

Stacey L. Smith**Expert Witness Testimony before the Task Force to Study and Develop Reparation Proposals for African Americans, September 23, 2021.**

Greetings to the members of the Task Force. It is an honor to speak before you today. My name is Stacey Leigh Smith, and I am an associate professor of history at Oregon State University. My areas of research specialization are the US West, slavery, and the Civil War and Reconstruction. I have studied the history of slavery and Black civil rights in nineteenth-century California for approximately eighteen years, and I have published extensively on these topics.¹ I am testifying today to share my findings on the state of California's relationship to the institution of slavery in the early decades of statehood.

My testimony today will cover two major topics: 1) the existence of slavery in California and the experiences of enslaved Black people; and 2) the role that California's early lawmakers and judges played in protecting slavery and promoting anti-Black oppression in the state.

The existence of slavery in California seems puzzling at first. Famously, California was supposed to be a free state with an antislavery constitution. It entered the federal union as part of the Compromise of 1850, a brokered political deal aimed at appeasing both pro- and antislavery Americans.² Yet, at the same time, there is ample evidence that the enslavement of people of African descent happened in California. What is more, California's early state government protected the institution of slavery and severely restricted Black people's civil rights.³ I will aim to explain this disconnect.

One of the key reasons that the state of California tolerated slavery was that the enslavement of Black people had already taken root there before the drafting of the antislavery constitution in 1849. California had been part of Mexico before the United States seized it in the U.S.- Mexico War of 1846 to 1848. Mexico had abolished slavery in 1829,⁴ but American slaveholders began forcibly bringing enslaved Black people into California before, during, and after the US-Mexico War, especially once the gold rush began in 1848.⁵

The exact number of enslaved Black people in California is difficult to determine. My detailed analysis of census records reveals approximately 203 enslaved Black people living in California in 1850 and approximately 178 in 1852.⁶ These are almost certainly undercounts because gold rush-era census records are notoriously incomplete.⁷ Given the fragmented records, I support the findings of historian Rudolph Lapp who estimated that at least 500 – 600 enslaved Black people lived in California during the gold rush.⁸

Each of these enslaved people almost certainly suffered traumatic uprooting. Going to California meant a forced separation from family, friends, and community by a distance of thousands of miles.⁹ Even though slaveholders framed this separation as temporary, most goldseekers spent at least two years in California—and usually many more—due to the distance and difficulty of the journey.¹⁰ For example, an enslaved North Carolina man, known only as John, arrived in California with slaveholder Robert M. Dickson in 1852 and stayed at least three years, until Dickson's sudden death in 1855.¹¹ The historical record is silent about whether John ever returned to North Carolina. His journey to California may have resulted in permanent separation from his family.

Like John, most of the enslaved people forced to migrate to California were younger men or teenaged boys who ended up working as miners in the gold country.¹² These enslaved miners faced backbreaking

and often dangerous working conditions. Placer mining, the most common type of mining in the earliest days of the California gold rush, involved digging up soil from the beds and banks of rivers and creeks. Sometimes, miners dammed up and diverted these bodies of water to get at gold deposits deep in the beds. These techniques often required standing knee- or waist-deep in cold rushing water for several hours each day in the broiling summer heat.¹³ Overwork, exposure to the elements, poor sanitation, a lack of nutritious food, and the absence of medical care contributed to long-term illnesses or death by disease.¹⁴ For instance, several enslaved men from western North Carolina died in a cholera epidemic, along with their enslaver, in Tuolumne County in 1852.¹⁵ Accidents and injury were also common, as seen in the life of an enslaved man from Kentucky, known only as Rheubin. He drowned in the American River while working in the gold country in 1851.¹⁶

Not all enslaved people worked directly in mining. Women and girls, who made up less than one quarter of all recorded enslaved people in California,¹⁷ often labored as domestic servants, cooks, or laundresses in private homes, hotels, restaurants, or boarding houses.¹⁸ Skilled domestic workers were so scarce, and the wages of their labor so high, that slaveholders often rented both enslaved women and men to owners of these establishments. This practice was called “hiring out.” Slaveholders then pocketed all or most of the enslaved people’s wages from their rented labor.¹⁹

