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**BETWEEN MARTIN LUTHER AND MARTIN LUTHER KING:
James Pennington's Struggle for "Sacred Human Rights" Against Slavery**

Abstract. This Article outlines the human rights theories of nineteenth-century abolitionist and civil rights leader James Pennington. Born into slavery in Maryland, Pennington escaped North and became the first African American to attend Yale. As an ordained Presbyterian clergyman, educator, orator, author, and activist, he adapted traditional Protestant rights theories explicitly to include the rights of all, regardless of race. He emphasized the authority and freedom of the individual conscience as foundational to human rights. He advocated a central role for covenantal institutions including church, state, family, and school as essential for fostering a law and culture of human rights. And he defended the right of all to disobey unjust laws and resist tyrannical regimes. Pennington bridged these theories in novel ways with pacifist teachings, anticipating by more than a century the American civil rights movement led by Martin Luther King, Jr., and others. Though largely forgotten by historians, Pennington was well known and influential among his contemporaries. His life and work represent an important step in the development of law, religion, and human rights.

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INTRODUCTION

The Reverend Dr. James W.C. Pennington (ca. 1807 to 1870) was a remarkable figure in the American anti-slavery movement, though he is largely unknown today except by specialists.¹ He was born into slavery in Maryland. As a young child, he was whipped severely by the master's overseer and taunted by the master's children. So he spent long, lonely, and hungry days hiding in the woods while his parents worked the fields. As a youth, he was trained as a blacksmith, and periodically leased out to other masters and forced to live away from his family. In 1827, after witnessing the brutal whipping of his father, he fled North toward freedom. Twice along the way he was seized by fugitive slave hunters; twice he escaped. He made his way to Pennsylvania where Quakers took him in and provided food, shelter, kindness, a paid job, his first Bible, and his first glimpse of formal education. Pennington then moved to New York City and settled in a Presbyterian community, working during the day and attending one of the black charity schools at night.²

In 1830, Pennington converted to Christianity and learned to read the Bible. He taught himself Latin and Greek and became a voracious reader of theology, history, philosophy, and rhetoric. In 1834, he became the first African American to study at Yale, taking courses in theology despite being forced to sit in the hallway outside the classrooms to hear the lectures. He became an ordained minister in the Presbyterian Church in 1838, serving as pastor to churches on Long Island, Hartford, and New York City—and later as moderator of the New York presbytery before taking final pastoral calls in Maine, Mississippi, and Florida.³

¹ For biographical studies, see THE PENNINGTON LECTURES, 2011-2015 (Jan Stievermann ed., 2016); CHRISTOPHER L. WEBBER, AMERICAN TO THE BACKBONE: THE LIFE OF JAMES W.C. PENNINGTON, THE FUGITIVE SLAVE WHO BECAME ONE OF THE FIRST BLACK ABOLITIONISTS (2011); R.J.M. BLACKETT, BEATING AGAINST THE BARRIERS: BIOGRAPHICAL ESSAYS IN NINETEENTH-CENTURY AFRO-AMERICAN HISTORY 1-86 (1986); HERMAN E. THOMAS, JAMES W.C. PENNINGTON: AFRICAN AMERICAN CHURCHMAN AND ABOLITIONIST (1995); with literature review in *id.* at 6-12, 187-200. Pennington's given name was James Pembroke. He changed his surname name to Pennington after his escape in order to elude the attention of fugitive slave hunters.

² See *infra* notes 21-42 and accompanying text.

³ See *infra* notes 41-54 and accompanying text.

Also in 1830, Pennington attended his first abolitionist convention in New York City. His own suffering as a slave had already convinced him that slavery and racism were morally evil, and that he was no less entitled to natural liberty than his white counterparts. But as he learned more about the vast scope, cruelty, and injustices of the chattel-slavery system in America and beyond, he resolved to become an educator and crusader against slavery and racism, adopting and adapting the Presbyterian theories of rights, resistance, and revolution that he was learning as a pastor and scholar.⁴

Pennington treated slavery as a form of domestic tyranny that needed to be resisted and reformed in the name of human rights. Much like the sixteenth-century Protestant reformers who revolted against the *spiritual* tyranny of the medieval pope and the American revolutionaries who revolted against the *political* tyranny of the English king, Pennington called for abolitionists to revolt against the *domestic* tyranny of the chattel-slave system. He called it “blatant hypocrisy” for the avowedly Protestant American nation to declare proudly that “all men are created equal, that they are endowed by their Creator with certain unalienable rights,” and then systematically to deny rights to women, children, immigrants, indentured servants, Native Americans, and African Americans, enslaved and free.⁵ He called it a “monstrous crime” for slaves to be treated as items of personal property of their masters rather than as image-bearers of their creator God.⁶ He called it “divine treason” to refuse sanctuary and comfort to an escaped slave, or to return slaves to their masters for “thirty pieces of silver,” in the vein of Judas Iscariot.⁷ And he called the American law of slavery a “covenant with death and hell” that would bring the entire nation under God’s judgment and wrath.⁸

But Pennington was no sword-swinging revolutionary like some of his Protestant forebearers.⁹ Anticipating by a century the civil rights movement led by Martin Luther King, Jr., and others, Pennington advocated primarily nonviolent resistance against racism and slavery.¹⁰ To

⁴ See *infra* notes 61-84 and accompanying text.

⁵ See *infra* notes 111-149 and accompanying text.

⁶ See *infra* notes 96, 272, 338 and accompanying text.

⁷ See *infra* notes 307-316 and accompanying text.

⁸ See *infra* notes 241-253, 366-370 and accompanying text.

⁹ See *infra* notes 64-82 and accompanying text.

¹⁰ See *infra* notes 285-332 and accompanying text.

combat racism, he led sit-ins, lawsuits, political protests, and scholarly refutations of popular prejudices.¹¹ He worked assiduously for the abolition of the institution of slavery and for the emancipation and escape of individual slaves. He sold much of his property and collected donations from others in an effort to ransom his family.¹² He led initiatives to promote temperance, education, family stability, missionary work, and charity among free and enslaved blacks in the United States, Africa, and the West Indies.¹³ And as an elected leader of the World Antislavery Society, he mounted pulpits, lecterns, and soapboxes on both sides of the Atlantic, pleading for the rights and liberties of all—especially for African Americans, slave and free.¹⁴

Pennington's abolitionist speeches, first in London in 1843¹⁵ and later in Paris in 1849,¹⁶ caught the appreciative ear of Heidelberg jurist, philosopher, and literary figure Friedrich Wilhelm Carové, himself something of a liberal freedom fighter. Carové thus took the bold step of recommending Pennington for an honorary doctorate in theology.¹⁷ "The University of Heidelberg," he wrote to his colleagues, "was the first to confer this honor upon a Jew (Spinoza)," as a standing rebuke to many centuries of pogroms, expulsion, persecution, and slaughter of Jewish people.¹⁸ "The university was the first to establish a chair for natural and human rights," he continued, to counter the many centuries of church and state absolutism that so abused the people.¹⁹ And now, Carové argued to his colleagues, this great German university should again be the "first to confer the doctoral degree . . . on this mistreated and despised North American" James Pennington and, by lifting him up, help Europe begin to "atone for the terribly heavy guilt for [abusing] the wretched sons of Africa, who for centuries have been robbed of their most sacred human rights."²⁰

¹¹ See *infra* notes 297-332 and accompanying text.

¹² See *infra* notes 280-284 and accompanying text.

¹³ See *infra* notes 60-61, 101, 329-332, 373-376 and accompanying text.

¹⁴ WEBBER, *supra* note 1, at 186.

¹⁵ *Id.*

¹⁶ *Id.* at 255.

¹⁷ See a facsimile of the original diploma with translation of the dedication in THOMAS, *supra* note 1, at 179-86.

¹⁸ *Id.* at 186.

¹⁹ *Id.*

²⁰ *Id.* at 185.

This principle of “sacred human rights” animated Pennington’s mature efforts to abolish chattel slavery and to purge the racism that marked American society. Pennington’s understanding of “sacred human rights” came directly from the Protestant tradition of rights, resistance, and revolution that he absorbed in his Presbyterian training and ministry. He portrayed the sixteenth-century Reformation movement in Germany and the abolitionist cause in America as part of the same providential movement from slavery and tyranny toward liberty and justice, from a national “covenant with death” to a natural covenant with life. Like the Protestant revolutionaries before him, Pennington viewed conscience as the “mother of all rights.” Like the black church civil rights leaders after him, Pennington viewed Christian faith as the “soul fire” of the human rights movement. As such, Pennington stands as a fulcrum between Martin Luther and Martin Luther King.

I. EARLY BIOGRAPHICAL ORIGINS OF PENNINGTON’S THEORY OF HUMAN RIGHTS

A. The Cruelty of Slavery

James Pennington’s theory of human rights was born, in part, out of his bitter personal experience with slavery. In his 1849 autobiography, *The Fugitive Blacksmith*, he recounts the abuses and indignities that led him to “steal himself” from his master and flee North.²¹ It began with the commercial “business of breeding slaves” which was built on “the primary law of slavery . . . that the child shall follow the condition of the mother,” however that child was conceived.²² Each slave was viewed as a singular item of property that could be bought, sold, leased, gifted, or moved at the master’s discretion, without regard to a slave’s family ties. Pennington’s master, Frisby Tilghman, in fact, gifted the four-year-old Pennington, his mother, and his older brother to his newly wedded son, and the newlyweds promptly moved to another county with their new slaves in tow. So “began the first of our family troubles that I knew anything about,”

²¹ JAMES W.C. PENNINGTON, *THE FUGITIVE BLACKSMITH, OR, EVENTS IN THE HISTORY OF JAMES W.C. PENNINGTON, PASTOR OF A PRESBYTERIAN CHURCH, NEW YORK, FORMERLY A SLAVE IN THE STATE OF MARYLAND, UNITED STATES* (London: Charles Gilpin 2d ed. 1849).

²² *Id.* at 1-2.

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Pennington recounts, “as it occasioned a separation between my mother and the only two children she then had, and my father, to a distance of about two hundred mile[s].”²³ Pennington’s new owner later purchased his father and consequently reunited the family. Yet slavery continued to wreak havoc on Pennington and his family, for it prevented his parents from fulfilling their natural duties to care for their children.

My parents were not able to give any attention to their children during the day. I often suffered much from *hunger* and other similar causes. To estimate the sad state of a slave child, you must look at it as a helpless human being thrown up on the world without the benefit of its natural guardians. It is thrown into the world without a social circle to flee to for hope, shelter, comfort, or instruction. The social circle, with all its heaven-ordained blessings, is of the utmost importance to the *tender* child; but of this, the slave child, however tender and delicate, is robbed.²⁴

Slavery not only robbed young Pennington of parental care, but also left him and other slave children vulnerable to the cruelty of the master’s children and overseers. Though similar in age to his master’s sons, Pennington and his fellow slave children “were not only required to recognize these young sirs as our young masters, but *they* felt themselves to be such; and, in consequence of this feeling, they sought to treat us with the same air of authority that their father did the older slaves.”²⁵ Worse were the plantation overseers. Charged with managing and disciplining all the slaves, Tilghman’s overseers took “pleasure in torturing the children of slaves, long before they are large enough to be put at the hoe, and consequently under the whip.”²⁶ One “extremely cruel” overseer named Blackstone severely flogged young Pennington. “From that [day], I lived in constant dread of that man; and he would show how much he

²³ *Id.* at 2.

²⁴ *Id.*

²⁵ *Id.* at 2-3.

²⁶ *Id.* at 3.

delighted in cruelty by chasing me from my play with threats and imprecations.”²⁷

It was even harder for Pennington to see his family members mistreated.²⁸ He was especially outraged when, as a teenager, he witnessed the severe beating of his father. “I was near enough to hear the insolent words that were spoken to my father, and to hear, see, and even count the savage stripes inflicted upon him,” he remembered.²⁹ That humiliating and infuriating scene steeled his opposition to slavery. “Let me ask any one of Anglo-Saxon blood and spirit, how would you expect a *son* to feel at such a sight?”³⁰ It was a crucial turning point in Pennington’s life and that of his entire family:

This act created an open rupture with our family – each member felt the deep insult that had been inflicted upon our head; the spirit of the whole family was roused; we talked of it in our nightly gatherings and showed it in our daily melancholy aspect. The oppressor saw this, and with the heartlessness that was in perfect keeping with the first insult, commenced a series of tauntings, threatenings, and insinuations, with a view to crush the spirit of the whole family. Although it was sometime after this event before I took the decisive step [to escape], yet in my mind and spirit, I never was a *Slave* after it.³¹

The natural integrity of the family—and the inherent dignity of each family member—would remain a lasting theme in Pennington’s thought.³² His father’s beating convinced Pennington that he could not

²⁷ *Id.*

²⁸ See James W.C. Pennington, [Untitled Report of Speech], MONTREAL WITNESS, Sept. 6, 1862, available at BAA, Doc. No. 25908: “No man was contented who saw his mother flogged, his sister violated, and his brothers sold on the auction block,” Pennington reflected.

²⁹ PENNINGTON, *supra* note 21, at 7.

³⁰ *Id.*

³¹ *Id.*

³² See *infra* note 40. See, e.g., [Record of Lecture Given by Pennington in England], ANTI-SLAVERY REP., June 28, 1843, available at BAA, Doc. No. 06951, at 1-2. (Slavery “originates in the dismemberment of those portions of the human family who have been long and cruelly disfranchised. The human family, taken as a whole, are like the body. Each

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continue to live in bondage. Yet even as this conviction grew stronger, relations between his family members and their master continued to deteriorate. “Our social state was now perfectly intolerable,” Pennington said of the weeks after his father’s beating. “We were on the eve of a general fracas,” as family members struggled to know how to respond and protect themselves from such manifest cruelty and injustice. Finally, one Saturday evening, Pennington recounted, “without counsel or advice from any one, I determined to fly.”³³ It was the first of his many conscientious acts of resistance against tyranny.

B. Liberation of Body, Mind, and Soul.

Pennington’s flight from slavery foreshadowed his later efforts to abolish slavery so much as possible by nonviolent means. Though fully convinced that he had the right to break his bonds and claim his freedom, Pennington remained troubled, both during and after his escape, by the deception and violence that his escape required. His master set a hefty two-hundred-dollar bounty on his head and Pennington was actively pursued as a fugitive as he made his way, largely by night and by backroads and trails, from the Maryland coast to the closest free state of Pennsylvania.³⁴ When periodically confronted by white slave catchers, Pennington spun lies to elude capture or fled by foot. Twice he was captured and held, but each time he broke free and escaped again.³⁵ “I had resolved upon a plan of operation,” Pennington later said of his decision to fight one of his pursuers, “to stop short, face about, and commence action; and neither ask or give quarters, until I was free or dead!”³⁶ But Pennington also regretted such thoughts and actions. When another slave catcher pursued him over a hill, he reflected: “Once more I thought of

class is a limb; every limb sustains its appropriate relation. Strike off a limb, and you injure the whole body. To treat any one class of the human family without a respect to the relationship they sustain, is to do injury to the entire body, and to diffuse pain throughout. Here is the exact position of that limb of the human family which I represent to-day. For hundreds of years it has been dismembered from the trunk, and hence mutual pain, mutual disease, mutual agony, mutual trouble throughout the whole body. Again, I ask, What is the remedy? It is direct, it is close, it is reasonable. Restore the dismembered limb.”)

³³ PENNINGTON, *supra* note 21, at 11.

³⁴ *Id.*

³⁵ *Id.* at 18-30.

³⁶ *Id.* at 26.

self-defense. I am trying to escape peaceably, but this man is determined that I shall not.”³⁷

Pennington ultimately justified such lies and violence as sins of necessity born of the natural right to self-defense.³⁸ But sins they remained in his mind at the time. Faced with the prospect of “200 lashes” for his escape and a lifetime of even harder bondage thereafter,³⁹ he instinctively defended himself—ready to fight to the death, if necessary. But Pennington was also aware that his conduct was judged by a transcendent moral law, which he resented having to break.

If you ask me whether I had expected before I left home, to gain my liberty by shedding men’s blood, or breaking their limbs? I answer, no! . . . If you ask me if I expected when I left home to gain my liberty by fabrications and untruths? I answer, no! my parents, slaves as they were, had always taught me, when they could, that “truth may be blamed but cannot be shamed” If you ask me whether I now really believe that I gained my liberty by those lies? I answer, no! I now believe that I should be free, had I told the truth; but, at that moment, I could not see any other way to baffle my enemies, and escape their clutches. The history of that day has never ceased to inspire me with a deeper hatred of slavery; I never recur to it but with the most intense horror at a system which can put a man not only in peril of liberty, limb, and life itself, but which may even send him in haste to the bar of God with a lie upon his lips.⁴⁰

These moral dilemmas and injustices became clearer to Pennington as he pursued his education. After crossing from Maryland into Pennsylvania, he was taken in by Quakers who gave him food, shelter, and paid work. They introduced him to literature, the Bible, astronomy, and mathematics. They taught him basic skills in reading and writing.⁴¹ He

³⁷ *Id.* at 23.

³⁸ For Pennington’s later theory of self-defense, see *infra* note 358.

³⁹ PENNINGTON, *supra* note 21, at 23.

⁴⁰ *Id.* at 29-30.

⁴¹ *Id.* at 40-44; see also WEBBER, *supra* note 1, at 35-37.

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would later describe this six-month stay with the Quakers as a bittersweet period of enlightenment. All this new reading opened his mind and imagination for the first time. But he also discovered the extent to which slavery had shackled not only his body but also his mind, stunting his educational preparation and intellectual development.

I now began to see, for the first time, the extent of the mischief slavery had done to me. Twenty-one years of my life were gone, never again to return, and I was as profoundly ignorant, comparatively, as a child five years old. This was painful, annoying, and humiliating in the extreme. Up to this time, I recollected to have seen one copy of the New Testament, but the entire Bible I had never seen, and had never heard of the Patriarchs, or of the Lord Jesus Christ. I recollected to have heard two sermons, but had heard no mention in them of Christ, or the way of life by Him. It is quite easy to imagine, then, what was the state of my mind, having been reared in total moral midnight; it was a sad picture of mental and spiritual darkness. As my friend poured light into my mind, I saw the darkness; it amazed and grieved me beyond description. Sometimes I sank down under the load, and became discouraged, and dared not hope that I could ever succeed in acquiring knowledge enough to make me happy, or useful to my fellow-beings.⁴²

Pennington would go on to become a renowned scholar, preacher, and teacher, but he always resented this lack of early education and the handicaps it imposed on him.

There is one sin that slavery committed against me, which I never can forgive. It robbed me of my education; the injury is irreparable; I feel the embarrassment more seriously now than I ever did before. It cost me two years' hard labour, after I fled, to unshackle my mind; it was three years before I had purged my language of slavery's idioms; it was four

⁴² PENNINGTON, *supra* note 21, at 43-44.

years before I had thrown off the crouching aspect of slavery; and now the evil that besets me is a great lack of that general information, the foundation of which is most effectually laid in that part of life which I served as a slave. When I consider how much now, more than ever, depends upon sound and thorough education among coloured men, I am grievously overwhelmed with a sense of my deficiency, and more especially as I can never hope now to make it up. If I know my own heart, I have no ambition but to serve the cause of suffering humanity; all that I have desired or sought, has been to make me more efficient for good. So far I have some consciousness that I have done my utmost; and should my future days be few or many, I am reconciled to meet the last account, hoping to be acquitted of any wilful neglect of duty; but I shall have to go to my last account with this charge against the system of slavery, "*Vile monster! thou hast hindered my usefulness, by robbing me of my early education!*"⁴³

Proper education for all people—black and white, slave and free, male and female alike—would become another abiding theme in Pennington's theory of human rights.⁴⁴ As he later put it, "The proud and selfish Anglo-Saxon seized upon the Negro to be used merely as a beast; but he was soon alarmed to find that he must undertake the difficult task of forging chains for a mind like his own . . . [F]rom that moment to the present, slavery has been literally A WAR OF MINDS."⁴⁵

⁴³ *Id.* at 56-57.

⁴⁴ See, e.g., James W.C. Pennington, *Common School Review – No. XI*, COLORED AM., June 26, 1841, available at BAP, Doc. No. 13372 ("Education is so desirable that every effort and sacrifice ought to be made by every one to diffuse it into the mass of our needy people every where."); James W.C. Pennington, *Common School Review – No. [illegible]*, COLORED AM., July 4, 1840, available at BAP, Doc. No. 12589; James W.C. Pennington, *From the Old 'Long Island Scribe'*, WKLY. ANGLO-AFR., Sept. 24, 1859, available at BAP, Doc. No. 9650. See, e.g., DAVID E. SWIFT, BLACK PROPHETS OF JUSTICE: ACTIVIST CLERGY BEFORE THE CIVIL WAR 211-14 (1989).

⁴⁵ JAMES W.C. PENNINGTON, THE COLOURED POPULATION OF THE UNITED STATES HAVE NO DESTINY SEPARATE FROM THAT OF THE NATION OF WHICH THEY FORM AN INTEGRAL PART: A LECTURE DELIVERED BEFORE THE GLASGOW YOUNG MEN'S CHRISTIAN ASSOCIATION AND ALSO BEFORE THE ST. GEORGE'S BIBLICAL, LITERARY, AND SCIENTIFIC INSTITUTE, LONDON 2, Congregational Library – Anti-Slavery Pamphlets (1850), available at BAP, Doc. No. 372.

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But “an increase in knowledge” brought with it “an increase in sorrow” for Pennington.⁴⁶ It first drove him to despair, but ultimately brought him to the Christian faith. After six months of residing with the Quaker family in Pennsylvania who first took him in, Pennington made his way to New York City in late 1828 or early 1829.⁴⁷ There he joined a Presbyterian community and continued his studies in Sunday schools and evening charity schools while working as a coachman.⁴⁸ The more he learned about the magnitude of the suffering of slaves, however, the more he lamented their plight and the guiltier he felt about his own newly claimed liberty. His indignation and despair led to a tortuous period of introspection and ultimately to a full-scale religious conversion.

The theme was more powerful than any my mind had ever encountered before. It entered into the deep chambers of my soul, and stirred the most agitating emotions I had ever felt. The question was, what can I do for that vast body of suffering brotherhood I have left behind. To add to the weight and magnitude of the theme, I learnt for the first time, how many slaves there were. The question completely staggered my mind; and finding myself more and more borne down with it, until I was in an agony; I thought I would make it a subject of prayer to God, although prayer had not been my habit, having never attempted it but once. I not only prayed, but also fasted. It was while engaged thus, that my attention was seriously drawn to the fact that I was a lost sinner, and a slave to Satan; and soon I saw that I must make another escape from another tyrant. I did not by any means forget my fellow-bondmen, of whom I had been sorrowing so deeply, and travailing in spirit so earnestly; but I now saw that while man had been injuring me, I had been offending God; and that unless I ceased to offend him, I could not expect to have his sympathy in my wrongs; and moreover, that I could not be instrumental in eliciting his

⁴⁶ *Ecclesiastes* 1:18.

⁴⁷ WEBBER, *supra* note 1, at 43-44; THOMAS, *supra* note 1, at 45.

⁴⁸ SWIFT, *supra* note 44, at 209.

powerful aid in behalf of those for whom I mourned so deeply.⁴⁹

True liberation, Pennington now believed, required not only release of the body from the shackles of slavery and of the mind from the perils of ignorance, but also redemption of the soul from its enslavement to sin.

Day after day, for about two weeks, I found myself more deeply convicted of personal guilt before God. My heart, soul and body were in the greatest distress; I thought of neither food, drink or rest, for days and nights together. Burning with a recollection of the wrongs man had done me – mourning for the injuries my brethren were still enduring, and deeply convicted of the guilt of my own sins against God. One evening, in the third week of the struggle, while alone in my chamber, and after solemn reflection for several hours, I concluded that I could never be happy or useful in that state of mind, and resolved that I would try to become reconciled to God.⁵⁰

Under the guidance of Presbyterian minister Samuel Cox, Pennington accepted the Christian faith. “I was brought to a saving acquaintance with Him, of whom Moses in the Law and Prophets” and the New Testament wrote at length.⁵¹ This was the God who brought his people out of literal slavery in Egypt into the promised land of Israel, Pennington noted.⁵² And this was the God who brings each person out of spiritual slavery to sin into the gracious presence of the church, the spiritual body of Christ on earth.⁵³ Pennington became a devoted Christian thereafter and worshipped in the Presbyterian church pastored by Rev. Cox.⁵⁴

⁴⁹ PENNINGTON, *supra* note 21, at 51-52.

