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POSTDOCTORAL STUDIES

Ruth Carlyne Dunley

AUTEUR DE LA THÈSE / AUTHOR OF THESIS

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A.D. Smith: Knight-Errant of Radical Democracy

TITRE DE LA THÈSE / TITLE OF THESIS

Donald F. Davis

DIRECTEUR (DIRECTRICE) DE LA THÈSE / THESIS SUPERVISOR

CO-DIRECTEUR (CO-DIRECTRICE) DE LA THÈSE / THESIS CO-SUPERVISOR

EXAMINATEURS (EXAMINATRICES) DE LA THÈSE / THESIS EXAMINERS

Michael Fellman

Richard T. Connors

Lofti Ben Rejeb

Béatrice Craig

Gary W. Slater

Le Doyen de la Faculté des études supérieures et postdoctorales / Dean of the Faculty of Graduate and Postdoctoral Studies

A.D. SMITH:
KNIGHT-ERRANT OF RADICAL DEMOCRACY

by
Ruth Dunley

**Thesis submitted to
the School of Graduate Studies and Research
in partial fulfillment of the requirements for the
Ph.D. degree in History**

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ABSTRACT

A.D. SMITH:

KNIGHT-ERRANT OF RADICAL DEMOCRACY

Ruth Dunley,
University of Ottawa, 2008

Supervisor:
Dr. Donald F. Davis

Though few people have heard of A.D. Smith, this nineteenth-century knight-errant made his mark in some of the key events of his times. On a Quixotic trail that began in upstate New York, wound westward to the Ohio and Wisconsin frontier, southward to the federally occupied Sea Islands of South Carolina and finally to a mysterious death aboard a northbound steamer, Smith personified the nineteenth-century impulse to move across the American landscape.

In Ohio he became involved with a paramilitary group, the Hunters' Lodge, that elected Smith the "President of the Republic of Canada." In Wisconsin, he achieved fame as the judge who dared to declare the Fugitive Slave Act of 1850 unconstitutional, lighting one of many fuses that sparked the Civil War. In South Carolina, he fought passionately for the property rights of freedmen.

Not only did he move from state to state, but he also believed in a civic *movement* on behalf of a Jeffersonian democracy and republican ideals. Civic participation, he believed, was a fundamental part of being a good American. Hence Smith took on public roles as a justice of the peace, councilman, lawyer, judge and tax commissioner for the U.S. government. This civic impulse was also seen in his enthusiastic embrace of the reform movements of the day. The key to unlocking Smith's character, however, lies in his absolute dedication to radicalism. At the centre of this work is an examination of

Smith's shifting position at the far left of the Democratic Party and how this affected Smith's actions, frequently putting him out of step with contemporaries and thwarting his ambitions.

A detective story set against the backdrop of the volatile antebellum era, this socio-cultural biography pieces together methodological inquiry with a jigsaw puzzle composed of secret documents, probate records, court testimony, speeches, correspondence, newspaper coverage and genealogical research in order to tell the story of a man named Smith, of his vision for the United States, and, more generally, of the value of remembering secondary historical characters. In so doing, this biography also establishes that the viewing of the past through its own optics casts briefly into the limelight actors of transient importance who, while now forgotten, were nonetheless important in their own era.

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I also owe much to the advice and guidance of many professors at home. It was at the suggestion of Professor Klaus Pohle of Carleton University that I pursued a Ph.D. I will forever be grateful for his help, wisdom and friendship. My initial query to the University of Ottawa landed in the inbox of Professor Donald F. Davis, a twentieth-century historian. Instead of turning away a journalist with a love of nineteenth-century U.S. history, he encouraged me to try. His willingness to take a chance helped me realize my goal. His sharp criticisms, encyclopedic knowledge of American history and patience shaped my writing and helped me receive the Fulbright — changing my life in the process. Other Ottawa professors also shaped this work: Beatrice Craig, Chad Gaffield, Richard Connors and Jacques Barbier. They helped a journalist to think like an historian (despite frequent relapses).

I am also grateful to those academics and independent historians not affiliated with my schools, but who nonetheless took time to help me or discuss issues in this

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I am indebted to archivists and librarians across North America, though I especially want to thank Michael Ruffing at the Cleveland Public Library, Jane de Broux and John Nondorf at the Wisconsin Historical Society and Grace Cordial at the Beaufort County Library.

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I am particularly indebted to the former editor-in-chief of the *Ottawa Citizen*. Almost seven years ago, Scott Anderson told me he would offer me unconditional support to pursue a Ph.D. — and he did.

Alex Molnar was steadfast in his support of my work and without his help, I would not have started this challenge.

My parents, siblings and their children, especially Paige, provided the love and support that gave me the courage to attempt working fulltime and attending school fulltime. I will never be able to fully recognize the contributions my parents have made to this thesis. In short, my father gave me a love of history (and an addiction to historical markers), and my mother helped me understand my own.

Finally, Derek Shelly was an advocate for Smith from the beginning and endured his presence in our lives until the end, even at expense to his own scholarship. He assisted with research, copy edited the final draft, helped me make sense of various documents and, when I was out with Abram, carried the responsibilities at home. For his unfailing support and encouragement, I thank him most of all.

TABLE OF CONTENTS

	Page
ABSTRACT	ii
ACKNOWLEDGEMENTS	iv
TABLE OF CONTENTS	vii
LIST OF ILLUSTRATIONS	viii
CHAPTER 1: IN SEARCH OF A MAN NAMED SMITH	1
CHAPTER 2: 'THE PRESIDENT OF CANADA'	33
CHAPTER 3: 'WHEN I THINK OF HIM I INCLINE TO SPIT'	88
CHAPTER 4: 'YOUR MEMORY WILL BE CHERISHED'	157
CHAPTER 5: 'ACT, ONE AND ALL'	212
BIBLIOGRAPHY	241

LIST OF ILLUSTRATIONS

ILLUSTRATION 1: Daguerreotype of A.D. Smith	32
ILLUSTRATION 2: Milwaukee, circa 1844	86
ILLUSTRATION 3: Portrait of A.D. Smith	87
ILLUSTRATION 4: Headquarters for the Tax Commission, Beaufort, S.C.	156
ILLUSTRATION 5: The Brick Church, St. Helena Island, S.C.	210
ILLUSTRATION 6: Portrait of William Henry Brisbane	211

Chapter 1

In search of a man named Smith

In the face of Infinity and of Eternity, what is he, but a speck? Is any particular bubble on the ever-flowing stream of Nile or Amazon — an iridescent beam at one moment, and gone the next — singled out for lasting remembrance?

— William Roscoe Thayer, *The Art of Biography*¹

In a 1998 interview, biographer and historian Stephen Ambrose recalled a life-changing assignment from William B. Hesseltine, his professor. Hesseltine, then working on a dictionary of Wisconsin biography, asked students to write short biographies of people in the state who “were not important enough to have a real biography written about them, but who’d made an impact.” Ambrose said he would never forget the sense of accomplishment he felt when he finished the assignment, and the lesson he took from the experience:

I’ll never forget the feeling I had when I finished that work and wrote the 10-page bio of this guy: ‘I know more about Charles A. Billingshurst than anybody else in the world!’ I just thought that was marvelous. Now what I soon learned was, the reason for that was that nobody else cared about Charles A. Billingshurst. And then what I learned after that was, ‘But I can make ’em care if I tell the story right.’²

Telling a biography “right,” especially when it revolves around a character of secondary historical importance, is perhaps not as straightforward as Ambrose’s reminiscence might suggest. Theoretical and methodological concerns aside, telling the life story of someone whose historical record is largely unknown creates a thorny set of

¹ William Rose Thayer, *The Art of Biography* (New York: C. Scriber’s Sons, 1920), 4.

² “Biographer and Historian.” Interview with the Academy of Achievement, Stephen E. Ambrose, May 22, 1998, <http://www.achievement.org/autodoc/printmember/amb0int-1> (accessed July 8, 2006).

problems, not the least of which is navigation around the missing information that impedes investigation of lesser-known characters. Antebellum historian Michael Wayne suggests this deft maneuvering, rather than being a liability, simply forces historians to approach their writing with imagination and originality:

The difficulty of capturing feelings and private thoughts from the kinds of records that survive, the gaps in evidence, so many other obstacles to interpreting the human experience in earlier times necessitate that historians be extraordinarily resourceful and creative.³

In searching for the way to tell my story right, I have had endless hours of conversation with friends and colleagues about the nature of life in a century that often seems like a foreign country.⁴ At the heart of this work is a mystery that captured my imagination from the beginning. The mystery sustained me through countless research dead ends, for as the seventeenth-century author Sir Thomas Browne said, "...we love to lose ourselves in a mystery."⁵ Often, the level of enjoyment we receive from a mystery is directly proportionate to the difficulty of solving it. From the beginning, I became haunted by the mystery of a man named Smith.

I first learned of Smith in a conversation with my academic adviser, who quoted aloud to me from a passage in an old American history by Glyndon Van Deusen, *The Jacksonian Era*. Flipping through the pages of the paperback, he stopped and read: "In September, 1838, some 160 Hunters from both sides of the border attended a convention

³ Michael Wayne, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South* (New York: Oxford University Press, 2001), 185.

⁴ David Lowenthal, *The Past is a Foreign Country* (New York: Cambridge University Press, 1985).

⁵ *Oxford Dictionary of Quotations* (London: Oxford University Press, 1979), 96. No editor cited.

in Cleveland, where they elected one Smith, a resident of that city, President of the Republic of Canada.”⁶ *One Smith*.

The Hunters, my adviser explained, were an obscure, mostly American paramilitary group that had attempted to overthrow Crown rule in the Canadas in the late 1830s. My professor continued, musing aloud about how he had often cited the passage to his undergrads and had always wondered who Smith might have been. Surely someone must have investigated this man’s identity, I thought — “one Smith” was at one time a real, specific Smith who very likely had a home and family plus the desire and credentials to lead a country. As I left campus that day, I knew that I must find the identity of the Canadian President who never was; but this proved to be a far more difficult venture than I bargained. When I pulled Van Deusen’s book off a shelf of the university library, I was greeted with a message from a previous reader — there in the margin of the weathered book in bright blue, block letters, the exclamation that came to define the reaction I most often received while looking for answers about a man named Smith: “HA!”

It seemed somehow apt, as if Clio were daring me to find this elusive character. I was being asked to scavenge through countless archives for the detritus of a minor life. Very early on in my research, it became clear that finding “one Smith” would have its methodological challenges. For the biographer, “a lot of the time has to be spent seeking trivia — asking for and searching out things that make polite people laugh at you.”⁷ A trip to the University of Ottawa’s library confirmed the existence of the Hunters, that they had held an election, and that they had chosen a Smith as first president of the Republic

⁶ Glyndon G. Van Deusen, *The Jacksonian Era: 1828-1848* (New York: Harper and Row, 1959), 138.

⁷ Paula Backscheider, *Reflections on Biography* (London: Oxford University Press, 1999), 71.

of Canada. (A book I consulted called Smith a “Canadian refugee,”⁸ but no subsequent source ever corroborated the assertion that Smith was ever a Canadian.) Over the telephone, librarians and archivists were, more often than not, dismissive of my requests, their sense of futility audible in their voices.

“*Smith?*” they asked, incredulous.

Yes, Smith. The name alone made the search tremendously complicated. Even in smaller towns of the early nineteenth century, there was usually more than one Smith listed in property records. Eventually, I determined that Smith’s initials were A.D., and a day before I left for research in Cleveland, the site of his “election,” a volunteer at the Cuyahoga County archives told me he had stumbled across a reference to an Abram D. Smith who was called to the bar in 1839. In Ohio, I searched as many records as possible in an effort to confirm that A.D. Smith was Abram D. Smith — in tax assessments stuffed in boxes under layers of dust at a municipal warehouse, in a damp sub-basement of city hall and in the archives of the Western Reserve Historical Society. I pestered librarians and archivists and historians, but no one knew anything about A.D. Smith. As the city directories for Cleveland between 1837 and 1845 are no longer extant, the directories I did find were of limited use. They indicated, however, that an A.D. Smith

⁸ Oscar A. Kinchen, *The Rise and Fall of the Patriot Hunters* (New York: Bookman Associates, 1956), 38-39. Kinchen cites several sources for the paragraph that contains this piece of information. It is unclear which citation may refer to Smith, though those that I have checked do not substantiate the claim that he was Canadian. Kinchen, a Tennessean, was an historian with an avid interest in Canadian and Confederate history. Kinchen was also interested in Canadian involvement in the Civil War. See Oscar Kinchen, *Confederate Operations in Canada and the North* (North Quincy, Massachusetts: Christopher Publishing House, 1970).

had arrived in the city around 1836 or 1837,⁹ but that there was no sign of him in any public records after 1841.

Had he moved to another city? *But where?*

Had he died? I could not find an obituary. When I entered "A.D. Smith" into the search engine for Cleveland's necrology files, I was greeted by 6,294 possibilities. As probate records yielded the same volume of possibilities, I could not locate a marriage or death certificate. It was impossible to make progress without a first name, and so I consulted a baby name book and spent hours entering random combinations into online genealogy search engines, guessing at possible names for the mysterious Mr. Smith, an exercise that was both frustrating and futile. A.D. Smith was listed 28 times in the *Annals of Cleveland*, a compendium of Cleveland newspaper articles, and I held hope that one of those references would produce a name. They did not, although they did indicate that Smith worked as Cleveland's justice of the peace for a time. Census records revealed that an A.D. Smith living in Cleveland in 1840 was born between 1810 and 1820,¹⁰ but even this document failed to provide a full name. My advisor surmised that Smith's obvious reluctance to use his full name could indicate that it was unusual in some way, therefore making Smith loath to commit it to paper. I scoured lists of Biblical names, looking for something that might have made this man averse to sharing it with the public. *Abaddon?* *Azariah?* *Abednego?* The mystery only deepened, furthering my craving to know my subject's name.

⁹ Julius P. Bolivar MacCabe, *Cleveland Directory: A Directory of the Cities of Cleveland & Ohio, for the Years 1837-38* (Cleveland: Sanford & Lott, Book & Job Printers, 1837), 93.

¹⁰ U.S. Federal Census, Cleveland, Cuyahoga County, 1840.

The *Annals of Cleveland* contained advertisements for lectures Smith gave in the late 1830s about the emerging “science” of phrenology. In these ads, Smith appeared as Dr. Smith. Was he a physician? There was no simple way to know, as records for the American Medical Association do not go back that far. Besides that, many people in the 1830s who called themselves doctors were not trained professionals. Smith was not listed in the *Encyclopedia of Cleveland History* or the *Dictionary of Cleveland Biography*. He was mentioned in *Cleveland: The Making of a City*, but only as a trustee of the Cleveland Female Seminary.¹¹ I thought that if I could locate the records for the seminary, that I might find a more complete reference to Smith’s name. Despite my efforts, no one could tell me where its records might be and most often archivists confused Smith’s seminary with a successor built on the same site.

I also tried to search Smith through his involvement in the Hunters’ Lodge, but as it was a secret society, few papers survived in Ohio and some of these were written in code.¹² With the assistance of a computer hacker,¹³ I was able to decode some of the documents, but again, while Smith was mentioned as President, his full name did not appear. I surmised that colonial officials in Upper Canada must have known Smith’s particulars, but correspondence from the time period in Library and Archives Canada simply referred to him as Smith, or President Smith.¹⁴ There was nothing to indicate his given name.

¹¹ William Ganson Rose, *Cleveland: The Making of a City* (Kent, Ohio: Kent State University Press), 155.

¹² Coded letter of appointment of Lucius V. Bierce by A.D. Smith. [August 18, 1838], Bierce, Lucius Verus (1801-1876) MSS 1081, Container 1, Folder 4.

¹³ I do not credit this individual at his request.

¹⁴ Rebellion of 1837-1838, Upper Canada Collection. R5201-0-6-E (formerly MG24-B97). Library and Archives Canada, Ottawa.

I then tried to find Smith by searching his address, which I knew from Cleveland's city directory to have been No. 9, Farmers' Block, but the address no longer exists and when I ventured downtown in the December snow to locate it, I could not find any clues in the parking lot that had replaced the original neighbourhood. I thought perhaps I might find my Smith through other Smith families: Archibald Smith and Ann Smith and various other Smiths appeared regularly on tax records, but not A.D. I checked property assessments from 1836 to 1841. I also checked promissory notes, small claims, and trespass and assault records. The township paid an A.D. Smith \$1.50 in 1837, but the receipt did not say why or provide any clues to his full name. As I now knew, Smith had been a justice of the peace; thus, in locating his docket books at the county archives in Cleveland, I was certain that I had found my man.¹⁵ Alas, in about 1,500 pages of his docket books, he signed nearly every page and even signed some pages twice — but not as I had hoped. When I got about half way through or so, I realized that he was never going to sign his full name, and sure enough, hours later, my hands blackened from the dirt-encrusted pages, I could not find a single instance where he had signed using his full name, meaning that I still could not corroborate the volunteer's suggestion that his name was Abram.

No wonder this man has remained a mystery, I thought. I grew envious every time I read books in which fortunate historians reveled in a surplus of documents, untangling their characters' tales with ease and conviction. Not only did the world know nothing about A.D. Smith, but now, as his would-be biographer, neither did I. I considered a favourite tale of fiction by Josephine Tey, *The Daughter of Time*. In it, Inspector Alan

¹⁵ Justice of the Peace Docket, Cleveland Township, 1837-1842. A.D. Smith. Cuyahoga County Archives, Cleveland, Ohio.

Grant of Scotland Yard investigates a historical mystery from his hospital bed after a portrait sparks his interest :

Grant paused in the act of turning the thing over, to consider the face a moment longer. A judge? A soldier? A prince? Someone used to great responsibility, and responsible in his authority. Someone too-conscientious. A worrier; perhaps a perfectionist. A man at ease in a large design, but anxious over details. A candidate for gastric ulcer. Someone, too, who had suffered ill-health as a child. He had that incommunicable, that indescribable look that childhood suffering leaves behind it; less positive than the look on a cripple's face, but as inescapable. This the artist had both understood and translated into terms of paint. The slight fullness of the lower eyelid, like a child that has slept too heavily; the texture of the skin; the old-man look in a young face. He turned the portrait over to look for a caption. On the back was printed: Richard the Third. ... So that was who it was. Richard the Third. Crouchback. The monster of nursery stories. The destroyer of innocence. A synonym for villainy.¹⁶

The bedridden Grant, haunted by the portrait, with the help of nurses and friends, investigated whether Richard III really did murder his two nephews. In the end, he discovers to his disappointment that he was not the history detective he thought himself to be. In his effort to combine his skills as a detective with the interpretative demands of the historian, he found that he was entirely out of his element. Sleuthing and history were two completely different worlds:

Grant gave up. History was something that he would never understand. The values of historians differed so radically from any values with which he was acquainted that he could never hope to meet them on any common ground. He would go back to the Yard, where murderers were murderers and what went for Cox went equally for Box.¹⁷

Sitting in the Detroit airport on a stopover from Cleveland to Ottawa, I knew exactly how Inspector Grant felt. I was coming home virtually empty-handed, for the man named Smith had eluded me again and again. In James West Davidson and Mark Hamilton Lytle's ever-popular text, *After the Fact: The Art of Historical Detection*, the

¹⁶ Josephine Tey, *The Daughter of Time* (London: Arrow Books, 1951), 28.

¹⁷ Tey, *The Daughter of Time*, 221.

authors recount the story of Silas Deane, a “second-rank diplomat for the United States” during the American Revolution.¹⁸ Davidson and Lytle cleverly recount the mystery of Deane’s life. As a diplomat in France, letters he had sent to American friends recommending that his home country sue for peace were seized by a third party and subsequently published in a New York newspaper shortly after the American victory at Yorktown. Branded a traitor at home, Deane fled to Flanders, drank heavily and sought refuge in the boarding house of a prostitute. At the end of his financial rope several years later, Deane attempted to return to America but became ill on board and died before his boat docked.

Rumours swirled that Deane had killed himself, though, as Davidson and Lytle explain, Deane’s involvement with a double-agent, Edward Bancroft, may have led to a more sinister demise. Bancroft, who was spying for the British during the Revolution, may have feared Deane, a close friend possibly aware of Bancroft’s double-crossing ways, would divulge what he knew to American officials and identify him as a traitor to the United States. This would have scuttled all hope of a lucrative monopoly in dyes Bancroft was seeking from the British Parliament. As Bancroft was also an expert in poisons, Davidson and Lytle advance the theory that he may have silenced Deane through murder.¹⁹ As the authors point out, however, there is no way to know for certain (at least not yet), how Deane died, but his story is still worth telling for what it illustrates about the difficulties of historical detective work:

Being courier to the past is not enough. For better or worse, historians inescapably leave an imprint as they go about their business: asking interesting questions

¹⁸ James West Davidson and Mark Hamilton Lytle, *After the Fact: The Art of Historical Detection* (New York: The McGraw-Hill Companies, Inc., 2005), xv.

¹⁹ Davidson and Lytle, *After the Fact: The Art of Historical Detection*, xv-xxxi.

about apparently dull facts, seeing connections between subjects that had not seemed related before, shifting and rearranging evidence until it assumes a coherent pattern. The past is not history, only the raw material of it.²⁰

In my search for A.D. Smith, I had couriered pieces of the past, but was still looking for enough of them to compose a history. Fortunately, it started to unfold not long after I returned from Cleveland. Even though I had no way of knowing if Abram were the correct name, I went back to the Internet again, trying numerous sites before I hit a match on www.politicalgraveyard.com, which included a listing for an Abram Smith — not in Ohio this time, but in Wisconsin. Further investigation led me to a website for the Wisconsin Supreme Court, where an Abram D. Smith was included in biographical sketches of former Supreme Court justices. This Abram D. Smith had been born in 1811, which was a possible match for the A.D. Smith I had found in the Cleveland census. Although I did not like to consider it, there was still a troubling possibility that I was examining two Smiths simultaneously since I had as yet no concrete evidence to suggest otherwise. A.D. Smith of Cleveland and Abram Smith of Wisconsin could have been the same man, which was what I hoped, or they could have been two very different people with the same initials. I needed some shred of proof that would either link the Ohio Smith and the Wisconsin Smith, or differentiate between the two. Finally, after hours of frustration, I found the necessary clue in an obscure book, long out of print. *The Story of a Great Court*, a history of the Wisconsin Supreme Court published in 1912, cited an even more obscure publication intended for lawyers of the nineteenth century — *The Green Bag*. Its Volume 9 in 1897 provided the evidence I sought: “Before coming to

²⁰ Davidson and Lytle, *After the Fact: The Art of Historical Detection*, xxix.

Milwaukee (Smith) was a justice of the peace in Cleveland, Ohio.”²¹ From this, I was able to extend the chronology of Smith’s life still further, learning that after being a judge in Wisconsin he had worked as a federal tax commissioner in the occupied Sea Islands of South Carolina during the Civil War. Still anxious to verify that the Smith I knew in Cleveland was the one I had now found in the South, I provided two different signatures, one from Ohio and one from South Carolina, to a handwriting expert. When she lined up the letters, scratched onto paper more than a century ago, nearly everything aligned, though there were subtle changes. Since the signatures were made nearly three decades apart, the analyst suggested that any variation could be attributed to “the impetuosity of youth.”²²

It was at this point that I finally felt confident that I had found the trail of A.D. Smith, even though it remained difficult to follow because Smith was never still for long and ultimately worked in four states before his life’s journey came to a sudden end, like Silas Deane, under suspicious circumstances aboard a ship. Armed with this basic chronology of Smith’s life, and having found a portrait of Smith to spur me on much like Inspector Grant in *The Daughter of Time*, I was able to pursue the fine details of the mystery, gradually making my way to the places Smith had known — to the tiny towns of his youth in upstate New York, to the main square in Cleveland that was only a short walk from where his home once stood, to the streets of Milwaukee and Madison where he

²¹ John Bradley Winslow, *The Story of a Great Court: Being a Sketch History of the Supreme Court of Wisconsin, Its Judges and Their Times from the Admission of the State to the Death of Chief Justice Ryan* (Chicago: T.H. Flood & Company, 1912), 41.

²² Correspondence and telephone conversations with Sheila Lowe of Sheila Lowe and Associates, spring 2003. Lowe is a U.S.-based handwriting expert who has been certified by the American Handwriting Analysis Foundation and the Society of Handwriting Analysts. She is a member of the National Association of Document Examiners.

had worked as a lawyer and judge and to the South Carolina church where, likely drunk, he had staggered to the pulpit to deliver a sermon to the freedmen of the Sea Islands. In each place, it was the mystery that propelled Smith's story forward in my mind — the desire to ask questions and to construct answers based on the emerging evidence.

Thinking back to the advice of Michael Wayne, to the case of Silas Deane, and even to the fictional travails of Inspector Grant, it dawned on me that, unbidden, a common and natural thread was beginning to weave its way through my work, through the life of the man named Smith. What made his story (and the stories of so many secondary characters) so compelling, so worthwhile in the end, was its ability to captivate us with the powerful siren's call of a mystery waiting to be solved. That mystery forces us, as historians, to look for clues not only in the raw evidence untouched by time, but also through an examination of the characters of the day through the lens of hermeneutics: what would they have seen, felt and understood about their circumstances? What made them behave the way they did? What motivated Abram Smith, and above all, what inside his character had pushed him from city to city, state to state? In his own library, Smith kept a copy of Cervantes' *Don Quixote* — and in many ways he had lived his own Quixotic journey. Considering how far he travelled, and how often, Smith emerged from the surviving records as a nineteenth-century knight-errant. In the name of all that was good, the medieval knight-errant saw himself as a wandering hero who championed the oppressed — a brave man who sought and fought the dragons and giants of corruption and immorality. Rushing to new frontiers to fight for his own, sometimes misguided, perceptions of justice and truth, Smith behaved like a knight-errant for

republicanism and justice, battling the most fearsome foes of an American Yankee: monopolistic banks that exploited workers, monarchical government, and race slavery.

As I trudged through a Wisconsin cemetery in search of Smith's grave, I knew for certain that mystery was very much the province of history — it would be difficult to pinpoint the motivations behind Smith's errant ways, but surely it was his quest for personal greatness that imbued his story with timeless meaning. I searched along winding pathways for some time before I tracked the grave's location to Lot 2, Block 1, Section 26 of Forest Home Cemetery in Milwaukee. The grave, a tall obelisk that overshadowed the headstones of Abram Smith's wife, Mary Augusta, and son, Marius, was under the boughs of a towering old oak. I had seen a picture of the grave before, but this was the first time I had visited. As I knelt by the grave and traced the epitaph with my fingers, there was no sign that anyone had stopped by of late. There were no withered flowers and, for a moment, I cursed that I had not stopped by a florist beforehand.

Someone watching me that day in March 2004 could be forgiven for thinking that I was there to pray for an ancestor, when, in fact, I was mostly preoccupied with hopes that I would one day be able to tell the story of this man who was perpetually on the move, leaving few traces behind. For unlike many of biographers of nineteenth century notables, who often knew their subjects or were related to them²³, Abram Smith is not my ancestor. Yet, like other biographers before me, I felt a connection to Smith that was at once real and deep.²⁴ This man, I realized, had convinced others of the need to change the

²³ A.O.J. Cockshut, *Truth to Life: The Art of Biography in the Nineteenth Century* (London: William Collins Sons & Co. Ltd., 1974), 13.

²⁴ For the account of a biographer who felt the same way about her subject, see Jill Lepore, "Historians Who Love Too Much: Reflections on Microhistory and Biography." *The Journal of American History*, 88, no. 1 (2001) 129.

course of both Canadian and American history. A man of great strength and conviction, it seemed impossible to me that he had been reduced to a forgotten grave in Milwaukee — no book, no statue, no postage stamp to rescue him from obscurity.

An antebellum Don Quixote, Abram Smith followed a journey to restore republican values and justice: first as the man who wanted to be the President of Canada in the late 1830s, next as the judge who touched off a legal firestorm by declaring the Fugitive Slave Act unconstitutional in the 1850s, and finally as the tax commissioner who demanded that freed blacks have an opportunity to pre-empt land in South Carolina during the Civil War in what historian Willie Lee Rose called a “Rehearsal for Reconstruction.”²⁵ Smith understood law and classical languages, named his son after Marius, the great Roman general and consul, read poetry and Darwin²⁶ and orated for hours. Clearly a man of intelligence, wit and passion, yet so many times he had fallen short, in both his political and personal life. He could be quarrelsome and supercilious, an insufferable blowhard. Though a Democrat, he was alleged to have hated Catholics,²⁷ was charged with taking a \$10,000 bribe,²⁸ and lectured on temperance while battling his own alcoholism.²⁹

The dichotomies of Abram Smith’s personality, coupled with the fact that he was only a footnote to everyone else, added up to a mystery and a story worth telling. At a time when shelves are populated by dozens of biographies of the Great Men, another

²⁵ Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (New York: Vintage Books, 1964).

²⁶ Abram Daniel Smith, Last Will and Testament, recorded October 8, 1856. Probate Collection, Milwaukee County Historical Society, Milwaukee, Wisconsin.

²⁷ *Milwaukee Sentinel*, July 25-27, 1848.

²⁸ *Milwaukee Sentinel*, Feb. 23, 1858.

²⁹ *Milwaukee Sentinel*, Oct. 26, 1842.

group of men and women linger off stage, waiting patiently for someone to resurrect their stories, dust them off, and hold up their life experiences among all the retellings of the lives of powerful emperors, politicians and generals. As prize-winning journalist and biographer Jean Strouse has written, at one end of the spectrum "are exemplary historical figures whose lives take on mythic proportions in the floodlights of public recognition" while on the other, "census figures made out of obscure lives that now seem exemplary precisely because they were commonplace."³⁰ The category of lives that falls between the two, however, is sometimes overlooked. Strouse notes:

In between is a twilight zone, a semiprivate realm occupied by minor poets, lesser dignitaries, hands that rocked important cradles, single flashes of success or fame, and the friends, relatives and disciples of great men and women Looking at the lives of individuals in this group enables us to examine two dimensions of history at once, both the public arenas of great figures and events, and the hidden dramas of ordinary private life.³¹

A.D. Smith lived in this biographical twilight zone. Though he achieved some prominence, he failed to make a name for the ages. Often, just when it seemed he might be gaining some notoriety, he slipped into obscurity yet again: In Cleveland, his tenure as President of Canada was short-lived and went unnoticed by most. In Wisconsin, where his name was once bruited about as a possible vice-presidential candidate,³² his deeds failed to register; and in South Carolina, he held a federal appointment under Lincoln, yet played little more than a cameo role in early attempts at Reconstruction. It is clear that he was comfortable in the public sphere: he sought public office at the local, state and even federal levels. He wrote numerous letters to newspaper editors. He lectured publicly. He

³⁰ Jean Strouse, "Semiprivate Lives," in *Studies in Biography*, ed. Daniel Aaron (Cambridge: Harvard University Press, 1978), 115.

³¹ Jean Strouse, *Studies in Biography*, 115.

³² *Milwaukee Sentinel*, May 2, 1859.

participated in well-attended public events. He was always, always on the move, witnessing some of the great events of his time in a nimble sort of nineteenth-century Forrest Gump³³. Smith died a quiet death at the end of the Civil War and, though his life was briefly celebrated in obituaries in Wisconsin, he was quickly forgotten soon after. For all he did, Smith never really stayed on the historical radar long enough for anyone to have contemplated him as a subject of a biography, or, if they did, they soon gave up upon discovering the paucity of sources. Abram Smith, to be blunt, was never a Great Man, even though he lived his life trying to become one.

What, then, is the value of telling the life story of someone who played a small, unrecognized part in history? I recalled the story of Silas Deane, who certainly qualified as a secondary character. Yet, through the use of historical detection, this second-rate diplomat has been rendered noteworthy by Lytle and Davidson. Others, too, have pulled sleuthing from their historical toolboxes,³⁴ experimenting with the combination of

³³ Robert Zemeckis, Tom Hanks, Robin Wright Penn, Gary Sinise, Sally Field and Paramount Home Video. *Forrest Gump*. 1 videocassette, (142 min.) videorecording. Hollywood, CA: Paramount Home Video, 1994. In this Academy Award-winning film, the main character, played by Tom Hanks, travelled across the United States and witnessed some of the most important events of the mid-twentieth century, even being captured on film with presidents and various other icons of entertainment and sports, yet still managed to live out his life in obscurity.

³⁴ The Salem Witch Trials have provided endless fodder for historians playing detective. See Mary Beth Norton, *In the Devil's Snare: The Salem Witchcraft Crisis of 1692* (New York: Alfred A. Knopf, 2002) and Carol F. Karlsen, *The Devil in the Shape of a Woman: Witchcraft in Colonial New England* (New York: W.W. Norton & Company, 1987). Other mysteries that continue to fascinate historians and readers include the Boston Massacre (see Hillier B. Zobel's definitive work, *The Boston Massacre* (Norton, 1970) and the tragic tale of rape and lynching in Steve Oney, *And the Dead Shall Rise: The Murder of Mary Phagan and the Lynching of Leo Frank* (New York: Random House, 2003). For a deeper look at questions of crime and the mysteries of the law see Lawrence Friedman, *Crime and Punishment in American History* (New York: Basic Books, 1993). Friedman examines enduring courtroom mysteries such as the Salem witch trials, the Lindbergh kidnapping and the infamous Lizzie Borden.

secondary characters and deeply puzzling facets of who they were, what made them tick and sometimes even what killed them. In *Killed Strangely: The Death of Rebecca Cornell*, historian Elaine Forman Crane examined not just the life of Rebecca Cornell, a New England septuagenarian who turned up dead in her own home in 1673, having suffered terrible burns, but also the social aspects of death. A suspect in the case was Cornell's son Thomas. Crane asked:

Was Thomas Cornell guilty? One reading of the evidence allows us to absolve Thomas Cornell of stabbing his mother and burning her body. Another suggests that Rebecca may have committed suicide or that someone else murdered her. Or her death may even have been accidental Readers looking for a thesis, an answer, a satisfactory conclusion to the main event will be disappointed, since the *Rashomon*³⁵ qualities of this case preclude any easy solution.³⁶

Crane propels her narrative through the circumstances surrounding Rebecca's death and its aftermath, ultimately telling a tale about seventeenth-century community and familial relationships through the lens of mystery. Piecing together primary documents with current scholarship about the time and place, the historian is able to offer analysis while also leaving enough room for reader interpretation. In the end, the old woman remains very much a secondary historical figure, yet her story merits telling, the author says, in part because it had been neglected and in part because of what interpretation of the mystery can reveal when we look closely enough:

Thomas Cornell may have killed his mother. On the other hand, it is possible he did not. Either way, the Cornell case is surely one of early New England's darker moments — and doubly so. The nature of Rebecca Cornell's death was ominous

³⁵ Akira Kurosawa, Toshiro Mifune, Machiko Kyo, Masayuki Mori, Takashi Shimura and Daiei Motion Picture Co. Ltd. *Rashomon*. 1 videocassette, (88 min.) videorecording. Kyoto, Japan: The Criterion Collection/HomeVision Entertainment, 1950. This dark film explores the story of a violent rape and a murder through the eyes of four defendants, leaving the viewer to decide which perspective reveals the truth.

³⁶ Elaine Forman Crane, *Killed Strangely: The Death of Rebecca Cornell* (Ithaca: Cornell University Press, 2002), 6-7.

to begin with, and the events surrounding the incident have languished in the shadows of historical obscurity. This is unfortunate since it is a compelling tale, one that begs to be told not only because of our fascination with violence at a distance, but because it involves complex historical issues about which there is rarely enough evidence to permit critical analysis.

Historian Michael Wayne also used the vehicle of detection in his 2001 book, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South*. In this work, which historian James McPherson hailed as a “detective thriller,” Wayne investigated the death of Duncan Skinner, a Mississippi overseer. Even though the death was originally ruled an accident, Wayne revealed that local planters believed Skinner was murdered by slaves egged on by a local carpenter. In his introduction, Wayne, much like Ambrose, recalled a life-changing episode in his own academic past that has affected the way he has approached history and that prompted his construction of the Skinner book as a mystery. He remembered as a student at Yale a seminar course in which a professor had dumped dozens of photocopied documents on a desk and had asked his students to recount what had really happened in the event described in the primary material. It was, Wayne wrote, “like being a raw recruit in a police force doing detective work under the supervision of a grizzled veteran.”³⁷ *Death of an Overseer* could not solve the puzzle of Skinner’s death since the evidence is inconclusive, but the mystery surrounding the case became an effective instrument for examining slavery and plantation society in the Old South.

Mystery need not be employed exclusively to investigate murder and mysterious deaths, either. In a recent *New York Times* bestseller, Edward Ball has used mystery in the National Book Award Winner, *Slaves in the Family* to relate his personal search for

³⁷ Michael Wayne, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South* (New York: Oxford University Press, 2001), 3-4.

his ancestors. The descendant of powerful South Carolina planters, Ball casts himself as a detective, seeking the answers to a story long hidden. The gift of a family history from his father set the author on his own detective story, often with painful results:

I know my father was proud of his heritage but at the same time, I suspect, had questions about it. The story of his slave-owning family, part of the weave of his childhood, was a mystery he could only partly decipher. With the gift of the book, Dad seemed to be saying that the plantations were a piece of unfinished business. In that moment, the story of the Ball clan was locked in the depths of my mind, to be pried loose one day.³⁸

Ball's search for the descendants of slaves his family once owned, old plantation property records and artifacts from "a bygone world"³⁹ met with such acclaim that he followed it up with *The Sweet Hell Inside: A Family History*,⁴⁰ which narrated the story of his African-American relatives, a side of his family he had not known before his quest for answers began several years earlier.

My own quest for answers has included research into Smith's demise, but as I ponder the circumstances of Smith's death, which are certainly unusual, I am far more preoccupied with questions of how he was a man of his time and the factors that set him on the road to that mysterious death aboard the steamer *Arago* in 1865. Structurally and in theoretical terms, then, this biography of Abram Smith will take the shape of a cultural biography, in much the same vein as David S. Reynolds' recent study of abolitionist John Brown.⁴¹ Reynolds writes:

Cultural biography is based on the idea that human beings have a dynamic, dialogic relationship to many aspects of their historical surroundings, such as

³⁸ Edward Ball, *Slaves in the Family* (New York: Ballantine Publishing Group, 1999), 8.

³⁹ Ball, *Slaves in the Family*, 15.

⁴⁰ Edward Ball, *The Sweet Hell Inside: A Family History* (New York: HarperCollins, 2001).

⁴¹ David S. Reynolds, *John Brown: Abolitionist, The Man Who Killed Slavery, Sparked the Civil War and Seeded Civil Rights* (New York: Alfred A. Knopf, 2005).

politics, society, literature, and religion. The special province of the cultural biographer is to explore this relationship, focusing on three questions: How does my subject reflect his or her era? How does my subject transcend the era — that is, what makes him or her unique? What impact did my subject have on the era?⁴²

The patterns of A.D. Smith's life trace his era in numerous ways. Born in 1811, he was very much a man of the Jacksonian era, a time that has been declared simultaneously gloomy and triumphal.⁴³ As Arthur Schlesinger, Jr., recorded in *The Age of Jackson*, it was a time of great political change and anxiety, and the slow death of the Jeffersonian ideal of an America of independent farmers, living peacefully on acreages across the countryside.⁴⁴ "The young republic faced its critical test," Schlesinger noted. "Could it survive the rule of the people? Or were Webster, Clay, Adams and the friends of Van Buren right in their anticipations of disaster?"⁴⁵

In *The Jacksonian Promise: America, 1815-1840*, Daniel Feller argued that though Americans in this era were grappling with rapid demographic and political change, they were also filled with optimistic anticipation and hope for their country. In describing the Jubilee celebrations that marked the fiftieth anniversary of the Declaration of Independence, Feller noted that most Americans present felt not a sense of foreboding about the future, but rather confidence and pride:

The chance still lay, as Paine had said in 1776, to 'begin the world over again.' That sense of possibility inspired optimism and exuberance. It also imparted an earnest and even terrible urgency.... Americans saw themselves at a prophetic

⁴² Reynolds, *John Brown: Abolitionist*, 9.

⁴³ See also Marvin Meyers, *The Jacksonian Persuasion: Politics and Belief* (Stanford: Stanford University Press, 1957). Meyers examines the inner conflict of the Jacksonians, looking at how they dealt with old ideals in a new age.

⁴⁴ Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945), 8.

⁴⁵ Schlesinger, *The Age of Jackson*, 7.

moment in history, with the fate of the country and even the world resting in their hands. Americans at the Jubilee felt the power to determine their future.⁴⁶

It was a time of fierce protectionism, migration and improvements in transportation. A.D. Smith was born into this world and, in various ways, reflected his challenged and conflicted times. He was raised in a Protestant home in an area of upstate New York that historian Whitney Cross memorably called the Burned-over District,⁴⁷ an area rapidly transformed by the Erie Canal that was swept up in the religious revivals⁴⁸ of the Second Great Awakening, “intensifying popular piety and leading to a multitude of new religious institutions. Projects for social reform germinated in the new environment of religious benevolence.”⁴⁹ Smith was an active participant in reform movements, and primary documents show that he was involved in efforts to promote temperance, education for young women and abolition. Smith undoubtedly reflected the optimism⁵⁰ of

⁴⁶ Daniel Feller, *The Jacksonian Promise: America, 1815-1840* (Baltimore: The Johns Hopkins University Press, 1995), 12-13

⁴⁷ Whitney R. Cross, *The Burned-over District: The Social and Intellectual History of Enthusiastic Religion in Western New York, 1800-1850* (New York: Harper & Row, 1950).

⁴⁸ A figure central to the Second Great Awakening was revival preacher Charles Finney. See Charles E. Hambrick-Stowe, *Charles G. Finney and the Spirit of American Evangelicalism* (Grand Rapids: Eerdmans, 1996) for a recent biography that has academic and popular appeal. See also Keith J. Hardman, *Charles Grandison Finney, 1792-1875* (Syracuse: Syracuse University Press, 1987) for an examination of Finney's life and theology.

⁴⁹ Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America*. (New York: Hill and Wang, 1990), pp 7-8.

⁵⁰ See also, Alice Felt Tyler, *Freedom's Ferment: Phases of American Social History from the Colonial Period to the Outbreak of Civil War* (Minneapolis: University of Minnesota Press, 1944). Tyler examines the optimism of the era and analyzes the impact of the Second Great Awakening on life in the nineteenth century.

his times and the “imminent perfection of human society under God’s guidance”⁵¹ was a goal that he clearly believed could be attained.⁵²

Smith also reflected an intense dedication to republicanism, a faith cherished by upstate New Yorkers. His home region had suffered tremendous hardship through the War of 1812, fostering an intense aversion to all things British. Smith’s desire to bring republican government to Canadians through his involvement in the Hunters’ Lodge was yet another example of how Smith was a man of his time, and a man of his place. Thus, Smith can tell us much about the times in which he lived. His life stands as an example of many of the movements of the antebellum era, including a sense of optimism about his own times — that, by the standards of his ideals, it was possible for an individual to effect change in his own society through sheer force of will and personal conviction.

In an era of constant upheaval, of mass migration towards the western frontier, A.D. Smith was very much a man of his time, his life marked by constant mobility as he sought to bring these ideals of optimism, reform and republicanism to four different states. A.D. Smith was a man in perpetual motion and a man who believed it was his duty as an American to take an active part in politics and in each of the communities in which he lived. Yet A.D. Smith was also a walking contradiction of many assumptions about the times. He drank, an addiction that may well have contributed to an early death, yet campaigned for temperance. His outspoken devotion to abolition and the rights of South Carolina’s population of freed slaves was also tempered by accusations early in his

⁵¹ Watson, *Liberty and Power: The Politics of Jacksonian America*, 8.

⁵² See also Paul E. Johnson, *A Shopkeeper’s Millennium: Society and Revivals in Rochester, New York, 1815-1837* (New York: Hill & Wang, 1978) for a look at the impact of revivals in one upstate town and for a cultural examination of Rochester in the context of the Burned-over District.

political career of nativism and a hatred of Catholics, creating a dynamic of a man who fought for the rights of some while actively blocking others. He was a Free-Soil Democrat who believed in States' Rights even when it was inconvenient doctrine for fighting slavery.

Despite — or possibly because of — his internal contradictions, A.D. Smith had an impact on his era. His work, along with that of Northern missionaries and other federally appointed agents, in the occupied Sea Islands of South Carolina from 1862 marked Americans' earliest attempt to offer equality of opportunity to the freed slaves and their progeny. A.D. Smith's most dramatic impact on his era was his controversial decision in *Ableman v. Booth*, the only case in which a state judge had the political temerity to declare repugnant the Fugitive Slave Law of 1850.

Beyond the mystery of his life, Smith's political character also provides fodder for the historian of a secondary subject. Everything Smith did was informed by a moral code that was developed as a young man and a product of the Jacksonian era. As historian Sean Wilentz notes, "the key to Jacksonian politics"⁵³ was:

... A belief that relatively small groups of self-interested men were out to destroy majority rule and, with it, the Consitution. The nonproducing few were able to oppress the productive many, the Democracy proclaimed, because of deliberate political corruptions that thwarted the great principle undergirding American government, popular sovereignty."⁵⁴

It was during this time that the central philosophy of Smith's life was formed, dictating an absolute commitment to championing the rights of those oppressed by the "nonproducing few" and upholding the beliefs of the far-left Democracy. It is through

⁵³ Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton & Company, Inc., 2005), 513.

⁵⁴ Wilentz, *The Rise of American Democracy*, 513.

this lens of radical Democratic politics that all actions taken by Smith — and reactions to him — must be seen. As one Democratic pamphlet in the mid-1850s noted, the “Democratic creed was the creed of Jefferson: Absolute acquiescence in the decisions of the majority, the vital principle of republics, from which there is no appeal but to force, the vital principle and immediate parent of despotism.”⁵⁵ A.D. Smith held firm to this vision of his party, and of his country, from the time he was a young Jacksonian until his early death at the end of the Civil War. His earliest known formal political affiliation was with the Locofocos of the late 1830s, a group with ties to the orthodoxy of leftist Workingmen’s parties that tended to be populated by “men whose careers were characterized by a ‘high incidence of social and occupational mobility.’”⁵⁶ At this time, A.D. Smith was a man whose career and social standing were ascendant — he was young, politically active and ambitious. He readily identified with the Jeffersonian spirit of the Locofocos, who believed they were “the original Democratic party”⁵⁷ and based their actions on principles of equal rights. Historian Carl Degler notes the party’s “declaration of principles”⁵⁸:

1st. ‘The true foundation of Republican Government is the equal rights of every citizen, in his person and property, and in their management.’ 2. ‘The rightful power of all legislation is to declare and enforce only our natural rights and duties, and to take none of them from us. No man has a natural right to commit aggression on the equal rights of another; and this is ALL from which the law ought to restrain him. Every man is under the natural duty of contributing to the

⁵⁵ James L. Huston, *Calculating the Value of the Union: Slavery, Property Rights, and the Economic Origins of the Civil War* (Chapel Hill: University of North Carolina Press, 2003).

⁵⁶ Edward Pessen, *Jacksonian America: Society, Personality, and Politics* (Homewood, IL, the Dorsey Press, 1969), 296.

⁵⁷ Carl N. Degler, *An Inquiry into the Locofoco Party*. Master’s diss., (New York: Columbia University, 1947) 97. Emphasis in the original.

⁵⁸ Degler, *An Inquiry into the Locofoco Party*, 97.

necessities of society; and this is all the law should enforce on him. When the laws have declared and enforced all this, they have fulfilled their functions.’⁵⁹

“It turned out,” historian Edward Pessen has noted, that the Locofocos “had no permanent friends or enemies, only permanent attachment to their principles.”⁶⁰ It is certainly true that while the Locofocos were a relatively short-lived political force, their guiding principles lived on in Smith decades after he spoke at their rallies in Cleveland, Ohio. In fact, this attachment to far-left Democratic politics can be seen throughout his life in one form or another, often in direct conflict with those around him.

In this light, then, it is hardly surprising that his actions rubbed his contemporaries the wrong way, putting him in a radical fringe movement that attempted to overthrow colonial governments in Canada, on the wrong side of the United States Supreme Court in *Ableman v. Booth* and landing him during the Civil War in federally occupied South Carolina, about as far away from the Washington locus of power as possible. Smith’s principles, formed in his early embrace of Locofocoism, had the effect of alienating him from many of those around him. Responses to him were seldom ambiguous and some were openly hostile towards a man whose Locofoco tendencies evolved over the course of his life, leading him down a radical path that most closely aligned with the Barnburner faction of the Democratic Party⁶¹ in the 1840s and the radical fringes of the Republican Party of the 1850s. The Barnburners were Van Buren Democrats so named for their radicalism, allegedly inspired by the willingness of one farmer to burn down a barn in

⁵⁹ Degler, *An Inquiry into the Locofoco Party*, 97.

⁶⁰ Pessen, *Jacksonian America*, 296.

⁶¹ For a comprehensive examination of radicalism and labour history in New York City in the period of time leading up to 1850, see Sean Wilentz, *Chants Democratic: New York City & the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984).

order to rid it of rats.⁶² Like the Locofocos before them, Barnburners “revealed a generally restrictive economic outlook and a suspicion of monopoly, loose banking practices, paper money, and speculation; they became the spokesman for ... small farmers and mechanics.”⁶³ These radicals quickly garnered a reputation for their “uncompromising determination, even at risk of total loss; practitioners of the art of the impossible,”⁶⁴ a reputation that accurately describes the personality of Smith, who in the end faced the loss of his career over principles that never endeared him to his peers. According to one acquaintance, even the thought of Smith made him “want to spit.”⁶⁵ The central theme that emerges from this biography is plain: Smith’s ideas were too extreme, his acceptance of blacks and his willingness to appropriate States’ Rights ideology in their defence too idiosyncratic and his politics simply too corrupt for many to swallow. As one man who clashed with Smith said of his plans to secure property for freed slaves in the Sea Islands of South Carolina, it “out radicals all the radicalism I ever heard of.”⁶⁶

It would seem likely that Smith was cognizant that what he sought to do on many occasions might be considered radical by some, but for him it was justified by a sense

⁶² There are several explanations of how the Barnburner name came to be, though this particular version is by far the most prevalent. In his *New Political Dictionary*, William Safire notes the phrase may go as far back as 1629, when Thomas Adams noted “The empiric to cure the fever, destroys the patient; so the wise man, to burn the mice, set fire to his barn.” See William Safire, *Safire’s New Political Dictionary: The Definitive Guide to the Language of Politics* (New York: Random House, 1993), 45.

⁶³ Joseph G. Rayback. *Free Soil: The Election of 1848* (Lexington: University Press of Kentucky, 1970).

⁶⁴ William Safire, *Safire’s New Political Dictionary: The Definitive Guide to the Language of Politics* (New York: Random House, 1993), 45.

⁶⁵ *Milwaukee Sentinel*, Aug. 2, 1848.

⁶⁶ William Henry Brisbane to Salmon P. Chase, February 15, 1864. The Salmon P. Chase Papers, John Niven, ed., (Frederick, Maryland: University Publications of America, 1988). 43 microfilm reels. Hereafter, SCP.

that he was guided by a higher purpose. In many cases, Smith's unfailing sense of justice, his own distinctive, moral compass of radicalism, dictated that the end justified the means: the death of innocent men was justifiable if it meant the overthrow of despots blocking democracy in the Canadas; violating federal law was justified if it meant taking a stand against slavery; accepting bribes in railway bonds was justified if it meant that the tracks went through his hometown of Milwaukee instead of rival Chicago; sinking his political career was justified if it meant upholding the natural rights of African Americans. Smith apparently believed that his actions on behalf of republican justice, as he saw it through the prism of radical Jacksonianism, would not only win him public favour in his own time but also the admiration of generations to come. And yet who today, or in any decade, would admire all he stood for — for racial equality, yes, but for invading a friendly neighbouring country? For opposition to the iniquitous Fugitive Slave Act, yes, but for citing *States' Rights*, the intellectual and constitutional bulwark of slavery as justification for nullifying the Act? Smith's dichotomies now strike us as either perverse or preposterous perhaps only because we live in a world so radically transformed by the collapse of the antebellum party system, by the Civil War, by emancipation and by the unification and democratization of Canada that we can scarcely imagine the likes of A. D. Smith — at least not clothed in the respected garb of justice of the peace, supreme court justice, or United States tax commissioner.

To study Smith is to study a mindset now lost; his career helps us to add another fracture line to the antebellum debate over slavery that splintered the Democratic Party, even as *States' Rights* concerns still made it possible for some, including Smith, to take the final step of becoming a Lincoln Republican. To study Smith is also, moreover, to

study the mindset of American mission.⁶⁷ After all, it was his interest in “liberating Canada” that initiated this study, just as others will investigate in due course those who “liberated Iraq” in 2003. It is vital to understand politicians like Smith — to learn how the reform impulse that led them to promote racial and gender equality also led them to international intervention and war.

To illuminate this man fully, it is important to pay attention to form as well as to content. Reynolds’ description of cultural biography — how Smith reflected, transcended and contributed to his era — was a start, but the form I was using to explore his life, biography, was also of significance as I moved forward with my work. As much as I sought to address Smith’s anonymity in American history, and his particular brand of radical politics, I was also conscious of pitfalls inherent in my interpretation of his life. The subject of evidence is obviously key to all biographers, and something that I have learned to deeply appreciate through the course of my own research. As biographer and historian Paula Backscheider has noted, “just as poets court, bless, fear, and rail at the Muses, so biographers relate to evidence.”⁶⁸ The trail of clues left by Smith is fragmented. His parents, for example, have remained untraceable, and no archival sources have yielded clues about the character or personality of his wife, Mary Augusta Smith. There also remain unexplorable gaps of time in A.D. Smith’s life. It is his constant restlessness — between careers, between cities and states — that ultimately compromises

⁶⁷ For further reading on this “sense of mission,” see Edward McNall Burns, *The American Idea of Mission: Concepts of National Purpose and Destiny* (New Brunswick, N.J.: Rutgers University Press, 1957). While McNall’s work is dated, a more recent exploration of such ideas can be found in Michael Mandelbaum, *The Case for Goliath: How America Acts as the World’s Government in the 21st Century* (New York, Public Affairs Books, 2006).

