states, to indicate that slaves were treated

81. George Frederick Holmes, *A Key to Uncle Tom's Cabin*, 18 S Literary Messenger 321, 328 (1853).

82. Stearns, *Notes on Uncle Tom's Cabin* at 172 (cited in note 54) (quoting *Key* 40).

83. Stearns, *Notes on Uncle Tom's Cabin* at 54-55 (cited in note 54). In his book-length response to *Uncle Tom's Cabin*, A. Woodward flatly contradicted Stowe. “In the eye of the law, there is no difference between the man that murders his slave, and the man that murders his neighbor; and the laws not only punish men for cruel and unnecessary punishment inflicted on slaves, but there are penal statutes against the unnecessary . . . destruction of horses and other species of property.” Woodward, *A Review of Uncle Tom's Cabin* at 70-71 (cited in note 63). See also Gossett, *Uncle Tom's Cabin and American Culture* at 197 (cited in note 4).

84. See Stearns, *Notes on Uncle Tom's Cabin* at 190-205 (cited in note 54).

85. 48 Va (7 Gratt) at 673 (cited in note 9).

86. 13 NC (2 Dev) at 263 (cited in note 8).

87. Stearns, *Notes on Uncle Tom's Cabin* at 195-6 (cited in note 54) (quoting 13 NC (2 Dev) at 268 cited in note 8)).

88. *Id* at 199.

those abuses which grow out of the evil passions of men.”⁷⁶ Human nature mitigated the harshness of slavery, Pringle thought. “Theirs is the hard letter of the law,—nothing that is not ‘in the bond’! With us the moral code becomes positive law where legal rights end.”⁷⁷ Such was a common response to Stowe. The laws, reviewers asserted, did not represent the way that slaves were actually treated.

Pringle also counseled against indicting slavery simply because of the occasional abuses depicted by Stowe. “[T]he laws of property are respected still, though the oppression of the rich has wrung from the poor the bitter cry that ‘property is robbery.’”⁷⁸ In response to the related charge that “the power of one man over another is so irresponsible, so little restrained by law or nature,” Pringle believed that dependence was inherent. Are not Northern workers more dependent than slaves, Pringle asked.⁷⁹ Slaves, he argued, had masters to protect them, but freemen, “weighted down by the inevitable ills that society is subject to, [have] no tyrant but the hard laws of demand and supply, stern and unchangeable.”⁸⁰ Given the harsh results of Northern laws, Pringle hoped that his readers would recognize that the laws were not responsible for the hardships of slavery. Some laws, however, helped mitigate the harshness of slavery, he believed.

2. Law Adequately Protects Slaves

Many Southern reviewers of *Uncle Tom's Cabin* responded to Stowe's challenge that it was slave law that accounted for the harsh treatment of slaves by arguing that law adequately protected slaves. Stowe's representation that Legree could murder Tom with impunity was probably the most frequently contested scene in the novel. In his review of the *Key*, Holmes disputed Stowe's claim that Legree could not be convicted of Tom's murder. Holmes stated that Tom's death was “an outrage which every Southern man would reprobate with indignant scorn—and punish by the summary application of Lynch law, which may be sometimes prof-

76. Pringle, *Slavery in the Southern States* at 11 (cited in note 67). Compare [David Brown], *The Planter; Or, Thirteen Years in the South* 37-40 (H. Hooker, 1853) (discussing Stowe's image of a “brooding shadow”).

77. Pringle, *Slavery in the Southern States* at 46 (cited in note 67).

78. *Id.* at 9.

79. See *id.* at 22.

80. *Id.* at 25.

equitably by the courts and that masters' powers over slaves were limited. In case those references were insufficient, Stearns pointed to provisions for slavery in Mosaic law. He noted that those provisions were a "vindication of the slave code in a nutshell."⁸⁹ Thus, Southerners maintained that the law did not need reform, and *a fortiori* that slavery itself was proper.

3. Slaves Treated Well: The Sphere of Sentiment

Even when proslavery writers acknowledged the harshness of slave law in the face of Stowe's evidence, they argued that most masters treated slaves humanely and certainly better than the laws required. Stearns, for example, cited nineteen passages from Stowe attacking slave law for permitting inhumane treatment of slaves; he then responded that Stowe misunderstood the nature of law. Laws are not responsible for the evils they permit, he said; human nature itself is to blame for the mistreatment of slaves. "Verily, if laws are to be held responsible for the wrongs which they *passively* permit, the slave code will find plenty of other codes to keep it company, in the Northern states, to say nothing of European Christendom."⁹⁰ Thus, Stearns proposed that the relatively few cruel masters deserved censure, not the laws.

Louisa McCord advanced a similar attack on Stowe in the *Southern Quarterly Review*. The law of slavery encouraged a tutelage of slaves, she wrote. Stowe might be able to find some instances of mistreatment, McCord acknowledged, but "[i]f the lowest vices of the lowest men . . . are to be culled out with care, and piled upon each other, to form a monster disgusting to humanity, let the creator of so unnatural a conception give to his Frankenstein the name as well as the character of the monsters of fable."⁹¹ The true test of a society for McCord was not its laws but the actual treatment of slaves. And slave society—with its gradations of hierarchy—provided for the proper elevation of the higher classes and the most comfortable life for the lower classes.

Edward Pringle's *Slavery in the Southern States* likewise acknowledged that the laws did not always protect slaves but that laws by themselves could not reform human manners. "A system of government which would raise a barrier against every evil disposition in man would be a clog about his feet. . . . But the necessary

89. *Id.* at 30-31.

90. *Id.* at 30.

91. McCord, *S Q Rev* at 88 (cited in note 47).

insufficiencies of legislation are the most fruitful occasions for the exercise of the virtues, which here play the part of the *vis medicatrix* of nature."⁹² Thus, it was necessary to reform manners, which would in turn lead to different treatment of slaves. Pringle thought that the proslavery writers were doing precisely that. "While the slaveholder is bringing forward the above suggestions in defense of slavery, he will remember that he is going over the catalogue of his own duties." And once the duties were learned, the slaves would be treated well, no matter what the laws were. Pringle confidently predicted that "the good there is in human nature will supply the deficiencies of human legislation."⁹³ But pro-

92. Pringle, *Slavery in the Southern States* at 12 (cited in note 67). See also Lawrence Frederick Kohl, *The Politics of Individualism: Parties and the American Character in the Jacksonian Era* 163 (Oxford U Press, 1989) (distinguishing between corruption of morals caused by law and corruption characterized by failure to follow the law). The position of both Pringle and McCord that laws were not responsible for hardship and Stowe's position that laws were themselves evil represent one of the fundamental, though understudied, distinctions of antebellum thought. See generally Howe, *Political Culture of the American Whigs* at 219-20 (cited in note 12) (discussing relationship of reason, sentiment, and law); Miller, *The Life of the Mind in America* at 214-18 (cited in note 5) (virtue of law, in the mind of jurists like James Kent, is the negative power it influences over the American people by caging their passions). For other examples of the distinction, see Goodell *The American Slave Code in Theory and Practice* (cited in note 19); Nathan Beverley Tucker, *A Series of Lectures on the Science of Government*, 313-14 (Carey & Hart, 1845) (characterizing the belief that "love must perish as soon as restraints of law are applied to it" as a "fatal error in morals and politics"); id at 42 (virtue of society is that it secures "to each citizen the tranquil enjoyment of life, liberty and property" through law).

