

WILLIAM APESS, ELIAS BOUDINOT, AND SAMUEL CORNISH:
NATIVE AMERICANS AND AFRICAN-AMERICANS LOOKING FOR FREEDOM
OF EXPRESSION, REPRESENTATION, AND RHETORICAL SOVEREIGNTY
DURING THE AGE OF JACKSON

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Doctor of Philosophy

by
KEVIN R. KEMPER
Dr. Sandra Davidson and Dr. Charles Davis, Dissertation Co-Chairs
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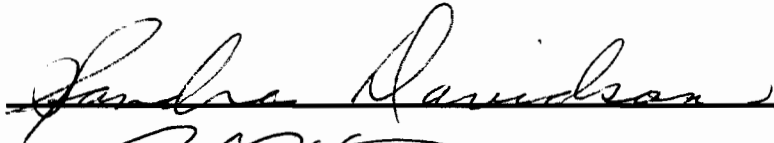
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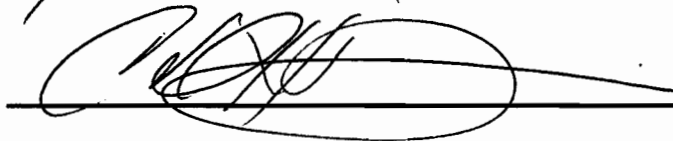
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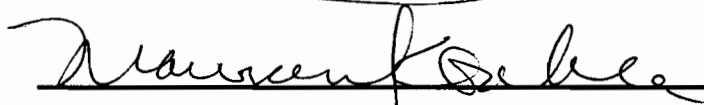
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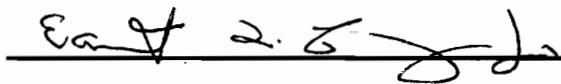
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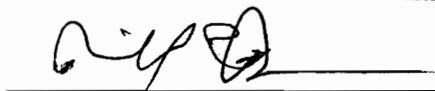
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ACKNOWLEDGEMENTS

To all of those who have helped along the way.

DEDICATION

To my *peoples*, individuals as well as ethnic groups, as we *all* matter.

GLORY

To God.

William Apess, Elias Boudinot, and Samuel Cornish would have agreed.

As I finished this dissertation, I realized that I chose to study each one because

in some ways I am like each one,

and in more ways I want to be like each one,

and in a few ways I do not want to be like each one.

They inspire me.

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ABSTRACT

During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, as it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty. Pequot writer William Apress, Cherokee editor Elias Boudinot, and African-American editor Samuel Cornish sought and practiced the right to represent themselves and their ethnic groups. This contributed to the political and cultural survival of their ethnic groups. Scott Lyons says, “Rhetorical sovereignty is the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse.” This dissertation puts rhetorical sovereignty into a historical context, finding that the concept may promote freedom of expression and the right of rhetorical representation for “*peoples*” but not for individual people.

CHAPTER 1

BEGINNINGS

Introduction

During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.¹ The theoretical framework supporting that thesis statement explores the meanings of rhetorical sovereignty, representation, and freedom of expression.² The key concept of rhetorical sovereignty means, “Rhetorical sovereignty is the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of

¹ First, the age of Jackson will be defined loosely as the years right before, during, and right after the administration of President Andrew Jackson. Though Jackson served from 1829 to 1837, other scholars like Pulitzer Prize winner Arthur Schlesinger articulate a more nebulous age ranging from roughly the War of 1812 to Jackson’s ascendancy to the presidency to the coming Civil War; thus, the age of Jackson typically represents the first third to the first half of the nineteenth century. See Arthur Schlesinger, *The Age of Jackson* (Boston: Little, Brown, 1945).

² The basic concepts of free expression will be cited primarily to Thomas I. Emerson, *Toward a General Theory of the First Amendment* (New York: Random House, 1966), and *The System of Free Expression* (New York: Random House, 1970). Another seminal source for this dissertation is Nat Hentoff, *Free Speech For Me—But Not For Thee: How the American Left and Right Relentlessly Censor Each Other* (New York: HarperCollins, 1992). For his history of free expression, see Hentoff, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1980).

Rhetorical sovereignty primarily will be cited to Scott Richard Lyons, “Rhetorical Sovereignty: What Do American Indians Want from Writing?” *College Composition and Communication*, 51, no. 3 (February 2000): 447-468; available at <http://links.jstor.org>. See also Scott Lyons, “Rhetorical Sovereignty: American Indian Writing as Self-Determination” (Ph.D. diss., Miami University of Ohio, 2000); available at <http://proquest.umi.com>. That dissertation appears to be Lyons’s most extensive conceptualization of rhetorical sovereignty to date, though his later article seems to be the most refined. Hereinafter, the article will be referred to as “Rhetorical Sovereignty: Writing” and the dissertation as “Rhetorical Sovereignty: Self-Determination.”

For ideas about representation, primarily see Edward Said’s *Orientalism* (New York: Vintage, 1977, 1994) and *Culture and Imperialism* (New York: Vintage, 1994).

public discourse.”³ This dissertation weaves that thesis statement and theoretical framework about the value of rhetorical sovereignty, freedom of expression, and representation for minorities with historical narratives from the writings and historiographies of three rising voices – Pequot writer William Apess, Cherokee editor Elias Boudinot, and African-American editor Samuel Cornish.⁴ Each of these writers complained about misrepresentation by others – including at times what they saw as

³ Lyons, “Rhetorical Sovereignty: Writing,” 449-450, also cited by Deborah Gussman, “Rhetorical Sovereignty in William Apess’ Indian Nullification of the Unconstitutional Laws of Massachusetts” (paper presented at the annual meeting of the American Literature Association Annual Conference, May 2004): 7. This concept will be explained more in chapter two, *infra*.

⁴ This dissertation relies in part upon certain papers and presentations prepared by Kevin R. Kemper during his earlier doctoral studies and current employment, including Kemper, “Native American Free Press’ Is NOT an Oxymoron: How History and Culture Inform Law and Practice (research presentation delivered at the Brown Bag Series of the Department of History, University of Arizona, Tucson, 4 October 2005); “Native American Free Press’ is NOT an Oxymoron: A Legal and Historical Perspective for Current Concerns” (research presentation delivered at the Department of Journalism, University of Arizona, Tucson, 21 January 2005); “Free Press Before the Civil War” (lecture delivered in Law of the Press course, Department of Journalism, University of Arizona, Tucson, 20 January 2005); “THUNDER TONES’: The Battle Cry for Freedom of the Press During the Early Nineteenth Century Through the Eyes of the Reverend Samuel Cornish, an Abolitionist and One of the First Black Journalists in the United States” (paper presented at the annual meeting of the American Journalism Historians Association, Cleveland, Ohio, October 2004); “Freedom of the Press for the Cherokee Nation During the Early Nineteenth Century: An Elegant Dream, an Elusive Myth” (paper presented at the annual Scholar-to-Scholar Paper Session of Law Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004); “WE SHALL NOT SUBMIT!’ How the 24th Congress and the Jackson Administration Attempted to Stop the Circulation of Abolitionist Materials Through the United States Post Office During the Late 1830s” (third place paper presented in Graduate Student History Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004); “We Can Get Redress Nowhere’: Seditious Libel and Free Expression for Early Nineteenth Century Native Americans, as Told in *Indian Nullification* by William Apess,” (first place paper presented to the Graduate Student Section of Religion and Media Interest Group of Association for Education in Journalism and Mass Communication, Toronto, Ontario, 2004); “Civilization, Christianity, and Cherokeeity: The Three Layers of Elitism in the Writings of Cherokee Editor Elias Boudinot” (paper presented to the Scholar-to-Scholar Poster Session, Cultural and Critical Studies Division of Association for Education in Journalism and Mass Communication, Kansas City, Missouri, 2003); “Mediating Structures: Making Connections Between Native Americans, Journalism Education, and General Circulation Daily Newspaper Newsrooms in the United States” (paper for Pro-Seminar 2 course, University of Missouri-Columbia, May 2002); “The *Phoenix* Rose, But With Restraints: How Culture May Have Influenced Early 19th Century Ideas About Freedom of the Press for the Cherokee Nation” (paper for Doctoral Seminar course, University of Missouri-Columbia, April 2002); “The Right to Privacy, the Right to Know, and Emotional Distress Tort: A Literature Review About Legal Ramifications of Photojournalism on American Indian Reservations” (paper for Pro-Seminar 2 course, University of Missouri-Columbia, March 2002); and “Native Press Issues” (panel participation for Southwest Symposium, Southwest Education Council of Journalism and Mass Communication, at Oklahoma State University, Tulsa, November 2001).

misrepresentations by their own people – and argued for protected and expanded rights of freedom of expression and against controls of information. By doing so, they did what they could to promote the survival of their peoples. By examining this particular time period, these particular writers, and the intersection of the three broad concepts of rhetorical sovereignty, representation, and freedom of expression, scholars can learn more about the impact of rhetorical sovereignty, representation, and freedom of expression in the twenty-first century and beyond. By doing so, scholars may see how words can facilitate the survival of oppressed people and groups.

Consider a particular problem needing consideration and action – misrepresentations of racial minorities in the United States. For as long as there have been different types of people, individuals and groups have not understood or accepted each other fully. This was true during the age of Jackson, especially for African-Americans and Native Americans. Consider then the first article in the first column of the first newspaper published by African-Americans in the United States: About two years before the inauguration of Andrew Jackson as president of the United States on March 4, 1829, editors Samuel Cornish and John Russwurm insisted that *Freedom's Journal* – as an act of free expression – needed to be published because of “misrepresentation” of African-Americans by the dominant Euro-Americans. They said:

We wish to plead our own cause. Too long have others spoken for us. Too long has the publick been deceived by **misrepresentations**, in things which concern us dearly, though in the estimation of some mere trifles; for though there are many in society who exercise towards us benevolent feelings; still (with sorrow we confess it) there are others who make it their business to enlarge upon the least trifle, **which tends to the discredit of any person of color**; and pronounce anathemas and denounce our whole body for the misconduct of this guilty one [emphasis added].⁵

⁵ Samuel Cornish and John Russwurm, “TO OUR PATRONS,” *Freedom's Journal*, 26 March 1827, 1.

Specifically, Cornish and Russwurm were upset with *The New York Enquirer*, as its editors had refused to publish alternative views in letters to the editor by Cornish and Russwurm; thus, the men started *Freedom's Journal*, a newspaper devoted to African-American progress.⁶ The name of the newspaper itself – *Freedom's Journal* – implicates freedom both as a goal and as an operative element of the journalism: With a bit of capital and a lot of erudition and initiative, the free African-American editors were able to voice their opposition to slavery and the general mistreatment of African-Americans, as well as their support of abolition, education, and economic opportunities.⁷

Euro-American newspapers also have misrepresented and still misrepresent Native Americans, as Coward ably illustrates in *The Newspaper Indian*, a narrative about the problem throughout U.S. history, especially in the nineteenth century.⁸ Cherokee editor Elias Boudinot faced this issue of misrepresentation, as he used journalism to answer what he felt were ungrounded claims by Euro-Americans against the Cherokee. One such issue was whether the Cherokee could survive on the game available then in southern Appalachia; the Committee of Indian Affairs in the U.S. House of Representatives had raised doubts as to the ability of the Cherokee to provide for

⁶ For a discussion of this, see Bernell Tripp, *Origins of the Black Press: New York, 1827-1847* (Northport, AL: Vision Press, 1992), 73-74, 88-89, citing among others Martin E. Dann, ed., *The Black Press, 1827-1890: The Quest for National Identity*, (New York: G.P. Putnam's Sons, 1971), 16. See also Charles A. Simmons, *The African-American Press, with Special References to Four Newspapers, 1827-1965* (Jefferson, N.C.: McFarland & Co., 1998), 9.

⁷ This dissertation extends the argument that *Freedom's Journal* cared about more than abolition of slavery, though that was an essential issue. See Genevieve G. Caspari, "The Impatient Press: Placing Black Newspapers in the Ideologies of Black Progress" (paper presented at the annual conference of the Association for Education in Journalism and Mass Communication, Corvallis, OR, 6-9 August 1983): 5, 17. Also, this dissertation focuses upon Cornish, and not Russwurm, in part because Cornish later edited two other African-American newspapers and therefore had more to say about freedom of the press and related issues.

⁸ John Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-1890* (Urbana: University of Illinois Press, 1999). For another discussion, see, e.g., Sharon Murphy, "American Indians and the Media: Neglect and Stereotype," *Journalism History* 6, no. 2 (Summer 1979): 39-43, and James E. Murphy and Sharon M. Murphy, *Let My People Know: American Indian Journalism, 1828-1978* (Norman: University of Oklahoma Press, 1981), 3-15.

themselves.⁹ The real issue seems to be whether the Cherokee had changed their culture to fit the agrarian model of the European invaders. Boudinot wrote:

Whoever really believes that the Cherokee subsist on game, is most wretchedly deceived, and is grossly ignorant of existing facts. *The Cherokee do not live upon the chase*, but upon the fruits of the earth produced by their labour. We should like to see any person point to a single family in this nation who obtain their clothing and provisions by hunting. *We know of no one.*¹⁰

What harm would it be to be known as a hunting culture? In that time frame, and in that context, the Euro-Americans expected the Southeastern tribes to become “civilized” by being agrarians – an expectation that Boudinot embraced with passion.¹¹ To this day, the Cherokee, Choctaws, Seminoles, Chickasaws, and Muscogee (Creeks) are called “The Five Civilized Tribes.” Certain members of those tribes – like Boudinot – thought that being civilized would guarantee protection and prosperity.¹²

The Native American and African-American writers also faced controls of information from various quarters, including federal, state, and even tribal governments. For instance, the Cherokee legislature regulated the administration and even some of the content of *The Cherokee Phoenix*.¹³ Critics charged William Apress with a form of

⁹ For a discussion of this issue, see Elias Boudinot, *Cherokee Phoenix*, 21 April 1830, in Elias Boudinot, *Cherokee Editor: The Writings of Elias Boudinot*, ed. Theda Perdue (Athens: University of Georgia Press, Brown Thrasher Book, 1996), 114.

¹⁰ *Ibid.* Maureen Konkle also discusses this in the context of battling misrepresentation. Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), 60-61.

¹¹ See Kemper, “Civilization,” for an extended discussion of Boudinot’s elitist ideology, as well as chapter 4, *infra*. See also Bernd Peyer, *The Tutor’d Mind: Indian Missionary-Writers in Antebellum America*, Native Americans of the Northeast: Culture, History, and the Contemporary, eds. Colin G. Calloway and Barry O’Connell (Amherst: University of Massachusetts Press, 1997), 16, 189, 222.

¹² *Ibid.*

¹³ For an earlier discussion, see Kemper, “Freedom of the Press,” 25-26, citing relevant Cherokee laws compiled from “Laws of the Cherokee Nation Adopted at Various Periods,” ed. Rennard Strickland, in *Fires and the Spirits: Cherokee Law from Clan to Court*, Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1975), 211-228.

sedition libel.¹⁴ Samuel Cornish lost a libel suit, which put him in conflict with David Ruggles, another African-American journalist involved as a defendant in that suit.¹⁵ All of these incidents must have frustrated these writers in their attempts to share their thoughts with others.

Cornish, Boudinot, and Apess also vigorously defended the idea of freedom of expression as a means of combating the misrepresentations and controls of information. One of Cornish's readers wrote a letter to the editor, hoping that a free press even would lead to the abolition of slavery:

The perusal of this and similar "Opinions of the Public Press," have now completely confirmed me in the belief of what I have so often stated to you, in private conversation: - "That the permanent establishment of a FREE PRESS, among our colored brethren, well conducted, entirely under their own supervision, will have a most powerful tendency in hastening the termination of that system of oppression, which, I believe, had its origin in the infernal regions, and is only supported at the present day, by some "choice characters," whose spirits and principles emanate from that quarter."¹⁶

A study of the journalism of these authors and editors opens an opportunity for this dissertation, an occasion to explore the interlinked roles of rhetorical sovereignty, representation, and freedom of expression for racial minorities as they navigate their own positions in American society. Understanding these historical narratives would help

¹⁴ See Kemper, "Indian Nullification," 11-12, citing among others "Marshpee Indians," *Barnstable Patriot*, 5 February 1834, in William Apess, *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained* (Boston: Press of Jonathan Howe, 1835), 92. Though accused of riot, trespass, and assault, Apess discussed these charges as if they involved the principles of seditious libel.

¹⁵ See Kemper, "Cornish," pages 13-15, as well as chapter five, *infra*. An account of the libel suit may be found in Frankie Hutton, *The Early Black Press in America, 1827 to 1860* (Westport, Conn.: Greenwood Press, 1993), 19-21. Hutton relied greatly upon the account in Dorothy B. Porter, "David N. Ruggles, An Apostle of Human Rights," *Journal of Negro History* 28 (January 1943): 23-50, especially 39-42. Hutton's note 49 appears to have a citation error. David Ruggles edited and published only a handful of issues of *The Mirror of Liberty* from 1837 until 1838. See Porter, 31.

¹⁶ "ANOTHER TESTIMONY," (letter to editor) from R.S. (full name unknown), *The Colored American*, 23 June 1838.

scholars and journalists to understand similar issues today. These cyclical conflicts of oppression, expression, and suppression illustrate the fundamental struggle among minorities to participate in democracy and of the majority to stay in power. This age-old issue remains today, as minorities continue to fight for representation, both politically and culturally.¹⁷ For this dissertation, the word “minority” is a racial or ethnic designation; yet, the concept of “minority” may include political, cultural, religious, and other designations of those not in a numerical majority in a society. The fundamental principle remains that the voice of any minority contributes to the success of democracy.¹⁸ And, by the end of this dissertation, one point will become clearer: Race and other means of distinguishing people ought not determine the boundaries of free expression, as free expression ought to help us to move past divisions and closer towards a diverse, equal, just society.¹⁹ The rights of people to express and represent themselves ought to be respected.

When the government attempted to suppress the expressions of support for the causes of these minorities during the Jackson Administration, where was the First Amendment, in its historical role of protecting free expression in the United States? As this dissertation illustrates, the First Amendment during the early nineteenth century may not have applied directly to non-citizens like Native Americans and African-Americans.

¹⁷ Certain scholars view Alaska Natives’ efforts to communicate on their own terms as “cultural persistence.” Patrick J. Daley and Beverly A. James, *Cultural Politics and the Mass Media: Alaska Native Voices*, The History of Communication, eds. Robert W. McChesney and John C. Nerone (Urbana: University of Illinois Press, 2004), 191. They also argue that “while Alaska Natives continue to achieve some success in their everyday practices of resistance as cultural persistence, they do so in the face of hegemonic news media and a unitary public sphere that undermine their abilities to tell their own stories, particularly those stories that emphasize their relationships to nature, to place, and to their subsistence practices.” *Ibid.* This may relate to the concept of rhetorical sovereignty to be discussed, *infra*.

¹⁸ See Emerson, *Free Expression*, 3.

¹⁹ This basic concept of a just society derives in part from John Rawls, *A Theory of Justice* (Cambridge, MA: The Belknap Press of Harvard University Press, 1971).