⁶⁸ Paula R. Backscheider. *Reflections on Biography* (London: Oxford University Press, 1999), 61.

the ability to tell his story fully. Yet, as Robin Winks suggests in *The Historian As Detective*, it is the missing pieces of the story, and the knowledge that more pieces can be found, that contribute to the irresistible mystery that is part of the allure of biography:

That single piece of evidence by which a lifetime of research falls into place, seldom exists, for the historian does not make his case, plea for his defendant, or prosecute his master villain on the basis of one discovery. The historian works by accretion, adding a bit here and a piece there, until a reasonable likeness of the subject of his pursuit begins to emerge.⁶⁹

Backscheider, in her *Reflections on Biography*, agrees that it is the search for evidence that provides the biographer with a “fierce struggle.”⁷⁰ As she points out, judging which evidence can be trusted — how we ultimately understand things to be true — varies from discipline to discipline. The scientist, she notes, has specific modes of understanding knowledge; only some information is categorized as empirical or inherently trustworthy.⁷¹ The historian, by contrast, is challenged by a much wider expectation of interpretation. Gaps in documentary proof necessitate interpretation as well as silence, as historian Michael Wayne concluded in having to leave the mystery of his biography, the murder of an overseer, unsolved:

Historians are not allowed to introduce fictional places or characters or events into their accounts. Nor may they use invented dialogue ... these restrictions are the price historians believe they must pay to help ensure that illusion does not overtake reality in their attempts to reconstruct the past. But the rules have an ironic side effect. Because of the constraints under which they operate, historians rarely are able to produce narratives as fully realized or richly textured as those dreamed up by skilled novelists. Call it an occupational hazard.⁷²

⁶⁹ Christopher Morley, “The Secret of the Ebony Cabinet: A Search for ‘Lost’ Manuscripts — from the Preface to Boswell’s London Journal (1762-1763)”, in *The Historian as Detective: Essays on Evidence*, ed. Robin W. Winks (New York: Harper & Row, 1968), 89.

⁷⁰ Backscheider, *Reflections on Biography*, 80.

⁷¹ Backscheider, *Reflections on Biography*, 81.

⁷² Wayne, *Death of an Overseer: Reopening a Murder Investigation from the Plantation South*, 185.

Among the occupational hazards, then, is the danger that our interpretations lead us astray, or solve the mysteries in ways that do not do the subject justice. Pulitzer Prize-winner William McFeely pondered this difficulty in his biography of General Ulysses S. Grant, in which he wished to tell “a story of the quest of an ordinary American man in the mid-nineteenth century to make his mark.”⁷³ That quest was part of McFeely’s own “exciting journey,”⁷⁴ one he shared with readers by revealing his own theories about Grant’s inspiration. It was, McFeely concluded, the desperate fear of failure, and having known that failure, that gave Grant the determination to push ever forward to greater and greater roles — from common soldier, to General, to President.⁷⁵ Yet, McFeely cannot *prove* this hypothesis, and it is this inherent personal mystery of the character of every human that makes a new biography of Grant, about whom there are many biographies, a compelling read. McFeely concludes:

What is there that we as writers, as readers, can trust in the re-creation of a life? It seems to me, finally, that at least a hint of an answer lies in the riddle, ‘Why biography?’ Impeccable research, although absolutely essential, does not alone insure that trust. There is another ingredient, one that I think is hinted at by our question, ‘Why biography?’ To the subject must come the basic human curiosity about our fellow humans.⁷⁶

The life of A.D. Smith stirs that basic human curiosity. It poses questions about the radical politics of the nineteenth century and how men of extreme views, like Smith, were seen by their contemporaries. It asks us to contend with questions of human failure and the almost feverish desire to avoid it through a constant agitation and movement that

⁷³ William S. McFeely, *Grant: A Biography* (New York: W.W. Norton & Company, 1981), xiii.

⁷⁴ William S. McFeely, “Why Biography?” in *The Seductions of Biography*, eds. Mary Rhiel and David Suchoff (New York: Routledge, 1996), ix.

⁷⁵ McFeely, *Grant: A Biography*, xiii.

⁷⁶ McFeely, *The Seductions of Biography*, xiii.

was so common in the era of the “common” man. This movement creates the mile markers for the story of the errant, questing and Quixotic life of A.D. Smith and his times. What follows is my attempt, in the words of Stephen Ambrose, to tell that story right.

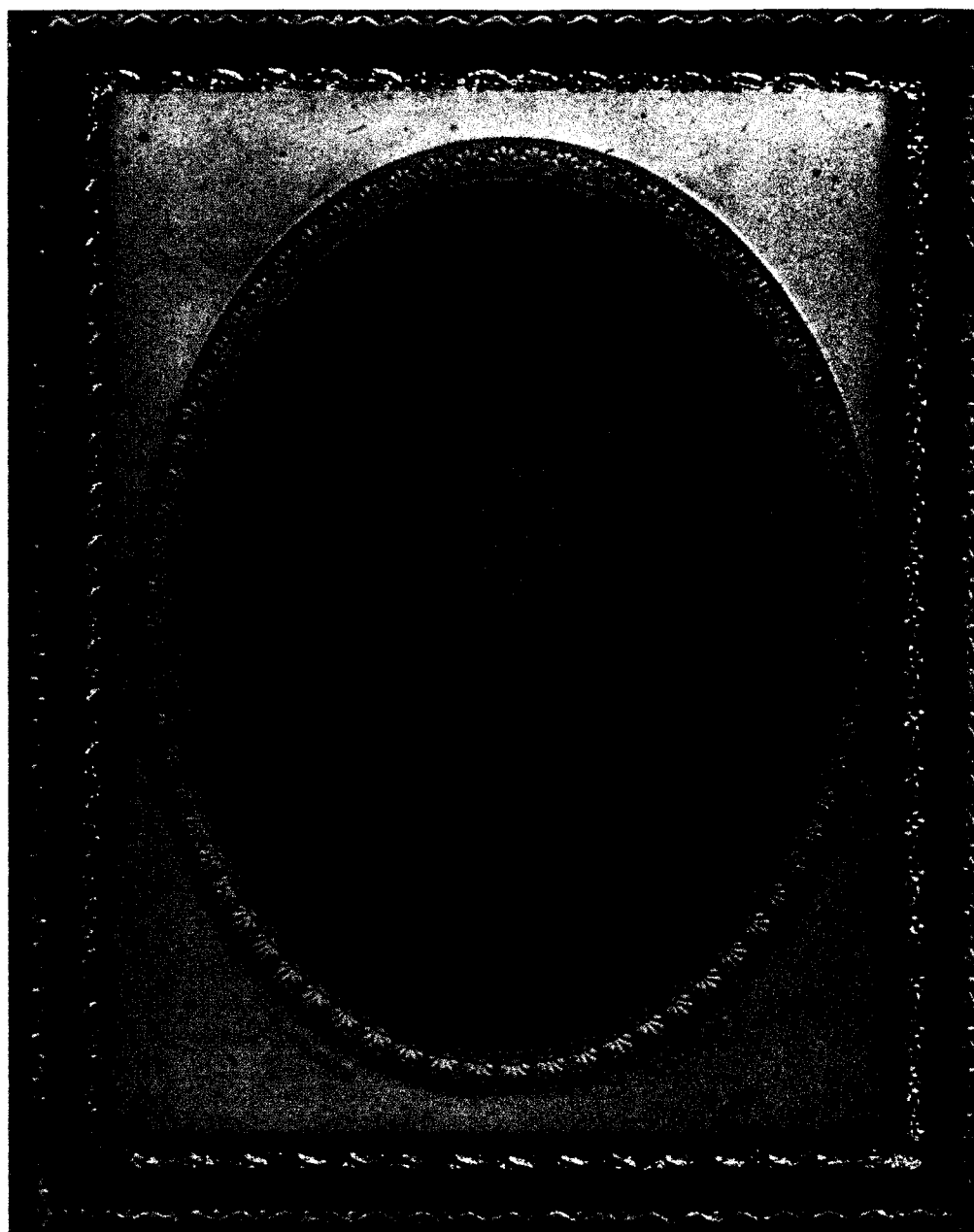


ILLUSTRATION 1: A daguerreotype of Smith taken in the 1840s. From the collection of the Wisconsin Historical Society, Madison, Wisconsin.

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Chapter 2

The President of Canada

Had the Hunters succeeded, some of their leaders might have been awarded a place in history alongside such heroes as Sam Houston, James Bowie and David Crockett, if not even Washington, Lafayette and other immortals of the American Revolution.

—Oscar Kinchen, *The Rise and Fall of the Patriot Hunters*, 1956¹

The year 1811 is not generally remembered as a year of tremendous significance in American history. And yet it was the year of the Battle of Tippecanoe, of freakish earthquakes in Missouri and of slave revolts in Louisiana. It was also the year that several people who would make their mark on the century ahead were born: Charles Sumner, Horace Greeley, Harriet Beecher Stowe — and Abram Daniel Smith, the New Yorker who went on to become the President of Canada.

It was a time, writes historian Gordon S. Wood, when the United States was still grappling with the aftermath of the Revolution, and the future uncertainties of the young republic:

[As] Americans were coming to appreciate their capacity to mold and manipulate the culture of their new Republic, they were less and less sure they had that capacity under control. They knew the world had changed and changed radically since the Revolution, but had it changed in directions they had intended? By the early nineteenth century, America had become a huge bustling, boundless nation fascinated with its own expansion — ‘an expansion of population, of resources, of

¹ Oscar Kinchen, *The Rise and Fall of the Patriot Hunters* (New York: Bookman Associates, 1956), 6.

territory, of power, of information, of freedom, of everything that tends to magnify man.²

Other than that he was born during a cold late spring on 9 June 1811, in Lowville, New York, little is known about the early years of A.D. Smith. No record of his family appears to exist in the town, a plain and inauspicious place founded eleven years earlier that yet sits amid the gently rolling hills of north-central New York, about one hundred kilometers from the Canadian border, though Smith's obituaries list it as his birthplace. Several Smith families lived in this area of Lewis County at the time, but none of their records can be conclusively linked to A.D. Smith. Census data at the Lowville clerk's office go back to 1825, when Smith would have been fourteen, but the family may have moved to another location by that time. Unfortunately, birth records for New York are unavailable for dates before 1881 and a military pass in Smith's name that was issued during the Civil War suggests that his birthplace was not Lowville but Cambridge, about 250 kilometres southeast in Washington County, New York. This is the only reference that suggests he may not have been born in Lowville but records in Cambridge cannot corroborate that he was born in that town, either. Further, Smith's obituaries consistently list Lowville as his place of birth, thus giving the town the best claim to Smith as its progeny.³

Of Smith's childhood and teenage years, very little can be determined. Records for the period are notoriously weak and spotty and complicating matters is the fact that even in small towns there was often more than one Smith family, making it difficult to

² Gordon S. Wood, *The Radicalism of the American Revolution* (New York: Alfred A Knopf, 1992), 358.

³ For more information about Lowville, see Franklin B. Hough, *A History of Lewis County in the State of New York from the Beginning of its Settlement to the Present Time* (Albany: Munsell & Rowland, 1860), 152.

ascertain which family might have been A.D. Smith's. If, as was common, Smith was named after his father, the historical waters are muddied by the early nineteenth-century tendency of record-keepers to use the names Abraham and Abram interchangeably. What can be learned about Smith's early years and his family may be drawn from informed inference about the time and place into which he was born. The social and political landscape of Smith's youth provides a foundation of information upon which much can be surmised about how he and his family might have responded to the prevailing attitudes and opinions of the time. As part of what is referred to as the Burned-over District, an area of upstate New York that became legendary for its participation in religious revivals of famed preachers such as Charles Finney, the two counties in which Smith grew up had certain defining characteristics. Lewis County and Jefferson County, where Smith lived later, were therefore likely populated primarily by migrants from other states in the early part of the century, particularly from areas such as western Vermont, Connecticut and parts of Massachusetts.⁴ This "solid Yankee inheritance"⁵ gave the people of these counties, and the rest of the Burned-over area of the state, particular traits. It was, as historian Whitney Cross has argued, the deep moral contemplation of these settlers that was their defining characteristic:

It was only to be expected that emigration would carry the old traditions westward, most abundantly in the region wherein the migrants settled most thickly. But this natural legacy was reinforced by the purposeful activity of those who remained in the land of steady habits; and a swelling resurgence of evangelistic religion coincided with the period of migration. Consequently, fervent revivalism concentrated in western New York as in no other portion of the

⁴ Whitney R. Cross. *The Burned-over District: The Social and Intellectual History of Enthusiastic Religion in Western New York, 1800-1850* (New York: Harper & Row, 1950), 6.

⁵ Cross, *The Burned-over District*, 4.

country during its pioneering era. Emotional religion was thus a congenital characteristic, present at birth and developed throughout the youth of the section.⁶

As a point of conjecture, and assuming that Smith was not a first-generation American, it would seem likely that his background rests somewhere in New England, with his parents likely settling in Lewis County as part of a wave of westward immigration that saw whole communities and villages from the northeast relocate to western New York.⁷ This New England tie may also be supported by examining Smith's name, Abram Daniel, which is consistent not only with a family that likely had religious tendencies, but also with Puritan onomastic preferences for Biblical names, a pattern that was still common throughout the early Republic in many regions, and nowhere was it followed as faithfully as among settlers of Puritan stock.⁸ As historian Daniel Scott Smith has written, "the naming of children is culturally never a trivial act"⁹ and by naming their son Abram, after the father of Israel, and choosing the middle name Daniel, whose Biblical character slew the lion, they bestowed upon their child a name that conjured images of strength, leadership and courage in the face of adversity. Even so, Smith may not have liked his given names, as he seldom signed his full name on official papers of any kind, preferring instead his initials.

Since the type of property owned by the Smith family cannot be determined from land records in Lewis County, it is unclear whether Smith grew up in the town of Lowville or in the surrounding countryside. Since no birth records have been located for the family, the question of whether Smith had any siblings also remains unresolved.

⁶ Cross, *The Burned-over District*, 4.

⁷ Cross, *The Burned-over District*, 5.

⁸ David Hackett Fischer, *Albion's Seed: Four British Folkways in America* (New York: Oxford University Press, 1989), 93-97.

⁹ Daniel Scott Smith as quoted in Fischer, *Albion's Seed*, 93.

Smith's religion is a historical guessing game of sorts since no records for Lewis County have provided any clues as to the denomination of the Smith family. Later in life, Smith was a member of the board of trustees of the First Congregational Bethel Church of Milwaukee¹⁰ and was also listed as a member of the "First Congregational Society in the town of Milwaukie"¹¹ [sic] and so it is probable that he was raised a Congregationalist. Certainly this would be consistent with a Yankee upbringing in the Burned-over District, where Congregationalism was one of the accepted denominations of the region, along with Baptism, Methodism and Presbyterianism.¹² Congregationalist membership in the U.S. doubled between 1800 and 1830¹³ as the Church followed a "traditional Calvinism modified by revivalism"¹⁴ that was supported overwhelmingly by people of New England ancestry.¹⁵ According to David Hackett Fischer, Congregationalists believed their denomination was the "middle-way" — a moderate church that combined independent congregations and weak synods.¹⁶ As Fischer describes:

Their theology took a middle ground between Arminianism (which tended toward rationalism and free will) and Antinomianism (the dominion of the spirit). Their formal beliefs were defined by the Synod of Dort (1618-19) in the five points of Calvinism (total depravity, limited atonement, unconditional election, irresistible grace and the final perseverance of the saints) — a Christian creed of extreme austerity.¹⁷

¹⁰ Charles E. Monroe, *History of Milwaukee: From Its First Settlement to the Year 1895*. Edited by Louis Conard. Chicago: American Biographical Publishing Co. 1895), 210.

¹¹ *Wisconsin Argus*, April 1, 1845.

¹² Cross, *The Burned-over District*, 8-9.

¹³ John R. McKivigan, *The War Against Proslavery Religion: Abolitionism in the Northern Churches: 1830-1865* (Ithaca: Cornell University Press, 1984), 24.

¹⁴ McKivigan, *The War Against Proslavery Religion*, 172.

¹⁵ McKivigan, *The War Against Proslavery Religion*, 172.

¹⁶ Hackett Fischer, *Albion's Seed*, 796.

¹⁷ Hackett Fischer, *Albion's Seed*, 796.

It was into this world of asceticism and severity that Smith was likely born, and even if the denomination of his childhood was not Congregationalism, it is most likely he was raised in a God-fearing home. Writes one historian looking at the prevalence of Hebraic iconography in the time period: "The Old Testament is truly so omnipresent in the American culture of 1800 or 1820 that historians have as much difficulty taking cognizance of it as of the air the people breathed."¹⁸ It is not likely a coincidence, then, that his first name, Abram, is so closely identified with the Old Testament.

Just as much in question as the faith of Smith is his educational background. Without knowing his father's occupation, it is difficult to assess what kind of schooling he may have had. As a young man he went on to study law and become a successful lawyer, state Supreme Court judge and federal tax commissioner, suggesting that his education was not the rudimentary kind for children of farmers and common labourers. His extensive library, the contents of which were itemized in his will, suggests a lifelong interest in reading, from history to poetry to studies of the great leaders, particularly Napoleon.¹⁹ For this reason it is likely that his father was a learned man, perhaps a lawyer, clerk, doctor or clergyman.

Smith would have had no memory of the War of 1812, but the post-war world of his boyhood would ultimately have left an impression on him, from the stories he would have heard from family members to the local legends retold by friends and neighbours. The places he called home in his youth and early adulthood had been particularly hard-hit by the war. At some point, he settled in Sackets Harbor in neighbouring Jefferson

¹⁸ Perry Miller, "The Garden of Eden and the Deacon's Meadow," in *A Sense of History* (New York: Simon and Schuster, Inc., 2003), 114.

¹⁹ Abram Daniel Smith, Last Will and Testament, recorded October 8, 1856. Probate Collection, Milwaukee County Historical Society, Milwaukee, Wisconsin.

County, New York, where he read law, a common practice in the days before formalized legal educations were mandatory. The town had been the headquarters for U.S. military forces in the northern theatre of the War and some estimates have suggested that four-fifths of the area's 1,200 residents suffered some loss during the conflict. During the war, about a third of the American army and a quarter of its navy were stationed in the stone barracks of the town, which was the celebrated site of two battles in which the American forces were victorious. One of the residual effects of the war was a deeply rooted sense of anti-British sentiment that can be traced beyond the War of 1812 to the Revolutionary War. Veterans of the Revolution were still alive; indeed, Smith's own ancestors may have fought in its battles. It was common for these elderly men to be paraded about on the Fourth of July,²⁰ and give patriotic speeches to rowdy tavern crowds.

As a young man studying to become a lawyer, Smith would have taken all of this in and was beginning to form his own decidedly republican opinions. One story of his fervent republicanism remained a legend in legal circles long after his death. The story began one hot July when Smith, indignant that none of the other young men of his acquaintance had made any sort of plan to celebrate Independence Day, took matters into his own hands. Armed with a gun and some liquid provisions, young Smith slipped a rowboat into the waters of a nearby bay. He eventually made his way to a small island, where he camped under the stars. When the sun rose the next morning, July 4, gunshots startled birds from their branches as Smith began firing skyward in a jubilant salute. By 10 a.m., he had set his gun aside and, as the legend goes, began to read the Declaration of Independence aloud — to the lonely woods — and then held forth on the subject of

²⁰ Donald E. Graves, *Guns Across the River: The Battle of the Windmill, 1838* (Prescott: The Friends of Windmill Point, 2001), 31.

liberty. The ceremony still inadequate, he marched to his rowboat and, as a tribute to the original colonies, raised a bottle of liquor and drank thirteen toasts (“and any number of volunteer ones”), all the while singing and cheering, save for the last toast, a silent tribute to George Washington. Setting his drink aside, he curled up on the boat’s wooden planks and promptly fell into an inebriated sleep, lulled, no doubt by the soft splash of the waves. Unfortunately, he was oblivious to the fact that his tiny boat wasn’t moored securely and he slept through till the next morning, when, thirsty and likely nursing a dreadful hangover, he found himself in the middle of the bay. Ever the optimist, he apparently told friends that he “was never more thankful than to find himself where he could get such a bountiful supply of water to quench his thirst.”²¹

Apart from this being an amusing anecdote in the life of young Smith, it is also instructive. In it, one can see the stirrings of passion that guided him throughout his life: his love of liberty, his belief in the sovereignty of the states, his belief in republicanism and his wry sense of humour. What is more, it also reveals something of an Achilles heel — a taste for alcohol that was to set him on a course that ultimately led to his deathbed, hundreds of miles away and three decades later.

Any attempt at understanding Smith’s next actions requires some understanding of trans-Atlantic republicanism and the ways in which it manifested itself in American thought. The historiography on this topic is necessarily deep and broad, but for the purposes of this dissertation, six key themes that recur through that historiography are important to note. First, republican ideology traded heavily on the idea that the British system of government, in its original state, was the most perfect of political institutions

²¹ *The Green Bag*, 1897, Vol. 9, 110-112.

and that the English constitution was the pinnacle of that perfection.²² However, the early republicans believed this system had suffered over time at the hands of corrupt officials, who had damaged the system beyond repair.²³ It was up to republicans to rescue the historic constitution from this corruption, they believed, and implement it in its purest form in the new republic.

The second theme that recurs in the historiography is one that emphasizes the early republican adherence to an apocalyptic vision, bordering on the paranoid.²⁴ It is clear, historians argue, that the voices of the early republic believed that taking action was not negotiable, but a mandatory and preemptive strike against a corruption that was spreading and threatening to take hold across the Atlantic world. Failure to do so would result, they believed, in eternal enslavement. This fatalistic vision justified armed resistance against Britain.

The third theme of the historiography underscores the early republicans' desire to strike a balance between power and liberty.²⁵ They held a fervent belief that this balance, upset by the corrupt hand of England, had to be not only restored, but also enshrined in the American constitution. For early American republicans, the balance of power was also vulnerable to imbalances created by wealth and luxury.

The fourth historiographic theme is that of the idea of virtue. Virtue, in all its forms, was of great importance to the early republican thinkers — something to be

²² Gordon S. Wood, *The Creation of the American Republic: 1776-1787* (Chapel Hill: University of North Carolina Press, 1969), 12.

²³ Bernard Bailyn, *Ideological Origins of the American Revolution* (Cambridge, Massachusetts: Harvard University Press), 330.

²⁴ J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton: Princeton University Press, 1975), 507-508.

²⁵ Bailyn, *Ideological Origins of the American Revolution*, 56.

guarded and something for which every good republican must strive. Historians today argue that virtue is central to our understanding of how early republicans in America shaped their society.²⁶ Wood defines virtue as the “willingness of the individual to sacrifice his private interests for the good of the community,” thereby forcing the republic, by its very nature, to depend on the good will or inherent virtue of the individual.²⁷ Further, “every state in which the people participated needed a degree of virtue; but a republic which rested solely on the people absolutely required it.”²⁸

The fifth theme of the historiography concerns religion. Specifically, religion fit into early American republican ideology not only as a way of achieving virtue, but also as an affirmation that their revolution was guided by God in the name of liberty.²⁹ Not only could the church be used to promote and restore virtue, but it could also be used to combat the spread of corruption. Wood notes: “Christianity fostered benevolence, a love of one’s fellow man and of the community. Religion was the strongest promoter of virtue, the most important ally of a well-constituted republic.”³⁰ Republicans believed that God, from the first stirrings of revolution, had been on the side of liberty and the colonies. Perhaps the best example of appeals to religion in the name of revolution was Patrick Henry’s famous “Give Me Liberty or Give Me Death” speech of March, 1775 where he said,

Sir, we are not weak if we make proper use of those means which the God of nature hath placed in our power. The millions of people, armed in the holy cause of liberty, and in such a country as that which we possess, are invincible by any

²⁶ Stanley Elkins and Eric McKittrick, *The Age of Federalism* (New York: Oxford University Press, 1993), 22.

²⁷ Wood, *The Creation of the American Republic*, 68.

²⁸ Wood, *The Creation of the American Republic*, 68.

²⁹ Wood, *The Creation of the American Republic*, 427.

³⁰ Wood, *The Creation of the American Republic*, 427.

force which our enemy can send against us. Besides, sir, we shall not fight our battles alone. There is a just God who presides over the destinies of nations, and who will raise up friends to fight our battles for us.³¹

The sixth and final theme in the historiography explores the ways in which the early republican tradition was influenced by earlier groups of writers. From the early writers of Greece and Rome, through the Enlightenment to English legal minds and libertarians, historians make a convincing case that early republican vision in America was clearly shaped by other traditions. According to historian Bernard Bailyn, “They found their ideal selves, and to some extent their voices, in Brutus, in Cassius, and in Cicero.”³² (Smith’s library, it is interesting to note, includes several works by classical authors,³³ and in later years, he took to explaining Latin words to African Americans.³⁴)

While much of this historiography refers to accepted republican ideology in the late eighteenth century, it is important to remember that this same ideology would have influenced republican thought in the early nineteenth century and would have helped shape Smith’s opinions as a young man in the 1820s and 1830s. And yet, as Gordon S. Wood notes, Americans of Smith’s generation differed from their republican forebears:

A new generation of democratic Americans was no longer interested in the revolutionaries’ dream of building a classical republic of elitist virtue out of the inherited materials of the Old World. America, they said, would find its greatness not by emulating the states of classical antiquity, not by copying the fiscal-

³¹ Patrick Henry, [<http://www.yale.edu/lawweb/Avalon/Patrick.htm>]. “Give Me Liberty or Give me Death,” in the Avalon Project, Yale University.

³² Bailyn, *Ideological Origins of the American Revolution*, 25-26

³³ Abram Daniel Smith, Last Will and Testament, recorded October 8, 1856. Probate Collection, Milwaukee County Historical Society, Milwaukee, Wisconsin.

³⁴ William F. Allen, Family Papers: 1775-1950. MSS 384, Wisconsin Historical Society, Madison.

military powers of modern Europe, and not by producing a few notable geniuses and great-souled men. Instead, it would discover its greatness by creating a prosperous free society belonging to obscure people with their workaday concerns and their pecuniary pursuits of happiness — common people with their common interests in making money and getting ahead.³⁵

Still one of the “obscure people” in the fall of 1832, Smith met and married Mary Augusta Reed. She had been born in Westford, Massachusetts, the fourth child and second daughter of Seth Reed and Rhoda Fenny (or Finney) Reed,³⁶ who generally had a child every other year of their marriage between 1806 and 1822. They ultimately had eight children and raised them, at least for a few years, in New England. The family moved to Tyngsboro, Massachusetts, some time after 1813 and then settled for a time in Castleton, Vermont, where they ran a hotel and traded cattle.³⁷ While records for Mary Augusta are thin, some information for her can be gleaned through research into the life of her younger sister, Martha, who married Wisconsin railway tycoon Alexander Mitchell and for whom more substantial information exists. Martha evidently attended school in Keene, New Hampshire in 1831 and records indicate that by 1835 she was enrolled at the Willard seminary in Troy, New York.³⁸ Records at the Rensselaer County Historical Society in Troy do not provide any evidence that Smith ever lived in that city, but it would appear that he may have met Mary Augusta Reed there, since her parents were likely in Troy to care for the teenaged Martha and their younger children; her older

³⁵ Gordon S. Wood, *The Radicalism of the American Revolution*, 369.

³⁶ Both Seth and Rhoda Reed were born in Massachusetts.

³⁷ For background on the Reed family see John G. Gregory, “Early Wisconsin Editors: Harrison Reed,” *Wisconsin Magazine of History*, 7 (June 1924): 460 and Richard N. Current, *Three Carpetbag Governors* (Baton Rouge: Louisiana State University Press, 1967), 7.

³⁸ *Milwaukee Journal*, February 14, 1902. As quoted in the Wisconsin Writers Program, Wisconsin Historical Society, Madison, Wisconsin. WIS MSS MM, Box 27 of 43.

brother Harrison appears in the 1832-33 city directory as a clerk.³⁹ Whatever the case, A.D. Smith and Mary Augusta married in September 1832 and birth records indicate they had their first child, Mary Frances, in nearby Lansingburgh on 4 June 1834.

While much of A.D. Smith's life is a mystery, the story of his wife is an even greater enigma. Her personality and appearance remain unknown given that no letter or diary have been located in her name and no photograph or *carte de visite* of her has been found in the archival material of her family members. Few of Smith's letters mention his wife, but one that does refers to her warmly as "Mrs. S.," and in his will he left everything to his "beloved and affectionate" wife.⁴⁰ This suggests the pair enjoyed a happy union and they had at least four children together in a marriage that spanned thirty-three years and was ended only by death.

What the Smith family did between the years of 1834 and 1837 cannot be determined from primary documents, but at some point, they joined the exodus of New Englanders and New Yorkers westward.⁴¹ Settled earlier than the other states of the northwest frontier, Ohio was populated by a patchwork of emigrants from all over the country; the northern part of the state, including Cleveland and the Western Reserve saw,

³⁹ Troy City Directory, 1832-33, 61. In the collection of the Rensselaer County Historical Society, Troy, New York.

⁴⁰ Abram Daniel Smith, Last Will and Testament, recorded October 8, 1856. Probate Collection, Milwaukee County Historical Society, Milwaukee, Wisconsin.

⁴¹ Where the family lived in 1836 is not known, making their reasons for departure difficult to determine. The population of cities such as Troy was still growing (see David Paul Davenport, "Migration to Albany, New York, 1850-1855," in *Social Science History* 13 (summer, 1989) 168, for population statistics for this area in the 1830s) and there are no indications that the standard of living in upstate New York at this time was undesirable. The impulse to leave the area may have been connected to a desire to explore better opportunities in Ohio.

however, settlement dominated by Yankees from New England and New York.⁴² Westward immigration to Ohio and Michigan was booming during the 1820s and 1830s, with thousands streaming in by wagon and boat.⁴³

Cleveland reported the westward movement 'beyond any former example.' Each season saw the numbers increase. In the spring of 1835 fifty-six boats left Buffalo for the West in one week. Six to eight boats with 1,000 to 1,500 passengers passed Erie daily. At this rate the season's total by the lake route would be 200,000. The next year was the same. In October, when Buffalo reported nine boats with 4,000 people having left for the West, they were welcomed with, 'There is yet room, and all things are ready....' The western fever was contagious.⁴⁴

Growth was especially rapid for Cleveland after the completion of the Ohio and Erie Canal in 1832, a catalyst that saw many of the newcomers to Ohio, including the Smith family, choosing the northern city on the shores of Lake Erie as the site of their new home.⁴⁵ Cleveland may have been called the "mistake on the lake" in the twentieth century, but in the early nineteenth century, it was considered a beautiful city with great promise. By the time the Smiths moved to Cleveland in 1836 or 1837, it had a population of about 9,000⁴⁶ and represented a new start for many people that was nothing short of utopian, drawing comparisons to the great cities of Europe. Gushed the *Cleveland Herald and Gazette* in 1837:

The favorable location of our city, overlooking as it does a broad expanse of waters on the north and west, often gives to the admiring eye an evening perspective outrivaling the famed rose-colored skies of impassioned Italy. At such an hour the divinity is stirred within us, and few can go out under the pavilion nature has spread over forest, city and Erie, without feeling that 'God alone is to

⁴² R. Carlyle Buley, *The Old Northwest: Pioneer Period, 1815-1840* (Bloomington: Indiana University Press, 1962), 3.

⁴³ Buley, *The Old Northwest*, 43-44.

⁴⁴ Buley, *The Old Northwest*, 100-101.

⁴⁵ Buley, *The Old Northwest*, 48.

⁴⁶ William Ganson Rose, *Cleveland: The Making of a City* (Kent, Ohio: Kent State University Press, 1990), 119.

be seen in heaven.' The breathings of the sweetest of American bards then come unbidden from the fount of memory.⁴⁷

For his part, Smith moved his wife and daughter into a home not far from the public square, somewhere close to the intersection of Ontario and Prospect streets in "Farmers' Block." In Smith's time this area would have bustled with horse-drawn carriages with people making their way through the dirt streets to church or meeting friends and business acquaintances in the square. Still a young man of only 26, it is at this point in his life that Smith began to participate in public affairs. Initially, at least, he seems to have worked very hard to carve out a respectable place for himself in Cleveland society. Newspaper accounts of the time indicate that, in fairly short order, he became involved in local politics and in 1838 won the election for justice of the peace by eighteen votes.⁴⁸

He also showed an early interest in science of the day, becoming involved in phrenology, the "science" of examining the bumps and contours of a human skull in an effort to determine the psychology of the patient. Phrenology, from its origins in Europe, had made its way to North America in the early 1800s, likely hitting its peak of popularity at around the time Smith was in Cleveland. Some dismissed phrenology as the work of charlatans: in his *Devil's Dictionary*, Ohio-born journalist and satirist Ambrose Bierce defined phrenology as "the science of picking the pocket through the scalp,"⁴⁹ but many phrenologists were respectable men like Smith. He was so smitten with phrenology that he gave public lectures on the subject and seems to have adopted the honorific "Dr."

⁴⁷ *Cleveland Herald and Gazette*, November 4, 1837.

⁴⁸ *Annals of Cleveland, Cleveland Newspaper Digest*, Jan. 1-Dec. 31, 1838, Cleveland Public Library, Cleveland, Ohio. Abstract 1415.

⁴⁹ Ambrose Bierce, *The Devil's Dictionary* (New York: Dover Publications, 1993), 93.

from time to time.⁵⁰ At the time, formal medical training was not necessary to work as a physician and most had simply apprenticed with a doctor for a period of time before being granted a certificate.⁵¹ Whether this was true of Smith cannot be verified. Certainly the ability to hold public lectures would have enhanced Smith's growing public reputation as someone with credibility and knowledge. In the city directory of 1837 he was listed not as justice of the peace or attorney, but rather as a professor of phrenology.

Smith also became involved with the abolitionist movement in Cleveland as a member of the County Anti-Slavery Society in the summer of 1837.⁵² While no further involvement in abolition surfaces in Smith's public records in Ohio, his later activities suggest that anti-slavery was a lifelong passion, as it was for many in Ohio, a state with a strong history of opposition to slavery. The state's Anti-Slavery Society held its organizational meeting in 1835 in Zanesville, south of Cleveland. The meeting was attended by an impressive 110 delegates from twenty-five counties, including the legendary Reverend John Rankin, of Ripley, Ohio, whose hilltop house on the Kentucky border acted as a beacon for runaway slaves.⁵³

Abolitionist activity was, of course, part of a wider trend of reform that was sweeping the United States during this period. Reform, sparked in part by the Second Great Awakening, was picking up momentum in the 1830s as movements such as abolition, education for women, and temperance gained a foothold in cities such as

⁵⁰ *Cleveland Herald and Gazette*, Feb. 10, 1837.

⁵¹ Rose, *Cleveland*, 118.

⁵² *Annals of Cleveland*, 1837, abstract 2203.

⁵³ Francis P. Weisenburger, *The Passing of the Frontier: 1825-1850* (Columbus: Ohio State Archaeological and Historical Society, 1941), 370. Local antislavery societies began to appear before the Revolution. By 1838 there were about 1,350 such groups spread out across the United States. See Patrick C. Kennicott, "Black Persuaders in the Antislavery Movement," *Journal of Black Studies* 1(September 1970) 6.

Cleveland. Reformers believed that “only those who mastered base impulses and achieved genuine self-control could count themselves truly free”⁵⁴ and Smith followed this line of thinking, perhaps influenced by the Arminianism of the Burned-over district. Many of Smith’s generation saw a rigid Calvinist theology that emphasized predestination give way to the Arminianism of revivalist Charles Finney, who preached that each man held the key to his own fate. According to Arminianism, “salvation was a matter of individual choice, not divine fiat.”⁵⁵ This philosophy appealed to reformers like Smith, who believed society could be improved through the actions of the individual. In fact, the actions of a good Christian and a good American were one and the same in that they bolstered republicanism:

... [T]he idea of human rebirth, the ‘new man’ was the central point of St. Paul’s moral theology. ‘Christianity,’ wrote William Ellery Channing, ‘... should come forth from the darkness and corruption of the past in its own celestial splendour and in its divine simplicity. It should be comprehended as having but one purpose, the perfection of human nature, the elevation of men into nobler beings.’ ... The prime instrument in this progressive process was the American Republic itself.⁵⁶

This inclination towards reform was a fundamental tenet of republicanism in the generations that followed the Revolution. In the *Radicalism of the American Revolution*, Gordon S. Wood argues that this was all part and parcel of the desire to create a middle class:

At the same time as ordinary people were reaching upward and vulgarizing aristocratic and genteel culture, the gentry themselves felt increasingly compelled to reach down and embrace wider and deeper levels of the populace. Central to the republican revolution had been the desire by the revolutionary leaders to refine and improve the moral and aesthetic sensibilities of the American people.

⁵⁴ Daniel Feller, *The Jacksonian Promise: America, 1815-1840* (Baltimore: The Johns Hopkins University Press, 1995), 115.

⁵⁵ Stephen Prothero, *American Jesus: How the Son of God Became a National Icon* (New York: Farrar, Straus and Giroux, 2003), 168.

⁵⁶ Paul Johnson, *A History of Christianity* (New York: Simon & Schuster, 1976), 429.

Like all educated eighteenth-century gentlemen, they had been eager to roll back Gothic barbarism and vulgar manners and extend enlightened civilization and cultivation among the general populace.⁵⁷

By the 1830s an enlightened, civilized reformer did not drink alcohol to excess — which posed a problem for Smith. If it is assumed that Smith was a Congregationalist, his drinking would have been an issue since most members of the church did not agree with even moderate consumption of alcohol, as with other activities that were detrimental to the soul:

In both Presbyterian and Congregational churches, members were arraigned for such offenses as scandal, Sunday traveling, theft, sexual immorality, profanity, card-playing, running a Sunday boat, using intoxicants, 'attending cotillions and dancing parties,' and neglecting the 'means of grace,' including family prayers.⁵⁸

Historian Francis P. Weisenburger notes that "temperance was a subject for much concern, especially on the part of evangelical denominations."⁵⁹ Furthermore, "Congregationalists were probably the most zealous in the movement. In 1833, for example, the church at Wellington (Ohio) passed a resolution requiring new members to promise entire abstinence in the use and sale of alcohol"⁶⁰ There is no evidence that Smith's drinking, which seems to have been something of an issue when he was in Sackets Harbor, was under control in Ohio. One assumes that he was at least making a show of leading a temperate lifestyle, particularly because temperance was one of the most popular reform movements of the day and was also tied to republican ideology, for "the elimination of drunkenness would prove crucial to avoiding internal civil disruption

⁵⁷ Wood, *The Radicalism of the American Revolution*, 354.

⁵⁸ Weisenburger, *The Passing of the Frontier*, 162.

⁵⁹ Weisenburger, *The Passing of the Frontier*, 163.

⁶⁰ Weisenburger, *The Passing of the Frontier*, 163.

— thus literally preserving the republican experiment itself.”⁶¹ Historian W.J. Rorabaugh explains that temperance may have been a response to heavy drinking that was prevalent in the post-Revolutionary turmoil of rapid expansion, migration and economic uncertainty:

Societies are vigorous and healthy when their institutions and ideologies reinforce one another. When a culture undergoes rapid, disruptive change, its social structure is altered, some of its institutions are weakened, its ideology loses vitality, and stress develops. How a society responds to these conditions determines its future. If a society eases its stress in nonideological ways such as the consumption of alcohol, institutions will be weakened further, and the structure of society may, as in many primitive tribes, disintegrate. If a society handles its stress by developing ideological responses, such as a temperance movement, old institutions can be reinforced, new ones created, and the social structure maintained.⁶²

Smith, though responsible for most of the “rapid, disruptive change” in his life, clearly was an exemplar of both the origins of intemperance and of the need for temperance. Smith, now with a young daughter, also showed an early interest in educational reforms for women, becoming a trustee for the Cleveland Female Seminary, “a private school for young ladies,” in 1837.⁶³ How involved he was in the school cannot be determined, and no records for his activities there can be located.⁶⁴

In addition to his involvement in reform movements of the day, Smith was also expanding his experience as a political animal, another passion that remained with him throughout his life. It was in Ohio that Smith’s lifelong commitment to the radical goals of the far left of the Democratic Party emerged. Various known as Locofocos or, later,

⁶¹ Mark Edward Lender and James Kirby Martin, *Drinking in America: A History* (New York: The Free Press, 1982), 66 .

⁶² W.J. Rorabaugh, *The Alcoholic Republic: An American Tradition* (New York: Oxford University Press, 1979), 190.

⁶³ Rose, *Cleveland*, 155.

⁶⁴ As mentioned in Chapter 1, I have been unsuccessful in my attempts to locate records for the school.

as Barnburners, this faction originated in Smith's home state of New York. Smith's dedication to small-r republicanism made his association with the Jacksonian Democrats a natural fit. As political scientist John Gerring has noted, these men saw themselves as the guardians of freedom:

In consonance with their general antistatist bent, Democrats assumed the existence of natural rights, that government was instituted to serve basic principles, like private property and liberty, which were therefore *prior* to government. Any infringement of these rights by government constituted an offense against nature ... Well before the outbreak of the Civil War, Democrats were emphasizing the rights of minorities and the corresponding danger presented by the overweening power of popular majorities Throughout the nineteenth century, the Democratic party was much more likely to emphasize the significance of civil liberties and civil rights (as they pertained to white men) than were the Whig and Republican parties. Freedom of the press and of religion, 'personal or home rights,' as well as the abstract praise of liberty and the ritual invocation of the Kentucky and Virginia Resolutions and the bill of Rights were predominantly Democratic themes.⁶⁵

Democrats during the Jacksonian era, and Smith was no exception, closely identified with Jeffersonian ideology. According to one historian, after the death of Jefferson his *Memoirs* were "quoted in Congress almost as readily as ministers quoted scripture,"⁶⁶ and Smith's choice of party indicates he would most certainly have thought of Jefferson as the "Father of Democracy"⁶⁷ and would have viewed politics through a Jeffersonian lens. As historian Merrill D. Peterson has written, "... so tight was the association of these three elements — the Jefferson symbol, democracy, and the

⁶⁵ John Gerring, "A Chapter in the History of American Party Ideology: The Nineteenth-Century Democratic Party (1828-1892)," *Polity* 26 (summer, 1994): 760-761.

⁶⁶ Merrill D. Peterson, *The Jefferson Image in the American Mind* (New York: Oxford University Press, 1962), 71.

⁶⁷ Merrill D. Peterson, *The Jefferson Image in the American Mind*, 68.

Democratic party — that one scarcely existed in the public mind apart from the others and attempts to disengage them met with fleeting success.”⁶⁸

Smith was a city councilman for Ward One from 11 October, 1837 until 19 March 1838,⁶⁹ though his politics are not documented in the daily newspapers. What is known is that he spoke at meetings of Cleveland’s Locofocos. A radical wing of the Democratic party that emerged in the mid-1830s, the Locofocos were so named, according to legend, by the brand of matches they used to light a meeting at which more conservative members of the party had extinguished the gas lights.⁷⁰ The faction was against monopolies, banks, corporations and slavery,⁷¹ just as their later New York counterparts, the Barnburners, were. Locofocos, like Andrew Jackson, believed that “gold and silver were the proper currency ... and that a rapid increase in banks and paper money should be discouraged.”⁷² They also worked “to purge American democracy of the inequities that had crept into its midst and, as a means to that end, to free Jacksonian Democracy of any taint of privilege;”⁷³ they saw monopolies, banks, and corporations as inherently exploitative as slavery.

Historian Carl Degler has noted that many Locofoco policies and beliefs set them at odds with other social and political groups of the Jacksonian period:

⁶⁸ Merrill D. Peterson, *The Jefferson Image in the American Mind*, 69.

⁶⁹ *Annals of Cleveland*, officeholder series. Historical record of public officeholders in Cuyahoga County; register of public officeholders in Cleveland, 1802-1891. Cleveland: Library Service project, Work projects administration in Ohio, 1942, Vol. 1, page 118.

⁷⁰ Harry L Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 192. There are many versions of this episode, which has passed into American political legend.

⁷¹ Glyndon G. Van Deusen, *The Jacksonian Era: 1828-1848* (New York: Harper & Row, 1959), 95.

⁷² Weisenburger, *The Passing of the Frontier*, 311.

⁷³ Van Deusen, *The Jacksonian Era*, 95.

While the antimonopoly planks of the Locofocos are quite in keeping with the antimercantilistic or "liberating" interpretations often applied to the Jacksonians, the party's monetary principles point in precisely the opposite direction. It is the Locofocos' monetary views which most clearly reveal that the group was not a part of the expansionist pattern currently alleged to be characteristic of the Jacksonian movement.⁷⁴

Degler wrote that most Locofocos were either artisans or mechanics, with professionals such as Smith a much smaller part of the movement.⁷⁵ Even so, there were lawyers like Smith who participated in Locofoco gatherings and adhered to Locofoco ideas on banks and currency. Degler explained that "regardless of the undoubted constrictive effect upon the larger business community, these ... men sought to control inflation by the drastic deflationary device of a metallic currency. It was for this precise reason that the Locofocos thought they saw champions in Andrew Jackson and his successor, Martin Van Buren,"⁷⁶ because of the Bank War and the Independent Treasury.

In among ads for cures for baldness and hemorrhoids and recipes for "cheap and wholesome" table beer, Smith was advancing his political causes in local newspapers. In the summer of 1837, Smith went to the courthouse where there was a "most rambling" debate and an opportunity for him to address the crowd. He made two speeches of the "ultra Locofoco kind," though details of what he said cannot be determined.⁷⁷ At another meeting, "the largest ever convened in Cleveland," townsfolk gathered at the courthouse and crowded the seats, floor and galleries to hear speeches by a number of men. It was noted in the newspaper that the remarks, "especially those of Dr. Smith, drew forth strong

⁷⁴ Carl N. Degler. "The Locofocos: Urban 'Agrarians.'" *Journal of Economic History*, 16 (September, 1956): 322.

⁷⁵ Degler, "The Locofocos," 329.

⁷⁶ Degler, "The Locofocos," 330.

⁷⁷ *Cleveland Herald and Gazette*, August 11, 1837.

symptoms of approbation.”⁷⁸ Smith spoke for about an hour “in a most able and powerful speech ... against the present corrupt system of banking. He clearly and forcibly illustrated the evil effects of banking upon communities in which those institutions are situated, and their evil tendency upon the country generally.”⁷⁹

The gathering was a meeting of “the Workingmen,” one of many assemblies of mechanics, craftsmen and journeymen that were springing up, formally and informally, across the country, particularly since the Panic of 1837 ushered in a six-year depression. Started in eastern Massachusetts and sparked by fears of industrialization, urban chapters forged the Workingmen’s party⁸⁰ which shared many of the philosophies of the Locofocos. As historian Walter Hugins has argued, the Workingmen’s “initial impetus was economic, a protest against unemployment and a defense of the ten-hour day.”⁸¹ Their movement to secure rights for the average working man, “did not originate in party politics or the old mechanics’ interest, but its evolution owed a great deal to the Jacksonian political revolution”⁸² according to Historian Sean Wilentz, who further argues that the roots of Workingmen’s parties “lay well outside the changing political establishment.”⁸³ Their radicalism may explain why Smith may have been drawn to them, at least in part, as he often found himself tied up in fringe movements. At this point in his life, he was working for several radical causes — he spoke on behalf of

⁷⁸ *Cleveland Daily Advertiser*, August 5, 1837.

⁷⁹ *Cleveland Daily Advertiser*, August 4, 1837.

⁸⁰ Arthur M. Schlesinger, Jr., *The Age of Jackson* (Boston: Little, Brown and Company, 1945), 149.

⁸¹ Walter Hugins, *Jacksonian Democracy and the Working Class: A Study of the New York Workingmen’s Movement, 1829-1837* (Stanford: Stanford University Press, 1967), 11.

⁸² Sean Wilentz, *Chants Democratic: New York City & the Rise of the American Working Class, 1788-1850* (New York: Oxford University Press, 1984), 172-173.

⁸³ Wilentz, *Chants Democratic*, 175.

Workingmen and civil rights for women and African Americans. These stirrings of far-left politics in Smith can find their roots in his championing of the labouring classes.

Wilentz writes:

In the aftermath of the 1790s, and for a quarter of a century thereafter, New York's masters and journeymen retained and responded to the ideals of the late eighteenth century, for the protection and expansion of their collective political rights against the static, deferential harmony of unquestioned elite supremacy — or, more loosely, for 'equality' against 'aristocracy.' Even as they came to blows in the workshops and the courts, they were as one in politics — the 'sinews and muscles of our country,' as one Jeffersonian put it — ever prepared to redeem *their* Revolution against any who would trample on their political liberties, against any who would inject 'corruption ... through the veins of the body politic.'⁸⁴

Geographically, it is worth noting, as Pulitzer Prize-winning historian Arthur M. Schlesinger, Jr. did in his landmark study of the Era, *The Age of Jackson*, that Locofocoism was primarily a movement that gained momentum in the East:

In every state, the reckless expansion of banking facilities provoked widespread popular disgust, and Locofocoism, the expression of that disgust, accordingly was strongest in the states where issues of currency and incorporation were most vital. It was thus an *Eastern* movement, designed to meet *Eastern* economic difficulties, preoccupied with fears to which the West was largely indifferent.⁸⁵

The frontier was not devoid of the movement, though, and Ohio was the western state with the strongest showing of support for Locofocoism, in part because its economics most closely resembled those of the East.⁸⁶

As a New York native, Smith might have also had a greater affinity for a radical faction that found its roots in his home state. How passionate he was about fundamental Locofoco beliefs cannot be determined, however, from documentation of the time. His speeches did not end up in Cleveland archives, nor were they reprinted in newspapers of

⁸⁴ Wilentz, *Chants Democratic*, 76. Emphasis in the original.

⁸⁵ Schlesinger, *Age of Jackson*, 205.

⁸⁶ Schlesinger, *Age of Jackson*, 208.

the day. What can be stated with some degree of certainty is that, politics aside, Locofocos like Smith saw themselves, as Van Deusen writes, as “principled equalitarians, neo-Jeffersonians, men filled with a high sense of justice and fair dealing.”⁸⁷ Later in life, as will become clear in Chapters 3 and 4, Smith struggled for equality for various parties, quoted Jefferson in his campaign to champion the sovereignty of the states and became a judge sworn to uphold the principles of justice. Smith’s involvement with the Locofocos was, in sort, no political flirtation, but rather a lifelong commitment to the left wing of the Democracy — and very often to the far left. So extreme was his pledge to “justice and fair dealing” that he frequently found himself on the wrong side of the politically powerful and, in the end, of the Democratic Party itself.

It is also important to see Smith in the economic context of his times, by examining the broader social context of the era in which he lived. In the early 1830s there was a flurry of economic activity that produced flashpoints across the country: Andrew Jackson’s Bank wars, unprecedented purchasing of land on credit, the construction of internal improvements such as canals and roads and rising prices of land and exports. But some began to fear that prosperity would not last:

To appearances, the country had never thrived so well. But by 1836 the rise was beginning to spin out of control. Some saw symptoms of a speculative cycle and predicted a bad end. Wage-earners and credit-seeking businessmen felt the pressure of higher prices and interest rates. Doomsayers warned of inflated values caused by ‘overtrading.’ Fears of an imminent, perhaps catastrophic collapse gathered over Jackson’s last days as president.⁸⁸

⁸⁷ Van Deusen, *The Jacksonian Era*, 95.

⁸⁸ Feller, *The Jacksonian Promise*, 172.

The Panic of 1837 broke early in that year and with it came the suspension of specie payments, unemployment and a massive drop in land values.⁸⁹ While businesses in Ohio cities were affected, the state's residents fared better than most due in part to their reliance on a largely agrarian economy and Ohio crops in 1837 were plentiful.⁹⁰ As a justice of the peace at the time, it is unlikely that Smith felt much of a pinch — his docket books for the time he was justice of the peace in Cleveland suggest he was quite busy during this period, and at home, his family was about to expand. Later in 1837, Mary Augusta became pregnant and the following year gave birth to a second girl, Maria Cecilia. The Panic of 1837 did have an impact on Smith's actions, however, because it facilitated, in part, the jingoist movement of which he was to become a part. As historian Oscar Kinchen has noted, the months following the onset of the depression saw a nation looking outward for someone to blame for the sudden hardships. It was the ideal time for many to turn against Britain one more time:

Not a few bankrupt business and professional men held that Britain was largely to blame for the prevailing hard times, that in spite of America's war for independence, the country was still 'under British thralldom,' ... In the opinion of no small number, the issues at stake were patriotism and independence and that the real fight was still with the same enemy that Jackson had met at New Orleans.⁹¹

During this crisis Smith was leading a secret life, one of which even friends and family may not have known. With a wife and two children, Smith was outwardly living a respectable, professional life with some prominence in a growing city. And yet he was attending clandestine meetings and learning secret codes and handshakes as a member of

⁸⁹ Feller, *The Jacksonian Promise*, 190.

⁹⁰ Francis P. Weisenburger, *The Passing of the Frontier: 1825-1850, A History of the State of Ohio*. (Columbus: Ohio State Archaeological and Historical Society. 1941), vol. 3, 339.

⁹¹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 11-12.

the Hunters' Lodge, "the most formidable of all the secret associations formed for the forcible republicanization of Canada."⁹² Smith was turning his attention away from the local political scene to the international stage. Unrest in Upper and Lower Canada was reported on an almost daily basis in Cleveland and as someone who had grown up only a few miles from the Canadian border, Smith would have already been attuned, to some degree, to the issues that were riling Upper Canadians. Increasingly, Canadians were speaking out against the oligarchic ways of the Family Compact, the Toronto-based group of aristocrats who dominated decision-making in Upper Canada. Nepotism, political patronage, land grants, favouritism toward the Anglican Church and a sliding economy all contributed to a seething anger in the province.

When political agitation failed, reformers, led by the fiery William Lyon Mackenzie, resorted to armed conflict, known since as the Rebellion of 1837. Mackenzie, using rhetoric reminiscent of the American Revolution, urged Canadians to join his cause:

'Canadians!' — it was a voice that knifed the expectant hush; 'Do you love Freedom?' — and as the answering murmur swelled — 'I know you do! Do you hate oppression? — Who dare deny it! I say to you that the farmer toils, the labourer toils, the merchant toils — and the Family Compact reap the fruit of their exertions! What redresses can we expect, while Canada is ruled by a man in a street in London?'⁹³

That December, Mackenzie led a mob of up to 1,000 men⁹⁴ to Montgomery's Tavern north of Toronto. They dispersed after a deadly clash with loyalists, who fired

⁹² Donald Creighton, *John A. Macdonald: The Young Politician* (Toronto: The MacMillan Company of Canada, Ltd., 1952), 52.

⁹³ M. Bellasis, *Rise, Canadians!* (London: Hollis & Carter, 1955), 77.