Similarly, Americans justified their alteration of English property law based on the corruption wrought by feudal remnants in the law. See, for example, Thomas Jefferson, *Autobiography* in Merrill D. Peterson, ed., *Thomas Jefferson: Writings* 44 (Library of America, 1984) (considering laws protecting religious freedom and abolishing entail and primogeniture "as forming a system by which every fibre would be eradicated of antient or future aristocracy; and a foundation laid for a government truly republican"); *Shorter v Smith*, 9 Ga 517, 532 (1851) ("[W]ould it not be strange for the Courts of this country at this day, to enforce a doctrine which had its origin in the feudal system; a system, justly characterized, as aggregating to itself all privileges, which increased the mass of wealth in the feudal Lords, at the expense of the public?").

93. Pringle, *Slavery in the Southern States* at 13 (cited in note 67). See also id at 12, 24. Historians often comment on the ways that Southern law left the control of slaves to their masters' sentiments. See, for example, Mark V. Tushnet, *The American Law of Slavery, 1810-1860* 54-65 (Princeton U Press, 1981) (viewing *State v Mann*, 13 NC (2 Dev) 263 (1829)) as relegating control of slaves to the sphere of sentiment); James Oakes, *Slavery and Freedom: An Interpretation of the Old South* 166 (Knopf, 1990) ("The conflicts between Lydia and John Mann . . . were not isolated outbreaks of conflicting principles but emblematic demonstrations of the problem of slave resistance in a liberal society. The smallest incidents of refusal could exacerbate the fundamental tension between the master's authority and the power of the state."). Compare Stanley M. Elkins, *Slavery: A Problem in American Institutional and Intellectual Life* 37-52 (U Chicago Press, 1959) (interpreting *Mann* as reflecting the control that masters held over their slaves); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* 35-36 (Pantheon, 1974) (same).

Considerations of humanity were also given domain outside of slave law. In the area of vested rights, for instance, United States Supreme Court Chief Justice Roger Taney

slavery writers could not escape the fact that slaves were treated poorly. Southerners might be able to lessen the magnitude of abolitionists' claims, but the fact remained that slaves were mistreated. It became imperative, then, to point out that the South held no monopoly on human misery and that suffering occurred under Northern as well as Southern law.

4. Law Permits Free Workers to be Treated Poorly

Hoping to defuse the abolitionist critique, proslavery writers argued that laws in the North allowed just as harsh treatment of workers as did slave law. "Are the laws of debtor and creditor—and the processes by which gain is squeezed from the life-blood of the indigent, more gentle . . . than the atrocious heart of that fiendish yankee, Simon Legree?" asked George Frederick Holmes.⁹⁴

In defending slavery, the writers drew examples from around the world. Nehemiah Adams suggested that heart-rending stories could be told about workers in the English coal mines, about brides in India who were murdered for their dowry, and about Irish peasants.⁹⁵ Edward Pringle looked closer to home, to the impoverished inhabitants of the Northern cities and to the institution of marriage. He utilized comparative data on the health of Northern workers and of slaves to suggest that the former were actually more oppressed than the latter. "If we were to draw a picture of the miserable condition to which men and women are reduced in the great cities and manufacturing districts by the fierce competition . . . and if, ascribing this to the liberal legislation that allows [the employer] to demand so much work for so little pay," he ob-

relegated the state's power to determine the remedies for violations of contract to considerations of humanity. See *Bronson v Kinzie*, 42 US (1 How) 311, 315 (1845) ("Regulations of this description have always been considered, in every civilized community, as properly belonging to the remedy, to be exercised or not by every sovereignty, according to its own views of policy and humanity."). Judges carved out certain areas in which moral sentiments were free from law; in those areas, states and individuals could act according to their own inclinations. See, for example, *Lapsley v Brashears and Barr*, 14 Ky (4 Litt) 47, 53-55 (1823) (Owsley) (distinguishing moral and legal obligations to abide by a contract); *Grayson v Lilly and Bullock*, 23 Ky (7 Mon) 16, 12 (1828) (same). Occasionally, however, judges argued that the "rights of humanity" ought to have legal force. See, for example, *Ogden v Saunders*, 25 US (12 Wheat) 213, 283 (1825) (Johnson, dissenting) ("For it is among the duties of society to enforce the rights of humanity; and both the debtor and the society have their interests in the administration of justice, and in the general good; interests which must not be swallowed up and lost sight of while yielding attention to the claim of the creditor.").

94. Holmes, 18 S Literary Messenger at 728 (cited in note 1).

95. Adams, *A South-Side View of Slavery* at 164-68 (cited in note 60).

served, "our argument would not be more faulty than Mrs. Stowe's."⁹⁶ Pringle informed his Northern readers that they might "make laws to govern this and guard against its abuse," but reminded them that they had not done so.⁹⁷

5. Proslavery Novels: The Fictional Responses to *Uncle Tom's Cabin*

The proslavery novels written in response to *Uncle Tom's Cabin* also confronted Stowe's challenge to Southern law.⁹⁸ For example, Mary Eastman's *Aunt Phillis's Cabin*, described a reminiscence of Mr. Chappman, a Southern plantation owner, to show that Northern laws did not protect free workers. Chappman recounted a recent trip to upstate New York, where he saw a railroad under construction. The foreman of the construction crew struck one of the Irish workers. Chappman asked the foreman why the laws did not protect the workers from physical attack. "Laws! why railroads have to be made, and have to be made the right way. I ain't afraid of the laws. I think no more of knocking an Irishman

96. Pringle, *Slavery in the Southern States* at 11 (cited in note 67).

97. *Id.* at 21.

98. Much of the proslavery fiction attempted to portray amicable relations between masters and slaves rather than to address Stowe's critique of law directly. Aunt Phillis, a character in Mary Eastman's *Aunt Phillis's Cabin*, for example, rebuffed an attempt by abolitionists to help her escape while visiting Philadelphia with her owner. Mary Eastman, *Aunt Phillis's Cabin* (Lippincott, Grambo, 1852). See also Adams, *A South-Side View of Slavery* at 129-31 (cited in note 60).