⁵⁰ *Id.* at 53.

⁵¹ *Id.* at 54.

⁵² PENNINGTON, *supra* note 45, at 2.

⁵³ [Record of Lecture Given by Pennington in England], ANTI-SLAVERY REP., June 28, 1843, available at BAA, Doc. No. 06951, at 4.

⁵⁴ *Id.* at 54; see also WEBBER, *supra* note 1, at 50-52, 435, 441-42.

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Also in 1830, Pennington joined the abolitionist cause, “the great movement . . . of anti-slavery friends,” as he called them, including such notables as William Lloyd Garrison, Simeon Jocelyn, and Lewis Tappan.⁵⁵ He attended “those Conventions, where they came to make our acquaintance, and to secure our confidence in some of their preliminary labours.”⁵⁶ As he continued to establish and educate himself in the North, Pennington came to view American slavery as “more hideous than ever.”⁵⁷

I saw it now as an evil under the moral government of God – as a sin not only against man, but also against God. The great and engrossing thought with me was, how shall I now employ my time and my talents so as to tell most effectually upon this system of wrong! . . . Many, many lonely hours of deep meditation have I passed during the years 1828 and 1829, before the great anti-slavery movement. On the questions, What shall I do for the slave? How shall I act so that he will reap the benefit of my time and talents? . . . At length, finding that misery, ignorance, and wretchedness of the free coloured people was by the whites tortured into an argument for slavery; finding myself now among the free people of colour in New York, where slavery was so recently abolished; and finding much to do for their elevation, I resolved to give my strength in that direction . . . [so that each slave] may be speedily released from the pain of drinking a cup whose bitterness I have sufficiently tasted, to know that it is insufferable.⁵⁸

⁵⁵ ANTI-SLAVERY REP., *supra* note 53, at 54-57. On the wide variety of abolitionists, see the recent massive study and copious sources cited in MANISHA SINHA, *THE SLAVE'S CAUSE: A HISTORY OF ABOLITION* (2016).

⁵⁶ PENNINGTON, *supra* note 21, at 54-57.

⁵⁷ *Id.*

⁵⁸ *Id.* Pennington continued: “And well do I remember the great movement which commenced among us about this time, for the holding of General Conventions, to devise ways and means for their elevation, which continued with happy influence up to 1834, when we gave way to anti-slavery friends, who had then taken up the labouring oar. And well do I remember that the first time I ever saw those tried friends, [William Lloyd] Garrison, [Simeon] Jocelyn, and [Lewis] Tappan, was in one of those Conventions, where they came to make our acquaintance, and to secure our confidence in some of their preliminary labours.” *Id.* at 57.

Convinced that liberation of body, mind, and soul were interdependent, Pennington resolved to prepare himself for the vocation of minister and educator, and from that platform to join churches, schools, families, and abolitionist societies alike to fight for the emancipation, elevation, and equality of his fellow African Americans. Pennington thus immersed himself in his studies and, in 1834, won a teaching position at a local school for black children.⁵⁹ That same year, he enrolled in a two-year program of theological training at Yale to prepare for ordination in Presbyterian ministry.⁶⁰

II. PROTESTANT FOUNDATIONS OF RIGHTS, RESISTANCE, AND REVOLUTION AGAINST TYRANNY

Pennington would later call it “providential”⁶¹ that he had converted to Presbyterianism. This was a democratic form of Protestant Christianity born in sixteenth-century Scotland and prominent in nineteenth-century America. American Presbyterians, like most churches in Pennington’s day, were divided between proslavery and antislavery factions.⁶² Several strong black Presbyterian churches in the North were

⁵⁹ PENNINGTON, *supra* note 21, at 56; SWIFT, *supra* note 44, at 211.

⁶⁰ See, e.g., *Colored Ministers*, N. STAR, Apr. 7, 1848, available at BAP, Doc. No. 4191, at 8869: “He [Pennington] has ever secured the confidence and respect of the whole community, and has had one of the most orderly, respectable, and intelligent audiences that I ever knew. He is a sound theologian, a good self-made scholar, and a gentleman; aside from pastoral duties actively engaged, heart and hand, in temperance, education, anti-slavery, and all the reforms that tend to improve, refine, and elevate society.”). See other accounts in SWIFT, *supra* note 44, at 211-20.

⁶¹ James W.C. Pennington. *The Position and Duties of the Colored People: Or the Great Lessons to Be Learned from the Late Riotous Attack upon Them in New York*, NATIONAL PRINCIPIA, Aug. 24, 1863, available at BAA, Doc. No. 27335, at 9.

⁶² See Russell E. Hall, *An Outline History of the Presbyterian Church in America*, 26 J. PRESBYTERIAN HIST. SOC’Y 227 (Dec. 1948); J. Earl Thompson, Jr., *Slavery and Presbyterianism in the Revolutionary Era*, 54 J. PRESBYTERIAN HIST. (PRESBYTERIANS AND THE AMERICAN REVOLUTION: AN INTERPRETIVE ACCOUNT) 121 (Spring 1976); Mark A. Noll, *Presbyterian History, and the Civil War*, 89 J. PRESBYTERIAN HIST. 4 (Spring/Summer 2011); Jewel L. Spangler, *Proslavery Presbyterians: Virginia’s Conservative Dissenters in the Age of Revolution*, 78 J. PRESBYTERIAN HIST. 111 (Summer 2000); Irving Stoddard Kull, *Presbyterian Attitudes Toward Slavery*, 7 CHURCH HIST. 101 (June 1938); Walter B. Posey, *The Slavery Question in the Presbyterian Church in the Old Southwest*, 15 J.S.

firmly abolitionist, led by renowned ministers like Henry Highland Garnet.⁶³ The Presbyterian and related Protestant traditions offered Pennington a firm theological framework in which to ground his emerging arguments against slavery and his early beliefs that church, family, and school were essential institutions for the liberation of body, mind, and soul. Even more, this Protestant tradition provided Pennington with a powerful theory of rights, resistance, and revolution against spiritual and political tyranny, which he adopted and then adapted into a theory of nonviolent resistance against the domestic tyranny of slavery.

The idea of rights, resistance, and revolution against any form of tyranny, of course, was no Presbyterian or Protestant invention. This idea had ancient Greek and Roman roots and grew into whole forests of Catholic, Protestant, and Republican thought by early modern times.⁶⁴ Drawing on this tradition in 1517, Martin Luther (1483-1546), the first Protestant reformer, led a revolution against the spiritual tyranny of the pope and the “Babylonian captivity of the church” by Rome.⁶⁵ Through false doctrines and abusive canon laws, Luther charged, the pope and

HIST. 311 (Aug. 1949); Jennifer Oast, “*The Worst Kind of Slavery*”: *Slave Owning Presbyterian Churches in Prince Edward County, Virginia*, 76 J.S. HIST. 867 (Nov. 2010); Daniel Ritchie, *Radical Orthodoxy: Irish Covenanters and American Slavery, circa 1830-1865*, 82 CHURCH HIST. 812 (Dec. 2013); Jack P. Maddex, Jr., *Proslavery Millennialism: Social Eschatology in Antebellum Southern Calvinism*, 31 AM. Q. 46 (Spring 1979); MATTHEW ANDERSON, PRESBYTERIANISM: ITS RELATION TO THE NEGRO (1897).

⁶³ See Pennington, *supra* note 61, at 12-14. For studies of African-American Presbyterian churches and figures see also GAYRAUD S. WILMORE, BLACK & PRESBYTERIAN: THE HERITAGE AND THE HOPE (1983); David E. Swift, *Black Presbyterian Attacks on Racism: Samuel Cornish, Theodore Wright and Their Contemporaries*, 51 J. PRESBYTERIAN HIST. 433 (Winter 1973); Moses N. Moore, Jr., *Righteousness Exalts a Nation: Black Clergymen, Reform, and New School Presbyterianism*, 70 AM. PRESBYTERIANS 222 (Winter 1992); Moses N. Moore, Jr., *Revisiting the Legacy of Black Presbyterians*, 84 J. PRESBYTERIAN HIST. 37 (Spring/Summer 2006); Timothy L. Smith, *Slavery and Theology: The Emergence of Black Christian Consciousness in Nineteenth Century America*, 41 CHURCH HIST. 497 (Dec. 1972).

⁶⁴ See, e.g., P.J. RHODES, THE GREEK CITY STATES: A SOURCEBOOK (2007); HAROLD J. BERMAN, LAW AND REVOLUTION: THE FORMATION OF THE WESTERN LEGAL TRADITION (1983); BRIAN TIERNEY, THE IDEA OF NATURAL RIGHTS: STUDIES ON NATURAL RIGHTS, NATURAL LAW, AND CHURCH LAW, 1150-1625 (1997); ROBERT M. KINGDON, GENEVA AND THE CONSOLIDATION OF THE FRENCH PROTESTANT MOVEMENT: A CONTRIBUTION TO THE HISTORY OF CONGREGATIONALISM, PRESBYTERIANISM, AND CALVINIST RESISTANCE THEORY (1967).

⁶⁵ MARTIN LUTHER, *The Babylonian Captivity of the Church (1520)*, in 36 LUTHER'S WORKS 11 (Helmut T. Lehmann ed., A.T.W. Steinhäuser trans., Fortress Press, 1959); see *sources* in JOHN WITTE, JR., LAW AND PROTESTANTISM: THE LEGAL TEACHINGS OF THE LUTHERAN REFORMATION 53-65 (2002).

his clerical retinue had destroyed the liberty of the Gospel, tyrannized the Christian conscience, and deceived the German people on the pretext of controlling their salvation. Relying on the authority of scripture and individual conscience, Luther called on various magistrates to stand up and throw off this spiritual tyrant for the sake of “the freedom of the Christian.”⁶⁶

After 1550, some Protestants further revolted against political tyrants as they faced inquisitions and genocides that killed their coreligionists by the tens of thousands from the later sixteenth century onward. In particular, Lutherans in Magdeburg and Calvinists in France, the Netherlands, Scotland, England, and North America went from turning cheeks to swinging swords against their oppressors. And they used their writing desks and pulpits to work out a logic of rights, resistance, and revolution that had become a Presbyterian and broader Protestant commonplace by the time Pennington opened his theological tracts.⁶⁷

This Protestant logic built in part on the familiar legal doctrine of legitimate self-defense. Defense of oneself and of third parties against attack, using proportionate, even deadly force and violence when necessary was an ancient legal teaching.⁶⁸ The law of resistance to tyranny is the law of self-defense writ large. When a magistrate exceeds his authority, he forfeits his office and becomes like any other private person. His victims and third parties alike may resist him, passively or actively, just as if he were any other criminal thug.⁶⁹

Presbyterians and other Protestants also drew in the biblical idea of covenants, which they cast into a Christian social and government contract theory.⁷⁰ The political government of each community, they argued, is formed by a three-way covenant between God, the rulers, and the people, modeled in part on ancient biblical covenants. By this covenant, God agreed to protect and bless the rulers and the people in return for their proper obedience to the laws of God and nature. The rulers

⁶⁶ MARTIN LUTHER, *The Freedom of a Christian* (1520), in 31 LUTHER'S WORKS 327, 327-377 (W.A. Lambert, trans.).

⁶⁷ See detailed sources and discussion in JOHN WITTE, JR., *THE REFORMATION OF RIGHTS: LAW, RELIGION, AND HUMAN RIGHTS IN EARLY MODERN CALVINISM* (2007).

⁶⁸ See, e.g., Johannes Althusius's theory of self-defense as informed by historical legal and theological precedents in WITTE, *supra* note 67, at 168-169.

⁶⁹ *Id.* at 200.

⁷⁰ *Id.* at 7-35, 85-89, 124-154, 185-291.

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agreed to honor these higher laws and protect the people's essential rights, particularly those rights rooted in the Bible. The people agreed to exercise God's political will for the community by electing and petitioning their rulers and by honoring and obeying them so long as the rulers honored God's law and protected the people's rights. If any of the people violated the terms of this political covenant and became criminals, the ruler could properly prosecute and punish them—and sentence them to death in extreme cases. In turn, if any of the rulers violated the terms of the political covenant and became tyrants, they could be properly resisted and removed from office—and sentenced to death in extreme cases if convicted. The remarkable trial and execution of King Charles I of England in 1649 was a textbook example of this stern Calvinist resistance logic in action.⁷¹ But if the tyrant refused to leave or could not be tried and persisted in tyranny, the lower magistrates were to organize and direct the people in revolt, including all-out revolution if needed to unseat this tyrant.⁷²

Early-modern Protestants largely accepted the enumerated lists of rights and liberties (*iura et libertates*) set out in classical Roman law and expanded in medieval and early-modern laws.⁷³ But they rearranged, prioritized, and expanded this roll of rights, in part, on the basis of the Bible. The most important rights, they reasoned, were the religious rights of “liberty of conscience” and “free exercise of religion.”⁷⁴ After all, persons are created first and foremost as subjects and ambassadors of God and called to honor God above all else. The Ten Commandments enjoined them to worship God, to observe the Sabbath, and to avoid blasphemy and idolatry.⁷⁵ The New Testament ordered them to “obey God rather than men.”⁷⁶

⁷¹ THE TRIAL OF CHARLES I: A DOCUMENTARY HISTORY (David Lagomarsino and Charles T. Wood ed., 1989); NOEL H. MAYFIELD: PURITANS AND REGICIDE: PRESBYTERIAN-INDEPENDENT DIFFERENCES OVER THE TRIAL AND EXECUTION OF CHARLES I STUART (1989).

⁷² THEODORE BEZA, CONCERNING THE RIGHTS OF RULERS OVER THEIR SUBJECTS AND THE DUTIES OF SUBJECTS TOWARD THEIR RULERS 27, 36-38, 72-74 (Henri-Louis Gonin, trans. 1956).

⁷³ See sources and discussion in CHRISTIANITY AND HUMAN RIGHTS: AN INTRODUCTION 20-23, 64-80 (John Witte, Jr. & Frank S. Alexander eds., 2010); 1 CHRISTIANITY AND FREEDOM (Allen Hertzke & Timothy Shah eds., 2016).

⁷⁴ WITTE, *supra* note 67, at 45-48, 128-29, 140-41, 170-76, 226-35, 303-07.

⁷⁵ Exodus 20:1-11.

⁷⁶ Acts 5:29.

In practice, it became clear that protecting religious rights and duties required the protection of several other correlative rights, especially in contexts where Protestants were persecuted minorities. An individual's right to religious freedom, for example, required attendant rights to assemble, speak, worship, evangelize, educate, marry, parent, travel, and more. The rights of the religious group to worship and govern itself as an ecclesiastical polity required attendant rights to legal personality, corporate property, collective worship, organized charity, parochial education, freedom of the press, freedom of contract, freedom of association, and more. And both individuals and groups had to live by many other biblical commandments that set out the rights and duties of life, liberty, property, marriage, family, household, sanctuary, relief for the poor, charity, education, and more.⁷⁷ By the 1560s, Calvinist writers began calling all these rights "essential," "unalienable," and "fundamental."⁷⁸ The chronic and pervasive breach of these rights by a magistrate, they reasoned, triggered the basic right and duty of the people, through appropriate means and channels, to resist or even to revolt.

This Protestant logic had driven French, Dutch, Scottish, and English revolutionaries in the sixteenth and seventeenth centuries to throw off their tyrannical oppressors in protection of their fundamental rights.⁷⁹ It was in part to that same tradition that early American revolutionaries appealed when they called their countrymen to arms against British tyranny.⁸⁰ While seventeenth-century American colonists had

⁷⁷ WITTE, *supra* note 67, at 45-48, 128-29, 140-41, 170-76, 226-35, 303-07.

⁷⁸ See, e.g., CHRISTOPHER GOODMAN, *HOW SUPERIOR POWERS OUGHT TO BE OBEYED* (1558) 52-53, 74-76, 97-99, 142, 160-61 (fasc. ed. Charles H. McIlwain, 1931); WITTE, *supra* note 67, at 169-81 (describing the detailed rights theory of Johannes Althusius).

⁷⁹ See MICHAEL WALZER, *THE REVOLUTION OF THE SAINTS: A STUDY IN THE ORIGINS OF RADICAL POLITICS* (1965); 1 AND 2 R.R. PALMER, *THE AGE OF THE DEMOCRATIC REVOLUTION* (1959-1964); JOHN W. SAP, *PAVING THE WAY FOR REVOLUTION: CALVINISM AND THE STRUGGLE FOR A DEMOCRATIC CONSTITUTIONAL STATE* (2001); DAVID T. BALL, *THE HISTORICAL ORIGINS OF JUDICIAL REVIEW, 1536-1803: THE DUTY TO RESIST TYRANNY* (2005).

⁸⁰ HARRY S. STOUT, *THE NEW ENGLAND SOUL: PREACHING AND RELIGIOUS CULTURE IN COLONIAL NEW ENGLAND* (Oxford 1986, 2012); NATHAN O. HATCH, *THE SACRED CAUSE OF LIBERTY: REPUBLICAN THOUGHT AND THE MILLENNIUM IN REVOLUTIONARY NEW ENGLAND* (1977); James H. Smylie, *Presbyterians and the American Revolution*, 52 *J. PRESBYT. HIST.* 299-488 (1974).

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viewed themselves as the New Israel set on an “errand into the wilderness”⁸¹ after escaping bondage in old England, eighteenth-century Americans saw themselves as the old Israelites shackled in another house of bondage. Like the ancient pharaohs, they preached, modern British kings were systematically breaking the laws of nature and nature’s God and breaching the fundamental rights and liberties of God’s people in America. Like the ancient Israelites led by Moses, the new American colonies had to break these bonds of political tyranny so that they could exercise their rights and duties in service of God, neighbor, and self. “Rebellion to tyrants is obedience to God,” the American revolutionaries argued.⁸²

III. HUMAN RIGHTS AND NONVIOLENT RESISTANCE IN PENNINGTON’S THOUGHT

A. Liberty of Conscience and Human Rights

James Pennington discovered a deep “elective affinity”⁸³ with this Protestant tradition as he immersed himself in Presbyterian theology and abolitionist advocacy. As he put it in a later sermon:

The Reformation was a contest for the rights of the people in matters of religion and conscience From his monkish apartments Luther looked out upon the moral state of his countrymen. He beheld them without the word of God. He assumed it to be the right of every man to have and to read God’s Holy Word Luther was especially prompted by his conscience to oppose slavery, whether physical, mental,

⁸¹ Title of SAMUEL DANFORTH, *A BRIEF RECOGNITION OF NEW-ENGLANDS ERRAND INTO THE WILDERNESS* (1671), discussed in PERRY MILLER, *ERRAND INTO THE WILDERNESS* (1956).

⁸² See representative texts in *POLITICAL SERMONS AND THE AMERICAN FOUNDING ERA, 1730-1805*, at 559-656 (Ellis Sandoz ed., 1991); *PURITAN POLITICAL IDEAS, 1558-1794*, at 304-92 (Edmund S. Morgan ed., Hackett Pub’g Co. reprt. ed. 2003) (1965); JOHN WINGATE THORNTON, *THE PULPIT OF THE AMERICAN REVOLUTION* (2d ed. 1876).

⁸³ The term “elective affinity” (or *Wahlverwandtschaft*) is drawn from the work of Max Weber and is used here to describe the fit between Pennington’s worldview, experiences, and interests and the Protestant legal and theological traditions that he adopted after his escape from slavery. See MAX WEBER, *The Social Psychology of the World Religions*, in *FROM MAX WEBER: ESSAYS IN SOCIOLOGY* 284-85 (H.H. Geertz & C. Wright Mills eds. & trans., 1946); Richard Herbert Howe, *Max Weber’s Elective Affinities: Sociology Within the Bounds of Pure Reason*, 84 *AM. J. SOC.* 366 (1978).

or religious. It mattered not to him whether the rights of man were attacked by the Pope, Emperor or Civilian; he resisted that attack upon the authority of his conscience in the fear of God alone. Liberty of conscience he claimed as the birthright of man.⁸⁴

Pennington, too, laid claim to this birthright for himself and all others. Pennington's earliest discussions of conscience centered on the human "intellect." All human beings, regardless of skin color or social status, are set apart from all animals by being created not only with instincts but also with an intellect, or the capacity to reason.⁸⁵ The intellect can be cultivated or neglected, refined or rudimentary, he recognized. But its basic presence in each person is "fixed by the God of his nature" and is "identical in all human beings."⁸⁶ The intellect gives humans their unique ability to reason and reflect. It further vests them with the moral capacity to understand and adhere to God's moral laws. God is the "moral governor of the world," Pennington insisted, who has "given a law for the government of moral agents."⁸⁷ "His fixed and irrevocable law is the supreme law of earthly rule and empire. Call it the law of nature—the law of nations, or by what name we may, yet still it is there fixed"⁸⁸ and binding on all people.⁸⁹

⁸⁴ James W.C. Pennington, *The Government of God Over Nations; Its Evidences; and the Manner in Which it Affects Individuals*, in MINUTES OF THE SEVENTH ANNUAL MEETING OF NEW YORK CENTRAL COLLEGE ASSOCIATION . . . TOGETHER WITH THE GENERAL AGENT'S REPORT, JULY 11, 1856, available at BAA, Doc. No. 15370, at 7.

⁸⁵ See JAMES W.C. PENNINGTON, A TEXT BOOK OF THE ORIGIN AND HISTORY . . . OF THE COLORED PEOPLE 59-64 (Hartford, Conn.: L. Skinner 1841); see also *id.* at 55 ("A mere animal is not a man because it has no intellect, and it never can be identical with man because it cannot be, by any possible process, supplied with intellect. If I am required to say what I intend by intellect, I reply, I mean those powers of the human soul, as distinct from mere instinct, which alone enable man to reason and reflect. Now if the absence of intellectual intelligence in the brute constitutes the difference between man and brute, then the intellectual intelligence cannot be predicable of a brute or mere animal in any possible degree. And if the possession of intellectual intelligence be that thing which raises man above the brute or mere animal, this must be the dividing line; nor can we conceive of more than one such line.").

⁸⁶ *Id.* at 54.

⁸⁷ *Id.* at 65.

⁸⁸ Pennington, *supra* note 84, at 3-4.

⁸⁹ See PENNINGTON, *supra* note 85, at 68 ("Does it matter in the sight of God and in His dispensation of rewards and punishments, whether [a person is from] Africa, Asia, Europe

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In his later work, Pennington also emphasized God's role in informing and animating the human "conscience." Adducing common Presbyterian teachings that "God alone is the Lord of man's conscience,"⁹⁰ Pennington treated conscience as a conduit through which God providentially guides and governs individuals' perceptions and actions, as well as history itself. This exercise of divine authority through the conscience, he insisted, precedes and preempts the authority of parents, pastors, or political magistrates in each person's life.

The conscience is God's viceregent in the soul of man. He, as the all-wise author of our being, has furnished us with this faculty of judging. As an original faculty it must be under the immediate control of God. God appealed to this faculty and predicated man's duty upon it before the fall; and again even immediately after the fall, and before man had become amenable to any other authority. . . . Thus, it is evident that the higher and more sacred duties of man grow out of the fact that God controls his conscience by direct influences brought to bear upon it. We have no philosophy which will just exactly describe the *modus operandi* of the influence of God upon the inward man. But the fact is clear that such an influence there is. Every conscience responds to the judgments of God in matters of man's duty. Even men have this experience. Saul had it. Ahab had it. David had it. Man in every state is subject to these impressions. Through this faculty God constantly enforced the duty of obedience to Himself. That which may be known of God is manifest in them, for God hath shown it unto them.⁹¹

or America? Does God slacken his hand upon the idolatrous colored man? Does the sword of justice fall more lightly upon him for his sin of idolatry than upon the European, or upon the American? Nay his law 'is truth,' Psalm cxix. 142, and 'the Judge of all the earth does right.' Gen. xviii. 25.")

⁹⁰ THE WESTMINSTER CONFSSION OF FAITH, sect. 20.2, p. 34 (2017); see also James W.C. Pennington, *Letter to Frederick Douglass*, FREDERICK DOUGLASS' PAPER, May 4, 1855, available at BAP, Doc. No. 7227, at 16521-22 ("I recognize no Lord of my of conscience but God only. Slave born, thou I be, I am fully awake to the right of private judgment.")