⁹⁴ Estimates of the number of participants vary widely from source to source. Library and Archives Canada estimates that Mackenzie was backed by about 800 men, who faced

cannon-shot at the building. Five rebels died and Mackenzie, along with other “rebel refugees,” fled to the United States.⁹⁵ A week later, Mackenzie organized a “patriot army” that occupied Navy Island, part of Upper Canada on the Niagara River, its boundary with New York. There the patriots rapidly grew in number as Americans answered the call for troops. While some of these young Americans were undoubtedly looking for adventure, surviving documentation suggests that loftier goals spurred some of them, including a group that had travelled from Buffalo to participate in the occupation:

We the young men residents of the city of Buffalo ... pledge to each other our mutual support and co-operation for the commendable purpose of aiding and assisting our Canadian brethren in their present struggle for liberty and those principals [sic] which have given the world that asylum which we have the honor of calling our homes and built up that fabrick [sic] of human might which pronounces to mankind the sacred dogma of equality.⁹⁶

Disgruntled Canadians also made haste to the island. By the month's end, there were up to 1,000 men stationed there, preparing to proclaim an Upper Canadian republic. Before long, they were firing cannon at the Canadian shore. Matters escalated on 29 December, when Canadian troops captured an American steamer, the *Caroline*, with “the slashing of the cutlass and the sharp bang of the pistol”⁹⁷ as it ferried supplies to the

about 1,000 militia and volunteers. See www.collectionscanada.ca/military/025002-3000-e.html

⁹⁵ For a full account of the debacle at Montgomery's Tavern, see Edwin C. Guillet, *The Lives and Times of the Patriots: An Account of the Rebellion in Upper Canada, 1837-1838, and the Patriot Agitation in the United States, 1837-1842* (Toronto: University of Toronto Press, 1963), 15-28.

⁹⁶ Quoted in Edwin C. Guillet, *The Lives and Times of the Patriots: An Account of the Rebellion in Upper Canada, 1837-1838, and the Patriot Agitation in the United States, 1837-1842* (Toronto: University of Toronto Press, 1963), 72n.

⁹⁷ Guillet, *The Lives and Times of the Patriots*, 79.

militants on Navy Island.⁹⁸ In the chaos that ensued, passengers were forced ashore and the steamer was set ablaze, its fiery remains left to drift toward Niagara Falls. As one witness recounted, the scene of the blazing boat finally toppling was simultaneously beautiful and horrifying:

It was a splendid sight which shed a light for many miles around, — the rippling of the water made it appear as if gold dust had been sprinkled on its surface, and the gleam of light was so great that the sentinels upon the island perceived some of the boats, fired, but the balls fell short ... Her pipe got red hot and stood upright till the last. At the commencement of the rapids she appeared as if hesitating a moment, when plunge she went, rose once, then a sea struck her, she heeled over, sunk in the falls and disappeared forever. It was a sight that made the boldest hold his breath.⁹⁹

The trouble was, the *Caroline* was in American waters at the time of its seizure and an American was killed in the *mêlée*. To defuse the international crisis, President Martin Van Buren sent General Winfield Scott in the new year of 1838 to set up a military command along the border. Van Buren also issued a proclamation admitting that American citizens had participated in the *Caroline* catastrophe. Calling on his countrymen to return to their homes, he warned them that no American could expect help from his government if captured in Canadian territory.¹⁰⁰ Why the hostility towards the Hunters? Historian Samuel Watson has made the case that cautious Americans during this time saw the filibusterers as “threats to international law and domestic order — a sort of international mobocracy.”¹⁰¹ Additionally, citing work done by historian Reginald C. Stuart, Watson has explained that the federal government then lacked the constitutional

⁹⁸ Kinchen, *The Rise and Fall of the Patriot Hunters*, 15.

⁹⁹ Guillet, *The Lives and Times of the Patriots*, 80.

¹⁰⁰ Wilson Porter Shortridge, “The Canadian-American Frontier during the Rebellion of 1837-1838,” *Canadian Historical Review* 7 (March, 1926): 15.

¹⁰¹ Samuel Watson. “United States Army Officers Fight the ‘Patriot War’: Responses to Filibustering on the Canadian border, 1837-1839.” *Journal of the Early Republic*, 18 (Autumn, 1998): 492.

and military authority to suppress the Hunters. It was, Watson argued, a delicate situation for Van Buren, who also had to deal with the so-called Aroostook War over the Maine-New Brunswick border.¹⁰² In his inaugural address of 1837, Van Buren was clear that he intended to keep the United States on a course of neutrality: “We have no disposition and we disdain all right to meddle in disputes, whether internal or foreign, that may molest other countries, regarding them in their actual state as social communities, and preserving a strict neutrality in all their controversies.”¹⁰³

But for many Americans, particularly those living in border areas, the destruction of the *Caroline* was a call to war and “many a violent resolution was adopted at public meetings along the border.”¹⁰⁴ In an area already predisposed to animosity towards the British, the American fatality and violation of the U.S. border were the provocation to resume the War of 1812. In Cleveland, citizens braced themselves for possible conflict. “A crisis,” one of the newspapers warned a month before the *Caroline* incident, “is approaching.”¹⁰⁵

Americans along the border were organizing in earnest in secret societies to overthrow Crown rule in the Canadas. More organized than Mackenzie’s ragtag groups, these Americans believed they were taking part in a post-script to the Revolution. They called their group the Hunters’ Lodge. There are differing opinions about why they were

¹⁰² For an examination of this dispute, see Francis M. Carroll, “The Passionate Canadians: The Historical Debate about the Eastern Canadian-American Boundary.” *New England Quarterly*, Vol. 70 (March 1997): 83-101. See also, Francis M. Carroll, *A Good and Wise Measure: The Search for the Canadian-American Boundary, 1783-1842*. (Toronto: University of Toronto Press, 2001).

¹⁰³ Inaugural address of Martin Van Buren, March 4, 1837. See the Avalon Project, www.yale.edu/lawweb/avalon/president/inaug/vanburen.htm

¹⁰⁴ Guillet, *The Lives and Times of the Patriots*, 80.

¹⁰⁵ *Cleveland Weekly Herald and Gazette*, November 3, 1837.

so named. One theory suggests they were named after Dr. James Hunter, of Whitby, Ontario, who had taken part in Mackenzie's raid at Montgomery's Tavern.¹⁰⁶ Another theory says it was a cover for armed men who spent much of their time in the backwoods as if on a hunting expedition. In addition to special handshakes and passwords there were also elaborate initiation rites. Candidates reported to secret locations, were blindfolded and then, as the cloth was ripped from their faces, told to "behold the light." With a waving of pistols and torches burning, the new Hunter was given a final warning: "As you see light, so you also see death, presented to you in the most awful shape and form, from which no earthly power can save you, the moment you attempt to reveal any of the secrets or signs which have, or may be revealed to you."¹⁰⁷ Much of the mystery would have appealed to men like Smith who were already involved in freemasonry¹⁰⁸ or other fraternal organizations.

The primary purpose of the local Hunters' lodges, according to Kinchen, was "initiation of candidates for the various degrees, recruiting volunteers for the Patriot army and navy, collecting money, arms, clothing, and other supplies for the movement, and the making of numerous reports and donations to the central committee, or grand lodge,

¹⁰⁶ Kinchen, *The Rise and Fall of the Patriot Hunters*, 31.

¹⁰⁷ Kinchen, *The Rise and Fall of the Patriot Hunters*, 56-57.

¹⁰⁸ Allan E. Idling, ed., *Forward Freemasonry* (Dousman, Wisconsin: Grand Lodge F. & A. M. of Wisconsin, 1996), 283. Smith was initiated into the Masons in Cleveland and according to this source, was a member and a Master of Milwaukee of Lodge No. 3 and later of Tracy Lodge No. 13. He was Grand Master in 1846, 1847, 1848 and 1851. "Questions of territorial jurisdiction between the Grand Lodge of Wisconsin and the Grand Lodges of Illinois and Iowa were settled under his administration." See also the *Wisconsin Masonic Journal*, December 2000, www.wisc-freemasonry.org/MasonicJournal/200012/NotesOnRitual-II.htm (accessed December 6, 2002). This source indicates Smith was initiated in 1841, just before arriving in Milwaukee.

under whose jurisdiction the local society belonged.”¹⁰⁹ What, exactly took place at the meetings would have varied from lodge to lodge, though the meetings seem to have taken place consistently at night, often in a private home:¹¹⁰

In these meetings the members were harangued by traveling propagandists, who denounced the alleged evils of monarchical government while extolling the blessings of liberty, equality, and brotherly love. Responsible self-government for the Canadians was bitterly denounced as a delusion and a snare to entice liberty-loving people to turn away from the pursuit of democratic institutions and republican government ... bounteous suppers were sometimes served, very likely for the purpose of promoting the attendance of luke-warm members whose waning interest might otherwise have kept them away.¹¹¹

Speeches, often of the “long and inflammatory kind” that went well into the night were also commonplace at some lodges. It is worth noting that Smith’s extant writings and speeches, show a fondness for verbosity and flamboyancy, a style that may have been influenced by his early involvement in the Hunters’ Lodge.

It is also important to note that the Hunters’ Lodge was not alone in its efforts. It was joined by a similarly named francophone group, Les Frères Chasseurs, which had lodges in the east and support from New England, primarily from Vermont. The Chasseurs elected their own leaders, who acted independently but also in concert with the Hunters. As historian Oscar Kinchen notes, “... these two organizations were necessarily interdependent, since the success or failure of the one was bound up with that of the other.” To what extent Smith was involved with the New England group is as yet unknown.

The Hunters’ Lodges, which were primarily an American movement, were very much informed by their roots in the Canadian Rebellions led by Mackenzie and his

¹⁰⁹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 52.

¹¹⁰ Kinchen, *The Rise and Fall of the Patriot Hunters*, 54.

¹¹¹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 54.

Lower Canadian counterpart, Louis-Joseph Papineau. For his part, Mackenzie, insisting “that Canada identify itself with the struggle for liberty being waged in America in the 1830s,”¹¹² was very much influenced by American President Andrew Jackson and Jacksonian ideology. As historian J.E. Rea has noted, Mackenzie held an idealized vision of Jackson, “his “great Democratic hero.”¹¹³

[Jackson was] not in words only, but in deed and in truth, the friend of the humbler classes against the united rapacity of their more exalted brethren, who, in America, as elsewhere, would willingly concentrate the wealth and power of the republic in a few hands, that it might minister the more securely to the wants of a luxurious and immoral aristocracy.¹¹⁴

Evidently Mackenzie’s “admiration for American democracy grew as rapidly during the 1830s as his affection for British rule declined.”¹¹⁵ He was influenced both by his own travels to and “omnivorous reading”¹¹⁶ about the United States and when he recorded his thoughts about American politics in his 1833 work, *Sketches of the United States and Canada*, he remained highly complimentary of Jackson, as historians Wise and Brown have remarked:

The hero of the Sketches is unquestionably Andrew Jackson, the noblest of ‘these modern Romans,’ whose austere republican virtues, whose rise to greatness through sheer merit, not birth or wealth, and whose advocacy of the cause of ‘the humbler classes against the united rapacity of their more exalted brethren,’ testified to the moral strengths of American Democracy.¹¹⁷

¹¹² Allan Smith, “American Culture and the Concept of Mission in 19th Century English Canada,” in *Canadian History Before Confederation: Essays and Interpretations*, J.M. Bumsted, ed., (Georgetown, Ontario: Irwin-Dorsey Limited, 1979), 488.

¹¹³ William Kilbourn, *The Firebrand: William Lyon Mackenzie and the Rebellion in Upper Canada* (Toronto: Clarke, Irwin & Company Limited, 1960), 238.

¹¹⁴ Mackenzie as quoted in J.E. Rea, “William Lyon Mackenzie — Jacksonian?” in *Canadian History before Confederation: Essays and Interpretations*, J.M. Bumsted, ed., (Georgetown, Ontario: Irwin-Dorsey Limited, 1979), 383.

¹¹⁵ Kilbourn, *The Firebrand*, 100.

¹¹⁶ S.F. Wise and Robert Craig Brown, *Canada Views the United States: Nineteenth-Century Political Attitudes* (Seattle: University of Washington Press, 1967), 32.

¹¹⁷ Wise and Brown, *Canada Views the United States*, 36.

As time went on, Mackenzie “increasingly advocated measures derived from contemporary American political forms,” and when he and fellow reformers were ignored, violence ensued.¹¹⁸ This violence, borne of frustration and anger, was first seen in the Rebellions of 1837-1838, but manifested itself later in the form of the Hunters’ Lodge.

From the existing documentation, it seems clear that, like the American men from Buffalo who helped occupy Navy Island, Americans who joined the Hunters’ Lodge believed it was their fraternal duty to liberate their Canadian brethren from the tyranny of the Crown. Kinchen writes that Hunters were Americans who had been “bred in revolutionary tradition and nourished on Fourth-of-July oratory to the hatred of all things British”¹¹⁹ and most were “administration men” — Van Buren Democrats.¹²⁰ They were also, like Smith, unafraid of radicalism.

With lodges in Detroit, Buffalo, Cincinnati, Rochester, Watertown and dozens of small towns in between, the number of Hunter bases grew exponentially. Estimates of the group’s members vary from 20,000 or 40,000 to more than 200,000¹²¹, but there are no definitive sources on their membership given the clandestine nature of their organization. Cleveland, sharing Lake Erie with Upper Canada and handy to ships, became the Western headquarters for the Hunters¹²² and not long after the *Caroline* debacle, public meetings were being held to rally support for the “patriot cause.” At one such meeting in

¹¹⁸ Wise and Brown, *Canada Views the United States*, 37-38.

¹¹⁹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 5.

¹²⁰ Wilson Porter Shortridge, “The Canadian-American Frontier during the Rebellion of 1837-1838,” 20.

¹²¹ Graves, *Guns Across the River*, 53.

¹²² Weisenburger, *The Passing of the Frontier*, 359.

Cleveland, those gathered struck a committee to “receive donations for the benefit of the Patriots” and Smith was one of the twenty-one men named to it.¹²³ The *Cleveland Daily Advertiser* reported on January 4, 1838:

Monday evening, pursuant to a call posted up about the streets of the city, at an early hour the Court House was filled to overflowing by the friends of the Canadian cause General Sutherland, from the Patriot Camp at Navy Island, was then announced to the meeting and the loud, long and enthusiastic cheers which welcomed him attested the sympathy of our citizens with his cause; in an able, clear manner, he laid before those assembled, the condition of the Canadas, their wants and desires, the hopes which animated them to the struggle for freedom from a foreign despotism.¹²⁴

Interest in the Patriot cause was widespread in Ohio — while most did not openly advocate hostilities with Britain, the Hunters’ Lodge began stockpiling arms and plotting invasions into Canada. The Hunters were spurred on not only by the example of their forefathers in the Revolutionary War, but also by recent revolutionary activity in Greece, Poland, Italy and Belgium and, especially, in Texas. They actively sought to spark similar revolutionary activity in the Canadas and many, such as one man who wrote to the *Freeman’s Advocate*, a Hunter newspaper based in Lockport, New York, did so out of a strong sense of duty to the founding principles of their own country:

Oh! Ye venerable dead, hover once over the land of liberty — bring with you the ‘Nation’s Guest’ — ask him, the friend of Washington, how ought the Americans to act upon this occasion — would he not say, imitate my example. ... Ask the immortal Washington, and would he not say — give the patriots the chance that the American Revolutionists had — be to them what France was to you. ... The Americans have only to say to the Canadians, be ye free and independant! [sic] and it will be done.¹²⁵

¹²³ *Cleveland Daily Advertiser*, January 4, 1838.

¹²⁴ *Cleveland Daily Advertiser*, January 4, 1838.

¹²⁵ *Freeman’s Advocate*, Nov. 30, 1838. The *Freeman’s Advocate*, edited by James Mackenzie, William Lyon Mackenzie’s son, began publication in September, 1838 and ceased publication in March, 1839. The newspaper can be found at the Library and Archives Canada, Ottawa. See Amicus No. 27104190.

Whether the Hunters desired an independent Republic of Canada or the addition of Canada to the American union is not entirely clear. Certainly the idea of annexation was not unthinkable to Americans at the time; though the term Manifest Destiny did not enter the American lexicon until the 1840s, the ideas inherent in that philosophy were percolating long before. The idea of acquiring Canada went back as far as the siege of Quebec in 1690 and had resurfaced during the American Revolution and War of 1812. In the decades leading up to the creation of the Hunters' Lodge, the United States had undergone massive expansion through the Louisiana Purchase and the acquisition of Florida. By the 1820s, Americans had staked a claim to a full half of the continent.¹²⁶

Through the early winter and spring of 1838, the Hunters gathered strength, stockpiling weapons and infiltrating low-ranking government posts as sheriffs, postmasters and customs officers.¹²⁷ They also created their own bank, The Republican Bank of Canada (its currency to bear the words, "liberty, equality and fraternity"¹²⁸) in which investors could buy stock, to be paid out upon the liberation of the Canadas.¹²⁹ They also created a new logo that could be used as a national flag for a new Canadian republic: a giant American eagle swooping to Earth and sinking its sharp talons into the back of the British lion. While membership in the Hunters included malcontents and ne'er-do-wells, it may have attracted "men of wealth, influence and intelligence"¹³⁰ and it was rumoured that governors of some Great Lake states, including Michigan and New

¹²⁶ Charles M. Wiltse, *The New Nation: 1800-1845* (New York: Hill and Wang, 1964), 82.

¹²⁷ Graves, *Guns Across the River*, 53.

¹²⁸ Kinchen, *The Rise and Fall of the Patriot Hunters*, 40.

¹²⁹ Graves, *Guns Across the River*, 53.

¹³⁰ Letter from John Mittleberger to Sir George Arthur, October 1838. LAC.

York, were members.¹³¹ Even Henry Clay was believed to sympathize with the Hunters.¹³² Historian Donald E. Graves notes that the Hunters recruited Orrin Scott, the nephew of General Winfield Scott, the very man sent to patrol the border to prevent Hunter incursions from getting out of hand, as well as Charles Brown, nephew of General Jacob Brown, the man who had once been the commander of the entire American army.¹³³

Night after night in Cleveland, men stole into the streets. When they were not meeting at the Hunters' Lodge, they drilled out in the woods outside the city, preparing for battle. "Parties were drilled at night in all possible secrecy at distances of thirty to fifty miles from the frontier," wrote one informant to Sir George Arthur, lieutenant governor of Upper Canada. Cleveland also had its own newspaper dedicated to the Hunters' cause, the *Bald Eagle*. Curiously, neither the *Bald Eagle* nor the mainstream press reported anything unusual during the week of September 16 to 22 even though dozens of Hunters were arriving in Cleveland for a convention to elect a provisional government of the Republic of Canada. All lodges were expected to report to the meeting.¹³⁴

It was at this gathering that A.D. Smith was elected president of "the Republic of Canada." Few details of the election have yet been located, but it can be surmised that it was done in strictest secrecy since there is no mention of it in Cleveland's press.¹³⁵ A coded Hunter document in the Lucius Verus Bierce manuscript collection at the Western

¹³¹ Graves, *Guns Across the River*, 54.

¹³² Rebellion of 1837-1838, Upper Canada Collection. R5201-0-6-E (formerly MG24-B97). Library and Archives Canada, Ottawa. Hereafter LAC.

¹³³ Graves, *Guns Across the River*, 54.

¹³⁴ Charles Lindsey, *William Lyon Mackenzie* (Toronto: Morang & Co., Ltd., 1912), 441.

¹³⁵ Kinchen, *The Rise and Fall of the Patriot Hunters*, 50.

Reserve Historical Society dated almost exactly one month before the Cleveland election is signed “by the President, A.D. Smith.”¹³⁶ Whether the date was simply listed incorrectly or whether Smith had been de facto president weeks before he was formally elected to the position cannot be ascertained. A Cleveland grocer, Nathan Williams, was elected vice-president and Lucius V. Bierce, an Akron lawyer, was made commander-in-chief of the “Army of the Northwest.” The group of 160 delegates approved what labour historian Andrew Bonthius has called “a quintessentially Locofocoite banking plan designed to fund their cause and serve a new republican economy in Canada.”¹³⁷ Bonthius has noted:

The circular left little room for mistaking the Hunters’ all-encompassing vision for anything less than the refashioning of Canadian civil society along radical republican lines: ‘All institutions of the country should be for the benefit of the people. There should be no landed aristocracy, no established church, no bank monopoly, no union of the monied aristocracy with the executive.’ The exigencies of capitalist development, particularly in the U.S., had made this latter call for the separation of state and bank the calling card of radical, democratic republicans... . Thus, even though they were using the word ‘bank,’ theirs was obviously not intended to operate in any traditional capitalist sense, and eastern bankers would certainly have scoffed at the ... plan approved by Patriots in Cleveland.¹³⁸

Bonthius touches here on an important aspect of Hunter ideology that is particularly relevant when considering the character of Smith. The Hunters’ distaste for monopolies and aristocracies mirrors the Jacksonian aversion to “an America of privilege and monopoly”¹³⁹ while their banking scheme was classically Jacksonian. “The bank

¹³⁶ Lucius Verus Bierce papers, Western Reserve Historical Society, Cleveland, Ohio. MS. 1081.

¹³⁷ Andrew Bonthius, “The Patriot War of 1837-1838: Locofocoism With a Gun?” *Labour/Le Travail* 52 (Fall 2003): 32. See also online www.historycooperative.org/journals/llt/52/bonthius.html

¹³⁸ Bonthius, “The Patriot War,” 32.

¹³⁹ Joseph L. Blau, ed. *Social Theories of Jacksonian Democracy: Representative Writings of the Period 1825-1850* (New York: Liberal Arts Press, 1954), xxviii.

issue,” wrote historian James Roger Sharp, “was the crucible of the Democratic party. It tested and tempered the metal of Jackson’s followers and became the mold from which the party was shaped.”¹⁴⁰ In many respects, then, Hunter ideology rested firmly on Jacksonian precedents, and would have had direct appeal for someone like Smith, whose left-Jacksonian leanings — particularly his repeated efforts to vindicate the disenfranchised of society — welled up at this stage in his life, priming him for personal and public battles he was to face in later years.

Cleveland’s Hunter headquarters and the place where their new president, Smith, did his scheming, was located in Miller’s Block, on Superior Street, a location that now houses a municipal parking lot. The facility featured a spacious hall on its upper floor for meetings that was roomy enough for Hunters to drill. In mid-September, 1838, “President Smith” informed at least one man, an Ohio cabinetmaker named William Jones, that an attack was planned for the following month.¹⁴¹ In fact, the Hunters had many attacks and invasions planned, though it cannot be certain how many, if any, of them were masterminded by Smith. In November, 1838, the Hunters stormed Eastern Ontario near Prescott, triggering the Battle of the Windmill, an event that, had it not involved the loss of life, historian Donald Graves notes, would have made “delightful comic opera.”¹⁴² The initial plan was to land at Prescott and seize nearby Fort Wellington.

¹⁴⁰ James Roger Sharp, *The Jacksonians versus the Banks: Politics in the States After the Panic of 1837* (New York: Columbia University Press, 1970), 6.

¹⁴¹ Sworn deposition from William Jones. LAC.

¹⁴² Graves, *Guns Across the River*, 11. Graves’ work is the most recent to tackle the story of the Hunters and is also the definitive book on the Battle of the Windmill. My recounting of the battle is based on his account.

At that point, the Hunters intended, according to historian Graves, “to arm the thousands of Canadians expected to rally round once news of the invasion had spread.”¹⁴³

With sentries in Prescott sounding the alarm, the Hunters’ initial night landing was thwarted by three abortive attempts to dock their schooners, forcing them to retreat to the American side of the St. Lawrence until the morning light. By then, HMSV *Experiment* had arrived to defend the town. On their way to safe American waters, the Hunters’ ships ran aground and their lines entangled.¹⁴⁴ In desperation, the Hunters hijacked the steamer *United States* in Ogdensburg. The New York river port had erupted in chaos as Hunters, “armed to the teeth,” overwhelmed federal officials.¹⁴⁵ Seeing the HMSV *Experiment*, the Hunter captaining the pirated *United States* “decided his best course of action was to ram” the smaller British vessel, much to the appreciation of his boisterous “crew.” According to Graves, the new captain reasoned that,¹⁴⁶

If he could not sink the *Experiment*, he might damage her enough to keep her out of the way, and on his orders the steamer’s pilot, Solomon Foster, steered directly for the little British steamer. As the *United States* came up the river, the militia in Prescott fired at her but the Hunters on her decks, perhaps as intoxicated as her captain, jeered when the rounds fell short.¹⁴⁷

The *Experiment*, evading the attack, steamed back to the docks at Prescott. Gathering at Windmill Point, about a kilometer and a half east of Prescott, the Hunters waited for reinforcements. Historian Donald Graves estimates that up to 300 Hunters may have

¹⁴³ Graves, *Guns Across the River*, 81.

¹⁴⁴ Graves, *Guns Across the River*, 84-87.

¹⁴⁵ Graves, *Guns Across the River*, 88-89.

¹⁴⁶ Graves, *Guns Across the River*, 91.

¹⁴⁷ Graves, *Guns Across the River*, 92.

reached Canada that day¹⁴⁸ and prepared for battle the following morning. As one Hunter recalled:

We had full confidence in our cause as a just and noble one. We believed we were about to do our neighbours a deed of charity, such as the golden rule inculcates when it teaches us to do to our fellows as we would they should do to us. We believed our Canadian neighbours to be struggling for that freedom which we were enjoying and with a little aid, they would be successful in securing.¹⁴⁹

But with limited ammunition and food and bereft of the support they had anticipated from Canadians,¹⁵⁰ the Hunters did not have the advantage. Some sensed the futility of the venture and deserted before the battle began.¹⁵¹ After exchanging fire with the British over several days, the battle ended with the Hunters, some wounded, barricaded inside the mill:

The doors and ground floor windows of the buildings near the mill were barricaded with bricks, stones, furniture, lumber and timber, and just about anything else that could be found until they were completely blocked. To enter the buildings, the Hunters used ladders to climb up to the second-storey windows, and once inside, these were pulled up to deny access to unwanted visitors ... The invaders also collected nails, spikes, door handles, hinges and other metal scrap to use as canister rounds in their artillery pieces.¹⁵²

Now surrounded by British forces and staring down the barrels of two 18-pounders, the Hunters' situation was untenable and they surrendered on 16 November, 1838.¹⁵³ Kinchen has estimated that one hundred and fifty-seven men were taken prisoner and brought to Kingston's Fort Henry to await military trial, where they were prosecuted under "An Act to protect the Inhabitants of this Province against Lawless aggression

¹⁴⁸ Graves, *Guns Across the River*, 101.

¹⁴⁹ Jack Cahill, *Forgotten Patriots: Canadian Rebels on Australia's Convict Shores* (Toronto: Robin Brass Studio, 1998), 62.

¹⁵⁰ Graves, *Guns Across the River*, 125.

¹⁵¹ Graves, *Guns Across the River*, 136.

¹⁵² Graves, *Guns Across the River*, 134.

¹⁵³ Kinchen, *The Rise and Fall of the Patriot Hunters*, 76-77.

from Subjects of Foreign Countries at Peace with Her Majesty.”¹⁵⁴ Some of the Hunters who participated in the Battle of the Windmill were sent to penal colonies in Australia¹⁵⁵ and eleven were hanged.¹⁵⁶ In an ironic twist, the Hunters were defended by a team that included John A. Macdonald — then a young lawyer like A.D. Smith. Smith never realized his dream of leading Canada, but Macdonald went on to become the united country’s first prime minister in 1867.¹⁵⁷

Smith apparently had little to do with the Prescott attack since most of the men involved seem to have been from New York,¹⁵⁸ but it is likely that he had a hand in the plot to invade Windsor, as this was planned in Cleveland and guided in part by the efforts of Lucius Bierce,¹⁵⁹ Smith’s “commander-in-chief.” Seizing the steamboat *Champlain* on 3 December 1838 and locking her crew inside, the invaders crossed the Detroit River to land on the Canadian side in Windsor. With Bierce’s command to “conquer or die,”¹⁶⁰ the Hunters, armed with muskets, bayonets, pistols and knives, marauded through the village of Windsor.¹⁶¹ They set fire to the militia barracks, burning some of the soldiers inside alive. They torched a Canadian steamer, the *Thames*, and set fire to houses. They killed

¹⁵⁴ Graves, *Guns Across the River*, 163.

¹⁵⁵ See Jack Cahill, *Forgotten Patriots: Canadian Rebels on Australia’s Convict Shores* (Toronto: Robin Brass Studio, 1998) for an examination of what happened to those who were sent to the penal colonies.

¹⁵⁶ Charles Lindsey, *The Makers of Canada: The Struggle for Responsible Government, MacKenzie, Papineau*. Volume VI. (Toronto: Morang and Company Ltd., 1912), 444.

¹⁵⁷ For more information about Macdonald’s life, see what many consider to be the definitive biography. Donald Creighton, *John A. Macdonald: The Young Politician* (Toronto: The MacMillan Company of Canada, Ltd., 1952) and by the same author, *John A. Macdonald: The Old Chieftain* (Toronto: The MacMillan Company of Canada, Ltd., 1955). For a more recent biography, see, Richard J. Gwyn, *John A: The Man Who Made Us* (Toronto: Random House Canada, 2007).

¹⁵⁸ Guillet, *The Lives and Times of the Patriots*, 133.

¹⁵⁹ Guillet, *The Lives and Times of the Patriots*, 143.

¹⁶⁰ Kinchen, *The Rise and Fall of the Patriot Hunters*, 81.

¹⁶¹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 81.

one man on the spot when he refused to join their rampage. They killed another man, either by shooting him and then slashing his bloodied body with Bowie knives or by mutilating him with an axe before feeding him to hogs.¹⁶² When the militia arrived, the Hunters were positioned in an apple orchard. Kinchen has described the outcome of the ensuing fray:

Before the invaders could reload, the orchard was filled with militia, firing point blank at the wavering lines of the Hunter force it was only a matter of minutes until Bierce's men were in tumultuous flight, some running southward into the woods while others ... were able to find canoes and skiffs and to make their way across the river while bullets whizzed by on their right and left.¹⁶³

Twenty-one Hunters died in the battle and twenty-four were captured. Four of them were shot without trial.¹⁶⁴ The Hunters who returned to the United States were welcomed as heroes in Detroit, despite the American government's policy of neutrality.¹⁶⁵ Back in Upper Canada, the incidents in Prescott and Windsor sparked fears of more attacks. But the attacks, when they came, were minor. From time to time Canadian homes along the border were torched, particularly those of known supporters of the Crown. These actions must have left many Upper Canadians confused. While disgusted by what they saw as corruption in the offices of colonial officials, most had no quarrel with Crown rule and they did not abide arson. The raids were a serious miscalculation on the part of the Hunters, who had believed from the beginning that they had the moral and physical support of Canadians. Instead, the raids were met with little or no support, leaving the Hunters completely alone. As historians S.F. Wise and Robert Craig Brown

¹⁶² Kinchen, *The Rise and Fall of the Patriot Hunters*, for a description of the Battle of Windsor, see pp. 79-82, also Guillet, *The Lives and Times of the Patriot Hunters*, pp. 143-152.

¹⁶³ Kinchen, *The Rise and Fall of the Patriot Hunters*, 82.

¹⁶⁴ Kinchen, *The Rise and Fall of the Patriot Hunters*, 82.v

¹⁶⁵ Kinchen, *The Rise and Fall of the Patriot Hunters*, 82-83.

have noted, years of violence — first the Canadian Rebellions followed by the guerrilla activities of the Hunters — transformed Canadian opinion of America. In this climate, support of the Hunters became all the more improbable:

In all regions, the rebellions of 1837 and the ensuing violations of British North American territory by American citizens in support of the rebels, with the apparent sympathy of the United States government, served to telescope colonial opinion toward the right. Favorable views of American institutions were now irretrievably associated with treason, and it required more courage — and more conviction — than most moderate reformers possessed to voice publicly the mildest praise for them. For more than a decade after the rebellions, there would be no major challenge to the dominant conservative position on the nature of the American polity.¹⁶⁶

Kinchen notes several factors that contributed to the demise of the Hunters at this time. American forces along the border had been strengthened, making excursions more difficult. As well, General Winfield Scott and his men were under orders “to use every measure in their power to prevent any hostile incursions into Canadian territory and officers ... were supplied with funds for the purchase of information about threatened attacks,” thus hampering recruitment and any open plotting in taverns.¹⁶⁷ This crackdown was quite effective, given the weak leadership of the Hunters.

Whatever support the Hunters ever had faded, furthermore, when the Durham Report of 1839¹⁶⁸ recommended responsible government for British North American colonies and the amalgamation of Upper and Lower Canada to form a united Province of Canada. In 1841, the same year as the Act of Union, President John Tyler, a Virginian

¹⁶⁶ Wise and Brown, *Canada Views the United States*, 43.

¹⁶⁷ Kinchen, *The Rise and Fall of the Patriot Hunters*, 101.

¹⁶⁸ For a discussion of the Durham Report in the context of liberalism, see Janet Ajzenstat, “Liberalism and Nationality,” in *Canadian Journal of Political Science* 14 (September, 1981).

little interested in Northern expansion, issued a proclamation denouncing the Hunters and their motives:

I expect all well-meaning but deluded persons who may have joined these lodges immediately to abandon them and to have nothing more to do with their secret meetings and unlawful oaths, as they will avoid serious consequences to themselves; and I expect the intelligent and well-disposed members of the community to frown upon all these unlawful combinations and illegal proceedings, and to assist the Government in maintaining the peace of the country against the consequences of the acts of their violations of the law.¹⁶⁹

The Tyler presidency ushered in a new era in American politics and American-British diplomacy. Many historians have commented that the two countries were on the brink of war during much of the time of the Hunters' activities, but in the early 1840s, the relationship took a decided turn for the better¹⁷⁰ as the Whigs took power in the U.S. In 1842, the British government sent Alexander Baring, Lord Ashburton, to Washington to broker a settlement of all outstanding disagreements with the United States. His mission was helped along by the fact that Daniel Webster, the Secretary of State, was warm to the idea of peace with England, and even considered Lord Ashburton a personal friend.¹⁷¹

In addition to the Maine border dispute, the Webster-Ashburton Treaty settled one of the unresolved issues stemming from the *Caroline* incident. In 1840, a Canadian deputy sheriff by the name of Alexander McLeod¹⁷² had bragged over beer at an American tavern that he had been responsible for the sole death aboard the boat, the killing that had sparked most of the cries for retribution on the American side of the border. Immediately he was jailed in New York on the charge of murder. Britain

¹⁶⁹ Proclamation of John Tyler, Sept. 25, 1841. For full text, see the American Presidency Project, www.presidency.ucsb.edu/ws/index.php?pid=67555.

¹⁷⁰ Van Deusen, *The Jacksonian Era*, 172.

¹⁷¹ Van Deusen, *The Jacksonian Era*, 173.

¹⁷² For an examination of the McLeod case see R.Y. Jennings, "The Caroline and McLeod Cases," *American Journal of International Law* 32 (January 1938).

protested the arrest but negotiation stalled when the U.S. federal government refused to intervene in a state court case.¹⁷³ At trial, evidence showed McLeod to be a liar, not a murderer, and he was acquitted when it was determined that he had been miles away from the *Caroline* at the time of the death.¹⁷⁴ Ashburton expressed some remorse for the whole sad affair and, in exchange, Webster also made a concession: a new law to give federal courts the right to intervene with habeas corpus when foreigners were arrested by state authorities for acts committed in the accused's home country.¹⁷⁵ With reform in Canada and improved diplomatic relations between the United States and Britain, the Hunters' *raison d'être*, and their tenuous organizational structure, crumbled. With no issues to keep their radical fires burning, the Hunters simply faded from the landscape; they were forgotten as quickly as they had formed.

The question of what, exactly, was meant by the election of a President of Canada, remains one of the questions the Hunters left in their wake, and answers are difficult to ascertain and speculative at best. Scant documentation remains to confirm that Smith was considered a president in any meaningful way and thus far, no private writings from Smith during this time have been located. Accounts of contemporaries say little of Smith's role as president. On the surface, Smith's title can be read as a provisional rôle that would have been activated the moment Hunters took control of Canadian soil. In practical terms, the rôle appears to have been solely administrative since there is no evidence at all that Smith took part in any military activities himself. It is possible that the Hunters were simply modelling the idea of a Canadian president after something they

¹⁷³ Van Deusen, *The Jacksonian Era*, 139.

¹⁷⁴ Van Deusen, *The Jacksonian Era*, 173.

¹⁷⁵ Van Deusen, *The Jacksonian Era*, 173.

had seen take place during the Canadian Rebellions, when William Lyon Mackenzie declared himself president of a new republic:

Less than a week after he had fled the battlefield, Mackenzie was again on Canadian soil, this time as the chief of state of a new Canadian republic. The first volunteers crossed with him to Navy Island ... Here Mackenzie raised the Patriot tricolour, with its twin stars for the two Canadas, and, as 'Chairman, *pro tem.*' of the provisional government, promised rewards of Canadian land and silver for every new recruit.¹⁷⁶

Part of the difficulty in analyzing Smith's role lies in the murkiness that surrounds the goals and intentions of the Hunters themselves. Kinchen says simply that their "purpose was none other than to 'give liberty to the people of Canada.'" Edwin C. Guillet states explicitly that "the main aim of this elaborate secret organization was to obtain a republican form of government for Canadians, and they were persuaded that on their arrival the populace would rise to their support."¹⁷⁷ If this were so, the Hunters would have had to spark a full-scale Revolution and, in the aftermath of such an event, it would seem unlikely that Canadians' first choice for President of the new republic would have been a foreigner such as Smith.¹⁷⁸

If, on the other hand, Hunters entertained thoughts of annexation, Smith's status might have been seen as more akin to that of a territorial governor rather than a president, a distinction they perhaps believed they could quibble over once the nasty business of Revolution had been set aside. All of this hinges, of course, on whether the Hunters truly believed they had what it took to overthrow the Crown. The success of such a Revolution depended on full support from Canadians, which the Hunters realized they did not have

¹⁷⁶ Kilbourn, *The Firebrand*, 219-220.

¹⁷⁷ Guillet, *The Lives and Times of the Patriots*, 132.

¹⁷⁸ If, indeed, he was born in the United States as records suggest. Ambiguity over Smith's birthplace, as outlined above, leaves open the remote possibility that he may have been born in Upper Canada, or born in the United States to Canadian emigrants.

after their first incursions on Canadian soil. Eventually, they would also have required support from their own government, which they were also aware they lacked. Those men who occupied positions of power within the group, such as Smith, must also have been aware that the Hunters' Lodge lacked the organization, military skill and sheer numbers to ever be successful, leaving a troublesome question: *Did the Hunters not believe in their own stated purpose?* Undoubtedly some must have held strong beliefs that their goal of a Canadian republic was possible, particularly those who were willing to risk their lives on the front lines for such a cause. Yet many men who were persuaded to fight for the cause were also paid for their participation by funds raised by the Lodge, or they were promised future payment.¹⁷⁹

For men like Smith, however, motivations for belonging to the group would seem suspect. As one spy reported to colonial officials, Hunter meetings seemed to be attended mostly by 'fellows who delight in hearing themselves speak, but who would never venture to take an active part in an invasion of Canadian territory.'¹⁸⁰ While those drilling in the woods may have been of the working classes,¹⁸¹ those in higher positions of responsibility within the organization were often doctors,¹⁸² lawyers and merchants and, as historian Oscar Kinchen notes, politicians: "On the American side, there were politicians seeking personal advancement by associating themselves with the 'crusade for Canadian freedom.' Candidates are said to have announced for office, basing their claim

¹⁷⁹ Kinchen, *The Rise and Fall of the Patriot Hunters*, 63.

¹⁸⁰ Kinchen, *The Rise and Fall of the Patriot Hunters*, 54-55.

¹⁸¹ Smith's commander-in-chief of the "Army of the Northwest," Lucius Bierce, seemed more interested in "bombastic addresses and proclamations" than in taking part in any sort of combat. See Guillet, *The Lives and Times of the Patriots*, 143.

¹⁸² Kinchen, *The Rise and Fall of the Patriot Hunters*, 20.

to public favor on the ground of their being identified with the Patriot cause."¹⁸³ For a young man like Smith with obvious political aspirations, participation in the Hunters movement would have served the same purpose as his activities with the freemasons in that it would have provided opportunities to connect with influential men in the community, practise oratory and sharpen his leadership skills. Since the Hunters in Ohio were known backers of President Martin Van Buren,¹⁸⁴ and since Smith was an avowed Democrat, it also presented a chance to socialize with like-minded citizens for the purpose of political organization beyond the goals of the Hunters' Lodge:

...the discussion of politics and the advocacy of candidates deemed favorably to the Patriot cause occupied no small place in the program at these lodge meetings. During the autumn of 1838, the lodges in New York and Ohio were backing a slate of candidates for the various state offices as well as for representatives in Congress."¹⁸⁵

While this interpretation may seem to make Smith's participation disingenuous, a critical distinction must be made: just because Smith may not have believed the Hunter objectives were possible does not imply that he did not believe in the cause itself. On the contrary, the Hunters' efforts to secure republican virtue in Canada, their absolute dedication to concepts of liberty and their Jacksonian devotion to the protection of the common man would have held immense appeal for Smith.

The questions raised by Smith's experience with the Hunters are numerous, and answers are not easily found. As a secret society, the group did not leave a tell-tale paper trail, accounts of their activities vary widely, and no diary of Smith's time in Ohio has been located. Even those who must have known Smith, such as Bierce, do not seem to

¹⁸³ Kinchen, *The Rise and Fall of the Patriot Hunters*, 20.

¹⁸⁴ Kinchen, *The Rise and Fall of the Patriot Hunters*, 43.

¹⁸⁵ Kinchen, *The Rise and Fall of the Patriot Hunters*, 54.

have written about his Ohio exploits. Kinchen noted that the Hunters had a standing order to burn all membership rolls and other lodge records in the event that the movement failed. Consequently, few official Hunter records, save a few coded documents with minimal information, have ever been found.¹⁸⁶ Despite this, Smith's involvement in the group does reveal some clues about his personality that are evident in all chapters of his life, starting of course with his apparent inability to assess realistically the alignment of forces in the boundary region. Later, his lack of realism would undo his career in both Wisconsin and South Carolina.

More positively, his embrace of the United States' "mission" to spread republicanism attested to his lifelong passion to protect those he saw as defenceless and vulnerable to the heavy hand of an oppressor, which usually presented itself in the form of government. "The world is governed too much," was, as Hugins has noted, the slogan of the *Washington Globe*, agent of the Jackson administration.¹⁸⁷ Hugins wrote:

This became the rallying cry of Jacksonians, North and South, and especially of those party radicals, like the Locofocos, who scolded their more conservative fellow Democrats for departing from the guiding principles of Jefferson and Jackson. Meanwhile, they saluted the President for his forthright statement in the famous 1832 veto message: 'There are no necessary evils in government. Its evils exist only in its abuses. If it would confine itself to equal protection, and, as Heaven does its rains, shower its favors alike on the high and the low, the rich and the poor, it would be an unqualified blessing.'¹⁸⁸

In Smith's eyes, it is easy to see why the aims of the Hunters would have been appealing. As misguided as they may have been in terms of gauging Canadian public opinion and as hopelessly disorganized as they were in terms of military proficiency, the Hunters nonetheless were motivated primarily by their wish to safeguard and defend the

¹⁸⁶ Kinchen, *The Rise and Fall of the Patriot Hunters*, 122.

¹⁸⁷ Hugins, *Jacksonian Democracy and the Working Class*, 148.

¹⁸⁸ Hugins, *Jacksonian Democracy and the Working Class*, 148.

downtrodden — ideals that were tinged with a decidedly Jacksonian flavour. In December, 1838, the *Freeman's Advocate* outlined its position in this regard:

Let us be understood — in principle we are of the ultra-democratic school. Aristocracy and monarchy are equally hideous to us — where the former seeks to make wealth a basis of power independent of intellect — the only true and genuine aristocracy which can be claimed by man. We are disposed to look with an equally cold eye upon the republican aristocrat, as the British tory — time and circumstance alone create the difference — the feelings, the motives are the same — a love of power independent and uncontrolled by their fellow men.¹⁸⁹

In the aftermath of the Battle of the Windmill, the *Freeman's Advocate* added the following quote from Carlyle to its banner: "There is an unconquerability in man, when he stands of the rights of man; Let despots and slaves, and all people know this and only them that stand on the wrongs of man tremble to know it."¹⁹⁰ When Canadians had still not managed to rise up against "the grossest tyranny"¹⁹¹ the following year, rather than suggest the beleaguered and inactive northerners should perhaps take matters into their own hands, the Hunters simply felt that "their helplessness should command our warmest commiseration."¹⁹² In his efforts in various reforms, Smith *always* had the warmest commiseration for anyone he and others had deemed helpless. In Ohio, his efforts to become involved in abolition suggest early stirrings of a desire to help those enslaved in the South. That he became involved in education for women at this time in his life indicates he must have felt strongly that women deserved, if not equal educational prospects, at least expanded opportunities. His secret stand with the Hunters perhaps best exemplifies this will to save a group of people from what he considered unreasonable and, more importantly unjust, treatment. This is also consistent with Smith's devotion to

¹⁸⁹ *Freeman's Advocate*, Dec. 28, 1838.

¹⁹⁰ *Freeman's Advocate*, Nov. 23, 1838.

¹⁹¹ *Freeman's Advocate*, Feb. 1, 1839.

¹⁹² *Freeman's Advocate*, Feb. 1, 1839.

the Democratic party, an organization, John Gerring asserts, that saw itself as a champion of the oppressed:

Democrats ... as ethnocultural historians have keenly pointed out, saw many disadvantaged groups in their midst — the South of course, but also agriculture (oppressed by industrial and financial interests) and the various religious and ethnic newcomers who were overrepresented in the party's voting base The Democratic party *portrayed itself* throughout the nineteenth century, well before the advent of the Civil War, as a party of victims, and it is this rhetoric of victimization that gave Democratic ideology much of its minoritarian flavor

In the end, it was clear that Smith's Canadian "victims" did not see themselves in quite the same terms, and the lawless behaviour of the Hunters soon began to disappear from newspaper headlines.

Yet, even as Smith broke the law along the border, he was upholding it in Cleveland. In hundreds of pages of his docket books, now yellowing pages in storage at the Cuyahoga County Archives in Cleveland, Smith's time as justice of the peace was recorded in the petty cases he oversaw. On 5 May 1841, Smith handed over the dockets to John Barre, Esq., his "successor in office." This was the last time he signed an official document still extant in Cleveland.

Then, like the Hunters, he simply disappeared. There is nothing to indicate that anything in particular acted as a catalyst for Smith's move. While Hunter activity was frowned upon by the U.S. government, there is no evidence that anyone involved in the Hunter cause feared the authorities' pursuing them on American soil, provided that they did not openly engage in further activity. In Smith's case, he seems to have disowned the movement and his involvement with the Hunters did not follow him throughout his life. Caught up in the movement as a young man, it would seem likely that the Hunters were an embarrassment to him in later life — a radical, reckless episode of youth that a more

established man might wish to forget. The Hunters were disorganized losers in the fight for the establishment of a Canadian republic, and Smith was the President of Canada who never was. It is possible that not even his wife, Mary Augusta, understood the extent to which he was involved with the Hunters. It was a secret that in all likelihood, he took to his grave.

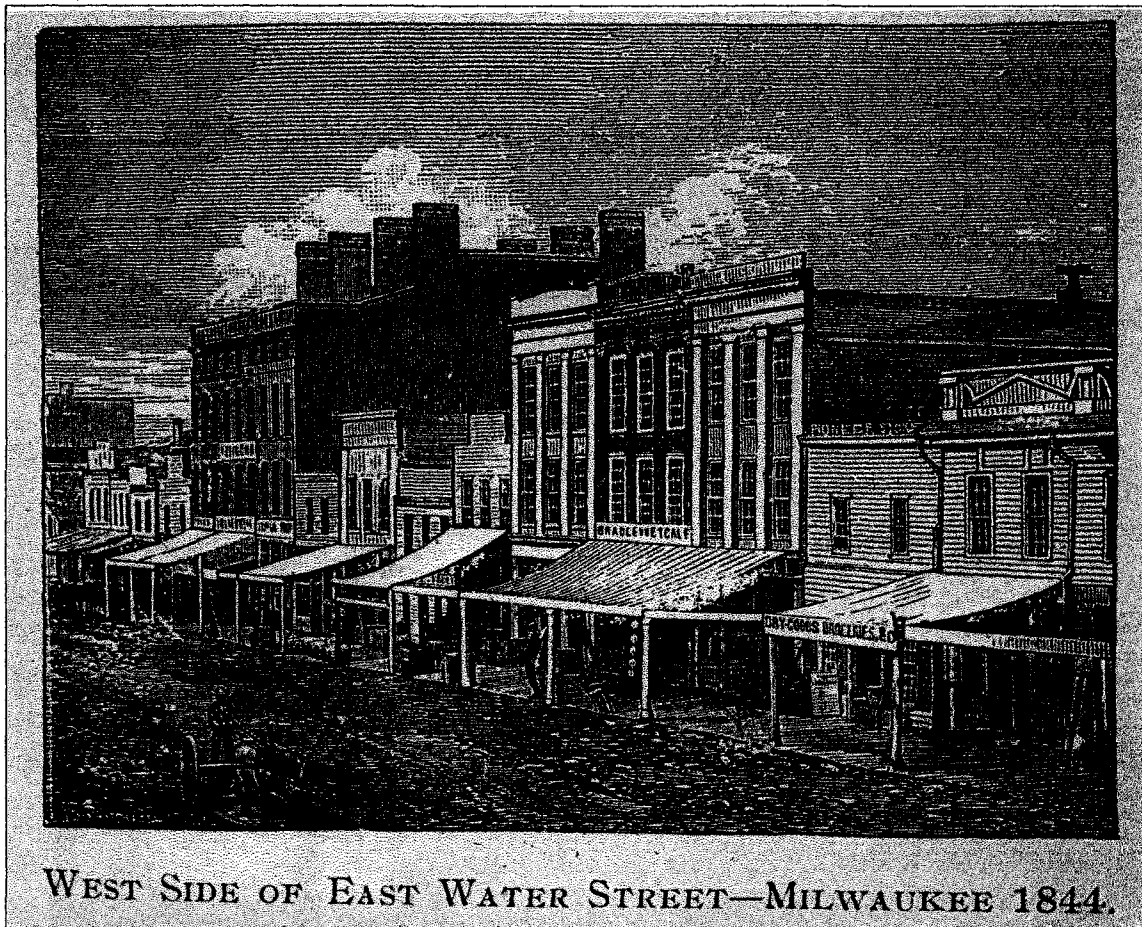


ILLUSTRATION 2: Milwaukee as it appeared shortly after A.D. Smith's arrival in 1842. From the collection of the Wisconsin Historical Society, Madison, Wisconsin.
Image ID: 5226



ILLUSTRATION 3: Oil painting of A.D. Smith from the Wisconsin Historical Society, Madison, Wisconsin. Portrait by Samuel Marsden Brookes, 1856.
Photograph of portrait by Ruth Dunley, March 2005.

Chapter 3

“When I think of him I incline to spit”

Why was it Wisconsin and not some other northern state, which struck down the 1850 Act and embraced states rights? The answer does not lie in any unique feature of Wisconsin politics or society. Wisconsin happened to have one man on its supreme court, Abram Smith, who was willing to shoulder the responsibility of going against all legal precedent — and got the opportunity to do so. If someone other than Smith had been on the bench ... the Wisconsin states rights movement might well never have been born.
— Joseph A. Ranney, Wisconsin legal historian¹

On the south stairwell, approaching the landing between the first and second floors of the Wisconsin Historical Society in Madison, Wisconsin, people can be forgiven for shuffling past the unassuming oil painting that hangs in front of them. With a gold frame and swirls of dark paint, the portrait looks like so many of the nineteenth century — an austere-looking man with wavy grey hair, dressed in a black suit, with a vest just a little too snug, a second chin spilling over a too-tight cravat. His blue-grey eyes, in which “an expression of mirth was always lurking,”² according to one description, instead stare down at viewers with a look of mild disdain that borders on superciliousness, as evidenced by the down-turned corners of his mouth and the firm set of his shoulders. He looks every bit “a man of strong and original mind, of imperious will and tireless

¹ Joseph A. Ranney. “‘Suffering the Agonies of Their Righteousness’: The Rise and Fall of the States Rights Movement in Wisconsin, 1854-1861,” *Wisconsin Magazine of History* (winter, 1991-1992): 115.

² James S. Buck, *Pioneer History of Milwaukee: From the First American Settlement in 1833 to 1846* (Milwaukee: Swain, 1881-1890), 123.

industry,” to be sure.³ It would be of little surprise to anyone, then, that the man was a lawyer and later a judge, though few would be able to recognize the portrait subject as A.D. Smith and fewer still would bother to investigate further — in the past six years, the Society’s curator has received not one inquiry about the painting.

It is a rare portrait of Smith, who, despite his stature in early Wisconsin society, failed to leave much evidence of his eminent and generally well-respected position in the state. Ironically, when Smith sat for Milwaukee artist Samuel Marsden Brookes some time in 1856, he was at the height of his prominence in United States society. “This portrait,” according to an official report on the Society’s collection, “is a strikingly accurate one, and is remarkably correct in preserving the expression.”⁴ Certainly, it is a look of a man who was “fearless and independent,” as he is described in one history of Milwaukee.⁵ Accurate or not, Smith gave the painting to the State Historical Society of Wisconsin the same year Brookes finished the painting. Clearly, A.D. Smith believed he would one day be an important face of the state’s history, which makes his disappearance from general textbooks and state histories all the more intriguing. It begs an obvious question — *was he simply a legend in his own mind?*

During the 1850s, all of which Smith spent in Wisconsin, evidence suggests A.D. Smith was one of the most powerful men in the state; he moved in influential circles —

³ John Bradley Winslow, *The Story of a Great Court: Being a Sketch History of the Supreme Court of Wisconsin, Its Judges and Their Times from the Admission of the State to the Death of Chief Justice Ryan* (Chicago: T.H. Flood & Company, 1912), 40.

⁴ Second Annual Report and Collections of the State Historical Society of Wisconsin for the Year 1856, 1857, in the collection of the Wisconsin Historical Society, Madison, page 41, available online at <http://www.wisconsinhistory.org/museum/collections/online/> (accessed January 31, 2007), under entry for Samuel Marsden Brookes

⁵ John G. Gregory, *History of Milwaukee, Wisconsin*, (Chicago: S. J. Clarke, 1931) Vol II, 922.

he was connected to people at the highest levels of state government, socialized with the legal elite and was frequently quoted in Wisconsin newspapers. His landmark legal decision in the *Ableman v. Booth* case was known nationally, fêted by influential abolitionists and controverted at the United States Supreme Court only to be smacked down by Judge Roger B. Taney, whose Dred Scott decision only two years before had left the north reeling. Today, *Ableman v. Booth* is still seen as one of the most significant cases in Wisconsin's history, fomenting great anger in the nineteenth century and propelling the state, and country, towards the Civil War. Appropriately the *Reader's Companion to American History*⁶ makes *Ableman v. Booth* its first entry. Yet Smith was not part of the entry. Sadly, but not surprisingly, he did not merit a listing on his own, either, in the massive 1,188 page book. Nor do many people in Wisconsin seem to have any knowledge of the man. Even those who are aware of *Ableman v. Booth* seem to know very little about the man who adjudicated it.