For discussions of the proslavery fictional responses, see Elizabeth Moss, *Domestic Novelists in the Old South: Defenders of Southern Culture* (Louisiana State U Press, 1992); Jeannette Reid Tandy, *Pro-Slavery Propaganda in American Fiction of the Fifties*, 21 S Atl Q 41-50, 170-78 (1922); William L. Taylor, *Cavalier and Yankee: The Old South and American National Character* (G. Braziller, 1961); Eric J. Sundquist, *The Literature of Expansion and Race*, in Sacvan Bercovitch, ed, *The Cambridge History of American Literature, 1820-1865*, 125, 264-67 (Cambridge U Press, 1995). Besides Eastman, the responses included: Martha Haines Butt, *Antifanaticism: A Tale of the South* (Lippincott, Grambo, 1853); Lucien B. Chase, *English Serfdom and American Slavery or, Ourselves as Others See Us* (H. Lang & Brother, 1854); Robert Criswell, "Uncle Tom's Cabin" Contrasted with *Buckingham Hall, the Planter's Home, or a Fair View of Both Sides of the Slavery Question* (D. Fanshaw, 1852); Caroline Lee Hentz, *The Planter's Northern Bride* (Peterson, 1854); Maria J. McIntosh, *The Lofty and the Lowly; or, Good in All and None All-Good* (Appleton 1854); John W. Page, *Uncle Robin: In His Cabin in Virginia, and Tom Without One in Boston* (J. W. Randolph, 1853); J. Thornton Randolph [Charles J. Peterson], *The Cabin and Parlor; or, Slaves and Masters* (T.B. Peterson, 1852); Caroline E. Rush, *The North and South; or Slavery and its Contrasts: A Tale of Real Life* (Crissy & Markley, 1852); Mary Howard Schoolcraft, *The Black Gauntlet: A Tale of Plantation Life in South Carolina* (J.B. Lippincott, 1860); William L. G. Smith, *Life at the South: or "Uncle Tom's Cabin" as It Is: Being Narratives, Scenes, and Incidents in the Real "Life of the Lowly"* (G. H. Derby & Co, 1852); Thomas B. Thorpe, *The Master's House: A Tale of Southern Life* (T. L. McElrath, 1854).

over, sir, than I do of eating my dinner."⁹⁹ Chappman's vignette was intended to demonstrate that even if the laws were changed in the South to require better treatment of slaves, they would have little effect, and that free, but poor, white workers were treated no better than slaves.

In another scene Aunt Phillis, a slave herself, sheltered a runaway slave. The scene was reminiscent of the sheltering of Eliza by Senator Byrd's family, but this time the slave was a drunken field-hand instead of an appealing mother. Mr. Weston, Phillis' owner, solemnly observed, "I am responsible for what my servants do. . . . The laws of Virginia require the rights of the master to be respected."¹⁰⁰ The readers learned that although one may have humane feelings, one must obey the law.

Lest her readers forget that slavery was protected by the Constitution, Eastman included an illustrative debate between an abolitionist and a Southerner.¹⁰¹ The Southerner responds to the abolitionist's claim that there was no right to hold slaves with an analogy to Native Americans' claims to land. He points out that New Englanders had taken Native American lands unjustly, then posits that:

[W]e have as good a right to our *property* as you to yours—we each inherit it from our fathers. You must know that slaves are recognized as *property* under the Constitution. John Q. Adams, speaking of the protection extended to the peculiar interests of the South, makes these remarks: "Protected by the advantage of representations on this floor, protected by the stipulation in the constitution for the recovery of fugitive slaves, protected by guarantee in the constitution of the owners of this *species of property* against domestic violence."¹⁰²

Other writers responded with alternative pictures of the law. In proslavery fiction, law did not usually lead to separation of slaves from their kind masters. Debt was the central problem for William Gilmore Simms' Captain Porgy in the 1854 novel *Woodcraft*.¹⁰³ Porgy returns from fighting in the American Revolution to find his plantation mortgaged to British sympathizers. Throughout

99. Chapman continued: "Now, if an Abolitionist sees a slave knocked over, he runs home to tell his mammy; it's enough to bring fire and brimstone, and hail, and earthquakes on the whole country." Eastman, *Aunt Phillis's Cabin*, at 95 (cited in note 98).

100. *Id.* at 117.

101. *Id.* at 133.

102. *Id.*

103. W. Gilmore Simms, *Woodcraft; or, Hawks about the Dovecote: a Story of the South at the Close of the Revolution* (Lovell, Coryell, 1856).

the novel he struggles to extricate himself from debt, even refusing to sell his beloved slave Tom—thus providing a contrast to the sale of Uncle Tom in Stowe's novel and showing that an alternative exists in the face of debt. *Woodcraft* is Simms' response to Stowe—one novelist's response to another's criticism of the slave code—depicting masters as kind, no matter what the laws allow.

* * *

Proslavery writers recognized that Stowe attacked law as well as slavery. In his book *Review of Uncle Tom's Cabin*, A. Woodward cataloged the reasons he opposed abolitionists. The reasons were frequently related to law: "I am opposed to the abolitionists, because they trample under foot the Constitution and laws of their country. . . . I am opposed to them, because they have decoyed away slaves from their masters, and have at the same time encouraged slaves to steal from their masters and others. . . . I am opposed to them, because they reject the Bible and profess to be under the guidance of a higher law."¹⁰⁴ Woodward's catalog encapsulates the reasons why Stowe's sentimental attack on law was perceived by Southerners as dangerous to their society. In the years leading up to Civil War, Southerners began to realize how effective Stowe's appeal to the sentiments of her readers could be.

IV. THE INTERPLAY OF RELIGIOUS BELIEFS, SENTIMENTALITY, AND LAW

Stowe's critique of slave law and the proslavery responses add to our understanding of the process of law reform in antebellum America. Stowe's work helped to mobilize antislavery thought; it made abolition of slavery more conceivable and popular and so contributed to large-scale changes in American law. At the same time, the proslavery responses reveal the ways that the legal mentality responded to abolitionist criticism and thus how the "head" responded to appeals of the heart. The head predominated in the judiciary and may have been important in developing the formal style of judicial reasoning.

104. Woodward, *Review of Uncle Tom's Cabin* at 100 (cited in note 63).

A. Stowe and the Reform of Law in Antebellum America

Abolitionists sharing Stowe's emotional fervor represented only a small percentage of the Northern electorate in 1860.¹⁰⁵ Abraham Lincoln's quaint (and possibly apocryphal) statement made upon greeting Stowe at the White House in 1863, "so this is the little lady who made this big war," conveys the impression that moral outrage over slavery was stronger than the historical record suggests.¹⁰⁶ Nevertheless, Stowe's critique, which reached hundreds of thousands directly in print and many thousands of others in dramatized versions, had the ability to transform the audience with her emotional appeal.¹⁰⁷ The magical powers of the heart promised to challenge the cold, logical head. With chapters like "In which it appears that a Senator is but a man," "The Mother's struggle," and "In which the reader is introduced to a Man of Humanity," Stowe emphasized for her readers the clash between logical legal thought and humanity. The novel had the potential to melt the cold, duty-bound response of politicians to slavery. If Senator Byrd, when individually confronted with the inhumanity of the law, was able to act humanely, then so might others.¹⁰⁸ The emotional appeal, like many appeals of reformers of the antebellum period, proved too radical to be adopted wholesale.¹⁰⁹ But the ideas, once planted, continued to grow tenaciously.

105. See William E. Gienapp, *The Origins of the Republican Party, 1852-1856* 354 (Oxford U Press, 1987) (showing that the number of voters motivated by moral outrage over slavery was limited, but crediting Stowe with increasing their ranks).

106. David Herbert Donald, *Lincoln* 542 (Simon & Schuster, 1995); Foner, *Free Soil, Free Labor, Free Men* at 301-17 (cited in note 30) (depicting moral outrage over slavery as relatively unimportant part of Republican ideology). But see Edmund Wilson, *Patriotic Gore: Studies in the Literature of the American Civil War* 3-52 (Oxford U Press, 1962) (placing Stowe in the center of the Civil War debate); Glenna Mathews, "Little Women" *Who Helped Make this Great War*, in Gabor S. Boritt, ed., *Why the Civil War Came* 33-49 (Oxford U Press, 1996) (suggesting ways that women shaped the political discourse and ethical culture leading to Civil War).