⁹¹ Pennington, *supra* note 84, at 5-6.

Pennington followed Protestant convention in viewing liberty of conscience as the natural corollary to the sovereignty of God. It is the liberty not merely to do as one wishes but to do as God commands. In practice it requires the right to discharge one's spiritual duties: to worship God, to honor God's name, to observe the Sabbath, to avoid idolatry and blasphemy, and to enjoy the "free exercise of religion" as one's heart, mind, and Scripture commanded.⁹² It also includes the right to discharge one's moral duties towards neighbors: to respect a neighbor's life, property, reputation, family, household, and business; to hearken to that "voice from the inner man directing, ordering and commanding, and enforcing justice to man."⁹³ The moral laws of God, revealed to and through the human conscience, are prior in time and superior in authority to the laws of the family, church, state, or society. The individual conscience thus communicates one's God-given rights, status, and duties as a human being, thereby relativizing the authority of institutions and persons who might infringe on one's rights, deny one's dignity, or impede one's fulfillment of moral and religious duties.

Pennington further followed Protestant convention in seeing liberty of conscience as the wellspring of "individual rights under the government of God."⁹⁴ Like the duties that flowed from conscience, these rights, too, Pennington argued, are prior in time and superior in authority to the laws of any government.⁹⁵ "Liberty of conscience is natural to every human being," Pennington explained.

Conscience claims and exercises free speech. It tells man that he has a right to be, and to be free. It tells him that he has a right to have a lawful wife and children. It tells him that he has a right to enjoy, and have these in a state of freedom. That such are the convictions of the slave's conscience is obvious by the achievements made by the fugitive slave . . .

⁹² *Id.* at 3-4.

⁹³ *Id.* at 7. The text continues: "This voice condemns all injustice, fraud and wrong, no matter whether sanctioned by legislation or not." *Id.*

⁹⁴ Pennington, *supra* note 84, at 8.

⁹⁵ JAMES W.C. PENNINGTON, COVENANTS INVOLVING MORAL WRONG ARE NOT OBLIGATORY UPON MAN: A SERMON DELIVERED FOR THE FIFTH CONGREGATIONAL CHURCH, HARTFORD, ON THANKSGIVING DAY, NOV. 17TH, 1842 (Hartford, Conn.: John C. Wells 1842), available at BAP, Doc. No. 421.

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. . . Every human being has a right to be, and to act as such. To possess life, liberty, and to pursue happiness. This right is given by the author of man's being – God; and it cannot be taken away by any power in the world Man made in the image of God is an object of God's love and regard. The happiness of man is an object of God's government; the greatest amount of happiness to the greatest number of HIS creatures.⁹⁶

Elsewhere, Pennington included the “freedom of thought,” “the right of private judgment,”⁹⁷ and “personal liberty among the inalienable rights of all men.”⁹⁸ “Any man, or body of men, who attempts to invade that sacred right, I must regard as the most dangerous of all men.”⁹⁹ Pennington also defended the universal right of every human being to learn and to educate their children in school and prepare them for their proper vocation.¹⁰⁰ He insisted on the natural right of all human beings to pursue

⁹⁶ Pennington, *supra* note 84, at 8-9. A year before, Pennington defended strongly his right as a preacher and abolitionist to speech: “You will, therefore, appreciate me when I say, that I feel indignant at the thought of asking any man or party of men to endorse my abolitionism. I ask no man what opinions I shall hold and advocate in my pulpit, and on the public platform, on the question of immediate and gradual emancipation. – The right of the slave to take boats, horses, money, and even lives in order to secure his freedom – the right of others to help him in defiance of the Fugitive Slave Law – the obligation of government to compensate slaveholders as an effective inducement to give up their slaves – the propriety of redeeming the poor fugitive who has been captured, or who is in danger of being arrested – the inconsistency of professed abolitionists trading in slave grown Cotton, Rice, Sugar, &c., for gain and luxury – that sort of communion with man-stealers in the counting room which makes millionaires by scores annually; my views upon these and kindred subjects, connected with American Slavery, sir, are neither bought nor borrowed from any class of men – I inherit them from the bosom of my dear enslaved mother, and as I love her memory, I will stand by them till I die If the time has come, when colored men are to be persecuted for freedom of opinion in regard to their own cause, let us know it, and let us prepare for an open and manly fight.” James W.C. Pennington, *Letter from Rev. Dr. Pennington*, FREDERICK DOUGLASS' PAPER, Feb. 23, 1855, *available at* BAP, Doc. No. 7210.

⁹⁷ Pennington, *supra* note 90.

⁹⁸ PENNINGTON, *supra* note 95, at 8.

⁹⁹ Pennington, *supra* note 90.

¹⁰⁰ James W.C. Pennington, *The Self-Redeeming Power of the Colored Races of the World*, ANGLO-AFR. MAG., Oct. 1859, *available at* BAP, Doc. No. 10609; PENNINGTON, *supra* note 85, at 59-64; PENNINGTON, *supra* note 45, at 11-14; [Lecture Summary], WKLY. ANGLO-AFR., Oct. 15, 1859, *available at* BAA, Doc. No. 21204; *see also* James W.C. Pennington, *Who Will Go and Do Likewise?*, CHRISTIAN FREEMAN, Nov. 6, 1845, *available at* BAP, Doc. No. 4759 (“Our colored churches have settled one great question, namely,

meaningful voluntary work and to enjoy the fruits of their own labor. “The right to labor, earn wages, and dispose of our earnings for the support of our families, the education of our children, and to support religious institutions of our free choice, is inherent.”¹⁰¹ He defended every person’s right “to write, speak, and publish his own thoughts, views, reviews, assents, dissents, beliefs and disbeliefs, subject only to constitutional liabilities under due process of law.”¹⁰² He spoke briefly of the rights of men, women, and children alike.¹⁰³ And Pennington repeatedly called for the right to universal suffrage for all adults and the right to hold public office.¹⁰⁴ “If a man born in a country was bound to protect and provide for his family circle, he should have his voice heard in the assembly. They

that colored men may be eminently pious and useful as Christians. The question is now, what is the next step in the onward course of colored men? I answer, sound scholarship. What next? Sound scholarship. And what next? Sound scholarship. I do not care how they obtain it. It will be all the same if they have to obtain it by studying in caves as some of the primitive scholars did. – But I say, by all means, we must have scholarship.”). See Pennington, *supra* note 61 at 8-9 (“The right to labor, earn wages, and dispose of our earnings for the support of our families, the education of our children, and to support religious institutions of our free choice, is inherent. No party, or power, in politics, or religion, can alienate this right. . . . Let us place our daughters, and younger sons in industrial positions, however humble; and secure openings where they may be usefully employed. Every father, and every mother may be of service, not only to their own children, but also to those of others. You will have many applications for “colored help.” Be useful to applicants. Prepare your sons and daughters for usefulness, in all the branches of domestic labor and service. 4th. Let our able bodied men go into the United States service. There is no better place for them. If I had a dozen sons, I would rather have them in the United States army and navy, than to have them among our loose population.”); and Pennington, *supra* note 44, *Common School Review No. XI*, (“Education is so desirable that every effort and sacrifice ought to be made by everyone to diffuse it into the mass of our needy people every where.”).

¹⁰¹ Pennington, *supra* note 61, at 8-9 (“We must enter into a solemn free colored protestant industrial or labor league. Let the greedy foreigner know that a part of this country BELONGS TO US . . . that WE ARE TO HAVE ALL OUR RIGHTS AS MEN AND AS CITIZENS, AND, THAT THERE ARE TO BE NO SIDE ISSUES, NO RESERVATIONS, either political, civil, or religious. In this struggle we know nothing but God, Manhood, and American Nationality, full and unimpaired. The right to labor, earn wages, and dispose of our earnings for the support of our families, the education of our children, and to support religious institutions of our free choice, is inherent. No party, or power, in politics, or religion, can alienate this right.”).

¹⁰² James W.C. Pennington, *Circular Letter*, ANGLO-AFRICAN, Dec. 23, 1865, available at BAP, Doc. No. 14232, at 30016.

¹⁰³ *Id.*

¹⁰⁴ [Summary of Speech], LEEDS MERCURY, August 5, 1843, available at BAP, Doc. No. 07016; James W.C. Pennington et al., *To the Good People of Connecticut: Soul or Skin*, PA. FREEMAN, Oct. 7, 1847, available at BAP, Doc. No. 1472, at 8865-67.

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should all be heard at the ballot-box.”¹⁰⁵ “The monopoly of suffrage was an insult to common sense – that it was an offence in the sight of God, and an oppression to man – and it ought to be abolished, and swept from the face of the earth.”¹⁰⁶

“Which is the basis of human rights?” Pennington asked himself rhetorically in 1847.¹⁰⁷ He never fully answered that question beyond gesturing to the Bible, human nature, the family, common sense, and constitutional declarations and traditions of rights. Nor did he lay out a comprehensive account of all the rights advocated for or protected in his day. The basic rights and liberties that were foreclosed to American slaves and to African Americans more generally drew most of his attention. What he insisted on, however, was that God has given all humans various “high and holy rights, which every instinct of human nature and every sentiment of manly virtue bid us to preserve and to protect to the full extent of our ability.”¹⁰⁸ These “God-bestowed rights are common to all men. They may be invaded, but man never surrenders them. They may be impaired by oppressive legislation, but they are never abandoned. If misfortune ever snatches them from his embrace, the prompting of his conscience moves him to recover them.”¹⁰⁹

B. Tyranny, Slavery, and Revolution.

Since “the days of immortal Luther,” Pennington continued, many Protestant revolutionaries have fought for human rights rooted in liberty of conscience.¹¹⁰ Seventeenth-century Presbyterians led “the twenty-eight years’ struggle between England and Scotland” for fundamental rights that King James and King Charles had so blatantly violated.¹¹¹ New England Puritan revolutionaries helped drive “the seven years’ struggle between Britain and the thirteen colonies” in America.¹¹² Indeed the

¹⁰⁵ *Complete Suffrage Soiree in Finsbury*, NONCONFORMIST, June 28, 1843, available at BAP, Doc. No. 8551. Also see BAA, Doc. No. 06949.

¹⁰⁶ *Id.*

¹⁰⁷ Pennington, *supra* note 104.

¹⁰⁸ James W.C. Pennington, *Call for a Colored National Convention*, FREDERICK DOUGLASS’ PAPER, May 20, 1853, available at BAP, Doc. No. 7585, at 14160.

¹⁰⁹ Pennington, *supra* note 84, at 8-9.

¹¹⁰ *Id.* at 9-10.

¹¹¹ *Id.*

¹¹² *Id.*

“whole world” was now “astir upon the great question of the liberty of conscience.”¹¹³ Much as God himself had “moved upon the face of the waters”¹¹⁴ at the outset to create a new world, God was now moving over “the dark waters of oppression” to create a new society.¹¹⁵ “God acting upon individual human consciences imposes the most powerful checks upon the movements of tyrants, despots and bigots,”¹¹⁶ Pennington urged. “A true patriot” in a just cause “must always feel that he owns and contends for property which God gave him, whether it be life, or liberty, or the pursuit of happiness. His greatest strength will be in the firm conviction that God is transacting his business. . . . When the hand of God is with us, we are strong, and when he shows us his will, in regard to our duties, we should be in earnest to do it.”¹¹⁷

The American revolutionaries had built their constitutional revolt and reconstruction on this tradition of rights, resistance, and revolution, Pennington continued.¹¹⁸ Indeed, the “brotherhood of the Human Family” is the “cardinal principle of true Democracy and of true Christianity.”¹¹⁹ The Declaration of Independence repeated the principle that “all men are born free and equal,”¹²⁰ making it the “fundamental maxim of the American republic.”¹²¹ It recited anew “certain truths concerning the rights of mankind universally, which in its own sense are as old as creation.”¹²² “The principles of the American declaration are not merely upon the parchment of ’76,” Pennington argued, “they are more sublimely engraved on the more durable parchment of the human mind; this is what

¹¹³ *Id.*

¹¹⁴ *Genesis* 1:1-3.

¹¹⁵ Pennington, *supra* note 84, at 10.

¹¹⁶ *Id.* at 7.

¹¹⁷ Pennington, *supra* note 61, at 14.

¹¹⁸ PENNINGTON, *supra* note 45, at 25. “The States took the ground that a sovereign has no right to exercise power in subversion of his legitimate authority, and consequently that all such acts were null and void—of no binding force. And for the justness of the sentiment, they appealed [in the Declaration of Independence] to the judgment of the civilized world; and to the JUDGE OF ALL, that doeth right.”

¹¹⁹ Arthur Tappan et al., *To the Friends of Liberty*. NAT’L ERA, July 6, 1848, available at BAP, Doc. No. 14891.

¹²⁰ PENNINGTON, *supra* note 95, at 5: The Declaration says that “every man is born free and endowed with LIBERTY.” This “truth has its foundation in the nature of God, of man, and also of things.”

¹²¹ PENNINGTON, *supra* note 45, at 25.

¹²² James W.C. Pennington, [Untitled Pamphlet], PRESSCOPY – YALE UNIVERSITY – ANTI-SLAVERY PAMPHLETS, August 1, 1839, available at BAA, Doc. No. 04137.

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makes these principles the living glory of every freeman on earth, and also the terror of tyrants.”¹²³

For all their revolutionary efforts against the *political* tyranny of England, however, many Americans remained largely blind to the *domestic* tyranny of their own governments. Blacks and whites, slaves and free, had fought shoulder to shoulder in the American Revolution, Pennington explained.¹²⁴ They were literally brothers-in-arms, carrying and caring for each other in the fight.¹²⁵ Yet “notwithstanding the star bespangled banner that they saw in their waters, notwithstanding all they heard of the Declaration of Independence and . . . the 4th of July orations,” Pennington argued, America soon betrayed its founding ideals.¹²⁶ While the Declaration of Independence proudly proclaimed that “all men are created equal, and endowed with certain unalienable rights,” the reality was that many Americans were treated as being fundamentally unequal and were systematically denied many of their God-given rights, including women and children, the unpropertied and indentured, Native Americans, and African Americans.¹²⁷ More brutally, slaves were denied rights

¹²³ *Id.* Pennington continued: “The enemy of human liberty may take such a paper parchment and put it in his nethermost pocket and claim that he has disposed of the case. The despot, I say, may take a paper parchment, deposit it in a shrine of iron, place the whole beneath the broad base of his throne, and challenge his subjects that they have no rights, but at his option; yet after this is done, those declarations engraven upon the living parchment of the human mind, will speak to the no small discomfiture of the tyrant’s mind. It was so with Nero of Rome. After he thought he had reduced the liberties of the Romans to a nut-shell, he still found such an opposition to his pretensions, that he could wish that the “Romans had but one neck,” so that he might despatch them at a blow. The principles of our declaration, then, are as firm as the throne of the Ancient of Days, and this republic may be called to “pass into the memory of things beyond the flood,” and leave them behind, unless she adhere to them in spirit.” *Id.*

¹²⁴ [Summary of Speech], FREDERICK DOUGLASS’ PAPER, Oct. 1, 1852, *available at* BAA, Doc. No. 13086, at 2.

¹²⁵ [Summary of speech on colonization], NAT’L ANTI-SLAVERY STANDARD, Jan. 22, 1852, *available at* BAA, Doc. No.12342, at 1-2.

¹²⁶ [Summary of Speech], LEEDS MERCURY, Aug. 5, 1843, *available at* BAA, Doc. No 07016, at 1. The full text reads: “Notwithstanding the star bespangled banner that they saw in their waters, notwithstanding all they heard of the Declaration of Independence, the celebrated document of ’76, notwithstanding the 4th of July orations, . . . notwithstanding all the pride of liberty that reigned in the American bosom, American was still a land of slavery.” For comparable sentiments a decade later in Frederick Douglass, see “What to the Slave is the Fourth of July” (July 5, 1852), *available at* <https://www.thenation.com/article/what-slave-fourth-july-frederick-douglass> (last visited Feb. 8, 2018).

¹²⁷ See, e.g., PENNINGTON, *supra* note 45, at 25 (“The fundamental maxim of the American republic [is] ‘That all men are born free and equal.’ If we [blacks], born in America, cannot

altogether, even the right to legal recognition as human beings as image-bearers of their Creator.¹²⁸ “We profess to be the freest nation in the world. We have the largest number of slaves of any nation in the world.”¹²⁹

Both southern states’ cruel slave codes¹³⁰ and the United States Constitution itself preserved and perpetuated the domestic tyranny of the chattel-slave system.¹³¹ The Constitution allowed the odious trans-Atlantic slave trade to continue for at least a generation, with cargoes of human beings carrying over twelve million Africans to the Americas, with three million more dying in passage.¹³² The Constitution’s infamous three-fifths compromise strengthened southern states’ political power by counting their slaves in calculating proportional representation in the United States Congress, even though slaves were discounted as mere chattel at home and under state law.¹³³ And the Constitution established the fugitive slave laws that required escaped slaves found in free states to be returned to their masters, reduced again to property that could be bought, sold, and leased; beaten, raped, and starved; worked, bred, and boarded like beasts; and foreclosed by state law from such basics of life as marriage, education, literacy, art, leisure, paid work, worship, church life, and more.¹³⁴

live upon the soil upon terms of equality with the descendants of Scotchmen, Englishmen, Irishmen, Frenchmen, Germans, Hungarians, Greeks, and Poles, then the fundamental theory of the American Republic fails, and falls to the ground; and the door once opened to kick out the people of colour, let others be prepared for their turn.”)

¹²⁸ See *supra* note 96, and *infra* note 272 (discussing denying the image of God in the slave).

¹²⁹ JAMES W.C. PENNINGTON, MINUTES OF THE SEVENTH ANNUAL MEETING OF NEW YORK CENTRAL COLLEGE ASSOCIATION . . . TOGETHER WITH THE GENERAL AGENTS REPORT: AND A SERMON . . . BY J.W.C. PENNINGTON (July 11, 1856), available at BAA, Doc. No. 15370, at 9-10 (“[E]xcept the *Brazilians*”).

¹³⁰ WILLIAM GOODELL, THE AMERICAN SLAVE CODE IN THEORY AND PRACTICE: ITS DISTINCTIVE FEATURES SHOWN BY ITS STATUTES, JUDICIAL DECISIONS AND ILLUSTRATIVE FACTS (1853); 1 AND 2 JOHN C. HURD, THE LAW OF FREEDOM AND BONDAGE IN THE UNITED STATES (1858-62).

¹³¹ PENNINGTON, *supra* note 95, at 5-6.

¹³² DAVID ELTIS AND DAVID RICHARDSON, ATLAS OF THE TRANSATLANTIC SLAVE TRADE (2010), at xvii (stating that 12.5 million Africans were deported from Africa to the “New World” through the slave trade between the years of 1501 and 1867).

¹³³ U.S. CONST. art. 1, §2, cl. 3, *repealed by* U.S. CONST. amend. XIV.

¹³⁴ [Summary of Speech], KELSO CHRON., Jan. 3, 1851, available at BAA, Doc. No. 11152, at 1-8; see also PENNINGTON, *supra* note 95, at 7-11 (arguing further from the Declaration

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“Slavery is the antipode of liberty” and the archetype of tyranny, Pennington thundered.¹³⁵ Spiritual tyranny threatens a person’s worship and church life. Political tyranny threatens a person’s body and belongings. But the domestic tyranny of chattel slavery threatens a person’s very “right to be, and to be free.”¹³⁶ If it is a self-evident truth that all women and “men are born free . . . by the hand of God . . . that act, which uproots the hallowed Constitution of Nature, opposes the hand of God, and prostitute[s] his divine ordinance . . . is an act of mortal *sinfulness*.”¹³⁷

IV. PENNINGTON’S CRITIQUE OF CHATTEL SLAVERY

A. Chattel Slavery

So far, Pennington’s argument extended the familiar Protestant logic of rights, resistance, and revolution to expose the problems of slavery and racism in America. Because God creates all persons as equals with moral intelligence and liberty of conscience, he argued, African Americans deserve equal treatment and protection. Because God vests all persons with natural rights to discharge their natural duties to God, neighbor, and self, taught to them by conscience, African Americans should enjoy the same. Because the persistent and pervasive violation of a whole community’s natural rights by church and state authorities constitutes spiritual and political tyranny, similar violations of the natural rights of a whole race by domestic authorities constitute domestic tyranny. And because all tyranny triggers the most fundamental right to resist and revolt, the domestic tyranny of chattel slavery triggers that same right for enslaved people.

Yet most of Pennington’s American slaveholding audience remained unconvinced, for “the peculiar institution” of chattel slavery in nineteenth-century America rested on deeper and darker premises that

of Independence, “the authority of right reason,” the Constitution itself, the “direct command of God” in *Isaiah* 16 (to “make a shadow to hide the outcasts”), and from *Isaiah* 28:8 [properly 13] (“And your covenant with death shall be disannulled, and your agreement with Hell shall not stand.”).

¹³⁵ *Id.* at 12.

¹³⁶ Pennington, *supra* note 84, at 8-9; see also HANNAH ARENDT, *THE ORIGINS OF TOTALITARIANISM* 296 (1968) (arguing that the most basic right is “the right to have rights”).

¹³⁷ PENNINGTON, *supra* note 95, at 12.

would take more effort to parry.¹³⁸ The ugliest logic of the day taught that slaves were not human persons at all, but items of property. Chattel slaves, the argument went, were marked by color and were thus easy to identify. They lacked intelligence and thus could not be educated. They lacked souls and thus could not worship. They lacked affections and thus could not marry or have families. They lacked agency and thus depended on their masters to discipline and contain them, lest they become a menace to themselves and their neighbors. A whole industry of literature developed these ugly arguments in opposition to the abolitionists.¹³⁹

Pennington responded directly to such arguments. In his first book, *A Text Book of the Origin and History of the Colored People*, he aimed to “unembarass the origin, and to show the relative position of the colored people in the different periods among the different nations.”¹⁴⁰ He further aimed to give his readers “a right state of feeling on the total subject of HUMAN RIGHTS,” a topic which occupied him in a long series of sermons and speeches thereafter.¹⁴¹ Some of Pennington’s arguments echoed those of other abolitionists in pointing out the self-serving fallacies and “is/ought” confusions of this crude logic of chattel slavery.¹⁴² That slaves were treated like animals does not mean that slaves are not persons, he argued. That slaves were denied education does not mean they lack intelligence or learning. That slaves were denied Bibles does not mean that they lack souls. That slaves were denied marriages does mean they lack marital love or familial affection. That slaves were the

¹³⁸ KENNETH M. STAMPP, *THE PECULIAR INSTITUTION: SLAVERY IN THE ANTE-BELLUM SOUTH* (1956). For more recent literature, see Ariela Gross, *Slavery, Anti-Slavery, and the Coming of the Civil War*, in 2 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 280, 280-312 (Michael Grossberg & Christopher Tomlins eds., 2008).

¹³⁹ Among numerous studies, see, for example, *SLAVERY DEFENDED: THE VIEWS OF THE OLD SOUTH* (Eric L. McKittrick ed, 1963); *THE LAW OF AMERICAN SLAVERY: MAJOR HISTORICAL INTERPRETATIONS* (Kermit L. Hall ed., 1987); MARK V. TUSHNET, *THE SLAVE LAW IN THE AMERICAN SOUTH: STATE V. MANN IN HISTORY AND LITERATURE* (2003).

¹⁴⁰ PENNINGTON, *supra* note 85, at 3.

¹⁴¹ *Id.* at 3.

¹⁴² MANISHA SINGHA, *THE SLAVE’S CAUSE: A HISTORY OF ABOLITION* (2016); ROBERT M. COVER, *JUSTICE ACCUSED: ANTISLAVERY AND THE JUDICIAL PROCESS* (1975). For sample documents, see WILLIAM M. WIECEK, *THE SOURCES OF ANTI-SLAVERY CONSTITUTIONALISM IN AMERICA, 1760-1848* (1977); LOUIS RUCHAMES, *RACIAL THOUGHT IN AMERICA: A DOCUMENTARY HISTORY* (1970).