Much like enslaved people in the US South, those in California also faced brutal violence. In 1850, one slaveholder beat an enslaved man in the town square of San Jose for disobeying him. Local authorities arrested both men, but ultimately determined that the slaveholder was not guilty of assault because his victim was legally his slave.²⁰ In another case from 1850, an elderly enslaved couple ran away near the town of Sonora. When the slaveholder caught them, he whipped the elderly man until his blood flowed so heavily that it filled his shoes.²¹ One of the worst incidents of violence also happened in 1850, this time in Los Angeles. A group of white southerners chased, shot at, and captured a handful of escaped enslaved people and then beat them until one nearly died.²²

The forced journey to California resulted in diverse outcomes for the enslaved people who survived it. Many people probably worked in California for a few years before returning to enslavement in the South. Others, especially those who were allowed to keep a small portion of their wages from hiring out or digging gold, saved enough money to purchase their freedom.²³ Finally, some enslaved people labored under formal or informal indenture agreements by which they promised to work for a certain number of years in California in exchange for their freedom.²⁴ Enslaved people who gained their own freedom might then also earn enough money to free their family members.²⁵

Of course, many enslaved people also saw California as a place where they could seize their own freedom or renegotiate the terms of their enslavement. The California gold country was large, isolated, and full of diverse people, including antislavery Black and white northerners. It was generally far easier to run away, hide, and find allies in California than in the southern slave states.²⁶ But it is important to remember that all enslaved people who went west were forced to leave their family members and communities behind in the South. Escape, therefore, was not a viable option for many enslaved people because staying with slaveholders was their only way to maintain their family ties. Slaveholders, in effect, used their control over enslaved people’s family members as leverage to force them to cooperate. For this reason, enslaved people may have been more likely to resist in other ways. Some, for instance, refused to work or escaped temporarily until they were allowed to keep more of their

earnings.²⁷ This might have been a more secure path to freedom if they earned enough to buy themselves and their family members out of slavery.

California's 1849 antislavery state constitution did little to stop the violence and exploitation that enslaved people suffered. The new constitution proclaimed that "neither slavery, nor involuntary servitude, unless for the punishment of crimes, shall ever be tolerated in this State."²⁸ The problem was that slavery already existed in the state and was already being tolerated there. Furthermore, the constitution was silent about what should happen to enslaved people in the state. It was one thing for the California constitution to declare that slavery would not be tolerated; it was quite another thing actually to criminalize slavery, emancipate enslaved people, punish slaveholders, and give Black people protections for their freedom.²⁹

Proslavery white southerners took advantage of this discrepancy to perpetuate slavery in California. During California's 1849 Constitutional Convention, proslavery delegates from the South had quietly accepted a provision banning slavery without protest or discussion.³⁰ After statehood, however, a disproportionately large number of proslavery men won political office in California. White southerners with proslavery views were prominent in the state legislature, the state courts, and among California's representatives in Congress.³¹ During the 1850s, these men used their newfound power to commit the state of California to protecting slaveholders' rights by passing and upholding laws that skirted around the antislavery constitution.

The California government's most proslavery action was passing and enforcing a state fugitive slave law in 1852.³² Proslavery southerners were angry to discover that the federal fugitive slave law of 1850, a harsh new law to help slavecatchers chase down and re-enslave runaways, did not apply to most cases in California. Slaveholders could only use the federal law to catch and reenslave people who escaped across state lines, not those who ran away within the state's borders.³³ In 1852, the California state legislature addressed this issue by greatly expanding the definition of who counted as a fugitive slave. California's new state law defined a fugitive slave as any enslaved person who arrived in the state prior to official statehood in September 1850 but who refused to return to the slave states with their enslaver. These people were subject to arrest and deportation back to the US South.³⁴ The legal rationale for this law was that California's antislavery constitution did not officially go into force until the moment of statehood. Before then, California was a federal territory where, according to proslavery legal theory, the US Constitution entitled all citizens to migrate freely with any type of property they might own, including property in human beings. Therefore, the law's supporters argued that California had a constitutional duty to protect the rights of slaveholders who arrived before official statehood.³⁵

The passage of this state fugitive slave law made California an outlier among free states. In the northeastern US, many free states resisted helping capture fugitive slaves.³⁶ The California fugitive slave law of 1852, on the other hand, authorized slaveholders to use violent means to capture enslaved people. It also ordered state officials to assist in the capture and arrest of enslaved people or they would face removal from office and heavy fines. Finally, the California fugitive slave law, like the federal version, strictly prohibited accused fugitives from testifying in their own defense.³⁷ California's laws banning non-white testimony in court cases involving white people compounded this injustice. Free Black activists, enslaved people's greatest allies, could not be witnesses in any court proceedings.³⁸