107. The book sold 300,000 copies in America in its first year. See Gossett, *Uncle Tom's Cabin and American Culture* at 164 (cited note 4).

108. At least Stowe so hoped in 1851 when she wrote the scene. By 1855, however, her optimism that she might change law through appeal to sentiment had declined. In her novel *Dred* she demonstrated that in the South cold legal thinking, reinforced by religious institutions, overcame emotion. Judge Clayton despaired that although many individuals sought reform, "they are mostly without faith or hope, like me. And from the communities—from the great institutions in society—no help whatever is to be expected." Stowe, *Dred* at 76 (cited in note 11). Emotional appeal failed to move Southern politicians, lawyers, and judges; there was "little to hope from any outburst of . . . emotional nature." *Id.* at 26.

109. See Perry, *Radical Abolitionism: Anarchy and the Law of God* (cited in note 19) (cataloging many of the radical ideas of abolitionists that never became accepted by mainstream American culture, including anarchy and free love); Walters, *American Reformers*

Stowe communicated with her readers directly in her final chapter, "Concluding Remarks." She told them that she had avoided discussion of slavery before *Uncle Tom's Cabin* because it was "too painful to be inquired into . . ." (470) But she heard "Christian and humane people actually recommending the remanding escaped fugitives into slavery, as a duty binding on good citizens," in discussing the Fugitive Slave Act of 1850. Her "Concluding Remarks" explain the process by which Stowe thought reform might occur. She believed that if readers knew what slavery was, then "such a question could never be open for discussion." (470) She urged her readers to take three actions. First, they should "see to it that *they feel right*." (472) Adherence to principles of Christianity was fundamental. "An atmosphere of sympathetic influence encircles every human being; and the man or woman who *feels* strongly, healthily, and justly on the great interests of humanity, is a constant benefactor to the human race." (472) Second, she told them, "[Y]ou can *pray!*" (473) Finally, she urged the readers to give slaves "education, knowledge, Christianity." (471) It was a revival she was seeking, and she harnessed the techniques of revivalist ministers. The consequences of failure to redeem oneself—and the American nation—were dire. "Every nation that carries in its bosom great and unredressed injustice has in it the elements of this last convulsion." (476)

Stowe's contemporaries realized the powerful effect literature could exercise on Americans' thinking.¹¹⁰ Her sister Catherine Beecher introduced Stowe's 1843 book, *The Mayflower*, by discussing the power of novels. "Works of imagination *might be* made the

at 216 (cited in note 12) (noting that many of the reformers' greatest ideas "were ground up in the machinery of modern times").

110. Assessing the amount of power that literature exerts over human thought is necessarily speculative. A number of important studies of antebellum America have, however, made substantial progress in determining the influence of print generally and in reminding us that literature's power often comes from rechanneling ideas and emotions already present in a culture. See generally Cathy N. Davidson, *Revolution and the Word: The Rise of the Novel in America* (Oxford U Press, 1986); Nina Baym, *Novels, Readers, and Reviewers: Responses to Fiction in Antebellum America* ch 2, 7 (Cornell U Press, 1984); Tompkins, *Sensational Designs* at 122-46 (cited in note 4) (assessing the "sentimental power" of *Uncle Tom's Cabin*). Scholars are reassessing the particular ways sentiment shaped political and social thought in the nineteenth century. See, for example, Lynn Wardley, *Relic, Fetish, Femmage: The Aesthetics of Sentiment in the Work of Stowe* in Shirley Samuels, ed, *The Culture of Sentiment: Race, Gender, and Sentimentality in Nineteenth-Century America* 203-20 (Oxford U Press, 1992); Shirley Samuels, *The Ideality of Slavery* in id at 157-71. Other, specialized studies have linked sentimental fiction to the language used by reformers, suggesting ways that fiction channeled public thought. See, for example, Sarah Baringer Gordon, "Our National Hearthstone": *Anti-Polygamy Fiction and the Sentimental Campaign Against Moral Diversity in Antebellum America*, 8 *Yale J L & Hum* 295 (1996).

most powerful of all human agencies in promoting virtue and religion”¹¹¹ Likewise, in a critical review of United States Supreme Court Justice Joseph Story’s *Commentaries on the Constitution*, Nathan Beverley Tucker, a professor of law at William and Mary and an influential proslavery writer, recognized that “in this reading age, . . . it is as true at this day, as that adage ever was, that ‘he who writes a people’s books, need not care who makes their laws.’”¹¹² *Uncle Tom’s Cabin* was seen by Stowe’s contemporaries as an agent of change. A Southern reviewer of *Uncle Tom’s Cabin* understood the effect the novel had on readers. “It has gone into thousands of families, and is silently exciting . . . a feeling of prejudice and distrust”¹¹³ William Gilmore Simms wanted his readers to bear “in mind that this slanderous work has found its way to every section of our country . . . filling the minds of all who know nothing of slavery with hatred for that institution and those who oppose it.”¹¹⁴

A sense of the impact of *Uncle Tom’s Cabin*—the passions it expressed and those it generated—may be gauged from United States Senator Charles Sumner’s speech *Freedom National, Slavery Sectional*, urging repeal of the Fugitive Slave Act. Sumner first argued that the nation’s framers intended slavery to be narrowly limited; he then urged that “all legislation hostile to the fundamental law of the land should be repealed.”¹¹⁵ He questioned whether the

111. Stowe, *The Mayflower* at xii (cited in note 10). George Frederick Holmes went even further. He thought, “The potency of literature, in this age of the world, when it embraces all manifestations of public or individual thought and feeling, and permeates, in streams, more or less diluted, all classes of society, can scarcely be misapprehended.” Holmes, 18 S Literary Messenger at 724 (cited in note 1).

112. Tucker, *A Series of Lectures on the Science of Government* at 416 (cited in note 92). See also Holmes, 18 S Literary Messenger at 724 (cited in note 1) (likening fiction to a magic wand). Literary critics attributed substantial power to literature to touch human passions and thus influence how people think and act. William Gilmore Simms used that perceived power to call for production of a distinctly American literature. He warned about the influence of ideas, “taught us through the medium of a foreign, and perhaps hostile and insulting teacher,” English art and literature. *Americanism in Literature*, in William Gilmore Simms, *Views and Reviews in American Literature and Fiction* 7, 13-14 (Wiley and Putnam, 1845) (C. Hugh Holman, ed, Harvard U Press, 1962).

113. Waddell, “*Uncle Tom’s Cabin*” Reviewed at 49 (cited in note 3).

114. Simms, 18 S Literary Messenger at 638 (cited in note 50). Recently Professor Gordon has demonstrated the influence that sentimental fiction exercised in shaping attitudes towards polygamy. See Gordon, 8 Yale J L & Hum (cited in note 110). Her work portrays in a detailed fashion the power of fiction in a reform movement close in time to abolitionism. See also Laura Hanft Korobkin, *The Maintenance of Mutual Confidence: Sentimental Strategies at the Adultery Trial of Henry Ward Beecher*, 7 Yale J L & Hum 1 (1995) (tracing the use of sentimental imagery on jurors in a postbellum trial).