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legal responsibility of their master does not mean they lack moral agency.¹⁴³

It was hypocrisy to insist otherwise, Pennington contended. Slaveholders often accused slaves of theft, even though owners themselves were “*robbers of human liberty*.”¹⁴⁴ They accused slaves of being rebellious. “But what a contradiction is this to common sense! Have the wretched Africans formally resigned their freedom? Have the slaveholders, the *receivers* of stolen goods, any other claim than that of force?”¹⁴⁵ They accused slaves of being “vicious” and “ill-disposed.” “But can they be *well-disposed* to their oppressors?” “Have they been brought up, as their tyrannical masters have, under the influence of that precept which teaches us to love our enemies? It is well known that in their own country [Africa], they were just, generous, hospitable. . . . If then they are vicious, they must have contracted many of their vices from their masters.”¹⁴⁶ Slaves are accused of being inferior in “their capacities” and “void of understanding.” “Is it wonderful when by incessant labor, the continual application of the lash, and the most inhuman treatment that imagination can devise, their genius is overwhelmed and hindered from breaking forth? No, their abilities are confounded by the severity of their servitude.”¹⁴⁷

The “best way to fit a man for slavery is to place him in a state of slavery,” Pennington wrote.¹⁴⁸ But “the best way to fit a man for freedom is to lay upon him the responsibility of acting the part of a free man.”¹⁴⁹ Pennington’s own experiences, first as slave and then as free, made all this abundantly clear to him. His own life was proof that once African Americans were treated as persons with inherent rights and dignity;

¹⁴³ James W.C. Pennington, *The Self-Redeeming Power of the Colored Races of the World*, *ANGLO-AFR. MAG.*, Oct. 1859. Available at BAP, Doc. No. 10609; see also PENNINGTON, *supra* note 85, at 45-73.

¹⁴⁴ James W.C. Pennington, *A Review of the Slave Trade*, *THE ANGLO-AFR. MAG.*, May 1859, at 155, 156, available at Hathi Trust Digital Library, <https://babel.hathitrust.org/cgi/pt?id=uc1.32106005410862;view=1up;seq=8> (last visited Aug. 12, 2018).

¹⁴⁵ *Id.* at 157.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ JAMES W.C. PENNINGTON, *THE REASONABLENESS OF THE ABOLITION OF SLAVERY AT THE SOUTH, A LEGITIMATE INFERENCE FROM THE SUCCESS OF BRITISH EMANCIPATION: AN ADDRESS DELIVERED AT HARTFORD, CONN., ON THE FIRST OF AUGUST, 1856*, at 11 (Hartford, Conn.: Tiffany & Co. 1856), available at BAA, Doc. No. 17958.

¹⁴⁹ *Id.*

gained rights to education, worship, marriage, and proper work; and were accorded responsibility, accountability, and legal standing, these self-serving fallacies and hypocritical caricatures of the chattel slave would disappear.¹⁵⁰

B. The Curse of Ham

Pennington also exposed and refuted popular religious justifications for slavery. For example, he debunked the popular teaching of the day that God had condemned African people to slavery. That popular teaching started with the biblical story of Noah, who is reported to have gotten drunk and fallen asleep “naked,” a likely biblical euphemism for having sex.¹⁵¹ Noah’s son Ham had watched his father, while his two other sons, Shem and Japheth, discreetly covered him up. When Noah woke up and learned what Ham had done, he was livid. He cursed Ham’s son, Canaan, and condemned him to slavery.¹⁵² “Cursed be Canaan; a servant of servants shall he be unto his brethren,” Noah declared ominously.¹⁵³ He blessed his two other sons and said of each of them, “Let Canaan be his slave.”¹⁵⁴

Apologists for American chattel slavery had long used this biblical story to support the enslavement of Africans.¹⁵⁵ Modern Europeans and Americans, they argued, were the heirs of Shem and Japheth who had inherited the divine right to hold slaves. Modern Africans, in turn, were

¹⁵⁰ In 1859, a mature Pennington described the vaunted, if troubled, history of African peoples and their descendants as a source of profound hope: “A race so numerous in almost every populous part of the globe – a race so ancient, so well connected, and so intimately associated with all the leading events in universal history, cannot fail to elicit the attention of those unselfish minds of the various enlightened nations who are engaged in the great work of universal civilization,” Pennington wrote. “The past history of the descendants of Africa is now appealing to her sons and daughters in the four quarters of the globe, to be up and doing for God, for Christ, for the race, for pure religion, for humanity, for civilization, and for righteousness and truth. The response is certainly very creditable to the hoping and hopeful man: for such is the colored man the world over; for if [there] is a human being on the face of the earth who can hope alone, and even hope against hope, it is the colored man. And this is the secret of his amazing powers of endurance.” James W.C. Pennington, *The Self-Redeeming Power of the Colored Races of the World*, *ANGLO-AFR. MAG.*, Oct. 1859, available at BAP, Doc. No. 10609, at 21106.

¹⁵¹ *Genesis* 9:20-21.

¹⁵² *Genesis* 9:21.

¹⁵³ *Genesis* 9:24.

¹⁵⁴ *Genesis* 9:25. For discussion, see PENNINGTON, *supra* note 85, at 14.

¹⁵⁵ See, e.g., *The Mark of Cain and Curse of Ham*, 3 S. PRESBYTERIAN REV. 415-25 (1850).

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the descendants of Canaan who remained under his hereditary curse to be slaves. Furthermore, the dark skin of Africans was the product of God's earlier curse of Cain, who notoriously murdered his brother Abel.¹⁵⁶ As punishment, "God put a mark on Cain," the Bible reads.¹⁵⁷ That "mark of Cain" was black skin, the argument went. Canaan was cursed by Noah, and married a descendant of Cain, who had been cursed by God with black skin. The descendants of Canaan, thereafter, were distinguishable by their dark skin and thus marked by God and his servant Noah to be slaves.¹⁵⁸

This purported biblical exegesis was the fanciful work of "a class of men . . . attempting gravely to theorise themselves into the right to oppress, and to hate and abuse their fellow men," Pennington countered.¹⁵⁹ Are Bible readers really supposed to believe that "Noah cursed his grandson Canaan, and this *dooms* the black man to slavery, and *constitutes* the white man the slaveholder! Astounding!"¹⁶⁰ Searching through biblical and other genealogies, Pennington concluded that the more likely descendants of Canaan were the light-skinned "Canaanites" of the Middle East described later in the Bible, rather than the dark-skinned Africans of West Africa who were likely descended from Noah's two favored sons, Shem and Japheth.¹⁶¹ American slaveholders have misidentified their quarry, Pennington wrote in jest. "They must discharge the Africans, compensate them for false enslavement, and go and get *Canaanites*" if they want slaves.¹⁶²

¹⁵⁶ Other variants of this argument posited that Noah's curse itself had the effect of darkening the skin of Canaan and his descendants. See DAVID M. GOLDENBERG, *BLACK AND SLAVE: THE ORIGINS AND HISTORY OF THE CURSE OF HAM* 87 (2017); Stephen R. Haynes, *Original Dishonor: Noah's Curse and the Southern Defense of Slavery*, 3 J.S. RELIGION (2000), available at <http://jsreligion.org/Volume3/Front3.html> (last accessed Aug. 10, 2018); DAVID M. WHITFORD, *THE CURSE OF HAM IN THE EARLY MODERN ERA: THE BIBLE AND THE JUSTIFICATIONS FOR SLAVERY* (2009).

¹⁵⁷ *Genesis* 3:15; see also GOLDENBERG, *supra* note 156, at 238-52.

¹⁵⁸ PENNINGTON, *supra* note 85, at 8-18; see Benjamin Braude, *The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods*, 54 WM. & MARY Q. 103-42 (1997); RUTH MELLINKOFF, *THE MARK OF CAIN* (1981); see also Pennington, *supra* note 144, at 158-59.

¹⁵⁹ PENNINGTON, *supra* note 85, at 13.

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at 12, 19-31, 91-96.

¹⁶² *Id.* at 14.

But rather than enslave modern-day Canaanites or “any class of human beings,” Pennington continued seriously, Christians should consider Noah’s curse for what it really was.¹⁶³ Even if Noah *had* cursed an ancestor of modern-day Africans, this was not a “divine malediction” “intended to extend to posterity.”¹⁶⁴ It was one man’s drunken threat, blurted out in embarrassed anger at a family member. It was certainly not a binding divine edict to “control the administrations of the great God.” The “spirit of wine” is hardly “the spirit of God.”¹⁶⁵ Moreover, even if Noah or God had chosen to punish Ham for his misdeed, they could not harm Ham’s son Canaan. For elsewhere God’s law commanded clearly that the “son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son.”¹⁶⁶

C. The Heathendom of Africans

The “curse of Ham” argument for slavery often went hand-in-hand with the argument that Africans were “heathens” who deserved slavery rather than liberty. After all, the argument went, the Old Testament records many stories of God helping his chosen people of Israel conquer the heathen nations around them. Sometimes, God killed these enemies directly, as with the inhabitants of Sodom and Gomorrah that threatened Abraham and his family,¹⁶⁷ or the Egyptians who rejected Moses’ repeated demand on God’s behalf to “let my people go!”¹⁶⁸ More often, God empowered the Israelites to wage and win wars against their enemies, even those much stronger in arms and numbers.¹⁶⁹ Sometimes Israel annihilated these so-called heathens, tearing down their cities and killing all their residents.¹⁷⁰ Other times, Israel spared some victims and took or

¹⁶³ *Id.* at 14-15.

¹⁶⁴ *Id.* at 15-16.

¹⁶⁵ *Id.* at 16-17.

¹⁶⁶ *Id.* (quoting *Ezekiel* 18:20); see also *Deuteronomy* 24:16. But see other biblical texts on the heritability of parental sins discussed in JOHN WITTE, JR., *THE SINS OF THE FATHERS: THE LAW AND THEOLOGY OF ILLEGITIMACY RECONSIDERED* 4-6, 11-16, 170-76 (2009).

¹⁶⁷ *Genesis* 19:24-29.

¹⁶⁸ *Exodus* 5:1; 7:16; 8:1, 8, 20, 21; 9:1, 13, 17.

¹⁶⁹ See, e.g., *Exodus* 17:8-16; *Deuteronomy* 9:1-5; *Joshua* 5-12; *Judges* 7-8; *1 Samuel* 12-17; *2 Samuel* 8; *1 Kings* 20.

¹⁷⁰ See, e.g., *Numbers* 21:21-35, 31:1-12, 33:50-56; *Deuteronomy* 2:26 - 3:11; *Joshua*: 6:1-27.

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sold them into slavery.¹⁷¹ These biblical narratives had long inspired Western Christian laws that regarded so-called heathens, pagans, idolaters, and infidels as fair game for such conquest, colonization, and enslavement.¹⁷² Not only the American slave system, but also the trans-Atlantic slave trade, under this view, rested on solid biblical foundations.

Pennington denounced this popular argument for slavery, too. He admitted that many Africans, though by no means all, were pagan or heathen “polytheists.”¹⁷³ He further conceded that such infidelity had in some cases led to “blindness of mind,” “looseness of morals,” “divisions,” and intertribal “animosities” that “induced the tribes to make war upon and to sell each other” in the slave trade.¹⁷⁴ But such conditions called for peaceful Christian missionaries, not enslavement—and for charity and education, not brutality and exploitation.¹⁷⁵ The God of the Old Testament may have allowed his people to engage in sieges, warfare, and enslavement as they struggled to find their place in the violent ancient world. But the God of the New Testament was a God of peace and not of war, a God of the Word and not of the sword. The New Testament commanded Christians to “love their enemies,” not to curse them or wage war on them.¹⁷⁶ Jesus’s final commandment to his followers was: “Go therefore, and make disciples of all nations, baptizing them in the name of the Father, and of the Son, and of Holy Spirit, teaching them to observe

¹⁷¹ See, e.g., *Numbers* 31:9-18; *Deuteronomy* 20:10-14; *Joshua* 9:1-27.

¹⁷² JAMES MULDOON, *POPES, LAWYERS, AND INFIDELS: THE CHURCH AND THE NON-CHRISTIAN WORLD, 1250-1550* (2015); JAMES MULDOON, *THE AMERICAS IN THE SPANISH WORLD ORDER: THE JUSTIFICATION FOR CONQUEST IN THE SEVENTEENTH CENTURY* (1994); Anthony Pagden, *Law, Colonization, Legitimation, and the European Background*, in 1 *THE CAMBRIDGE HISTORY OF LAW IN AMERICA* 1, 1-31 (Michael Grossberg & Christopher Tomlins eds., 2008).

¹⁷³ PENNINGTON, *supra* note 85, at 32-35.

¹⁷⁴ *Id.* at 32-37.

¹⁷⁵ James W.C. Pennington, *Letter: To the Editor of the American Missionary*, August, 1853, in MS American Missionary Association Archives, 1839-1882 5538 (Amistad Research Center at Tulane University), 1-7, esp. 5-6; James W.C. Pennington, *Colored Preachers for Africa*, MD. COLONIZATION J. [originally published in NEW ENG. RELIGIOUS HERALD], October 1847, available at BAP, Doc. No. 10995. (“The church is not called to educate politicians and merchants for any heathen land, nor is she for Africa. But well informed colored preachers of the gospel are what Africa now and ever has needed I will venture to say, that that branch of the Christian Church in this country which will take hold of this work in good faith, and do the most at educating talented and pious colored men for African Missions, will do the most effective work against Slavery in this country, and the Slave trade in Africa.”)

¹⁷⁶ *Matthew* 5:43-44; *Romans* 12:20. See *infra* notes 289-357 and accompanying text (discussing Pennington’s Christian pacifism).

all that I have commanded you, and lo, I am with you always, to the close of the age.”¹⁷⁷ “Making disciples of all nations” in Africa was the proper Christian way to confront African heathenism, Pennington concluded. Accordingly, he spent a good deal of time encouraging and building Christian missions to Africa and to African diaspora communities in the Caribbean.¹⁷⁸

Moreover, Pennington argued, the polytheist heathenism of Africans paled in comparison to the barbaric heathenism of the white slave traders who came to Africa. These slave traders were aflame with the “same plundering, bloody and murderous spirit which characterized” the earlier conquests of the Americas.¹⁷⁹ Already in the fifteenth century,

Columbus sounded the news [of] “a new world,” and [a] multitude of adventurers soon flew to make conquests. But to get gain for nought in lands was not sufficient for their purpose. They must have property in human flesh. They must have the aborigines’ lands for nought, and in addition to this they must have the aborigines work it for nought. And when this appeared to be not so convenient, they must have a supply of Africans. This spirit broke forth from the old world like a lion from his cage, pinched with hunger; and see here how desperately it figures about the world to complete its measure of iniquity. First it pounces upon the aborigines, head and heels, and then away to Africa, and there is blood, blood and blood only in its train.¹⁸⁰

It was doubly shameful for Protestants to share and profit in this trade of flesh and blood, Pennington continued, now playing to the anti-Catholic animus of his day. Not only was chattel slavery invented by the purportedly advanced Christian civilizations of Europe rather than by the purportedly backward heathen Africans. But, even worse, chattel slavery and the trans-Atlantic slave trade system were part and product of the

¹⁷⁷ *Matthew* 28:19-20; *see also Acts* 1:8.

¹⁷⁸ James W.C. Pennington, [Record of Speech on Colonization], NAT’L ANTI-SLAVERY STANDARD, Jan. 22, 1852, *available at* BAA, Doc. No.12342, at 4-5.

¹⁷⁹ PENNINGTON, *supra* note 85, at 40.

¹⁸⁰ *Id.* at 42-43; *see also id.* at 48 (“drenched with blood by the man stealer”).

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same tyrannical rule of the medieval Catholic Church that the Protestant Reformers had thrown off in the name of their own rights and liberties. Whether the slavery and tyranny are spiritual, political, or bodily, Pennington thundered to his Protestant audience, “slavery is an institution of the *dark age!*” It pulses with the same evil spirit that gave the West the rack, the wheel, and the stake—as well as the Crusades, the pogroms, and the Inquisition.¹⁸¹

Yes, slavery was bred, born and nurtured in the will of Charles the Fifth of Spain, second only to Nero of Rome; this rebel ghost who was capable of fulminating, and figuring in the darkest of the darkness of the dark age; this great patron of the mother of abomination; this stoutest of the co-workers with the Pope of Rome, in his persecution of [Martin] Luther and the reformers; *he was also the first patron and patriarch of the institution [of chattel slavery] which is so peculiar at the south.* And who knows, perhaps these chivalrous patriarchs of the south have descended from Charles, and have from him inherited their patents? Have the apologists for slavery ever thought of this? They are apologizing for the dark age. Have the ministers of the sacred office at the south, who interpret the Bible in support of slavery, ever thought that they are preaching a doctrine first invented by a bishop of the Romish church? . . . Can any wonder then, that the spirit of slavery hides God and truth from the understanding, when it comes under the damning and accumulated darkness of the dark age.¹⁸²

¹⁸¹ *Id.* at 42-44.

¹⁸² *Id.* at 43-44.

Later in his career, Pennington softened his critique of Roman Catholicism and praised American Catholics for resisting slavery and racism,¹⁸³ as many did, sometimes at the cost of severe Protestant reprisal.¹⁸⁴ But Pennington persisted in his argument that American Protestants should see better than others that chattel slavery was a form of heathenism in God's eyes. For Americans to side with slaveholders, in his view, was to betray their Protestant ancestors' sacrifices, to choose a new form of tyranny over true Christian liberty, and even to commit blasphemy against God himself. "Who is a blasphemer if not he who says that God is the author of American slavery?" Pennington demanded. "Who is a blasphemer but he who wrests the holy word of the Holy God from its proper meaning, and makes it to sanction iniquity?"¹⁸⁵

¹⁸³ See, e.g., "[Untitled Report]," CHRISTIAN FREEMAN, Sept. 14, 1843, available at BAA, Doc. No. 07101; James W.C. Pennington, *Address to the People of the State of New York*, NAT'L ANTI-SLAVERY STANDARD, Feb. 5, 1852, available at BAP, Doc. No. 3131. ("The Catholic Church, true to her ancient and not inglorious traditions, holds its members equal, regardless of complexion – coloured clergymen have ministered its sacred rites in the city of New York; her edifices have no caste pews, and there is no coloured Catholic church in the United States, nor in the world."); James W.C. Pennington, *God Is No Respecter of Persons*, LIBERATOR, Aug. 5, 1842, available at BAP, Doc. No. 6406. ("True, I am informed that in Catholic countries, whatever diversities of condition may obtain in society, none are known within the precincts of the church: there black and white, high and low, all bow themselves before the common Father of their souls, for 'God is no respecter of persons.' But Protestantism, in shaking off the corruptions of papacy, and returning to the pristine purity and simplicity of Christianity, has set up a negro pew, and stamped unclean on the brow of those for whom Jesus Christ was not ashamed to die. Would he who associated with Lazarus and Mary Magdalene, have shunned the society of the kind-hearted negro?") But see Pennington, *supra* note 61, at 6 (noting that only "colored protestants" were targeted by Irish Catholic immigrants, during violent riots of 1863.). On these riots, see *infra* note 269.

¹⁸⁴ See generally JOHN T. MCGREEVEY, CATHOLICISM AND AMERICAN FREEDOM: A HISTORY 43-90 (2003); KENNETH J. ZANKA, AMERICAN CATHOLICS AND SLAVERY, 1789-1866: AN ANTHOLOGY OF PRIMARY DOCUMENTS (1994); Justin Latterell, *The Constitution of Religious Liberty: Religion, Power and the Birth of the Secular Purpose Test, 1844-1971* (2014) (manuscript at 99-119) (unpublished Ph.D. dissertation, Emory University), UMI No. 3688121.

¹⁸⁵ PENNINGTON, *supra* note 85, at 84; see also PENNINGTON, REASONABLENESS OF ABOLITION 15-16 (criticizing European attempts to exploit slaves in the West Indian islands on similar grounds: "But as it has pleased God to honor her before all the nations, as the instrument to accomplish this great event [of British emancipation], we may congratulate her upon the success of her abolition measure, while the powerful and even dangerous combination of the West India interest, or rather prejudice was against it, and while the political prayers of France, Denmark, Sweden, Spain, Portugal, Holland, and our own United States, were mingling in unhallowed unison to the god of slavery (if it has any) for its failure.").

D. Slavery in the Bible

One major hurdle for abolitionists like Pennington, however, was that the Bible seemed to condone slavery, albeit not necessarily chattel slavery. The Old Testament or Hebrew Bible was teeming with laws and examples of God's chosen people of Israel enslaving debtors¹⁸⁶ and criminals,¹⁸⁷ taking slaves as war booty,¹⁸⁸ and purchasing slaves from neighboring nations.¹⁸⁹ Mosaic law made clear that the enslavement of fellow Jews was to be temporary, humane, and closely regulated, with automatic manumission after six or seven years.¹⁹⁰ Gentile and foreign slaves, however, were protected property who could not be harmed or stolen by others.¹⁹¹ These slaves were subject to sale, lease, barter, mortgage, gift, and devise.¹⁹²

But even gentile slaves were regarded as persons, not chattel, in ancient Jewish law and culture—and they, too, could and should be manumitted after a time.¹⁹³ Masters were required to circumcise their male slaves so that they could participate in Jewish religious life,¹⁹⁴ and masters and their sons could marry their female slaves.¹⁹⁵ Slaves could be forced to work,¹⁹⁶ though not on the Sabbath,¹⁹⁷ and were required to be obedient and subservient to their masters.¹⁹⁸ Masters could and should

¹⁸⁶ See examples in ANCHOR BIBLE DICTIONARY (David Noel Freedman et al. eds., 1992), "slavery."

¹⁸⁷ *Exodus* 22:3.

¹⁸⁸ *Numbers* 31:9-18; *Deuteronomy* 20:10-14.

¹⁸⁹ See *Exodus* 21:2 (discussing temporary purchase of Jewish slaves); *Leviticus* 25:44-46 ("As for your male and female slaves whom you may have: you may buy male and female slaves from among the nations that are round about you. You may also buy from among the strangers who sojourn with you and their families that are with you, who have been born in your land; and they may be your property. You may bequeath them to your sons after you, to inherit as a possession for ever; you may make slaves of them, but over your brethren the people of Israel you shall not rule, one over another, with harshness.").

¹⁹⁰ *Exodus* 21:1-11, 16; *Deuteronomy* 15:1-6, 12-18, 24:7; *Leviticus* 25:39-55.

¹⁹¹ *Exodus* 20:17, 21:20.

¹⁹² *Genesis* 12:16, 20:14, 24:35, 30:43, 32:5.

¹⁹³ *Exodus* 21:1-11; *Deuteronomy* 15:1-6

¹⁹⁴ *Genesis* 17:13-27; *Exodus* 12:44; *Deuteronomy* 12:12; *Leviticus* 22:21.

¹⁹⁵ *Deuteronomy* 21:10-14.

¹⁹⁶ *Job* 7:2.

¹⁹⁷ *Exodus* 20:10, 23:12; *Deuteronomy* 5:14.

¹⁹⁸ *Malachi* 1:16.

discipline their slaves.¹⁹⁹ But if their punishments physically disfigured their slaves, masters had to release them; if punishments were fatal, masters themselves were to be punished.²⁰⁰ Moreover, if slaves escaped a cruel master and sought sanctuary, they did not have to be returned as fugitives.²⁰¹

In the New Testament narratives, Jesus took the existence of slavery for granted in his parables and teachings.²⁰² He did call for mercy by masters who held (self-)enslaved debtors.²⁰³ Some interpreters suggested that this might have been the import of the famous line in the Lord's prayer, "Forgive us our debts, as we forgive our debtors."²⁰⁴ But Jesus never condemned Jewish or Roman slavery directly, even though he attacked many other legal practices and institutions of his day. Similarly, the New Testament epistles of Paul repeatedly call on slaves, including new Christian converts, to accept their status and to remain faithful to their masters, now as a matter of Christian duty. In his letters to the Ephesians and Colossians, for example, Paul commands:

Slaves, be obedient to those who are your earthly masters, with fear and trembling, in singleness of heart, as to Christ; not in the way of eye-service, as men-pleasers, but as servants of Christ, doing the will of God from the heart, rendering service with a good will as to the Lord and not to men, knowing that whatever good any one does, he will receive the same again from the Lord, whether he is a slave or free. Masters, do the same to them, and forbear threatening, knowing that he who is both their Master and yours is in heaven, and that there is no partiality with him.²⁰⁵

¹⁹⁹ *Proverbs* 29:19, 21.

²⁰⁰ *Exodus* 21:20-21, 26-27.

²⁰¹ *Deuteronomy* 23:15-16.

²⁰² *Matthew* 18:23-34, 24:45-51; *Luke* 15:22, 17:17.

²⁰³ See *Matthew* 18:23-34.