Before looking at Smith's contributions in Wisconsin, however, I first had to determine what brought him to the state in the first place, which was easier said than done. I have found no reason for his departure from Ohio. After 1840, he simply vanishes from public records in that state, with little indication of where he might have gone. By this time, he had a wife, Mary Augusta, and two children, Mary Frances, now four years old, and Maria Cecilia, who was born in the summer of 1838,⁷ only a few weeks before the Hunters' convention in Cleveland at which her father was elected President of the Republic of Canada. Clearly, though, any thoughts of moving north to Upper Canada

⁶ Eric Foner and John A. Garraty, eds. *The Reader's Companion to American History* (Boston: Houghton Mifflin Company, 1991), 1.

⁷ Almost all genealogical information has been gleaned from online searches at www.familysearch.org and www.ancestry.com.

must have been dismissed, though the specific reasons why will likely never be known. As he had already done when he moved from New York to Ohio, Smith did what must have seemed prudent and what so many in mid-century were banking on to improve their lives after the Panic of 1837: he moved westward.⁸

Even more, Smith had familial reasons for wanting to leave Ohio. His in-laws, the Reeds of Massachusetts, had already long-settled in the Wisconsin Territory and were solidifying their position as pioneers of the state. Smith's wife, Mary Augusta, had five brothers, George, Orison, Harrison, Herbert and Curtis, and two sisters, Juliana and Martha, and it was clear from the beginning that the Reed children were ambitious in establishing their name in the western outpost. George Reed, the oldest son in the family, had studied law in Vermont and moved to Wisconsin in 1834. He later became a state senator, founder of the Wisconsin Historical Society and president of the Wisconsin Central Railway. About a year after his arrival he was joined in Wisconsin by his parents Rhoda and Seth and his siblings.⁹ Harrison Reed promptly established himself as an editor at the *Milwaukee Sentinel* and became one of the founders of the Republican Party before being tapped by the Lincoln administration to serve, as Smith also did, as a tax commissioner in the occupied south. (Harrison Reed later went on to a rocky career as a carpetbagging governor of Florida after the Civil War.¹⁰) Herbert Reed was a grocer

⁸ In 1840, Cleveland had a population of 6,071 while Milwaukee was a city of only 1,712. To compare population statistics for other Great Lakes cities, see Bayrd Still, "Patterns of Mid-Nineteenth Century Urbanization in the Middle West," in *Mississippi Valley Historical Review*, 28 (September, 1941): 189.

⁹ Milo M. Quaife, *The Convention of 1846* (Madison: Wisconsin Historical Society, 1919,), constitutional series, vol. II, 788.

¹⁰ Richard Nelson Current, *Those Terrible Carpetbaggers* (New York: Oxford University Press, 1988).

whose shop was later damaged by an alleged arson attack¹¹ and Curtis Reed, initially a clerk at a trading post,¹² became a state assemblyman who also held positions as alderman, mayor and postmaster in the town he helped settle, Menasha. Orison Reed served in the state senate.¹³ Martha Reed married railway tycoon Alexander Mitchell¹⁴ and Juliana married the president of the Milwaukee County Medical Association, Dr. Thomas Noyes¹⁵. All told, Smith was well-connected when he settled in the state. As legal and constitutional historian H. Robert Baker states, it was the perfect place for a lawyer at this point in time:

Lawyers were the most directly tied to the city's commerce. Lawyers provided crucial services in a cash-poor commercial town where many transactions went naturally through the courts. Lawyers worked to develop a reputation for fairness, predictability, and fidelity in Milwaukee. In a highly litigious community, they earned good livings and were the most financially successful of the professional classes.¹⁶

Wisconsin was considered an attractive destination in the early part of the century as a wave of post-War of 1812 westward migration, facilitated by the completion of the Erie Canal through New York state in 1825, which flooded the area¹⁷ with settlers such as the Reeds. The Reeds were typical of settlement in the area since Milwaukee absorbed most of its early settlers from the east, particularly from "the stony soil of New England

¹¹ *Milwaukee Sentinel*, Dec. 2, 1857.

¹² Newspaper clipping, Harrison Reed Papers, 1838-1940, Wisconsin Historical Society, Madison, Wisconsin. Wis Mss SR. Hereafter, Harrison Reed Papers.

¹³ *Dictionary of Wisconsin Biography* (Madison: The State Historical Society of Wisconsin, 1960) 299.

¹⁴ Harrison Reed Papers.

¹⁵ *Milwaukee Sentinel*, Feb. 6, 1838.

¹⁶ H. Robert Baker, "The Rescue of Joshua Glover: Lawyers, Popular Constitutionalism, and the Fugitive Slave Law in Wisconsin" (Ph.D. diss., University of California, Los Angeles, 2004), ch. 2, 1.

¹⁷ Alice E. Smith, *The History of Wisconsin: From Exploration to Statehood*, (Madison: State Historical Society of Wisconsin, 1973), 162-163.

or the rolling New York countryside.”¹⁸ By the 1840s, this trend began to shift as Wisconsin began to see waves of immigrants from Europe, especially from Germany and Ireland. The influence of these immigrant groups on Milwaukee society was evident by the time Smith arrived in Milwaukee — he would have seen German advertisements and German newspapers and German settlers were beginning to take on positions of authority, such as Edward Weisner, a German immigrant who served as justice of the peace.¹⁹ The flow of immigration did not subside and during the summers of 1843 and 1844, between 1,000 and 1,400 Germans arrived in the city every week.²⁰ Milwaukee also welcomed the Irish, though in smaller numbers. Most of these settlers arrived via other areas of the United States, having initially settled in New England, New York and frontier states further east, such as Michigan and Ohio.²¹

Smith seems to have moved to Milwaukee in the early 1840s, with most references suggesting he arrived in 1842. He arrived in a city that was undergoing rapid expansion: dams and canals were being dug, a dozen stores offered everything from a “fashionable tailor” to a meat market, there were six law offices and five doctors.²² A history of the city written about two decades later noted that Milwaukee in the summer of 1842 was a “town branching out into enterprise” as the “blossoms of speculation were giving way to the fruits of utility.”²³ Upon his arrival, Smith “immediately took high rank

¹⁸ Bayrd Still, *Milwaukee: The History of a City* (Madison: The State Historical Society of Wisconsin, 1948), 70-71.

¹⁹ Smith, *The History of Wisconsin: From Exploration to Statehood*, 75.

²⁰ Smith, *The History of Wisconsin: From Exploration to Statehood*, 73.

²¹ Smith, *The History of Wisconsin: From Exploration to Statehood*, 80.

²² Andrew Carpenter Wheeler, *The Chronicles of Milwaukee: Being A Narrative History of the Town from its Earliest Period to the Present* (Milwaukee: Jermain & Brightman, 1861), 120-122.

²³ Wheeler, *The Chronicles of Milwaukee*, 125.

as a pleader at the bar.”²⁴ He first appears in the *Milwaukee Sentinel* in 1842 in a notice about his “very interesting” temperance lecture at Presbyterian House²⁵ and two years later in connection with his activities with the Milwaukee Locofoco group,²⁶ indicating that he was still participating in the far-left Democratic politics that had marked his time in Ohio. Two days before Christmas, 1843, Mary Augusta gave birth to a son, Marius (no doubt named after the famed Roman general and warrior renowned for his dedication to republicanism) but the child died just two months after his first birthday. Smith appears to have responded to the death by throwing himself into public life.

An active lawyer with a young family, he was slowly emerging as a member of Milwaukee’s elite. He came to further prominence, however, when he took an active part in the bitter feuds over the ratification of the Wisconsin Constitution. In early 1846 there is a reference to him giving a speech in Madison as “Governor of the People,” a speech that spoke of the annexation of Texas and that carried more than an echo of Smith’s Hunter past:

The human intellect, emancipated by free government, has demonstrated its energy, and presented to an astonished world, its first trophy, in the bloodless acquisition to the United States of a foreign nation, achieved by moral power alone. A conquest made by the equity of our fundamental laws and the power of the great truths on which our system is based ... The mind emancipated, its energies in full exercise, passed at once from that result to a still wider field of moral conquest. A magnificent thought at first tremblingly entertained, has rapidly swollen into a universal sentiment, and already is demanding as a settled policy of the county, the union of the whole North American Continent, with all its dependencies under one, free democratic government. This is our destiny. He

²⁴ John G. Gregory, *History of Milwaukee, Wisconsin* (Chicago: S.J. Clarke, 1931), vol. II, p. 922.

²⁵ *Milwaukee Sentinel*, Oct. 26, 1842.

²⁶ *Milwaukee Sentinel*, March 30, 1844.

that rebels against it will be found warring against the inevitable consequences, of the intellectual and moral energies of the American people.²⁷

In four referenda from 1840 until 1844, Wisconsin voters had rejected a bid for statehood²⁸— many felt the territory did not have the wealth or population to support a state government and advocated continued reliance on the federal government.²⁹ This sentiment began to shift as the territory's population continued to swell and through an act of Congress in 1846, Wisconsin was authorized to write a constitution and apply for statehood.³⁰ The demographic makeup of the first convention became a factor as seventy-four per cent of the delegates were from either New England or New York and were overwhelmingly Democratic by a margin of 103 to only 18 Whigs and three independents.³¹ As explained by legal historian Joseph Ranney, these eastern Democrats brought to the convention a specific agenda, "which espoused a broad variety of reforms designed to further the Jacksonian ideals of popular sovereignty, dispersion of power, and equal economic and political opportunity for all."³² These reformers were at odds with the more conservative Democrats, the "Hunkers," from the southwestern part of the state, and might have prevailed at the convention had they not been so fractured themselves, their "spirit of disunity" apparent from the opening day.³³ After the convention, Smith, as part of the reform-minded group, spoke passionately in favour of the proposed

²⁷ A.D. Smith. "Message of His Excellency, A.D. Smith, Governor of the People," delivered at the Capitol, Madison, Wisconsin. January 20, 1846z. (Madison: H.A. Tenney, Territorial Printer, 1846): 4.

²⁸ Smith, *The History of Wisconsin: From Exploration to Statehood*, 648.

²⁹ Ranney, *Trusting Nothing to Providence*, 47.

³⁰ Ranney, *Trusting Nothing to Providence*, 48.

³¹ Smith, *The History of Wisconsin: From Exploration to Statehood*, 655.

³² Ranney, *Trusting Nothing to Providence*, 50.

³³ Smith, *The History of Wisconsin: From Exploration to Statehood*, 655.

constitution, though his oratory skills were not universally praised, as one detractor in Madison noted:

... after walking out of the hall, [he] returned in about five minutes with a long series of bombastic resolutions, which he could not have concocted and written out in an hour, and which no doubt had been prepared at Milwaukee ... The preamble and resolutions, characteristic of the framer of them, full of bombast and fulsome with praise and laudations of the late convention and the constitution, were indeed to any unbiased mind a rather sickly affair.³⁴

Smith was now speaking publicly on what appears to be a regular basis during the contentious period leading up to the vote on the proposed constitution. As documented by Ranney, some of the main issues that divided Democrats were alien suffrage, banks, and married women's property rights, all of which Smith spoke to in a lengthy address printed in response to an anti-constitution paper printed by Marshall Strong, a Racine lawyer and newspaper editor, based on a public speech. Smith said Strong was an "honorable gentleman" and then proceeded to take issue with, and poke fun at, every point Strong had advanced. In particular, Smith took issue with Strong's objections to married women's property rights, a topic that had come to the fore in the mid-nineteenth century. Following the economic fallout of the Panic of 1837, more men felt inclined to use their wives to shelter assets and more women were working outside their homes.³⁵ Reformers, like Smith, believed property rights should be extended to women on the basis of equality, but opponents said this would undermine marriage. Strong even suggested it might lead to increased rates of illegitimacy similar to what had been seen in France, which had such a provision.³⁶ Smith responded:

³⁴ Quaife, *The Struggle Over Ratification*, 388.

³⁵ Ranney, *Trusting Nothing to Providence*, 58.

³⁶ Smith, *The History of Wisconsin: From Exploration to Statehood*, 664.

The objection is that if a woman's rights of property are trespassed upon, the law will give her redress. This is seriously imputed by the learned gentleman as a vital objection. But pray, sir, would you not give her the protection of the law at all? Would you dehumanize her? Would you deny her a legal existence? This monstrous doctrine reduces her to a condition worse than the slave of the South. We had supposed it was the design of popular government to extend security of person and property to all.³⁷

This was not all. The topic seemed to have stirred an anger in Smith, for he continued:

Prevented by law or cowardice from trampling upon the rights of men, they cling with deathly grasp to the power of tyrannizing over woman ... In their view nothing is so terrible as an uncaged woman. Unchain the lion, let loose the tiger, but there can be no security for breeches while a petticoat flutters in the breeze!³⁸

Also controversial was the proposed Homestead Exemption, which was designed to save homestead property valued at no more than \$1,000 from the attachment of creditors. It had only been a decade since Wisconsin's territorial system had done away with imprisoning debtors, so reforms sparing debtors were relatively new.³⁹ Again, Smith spoke in favour:

It is hope, bright, sunny hope, that revives the fallen spirit and raises and sustains the man in misfortune. It is hope and reason that distinguish human nature. It is hope that lights the pathway of time and opens a vista to immortality. Deprive man of hope, and his reason only renders him the more capable and inclined for mischief. God gave hope to man to elevate and inspire him with sentiments of virtue and promise of reward. We would not destroy God's work by destroying this, his chief source of happiness, nor degrade our brother by removing the strongest incentive to honorable and useful action. The government has the right to call upon every one of its citizens to take up arms to defend its soil and prosecute its wars, and this is right. But if this is right on the part of the government, has the government no reciprocal duties to the citizens? Most surely the government should secure to the family a portion of the soil which the husband is periling his life to defend.⁴⁰

³⁷ Quaife, *The Struggle Over Ratification*, 568.

³⁸ Quaife, *The Struggle Over Ratification*, 570-571.

³⁹ Ranney, *Trusting Nothing to Providence*, 57.

⁴⁰ Quaife, *The Struggle Over Ratification*, 577.

Opponents of the proposed constitution also found fault with the proposal for an elected judiciary, believing that judges “would be chosen based on service to their political party rather than legal ability and integrity.”⁴¹ Again, Smith countered in support of the constitution, suggesting that the people would rise above this “to select the man best qualified.”⁴² In the end, Smith argued, Wisconsin needed to accept the constitution in order to “make Wisconsin what Nature designed her, the Queen of the West”⁴³:

Be not deceived; your rights are now placed in your own hands. Let not your grasp loosen for a moment, that your enemies may snatch them away. Be not inactive ... Come up to the contest with the shout and strength of freemen who know their rights and dare maintain them.⁴⁴

By early 1847, Smith had clearly achieved some public popularity, having been dubbed once again the “People’s Governor,” this time in the pages of the *Milwaukee Sentinel*. His image was suspect in some quarters, though, as subsequent articles refer repeatedly to Smith as a “zealous Native American”⁴⁵ with “Native American prejudices.”⁴⁶ Accusations of nativism, which had sprung up in the 1830s and 1840s as a response to overwhelming immigration, would have been damaging to Smith in a city that had seen widespread settlement of people of Germans and Irish heritage. In particular, Irish Catholics were conspicuous in the predominantly New England-founded Protestantism of Wisconsin. Accusations of nativism against Smith cannot be proven, but would have been at odds with general trends in the Democratic party at the time. Since Democrats had shown early sympathies with labour, as the Locofoco moment

⁴¹ Ranney, *Trusting Nothing to Providence*, 52-53.

⁴² Quaife, *The Struggle Over Ratification*, 584.

⁴³ Quaife, *The Struggle Over Ratification*, 587.

⁴⁴ Quaife, *The Struggle Over Ratification*, 587.

⁴⁵ *Milwaukee Sentinel*, Feb. 23, 1847.

⁴⁶ *Milwaukee Sentinel*, Feb. 23, 1847.

demonstrates, it was often the party that attracted immigrant voters, who were more likely to be working as labourers. As the party that embraced Protestantism, Whigs, on the other hand, tended to be less willing to entertain the needs of these Catholic settlers.⁴⁷ If Smith were a nativist, he endeavoured to cover his feelings, as would be prudent for someone with political aspirations, in his proclamation in support of the constitution, in which he made obvious overtures to Wisconsin's immigrants:

From the hills of Germany come thousands upon thousands of honest hearts and stout hands, bearing treasures of intelligence, industry, and gold from their fatherland to enrich this state of their adoption. From Sorrowing Erin come throngs of Freedom's pilgrims whose spirits no oppression could crush, and whose energies no calamity could subdue. From Norway's snowy hills and icy plains rush on and on succeeding hosts, with hearts alive to Liberty's sweet inspirations, asking no other privilege than the common equal rights and privileges of men among men. These are our citizens by whose energy and skill Wisconsin is being transformed magic-like from a wilderness to a garden. These are the men whose patriotism is the deep foundation of the state's safety. These are the women who are to bear to Wisconsin her sons and daughters to enjoy and transmit the liberty and equal rights which the friends of the constitution are laboring to secure and establish.⁴⁸

In the end, 14,116 voted in favour of the constitution and 20,231 voted against.⁴⁹

A second constitutional convention was held in 1847 and 1848 and voters approved the resulting constitution by a landslide of 16,799 to 6,384.⁵⁰ Smith was a candidate for a seat at this event, but was defeated,⁵¹ as he was the following year when he attempted to win a spot as circuit judge for the Democrats, running against Francis Randall, a Whig. Part of his political handicap may have been that he was still dogged by accusations of nativism.

⁴⁷ Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York: Hill and Wang, 1990), 194.

⁴⁸ Quaife, *The Struggle Over Ratification*, 578.

⁴⁹ Smith, *The History of Wisconsin: From Exploration to Statehood*, 665.

⁵⁰ Ranney, *Trusting Nothing to Providence*, 67. Wisconsin was admitted to the Union on May 29, 1848.

⁵¹ Winslow, *The Story of a Great Court*, 41.

Facing opposition from the Irish and Roman Catholics of Milwaukee, Smith became the subject of much debate in the *Sentinel*. "It is gravely asserted, that a report goes the rounds telling us that Catholics, 'as such' are arranging themselves as a body to defeat the election of Mr. A.D. Smith on merely religious grounds," wrote "Examiner" in the *Sentinel* in the summer of 1848.⁵² In particular, it recounted a story from Smith's past, suggesting that he had blocked a Catholic nominee for the position of sheriff:

We oppose A.D. Smith because he is A.D. Smith, because we know the man. We have not that confidence in his integrity and purity of character that we wish to have in the man we are to support for Judge. Not because he is, or has been thought to be intolerant (as "Jefferson" insinuates.) We do not charge him with that. His solemn apology for refusing to support the Democratic nominee for Sheriff some years since on account of his being a Catholic, we regard as an ebullition of disappointed vanity.⁵³

The debate over Smith's anti-Catholicism became so heated in the newspaper that some called for Smith to speak to the issue:

Either his conduct on some political platform was opposed to Catholics, as such, or it was not. If he is guilty, why do his friends try to shift the burden from his expressed hatred of Catholics, to the Catholic religion? If he is innocent, why so tamely endure so many challenges in times past from the *Sentinel & Gazette*? Why does he not like an injured man vindicate his good name? Let him speak to his peers and they will hear him!⁵⁴

Smith entered the fray by threatening to sue the editors of the *Madison Argus* for libel after they suggested he was "of intemperate habits, immoral character, questionable integrity, and unfit altogether for the office of Judge."⁵⁵ The possibility of a lawsuit prompted Solomon Juneau, a Catholic Montrealer who was credited as Milwaukee's

⁵² *Milwaukee Sentinel*, July 26, 1848.

⁵³ *Milwaukee Sentinel*, July 26, 1848.

⁵⁴ *Milwaukee Sentinel*, July 26, 1848.

⁵⁵ *Milwaukee Sentinel*, Aug. 2, 1848.

founding father,⁵⁶ to write a vitriolic letter to the editor of the *Sentinel* denouncing Smith's character:

Mr. Smith by threats of prosecution, cannot force public opinion in his favor. The people will judge and act independently of his threats, and if he does not know his own standing in this community, the approaching canvass will inform him that he is not overrated. As for myself, when I think of him, I incline to spit.⁵⁷

While Smith seems to have abandoned the lawsuit, he did campaign with new vigour, travelling through the counties of the Second District to seek support. "A course," the *Sentinel* sniffed, "not only unbecoming the station to which Mr. Smith aspires, but must, we think, be exceedingly revolting to the great mass of the electors in all parties."⁵⁸ In an interesting twist, Smith was defeated, in part, due to the efforts of an Irish immigrant named William Fox. As fate would have it, some years earlier in Cleveland, a smallpox patient was left to suffer in isolation, because visits, from friend or physician, had been prohibited by city law due to fears of transmission. But Fox, a "humane and high-spirited" doctor, ignored the rule in order to provide care for the ailing man, who had been his medical instructor. This violation brought Dr. Fox to the attention of officials, who took him to Smith, justice of the peace for the city. Smith opted to follow the letter of the law, slapping Fox with a severe fine. Dr. Fox was apparently unable to forgive Smith's heavy handling of the case, and when he later moved to Wisconsin and learned of Smith's bid to become a circuit judge, he set to work campaigning against him, an effort that paid off with Smith's defeat by a slim margin (something which Fox

⁵⁶ Frank A. Flower, *History of Milwaukee, Wisconsin* (Chicago: Western Historical Company, 1881), 75.

⁵⁷ *Milwaukee Sentinel*, Aug. 2, 1848.

⁵⁸ *Milwaukee Sentinel*, Aug. 5, 1848.

evidently believed had settled the score).⁵⁹ Despite his loss, Smith, undeterred, continued his speaking engagements (such as a lecture on “immortality of the body” that attracted a large crowd to the Young Men’s Association⁶⁰). In 1851, he generated the Democratic nomination for mayor.⁶¹ He lost to George Walker, a Virginian, by 346 votes.⁶²

While engaging in politics, Smith was also actively contributing to various community efforts, including the establishment of a medical college in Milwaukee. Plans for the college got underway in 1850 and when officers were elected to run the school, Smith won a spot as professor of medical jurisprudence. He was never able to teach, however, as plans for the school stalled for more than a decade.⁶³ In 1851 he threw his hat into the political ring for the position of circuit judge, but withdrew a short time later, with no reasons recorded in the newspapers of the time.

It was an event in the courtroom, not the political arena, though, that brought the prominence Smith so clearly sought. It also forced him to confront a great moral dilemma, and carry a terrible secret. Having started a legal practice in 1849 with Milwaukee lawyer Henry L. Palmer,⁶⁴ a Pennsylvanian who had moved to Milwaukee via West Troy, New York, Smith became known as “one of the ablest men at the bar of the

⁵⁹ *The Green Bag*, 1897, Vol. 9, 111. *The Green Bag* ceased publication late in the nineteenth century but has recently been resurrected.

⁶⁰ *Milwaukee Daily Free Democrat*, Dec. 7, 1850.

⁶¹ *Milwaukee Sentinel*, May 19, 1851.

⁶² *Milwaukee Sentinel*, May 21, 1851.

⁶³ John G. Gregory, *History of Milwaukee, Wisconsin*, (Chicago: S. J. Clarke, 1931) Vol II, 999.

⁶⁴ John R. Berryman (prepared under direction of), *History of the Bench and Bar of Wisconsin*, (Chicago, IL: H.C. Cooper, Jr., & Co., 1898), 47.

county or state,”⁶⁵ he found himself in the newspaper on a regular basis for his flamboyant defence work in the scandalous Radcliffe-Ross⁶⁶ murder trial of 1851.

The same year, Mary Augusta gave birth to their third daughter, Marion Augusta. Smith, however, would not have had time to enjoy fatherhood with Marion once the murder trial began — the case had the city “wrought up to a high pitch of excitement” over the murder of a merchant named David Ross. After the death of his beloved wife, Ross had determined to leave the city, bundling up his savings of three or four hundred dollars, allegedly in gold. He never made it out of town — the widower was later found in a field, his skull smashed in and his face bruised. He was still alive, but not lucid enough to point investigators to the killer before he died. Suspicion immediately turned to Bill Radcliffe, a blacksmith who had been seen drinking with Ross earlier in the evening and who was subsequently found with bloodstains on his boots and clothing.⁶⁷ Smith, along with Jonathan E. Arnold, defended the bloodied blacksmith, who was facing the death penalty⁶⁸ and public sentiment that had already convicted him. The case went on for days, the newspapers devoting great attention to the proceedings.

When the drama finally began at 9 a.m. on 8 March, 1852, the room was filled to capacity as Smith stood to deliver his opening statement:

Gentlemen of the Jury: The sovereign State of Wisconsin demands the life of William B. Radcliff! [sic] ... The law came forth from the Eternal, midst the loud,

⁶⁵ Howard Louis Conard, ed., *History of Milwaukee County from its first settlement to the year 1895* (Chicago: American Biographical Publishing Company, 1895), 200.

⁶⁶ I have elected to use this spelling of Radcliffe, though spellings of Radcliff, Ratcliff and Ratcliffe can also be found.

⁶⁷ John G. Gregory, *History of Milwaukee, Wisconsin*, (Chicago: S. J. Clarke, 1931), 314.

⁶⁸ Ranney, *Trusting Nothing to Providence*, 73-75. Ranney documents sentiment for and against the death penalty in Wisconsin, noting that by 1849, Wisconsin courts tended to spare convicted murderers. It was abolished in the state in 1853. There is no evidence to suggest where Smith stood on this particular issue.

rolling thunder and the quaking of the Earth, 'Whoso sheddeth man's blood, by man shall his blood be shed.' Acting upon the authority so delegated, human governments may be said almost to usurp the prerogative of the Almighty, and to decide upon the life which He has given to his creatures. You are called upon to pronounce that verdict which shall authorize the cutting off of your fellow man in the meridian of his life.⁶⁹

Smith urged the jury to ignore public sentiment against Radcliffe and to consider the possibility that the blacksmith, "hunted like a wild beast,"⁷⁰ was innocent, the victim of largely circumstantial evidence. Radcliffe's soiled shirt, according to Smith, could have been caused by his slovenly drinking habits ("persons who are in the habit of frequently drinking beer are very apt to spill a portion of the liquid upon their bosoms and wristbands"). Besides that, Smith said the coat Radcliffe wore on the night of the killing was unsoiled, and even then, why would the accused bother to use an overcoat to conceal evidence on his shirt but continue to walk around with bloody boots? "Here are the inconsistencies which entirely forbid the conclusion of guilt against the defendant," Smith continued.⁷¹

It was not quite airtight, yet Smith gave plausible reasons for the jury to ponder the slimmest possibility that Radcliffe was, in fact, an innocent man who did not deserve to die any more than the victim. What makes Smith's defence so intriguing is that in addition to showing his sharp legal acumen, it also speaks to an incredible inner conflict. In yet another example of Smith's many secrets, it was later revealed that Radcliffe had confessed his guilt to his defence team in mid-trial. Quietly, Smith approached a friend in legal circles about what his "professional and Christian duty" would be under the unusual

⁶⁹ *Milwaukee Daily Free Democrat*, March 9, 1852.

⁷⁰ *Milwaukee Daily Free Democrat*, March 9, 1852.

⁷¹ *Milwaukee Daily Free Democrat*, March 9, 1852.

circumstances. Word of the confession made it all the way up to Judge Levi Hubbell,⁷² but it was decided that the trial must go on as if Radcliffe had remained silent because Smith's and Arnold's professional oaths prevented them from testifying against their own client.⁷³

Public interest in the case had continued to swell, with crowds literally thronging the courthouse to hear the details, according to one account. By the time the lawyers were ready to give their closing arguments, the courthouse could no longer handle the crowds of spectators and the judge ordered the case be moved to the largest public hall in the city.⁷⁴ "The scene was highly dramatic. The hall was equipped as a theater, and the main floor and gallery would seat about fifteen hundred persons. The court, judge, jury, prisoner, officers and attorneys, occupied the stage, and the play went on."⁷⁵

Even though he knew Radcliffe had killed Ross, Smith and his co-counsel continued in their efforts to sway the jury, defending the accused "as zealously as if they had known him to be the white soul of innocence itself."⁷⁶

"No money — no papers — no belt — no weapon — nothing was found to connect the prisoner with the *corpus delicti*," Smith told the jurors. "How weak and vague is poor human reason! I tell you that unless the facts and circumstances conclusively connect the prisoner with the *corpus delicti*, you cannot convict. Gentlemen, I have done my duty. If this man die an ignominious death, his blood will not be on me. I

⁷² Of those who had knowledge of this development, it is unclear who might have repeated it or how it made its way to Hubbell.

⁷³ Frank A. Flower, ed., *History of Milwaukee* (Chicago: Western Historical Publishing Co., 1881) 315.

⁷⁴ Conard, *History of Milwaukee County*, 214.

⁷⁵ Conard, *History of Milwaukee County*, 214.

⁷⁶ Flower, *History of Milwaukee*, 316.

hope it will not be on you.”⁷⁷ And then, with a flourish, he gestured to Radcliffe’s wife and children:

Oh! Let this poor crushed and crouching wife appeal to you! Let those little children appeal to you; and if in the examination of the circumstances of this case there remains a doubt upon your minds which you cannot reconcile with the prisoner’s guilt, in mercy to their appeal give the benefit of that doubt to the prisoner. Gentlemen, I have done, I commend the prisoner to you; may God give you a clear account of your conduct and him a safe deliverance.⁷⁸

When the jury finally returned its verdict, they found Radcliffe not guilty, prompting the disgusted Judge Hubbell, who knew the man was literally getting away with murder, to exclaim, “May God have mercy on your consciences.”⁷⁹

Even though public sentiment had been against the accused, the surrounding media attention could not have hurt Smith, and probably paved the way for his next venture. Now seen as being at the zenith of his power as an attorney,⁸⁰ Smith aimed for an even more powerful position. In 1852, when the state held an election for its fledgling Supreme Court, he ran on a Democratic nomination and was successful, securing a position as associate justice.⁸¹ The year was also a successful one for federal Democrats, with Franklin Pierce trouncing decorated military man Winfield Scott for President. By the late 1840s, tensions in the Whig party had become more pronounced⁸² and the 1852 election was the worst in the party’s history.⁸³ The reasons for Smith’s victory at this time

⁷⁷ *Milwaukee Sentinel*, March 13, 1852.

⁷⁸ *Milwaukee Sentinel*, March 13, 1852.

⁷⁹ Flower, *History of Milwaukee*, 316.

⁸⁰ Conard, *History of Milwaukee County*, 214.

⁸¹ Winslow, *Story of a Great Court*, 38.

⁸² Michael F. Holt, *The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War* (New York: Oxford University Press, 1999) 956.

⁸³ Holt, *The Rise and Fall of the American Whig Party*, 764.

cannot be stated conclusively, but it would not have hurt him to be affiliated with a party that was experiencing political gains at the federal level.

This professional success coincided with times of domestic happiness for Smith, who, not long after his arrival in Milwaukee had built a house at the corner of Grand Avenue and Tenth Street.⁸⁴ Smith's eldest daughter, Mary Frances (who seems to have been known affectionately as Franky), was beginning to entertain suitors and Mary Augusta Smith seems to have kept busy organizing social functions⁸⁵ and taking part in various charities, serving on the board of trustees of Milwaukee's first "orphan asylum," organized by the Ladies' Benevolent Society.⁸⁶ Smith himself seems to have been particularly content, writing glowingly of his home life, surrounded by his wife and daughters, to a friend in Madison in April 1852, shortly after the Radcliffe trial had concluded:

My Dear Friend, I have had it in my mind some time to write you, but the doing up of two terms of court has kept me quite engaged. But it is over now and with Franky on my right, Mrs. S. on my left knitting, the little chick hanging on my knee with all the warm and good feelings and affections glowing within me, is it not natural that, precisely under such circumstances I should think of and begin to write to you?⁸⁷

The real reason for the letter, however, became evident a few paragraphs later, as Smith sought the backing of his friend in his bid for the Supreme Court.

If my friends shall deem me qualified and will help me to it, they know how thankful I should be. I believe it is not vanity in my to say that I have rendered the Democratic Party some service ... in this I have only done my duty, but as Supreme Judge, I could still do duty, not to party merely, but to those free and

⁸⁴ Buck, *Pioneer History of Milwaukee*, vol. 4, 297.

⁸⁵ Letter, Lucius Fairchild Papers, Wisconsin Historical Society Archives, Madison, Wisconsin, Wis Mss GC.

⁸⁶ Flower, *History of Milwaukee*, 990.

⁸⁷ Lucius Fairchild Papers, Wis Mss GC, Wisconsin Historical Society Archives, Madison, Wisconsin.

germane principles of Freedom's Laws, upon which the Democratic Party is organized, and on which alone it can permanently prosper.⁸⁸

In the judicial election of 1852, Smith won his seat by a small majority, taking up his six-year term as an associate justice of the Supreme Court of Wisconsin on 1 June, 1853, with an annual salary of \$2,000.⁸⁹ Also elected were Chief Justice Edward V. Whiton and his fellow associate, Orsamus Cole. Smith seems to have been a well-respected member of the bench — accounts of his time there are generally complimentary:

As a man, he had a high order of mind, fine native powers, which were developed, improved and adorned by liberal culture. As a lawyer, he was able, learned, earnest, eloquent and successful; always kind, courteous, and obliging. As a judge, he was urbane, dignified, patient, especially considerate towards the younger members of the profession, always ready with a word of encouragement and cheer, and never failed to appreciate the place he so nobly filled upon the bench. He was always a generous, genial and hospitable gentleman.⁹⁰

In 1854, Smith was presented with a case that made American legal history. It was the pivotal moment in his career, and his decision catapulted him onto the national stage, if only briefly. The case involved the capture of a slave named Joshua Glover who had escaped, travelled some 350 miles⁹¹ and settled in Wisconsin. Set against a backdrop of northern animosity towards the Fugitive Slave Act of 1850, the case was a perfect storm of antebellum laws, the anti-slavery movement and the emerging personality of a liberal northern state. Slavery's possible creep north, particularly into the territories, had

⁸⁸ Lucius Fairchild Papers, Wis Mss GC, Wisconsin Historical Society Archives, Madison, Wisconsin.

⁸⁹ Winslow, *The Story of a Great Court*, 32.

⁹⁰ *Report of the Proceedings of the Meetings of the State Bar Association of Wisconsin for the Years 1878, 1881 and 1885 together with a report of the proceedings had preliminary to the organization of the Association* (Madison, Wisc. Taylor and Gleason, book and Job Printers. 1905), 124.

⁹¹ Ruby West Jackson and Walter T. McDonald, *Freedom: The Untold Story of Joshua Glover, Runaway Slave* (Madison: Wisconsin Historical Society Press, 2007), 27.

also heightened tensions in states such as Wisconsin. News of the Kansas-Nebraska Bill, which effectively destroyed the Missouri Compromise of 1820 and opened northern land to slavery in an area where it had previously been prohibited, started to appear in Wisconsin newspapers in late January of 1854. By February, petitions against the Bill began to circulate and opponents began to organize meetings.⁹² Northerners were still reeling from the federal government's adoption of the Fugitive Slave Act as part of the controversial Compromise of 1850. While the Compromise was initially welcomed by many on both sides of the Mason-Dixon as a means of strengthening the Union, the Fugitive Slave Act, which forced northerners to comply with any federal attempts to return runaway slave "property" to southern slaveholders, was seen as an affront to the pervasive northern objection to the peculiar institution. In Wisconsin there was no support for any part of the Compromise and the state was an "unusually fertile ground for a challenge" given that it was home to large immigrant populations of Germans and New Englanders who had left their homes to escape political turmoil and persecution. Neither of these groups supported slavery or its continuation.⁹³ In fact, Wisconsinites "deeply detested the Act"⁹⁴ and the atmosphere of discontent in the north proved a fruitful ground for protest — through popular culture such as Harriet Beecher Stowe's novel, *Uncle Tom's Cabin* (a favourite book of Smith's eldest daughter, Mary Frances), public meetings and even more overt forms of protest. Anti-slavery violence increased in the

⁹² Diane S. Butler, "The Public Life and Private Affairs of Sherman M. Booth," *Wisconsin Magazine of History*, 82 (spring 1999): 175.

⁹³ Ranney, "Suffering the Agonies of Their Righteousness": The Rise and Fall of the States Rights Movement in Wisconsin," 86.

⁹⁴ Joseph Ranney, "A World in Which Nothing is Perfect — Chief Justice Edward G. Ryan," in *Wisconsin Lawyer*, Vol. 75, (Sept. 2002): 17. Available online at www.wisbar.org/islawmag/2002/09ranney2.html (accessed June 4, 2003).

wake of the Compromise⁹⁵ and some eminent writers and scholars, Henry David Thoreau among them, had begun to broadly suggest civil disobedience when it came to the Fugitive Slave Act, suggesting that no one should feel any obligation to obey a law that was unjust: "The only obligation which I have a right to assume is to do at any time what I think right. Law never made men a whit more just; and, by means of their respect for it, even the well-disposed are daily made the agents of injustice," Thoreau argued.⁹⁶ Some particularly militant factions were spurred to defy the Fugitive Slave Act by whatever means necessary,⁹⁷ often resulting in violence. Others, such as radical Joshua Giddings, called abolitionists to arms in the defence of fugitive slaves.⁹⁸ In small communities across the north, abolitionists and free blacks called meetings to discuss this "federal assault on freedom."⁹⁹ Many had no qualms about the use of violence, if deemed necessary, and others were simply emboldened by the idea of a "higher law" that must have served to reassure those who felt queasy about the use of force:

There was a strong belief among evangelicals North and South that human laws were of no force unless they were in accord with God's law. The great majority of such evangelicals did not take violent action based on this belief. But the concept of a 'higher law' did encourage many of slavery's opponents to disregard laws

⁹⁵ John R. McKivigan and Stanley Harrold, eds., *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America* (Knoxville: the University of Tennessee Press, 1999), 19.

⁹⁶ Fergus Bordewich, *Bound for Canaan: The Underground Railroad and the War for the soul of America* (New York: Harper Collins, 2005), 323.

⁹⁷ Don E. Fehrenbacher, *The Dred Scott Case: Its Significance in American Law and Politics* (New York: Oxford University Press, 1978), 177.

⁹⁸ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party Before the Civil War* (New York: Oxford University Press, 1970) 134.

⁹⁹ Lois E. Horton. "Kidnapping and Resistance: Antislavery Direct Action in the 1850s." In *Passages to Freedom: The Underground Railroad in History and Memory*, ed. David Blight (Washington: Smithsonian Books, 2004), 159.

that protected the interests of slaveholders. It provided a few such opponents with the resolve to resist such laws physically in the North and in the border South.¹⁰⁰

Abolitionists found several provisions of the Fugitive Slave Act particularly contemptible, namely that accused fugitives such as Glover were denied a trial by jury and were prohibited from speaking for themselves in front of commissioners but also because of the inherent bias built into the Act. Federal commissioners were paid \$10 for returning slaves to their former owners (or, even a man who stepped forward and claimed to be the slave's owner) but half as much should they decide to free the runaway. Thus, there was little or no incentive to helping a slave. While free blacks still faced discrimination and prejudice when they relocated to the north, in the period of time between the passage of the Fugitive Slave Act and the Civil War, they lived in what historian Carol Wilson has characterized as a "legal limbo between slavery and freedom."¹⁰¹ Incensed northerners began to take matters into their own hands, leading to a string of blatant violations of the Fugitive Slave Law that caused great embarrassment for the federal government, angry scenes of mob violence and, in some places, death. Many towns and cities organized vigilance committees to assist runaways, often by intimidating those who tried to reclaim them and return them to the south, as was the case with the men who came to reclaim two Georgia runaways, Ellen and William Craft, from Massachusetts in 1851. After cutting her hair and donning a man's clothing, the light-skinned Ellen Craft posed as an ailing southern gentleman on his way north with his

¹⁰⁰ John R. McKivigan and Stanley Harold, eds., *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America*, 3.

¹⁰¹ Carol Wilson. "Active Vigilance Is the Price of Liberty: Black Self Defense against Fugitive Recapture and Kidnapping of Free Blacks." In *Antislavery Violence: Sectional, Racial, and Cultural Conflict in Antebellum America*, ed. John R. McKivigan and Stanley Harold (Knoxville: University of Tennessee Press, 1999), 123.

slave, William Craft. The pair boarded a northbound train and made what historian Sean Wilentz has called “the most famous runaway saga since Frederick Douglass’s.”¹⁰² The couple quickly became the darlings of the abolitionist press and it did not take long for word of their safe arrival in the north to reach the ears of their owner. When slave-catchers arrived in the couple’s new home city of Boston, however, they were promptly run out of town.¹⁰³ President Millard Fillmore, who had referred to the Compromise as the “final settlement”¹⁰⁴ of sectional strife, promised the Crafts’ owner in vain that he would do all that he could to make sure the couple would be returned to his home in Macon. Supported by their abolitionist friends, the Crafts later escaped to Canada, then Britain.¹⁰⁵

While fugitive slave cases were generally local affairs, in the context of increasing animosity between north and south, they were quickly taking on a national significance. President Fillmore called the rescue of Virginia fugitive Frederick “Shadrach” Minkins “a scandalous outrage,” after a mob delivered the black waiter from custody in the Boston courthouse in 1851.¹⁰⁶ Though ten men were indicted in the aftermath, when the cases went to court, juries would not convict one of them¹⁰⁷ and Minkins made his way to Canada.¹⁰⁸ The same year, Edward Gorsuch of Maryland was beaten to death by a black mob when he attempted to reclaim slaves that had fled to

¹⁰² Sean Wilentz, *The Rise of American Democracy: Jefferson to Lincoln* (New York: W.W. Norton & Company, 2005), 646.

¹⁰³ Wilentz, *The Rise of American Democracy*, 646.

¹⁰⁴ James McPherson. *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988) 76.

¹⁰⁵ Wilentz, *The Rise of American Democracy*, 646.

¹⁰⁶ Bordewich, *Bound for Canaan*, 321.

¹⁰⁷ Bordewich, *Bound for Canaan*, 340.

¹⁰⁸ Wilentz, *The Rise of American Democracy*, 647.

Pennsylvania. Gorsuch, using intelligence from a travelling clockmaker,¹⁰⁹ tracked his slaves to the home of William Parker in Christiana. There, he and his posse of family members and federal and local officials met the violent rage of Parker's black militia:

The tension broke like a dam, and Parker's men flooded forward with a shout. The yard in front of the house dissolved into chaos. All the white men in the lane then fired. At least two blacks were hit. Shots flew in every direction. Someone struck Edward Gorsuch with a rifle and clubbed him to the ground ... others caught Joshua Gorsuch and clubbed him until the blood ran out of his ears ... the only members of the posse who escaped unharmed, leaped the fence and ran for their lives.¹¹⁰

The incident received national attention in newspaper headlines and President Fillmore took action by calling in marines and federal marshals to track down the participants in the so-called Battle of Christiana.¹¹¹ Three participants eventually made their way to Canada via the Underground Railroad (attempts by Fillmore to extradite them were unsuccessful), and grand jury indictments of forty-one others for treason and failure to uphold the Fugitive Slave Law were soon dropped when, as historian James McPherson wrote, the federal case unravelled:¹¹²

The government's case quickly degenerated into farce. A defense attorney's ridicule made the point: 'Sir — did you hear it? That three harmless non-resisting Quakers and eight-and-thirty wretched, miserable, penniless negroes, armed with corn cutters, clubs, and few muskets, and headed by a miller, in a felt hat, without arms and mounted on a sorrel nag, levied war against the United States.'¹¹³

Less than a month later, in October, 1851, yet another fugitive slave case came to prominence in Syracuse, New York. A group of rescuers, some whites in blackface,¹¹⁴

¹⁰⁹ Bordewich, *Bound for Canaan*, 325.

¹¹⁰ Bordewich, *Bound for Canaan*, 330.

¹¹¹ McPherson, *Battle Cry of Freedom*, 85.

¹¹² McPherson, *Battle Cry of Freedom*, 85.

¹¹³ McPherson, *Battle Cry of Freedom*, 85.

¹¹⁴ Lois E. Horton, "Kidnapping and Resistance: Antislavery Direct Action in the 1850s," 168.

rescued a fugitive Missouri cooper named William “Jerry” McHenry¹¹⁵ from the courthouse, throwing rocks, shattering windows and screaming, “Let him go!”¹¹⁶ Jerry was subsequently smuggled into Canada, leaving behind a bureaucratic mess. The federal government spent fifty thousand dollars and more than a year prosecuting fourteen whites and twelve blacks for their part in the rescue, though only one man was found guilty (and died as his case was being appealed).¹¹⁷

In the decade leading to the Civil War, an estimated eighty “well-publicized” rescues or rescue attempts of fugitives were made,¹¹⁸ and during the same time the number of slaves apprehended under the Fugitive Slave Law between 1850 and 1861 has been estimated at about three hundred.¹¹⁹ The combination of damaging anti-slavery publicity and a relatively low number of successes under the Act was an embarrassment for the federal government, which had suffered a string of humiliations in its attempts to enforce the legislation. In the south, such flagrant violations of a federal law intended to protect what slave-owners believed was a God-given right, provided more evidence of what they perceived as hateful northerners trying to impose their sanctimonious ways on Dixie. “We warn the press and the people of the North that there is a point, not far distant, when forbearance on our part will cease to be virtuous or honorable, and that they and they alone will be responsible for all the ills that may betide this government,”¹²⁰ the *Savannah Republican* warned shortly after the violence in Christiana.

¹¹⁵ Note that some histories of the case refer to Jerry’s surname as McHenry, others use the surname Henry.

¹¹⁶ Bordewich, *Bound for Canaan*, 337.

¹¹⁷ Bordewich, *Bound for Canaan*, 339.

¹¹⁸ Horton, “Kidnapping and Resistance,” 166.

¹¹⁹ Wilentz, *The Rise of American Democracy*, 648.

¹²⁰ As quoted in Bordewich, *Bound for Canaan*, 340.

As well, Wisconsin “provided unusually fertile ground for a challenge to the 1850 Act.”¹²¹ Historian Joseph Ranney has noted that the combination of a robust community of German and Irish immigrants in the state stood opposed to the Act and that the state’s congressional representatives from all political parties had unanimously voted against it “and against all parts of the Compromise of 1850 which were designed to placate the South.”¹²² It was in this political climate in 1854 that a headline screamed across the Milwaukee press and was missed by no one. “GREAT EXCITEMENT! Arrest of a Fugitive Slave!” read the *Milwaukee Sentinel* on 13 March, 1854.¹²³ That fugitive slave was Joshua Glover.

The accounts of Glover’s story vary from source to source,¹²⁴ but agree that Glover had run away from Benammi Garland, a Missouri slaveholder, in 1852, two years after the federal government had adopted the Fugitive Slave Act. After his escape from Garland’s property in Missouri, Glover had settled outside Racine, where he had worked undetected at a sawmill, Rice & Sinclair,¹²⁵ for about two years. On the night of 10 March, 1854, he was allegedly enjoying a quiet card game with friends in his modest cabin when there was a sudden rapping at the door. One account suggested that a friend advised Glover against answering the door and that Garland had employed a black man to

¹²¹ Ranney, “Suffering the Agonies of Their Righteousness”: The Rise and Fall of the States Rights Movement in Wisconsin,” 86.

¹²² Ranney, “Suffering the Agonies of Their Righteousness”: The Rise and Fall of the States Rights Movement in Wisconsin,” 86.

¹²³ *Milwaukee Sentinel*, March 13, 1853.

¹²⁴ For the most recent and thorough scholarly account, see H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens, Ohio: Ohio University Press, 2006). A more popular account can be found in Ruby West Jackson and Walter T. McDonald’s *Finding Freedom: The Untold Story of Joshua Glover, Runaway Slave*. Madison: Wisconsin Historical Society Press, 2007.

¹²⁵ Gregory, *History of Milwaukee, Wisconsin*, vol. II., 746.

act as a decoy.¹²⁶ In any case, at some point one of Glover's friends, Nelson Turner, made the fateful decision to leave the card table and see who was banging on the door: standing in the darkness, Garland, a federal marshal and three other men were preparing to enforce the Fugitive Slave Act and bring Glover back to Missouri.¹²⁷ (Turner, some suspect, was no friend but actually an accomplice in the plot to capture Glover.¹²⁸)

John Kearney, the federal deputy marshal in Racine, allegedly bludgeoned Glover to the ground.¹²⁹ With guns now pointed at him, Glover apparently still struggled but was eventually overpowered. With Kearney's boot on his neck and his own blood seeping onto the wagon floor, Glover was hauled away from his little shack and unwittingly became a figure of national prominence.¹³⁰ For most captured fugitives, this would have been the end of the story, but word of the Glover capture leaked out, eventually reaching abolitionist Sherman Booth in the form of a telegram.¹³¹ The idea of the free state of Wisconsin taking part in any way in the capture of a man and his return to slavery must have been abhorrent to a man like Booth. Booth was an old Barnburner from the ultra liberal wing of the Democratic Party, and a member of the Liberty Party, which was founded by abolitionists. As a young man at Yale, Booth had helped teach the captives in the famous *Amistad* case to speak English¹³² (The 1839 *Amistad* drama put slavery in the spotlight as a boatload of African slaves managed to wrest control of a ship that was transporting them, only to be re-enslaved when their vessel was seized in American

¹²⁶ *Milwaukee Daily Free Democrat*, March 13, 1854.

¹²⁷ Butler, "The Public Life and Private Affairs of Sherman M. Booth," 175.

¹²⁸ Gregory, *History of Milwaukee, Wisconsin*, vol. II, 746.

¹²⁹ Baker, *The Rescue of Joshua Glover*, 2.

¹³⁰ Gregory, *History of Milwaukee, Wisconsin*, vol. II, 747.

¹³¹ Butler, "The Public Life and Private Affairs of Sherman M. Booth," 176.

¹³² Butler, "The Public Life and Private Affairs of Sherman M. Booth," 169.

waters. The ensuing court case concluded with John Quincy Adams successfully arguing for the freedom of the Africans based on the illegality of the international slave trade.) Now the publisher of the *Daily Free Democrat*, Booth began to take action, mobilizing the distribution of handbills to gather like-minded people to come to Glover's aid. The fervent abolitionist apparently also mounted a horse (in many accounts, the horse is suitably a white steed) and shouted to his fellow citizens as he careened through the streets of Milwaukee, "Freemen! To the rescue! Slavecatchers are in our midst!"¹³³

At about 6 o'clock that evening, having been "whipped into a frenzy"¹³⁴ by Booth, a mob of about 5,000¹³⁵ descended on the jail to rescue Joshua Glover by force. Allegedly using pick axes, Booth's posse broke down the door and paraded the former slave through the streets of the city. Later that day, Glover was spirited out of Milwaukee and managed to make his way to Canada via the Underground Railroad,¹³⁶ apparently "borne away at a speed that under ordinary circumstances would have provoked arrest for fast driving."¹³⁷ On 15 March, two days after the jailbreak, Sherman Booth communicated to the city via the pages of his newspaper, the *Daily Free Democrat*, what must have been a shocking turn of events — his arrest for assisting and abetting the escape of a fugitive slave:

We have the honor of being the first person in Wisconsin who has been arrested by the Federal Courts for alleged disobedience to the Fugitive Law and for obedience to the higher law. Our crime, if ... as set forth in the warrant is true, is

¹³³ Fred L. Holmes, *Badger Saints and Sinners* (Milwaukee: E.M. Hale and Company, 1939), 195. As historian H. Robert Baker notes in *The Rescue of Joshua Glover*, Booth later denied that he shouted these words, but regardless of his choice of words, he was successful in rousing a crowd.

¹³⁴ Holmes, *Badger Saints and Sinners*, 196.

¹³⁵ Butler, "The Public Life and Private Affairs of Sherman M. Booth," 178.

¹³⁶ Butler, "The Public Life and Private Affairs of Sherman M. Booth," 178.

¹³⁷ Gregory, *History of Milwaukee, Wisconsin*, vol. II, 751.

that we have helped a human being to escape from bondage. And if the government can make out its case and this Fugitive Law stands, we are liable to be fined \$2,000 and be imprisoned six months. We cheerfully meet the issue.¹³⁸

Booth retained a young abolitionist named Byron Paine to represent him. It was Paine's first major legal case and he applied to the state Supreme Court for a writ of habeas corpus releasing Booth after an initial application through local courts was denied.¹³⁹ In the writ, published in the *Daily Free Democrat* for all to see, Smith ordered Stephen Ableman, the federal marshal, to bring Booth to the judge's doorstep — literally:

You are hereby commanded to bring the body of Sherman M. Booth, by you imprisoned and detained, as it is said, together with the time and cause of such imprisonment and detention ... before me, Abram D. Smith, one of the Justices of the Supreme Court of the State of Wisconsin, forthwith, at my dwelling in the city of Milwaukee.¹⁴⁰

When he appealed to Smith to free Sherman Booth, Paine used many of the abolitionists' standard arguments against the Fugitive Slave Act. For one, hearings conducted by commissioners rather than judges violated the Constitution, which places federal judicial power in appointed judges. As well, prohibiting a jury trial was unconstitutional and, besides that, the Constitution did not legislate an enforcement mechanism for returning a slave to his or her owner and since the state had not done so either, the Act could not be enforced. Finally, Paine also made the boldest argument yet — that the Fugitive Slave Act violated the rights of the state of Wisconsin.¹⁴¹ He alluded to the fact that the case was just as much about states' rights as it was about the freedom of the individual, Sherman Booth:

¹³⁸ *Milwaukee Free Democrat*, March 15, 1854.

¹³⁹ Ranney, *Trusting Nothing to Providence*, 98.

¹⁴⁰ *Milwaukee Daily Free Democrat*, May 27, 1854.

¹⁴¹ See Ranney, *Trusting Nothing to Providence*, 98-99.