115. *Congressional Globe*, 32nd Cong, 1st Sess, Appendix, 1111 (Aug 26, 1852). University of Virginia Professor Albert Bledsoe called the widely circulated speech, which

law had essential support in the "public conscience of the States," for such support "*is the life of all law, and without which any law must become a dead letter.*"¹¹⁶ Sumner appealed to the sentiments of his audience. "The great heart of the people recoils from this enactment. It palpitates for the fugitive, and rejoices in his escape. . . . The literature of the age is all on our side. The songs, more potent than laws, are for him. The poet, with voices of melody, are for freedom. . . . They who make the permanent opinion of the country, who mould our youth, whose words, dropped into the soul, are the germs of character, supplicate for the slave."¹¹⁷ Sumner had a particular heroine in mind here:

And now, sir, behold a new and heavenly ally. A woman, inspired by Christian genius, enters the lists, like another Joan of Arc, and with marvelous powers sweeps the chords of the popular heart. Now melting to tears, and now inspiring to rage, her work everywhere touches the conscience, and makes the slave-hunter more hateful. In a brief period, nearly one hundred thousand copies of *Uncle Tom's Cabin* have been already circulated. But this extraordinary and sudden success—surpassing all other instances in the records of literature—cannot be regarded merely as the triumph of genius. Higher far than this, it is the testimony of the people, by an unprecedented act, against the fugitive slave bill.¹¹⁸

One sees in such pleas the impact that emotional appeal could have in stripping slave law of its legitimacy.

The emotions expressed and generated by *Uncle Tom's Cabin* became part of the matrix of antebellum thought. Single-causation

Sumner delivered to the Senate August 26, 1852, "the most elaborate speech ever made . . . on the subject of the Fugitive Slave Law." Albert Bledsoe, *Liberty and Slavery*, reprinted in Elliott ed, *Cotton is King* at 422-3 (cited in note 58).

116. *Id.* (emphasis in original). Jurists also recognized the power of sentiment. In interpreting the rights of Texans who traced their title to grants from the Mexican government, Justice Lipscomb interpreted the law in light of public opinion, which favored protection of property rights of conquered citizens. "The masses of the people have felt their strength, and made the tyrants feel it too, and in this moral regeneration a more elevated sense of right, of justice, and the laws of humanity has asserted an ascendancy over the cruelty and despotism of the past." *McMullen v Hodge*, 5 Tex 34, 71 (1849). Proslavery jurists likewise harnessed the imagery of sentiment of the people. Chief Justice Roger B. Taney warned in *Dred Scott* about the consequences of failing to preserve a balance of power among the states and the federal government. If states' interests were not preserved, there might be a loss of the "community of interest, sentiment, and feeling, which are so essential to the support of the Union." *Scott v Sandford*, 60 US (19 How) 393, 516 (1857).

117. Congressional Globe, 32nd Cong, 1st Sess, Appendix at 1112.

118. *Id.* Sumner's eloquence generated little in the way of support in the Senate. His attempt to repeal the Fugitive Slave Act of 1850 garnered only three votes besides his own. See Potter, *The Impending Crisis* at 139 (cited in note 28).

theories are rightly suspect in modern social science and one is unlikely to ever determine with precision the contribution of any single event to a result.¹¹⁹ However, Stowe may rightly be credited with lending legitimacy and power to the movement to remove legal protection for slavery. Stowe's contemporaries, both North and South, discussed the uncertain relationship between cultural ideas and statutory law, the crossroads of law and humanity. In debate over revision of the Fugitive Slave Act of 1850, senators recognized that "all laws depend for their execution and efficiency, in no small degree, upon the opinion of the community that they are just and reasonable laws."¹²⁰ Stowe affected Americans' thinking on the relative weight to give to law and to humanity. The public sentiment and the cultural ideas necessary for observance and effective enforcement of the law—necessary to maintain the majesty of the law—were transformed by abolitionist attacks in the 1850s.¹²¹ The matrix of acceptable responses to the Fugitive Slave Law was changed by *Uncle Tom's Cabin*, just as other works of

119. In an analysis of the antebellum South, Professor William Fisher has recently reminded us of the various ways that legal tradition and current conditions combined to produce the slave law. He observed that some historians believe that American slave law originated from a variety of sources—"a dash of villenage, a splash of Roman law (strained through the civil law tradition), a sizable dollop from the slave code of Barbados, and a large portion of the common law and equitable principles in force in England." William W. Fisher, *Ideology and Imagery in the Law of Slavery*, 68 Chi Kent L Rev 1051, 1056 (1993).

120. *Congressional Globe*, 31st Cong, 1st Sess, 1858 (Aug 19, 1850). See also id at 1593 (Aug 20, 1850) (Senator Winthrop) ("[F]or the faithful observance and efficient operation of any law, it is essential that its provisions should not do violence to the opinions and principles of the people over whom it is to operate.").

121. For references to the authority of the law and the damage it suffered from abolitionist attacks on the Fugitive Slave Law, see *Congressional Globe* 31st Cong, 1st Sess, 312 (Feb 22, 1851) (Senator Douglas) (majesty of the law); *Congressional Globe* 31st Cong, 1st Sess, 1522 (Aug 20, 1851) (Senator Pratt) ("The law is a nullity because the will of the people is against it . . ."); *Congressional Globe* 31st Cong, 1st Sess, 312 (Feb 22, 1851) (Senator Turney) ("I do not believe this law can be faithfully executed where all the feelings and sentiments of the people among whom it is to be executed are averse to it."); *Congressional Globe* 31st Cong, 2nd Sess, Appendix 253 (Dec 2, 1850) (Representative Josuah Giddings) ("[P]ublic sentiment, with an enlightened and patriotic people is stronger than armies or navies; that [the President] himself is but the creature of the people's will—their servant—elected to execute their purposes."); *Moore v Illinois*, 55 US (14 How) 13, 18 (1853) (Grier) ("Experience has shown, also, the results [of helping slaves escape] . . . are not only to demoralize their citizens who live in daily and open disregard of the duties imposed upon them by the Constitution and laws, but to destroy the harmony and kind feelings which should exist between citizens of this Union . . ."). See generally Stewart, *Holy Warriors* at 147-77 (cited in note 13) (assessing impact of abolitionist attacks on slavery).

fiction challenged their readers to rethink the domains of law and humanity.¹²²

B. Proslavery Thought and Judicial Formalism

One of the most perplexing issues in American legal history concerns the reasons for the rise of judicial formalism, beginning in the 1850s. Scholars ranging from Roscoe Pound to Duncan Kennedy, from the legal realists to proponents of critical legal studies and economic analysis of the law, have sought to understand the factors that accounted for its rise and the purposes that it served.¹²³ Professors William Nelson and Robert Cover explain the rise of formalism as a reaction against proslavery legal thought.¹²⁴ Professor Nelson seeks to explain the shift from "a style in which judges explicitly asked themselves whether a proposed rule would promote economic growth to a style in which judges asked whether a proposed rule was consistent with an existing body of doctrine."¹²⁵

122. Much more work remains to be done to assess Stowe's impact on Northern thought. See generally Gossett, *Uncle Tom's Cabin in American Culture* (cited in note 4) (discussing Stowe's impact on the American mind).