The only redeeming feature of the California fugitive slave law was its short enforcement period. Slaveholders were supposed to have just one year to arrest and deport people who they claimed were

runaway slaves.³⁹ But, in 1853, California legislators renewed the fugitive slave law for another year.⁴⁰ They did the same thing again in 1854.⁴¹ This meant that for three years, from 1852 to 1855, anyone accused of being a fugitive slave could be chased down, dragged before a court, and sent back to lifelong slavery in the South, even if they had been living in the free state of California for five years or more.⁴²

Just a few months after the passage of the state fugitive slave law, free Black activists, with the assistance of white attorneys, brought a test case called *In re Perkins* all the way to the California Supreme Court.⁴³ The state's supreme court justices decided that three Black men—Carter Perkins, Robert Perkins, and Sandy Jones⁴⁴—should be returned to enslavement in Mississippi because they had arrived with their enslaver before official statehood.⁴⁵ The court ruled that the antislavery section of the California constitution was only a “declaration of a principle.” The constitution said the state would not tolerate slavery, but California had no laws in place to enforce this decree.⁴⁶ The justices also agreed with the state legislature that California could not emancipate enslaved people who arrived before official statehood. The court accepted the extreme proslavery legal theory that the US Constitution guaranteed slaveholders the right to bring enslaved people into the federal territories without restrictions.⁴⁷ This decision foreshadowed the ruling in the much more famous case of *Dred Scott v. Sandford* five years later in 1857. In that landmark decision, the US Supreme Court ruled that the federal government could not close slavery out of any of the federal territories.⁴⁸

Altogether, California courts tried at least 10 cases, involving the freedom of 13 people, under the state fugitive slave law between 1852 and 1855. In 5 of those 10 cases, the courts returned the accused runaways (7 people total) to slavery. These numbers may seem small, but this list only includes cases for which documentation still exists.⁴⁹ The small numbers also do not accurately reflect the terror that all Black people, free or enslaved, would have suffered under this law. When combined with the exclusion of Black court testimony against whites, the California fugitive slave law made every Black person vulnerable to being accused, arrested, or deported without being able to defend themselves.⁵⁰ Finally, it is also important to note the symbolic and political significance of the California fugitive slave law. In supporting this law, the California legislature and courts signaled their sympathy with the southern slave states and proslavery interpretations of the US Constitution.⁵¹

The California legislature finally let the state fugitive slave law lapse in 1855.⁵² Still, fugitive slave cases continued. At least six additional cases, involving the freedom of 19 people, came before the California courts after 1855. All of these cases eventually led to the freedom of the enslaved people in question.⁵³ But in one particular case, that of Archy Lee in 1857/1858, the proslavery California Supreme Court made every effort to return the person to enslavement. Lee's enslaver, Charles Stovall, had brought the enslaved man to California years after statehood and the lapse of the state fugitive slave law. Still, the justices ruled that Stovall was so young, ill, and ignorant of California's laws that he should not be punished by losing his right to own Archy Lee. It took multiple lawsuits by free Black Californians, and intervention by federal legal officials, to secure Lee's freedom.⁵⁴

Throughout the 1850s, California's political leaders were also complicit in other types of anti-Black legislation. California's 1849 Constitutional Convention delegates restricted the right to vote to white male citizens⁵⁵ and also debated a Black exclusion law to prohibit all future African American migration to the state.⁵⁶ The Black exclusion law did not make it into the constitution, but, at the urging of Peter Burnett, California's first governor, the legislature attempted to pass a Black exclusion four times in the

1850s.⁵⁷ In addition to barring black court testimony against whites, the California legislature also prohibited interracial marriage between Black and white people,⁵⁸ excluded Black people from making homestead claims in state courts,⁵⁹ denied state funding for Black children to attend public schools,⁶⁰ and refused to acknowledge petitions from Black activists seeking to change unjust laws.⁶¹ The vicious anti-Black tone of state politics prompted many Black Californians to leave the state in search of greater freedom and equality.⁶² Starting in 1858, up to 800 Black men, women, and children migrated north to the colonies of Vancouver Island and British Columbia where many became British subjects.⁶³

The Civil War and Reconstruction brought important victories and bitter defeats for California's Black activists. In 1863, after twelve years of petitioning, activists finally convinced the California legislature—now dominated by antislavery Republicans—to repeal the ban on African American court testimony against whites.⁶⁴ The late 1860s, however, saw the return of anti-Black legislation. Hostile Democrats retook the legislature and refused to ratify the Fourteenth Amendment, establishing Black citizenship rights, and the Fifteenth Amendment, prohibiting racial discrimination against voters. California would not ratify these critical pieces of legislation until almost a century later during the civil rights movement.⁶⁵