"May it please the Court," Paine began. "In arising to the countenance the investigation of this case, I do so with those feelings of strong embarrassment which must naturally result from knowing that I undertake to deal with a question more important than any that could be presented to a judicial tribunal. It is a question in which, according to my judgment, are involved, not the liberties of Mr. Booth alone, but the liberties of the whole people."¹⁴²

Paine made his case and left it in Smith's hands, creating much anticipation as the public waited for two days. Finally, on 7 June, 1854, Smith delivered his opinion at 11 o'clock in the morning. Normally, the case would have been heard by the entire court, and had it taken place in March, when Glover was sprung from the jail, this would have been the case. As the case suffered various delays as it worked its way through the system, by the time it reached the Court in June, Smith alone was available to deal with it, the other justices having already gone on vacation¹⁴³. Smith noted this in the preamble to his decision, clearly feeling the burden of his choice:

I can not but feel the immense responsibility thrown upon me alone, and may be pardoned for expressing my regret that I am deprived of the aid and counsel of my associates, so much better able to cope with the grave and intricate questions involved than I am myself. Whether by design or from necessity, this application has been made to me, I meet the emergency with all the anxiety and concern which it cannot fail to excite, and I hope with some share of the firmness which the occasion and the nature of the questions involved imperatively demand.¹⁴⁴

Smith's decision went on for pages and pages — brevity was never his strong suit. In the end, it was a startling answer to Paine's argument. Resting his argument on states' rights, Smith solemnly and emphatically declared the much-hated Fugitive Slave Act was unconstitutional.

Without the States there can be no Union. The abrogation of State sovereignty is not a dissolution of the Union, but an absorption of its elements. He is the true man, the faithful officer, who is ready to assert and guard every jot of power

¹⁴² *Milwaukee Daily Free Democrat*, June 6, 1854.

¹⁴³ Baker, *The Rescue of Joshua Glover*, 114.

¹⁴⁴ *Milwaukee Daily Free Democrat*, June 8, 1854.

rightfully belonging to each, and to resist the slightest encroachment or assumption of power on the part of either.¹⁴⁵

The argument over central power was “the central constitutional issue in America” since the Declaration of Independence.¹⁴⁶ As historian Richard E. Ellis has demonstrated, the extent of central power was ambiguous, and so left open to interpretation:

By creating a national government with the authority to act directly upon individuals, by denying to the states many of the prerogatives that they formerly had, and by leaving open to the central government the possibility of claiming for itself many powers not explicitly assigned to it, the Constitution and bill of Rights as finally ratified substantially increased the strength of the central government at the expense of the states. But the Constitution did not make the states clearly subservient to the federal government ... further, by failing to provide for an ultimate arbiter to interpret the Constitution, the new frame of government became open to the logical, although controversial, interpretation that this power rightly belonged to the states.¹⁴⁷

The states’ rights philosophy presented by Byron Paine in the case of Sherman Booth would have held immense appeal for a libertarian such as Smith, particularly in the context of his dalliances with the Hunters in Ohio, who tried to smash centralized power in the form of Crown rule in the Canadas. Until the Glover case, however, states’ rights policy had been largely appropriated by the south, first in the Nullification controversy of 1831-1833 in South Carolina and subsequently in defence of slavery and its expansion into the territories. It is worth noting that Calhoun, the giant at the centre of the Nullification controversy, had caught the eye of many a radical Democrat in the early 1840s. As Sean Wilentz notes:

¹⁴⁵ *Milwaukee Daily Free Democrat*, June 8, 1854.

¹⁴⁶ Richard E. Ellis, *The Union at Risk: Jacksonian Democracy, States’ Rights, and the Nullification Crisis* (New York: Oxford University Press, 1987), 1.

¹⁴⁷ Ellis, *The Union at Risk*, 4.

The most surprising development with the Democracy was a growing enthusiasm, among some of the most radical northeastern hard-money advocates, for, of all people, John C. Calhoun ... Saving democracy, they now believed, required uniting the small disciplined group who understood what democracy really was, and upending the demagogic rule of capital by the most direct means necessary — which in 1842, after his own strange left-wing turn, seemed to be Calhoun ... Above all, there was the lure of Calhoun as an antibusiness candidate, pledged to an official platform that included, '*No Debt — No Connection with Banks — Economy — Retrenchment — and a strict adherence to the Constitution.*' Squint hard enough, and Calhoun might even look like a southern-style hard-money Radical, but without Van Burenism's taint on him.¹⁴⁸

It is not known whether Smith had been one of the radicals who had entertained the idea of supporting Calhoun, but certainly he would have known of this trend and been familiar with Calhoun's arguments about states' rights. However, historian Michael J. McManus argues that there was one primary distinction between South Carolina's use of states' rights and Wisconsin's:

South Carolina had originally embraced states' rights principles to safeguard its economic interests. Thereafter, the South took up states' rights to block national interference with slavery within the slaveholding states, and state sovereignty, with decrees such as the Fugitive Slave Act, to demand federal protection for the rights of slaveowners outside the state jurisdictions in which they had been granted. To counteract Southern aggressiveness, Wisconsin, along with other Northern states, employed states' rights to defend individual liberty from legislation regarded as unconstitutional. Most often, resistance took the form of personal liberty laws designed to thwart enforcement of the Fugitive Slave Act.¹⁴⁹

Smith nonetheless was trumpeting a southern argument for a northern cause using — confusingly — what had, until that time, been a *southern* interpretation of the Constitution. As legal historian Jeffrey Schmitt has explained, the "compact theory of the Union"¹⁵⁰ used by Smith had been developed by Southerners Calhoun, but also Thomas

¹⁴⁸ Wilentz, *The Rise of American Democracy*, 533-534.

¹⁴⁹ Michael J. McManus, *Political Abolitionism in Wisconsin, 1840-1861* (Kent, OH: Kent State University Press, 1998), 137.

¹⁵⁰ Jeffrey Schmitt, "Rethinking *Ableman V. Booth* and States Rights in Wisconsin," *Virginia Law Review*, 93 (August, 2007), 1329

Jefferson and James Madison.¹⁵¹ It held, in Schmitt's words, that "the states, as opposed to the people, had created the Constitution and thus could decide which powers were ceded to the federal government. The states, as principal actors, could not be subordinate to the agent they had created, the federal government."¹⁵² Echoes of this compact theory were evident in Smith's ruling:

The judicial department of the Federal Government is the creature, by compact, of the several States as sovereignties — That department can exercise no power not delegated to it. All power not delegated and not prohibited to the States, the States have expressly reserved to themselves and the people. To admit that the Federal Judiciary is the sole and exclusive judge of its own powers, and the extent of the authority delegated, is virtually to admit that the same unlimited power may be exercised by every other department of the general government both legislative and executive, because each is independent and co-ordinate of the other. *Neither* has any power but such as the States have delegated, and *all* power not delegated, remains with the States and the people thereof.¹⁵³

Smith was emphatic that the states could not afford to give any ground in the matter, and that to do so would have catastrophic consequences for republicanism. "I solemnly believe that the last hope of representative federative government rests with the States," he wrote in his judgment. "Increase of influence and patronage on the part of the Federal Government naturally leads to consolidation, consolidation to despotism, and ultimate anarchy, dissolution and all its attendant evils."¹⁵⁴

Anarchy, despotism, evils — Smith clearly believed he lived in dire times that imposed on him the moral obligation to make his historic judgment and felt that no matter how weighty the consequences of the decision might be for his party or career. If,

¹⁵¹ Schmitt, "Rethinking *Ableman V. Booth*," 1329

¹⁵² Schmitt, "Rethinking *Ableman V. Booth*," 1329

¹⁵³ *Milwaukee Daily Free Democrat*, June 8, 1854. Emphasis in the original.

¹⁵⁴ *Milwaukee Daily Free Democrat*, June 8, 1854.

as he feared, the states were being asked to surrender their natural rights, he made it clear that he did not want to find himself the historical scapegoat for such a calamity:

If the sovereignty of the States is destined to be swallowed up by the Federal Government, if consolidation is to supplant federation, and the General Government to become the sole judge of its own powers, regardless of the solemn compact by which it was brought into existence and the source of its own vitality, as an humble officer of one of the States, bound to regard the just rights and powers, both of the Union and the States, I want my skirts to be clear, and that posterity may not lay the catastrophe to my charge. I am truly thankful for the same feeling of conscientious firmness on entering upon the discharge of the duty before me, as would be required in case of direct invasion, open rebellion, or palpable treason against our common country.¹⁵⁵

Schmitt holds that Smith's version of compact theory was more radical than that of even Calhoun¹⁵⁶ (the South Carolinian, of course, not known for being moderate about anything), who limited the states' right to be final arbiters of the constitution to their elected representatives assembled in a special convention. In Smith's version of compact theory, the power resided in a transient majority on any state's Supreme Court. Schmitt contends that Smith probably preferred the state judges to adjudicate the meaning of the U.S. Constitution because it "lent the theory the perception of legal credibility." Moreover, as a career politician, he could see the advantage of having only to convince one of his two colleagues on the bench rather than the majority of people in the state of Wisconsin.¹⁵⁷ In fact, Smith had been able to convince one judge, Chief Justice Edward Vernon Whiton of the Wisconsin Supreme Court, of his constitutional interpretation while the other judge on the bench, Samuel Crawford, dissented. According to historian Joseph Ranney, Crawford agreed that Booth ought to be released due to the technically defective nature of the writ but stood in opposition to Smith by upholding the

¹⁵⁵ *Milwaukee Daily Free Democrat*, June 8, 1854.

¹⁵⁶ Schmitt, "Rethinking *Ableman V. Booth*," 1334.

¹⁵⁷ Schmitt, "Rethinking *Ableman V. Booth*," 1334.

constitutionality of the Fugitive Slave Act.¹⁵⁸ Ranney notes that Crawford “concluded that the powers which the Act gave commissioners were not judicial powers.”¹⁵⁹ The commissioners, Crawford said, did not make the final decision as to whether a fugitive was indeed a slave, but rather bounced the matter, with the runaway, back to the South for judicial assessment.¹⁶⁰ Whiton’s backing of Smith, however, was enough to sustain the original ruling reached in June.

In his analysis of Smith’s independent judgment, Schmitt concludes it offers clues as to what may have been the radical judge’s primary motive: “a desire to reject the southern legal processes of the Fugitive Slave Act and return to the traditional northern presumption of freedom.”¹⁶¹ Inasmuch as the legal procedures outlined by the Act “created a presumption of slavery for anyone alleged to be a fugitive,” adds Schmitt, Wisconsin — in the person of the Honorable A.D. Smith — “wished to return to the common law presumption of freedom for alleged slaves.”¹⁶²

Smith must have realized that in his challenge to the Fugitive Slave Act, the principal Southern gain from the bitter Compromise of 1850, he was throwing down the gauntlet to the entire South (and to the southern-dominated Supreme Court that he must surely have known would eventually reverse his radical decision — to the undoubted outrage of many northerners). But he felt he had no alternative to throwing oil on the hot coals of sectional discord, for to uphold the slaveholder’s rights in the free states, would see “the slave code of every state in the union [would be] engrafted upon the laws of

¹⁵⁸ Ranney, “Suffering the Agonies of Their Righteousness,” 94.

¹⁵⁹ Ranney, “Suffering the Agonies of Their Righteousness,” 94.

¹⁶⁰ Ranney, “Suffering the Agonies of Their Righteousness,” 94.

¹⁶¹ Schmitt, “Rethinking *Ableman V. Booth*,” 1335.

¹⁶² Schmitt, “Rethinking *Ableman V. Booth*,” 1326.

every free state.” In that case “the rights, interests, feelings, dignity, sovereignty, of the free states are as nothing, while the more pecuniary interests of the slaveholder are everything.” In ringing language designed to broaden northern abolitionist sentiment, Smith asserted that freedom for blacks trumped southern property rights.¹⁶³

Significantly in the life of Smith, it was during this time that his very liberal views of African Americans and their presumed freedom become abundantly clear, resurfacing in equally dramatic fashion in the years ahead. The presumption for liberty, safeguarded by upholding States Rights in Wisconsin, was central to Smith’s final decision. “Let the federal government return to the exercise of the just powers conferred by the constitution, and few, very few, will be found to disturb the tranquility of the nation or to oppose by word or deed the due execution of the laws!” he declared in his summation, adding that:

I feel a grateful consciousness of having discharged my duty, and full duty; of having been true to the sovereign rights of my State which has honored me with its confidence, and to the Constitution of my country, which has blessed me with its protection; and though I may stand alone, I hope I may stand approved of my God as I know I do of my conscience.¹⁶⁴

Smith’s decision “caught the entire nation by surprise”¹⁶⁵ and was met with much jubilation across the state. Newspapers heralded it as solid and just and citizens gathered to cheer the news. Judge Smith’s decision “will stand like a rock, mid the waves of conflicting and discordant opinions and loom up in the future, as one of the great beacon lights, which have led the people out of the darkness of despotism and the bondage of subjection to slaveholding and pro-slavery interpretations of the Constitution,” exulted

¹⁶³ Schmitt, “Rethinking *Ableman V. Booth*,” 1334-1335.

¹⁶⁴ *Milwaukee Daily Free Democrat*, June 8, 1854.

¹⁶⁵ Ranney, “Suffering the Agonies of Their Righteousness”: The Rise and Fall of the States Rights Movement in Wisconsin,” 91.

the *Milwaukee Daily Free Democrat*.¹⁶⁶ The *Sentinel* agreed that the decision gave “great and general satisfaction, and even those who differ from him in the conclusions which he has drawn, admit the force and relevancy of the arguments he has advanced.” In Kenosha, the *Democrat* hailed Smith as “a gentleman of eminent ability and candor. We do not know a man who can bring to the investigation of such a question a more dispassionate judgment” and the *Kenosha Telegraph* called it the “dawning of a new era.”

¹⁶⁷ In Racine, hundreds poured into the streets where Joshua Glover had lived before his arrest and the headline of the *Racine Advocate* joyously announced that “Wisconsin is Free!!” The newspaper went on to give Smith lavish praise, heralding him as a veritable hero.

“We have no words to express our gratification at this bold decision of so able a jurist as A.D. Smith. Henceforth his name will go down to posterity coupled with the names of those who stand out eminent on the pages of history as the vindicator of laws, and the faithful exponent and defender of his country’s Constitution ... Judge Smith will henceforth be named as the man who dared step into the gap, in the face of tyrants and declare this hellish enactment, which is the scourge of our country, and the disgrace of humanity, as a nullity, and of no force ... By this gloriously righteous decision, Wisconsin stands a head and shoulders above all other States in the Union.”¹⁶⁸

Smith’s decision received national attention, with Charles Sumner declaring it “showed true metal.”¹⁶⁹ In New York, the *Albany Evening Journal* declared “this upright Judge in Wisconsin is the first who has had the courage to face the Slaveholding aggression which takes upon itself the semblance of authority, only that it may deny

¹⁶⁶ *Milwaukee Daily Free Democrat*, June 10, 1854.

¹⁶⁷ *Milwaukee Sentinel*, June 12, 1854.

¹⁶⁸ *Milwaukee Sentinel*, June 12, 1854.

¹⁶⁹ Vroman Mason, “The Fugitive Slave Law in Wisconsin, with Reference to Nullification Sentiment.” In *Fugitive Slaves*, ed. Paul Finkelman (New York: Garland Publishing, Inc., 1989), 138.

Justice and disregard the Law.”¹⁷⁰ The New York *Tribune* published Smith’s decision and urged readers, especially those who were still wavering on the constitutionality of the Fugitive Slave Act, to examine its content: “His judgment has all the bone and muscle, with the strong spirit, in which his youthful state exults. As a composition it is excellent, especially when compared with the dead level of judicial opinions, while it is often lifted by its animating principles into a region of true eloquence.”¹⁷¹

On 19 July, 1854, Smith’s decision was confirmed by the Wisconsin Supreme Court.¹⁷² Booth’s troubles were not over, however, as he still faced the federal authorities on further obstruction of justice charges.¹⁷³ At this point, the Booth case becomes more complex. Having been freed from custody by Smith’s decision, Booth now found himself in custody of a U.S. district court. Again, he appealed to the state’s Supreme Court, but this time, the court refused to get involved, saying it was out of their jurisdiction:

In this case, when the prisoner was first brought up on the writ of Habeas Corpus, he was within the State jurisdiction exclusively. It then became our duty to decide upon the validity of the process and of the law, by virtue of which he was held. He was discharged. Thus ended our jurisdiction in the case. But our judgment in that case could not be pleaded in bar to a future indictment found against the prisoner for the same offense. Subsequently, the prisoner is indicted in the District Court of the United States.¹⁷⁴

Thus, the justices were comfortable intervening when Booth was imprisoned in a case that would have put him before a commissioner, but not in a federally administered case that would be heard by a full court. Smith explained:

In the former case he was held under the process of an officer who had no power to hear and determine upon the validity of the law, or the allegations of the

¹⁷⁰ *Milwaukee Sentinel*, June 19, 1854.

¹⁷¹ *Milwaukee Sentinel*, July 17, 1854.

¹⁷² *Milwaukee Sentinel*, July 20, 1854.

¹⁷³ Butler, “The Public Life and Private Affairs of Sherman M. Booth,” 184.

¹⁷⁴ *Milwaukee Daily Free Democrat*, Aug. 4, 1854.

defendant against its validity. But now he is held under process of a Court, a judicial tribunal, having full power and authority to decide upon all the questions or allegations presented in his behalf. The legal and just presumption is that the Court will declare the law as it is.¹⁷⁵

This time, newspapers were clearly upset by the different conclusion Smith reached, calling him “a blind man groping his way out of a labyrinth.”¹⁷⁶ When the case went to trial, Booth was found guilty. Again, he appealed to the Supreme Court of Wisconsin. This time, the Court sided with Booth, with all three justices in agreement that the “conviction rested upon defective indictments.”¹⁷⁷ Through all of this, Smith maintained an air of celebrity, particularly among abolitionists. When he visited Chicago in the spring of 1855, the *Tribune* declared he looked “well and hearty” and advised readers that he would remain a prominent figure. “As a history-maker, the Judge will be conspicuous in the future of this Republic, not that he will write a book, but that he will do what will make others write.”¹⁷⁸ He was a sought-after speaker,¹⁷⁹ and when he went to New York in 1857 the *New York Evening Post* reported that a public dinner was to be held in his honour, at the behest of some of New York’s most influential figures, including Horace Greeley. Unfortunately, Smith’s visit to New York had concluded by the time he got the invitation and he could only offer his regrets.¹⁸⁰

Wisconsin, he said in his letter to the group that was subsequently published in the *Milwaukee Daily Free Democrat*, “will be faithful to all the covenants and compacts of the Constitution, and she will also be faithful to all her high and solemn obligations of

¹⁷⁵ *Milwaukee Sentinel*, Aug. 5, 1854.

¹⁷⁶ *Milwaukee Daily Free Democrat*, Aug. 4, 1854.

¹⁷⁷ H. Robert Baker, *The Rescue of Joshua Glover: A Fugitive Slave, the Constitution, and the Coming of the Civil War* (Athens, Ohio: Ohio University Press, 2006), 131.

¹⁷⁸ *Milwaukee Sentinel*, May 7, 1855.

¹⁷⁹ *Milwaukee Sentinel*, July 14, 1856.

¹⁸⁰ *Milwaukee Sentinel*, April 16, 1857.

a sovereign State, cheerfully conceding to federal authority all the powers delegated, and ready at all times to strengthen the arms of federal functionaries in their execution; but yielding not one jot or title of her inherent or reserved powers, alike essential to her own existence and to the liberty and prosperity of her citizens.”¹⁸¹

As the people of Wisconsin watched the *Ableman* case wind its way through the court system, “with a fanatical anxiety,”¹⁸² it eventually landed at the United States Supreme Court, where, in 1859, five years after Joshua Glover’s quiet card game outside Racine, Justice Roger B. Taney finally delivered the verdict. To understand that verdict, however, it is necessary to examine the backdrop against which *Ableman v. Booth* was set, and the character of some of the personalities involved in the decision. Front and centre, of course, was Chief Justice Taney. Taney had been nominated to the position on 28 December, 1835 by President Andrew Jackson. Born into the planter aristocracy of Maryland¹⁸³ and educated in Pennsylvania, Taney rose through the ranks from senator to state attorney general of Maryland to Attorney General and secretary of the treasury.¹⁸⁴ Not everyone rejoiced in the selection of Taney and reaction to the announcement of his appointment to the Supreme Court was mixed. Supporters felt sure of Taney’s “loyalty to the president and his apparent commitment to an egalitarian economic vision for the young republic,” and naysayers (among them, Henry Clay and

¹⁸¹ *Milwaukee Daily Free Democrat*, Feb. 7, 1860.

¹⁸² Samuel Tyler, *Memoir of Roger Brooke Taney, LL.D.: Chief Justice of the Supreme Court of the United States* (Baltimore: John Murphy & Co., 1872), 397.

¹⁸³ Timothy S. Huebner, *The Taney Court: Justices, Rulings, and Legacy*, (Santa Barbara: ABC-CLIO, Inc., 2003), 32.

¹⁸⁴ James V. Young, *Landmark Constitutional Law Decisions: Briefs and Analyses*, (Lanham, MD: University Press of America, 1993), 41.

Daniel Webster¹⁸⁵) feared Taney “would threaten the interests of property holders, undermine the strength of the Union and weaken the authority of the Supreme Court.”¹⁸⁶ According to one of the older biographies of Taney, the jurist’s background provided some clues about how he might lean on the bench — he was not, as A.D. Smith was, a fan of Jeffersonian theory:

One should not forget that Taney was a leader of the Federalists in Maryland in the period when the Republican party was Jefferson’s, or that he broke with the New England leaders of his own party when they enunciated nullification doctrines and hinted at secession in the closing days of the War of 1812 ... Taney is a nationalist. He maintains the independence of the national government, the authority of the Supreme Court to interpret national laws, and the permanence of the Constitutional Union.¹⁸⁷

As a young man, Taney held views on slavery that were consistent with those living in border states in the early nineteenth century, where, as historian Timothy S. Huebner has noted “slaves constituted only a small percentage of the population.”¹⁸⁸ Taney also inherited a number of slaves, whom he later freed,¹⁸⁹ and was an advocate of colonization efforts¹⁹⁰ to return slaves to Africa. Described by one historian as “a Southerner who loved his country, a states’ righter dedicated to the Union, a slaveholder who regretted the institution and manumitted his slaves, and an aristocrat with a democratic political philosophy,”¹⁹¹ Taney nonetheless “remained committed to

¹⁸⁵ Bernard C. Steiner, *Life of Roger Brooke Taney: Chief Justice of the Supreme Court* (Baltimore: Williams & Wilkins, 1922), 182.

¹⁸⁶ Timothy S. Huebner, *The Taney Court*, 32.

¹⁸⁷ Charles W. Smith, Jr., *Roger B. Taney: Jacksonian Jurist*, (Chapel Hill: The University of North Carolina Press, 1936), 92.

¹⁸⁸ Timothy S. Huebner, *The Taney Court*, 34.

¹⁸⁹ Bernard C. Steiner, *Life of Roger Brooke Taney*, 55.

¹⁹⁰ Timothy S. Huebner, *The Taney Court*, 34.

¹⁹¹ Timothy S. Huebner, *The Taney Court*, 42.

proslavery principles throughout his judicial career".¹⁹² Historian Don E. Fehrenbacher has argued that while there are many references in the historiography to Taney being personally opposed to slavery, this is most certainly a fallacy. By the time of *Ableman v. Booth*, Taney "had become as fanatical in his determination to protect the institution as Garrison was in his determination to destroy it."

While serving on the Supreme Court, Taney considered several cases relating to slavery and to the increasingly strained relationship between the federal and state governments, all of which provided the contextual conditions in which *Ableman v. Booth*, was decided. In 1842, the Court considered *Prigg v. Pennsylvania*, a case in which a state's personal liberty laws clashed with the Fugitive Slave Law of 1793. At the time of the case, many free states enacted such laws in an effort to impede the efforts of southern slave-catchers on northern soil.¹⁹³ Such statutes would have been of particular concern in border areas such as Taney's Maryland. *Prigg v. Pennsylvania* concerned a cross-border dispute over a woman, Margaret Morgan, whose parents, though slaves, were permitted to live "in virtual freedom"¹⁹⁴ by their Maryland owner, who apparently never actively claimed Margaret as his property. Margaret ultimately married a free man and moved to Pennsylvania, but when her parents' owner died, his estate passed into the hands of his niece, who set about hiring Edward Prigg to track down what she believed was her property: Margaret Morgan.¹⁹⁵ Prigg found Margaret and her family and brought them

¹⁹² Timothy S. Huebner, *The Taney Court*, 41.

¹⁹³ Eric Foner and John A. Garraty, eds. *The Reader's Companion to American History*, 831.

¹⁹⁴ Paul Finkelman, "Prigg v. Pennsylvania and Northern State Courts: Anti-Slavery Use of a Pro-Slavery Decision." In *The Law of American Slavery: Major Historical Interpretations*, ed. Hall, Kermit L. (New York: Garland Publishing Inc., 1987), 161.

¹⁹⁵ Paul Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 161.

before a justice of the peace to obtain a certificate of removal, but the justice refused to complete the required paperwork. When Prigg proceeded to take Margaret and her children without the proper authorization, he violated an 1826 Pennsylvania personal liberty law and was charged with kidnapping. Prigg was, as might have been expected, convicted by the local Pennsylvania court, a decision upheld by the Pennsylvania Supreme Court. The U.S. Supreme Court, however, rejected the Pennsylvania courts' decisions and in its ruling, as set out by Justice Joseph Story, a New Englander who was Taney's fiercest rival,¹⁹⁶ stated that under the Constitution's Fugitive Slave Clause, owners of slaves had "the complete right and title ownership in their slaves, as property, in every State in the Union into which they might escape from the state where they were held in servitude."¹⁹⁷ That said, the Court ruled that it was up to the federal government to enforce the clause, which it upheld, simultaneously declaring the 1826 Pennsylvania anti-kidnapping law unconstitutional.¹⁹⁸ All in all, it was "a major pro-slavery decision"¹⁹⁹ on a number of fronts:

First, Story found the Act of 1793 constitutional; second, he declared that state laws interfering with the rendition of fugitive slaves were unconstitutional; third, he discovered that the fugitive slave clause was in part self-executing, and that an owner or agent could compel a fugitive's return under a right of self-help, without relying on any statute or judicial procedure.²⁰⁰

Only Justice John McLean, a northerner from the Buckeye state, fully dissented on the case. Chief Justice Taney and Justices Smith Thompson and Peter V. Daniel

¹⁹⁶ Timothy S. Huebner, *The Taney Court*, 42.

¹⁹⁷ Timothy S. Huebner, *The Taney Court*, 158-159. This condensed version of Margaret Morgan's story is based on Huebner's work, but my synopsis has also been informed by the work of Don. E. Fehrenbacher. See *The Dred Scott Case: Its Significance in American Law and Politics*, pages 40-47.

¹⁹⁸ James McPherson, *Battle Cry of Freedom*, 79.

¹⁹⁹ Paul Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 163.

²⁰⁰ Paul Finkelman, "Prigg v. Pennsylvania and Northern State Courts," 163.

disagreed with part of the decision,²⁰¹ namely Story's assertion that "the states had no role in enforcing" a federal law.²⁰² According to Fehrenbacher, Taney believed that states, while they could not block a slaveholder's rights to claiming slave property, in fact had the "power and even the obligation to assist in *protecting* those rights."²⁰³ In 1847 the Court again upheld the constitutionality of the 1793 Fugitive Slave Act when it considered the case of John Van Zandt, an Ohio man who was caught spiriting Kentucky slaves on a northbound road out of Cincinnati.²⁰⁴ Van Zandt was represented by Salmon P. Chase (then known as "the attorney-general for runaway negroes"²⁰⁵) and William Seward, who argued that the federal government was powerless to "create, continue, or enforce"²⁰⁶ slavery since those functions were under state jurisdiction — in short, the Constitution "did not give the federal government the power to enslave anyone."²⁰⁷ Chase also argued that slavery ran counter to the Declaration of Independence's references to personal liberty, and that it violated the Bill of Rights.²⁰⁸ Citing *Prigg v. Pennsylvania*, Justice Levi Woodbury delivered the verdict:

This court has already, after much deliberation, decided that the act of February 12th, 1793, was not repugnant to the constitution ... In coming to that conclusion they were fortified by the idea, that the constitution itself, in the clause before cited, flung its shield, for security, over such property as is in controversy in the present case, and the right to pursue and reclaim it within the limits of another State. This

²⁰¹ Timothy S. Huebner, *The Taney Court*, 161.

²⁰² Timothy S. Huebner, *The Taney Court*, 160.

²⁰³ Don E. Fehrenbacher, *The Dred Scott Case*, 45.

²⁰⁴ Timothy S. Huebner, *The Taney Court*, 161.

²⁰⁵ William M. Wiecek, "Slavery and Abolition Before the United States Supreme Court, 1820-1860." In *Law, the Constitution, and Slavery*, ed. Finkelman, Paul (New York: Garland Publishing, Inc., 1989), 557.

²⁰⁶ Wiecek, "Slavery and Abolition Before the United States Supreme Court," 557.

²⁰⁷ Melvin I. Urofsky, ed., *Documents of American Constitutional & Legal History: From Settlement through Reconstruction*. Vol. 1, (Philadelphia: Temple University Press, 1989), 389.

²⁰⁸ Wiecek, "Slavery and Abolition Before the United States Supreme Court," 557.

was only carrying out, in our confederate form of government, the clear right of every man at common law to make fresh suit and recapture of his own property within that realm ...²⁰⁹

Justice Woodbury argued that while slavery might not have been recognized by some states, the Fugitive Slave Law was a sort of compromise “for the safety of that portion of the Union which did permit such property, and which otherwise might often be deprived of it entirely by its merely crossing the line of an adjoining State.”²¹⁰

Undeterred, Chase took on Taney’s Court again in the *Moore v. Illinois* case of 1852. In this case, the Court considered an Illinois law that prohibited the harbouring of slaves and again stayed the course it had set in *Prigg v. Pennsylvania*. Chase argued that federal and state law clashed since the Prigg case had given jurisdiction over fugitive slaves exclusively to the federal government, rendering Illinois powerless to meddle in a matter involving fugitives.²¹¹ The Supreme Court upheld the state law, stating that it was a justifiable means of keeping the peace, and was in the best interests of the citizens of Illinois since providing assistance to runaway slaves could lead not only to disruptions of the peace, but also to “violent assaults, riots, and murder.”²¹² Besides, Justice Grier noted, state and federal law regarding fugitive slaves could co-exist, since only a state law that *interfered* with the return of fugitives was an issue.²¹³ In the case of the Illinois law, it not

²⁰⁹ Urofsky, ed., *Documents of American Constitutional & Legal History: From Settlement through Reconstruction*, 390.

²¹⁰ Urofsky, ed., *Documents of American Constitutional & Legal History: From Settlement through Reconstruction*, 390.

²¹¹ Timothy S. Huebner, *The Taney Court*, 163.

²¹² Timothy S. Huebner, *The Taney Court*, 163.

²¹³ Timothy S. Huebner, *The Taney Court*, 163.

only did not impede the return of fugitives, but in fact complemented the objectives of the Fugitive Slave Act.²¹⁴

Arguably the most important case to precede and set the stage for *Ableman v. Booth*, however, was *Dred Scott v. Sandford*. The case concerned a Missouri slave, Dred Scott, whose owner was a U.S. military surgeon who frequently brought Scott along on out-of-state travels. Some of these journeys involved extended stays in areas that did not allow slavery, including two long-term visits to Illinois and the Wisconsin Territory. When Dr. John Emerson died in 1843, the ownership of Dred Scott and his family transferred to the doctor's widow, Eliza Irene Emerson, née Sanford (most accounts of the Dred Scott case acknowledge that the name was recorded incorrectly in the original records). Three years later, Scott, bolstered by support from abolitionists and using the argument that he had lived for a time in free territory, sought his freedom in the Missouri courts.²¹⁵ At the circuit court level Scott won his case, but lost on appeal, with the battle landing at the U.S. Supreme Court in 1855. As historian Don E. Fehrenbacher notes, an "odor of conspiracy"²¹⁶ had haunted the case, from contemporaries who believed it was orchestrated by pro-slavery forces to questions that still remain over the ownership of

²¹⁴ Timothy S. Huebner, *The Taney Court*, 163-164.

²¹⁵ James V. Young, *Landmark Constitutional Law Decisions: Briefs and Analyses*, 65. Young provides a concise synopsis of the well-documented case. For more a more detailed evaluation, the standard has been set by Don E. Fehrenbacher's Pulitzer Prize-winning, *The Dred Scott Case: Its Significance in American Law and Politics* (Oxford: Oxford University Press, 1978). For more recent scholarship on *Dred Scott v. Sandford*, see also Mark A. Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge: Cambridge University Press, 2006) and Austin Allen, *Origins of the Dred Scott Case: Jacksonian Jurisprudence and the Supreme Court, 1837-1857* (Athens, Georgia: University of Georgia Press, 2006).

²¹⁶ Fehrenbacher, *The Dred Scott Case*, 275.

Scott and his family. While many facets of the case remain unclear, the basic problem, as set out in Chief Justice Taney's opinion, was straightforward:

The question is simply this: Can a negro, whose ancestors were imported into this country, and sold as slaves, become a member of the political community formed and brought into existence by the constitution of the United States, and as such become entitled to all the rights, and privileges, and immunities, guaranteed by that instrument to the citizen? One of which rights is the privilege of suing in a court of the United States in the cases specified in the constitution.²¹⁷

The answer from the Court, while couched in a decision that took Chief Justice Taney nearly two hours to read,²¹⁸ was equally forthright: No.

In the opinion of the court, the legislation and histories of the times, and the language used in the declaration of independence, show, that neither the class of persons who had been imported as slaves, nor their descendants, whether they had become free or not, were then acknowledged as a part of the people, nor intended to be included in the general words used in that memorable instrument ...²¹⁹

This part of the opinion, while it left many Northerners and particularly abolitionists disgusted, was not as shocking as the rest of the opinion, which went beyond answering the initial question set forth by Scott and his lawyers by declaring not only that Scott was not a citizen and did not have the right to have his case heard by the Supreme Court, but because slaves were property and the government had a right to uphold the property rights of its citizens, the federal government had no right to limit slavery in the territories, deeming the Missouri Compromise unconstitutional from its inception. Taney concluded:

... the right of property in a slave is distinctly and expressly affirmed in the Constitution. The right to traffic in it, like an ordinary article of merchandise and property, was guaranteed to the citizens of the United States, in every state that

²¹⁷ Stanley I. Kutler, ed. *The Supreme Court and the Constitution: Readings in American Constitutional History* (New York: W.W. Norton & Company, 1977), 150.

²¹⁸ Fehrenbacher, *The Dred Scott Case*, 2.

²¹⁹ *Dred Scott v. Sandford* (1857) as cited in Urofsky, ed., *Documents of American Constitutional & Legal History: From Settlement through Reconstruction*, 425.

might desire it, for twenty years. And the government in express terms is pledged to protect it in all future time if the slave escapes from his owner. That is done in plain words — too plain to be misunderstood ... Upon these considerations it is the opinion of the Court that the act of Congress which prohibited a citizen from holding and owning property of this kind in the territory of the United States north of the line therein mentioned is not warranted by the Constitution and is therefore void; and that neither Dred Scott himself, nor any of his family, were made free by being carried into this territory; even if they had been carried there by the owner with the intention of becoming a permanent resident.²²⁰

The decision further polarized a nation that had already been bitterly divided over the Kansas-Nebraska Act of 1854, and public reaction in the North was “vitriolic in the extreme”²²¹ as many feared the decision had effectively opened the Northern territories to the expansion of slavery. As historian Michael Holt has noted, the decision was particularly galling for Republicans because it suggested that one of the party’s central tenets, that slavery should not be permitted in the territories, violated the Constitution.²²² Exacerbating the situation was the fact that the Court’s decision had been made by a majority of Southern justices and was, many Republicans felt, ever more evidence of the influence of the Southern Slave Power that had exercised its influence from, as Kenneth Stampp wrote, the annexation of Texas all the way to the loathsome Kansas-Nebraska Act.²²³ Republican legislatures in several Northern states “passed resolutions stating that color did not disqualify a resident of the state from citizenship”²²⁴ and newspapers throughout the north denounced the decision. Chief Justice Taney could not “have flung a

²²⁰ *Dred Scott v. Sandford* (1857) as cited in Urofsky, ed., *Documents of American Constitutional & Legal History: From Settlement through Reconstruction*, 428-429.

²²¹ James F. Simon, *Lincoln and Chief Justice Taney: Slavery, Secession, and the President’s War Powers* (New York: Simon & Schuster, 2006), 129.

²²² Michael Holt, *The Fate of Their Country: Politicians, Slavery Extension, and the Coming of the Civil War* (New York: Hill and Wang, 2004), 119.

²²³ Kenneth M. Stampp, *American in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 105-106.

²²⁴ Foner, *Free Soil, Free Labor, Free Men*, 293.

more hate-packed decree at the Republicans if he had been a zealot for perpetual enslavement and disunion.”²²⁵ For Democrats, the reaction was more complex. Most agreed with Taney’s opposition to black citizenship,²²⁶ and for southern Democrats especially, the decision appeared to be a long-awaited validation of their way of life. The sticking point was the issue of popular sovereignty, which had long been advocated by Stephen Douglas. The subject became part of the famous Lincoln-Douglas debates, and sparked Douglas’s so-called Freeport Doctrine, in which he tried to find a balance between the popular-sovereignty of the Kansas-Nebraska Act and the blanket ruling of the Dred Scott decision. When Lincoln asked whether a territory could exclude slavery before statehood, Douglas replied:

Whatever the Supreme Court may hereafter decide as to the abstract question of whether slavery may go in under the Constitution or not, the people of a Territory have the lawful means to admit it or exclude it as they please, for the reason that slavery cannot exist a day or an hour anywhere unless supported by local police regulations, furnishing remedies and means of enforcing the right to hold slaves. Those local and police regulations can only be furnished by the local legislature. If the people of the Territory are opposed to slavery they will elect members to the legislature who will adopt unfriendly legislation to it. If they are for it they will adopt legislative measures friendly to slavery.²²⁷

This was not music to Southern Democratic ears, but as David M. Potter has documented, Douglas was in a difficult spot. To reject the Dred Scott decision would be to alienate Southerners, while support of it would cost him endorsement from Northerners who had previously backed him simply because of his advocacy of popular

²²⁵ William W. Freehling, *The Road to Disunion, Volume II: Secessionists Triumphant, 1854-1861* (New York: Oxford University Press, 2007), 121.

²²⁶ Fehrenbacher, *The Dred Scott Case*, 455.

²²⁷ Harold Holzer, ed. *The Lincoln-Douglas Debates* (New York: Fordham University Press, 2004), 106.

sovereignty.²²⁸ *Ableman v. Booth* was decided in this decidedly turbulent atmosphere, with historians of the antebellum era describing this period with any number of synonyms for the term “powder-keg.” In addition to the obvious political turmoil, violence in Kansas had escalated with the horror of the Pottawatomie Massacre and the Sack of Lawrence in 1856, and Americans had been scandalized by the brutal caning of Senator Charles Sumner the same year. *Dred Scott v. Sandford* was decided in March 1857, creating further instability within political parties that were already fraying over the myriad issues connected to territorial expansion, ever-growing regionalism and, of course, slavery. By March 1859, when Chief Justice Taney delivered the decision in *Ableman v. Booth*, the case had acquired a new weight in the context of the political events and legal precedents that had unfolded in the days since Joshua Glover had been freed by a mob and Sherman Booth had been incarcerated.

After what must have seemed an interminable wait, in March 1859, the U.S. Supreme Court finally delivered its decision in *Ableman v. Booth*. Unlike other federal cases involving slavery and fugitives, this time there was no dissent among the justices. The state, the Court ruled, could not overrule federal authority. In what has been hailed as “the most significant statement for the supremacy of federal over state courts between *Cohens v. Virginia* (1821) and the mid-twentieth century conflicts over desegregation,”²²⁹ Taney proceeded to outline his case:

If the judicial power exercised in this instance has been reserved to the States, no offence against the laws of the United States can be punished by their own courts, without the permission and according to the judgment of the courts of the State in which the party happens to be imprisoned; for, if the Supreme Court of Wisconsin

²²⁸ David M. Potter. *The Impending Crisis: 1848-1861*. Edited and completed by Don. E. Fehrenbacher. (New York: Harper and Row, 1976), 326-329.

²²⁹ Kutler, ed., *The Supreme Court and the Constitution*, 110.

possessed the power it has exercised in relation to offences against the act of Congress in question, it necessarily follows that they must have the same judicial authority in relation to any other law of the United States; and, consequently, their supervising and controlling power would embrace the whole criminal code of the United States, and extend to offences against our revenue laws, or any other law intended to guard the different departments of the General government from fraud or violence.²³⁰

The effect of this was that states could not accept federal legislation as a type of grocery list, acknowledging some laws and rejecting others as they saw fit. Taney argued the federal government's orders superceded the sovereign rights of the state by virtue of the Constitution's supremacy clause²³¹: "this Constitution, and the laws of the United States which shall be made in pursuance thereof, shall be the supreme law of the land, and obligatory upon the judges in every State."²³² Taney acknowledged that state and federal governments might not always agree, but in such instances where a state took issue with a federal law, the Supreme Court must act as final arbiter on behalf of the people:

The importance which the framers of the Constitution attached to such a tribunal, for the purpose of preserving internal tranquility, is strikingly manifested by the clause which gives this court jurisdiction over the sovereign States which compose this Union, when a controversy arises between them. Instead of reserving the right to seek redress for injustice from another State by their sovereign powers, they have bound themselves to submit to the decision of this court, and to abide by its judgment.²³³

As a final blow to Smith's earlier decision, Taney saved his pronouncements on the Fugitive Slave Act for the end. Given the Court's unwillingness "to be misunderstood" on the issue, Taney spelled out in plain language that the law was, "in all its provisions" constitutional. "The judgment of the Supreme Court of Wisconsin," he

²³⁰ Taney, as quoted in Kutler, ed., *The Supreme Court and the Constitution*, 110.

²³¹ Ranney, "Suffering the Agonies of Their Righteousness," 104.

²³² <http://supreme.justia.com/us/62/506/case.html>. Accessed on Aug. 31, 2007.

²³³ <http://supreme.justia.com/us/62/506/case.html>. Accessed on Aug. 31, 2007.

concluded, “must therefore be reversed in each of the cases now before the court.”²³⁴ Outraged, the Wisconsin Supreme Court refused to file the federal verdict in its records. The state legislature further rebelled against the federal court by adopting joint resolutions that publicly chastised Judge Taney and his legal colleagues: “*Resolved*, That this assumption of jurisdiction by the Federal judiciary, in the said case, and without process, is an act of undelegated power, and therefore without authority, void and of no force.”²³⁵ Still, the decision was not entirely unexpected, since the Supreme Court, according to the *Milwaukee Daily Free Democrat*, was “composed of a majority of slave holders and completely under the control of the Slave Power.”²³⁶ Chief Justice Taney had anticipated a flurry of renewed interest in the case, even going so far as to have the judgment published in a pamphlet — it was, after all, a decision of which he was quite proud. The pamphlet never materialized. Historian James F. Simon has theorized this had as much to do with the “precipitous drop in the Supreme Court’s prestige” as with the lack of interest in the case.²³⁷

Nonetheless, the timing of the decision was less than propitious for Smith, who was seeking reelection to the Supreme Court of Wisconsin the same month. In the five years between Booth’s arrest and Taney’s judgment, the once eminent judge and man about Milwaukee was weathering stormy seas, politically and personally. In the aftermath

²³⁴ <http://supreme.justia.com/us/62/506/case.html>. Accessed on Aug. 31, 2007.

²³⁵ Vroman Mason, “The Fugitive Slave Law in Wisconsin, with Reference to Nullification Sentiment.” In *Fugitive Slaves*, ed. Paul Finkelman (New York: Garland Publishing, Inc., 1989), 299.

²³⁶ *Milwaukee Daily Free Democrat*, March 11, 1859.

²³⁷ James F. Simon. *Lincoln and Chief Justice Taney: Slavery, Secession, and the President’s War Powers* (New York: Simon & Schuster, 2006), 163.

of the Wisconsin court's decision, Smith had enjoyed tremendous public popularity,²³⁸ but as the Glover story began to fade from the headlines, another story, in which Smith was equally prominent, began to take its place. In the spring of 1857, a land grants scandal rocked the state government. Dozens of officials, including Smith, were implicated in the sordid affair, which centred on Wisconsin's first federal railroad land grant to the state the previous year. Several companies had been competing for the land grant, but it was Byron Kilbourn's La Crosse & Milwaukee Railroad that ultimately received the grant. What emerged later, however, was that Kilbourn, one of the original founders of Milwaukee, had spent thousands of dollars, some in stocks and bonds, to bribe public officials and win the grant.²³⁹ Smith was accused of accepting \$10,000 in railway bonds, a charge he denied. Kilbourn and Smith probably knew each other since Kilbourn had worked extensively with Smith's brother-in-law, George Reed, in the earliest days of settlement in the state and the pair had founded the Milwaukee and Rock River Canal.²⁴⁰ After the scandal broke, Smith was steadfast in his insistence that he had only done what was "proper and lawful" when he had approached Wisconsin's governor about the possibility that a competing company might put a rail line through Chicago at

²³⁸ In addition to maintaining a favourable public image, Smith's domestic life during the early 1850s also appeared stable, with Mary Frances marrying a Yale-educated Presbyterian minister 11 years her senior, William Sydney Huggins, and settling in Kalamazoo, Michigan in 1854. Mary Frances gave birth to Abram's first grandchild, Mary A. Huggins, about a year later. For more information about Huggins and his death, see the Making of America website for a copy of *Three Sermons to young Men: Preached by Rev. William S. Huggins of Kalamazoo, Michigan, and a Funeral Discourse, by Rev. Samuel Haskell* (Philadelphia: Presbyterian Publication Committee, 1862): <http://name.umd.umich.edu/AJK3161.0001.001>

²³⁹ Joseph A. Ranney, "Imperia in Imperiis: Law and Railroads in Wisconsin, 1847-1910," *Wisconsin Lawyer*, <http://www.wisbar.org/wislawmag/archive/history/pt03.html> (accessed April 6, 2003) 2.

²⁴⁰ James S. Buck, *Pioneer History of Milwaukee*, 125.

the expense of Milwaukee. The city buzzed with speculation about who had taken bribes and who had not — among the dozens of suspected recipients of bribes were the governor, Smith's former law partner, Henry Palmer, the editor of the *Milwaukee Sentinel*, Rufus King, and Smith's brother-in-law, Alexander Mitchell, the first president of the Wisconsin Bankers' Association.²⁴¹ There was much public discussion about Smith's possible involvement. The same man who had brought Wisconsin fame and glory as a place of high principles now stood accused of putting a price on his honour.

Smith's hometown newspaper, the *Milwaukee Sentinel*, carried the text of Smith's testimony before a special legislative committee convened to investigate the bribery. In his testimony, Smith never denied receiving the bonds, however, he testified he didn't actually do anything with them. He was emphatic that he had done nothing wrong:

There never was, at any time, any agreement, understanding, or intimation, suggestion or hint, whatsoever to me, or between me and any other person, touching the receipt by me, or payment, or presentation to me of any La Crosse & Milwaukee Railroad Company bonds or stock of any kind or denomination whatever.²⁴²

Asked to elaborate on how he came to be in possession of the bonds, Smith said that one morning he had found a package on his library table containing railway bonds for La Crosse & Milwaukee:

I had no reason that I knew, or could think of, to believe or suspect that they were intended for any unworthy purpose. But although I stood in no official relation to the company, I could perceive that such relation might arise. I could foresee other circumstances wherein I thought it would be my duty, in justice as well to myself as to the State, to retain those bonds, safely and securely within my control, to be produced as circumstances might require," Smith said. "I therefore replaced the bonds in the envelope, took them into the bank where I kept my account, and requested the Cashier to put his seal upon it, and deposit the package in the vault

²⁴¹ *Dictionary of Wisconsin Biography*, (Madison: The State Historical Society of Wisconsin, 1960), 256.

²⁴² *Milwaukee Sentinel*, May 29, 1858.

of the bank subject to my order, as a special deposit, and there they remain to this day.²⁴³

The committee asked Smith if he had had any discussions with the state's governor, Coles Bashford, about approving a bill to grant land to Kilbourn's company. Smith admitted he had, and that he had expressed concern to the governor, who stood accused of accepting \$50,000 in La Crosse & Milwaukee stock²⁴⁴ that another railroad company might receive the grant to the detriment of Wisconsin. Smith claimed:

It was rumored, nay confidently asserted, that the Chicago Company, as it was called, were at Madison urging their claims to the grant, with every probability of success. I thought I foresaw that if the grant of land was given to that company for the purpose of constructing a road through the centre of our State to Chicago, it would not only operate disastrously to Milwaukee and all her interests, but would tend to the disparagement of the State, as a confession of her inability to manage her inheritance or bequest ... I therefore felt it my duty to exercise the right which I had in common with all other citizens to use all proper and lawful means in my power to prevent such a catastrophe.²⁴⁵

In the end, the 1858 Legislature revoked the grant to the La Crosse & Milwaukee as the scandal ruined several political careers in the state. In examining Smith's actions, it would appear that while his career was not ruined, he had taken something of a hit to his credibility. Even though he never faced criminal charges in the case, even the suspicion of having accepted a bribe did not paint a Supreme Court justice in a favourable light, and made his reelection prospects exceedingly difficult. This aside, his earlier ruling in the Joshua Glover case would have made it almost impossible for him to win the Democratic nomination. In his 1912 history of the Court, John Bradley Winslow

²⁴³ *Milwaukee Sentinel*, May 29, 1858.

²⁴⁴ *Milwaukee Sentinel*, May 15, 1858.

²⁴⁵ *Milwaukee Sentinel*, May 29, 1858.

explained that Smith's ultra states' rights position had alienated him from the Democrats, effectively leaving Smith "a man without a party."²⁴⁶

The Northern Democracy did not approve of party men criticizing the Fugitive Slave Act, a disagreeable but essential part of the Compromise of 1850. When the Compromise had been put before the Senate as an omnibus bill, it received the support of three-fourths of Northern Democrats.²⁴⁷ When the omnibus strategy failed, the Compromise had been rescued in Congress by the leading Northern Democrat, Stephen Douglas, whose strategy to break the omnibus into its separate parts ultimately assured its passage.²⁴⁸ In *Ableman v. Booth*, Smith, in a very public way, had embarrassed his Party, as he had attacked the Compromise in no uncertain terms:

[The 1850 Act] is a wicked and a cruel enactment. ... Let the federal government return to the exercise of the just powers conferred by the Constitution and few, very few, will be found to disturb the tranquility of the nation. ... But until this is done, I solemnly believe that there will be no peace for the state or the nation, but that agitation, acrimony and hostility will mark our progress, even if we escape a more dread calamity which I will not even mention.²⁴⁹

Thanks to *Ableman v. Booth*, Northern Democrats thus stood accused of subverting the Union, and the blame fell squarely on Smith's shoulders. Worse, Smith had also clashed with William Barstow, former governor of Wisconsin described by one historian as "the kingpin of the state's Democratic party."²⁵⁰ In a bitter dispute that was ultimately decided by the Wisconsin Supreme Court, Barstow lost the 1855 contest for the governor's office. After an investigation, it was determined that some of the returns were forgeries or were from areas that did not even exist. The justices, including Smith, unanimously decided

²⁴⁶ Winslow, *The Story of a Great Court*, 116.

²⁴⁷ Holt, *The Rise and Fall of the Whig Party*, 532.

²⁴⁸ Wilentz, *The Rise of American Democracy: Jefferson to Lincoln*, 643.

²⁴⁹ Smith as quoted in Ranney, *Trusting Nothing to Providence*, 100.

²⁵⁰ Michael J. McManus, *Political Abolitionism in Wisconsin*, 175.

that the election should have gone to Barstow's opponent, Coles Bashford.²⁵¹ Evidently, the court's decision earned Smith the enmity of the powerful Barstow. "He and his henchmen powwowed in Madison and resolved to place a candidate in the field against Smith," writes historian Michael J. McManus.²⁵² Their selection of William Pit Lynde indicated that Democrats wanted a man who was "well known for his views opposing the decision of the state court and favoring the Dred Scott decree and other proslavery enactments of the federal government."²⁵³

Many Republicans were ready to support Smith, but in the context of the railway scandal and the availability of Booth's dynamic defence attorney, Byron Paine, Smith looked very much like yesterday's man. Some Republicans worried that Smith "might harm the party's image and fail to rally the rank and file"²⁵⁴ and that his sullied reputation would make his election an impossibility. Even Sherman Booth, who had benefited from Smith's support in the past, turned against him. "The Angel Gabriel could not be elected judge with ten thousand dollars of Land Grant Bonds in his possession," Booth wrote in the *Free Democrat*. Smith, he said, "stands no more chance of being elected than he does of being struck by lightning."²⁵⁵

Paine, regarded as a "youthful, almost romantic figure,"²⁵⁶ was nominated by the Republicans at their March 1859 caucus in Madison, despite the fact that about forty

²⁵¹ Current, *The History of Wisconsin*, 224-230.

²⁵² Michael J. McManus, *Political Abolitionism in Wisconsin*, 175.

²⁵³ Michael J. McManus, *Political Abolitionism in Wisconsin*, 175.

²⁵⁴ Michael J. McManus, *Political Abolitionism in Wisconsin*, 175.

²⁵⁵ As quoted in Michael J. McManus, *Political Abolitionism in Wisconsin*, 175.

²⁵⁶ Winslow, *The Story of a Great Court*, 116.

Republican newspapers had endorsed Smith.²⁵⁷ At the caucus, Paine received forty-six votes to Smith's fifteen.²⁵⁸

"Better news for Freedom never, in the long line of history, reached this ancient capital," Charles Sumner wrote to Paine from Rome. "God bless the people of Wisconsin who know their rights, and knowing dare maintain! God bless the champion they have chosen! God bless the cause!"²⁵⁹

On 17 March, 1859, the *Sentinel* confirmed that Smith had announced a day earlier that he would withdraw his candidacy for the court, much to the disappointment of those who supported his ultra states' rights position. Smith acknowledged his backing in an address printed in the *Milwaukee Sentinel*, but said he felt it was time to remove himself from the race:

During the last few months, I have frequently been asked whether I would be a candidate for re-election — and if so, whether I would desire a party nomination. My uniform reply to all these inquiries has been that I had served the people of the State six years — and that if they desired my services any longer they would say so — that in no event would I take a party nomination — that if the people, without regard to party ties or demands, desired my services another term, their will would be obeyed.²⁶⁰

The statement was — to put it mildly — disingenuous, given his pursuit of both parties' nominations. As well, a move to the Republican Party would have been an obvious strategy for anyone seeking public office in Wisconsin: by 1857, both senators, all three

²⁵⁷ Winslow, *The Story of a Great Court*, 116.

²⁵⁸ *Milwaukee Daily Free Democrat*, March 11, 1859.