Though no one could rationally argue that the First Amendment ever has fully protected all expression in the United States, one could question the extent of protection of free expression during the Jackson Administration, especially for minorities. African-Americans and Native Americans held different yet tenuous positions because the Euro-Americans dominated every part of the economic, political, cultural, and legal infrastructures of the emerging United States. Each minority group had something to say, but each minority group did not have complete access to the means to say it. But none could be silenced entirely. These rising voices articulated visions of democratic participation by and accurate representations of their peoples.

The minority groups sought something with which to ensure their survival. The idea of “rhetorical sovereignty,” as articulated by Scott Lyons, may well describe that quest for survival. Again, Lyons says, “Rhetorical sovereignty is the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse.”²⁰ As discussed below, this operative definition will be taken at face value and tested historiographically with the writings by and facts about William Apess, Elias Boudinot, and Samuel Cornish and their respective ethnic groups.

To frame this research, this introductory chapter contains research questions, the primary thesis statement, a discussion of methodology and primary sources, and a discussion of the value of the research.

²⁰ Lyons, “Rhetorical Sovereignty: Writing,” 449-450, also cited by Gussman, “Rhetorical Sovereignty,” 7.

1. Research questions

This dissertation emphasizes freedom of expression. This research also necessarily discusses the First Amendment of the U.S. Constitution, even though Native Americans and African-Americans generally were not U.S. citizens during the Jackson Administration, and therefore likely looked to the First Amendment more for its concepts than for its concrete legal protections. Scholars have explored the meaning of free expression and the First Amendment during the first half of the nineteenth century, but Professor David Rabban argues that the time frame remains one of the least studied and therefore one of the least understood.²¹ And few have discussed related issues as they applied to minority groups at the time. That, in and of itself, would justify this research.

Also, superimposing the issues of African-Americans and Native Americans – and therefore issues of representation – upon the issues of free expression raises more questions than it answers, particularly in terms of specific legal rights, citizenship, and democratic representation. This empowers future research. And, one wonders the extent of First Amendment-like protections for people in various political positions during the age of Jackson. Scholars also need to examine how this leads to the idea of rhetorical sovereignty, if at all. At minimum, thanks to existing copies of newspapers, legal documents, and other primary sources, one could at least know some of what certain people *said* as well as some of what they *did* about the issues. That leads to the **primary research question**:

In what ways do the writings of Pequot writer William Apess, Cherokee editor Elias Boudinot, and African-American editor Samuel Cornish during the age of Jackson support the concept of rhetorical sovereignty and thereby inform the concepts of representation and freedom of expression?

²¹ David Rabban, *Free Speech in its Forgotten Years*, Cambridge Historical Studies in American Law and Society, eds. Arthur McEvoy and Christopher Tomlins (Cambridge: Cambridge University Press, 1997), 2.

To develop the answers to this question, other questions need to be asked. The following questions came from operative concepts in Lyons's definition of rhetorical sovereignty: "Rhetorical sovereignty is the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse."²²

- (A) Did William Apess, Elias Boudinot, and Samuel Cornish use journalism and mass communications in ways that resemble rhetorical sovereignty?
 - (1) In what ways did the writers believe they and their primary ethnic groups had been misrepresented?
 - (a) William Apess and Mashpee or Pequots?
 - (b) Elias Boudinot and Cherokee?
 - (c) Samuel Cornish and free African-Americans?
 - (2) To what extent did they believe that they as representatives of their ethnic groups had "the inherent right and ability" to communicate for those ethnic groups?
 - (a) William Apess and Mashpee or Pequots?
 - (b) Elias Boudinot and Cherokee?
 - (c) Samuel Cornish and free African-Americans?
 - (3) How were controls exerted over representations of their primary ethnic groups?
 - (a) William Apess and Mashpee or Pequots?
 - (b) Elias Boudinot and Cherokee?
 - (c) Samuel Cornish and free African-Americans?
 - (4) To what extent did the goals of political entities and others of those ethnic groups conflict with the writers' individual rights?
 - (a) William Apess and Mashpee or Pequots?
 - (b) Elias Boudinot and Cherokee?
 - (c) Samuel Cornish and free African-Americans?

²² Lyons, "Rhetorical Sovereignty: Writing," 449-450, also cited by Gussman, 7.

- (B) In what ways do the experiences and views of the writers support or not support the basic premises of rhetorical sovereignty?
- (a) William Apess and Mashpee or Pequots?
 - (b) Elias Boudinot and Cherokee?
 - (c) Samuel Cornish and free African-Americans?
 - (d) Bringing them together.

The answers to Questions (A) will be detailed in chapters four through six, while the answers to Question (B) will be detailed in chapter seven.

2. Thesis statement

Based upon preliminary research cited above, as well as fresh assessments discussed below, a controlling thesis emerges for the dissertation:

During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.

Freedom of expression grew, but had not fully blossomed, for minorities during the Jackson Administration. Regrettably, the historical evidence that follows indicates that the patriotic rhetoric often did not match the practical realities of U.S. politics and that truth, justice, and liberty could be seen as empty hyperbole in the face of cruel oppressions against African-Americans and Native Americans. Then again, the same research indicates that the “empty hyperbole” may well have been both aspirational and within reach. African-Americans and Native Americans, or at least Apess, Boudinot, and Cornish – believed that such ideals belonged to them, too. Among those ideals was freedom of expression. Apess, Boudinot, and Cornish used these rights when possible to combat misrepresentation and controls of information. The ultimate goal of Apess, Boudinot, and Cornish may well have been the survival of their respective ethnic groups. Their work developed a form of rhetorical sovereignty, but group rights and goals tended

to be in tension with individual rights and goals. And political and personal exigencies collided with rights of free expression.

3. Methodology

At many levels, this dissertation actually employs various methodologies – historical narrative, qualitative content analyses, legal analyses, and philosophical analyses. This dissertation takes a qualitative look at William Apess, Elias Boudinot, and Samuel Cornish, while examining the role of free expression as minorities battled misrepresentation and controls of information, and while attempting to find support for the idea of rhetorical sovereignty.

(A) Basic historical approaches

For evidence to support the thesis, this dissertation weaves a historical narrative from the writings and historiographies of three major writers – William Apess, Elias Boudinot, and Samuel Cornish. An important goal of this dissertation is to report what had been *said* and *done* about the issues, or to draw out the plain meaning of the words of these writers. The methodology for this dissertation borrows concepts from various other methodologies, premised upon the notion that differing epistemologies and schools of thought inform one another.²³ In short, the writings of these minority writers serve as the basic primary sources. Again, this dissertation highlights the key concepts within the

²³ For instance, Katzer et al. says:

To oversimplify, we believe that science offers the best guidance for determining the accuracy of information. When we speak of science we are not referring to any particular discipline but to the overlap among the norms, practices, and values of many areas of science. Jeffrey Katzer, Kenneth H. Cook, and Wayne W. Crouch, *Evaluating Information: A Guide for Users of Social Science*, 4th ed. (Boston: McGraw-Hill, 1998), 16.

Of course, Katzer et al. take an empirical approach for gauging what is valid, but at least they recognize that scholars have something to learn from one another.

primary documents, letting the writers speak for themselves as much as possible.²⁴ This dissertation also offers historical backgrounds and contexts. The chapters about the authors are structured as historical narratives, answering the research questions in turn. This sometimes results in chronological narrative, but not always. At times, the writings reference legal issues and particular cases and statutes. For legal analyses, relevant cases were sought in early nineteenth century legal reporters and current secondary books and articles. Then, these cases are discussed in historical and narrative context, especially as Apess, Boudinot, and Cornish had discussed them.

Of course, normative issues necessarily arise from any discussion about the law, especially about civil liberties. For instance, scholars have a difficult time discussing slavery or land dispossession without reaching for prescriptive language: This dissertation presupposes that the African-Americans should not have been enslaved, the Native Americans ought not to have lost their land rights. And all people in the United States and beyond ought to have civil liberties such as freedom of expression. These types of normative conclusions open up deep epistemological, philosophical, and political questions and conflicts that often do not have clear answers and resolutions. This dissertation cannot completely avoid these questions, but need not assume easy answers. The primary point of view will be supportive of minority writers, letting the characters represent themselves as much as possible. Yet, even that would be an impossible task. As discussed below, and in more detail in the dissertation itself, the minority writers insisted that only *they* could properly represent themselves and their own interests.

²⁴ At first, this study used the structure of an ideological critique outlined by Mike Cormack, *Ideology* (Ann Arbor: The University of Michigan Press, 1992), 28-35, like the approach employed in Kemper, "Civilization," *e.g.*, 12. But this structure became insufficient, because the ideological critique does not suit the research questions being asked. In the end, this research simply looked for obvious evidence of discussions or allusions to freedom of expression, controls of information, and representation and how those might inform the subject of rhetorical sovereignty.

(B) Primary sources

Publications such as newspapers, books, case law, and government documents produced during the Jackson Administration serve as the primary sources for this dissertation. These provide information about what people *said* as well as what people *did* regarding free expression during the Jackson Administration. Also, these are typical primary sources for a historiography, especially in journalism and law. Yet a caution would be in order. No reasonable scholar – or casual reader, for that matter – would assume that any of these sources would be complete accounts, but scholars can and should expect some amount of reliability.²⁵ Newspapers could contain bias, innuendo, and inaccurate accounts of historical incidents.²⁶ For instance, an actual bill by Congress

²⁵ For example, see chapter seven of Jacques Barzun and Henry F. Graff, *The Modern Researcher*, 5th ed. (San Diego, CA: Harcourt, Brace, Jovanovich, 1985), 154-180, which distinguishes between records as “intentional transmitters of fact” and relics as “unpremeditated transmitter of facts,” adapting from a discussion in John Martin Vincent’s *Historical Research* (New York, 1911). A basic argument is “truth rests not on possibility nor on plausibility but on probability.” *Ibid.*, 166. This raises the bar, to be sure, in historical judgment. *Ibid.* Thus, relics may be more reliable than records. *Ibid.*

²⁶ Nord claims, “The M.A. and Ph.D. theses that report ‘what the press said about this or that’ are often methodologically sound, but devoid of theoretical value.” David Paul Nord “The Nature of Historical Research,” in *Research Methods in Mass Communication*, 2d ed., eds. Guido H. Stempel III and Bruce H. Westley (Englewood Cliffs, N.J.: Prentice Hall, 1981, 1989), 309. Smith acknowledges that “the progressive, crusader newspaper, for example, projects a news bias....” Mary Yodelis Smith, “The Method of History,” in *Research Methods in Mass Communication*, 2d ed., eds. Guido H. Stempel III and Bruce H. Westley (Englewood Cliffs, N.J.: Prentice Hall, 1981, 1989), 323. Another interesting explanation of these challenges in journalism and mass communications historiography is John D. Stevens and Hazel Dicken Garcia, *Communication History*, The SAGE COMMTEXT Series, Vol. 2 (Beverly Hills, CA: Sage Publications, 1980).

For another helpful discussion of internal and external validity of written records, as well as the use of newspapers, in journalism and mass communication history, see James D. Startt and Wm. David Sloan, *Historical Methods in Mass Communication* (Hillsdale, N.J.: Lawrence Erlbaum Associates, 1989), 117-139. For the most part, this dissertation does not perform elaborate tests of validity upon the primary sources, which typically are the writings of William Apess, Elias Boudinot, and Samuel Cornish, even though they were treated with skepticism when appropriate. While at times, *infra*, the validity of a few points may be questioned, it would seem disingenuous to argue strongly for people to mistrust the representations of these minority writers, as those writers had complained about having been misrepresented. But, for future research, one could in fact explore possible inconsistencies between the writings and other historical records. See, e.g., chapter four. At no point, though, does the dissertation accept as a fact something known by other sources to be false. But one must admit a great deal of trust gets put into the writings of these authors. Thus, the comment to follow seems apt:

While the limitations on evaluating historical material can be frustrating, the historian must remember the key attitude with which it must be approached: caution. The

arguably could be more reliable than newspaper accounts about that bill. Yet, even the most primary of primary documents fail to convey enough information to guarantee complete understanding. Thus, this dissertation's use of primary documents relies upon two basic, possibly contradictory, presuppositions: First, major assertions may need verification by other sources when possible, and secondly, each "fact" asserted is considered to be true, unless proven otherwise. By doing this, though, historical validity relies upon a multitude of voices, each with its own unique viewpoint. For example, this dissertation discusses three writers of various ethnic backgrounds, rather than just one.²⁷ Future research could develop the cultural nuances and implications of the findings. For this dissertation, the voices will speak, though the dissertation itself serves as an inevitable filter that could distort unintentionally.

These voices include much of the available writings of Elias Boudinot, William Apess, and Samuel Cornish. Please note that sometimes the articles selected were not authored, but rather were edited or otherwise influenced, by the writers in question. Though many of these primary sources have been examined during preliminary research already cited, this dissertation reports findings from fresh readings. This re-examination allows for verification of earlier findings, as well as for new searches for references to the issues of representation and allusions to what now may be called rhetorical sovereignty.

historical record, because so much of what happened in the past went unrecorded and is lost forever, never can be complete. Caution and recognition of the limitations, however, will assist the historian in treating the material that survives judiciously and insightfully. That treatment, rather than total record, is the standard expected in historical study. Startt and Sloan, 139.

²⁷ As indicated below in the chapter of the theoretical framework, using multiple methodologies and voices in crafting history actually supports a basic concept supporting this dissertation: The more voices people hear, the better off they are.

(1) Writings of William Apess

The Reverend William Apess, a Pequot and a Methodist minister, wrote books and sermons, relying in part upon the journalism of others, including *A Son of the Forest: The Experience of William Apes, A Native of the Forest, Comprising a Notice of the Pequod Tribe of Indians, Written by Himself* in 1829, the year of his ordination; *The Increase of the Kingdom of Christ, a Sermon*, 1831; and *The Experiences of Five Christian Indians of the Pequod Tribe; or An Indian's Looking-Glass for the White Man*, 1833. During that same year, Apess identified with and took part in the Mashpee Revolt of 1833, when the Mashpee Tribe declared itself to be autonomous and therefore refused to accept a state-funded missionary, whom they resented. After a few years of controversy, in 1835, Apess wrote *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained*. Finally, Apess delivered, and then published in 1836, *Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston, by the Rev. William Apes, an Indian*. Barry O'Connell compiled these major works of Apess into *On Our Own Ground: The Complete Writings of William Apess, A Pequot*.²⁸ Thus, much of the textual analyses and related citations to Apess primarily will be to this handy compilation, though *Indian Nullification* will be cited at times to its original version.²⁹

²⁸ William Apess, *On Our Own Ground: The Complete Writings of William Apess, A Pequot*, ed. Barry O'Connell (Amherst: The University of Massachusetts Press, 1992, 1997). The 1997 version omits *Indian Nullification* and *The Increase of the Kingdom of Christ: A Sermon and the Indians, Written by Himself* (1831) for no explicit reason, though Kemper wondered whether O'Connell "minimized the importance of *Indian Nullification*." Kemper, "*Indian Nullification*," 2.

²⁹ See Apess, *Indian Nullification*.

(2) Writings of Elias Boudinot, including those in *Cherokee Phoenix*

Elias Boudinot produced much of his writings as the first editor of the *Cherokee Phoenix*. Microform copies of the *Cherokee Phoenix*, along with particular articles by Boudinot in Theda Perdue's *Cherokee Editor: The Writings of Elias Boudinot*, were examined for this dissertation.³⁰ Perdue claims to have compiled Boudinot's more important works, "except repetitious and nonanalytical editorials from the *Cherokee Phoenix*."³¹ This compilation, though not complete, proved useful in preliminary research because it gives examples of Boudinot's opinions about free expression and other relevant topics to this dissertation.³² This dissertation examines both the microfilm of the *Cherokee Phoenix*, as well as Perdue's compilation, allowing for some cross-verification of the findings. Other primary sources relating to Boudinot include a compilation by Perdue and Green of related historical documents, as well as the papers of Chief John Ross, who in the end conflicted with Boudinot over control of the message of the *Cherokee Phoenix*.³³ More importantly, a recent publication of letters among Boudinot, his wife Harriett Gold, and her family indicate some of the reasons for his actions as editor of the *Cherokee Phoenix* and as a purported representative of the Cherokee people at the signing of the Treaty of New Echota in 1835, which led to the

³⁰ See Perdue in Boudinot, *Cherokee Editor*. The microform documents were *Cherokee Phoenix*, generally October 1827 to August 1832 (Ellis Library, University of Missouri-Columbia), text-fiche. These often were defective, but they proved useful to a point.

³¹ *Ibid.*, ix. Also, Western Carolina University has begun but has not finished the process of digitizing the earliest copies the Phoenix at <http://library.wcu.edu/CherokeePhoenix/>, a welcome development, given the poor quality of many of the microform images available.

³² See, e.g., chapter five, *infra*.

³³ Theda Perdue and Michael D. Green, eds., *The Cherokee Removal: A Brief History with Documents*, 2d ed., The Bedford Series in History and Culture (Boston: Bedford/St. Martin's, 2005); John Ross, *The Papers of Chief John Ross*, ed. Gary E. Moulton (Norman: University of Oklahoma Press, 1985).

removal of the nation in 1838 and 1839 to present-day Oklahoma.³⁴ This dissertation synthesizes his writings with these personal letters, giving fresh insights into the man and his motivations.³⁵

(3) Writings of Samuel Cornish

During the Jackson Administration, the Reverend Samuel Cornish worked as editor at various times for three different African-American-owned newspapers: *Freedom's Journal*, *The Rights of All*, and *The Colored American*.³⁶ Though other African-American journalists spoke about the issues of this dissertation, Cornish as co-founder of the first African-American newspaper provides a strong framework for profitable discussions about freedom of expression, representation, and rhetorical sovereignty. Most of the primary documents come from certain issues of *Freedom's*

³⁴ Theresa Strouth Gaul, *To Marry an Indian: The Marriage of Harriett Gold and Elias Boudinot in Letters, 1823-1839* (Chapel Hill: University of North Carolina Press, 2005).

For a copy of the Treaty of New Echota, December 29, 1835; available at <http://cherokeobserver.org/Issues/treatynewechota.html>.

³⁵ Barbara Luebke cited originals of these letters, but Gaul's compilation helps provide more access to these important documents. See Luebke, "Elias Boudinot, Cherokee Editor." (Ph.D. diss., University of Missouri-Columbia, 1981), e.g., notes on 325.

³⁶ See Kemper, "THUNDER TONES" 1, n. 2. Cornish apparently edited the following issues: *Freedom's Journal* from March until September 14, 1827, *The Rights of All* from May 29 until October 9, 1829, and *The Colored American* from March 4, 1837, until May 18, 1839, though precise dates of all of his influence are not known. For a discussion, see Tripp, *Origins*, 39, among others; and Armistead S. Pride and Clint C. Wilson II, *A History of the Black Press* (Washington, D.C.: Howard University Press, 1997): 36.

Freedom's Journal and *The Colored American* first were accessed in the summer of 2004 at <http://www.accessible.com> by Accessible Archives, a private company charging for archival access to certain nineteenth century primary documents. These issues had been changed into readable text for an online format. Certain key terms like "freedom of the press" were searched for the writing of Kemper, "THUNDER TONES." Accessible Archives limits some of the research: Not all the volume and page number information is easily available in that format, and the articles cannot be viewed in context or presentation.