In the meantime, California's Supreme Court set another destructive precedent that the rest of the nation would eventually follow. In the 1874 case of *Ward v. Flood*, California's Supreme Court justices ruled that segregation in the state's public schools was legal so long as Black children and white children had equal access to similar educational facilities.⁶⁶ Twenty-two years later, the US Supreme Court adopted a similar "separate but equal" principle in the case of *Plessy v. Ferguson*. This decision upheld the segregation of public facilities in the United States for almost sixty years.⁶⁷ As with many things, California was ahead of its time, but in this case, tragically, the state led the way in establishing anti-Black racial oppression across the United States.

In closing, I would also like explain my personal reasons for testifying today. I am a white American who, like a large number of white Americans, is descended from slaveowners. This is not a subject my family talks about much. We proudly tell stories about my great-great-grandfather on my father's side, a son of antislavery German immigrants and a Civil War veteran who was severely injured fighting for the Union cause. But our emphasis on the heroism of my antislavery ancestor obscures an uglier truth. On my mother's side, my 4th great grandfather, Arthur Jernigan of Tennessee, came from a slaveowning family and claimed 7 human beings as his property. The 1830 US Census shows 1 Black man, 1 Black woman, and 5 Black children, three girls and two boys, enslaved by the Jernigans. These enslaved people were likely a family group made up of parents and children, but we will never know for sure because the census has no other information about them, not even their names. The historical record is also silent about what happened to them. The 1840 census showed that the Jernigans no longer owned slaves. It is possible that Arthur Jernigan set the enslaved people free, but the more likely, horrible reality is that he sold them off to pay debts or to buy land. If so, he probably did not sell them as a family group, but as individuals, ensuring that they were separated from their loved ones forever.

As a white person from an upper-middle-class family, I recognize that the privileges I have benefited from—economic security, access to higher education, and even my bodily safety—are built on the stolen intellect, labor, and skills of enslaved people who my ancestors also traumatically ripped away from their homes and families. For me, reparations means that white people like myself need to acknowledge not just the national debt that the United States owes to Black people for building the economic, social,

and cultural foundations of this country. Reparations also entail a deeply personal process of reflection about how to compensate Black Americans for the generational wealth and social upward mobility that white families like my own have gained from the exploitation and attempted destruction of Black families. I hope that my testimony today can help the state of California, and all Californians, grapple with these difficult questions.

Sincerely,



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¹ Smith, *Freedom's Frontier: California and the Struggle over Unfree Labor, Emancipation, and Reconstruction* (2013); Smith, *Remaking Slavery in a Free State: Masters and Slaves in Gold Rush California* (2011) 80 *Pacific Hist. Rev.* 28; Smith, *Beyond North and South: Putting the West in the Civil War and Reconstruction* (2016) 6 *J. of the Civil War Era* 566; Dred Scott *on the Pacific: African Americans, Citizenship, and Subjecthood in the North American West* (2018) 100 *So. Cal. Q.* 44; and Smith, *California's Last Slave Case*, *New York Times* (March 5, 2014), <https://opinionator.blogs.nytimes.com/2014/03/05/californias-last-slave-case/>.

² Foner, *Forever Free: The Story of Emancipation and Reconstruction* (2005) 29 – 30.

³ Smith, *Remaking Slavery in a Free State* 33.

⁴ Smith, *Freedom's Frontier* 7.

⁵ Lapp, *Blacks in Gold Rush California* (1977) 4 – 9, 130 – 139.

⁶ Smith, *Freedom's Frontier* 240 – 245.

⁷ Poor census taking in isolated mining camps, the constant population flux, the loss or destruction of census returns, and the possible desire of slaveowners to hide enslavement from census takers, make it impossible to construct a complete picture of enslavement in 1850s California. On these difficulties, see Smith, *Freedom's Frontier* 237 – 238 and Lapp, *Blacks in Gold Rush California* 64 - 65.

⁸ Lapp, *Blacks in Gold Rush California* 65. One gold-rush era source, however, estimated that 1,500 enslaved African Americans lived in California in 1852, which may mean that these baseline numbers should be adjusted even higher. See Smith, *Freedom's Frontier* 40, 257.