²⁰⁴ *Matthew* 6:12. The Greek term *opheilolopheilema* for "debts" is a legal and economic term that is used elsewhere in *Matthew* 18:24-33; *Luke* 7:41, 16:5-7. See S. Scott Bartchy, *Slavery (Graeco-Roman)*, in 6 *THE ANCHOR BIBLE DICTIONARY* 65-73, 68 (citing R.A. HORSLEY, *JESUS AND THE SPIRAL OF VIOLENCE: POPULAR JEWISH RESISTANCE IN ROMAN PALESTINE* 254-255 (1987)).

²⁰⁵ *Ephesians* 6:5-9; see also *Colossians* 3:22-25.

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Paul's letter to Timothy strikes a similar tone:

Let all who are under the yoke of slavery regard their masters as worthy of all honor, so that the name of God and the teaching may not be defamed. Those who have believing masters must not be disrespectful on the ground that they are brethren; rather they must serve all the better since those who benefit by their service are believers and beloved.²⁰⁶

In his letter to the Corinthians, Paul again defended the status quo of slavery, though he seemed to warn against using self-enslavement to repay debts:

Only, let every one lead the life which the Lord has assigned to him, and in which God has called him. This is my rule in all the churches Were you a slave when called? Never mind. But if you can gain your freedom, avail yourself of the opportunity. For he who was called in the Lord as a slave is a freedman of the Lord. Likewise he who was free when called is a slave of Christ. You were bought with a price; do not become slaves of men. So, brethren, in whatever state each was called, there let him remain with God.²⁰⁷

It was comfort enough, Paul argued, that unity in Christ transcended the gender, cultural, and economic distinctions of this life, particularly since the second coming of Christ would likely occur in the very near future: "in Christ Jesus you are all sons of God, through faith. For as many of you as were baptized into Christ have put on Christ. There is neither Jew nor Greek, *there is neither slave nor free*, there is neither male nor female; for you are all one in Christ Jesus."²⁰⁸

²⁰⁶ 1 *Timothy* 6:1-2.

²⁰⁷ 1 *Corinthians* 7:17, 21-23; see also *Colossians* 4:9 (describing Paul introducing "Onesimus, the faithful and beloved brother" in Christ but then still sending him back to his master); *Philemon* 8-22.

²⁰⁸ *Galatians* 3:23-28 (emphasis added); see also *Colossians* 3:9-11; *Ephesians* 2:14-15.

Such biblical passages led many Americans to advocate for a more benign version of slavery featuring benevolent Christian masters and obedient Christian slaves living in domestic harmony. The Rev. Henry J. Van Dyke, Sr., Pennington's fellow Presbyterian minister in Brooklyn, New York, is representative.²⁰⁹ Van Dyke thought it unbiblical to treat slaves as mere property instead of persons and to bar slaves entirely from worship, education, and family life.²¹⁰ He also thought that slavery might gradually disappear over time as subsequent generations of enslaved Africans became more civilized. But he did not think that the Bible called for the total abolition of slavery.²¹¹ After all, many biblical patriarchs owned slaves. Jesus accepted slavery. Paul called slaves to accept their life with grace and humility. And the apostolic churches admitted both slaves and masters as full members. "If the New Testament is to be received as a faithful history," Van Dyke pointed out, "no man was ever rejected by the apostolic church upon the ground that he owned slaves."²¹²

But the early church did call its members to rise above what the secular law around them allowed, Van Dyke continued, and it disciplined those who fell short of the law of Christian love and charity in their homes.

If he [a member of the early Church] abused his power as a master, if he availed himself of the authority conferred by the Roman law to commit adultery, or murder, or cruelty, he was rejected [by the apostolic church] for these crimes, just as he would be rejected now for similar crimes from any

²⁰⁹ HENRY J. VAN DYKE, *THE CHARACTER AND INFLUENCE OF ABOLITIONISM: A SERMON PREACHED IN THE FIRST PRESBYTERIAN CHURCH OF BROOKLYN, N.Y. ON SUNDAY EVENING, DECEMBER 9, 1860* (Henry Polkinhorn, Printer, 1860). See also RICHARD FULLER & FRANCIS WAYLAND, *DOMESTIC SLAVERY CONSIDERED AS A SCRIPTURAL INSTITUTION IN A CORRESPONDENCE BETWEEN THE REV. RICHARD FULLER OF BEAUFORT, S.C. AND THE REV. FRANCIS WAYLAND OF PROVIDENCE, R.I.* (New York: Lewis Colby & Co. 4th ed. rev. 1847) (1845); see also JAMES RENWICK WILSON SLOANE, *REVIEW OF REV. HENRY J. VAN DYKE'S DISCOURSE ON 'THE CHARACTER AND INFLUENCE OF ABOLITIONISM,' A SERMON PREACHED IN THE THIRD REFORMED PRESBYTERIAN CHURCH, TWENTY-THIRD STREET, NEW YORK, ON SABBATH EVENING, DECEMBER 23, 1860* (William Erving 1861).

²¹⁰ Describing the meaning of a master's property right in his or her slave(s), Van Dyke argued: "The property consists not in the right to treat the slave like a brute, but simply in a legal claim for such services as a man in that position may properly be required to render." VAN DYKE, *supra* note 209, at 13.

²¹¹ *Id.* at 11.

²¹² *Id.*

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Christian church in our Southern states. If parents abused or neglected their children, they were censured, not for having children, but for not treating them properly. And so with the slaveholder. It was not the owning of slaves, but the manner in which he fulfilled the duties of his station that made him subject for church discipline. . . . It is upon the recognized lawfulness of the relation, that all the precepts regulating the reciprocal duties of that relation are based.²¹³

In light of these “reciprocal duties,” slavery was no more sinful than marital family life, Van Dyke claimed. In fact, “multitudes of the noblest and holiest men of this land have been, and are, slaveholders,” including the American founders who crafted the constitutional bills of rights.²¹⁴ And “there are now in our Southern States thousands of Christian masters who give every Scriptural evidence of piety.”²¹⁵ Of course, some masters and slaves shirk their duties and abuse their positions. But that does not make slavery inherently immoral. It is no fairer to abolish slavery because of a few abusive masters or restless slaves than to abolish the marital family because of a few adulterous spouses or delinquent children.²¹⁶ Slavery is a good domestic institution, just like the marital family, Van Dyke insisted. Indeed, slavery is the means by which God was bringing about the conversion and gradual civilization of African “heathens,” he added, playing another well-worn populist card.²¹⁷

I cordially embrace the current opinion of our church that slavery is permitted and regulated by the divine law under both Jewish and Christian dispensations, not as the final destiny of the enslaved, but as an important and necessary process in their transition from heathenism to Christianity – a wheel in the great machinery of Providence, by which the final redemption is to be accomplished. However this may be, one thing I know, and every abolitionist might know if he

²¹³ *Id.* at 10.

²¹⁴ *Id.* at 4.

²¹⁵ *Id.*

²¹⁶ *Id.* at 13-14.

²¹⁷ *Id.* at 11-12.

would, that there are Christian families at the South in which a patriarchal fidelity and affection subsist between the bond and the free, and where slaves are better fed and clothed and instructed, and have a better opportunity for salvation, than the majority of laboring people in the city of New York. If the tongue of abolitionism had only kept silent these twenty years past, the number of such families would be tenfold as great. Fanaticism at the North is one chief stumbling-block in the way of the gospel at the South.²¹⁸

Christians should promote moral virtue *within* the institution of slavery, Van Dyke concluded, not demand equal rights and liberties *from* slavery. "I stand here, at one of the main fountain-heads of the abuse we have complained of," Van Dyke declared from his New York pulpit to the abolitionists in his community. "I stand here to rebuke this sin [of abolitionism], and exhort the guilty parties to repent and forsake it. It is magnanimous and Christ-like for those from whom the first provocation came to make the first concessions."²¹⁹

Pennington made no such concessions. He knew well the biblical passages on slavery. But he insisted that these passages simply reflected the matter-of-fact history of slavery in ancient times. They did not project the proper law or ethic of domestic relations for modern Christian churches, states, or societies. Indeed, the whole narrative and normative arc of the Bible was for liberation from slavery, Pennington insisted.²²⁰ This biblical narrative, which Pennington now connected to the struggle against American slavery, was one of liberation of God's people from actual bondage in Egypt to the liberty of the Promised Land. It recalled the liberation of Jewish and gentile slaves by manumission, redemption, and sanctuary as prescribed by God's law.²²¹ It declared the liberation of each person from the bondage of sin to the freedom offered by divine grace.

²¹⁸ *Id.* at 11.

²¹⁹ *Id.* at 17.

²²⁰ [Summary of Lecture in Edinburgh], CHRISTIAN NEWS, Jan. 3, 1850, available at BAA, Doc. No. 10382, at 1-2.

²²¹ JAMES W.C. PENNINGTON, A TWO YEARS ABSENCE, OR A FAREWELL SERMON PREACHED IN THE FIFTH CONGREGATIONAL CHURCH, available at BAA, Doc. No. 07929, at 16-18.

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Against those who cited the Bible to support slavery, Pennington thus levied a barrage of biblical passages enjoining freedom for God's people: "For freedom, Christ has set us free," the New Testament said. "You were called to freedom." "Where the Spirit of the Lord is, there is freedom." "You will know the truth, and the truth will make you free." "You will be free indeed." "You have all been given "the glorious liberty of the children of God."²²² The "general tenor and scope of the New Testament" is thus unequivocally "against the system" of slavery," Pennington concluded.²²³ "The gospel rightly understood, taught, received, felt and practised, is [as] anti-slavery as it is anti-sin."²²⁴ "God has handed down this blessed book [the Bible] from heaven; we receive it with joy for the light it contains; we read it, we study it, and we do not believe there is a particle of slavery in it."²²⁵

Whereas apologists like Van Dyke treated cruelty toward slaves as an aberration in an otherwise benevolent system of domestic life, Pennington insisted that slavery always tends "to barbarism; a barbarism which is the perfect opposite of Christian civilization."²²⁶ "Slavery is an utter stranger [to] the attributes of justice, mercy, and love, those great elements of refinement to the human soul," taught by the Bible.²²⁷ Not all slave owners were equally cruel, Pennington admitted. Yet cruelty was inherent to and inevitable in the institution of slavery. "The melancholy truth is, that cruelty is the legitimate offspring, the natural concomitant of

²²² *Galatians* 5:1, 13; *2 Corinthians* 3:17; *John* 8:32, 36; *Romans* 8:21. See PENNINGTON, *supra* note 21, at 74-78, 82-84 (relating to his parents how the Gospel "proclaims liberty to the captives"). See other uses of these biblical texts in Evelyn Brooks Higginbotham, "Didn't My Lord Deliver Daniel": *Biblical Witness and African-American Freedom Struggle*, in THE PENNINGTON LECTURES, *supra* note 1, at 57-79.

²²³ PENNINGTON, *supra* note 221, at 17-18 ("My sentence is that slavery is condemned by the general tenor and scope of the New Testament. Its doctrines, its precepts, and all its warnings are against the system. I am not bound to show that the New Testament authorizes me in such a chapter and verse to reject a slaveholder. It is sufficient for me to show, what is fully acknowledged by my opponents, that it is murdering the poor, corrupting society, alienating brethren, and sowing the seed of discord in the bosom of the whole church, and covering all missionary ground with the blasting fires of controversy.").

²²⁴ PENNINGTON, *supra* note 21, at 76 (noting that while God had "permitted" slavery in order to "bring good out of the evil," there "is not a solitary decree of the immaculate God that has been concerned in the ordination of slavery, nor does any possible development of his holy will sanction it").

²²⁵ PENNINGTON, *supra* note 45, at 17.

²²⁶ *Id.* at 1.

²²⁷ *Id.*

slavery; it may develop itself under different phases, according to the peculiar constitution of the patient, but the virus is in the system, and the pustules will appear on the surface.”²²⁸

“The sin of slavery lies in the chattel principle,” Pennington explained—the idea that one person can own another and do with him or her as he wishes with little legal restraint or consequence.²²⁹ “The being of slavery, its soul and body, lives and moves in the chattel principle, the property principle, the bill of sale principle; the cart-whip, starvation, and nakedness, are its inevitable consequences.”²³⁰ How can this ever be considered biblical, he demanded? “Does the Bible justify men in hatred and injustice?”²³¹

Does it [the Bible] sanction “cruelty”? Jas. ii.13. Does it sanction “Mangling”? Luke X.30. Does it sanction “imprisonment”? Heb. XI.36. Does it sanction “starvation”? Matt. XXV.45. Does it sanction “torture”? Heb. XI.37. In short, does it sanction “malignant spite,” “insane anger,” and whimsical sporting with the happiness of our fellow men?²³²

The Bible sanctions none of these, nor the institution of chattel slavery that allows them.

“My feelings are always outraged,” Pennington proclaimed defiantly, when he heard Christian clergy defend “kind” and “gentle” Christian masters against their detractors and demand that slaves practice Christian obedience, patience, and even gratitude for the relatively affluent conditions of plantations as compared to the purported barbarism, savagery, and heathenism of their African homelands.²³³ Such duplicitous

²²⁸ Pennington, *supra* note 144.

²²⁹ PENNINGTON, *supra* note 21, at iv-v.

²³⁰ *Id.* at iv-v.

²³¹ PENNINGTON, *supra* note 85, at 86.

²³² PENNINGTON, *supra* note 221, at 19.

²³³ PENNINGTON, *supra* note 21, at iv-v; see also [Summary of Speech], LEEDS MERCURY, Aug. 5, 1843, available at BAP, Doc. No 07016. For an early version of this argument about kind Christian masters, see Pennington’s analysis of the 1740 “Negro Plot” court records in PENNINGTON, *supra* note 45, at 3-6 (“Gentlemen, – the monstrous ingratitude of this BLACK TRIBE is what exceedingly aggravates their guilt. Their slavery among us is generally softened with great indulgence; they live without care, and are commonly better fed and clothed, and put to less labour than the poor of most Christian countries.”).

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talk “is calculated to mislead the public mind” and to distract the public eye from the “horrors of the slave system,” Pennington charged.²³⁴

The opinion seems to prevail, that the negro, after having toiled as a slave for centuries to enrich his white brother, to lay the foundation of his proud institutions, after having been sunk as low as slavery can sink him, needs only a second-rate civilization, a lower standard of civil and religious privileges than the whites claim for themselves.

During the last year or two, we have heard of nothing but revolutions, and the enlargements of freedoms, on both sides of the Atlantic. Our white brethren everywhere are reaching out their hands to grasp more freedom. In the place of absolute monarchies . . . they have republics; so tenacious are they of their own liberties.

But when we speak of slavery and complain of the wrong it is doing us, and ask to have that yoke removed, we are told, “O, you must not be impatient, you must not create undue excitement. You are not so badly off, for many of your masters are kind Christian masters.” Yes, sirs, many of our masters are professed Christians; and what advantage is that to us?

In all the bright achievements we have obtained in the great work of emancipation, if we have not settled that the chattel principle is wrong, and cannot be maintained upon Christian ground, then we have wrought and triumphed to little purpose, and we shall have to do our first work over again.²³⁵

Pennington thus chastised white Christians who demanded a full array of rights and privileges for themselves but subjugated blacks to servitude, cruelty, and “second-rate civilization.”

²³⁴ PENNINGTON, *supra* note 21, at x.

²³⁵ *Id.* at x-xii.

V. THE COVENANTAL JUDGMENT OF GOD ON SLAVERY AND RACISM

The “chattel principle is wrong” not only because it is cruel and abusive to fellow humans, Pennington continued. It is also “blasphemous” to God and divine law.²³⁶ For a chattel slaveholder to deny the personhood of the slave and to treat him instead as an animal defies God’s order of creation, which first separated and named each animal “according to its kind” and then created human beings as God’s unique image-bearers on earth with a body, mind, and soul.²³⁷ To “ADMIT THE RIGHT OF PROPERTY IN MAN” amounts to stealing from God himself, who retains lordship over humans as his ambassadors on earth, even while giving humans “dominion over the fish of the sea and over the birds of the air and over every living creature that moves upon the earth.”²³⁸ To defend the permanent subjugation of a group to slavery is to defy Christ’s new order of redemption that levels all false hierarchies: as St. Paul noted, “there is neither Jew nor Greek, male nor female, slave nor free, for we are all one in Christ Jesus.”²³⁹

The chattel principle also betrays elementary principles of God’s law as set out in the Decalogue. Chattel slavery is a form of “theft” of a man’s God-given freedom and a “kidnapping” of a person from his family and community. It is a “system of murder” because its brutal forms of work and discipline and the “barbarous treatment of slaves” shorten a slave’s life considerably. It is a form of forced adultery and “bigamy,” because the enslaved man is often forced to share his wife as the coerced

²³⁶ PENNINGTON, *supra* note 95, at 6.

²³⁷ PENNINGTON, *supra* note 85, at 54-59; [Untitled Report], CHRISTIAN NEWS, Jan. 3, 1850, available at BAA, Doc. No. 10382, at 3 (“He regarded slaveholding as a heresy in every professor of religion, and whoever held a man as property must virtually deny the immortality of that man’s soul”); see *Genesis* 1:20-27.

²³⁸ PENNINGTON, *supra* note 85, at 57-59, 68-72; James W.C. Pennington, [Summary of Speech], KELSO CHRON., Jan. 3, 1851, available at BAA, Doc No. 11152, at 2; PENNINGTON, *supra* note 95, at 6 (referencing in part *Genesis* 1:26-30 (on separation of animals and humans as image bearers of God)); see also *Psalms* 8:3-8 (noting human lordship over the rest of creation).

²³⁹ [Record of Lecture Given by Pennington in England], ANTI-SLAVERY REP., June 28, 1843, available at BAA, Doc. No. 06951, at 4, quoting *Galatians* 3:23-28; see also PENNINGTON, *supra* note 45, at 26-29.

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concubine of his master and other accomplices, while she is forced to participate in “the grossest immorality and debauchery.”²⁴⁰

This truly is a “covenant with death and an agreement with hell,” Pennington warned.²⁴¹ And it would bring the entire nation of America and each of its slaveholding members under divine judgment and condemnation.²⁴² For Pennington, this was not loose rhetoric. Following traditional Calvinist conventions, he believed that God had called the people of America into a special covenant relationship, much as God had once brought his chosen people of ancient Israel into special divine favor. By this new covenant, the American nation as a whole was to be “a beacon of righteousness,” “a city on a hill,” and “a light to all nations.”²⁴³ And each member of the American covenant community was called to love God, neighbor, and self, and to live by the law of God taught in conscience and the Bible. If they obeyed the law of God, the nation and all its members would be richly blessed by God. But if they disobeyed, they would be called into divine judgment and severely cursed. Here is one of several biblical texts that set out these reciprocal covenantal promises and threats:

And if you obey the voice of the LORD your God, being careful to do all his commandments which I command you this day, the LORD your God will set you high above all the nations of the earth. And all these blessings shall come upon

²⁴⁰ [Untitled Report], CHRISTIAN NEWS, Jan. 3, 1850, *available at* BAA, Doc. No. 10382, at 2; [Summary of Speech], KELSO CHRON., Jan. 3, 1851, *available at* BAA, Doc. No. 11152, at 5.

²⁴¹ PENNINGTON, *supra* note 95, at 7-10. Other abolitionists in Pennington’s generation similarly invoked this biblical phrase (from *Isaiah 28*) to denounce slavery and the laws by which it was enforced. William Lloyd Garrison, for example, famously described both the Fugitive Slave Act and the U.S. Constitution itself as covenants with death and agreements with hell. See WILLIAM LLOYD GARRISON, SELECTIONS FROM THE WRITINGS AND SPEECHES OF WILLIAM LLOYD GARRISON (R.F. Wallcut, ed., 1852), at 118; Albert B. Saye, *A Covenant With Death: An Essay-Review*, 59 THE GEORGIA HISTORICAL QUARTERLY 330-334, 1975, at 330. For another poignant example, see BERIAH GREEN, THINGS FOR NORTHERN MEN TO DO 22 (1836) (denouncing slavery and the silence of the church in the face of it as a “covenant with death . . . and our agreement with hell. . .”). The authors are grateful to Professor Nathan Chapman for bringing other uses of this passage to our attention.

²⁴² See Pennington, *infra* notes 367-368.

²⁴³ MICHAEL P. WINSHIP, GODLY REPUBLICANISM: PURITANS, PILGRIMS, AND A CITY ON A HILL (2012); John Witte, Jr., *How to Govern a City on a Hill: The Early Puritan Contribution to American Constitutionalism*, 30 EMORY L J 41 (1990).

you and overtake you, if you obey the voice of the LORD your God. Blessed shall you be in the city, and blessed shall you be in the field. Blessed shall be the fruit of your body, and the fruit of your ground, and the fruit of your beasts, the increase of your cattle, and the young of your flock. Blessed shall be your basket and your kneading-trough. Blessed shall you be when you come in, and blessed shall you be when you go out. The LORD will cause your enemies who rise against you to be defeated before you. . . .

But if you will not obey the voice of the LORD your God or be careful to do all his commandments and his statutes which I command you this day, then all these curses shall come upon you and overtake you. Cursed shall you be in the city, and cursed shall you be in the field. Cursed shall be your basket and your kneading-trough. Cursed shall be the fruit of your body, and the fruit of your ground, the increase of your cattle, and the young of your flock. Cursed shall you be when you come in, and cursed shall you be when you go out. . . . The LORD will cause you to be defeated before your enemies . . . and you shall be a horror to all the kingdoms of the earth.²⁴⁴

It was thus particularly blasphemous that the slave laws undermined the religious freedom of African Americans, including their ability to receive God's word, to worship God freely in communion with others, and to learn and to abide by the law of God in all areas of life. In his autobiography, Pennington recounted how southern slave masters, for all their own outward piety, "sternly resisted" the efforts of Christian missionaries and pastors to evangelize and to educate slaves.²⁴⁵ One Meth-

²⁴⁴ *Deuteronomy* 28:1-35. On the heavy use of this covenant imagery in American Protestant thought, see DAVID A. WEIR, *EARLY NEW ENGLAND: A COVENANT SOCIETY* (2005); DANIEL J. ELAZAR, *COVENANT AND CONSTITUTIONALISM: THE GREAT FRONTIER AND THE MATRIX OF FEDERAL DEMOCRACY* (1998); E. BROOKS HOLIFIELD, *THEOLOGY IN AMERICA: CHRISTIAN THOUGHT FROM THE AGE OF THE PURITANS TO THE CIVIL WAR* 273-398 (2003).

²⁴⁵ PENNINGTON, *supra* note 21, at 67.

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odist preacher, he observed, was “arrested and tried for his life” for “addressing words of comfort” to slaves at the door of the church.²⁴⁶ Another slave owner “instigated the authorities of the town where he attended service, to break up a Sabbath-school some humane members of the Methodist and Lutheran denominations had set up to teach the free negroes, lest the slaves should get some benefit of it.”²⁴⁷ In later lectures, Pennington recounted how Christian missionaries and teachers in southern slave states were assaulted and driven away just because they shared the good news of the Bible to slaves.²⁴⁸ He also noted that pastors and deacons who dared provide food and shelter to slaves were run out of their churches, homes, and towns at gunpoint.²⁴⁹ Black and white churches, in both the north and south, that tried to provide sanctuary to fleeing slaves faced criminal prosecution and state fines and confiscation of their properties, as well as private acts of vandalism and arson that went unpunished.²⁵⁰ “The effects of slavery upon the Christian church are horrible to contemplate,” Pennington wrote. “All the great denominations in the country have their hands . . . stained with human blood.”²⁵¹ “[T]hink not only of the bleeding hearts and manacled limbs; the nakedness, the starvation, the darkness of mind, the premature death,” the murder, theft, and rape of slaves which the church has countenanced by its silence, its support for slavery, and its harboring of abusive masters. Think even more of “the LOSS OF THE IMMORTAL SOULS, to which it is an accessory.”²⁵² This truly is a “covenant with death and an agreement with hell!”²⁵³

Even freed or free-born blacks had little religious freedom or equality in Christian churches, Pennington lamented, now broadening his attack to include the racism that lay at the heart of American chattel slavery. Blacks were “treated with indignity in the white churches,” forced to sit in their own pews or to stand, if allowed in the door at all.²⁵⁴ They were

²⁴⁶ *Id.* at 68. He was eventually acquitted.

²⁴⁷ *Id.* at 71.