For discussion of other American authors addressing the conflict between law and humanity, see Miller, *The Life of the Mind* at 99-104 (cited in note 5); Fisher, *Hard Facts* at 94-95 (cited in note 14). William Dunlap's play *André* broached the question whether it was proper for General Washington to order the execution of British Major André for bribing Benedict Arnold, because André possessed "every virtue of humanity" and because he acted "only . . . as duty prompted." William Dunlap, *André* (New York, 1798) reprinted in Arthur Hobson Quinn, ed, *Representative American Plays* 83, 96 (Appleton-Century-Crofts, 6th ed, 1938). James Waddell pointed out the parallel between Major André and *Uncle Tom's Cabin* in his review. Waddell, "Uncle Tom's Cabin" *Reviewed* at 42-43 (cited in note 3). See also William Gilmore Simms, *Benedict Arnold as a Subject for Fictitious Story*, in *Views and Reviews* 55, 68-73 (cited in note 112) (discussing fate of André).

123. For a sampling of the approaches to judges' reasoning styles see Duncan Kennedy, *The Rise and Fall of Classical Legal Thought, 1850-1940* ch 5 (unpublished manuscript, 1975) (explaining contours of "Classical Legal Thought"); Morton J. Horwitz, *The Transformation of American Law, 1780-1860* 253-66 (Harvard U Press, 1977) (formalism emerged to protect legal rules that benefit commercial interests from attack or re-examination); Roscoe Pound, *The Formative Era of American Law* (Little, Brown, 1938); Robert S. Summers, *Instrumentalism and American Legal Theory* (Cornell U Press, 1982); Richard A. Posner, *A Theory of Negligence*, 1 J L Stud 29, 32-6 (1972) (explaining social function of liability for negligent acts after Civil War, implying that judges' decisions derived from their economic understandings). For a fine recent treatment, which aims to define precisely the elements of formalism and instrumentalism, see Steven M. Quevedo, *Formalist and Instrumentalist Legal Reasoning and Legal Theory*, 73 Cal L Rev 119 (1985).

124. See Nelson, 87 Harv L Rev at 566 (cited in note 26); Cover, *Justice Accused* (cited in note 42). Grant Gilmore adopts Cover's argument on the rise of formalism in *The Ages of American Law* 37-39 (Yale, 1977).

125. Nelson, 87 Harv L Rev at 516 (cited in note 26). Nelson, drawing upon an essay that formed the basis for Horwitz's *Transformation of American Law* (cited in note 123), Morton J. Horwitz, *The Emergence of an Instrumental Conception in American Law 1780-1820*, in Bernard Bailyn and Donald Fleming, eds, *Law in American History* (Little, Brown, 1971), sees instrumentalism as related to the belief that law "was essentially muta-

He views formalism both as a reaction against instrumentalism, which he believes was largely the domain of proslavery jurists, and as an extension of a belief made popular by antislavery lawyers that one should reason from "first principles on which all . . . agreed."¹²⁶ According to Professor Nelson, formalism emerged when lawyers trained in antislavery modes of thought began to occupy the federal and state benches. Those antislavery jurists rejected the instrumentalist reasoning employed by proslavery jurists in favor of formalism that proceeded mechanically from their agreed-upon principles.¹²⁷

Like Nelson, Robert Cover attributes the rise of formalism to antislavery thought. But Cover does not believe that antislavery thought was inherently formalist. In Cover's view, formalism arose when antislavery judges retreated to a formal argument as a way of escaping the moral problems of proslavery law. They used what Cover calls the "judicial can't" to explain to themselves and their audience that the law constrained their options.¹²⁸ Antebellum legal writers often urged jurists to follow the law rather than their

ble and transitory in nature." Nelson, 87 Harv L Rev at 520 (cited in note 26). Instrumentalism rested upon the understanding that the common law adapted to the progress of society. Id at 521. Consequently, courts reexamined precedents and sought to remake the law to satisfy current needs. That definition seems to parallel the reexamination of principles that Emerson called for in *Nature*. See Ralph Waldo Emerson, *Nature* in 1 *Emerson's Complete Works* 13 (Houghton, Mifflin, 1883); compare Miller, *The Life of the Mind* at 129-30 (cited in note 5) (contrasting Emerson with [Hugh S. Legaré], James Kent, *Kent's Commentaries on American Law*, 2 *Southern Review* 72-113 (1828)). The judges' reexamination of principles through the grand style, which might undermine that which was previously solid, resembles the role Emerson envisioned for the scholar. See *The Method of Nature* in 1 *Emerson's Complete Works* 183, 185; *Lecture on the Times*, in 1 id at 246, 248 (chronicling ways that contemporaries reformulate and reexamine their heritage). A disciple of Emerson might term the movement toward the grand style of reasoning "the transcendence of American law." A judge, rewriting the common law, might agree that "the world is new, untried. Do not believe the past. I give you the universe, a virgin today." *Literary Ethics* in id at 162.

126. Nelson, 87 Harv L Rev at 566 (cited in note 26).

127. Nelson characterizes the conflicting visions as follows: "[A]dvocates of compromise with slavery rested their case upon instrumentalist arguments about what was politically wise and economically expedient, whereas opponents of slavery made essentially moralistic arguments about the law of God and the rights of man." Nelson, 87 Harv L Rev at 543 (cited in note 26).

128. See, for example, Cover, *Justice Accused* at 119-23, 197-200, 232-36 (cited in note 42). Stowe's fictional judge, Judge Clayton, employed a "judicial can't" in explaining why he failed to reform North Carolina slave law in her novel *Dred*. He thought that "A Judge can only perceive and declare. What I see, I must speak, though it go against all my feelings and all my sense of right." Stowe, 1 *Dred* at 439 (cited in note 11). Stowe also portrayed religious leaders as confined in the course they could take in public. See 2 id at 76 (fictional Presbyterian minister refusing to lobby to end slavery because it would be futile).

own conscience.¹²⁹ Antislavery jurists drew upon their heritage to limit their own feelings of culpability for issuing proslavery decisions.¹³⁰ From their culture, some antislavery jurists learned and internalized a respect for law that then led to formalism, according to Cover. While both Cover and Nelson arrive at formalism, they travel along different paths to that destination. Nelson believes that antislavery jurisprudence was formalist from the outset; Cover believes that antislavery jurisprudence employed formalism only to avoid moral culpability, not as a way to achieve an antislavery result. Cover carefully limits his thesis to the slavery context, but he suggests that his hypothesis may apply in other contexts.¹³¹

Stowe's writings suggest, however, that proslavery jurists may have retreated to formalism more frequently than did antislavery legal thinkers. She believed that "the reason why the slave-code of America is more atrocious than any ever before exhibited under

129. See, for example, Horace Binney, *Eulogy for Chief Justice Tilghman* in George Sharswood, *An Essay on Professional Ethics* 41 (T. & J.W. Johnson & Co, 1896) ("There is not a line from his pen that trifles with the sacred deposit in his hands by claiming to fashion it according to a private opinion of what it ought to be. Judicial legislation he abhorred . . . as an implication of his conscience. His first inquiry in every case was of the oracles of the law for their response; and when he obtained it, notwithstanding his clear perception of the justice of the cause, and his intense desire to reach it, if it was not the justice of the law, he dared not to administer it."); Bledsoe, *Liberty and Slavery* at 456 (cited in note 115) (urging that legislators and judges follow their oath to uphold the Constitution). See also Craig Evan Klafter, *Reason Over Precedents: Origins of American Legal Thought* chs 3-4 (Greenwood, 1993) (antebellum legal education employed systematic, scientific approach to law); William P. LaPiana, *Logic and Experience: The Origin of Modern American Legal Education* 29-38 (Oxford U Press, 1994) (detailing importance of science in antebellum legal thought); Miller, *The Life of the Mind* at 99-104 (cited in note 5) (examining conflict between law and justice).