⁹ Smith, *Freedom's Frontier* 44.

¹⁰ Rohrbough, *Days of Gold: The California Gold Rush and the American Nation* (1997) 256 – 261.

¹¹ Rohrbough, *Days of Gold* 211 – 214.

¹² Smith, *Freedom's Frontier* 239 – 245.

¹³ Rohrbough, *Days of Gold* 136 – 138.

¹⁴ Baur, *The Health Factor in the Gold Rush Era* (1949) 18 *Pacific Hist. Rev.* 97, 97 – 105.

¹⁵ Inscoc, *Mountain Masters: Slavery and the Sectional Crisis in Western North Carolina* (1996) 73.

¹⁶ Smith, *Freedom's Frontier* 259.

¹⁷ Smith, *Freedom's Frontier* 239 – 245.

¹⁸ For some examples, see Beasley, *The Negro Trail Blazers of California* (1919) 70 – 71.

¹⁹ Smith, *Remaking Slavery* 38 - 39; Lapp, *Blacks in Gold Rush California* 132 – 133.

²⁰ *A Slave Flogged in San Jose*, *Daily Alta California* (Feb. 16, 1850), p. 2, col. 3.

²¹ *Slaveholding in California*, *Liberator* (Aug. 30, 1850), p. 140, col. 5.

²² *An Illustrated History of Los Angeles County, California* (1889) 358 – 359; *Letter from California*, *Liberator* (Oct. 11, 1850), p. 161 col. 3.

²³ Smith, *Freedom's Frontier* 52 - 54.

²⁴ Smith, *Freedom's Frontier* 57 – 63.

²⁵ Smith, *Freedom's Frontier* 54.

²⁶ Smith, *Freedom's Frontier* 50 – 52.

²⁷ Smith, *Freedom's Frontier* 52 – 54.

²⁸ Cal. Const. of 1849, art. I, § 18.

²⁹ Smith, *Freedom's Frontier* 65.

³⁰ Smith, *Freedom's Frontier* 7.

³¹ Smith, *Freedom's Frontier* 8.

³² An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, California Statutes, at 67–69.

³³ Smith, *Freedom's Frontier* 66 – 67.

³⁴ An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, Cal. Stat., at 67–69; Smith, *Freedom's Frontier* 67 – 70.

³⁵ Smith, *Freedom's Frontier* 67 – 70.

³⁶ Smith, *Freedom's Frontier* 67 – 68.

³⁷ An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, Cal. Stat., at 67–69; Smith, *Freedom's Frontier* 67 – 69.

³⁸ Smith, *Freedom's Frontier* 71 – 72.

³⁹ An Act Respecting Fugitives from Labor, and Slaves brought to this State prior to her Admission into the Union, April 15, 1852, ch. 33, Cal. Stat., at 67–69; Smith, *Freedom's Frontier* 69.

⁴⁰ An Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to her Admission into the Union, Act of April 15, 1853, ch. 67, Cal. Stat., at 94.

⁴¹ An Act Amendatory to an Act to Amend an Act respecting Fugitives from Labor and Slaves Brought to this State prior to her Admission into the Union, Act of April 13, 1854, ch. 22, Cal. Stat., at 30.

⁴² Smith, *Freedom's Frontier* 71 – 72.

⁴³ *In re Perkins*, 2 Cal. 424 (1852); Smith, *Freedom's Frontier* 70 – 71.

⁴⁴ The three men had arrived in California in 1849 with Charles Perkins, the son of their enslaver. When Charles Perkins went back to Mississippi in 1851, he informally emancipated the men. Once he heard about the new California fugitive slave law, Perkins decided to use it to reclaim the men and force them to return to Mississippi as slaves.

⁴⁵ *In re Perkins*, 2 Cal. 424 (1852).

⁴⁶ *In re Perkins*, 2 Cal. 424 (1852), 455 – 457.

⁴⁷ *In re Perkins*, 2 Cal. 424 (1852), 452 – 455.

⁴⁸ *Dred Scott v. Sandford*, 60 U.S. 393; In fact, one California antislavery attorney asserted that the lawyers for Dred Scott's enslavers cited the California case of *In re Perkins* as a precedent to support Scott's continued enslavement. For this evidence, see Cornelius Cole, "Judicial Influence--Politics upon the Bench, no. 3," scrapbook no. 1, box 38, Cole Family Papers, Charles E. Young Research Library, Department of Special Collections, University of California-Los Angeles.