²⁴⁸ *Id.*; [Summary of Speech], LEEDS MERCURY, Aug. 5, 1843, available at BAP, Doc. No. 07016

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.*

²⁵² PENNINGTON, *supra* note 95, at 10.

²⁵³ *Id.* at 10 (citing *Isaiah* 28).

²⁵⁴ [Transcript of Speech], NATIONAL ANTI-SLAVERY STANDARD, May 3, 1849, available at BAA, Doc. No. 9720, at 1-2.

rarely allowed to stand in the white pulpit or in leadership positions.²⁵⁵ They were never allowed to approach the Eucharist table and eat the bread and drink the cup of redemption from sin, unless and until all whites had been served—even unrepentant white slaveholders who were allowed to worship freely in states that have abolished slavery.²⁵⁶ Except for the Catholics and Socinians, Pennington charged, all Christian denominations in America were beset by a “spirit of caste.”²⁵⁷ “I could not go either to the Episcopalian, Presbyterian, Methodist, Congregational, or Baptist churches, without being reminded that I am a coloured man, and therefore not permitted to enjoy the privilege of worshipping God with them.”²⁵⁸ This “sacrareligious,” “man-hating” principle is especially blasphemous in the church.²⁵⁹ “[T]he coloured people of America, are testing the genuineness of the spirit of Christianity and the great advantages of Christian civilization.”²⁶⁰

“Coloured people” were also testing the genuineness of the spirit of America, Pennington continued, and its commitment to the founding principles of liberty, equality, and justice for all. Even in free states, free-born or emancipated African Americans were not restricted only as to their pews and churches.²⁶¹ They also had to stay in their own houses, neighborhoods, schools, boarding houses, orphanages, asylums, charities, businesses, and more.²⁶² They could not marry or employ whites. They had to sit in their own seats in railcars, ships, ferries, and carriages. They could not vote in many free states or participate on equal terms with

²⁵⁵ [Untitled Report], CHRISTIAN FREEMAN, Nov. 2, 1843, *available at* BAA, Doc. No. 07163.

²⁵⁶ [Untitled Report]. CHRISTIAN FREEMAN, September 14, 1843, *available at* BAA, Doc. 07101.

²⁵⁷ [Untitled Report] CHRISTIAN FREEMAN, Nov. 2, 1843, *available at* BAA, Doc. No. 07163.

²⁵⁸ “[Untitled Report].” CHRISTIAN FREEMAN, September 14, 1843, *available at* BAA, Doc. 07101.

²⁵⁹ PENNINGTON, *supra* note 85, at 80-84.

²⁶⁰ PENNINGTON, *supra* note 45, at 22-25; *see also* [Record of Lecture Given by Pennington in England], ANTI-SLAVERY REP., June 28, 1843, *available at* BAA, Doc. No. 06951, at 4; PENNINGTON, *supra* note 221, at 1-22; [Untitled Report], LIBERATOR, Jan. 5, 1855, *available at* BAA, Doc. No. 16221.

²⁶¹ But they “could have no property in those churches, nor in anything else, according to American law.” [Untitled Report], CHRISTIAN NEWS, Sept. 26, 1850, *available at* BAA, Doc. No. 10883, at 1; [Untitled Report], CHRISTIAN FREEMAN, Nov. 2, 1843, *available at* BAA, Doc. No. 07163, at 2.

²⁶² James W.C. Pennington, *Call for a Colored National Convention*, FREDERICK DOUGLASS’ PAPER, May 20, 1853, *available at* BAP, Doc. No. 7585, at 14160.

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whites in other government offices and activities.²⁶³ Moreover, African Americans were excluded, segregated, or otherwise discouraged from applying even to avowedly liberal northern schools to protect the feelings of their white counterparts, many of whom travelled north for their schooling. This was because of the purported “fickleness, inconstancy and unsound morality” of the “coloured” race.²⁶⁴

Hence it appears that Southern young men, arrogating themselves the title of gentlemen, who, in infancy, had drawn nutriment from the breasts of black mothers, the cost of whose bringing up – nay, the very clothes upon whose backs are paid for out of the unrequited toil of black men and women, have come into the free [North] . . . and succeeded

²⁶³ [Summary of Speech], NONCONFORMIST, June 28, 1843, *available at* BAA, Doc. No. 06949, at 1 (arguing that blacks and others were denied the franchise, and could not vote to improve their plight. “The monopoly of suffrage was not only an evil, but a fatalism, offensive to God, and offensive to man. If a man born in a country was bound to protect and provide for his family circle, he should have his voice heard in the assembly. They should all be heard at the ballot-box.”). *But see* [Summary of Speech], LEEDS MERCURY, Aug. 5, 1843, *available at* BAP, Doc. No 07016, at 2 (“In the Free States of Rhode Island, Massachusetts, Vermont, Maine, and New Hampshire, he was glad to say, the coloured man was now permitted to vote in the elections, but in his own state of Connecticut, which was held to be the one of the most highly favored and enlightened in the Union, there was a provision in the constitution, by which coloured men were excluded from that privilege. By coloured men they meant not simply black men, but even men who could scarcely be distinguished from the whites by their complexion. If a man had, he almost might say, one thousandth part of black blood in his veins, if but one hair of his head were wrinkly, he was on the black side of the line, and was prohibited by the constitution of Connecticut from saying who should make laws he was to obey, and which were to protect or take away his life. In the States of New York, Pennsylvania, New Jersey, Delaware, the same was true, and yet all these were what were called free states. When the state of things existed in the free states, what must they expect in the slaves states?”).

²⁶⁴ See James Pennington, *J.W.C. Pennington to H.*, CHRISTIAN FREEMAN, December 18, 1845, *available at* BAP, Doc. No. 4765. Pennington here responds to a published letter from the president of Dartmouth, Nathan Lord, explaining that, of the three African American students who had enrolled there, two had “failed, from fickleness, inconstancy and unsound morality. We are afraid for the future. We doubt the fitness of Africans, in their present state of civilization, for the grave and considerate pursuit of students. We doubt the expediency of attempting to educate many of them far beyond the level of their race. Now and then there may be a successful instance. But they will need cultivation as a people, for centuries, before many of them will hold their way with long civilized and Christian Saxons, if indeed, that is ever to be expected, which I doubt. Still we resolve to proceed upon the Christian idea, and help a struggling people. It shall not be our fault if any seek and find not. We should not choose to have a flood of blacks at this college. But we should refuse none of the proper character. We are disposed to leave this matter to the Divine Providence.”

in closing these seats of learning to coloured men, in order to make capital for perpetual Slavery out of the necessary ignorance of free persons of colour.²⁶⁵

All such manifest racism and “injustice is the subversion of rights,” Pennington argued. “It is prejudice itself to the rights of those on whom it is brought to bear. This prejudice, however, is not a single act of injustice, but a series of acts. Hence, we have only to see that a minister, a judge, a teacher, or a church is prejudiced against our interests, and we are hopeless for justice from such.”²⁶⁶

Pennington further challenged those who presented the “separation of the races” as a “perfectly natural” way of allowing each group to be with its own kind. After all, the argument went, animals naturally separate into groups of their own species, colors, sizes, and shapes. Humans, too, are naturally attracted to their own kind and averse to others. How then can the segregation of races into separate schools, churches, and neighborhoods be sinful?²⁶⁷ Pennington countered that such “separation of the races” principles were not merely natural aversions, but spiteful expressions of vice that led to the oppression of African Americans. Racism fosters the vices of “dishonesty,” “hypocrisy,” “supreme selfishness,” and “[b]rutish and uncivil manners” toward those in other groups.²⁶⁸

Mere aversion does not abuse and insult a man in the public street, in the stage, in the rail car, in the steam boat, and in the church. It is ill will that does this. Mere aversion would

²⁶⁵ James W.C. Pennington, *Address to the People of the State of New York*, NAT'L ANTI-SLAVERY STANDARD, Feb. 5, 1852, available at BAP, Doc. No. 3131; see also [Untitled Report], LEEDS MERCURY, Aug. 5, 1843, available at BAP, Doc. No. 07016 (“It was generally thought that the most highly educated men would be the most liberal, but in America it seemed just the reverse; and it was a common thing for the men who presided in their institutions of learning, to turn away the coloured youth who sought to obtain there the advantages and blessings of instruction. The story was that the coloured people were ignorant, worthless, degraded, unfit to associate with, incapable of being taught, and yet this was the way in which the experiment of improvement was made, by driving them away from their institutions of education.”).

²⁶⁶ PENNINGTON, *supra* note 85, at 78.

²⁶⁷ See, e.g., WEBBER, *supra* note 1, at 391.

²⁶⁸ PENNINGTON, *supra* note 85, at 77-85; [Untitled Report], CHRISTIAN FREEMAN, Nov. 2, 1843, available at BAA, Doc. No. 07163, at 2-4.

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be satisfied to let the victim pass unmolested, but ill will is always known by its perseverance in seeking the injury of its victim.²⁶⁹

Segregation, like slavery, is part and product of the same mortal sin of racism and destroys the covenant community.

Racism, Pennington continued, is like a “great tree, having four enormous roots . . . piercing down through the entire moral soil of the country” and gradually tearing apart the foundations of American churches, states, schools, and social relations alike.²⁷⁰ This “prejudice against color” was partly “founded in a will to tread down the weak and poor” whom God and his word always favored. “As much as you do it to the least of these, you do it me,” Jesus said.²⁷¹ Color prejudice was a form of “hating the image of God,” which is represented in all God’s children, “male and female,” black and white, young and old, rich and poor, whole and maimed alike.²⁷² Color prejudice “seeks no glory for God, nor good for man, but is pointedly opposed to both.”²⁷³ Color prejudice is a form of “sacrareligion” that is leading America “*down to a state of refined heathenism.*”²⁷⁴

God is not before the eyes of this nation in all these things. Now who is a heathen but him who acts as if the God of heaven did not hear, see, and govern him? But this is sadly true of those who are actuated by this prejudice. There is not only a heathenlike disregard to the [covenant] relation which God has established between man and man, but this disregard is acted out just as bravely, and as silly as if God

²⁶⁹ PENNINGTON, *supra* note 85, at 76; see also Pennington, *supra* note 61 (describing recent “bloody riots” and other violent acts perpetrated against African Americans and abolitionists in the North).

²⁷⁰ [Untitled Report], LEEDS MERCURY, Aug. 5, 1843, available at BAP, Doc. No 07016.

²⁷¹ *Matthew* 25:40.

²⁷² PENNINGTON, *supra* note 85, at 6, 74; James W.C. Pennington, *God Is No Respecter of Persons*, LIBERATOR, Aug. 5, 1842, available at BAP, Doc. No. 6406, at 6693.

²⁷³ PENNINGTON, *supra* note 85, at 74.

²⁷⁴ *Id.* at 80, 85.

could not discern it, or rather as if there was no God to discern it. A nation covered in Egypt's darkness could do nothing more. "He that hateth his brother is in darkness."²⁷⁵

The sins of slavery and racism put the entire nation and each of its members "in danger of the judgments of God,"²⁷⁶ Pennington repeated, sounding his familiar covenant argument.²⁷⁷ For such sins violate the cardinal commands of "faith, hope, and love" set out in the Bible, and of "justice, liberty, and equality" set out in the natural and constitutional law.²⁷⁸

That great principle of law which God proposes to apply to national conduct imposes obligations which are immutable as His throne. It is a law like God's nature which tolerates nothing but that which is right, and condemns all that is wrong. "Justice and judgment are the habitation of God's Throne." Earthly governments derive all the authority they have from His. They are but tributary. Independence of God can in no sense be predicated of nations. His fixed and irrevocable law is the supreme law of earthly rule and empire. Call it the law of nature—the law of nations, or by what name we may, yet still it is there fixed. It is the habitation of His high and glorious Throne. "Mercy and Truth shall go before Him." This is the practice of Divine government—a practice which is solemnly and imperatively binding upon all earthly governments. As a lawgiver His authority extends and applies to nations in their organized and governmental capacity. His superintending hand is in all national matters. He has to do with the Throne, and with the Chair of State, the Bench, the Bar, and the Jury Box.— The hearts of all men are in His hands and he turns them as the rivers of water are turned.²⁷⁹

²⁷⁵ *Id.* at 85-86; *see also id.* at 77 ("Who can be blinder than he who abuses all relation and obligation, and argues that he is doing no wrong?").

²⁷⁶ *Id.* at 85.

²⁷⁷ *Id.* at 64-73, 85.

²⁷⁸ PENNINGTON, *supra* note 221, at 14-17, 22-24.

²⁷⁹ Pennington, *supra* note 84, at 4-5.

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Pennington put this same argument about pending divine judgment in intensely personal terms to his former master, Frisby Tilghman. After settling into his ministry, Pennington sold much of his precious library and other goods and had gathered enough donated funds to try to ransom his enslaved family and to redeem himself from his continued fugitive status.²⁸⁰ He then wrote a poignant letter to Tilghman in 1844.²⁸¹ He recounted his two decades of service while enduring the persistent abuse that ultimately drove him to escape. He then appealed directly to Tilghman's conscience, entreating him at his advanced age to repent of slavery and to release his slaves before facing the final judgment of God.

I . . . remind you of your coming destiny. You are now over seventy years of age, pressing on to eternity with the weight of these seventy years upon you. Is not this enough without the blood of some half-score of souls? You are aware that your right to property in man is now disputed by the civilized world. You are fully aware, also, that the question, whether the Bible sanctions slavery, has distinctly divided this nation in sentiment. On the side of Biblical Anti-slavery, we have many of the most learned, wise and holy men in the land. If the Bible affords no sanction to slavery, (and I claim that it cannot,) then it must be a sin of the deepest dye; and can you, sir, think to go to God in hope with a sin of such magnitude upon your soul? . . .

What will become of those long groans and unsatisfied complaints of your slaves, for vexing them with insulting words, placing them in the power of dogish and abusive overseers, or under your stripling, misguided, hot-headed son, to drive and whip at pleasure, and for selling parts or whole families to Georgia? They will meet you at that bar [of God]. . . . As

²⁸⁰ THOMAS, *supra* note 1, at 55. Pennington struggled with finances all of his life, and in 1862 was convicted and sentenced to a month of labor for stealing a copy of "Pope's Homer's Odyssey" from a book shop. See "Troubles of a Colored Divine," *Detroit Free Press* (July 17, 1862).

²⁸¹ PENNINGTON, *supra* note 21, at 79-84.

for myself, I am quite ready to meet you face to face at the bar of God. I have done you no wrong; I have nothing to fear when we both fall into the hands of the just God. I beseech you, dear sir, to look well and consider this matter soundly. In yonder world you can have no slaves – you can be no man’s master – you can neither sell, buy, or whip, or drive. Are you then, by sustaining the relation of a slaveholder, forming a character to dwell with God in peace?²⁸²

Here, Pennington appealed to God’s law not as an abstract system of moral norms, but as a literal body of law binding on conscience and enforced in a heavenly courtroom. He wrote not just of the general judgment of God on the nation for its acceptance of chattel slavery, but of the specific judgment of God on each master who refuses to let God’s enslaved people go. He wrote not just of an abstract covenant with death and hell, but of a personal indictment of the slaveholder that threatens real, eternal punishment. Slaveholders like Tilghman would ultimately confront their enslaved victims as witnesses and equals at the “bar of God,” Pennington believed, and be compelled by God to answer for their sins and crimes. Pennington hoped that the prospect of eternal punishment, presented plainly and in the “most kind and respectful terms,” would lead Tilghman to repent and to release his slaves.²⁸³ His persistent efforts helped secure the freedom of his father and two brothers, but his mother died in slavery.²⁸⁴

VI. NONVIOLENT RESISTANCE TO SLAVERY AND RACISM

If preaching and personal appeals against slavery and racism availed little—and if exposing the fallacies and dangers of this national and personal “covenant with death” moved few hearts and minds—then what was a conscientious Christian to do? Here, too, Pennington

²⁸² *Id.*

²⁸³ James W.C. Pennington, *Freedom’s Son and Daughter*. COLORED AM., June 26, 1841, available at BAP, Doc. No. 13355.

²⁸⁴ PENNINGTON, *supra* note 21, at 63; WEBBER, *supra* note 1, at 216-219, 255; *Story of Stephen Pembroke*, PA. FREEMAN, Aug. 5, 1854, available at BAP, Doc. No. 5792; James W.C. Pennington, *Letter of From Rev. Dr. Pennington – Appeal for Help*, PA. FREEMAN, June 8, 1854, available at BAP, Doc. No. 6939, at 15273.

adopted but reformulated traditional Protestant teachings on rights, resistance, and revolution. “The happiness of man is an object of God’s government,” he explained.²⁸⁵ “To effect this happiness he has bestowed upon man certain rights and privileges under his own government which do not depend upon any other government.”²⁸⁶ Insofar as earthly rulers (in states, churches, homes, schools, businesses, or other organized communities) exercise their authority in accordance with God’s laws and in protection of the people’s rights, these rulers must be honored and obeyed. But if these rulers persistently and pervasively abuse their authority and violate the God-given rights of their subjects—if they practice manifest “injustice . . . in subversion of rights”²⁸⁷—the people have a God-given right and duty to resist, rebel, and revolt against these authorities and to reform, restore, and reconstruct a better covenantal order. God “shall ere long dispense the rich blessings of life, liberty, and the pursuit of happiness to every slave in our land,” Pennington wrote already in 1839. “For this we should pray – for this we should labor. If this be rebellion against the powers of earth, we have only to say that it is loyalty to God.”²⁸⁸

A. The Principles of Nonviolence

But “rebellion” against the powers of earth should be as nonviolent as possible, Pennington insisted, contrary to the more revolutionary strains of historical Protestantism. In the 1830s and 1840s, Pennington was a principled pacifist, committed to nonviolent protest and change. “Colored people must bear and forbear,” he wrote in 1842.²⁸⁹ Some abolitionists, including fellow black Presbyterian minister Henry Highland

²⁸⁵ Pennington, *supra* note 84, at 8-9.

²⁸⁶ PENNINGTON, *supra* note 85, at 87-88.

²⁸⁷ *Id.* at 78.

²⁸⁸ Pennington, *supra* note 123, at 14.

²⁸⁹ PENNINGTON, *supra* note 85, at 87-88. He continues: “We have borne and forborne much, and whether we have done this with good will, God will show. The writer can only say for his own heart, I have come in contact with prejudice at every step, and God is my record, that I regard the haters of my people only with pity. I am sorry that they are so silly before God and the enlightened world, and that they can act as if there was no umpire of strife, no judge of right and wrong but themselves. I owe them nothing but good will. If I could deliver them from their blindness and folly and turn their hatred into love, I would do so.” *Id.*

Garnet, called for a slave uprising, urging his listeners: “Fellow-men! patient sufferers! Behold your dearest rights crushed to the earth! See your sons murdered, and your wives, mothers and sisters doomed to prostitution. In the name of the merciful God, and by all that life is worth, let it no longer be a debatable question, whether it is better to choose *Liberty or death*. . . . Brethren, arise, arise! Strike for your lives and liberties.”²⁹⁰

Yet Pennington, in an 1843 sermon, contrasted sharply “the doctrines of Christianity and the doctrines of war.”²⁹¹ Christ “proclaimed a new doctrine,” he said: “Love your enemies, do good to them that hate you, and pray for them that spitefully use and persecute you, ‘Resist not evil, but overcome evil with good.’”²⁹² For “right was generally on the side of the weak, and wrong on the side of power.”²⁹³ Moreover, “conquests gained by the sword, never stay settled. . . . But the operations of the principles of the gospel of peace were different. They struck at the root of the evil; for when they converted an enemy into a friend, he stayed a friend.”²⁹⁴ At the 1849 General Peace Congress held in Paris, Pennington declared,

We [African-Americans] are wronged, but we do not wrong others. In our character you will find an element of *Peace*, which naturally accords with the spirit of the resolution – nay with that of the Gospel, we ENDURE *our wrongs*. . . . No class of the human family of man has suffered more unqualified and unprovoked wrongs than we. We have pressing upon our minds the recollection of centuries of oppression, including the loss of time, wealth, education, character, and every thing that man holds dear. . . . Surely then, if being robbed of all of one’s rights is a justification for disturbing the peace of society, we have that justification. . . . We take

²⁹⁰ Henry Highland Garnet, “An Address to the Slaves of the United States of America, Buffalo, N.Y., 1843” (1843), *available at* Electronic Texts in American Studies, <http://digitalcommons.unl.edu/etas/8> (last visited August 14, 2018).

²⁹¹ [Report of speech on nonviolence], EMANCIPATOR, Oct. 26, 1843, *available at* BAA, Doc. No. 107140, at 1-2; *see also* [Summary of Speech?], LIBERATOR, Sept. 21, 1849, *available at* BAA, Doc. No. 10060, at 1.

²⁹² [Report of speech on nonviolence], EMANCIPATOR, Oct. 26, 1843, *available at* BAA, Doc. No. 107140, at 1.

²⁹³ *Id.* at 1-2.

²⁹⁴ *Id.*

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a higher and broader view of the subject. That element of peace in our character gives us a more substantial ground of hope. We rely upon the immutable justice of God. We, all things considered, prefer to keep the peace, and choose God as our arbiter. The sword settles nothing. Physical force, however powerful, substantiates nothing. But the arm of God does. The noise of revolutions that has greeted our ears from all parts of the world has not moved us from our fidelity to the principles of peace.²⁹⁵

But pacifism does not connote passivity, Pennington insisted, and turning the other cheek does not require martyrdom. “[T]he best way to fit a man for freedom is to lay upon him the responsibility of acting the part of a free man,” he said.²⁹⁶ That requires him to disobey all unjust laws and to join others to challenge such laws in public squares, courts, and legislatures. It requires each person to “preach, practice, and pray” for justice.²⁹⁷ Each person must help create churches, families, neighborhoods, schools, and businesses that model equality and proper covenant living. People are also required to:

organize in school districts, in town and villages; hold frequent meetings; go to other political meetings, to proselytize, and not to be proselytised; abandon not an inch of ground already acquired, but make aggressive movements. Invoke the aid of the Pulpit, the Press, the Lyceum; above all, invoke the God of the oppressed—the God of our fathers—that he will make this indeed a Model Republic; that here all men may rejoice in equal rights.²⁹⁸

²⁹⁵ James W.C. Pennington, *Speech by J.W.C. Pennington*, in 1 BLACK ABOLITIONIST PAPERS 157, 158-159 (August 24, 1849) (C. Peter Ripley, et al, eds., 1985). Also see an alternative account of the speech in J.W.C. Pennington, “Les congress des amis de la paix universelle, compte rendue,” (Paris, 1850), *available at* BAA, Doc. No. 10295, at 1-2.

²⁹⁶ PENNINGTON, *supra* note 148, at 11.

²⁹⁷ Language in an Abolitionist Petition co-signed by Pennington and 10 others: Arthur Tappan, S.S. Jocelyn, George Whipple, Lewis Tappan, J. Warner, Luther Lee, James W.C. Pennington et al., *To the Friends of Liberty*, NAT’L ERA, July 6, 1848, *available at* BAP, Doc. No. 14891.

²⁹⁸ *Id.*

Here in a nutshell was Pennington's new variation on Protestant teachings about "rights, resistance, and revolution." Human laws were to be made—or unmade—in the image of divine duties and sacred human rights.

B. Disobeying Unjust Laws

The first "way to fit a man for freedom" is to disobey those unjust human laws that violate the laws of God and the rights of God's children. The most notorious examples for Pennington were the laws of slavery and of fugitive slave return. These laws were blatantly unjust when judged by Scripture, reason, and nature. Christians could, and should, in good conscience break them. Using familiar Protestant language, Pennington wrote:

As God neither wills [n]or commands any thing that is wrong, He cannot consistently with this rule of rectitude, make or sanction a Covenant that binds men to do wrong. The same is true whether the action is contemplated to be between himself and man, or between man and man. Hence, all those promises, oaths, agreements, and Covenants which originate among men, and are intended to operate, between man and man, to have binding force, must have regard to right. No law, Covenant, or agreement, can legalize wrong in such a sense, as to give it the character of moral rectitude. . . . Any agreement, Covenant, or compact, which assumes to legalize and bind men to do moral wrong, is *positively*, by virtue of its conflict with the will of God *null and void*.²⁹⁹

In practice, this meant that slaves had the right to escape their masters if they were able to do so without undue violence, although Pennington defended "the right of the slave to take boats, horses, money, and even lives in order to secure his freedom."³⁰⁰ Perhaps remembering

²⁹⁹ PENNINGTON, *supra* note 95, at 4.