At <http://www.wisconsinhistory.org/libraryarchives/aanp/freedom/index.asp>, the Wisconsin Historical Society has digitized copies of the originals of *Freedom's Journal*, but those copies are difficult to read at times. Even so, they were used in later research for this dissertation, as they provided the context more clearly than did Accessible Archives.

The Rights of All and *The Colored American* were available by microform, though some of the copies were defective.

Journal, *The Rights of All*, and *Colored American* that Cornish likely wrote, edited, or influenced heavily. Also, one scholar compiled some of Cornish's writings – especially his more pithy quotes – into a handy volume of African-American journalism.³⁷

(4) Other resources

When required because of references in the writings of the subjects, other primary documents were secured. For instance, copies of the Cherokee Cases decided by the U.S. Supreme Court help with understanding the background of Boudinot's coverage, as well as some of the legal issues facing these writers as they battled misrepresentation and controls of information.³⁸ Of course, secondary sources help the study. For the past four years, research has gleaned from dozens of helpful articles and books as he has conceptualized and narrowed this study. Yet, the most progress came when secondary sources were set aside and the primary sources became the focus of contemplation and writing. Then, certain secondary sources were consulted again to verify conclusions and to cite properly contributions to the process. Ultimately, certain secondary sources provided theoretical guidance during the attempt to make sense of the primary findings. These come from many disciplines, ranging from law to moral philosophy to history, illustrating that knowledge comes from different sources and must be synthesized.

³⁷ See Dann, *The Black Press*.

³⁸ For example, discussion will include the Cherokee Cases, which established precedence for indigenous law in the United States, and had an impact upon the circumstances and content of Boudinot's journalism. These cases include *Cherokee Nation v. Georgia*, 30 U.S. (5 Peters) 1 (1831), and *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832), which may be found at Jill Norgren, *The Cherokee Cases: Two Landmark Decisions in the Fight for Sovereignty* (New York: Mc-Graw Hill, 1996; Norman: The University of Oklahoma Press, 2004), 165-186. These also are available at <http://lawschool.westlaw.com>.

4. Value of study

This dissertation attempts to explore important issues of freedom of expression and representation in the context of a fresher idea – rhetorical sovereignty – while giving insights into minority journalists during the important time of the Jackson Administration. Even though it does not purport to answer all questions raised, or even to answer fully any of the questions raised, this dissertation does move forward important discussions. Altogether, the major contributions include the testing historically of the concept of rhetorical sovereignty, the synthesis and expansion of important historiographies, the further exploration of the meaning of freedom of expression for minority groups specifically and the United States generally then and now, the exploration of issues of individual versus group rights of freedom of expression, and the beginning of building the historical foundations for further study into the issues of Native American and African-American journalism in the United States. Issues of race dominate today's discussions about the roles, functions, and qualities of journalism and mass communications in society.³⁹ Like a Venn diagram, the overlaying of the concepts of freedom of expression, representation, and rhetorical sovereignty in the context of race relations yields convergent and divergent thoughts. This research allows us to examine more closely the role of the press in race relations, and perhaps help us a bit in the slow and painful process of addressing centuries of colonization, oppressions, misunderstandings, and hatred.

Also, this study explores the tenuous relationship between political survival and freedom of expression – one might think that freedom of expression would undermine

³⁹ E.g., *The Missouri School of Journalism, Guide to Research on Race and News* (Columbia: Missouri School of Journalism, 2000). This provides among other things an annotated bibliography of “how the U.S. news media cover issues of ethnicity.” *Ibid.*, i.

political survival, or vice versa. For instance, tribal leaders have complained that freedom of expression might undermine tribal survival, while journalists – mainstream and tribal – have complained that freedom of expression would be necessary for tribal survival.⁴⁰ The end result will be that freedom of expression will be better understood in specific historical and ethnic contexts.

Conclusion

Freedom of expression has been an integral concept for journalism and mass communication scholars for as long as the discipline has existed, while diversity has been a growing but still neglected concept.⁴¹ Over the past few decades, certain journalism and mass communication practitioners and scholars have complained about the lack of diversity in the newsrooms, as well as the classrooms, of the United States.⁴² Interestingly, a few scholars have begun combining the two issues, implicating the value of freedom of expression for Native Americans, for example.⁴³ As discussed below, the

⁴⁰ For accounts of this debate, primarily from concerned journalists, see, e.g., Karen Lincoln Michel, ed., *From the Front Lines: Free Press Struggles in Native America: Essays by Native Journalists* (Minneapolis, MN: Native American Journalists Association, 1998) and numerous articles in “Covering Indian Country,” *Nieman Reports* 59, no. 3 (Cambridge, MA: The Nieman Foundation for Journalism at Harvard University, Fall 2005).

⁴¹ For a discussion about the historiography about freedom of the press, see, e.g., Wm. David Sloan and Thomas A. Schwartz, “Historiographical Essay: Freedom of the Press, 1690-1801: Libertarian or Limited?” *American Journalism* 5, no. 3 (1988): 159-177. For a discussion about the coverage of race, see *Guide to Research on Race and News*, i.

⁴² Probably the most pervasive study would be the annual newsroom diversity survey, “Newsroom Employment Census, The American Society of Newspaper Editors; available at <http://www.asne.org/index.cfm?id=1138>.

⁴³ See, e.g., Mark Trahan, *Pictures of Our Nobler Selves: A History of Native American Contributions to News Media* (Nashville, TN: The Freedom Forum First Amendment Center, 1995); available at <http://www.freedomforum.org/publications/newsroomtraining/picsnoblerselves/pictureofournoblerselves.pdf>; Stacey J.T. Hust, “Performing the Watchdog Function: An Investigation of the Status of Freedom of Expression Within Native American Tribal Courts” (paper presented at the Minorities and Communication Division of the Association for Education in Journalism and Mass Communication, Kansas City, Missouri, August 2003), and “Performing the Watchdog Function: Freedom of the Press on Tribal Land” (paper presented at Many Ways to See the World: Fusing Indian and Non-Indian Legal Systems in the Modern World: New Directions in American Indian Research: A Gathering of Emerging Scholars at the Graduate School of the University of North Carolina at Chapel Hill, November 2004); available at <http://www.gradschool.unc.edu/natam/panels/many.html>; and Leslie Newell, “Unprotected and

idea of rhetorical sovereignty may provide a framework for discussing these and other issues, but scholars need to test that idea with historical evidence. The following theoretical framework and literature review, along with the findings and syntheses, explore the basic thesis of this dissertation: During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.

Disconnected: Tribal Newspapers, Tribal Law and the Indian Civil Rights Act” (M.A. thesis, University of Arkansas at Little Rock, 1988). Kemper especially appreciates Dan Littlefield of the American Native Press Archives at the University of Arkansas at Little Rock for sending a copy of Newell’s thesis quickly and without charge during this dissertation process.

CHAPTER 2

THEORETICAL FOUNDATIONS

Introduction

When misrepresented with words, people of any culture will want the freedom to express themselves with words so as to correct the misrepresentation; this attempt at rhetorical sovereignty promotes the survival of that culture.⁴⁴ During the early nineteenth century, Native Americans and African-Americans wanted to survive and to have the freedom to speak for themselves.⁴⁵ This was a part of attempts by some to participate in the democratic forms of government in the United States. For instance, the Cherokee Nation established a constitutional republic – a form of democracy – with its Constitution

⁴⁴ The views about freedom of expression will be cited primarily to Thomas I. Emerson, *Toward a General Theory of the First Amendment* (New York: Random House, 1966), and *The System of Free Expression* (New York: Random House, 1970). Another seminal source for this dissertation is Nat Hentoff, *Free Speech For Me—But Not For Thee: How the American Left and Right Relentlessly Censor Each Other* (New York: HarperCollins, 1992). For his history of free expression, see Hentoff, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1980).

The idea of rhetorical sovereignty can be found at Scott Richard Lyons, “Rhetorical Sovereignty: What Do American Indians Want from Writing?” *College Composition and Communication*, 51, no. 3 (February 2000): 447-468; available at <http://links.jstor.org>; and “Rhetorical Sovereignty: American Indian Writing as Self-Determination” (Ph.D. diss., Miami University of Ohio, 2000); available at <http://proquest.umi.com>. Hereinafter, the article will be referred to as “Rhetorical Sovereignty: Writing” and the dissertation as “Rhetorical Sovereignty: Self-Determination.”

This dissertation adapts these concepts from Emerson and Lyons, as well as others cited below, as they examine how free expression informs the historical evidence, and vice versa. Also, note from the beginning that Emerson, *System*, 3, stands for the proposition of the individual needing freedom of expression in a democratic framework like the constitutional republic in the United States, while Lyons, 449, represents the view that rhetorical sovereignty (which this dissertation argues has profound implications for free expression) has communal characteristics and is needed by Native Americans as they “attempt to survive and flourish as a people.” These ideas are not mutually exclusive, but do demand more explanation and reconciliation.

For ideas about representation, primarily see Edward Said’s *Orientalism* (New York: Vintage, 1977, 1994) and *Culture and Imperialism* (New York: Vintage, 1994).

⁴⁵ This dissertation relies in part upon certain papers and presentations prepared by Kemper during his earlier doctoral studies and recent employment. See notes, *supra*.

of 1827, but did not guarantee freedom of the press.⁴⁶ In fact, the nation saw itself as “one of the sovereign and independent nations of the earth,” meaning that it viewed itself as an equal with the United States.⁴⁷ Thus, freedom of expression quickly became an issue as the tribe asserted its long-cherished political sovereignty and the U.S. resisted. Scott Lyons describes rhetorical sovereignty as “the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse.”⁴⁸ The concepts

⁴⁶ See CONSTITUTION OF THE CHEROKEE NATION: FORMED BY A CONVENTION OF DELEGATES FROM THE SEVERAL DISTRICTS, AT NEW ECHOTA, JULY 1827, in Theda Perdue and Michael D. Green, eds., *The Cherokee Removal: A Brief History with Documents*, 2d ed., The Bedford Series in History and Culture (Boston: Bedford/St. Martin's, 2005), 60-70. Perdue said, “The Constitution of the Cherokee Nation (1827) did not protect freedom of the press, and the Council clearly viewed the *Phoenix* as an organ of the government.” Perdue, in Boudinot, *Cherokee Editor*, 227, n. 15.

For a discussions about some possibilities as to why the Cherokee constitution and other southeastern tribal constitutions omitted explicit clauses about freedom of press or speech, see Smith, who said:

These artificial forms of government were not the result of long political struggles to wrest individual liberties away from a despotic monarch. Instead, these constitutions represented enhancements of centralized executive authority, limits on political participation, and structures to restrict freedom of expression among people who recognized no verbal crimes before contact with white colonists. Stephen A. Smith, “Freedom of Expression in Native American Constitutions,” *Journal of Communication Inquiry* 15, no. 1 (Winter 1991): 39.

See also Kemper, “Freedom of the Press.” In that study, Kemper misunderstood Smith’s argument, wrongly criticizing Smith’s use of primary sources over secondary sources (though the meaning of that criticism was that Smith needed to explain better the meaning of the primary sources by synthesizing other studies) and prematurely claiming that Smith “does not seem to answer adequately the question of why freedom of the press was omitted in the first Cherokee Constitution.” *Ibid.*, 8. After further reflection, Kemper now believes Smith indeed provides a good but perhaps incomplete discussion of how “traditional tribal customs for governance were replaced by written constitutions....” See Smith, 23.

Finally, it would be inaccurate anyone to say that the constitutional republic was the first time the Cherokee practiced a form of democracy. See, e.g., an explanation of early “democratic political culture” of southeastern tribes like the Cherokee in Duane Champagne, *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, CA: Stanford University Press, 1992), 28-55.

⁴⁷ See CONSTITUTION OF THE CHEROKEE NATION, cited also in Ralph Henry Gabriel, *Elias Boudinot: Cherokee & His America* (Norman: University of Oklahoma Press, 1941), 122.

⁴⁸ Lyons, “Rhetorical Sovereignty: Writing,” 449-450, and “Rhetorical Sovereignty: Self-Determination,” 6. Also cited by Deborah Gussman, “Rhetorical Sovereignty in William Apess’ Indian Nullification of the Unconstitutional Laws of Massachusetts” (paper presented at the annual meeting of the American Literature Association Annual Conference, May 2004): 7.

of rhetorical sovereignty, freedom of expression, and representation interact dynamically. But they can operate sequentially, as the historical narrative suggests: Misrepresentation led to a call for freedom of expression, which led to the opportunity to represent correctly, which promoted rhetorical sovereignty. This will be applied to Native Americans and African Americans during the age of Jackson.⁴⁹

The theoretical framework outlined in the preceding paragraph supports the thesis of this dissertation: During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.

Some, concerned that uncontrolled expression might hurt minorities, have questioned the boundaries of free expression.⁵⁰ It comes as no surprise that freedom of

In his dissertation, "Rhetorical Sovereignty: Self-Determination," Lyons also defines rhetorical sovereignty "as a people's right to control its own meanings, to describe and interpret itself, for itself, as well as others—that is, to tell its own stories." *Ibid.*, 154. He also says rhetorical sovereignty is "the right to exist and thrive as a distinct people and culture, whose communicative existence and ways of being are not destroyed by dominant languages or mode of thought, and who possesses an ability to defend those rights and ways." *Ibid.*, 206.

⁴⁹ In fairness, it must be admitted that Lyons apparently did not apply this concept outside of the context of American Indian/Alaska Native tribes. Yet, it seems logical to explore the idea that what is good for one group could be good for others. Those who are Kantian might employ the categorical imperative, believing that if it is right here it is right everywhere. For an explanation of the categorical imperative, see Philip Patterson and Lee Wilkins, *Media Ethics: Issues and Cases*, 2d ed. (Madison, WI: Brown & Benchmark Publishers, 1991, 1994), 8-9. Therefore, this theoretical framework takes various conceptions of free expression to find what could be workable for as many people as possible.

Shiffrin says, "Like the romantics, then, eclectics resist both Kantianism and utilitarianism in part because society is too diverse and too complicated to justify the expectation that monistic methodologies could be productive." Steven H. Shiffrin, *The First Amendment, Democracy, and Romance* (Cambridge, MA: Harvard University Press, 1990), 7. Yet, this dissertation does not delve deeply into the different variants of First Amendment philosophy, seeking to justify one or the other. On the other hand, Kemper takes more of a Kantian than a utilitarian approach to First Amendment theory. He hopes this is not just eclectic or romantic.

⁵⁰ For more specific instances, see discussion, *infra*.

expression meets with resistance, for it has met with resistance in each cultural context where the freedom has been asserted. Also, one must recognize from the outset that minority groups – often having been oppressed during their histories – understandably might question something that could be viewed as a threat to those groups.

Throughout this dissertation, other points about race must be clear and present. The experiences of Native Americans and African-Americans have been similar *and* different, and thus scholars ought not to over-generalize. Yet, though these two groups were chosen for study, these principles may be considered and perhaps applied to any distinct group of people, whether that group is identified by race, ethnicity, religion, political position, gender, etc. And, sweeping generalizations – an all too common logical fallacy – can occur when scholars use one term or concept or philosophy to describe a group. For instance, each of the hundreds of indigenous tribes has unique customs and perspectives; and members have their own unique viewpoints. Thus, scholars and other communicators cannot truly say they represent all of the “Native American” or “African-American” or “Euro-American” perspectives. One person or perspective cannot truly represent all of the viewpoints of one race. But persons need freedom of expression to explore issues that affect them as well as others like them, or even others unlike them. Therefore, this dissertation seeks concepts and theories that may explain shared as well as unique experiences, that nourish and grow the well-being of all people, and that minimize polarization and divisiveness.⁵¹ That is, let as many voices speak so that common solutions can emerge for problems.

⁵¹ For a discussion about how studying ethnic groups like Native American tribes could lead to “polarizing differences,” see Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), 35, citing Wendy Rose, cited in Kenneth Lincoln, *Sing with the Heart of a Bear: Fusions in Native and American Poetry, 1890-1999* (Berkeley: University of California Press, 2000), xii, 10. For a discussion of how ethnic groups and individuals could minimize differences, see Cornel West, *Race Matters*, 2d ed. (Boston: Beacon Press, 1993; New York: Vintage Books, 2001).

To that end, this particular chapter provides a multi-layered theoretical framework that conceptualizes the key concepts of rhetorical sovereignty, freedom of expression and controls of information, and representation and misrepresentation, and thereby explains the basic arguments of this dissertation. The literature review in the next chapter emerged during earlier research on the writers in question and has developed through the process; yet, the theoretical framework in this chapter coalesced only after the completion of the primary research. This means that the historical evidence drove the theory, and not vice versa.

1. Rhetorical sovereignty – a promising but problematic concept

Though touching upon age-old issues, a particular conceptualization of rhetorical sovereignty in scholarship about minority writers recently has emerged, but not without some immediate concerns. Frankly, the conceptualization is too new for an extensive literature review of how it has been applied to the issues in question. But the concept of rhetorical sovereignty is significant enough to warrant an attempt to support it.⁵² Scott Lyons, in an attempt to explore how Native Americans can recover their own voices in writing, defines rhetorical sovereignty as “the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse.”⁵³ Lyons operationalizes the concept by saying its goal is “to proclaim, defend, and improve our existence by using, and adapting to our purposes, the available means of communication

⁵² Lyons briefly discusses Boudinot and the *Cherokee Phoenix* at places, meaning that journalism fits into his conceptualization of the words over which Native Americans need rhetorical sovereignty. *E.g.*, “Rhetorical Sovereignty: Self-Determination,” 72, 192, 194, 200, and 204. He apparently mentions Apess just once. *Ibid.*, 183. He does not mention Cornish at all. But that does not appear to be significant, given Lyons’s overall focus upon the Ojibwas and other North American tribes as examples of those wanting and needing rhetorical sovereignty.

⁵³ See note 47, *supra*.

production.”⁵⁴ Also, he says, “Rhetorical sovereignty is asserted, achieved, and recognized when Native peoples successfully use language to consolidate and proclaim their right to exist and everything that accompanies it: land and language rights, cultural integrity, political self-determination, and freedom from oppression, exploitation, and imperialism.”⁵⁵

While sounding thoughtful and likely to promote communicative freedom, the concept of rhetorical sovereignty immediately presents some problems. No ethnic group can claim to have complete unanimity in every issue, which Lyons seems to admit in a brief discussion about the need for a free press on the reservation.⁵⁶ Also, Lyons emphasizes the issue of community, which likely would explain why he italicized “*peoples*” in his definition of rhetorical sovereignty, but does not account for whether the tribes have obligations to preserve the individual liberties of their members.⁵⁷ In his dissertation, Lyons defines “people” as “a group of human beings united together by history, language, culture, or some combination therein—a community joined in union for a common purpose: the survival and flourishing of the people itself.”⁵⁸ At first glance, this seems broad enough to accommodate a discussion of Native Americans in general, tribes in particular, African-Americans, and even Euro-Americans. Lyons later narrows his discussion, eschewing what he calls “mainstream multiculturalism,” which “may focus on the *people* but typically not the *state*—and hence, not the *nation*—and

⁵⁴ *Ibid.*, 22.