⁴⁹ These include: 1) the Lathrop case, described in Lapp, *Blacks in Gold Rush California* 141 – 142; 2) the Perkins case, described in *In re Perkins*, 2 Cal. 424 (1852); 3) the case of Harriet Jordan, described in *Another Fugitive Slave Case*, Daily Alta California (Sept. 22, 1852), p. 2, col. 2 and *A Fugitive Slave Case*, Placer Times and Transcript (Sept. 22, 1852), p. 3, col. 1; 4) an anonymous enslaved woman in El Dorado County, described in *Fugitive Slave Case*, Sacramento Daily Union (Oct. 2, 1852), p. 2, col. 3; 5) the case of Lucy Brown, described in *Fugitive Slave*, Daily Alta California (April 20, 1853), p. 2, col. 2; 6) the O'Neil case, described in *Habeas Corpus*, Sacramento Daily Union (Jan. 19, 1854), p. 3, col. 2; 7) the case of an anonymous enslaved boy in Marysville, described in *Kidnapping*, Daily Alta California (March 31, 1854), p.2, col. 2 and *The Kidnapping Case*, Placer Times and Transcript (April 1, 1854), p. 2, col. 4; 8) the case of Stephen Spencer Hill, described in Johnson, *Roaring Camp: The Social World of the California Gold Rush* (2000), 67 – 68, 191; 9) the Kibbe case, described in untitled article, Daily Alta California (April 7, 1855), p. 2, col. 4; and 10) the case of George Mitchell, described in Lapp, *Blacks in Gold Rush California* 147.

⁵⁰ Smith, *Freedom's Frontier* 71 – 73.

⁵¹ Smith, *Remaking Slavery in a Free State* 49 – 50.

⁵² Smith, *Freedom's Frontier* 75 – 76.

⁵³ These include: 1) The case of Bridget “Bidly” Mason, Hannah, and their enslaved children and grandchildren, described in Taylor, *In Search of the Racial Frontier: African Americans in the American West, 1528 – 1990* (1998) 79 – 80; 2) the case of Archy Lee, described in Smith, *Freedom’s Frontier* 76 – 78; 3) the Mathews case, described in *Alleged Abduction Case*, *San Francisco Bulletin* (Jan. 21, 1859), p. 3, col. 2; 4) the case of Nathaniel Rice, described in *Almost an ‘Archy Case,’* *San Francisco Bulletin* (Aug. 20, 1860), p. 3, col. 5; 5) the case of John Turner, described in *Attempt to Kidnap*, *Sacramento Daily Union* (Jan. 25, 1861), p. 3, col. 2; and 6) the case of Ada (Edith) Blue, described in Smith, *California’s Last Slave Case*, *New York Times* (March 5, 2014) <https://opinionator.blogs.nytimes.com/2014/03/05/californias-last-slave-case/>.

⁵⁴ Smith, *Freedom’s Frontier* 76 - 78.

⁵⁵ Cal. Const. of 1849, art. II, § 1.

⁵⁶ Richards, *The California Gold Rush and the Coming of the Civil War* (2007) 73 – 77.

⁵⁷ Smith, *Freedom’s Frontier* 61 – 63.

⁵⁸ An Act Regulating Marriages, April 22, 1850, ch. 140, § 3, Cal. Stat., at 424.

⁵⁹ “An Act extending the Privileges of the Homestead Law to certain Persons, and to Regulate the Creation of the Same,” March 18, 1860, ch. 120, § 2, Cal. Stats., at 87 - 88.

⁶⁰ Smith, *Dred Scott on the Pacific* 50.

⁶¹ Lapp, *Blacks in Gold Rush California* 196 – 197.

⁶² Lapp, *Blacks in Gold Rush California* 239 – 245.

⁶³ Smith, *Dred Scott on the Pacific* 46.

⁶⁴ Lapp, *Blacks in Gold Rush California* 206 – 209.

⁶⁵ Smith, *Freedom’s Frontier* 210 – 214. California ratified the Fourteenth Amendment in 1959 and the Fifteenth Amendment in 1962. See also Waite, *Early California lawmakers also preached #resistance—but against immigration*, *Los Angeles Times* (Aug. 3, 2018), <https://www.latimes.com/opinion/op-ed/la-oe-waite-california-14-amendment-20180803-story.html>.

⁶⁶ *Ward v. Flood*, 48 Cal. 36 (1874).

⁶⁷ *Plessy v. Ferguson*, 163 U.S. 537 (1896).