³⁰⁰ James W.C. Pennington, *Letter from Rev. Dr. Pennington*, FREDERICK DOUGLASS' PAPER, Feb. 23, 1855, available at BAA, Doc. No. 7210.

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his own escape, he wrote: “In this great work of self-emancipation, the slave evinces all the great elements of mind, out-scheming mind, iron will, penetrating judgment, quick invention, profound insight of human nature, power of endurance, physical and moral courage, and practical knowledge of heavenly bodies” to guide him at night.³⁰¹ A slave need not wait passively in hopes that his master might release him or that the slave laws might be abolished, Pennington wrote in 1843. “Although the cause [of abolition] was advancing, slavery was still the same” for the individual slave; he still “breathed in pain, and blood, and sorrow; and the only way to change his condition was to break his fetters.”³⁰² He had a right to escape.³⁰³ Here, again, Pennington appealed to the authority of individual conscience and sacred human rights:

The loud voice of natural conscience is the tribunal which charges every man with what he has a right to be, as well as what it is his duty to do. It tells the suffering slave what are his rights, and what are his wrongs. It prompts him to escape from his oppressors. Chains cannot bind him. Bolts and bars cannot confine him. The horse whip cannot deter him. Every fugitive who comes to our free district is a monument of the power and daring of silent prompting by the sacred whisperings of the voice of God, and of nature.³⁰⁴

Pennington described the escape of individual slaves as:

the divinely ordered method for the effective destruction of American slavery. . . . The masters may legislate, rave like madmen, pursue with bloodhounds, and offer rewards which call to their aid the vile and the murderous. But we fear them not. . . . We have the right of the question upon Christian principles. We deny utterly and positively their

³⁰¹ PENNINGTON, *supra* note 45, at 10.

³⁰² James W.C. Pennington, [Report of Speech Given by Pennington in Birmingham, England], ANTI-SLAVERY REP., Aug. 9, 1843, *available at* BAA, Doc. No. 07020, at 3.

³⁰³ [Untitled Report], KELSO CHRON., Jan. 3, 1851, *available at* BAA, Doc. No. 11152, at 2 (“[T]he slave had decidedly a *casus belli* against this oppressor, for he believed he had as much right to escape out of the hands of his captor as a bird from the fowler.”).

³⁰⁴ Pennington, *supra* note 84, at 9.

claim to property in us, and if as men they are determined to be so heartless, cruel, and barbarous, that we cannot dwell with them in peace – God, the spirit of peace, the love of order, and the spirit of liberty, says to us, come out from among them.³⁰⁵

As the “underground railroad” and other avenues of escape brought more slaves north, Pennington lauded such efforts. Escaping from slavery is the “most striking illustration” of the slave’s godly resistance to tyranny and unjust laws the world has seen since biblical days, when “two millions five hundred thousand souls were led out of a tyrant’s land under the leadership of one man [Moses].”³⁰⁶ That natural right and drive to be free, illustrated by the exodus from Egypt, is now dictated by the conscience of each and every slave today, Pennington insisted.

Pennington further claimed that Christians could not, in good conscience, assist with the capture and return of fugitive slaves, regardless of American law to the contrary. The United States Constitution clearly required the return of fugitive slaves: “No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.”³⁰⁷ The United States Congress used this Article to pass statutes penalizing individuals and states for assisting or harboring fugitives, failing to return them to their masters, or refusing to deliver them to the master’s slave-catching agents.³⁰⁸ In the 1830s and 1840s, the United States Supreme Court upheld these laws against constitutional challenges that they violated the basic rights and liberties of individual citizens, and the power of free states to deal with their own citizens as they saw fit.³⁰⁹ All this remained firm law until the Civil War.

³⁰⁵ James W.C. Pennington, *James W.C. Pennington to Charles Gilpin*, in THE FUGITIVE BLACKSMITH (London, July 30, 1850), available at BAP, Doc. No. 480, at 10807.

³⁰⁶ Pennington, *supra* note 84, at 9.

³⁰⁷ U.S. CONST. art. 4, § 2, cl. 3.

³⁰⁸ Act of February 12, 1793, 1 Stat. 302 (1793); Act of September 18, 1850, 9 Stat. 462 (1850).

³⁰⁹ See, e.g., *Prigg v. Pennsylvania*, 41 U.S. 539 (1842).

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Perhaps it was firm law, but it was not just law, Pennington insisted. “American fugitive slave law was based upon the assumed right that man had a property in man, and it perpetuated that right to the slaveholder after his victim had been free and escaped out of his hand.”³¹⁰ But rather than protecting the rights of the escaped man in his newly acquired freedom—even one living in a free state that has abolished slavery—the fugitive slave law protects the false rights of his master to have and to hold him. Even worse, this law also protects the right of a perfect stranger to assault, batter, capture, and kidnap a newly free man—and to drag him from his home in a free state to his hovel in a slave state to face the brutal retribution of his master. But rather than imprison the fugitive slave catcher for his seeming crimes, the law rewards him with a lucrative finder’s fee that courts will enforce against a recalcitrant master.³¹¹

All this piles injustice upon injustice, Pennington lamented. The laws that condone it are not morally binding, no matter how august their authorship or authority. “To deliver up a fugitive from bondage, is to commit a moral wrong, in taking away a man’s liberty and [again] reducing him to slavery. But, nothing is binding that is morally wrong. Therefore, [the law requiring a person] to deliver a fugitive is not binding.”³¹² When criticized for condoning insurrection against God-given federal authorities, Pennington defended his “defiance of the Fugitive Slave Law.”³¹³

We do not want to break the Constitution, but we want to *mend* it; for we contend that just at this clause, there *is* no Constitution, as applied to slavery. There is a breach here which is only filled with dead letters. What is the Constitution? Is it a sovereign over the will and the power of the people? No, it is the creature of that will and power. Now the will and power of the people is supreme in all matters, where they have the right to exercise will and power. But, we state here as a position, that in this clause there is an assumption

³¹⁰ [Untitled Report], KELSO CHRON., Jan. 3, 1851, *available at* BAA, Doc. No. 11152, at 2.

³¹¹ *Id.* at 3–4.

³¹² PENNINGTON, *supra* note 95, at 8.

³¹³ Black Abolitionist Papers James W.C. Pennington, *Letter from Rev. Dr. Pennington*, FREDERICK DOUGLASS’ PAPER, February 23, 1855, *available at* BAA, Doc. No. 7210.

of power which the framers of the Constitution never had lodged in hands.³¹⁴

While earlier Protestants had accused monarchs and magistrates of trespassing on natural rights, Pennington here emphasized the limits on the democratic will of the people themselves. Neither monarchs nor duly elected representatives nor agents of the state could rightfully infringe upon the fundamental rights of any person, regardless of skin color or slave status. To hold a man in slavery is sin, Pennington again explained. “If you [re-]enslave a man, you do not only rob him of his own dear liberty and happiness, but you rob God of his right as Creator and Redeemer of that man.”³¹⁵ It was even worse to collect a bounty for slave catching. A slave catcher is a modern-day Judas Iscariot, Pennington charged, who “betrays” another son of God “for thirty pieces of silver.”³¹⁶

C. Modeling Covenant Community.

Nonviolent resistance to slavery and racism also included modeling what a racially integrated and just covenant community should look like, locally if not nationally. That effort starts with the Christian church, Pennington insisted, where racism, slavery, and segregation should find their least refuge and strongest rebuke. Enrolling at the Yale Divinity School, in this sense, was an act of civil disobedience that informed Pennington’s subsequent efforts to integrate American pews and pulpits. Pennington insisted on preparing for the ministry at Yale even though no African American student had enrolled there before. He persistently sat in white pews, knelt at white communion rails, and stood in white pulpits, even though many white churches had turned him away. He resolutely served as the duly elected moderator of the Presbytery of New York, even though that required him to judge the ordination and discipline of white ministers, likely including those who, like Henry Van Dyke, were apologists for slavery.

Pennington urged other African American ministers to volunteer to preach in white pulpits and urged African American parishioners to try

³¹⁴ PENNINGTON, *supra* note 95, at 7.

³¹⁵ *Id.* at 6, 14.

³¹⁶ *Id.* at 10.

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to attend white churches and religious schools, regardless of the slim odds of successful admission.³¹⁷ He proposed banning slaveholders and fugitive slave catchers from communion tables in order to convict them of their sins and pressure them to repent.³¹⁸ He urged all Christians to pray publicly and privately for the slaves—and for the slaveholders, too—thereby “mak[ing] slaveholding disreputable.”³¹⁹ He asked churches to lead in boycotting slave-produced goods and thereby make the labor of slaves so “unprofitable” that their masters “would be willing to let them go.”³²⁰ And he appealed to leaders of church, state, and business to raise ransom funds for the purchase and release of slaves wherever possible, as he did in seeking to rescue his own enslaved family.³²¹

³¹⁷ [Untitled Report], CHRISTIAN FREEMAN, Nov. 2, 1843, *available at* BAA, Doc. No. 07163, at 3-4. *But see* PENNINGTON, *supra* note 45, at 16 (crediting those who leave racist congregations for conscientious reasons: “The coloured people do not think they are bound to worship where their consciences are wounded. They will leave any church where they find the feeling is not cordial and Christianlike. There is no instance on record in America where the coloured people have maintained any church quarrel or battle with their white brethren.”).

³¹⁸ [Untitled Report], LIBERATOR, Jan. 5, 1855, *available at* BAA, Doc. No. 16221, at 2.

³¹⁹ *Id.* at 2; [Untitled Report], GATESHEAD OBSERVER, September 28, 1850, *available at* BAA, Doc. No. 10894(b); James W.C. Pennington, [Report of Pennington Describing the Injustices of Slavery to a Foreign Audience], ANTI-SLAVERY REP., June 21, 1843, *available at* BAA, Doc. No. 06940, at 3 (“Men and brethren, help. Do you ask how you are to help us? You can help us through the channel of emigration. The world is pouring in its population upon the shores of America. Your emigrants, in many instances, become slaveholders and man-haters. When your friends come to settle among us, use your influence to have them bring right principles with them. Americans visit your countries. When they come, question them on the subject of slavery. Ask them how they feel towards the coloured people. Tell them how they stand before the world, and ask them what they are doing to abolish slavery? You visit America. When you go, do not forget that there is a certain man there who has fallen among thieves and robbers! Go as good Samaritans. Make inquiries regarding the condition of the coloured population, and drop a kind word for them; it will have its effect and due weight on the American mind. That was due to them. The world owed the coloured race a debt of justice. (Loud cheers.) Where was the nation that had not wronged the African race? He and his brethren felt warranted in declaring that the world owed them a debt of justice; and he asked for justice—only simple justice. (Loud cheers.) If you extend to us your sympathy, and aid us in endeavouring to procure justice, we live; deprive us of your sympathy, we pine and die.”)

³²⁰ LIBERATOR, *supra* note 320, at 3; *see also* [Untitled Pamphlet], PRESSCOPY – YALE UNIVERSITY – ANTI-SLAVERY PAMPHLETS, Aug. 1, 1839, *available at* BAA, Doc. No. 04137, at 8-9 (“But the day is also hastening, when we shall see a combination of all the great and generous powers of the earth against the bloody slave system of this land, by a proscription of slave produce . . . When the eyes of the civilized nations shall be turned with unanimous indignity upon the crying sin of this land, the south will feel and think differently about her system.”)

³²¹ *See supra* note 284 and accompanying text.

Pennington pushed this same message of liberation and equality outside the church as well. After being repeatedly denied seats on public carriages and trains,³²² he helped found the Legal Rights Association in New York City, which brought successful lawsuits to end segregated seating on public transportation in several northern cities.³²³ To break down economic segregation, he urged African American families to “place our daughters, and young sons in industrial positions, however humble; and secure openings where they may be usefully employed.”³²⁴ He further urged African American workers to collaborate, unionize, and petition for fair labor and economic standards.³²⁵ He called for universal suffrage in federal, state, and local elections—for blacks and whites, men and women alike.³²⁶ And he urged African American families to stay together or reunite after emancipation or escape—even if chattel-slave laws had prevented couples from marrying; even if slave owners had separated parents, children, and siblings; and even if masters had raped, scandalized, and impregnated enslaved women and girls.³²⁷ The intact marital family for him was a bastion and bulwark of liberty, for men, women, and children alike.³²⁸

Pennington noted several signs of hope in African American communities in the 1830s and 1840s. “[H]ere and there, individual minds have been struggling up from among the masses and have slowly progressed against great odds.”³²⁹ Despite legal and cultural barriers, free

³²² James W.C. Pennington, *A Hard Case* [Originally Published as a Letter to the Editor in the *New York Evangelist*], AFR. REPOSITORY, March 1853, available at BAP, Doc. No. 8240 (noting, after recounting “rudely refused” service on busses and trains in New York City while trying to tend to his ministry: “I shall be told that the majority of the public will object to my riding in the 'busses. Is that true? Will the members of a Christian public object to me, a minister of Christ, using the facilities of a public conveyance, while about my Master’s business?”).

³²³ See 4 BLACK ABOLITIONIST PAPERS 274, 277 n.10 (C. Peter Ripley, et al., eds., 1991); see also THOMAS, *supra* note 1, at 57-58.

³²⁴ Pennington, *supra* note 61, at 8-9, 14.

³²⁵ *Id.* at 8-9.

³²⁶ See sources *supra* notes 104 to 106.

³²⁷ See sources *supra* note 240.

³²⁸ See PENNINGTON, *supra* note 148, at 18-19. For comparable views among pre- and post-Emancipation African Americans, see FRANCES SMITH FOSTER, ‘TIL DEATH OR DISTANCE DO US PART: LOVE AND MARRIAGE IN AFRICAN AMERICA (2010); LOVE & MARRIAGE IN EARLY AFRICAN AMERICA (Frances Smith Foster ed., 2008).

³²⁹ James W.C. Pennington, *The Self-Redeeming Power of the Colored Races of the World*, ANGLO-AFR. MAG., Oct. 1859, available at BAP, Doc. No. 10609, at 21105.

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African Americans have proven themselves in the fields of education, agriculture, “mechanical arts and manufactures,” commerce, and Christianity.³³⁰ African American churches of all denominations have exemplified orthodox preaching and practice, despite discriminatory ecclesial and state laws:

In these churches all the institutions of the gospel are held sacred. A regular ministry is highly esteemed; the Sabbath is sanctified; the Bible is held to be the only rule of faith and practice. Our people also prize all those other means which Christian communities regard as essential – Sabbath schools, Bible classes, temperance, and moral reformation societies. The coloured pulpit of the country is the most efficient and disinterested.”³³¹

Despite persistent discrimination and exclusion from public schools, schools for “colored” students were also making progress in “the work of civilization.”³³²

D. Advocacy for Abolition

These individual acts of civil disobedience and community building, Pennington believed, were critical steps toward the ultimate abolition of

³³⁰ PENNINGTON, *supra* note 45, at 11-16, 23-25; James W.C. Pennington, *From the Old 'Long Island Scribe'*, WKLY. ANGLO-AFR., Sept. 24, 1859, available at BAP, Doc. No. 9650 (“On the subject of farming, our colored men of this town are among the most intelligent on the Island. As cultivators of their own small portions of soil they are not excelled in skill by any other class. All they need is more broad acres to make them A No. 1 in the business. As it is they are most valuable in their connexion with the New York garden and market agriculture.”).

³³¹ PENNINGTON, *supra* note 45, at 16.

³³² *Id.* at 13; James W.C. Pennington, *The Self-Redeeming Power of the Colored Races of the World*, ANGLO-AFR. MAG., Oct. 1859, available at BAP, Doc. No. 10609, at 21106. But Pennington also conceded that African Americans lagged behind their European and Euro-American counterparts in other ways. “In answer to the voice of our history calling upon us to reproduce the works of our past, it will be seen that our literature, and productions of science and art, attest that our’s are a recovering people,” he poignantly reflected in 1859. If many African cultures and communities were less advanced or refined than their Euro-American counterparts, however, it was not for lack of intellect or virtue. The abilities of African races “expand in proportion to their state,” Pennington observed, and “if they were equally improved, they would be equally ingenious.” Pennington, *supra* note 144.

slave laws. The “laws and compacts, designed to legalize a system of human bondage” are patently unjust, he wrote.³³³ And despite the growing success of freeborn African Americans and emancipated or escaped slaves, many African Americans were still suffering gravely in many quarters:

The race has served the Republic in all the domestic relations, giving patriots leisure for study, and preparation for affairs. It has served the Republic in the Revolutionary field; and produced for the nation the enriching luxury of the plantation. The cotton plant which has done more than any thing else to enrich and refine the Saxon, has also done most to brutify and bind fast the slave. In the use of this, and other heavy staples of slave growth, the whole nation North, South, East and West, has invaded the rights of the slave. . . . The American horsewhip; the American Senate; the American Pulpit; and the American Press, have all in part lent their efforts.³³⁴

Even though pulpit, press, and politics might have “consecrated” these slave laws “with great veneration, and baptised [them] with much solemnity,” they need to “be swept away,” Pennington insisted.³³⁵ The nation needs new laws to secure “the personal liberty and rights of the slave. . . . With the Bible and Declaration of Independence for our weapons, we will make a bold push.”³³⁶

Pennington pointed repeatedly to the peaceful and successful British abolitionists as promising models for American legal reformers.³³⁷ British abolitionists, Pennington wrote, had

displayed their talents and energy in collecting and arranging their antislavery facts so as to carry the question home to the moral feelings of the nation. . . . They pushed their arguments to the throne, and . . . to the parliament, DECLARING, that the

³³³ See PENNINGTON, *supra* note 95, at 4.

³³⁴ Pennington, *supra* note 84, at 11.

³³⁵ PENNINGTON, *supra* note 95, at 4.

³³⁶ PENNINGTON, *supra* note 148, at 18-20.

³³⁷ *Id.* at 2; see Pennington, *supra* note 144.

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enslavement of men is a monstrous crime, which endangers the very existence of a nation, by exposing it to the wrath of heaven; that freedom is the slave's birth right; that the only way to do him justice is to set him free immediately and unconditionally; that the slave's ignorance which has been entailed upon him by slavery, is no argument for delaying his emancipation; that whatever preparation he may need for freedom, can not be made while in a state of slavery.³³⁸

These British abolitionists exercised "moral power" in demanding to Parliament that "the oppressed should go free," Pennington wrote with admiration.³³⁹ Like Moses commanding Pharaoh, these abolitionists "did not suppose they were asking a mere favor" for slaves.³⁴⁰ They were instead demanding "what was the bondman's right," to receive, and what was "the duty of the Parliament to give."³⁴¹ They "appealed nobly to the dreadful code of God; they appealed to the law of nature, sanctioned by the universal consent of mankind. And they appealed, too, with just pride to the great charter of British liberty," the Magna Carta.³⁴² These persistent abolitionist appeals ultimately transformed English law, Pennington noted. England abolished slavery in 1838.³⁴³

This 1838 law was a sublime historical moment that liberated the body, mind, and soul of former slaves and restored to them their bodies, natural rights, and family relationships, Pennington waxed poignantly:

It restored the bondman his body; his body that was marked, bruised and lacerated; but it *was* his body, dear to him still, as was the body of his oppressor to *him*, whose skin had never been broken by a scratch of a pin. The law came and the bondman received back his soul; his soul long benighted

³³⁸ PENNINGTON, *supra* note 148, at 11.

³³⁹ James W.C. Pennington, [Untitled Pamphlet], PRESSCOPY – YALE UNIVERSITY – ANTI-SLAVERY PAMPHLETS, Aug. 1, 1839, *available at* BAA, Doc. No. 04137, at 2.

³⁴⁰ *Id.* at 4-5.

³⁴¹ *Id.*

³⁴² *Id.* at 4-5.

³⁴³ Parliament abolished slavery with the Slavery Abolition Act of 1833 (3 & 4 Will. IV c. 73), but enacted a controversial "apprenticeship" program that delayed full abolition, in practice, until August 1, 1838.

and vexed, but it was still his soul, possessed of its own immortality, an immortality of which the cart-whip and other instruments of torture, plied with deadly effect to the body that enshrined it, could not divest it.

And here is an eternal truth that is destined to beat away every refuge of lies that can be brought by the ingenuity of critics, tyrants, and cavers, to support slavery. When you have made of man a slave by a seven-fold process of selling, bartering and chaining, and garnished him with that rough and bloody brush, the cart-whip, and set him to the full by blowing into the eyes of his mind cloud after cloud of moral darkness, his own immortality still remains. Subtract from him what you *can*, immortality still remains; and this is a weapon in the bosom of the slave which is more terrible and terrifying to the slaveholder than the thunder of triumphal artillery in the ears of a retreating army. At every stripe of the cart-whip there is a plaintive shriek which betokens the inwardly dwelling immortality of the soul.

The law of 1838 came, and the bondman received back his wife, his children, his Bible, his Sabbath, his sanctuary.

Oh, what moral sublimity is here, when the law spoke with such stern eloquence to the tyrant, in regard to the personal liberty and rights of the slave, and the mandate was, “*give them, give them back!*” and when the man of chains and stripes came forth, and reached out his hand to receive the precious trust!³⁴⁴

³⁴⁴ PENNINGTON, REASONABLENESS OF ABOLITION 18-19; James W.C. Pennington, [Untitled Pamphlet], PRESSCOPY – YALE UNIVERSITY – ANTI-SLAVERY PAMPHLETS, Aug. 1, 1839, *available at* BAA, Doc. No. 04137, at 1. On the anniversary of the abolition of slavery under British law, Pennington poetically declared that universal emancipation was all but inevitable: “We may congratulate ourselves that the day-star of universal emancipation which, under God, is destined to illumine the world with its resistless light, has risen. It is far up in yonder heaven, and like a ‘strong man rejoicing to run a race,’ it moves on majestically. Possibly we shall meet the charge of enthusiasm. Enthusiasm may run riot. It may tell a piteous tale on which truth may be compelled to ‘frown and turn aside her face, it may

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Pennington saw in these actions both the hand of God and a model for American abolitionists. Britain's emancipated slaves "are now talked of by politicians and people of all ranks in all lands, the slaves of America not excepted," he wrote. They are "beginning to shake every empire of blood" and move them to reform.³⁴⁵ Indeed, Britain's abolition of slavery in the West Indies freed "800,000 men" "without the shedding of a drop of blood."³⁴⁶

Pennington was optimistic that legal reforms and peaceable abolition would reach America, too. "Just so far and so fast as the true spirit of the gospel obtains in the land," Pennington declared, "will the spirit of slavery sicken and become powerless."³⁴⁷ For "the Gospel is the great law of progressive civilization. It is an express order of heaven's government that it shall be carried into all the world to every creature."³⁴⁸ He was delighted to see evidence of "the operation of conscience on the religious people of America" and that "heaven had worked" in favor of the abolitionists. He noted that "multitudes, who had not yet decided to act, nevertheless felt conscious that the principles which the abolitionists advanced were right."³⁴⁹ He further noted that abolitionists could now speak more fully and frankly about abolitionism in the pulpit, press, and political chamber. In a speech in 1850, he listed examples of progress.

The anti-slavery spirit is advancing in all the free states. . . .
We have swept the Jim Crow carriage from almost every
railway south of Mason and Dixon's line. We have abolished

bend the pillow of truth, and for a time, unhinge from its proper centre, the common sense of the moral world. But the tale of joy which we rehearse to-day, is no fiction."

³⁴⁵ James W.C. Pennington, [Untitled Pamphlet], PRESSCOPY – YALE UNIVERSITY – ANTI-SLAVERY PAMPHLETS, Aug. 1, 1839, *available at* BAA, Doc. No. 04137, at 2.

³⁴⁶ James W.C. Pennington, [Report of Speech Given by Pennington in Birmingham, England], ANTI-SLAVERY REP., Aug. 9, 1843, *available at* BAA, Doc. No. 07020; *see also* PENNINGTON, *supra* note 148, at 17 ("What slave in ours or any other country need despair of liberty since the British slave has gone free! His case was a desperate one, literally imprisoned in the sea, dark waters were the boundary of his habitation of sorrow. No free States or Canadas bounded him on either side, to which he could fly. But God, who ordained that the isles should wait for his law, enforced that law in due season.").

³⁴⁷ PENNINGTON, *supra* note 21, at 76.