⁵⁵ *Ibid.*, 40-41.

⁵⁶ *Ibid.*, 253.

⁵⁷ Lyons, “Rhetorical Sovereignty: Writing,” 449.

⁵⁸ Lyons, “Rhetorical Sovereignty: Self-Determination,” 49.

thus isn't necessarily the practice or honoring of Indian sovereignty."⁵⁹ Thus, Lyons focuses upon rhetorical sovereignty for tribes as distinct political entities.⁶⁰ So, if "peoples" mean distinct political entities, then the recognition of the right of those entities to determine their boundaries for communication could mean that each entity could decide to control communication, even for its own members. Some may think that group controls of information might be politically and strategically necessary for survival, for Lyons notes that some Native Americans feel as if "to write [English] is to kill" Native language, culture, and identity.⁶¹ But he moves past that argument by asserting that writing is not "anti-sovereign" and that rhetorical sovereignty over writing ensures the survival of indigenous groups.⁶²

⁵⁹ *Ibid.*, 54.

⁶⁰ *Ibid.*, 59-70. Lyons also wrestles with the idea of who should be considered to be an Indian. He concludes "that an Indian is a person who is recognized as Indian by other Indians." *Ibid.*, 66. Legal scholar Steven Pevar says, "There is no single definition of the term *Indian*." Stephen L. Pevar, *The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights*, 3d ed., An American Civil Liberties Union Handbook, ed. Eve Cary (New York: New York University Press, 2004), 18.

⁶¹ *Ibid.*, 163. This idea of words killing Native American cultures stands in opposition to the dozens and even hundreds of publications and broadcast outlets created by and for Native Americans. For a long list of such publications and broadcast outlets, see appendix A of James E. Murphy and Sharon M. Murphy, *Let My People Know: American Indian Journalism, 1828-1978* (Norman: University of Oklahoma Press, 1981), 177-199. This list obviously needs to be updated, but it illustrates a basic point that words by Native Americans benefit Native Americans.

⁶² While likely being the first scholar to use the phrase "rhetorical sovereignty" in relation to minority writing, Lyons owes intellectual debts to certain Native and non-Native scholars. For instance, for the idea that Natives ought to control Native communication, Lyons cites Elizabeth Cook-Lynn, *Why I Can't Read Wallace Stegner and Other Essays: A Tribal Voice* (Madison: University of Wisconsin Press, 1996), 78-98; Vine Deloria, Jr., *We Talk: You Listen: New Tribes, New Turf* (New York: Macmillan, 1970); and Robert Allen Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1995). See Lyons, "Rhetorical Sovereignty: Self-Determination," 53-54. But Lyons in his dissertation also adapts traditionally Western concepts of "rhetoric," citing certain Western thinkers like Aristotle, *On Rhetoric: A Theory of Civic Discourse*, trans. George A. Kennedy (New York: Oxford Press, 1991) and Plato, *Gorgias*, trans. Walter Hamilton (Middlesex: Penguin, 1971). See, e.g., Lyons, "Rhetorical Sovereignty: Self-Determination," 23-30. Some might claim that combination of Native ideas of sovereignty with Western conceptualizations of rhetoric would represent colonial impulses that Lyons claims to disdain; Lyons himself seems to admit this. Lyons, "Rhetorical Sovereignty: Self-Determination," 8. More likely, Lyons recognizes that writing exists whether Natives like it or not, and that they need to use it for their own purposes. *Ibid.*, 273.

Also, late in the dissertation process, it became apparent that perhaps Warrior's *Tribal Secrets* would need more study for future research. For instance, Warrior traces his idea of intellectual sovereignty to

Deborah Gussman applies Lyons's concept of rhetorical sovereignty to William Apess's *Indian Nullification* by noting Lyons's attempt to aid "the Mashpee's efforts to reclaim and redefine their sovereignty," but she does not explore possible connections between rhetorical sovereignty and freedom of expression.⁶³ More importantly, Gussman does not take an essential idea from Lyons about community and discuss in detail whether rhetorical sovereignty meant power for Apess or power for the Mashpee or power for Native Americans in general. She does mention that political documents from the Mashpee that Apess includes in *Indian Nullification* "dispel any notions of Apess as an outside agitator attempting to speak for the Mashpee by allowing the reader to hear the Mashpee speak for themselves."⁶⁴ But the extent or political validity of the power that Apess had to speak for the Mashpee needs to be evaluated in more detail.

Since Lyons views rhetorical sovereignty as a communal process, so individuals such as Boudinot and Apess might not be able to claim the right to represent the people.⁶⁵ Or could they? As the historical narrative illustrates below, Boudinot was the duly appointed editor of the tribal newspaper; even after he resigned, he still believed he spoke

discussions by Vine Deloria, Jr., and John Joseph Mathews. See Warrior, *Tribal Secrets*, chapter three, "Intellectual Sovereignty and the Struggle for an American Indian Future," 8-126, citing works like Deloria's *Custer Died for Your Sins: An American Indian Manifesto* (New York: Macmillan, 1969) and Mathews' *Talking to the Moon: Wildlife Adventures on the Plains and Prairies of Osage Country* (Norman: University of Oklahoma Press, 1945).

⁶³ Gussman, 7-8. The ways in which Gussman applied rhetorical sovereignty to Apess and even the Cherokee situation will be explored in more detail in subsequent chapters of this dissertation.

⁶⁴ *Ibid.*

⁶⁵ Champagne, *Social Order*, 38, argues that the Cherokee, among other tribes, have tended to have more communal societies. But also remember that cannot be generalized to all tribes without more specific research ascertaining whether American Indian/Alaska Native tribes are more communal in general. That would make for interesting future research. But it is possible to see that a communal notion of rhetorical sovereignty would resonate with American Indian/Alaska Native tribes, especially as they appear to want more sovereignty for groups. See, e.g., Vine Deloria, Jr., and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999), and Patrick Macklem, "Distributing Sovereignty: Indian Nations and Equality of Peoples," *Stanford Law Review* 45 (May 1993): 1311-1367; available at <http://lawschool.westlaw.com>.

for the people when he signed the Treaty of New Echota, which sent the Cherokee along the Trail of Tears to present-day Oklahoma. Also illustrated below, Apess spoke for the Mashpee Tribe as it claimed nullification of Massachusetts laws. Boudinot and Apess were, in a real sense, spokesmen for individual tribes, which means that they practiced and promoted a measure of rhetorical sovereignty for those tribes. Again, in relation to Native American writers, a fundamental issue to explore would be whether individuals speak for themselves, or tribes, or both. That is, who is the legitimate voice? And who decides that legitimacy? As scholars imply, those who decide legitimacy really have the sovereignty.⁶⁶

But, the extent of true political sovereignty for tribes has remained an open legal question, as U.S. courts have attempted to apply the tepid holding in *Cherokee Nation v. Georgia* in 1831 that tribes were “domestic-dependant nations,” or kind of sovereign, but kind of not.⁶⁷ Tribes tend to prefer to be considered as sovereign nations. As Macklem says:

The preexistent right of Indian nations to govern themselves, limited but not extinguished by the establishment of the United States as a sovereign entity, forms the basis for the assertion and exercise of tribal governmental power. Because tribal governments do not derive their authority from federal or state sources, their actions need not conform to constitutional constraints on federal and state authority, such as the First Amendment. Tribes are therefore free to design their own forms of government and to exercise jurisdiction over a range of subject matters, as diverse as rules for

⁶⁶ E.g., Deloria and Wilkins, *Tribes*, vii-xi, as well as Lyons in *toto*.

⁶⁷ Deloria and Wilkins, *Tribes*, 53, think Chief Justice Marshall’s phrase “domestic-dependent nations” is “demeaning language.” See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 16 (1831). For an excellent discussion of this case, as well as a copy of the case in the appendix, see Jill Norgren, *The Cherokee Cases: Two Landmark Federal Decisions in the Fight for Sovereignty* (Boston: McGraw-Hill, 1996; Norman: The University of Oklahoma Press, 2003), especially 98-111. Konkle, *Writing Indian Nations*, 17-26, also has a pertinent discussion of *Cherokee Nation v. Georgia*; *Johnson v. M’Intosh*, 21 U.S. 543 (1823); and *Worcester v. Georgia*, U.S. (6 Pet.) 515 (1832). Konkle said the cases “reveal the contradictions inherent in the practice of relying on the tradition of treaty-making to establish legitimate control of land while at the same time attempting to deny the political autonomy of Native peoples.” Konkle, *Writing Indian Nations*, 17.

membership and election or section, and economic development and taxation of entities doing business on Indian land.⁶⁸

Then, Macklem acknowledges that “federal law has heavily influenced the nature and scope of Indian government,” noting the federal Indian Civil Rights Act and its intent to ensure First Amendment-like rights for tribes.⁶⁹ Thus, the questions of how much power the tribes do have and ought to have over tribal communications remain open for discussion and debate. Lyons, for instance, uses the Cherokee Cases by the Marshall Court as examples of “rhetorical imperialism: the ability of dominant powers to assert control of others by setting the terms of debate.”⁷⁰ Maureen Konkle, while acknowledging these inherent colonial tendencies of the Marshall Court, appears to view the language as compromise, navigating “the contradictions inherent in the practice of relying on the tradition of treaty-making to establish legitimate control of land while at the same time attempting to deny the political autonomy of Native peoples.”⁷¹

This dissertation, without spending too much time exploring the questions inherent with tribal sovereignty, accepts as basic premises that tribes ought to have as much sovereignty as possible and that tribes and other powers ought not to undermine

⁶⁸ Macklem, 1318.

⁶⁹ *Ibid.*

⁷⁰ Lyons, “Rhetorical Sovereignty: Self-Determination,” 45. In a book published late in the dissertation process, Williams calls Justice Marshall – the chief justice of the U.S. Supreme Court for the Cherokee Cases decisions – “one of the most Indianophobic, racist justices of all time, at least when it came to giving his opinion on Indian rights in the ‘great case of Johnson v. McIntosh.’” Robert A. Williams, Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*, Indigenous Americas series, eds. Robert Warrior and Jace Weaver (Minneapolis: University of Minnesota Press, 2005), 57. This book needs to be mined for future research.

⁷¹ Konkle, *Writing Indian Nations*, 17. Konkle’s work in *Writing Indian Nations* grew out of, and Kemper’s earlier work in “Indian Nullification” was informed by, Konkle’s in-press version of *Writing Indian Nations*, then called *Unbelieving Indians: Treaties, Colonialism, and Native Historiography in English, 1827-1863*. Also, other works by Konkle that inform this dissertation includes her own dissertation, “Writing the Indian Nation: U.S. Colonialism, Native Intellectuals, and the Struggle Over Indian Identity” (Ph.D. diss., University of Minnesota, September 1997), and “Indian Literacy, U.S. Colonialism, and Literary Criticism,” *American Literature*, 69, no. 2 (September 1997): 457-486.

rhetorical sovereignty and freedom of information and expression. Lyons positions the discussion about rhetorical sovereignty with the issue of political sovereignty for tribes: “Sovereignty is the guiding story in our pursuit of self-determination, the general strategy by which we aim to best recover our losses from the ravages of colonization: our lands, our languages, our cultures, our self-respect.”⁷² A seemingly irreconcilable tension exists between tribal sovereignty and freedom of expression, meaning one may reduce the other. Rather, this dissertation accepts both concepts – that both tribal sovereignty and freedom of expression are necessary, despite their inherent tensions.

In regards to indigenous groups, Downing and Husband argue the importance of the view “that a core element of self-determination is a capacity to construct and report your own reality.”⁷³ And they then put the responsibility of misrepresentations upon mainstream media, noting “the power of non-indigenous media in determining the majorities’ perceptions of indigenous peoples has been, and is, a central plank of the hegemonic determination of indigenous peoples’ worlds.”⁷⁴ After discussions about how this may apply to indigenous groups in places such as Australia and the United States, Downing and Husband conclude by supporting the idea of tribal press.⁷⁵ They squarely set the issue in the discussion about what Lyons calls rhetorical sovereignty, applying freedom of expression specifically to indigenous groups.⁷⁶

⁷² Lyons, “Rhetorical Sovereignty: Writing,” 449. For examples of arguments for tribal sovereignty, see, e.g., Williams, *supra*; and Vine Deloria, Jr., and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999).

⁷³ John Downing and Charles Husband, *Representing ‘Race’: Racisms, Ethnicities and Media* (Thousand Oaks, CA: Sage Publications, 2005), 133.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

Finally, one of the biggest challenges with rhetorical sovereignty is to apply it to a non-indigenous ethnic group without a governmental entity, as illustrated by free African Americans in the United States during the age of Jackson. Free African Americans did not organize into distinct governmental entities in the United States, meaning that, unlike the indigenous tribes, they had no governmental mechanisms of their own to respond to the domination of the Euro-American-dominated governments. African Americans sought suffrage in the United States, which was not guaranteed until the post-Civil War amendments to the U.S. Constitution. Certain African Americans during the age of Jackson – individually and corporately, in person and in groups such as religious congregations and political committees – sought and practiced as they could the right to protest both slavery and the political and social mistreatment of their people in the United States and beyond, but did so *within* U.S. land. That sounds like a desire for something like “rhetorical sovereignty.” Of course, Africans have formed and maintained tribal groups and governments on the African continent, and some African-Americans organized a colonial government of their own in Liberia on the West African coast. As briefly discussed below, editor Samuel Cornish advocated assimilation into Euro-American society and with the same civil rights and opportunities, while his early partner, John Russwurm, promoted colonization of Africa by free African-Americans. In fact, Russwurm and Cornish split over the issue, leading to Cornish’s departure from *Freedom’s Journal*, the first newspaper owned and operated by African-Americans.⁷⁷ This split illustrates a problem discussed earlier in relation to rhetorical sovereignty as conceptualized by Lyons – no one person can claim to represent truly the views of an entire ethnic group, and such attempts to represent the entire group likely lead to

⁷⁷ For a discussion, see, e.g., Charles A. Simmons, *The African-American Press, with Special References to Four Newspapers, 1827-1965* (Jefferson, N.C.: McFarland & Co., 1998), 10.

overgeneralizations at best and misrepresentations at worst. Thus, one wonders at times whether rhetorical sovereignty serves as an accurate or at least an efficient theoretical construct to explain why the rights of free expression and rhetorical representation meant so much to minority writers during the age of Jackson.

But the quest for cultural survival, the hope for securing rights and opportunities for members of their ethnic groups, likely pushed these writers in their articulate and often vigorous assertions of the right to control their own communication. This also is part of Lyon's conceptualization of rhetorical sovereignty, a tantalizing idea if one wants to find a way to explain in more detail why freedom of expression appealed so much and misrepresentations offended so much. It seems obvious to say that these writers wanted freedom of expression, especially when that freedom appeared to be threatened. There has to be a compelling reason why they were so vociferous or insistent in their demands for the right to respond to misrepresentations, for the right to control their message. This control became the object of struggle among Native Americans, African Americans, and the dominant Euro-American power structure during the age of Jackson. So, rhetorical sovereignty perhaps could help us to better understand the *why* of the actions and words of these writers. They wanted nothing less than the survival of their ethnic groups.

2. Freedom of expression and controls of information

At first glance, rhetorical sovereignty sounds like freedom of expression, and perhaps they operate similarly. Freedom of expression is, at least in the view of this dissertation, the ability to conceptualize and communicate without undue or unjust interference from others. Controls of information are the natural enemies of freedom of expression.⁷⁸ Freedom of expression is a universal, fundamental human right, to be

⁷⁸ The concept "controls of information" comes from a course by that name, taken by Kemper from Professor Charles Davis at the University of Missouri-Columbia's School of Journalism.

abridged only in the gravest of circumstances.⁷⁹ Though not absolute in practice, this concept ought to be absolute in principle. The most immediate and therefore most influential source for this general concept of free expression in this dissertation would be Professor Thomas I. Emerson, who wrote treatises such as *The System of Freedom of Expression* in part to discuss the intrinsic and extrinsic value of freedom of expression for all societies.⁸⁰ Though he applied his theoretical framework specifically to the First Amendment jurisprudence as it had developed by the late 1960s, Emerson articulated a broader vision for freedom of expression for cooperation in all societies, saying, “Some degree of fundamental consensus—some minimum area of agreement or acquiescence—is essential for a community to operate on any basis other than one of sheer force or terror.”⁸¹ Thus, Emerson’s argument focuses upon democratic principles, as if they would be the only rational choice for societies.⁸² Practitioners and theorists such as

⁷⁹ For an example of this argument, see Thomas Franck, “Is Personal Freedom a Western Value?” *The American Journal of International Law* 91, no. 2 (October 1997): 593-627; available at <http://www.jstor.org>.³

⁸⁰ See Emerson, *System*, *supra*.

⁸¹ *Ibid.*, 4-5

⁸² While such a commitment to democracy smacks of political imperialism, this dissertation does not apologize for a commitment to democratic principles. The pressing issue today is not so much whether societies benefit from democracy, but how to spread those principles, either by force or not. Take for instance John Deutch’s pungent words in a recent op-ed piece:

America embarks on an especially perilous course ... when it actively attempts to establish a government based on our values in another part of the world. It is one matter to adopt a foreign policy that encourages democratic values; it is quite another to believe it just or practical to achieve such results on the ground with military forces. John Deutch, “Time to Pull Out, and Not Just From Iraq,” *New York Times*, 15 July 2005; available at <http://www.nytimes.com>.

Emerson argues that governments have the obligation to ensure freedom: “Ordinarily protection of expression against interference by private persons through force or violence is an accepted role for the police.” See *System*, 631. But free expression results in “orderly change.” *Ibid.*, 47. Fully answering the question of whether to use force to spread democracy – a fundamental issue during the United States’ current war against Iraq – lies beyond the purpose and scope of this dissertation. Still, this dissertation in general stands for the proposition that societies and individuals need to have the freedom to decide for themselves whether to have freedom of expression, and war does not necessarily militate (pun intended)

Kovach and Rosenstiel say journalism, especially in the United States, rests upon democratic foundations.⁸³ As Emerson argues, democracy needs freedom of expression, which he defines as “the right to form and hold beliefs and opinions on any subject, and to communicate ideas, opinions, and information through any medium—in speech, writing, music, art, or in other ways.”⁸⁴ To Emerson, free expression is the right to think and to share those thoughts.⁸⁵ Emerson then insisted that free expression must be “reconciled with *equal opportunity for other persons or groups*” to have those rights and “with other individual and social interests” [emphasis added].⁸⁶ This strikes at the heart of a major issue in this dissertation – whether Native Americans and African-Americans have had the same “equal opportunity” as Euro-Americans have had to exercise freedom of expression and other rights, whether as individuals or as groups. Rather than being a

free expression. Therefore, the argument for free expression for any person, any group, any society does not necessarily support the argument that force ought to be used to give that free expression. The concept of freedom of expression replicates itself. The pertinence of this position will become more apparent in chapter six, *infra*, when discussing how best to apply these principles in cultural contexts.

⁸³ Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* (New York: Crown Publishers, 2001), 27.

⁸⁴ Emerson, *System*, 3.