²⁵⁹ Vroman Mason, "The Fugitive Slave Law in Wisconsin, with Reference to Nullification Sentiment," 297.

²⁶⁰ *Milwaukee Sentinel*, March 17, 1859.

congressmen, most state legislators and the governor were Republicans.²⁶¹ Even so, Smith claimed that,

Until quite recently, no movement had been made by either of the political parties to make the election a party question but, on the contrary, the public sentiment, so far as it found expression, seemed to be decidedly averse to such a course. But recently matters have taken a different direction, and both the political parties, with a greater or less degree of formality, have placed in nomination a candidate on avowed partizan [sic] grounds and with a purpose of securing, by the result, peculiar party advantages ... I feel a deep and absorbing interest in the maintenance of those great conservative principles of popular liberty and state sovereignty on which the Federal Union was founded and by which alone it can be preserved. I know not what could induce me to do any act which might put them in jeopardy, or occasion their overthrow, or to omit any personal sacrifice which could possibly prevent such a result.²⁶²

The *Racine Journal* lamented Smith's withdrawal: "However much this ... will grieve the thousands of his many friends ... we see in it only further evidence of the magnanimity of the man, and still greater proofs of his fitness for the position to which his friends would have again elevated him."²⁶³ Regrets were short-lived: Winslow noted that Republican newspapers "fell into line" and eventually everyone endorsed Paine.²⁶⁴

Curiously, a vague reference in the *Sentinel* a few months later suggests that someone thought that Smith should, in fact, become a vice-presidential candidate.²⁶⁵ In 1860 the *Sentinel* again took up his cause as it suggested that Smith was the perfect candidate for the United States Senate: "There is not hardly a Republican in Wisconsin who does not desire to see A.D. Smith in the Senate of the United States — No more eloquent and earnest champion of freedom can our State produce."²⁶⁶

²⁶¹ Current, *The History of Wisconsin*, 236.

²⁶² *Milwaukee Sentinel*, March 17, 1859.

²⁶³ *Milwaukee Sentinel*, March 19, 1859.

²⁶⁴ Winslow, *The Story of a Great Court*, 118.

²⁶⁵ *Milwaukee Sentinel*, May 2, 1859.

²⁶⁶ *Milwaukee Sentinel*, Jan. 14, 1860.

In April 1859, Edward Whiton, Chief Justice of the Supreme Court of Wisconsin, died after a period of ill health and Luther Dixon, a Vermonter,²⁶⁷ was appointed as an interim replacement until an election for the position could be held in April 1860.²⁶⁸ Smith's name surfaced as a possible challenger to Dixon, a Republican and an "anti-State Rights man,"²⁶⁹ and Smith's future occupied the pages of Wisconsin newspapers through the winter of 1860. "There is no man whom the Republican Party could nominate who would begin to come up to his standard, whether you regard the measure of his ability or the character of his back-bone," asserted one letter to the editor of the *Sentinel*. "... His re-election at the present crisis, would be an announcement to the world that Wisconsin takes no steps backward towards Despotism, but is firmly pledged to UNION AND LIBERTY."²⁷⁰ Smith's shady dealings in the railway scandal came back to haunt him, but some argued it was time to forgive. "The people feel that it is time Judge Smith was restored to his place; they have need of his masterly talents and great experience; they feel that old friends are better than new ones."²⁷¹

As the election approached, Smith continued to bang the states' rights drum. He delivered a rousing speech in the state capital of Madison on 22 March, 1859. In front of a sizeable crowd, Smith gave a lengthy speech in Assembly Hall that garnered much attention in the Wisconsin press. In it, he urged Republicans to support states' rights:

But let me say what I do, in my heart of hearts believe, let me declare what seems to me to be as apparent as though destiny were written by a sunbeam on yonder wall, that if this government is to be preserved in its purity and strength, if it is to be saved from the fangs of the spoiler to put forth its vast energies, to effect its

²⁶⁷ Winslow, *The Story of a Great Court*, 122.

²⁶⁸ Ranney, "Suffering the Agonies of Their Righteousness," 108-109.

²⁶⁹ *Milwaukee Sentinel*, Feb. 7, 1860.

²⁷⁰ *Milwaukee Sentinel*, Jan. 17, 1860.

²⁷¹ *Milwaukee Daily Free Democrat*, Jan. 21, 1860.

legitimate results upon the civilization of the world, upon the development of the race, the elevation of man because he is man, to remain true and steadfast to his sacred character as God declared it 'a little (only a little) lower than the angels' — then it can only be done by a firm adherence to, and an ever ready vindication of the right of the States to maintain and exercise all the powers not delegated or relinquished by the Constitution of the United States.²⁷²

Smith's argument was founded on the principle that states' rights²⁷³ should be a fundamental part of the Republican platform because they were a tenet vital to the founding fathers' visions of the country's governmental structure.²⁷⁴ As he had said in a letter to Horace Greeley several years earlier, Smith sincerely believed that it was the express wish of the Founders that states retain a level of autonomy in the face of federal controls:

I believe the glorious vision of our Fathers will be realized of an expansive and expanding Union of sovereign and independent States, not an empire composed of dependent provinces. Let these principles be preserved, and union and liberty will continue our happy inheritance. Allow them to be trodden under foot, and consolidation and tyranny will be the inevitable result.²⁷⁵

This was consistent with earlier resolutions set forth by Republicans in Wisconsin who, at an 1857 caucus declared that it should be the mission of the party to "restore the action of the Federal Government to the purity of principles of its Republican founders" by adopting the Virginia and Kentucky Resolutions as set out by Jefferson and Madison

²⁷² A.D. Smith. "Speech of Hon. Abram D. Smith," delivered in the Assembly Hall, Madison, Wisconsin. March 22, 1860. (Madison: Atwood, Rublee & Reed, 1860): 5.

²⁷³ For a more dated examination of states' rights in Wisconsin, see James L. Sellers, "Republicanism and State Rights in Wisconsin," *Mississippi Valley Historical Review* 17 (September 1930): 213-229.

²⁷⁴ Ranney, "Suffering the Agonies of Their Righteousness," 109.

²⁷⁵ *Milwaukee Sentinel*, April 16, 1857.

in 1798-1799 and that it was an “imperative duty” to stand by the Wisconsin State Court in its judgment that the Fugitive Slave Act was unconstitutional.²⁷⁶

Particularly noteworthy in Smith’s speech to the Madison crowds was his willingness to push the states’ rights agenda even when it meant taking an unpopular stance alongside those who supported slavery. In the speech, Smith referred to an exchange that had taken place about a month earlier when *Ableman v. Booth* had become a topic in the U.S. Senate, sparking a debate between the state’s own Senator James Doolittle, a “highly effective orator”²⁷⁷ and the fiery Senator Robert Toombs of Georgia. It had not taken long for the debate to turn caustic, the sectional divide on the issue becoming readily apparent. According to Toombs, young Wisconsin, only a state for twelve years, “got rotten before she got ripe” and came to the Senate floor with “her hands all smeared with the blood of a violated Constitution, all polluted with perjury.”²⁷⁸ The insult must have made all loyal Wisconsins bridle — but Smith dared to be different. Smith not only referred to Toombs in his states’ rights speech in Madison, but backed him on the principle. Wisconsin must uphold a states’ rights position, Smith argued, whether it was convenient or not — after all, it was a fundamental part of being a good Republican. He explained:

However I may condemn his political doctrines, I honor that faithful Senator for his noble fidelity to the dignity of the State which he represents, and cordially sympathize in his patriotic aspirations, and only regret that he should have

²⁷⁶ James L. Sellers, “Republicanism and State Rights in Wisconsin,” *Mississippi Valley Historical Review*, 17 (Sept. 1930), 217-218.

²⁷⁷ Richard N. Current, *The History of Wisconsin: The Civil War Era, 1848-1873*, ed. William Fletcher Thompson (Madison: Wisconsin Historical Society, 1976), 283.

²⁷⁸ Thomas D. Morris, *Free Men All: The Personal Liberty Laws of the North, 1780-1861* (Baltimore: The Johns Hopkins University Press, 1974), 200.

forgotten that there was another state in the confederacy having equal rights, and entitled to equal consideration.²⁷⁹

It may have been partisanship as well as principle that allied Smith with Toombs, a Democrat, against Doolittle, a Republican. As this exchange demonstrated, the states' rights doctrine was, as historian Paul Finkelman has noted, "a two-edged sword"²⁸⁰ in that it could just as easily be used by one side of the slavery debate as the other — even Byron Paine had admitted to being influenced by the arguments of John C. Calhoun,²⁸¹ who surely must have been one of the most intensely disliked politicians of his time in a slavery-hating state such as Wisconsin. The political events of the decade demonstrate, as historian David Potter wrote, "that the attitudes of various groups in a society toward upholding the law is in direct proportion to their approval or disapproval of the law which is to be upheld."²⁸² The states' rights argument in Wisconsin, however, was beginning to lose its lustre. In the course of the campaign, Luther Dixon had said that as much as he disliked the Fugitive Slave Act, and even though he, too, felt it was unconstitutional, Wisconsin had an obligation to fall in line with the decision of the federal Supreme Court.²⁸³ His victory in the election for chief justice marked the demise of that "faction's" dominance of the Wisconsin court²⁸⁴ and suggests the beginning of a political shift in the

²⁷⁹ A.D. Smith. "Speech of Hon. Abram D. Smith," delivered in the Assembly Hall, Madison, Wisconsin. March 22, 1860. (Madison: Atwood, Rublee & Reed, 1860): 11-12.

²⁸⁰ Paul Finkelman, *An Imperfect Union: Slavery, Federalism, and Comity* (Chapel Hill: University of North Carolina Press, 1981), 336.

²⁸¹ Foner,

²⁸² Potter, *The Impending Crisis*, 296.

²⁸³ Ann Walsh Bradley and Joseph A. Ranney. "A Tradition of Independence: The Wisconsin Supreme Court's First 150 Years." *Wisconsin Magazine of History*, (winter 2002-2003), 44.

²⁸⁴ Ranney, "Suffering the Agonies of Their Righteousness," 111.

state that made it more receptive to federalism the closer the country inched toward Civil War.

Having been rejected by the Republicans in favour of Paine, then Dixon, Smith took a break from politics and pursued journalism by taking over the *Milwaukee Free Democrat*²⁸⁵ in December 1860. The newspaper, hitherto edited by Sherman Booth,²⁸⁶ was a vehicle for the Republican party, despite its name.²⁸⁷ At this point, Smith's political fortunes were, like those of the country, in dramatic flux. Yet his family life remained stable — his eldest daughter, Mary Frances, had married a Presbyterian minister and given birth to three more grandchildren in the years leading up to the Civil War. All had been born in Michigan. Smith's second daughter, Maria Cecilia, was in her early twenties, and his youngest child, Marion Augusta, was now about ten years old.²⁸⁸ The family continued to live in their Spring Street residence and employed two domestic workers from Europe, Anna Whaling from Ireland and a Prussian named Carl Gratz.

²⁸⁵ The *Milwaukee Free Democrat* changed hands several times. Booth sold the newspaper to Sholes & Crounse in March, 1859. Sholes & Crounse became Crounse & Thomson the day after the sale and in February, 1860 the firm became Crounse & Fitch. By May, 1860 it was bought by C.C. Olin and G.W. Tenney. Smith bought the paper on 3 December, 1860. See Flower, *History of Milwaukee, Wisconsin*, 627.

²⁸⁶ *Milwaukee Daily Sentinel*, Dec. 13, 1860. Sherman Booth, in addition to his legal battle in *Ableman v. Booth*, was also fighting charges that he had "seduced" a fourteen-year-old girl. At the time he was charged, in the spring of 1859, he also decided to sell the *Free Democrat*. See Butler, "The Public Life and Private Affairs of Sherman M. Booth," 190.

²⁸⁷ Current, *The History of Wisconsin*, 274.

²⁸⁸ There is no concrete evidence that Smith and his wife had more children between the death of Marius in 1843 and birth of Marion in 1851, though the odds of an eight-year period of infertility would seem unlikely in the mid-nineteenth century. The 1850 Census for Milwaukee County lists a 12-year-old boy by the name of Sylvester Smith. Unless the boy is Smith's nephew, he is a son who was born the year before Maria Cecilia, when the family was still in Ohio. I have been unable to locate further records for Sylvester Smith: he is not buried with the family and is not listed in the Census of 1860. It would seem that Sylvester was likely Smith's son, but died before reaching adulthood.

Another addition to the family was Smith's New England mother-in-law, Rhoda Reed, who was now in her 80s.

At some point in late 1861, Smith travelled to Washington and was called upon to collaborate with Republican Senator James Doolittle in drafting the Direct Tax Act, which allowed the federal government to collect taxes to support the war effort — including in areas of the Confederacy that were occupied by Federal troops.²⁸⁹ While their collaboration might seem odd, given Smith's comments on the Toombs-Doolittle debate, they had much in common: Doolittle had also been born in upstate New York, albeit four years later; Doolittle was also a lifelong Democrat, only leaving the party in 1856 over the repeal of the Missouri Compromise; and they moved in the same legal circles, Doolittle having been a judge of the first judicial circuit of Wisconsin in 1853-56. A lukewarm Republican who would vote against the impeachment of Andrew Johnson and return to the Democrats in 1871, Doolittle probably found a soulmate, possibly even a mentor, in A.D. Smith.²⁹⁰

In the new year of 1862, Smith announced in the *Free Democrat* that he had sold his subscription list to the *Milwaukee Sentinel* and lashed out at the war's "foes on this side of the Slave States":

The undying love of the Union is too deeply rooted in the hearts of the northern people, to permit one star to be stricken from our flag, or one stripe to be removed from its folds, except temporarily to lash traitors into submission. Howl on, ye

²⁸⁹ Ira Berlin et al., *Freedom: A Documentary History of Emancipation, 1861-1867*, (Cambridge: Cambridge University Press, 1993), series I, vol. II, 35.

²⁹⁰ Doolittle attended Geneva (later Hobart) College in upstate New York. The school has no record of Smith. See James L. Sellers, "James R. Doolittle," *Wisconsin Magazine of History* 17 (December, 1933): 168-178. For a concise biography of Doolittle, see "Doolittle, James Rood, (1815-1897)" in *Biographical Directory of the United States Congress*. <http://bioguide.congress.gov/scripts/biodisplay.pl?index=D000428>.

sympathizers with rebellion; ye are welcome to all the satisfaction you can get from your howlings.²⁹¹

At this point, Smith got out of the newspaper business and refocused on his political goals. Though he had alienated Democrats, he still had a chance with Republicans who were willing to overlook his connection to the railway bond boondoggle. Certainly he had now moved sufficiently towards the Republican Party to warrant a patronage appointment. By the summer of 1862 Smith was on the move again, this time as a member of the Direct Tax Commission in the federally occupied Sea Islands of South Carolina. Leaving friends and family behind, he was in motion yet again. When he finally returned to Wisconsin only weeks after the Civil War concluded, it was as a corpse.

²⁹¹ *Milwaukee Sentinel*, Jan. 28, 1862.

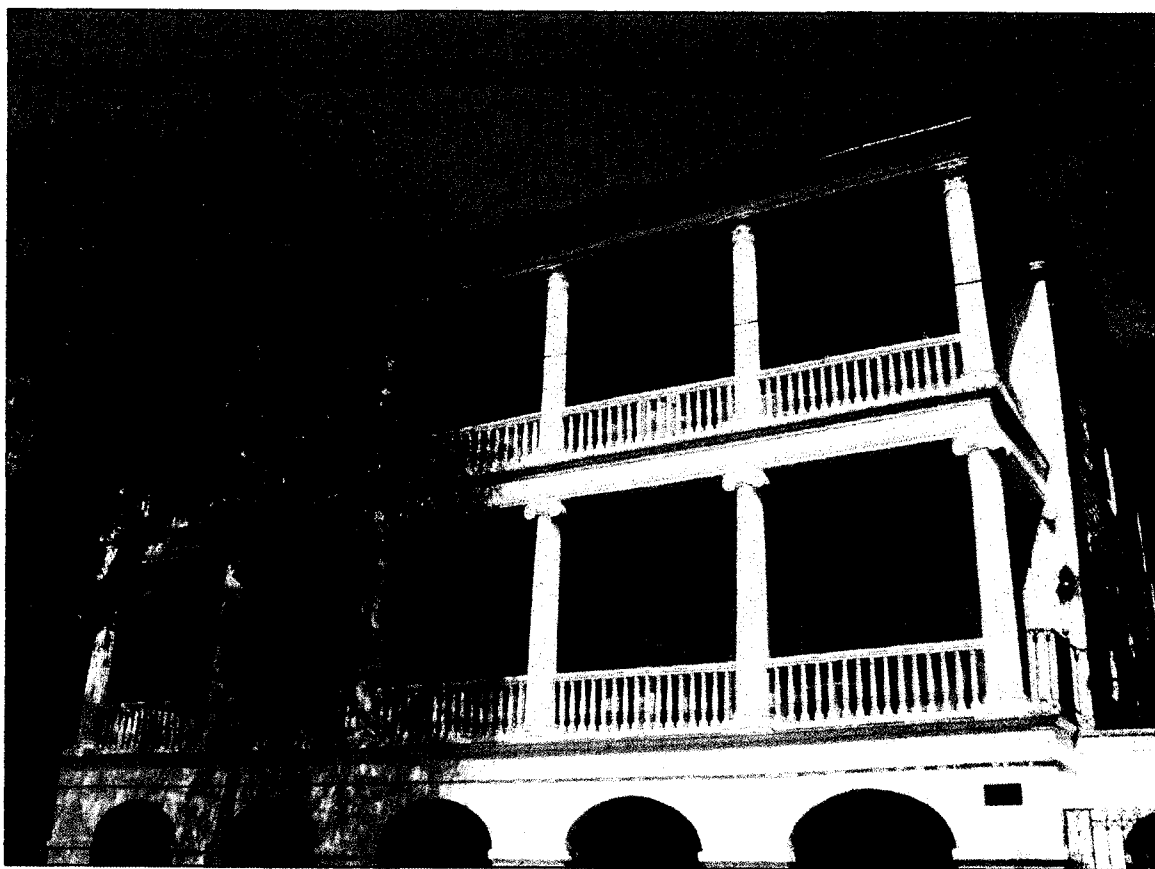


ILLUSTRATION 4: The Direct Tax Commissioners, A.D. Smith, William Henry Brisbane and William Wording, are believed to have made their headquarters in this home in Beaufort, South Carolina. Photographed by Ruth Dunley, February 2005.

Chapter 4

“Your name and memory will be cherished”

You can have the assurance that your name and memory will be cherished by these lowly ones, to whom you have spoken cheering words of hope and encouragement, long after the names of those who have slandered you shall have been forgotten, or remembered not for the good they have done here.

— General Rufus Saxton in a letter to A.D. Smith, 18 April, 1864.¹

On the morning of Thursday, 9 October, 1862, William Lloyd Garrison settled into his seat on a train departing Boston for the town of Randolph, a short journey to the south.² Only seventeen days earlier, in the aftermath of the horror of Antietam, the public had learned of President Lincoln's Preliminary Emancipation Proclamation, a plan to make slaves in Confederate states “forever free.” The shift from a war about Union to a war about slavery would have been good news to Garrison, publisher of the abolitionist newspaper *Liberator* and founder of the American Anti-Slavery Society, who had always been a proponent of equality between the races and of immediate slave emancipation. Garrison's strong views made him simultaneously beloved and despised in a country torn apart by sectional differences and now, war. Only the day before another 845 Union

¹ General Rufus Saxton to A.D. Smith, April 18, 1864. *The Rufus and S. Willard Saxton Papers*, Manuscript Group No. 431. Yale University Manuscripts and Archives, New Haven, Connecticut. Hereafter, Saxton Papers.

² Walter M. Merrill, ed., *The Letters of William Lloyd Garrison: Let the Oppressed Go Free, 1861-1867* (Cambridge: The Belknap Press of Harvard University Press, 1979), vol. v, 120-121.

troops had died and 2,851 had been wounded at the Battle of Perryville.³ As the train whistled and clattered along the tracks through the autumn colours of Massachusetts, Garrison took stock of an unusual scene that unfolded before his eyes that made such an impression that he later wrote about it to his wife.

A man seated behind Garrison began to speak in what he recalled as a clear and emphatic voice. Raising his voice above the clanking of the rail car, the man delivered a short polemic that caught Garrison's attention. The raging war, the man said, was a "just judgment of Heaven" upon the United States for its sins of oppression. The man continued, his rhetoric becoming more heated as he told fellow passengers of his hope that the fire of war "would continue to burn till the dross was removed, and the land thoroughly purified." Naturally, the man's words provoked response. "This stirred up two others near him," Garrison wrote, recording the episode on a piece of paper on his knee, "Gentlemen in pretence and appearance, one of them the President of the Railroad — who revealed the true democratic [Party] bile, and by their slang about the abolitionists showed they were as secesh [sic] in spirit as Jeff. Davis himself."

Garrison wrote that it was obvious the men knew who he was and so "paid Massachusetts a compliment by expressing the wish that she might be set off from the rest of the Union. The man behind Garrison spoke up again, replying "spiritedly" to the two southern sympathizers. What Garrison meant by his choice of the word "spiritedly" is open to interpretation, as is speculation as to the identity of the outspoken passenger who had stirred the exchange with his passionate oratory about the war raging on battlefields across the country. All Garrison knew was that the man identified himself as

³ E.B. Long and Barbara Long. *The Civil War: Day by Day. An Almanac 1861-1865* (New York: Da Capo Press, 1971), 276.

a Dr. Smith, of Wisconsin, formerly of Ryegate, Vermont.⁴ "After many years' absence, he was here on a visit to bring up 'the days o'auld lang syne' to his memory," Garrison recorded. "We found him a very hearty abolitionist."⁵

The depiction of Smith as an outspoken abolitionist, passionate orator, possibly slightly inebriated-bordering-on-belligerent rail passenger fits the character of A.D. Smith, though Garrison does not provide enough information for his identity to be fully substantiated. Certainly, Smith could have been on a train in that part of the country at that time. If, indeed, it was A.D. Smith, he may have been visiting extended family in Massachusetts before travelling on to New York City. There, eight days after Garrison had overheard the mysterious Dr. Smith, A.D. Smith boarded the U.S. Steamer *Erickson* to journey to South Carolina⁶ where he would be stationed for the next year and a half as a Federal tax commissioner in Beaufort, a town in the Sea Islands. In what is one of the lesser-known stories to be recorded in popular histories of the Civil War, Northern abolitionists such as Smith spent much of the war in Union-occupied lands of the South, taking part in what historian Willie Lee Rose has called the Port Royal Experiment, or the first attempt at Reconstruction.⁷ The area was seized by Union troops early in the Civil War as part of what historian James McPherson has called "the salt-water war,"⁸ as 17

⁴ I have not found any connection between A.D. Smith and Vermont; however, it is worth nothing that the Reed family lived in Vermont for a time, where Smith may have met his future wife, Mary Augusta Reed.

⁵ Merrill, *The Letters of William Lloyd Garrison*, 120.

⁶ A.D. Smith to Salmon P. Chase, Report of the Commission, Jan. 1, 1863. Records of the Direct Tax Commission, RG 58, Entry 99, National Archives and Records Administration, College Park, Maryland. Hereafter, RDTC.

⁷ Willie Lee Rose, *Rehearsal for Reconstruction: The Port Royal Experiment* (New York: Vintage Books, 1964).

⁸ James McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 369.

Union warships, 25 colliers and 33 transports snaked their way along the Atlantic seaboard to Port Royal, South Carolina, bringing with them thousands of troops. With “deadly precision,”⁹ Union forces took control of the area on 7 November, 1861, forcing plantation owners and Confederate sympathizers to flee, many to nearby Charleston.¹⁰ The slaves, abandoned by their masters and fearful of the Yankees, also fled into nearby swamps and forests. But some returned to the plantations where they had been enslaved. Finding their masters had abandoned the properties and themselves legally free, some of the ex-slaves became destructive. Historian Willie Lee Rose has cited an account in the *New York Tribune*, whose reporter recorded a scene of chaos:

We went through spacious houses where only a week ago families were living in luxury, and saw their costly furniture despoiled, books and papers smashed; pianos on the sidewalk, feather beds ripped open, and even the filth of the Negroes left lying in parlors and bedchambers.¹¹

To Rose, “...nothing that happened illustrated better the frustrated hostilities of generations than the desecration of the stylish houses in the east end of town.”¹² When the white land owners, men and women of what William W. Freehling has called the “rice aristocracy,”¹³ abandoned their homes, they left behind more than eight thousand penniless slaves¹⁴ who were bereft of property and unable to relocate to areas outside the Union-occupied territory for fear of being returned to slavery.

⁹ McPherson, *Battle Cry of Freedom*, 371.

¹⁰ Rose, *Rehearsal for Reconstruction*, 106.

¹¹ Rose, *Rehearsal for Reconstruction*, 107.

¹² Rose, *Rehearsal for Reconstruction*, 107.

¹³ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1990), 216.

¹⁴ McPherson, *The Negro's Civil War: How American Blacks Felt and Acted During the War for the Union* (New York: Ballantine Books, 1965), 57. For more about the freedmen's reaction to their newfound freedom, and to their lives before the occupation,

Smith later said, "the first necessity was to start a civilization, an education, a domestication of these colored people."¹⁵ In the spring of 1862, northern missionaries descended upon the Port Royal area in an effort to do just that. Through the co-ordination of various freedmen's aid societies that had been organized in many of the major northern cities, missionaries were dispatched to assist the freedmen through education and the initiation of free labour. Many hoped this microcosm of Northern reform would prove to skeptics that freed blacks could be made self-sufficient and integrated into civilized society. Known as the Gideonites (after the Biblical Gideon who led Israel to victory over the Midianites while armed with only pitchers and torches¹⁶), these men and women from places such as Boston and Philadelphia left their relatively comfortable Northern homes to embark on an unprecedented social experiment in the South, their work financially supported by well-to-do abolitionists and philanthropists.¹⁷

By the time Smith arrived, the missionaries had been in the Port Royal area for several months, teaching and organizing the freedmen, and it is within this context that he disembarked at Beaufort, entering a world such as he had never seen before. Certainly, he would not have worked among such a population of African Americans as he would have encountered in the Sea Islands — in 1840, just before Smith arrived in Wisconsin, records indicate there were only 185 free blacks in the entire Wisconsin Territory and ten

see Report of the Commission, Jan. 1, 1863. Records of the Direct Tax Commission, RG 58, Entry 99, pages 55-60. RDTC.

¹⁵ Ira Berlin et al., ed. *Freedom: A Documentary History of Emancipation, 1861-1867* (Cambridge: Cambridge University Press, 1990), series I, vol. III, 227.

¹⁶ Bruce M. Metzger and Michael D. Coogan, eds., *The Oxford Companion to the Bible* (New York: Oxford University Press, 1993) 253.

¹⁷ Akiko Ochiai, "The Port Royal Experiment Revisited: Northern Visions of Reconstruction and the Land Question," *The New England Quarterly*, 74 (Mar., 2001), 94.

years later, that number had increased to 635, still less than one per cent of the state's population.¹⁸ In stark contrast, in the Sea Islands blacks outnumbered whites by more than one hundred to one.¹⁹ Many of the Gideonites, such as one teacher from Boston named Elizabeth Botume, were horrified by the living conditions of the freedmen in Beaufort. Botume wrote:

Negroes, negroes, negroes. They hovered around like bees in a swarm. Sitting, standing, or lying at full-length, with their faces turned to the sky. Every doorstep, box, or barrel was covered with them, for the arrival of a boat was a time of great excitement. They were dressed — no, not dressed, nor clothed, but partly covered with every conceivable thing which could be put on the back of a biped. Some of the women had on old, castoff soldiers' coats, with 'crocus bags,' fastened together with their own ravellings, for skirts, and bits of sailcloth for head handkerchiefs. Many of the men had strips of gay carpeting, or old bags, or pieces of blanket, in which they cut arm-holes and wore as jackets. ... Words fail to describe their grotesque appearance.²⁰

Clearly, the Gideonites and government officials had their work cut out for them, with educational and social skills being the charge of the missionaries. Questions relating to the division of property and the freedmen's share fell to Smith and his colleagues on the Tax Commission to adjudicate.

Both the military officials in Beaufort and the Gideonites likely deemed Smith a logical choice for the position of Tax Commissioner. First of all, he had drafted the Direct Tax Act with Republican Senator James Doolittle of Wisconsin in the spring of 1862.²¹ The Act was a follow-up to the Confiscation Acts of 1861 and 1862, which gave authority to Washington to seize land belonging to the disloyal and to free their slaves.

¹⁸ Alice E. Smith, *The History of Wisconsin: From Exploration to Statehood*, (Madison: State Historical Society of Wisconsin, 1973), 475.

¹⁹ Edwin D. Hoffman, "From Slavery to Self-Reliance: The Record of Achievement of the Freedmen of the Sea Island Region," *The Journal of Negro History*, 41 (Jan., 1956), 10.

²⁰ Botume cited in McPherson, *The Negro's Civil War*, 115-116.

²¹ Berlin, *Freedom*, series I, vol. III, 227.

The Direct Tax Act further authorized the federal government to collect war taxes from residents in those states that were in rebellion. The Act “provided for assessments on individual parcels of land, which would be forfeited to the United States government if the owner failed to pay. Tax Commissioners, appointed by the President for each insurrectionary state, would then assume control, with authority to rent out the property or to subdivide and sell it at auction.”²²

Of greater importance to the Gideonites was the fact that Smith was a well-known and dedicated abolitionist who had attained national attention with his audacious decision in Wisconsin’s *Ableman v. Booth* case, which had gone all the way to the U.S. Supreme court and been covered extensively by newspapers in the North. Smith was obviously a sharp legal mind and he was outspoken — perhaps too outspoken for some.

It is this latter trait that may have been one of the reasons Smith was appointed to the Commission. In the early years of the war, the Republican Party had difficulty dealing with its more radical members, many of whom, like Salmon P. Chase and James Doolittle, were former Democrats who had abandoned their original party in favour of the fledgling Republicans. As Eric Foner has documented, in the decade leading up to the Civil War, there were at least fifteen ex-Democrats serving as Republican governors or senators, a sizeable contingent that “had considerable impact on the emergence of a distinctive Republican political program and ideology.”²³ As well, the ex-Democrats “came from a tradition which viewed the states as the locus of most governmental action,

²² Berlin, *Freedom*, series I, vol. III, 36.

²³ Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York: Oxford University Press, 1970), 149-150.

and they were extremely fearful of centralized power in Washington.”²⁴ At a time of war, when the federal power was growing inexorably, the Lincoln administration worried about the reaction of this particularly radical wing of States’ Righters in the party. The President adopted several strategies to control the ex-Democrats.

Chase he kept at arm’s length by adding him to his cabinet.²⁵ Still others he sent as far away as possible in the best interests of the party. The Department of the South, which maintained bureaus in those areas of South Carolina, Georgia and Florida that were occupied by federal troops, was the ideal posting for these loose cannons. A southern post was a perfect fit for men such as Smith who were dedicated to the cause of the Union and had the qualifications needed for the difficult tasks demanded of them, and like Smith, had excellent credentials in law, medicine, religion or journalism. At the same time, by installing them far away from the northern stage, they were far enough away that their commentary and actions took place in a bubble that remained largely undetected by Lincoln’s critics in Washington circles. Radicals in the area of States’ Rights or abolition, then, were often appointed as tax Commissioners in the deep South.²⁶

Smith had few prospects in Wisconsin when he accepted the South Carolina position. His ultra States’ Rights position had alienated him from the Democrats and he had found only limited support among more radical factions of the Republicans, who contemplated restoring him to the Supreme Court bench of Wisconsin in the judicial election of 1859. But overruled by more moderate members of the party they, too, cast

²⁴ Foner, *Free Soil, Free Labor, Free Men*, 180.

²⁵ Doris Kearns Goodwin, *Team of Rivals: The Political Genius of Abraham Lincoln* (New York: Simon & Schuster, 2005).

²⁶ David H. Overy, Jr., “The Wisconsin Carpetbagger: A Group Portrait.” *Wisconsin Magazine of History*, Autumn, 1960.

Smith aside. Yet feeling somewhat indebted to Smith for his anti-slavery stand in *Ableman v. Booth*, Republicans had some obligation to toss Smith a patronage bone; sending him to South Carolina would appease the radicals and keep Smith in a place so isolated that he could do no real harm to the Republicans' war effort should he start spouting off about States' Rights. Needless to say, his request for a consulship in South Carolina was easy to ignore.

Despite his qualifications, Smith seems to have learned about his appointment in the newspaper, when the Milwaukee *Sentinel* announced in its 19 July 1862 edition that three Wisconsin men had been tapped to travel to South Carolina: "The telegraph reports that Judge A.D. Smith, of Milwaukee, Wm. D. Wording, of Racine, and Dr. W.H. Brisbane, of Arena, have been appointed the Commissioners under the act for the collection of taxes in the insurrectionary districts, for the District of South Carolina." (The newspaper noted that Smith's brother-in-law, Harrison Reed, had been appointed to the same office in Florida.²⁷) His appointment came as something of a surprise to Smith, who had returned to Milwaukee in mid-July from Washington, where he had been working with Senator Doolittle. "I saw the announcement of my appointment in the newspapers," he testified the following year before the American Freedmen's Inquiry Commission, "and concluded to accept it."²⁸

It is unclear what Smith's decision meant for his family. There is nothing on record to indicate that they moved to South Carolina together. In fact, it would seem more reasonable that Mary Augusta, Maria Cecilia and Marion Augusta would have remained at the family home in Milwaukee, where they would have been able to maintain

²⁷ *Milwaukee Sentinel*, July 19, 1862.

²⁸ Berlin, *Freedom*, series I, vol. III, 227.

the property, remain close to the extended family and avoid risk of injury in an occupied territory vulnerable to Confederate attack. Tragically, a month after Smith accepted the job as Commissioner, misfortune struck the family as Smith's five-year-old grandson, William Henry Huggins, died in Kalamazoo of the typhoid pneumonia that had killed his father earlier that year, leaving Mary Frances to care for three young daughters by herself. Whether this family crisis gave Smith pause for thought on the new job is also unclear. If he had any doubts at all, he appears to have resolved them by August of 1862. In a letter to Salmon P. Chase, Secretary of the Treasury, he expressed some surprise at being selected for the Commission but formally accepted the appointment. "Dear Sir," Smith began:

A few days ago I read a note from Sen. Doolittle of Wisconsin, informing me of my appointment as Commissioner of Taxes for South Carolina under the bill for the collection of taxes in insurrectionary districts. Although I had very frequently consulted with Mr. Doolittle in the preparation of the bill, I had had no intimation that I would be called to aid in its execution. Approving as I do of the objects of the bill.... I told Mr. Doolittle that I would not shrink from this duty.²⁹

Senator Doolittle, while aware of Smith's taste for alcohol, had assured Chase that this would not become an issue if Smith were appointed to the commission, as he indicated in a letter to Chase years later. Doolittle apparently slapped a condition on the appointment and made Smith promise to abstain "from intoxicating drinks or drugs" while in the office.³⁰ Apart from the odd reference to Smith's "intemperate" behaviour in letters to the editor of the Milwaukee *Sentinel* during the 1850s, references to his drinking habits seem to have subsided while he was working as a lawyer in Wisconsin. The promises exacted by Doolittle indicate, though, that Smith carried a reputation for being a

²⁹ Smith to Chase, August 6, 1862. RDTC.

³⁰ Doolittle to Chase, Feb. 6, 1864. RDTC.

heavy drinker. Doolittle's reference to drugs is the only one to be found in the primary sources that indicates a possible dependency on substances other than alcohol. It is not impossible, though, that Smith had a drug problem, and if he did, the obvious drug of choice at the time was an opiate. In his analysis of nineteenth-century opiate addiction, David T. Courtwright found that one of the most common patterns of abuse took place among middle-aged, comfortable or affluent women who nursed their addictions under the guise of treatment for various disorders, from morning sickness to menstruation. While this rationale does not apply to Smith, Courtwright's analysis suggests that women resorted to opiates as they were seen as "a semi-respectable substitute for alcohol," something that may well have been in keeping with Smith's possible desire to reduce his alcohol consumption through the substitution of an opiate such as morphine.³¹ His subsequent health problems in South Carolina may provide further clues of alcohol and opiate use. It is within the context of possible substance abuse, either of alcohol, opiates or both, then, that Smith's activities on the Tax Commission must be understood.

Smith's conduct must also be understood in the context of the environment in which he found himself. While he was completely at home in places such as Cleveland and Milwaukee, he must have felt somewhat out of place in South Carolina. Smith arrived in Beaufort, the largest town of the Sea Islands, to a world turned upside down — abandoned plantations, well-meaning missionaries and a population of ex-slaves that had never known freedom in their lives. Flat, sandy and dotted with palmetto trees, the Islands sit like an unfinished jigsaw puzzle in the waters of the Atlantic, hot and humid in the summer and temperate through the winter. The landscape and climate were in stark

³¹ David T. Courtwright, "Opiate addiction as a consequence of the Civil War," *Civil War History* 24 (June 1978), 110-111.

contrast to the brisk winds and harsh winters Smith knew in the Great Lakes region. It is easy, today, to imagine Smith's wonder at his new surroundings: the crashing surf at Hunting Island, the oak trees dripping with Spanish moss that shaded the opulent homes of the southern aristocracy, all surrounded by tremendous natural beauty in the form of exotic trees and flowers

... flanked by magnolia and orange trees, furnished with mahogany and rosewood, these mansions attested to the prosperity of a class that had made the great staple crops of South Carolina pay well, if not at all times magnificently, over a number of generations.³²

Smith landed in the lush, Union outpost of Beaufort on 20 October, 1862 along with his colleagues on the Commission, William Henry Brisbane and William Wording. Upon arrival in what C. Vann Woodward has called the "seedbed of South Carolina secessionism,"³³ the three were, Smith reported, received with "the utmost consideration and kindness."³⁴ In all likelihood, the three men would have crossed paths in Wisconsin or, at the very least, would have known of each other. Wording was a judge in Wisconsin and Brisbane was a doctor and Baptist minister who had grown up in South Carolina. Brisbane had inherited property and slaves in the Beaufort area at the age of twenty-five, but soon after sold the land and renounced slavery, marking him as "the most hated man in the Beaufort District."³⁵ Scott Sandage of Carnegie Mellon University included Brisbane in his recent book of America's "born losers," noting that a credit agency once said of Brisbane that he had "been a planter, preacher, publisher, physician, & farmer but

³² Rose, *Rehearsal for Reconstruction*, 7.

³³ Rose, *Rehearsal for Reconstruction*, xv.

³⁴ A.D. Smith to Hon. S.P. Chase, 1 Jan. 1863, General Correspondence, RDTC.

³⁵ Scott A. Sandage, *Born Losers: A History of Failure in America* (Cambridge, Massachusetts, Harvard University Press, 2005), 136.

has never succeed[e]d at any[thin]g & probably never will.”³⁶ Brisbane wandered from Massachusetts to New Jersey to Ohio to Wisconsin, failing financially as a novelist, preacher, doctor and even tavern-keeper (as Sandage notes, no one wanted to buy a drink from a Baptist preacher), not to mention numerous business failings — his “only steady living came from patronage jobs (the last refuge of a man without pluck, people said).”³⁷

It is worth noting that Brisbane was related to Smith by marriage, something that other studies, observing the rancor that ultimately developed on the Tax Commission, have failed to examine. In the spring before Brisbane left Wisconsin for Beaufort, his daughter, Phoebe Adeline, married Herbert Reed, younger brother of Mary Augusta Smith, A.D. Smith’s wife. The marriage was not initially supported by Miss Brisbane’s father, who fired off a frosty letter to Herbert Reed, acknowledging his decent religious, moral and political principles, yet nonetheless taking issue with the proposed union.³⁸ “Candor obliges us to say that we have two objections to giving you our dear Addie, the one is disparity in your ages; and the other is, not that you are poor, but that you are in debt,” William Henry Brisbane wrote, also pointing out his wife’s alarm that Herbert and Addie belonged to different churches, both admittedly Protestant. In closing, however, Brisbane waived his concerns as Addie herself consented to the marriage. The couple was married in Milwaukee, where Herbert maintained a grocery business, but at some point in the early 1860s they relocated to New York, where he worked at the government Customs House.³⁹

³⁶ Sandage, *Born Losers*, 134.

³⁷ Sandage, *Born Losers*, 138-139.

³⁸ Harrison Reed Papers, 1838-1940, Wisconsin Historical Society, Madison, Wisconsin. Wis Mss SR. Hereafter, Harrison Reed Papers.

³⁹ Harrison Reed papers.

It would seem that this tenuous family tie did not improve relations between Smith and Brisbane, who seem to have been at odds from the beginning of their posting to Beaufort. Making matters worse for Smith was the fact that Wording, a former judge himself, did not have a mind of his own. Instead, as Willie Lee Rose noted, Wording “fell from the beginning under the influence of Brisbane and acted with him in all the business of the Commission.”⁴⁰ Smith’s outspoken manner and reputation for drinking would not have endeared him to his abstemious colleagues.

Smith did find an ally and friend in General Rufus Saxton, a fellow Freemason who had been named the military governor of the islands. Saxton, a Massachusetts native, was the son of a Unitarian minister with a strong abolitionist pedigree. His brother and aide-de-camp, Willard Saxton, also lived in Beaufort and the two men seem to have befriended Smith, frequently taking his side against Brisbane and Wording, whom one of the brothers referred to privately as the “Jesuit and the Jackass.”⁴¹ General Saxton had graduated from West Point Military Academy in 1849 and, like Smith, was something of a restless spirit, having taken part in a Rocky Mountain expeditionary force in the mid-1850s.

Despite the fact that the Gideonites had been working on the islands since the spring, the three tax Commissioners found their initial surroundings in disarray. Smith told the American Freedmen’s Inquiry Commission in 1863 that on his arrival he “found everything at odds and ends; — no system or policy or anything that looked to a permanent plan.” Smith deemed the first priority to be the care and education of the freedmen, who were still adjusting to a life outside of slavery through their participation

⁴⁰ Rose, *Rehearsal for Reconstruction*, 202.

⁴¹ Willard Saxton’s diary, March 9, 1864. Saxton Papers.

in activities co-ordinated by the Gideonites. Paramount in this, and in keeping with his Jeffersonian principles, was Smith's firm belief that the freedmen needed land in order to become full-fledged citizens. "They did not want to go away; they were attached to their homes and wanted to stay here provided they could be free and protected," Smith said. "But in order to get that encouragement and be given them — they *must have land, land.*"⁴²

Alas, it was not so simple. Smith, Brisbane and Wording, in their efforts to carve up land through the Direct Tax Act and to ensure that at least some of it went to the freedmen, found that they had little data upon which to base their assessments. Anyone who might have been able to help them with the matters of registered land and property lines had, of course, been among the white population that had fled the Sea Islands. Smith noted, in one of his early letters to the Department of Internal Revenue in Washington: "The Commissioners have been able to find scarcely an official data They have, however found the report of the State Comptroller for the year 1853. This is ancient, even for this ancient commonwealth." He later requested a more recent report from 1858 that he believed could be found in the Congressional Library.⁴³

In addition to a lack of material upon which to base their initial operations, the Commissioners were also working under the threat of Confederate attack. At one point, Smith even wrote to the Treasury Department to ask for a rowboat "for the purpose of examining the lands and as a means of transporting the books and documents and other effects of the Commission in any time of sudden attack by the enemy."⁴⁴ The

⁴² Berlin, *Freedom*, series I, vol. III, 227. Emphasis in the original.

⁴³ Smith to George Boutwell, Commissioner of Internal Revenue, Nov. 2, 1862. RDTC

⁴⁴ Smith to Chase, Oct. 30, 1862. RDTC.

Commissioners were able to ascertain that the whole Parish of St. Helena and a "considerable portion" of St. Luke's Parish were occupied entirely by Union forces, but they were hampered considerably by a lack of supplies to do their work effectively, struggling as they were "without a map or plat, a chain or compass, a land mark or a starting point."⁴⁵ Complicating matters was the realization by the three Commissioners that the Sea Islands were not as easy to survey as the land of Wisconsin. Smith recorded the Commissioners' frustration in his first official report to Chase:

Out of this chaos and confusion, to bring order, distinctness, definition, valuation, assessment and adequate certainty of description, without the means for survey and measurement, and without the aid of records or maps or sources of reliable information, seemed to be a task of great difficulty as well as of responsibility.⁴⁶

After a few days of chaos, the Commissioners benefited from a stroke of luck: Smith said that assessment rolls for 1858-1860 were discovered "in a heap of rubbish" in the attic of an abandoned home. In their haste to depart, the "Rebels" had left important papers behind,⁴⁷ the Commissioners surmised. With this information in hand, Smith, Brisbane and Wording were able to schedule the initial sale of lands for February. In addition to dividing up the land for sale or rent for the enrichment of government coffers, the group recognized that another task needed to be addressed, and herein was a serious problem for the Commission, whose members simply could not agree on an appropriate course of action. At the centre of the argument was the philosophy, supported by all members of the Commission, that the land being carved up by the government must also be made available for sale to those who had once worked it under conditions of slavery.

⁴⁵ Smith to Chase, Jan. 1, 1863. RDTC.

⁴⁶ Smith to Chase, Jan. 1, 1863. RDTC.

⁴⁷ Smith to Chase, Jan. 1, 1863, RDTC.

The difficulty for the Commissioners was how best to execute this in practical terms.

Smith wrote to Chase:

The great impediment in the way of immediate progress appears to be the uncertainty which overhangs the future of the colored population. It is a very great mistake to suppose that they are unmindful of the uncertainty of their present condition, or of their future destiny. Destitute of all means of present livelihood [sic], powerless to grasp or to use even such means as their rebel masters have abandoned, without a foot of soil or an implement of husbandry to which they could lay claim, they painfully appreciate the fact that though free and capable of earning under present circumstances a daily support, they are nevertheless but tenants at will upon the grace of the Government.⁴⁸

Smith argued that it was only fitting that the freedmen have the ability to purchase land in South Carolina, for he doubted that they would want to resettle in the North. After all, he said, they had a “strong desire” to remain in the region where they were born and raised.⁴⁹ The physical and social isolation of the Sea Islands had fostered a new culture among the slaves, but to many, it had created a population of African Americans that was “the most backward in the entire South.”⁵⁰ Smith’s report urged that the way to help the freedmen was to make the confiscated land available for early sale to them. Smith advised: “As soon as the government shall have acquired title to the lands, it is suggested that early steps be taken to have them subdivided and offered for sale in small parcels with the privilege of pre-emption, so that the freed man may secure himself and family a home and from his own earnings, that he shall feel its value at an early day.”⁵¹

Pre-emption was a system of land transfer that had been common practice in the United States, particularly with westward expansion along the frontier in the decades before the Civil War. As historian Akiko Ochiai has explained, pre-emption “granted first

⁴⁸ Smith to Chase, Jan. 1, 1863. RDTC.

⁴⁹ Smith to Chase, Jan. 1, 1863. RDTC.

⁵⁰ McPherson, *The Negro’s Civil War*, 115.

⁵¹ Smith to Chase, Jan. 1, 1863. RDTC.

rights of purchase at a fixed price to individuals who had improved and settled on surveyed public lands when those lands were offered at public auction.”⁵² Smith’s report was steadfast in his belief that allowing the freedmen to own land would be of benefit to the government and would fulfill a God-given right for the ex-slaves:

Having the soil — loyal people skilled in its culture, grateful, docile and hopeful — rebels absconded or driven out and refusing allegiance ... their places filled by patriots, their lands yearning for the plow and the spade — arms and hands eager to leap to their joyful because voluntary task — in short, all the elements of reconstruction, reformation, advancement in civilization, happiness, wealth, freedom and assured loyalty, fully devoted and reliable, how can a Government answer to God for its failure to improve opportunities of such a character, means so Providentially furnished ... so humane and magnificent?⁵³

General Saxton had already written to Edwin Stanton, Secretary of War, to recommend that lands be made available for sale to the freedmen. Smith’s steadfast adherence to pre-emption put him, along with his ally Saxton, at extreme odds with Brisbane and Wording, who raised legal and practical concerns about “squatter sovereignty,”⁵⁴ and created a rift on the Commission that hampered its progress.

While it is obvious from the remaining records that all the men involved in the debate cared deeply about the issues at hand, and particularly about the welfare of the freedmen, their repeated clashes speak to a deeper motivation. For Republicans, the issue of land rights for freedmen was a thorny matter that not only rocked the Port Royal experiment but also raged on in post-war debate, long after Smith and his colleagues had left the Sea Islands. For many, emancipation of slaves was one thing, but granting the right to own land was quite another matter. Property rights, however, had long been associated with republican concepts of freedom and liberty. Historian Gordon S. Wood

⁵² Ochiai, “The Port Royal Experiment Revisited,” 100.

⁵³ Smith to Chase, Jan. 1, 1863. RDTC.

⁵⁴ Berlin, *Freedom*, series I, vol. III, 108.

has documented that in 1776, for example, Thomas Jefferson lobbied for Virginia to give land to any man who was without property in order to promote independence:

Without having property and a will of his own — without having independence — a man could have no public spirit; and there could be no republic. For, as Jefferson put it, 'dependence begets subservience and venality, suffocates the germ of virtue, and prepares fit tools for the designs of ambition.'⁵⁵

Historian Eric Foner has noted that eighteenth-century Americans believed ownership of property was the foundation of liberty⁵⁶ and this was often employed as a justification by those seeking property rights:

The reinforced equation of autonomy and liberty inevitably raised the question of the social preconditions of freedom. If economic dependence created political subservience, should not the citizens of a republic be guaranteed access to productive property? The linkage of property ownership and liberty, previously employed to draw the political nation's boundary so as to exclude those without property, could be transformed into a political entitlement by those seeking land ... Settlers' claims for preferential access to land rested on the idea that possession of property, as a North Carolina congressman put it, was 'a situation incident to freedom and desired by all.'⁵⁷

In a move that surely would have made Smith's heart glad, General William Sherman issued Special Field Order No. 15 in the early winter of 1865, offering hundreds of acres of coastal land from the Sea Islands of South Carolina and Georgia all the way south to Jacksonville, Florida to freedmen looking for a place to settle.⁵⁸ Smith's ally Saxton was charged with settling the 40,000 freedmen who subsequently came forward to find new homes on that land, which had, of course, been confiscated largely from

⁵⁵ Gordon S. Wood. *The Radicalism of the American Revolution* (New York: Alfred A. Knopf, 1992) 179.

⁵⁶ Eric Foner. *The Story of American Freedom* (New York: W.W. Norton & Company, 1998) 9.

⁵⁷ Foner, *The Story of American Freedom*, 20-21.

⁵⁸ McPherson, *Battle Cry of Freedom*, 840.

wealthy plantation owners.⁵⁹ In the fall of 1865, President Andrew Johnson returned the land to its original owners and the issue of property rights for freedmen divided radical and moderate Republicans even more sharply. The question of whether black citizens of a republic ought to be guaranteed access to property was an absolute to radicals such as Smith and Saxton. In the years after the Civil War, however, those sympathetic to the land rights of freedmen were, as Eric Foner has noted, in the minority,⁶⁰ and the argument that so preoccupied the tax commissioners in Beaufort became one of the sticking points of the Reconstruction era:

Efforts to give the former slaves land failed to receive congressional approval. If emancipation, as (Frederick) Douglass had remarked, represented a convergence of the slaves' interests and those of the nation, eventually those interests, and their respective definitions of freedom, were destined to diverge. Only a minority of Republican policy-makers, most notably Radical congressman Thaddeus Stevens, sought to resurrect the older view — the view put forward by the ex-slaves — that without ownership of productive property, genuine freedom was impossible.⁶¹

During Reconstruction, Radical Republicans “hoped to reshape Southern society in the image of the small-scale competitive capitalism of the North,”⁶² a philosophy that was consistent with Smith’s position in Port Royal. Stevens, who had called for the confiscation of land owned by Confederates to help offset the costs of the war⁶³ advocated property rights for freedmen as a way of integrating them into society, putting

⁵⁹ McPherson, *Battle Cry of Freedom*, 841-842. I have found no evidence to suggest that Smith was involved with these efforts, though it is possible given his close relationship with Saxton and the absence of any evidence suggesting he had returned to Milwaukee when he was relieved of his duties on the tax commission.

⁶⁰ Foner, *The Story of American Freedom*, 113.

⁶¹ Foner, *The Story of American Freedom*, 113.

⁶² Eric Foner. *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: HarperCollins Publishers Inc., 1988), 235.

⁶³ Thomas Frederick Woodley. *Great Leveler: The Life of Thaddeus Stevens* (Freeport, N.Y.: Books for Libraries Press, 1937), 352-353.

the right to land ahead of the right to vote in terms of immediate importance since “nothing is so likely to make a man a good citizen as to make him a freeholder. Nothing will make them so industrious and loyal as to let them feel that they are above want and the owners of the soil which they till.”⁶⁴ Eric Foner has written that, in this way, Stevens stood virtually alone, with most Republicans believing black suffrage a much more important question than property rights.⁶⁵ “It is hardly surprising,” Foner wrote, “that many Radicals proved reluctant to support a program that so contravened the sanctity of property as confiscation; what is striking is how few suggested an alternative, other than holding out the prospect of individual advancement in accordance with the free labor ideology.”⁶⁶

Obviously, Smith and Brisbane and their cohorts could not have anticipated how the Reconstruction debate would have played out, but they doubtlessly understood the significance of their own debate, as well as the possibility that they were setting precedents for the treatment of freedmen in a post-war society. The frequency with which both parties lobbied Washington and the urgency they often attached to their entreaties suggests that both the Smith-French-Saxton faction and their opponents, Brisbane and Wording, were well aware that there would be long-term ramifications based on which side won the property-rights argument in Beaufort. This understanding added a subtext to the events that took place and the actions taken by these strong-willed men. Their obduracy, while likely very much a part of the natures of both Brisbane and Smith anyway, was brought to the fore by the idea that their actions might set precedents for

⁶⁴ Woodley, *Great Leveler*, 360.

⁶⁵ Foner, *Reconstruction*, 236.

⁶⁶ Foner, *Reconstruction*, 236.

future policy. That neither side was willing to give an inch in the disputes was hardly surprising when viewed in this context.