³⁴⁸ Pennington, *supra* note 84, at 7.

³⁴⁹ James W.C. Pennington, [Speech], ANTI-SLAVERY REP., Aug. 9, 1843, *available at* BAA, Doc. No. 07020, at 2.

the Black Laws of Ohio and Connecticut. We have enacted laws in most of the free states protecting fugitive slaves from the interference of their citizens, from being seized by warrants from the magistrates, being confined in their prisons. Several colleges have been thrown open for the reception of coloured youth, upon equal terms with whites. Large portions of several of the largest ecclesiastical bodies have taken decided anti-slavery ground. Numerous individual churches have excluded slave-holders from their communion [and promoted blacks to leadership positions]. . . . Fredrick Douglass, editor of the North Star, has been welcomed to the Association of Printers and Editors at Rochester.³⁵⁰

In another speech that same year of 1850, he declared that:

[t]he mind of the slaves, as well as the free people of colour in America, was rapidly expanding, and coming more and more into contact with the great principles of truth and civil and religious liberty which had fired the hearts and minds of the Anglo-Saxons in other times. . . . The tide of negro emigration from the South to the North would still roll on. No power would be able to arrest it. It was propelled by the philosophy of human nature, of common sense, civilization, and of Christianity.³⁵¹

VII. SLAVERY, JUST WAR, AND VIOLENCE

But despite all these efforts and advances, slavery remained firmly in place in the United States. The number of slave states was in fact expanding, not contracting, as slaves bore children and new states

³⁵⁰ PENNINGTON, *supra* note 45, at 26-27.

³⁵¹ James W.C. Pennington, [Summary of Speech], CHRISTIAN NEWS, June 27, 1850, available at BAA, Doc. No. 10773, at 3-4; see also James W.C. Pennington, [Report of Pennington Describing the Injustices of Slavery to a Foreign Audience], ANTI-SLAVERY REP., June 21, 1843, available at BAA, Doc. No. 06940, at 1-3.

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were added to the Union.³⁵² In 1850, Congress passed yet another fugitive slave law³⁵³ and, in the infamous 1857 *Dred Scott* case, the Supreme Court upheld that law, with Chief Justice Taney opining that slaves were not persons with constitutional rights even when they set foot in free states.³⁵⁴ This betrayal of the abolitionist cause at the highest levels of national government hardened Pennington's opposition to slavery and opened him to more strident means of opposition.

Already in an 1849 speech before the Paris Peace Conference, he acknowledged that American slavery, perhaps more than any other form of oppression in human history, merited an uprising of the oppressed:

Surely then, if being robbed of all of one's rights is a justification for disturbing the peace of society, we have that justification. Our wrongs are far greater than those of many who have set us the example in disturbing the peace. Nor can anyone who takes a candid view of the whole subject, doubt that we have it in our power to disturb the peace of society.³⁵⁵

Even so, Pennington still insisted that violent insurrection would be inconsistent with the Gospel, at odds with the motives and moral character of African Americans, and detrimental to the final success of the emancipation movement. Echoing the peaceful British abolitionists and anticipating the teachings of nonviolence of the later American civil rights movement, he wrote that the "element of peace in our character gives us a more substantial ground of hope" than violence.³⁵⁶

The goodwill we bear to all mankind, even to our oppressors, can do more to aid us to our high destiny of civilization,

³⁵² PENNINGTON, *supra* note 45, at 7-10. Documentation and analysis of this constitutional history can be found in DERRICK A. BELL, *RACE, RACISM, AND AMERICAN LAW 19-72* (6th ed. 2008).

³⁵³ Act of September 18, 1850, 9 Stat. 462 (1850).

³⁵⁴ *Dred Scott v. Sandford*, 60 U.S. (19 How.) 393 (1857), *superseded by constitutional amendment*, U.S. CONST. amend. XIV.

³⁵⁵ James W.C. Pennington, *Speech by J.W.C. Pennington*, in 1 *THE BLACK ABOLITIONIST PAPERS* 157, 158 (C. Peter Ripley et al. eds., 1992).

³⁵⁶ *Id.*

than all the physical force in the world can do to hinder us If the gospel be true, our [nonviolent] course is right, and must prevail. If the gospel is to make further progress, its next step must be to destroy the sword Wherever the sword holds sway, it holds the gospel in check: every battle throws society back into the labyrinths of barbarism.³⁵⁷

But escalating political tensions on the eve of the Civil War led Pennington to reevaluate the theological meaning of violence. When bloody riots against African American communities erupted in New York in the later 1850s and early 1860s, Pennington asserted the right of blacks to “use arms for self-defense. There is no principle of civil, or religious obligation, that requires [us] to live on, in hazard, and leave our person, property, and our wives and children at the mercy of barbarians. Self defense is the first law of nature.”³⁵⁸ When the abolitionist John Brown was put on trial for leading an armed insurrection at Harper’s Ferry in 1859—just one week after he had been a guest in Pennington’s home in New York³⁵⁹—Pennington published a public letter not to denounce this violence, but to encourage readers “to pray for old John Brown . . . that his blood may be sanctified to the cause of freedom.”³⁶⁰

Pennington never publicly advocated violent insurrection before the Civil War began, however, and he was “thankful” that the first shots of the war had been fired by slaveholders instead of slaves.

Had the slaves risen and attacked Fort Sumpter [sic], the world would have cried out against them, and proclaimed tauntingly, that this was the result of the abolition doctrines preached by [British abolitionist, William] Wilberforce and others. But now, no one could oppose emancipation on account of the turbulence and bloodthirstiness of the slaves.³⁶¹

³⁵⁷ *Id.*

³⁵⁸ Pennington, *supra* note 61, at 7-8.

³⁵⁹ WEBBER, *supra* note 1, at 396, 401.

³⁶⁰ James W.C. Pennington, *Pray for Old John Brown*, WKLY. ANGLO-AFR. (Nov. 5, 1859), <http://texashistory.unt.edu/ark:/67531/metaph596356>.

³⁶¹ [Untitled Report of Speech], MONTREAL WITNESS, Sept. 6, 1862, *available at* BAA, Doc. No. 25908.

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The Civil War, once begun, was a just war against the domestic tyranny of slavery, Pennington believed, just as the American Revolution had been a just war against the political tyranny of England. Otherwise-peaceable advocates for freedom could fight in the Civil War, just as their forefathers had fought in the Revolutionary War. Indeed, Pennington strongly encouraged African American men to enlist in the Civil War effort as soldiers and even offered to serve himself.³⁶² “The army of the United States must, hereafter, be the great bulwark of our life, as a nation,” he argued in 1863:

The rebellion has rendered it necessary that we should have a powerful standing army. Colored men should enter the army in force, for the sake of the strength it will give them, the education they will obtain, the pay they will get; and the good service they will do for God, this country, and the race.³⁶³

Pennington acknowledged that the Union remained a bastion of racial inequality. And he admitted the “terrible contingency” that black Union soldiers might meet their enslaved brethren as enemies on the battlefield. Enslaved blacks, he argued, “cannot be expected to exercise any more liberty of choice” in fighting for the Confederacy “than the poor white union men” conscripted into the Union army.”³⁶⁴ But the higher cause of abolition called for the assistance of able-bodied African American Union soldiers:

³⁶² WEBBER, *supra* note 1, at 411. African Americans initially were not permitted to serve in the Union Army. In a speech delivered in October of 1861, Pennington reportedly urged his audience to “ever stand firm and loyal to the country, and although their loyalty was spurned, their aid coldly rejected, and the fiery ardor of their patriotism partially quenched by the cold waters of prejudice against them – yet he knew that the vital spark was still alive in the smouldering embers of adversity, which would yet be kindled into a flame, that would assist in warming into cheerfulness the sad hearthstones made vacant by the fall of their brave white brethren – who have led the van in the strife of battle.” See James W.C. Pennington, *A Discourse by Dr. Pennington*, WKLY. ANGLO-AFR., Oct. 5, 1861, available at BAA, Doc. No. 24510; see also H.H. Garnet, *Great Meeting at Shiloh Church*, DOUGLASS’ MONTHLY, June 1863, available at BAP, Doc. No. 12265. (reporting that Pennington “showed how vitally necessary it is that black men should now enlist”).

³⁶³ Pennington, *supra* note 61, at 9.

³⁶⁴ *Id.*

There are some among us, who still doub[t] whether we are in duty bound to take up arms in support of the Government; and whether the Government has a right to draft colored men. The answer is obvious. NATURE AND CIVIL LAW HAS INSTITUTED a relation between colored men and the United States Government, which is mutually binding. We are BOUND to support the Government, and the Government is BOUND to protect us. Neither party has a right to ignore this duty. The plain and safe course for colored men, is to do service and claim their rights.³⁶⁵

Pennington believed that the Civil War was, in part, God's judgment and just retribution for America's "covenant with death"—its acceptance of chattel slavery and the odious racism that inspired and sustained it.³⁶⁶ He believed that God would set all of his people free, but now only at grave cost to the enslaved and free alike. "An intelligent view of the history of God's providential dealings with slavery," he explained, "leaves no room to doubt that its doom is sealed in this country."³⁶⁷ But the same providential God who had emancipated British slaves *without* the sword now was purging slavery from American soil *with* the sword. Neither the North nor the South would escape God's wrath, for neither were free from guilt:

On our side, the only wise and safe course is to press rapidly into the heart of the slave country, and work out the problem of the Proclamation of freedom [i.e. the Emancipation Proclamation of 1863]. We must prove to the slaves that we have both the will and the power to give effect to the proclamation, and that it is not a mere sound, reaching their ears, upon the

³⁶⁵ *Id.* at 9; [Untitled Report of Speech], MONTREAL WITNESS, Sept. 6, 1862, available at BAA, Doc. No. 25908, at 1-2; *Great Meeting at Shiloh Church*, DOUGLASS' MONTHLY, June 1863, available at BAP Doc. No. 12265, at 26600.

³⁶⁶ *Id.* at 1 ("[E]nslaved brethren see clearly the hand of God in this war. They believe He has arisen to make inquisition for blood, and to purge the land by blood of the guilt which rests upon it because of slavery; and they are willing to leave their cause with Him, in the assured faith and hope that He would send deliverance.").

³⁶⁷ Pennington, *supra* note 61, at 14.

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wings of the wind. Here is where our danger lies. The President [Lincoln] is right. The proclamation is the word of God's holy Providence, so to speak; but the great North is slow to repent of slavery. There is yet a great deal of wicked, angry, and unrighteous feeling in the heart of the North people. It may be that God intends to use the sword as a lance to bleed the whole nation, until she begins to faint, for very loss of blood, and then to swathe up the opened vein, and apply restoratives. Let us, then, not flatter ourselves that we shall escape. Let us not be deceived by those who would persuade us that there is any destiny for us, as an integral part of this American nation, separate from the nation, as a whole.³⁶⁸

African Americans, too, would therefore suffer with their nation for the sins of slavery, Pennington believed. Pennington's sentiments on these points anticipated the words of Abraham Lincoln's second inaugural address, two years later. There, the President declared that God "gives to both North and South, this terrible war, as the woe due to those by whom the offence [of slavery] came."³⁶⁹ Pennington believed that the Civil War was an act of Providence, even while resisting simplistic notions that the Union represented God's conquering army. He understood that war was the ultimate means by which God was excising and exorcising the sin of slavery from American law and culture. Violence, at least in this case, was a tragic but necessary duty—a form of acquiescence to God's just wrath and obedience to God's providential will.³⁷⁰

³⁶⁸ *Id.* at 16.

³⁶⁹ ABRAHAM LINCOLN, *Second Inaugural Address (March 4, 1865)*, in ABRAHAM LINCOLN: HIS SPEECHES AND WRITINGS 792-93 (Roy P. Basler ed., Da Capo Press 2d ed. 2001) (1946); see Justin J. Latterell, *In God We Trust: Abraham Lincoln and America's Deathbed Repentance*, 12 POL. THEOLOGY 594-607 (2011).

³⁷⁰ Elsewhere Pennington was more bullish about securing financial recompense and economic opportunities for African American communities by serving in the Union army. See James W.C. Pennington, *A Word to Colored Politicians*, WKLY. ANGLO-AFR., Aug. 10, 1861, available at BAP, Doc. No. 24280. "Mark my words, gentlemen, we cannot get out of this terrible scrape, without in some way helping to decide the contest; and I believe that we are on the eve of the grand heroic age of the race, when the last vestige of African Slavery shall be wiped out; and I repeat what I said yesterday, that an army of 25,000 black troops marching from the North west, upon the rear of Jeff. Davis, can recapture

Pennington's pen evidently went largely silent in the aftermath of the Civil War.³⁷¹ The archives hold no sustained comments from him about the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments, which together struck proslavery provisions from the United States Constitution. Nor do we have record of him opining on the passage of the first Civil Rights Act of 1866 or of various other measures that the Reconstruction Congress enacted in an effort to upend the law and

king cotton – or take that great gun which has been worth from \$80,000,000 to \$100,000,000, to the South per annum. And then the race will hold the position of the world. Because if cotton is king in the money market of the world, our race in America has by its blood, tears, and sweat crowned it a king, and are therefore entitled to the benefit of his reign.”

³⁷¹ An interesting editorial, “The New Evangel,” published in the *Anglo-African* on October 7, 1865, may have been written by Pennington. See WEBBER, *supra* note 1, at 420 (ascribing it to Pennington), 430 (suggesting it may have been by the journal editor). The text reads, in part, as follows, including a strong call to exchange “the gospel of endurance” for “the gospel of resistance”: “We have fulfilled the gospel of endurance; thoroughly, completely, exhaustively, in such way as the gospel never was fulfilled before, never can be fulfilled again: if that gospel meant an expiation of the curse of Ham, then we have expiated it; if it meant the earning of a better lot for our descendants, then we have earned it. We have fulfilled it as individuals; each and every one of us, we have fulfilled it as a race, through six generations; we have fulfilled it in all the relations of life, family, social, political, through all the recesses of the soul, mind and body, drenched, drained, filled to the overflowing, saturated, crushed, from birth to death with this doom of endurance under slavery and caste. Like the Patriarch of old, we have served this American people more than a century, and, instead of the promised Goddess of Liberty they put us off with the blear-eyed Leah of negroism, and, now that we have served them another century, and saved them from the ‘jaws of death’ they would place us anew under the doom of endurance! Endurance indeed! That game is ‘played out.’ There is nothing left of it: no amount of ingenuity can wrench anything now out of it. It is too soon for history to repeat itself: the trick is too transparent. There must be a new deal . . . We must exchange the gospel of endurance for the gospel of resistance. Our advancement to equality before the law will not be a sudden process. It is now little more than an idea between which and the practical enforcement or application thereof, there is a long and weary stride. This must be accomplished to a great extent by FORCE. . . Let this new evangel of resistance, or self-assertion, be clearly understood. We do not offer it as a substitute for the laws of the land, nor for the exercise of the State laws in the free States, nor for United States laws in the rebel States. . . . The great benefit of this new evangel is immediate to ourselves. For that odious, imbecile, plaintive dependence upon others, we instantly substitute dependence on ourselves. Instead of calling upon Andy Johnson, General Grant, General Dix, or the Provost Marshal to bring their authority, and their troops to quell a man who has called us ‘nigger’ with a blow, we simply return the compliment and settle the question for ourselves in the best way for all concerned. It is by this or an equivalent method only that we can attain and maintain equality. Equal Suffrage, equality before the law, may be written in State Constitutions, and yet if we fail to make ourselves felt as equals, will avail but little. It is by our constant assertion of our own manhood only that we can positively obtain and perpetually uphold our equality.” Compare his statements on self defense, *supra* notes 37-40 and 355-358.

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culture of slavery and racism. Pennington surely welcomed these legal measures, which did much to advance the principles of liberty, equality, and human rights for which he had risked his life, and to which he had devoted so much of his work. He certainly lamented, too, the persistence of racism in American law and culture even after constitutional amendments formally ended chattel slavery and granted civil and religious rights to all Americans regardless of skin color.³⁷²

From the end of the Civil War in 1865 until his death in 1870, Pennington shifted his energies to serving newly emancipated and enfranchised African American communities. Before the war ended, he had called on Northern churches to prepare and fund more missionaries to serve African American communities in the South. Shortly after the war ended in 1865, Pennington led the way South to Louisiana and then to Natchez, Mississippi. There, he briefly served as pastor of an African Methodist Episcopal Church, a denominational shift perhaps born of his effort to avoid the bitter fights over slavery and abolition that divided Northern and Southern Presbyterians in the 1860s.³⁷³ These new pastoral callings came with a substantial pay cut for Pennington, and his family was forced to remain in New York where his wife had a decent job. Following his wife's death in 1867, Pennington spent three years pastoring a church in Portland, Maine.³⁷⁴ Finally, in February of 1870, he accepted what would become his final call to the First Presbyterian Church of Jacksonville, Florida. "Duty calls me to go to the State of Florida and assist my brethren and others in that interesting field in the great cause of education and christian Reconstruction," he wrote to his friend and benefactor, Gerrit Smith. "There is a fine prospect in that state and a pressing call for education."³⁷⁵

Teaching and preaching to newly emancipated communities in the South was a fitting, if anticlimactic capstone to Pennington's life. He had escaped from slavery as a young man; educated himself and faced

³⁷² WEBBER, *supra* note 1, at 422-424.

³⁷³ See *The Schism of 1861*, <http://www.americanpresbyterianchurch.org/apc-history/presbyterian-history/the-schism-of-1861>, and further documents in ALBERT BARNES, *THE CHURCH AND SLAVERY* (2010). This internal Presbyterian division gave rise to the first major United States Supreme Court on church property disputes, *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).

³⁷⁴ See WEBBER, *supra* note 1 at 428.

³⁷⁵ *Id.* at 431.

down countless barriers of racial prejudice; educated and evangelized African American communities in the North while fighting for legal equality and rights; and contributed substantially to the abolition of slavery in the South. In Florida, Pennington discovered that slavery was “a malignant cancer [that] leaves its roots after being apparently cured.” Yet he remained hopeful. “[U]nder God,” he wrote, “I have confidence in our cause and a cheerful hope of our ultimate success.”³⁷⁶

Born into the shackles of slavery sixty-three years earlier, he died as the Reverend Doctor James W.C. Pennington on October 22, 1870—a free man and “Doctor of Divinity” with his shoulder still to the wheel of his life’s calling: emancipating, elevating, and educating those whose “sacred human rights” had for so long been denied.

VIII. CONCLUSION

James Pennington opened a new chapter in Protestant political theology and civil disobedience. He repeated the cardinal Protestant themes of rights, resistance, and revolution by a covenant community called to obey God before men. He echoed the central premise of Protestant rights talk that freedom of conscience is the font and focus of civil and religious liberties for individuals and communities alike. He underscored the Protestant teaching that the reform and renewal of law, politics, and society must include and involve religion and the church. And he repeated the Protestant mantra that a Christian church and community must always be restless to reform (*semper reformanda*), particularly in times of tyranny. Pennington thus adopted and adapted the centuries-old tradition of Protestant political theology and activism that had been sparked by Martin Luther’s earliest declarations of Christian liberty in Europe.

But Pennington also added appreciably to this tradition. First and foremost, he argued that human rights belonged to all humans, regardless of race or skin color. He treated slavery as a domestic form of tyranny that needed to be resisted and reformed in the name of those same human rights. He called it blatant hypocrisy for a Protestant nation to declare proudly that all persons are created equal with unalienable rights,

³⁷⁶ *Id.* at 432.

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and then systematically deny rights to women, children, immigrants, indentured servants, Native Americans, and African Americans, enslaved and free. He decried the monstrous blasphemy of treating human beings as items of property and not as image bearers of God. He judged it divine treason to refuse sanctuary and comfort to an escaped slave, or to return that slave to his master. And he condemned the American laws of slavery as a “covenant with death and agreement with hell,” that would bring the whole nation under the same divine retribution that the biblical God visited on the Israelites when they forsook his laws.

Emancipation from slavery, Pennington believed, must begin with proclamation of the Gospel and the free exercise of faith. Just as God miraculously led his chosen people out of the house of bondage in Egypt—and just as God’s grace irresistibly leads his elect from their bondage to sin—so God will ultimately break the bonds of human slavery. God equips the conscience of each slave to know that he or she is endowed with liberty and has the right to break free from slavery and escape when the right time comes. God pricks the conscience of each slaveholder to know that slavery is wrong and emancipation is right, whatever the wrong laws and false prophets (and profits) of his day might tell him. God calls on everyone to exercise the three-fold office of prophet, priest, and king on behalf of slaves: as prophets, to speak powerfully in opposition to slavery and racism; as priests, to evangelize slaves and masters and provide pastoral care and comfort, healing and sanctuary; and, as kings, to work hard to break those unjust laws of slavery that betray God’s word and to work for justice, mercy, and rights and liberties for all.

But Pennington was no sword-swinging revolutionary like some of his Protestant predecessors. Anticipating by a century the American civil rights movement led by Martin Luther King, Thurgood Marshall, Andrew Young, Jesse Jackson, Ralph Abernathy, Vernon Johns, and others, Pennington advocated primarily nonviolent resistance against slavery and racism. He led sit-ins, lawsuits, political protests, and constitutional challenges. He advocated the integration of churches, schools, charities, workplaces, and public accommodations. He encouraged blacks to prepare and to place themselves in positions of leadership in all sectors of society, starting with the church, whose segregation of blacks and whites and exclusion of slaves he called outrageous heresy.

Pennington, in prescient and prophetic ways, anticipated the twentieth-century civil rights movement led by the Protestant black churches. He anticipated that the more fully the state protects religious freedom, the more readily the church helps in the great task of bringing liberty and justice for all. He anticipated Martin Luther King, Jr.'s famous saying that:

if the church will free itself from the shackles of a deadening status quo, and, recovering its great historic mission, will speak and act fearlessly and insistently in terms of justice and peace, it will enkindle the imagination of mankind and fire the souls of men, imbuing them with a glowing and ardent love for truth, justice, and peace. Men far and near will know the church as a great fellowship of love that provides light and bread for lonely travelers at midnight.³⁷⁷

Pennington also anticipated our late-modern recognition that religion is a cornerstone of human rights and that religious freedom is indispensable to constitutional order.³⁷⁸ Even in today's liberal and pluralistic societies, religions help to define the local meanings and measures of restraint and respect, responsibility and restitution that a human rights regime presupposes. Much as churches in Pennington's day played an important role, for better or worse, in shaping their communities' moral commitments, diverse religious communities today help define ideals of human dignity and human community, and the essentials of human nature, need, and capacity upon which human rights are built. Much as churches and schools in Pennington's day could serve as important institutions of social uplift and support, religious organizations today often stand alongside the state and other institutions in helping to implement and to protect the rights of a person and community—especially at times when the state is weak, distracted, divided, cash-strapped, transitioning, or corrupt. Religious communities can create the conditions (sometimes

³⁷⁷ MARTIN LUTHER KING, JR., *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING JR.* 501 (James M. Washington ed., 1986).

³⁷⁸ See *generally* *THE FUTURE OF RELIGIOUS FREEDOM: GLOBAL CHALLENGES* (Allen D. Hertzke ed. 2013); *RELIGION AND HUMAN RIGHTS: AN INTRODUCTION* (John Witte, Jr. & M. Christian Green, eds., 2012).

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the prototypes) for the realization of civil and political rights of speech, press, assembly, and more. They can provide a critical (and sometimes the principal) means of education, healthcare, childcare, labor organizations, employment, and artistic opportunities, among other things. And they offer some of the deepest insights into duties of stewardship and servanthood that lie at the heart of environmental care, humane development, and the rights of nature.

Finally, Pennington challenges us to see that tyranny comes in many forms beyond that of the totalitarian state or the authoritarian church. Other legitimate authorities, too, across families, schools, corporations, hospitals, charities, farms, factories, unions, and other institutions wield enormous, but often invisible and unchecked, power. And these authorities can become corrupt and can crush the sacred human rights of their local subjects with as much cruelty, devastation, and outrage as the early-modern state inflicted on its local subjects. Particularly, in contrast to the loud and brash nativist and xenophobic voices that we now hear today on both sides of the Atlantic, we can take comfort and courage from Pennington's abiding message of hope and resilience; of peace and reform; of righteous protest and rights-based living; of just war and juster reconstruction – built on the foundations of family, church, and school; of democracy, constitutional order, and rule of law; and of the firm resolve to ensure that every member of society may enjoy their “sacred human rights.”