⁸⁵ *Ibid.* John Stuart Mill grouped these issues as “... the Liberty of Thought: from which it is impossible to separate the cognate liberty of speaking and of writing.” Mill, *On Liberty: Annotated Text, Sources and Background Criticism*, A Norton Critical Edition, ed. David Spitz (New York: W.W. Norton & Co., 1975), 16. It seems that scholars such as Mill who support free expression tend to be broader in what they think to be expression. Thus, it seems illogical for someone to say on one hand that she supports the freedom to criticize a Democratic president, but not the freedom to criticize a Republican president, or vice versa. Those who believe in the right to censor for some things, and not others, simply are hiding their philosophical biases behind political exigencies. Then, people are left with no alternative except to fight for their positions, leaving the loser to lament the censorship. Kemper believes that, while needing to have the discernment to know what garbage is, people ought not to be forced to accept government’s definition of garbage and have to throw away their ideas, because perhaps there is gold hidden in that garbage, or the garbage is not garbage at all. While some ideas are indeed repugnant and even reprehensible, people simply ought to have the freedom to express something without censoring others or being censored by others. This, in essence, is what Hentoff argues, see notes *supra* and *infra*. And this is the essence of the absolutism espoused in this dissertation.

⁸⁶ Emerson, *System*, 3.

countervailing force, liberty facilitates the possibility of equality.⁸⁷ During the age of Jackson, neither Native Americans nor African-Americans were U.S. citizens, even though some were executed for crimes under U.S. law, even though they unwillingly provided the land and labor to build the wealth of the country, even though they lived within the boundaries of the United States, even though they were and still are human beings.⁸⁸ Tribes had their own governments, with some similar to the U.S. system – the Cherokee Nation, for instance, established a constitutional republic in 1827.⁸⁹ Again,

⁸⁷ As a member of the debate squad while a senior in high school, Kemper examined and argued something to the effect that: “Resolved: liberty is greater than equality.” After over 20 years, it appears that the concepts do not present an either/or proposition, though as high schoolers the debaters argued from polar perspectives, when all should have understood the concepts’ mutually essential qualities. As John Rawls said, people ought to have “equal liberty.” See in particular Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 195-257. But, as Kemper wondered as a high school debater and has argued in this dissertation, liberty may well be necessary before equality. See Rawls, 214. As Rawls said:

We may take for granted that a democratic regime presupposes freedom of speech and assembly, and liberty of thought and conscience. These institutions are not only required by the first principle of justice but, as Mill argued, they are necessary if political affairs are to be conducted in a rational fashion. *Ibid.*, 225.

⁸⁸ Native Americans finally received the right of U.S. citizenship in 1924 with the ACT OF JUNE 2, 1924, 43 Stat., 253. For a discussion, see Deloria and Wilkins, xi, n. 4; see also 96-98, 146-148. Yet, the fourteenth amendment to the U.S. Constitution supposedly dealt with citizenship: “All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.” U.S. CONST., AMEND. XIV, § 1; available at <http://caselaw.lp.findlaw.com/data/constitution/amendment14/>.

The first section of the fourteenth amendment does not specify race, but the second section does say, “Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed.” U.S. CONST. AMEND. XIV, § 2; available at <http://caselaw.lp.findlaw.com/data/constitution/amendment14/>. The amendment came right after the Civil War and the passage of the thirteenth amendment, which abolished slavery. So perhaps the framers did not believe they were granting U.S. citizenship to Native Americans at the time. This would make for interesting research. Again, this issue about citizenship for Native Americans was addressed by the Act of June 2, 1924, which said: “That all noncitizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States.” Cited by Deloria and Wilkins, 146.

⁸⁹ For a copy of the first Cherokee constitution, see Theda Perdue and Michael D. Green, eds., *The Cherokee Removal: A Brief History with Documents*, 2d ed., The Bedford Series in History and Culture (Boston: Bedford/St. Martin’s, 2005), 60-70. For an excellent discussion of pre and post-constitutional law for the Cherokee, see Rennard Strickland, *Fires and the Spirits: Cherokee Law from Clan to Court*, Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1975).

Another important work, begging for more consideration in future research, is John Phillip Reid, *A Law of Blood: The Primitive Law of the Cherokee Nation* (New York: New York University Press, 1970), which discusses anthropological and cultural perspectives of the formation, expression, and understanding of law for the Cherokee in particular and Native Americans in general. See also Reid *A Better Kind of Hatchet:*

African-Americans were either free or slave within Euro-American society, but did not organize into distinct governmental units, though some did colonize Liberia for that very purpose.⁹⁰ Yet, neither Native Americans nor African-Americans had full participation in decisions by Euro-Americans that most affected them, whether those decisions involved removal or abolition or other matters.

Freedom of expression would have been self-empowering and powerful for ethnic minorities during the age of Jackson. Emerson asserts at least four general benefits for free expression, especially in a democratic society:

1. Freedom of expression is essential as a means of assuring individual self-fulfillment.
2. Freedom of expression is an essential process for advancing knowledge and discovering truth.
3. Freedom of expression is essential to provide for participation in decision making by all members of society.
4. Freedom of expression is a method of achieving a more adaptable and hence a more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus.⁹¹

Law, Trade, and Diplomacy in the Cherokee Nation During the Early Years of European Conflict (University Park: The Pennsylvania State University Press, 1976).

Bruce Johansen and other scholars such as Vine Deloria, Jr., argue that certain founders of the U.S. government actually learned some lessons about democracy from tribes. See Bruce Johansen, *Debating Democracy: Native American Legacy of Freedom*, with chapters by Donald A. Grinde, Jr., and Barbara A. Mann, with forward by Vine Deloria, Jr. (Santa Fe, N.M.: Clear Light Publishers, 1998), and Bruce Johansen, ed., *Native America and the Evolution of Democracy: A Supplementary Bibliography*, *Bibliographies and Indexes in American History*, 40 (Westport, CT: Greenwood Press, 1999). See also related notes, *infra*.

⁹⁰ Samuel Cornish and John Russwurm –the founding editors of the first African-American-owned newspaper in the U.S. – split over Russwurm’s support of colonization. Russwurm later went to Liberia, where he served as a journalist, educator, and public official. See Martin E. Dann, ed., *The Black Press, 1827-1890: The Quest for National Identity*, (New York: G.P. Putnam’s Sons, 1971), 29, and Lauren Kessler, *The Dissident Press: Alternative Journalism in American History*, The SAGE COMMTEXT Series, vol. 13, ed. F. Gerald Kline (Beverly Hills, CA: SAGE Publications, 1984), 28-29. Cornish believed the better course was for African-Americans to assimilate into mainstream society. E.g., Samuel Cornish, “TO OUR PATRONS, AND THE PUBLICK GENERALLY,” *The Rights of All*, 29 May 1829, 2. For a discussion, see Simmons, *The African-American Press*, 10.

⁹¹ Emerson, *System*, 6-7. Emerson, *Theory*, 3, expresses these, but with slightly different wordings. It is important to recognize Emerson’s contextualization of freedom of expression within democracy: The title

Emerson asks that these arguments be accepted by “faith,” as he claims that “[t]he validity of the foregoing premises has never been proved or disproved, and probably could not be.”⁹² This appears to be an unproductive position, because the validity of freedom of expression gets questioned and therefore must be supported. Now, if Emerson means validity in the empirical way that Katzer, Cook, and Crouch understand validity, or “[h]ow well a *measuring instrument* measures the phenomenon under investigation,” then perhaps Emerson would be correct because it would be difficult to “prove” the proposition quantitatively.⁹³ But, if by validity he means that freedom of expression may be deduced or induced through logical reasoning, then Emerson undercuts his own argument.⁹⁴ Freedom of expression can be examined logically and legally, as Emerson illustrates in his own work. Levi reminds us that logical reasoning and legal reasoning are not necessarily antithetical.⁹⁵ Freedom of expression also can be

of the first chapter of is “The Function of Freedom of Expression in a Democratic Society.” *Ibid.* This presupposes that freedom of expression operates as a democratic value; thus, a democratic society likely would have more freedom of expression, as opposed to a non-democratic society. Perhaps the level of freedom of expression for ethnic minorities would be determined by the nature or level of democracy practiced by their governments. But as this dissertation will illustrate, even in a democratic-type government, racial minorities still struggle with having freedom of expression. Perhaps that can be explained in part by how much Native Americans and African-Americans participate within those democracies. Qualitative and quantitative studies on that issue would make for interesting research in the future.

⁹² Emerson, *System*, 7-8.

⁹³ Jeffrey Katzer, Kenneth H. Cook, and Wayne W. Crouch, *Evaluating Information: A Guide for Users of Social Science Research*, 4th ed. (Boston: McGraw-Hill, 1998), 286. Another similar empirical definition of validity is what David Demers calls “the extent to which a measure or indicator actually measures what it is intended to measure.” David Demers, *Dictionary of Mass Communication & Media Research: A Guide for Students, Scholars & Professionals* (Spokane, WA: Marquette Books, 2005), 319.

⁹⁴ Common conceptualizations of “validity” involve law, logic, and philosophy. See <http://dictionary.reference.com/search?q=validity>.

⁹⁵ Edward H. Levi, *An Introduction to Legal Reasoning*, 1999 edition (Chicago: University of Chicago Press, 1949), 104.

examined philosophically or metaphysically, as Emerson and other authors illustrate.⁹⁶ Spouting “freedom of expression” and asking us to accept it by “faith” without compelling arguments – logical, legal, philosophical arguments – that address the concerns of racial minorities who fight for survival does not further the cause for freedom of expression adequately. The principles enunciated by Emerson – and echoed by others – must be analyzed at various levels and discussed from a perspective that respects the racial minorities who either ask for those principles or who resist the applications of those principles by people whom they distrust.⁹⁷ Yet, the historical narrative to follow will be organized around these principles; preliminary research supports all of these supposed benefits.⁹⁸

To ensure freedom of expression, Emerson argues that society needs three legal institutions – “a written constitution ... an independent judiciary possessing the power of judicial review ... an independent bar.”⁹⁹ Again, for these to work, the power of those institutions must apply directly to those needing protection. It remains an open question as to the extent to which the U.S. Constitution, judiciary, and bar applied to the Native

⁹⁶ For examples of other authors, see discussion in this chapter, *infra*.

⁹⁷ Though it does not attempt it explicitly, perhaps this dissertation does lean towards grounded theory, or “a qualitative research approach in which hypotheses or theories are derived through an inductive process, case by case.” Demers, 125, listing as a good starting point for grounded theory the treatise Barney G. Glasser and Anselm L. Strauss, *The Discovery of Grounded Theory: Strategies for Qualitative Research* (Chicago: Aldine, 1967). For a brief critique of grounded theory as being overly positivistic, see Norman K. Denzin and Yvonna S. Lincoln, “Introduction: Entering the Field of Qualitative Research,” in *The Landscape of Qualitative Research: Theories and Issues*, ed. Norman K. Denzin and Yvonna S. Lincoln (Thousand Oaks, CA: Sage, 1998), 9.

The essential point here is that freedom of expression and its applications may be understood and developed through various processes of critical thinking and research. This dissertation hopes to at least move in that direction, as it seems to be counterproductive to cast free expression upon the waters of “faith,” as Emerson describes, *supra*.

⁹⁸ See research by Kemper, *supra*.

⁹⁹ Emerson, *System*, 13.

Americans and African-Americans during the age of Jackson.¹⁰⁰ Thus, if free expression applied to them, they either had to apply it to themselves or benefit as much as possible from a porous U.S. legal system that did not always apply principles equally or consistently. The historical narrative shows that the minorities expected the principles to apply to them in general as a natural right, and that those like Samuel Cornish who hoped for equal citizenship would view civil rights as at least normative goals.¹⁰¹ Here is where Emerson's detailed analysis of U.S. jurisprudence until 1970 goes only so far: He insists as one of many basic propositions that "[t]he character of the system is such that freedom of expression can flourish, and the goals of the system can be realized, only if expression receives full protection under the First Amendment."¹⁰² Ultimately, that became a legal – but not necessarily a practical – reality, as African-Americans and Native Americans received U.S. citizenship and U.S. courts began to apply certain civil rights through the Fourteenth Amendment of the U.S. Constitution to the states. Today, the federal Indian Civil Rights Act says it guarantees freedom of the press, among other civil rights for

¹⁰⁰ Of course, the Cherokee Cases before the U.S. Supreme Court illustrate that Native Americans could access courts. For instance, the state of Georgia hanged Cherokee citizen George Tassels for murder, despite Chief Justice John Marshall having extended a writ of certiorari for the appeal to be heard by the U.S. Supreme Court. See a discussion by Norgren, 95-98. The Georgia Superior Court had decided in part "to extend its laws over the territory inhabited by the Cherokee Indians, and over the Indians themselves" *The State v. George Tassels*, 1 Dud. 229 (1830), in Norgren, 164. So it appears that what applied to the Indians, or not, had more to do with political and racial exigencies than it did consistent jurisprudence or legislation. For an excellent explanation of the interplay between tribal and U.S. laws, see Deloria and Wilkins, *supra*. Luebke notes that Boudinot looked to the U.S. Constitution, for instance, for at least guidance if not protection for Native Americans as they practice journalism. See Barbara Luebke, "Elias Boudinot and 'Indian Removal,'" in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), 133-134. And see discussion and notes, *infra*.

¹⁰¹ For an example of readers and thus the editor expressing an assumption that they had free expression, see "NEW YORK, Dec. 18, 1837," *The Colored American*, 23 December 1837, discussed in chapter five, *infra*. Also, Cornish and John Russwurm, in the first column in the first newspaper published by African-Americans, wrote of that "[T]he civil rights of a people" has "the greatest value" See "TO OUR PATRONS," *Freedom's Journal*, 26 March 1827. Thus, they expected and insisted upon those protections, though practically some questions exist as to how much protection they did receive.

¹⁰² Emerson, *System*, 17.

Native Americans.¹⁰³ The tribes must apply these rights for themselves, because of the level of sovereignty they retain over their own affairs, the U.S. Supreme Court in 1978 held in *Santa Clara Pueblo v. Martinez*.¹⁰⁴ Also, today, African-Americans through their own press or the mainstream media legally are supposed to have the same rights as do Euro-Americans – though surely no one could argue successfully that certain civil rights are in absolute practice for anybody.¹⁰⁵ That is, the First Amendment practically is not absolute in its protections, though scholars like Kemper search for that potential.¹⁰⁶ Emerson acknowledges that free expression is not absolute, having practical limitations: “In constructing and maintaining a system of freedom of expression the major controversies have arisen not over acceptance of the basic theory, but in attempting to fit its values and functions into a more comprehensive scheme of social goals.”¹⁰⁷ This may be wishful thinking on Emerson’s part, as scholars have challenged on utilitarian grounds whether there ought to be a broader system of free expression, given the threat of social upheavals.¹⁰⁸

¹⁰³ The federal Indian Civil Rights Act, 25 U.S.C.A. § 1302, says in part: “No Indian tribe in exercising powers of self-government shall -- (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances.” Available at <http://web2.westlaw.com>.

¹⁰⁴ *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978). See a discussion of the case by Deloria and Wilkins, 157-158.

¹⁰⁵ An intriguing work for how the First Amendment might speak to the problems African-Americans have with retaining civil rights in the United States, see Harry Kalven, Jr., *The Negro and the First Amendment* (Columbus: The Ohio State University Press, 1965; Chicago: Phoenix Books of The University of Chicago Press, 1966).

¹⁰⁶ For a discussion of some of the variants of First Amendment absolutism, see Alexander Meiklejohn, “The First Amendment is Absolute,” *Supreme Court Review* (1961), 245. For Kemper, absolutism means as few of restraints upon the press as possible – especially prior restraints – though at times there can be deserving plaintiffs who have been severely harmed by the press, and therefore ought to receive compensation.

¹⁰⁷ *Ibid.*, 9.

¹⁰⁸ For example, see Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995). See also Kemper, “WE SHALL NOT SUBMIT!” 3, citing

Some may counter that numerous Native American and African-American cultures and entities may not recognize freedom of expression in the ways in which Euro-American cultures do.¹⁰⁹ First, one cannot generalize a concept to all of the hundreds of federally recognized tribes (and numerous other state-recognized or extinct tribes), let alone to hundreds of African-American tribes in Africa or groups in the Americas, let alone to all Euro-Americans.¹¹⁰ Bruce Johansen argues, for example, that the Iroquois had a democratic form of government that influenced the framers of the United States,

Holmes for the general principle and discussing how the threat to end slavery evoked rhetoric from Southern politicians about controlling the press during the age of Jackson.

¹⁰⁹ For instance, see Macklem, 1318. With that sentence, Macklem cites, among others, *Native American Church of North America v. Navajo Tribal Council*, 272 F.2d 131, 135 (10th Cir. 1959), “(stating ‘[n]o provision in the Constitution makes the First Amendment applicable to Indian nations.)” Interestingly, the federal Indian Civil Rights Act, 25 U.S.C.A. § 1302, passed in 1968, but a KeyCite check on <http://web2.westlaw.com>, showed that the 10th Circuit case was apparently still good law at that point, with a neutral citation in *Santa Clara Pueblo v. Martinez*, 436 U.S. at 56, n. 4. So, perhaps free press for Native tribes would be an open legal question for the U.S. Supreme Court to someday consider. Given the tenor of the Macklem article, and the holding of *Santa Clara Pueblo v. Martinez*, a tribal attorney might argue the Court would not have jurisdiction. For a discussion of the impact of *Navajo Tribal Council* upon free expression for Native Americans, see Leslie Newell, “Unprotected and Disconnected: Tribal Newspapers, Tribal Law and the Indian Civil Rights Act” (M.A. thesis, University of Arkansas at Little Rock, 1988), 9-10.

Johansen cites Macklem for “ways in which Native American notions of liberty and sovereignty mesh with non-Indian traditions and beliefs.” Johansen, *Debating Democracy*, 206. But Macklem’s essential point remains clear:

The Indian message is simple: For too long, their identities have been defined by others. They desire to live their individual and collective differences under governments of their own design, and they yearn to be recognized and respected as equals in the community of nations. Macklem, 1312.

¹¹⁰ As of October 2005, the federal Bureau of Indian Affairs recognizes 562 tribal entities. See <http://www.doi.gov/enrollment.html>. This is six more than the 556 tribal entities listed in 1998. See <http://www.doi.gov/bia/tribes/telist00.html>. Ironically, and regrettably, the BIA had not recognized in either list the Mashpee Wampanoag Tribe of Massachusetts; remember that the Mashpee had been vigorously defended by Pequot William Apess, as discussed, *infra*. The tribe as of 2004 was not listed in the U.S. Department of Interior’s Bureau of Indian Affairs Tribal Leaders Directory at <http://www.doi.gov/leaders.pdf>. The tribe also is not listed as a state-recognized tribe in Massachusetts. See Pevar, *The Rights of Indians and Tribes*, 403.