The internecine battle of Beaufort began in January 1863 over Lincoln's orders⁶⁷ to have an initial sale in February in which tracts of land would be "sold to the highest bidder in lots of up to 320 acres."⁶⁸ Both Saxton and Smith, and the like-minded Reverend Mansfield French, a Methodist minister working in the Sea Islands under the auspices of the American Missionary Association, believed that this sale would be disastrous for the freedmen, who could not compete financially with Northern investors. French wrote to Salmon Chase early in the new year to voice his concerns, stating that there was "serious apprehension" for the welfare of the freedmen:

... [P]lans for stock companies are already before the public, and speculators are privately contriving to secure these plantations," fretted French. He added: "Should legislature be the only way of securing the laws, I beg to suggest that were Genl. Saxton ordered, or permitted, to visit Washington, Congress with the aid of his experience could act in turn to save the law and avert a vast amount of suffering. Much as he is needed here, we could spare him for the few days required."⁶⁹

However, before advertising was placed for the February sale, it was Smith, not Saxton, who travelled to Washington in an effort to amend the initial orders to allow the freedmen a better chance in the sales. After meeting with Chase and then with a number of high-profile senators, including Charles Sumner and James Doolittle, Smith drew up an amendment to the Direct Tax Act, allowing the government to:

... select such lands and purchase them as Gen. Hunter, Gen. Saxton and the Commissioners might deem a necessity for the military, naval, revenue,

⁶⁷ Ochiai, "The Port Royal Experiment Revisited," 98.

⁶⁸ Berlin et al., eds., *Freedom*, series I, vol. III, 102.

⁶⁹ Mansfield French to Salmon Chase, January 6, 1863. The Salmon P. Chase Papers, John Niven, ed., (Frederick, Maryland: University Publications of America, 1988). 43 microfilm reels. Hereafter, SCP.

charitable, educational and police purposes of the Department, and also giving the land Commissioners power, in their discretion, to bid upon any lands up to two-thirds of their assessed value, so that indeed it might not be a change of masters from slaveowners to capitalists, but that Government might have land enough for them all.⁷⁰

In early February of 1863, Congress enacted Smith's amendment, thereby setting aside a parcel of the Sea Islands to be kept away from outside investors and empowering the tax commissioners to bid for land in the name of the government at a rate of two-thirds its value. Under these provisions, the land sales were rescheduled for March,⁷¹ when 21,000 of the 80,000 acres of confiscated land were sold into private hands, with the freedmen procuring about 2,000 acres. Immediately after these sales, Smith filed a glowing report, noting that it was "particularly gratifying to be able to state that I do not know of an acre of land having passed into the hands of a speculator, but all have purchased with a view to immediate cultivation."⁷²

This early episode in the life of the tax Commission was the beginning of the end for Smith. While his allegiance with Saxton and French had held strong and his efforts in Washington had paid off, his actions seem to have worsened his relations with Brisbane and Wording. These two men were staunchly against pre-emption for a number of reasons. Their first objection was that pre-emption did not help the freedmen since they were still in competition with Northerners who also had the right to pre-empt the same pieces of property. As well, Brisbane and Wording believed, "settlement of freedpeople on small plots all over the islands would devalue property and dissuade white purchasers

⁷⁰ Berlin, *Freedom*, series I, vol. III, 228.

⁷¹ Berlin, *Freedom*, series I, vol. III, 103.

⁷² A.D. Smith, "A semi-official Report," March 12, 1863. RDTC.

from residing among them.” Furthermore, the lower purchase price put the government at a financial disadvantage in the whole deal.⁷³

Whatever differences existed, they were momentarily forgotten with the passing of 1862 to 1863. The new year brought some joy as the Sea Islands celebrated Lincoln’s Emancipation Proclamation. As Brisbane read the Proclamation aloud, freedmen broke into song and General Saxton held a dinner party and dance at his headquarters in Beaufort.⁷⁴ It did not take long, though, for differences between Smith, Brisbane and Wording to bubble to the surface again, and their repeated clashes of opinion did not go unnoticed. Mansfield French confided in a letter to Salmon Chase as early as February 1863 that “a broad and most unfortunate gulf of both opinion and action” existed between the two factions; and metaphorically underscoring the permanency of the rift during the first few months of the Commission’s activities, he added: “It can never be bridged.”⁷⁵

The oppressive weather did not help. In the summer of 1863 Brisbane, Wording and Smith all appear to have spent at least part of the season in the North. Wording fell ill in the early part of the summer and “seemed to be at the point of death for several weeks.”⁷⁶ He spent much of his time recuperating in New York, with Brisbane at his side for at least part of the time. While thus together, Wording and Brisbane unilaterally hired a new clerk for the Commission who would be competent as a surveyor; the current clerk was not, they said. They wrote to Smith, who had remained in Beaufort, to inform him of this arrangement and to note that the new clerk would begin his work on July 1st, at which time the old clerk’s position would be terminated.

⁷³ Berlin, *Freedom*, series I, vol. III, 108.

⁷⁴ Rose, *Rehearsal for Reconstruction*, 196-197.

⁷⁵ Mansfield French to Salmon Chase, Feb. 7, 1863. SCP. Emphasis in the original.

⁷⁶ Brisbane and Wording to Joseph Lewis, Nov. 2, 1863. RDTC.

According to Brisbane, Smith immediately set out for New York. When he arrived, Brisbane “urged him most earnestly” to attend a meeting with Wording, but Smith refused. Evidently he failed to conceal his contempt for Brisbane, as he added that instead of meeting with the duo he was leaving New York for business in Washington. “I will show you up,”⁷⁷ Brisbane recalled Smith saying before packing up for the capital, where Brisbane believed he spent the summer.⁷⁸ (Smith later told Joseph Lewis, Commissioner of Internal Revenue, that he had gone to the capital to “aid in making the necessary arrangements” for the next round of land sales in South Carolina.⁷⁹)

The actions of Brisbane and Wording during the summer clearly came as a shock to Smith and upon his return to Beaufort he wrote to Washington to complain of the premature dismissal of the clerk without any sort of formal meeting. What Smith could not have known is that Brisbane and Wording had already been engaging in correspondence of their own.

When Smith left for Washington he had evidently been feeling unwell, though it cannot be known for certain whether this illness was due to excessive alcohol consumption, the heat and humidity of Beaufort (where summer temperatures often push past 30 degrees Celsius) or some other malady. *The Free South* newspaper reported his return to the Sea Islands in September, noting that his health was “much improved” though the absence was “by no means a pleasure excursion.”⁸⁰

That fall, land sales resurfaced as a contentious topic, polarizing the members of the Commission still further. The “tax men” noted one observer, were “as amicably

⁷⁷ Brisbane to Lewis, March 5, 1864. RDTC.

⁷⁸ Brisbane and Wording to Joseph Lewis, Nov. 2, 1863. RDTC.

⁷⁹ Smith to Lewis, Dec. 5, 1863. RDTC.

⁸⁰ *The Free South*, September 26, 1863.

disposed towards each other as cat and dog.”⁸¹ For their part, Brisbane and Wording secretly lobbied to have Smith removed from the Commission altogether, by reason of his drinking habit. Initially, Brisbane wrote an informal note to Salmon Chase at the end of the summer of 1863:

My dear friend, you have no idea how difficult it is to work with Judge Smith. I inclose [sic] herewith some letters which will show you the animus [sic] of the man. Judge Wording will corroborate everything in my letter to Judge Smith. I have been hoping that he would finally show a better spirit, but I feel at last compelled to let you see something of what we have to trouble us. I do not make this an official communication, because I sincerely desire to keep from the public eye what may damage Judge Smith in the estimation of those who do not personally know his habits. I have earnestly desired to get along with him in as friendly a way as possible. But he is too overbearing + insulting. Judge Wording + myself can get along most harmoniously; but neither of us can get on comfortably with Judge Smith.⁸²

Brisbane could not have been too worried about keeping the issue from the public eye given that only nine days later, he and Wording issued a formal complaint to Chase:

It is with extreme reluctance we obtain our own consent to complain of our colleague Hon. A.D. Smith. We have patiently borne with him thus far in the cherished hope that his own course or other circumstances might render such a communication as this unnecessary. But we feel that we owe it to the country in general, and to our own Commission in particular to now say to you that the frequent inebriation of our said colleague unfits him for the proper duties of the Commission; and that the difficulty of conducting the business with him is such, as to force upon us the duty of respectfully asking the Government through you, to take such action in the premises as may be considered best for the credit of the Commission and the interests of the country.⁸³

Was Smith indeed drinking too much? And “too much” by whose standards? Drinking levels in the decade before the Civil War had dropped to the lowest rates in

⁸¹ Elizabeth Ware Pearson, ed., *Letters from Port Royal: 1862-1868* (New York: Arno Press, 1969), 231.

⁸² Brisbane to Chase, August 27, 1863. SCP Emphasis in the original. The enclosures Brisbane mentions could not be found in either the Salmon Chase Papers or in the records of the Direct Tax Commission.

⁸³ Wording and Brisbane to Chase, September 5, 1863. RDTC.

American history,⁸⁴ and as political debates had become more and more focused on slavery, prohibition had “all but collapsed as a major public issue” by the time the war broke out in 1861, according to Mark Lender and James Martin.⁸⁵ That said, Baptists like Brisbane were ardent advocates of temperance. It is unclear from the primary documents how much Smith drank, though it is possible that any amount might have offended his colleagues. Their initial claims of intemperance on the part of Smith could therefore have been exaggerated — were it not for the complaints from other parties. Whatever the case, it would appear that Chase had more pressing matters than the Sea Islands to attend to in the fall of 1863, and Smith was not removed from his post. Nor does Smith appear to have received any sort of warning from Washington that he was on probation.

To all outward appearances, the Port Royal Experiment was progressing as it should. Edward Pierce, a Boston lawyer who acted as a special agent for the Treasury Department, wrote in the September 1863 edition of the *Atlantic Monthly* that the exercise, “begun in doubt, is no longer a bare hope or possibility. It is a fruition and consummation. The negroes [sic] will work for a living. They will fight for their freedom. They are adapted to civil society.”⁸⁶ But all was not well in the Sea Islands in terms of the tax Commission, where acrimony intensified after the President issued new orders for a sale of land in the Sea Islands. Lincoln ordered about half of the 40,000 acres to be sold in 20-acre plots for the exclusive bidding of freedmen at a price of \$1.25 per acre.⁸⁷ While the order helped the freedmen in theory, for Smith and his allies, Saxton and

⁸⁴ Mark Edward Lender and James Kirby Martin, *Drinking in America: A History* (New York: The Free Press, 1982), 84.

⁸⁵ Lender and Martin, *Drinking in America*, 85-86.

⁸⁶ Edward L. Pierce, “The Freedmen at Port Royal,” *Atlantic Monthly* (September 1863).

⁸⁷ Ochiai, “The Port Royal Experiment Revisited,” 100.

French, it fell short of practicality. Smith and his supporters felt that Lincoln was not offering an adequate amount of land for the actual number of freedmen who might like to purchase plots; they also regarded it as unreasonable to confine the freedmen's bids to only the specified plots.⁸⁸ Why should they not have the right to other plots that they might find more attractive? As it stood, if they wanted land that was not included in the parcels reserved for them, they would have to compete for it against Northern investors, to the freedmen's extreme disadvantage. For his part, General Saxton began what Willie Lee Rose has called a campaign that had "all the earmarks of deliberate obfuscation in a worthy cause."⁸⁹ Rose has documented that Saxton told the freedmen to begin staking claims on whatever government land they pleased: he instructed them to bring their money and description of the land they wished to purchase to his office.⁹⁰ If the freedmen did this, he said, the Commissioners would have no choice but to take heed:

If the freedmen happily and innocently struck their claims hither and yon over the islands, was there not a good chance that the Commissioners would be obliged to have the instructions changed to suit the status quo? Would not *all* the lands in this way eventually fall to the black people who had so justly earned them through years of unrequited toil?⁹¹

Reverend French, meanwhile, travelled to Washington to lobby Chase yet again for widespread pre-emption. On his return to Beaufort French informed General Saxton and the Commissioners that the rules had changed, but, according to Brisbane, kept the new rules "in profound secrecy from the majority of the Board."⁹² When the official orders finally arrived, they were not good news for Brisbane and Wording because

⁸⁸ Berlin, *Freedom*, series I, vol. III, 106-107.

⁸⁹ Rose, *Rehearsal for Reconstruction*, 275.

⁹⁰ Rose, *Rehearsal for Reconstruction*, 274.

⁹¹ Rose, *Rehearsal for Reconstruction*, 275.

⁹² Brisbane to Lewis, Jan. 21, 1864, RDTC.

Lincoln had changed his directive to the Commission by the end of December to allow “any loyal resident of Helena Parish (black or white)” to pre-empt twenty to forty acres at a price of \$1.25 an acre.⁹³ In a final act of subterfuge, French had deliberately withheld the orders from Brisbane and Wording until after the steamer *Arago* had left the dock, making it impossible for the two men to send an immediate protest to Washington.⁹⁴

Brisbane recorded his anger at the turn of events in his diary:

Oh! That man French does mean mischief by his meddlesome spirit than his head is worth; and General Saxton seems to be a crazy man about the division of these lands. Much, much trouble is ahead, and I fear my colleague Judge Wording will resign and if he does I could not long remain with any satisfaction here.⁹⁵

But what of Smith? School teacher William Allen noted that Lincoln’s new orders were “clear, concise and judicious” and a victory for Smith.⁹⁶ Allen also wrote in his diary that the growing rift on the Commission was apparent to anyone who had occasion to observe the acrimonious trio of Brisbane, Wording and Smith: “There has been a chronic quarrel in the board of Tax Commissioners, between Dr. Brisbane and Judge Smith. The third member, Worden [sic] is a man of straw, who has sided with Brisbane and given him the majority.”⁹⁷

At the next meeting of the Tax Commission, Smith apparently tried to convince Brisbane and Wording to obey Lincoln, but they would have none of it. Brisbane recorded in his diary on 16 January, 1864: “Judge Smith tried to get us to begin to carry

⁹³ Berlin, *Freedom*, series I, vol. III, 107.

⁹⁴ Brisbane to Lewis, Jan. 16, 1864. Records of the Direct Tax Commission.

⁹⁵ Diary of William Henry Brisbane, William Henry Brisbane papers, January 15, 1864. Wisconsin Historical Society, Madison, Wisconsin. Wis Mss VD. Hereafter, Brisbane diary.

⁹⁶ William Allen diary, William F. Allen Family Papers, Jan 17, 1864. Wisconsin Historical Society, Madison, Wisconsin. Mss 384. Hereafter, Allen Diary.

⁹⁷ Allen diary, Jan. 17 1864.

out the new instructions but he was drunk and Judge Wording and myself were not disposed to make fools of ourselves by trying to do what we knew could not legally be done.”⁹⁸ More soberly, Smith advised the Commissioner of Internal Revenue that the President’s new instructions had been met with much happiness in the Sea Islands: “The people hailed the instructions of the 31st December as almost a second deliverance — they gave scope to their awakened aspirations — their promulgation was a great joy — second only to their freedom.” (Then, in what could be interpreted as an obsequious move, Smith scratched out “their freedom” and replaced with “[the] Proclamation of the President.”)⁹⁹

Certainly, not everyone found the instructions a second deliverance. To say Brisbane and Wording were not amused would be an understatement — the men were livid. First there was French’s meddlesome trip to argue for the revision of the initial instructions, then the fact that they were shut out of the new orders and finally, French’s jiggery-pokery with the release of the orders to prevent a timely objection. For his part, Brisbane, determined to be heard, immediately marched off to General Saxton and “entreated him to delay publication” of the new orders until the two commissioners had conferred with Washington. Saxton refused. Brisbane then asked the General if he would at least give him a week to think about the new orders. Again, Saxton refused. Now desperate, Brisbane asked for twenty-four hours. This time Saxton agreed. In a letter to Joseph Lewis, Commissioner of Internal Revenue, Brisbane implied that either Saxton had been drinking or had lost his temper for he was “unfit” to hear their side of the story:

⁹⁸ Brisbane diary, January 16, 1864.

⁹⁹ Smith to Lewis, February 7, 1864. RDTC.

It was utterly impossible to get him to listen to a connected argument, or to give the slightest indication of a disposition to grant the request for delay until we could confer with the department. He has issued his orders to his agent to go immediately forward and divide up the lands.¹⁰⁰

Brisbane also got wind of a mass meeting at the Brick Baptist Church on nearby St. Helena Island to take place the following day. Brisbane concluded that Saxton, French, and, by implication, Smith were, under the guise of religious worship, set to foment excitement about the new instructions from the capital. Knowing he was powerless to stop the proposed meeting, Brisbane lamented: "The negroes [sic] will be confused beyond measure, and while they will be wondering what it all means, keen-sighted white men will be travelling over the Islands to see where to locate their pre-emptions."¹⁰¹

Much to Brisbane's disgust, the meeting went ahead as planned, with dozens cramming inside the Brick Church (still standing today amid spiky Palmettos and weather-beaten gravestones) to hear Saxton, French and Smith hold court. French must have taken considerable delight in reading Lincoln's new instructions aloud and then leading the group assembled through a religious service.¹⁰² Later, others were given the opportunity to address the assemblage, which Smith did with great emotion and incoherence. Spitting tobacco and possibly inebriated, Smith walked to the front of the church to face the crowd. As one witness recalled, the congregation assembled was not quite sure what to make of the spectacle:

Judge Smith ascended the pulpit, and, looking around at the audience, asked why — why — when hearts were bursting with joy, heads were bent and tongues silent, and manly faces bathed in tears. As everybody was looking straight at him,

¹⁰⁰ Brisbane to Lewis, Jan. 16, 1864. RDTC.

¹⁰¹ Brisbane to Lewis, Jan. 16, 1864. RDTC.

¹⁰² Rose, *Rehearsal for Reconstruction*, 285-286.

and nobody was shedding any tears except himself (he occasionally wiped his eyes with a dirty pocket-handkerchief) there didn't seem to be any occasion to answer the question, so nobody did. He then relieved himself of a very large mouthful of tobacco, wiped the tears from his eyes, and went on to say that there were two kinds of joy, and this was t'other kind.¹⁰³

Despite Smith's wobbly appearance in church, the overall effect of his efforts, and that of his allies in favour of pre-emption, was to spur the freedmen to file property claims in droves.¹⁰⁴ Brisbane and Wording, however, refused to acknowledge the claims, believing them to be legally unsound. Brisbane told Commissioner of Internal Revenue Joseph Lewis:

If all of this be law, I as a Commissioner and my truly honest and upright colleague Judge Wording will carry it out in its letter and spirit so long as we remain in office. But to our view to make these new instructions law, will require an Act of Congress... Under the law there is no authority whatsoever for the pre-emption of improved lands ... [A]s the instructions therefore are inconsistent with the law, how can we give a valid title under them?¹⁰⁵

Saxton, angered by the non-compliance of Brisbane and Wording, immediately sent a petition to Chase. The two Commissioners were deliberately dallying, Saxton wrote, failing to carry out the "wise and human orders"¹⁰⁶ of the President. "The delay, at this critical period of year, when all these thousands of homeless ones should be preparing their land for the next season's crop, will be exceedingly disastrous," he warned, "and cause many who, otherwise, would be able to provide for themselves, to become a tax upon the bounty of the government."¹⁰⁷ About a dozen residents of Beaufort signed the document. Then, in a separate letter sent the same day, General Saxton also suggested to Chase that either Brisbane or Wording should be removed from the

¹⁰³ Allen diary, January 17, 1864.

¹⁰⁴ Rose, *Rehearsal for Reconstruction*, 286-287.

¹⁰⁵ Brisbane to Lewis, Jan. 16, 1864. RDTC.

¹⁰⁶ Saxton to Chase, Jan. 22, 1864. RDTC.

¹⁰⁷ Saxton to Chase, Jan. 22, 1864. RDTC.

Commission and replaced with someone else. Judge Smith, he noted, gave the new instructions “his cordial and hearty support” and was not the problem. Saxton requested in no uncertain terms: “I most respectfully ask if one of these two Commissioners [Brisbane and Wording] cannot be displaced and another appointed whose head and heart are more in sympathy with your enlightened policy.”

General Saxton told Brisbane not to concern himself with the legality of matters — that, said Saxton, was President Lincoln’s problem. The Commissioners should, he said, be concerned with the execution of the instructions, their primary duty. This advice further outraged the already near-apoplectic Brisbane. It was preposterous to think that Lincoln should have time to examine the fine details of the land sales, Brisbane said, and besides, that *was* the job of the Commission. The President and Chase did “have a right to expect of us that they be informed correctly and truly in all matters for which they are to be held responsible by their sanction,” he continued. “Can we under the shelter of the President’s responsibility violate the law that we are sworn to carry out and expect that he himself whose name has been the synonym of honesty would justify us in using his name for such a purpose” as implementing a flawed and fraudulent plan of pre-emption?¹⁰⁸

In the days after the meeting at the Brick Church, Brisbane set about articulating his argument more formally and put pen to paper again, this time sending an eight-page screed to Joseph Lewis about the new instructions, detailing what he saw as the insanity and illegality of the new orders. He declared the whole process to be tainted by the meddling of third parties.

Without any consultation, without any word of inquiry with the majority of the Commissioners, Mr. M. French proceeds to Washington and returns to Beaufort

¹⁰⁸ Brisbane to Lewis, Jan. 16, 1864. RDTC.

with new instructions for the Board of Commissioners... .[W]hat do these new instructions do? We are told by gentlemen who are particularly interested in promising them or in advocating them that they were designed for the benefit of the negroes [sic]. What? Is it for their benefit that twenty thousand acres of land which had been appropriated to them exclusively is taken away from them again and opened to the adroit, skillful and ready witted and educated white man to get ahead of them to pre-empt? Never were a poor ignorant people more terribly wronged by their enemies than the people have in this case been wronged by their friends. I can scarcely keep from weeping, my dear sir.¹⁰⁹

Brisbane also expressed concern that Wording might quit over the debacle:

I do sincerely hope that if he tenders his resignation it may not be accepted. I too feel a longing for my home and to be with my children; but I must while there is a plank to stand upon or a hope to cling to, look to this interest until I can feel assured that the future for this, my native state, has a bright and glorious pathway.¹¹⁰

It is clear from the correspondence that both Brisbane and Smith believed the betterment of the freedmen was inherently tied to their ability to own land in the area where they had been born and raised. At issue was the strategy to be adopted to achieve this mutual goal, and on that point, the men could simply not agree. Smith seems to have maintained a steely silence at this juncture, but it is unclear from the documents whether this was because he felt it best to keep any smug satisfaction with French's intervention to himself, or whether his drinking had taken a turn for the worse. As the battle over pre-emption heated up, Smith and his allies had considerable support for their side of the argument, but this support was mitigated by the repeated charges of alcoholism levelled against Smith. Willie Lee Rose has noted:

While Brisbane and Wording may have been, as was freely charged, more solicitous of the United States Treasury than of the freedmen's security, they at least had no outstanding personal vices to discredit their influence. Even the

¹⁰⁹ Brisbane to Joseph Lewis, Jan. 21, 1864, RDTC .

¹¹⁰ Brisbane to Joseph Lewis, Jan. 21, 1864, RDTC .

missionaries who supported him knew that *their* man on the Commission was a heavy drinker.¹¹¹

Worse, Smith's drinking now seems to have been interfering with his ability to carry out his work on the Commission, as he arrived late for meetings after sleeping until late in the morning. "If you catch him before ten, you will find him sober and clear; but then he doesn't get up till quarter of ten," admitted one of his supporters.¹¹²

As the pre-emption debate continued to simmer, Brisbane filed a report of the Commission's activities to Internal Revenue in early February, affirming that the two-man "majority" of the Commissioners were "unwilling to proceed"¹¹³ until they had received further instruction from Lewis's office. Brisbane noted that an extremely wet January had caused the surveyors to fall behind in their work, delaying the work of the Commission, as had the expropriation of some of their horses and wagons by the U.S. military. Beneath his signature, Brisbane added three more lines: "Commissioner Smith requests that I add that he dissents from the above and will forward a minority report." Indeed, Smith said he was "compelled" to dissent and filed his own report to Lewis five days later.¹¹⁴ According to Smith, Brisbane had only shown him the report at 6 o'clock the evening before, thus forcing him to cobble together his response on short notice.

The delay of progress on our surveys is, in my opinion, inexcusable," he wrote: "I am credibly informed that the season has not been unusually wet or otherwise prejudicial to the operations of the survey. If there be a fault in this respect, it must consist in the fact that they were not begun earlier in the season."¹¹⁵

¹¹¹ Rose, *Rehearsal for Reconstruction*, 291. Emphasis in the original.

¹¹² Allen diary, 98.

¹¹³ Brisbane to Lewis, February 2, 1864. RDTC.

¹¹⁴ Brisbane to Lewis, February 2, 1864. RDTC.

¹¹⁵ Smith to Lewis, Feb. 7, 1864. RDTC.

He also countered Brisbane's assertion that the Commissioners' transportation had been disrupted by the military's confiscation of horses and wagons, noting that General Saxton had always paid prompt attention to their requirements and that animals and vehicles had only been seized within the past few days. Any delays, Smith suggested, stemmed from the refusal of some members of the Commission to comply with their most recent instructions. After conducting his own legal analysis, Smith asserted that Brisbane had no justification for raising alarm:

I have been unable to discover, after careful examination and collation of all the laws, regulations and instructions, any point in which the President, the Secretary or the Commissioner of Internal Revenue have forgotten the law of the land. I see no difficulty with willing minds in carrying them out to their full intent and purpose.¹¹⁶

As Smith forwarded his learned opinion to higher powers, others were writing letters that would cause irreparable damage to his reputation. Initially, most of them had been crafted by Brisbane but even Smith's erstwhile allies such as Senator Doolittle, the man who had secured his appointment to the Commission, were turning against him. In a letter to Secretary Salmon Chase on 6 February, 1864, Doolittle, who had somehow learned of Smith's drinking, wrote:

I have the most unwavering confidence in the integrity, good judgment, sobriety and humanity of Dr. Brisbane and Judge Wording. I know them well. I had great confidence in Judge Smith, but for causes which give me great pain when I think of them, my confidence in him is broken down. I venture to give my opinion in decided terms. I would either remove Judge Smith immediately or I would direct that all the proceedings there should be under the [illegible text] of a majority of the Board. The former is probably the wiser course, as matters stand. ... I have much more faith in Dr. Brisbane's real friendship for the colored man than in the utopian ideas of the [Reverend] French. As I was mainly responsible for the appointment of these gentlemen, and I find that in Judge Smith in spite of all his promises to me of abstinence from intoxicating drinks or drugs I have been so

¹¹⁶ Smith to Lewis, Feb. 7, 1864. RDTC.

greatly disappointed in my hopes, I am willing to bear my full share of responsibility for his removal.¹¹⁷

That same day Chase reversed the pre-emption orders. The decision must have seemed a terrible betrayal to Smith, who had lobbied so hard for the orders to stand. News of the reversal reached Beaufort on 12 February 1864. By Brisbane's account, Smith was "very much disappointed" and Wording "very much elated." In his diary, Brisbane described himself as taking the news "quietly,"¹¹⁸ but he must have been as elated as Wording. After weeks of suffering through the self-righteousness of Smith, Saxton and French, he was finally able to celebrate: "I cannot but rejoice that the order of the Secretary of the date of the 6th instant restores matters to their former position and prevents a hopeless confusion," he wrote to Joseph Lewis. Brisbane expressed concern in this letter that Smith and his cohort were working behind the scenes to undermine the latest order:

It pains me to have to say that Judge Smith seems determined if he possibly can to get the people to believe that their applications for pre-emption, although never entertained by the Board, are themselves valid pre-emptions; and on Saturday brought forward resolutions to that effect.

Worse, Reverend French had used the occasion of a funeral to address the freedmen and to "excite a spirit of resistance to the disposition of the lands as under the old instructions.

Under these circumstances we may yet have a vast amount of trouble."¹¹⁹

In his diary, Brisbane spoke plainly about his amazement at the "obtuseness of General Saxton," his disgust "with Judge Smith's inebriations," and his indignation at "the intriguing character and cant of French." Brisbane apparently believed these

¹¹⁷ Doolittle to Chase, February 6, 1864. RDTC.

¹¹⁸ Brisbane diary, February 12, 1864.

¹¹⁹ Brisbane to Lewis, February 15, 1864. RDTC.

behaviours went beyond character flaws to outright malice on the part of the Smith coterie. Piously he wrote:

But my hope is in God that he will yet bring to light the hidden things of darkness, overturn the machinations of malice and cunning and yet save from ruinous confusion this interest so important to the country and so absolutely essential to the welfare of the poor colored people.¹²⁰

Back in Washington, the patience of Chase and Lewis must have been wearing thin with the feuding in the Sea Islands, as they endured a persistent campaign from one side or the other to adjust existing laws and policies. In February 1864, the government had issues of greater import than the squabbles of Beaufort's Tax Commissioners. During the same week that Chase had reversed the pre-emption orders, Lincoln had ordered another half million men be drafted into service, Sherman had started the Meridian Campaign in Mississippi and skirmishes were afflicting Tennessee, Alabama, Virginia and Missouri.¹²¹ Yet Brisbane would be heard. Intent on his *own* total victory, he wrote Lewis to insist that Smith be removed from the Commission once and for all. Smith, Brisbane charged, was spending too much time working as a magistrate in Saxton's office at the expense of his duties for the Commission. Furthermore, Smith was not fit for any public office:

My dear Sir, allow me to express myself to you about our troubles with Judge Smith. I must say I think it is cruel to Judge Wording and myself that we should be having to be continually annoyed with his indecorous treatment of us, his want of punctuality at our meetings, his attending to the business of another office which he holds under General Saxton, and his violent speeches to the negroes [sic] producing discontent among them & encouraging violent opposition on their part to white proprietors of the lands.¹²²

¹²⁰ Brisbane diary, Jan. 18, 1864.

¹²¹ Long and Long, *The Civil War: Day by Day*, 459-560.

¹²² Brisbane to Lewis, February 23, 1864. RDTC.

Brisbane wrote that he had given Smith fair warning of his asking their superiors to have the judge removed from his post, but that Smith had disdainfully told Brisbane to go right ahead and carry out his threat. According to Brisbane, Smith said he would return "the favour" by asking that Brisbane be removed.¹²³ Brisbane hinted at resignation: "I certainly prefer to be on my farm in Wisconsin than to have official association with such a man as he is," he complained. Finally, Brisbane conceded that the government may not follow through with his request, and, if that were the case, Brisbane issued an ultimatum:

If the Department should deem it best to retain Judge Smith I shall feel that self-respect and the hopelessness of accomplishing any good results by remaining will require me to resign. I am sure I have been faithful to the trust I have had and fear not the most thorough investigation of my official course: I respectfully ask you, Honored Sir, to take this matter into consideration and talk to the Secretary about it. I once asked the Secretary to get Judge Smith appointed to some other position for which he might be better adapted. But I would now take that back, as further experience with him really satisfies me that I would do wrong to advise his appointment to any Governmental Office. Whatever he once was he is not now adapted to a responsible public position in my judgment.¹²⁴

Wording, who had corresponded infrequently, seems to have been unable to keep silent on the Smith issue any longer; he complained to Joseph Lewis that Smith was now using "every conceivable means" to prevent bidding in the next round of land sales.¹²⁵ Their letters produced the desired effect: Joseph Lewis, likely weary to the point of exasperation with the debacle in the Department of the South, had already written to Chase to recommend Smith's removal:

... I deem harmony among the members of the board of the utmost importance, and that it appears to me that hope of such harmony, constituted as the board now is, is more than vain. Dr. Brisbane and Judge Wording are certainly labouring

¹²³ Brisbane to Lewis, February 23, 1864. RDTC.

¹²⁴ Brisbane to Lewis, February 23, 1864. RDTC.

¹²⁵ Wording to Lewis, February 25, 1864. RDTC.

faithfully to accomplish the objects of the Commission. I see no evidence of co-operation by Judge Smith with the other members. ... I assume the responsibility of recommending that Judge Smith be removed and that the vacancy be filled by some person who can act with other members cordially and with a disposition to do his whole duty. Judge Smith may be useful in some other field of the public service. As tax commissioner for the insurrectionary district of South Carolina he not only does nothing, as I believe, to forward the work in hand, but his influence is exerted to embarrass and annoy his colleagues.¹²⁶

At this point, even Smith's allies had to concede that the Sea Islands were in chaos. "We are in great affliction," French wrote to Lewis. "Uncertainty hangs over everything. The people turn from man and make their complaints known to God. What a pity that so many men intending good should be left, for lack of harmony, to do much harm."¹²⁷

Smith's case was not helped by Brisbane's charge of nepotism. In an odd twist, the spat over the dismissal of one clerk in favour of another in the summer of 1863 resurfaced. In a letter to Lewis, Brisbane asserted that the dismissed clerk of the Commission, John Candee Alexander, was related to Smith through his son-in-law.¹²⁸

Brisbane explained:

I will also add here how Mr. Alexander himself was appointed. It was done in the city of Milwaukee without my consent, without my knowledge and when I was on my route to Washington by the urgent requirement of the Secretary as communicated by a note from Judge Smith himself. After thus writing me, Judge Smith proceeded to Milwaukee, got Judge Wording to meet him there, urged him to agree to appoint Mr. Alexander whom he highly recommended to him, saying he had no doubt I would agree to it, persuaded him to make the appointment, of

¹²⁶ Lewis to Chase, February 5, 1864. SCP.

¹²⁷ French to Lewis, March 10, 1864. RDTTC.

¹²⁸ Maria Cecilia Smith, A.D. Smith's second daughter married William Sprague Candee, a cashier of the Manufacturers' Bank in Milwaukee in 1861. See Charles Candee Baldwin, *The Candee Genealogy: With Notices of Allied Families of Allyn, Catlin, Cooke, Mallery, Newell, Norton, Pyncheon, and Wadsworth* (Cleveland: Leader Printing Company, 1882) — this work indicates that J.C. Alexander and William Sprague Candee were cousins.

all which I knew nothing until I met my colleagues in Washington, having Mr. Alexander with them.¹²⁹

Brisbane said that “for the sake of harmony” he had not made a fuss about the appointment, though he added that he certainly would have, had he known that Alexander was related to Smith, particularly since he had told his own son that he could not work for the Commission. Brisbane further asserted that Alexander was still being paid after his dismissal from the Commission.¹³⁰ Brisbane’s letter implied that Smith had pulled a fast one on everyone, hiring a relative for a plum government job in an underhanded fashion, and then finagling so that the relative was paid for doing nothing.

Nepotism, accusations of intoxication, the constant bickering and the near-constant stream of complaints that flowed through the mail from Beaufort to Washington produced a not-entirely-surprising result. “The President has thought fit to appoint Mr. Cooley in the place of Judge Smith,” Chase wrote to Brisbane. “The preponderance of statements by those who seem best acquainted with the condition of things in the District, seemed to render this action necessary.”¹³¹

On 5 March, 1864, Brisbane received the letter indicating Smith was to be replaced. “This is truly agreeable news,” Brisbane wrote in his diary. “God be thanked for it.”¹³² Still others recorded different sentiments in their diaries. Rufus Saxton’s brother, Willard, described Smith’s dismissal as another symptom of what had become a toxic atmosphere in the Sea Islands — an atmosphere that had forced his brother to offer his resignation. “The last mail brought the news of the relief of Judge Smith from the

¹²⁹ Brisbane to Lewis, March 5, 1864. RDTC.

¹³⁰ Brisbane to Lewis, March 5, 1864. RDTC.

¹³¹ Chase to Brisbane, March 1, 1864. SCP

¹³² Brisbane diary, March 5, 1864.

Board of Tax Commissioners. The “Jesuit and Jackass” are triumphant,”¹³³ he wrote in reference to Brisbane and Wording. “Rufus wrote to Mr. Stanton asking to be relieved of his special duties here as Mil. Gov., feeling that he can do the people no farther good It would not make me cry to be obliged to leave here entirely.”¹³⁴

General Saxton, deciding that his own reputation had been unfairly maligned in the whole affair, sent a defiant letter to Chase urging him to ignore any scurrilous rumours he may have heard. Saxton put an entirely different spin on the way things had played out:

I have heard that I am held responsible for Mr. French’s mission to Washington — I am not. I gave him no permission to go and no instructions to act upon when there, and I also forbade him to use my name in any way. I have heard that I kept the instructions from the Board of Commissioners. I did not! I first saw them in the hands of one of them, Hon. A.D. Smith, sent to him for them, had them copied and returned to him within the hour. I refrained from publishing them for twenty-four hours at the earnest solicitation of Dr. W. H. Brisbane.¹³⁵

Chase did not accept Saxton’s resignation but instead sent a special agent to investigate how things in Beaufort had unravelled so spectacularly.¹³⁶ Of particular interest to the agent would be the circumstances in which the first clerk, Alexander, had been dismissed and a replacement clerk, Thomas Coryell, procured for the Commission. When the agent, Austin Smith (a man of no relation but the same initials), arrived on 1

¹³³ Willard Saxton’s choice of slur against Brisbane is ambiguous given that Brisbane was a Baptist, not a Catholic. Rufus Saxton was a freemason. Whether his brother Willard Saxton was a mason is not known, but is likely, given the company he kept. It is known that masons at the time saw Jesuits as nefarious political operators. “They sought to convert (masonry’s) pure philanthropy and toleration into political intrigue and religious bigotry.” See Albert G. Mackey and Charles T. McClenachan, *Encyclopedia of Freemasonry* (Chicago: The Masonic History Company, 1921) vol. I, 368.

¹³⁴ S. Willard Saxton diary entry, March 9, 1864. Saxton Papers.

¹³⁵ Rufus Saxton to Salmon P. Chase, March 9, 1864. Saxton Papers. Emphasis in the original.

¹³⁶ Rufus Saxton to Salmon Chase, March 28, 1864. Saxton Papers.

April he reported that A.D. Smith was still “acting and recognized as one of the District Tax Commissioners for South Carolina.” However, the judge officially terminated his duties on 15 April when his successor arrived.¹³⁷ In the end, Agent Smith concluded that by refusing to attend the meeting in New York, Judge Smith had waived his right to object to the hiring of a replacement for Alexander. Agent Smith also concluded that Alexander and Coryell had acted in good faith and that both were entitled to fair compensation for the work they had completed on behalf of the Commission.¹³⁸

Agent Smith’s report, however, did not stem the bickering between the Commissioners, even though A.D. Smith was now not officially a part of the group, for Brisbane and Wording were hounding their former colleague with letters demanding the return of nearly 200 items of stationery and property they accused Smith of taking from the Commission’s office, including thirteen paperweights, four knives, two erasers and an arm rest.¹³⁹ Smith received their letter — and immediately replied. “You also attempted to specify the particular articles in my possession. By what authority? Upon what data? The list which you present is utterly without basis in regard to very many articles and erroneous in regard to others,” he wrote. “It is proper for me further to state I was actually gathering up the debris or fragments in my possession when I received your communication. Nothing but press of other duties has prevented an early delivery.”¹⁴⁰

Though his former colleagues were glad to see Smith move out of his rooms on 29 April, 1864, at least a few people were disappointed that he had not prevailed. Smith’s staunchest friend through the whole ordeal was General Saxton, who wrote him a kind

¹³⁷ Austin Smith to Salmon Chase, May 27, 1864. RDTC.

¹³⁸ Report of Austin Smith, May 26, 1864. RDTC.

¹³⁹ T.D. Coryell to A.D. Smith, May 27, 1864. RDTC.

¹⁴⁰ A.D. Smith to Direct Tax Commission, May 28, 1864. RDTC.

and reassuring letter shortly after Smith received official word of his dismissal. General Saxton's letter implies that Smith's drinking may not have been as serious as his opponents had suggested:

I can assure you, my dear Judge, that it gives me the greatest pleasure to bear witness to your entire devotion and attention to the arduous duties of your commission. I have visited your office at all hours, and always have found you busily employed at your post of duty. The freedmen have ever found in you a wise counselor, an ever ready and sympathetic friend. I sincerely regret to learn that your duties may call you elsewhere, and that I, too, shall be deprived of your much-valued co-operation and advice in my own peculiar and sometimes perplexing duties. Should you leave the Department, you can have the assurance that your name and memory will be cherished by these lowly ones, to whom you have spoken cheering words of hope and encouragement, long after the names of those who have slandered you shall have been forgotten, or remembered not for the good they have done here. I am, with great respect, and esteem, your friend, sincerely.¹⁴¹

By mid-May of 1864, Smith's name had vanished from official government correspondence. It disappeared, too, from the Saxton papers and the Brisbane diary. There was no indication, however, that he returned home to Milwaukee. In all likelihood, he remained in Beaufort for more than a year after his dismissal acting in some capacity for Saxton. He had already been employed by Saxton's office as a magistrate,¹⁴² which he likely continued to be through the end of the war.

Smith's experience in South Carolina raises questions about what really prompted his dismissal from the commission, and the genesis of the cloud of acrimony that hung over the Commission. While Smith's ongoing feud with Brisbane and Wording could be categorized as a simple personality clash, evidence suggests a deeper, ideological division. Brisbane had been a member of the Liberty Party in the 1840s, even making a bid for Congress under its banner and later working with the Liberty leader, James

¹⁴¹ Rufus Saxton to A.D. Smith, April 18, 1864. Saxton Papers.

¹⁴² Coryell to Lewis, June 6, 1864. RDTTC.

Birney, to organize the party convention in Cincinnati in 1845.¹⁴³ Brisbane came to know Salmon Chase through their Liberty Party ties and the two became friends.¹⁴⁴ This connection suggests Chase may have been predisposed to listen more closely to the complaints of Brisbane than the counter-arguments of Smith. By the time Brisbane and Smith arrived in Beaufort, Chase and Brisbane had already known each other for nearly two decades and the two men shared a similar political metamorphosis by way of their days in the fledgling Liberty Party. The two men were also of similar mind when it came to their dedication to faith, as was common among Liberty Party members. “The truth is, that most of our leaders and political speakers have been and are ministers — not statesmen or politicians,” as one Liberty Party leader said.¹⁴⁵ Brisbane was a Baptist minister who identified with arguments that suggested slavery was borne of immorality. According to Eric Foner, Chase was also devout:

As a youth he had lived for several years with his uncle, the Episcopalian bishop of Ohio. Chase read the Bible and recited psalms every morning before breakfast, attended church regularly, admired chastity and disliked drinking, cursing, and the theatre.¹⁴⁶

As a young man, Chase became a member of the Young Men’s Temperance Society in Cincinnati, where he had been “shocked by the proliferation of taverns and the intemperate behavior of many citizens.”¹⁴⁷ Chase’s loathing of “the monster

¹⁴³ Blake McNulty, “William Henry Brisbane: South Carolina Slaveholder and Abolitionist,” paper submitted to the Department of History, University of Wisconsin, Waukesha, 1984, in the Beaufort County Library. See pages 5 and 6 for information about Brisbane’s political background.

¹⁴⁴ In correspondence, Brisbane frequently addressed Chase as “dear friend.”

¹⁴⁵ Foner, *Free Soil, Free Labor, Free Men*, 78.

¹⁴⁶ Foner, *Free Soil, Free Labor, Free Men*, 78.

¹⁴⁷ Frederick J. Blue, *Salmon Chase: A Life in Politics*, (Kent, OH: Kent State University Press, 1987), 16.

Intemperance”¹⁴⁸ made it unlikely that he would abide insobriety on the part of Smith. As for religion, Smith left few clues as to his beliefs or how deeply they ran. His extant letters and speeches say little or nothing about faith. It is obvious that Smith believed in science to some extent — he was a dyed-in-the-wool Democrat, the party that fought for separation of church and state; he read Charles Darwin; practised phrenology; and lectured on “physical immortality.”¹⁴⁹ Smith did not, as both Chase and Brisbane did, tie politics to his religion. He advocated things he believed were instinctively and inherently moral, not because they were codified by a specific religion. This separation of politics and religion might have further exacerbated Brisbane’s dislike of Smith.

Finally, Chase “combined religious conviction and humorlessness with unquenchable ambition and shrewd political insight.”¹⁵⁰ To him, Smith’s situation was clear: he was a Democrat at heart who now stood without a party — Republicans had no further obligation to support a drunkard who could not be trusted to toe the party line and was rapidly emerging as yesterday’s man. In short, there was little political advantage in keeping Smith in a patronage position. That he was “neglectful in promoting the political ambitions of Secretary Chase”¹⁵¹ would not have helped Smith’s case. In fact, it was not long after Brisbane warned his friend Chase that “you will be seriously injured if you sustain Judge Smith” that the latter was dismissed.¹⁵²

For his part, Chase expressed some confusion about the rift on the Commission, as he explained when he wrote to Brisbane to inform him of Smith’s dismissal:

¹⁴⁸ Blue, *Salmon Chase: A Life in Politics*, 16.

¹⁴⁹ *Milwaukee Sentinel*, Dec. 7, 1860.

¹⁵⁰ McPherson, *Battle Cry of Freedom*, 61.

¹⁵¹ Overy, “The Wisconsin Carpetbagger,” 22*n*.

¹⁵² Overy, “The Wisconsin Carpetbagger,” 22*n*.

I have been, and am greatly perplexed by the differences between yourself and Judge Wordding [sic] on one side, and Judge Smith, General Saxton and Mr. French on the other. Both parties seem equally anxious for the welfare of the colored laborers, which in my judgment should be the paramount object I know the task of dealing with this situation is difficult, but I can not help thinking that by mutual concessions among those who have the same objects in view, some plan might be agreed upon which would be practically useful I regret the necessity [of removing Smith] exceedingly, for I can never forget the early services of Judge Smith to the cause of freedom when, to render them, required great courage and genuine manhood.¹⁵³

Why, then, was Smith so at odds with Brisbane and Wordding and cast aside by the Republicans and Democrats alike during this later chapter in his life? If anything, both parties seem to have been more interested in distancing themselves from the erstwhile celebrity judge. Certainly there is evidence that Smith had successfully alienated the Democracy with his decision in the Joshua Glover fugitive slave case, and that his ultra States' Rights stand in Wisconsin made Republicans so anxious that they proceeded to place him in the middle of enemy territory during the Civil War. Upon examination of Smith's track record, both in Wisconsin and in South Carolina in particular, what clearly emerges is a remarkable pattern of racial liberalism that would have made most Americans, even many abolitionists, uncomfortable at the very least. This adherence to a belief in racial equality clearly would have put him in conflict with the most powerful men in both parties. As Jean H. Baker has documented, "intense racism"¹⁵⁴ was rampant within the Democratic Party, as was typified in the Northern Democrats' leader, Stephen Douglas:

Along with most nineteenth-century Democrats, Douglas's views on slavery were interwoven with his conception of race; having come to accept polygenetic theory, he believed Negroes irredeemably inferior to whites. Neither their

¹⁵³ Chase to Brisbane, March 1, 1864. SCP

¹⁵⁴ Jean H. Baker, *Affairs of Party: The Political Culture of Northern Democrats in the Mid-Nineteenth Century* (Ithaca: Cornell University Press, 1983), 177.

individual achievements nor their oppression in the United States shook this idea, and his comments on blacks were invariably harsh in tone, biological in metaphor, and popular in idiom.¹⁵⁵

Even Republicans were “guilty of more than a little racism”¹⁵⁶ and most knew that radicals of Smith’s ilk would only cause their party problems. Historian Kenneth Stampp has said that promoting the party as a haven for whites was simple political pragmatism:

Republican politicians and editors who, because of their constituents’ racial fears (and perhaps their own), tried to portray their party as a safe vehicle for white men to ride, were, if nothing else, realists. Given the racial attitudes of the 1850s, no party — not even one appealing primarily to northern voters — could have adopted a platform advocating equal political and legal rights for blacks without suffering total defeat. As an Indiana Republican warned, if his party permitted the Democrats to define the issue between them as ‘the equality of the black with the white race we shall be beaten not only in Indiana but in the Union from this time forward.’¹⁵⁷

Right up until the Civil War, Republicans, dogged by Democratic accusations of pandering to blacks at the expense of industrious whites, “insisted that they, not the Democrats, were the real ‘white man’s party’”¹⁵⁸ and that barring slavery in the territories was beneficial in part because it would prevent mixing of the races.¹⁵⁹ Even prominent and ardent anti-slavery Republicans such as William Seward and Salmon Chase held racist beliefs,¹⁶⁰ and they were not alone for “almost all (Republicans) accepted in some degree the racial stereotypes of their time.”¹⁶¹ Lincoln himself steered clear of advocating full racial equality and said he had “no purpose to introduce political and social equality

¹⁵⁵ Jean H. Baker, *Affairs of Party*, 177.

¹⁵⁶ Kenneth Stampp, *America in 1857: A Nation on the Brink* (New York: Oxford University Press, 1990), 106.

¹⁵⁷ Stampp, *America in 1857*, 133.

¹⁵⁸ Foner, *Free Soil, Free Labor, Free Men*, 265.

¹⁵⁹ Foner, *Free Soil, Free Labor, Free Men*, 266.

¹⁶⁰ Foner, *Free Soil, Free Labor, Free Men*, 295.

¹⁶¹ Foner, *Free Soil, Free Labor, Free Men*, 295.

between the white and black races”¹⁶² and put the very idea to rest in one of his famous debates with Stephen Douglas in October, 1858:

There is a physical difference between the two, which, in my judgment, will probably forever forbid their living together upon a footing of perfect equality, and inasmuch as it becomes a necessity that there must be a difference, I, as well as Judge Douglas, am in favor of the race to which I belong having the superior position ... I hold that notwithstanding all this, there is no reason in the world why the negro [sic] is not entitled to all the natural rights enumerated in the Declaration of Independence — the right to life, liberty, and the pursuit of happiness.¹⁶³

In most political circles, and certainly some more than others, the attitude that blacks deserved a measure of political and social rights but remained inferior as a race carried through the Civil War and Reconstruction. Smith’s racial liberalism, then, would have made finding a political home increasingly difficult as he became more outspoken and the war inched toward its conclusion. Smith would not have been able to tolerate the rampant racism of the Democrats, and Republicans, even radical ones like Chase, might have had difficulty tolerating Smith, whose vision of defending the disenfranchised and downtrodden included the freedmen — and was potentially dangerous to the welfare of the Party as a whole. In fact, Smith repeatedly expressed a firm belief that blacks and whites were *together* entitled to the same freedoms, as he so clearly set out in a letter to the Internal Revenue Commission in March 1863:

It must be as gratifying to the Department as it certainly is to me, that the cash sales of this small Parish have brought more than enough to defray all the expenses of the Commission for a year, besides vesting in the Gov’t [sic] a great abundance of lands to settle, support, educate and elevate all the freed people that can in any event come here, and also enough thereon to settle by purchase or demise loyal white citizens who, together with the colored will be able to protect & defend the whole. It has indeed been a difficult and laborious task — but thank

¹⁶² Harold Holzer, ed. *The Lincoln-Douglas Debates* (New York: Fordham University Press, 2004), 285.

¹⁶³ Holzer, *The Lincoln-Douglas Debates*, 285.

God it has been a success. What scarcely anybody believed feasible, what very many ridiculed, is now made a fait accompli and the future is comparatively simple and plain. The lands purchased by Gov't may now be [illegible word in the original], or subdivided & sold, furnishing homes to the poor loyal freedmen, to the faithful soldier, to the enterprising citizen of every grade.¹⁶⁴

In his defence of Smith to Salmon Chase in February, 1863, Mansfield French invoked the Bible in an effort to show Smith's absolute dedication to the former slaves and their welfare: "I must say, what you will be rejoiced to hear, that Judge Smith is as true to his trust, and to the freedmen, as were Caleb & Joshua to the charge committed to them by Moses."¹⁶⁵ Yet, when Joseph Lewis wrote to Chase, he urged that Smith be removed from the commission since he was doing nothing "to forward the work in hand" and that he was embarrassing and annoying his colleagues.¹⁶⁶ While Brisbane, like Chief Justice Roger Taney, may have freed the slaves he inherited, it is doubtful that his vision of "citizens of every grade" quite matched that of Smith's, whose freethinking attitudes on racial equality would have undoubtedly been an embarrassment for the cranky South Carolinian. Saxton and Smith's pre-emption plans were, in Brisbane's eyes, outrageous, and he didn't hesitate to tell Salmon Chase so when he wrote to him in February, 1864. Though he said he had "paid the greatest respect"¹⁶⁷ to Saxton, he simply could not support his "squatter system":

The condition of things here under it would be such that no salary or prospect of wealth could tempt me to remain here one year longer. And I told General Saxton that the worst harm I could do him would be to go away + allow his measures full scope. It would ruin his reputation forever ... I am sorry for it that General Saxton committed himself to this wild scheme, that out radicals all the radicalism I ever heard of in agrarian history.¹⁶⁸

¹⁶⁴ Smith to Geo. S. Boutwell, May 28, 1864. RDTC.

¹⁶⁵ Mansfield French to Salmon Chase, February 7, 1863. SCP

¹⁶⁶ Joseph Lewis to Chase, February 5, 1864. SCP

¹⁶⁷ Brisbane to Chase, February 15, 1864. SCP

¹⁶⁸ Brisbane to Chase, February 15, 1864. SCP

Earlier in the Commission's mandate, Brisbane referred to Saxton derisively as a man "who has a heart too big for his head" (and then, scratched in above "although his head doesn't lack") and told Chase he felt Saxton was displeased with him, and presumably Wording, because "we do not allow more for what he + Mr. French term 'the good of the cause,' which means the advocacy of the interests of the negroe [sic]."¹⁶⁹ In the eyes of Saxton, French and Smith, they were the only ones willing to do enough for the advocacy of the interests of the freedmen of Port Royal, and after months of bitter feuding, Smith paid for his principles with dismissal.

How the disgraced third wheel of the Commission spent his final year in Beaufort, or what he told his family about his career setback, is not known. Documents do show that Smith definitively left Beaufort with a northbound ticket the morning of 2 June 1865. Smith boarded the army steamer *Arago* at Hilton Head and waited for the anchor to be lifted, around noon. Brisbane, Wording and their family members were also aboard the ship. It is not clear whether the voyage was meant to be a permanent journey north for anyone or everyone in the Wisconsin party, but Brisbane did record feelings of great hope when he wrote in his diary the day of the departure. "I am truly thankful to God for that care he has taken of us, and that he has enabled me to be attentive and successful in the trusts confided to me." He also noted with cold indifference the condition of Smith, when he first saw him on the ship. "My former colleague Judge A.D. Smith is also on board. He is perfectly broken down and will probably even pass away."¹⁷⁰

¹⁶⁹ Brisbane to Chase, February 10, 1863. SCP

¹⁷⁰ Brisbane diary, June 3, 1865.

Surprisingly, the *Arago's* passenger list for 2 June 1865, did not list Smith, even though Brisbane and Wording and their travelling companions were duly recorded. A clue to Smith's invisibility can be found in Brisbane's diary, where he noted his discovery the day after the boat left port that Smith did not even have a room on board.