130. Professor Mary Bilder has reminded me that antislavery judges conferred legitimacy on the Fugitive Slave Act by accepting it and then broadcasting to the world their opinion that the law must be followed. In that way, antislavery jurists may have been some of the most influential supporters of slavery, because they may have helped convince others to support the law. Questions have been raised about how dedicated some "antislavery" jurists were to the antislavery cause. See Barbara Holden-Smith, *Lords of the Lash, Loom, and Law: Justice Story, Slavery, and Prigg v Pennsylvania*, 78 Cornell L Rev 1086 (1993); Paul Finkelman, *Story Telling on the Supreme Court: Prigg v Pennsylvania and Justice Joseph Story's Judicial Nationalism*, 1994 S Ct Rev 247.

Proslavery contemporaries recognized the power that antislavery advocates' arguments could have in convincing others about the legal correctness of slavery. Wendell Phillips, for example, so effectively showed the proslavery nature of the Constitution in *The Constitution a Proslavery Compact: Extracts from the Madison Papers* (American Anti-slavery Society, 1845) that Alabama politician John A. Campbell, soon to be a Justice on the United States Supreme Court and later Attorney General of the Confederacy, wrote to Senator John C. Calhoun of South Carolina, that "we might circulate [it] to great advantage excluding a few paragraphs." John A. Campbell to John C. Calhoun, Nov. 20, 1847, quoted in William M. Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* 240 (Cornell U Press, 1977).

131. Cover, *Justice Accused* at 200 (cited in note 42).

the sun, is that the Anglo-Saxon race are a more coldly and strictly logical race. . . ." (Key 82) Some judges, if their moral passion were stirred appropriately, might escape from that formalism imposed by logical, legal reasoning.¹³² But judges rarely left that mode, which Stowe had identified as the dominant characteristic of American law: "The decisions in American law-books show nothing so much as . . . severe, unflinching accuracy of logic." (Key 82) Indeed, the moral outrage shown by abolitionists towards "cool legal inhumanity" (Key 72)—what one might now call formalism—calls into question the antislavery roots of formalism.¹³³

Proslavery jurists may have referred to law as a way of channeling the debate over slavery. They might recognize, as North Carolina Supreme Court Justice Ruffin did in 1829, the "struggle . . . in the Judge's own breast between the feelings of the man and the duty of the magistrate."¹³⁴ To avoid those problems, they denied their power to change the law. They spoke of the imperative duty that the law imposed upon them to reach a particular result.¹³⁵

132. There is evidence that judges recognized the constellation of interests of humanity that Stowe believed would be important in fashioning an antislavery jurisprudence, and realized that they could interpret the law in light of those principles. See Christopher L.M. Eisgruber, *Justice Story, Slavery, and the Natural Law Foundations of American Constitutionalism*, 55 U Chi L Rev 273, 325 (1988). Nevertheless, those general principles were insufficient, given the judges' backgrounds and the political and religious constraints surrounding them, to allow them to break free of the gravitational pull of their perceived duty to law. See generally Phillips, *The Constitution a Proslavery Compact* 15-26 (cited in note 130) (listing constraints on judges). But see Anthony J. Sebok, *Judging the Fugitive Slave Acts*, 100 Yale L J 1835 (1991) (suggesting, from the perspective of twentieth-century jurisprudence, that antislavery judges had viable alternatives to proslavery law).

133. For instance, Stowe discussed a tort case in which a mistress whose slave was injured by attack of another slave sued the attacker's owner. She questioned why the injured slave should be delivered to the owner of the attacker. "In the course of the decision, the judge remarks, with that calm legal explicitness for which many decisions of this kind are remarkable, that '[t]he principle of humanity, which would lead us to suppose that the mistress, whom he had long served, would treat her miserable blind slave with more kindness than the defendant, to whom the judgment ought to transfer him, cannot be taken into consideration in deciding this case.'" (Key 74).

134. *State v Mann*, 13 NC (2 Dev) at 264 (cited in note 8).

135. The word "imperative" is frequently used in antebellum law to describe the sense of compulsion that judges felt in making decisions. See, for example, *Prigg v Pennsylvania*, 41 US (16 Pet) 539 624-25 (1842) (Story) ("Consequences like these show, that the nature and objects of the provisions imperiously require, that to make it effectual, it should be construed to be exclusive of state authority."); *Cherokee Nation v Georgia*, 30 US 1, 48 (1831) (Marshall) ("I have no power to act and imperious duty compels me to stop at the portal. . . ."); *Wright v Weatherly*, 15 Tenn (7 Yer) 367, 380 (1835) ("Such a provision would be fair and equal among the slaveholders themselves; and in relation to a large majority of the people of the State who do not own slaves, it is imperiously required."); *Shorter v Smith*, 9 GA at 532 (cited in note 92) (Lumpkin) ("Were there any imperative rule of law . . . I would bow to it; for . . . I feel already the responsibility sufficiently great, of expounding laws, without increasing it by making them.") (emphasis in original). Compare Waddell, "Uncle Tom's Cabin" Reviewed at 67 (cited in note 3) ("Should a sense of impera-

Judges construed their role in deciding cases narrowly when they dealt with areas outside of slavery as well. For example, Ruffin's opinions in other areas show a concern for limiting the judicial role—for casting judges as oracles, not creators of the law.¹³⁶ The dominant moral philosophy in the South, moreover, emphasized dispassionate reasoning from premises.¹³⁷ The jurisprudence of love that Stowe sought, which promised to protect slaves from inhumane laws and abusive masters, had as its opposite the rigidly logical approach of Southern judges. It may very well be that far from inspiring formalism, abolitionist thought opposed it. The pro-slavery forces—far more numerous in the ranks of the antebellum judiciary than were antislavery legal thinkers—may have been the motivating force behind the development of formalism.¹³⁸ Where

tive duty ever induce this distinguished lady to write another book on slavery, we would suggest that one defining and enforcing the *relative duties* growing out of this 'sinful relation' . . .") (emphasis in original).

Judges also invoked the phrase "duty" to explain the restraints on their latitude in deciding cases. See, for example, *United States v Rogers*, 45 US 567, 572 (1846) ("It is our duty to expound and execute the law as we find it, and we think it too firmly and clearly established to admit of dispute, that the Indian tribes residing within the territorial limits of the United States are subject to their authority . . ."); *Commercial Bank of Rodney v Mississippi*, 12 Miss (4 S & M) 439, 491 (1845) ("Duty prompts us, when discovered, to follow whithersoever it may lead.").