For a contemporary and passionate defense of the tribe’s sovereign rights and plea for recognition, see Statement of Glenn Marshall, President, Mashpee Wampanoag Tribe, U.S. House Resources Committee, 31 March 2004; available at <http://resourcescommittee.house.gov/archives/108/testimony/2004/glennmarshall.pdf>, cited by Gussman, 10. In fact, comparing Apess’s and Marshall’s pleas would make for interesting research.

though his theory has received marked scholarly criticism.¹¹¹ Secondly, democratic principles undergird this dissertation, so totalitarian regimes would not receive kind comment. Yet, it would be fair to note that Western conceptualizations of these issues might not fit well with the generally more communalistic societies.¹¹² Hiebert notes how syncretism – or the blending of different ideas and worldviews – occurs when cultures interact, and therefore those cultures lose important distinctives in the process.¹¹³ So, Western conceptualizations of freedom of expression may not work practically all of the time in other contexts. But each context may have its own conceptualization of free

¹¹¹ Bruce E. Johansen, *Forgotten Founders: Benjamin Franklin, the Iroquois, and the Rationale for the American Revolution* (Ipswich, MA: Gambit Incorporated, Publishers, 1982). In response to the spirited debate his theories produced, Johansen published another book: *Debating Democracy*, see note, *supra*. See also *Native America and the Evolution of Democracy*. For a copy of the Iroquois Constitution, see <http://www.law.ou.edu/hist/iroquois.html>. Johansen, *Debating Democracy*, 207, also cites as supportive of the same theory an article by Robert A. Williams, Jr., “The Algebra of Federal Indian Law: The Hard Trail of Decolonizing and Americanizing the White Man’s Indian Jurisprudence,” *Wisconsin Law Review* (March 1986): 219.

¹¹² See, e.g., Kemper, “Civilization,” 8, for a discussion about how the Cherokee were locally communal, which “consisted of shared norms, shared cultural orientations, symbols, ceremonies, and kinship organization,” citing Duane Champagne, *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, CA: Stanford University Press, 1992), 38.

Konkle cites Charles Mills’s argument the social contract envisioned by Western philosophers actually was a racial contract that perpetrated wrongs against people of color: “as a general rule ... white misunderstanding, misrepresentation, evasion, and self-deception on matters related to race are among the most pervasive mental phenomena of the past few hundred years, a cognitive and moral economy psychically required for conquest, colonization, and enslavement.” Maureen Konkle, *Writing Indian Nations*, 16, citing Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), 19 (Konkle also noting emphasis in original). See *contra*, e.g., Jean Jacques Rousseau, *The Social Contract and Discourses*, translated with an introduction by G.D.H. Cole (New York: E.P. Dutton and Co., Inc., 1950). Note that Mills’s work implies a sweeping generalization (always a logical fallacy) that all Western work is racist. It also would be a sweeping generalization to say that all Western ideas are individualistic. And it is a sweeping generalization to say that everybody in Great Britain or France or other areas of strong “white” presence would have the same ideas about anything. They do not. People simply cannot group ideas easily as “American” or “Indian” or “black” or whatever.

¹¹³ Syncretism is “the mixture of old meanings with the new so that the essential nature of each is lost,” as Hiebert says. Kemper, “Civilization,” 4, citing Paul Hiebert, “Culture and Cross-Cultural Differences,” in *Perspectives on the World Christian Movement: A Reader*, ed. by R.D. Winter and S.C. Hawthorne (Pasadena, CA: William Carey Library, 1981), 378. See also Hiebert’s discussion in *Reflections*, 91-92. Interestingly, <http://dictionary.reference.com> has a less negative meaning for syncretism: “Reconciliation or fusion of differing systems of belief, as in philosophy or religion, especially when success is partial or the result is heterogeneous.” Hiebert’s concerns appear to rise more out of preserving the essence of his view of Christianity than it does preserving the cultures being confronted with that view of Christianity. Regardless, both sides have serious stakes in the outcome of the cultural interactions.

expression which *would* work. And, freedom of expression carries with it the opportunity for people of all cultures to negotiate for themselves the limits by which they control expression. The right to speak is also the right to shut up.

3. Representation

The final major concept to consider would be representation and its antonym, misrepresentation. Conceptually, representation in this context can mean “a presentation to the mind in the form of an idea or image” or “a creation that is a visual or tangible rendering of someone or something.”¹¹⁴ Another definition says: “A presentation of fact – either by words or by conduct – made to induce someone to act, esp. to enter into a contract; esp., the manifestation to another that a fact, including a state of mind, exists....”¹¹⁵ No representation fully can accommodate or reflect the whole of what is being represented, but a representation can be true or not in the sense that it is accurate, fair, and balanced. Indeed, this goal reflects standard journalistic practice, or at least what some practitioners and theorists wish would be standard journalistic practice.¹¹⁶

But, having said that, representation presents knotty problems, as it is not a precise science. It necessitates role-playing: we represent them, I represent you, and vice versa. In fact, scholars such as Edward Said explore the nebulous quality of representation and the resulting positioning, giving it a broader denotation with a more negative connotation; thus, representation becomes the act of looking across (or even setting) cultural boundaries and exerting control over those people. For instance, in his

¹¹⁴ “Representation,” WordNet ® 2.0 (Princeton University, 2003); available at <http://dictionary.reference.com/search?q=representation>.

¹¹⁵ “Representation,” Black’s Law Dictionary, 8th ed. (2004); available at <http://web2.westlaw.com>.

¹¹⁶ See Kovach and Rosenstiel, 37, who argue among other related concepts, “Journalism’s first obligation is to the truth.” See also Brian Brooks, George Kennedy, Daryl R. Moen, and Don Ranly, *News Reporting and Writing*, 7th ed. (Bedford/St. Martin’s: Boston, 2002), 12-15

seminal works, *Orientalism* and *Culture and Imperialism*, Said challenges us not to view and represent other people or cultures with an attitude of domination or superiority.¹¹⁷ In *Orientalism*, Said implies that Orientalism creates a polarity – Europe and the United States versus the rest of the world.¹¹⁸ Though focusing primarily upon criticizing the dominant Western culture – a fair enough argument given the recorded domination of Western culture over the past millennium – Said raises interesting implications for any culture attempting to understand “the Other” or preferably for those who would eliminate the reality of viewing others as “the Other,” moving from us and them to “we.” Said defines what he means by “Orientalism,” and therefore scholars may see more of what he may mean about representation:

Orientalism is premised upon exteriority, that is, on the fact that the Orientalist, poet or scholar, makes the Orient speak, describes the Orient, renders its mysteries plain for and to the West. He is never concerned with the Orient except as the first cause of what he says. What he says and writes, by virtue of the fact that it is said or written, is meant to indicate that the Orientalist is outside the Orient, both as an existential and as a moral fact. The principal product of this exteriority is of course representation....¹¹⁹

Thus, representation is a product of viewing the other culture apart from itself, often from a perspective of domination and therefore judgment. At first, it would appear that this view would be *misrepresentation*. But, Said argues, “The things to look at are style, figures of speech, setting, narrative devices, historical and social circumstances, *not* the correctness of the representation nor its fidelity to some great original.”¹²⁰ Of course, it

¹¹⁷ E.g., Said, *Orientalism*, 1, for “the Other” and *Culture and Imperialism*, xxiv, for more pointed criticism.

¹¹⁸ See the 1994 edition of *Orientalism* (New York: Vintage), 1-6, for a general discussion of how he conceptualizes *Orientalism*.

¹¹⁹ Said, *Orientalism* (1977), 20-21.

¹²⁰ *Ibid.*, 21.

would be impossible for a writer to look at a group or a person or an event and reflect those with precision. Yet, as discussed in subsequent chapters, the subjects of this dissertation – Apess, Boudinot, and Cornish – took great pains to complain about misrepresentations, as if accurate representation ought to be at least a goal, even though it may not be attainable. Fundamentally, representation turns on whether what has been said can be relied upon as people make decisions based upon the information being represented. This really reflects the standard definitions of representation already discussed.

Said also argues:

The value, efficacy, strength, apparent veracity of a written statement about the Orient therefore relies very little, and cannot instrumentally depend, on the Orient as such.... that Orientalism makes sense at all depends more on the West than on the Orient, and this sense is directly indebted to various Western techniques of representation that make the Orient visible, clear, ‘there’ in discourse about it. And these representations rely upon institutions, traditions, conventions, agreed-upon codes of understanding for their effects, not upon a distant and amorphous Orient.¹²¹

If Said were absolutely correct in this basic argument, the acts of publishing newspapers or delivering sermons by Native Americans and African-Americans during this time period would have been the practice of Orientalism itself. More pointedly, this dissertation indeed could be Orientalism. Thus, under Said’s argument, Apess, Boudinot, Cornish and this dissertation discussing them cannot escape Westernization.¹²² But all of

¹²¹ *Ibid.*, 21-22.

¹²² Quoting from Said’s *Culture and Imperialism*, Mills says “we must not see culture as ‘antiseptically quarantined from its worldly affiliations.’” Mills, 27. Barry O’Connell implies that Apess’s Christianity, for instance, “violates expectations of how an ‘Indian’ writer should talk, as though it could only be inauthentic for a Native American to speak through any medium originating in European culture.” William Apess, *A Son of the Forest and Other Writings*, by William Apess, *a Pequot*, ed. and with an introduction by Barry O’Connell (Amherst: University of Massachusetts Press, 1992, 1997), lv. Peyer discusses Apess and Boudinot among other Native American writers as being vitally linked to Christianity, though they retained some of their Native beliefs. Bernd C. Peyer, *The Tutor’d Mind: Indian Missionary-Writers in Antebellum America*, in *Native Americans of the Northeast: Culture, History, and the Contemporary series*,

this may lead to a *reductio ad absurdum* that says the use of newspapers by non-Euro-Americans minorities, for example, *never* would have full value as an expression of those minorities, or never be divorced from a discussion of Euro-American dominance. That also implies, falsely, that printing and newspapers and other mass means of communication are solely the production of Western civilization: Certain Asians produced printed materials for dissemination centuries before such technologies were used by Europeans.¹²³ But Said does not go that far. Indeed, Said appreciates the role of such writings by non-Euro-Americans: He says, “I do not believe that authors are mechanically determined by ideology, class, or economic history, but authors are, I also believe, very much in the history of their societies, shaping and shaped by that history and their social experience in different measure.”¹²⁴ Thus, the better view is that as the Orient and the Occidental interact, cultures share their qualities, shaping us both positively and negatively. This is the essence of what Hiebert describes as cultures interact and influence each other, especially in a religious context.¹²⁵ African American author and theorist W.E.B. DuBois expressed the duality of straddling two cultures as

ed. by Colin G. Calloway and Barry O’Connell (Amherst: University of Massachusetts Press, 1997), 293. The point is summarized by the old saying that you can take the boy out of the country, but you cannot take all of the country out of the boy. This illustrates the incomplete but profound process of assimilation discussed by Peyer, 4-5.

¹²³ Sloan and Startt note that a Chinese man named Pi-Sheng “invented a press employing movable letters made of metal, clay, and wood in 1045. This achievement was later eclipsed in Europe where the letter press met with great success because printers did not have to cope with the 40,000 possible characters in the Chinese written language.” See Wm. David Sloan and James D. Startt, “Communication Before America,” in *The Media in America: A History*, 3d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 7-8, noting Oscar Ogg, *The 26 Letters* (New York, 1961), 188. So, Sloan and Startt then spend more time discussing Johann Gutenberg’s use of movable type to print bibles. Sloan and Starr, 13-15; see also <http://en.wikipedia.org/wiki/Printing> for a brief synopsis of the history of printing, which state unequivocally, “Printing was first conceived and developed in China,” tracing its history back to at least the sixth century, B.C.

¹²⁴ Said, *Culture and Imperialism*, xii.

¹²⁵ Paul G. Hiebert, *Anthropological Reflections on Missiological Issues* (Grand Rapids, MI: Baker Book House, 1994), 75-92. In a practical sense, this often results in syncretism, discussed *supra*.

“double-consciousness.”¹²⁶ DuBois laments what he presents as an inevitable position: “One ever feels his two-ness,--an American, a Negro; two souls, two thoughts, two unreconciled strivings; two warring ideals in one dark body, whose dogged strength alone keeps it from being torn asunder.”¹²⁷ Professor Earnest Perry used this dichotomy to discuss African-American journalism during World War II, noting these internal and external struggles related to this double-consciousness as discussed by DuBois.¹²⁸ This double-consciousness in a real sense creates polar extremes.

Perry’s dissertation reminds us that this duality does exist, and that African-Americans, like other minorities, resist domination as they insist upon basic human rights, and that the minority press moves forward that process.¹²⁹ What people need to avoid is falling into one side or the other in this duality without critical and thoughtful analyses of each side. Scholars have to take an argument to the next level of abstraction, to a viewpoint that philosophically rises above a dominant and subordinate position to search further for mutually satisfactory solutions, if they indeed exist. It seems too cynical to say that they do not exist.

This dissertation embraces what Professor Paul Hiebert calls “critical realism” as a way of reconciling the conflicting worldviews in both the primary and the secondary sources. This is an important step in understanding the writers in question, as they were

¹²⁶ W.E.B. DuBois, *The Souls of Black Folk in Writings* (Chicago: 1903; reprint New York: The Library of America, 1986), 364. Quoted by Earnest Perry, “Voice of Consciousness: The Negro Newspaper Publishers Association During World War II” (Ph.D. diss., University of Missouri-Columbia, 1998), 32; available at <http://www.lib.umi.com/cr/mo/fullcit?p9924951>.

¹²⁷ DuBois, *Souls*, 364-365, cited by Perry, 32.

¹²⁸ Perry, *e.g.*, 146.

¹²⁹ See *ibid.*, *e.g.*, 139-146, as he alludes – as did DuBois – to the fluid state of this double-consciousness and how it rises or falls depending upon the political positions at any particular time. Perry notes, “Despite the gains made during World War II, African Americans continued to struggle to reconcile the needs of their African side with those of their American side.” 139.

objects *and* propagators of conflicting worldviews. Critical realism, for this dissertation, means that no culture or person is perfect, and that individuals and groups can judge for themselves whether they want to embrace any aspects of cultures or people. That is, scholars have an obligation to sift through the dirt to find the gold. This concept helps scholars in understanding what may come after post-colonialism. In explaining critical realism, Hiebert draws out epistemological implications of historical paradigm shifts from colonialism to anticolonialism to globalism.¹³⁰ And critical realism is the epistemological position of globalism, Hiebert argues.¹³¹ Understanding this is essential to the process of understanding the rhetoric of William Apess, Elias Boudinot, and Samuel Cornish as they negotiated the crises that developed as their native cultures clashed with European culture. In reference to colonial times, Hiebert said:

Encounter led to a growing awareness in the West of the *otherness* of peoples, cultures, and religions in other parts of the world.... The first response of Western traders and officials to these racial and cultural differences was a sense of personal superiority.¹³²

Of course, some of the literature today about these authors and times implies a dissatisfaction and even offense at this notion of superiority. Charles Mills, for instance, even constructs elaborate criticisms of Western notions of “social contract” by noting the inherent racist motivations of the Europeans as they colonized much of the world.¹³³

¹³⁰ Hiebert, *Reflections*, especially chapter three, pages 53-73. This dissertation relies upon Hiebert for the basic understanding of critical realism.

¹³¹ *Ibid.*, 72.

¹³² *Ibid.*, 54. Though the language of “*otherness*” is similar to that of Edward Said’s, Hiebert regrettably does not discuss or cite Said anywhere in this work.

¹³³ Mills, 1-7. See also related notes *infra*, for how other authors reflect upon this notion of racially motivated sociocentric behavior as it applies to the writings of William Apess and Elias Boudinot, among other writers. See Konkle, *Writing Indian Nations*, especially 26-41. Konkle, for instance, cites Arif Dirlik for an extended discussion about the inherent problems with the interplay of assimilation with Eurocentrism. See Dirlik, “History Without a Center?: Reflections on Eurocentrism,” in *Across Cultural Borders: Historiography in Global Perspective*, ed. Eckhardt Fuchs and Benedict Stuchtey (Lanham, MD: Rowman & Littlefield, 2002), 247-284, and “Is There History after Eurocentrism?: Globalism,

Hiebert himself notes this dissatisfaction, claiming that it led “sensitive missionaries and anthropologists” to embrace anticolonialism.¹³⁴ But Hiebert criticizes anticolonialism, despite its necessary challenge to what he calls “Western cultural arrogance,” as it “does not move us from our initial prejudices to mutual respect,” among other reasons.¹³⁵ Anticolonialism has the tendency to lead towards dualistic criticism and polarities, not recognizing that people can learn from each other, regardless of their position.¹³⁶ As this theoretical framework develops, the need for abandoning that dualism will become more apparent. So, Hiebert presents “complementarity” as a necessary element of critical realism:

Because our minds are incapable of comprehending the whole of reality at once, we must break our knowledge of it down into different maps or blueprints. Each of these asks its own questions and uses its own methods to examine reality. Each contributes to our understanding of the whole. Various maps help us see different things in reality, but because they map the same reality they cannot contradict one another. Disagreements lead not to polemical debate but to further analysis to make whatever corrections are necessary to resolve the contradiction.¹³⁷

Said appears to encourage a search for solutions in two ways. First, while mentioning DuBois’s *The Souls of Black Folk*, among others, Said frames “decolonizing cultural resistance”:

1. [T]he insistence on the right to see the community’s history whole, coherently, integrally.

Postcolonialism, and the Disavowal of History,” *Cultural Critique* 42 (September 1999): 1-34, quoted by Konkle, 36-37 Dirlik’s work needs to be examined for future research.

¹³⁴ Hiebert, *Reflections*, 58.

¹³⁵ *Ibid.*, 63. Though what Hiebert means by “anti-colonialism” may not be exactly what some call “post-colonialism,” criticisms of both appear to be similar somewhat to those made by Konkle and Dirlik, *supra*.

¹³⁶ This appears to be the logical results of Hentoff’s overall argument about free expression for all people. See notes and discussion, *supra*.

¹³⁷ *Ibid.*, 68.

2. [T]he idea that resistance, far from being merely a reaction to imperialism, is an alternative way of conceiving human history.
3. [A] noticeable pull away from separatist nationalism toward a more integrative view of human community and human liberation.¹³⁸

Thus, people may appreciate the uniqueness and contributions of each side of a dichotomous debate, while moving towards a possible synthesis of the whole.

Secondly, as mentioned above, Said has asked scholars to position themselves from different vantage points as they look for answers. Citing Raymond Williams, Said argues people need “the ‘unlearning’ of ‘the inherent dominative mode.’”¹³⁹ Thus, as Said said in a later work, “The difficulty with theories of essentialism and exclusiveness, or with barriers and sides, is that they give rise to polarizations that absolve and forgive ignorance and demagoguery more than they enable knowledge.”¹⁴⁰ Thus, Said attacks these polarizations, acknowledging the actual value of what he calls “discrepant experiences.”¹⁴¹

Polarizations are not the only problem. Sometimes, representations create opposite images, presenting what they think are the proverbial two sides to the same coin. In reality, neither conception may be true. For example, in his outstanding work *The Newspaper Indian*, Coward notes the dueling conceptualizations of “the Noble Savage”

¹³⁸ Said, *Culture and Imperialism*, 215-216. The words are direct quotations, but compiled and numeralized for convenience.

¹³⁹ Said, in 1994 versions of *Orientalism*, 28.

¹⁴⁰ Said, *Culture and Imperialism*, 31.