All that his protégé Alexander did was to get him on board and request Mr. Stemson, the Express Agent, to look after him. I saw his situation — that he had no berth and I went to (the) Capt. of the vessel and to the purser to give him a suitable place. ... I got him a good state room and being next to mine I can pay him some attention.... I then helped him to his room and saw that a waiter should attend upon him. Today he has seemed to be getting worse and there is some question whether he will hold out through the voyage.¹⁷¹

In the early morning hours of 4 June, darkness still enveloped the *Arago*, "one of the finest ocean steamships in her day,"¹⁷² as it ploughed northward. Pushing through the waves to its final destination of New York, the boat carried an assortment of military personnel, 132 "paroled & escaped" men and numerous bureaucrats, their wives and children.¹⁷³ As of 6 o'clock in the morning, it also contained the corpse of A.D. Smith who, only five days shy of his fifty-fourth birthday, had reached the "end of life's journey." He died on a Sunday in a small room of the *Arago*, likely off the coast of Virginia. As he lay dying, he looked not into the eyes of his friends or family, but rather at the shadows of the onboard physician and the man who could best be described as an "enemy" — William Henry Brisbane. The irony of Brisbane's caring for the dying man was not lost on the diarist, who wrote rather cryptically: "It is rather strange it falls upon me to pay him these attentions, there being no friends of his special favor to look after

¹⁷¹ Brisbane diary, June 3, 1865.

¹⁷² Eldredge Collection notebooks, in the Collection of the Mariners' Museum library and archives, Newport News, Virginia. MS91, Box 3, File 27.

¹⁷³ Passenger list of the *Arago*, RG 92, entry 1403, Preliminary Inventory of the Textual Records of the Office of the Quartermaster General. National Archives and Records Administration, Washington, D.C.

him. They have used him and now they let him go without one to attend upon him.”¹⁷⁴ Brisbane was the one who, when Smith’s heart finally gave way, leaned over and placed his hands over the dead man’s eyes, closing them forever. In some ways, a death upon the restless ocean waves was a fitting end to the life of A.D. Smith. He died as he lived — in motion.

¹⁷⁴ Brisbane diary, June 3, 1865.



ILLUSTRATION 5: The Brick Church, St. Helena Island, South Carolina. It was here that A.D. Smith preached the benefits of pre-emption to the freedmen of Port Royal. Photographed by Ruth Dunley, February 2005.

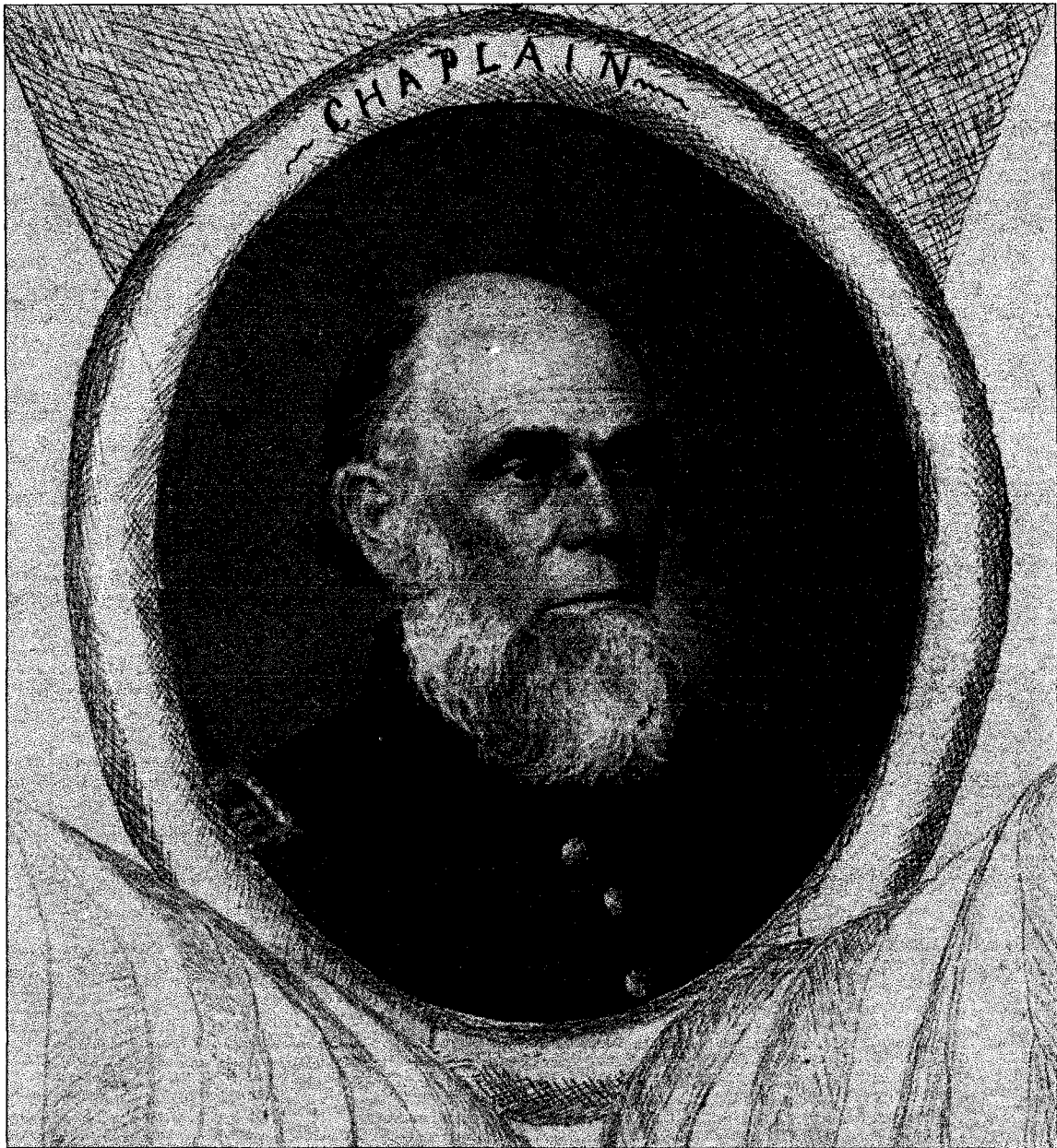


ILLUSTRATION 6: A.D. Smith's adversary on the Direct Tax Commission, William Henry Brisbane. From the collection of the Wisconsin Historical Society, Madison, Wisconsin. Image ID: 2246

Chapter 5

“Act, One and All”

Great events find ready record, but minor doings are often neglected until they become so obscured with the dust of time as to be forever clouded; yet from such humble origin may spring the mightiest results. History is commonly regarded as but the doings of rulers, who have the world for their theater of operations and the fate of empires for their subject. Such grave performances are of necessity remembered, but they are no more, in themselves, worthy of preservation than are the simpler deeds of heroism which pioneers so modestly participated in The people are seldom named in history.

— John G. Gregory, *History of Milwaukee, Wisconsin*, 1931¹

At half-past noon on the summer afternoon of Sunday, 11 June 1865, the Freemasons of Wisconsin Lodge No. 13 made their way through the streets of Milwaukee, trudging in a dark procession to the Smith house on Spring Street.² Removing their hats, they made their way inside the home, likely to the parlour, where many nineteenth-century funerals were held. The widow, Mary Augusta Smith, clad in the long black mourning dress that was the fashion, would have been supported by at least two daughters since Maria Cecilia, now married and about five months pregnant with her first child, and Marion Augusta, a teenager of fourteen, lived in the city. A third daughter, Mary Frances, may not have been able to make the journey from Kalamazoo, Michigan, on time. No doubt Alexander Mitchell, the wealthiest man in town and Smith's

¹ John G. Gregory, *History of Milwaukee, Wisconsin*, (Chicago: S. J. Clarke, 1931) vol. II, 7.

² *Milwaukee Sentinel*, June 10, 1865.

brother-in-law, would have been present with his wife, Martha, Mary Augusta's younger sister. Mitchell was an executor of Smith's will, along with Smith's son-in-law, William Sprague Candee. Also gathered at the house would have been a veritable who's who of Milwaukee society, including several lawyers and judges. At two o'clock, a somber hush fell about the room and the funeral service began.³

Smith's death must have come as something of a surprise to everyone assembled in the house. Mary Augusta Smith, likely in ill health herself, had received her husband's body only two days before the funeral. There is no evidence that she ever journeyed to South Carolina to visit her husband, and so she may only have seen him a handful of times since he had left Wisconsin in 1862. When the war ended in April 1865, Mary Augusta Smith must have anticipated the eventual return of her husband but documentation cannot confirm whether Smith was intending to return to Milwaukee when he left Hilton Head in early June — it is entirely possible he hoped to do work of some sort in New York or perhaps to return to Washington to lobby old friends in Congress for a posting. One could imagine that, if he were well enough, a position with the newly created Bureau for the Relief of Freedmen and Refugees as something Smith would have coveted. The end of the war also heralded new opportunities for Northern men to take advantage of economic and political change in the South. Known pejoratively as carpetbaggers, many of these men fared quite well, and Smith may have desired to join them in the realm of Reconstruction politics. Smith's own brother-in-law, Harrison Reed, had served on the Direct Tax Commission in Florida and would return

³ It is possible that the service was conducted by Mary Frances's second husband, Reverend Lucius Delison Chapin, who had been the minister at Milwaukee's Presbyterian Church in the 1840s.

there after the war, going on to achieve the lofty position of governor in 1868.⁴ However, there is no documentary evidence that Smith had courted any Southern opportunities; it would seem most likely that he was leaving Beaufort in June 1865 to return home to the North. It was customary for wealthy Carolina whites whose rice plantations dotted the low country to escape the oppressive summer heat and risk of malaria.⁵ The summer humidity of Beaufort did not agree with Smith, either and, after months of in-fighting with William Wording and William Henry Brisbane, a return to northern air and his friends was in all likelihood the thing he would have desired most.

Not quite fifty-four years old when he boarded the ship that became his funeral barge, Smith's demise came at a time when the country had grown weary of death, finding its presence all too common in the everyday strife of the Civil War. The recent death of Lincoln had plunged the entire country, particularly Northerners who looked to their Republican president for guidance at a time of the rebirth of the Union, into darkness and uncertainty. The Smiths and their friends would have been no exception and for them, now gathered to mark the life of A.D. Smith, it must have seemed a dreadfully bleak day. Smith, they must have thought, would know just what to say and would have already been making speeches about the direction the country should take. After all, even those who disagreed with Smith had to concede that he was always ready with a good speech.

⁴ Richard N. Current, *Three Carpetbag Governors* (Baton Rouge: Louisiana State University Press, 1967), 3-35. Reed had a stormy tenure as governor. After only five months in office he was facing mutiny in the legislature and survived impeachment three times before his enemies ousted him on a fourth attempt. Even after this unpleasant experience, Reed remained in Florida with his wife, the Syracuse-born Chloe Merrick.

⁵ William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York, Oxford University Press, 1990), 29.

It is not clear whether those gathered at the funeral still believed Smith to be working on the Tax Commission at the time of his death. Smith's obituaries implied that this was the case, even though he had been dismissed from that position more than a year before at the behest of his colleagues, Wording and Brisbane. It is possible that not even Smith's wife was aware of his activities in the months preceding his death since few people seem to have been conscious of what he was doing or what had made him sick. "Very little is known to me of the circumstances of his last illness and death," said Jonathan Arnold, who had worked with Smith on the infamous Radcliffe murder trial, when he announced Smith's death to the Supreme Court of Wisconsin on 25 July 1865. "I have learned from one of his family that some weeks before he left South Carolina, his health had become impaired by severe labours in his official duties ... he had no particular disease, but his powers of life seemed to be gradually sinking."⁶

One of the family members Arnold may have spoken to could have been one of Smith's three daughters: Mary Frances, Maria Cecilia or Marion Augusta,⁷ who was fourteen years old at her father's funeral.⁸ While Mary Frances and Maria Cecilia had

⁶ O.M. Conover, official reporter, "Report of Proceedings," *Wisconsin Supreme Court* (Chicago: Callaghan & Company, Law Publishers, 1874), 14.

⁷ Mary Frances was now a mother of three girls from her first marriage, (Mary, likely after her grandmother, Julia, perhaps after a maternal great-aunt, and Maria, after her aunt) and had inherited two children when she married Reverend Chapin, George and Ida. The couple went on to have two more sons, Wallace Torry and Raymond. One of Mary Frances's daughters, Mary, was known as Minnie. She married into the Gamble family, who went on to join forces with Proctor and form the firm that is now known internationally. Maria Cecilia had married William Sprague Candee, a banker, and they went on to have six children: Mary Augusta, Henry, Alexander Mitchell, Charles Lucius, Robert and William Leavitt.

⁸ Seven years later, Marion Augusta went on to marry Charles Elkanah Andrews, who had established a dry goods empire known for its Pearl Baking Powder. The couple had a daughter, Marion, and twins, Laurence and Florence, though Laurence disappears from Census records before he was seven. Marion later reached some prominence as manager

established homes, Smith's death had the most profound impact on his youngest daughter, Marion. Some time after the funeral she and her mother moved to a new home on Van Buren Street, where they became boarders. Mary Augusta's health began to fail, and though the cause of her illness was not documented, it was severe enough that she had the executors of her husband's will petition the courts for additional support money. A judge granted this, but only a few months later, Mary Augusta's health deteriorated further. She died on Thursday, 26 April 1866, her death recorded in the newspapers.⁹ Marion went to live with her older sister, Maria Cecilia, and her family. Their parents were buried side by side in Forest Home Cemetery — Smith's grave marked with a towering obelisk and Mary Augusta's with a small stone nearby. An even smaller headstone belonged to their son, Marius, whose body was now next to his mother's.

In Wisconsin legal circles, the news of Smith's death prompted a meeting of the Milwaukee bar to draft appropriate resolutions:

- *Resolved, that we have learned with regret the melancholy intelligence of the death of Hon. A.D. Smith, a member of this Bar and later one of the justices of the Supreme Court of Wisconsin.*
- *Resolved, that we recall with pleasure the many good qualities of the deceased as a man, a lawyer and a judge, and we mourn his death as that of an eminent*

of the Marion Andrews Concert Bureau, which promoted operas and various concerts in Milwaukee. See Arthur E. Wascher, *Who's Who in Music and Art in Milwaukee: Music, Painting and Sculpturing, Applied Art, Dramatic and Dancing* (Milwaukee: Advocate Publishing Co., 1927), 15. Her marriage was documented in the Sept. 4, 1872 edition of the *Milwaukee Sentinel*, which noted: "The church was beautifully decorated with flowers, and the services were very impressive being participated in by five clergymen. There was a very large attendance of invited guests.

⁹ *Milwaukee Sentinel*, April 28, 1866. No cause of death is listed for Mary Augusta Smith in the register of those buried at Forest Home Cemetery in Milwaukee.

man in Wisconsin, whose name will fill a prominent place in the history of the State.

- *Resolved, that in case of the removal of the remains of the deceased to this city for burial, we will receive them with the usual marks of respect and will attend his funeral in a body.*
- *Resolved, that a copy of these resolutions be transmitted to the family of the deceased with the assurance of the condolence and sympathy of the Bar.*¹⁰

From these resolutions, within their Victorian formality, comes a sense of deep respect for A.D. Smith. In the month following his death, the Supreme Court acknowledged his contributions to Wisconsin law, with colleagues speaking in glowing terms of a man they agreed was outspoken, but also dogged and fearless while wearing his judge's robe. Orsamus Cole, who had shared the bench with Smith for four years, said his former colleague had an original and vigorous mind, which was enhanced by his love of reading and learning. Smith's home library, listed in his will, indicates that his collection was extensive and included everything from the controversial science of the day, such as Darwin's *On the Origin of Species*, to works of poetry.¹¹ Cole also noted that Smith was motivated in all things by a desire to help the downtrodden and to right the wrongs of the world:

He had an abiding love for and devotion to the great principles of civil liberty and natural justice; and I believe it was the strongest desire of his soul that every human being, however degraded, should enjoy his natural rights. And if for the purpose of securing these rights to the downtrodden and oppressed, Judge Smith ever advanced from the bench constitutional views which some deem unsound, it is sufficient to say that the great mass of the loyal people of the country have

¹⁰ *Daily Wisconsin*, June 7, 1865.

¹¹ Abram Daniel Smith, Last Will and Testament, recorded October 8, 1856. Probate Collection, Milwaukee County Historical Society, Milwaukee, Wisconsin.

adopted his views in regard to the particular law which called them forth, overlooking his errors, if he fell into any, and freely pardoning something of the spirit of liberty by which he was actuated. Furthermore, he was fearless and independent in all his judgments, following no authority which did not seem to be founded on principle and reason.¹²

Jonathan Arnold, a former colleague, spoke to Smith's bold legal opinions in the Booth case. Even those who differ in opinion, he argued, must concede that they were the work of a pioneer. "Whether they were true or false, right or wrong," Arnold said, "he was the leading spirit that originated and taught them. He lived to see them become the settled law and policy of the state ... He is identified with them as their author, and will go down with them for the praise or censure of posterity."¹³

Posterity. Over and over again, in all facets of Smith's life, it was assumed that he was involved with activities, made decisions and associated with events that would make him be remembered. It is the recurring element that has defined his life: in the eyes of his contemporaries, he was seen as someone worthy of the American collective memory. More than a century after his death, however, few people have heard of A.D. Smith. More troubling are the things about A.D. Smith that cannot be known, at least not today, at least not until they are discovered in a long-forgotten manuscript file or untended attic. So much of his life remains a question mark, and likely will remain so. Yet, in the uncovering of Smith's life, the inherent story of passion and eccentricity and even failure emerges as a chronicle worth knowing, for within it, there are things that can be gleaned through historical interpretation. It is, if not a representation of his times, an articulation of moments within an era that can be tied together by common themes that, in their own

¹² John R. Berryman, *History of the Bench and Bar of Wisconsin* (Chicago: H.C. Cooper, 1898), 112.

¹³ Berryman, *History of the Bench and Bar of Wisconsin*, 111.

way, have something to tell us about life in the nineteenth century. As historian Jill Lepore has noted:

If the subjects of microhistories, however extraordinary, are not valued for their unique contributions to history, they are often people whose incompletely documented lives point historians toward a single question shrouded in mystery ... Traditional biographers seek to profile an individual and recapitulate a life story, but microhistorians, tracing their elusive subjects through slender records, tend to address themselves to solving small mysteries, in the process of which a microhistorian may recapitulate the subject's entire life story, though that is not his primary purpose. The life story, like the mystery, is merely the means to an end—and that end is always explaining the culture.¹⁴

What, then, can the life of A.D. Smith, shrouded in mystery as it is, tell us about American history and culture? In his life, he pursued ideas and actions that are woven through decades to form the fabric of a half-century, falling in and out favour and sometimes, like Smith, disappearing forever or becoming a mere footnote to other more salient or fashionable theories of a time and people. As an adult, his life spanned the middle decades of the nineteenth century — the 1830s, 1840s, 1850s and the turbulent Civil War years of the 1860s — and provides a window into the thoughts and fears of an antebellum generation. Most strikingly, he stands as something of an example of the diversity that existed within subgroups, political and social, of his time. Nineteenth-century American history fairly invites readers to see a world defined by sweeping categorization of black and white, Republican and Democrat, North and South.

Smith's life provides a reminder to students of that history that assumptions based on such oversimplification cannot stand. His involvement with locofocoism, for example, would suggest that Smith belonged to the blue-collar class of the Cleveland society in which he lived, but the evidence is that as a lawyer he was, if not an anomaly, an

¹⁴ Jill Lepore, "Historians Who Love Too Much: Reflections on Microhistory and Biography." *Journal of American History*, 88, no. 1 (2001): 133.

exception within the movement. Later, in Wisconsin, he was a dedicated Democrat, which would necessarily put him at odds with the accusations of nativism and hatred of Catholics. The Democratic Party was most often the party of choice of immigrants who identified with its early ties to labour. In this regard, then, Smith might have been better suited to the Whig Party. Finally, Smith is on record as an advocate of temperance, speaking about its merits publicly while privately engaging in extremely intemperate behaviour. In all of these things, he stands out as the exception to expectations about his time, and serves as a reminder of the decidedly non-homogeneous nature of the people of his time — like ours.

Smith's life is much more, though, than an example of being mindful of history's square pegs, or of one man's abject failure to attain the fame in posterity predicted by his friends and colleagues. At its heart, the life story of Smith speaks to a greater part of what it meant to be an American in the nineteenth century. For all the ways Smith was exceptional, or at the very least, different from his countrymen in the states in which he lived or the political bandwagons upon which he jumped, in one important and central way he was very much a man of his time. For it was not the individual chapters of his life that made him emblematic of his era, but rather the collective narrative that they tell about antebellum America. That narrative was — like the new nation — dynamic.

"Fortunes, ideas and laws are constantly altering," said Alexis de Tocqueville. "Unchanging nature herself appears to change, so greatly is she transformed by the hand of man."¹⁵ Tocqueville was seizing upon something that he detected in the American psyche, a mood or a propensity that made Americans reluctant to remain idle for very

¹⁵ Gerald E. Bevan, trans., *Alexis de Tocqueville: Democracy in America and Two Essays on America*, (London: Penguin Books, 2003), 712.

long. "Everyone is in a state of agitation," he wrote. "Some to attain power; others to grab wealth."¹⁶ Yale historian George W. Pierson has documented numerous examples of this peculiarly American trait. Americans, he notes, "don't seem anchored to place. Our families are all scattered about. Our loyalties are to abstractions and constitutions, not to birthplace or homestead or inherited associations. We share an extraordinary freedom to move again and again. No locality can claim us long."¹⁷

There are countless examples of antebellum nomads who, like Smith, spent much of their lives in transition from one location to the next. Though Smith and William Henry Brisbane, his colleague on the tax commission, clashed repeatedly in Beaufort, the two men were kindred spirits as wanderers and careerists. A South Carolinian by birth, Brisbane moved from Ohio to Wisconsin before taking to the road as an army chaplain in the Civil War, returning to his native state to work in Port Royal, and then later journeying back to Wisconsin. Smith's brothers-in-law, though most eventually settled permanently in Wisconsin, were also prone to wandering. Harrison Reed, for example, moved from Vermont to New York to Wisconsin to Florida. There are also other examples of nineteenth-century men, more prominent than Smith and his kin, who journeyed from state to state in search of a better cities and prospects. Famed Civil War General Ulysses S. Grant came by his wandering rather naturally, it would seem. His family, though American "in all its branches, direct and collateral," had wandered to numerous small towns through Massachusetts, Connecticut, Pennsylvania and Ohio.¹⁸

¹⁶ Bevan, trans., *Democracy in America*, 531.

¹⁷ George W. Pierson. *The Moving American* (New York: Alfred A. Knopf, 1973), 32.

¹⁸ Ulysses S. Grant. *Personal Memoirs*. No editor cited, from the Konecky & Konecky Civil War Library (New York: Konecky & Konecky, no year cited), 15-20.

“As a boy — indeed, all his life, Grant was restless,”¹⁹ writes Grant biographer William S. McFeely. “He liked to get out and away from home often, and his competence with horses provided the means of doing so.”²⁰ Born in Clermont County, Ohio, even as a teenager expressed the desire to travel beyond his home:

While still quite young I had visited Cincinnati, forty-five miles away, several times, alone; also Maysville, Kentucky, often, and once Louisville. The journey to Louisville was a big one for a boy of that day. I had also gone once with a two-horse carriage to Chillicothe, about seventy miles, with a neighbor’s family, who were removing to Toledo, Ohio, and returned alone; and had gone once, in like manner, to Flat Rock, Kentucky, about seventy miles away. On this latter occasion I was fifteen years of age.²¹

As a young adult, Grant travelled to West Point and after a stint in the Mexican War, found himself posted in California and Oregon before settling in Missouri and later in Galena, Illinois. His Civil War career took him across the United States, but it was post-war that he found himself travelling the world before settling in New York. In his chronicle of Grant’s friendship with Samuel Clemens (Mark Twain), Mark Perry writes that both men “had the same dream, of traveling on the big steamboats of the Mississippi to make their fortunes.”²² Clemens, of course, was one of the nineteenth century’s great wanderers, using the rivers of his beloved America to travel and to reflect:

For him, rivers were the highways of America’s first decades of economic growth and, therefore, a symbol of the nation’s freedoms. Rivers brought settlers to the West, transported their harvests to market, conveyed finished goods from the cities, and served as a province and temporary home to that most romantic of all nineteenth-century figures, the riverboat captain.²³

¹⁹ William S. McFeely, *Grant: A Biography* (New York: W.W. Norton & Company, 1981), 11.

²⁰ McFeely, *Grant: A Biography*, 11.

²¹ Ulysses S. Grant, *Personal Memoirs*, 21

²² Mark Perry, *Grant and Twain: The Story of an American Friendship* (New York: Random House, 2004), 36.

²³ Perry, *Grant and Twain*, 36.

Clemens himself became a riverboat pilot²⁴ and indulged his passion for travelling the waterways through his employment. Though his hometown was Hannibal, Missouri, Clemens lived for periods of time in several states, including Louisiana, California, Nevada, New York and Connecticut, and also travelled extensively in Europe, the Middle East, South Africa, India and Australia.²⁵ One of Clemens' many biographers, Ron Powers, cites a letter Clemens wrote to his mother while waiting for a ship's departure:

All I do know or feel, is, that I am wild with impatience to move — move—*Move!* ... Curse the endless delays! They always kill me — they make me neglect every duty & then I have a conscience that tears me like a wild beast. I wish I never had to stop *anywhere* a month.²⁶

Like Grant and Clemens, William Tecumseh Sherman felt he, too, was “cursed to live a vagabond life.”²⁷ Motivated to succeed, Sherman had broken away from his hometown of Lancaster, Ohio, and joined the army, seeing action, like Grant, in the Mexican War. After a posting in St. Louis, he subsequently left military life to pursue a banking career in California. One of Sherman's biographers, James M. Merrill, notes “Sherman's letters from San Francisco at this time showed his eager imagination and a restlessness which had been growing since his Lancaster days.”²⁸ Sherman's banking days were followed by work as a lawyer in Kansas, a brief return to Ohio and a stint as superintendent of a Louisiana military institute.²⁹ All this travel, often marked by long separations from his family, wore thin on Sherman's wife, Ellen, who angrily wrote to

²⁴ Perry, *Grant and Twain*, 36.

²⁵ There are many biographies of Clemens, but the most recent is Ron Powers, *Mark Twain: A Life* (New York: Free Press, 2005).

²⁶ Powers, *Mark Twain*, 195. Emphasis in the original.

²⁷ James M. Merrill. *William Tecumseh Sherman* (Chicago: Rand McNally & Company, 1971), 104.

²⁸ Merrill, *William Tecumseh Sherman*, 103.

²⁹ Merrill, *William Tecumseth Sherman*, 123-133.

her husband that she had “wandered enough”³⁰ with her young family. With the country on the brink of Civil War, Sherman realized his hopes of having his family join him in the South would likely be dashed, as he confided in a letter to his daughter in 1860:

What I have been planning so long and patiently, and thought we were on the point of realizing the dream and hope of my life, that we could all be together once more in a home of our own, with peace and quiet and plenty around us all, I fear is about to vanish, and again I fear I must be a wanderer, leaving you all to grow up at Lancaster without your Papa.³¹

Sherman then relocated to St. Louis before joining the military once more.³² For her part, Ellen Sherman never really understood why her husband could not be satisfied with a life in the town where they had both grown up.³³ She certainly was not the only nineteenth-century wife to lament this tendency of her husband to find greener grass beyond the more familiar turf of home. The practice of uprooting and moving in search of better opportunities, of finding a place to make one’s mark no matter where it might be, is found in all classes.

In his recent work, *Country of Exiles: The Destruction of Place in American Life*, author William Leach concludes that from the late eighteenth century on, “indifference to place has been a hallmark of American life”:³⁴

Whole populations swarmed across the continent, enticed by fantasies of paradise; by hopes of freedom and individual liberation; by great reserves of mostly unoccupied public lands; by government policies (subsidies to railroads, homestead laws, eviction of Indians from their homelands) that made it easy for people to move; by the treatment of land as property to sell and speculate on

³⁰ Merrill, *William Tecumseh Sherman*, 123.

³¹ Merrill, *William Tecumseh Sherman*, 148-149.

³² William Tecumseh Sherman. *Memoirs* (New York: Penguin Books, 2000), 157.

³³ Michael Fellman, *Citizen Sherman: A Life of William Tecumseh Sherman* (New York: Random House, 1995), 43.

³⁴ William Leach. *Country of Exiles: The Destruction of Place in American Life* (New York: Vintage Books, 1999), 9.

rather than as a community to live in; and, most of all, by prospects of unlimited wealth.³⁵

This trait set Americans very much apart from Europeans, Leach argues, and forged an identity that left an indelible imprint on the consciousness of the country:

Such was the American way. Unlike most Europeans, who rarely moved far from where they were born (unless, of course, they were forced by economic change to migrate to cities or to emigrate ...), Americans often decided to migrate whenever prospects elsewhere were brighter. The very size of the country, of course, with its untapped resources, dictated much of this mobility. But after 1850, as the country grew more urbanized and seemed to invite more settlement, Americans still displayed the same propensity to move, to get out.³⁶

It is worth mentioning that even those outsiders Leach speaks of saw Americans in this way, depicting them as incurable movers who were never content to remain idle for very long. Charles Dickens, whose *American Notes* documented his tour of the United States in 1842, noted that Americans were fickle and “so given to change, that your inconsistency has passed into a proverb.”³⁷ Domingo Faustino Sarmiento, an Argentine statesman who was born the same year as A.D. Smith, described American roads and rivers as scenes of constant activity, as he saw “thousands of steamboats ... dispersing themselves in every direction” along on the Mississippi³⁸ and “traffic jams” along the Hudson, where “steamboats cross each other’s paths like shooting stars.”³⁹ The American man, said Sarmiento, always carried a watch⁴⁰ and a “geographic map” in his pocket⁴¹ while seeking new opportunities to own land: “He talks of nothing else but going out to

³⁵ Leach, *Country of Exiles*, 9.

³⁶ Leach, *Country of Exiles*, 10.

³⁷ Charles Dickens, *The Works of Charles Dickens* (New York: Thomas Y. Crowell & Company, no year provided), vol. I, 464.

³⁸ Michael Aaron Rockland, trans., *Sarmiento’s Travels in the United States in 1847* (Princeton, New Jersey: Princeton University Press, 1970), 306.

³⁹ Rockland, trans., *Sarmiento’s Travels in the United States*, 219.

⁴⁰ Rockland, trans., *Sarmiento’s Travels in the United States*, 151.

⁴¹ Rockland, trans., *Sarmiento’s Travels in the United States*, 176.

occupy and settle new lands. His evenings are spent over the map, computing the stages of the journey, tracing a route for his wagon."⁴²

In her diary of 1857-1858, Englishwoman Barbara Leigh Smith Bodichon noted that the constant, reckless transportation of Americans was hazardous to their health, recalling a conversation she had with a doctor: "We talked about the American rashness and the number of accidents in carriage, rails and steamboats."⁴³ Two Norwegians who studied living conditions on the Illinois-Wisconsin border in 1839 were struck by what they considered an American indifference towards sub-standard housing that stemmed, they theorized, from their propensity to move so constantly:

We do not know, and can only guess, the reason for this poor method of building, but we think it comes from the American's bent and necessity to move from one place to another. When a person has got a piece of new land cultivated enough so that he can earn a little from it, he sells it and begins on a new piece. It sometimes happens that for one reason or another he is obliged to move yet again, without the slightest compensation for his house or the cultivation of his land.⁴⁴

Even Canadians such as Thomas Chandler Haliburton noted this impulse in their American neighbours. Haliburton's *The Clockmaker* is of particular note. The book, which had been published first as a serial in 1835, went on to become Canada's first international bestseller. It chronicled the adventures of a Yankee, Sam Slick of Slicksville, who travelled about Nova Scotia and opined on matters of politics and society with those he met along the road. Sam's repeated exasperation with the Nova Scotians' more relaxed pace of life is a recurring theme in the book, which stresses Sam's perspective as a wholly American view of the world. When asked what could possibly be

⁴² Rockland, trans., Sarmiento's *Travels in the United States*, 166.

⁴³ Joseph W. Reed, Jr. ed., *Barbara Leigh Smith Bodichon: An American Diary, 1857-8* (London: Routledge & Kegan Paul, 1972), 92,

⁴⁴ Alice E. Smith, *The History of Wisconsin: From Exploration to Statehood* (Madison: State Historical Society of Wisconsin, 1973), vol. I, 476.

done about the sloth of the Nova Scotians, Sam is quick with an answer: "They must recede before our free and enlightened citizens like the Indians; our folks will buy them out, and they must give place to a more intelligent and ac-TIVE people."⁴⁵ He continued: "[In the United States] ... the maxim is, 'Youth is the time for improvement; a new country is never too young for exertion; push on — keep movin — go ahead.'"⁴⁶

While Sam Slick was a fictional character, his persona speaks to something that their Canadian neighbours recognized about Americans and their way of life in Smith's era. Simply put, there was nothing worse in American eyes than remaining immobile, for it is in that immobility that chances and fortunes are lost. American literature and poetry also reflected this inherent need for Americans to journey, to seek and to explore beyond the horizon in the quest for the new and the better. In Walt Whitman's *On Journeys Through the States*, published as part of *Leaves of Grass* in 1855, this is apparent in the image of the traveller:

On journeys through the States we start,
 (Ay through the world, urged by these songs,
 Sailing henceforth to every land, to every sea,)
 We willing learners of all, teachers of all, and lovers of all.

We have watch'd the seasons dispensing themselves and passing on,
 And have said, Why should not a man or woman do as much as the seasons, and
 effuse as much?

We dwell a while in every city and town,
 We pass through Kanada [sic], the North-east, the vast valley of the Mississippi,
 and the Southern States,
 We confer on equal terms with each of the States,
 We make trial of ourselves and invite men and women to hear,
 We say to ourselves, Remember, fear not, be candid, promulge the body and the
 soul,

⁴⁵ Thomas Chandler Haliburton, *The Clockmaker*, (London: R. Bentley 1837), www.Gutenberg.org/dires/etext05/clckm10a.txt (accessed March 7, 2007), 37.

⁴⁶ Haliburton, *The Clockmaker*, 42.

Dwell a while and pass on, be copious, temperate, chaste, magnetic,
 And what you effuse may then return as the seasons return,
 And may be just as much as the seasons.⁴⁷

In 1865, Whitman also wrote admiringly of the pioneers as a “resistless, restless race” that would not halt no matter how weary, that would “take up the task eternal, and the burden and the lesson,” finally “conquering, holding, daring, venturing as we go the unknown ways.”⁴⁸ Samuel Clemens, in commenting on life in New York, also appreciated the need for Americans in Smith’s era to remain in a constant state of agitation:

There is something about this ceaseless buzz, and hurry, and bustle, that keeps a stranger in a state of unwholesome excitement all the time, and makes him restless and uneasy, and saps from him all capacity to enjoy anything or take a strong interest in any matter whatever — a something which impels him to try to do everything, and yet permits him to do nothing. He is a boy in a candy-shop — could choose quickly if there were but one kind of candy, but is hopelessly undetermined in the midst of a hundred kinds. A stranger feels unsatisfied, here, a good part of the time.⁴⁹

There is perhaps no better example of the American fear of immobility than in Washington Irving’s beloved tale of Rip Van Winkle, who awakens from a lengthy slumber to find his familiar, languid world has changed:

There was, as usual, a crowd of folks about the door, but none that Rip recollected. The very character of the people seemed changed. There was a busy, bustling, disputatious tone about it, instead of the accustomed phlegm and drowsy tranquillity [sic]. He looked in vain for the sage Nicholas Vedder ... or Van Bummel, the schoolmaster In place of these a lean, bilious-looking fellow, with his pockets full of handbills, was haranguing vehemently about rights of citizens — elections — members of congress — liberty — Bunker’s Hill —

⁴⁷ Walt Whitman, “On Journeys Through the States,” from his *Leaves of Grass* (Franklin Center, Pennsylvania: The Franklin Library, 1979), 12.

⁴⁸ Whitman, “Pioneers! O Pioneers!” from *Leaves of Grass*, 217-221.

⁴⁹ Letter from Samuel Clemens to the San Francisco *Alta California*, June 5, 1867. www.twainquotes.com/New_York.html (accessed February 2007).

heroes of seventy-six — and other words, which were a perfect Babylonish jargon to the bewildered Van Winkle.⁵⁰

For his part, A.D. Smith was in a very American state of lifelong agitation, a characteristic to which at least part of his failure to become a memorable historical character can be attributed. He rarely remained in any one place long enough to become a monument to a particular movement or political venture. His family is difficult to trace in part because of his name, but also because he moved repeatedly, and his parents likely did, too. The whereabouts of Smith's parents at the time of his birth cannot be determined through documentary evidence and it is entirely possible that they had themselves relocated to a new town or state, making their records difficult to locate. Smith's in-laws, the Reeds, scattered mainly to Wisconsin, but also to Florida and California, and Smith's children settled in Indiana, Illinois and Michigan. This constant movement of the nineteenth century has resulted in Smith's own descendants now being scattered in obscurity across the United States.⁵¹

What pushed him, and others of his time, to engage in this constant shifting and turning? What pulled at them to leave their recently-built homes and settle in new places, only to pack their bags and do the same thing over again? Tocqueville also sought answers to these questions, suggesting that in some ways, at least, this incessant motion in fact harmed some aspects of the development of Americans:

⁵⁰ Washington Irving, *Washington Irving's Rip Van Winkle, &c.*, ed. W.H.D. Rouse (London: Balckie & Son Limited, 1900), 22-23.

⁵¹ I have located the descendants of Smith's second daughter, Maria Cecilia Smith, in Wisconsin. The Candee family was aware that A.D. Smith was in their family tree but knew very little about his activities. Eager to discover more, they were pleased to learn that their ancestor was the first "President of Canada." Smith's descendants are particularly difficult to trace since Smith's son did not live to adulthood and his three daughters married men with fairly common surnames.

Amid this widespread upheaval, this repeated grating of opposed interests, men's unremitting progress toward wealth, where could be find the tranquility needed for deep intellectual investigations? How could the mind dwell upon one point, if everything around it was in constant movement and every day man himself is dragged along like flotsam in the raging torrent which carries all before it.⁵²

It is clear in Smith's story that he was something of a human magpie — his eye always caught by the latest, shiniest idea. He left New York and likely New England roots for the promise inherent in moving west to the frontier of Ohio. In the face of a devastating financial depression and the collapse of the Hunters' Lodge, its secrets and its plots, Smith immediately headed even farther west, to Wisconsin, which had not yet attained statehood. After a landmark legal case that was hailed around the nation and a domestic life that, if not perfect, was certainly stable and perhaps even enviable by the standards of the day, one might expect Smith to have remained in Milwaukee, but a personal scandal and a rift with his political party produced the impulse, yet again, for Smith to seek a new location in the unlikeliest of places. In Beaufort, South Carolina, Smith was at odds with his surroundings and his colleagues, and his time there did not end well. Though his final destination is uncertain, the end of the Civil War triggered the inclination to move yet again, boarding the *Arago* for a journey that led to death in the arms of an enemy. As Tocqueville wrote, an antebellum life like Smith's was a life of constant activity, and one that rarely produced lasting achievement:

... at the heart of these [democratic] nations resides a small, awkward movement, where incessant rumblings put men against each other; this disturbs and distracts their minds without stimulating or improving them. Men living in democratic societies not only have difficulty with meditation but they entertain a naturally low regard for it. The state of society and the democratic institutions include the majority of men to a constantly active life.⁵³

⁵² Bevan, trans., *Democracy in America*, 531.

⁵³ Bevan, trans., *Democracy in America*, 531-532.

This constant motion or "jostling," Tocqueville argued, meant that Americans could rarely achieve the goals they had set out to attain in the first place. This need for motion was simply not conducive to deep thought, or to the completion of a task. It is impossible, he theorized, to carry through on anything when there is a constant need to uproot, to relocate and to redefine oneself:

The man of action is frequently forced to accept compromise because he would never reach the fruition of his plans if he wished to achieve perfection in every detail. He has to rely endlessly upon ideas which he has not had the time to test thoroughly, for he is aided much more by the opportunity of an idea he is adopting than its strict accuracy In ages when almost every man is engaged in action, an excessive value is generally placed upon those rapid flights and superficial ideas of the intellect while its slower and deeper efforts are considerably undervalued.⁵⁴

Was this true of A.D. Smith? Smith rarely met a trend he did not like, particularly if it were of the radical kind. It certainly appears that Smith abandoned ideas as quickly as he sought new ones, many of which were ill-conceived from the beginning. The Hunters, though fervent in their sense of duty, fraternity and republicanism for all, failed miserably in gauging the pulse of Upper Canadians. Rather than picking up weapons to assist invading Hunters, the Canadians withdrew in bewilderment, therein marking a stark divergence in Canadian and American appetites for revolution and overthrow of government. Few, if any, outsiders seem to have been aware of his involvement in the group, possibly because the "President of Canada" restlessly left "office" even before the invasion designed to inaugurate him. His interest in phrenology was also dropped in later years, though at the time he practiced this emerging "science," it was at the forefront of social trends. In Wisconsin he made a landmark legal decision that put him at the centre of the debate over States' Rights. This philosophy, too, was necessarily abandoned as he

⁵⁴ Bevan, trans., *Democracy in America*, 532.

hastened to champion the Freedmen of South Carolina. His frequent changing of causes was clearly related to Smith's ambition. He strived, it is evident, to occupy a place of public importance and a position of power and, presumably, to achieve status and wealth. Tocqueville saw this tendency, too, in the people who made up the character of nineteenth-century America:

The man who has set his heart exclusively on the search for the good things of this world is always in a hurry for he has only a limited time to find, grasp and enjoy them. The reminder that life is short constantly spurs him on. Apart from the possessions he already has, he continually thinks of the thousand others which death will stop him enjoying if he does not hasten. This thought floods his mind with agitation, fear, and regret; it holds his soul in a sort of ceaseless nervousness which leads him perpetually to change plans and location ... [O]ften death is less feared than the persistent efforts needed to achieve the same ambition.⁵⁵

The constant movement of Americans created what Yale historian George W. Pierson has called a "nation of joiners,"⁵⁶ keen to find some self-identification within social groups that created a sense of belonging when there was so little attachment to geographical place. Consequently, in the nineteenth century membership in various groups swelled, with Americans joining Masonic groups, anti-Masonic groups, benevolent societies and reform groups. In this respect, Smith was typical of his time, avidly becoming a Freemason, a Hunter, and participant in reform movements such as temperance and education for women. Smith evidently loved to participate in the political dialogue of his day, to be a part of the movements that defined his age; he was clearly, as Clemens described, an American impelled to try everything he could, but ultimately to achieve less than he desired in all of those ventures.

⁵⁵ Bevan, trans., *Democracy in America*, 624.

⁵⁶ Pierson, *The Moving American*, 18.

A.D. Smith was one of the “peripatetic self-reinventors” described by University of Pennsylvania historian Walter McDougall in his recent analysis of Herman Melville’s protagonist in *The Confidence Man*:

They are also hustlers in the positive sense: builders, doers, go-getters, dreamers, hard workers, investors, organizers, engineers and a people supremely generous. Needless to say those qualities, not their baser ones, were what justified Americans’ faith in themselves, their nation and their nation’s destiny among nations.⁵⁷

Most of the words in this list above, most words would apply to Smith: he was involved in the shaping of frontier cities, was seen by his peers as a doer and an organizer, was a go-getter no matter where he had to go to get, a hard worker who invested in radical ideas, and a republican dreamer who believed whole-heartedly in liberty and equality to free the white working class of banks, African Americans of slavery, Canadians of monarchy and women of ignorance and the inability to own property.

In delving into Smith’s character, it is worth considering whether he was the real-life confidence man of Melville’s imagination. In her analysis of the nineteenth-century confidence man (and his female counterpart, the “painted woman”) Karen Halttunen describes how antebellum advice manuals were full of references to this shadowy archetype, cautioning young men in particular to avoid being duped and corrupted by these worldly yet dishonest and deceitful charlatans.⁵⁸ A confidence man, Halttunen writes, was seen as “a man without principle, a man whose art it is to deceive others through false appearances.”⁵⁹ Part of the confidence man’s persona was that he was

⁵⁷ Walter McDougall, *Freedom Just Around the Corner: A New American History, 1585-1828* (New York: HarperCollins, 2003), 7.

⁵⁸ Karen Halttunen, *Confidence Men and Painted Women* (New Haven, Yale University Press, 1982), 1-32.

⁵⁹ Halttunen, *Confidence Men and Painted Women*, 2.

something of a drifting opportunist, always on the lookout for the next great scam — or victim ripe for scamming. His mobility represented increased urbanization and the growing mobility of all Americans, and it generated great anxiety:

...the writers of antebellum advice literature expressed a deep disenchantment with the direction of historical change in early nineteenth-century America. In the figure of the urban associate, they cast their fears of the major social forces transforming American society: a high rate of geographical mobility and particularly of migration to the city, the decline of social deference and a loosening of ties between family generations the breakdown of traditional restraints over single workingmen, and in general a replacement of traditional hierarchical social relations with modern peer relations.⁶⁰

While not above using people or politics to suit his own purposes, Smith seems to fall short of being the type of confidence man described by Halttunen and conjured by Melville. There is no evidence that he fancied himself any sort of thief (although he did accept a bribe) or that he desired to hoodwink the young men he may have mentored. He was certainly a roving opportunist, but his motives seem to stem from his own principles about what was right not only for himself, but for those around him. That Smith was guilty of self-righteousness and moral conceit on a grand scale is obvious, but his attempts to sway people to his beliefs appear to have been motivated by a desire to contribute to a greater good. Whereas the traditional confidence man attempted to lure his victims to a darker side of humanity, Smith seems to have been guided by an earnest belief that he was leading people to the path that was just and true. There was no dark pessimism attached to his schemes to free Canadians or women or slaves. Rather, he was a perpetual optimist, who believed wholeheartedly in a more perfect republic. In his pursuit of this, he uprooted his home multiple times and moved from city to city, joined secret societies and, as he appears to have done in South Carolina, abandoned his family.

⁶⁰ Halttunen, *Confidence Men and Painted Women*, 20.

Movement was simply a part of an overall scheme to improve the country and it expressed Smith's very American optimism. Pierson says movement, no matter whether it was westward, between cities or from rural areas to urban settlements, has had its roots in a deeply felt sense of optimism:

Migration was not only the Destroyer, Distorter, Conservator, Atomizer and Energizer of western society, but its most effective "Optimizer." First of all, out of the welter of old-world classes and temperaments it selected the up-and-coming and the hopeful. Pessimists didn't bother; you had to be an optimist to move. Next it required sacrifice and waiting, and so captured many believers, the men of faith. Finally, it rewarded the successful — and those who weren't lucky were given a second try. America the golden was the land of the second chance. And from failure it offered a full timetable of escapes.⁶¹

There was great reason for American optimism in the nineteenth century. The period from roughly 1830–1860 was a period of spectacular economic growth and urbanization. In the twenty years preceding 1860, for example, manufacturing increased nationwide 350 per cent.⁶² As well, in the years after 1845, the country saw its largest-ever proportionate increase in foreign-born Americans with the arrival of a staggering three million immigrants,⁶³ bringing with them the labour to improve infrastructure and expand the country ever farther westward into the territories. According to historian James McPherson, the population doubled every twenty-three years and the gross national product doubled every fifteen years⁶⁴ and a "transportation revolution"⁶⁵ was moving Americans from one end of the continent to the other and deep into the interior faster than

⁶¹ George W. Pierson. "The M-Factor in American History," *American Quarterly*, XIV (summer 1962 supplement): 285.

⁶² Bruce Levine, *Half Slave and Half Free: The Roots of the Civil War* (New York: Hill and Wang, 2005), 57.

⁶³ James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 32

⁶⁴ McPherson, *Battle Cry of Freedom*, 10.

⁶⁵ McPherson, *Battle Cry of Freedom*, 11.

ever before. Optimistic escape was exactly what Smith did, over and over and over again. He recreated himself repeatedly, from lawyer to phrenologist to radical to politician to president to reformer to judge to tax commissioner to defender of freedmen. He was a nineteenth-century chameleon, but each time he relocated or recreated himself, he must have held the hope that his actions were contributing to a greater good and a Jeffersonian "empire for liberty."⁶⁶

For men such as A.D. Smith, the American right to pursue happiness had a profoundly geographic dimension. This constant movement, which to an outsider may appear lateral in nature, is seen instead as a vertical repositioning for those making the move, Pierson posits.⁶⁷ What is more, Pierson notes the likelihood of achieving power or success in seemingly lateral moves depended on the mover's ability to arrive at his destination before any other competition:

Lateral movement implied vertical movement, too. On the margins of empire, in the frontier areas, in the sprawling new cities, class barriers broke down, society became atomic, the enterprising and the aggressive could rise. Especially if you got there first⁶⁸

Smith arrived in the Western Reserve of Ohio when it was first opening to settlement and he departed for Wisconsin when opportunity beckoned there. He was also among the first of the "carpetbagging" northerners to journey to the occupied South, abandoning Wisconsin when it was clear that his upward mobility had been compromised by his position on States' Rights and involvement in the railway scandal. Smith's moves

⁶⁶ Peter S. Onuf, *Jefferson's Empire: The Language of American Nationhood* (Charlottesville: University Press of Virginia, 2000), 56.

⁶⁷ Pierson, *The Moving American*, 12.

⁶⁸ Pierson, *The Moving American*, 12.

only once catapulted him upwards in society — to a judgeship in Wisconsin. But he may have sold that one opportunity for a stack of railroad bonds.

Elizabeth C'de Baca Eastman, in a recent paper to an annual meeting of the American Political Science Association, argued that the concept of American motion is woven throughout *Democracy in America*, from references to the motion of individuals, to the idea of nations in motion. In fact, she says, Tocqueville's writing suggests that democracy can only be sustained by this sense of motion, and can be endangered when mobility is limited. The involvement of citizens in the life and politics of a country guarantees democracy, she says, but that same democracy can be threatened if citizens choose not to participate in public life, thereby allowing the rise of despotism. In Eastman's reading of Tocqueville, the only way this can be prevented is through this active participation or motion of citizens, for it is this very motion that is truly central to the viability of democracy.⁶⁹

In this way, Smith epitomizes the movement of the nineteenth century. Not only was his movement physical, from city to city and state to state, but it was also married with a civic movement of the kind described by Eastman in Tocqueville. Smith personified this duality throughout his life, for while he was pursuing very civic-minded activities, such as participating in city councils, the legal system and early attempts at Reconstruction through the Port Royal experiment, his democratic ideals were always the foundation of this movement. As historian Peter S. Onuf has written, it is this kind of

⁶⁹ Elizabeth C'de Baca Eastman. "Old and New Political Science: Motion in Tocqueville's *Democracy in America*. Prepared for delivery at the 2003 Annual Meeting of the American Political Science Association, Philadelphia, August 28-August 31, 2003.

involvement and consciousness that Thomas Jefferson, someone Smith was known to quote, saw as the ideal. Onuf writes:

A republican people, fully conscious of itself, would be enlightened enough to sustain consensual union and strong enough to resist coercion by any enemy. Union was predicated on shared commitment to 'federal and republican principles' that in turn depended on reciprocal recognition and identification among citizens in an inclusive national community.⁷⁰

Smith, it is clear, believed in American democracy and in republicanism — in the right to pursue happiness — and it was his fundamental commitment to these principles, the principles of the far left Democratic Party, that informed his interpretation of his own responsibilities to his country and propelled his own movement through the century. This responsibility was shaped, in part, by what Sean Wilentz has described as a Jacksonian reinterpretation of republicanism:

Americans of all backgrounds (with the obvious exception of the American Indians) framed their political and social discourse in eighteenth-century republican terms. Between the Revolution and 1850 changing class and social relations led to recurring reinterpretations of republicanism and battles over what the republican legacy meant. During that period, some groups of Americans — preeminently, so far as we know, the nation's leading politicians and jurists but certainly many more — came increasingly to interpret the republican framework as one or another form of liberal capitalist polity and economy. They did not reject republicanism in favor of liberalism; they associated one with the other. Others — threatened or displaced small producers, laborers, journeymen in rapidly changing skilled trades — associated the revolution in market and class relations (and emerging liberal definitions of republicanism) with the decline of their own independence and "self-government," and therefore with the Republic's demise.⁷¹

A.D. Smith sought throughout his lifetime to prevent what he often saw as symptoms of this demise. It would seem obvious that he participated in the Hunters' Lodge out of a desire to further republicanism north of the border — in his mind,

⁷⁰ Onuf, *Jefferson's Empire*, 13.

⁷¹ Sean Wilentz, "On Class and Politics in Jacksonian America," *Reviews in American History* 10 (Dec. 1982): 55.

republicanism was the purest form of democracy, and it was incumbent on Americans to bring this to their Canadian brothers. This was not exclusively tied to a personal sense of expansionism for the sake of enlarging the power or the size of his country, but rather to an inherent sense of civic duty as an American — it was not a manifest destiny of the soil, but rather of the mind. It was an obligation not just to spread republicanism because others might be deserving of it, but because civic duty demanded it.

Later, in Wisconsin, Smith's civic movements included participation in local politics and law, first as a lawyer and later as the judge who gained fame through his stand for States' Rights in *Ableman v. Booth*. Again, his guiding principle in this civic involvement was dictated by his own personal beliefs about democracy: the fundamental right of a man accused of murder to a fair trial, and the fundamental right of the states to defy unjust federal laws. Finally, his final civic motion, as a federal tax Commissioner in South Carolina, was motivated by a desire to secure Freedmens' land rights as these were fundamental, according to a Jeffersonian ideal, to their full citizenship in a republic.

Reflected, then, in all of Smith's activities throughout his nearly fifty-four years of life, was a desire to advance his vision of the national good. This vision pushed him and informed all of his decisions and his constant cry for action ensured that no moss gathered in his shadow. It was not enough, though, that he should be personally committed to this constant desire to move — he also saw it as his duty to inspire it in others. In his last fully documented speech on the eve of the Civil War, Smith shouted a rallying call to the people, urging them to rise up as defenders of States' Rights:

There is the only hope. Trust no longer in politicians. If Rome is saved, Romans must rush to the rescue. Fretting, scolding, denunciation will do no good. Action! Action!! Action!!! United, vigorous, determined Action alone will suffice.

Arouse, one and all. Act, one and all, and together. Salvation is yet for us ...
millions of hearts will leap for joy, and all the people will shout AMEN!⁷²

⁷² A.D. Smith. "Speech of Hon. Abram D. Smith," delivered in the Assembly Hall, Madison, Wisconsin. March 22, 1860. (Madison: Atwood, Rublee & Reed, 1860): 13.

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