136. In *State v Ephraim*, 19 NC (2 Dev) 162, 166 (1836), for example, Ruffin refused to add to grounds for excusing jurors. "It is . . . a bold and hazardous assumption in judges, to change and upset settled law, under the pretext that it was adopted in a state of society to which it was suitable, but that circumstances have now so varied . . . that the rule . . . ought therefore to be altered." See also *State v Samuel*, 19 NC (2 Dev) 177, 182 (1836) (Ruffin) (applying legislation governing slave marriages and noting that "the rule[s] . . . must be laid down by the makers of the law, and cannot be interpolated by its expounders"); *State v Cantey*, 20 SC (2 Hill) 614, 615 (1835) (Harper) (court would be "making, instead of declaring law").

137. See M. H. Hoeflich, *Law & Geometry: Legal Science from Leibniz to Langdell*, 30 Am J Legal Hist 95 (1986) (portraying legal thought, particularly in South Carolina, as deductive and based on "mathematical models," particularly geometry); E. Brooks Holifield, *The Gentlemen Theologians: American Theology in Southern Culture, 1795-1860* 127-54 (Duke U Press, 1978) (explaining the "exalted position" of moral philosophy, which emphasized sensibility and reason, in the antebellum South); compare Bruce Kuklick, *Churchmen and Philosophers From Jonathan Edwards to John Dewey* 145 (Yale U Press, 1985) ("The collegians elucidated man's obligations through introspection, and extrapolated from the mind's powers appropriate rules for ordering social life and political economy.").

Historians of religious thought more generally stress the importance of reason in antebellum thought and its connection to political thought. See Theodore Dwight Bozeman, *Protestants in an Age of Science: The Baconian Ideal and Ante-bellum American Religious Thought* (U North Carolina Press, 1977); Theodore Dwight Bozeman, *Inductive and Deductive Politics: Science and Society in Antebellum Presbyterian Thought*, 64 J Am Hist 704-22 (1979); Farmer, *The Metaphysical Confederacy* at 77-121 (cited in note 15); Genovese, *Slaveholders' Dilemma* at 94 (cited in note 15).

138. A variety of strands of thought merged in judicial formalism. See Morton J. Horwitz, *The Transformation of American Law, 1870-1960: The Crisis of Legal Orthodoxy* 9-31

some antislavery jurists retreated to formalism, more jurists who relied on a logic-based formalism were proslavery. Such jurists and other proslavery writers, including the academics George Frederick Holmes, Albert Bledsoe, and Edward Josiah Stearns, the literary critics William Gilmore Simms, Louisa McCord, James Pringle, and James A. Waddell, and novelist Lydia Eastman, illustrate the force pushing respect for law over a sentimental jurisprudence based on "feeling[s] of humanity." (Key 71)

CONCLUSION

Uncle Tom's Cabin was part of a religiously inspired movement for law reform in antebellum America. A strong theme of *Uncle Tom's Cabin* is the necessity of active reform of law, because slave law prevents kind masters from treating their slaves humanely and fails to restrain abusive masters. The novel addresses a fundamental struggle in the American intellect between the impassioned, religiously inspired ideas of the heart and the cold, logical response of the head—in other terms, the debate between evangelical religion and conservative legal thought.

The images and arguments developed in abolitionist literature reflected ideas in circulation and helped to shape the grounds on which the debate took place. *Uncle Tom's Cabin* contributed to the question whether the head or the heart—proslavery law or antislavery evangelical religion—would dominate Americans' response to slavery. While the novel did not effect immediate change, it influenced the terms of the debate both by drawing upon existing antislavery sentiments and by rechanneling existing emotions. Stowe sought to undermine proslavery law by awakening the sympathies of her readers. She hoped that when they understood

(Oxford U Press, 1992) (discussing numerous ideologies contributing to rise of formalism). Stowe's critique points to one of them and suggests that abolitionists were not directly responsible for the development of formalism. For example, Henry Ward Beecher told his congregation in 1851 that the call for support of the Fugitive Slave Law was based on mechanical reasoning:

And this doctrine, so taught and so sent, is nothing else than the doctrine of kings and despots, of the divine right of rulers, of non-resistance to power, however, oppressive. . . . It is because the common people are trodden down, because they have given up their consciences to priests and magistrates; and if this comes to be the custom in America, then all hope of freedom is lost.

Henry Ward Beecher, *American Slavery*, reprinted in John R. Howard, ed, *Patriotic Addresses* 178, 194 (Fords, Howard & Hulbert, 1887). Emerson, in speaking about literary studies, counseled against mechanical reasoning. "Translate, collate, distil all the systems, it steads you nothing; for truth will not be compelled in any mechanical manner." Ralph Waldo Emerson, *Literary Ethics*, in 1 *Emerson's Complete Works* 149, 166 (cited in note 125).

the nature of slavery and slave law, they would act against it. She attacked law as an institution that kept blacks in slavery, forced kind owners to sell their slaves to pay debts, and released the inhumane passions of unkind masters.

The reviews, pamphlets, and novels responding to *Uncle Tom's Cabin* testify to the fervor that Stowe tapped. Southerners and proslavery writers recognized the power of Stowe's emotional appeal and attempted to rebut it in two ways. First, they established a defense of slavery based on reason and practicality rather than "feelings of humanity."¹³⁹ The respondents called for order instead of abolition based on sentiments for slaves. They also countered that slavery was not as harsh as Stowe portrayed it.

At the end of the novel Stowe addresses her readers in religious and sentimental terms. She encourages them to "feel right" and "pray." (472-73) Those actions, she tells them, will start the process of making the world right. Her final comment, however, is an admonition that if readers—particularly Southerners—do not take action to effect "repentance, justice and mercy," the Union will be dissolved and the nation will suffer. (476-77) "[F]or, not surer is the eternal law by which the millstone sinks in the ocean, than that stronger law by which injustice and cruelty shall bring on nations the wrath of the Almighty God!" (477) Stowe failed to heat antebellum Southerners to the boiling point needed to end slavery peacefully; the legal mind triumphed in the antebellum South.

Uncle Tom's Cabin did not create all the fervor that Stowe tried to channel against slavery. A significant part of its power was generated, as Stowe realized, from awakening emotions that already existed. (470)¹⁴⁰ One lecturer told his audience at the University of Georgia that a literary work took on the ethos of the culture in which it was written. "[L]iterature receives, from the people through which it passes, . . . the very force and direction of its current The philosophic eye can readily detect the key, cause, and secret of each, and expose the seminal principle from which they grew into their particular shape and fashion."¹⁴¹ Given

139. Waddell, "Uncle Tom's Cabin" Reviewed at 43 (cited in note 3) (emphasis in original).

140. Compare Holmes, 18 S Literary Messenger at 723 (cited in note 1) ("It would seem almost a hopeless waste of time to show . . . how human sympathies have been operated on to encourage and sanctify most unholy practices . . .").

141. Alexander B. Meck, *Americanism as Literature* (Burroughs & James, 1844) (quoted in Simms, *Americanism in Literature* at 17 (cited in note 112)).

the popularity of *Uncle Tom's Cabin* and the response it generated, we should seek the "key[s], cause[s], and secret[s]" that are hidden within it, to understand what it communicates about law in the American mind as the Civil War approached.