¹⁴¹ *Ibid.*, 32. See also Konkle’s citation of Wendy Rose’s concern about polarizations in Native studies in chapter one, *supra*.

and the “Ignoble Savage.”¹⁴² Both views appear to be misrepresentations rooted in incomplete understandings of limited facts. Coward obligingly cites Said among others for the idea “that the creation of the Indian ‘other’ was a function of Euro-American knowledge and power.”¹⁴³ Then, Coward makes a statement that resembles somewhat the thesis of this dissertation: “This was a highly unequal process, of course, and it allowed few opportunities for native people to speak for themselves or to *control* the manner in which their lives and cultures were understood or interpreted [emphasis added].”¹⁴⁴ Speaking for yourselves – that sounds like rhetorical sovereignty.

This dissertation extends Coward’s work in at least two meaningful ways. First, this dissertation tells the stories of certain Native Americans responding to some of those misrepresentations. William Apess and Elias Boudinot specifically cited these types of misrepresentations as the *raison d’etre* of their own work.¹⁴⁵ Coward notes – almost too little too late in his own work – “that Native Americans could sometimes speak for themselves in the press,” mentioning Elias Boudinot’s editorials being “reprinted in a number of eastern newspapers in the 1830s,” as if the Natives should be grateful that the Euro-Americans condescended enough to let the Natives sometimes write.¹⁴⁶ Surely Coward did not mean to minimize the role of the Native Americans doing their own writing; but his work taken as a whole actually perpetuates the idea that knowledge about Native Americans comes through the Euro-Americans. This epistemological fault ought

¹⁴² John Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-1890* (Urbana: University of Illinois Press, 1999), 6.

¹⁴³ *Ibid.*, 9. Coward’s citation to Said was *Orientalism* (New York: Pantheon Books, 1977).

¹⁴⁴ Coward, 9.

¹⁴⁵ For example, see discussions in chapters four and five, *infra*.

¹⁴⁶ Coward, 231.

to produce intellectual tremors, especially as people heed the words of Said to overcome the idea of “the Other.” Thus, this dissertation offers more of the story that perhaps Coward could have or should have told. Still, *The Newspaper Indian* provides the other side of the dialogue among Native Americans and Euro-Americans. Secondly, this dissertation details those controls of information against Native Americans, and thereby creates a richer, more compelling argument for freedom of expression. Interestingly, Coward does not explicitly detail controls of information against the Euro-Americans as they represented the Native Americans. Of course, one would doubt that the dominant Euro-American government would have kept newspapers from writing about “the Ignoble Savage,” but one wonders whether anyone tried to hinder the flow of information about “the Noble Savage.”

There is another notion scholars need to acknowledge as foundational to this discussion about representation and the broader discussion about freedom of expression and rhetorical sovereignty: These polarizations in society often have racial and even racist foundations.¹⁴⁷ Thus, scholars need to understand, acknowledge, and hopefully forsake racism as they examine how the media as an institution has been guilty of misrepresentations. Mills, cited earlier, appears to discuss how difficult or even impossible it is to extract the underlying racism in everything Western, but that approach seems too one-sided, as racism flows from multiple sources.¹⁴⁸ Downing and Husband have outlined a formula for how racism becomes institutionalized: “Institutional racism = routine institutional practices and structures + made unproblematic by routine unreflecting race thinking.”¹⁴⁹ Downing and Husband also claim that this applies to

¹⁴⁷ For a discussion about how to overcome these polarizations, see West, *Race Matters*, passim.

¹⁴⁸ See the overall argument of Mills, *The Racial Contract*.

¹⁴⁹ Downing and Husband, 11.

discrimination relating to “gender, age, sexual orientation and religious affiliation.”¹⁵⁰ But the idea of institutionalizing inappropriate ideas such as racism raises thorny questions. For instance, how do individuals function within those institutions? Who ultimately is responsible for racism, individuals or the institutions? And, how do you define the institution? What does the institution of “the media” mean and how is that institution involved in the process? Can individuals within “racist” institutions *not* practice racism? Downing and Husband, by citing numerous scholars in discussing the nuances of the concept of representation, conclude that “the actual term ‘representation’ is mostly used either to signal presence or absence of people of color from media, or constructive vs. unconstructive portrayal.”¹⁵¹ This dissertation adopts the definition about “constructive vs. unconstructive portrayal,” as it assumes that, while people of color had been portrayed in the media during the age of Jackson, reporting about people of color was unconstructive at best and destructive at worst.¹⁵²

Conclusion

The theoretical framework contains both age-old ideas about the desires for free expression and the right of rhetorical representation, along with newer conceptualizations of how this affects the quest for sovereignty by distinct peoples. This framework will not be expected to provide easy or complete answers; rather, it opens up certain issues for discussion. One of the goals of this dissertation would be to balance in some way the seemingly contradictory goals of Edward Said’s concerns of imposing cultural values and Thomas I. Emerson’s cautions against ignoring freedom of expression as a cultural value.

¹⁵⁰ *Ibid.*

¹⁵¹ *Ibid.*, 43.

¹⁵² That assumption would be based in part upon the findings of Coward in *The Newspaper Indian*, *supra*.

Perhaps Scott Lyons's conceptualization could help us move in that direction. In short, this dissertation argues that freedom of expression benefits all people, including minorities in the United States during the age of Jackson, but that groups must have the freedom to negotiate those boundaries for themselves. While promoting the freedom of expression for groups, Lyons's concept of rhetorical sovereignty fails to guarantee free expression for individuals, as the dissertation will explain through the growing historiographies of the writers in question and in a later chapter synthesizing conclusions.

In sum, the idea of rhetorical sovereignty moves us closer to understanding the value of freedom of expression and representation for minority ethnic groups, as well as others, even though the idea contains some inherent drawbacks that must be addressed. This will be detailed in the historical narratives and syntheses to follow. Ultimately, this dissertation uses freedom of expression for groups *and* for individuals as the primary criteria for determining how the concept of rhetorical sovereignty helps us to understand better the historiographies of William Apess, Elias Boudinot, and Samuel Cornish. Again, during the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.

CHAPTER 3

HISTORIOGRAPHICAL FOUNDATIONS – A LITERATURE REVIEW

The preceding theoretical framework discusses and cites literature regarding the major concepts of rhetorical sovereignty, freedom of expression and controls of information, and representation and misrepresentation. This literature review puts all of that into historical context. This chapter will summarize the literature about journalism during the age of Jackson and the writers in question – William Apess, Elias Boudinot, and Samuel Cornish.¹⁵³ Then, this review will explore what already is known about freedom of expression and related concepts during the first half of the nineteenth century. By doing so, this dissertation synthesizes and expands numerous current historiographies in unique ways.

1. The age of Jackson

This section of the literature review highlights major historical events and issues during the age of Jackson, contextualizing Apess, Boudinot, and Cornish and their writings. As discussed below, the age of Jackson has received important attention from scholars, including journalism and mass communications historians. This literature review about the age of Jackson merely highlights important and applicable literature, while the review about the writers in question attempts to be more complete in its approach. Still, understanding the basics of the age of Jackson helps in understanding the writers and concepts in question.

Arthur Schlessinger wrote a Pulitzer Prize-winning history called *The Age of Jackson*, where he discussed the transition in the United States from an estate-based to a

¹⁵³ This dissertation relies in part upon certain papers and presentations prepared by Kemper during his earlier doctoral studies and recent employment. See note 4, *supra*.

labor-based society during the administration of President Andrew Jackson, who served from 1829 to 1837.¹⁵⁴ Like Schlessinger's work, this dissertation will be loose with its definition of the age of Jackson, which could mean the time from the War of 1812 until the beginning of the Civil War, or roughly the first half of the nineteenth century.¹⁵⁵ The writers being studied in this dissertation practiced journalism primarily during the Jackson Administration.

2. President Andrew Jackson and his administration

Andrew Jackson, destined to be president of the United States, was born just a few days after the death of his father Andrew Jackson, on March 15, 1767, some nine years before the Declaration of Independence and the official birth of the nation.¹⁵⁶ Coming from the Tennessee woods, Jackson became president after making his mark as a general during the War of 1812 with the British and during Indian wars in the southeastern United States. His was a life of conflict and controversy; even his marriage was not spared innuendo and scandal as the press published accounts alleging that his wife Rachel technically had not been divorced from her first husband before marrying Jackson.¹⁵⁷

¹⁵⁴ Arthur Schlessinger, *The Age of Jackson* (Boston: Little, Brown & Co., 1953).

¹⁵⁵ Schlessinger talked in terms of a transition from Jefferson to Jackson, which encompasses much of the first third of the nineteenth century. Remini said:

Historians call it the Age of Jackson and think of it as the period in American history roughly bridging the years from the end of the War of 1812 to the coming of the Civil War. But whatever the title and however it is called, it was an age of change, an age of innovation, an age of reform. Robert Remini, *The Revolutionary Age of Andrew Jackson* (New York: Harper Torchbooks, 1976), 3.

¹⁵⁶ For a discussion about Jackson's birth, see Marquis James, *The Life of Andrew Jackson* (Indianapolis, IN: The Bobbs-Merrill Co., 1938).

¹⁵⁷ For a discussion about this scandal, see Robert Remini, *Andrew Jackson and the Course of American Freedom, 1822-1832*, Vol. 2 (New York: Harper & Row, 1981), 118-121. Remini did not think highly of the press that had covered the Jacksons. Referring to the issue with Rachel Jackson, Remini said, "The scurrilous gutter tactics of unprincipled politicians and journalists scored deep wounds in the mind and

The election in 1828 of Jackson over President John Quincy Adams was most contentious; more importantly, it reflected an important power shift from the aristocratic rule of founders and their families to the burgeoning populace.¹⁵⁸ As Remini said:

When Jacksonians talked about equality they were not thinking in literal terms of everyone being equal. They realized that everyone was not equal—and maybe there was some advantage to that. Talents varied, abilities differed. What they did believe and were committed to was the notion of equality of *opportunity*. Everyone should have the opportunity to make it, to get ahead, to achieve financial success. No one should have special privileges that work to the disadvantage of others. Thus, one of the functions of government was to see to it that the race for success was a fair contest. Government must serve as a referee among all classes in society and prevent any one from gaining an advantage over the others.¹⁵⁹

The problem with that conclusion is that it entirely ignores the evidence of how Jackson and certain other Euro-Americans treated the Native Americans and African-Americans; *They* did not have “equality of *opportunity*.” And if government were a referee, then the government officials during the Jackson Administration needed glasses to see the unfair treatments of minorities by others *and* themselves. Yet, one must not underestimate the movement towards equality for Euro-Americans, as it had profound effects at every level of U.S. society. G. Edward White documents how the U.S. Supreme Court, under the leadership of Chief Justice John Marshall, reflected a growing sense that “[t]he seminal, identifying years of American culture were passing into history.”¹⁶⁰ The very ideas of

heart of a gentle Christian woman whose sole purpose in life was to serve her God and her husband.” *Ibid.*, 143. Remini even goes so far as to blame the newspaper attacks in part for her physical and perhaps emotional breakdown and her subsequent death. *Ibid.*, 150.

¹⁵⁸ See Schlessinger, and Remini, *Revolutionary Age, supra*, for excellent discussions of this shift.

¹⁵⁹ Remini, *Revolutionary Age*, 14-15.

¹⁶⁰ G. Edward White, *The Marshall Court and Cultural Change, 1815-1835*, abridged edition, with aid of Gerald Gunther (New York: Macmillan, 1988; Oxford University Press, 1991), 6. White also has an excellent, pertinent chapter entitled “Natural Law and Racial Minorities: The Court’s Response to Slaves and Indians,” 674-740, discussed, *supra*. For a strong biography about Justice Marshall, see Jean Edward Smith, *John Marshall: Definer of a Nation* (New York: Henry Holt, 1996). For a broader historiography of the law during the first half of the nineteenth century, in context of all of American history, see Lawrence M. Friedman, *A History of American Law*, 2d ed. (New York: Touchstone, 1973, 1985).

republicanism and nationalism were changing, White said.¹⁶¹ So, too, was citizenship. Michael Schudson notes that, during the age of Jackson, “a majoritarian, egalitarian, and individualistic concept of citizenship radiated through the nation.”¹⁶² Schudson also notes abolitionists’ use of mass media to spread their message as an illustration of this principle of spreading democracy and the shifting ideas of citizenship.¹⁶³

In fact, many institutions, including religion, were being democratized.¹⁶⁴ This happened during the Second Great Awakening, a time during the early nineteenth century when Americans experienced intense, renewed interest in religion. Gaustad connects this impulse with an increase in civic and religious “voluntarism”:

Relying on their own resources, the churches and synagogues of America engaged in a voluntary effort of unprecedented magnitude. “Voluntarism,” that is, action unaided by the state and undirected by any supreme ecclesiastical authority, came to be the distinguishing feature of religion in America, and at no time more conspicuously so than in the early decades of the nineteenth century.¹⁶⁵

Mandell connects the influences of the Second Great Awakening and preaching by Natives, including Apess.¹⁶⁶ This revivalism had an impact upon politics and other areas of public life. As Eric Foner argues, “Like the democratization of politics, which defined political freedom as a function of self-ownership rather than control of property, changes

¹⁶¹ *Ibid.*, 3.

¹⁶² Michael Schudson, *The Good Citizen: A History of American Civil Life* (Cambridge, MA: Harvard University Press, 1998), 109.

¹⁶³ *Ibid.*, 105-109.

¹⁶⁴ For a discussion of how this happened during the early nineteenth century, see Nathan O. Hatch, *The Democratization of American Christianity* (New Haven, CT: Yale University Press, 1989).

¹⁶⁵ Edward S. Gaustad, *A Religious History of America*, new revised ed. (New York: HarperCollins, 1966, 1974, 1990), 128.

¹⁶⁶ Daniel R. Mandell, “Shifting Boundaries of Race and Ethnicity: Indian-Black Inter-marriage in Southern New England, 1760-1880,” *The Journal of American History* 85, no. 2 (September 1998): 494.

in economic and religious life strongly encouraged the spread of a liberal understanding of freedom as the absence of external constraints upon autonomous, self-directed individuals.”¹⁶⁷

These efforts led to an increased awareness of and appreciation for religion during the age of Jackson. In fact, one cannot understand that time in the United States without appreciating the enormous, overwhelming influence of religion upon the people and the institutions. William Apress and Samuel Cornish were ordained ministers, and Elias Boudinot had studied for the ministry – all were professing evangelical Christians. So religion obviously had a profound impact upon their philosophies and practices.

In sum, the age of Jackson meant that people were exploring their freedoms and responsibilities as the emerging country continued to grow across the North American continent. Intense attitudes about civic duty, religion, and progress drove this “progress.” The problem was that the religious fervor and intellectual and financial progress failed to resolve the underlying problems in society. As Jim Wallis has said:

The systematic violence, both physical and spiritual, committed first against indigenous people and then against black Americans was, indeed, the original sin of the American nations. In other words, the United States of America was conceived in iniquity.¹⁶⁸

The historiographies of Apress, Boudinot, and Cornish will illustrate how minority writers fought some of those battles through journalism and mass communications.

¹⁶⁷ Eric Foner, *The Story of American Freedom* (New York: W.W. Norton and Co., 1998), 55. Foner also has an excellent discussion of how libertarian notions about universal liberty were contradicted in the United States by mistreatments of various groups, including Native Americans, African-Americans, Irish-Americans, Mexicans, Catholics, women, etc.. *Ibid.*, 69-94.

¹⁶⁸ Jim Wallis, *The Soul of Politics: Beyond 'Religious Right' and 'Secular Left,'* (San Diego, CA: Harvest, 1995), 100-101. And there have been other wrongs against other groups, but these two stand out in the history of the age of Jackson.

3. Journalism and mass communications during the age of Jackson

(a) Mainstream journalism and mass communications

Journalism and mass communications historians have a strong and growing sense of the importance of the press during the age of Jackson, especially in how the press and society both changed in significant ways. One of the better summaries of the time focuses upon how the role of the press interacted with and then distanced itself from politics.¹⁶⁹ This section will develop that further by outlining how scholars have examined issues such as the politicization of newspapers, a shift to more localized news despite expanded efforts to gather international news, the advent of penny papers, and broader changes about the nature of news.

One of the most pressing issues for journalism before and during the age of Jackson had to have been the “party press,” or how the particular newspapers found financial and inspirational support from particular political parties. The age of Jackson overlapped the middle and later parts of this particular era in journalism. Frank Luther Mott disdained this period, calling it “in many respects disgraceful—a kind of “Dark Ages” of American journalism.”¹⁷⁰ One example of the negative affects of partisanship

¹⁶⁹ Carol Sue Humphrey, *The Press of the Young Republic, 1783-1833*, The History of American Journalism, no. 2, eds. James D. Startt and Wm. David Sloan (Westport, CT: Greenwood Press, 1996), 113-132. One of her contributions was to have placed the *Cherokee Phoenix* in the broader context of American journalism of the time. *Ibid.*, e.g., 124, 144-145, 156.

¹⁷⁰ Frank Luther Mott, *American Journalism: A History: 1690-1960*, 3d ed. (New York: Macmillan, 1941, 1950, 1962), 169. Mott also divides the Party Press era into three periods, 1783-1801, 1801-1833, and 1833-1860. *Ibid.*, ix. Some see this as ranging roughly from 1783-1833, though remnants of the systems have been seen in the twentieth century and perhaps beyond. See Wm. David Sloan, “The Party Press, 1783-1833,” in *The Media in America: A History*, 3d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 117. Sloan does admit that the party press did not disappear immediately: “Even with the advent of the popular penny press in the 1830s, most papers continued to operate as partisan organs; but the partisan system was dealt a blow in 1846 when Congress passed legislation requiring the federal government to let bids on printing contracts.” *Ibid.* Thus, partisanship connects with governmental subsidies of newspapers, something that affects the freedom of the press.

For a discussion of the development of the party press, see Sloan, “The Early Party Press: The Newspaper Role in American Politics, 1788-1812,” *Journalism History* 9, no. 1 (Spring 1982): 18-24. Sloan also

in the press can be seen in the person of Amos Kendall, who had edited the *Argus of Western America* in Frankfort, Kentucky, and had supported President Jackson's election. Jackson later appointed Kendall to U.S. Postmaster General, and Kendall used that position to attempt to execute Jackson's policy of stopping circulation of abolitionist newspapers by censoring the U.S. mail.¹⁷¹ Another negative result of the partisan press may have been a diminishment of freedom of the press. Sloan, in a study of 1798-1808, which included the Alien and Sedition Acts, concluded:

... [T]he essential American approach to freedom of the press seems to have been this: while claiming freedom for themselves, politically passionate Americans urged that their opponents' freedom be restricted. Each side in the partisan politics believed itself alone to be right. Political ardor outweighed any desire for broad freedom of expression.¹⁷²

Of particular note to this dissertation would be his discussion of Benjamin F. Hallett, who supported William Apress in his antimasonic paper *Boston Advocate* and whose writings were a part of *Indian Nullification*.¹⁷³ Baldasty notes that the owners of

wrote other interesting articles about the press during the same general time frame, setting a stage for the press during the age of Jackson. See, e.g., "Scurrility and the Party Press, 1789-1816," *American Journalism* 5, no. 2 (1988): 97-112, and "Purse and Pen": Party-Press Relationships, 1789-1816," *American Journalism* 6, no. 2 (1989): 103-127.

¹⁷¹ For a typical discussion of Kendall and his cozy relationship with Jackson, see Edwin Emery, *The Press and America: An Interpretative History of the Mass Media* (Englewood Cliffs, N.J.: Prentice-Hall, 1972), 158-159. The 6th edition with Michael Emery (1988) had been consulted earlier in the dissertation process, but later was not easily available. For another standard historiography of journalism, see Curtis MacDougall, *The Press and Its Problems* (Dubuque, Iowa: W.C. Brown Co., 1964).

For a discussion of Kendall's role in the attempted censorship of abolitionist publications see Kemper "WE SHALL NOT SUBMIT!", 14-15, citing Clement Eaton, "Censorship of the Southern Mails," *The American Historical Review* 48, no. 2 (January 1943): 269-270; available at <http://www.jstor.org>.

¹⁷² Wm. David Sloan, "The Party Press and Freedom of the Press, 1798-1808," *American Journalism* 4 (1987): 84.

For other examples of partisan press, and for a more positive assessment, see Baldasty, who traces the intimate relationships of newspaper editors in Boston with political parties during the Jackson Administration. Gerald J. Baldasty, "The Boston Press and Politics in Jacksonian America," *Journalism History* 7, nos. 3-4 (Autumn-Winter 1980): 104-107. This article was found, along with others, by seeing the topical index in *Journalism History* 26, no. 2 (Winter 2000-2001): 182.

¹⁷³ Baldasty, "The Boston Press," 105, 107. See also Hallett's writings in Apress, *Indian Nullification*.

the paper, which began publishing January 3, 1832, “did not seek financial gain from the paper, but sought merely to guarantee discussion and debate reflecting their party’s platform and principles.”¹⁷⁴ So, the newspapers functioned more like newsletters from today’s political parties than as objective, neutral observers. Baldasty also explains that the partisan press in Washington, D.C., during the Jackson Administration “provid[ed] an invaluable channel of information and opinion between the political parties and the electorate at large.”¹⁷⁵ Here, like in his study of Bostonian partisans, Baldasty notes how the parties (and thus those in governmental power as the party leaders won elections) subsidized the newspapers.¹⁷⁶ Baldasty implies that newspapers in Washington had more lucrative opportunities than others across the country, as “an extensive system of federal patronage provided critical subsidies to these three papers, keeping them in operation and allowing them to carry out their role as a national political forum.”¹⁷⁷ The papers included the *Globe*, the *National Intelligencer*, and the *U.S. Telegraph*.¹⁷⁸ Baldasty notes:

¹⁷⁴ *Ibid.*, 107. Regrettably, Baldasty also does not discuss Hallett’s role in supporting Native rights, though the thesis of his article does not go that direction.

¹⁷⁵ Gerald J. Baldasty, “The Washington, D.C., Political Press in the Age of Jackson,” *Journalism History* 10, nos. 3-4 (Autumn/Winter 1983): 50.

¹⁷⁶ See *ibid.*, 50, and Baldasty, “Boston Press,” 104.

¹⁷⁷ Baldasty, “Washington,” 50.

¹⁷⁸ It would be most interesting in future research to compare the coverage of these papers relating to the Native American and African-American issues. John Coward did explore briefly the “William Penn’ essays” printed in the *National Intelligencer* as a response to efforts to remove the Cherokee to present-day Oklahoma, and has cited *Niles’ Weekly Register* extensively and the *Washington Globe* briefly. See Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-1890* (Urbana: University of Illinois Press, 1999), 73-75, as a part of chapter two, “Romance and Rumor: The Indian in the Antebellum Press,” 43-64, and chapter three, “Explaining Indian Removal,” 65-97.

For an interesting article about Hezekiah Niles’ role in finding “ways to ‘avoid the coming storm,’” see Bill Kovarik, “To Avoid the Coming Storm’: Hezekiah Niles’ Weekly Register as a Voice of North-South Moderation, 1811-1836,” *American Journalism* 9 (Summer 1992): 20-43.

The role of these Washington newspapers as a political forum in the early 1830s is significant for three reasons. First, these newspapers served as national forums; the papers were circulated nationwide. Second, the debate among editors led at times not just to strident propaganda but also to a refinement of thinking and political discussion. And third, federal patronage of the papers subsidized this diversity and partisan rivalry.¹⁷⁹

This sounds somewhat like the system created by the Cherokee Nation for the *Cherokee Phoenix*, whereby a paper was expected to adhere to the “party” line and therefore receive financial support from the government itself.¹⁸⁰ Also, the Cherokee Nation may have used the mainstream press when it could for its own partisan purposes, as Coward implied:

Both Georgia and the southern Indians had partisans in Congress and each side used the press to advance its cause. As a result, press coverage of this controversy followed two general trends: partisan politics, in which the papers lined up for or against Jackson according to their party politics, and a type of hands-off neutrality, in which newspapers left it to Indian sympathizers to promote the Indian cause.¹⁸¹

Coward also illustrates how there had been “a good deal of press sympathy for the Cherokees,” for instance.¹⁸² And, he notes an article from Elias Boudinot’s father-in-law in *Niles’ Weekly Register*, extolling what he saw as moves towards civilization.¹⁸³ Coward concludes, “Although thoroughly paternalistic, this report is representative of the most positive news accounts about Cherokees in the 1830s and it probably reflected the attitudes of many Indian sympathizers.”¹⁸⁴

¹⁷⁹ Baldasty, “Washington,” 52.

¹⁸⁰ See discussions in chapter four and seven, *infra*.

¹⁸¹ Coward, 68.

¹⁸² *Ibid.*, 79.

¹⁸³ *Ibid.*, 78, citing *Niles’ National Register*, 24 July 1838, 394. Coward’s citation at 95, n. 61 must have been a typographical error when it stated 1938, as Colonel Gold likely did not live that long.

¹⁸⁴ *Ibid.*

Besides removal issues and Native American sympathy (or antipathy), the Washington newspapers during the Jackson Administration also began to reflect sectional rivalries, particularly regarding slavery, abolition, and the nullification crisis, as Baldasty has illustrated.¹⁸⁵ For instance, Baldasty discussed how the editor of the Jacksonian paper *Globe* assailed the desires of certain Southern politicians to nullify a tariff law promoted by Jackson, calling those efforts “unconstitutional and revolutionary,” even as Duff Green of the *U.S. Telegraph* supported John C. Calhoun and other Southerners who saw nullification of the federal tariff law as “both a peaceful and logical remedy for sectional disagreements over tariff policy, and true to the spirit of the founding fathers.”¹⁸⁶ Baldasty’s conclusions show that partisanship ran deeper than parties, but reflected regional antipathy, particularly over slavery. Thus, the press during the age of Jackson played pivotal roles in the national debate over abolition as the nation moved closer to civil war.

Secondly, scholars have noted shifts in the types of coverage by early American newspapers. Donald R. Avery documents “the shift from foreign to domestic news” that “had been an ongoing process for some years prior to [the War of 1812].”¹⁸⁷ Bjork, citing Donald Shaw, notes a continued drop in international coverage from 1820 to 1860, but his article details how editors such as Horace Greeley pushed for foreign correspondence.¹⁸⁸ Bjork explains the “apparent contradiction” by arguing that

¹⁸⁵ *E.g.*, Baldasty, “Washington,” 51.

¹⁸⁶ *Ibid.*

¹⁸⁷ Donald R. Avery, “The Emerging American Newspaper: Discovering the Home Front,” *American Journalism* 1, no. 2 (1984): 51-66.

¹⁸⁸ Ulf Jonas Bjork, “Sketches of Life and Society: Horace Greeley’s Vision for Foreign Correspondence,” *American Journalism* 14, no. 3-4 (Summer/Fall 1997): 359-361, citing Donald Lewis Shaw, “At the Crossroads: Change and Continuity in American Press News, 1820-1860,” *Journalism History* 8 (1981): 38-50.

“[a]lthough they published less foreign and more domestic news in the 1830s, newspapers were shifting toward being more active gatherers of news abroad, taking control of the news flow by collecting information at the source.”¹⁸⁹ Despite being “active gatherers of news abroad,” newspapers indeed gathered more local news. Caudill and Caudill quantify the changes from 1780 to 1850, noting for example that local (or city and county) news increased from 34.9 percent of U.S. newspapers in 1780 to 49.2 percent in 1830, with a slight slip to 45.7 percent in 1840.¹⁹⁰ Caudill and Caudill, without giving a detailed explanation as to why, found a disconnect between regions, as “the Northern papers had a consistently higher proportion of local identifiers than did Southern papers in every decade from 1800 to 1860.”¹⁹¹ Shaw did an extensive quantitative study of changes in the content and source of news from 1820 to 1860, finding in part that reporters became more of an integral part of the news process and that the rate increased for news reaching the readers.¹⁹² Shaw said, “As traditional newspaper leaders were less clipped and quoted, speed displaced interpretation, a process

For an interesting article about the relationship between then-journalist Karl Marx and editor Horace Greeley, see Sally Taylor, “Marx and Greeley on Slavery and Labor,” *Journalism History* 6, no. 4 (Winter 1979-1980): 103-106, 122.

¹⁸⁹ Bjork, 361-362, citing Richard Schwarzlose, *The Formative Years, From Pretelegraph to 1865, no. 1 of The Nation's Newsbrokers* (Evanston, Ill.: Northwestern University Press, 1989) and T.H. Giddings, “Rushing the Transatlantic News in the 1830s and 1840s,” *New York Historical Society Quarterly* 42 (January 1958): 49, 55-56.

¹⁹⁰ Edward Caudill and Susan L. Caudill, “Nation and Section: An Analysis of Key Symbols in the Antebellum Press,” *Journalism History* 15, no. 1 (Spring 1988): 18. No evidence was given that minority newspapers were included in the sample.

For a quantitative analysis of the content of the *Cherokee Phoenix* from its inception until 1834, see Ann Lackey Landini, “The ‘Cherokee Phoenix’: The voice of the Cherokee Nation, 1828-1834” (Ph.D. diss., University of Tennessee, 1990).

¹⁹¹ Caudill and Caudill, 22.

¹⁹² Shaw, “Crossroads,” 41, 46.

considerably speeded up by the end of the 19th Century....”¹⁹³ In another study, Shaw and Slater note the influences of steam presses, railroads, telegraph, and technological innovations upon the rate of delivery of the news.¹⁹⁴ Newspapers changed rapidly during the early nineteenth century, for numerous reasons and with varying results.

Thirdly, the birth and growth of “penny papers” represented and fueled substantial changes in news and the newspaper industry and reflected changes in society itself, scholars argue. Mott, gruff at best about the partisan era, notes the shift to penny papers with enthusiasm.¹⁹⁵ Bjork, in setting the scene for his discussion about the advent of foreign correspondence in U.S. newspapers, lauds the “penny press” for its “major impact on the gathering of news from abroad by the American news media.”¹⁹⁶ The “penny press” began during attempts by publishers in Boston and New York to create newspapers affordable to the masses, including an abortive New York *Morning Post* with the future famous journalist Horace Greeley, but the first penny daily to survive and thrive was the New York *Sun*, run by Benjamin H. Day.¹⁹⁷ Whitby has claimed, however, that James Gordon Bennett of the New York *Herald* “was already a veteran penny press editor by the time Greeley opened the doors of the [New York] *Tribune* in April 1841.”¹⁹⁸ Scholars like Mott use this timeframe to talk about giants of journalism,

¹⁹³ *Ibid.*, 49.

¹⁹⁴ Donald L. Shaw and John W. Slater, “In the Eye of the Beholder? Sensationalism in American Press News, 1820-1860,” *Journalism History* 12, nos. 3-4 (Winter-Autumn 1985): 86.

¹⁹⁵ Mott, 215.

¹⁹⁶ Bjork, 362. Mott, 215, also makes that argument.

¹⁹⁷ Mott, 216-227.

¹⁹⁸ Gary L. Whitby, “TOUGH TALK AND BAD NEWS,’ Satire and the *New York Herald*, 1835-1860,” *American Journalism* (Winter-Spring 1992): 35. Whitby’s main thesis, however, involves *why* Bennett used satire. “His ‘tough’ language is best understood as social satire aimed at an increasingly romantic world view.” *Ibid.*, 52. More pertinent to this dissertation, Whitby also notes that Bennett used gross invectives about African-Americans. *Ibid.*, 48. It is hard to see how a romantic worldview would explain

including the founding of the Baltimore *Sun*, a major paper that publishes to this day.¹⁹⁹ So, scholars pay particular attention to how the changes in speed, as well as the increased availability of newspapers to the masses, helped publishers to put more news more quickly into the hands and minds of more readers. But the Native American and African-American presses, as discussed below, were challenged financially. They could not afford wide-ranging correspondents, or fancy presses, or to charge just a penny a paper.²⁰⁰ So the minority press was not able to have as wide of a reach as Euro-American papers.

Finally, perhaps one of the more important developments of journalism in this time period was the nature of news itself and its role in society. As society changed, so did news. Mott outlines three characteristics of the changes to news during the age of Jackson: “(1) an increase of local or home-city news; (2) a much greater emphasis on sensational news, especially that of crime and sex; (3) the appearance of what was later called ‘human-interest’ news—stories of persons who are interesting merely as human beings, and not for their connection with either significant or sensational news.”²⁰¹ This implies that the news focused upon the local communities. David Paul Nord, by using the example of William Lloyd Garrison’s abolitionism to explore Tocqueville’s vision of the role of journalism in democracy, argues how journalism impacts the idea of

using vulgar language about African-Americans; that seems to be more like racism than romanticism.

¹⁹⁹ *Ibid.*, 229-241. For an interesting article about the influence of religion upon the journalistic practices of James Gordon Bennett, see Judith M. Buddenbaum, “Judge ... What Their Acts Will Justify: The Religious Journalism of James Gordon Bennett,” *Journalism History* 14, nos. 2-3 (Summer/Autumn 1987): 54-67. Buddenbaum implies that the role of religion in society and the ensuing economic opportunities for reporting religion had more of an influence than Bennett’s own religiosity in his use of religion in the *New York Herald*. *Ibid.*, 55. Personal religiosity indeed had a major influence on certain mass communicators, including William Apress, Elias Boudinot, and Samuel Cornish – again, all three professed evangelical Christianity and two were ordained ministers.

²⁰⁰ *E.g.*, see Cornish’s struggles with finances in chapter six, *infra*.

²⁰¹ Mott, 243.

community: “Communities are built, maintained and wrecked in communication.”²⁰² In a similar article, Nord says:

Newspapers maintain civilization in a democracy, Tocqueville believed, by making collective thought and action possible. They permit many people to think the same thoughts and to feel the same feeling, simultaneously. A newspaper will live only if it serves this communitarian function.²⁰³

From the historical evidence, Nord concludes that the newspapers during the early nineteenth century in certain ways failed that vision.²⁰⁴ Nord’s thesis perhaps illuminates the role a newspaper could play in communities of Native Americans or African-Americans as they seek rhetorical sovereignty. Thus, newspapers during the age of Jackson, including those for Native Americans and African-Americans, served some political and communitarian purposes to certain degrees. Tocqueville himself, as he examined the liberty of the press in the United States during the early 1800s, said:

But although the press is limited to [certain] resources, its influence in America is immense. It causes political life to circulate through all the parts of that vast territory. Its eye is constantly open to detect the secret springs of political designs, and to summon the leaders of all parties in turn to the bar of public opinion. It rallies the interests of the community round certain principles, and draws up the creed of every party; for it affords a means of intercourse between those who hear and address each other, without ever coming into immediate contact.²⁰⁵

Based upon the historical narrative discussed below, it remains to be seen whether the Native American and African-American presses met this vision of Tocqueville; but given

²⁰² The direct quote comes from David Paul Nord, *Communities in Journalism: A History of American Newspapers and Their Readers* (Urbana: University of Illinois Press, 2001), 2. Nord’s discussion about Garrison is at 92-107; the chapter is a “slightly revised” reprint of “Tocqueville, Garrison, and the Perfection of Journalism,” *Journalism History* 13 (Summer 1986): 56-63. Nord, x.

²⁰³ Nord, “Tocqueville,” 57.

²⁰⁴ *Ibid.*, 62.

²⁰⁵ Alexis de Tocqueville, *Democracy in America*, ed. and abridged by Richard D. Heffner (1835; New York: Penguin Books, 1942, 1956), 94.

the communal nature of rhetorical sovereignty discussed above, such study would be useful in understanding both minority and mainstream journalism during the age of Jackson.

In that light, another interesting phenomenon by the press during the age of Jackson would be the exchange system, whereby newspapers had a habit of “using and sharing political and nonpolitical information,” as Stewart described it.²⁰⁶ Perhaps newspapers were united behind Jackson, or against Jackson, or for Euro-American society. But apparently they were *not* united completely behind abolitionism or Native American rights. Thus, one wonders how much minority newspapers participated in the exchange system, and then how much they benefited from or suffered because of the system.²⁰⁷

Political and societal issues influenced the development of the nature of news. Michael Schudson argues “the idea of ‘news’ itself was invented in the Jacksonian era.”²⁰⁸ Schudson says, “As in the Jacksonian era, so in the 1890s, changes in the ideals of journalism did not translate technological changes into occupational norms so much as make newspaper ideals and practices consonant with the culture of dominant social classes.”²⁰⁹ These changes developed into an ideology of objectivity, which to Schudson means “the belief that one can and should separate facts from values.”²¹⁰ Consistent with

²⁰⁶ Robert K. Stewart, “The Exchange System and the Development of American Politics in the 1820s,” *American Journalism*, 4 (1987): 31.

²⁰⁷ There are numerous instances of the publication of articles from other periodicals in the *Cherokee Phoenix*, *Freedom’s Journal*, *The Rights of All*, and *The Colored American*. But one wonders the extent of how many times articles from those minority-owned newspapers made it into Euro-American newspapers.

²⁰⁸ Michael Schudson, *Discovering the News: A Social History of American Newspapers* (New York: Basic Books, 1978), 4.

²⁰⁹ *Ibid.*, 5.

²¹⁰ *Ibid.* Frankie Hutton makes an interesting observation that, in reference to Cornish and his peers, “[m]essages of fairness and truthfulness in reporting reverberated in black newspapers as aspects of the

Mott, Schudson talks about how news focused more upon the general populace: “To be more precise, in the 1830s the newspapers began to reflect, not the affairs of an elite in a small trading society, but the activities of increasingly varied, urban, and middle-class society of trade, transportation, and manufacturing.”²¹¹ Schlessinger documents this important societal shift from elitism as typified by Jefferson to populism as typified by Jackson.²¹² That stands in contrast to Elias Boudinot, for instance, who represented the intelligentsia and cultural elite of the Cherokee Nation by personal example and through his journalism.²¹³ By contrast, mainstream media moved in different directions. As Schudson argues, “The penny papers’ concept of news not only created news as a marketable product whose attributes—particularly timeliness—could be measured, it invented a genre which acknowledged, and so enhanced, the importance of everyday life.”²¹⁴ Schudson explores how changes in technology, literacy, and natural history contributed to this shift in the nature of news.²¹⁵ Francke, in an article about sensationalism in nineteenth-century newspapers, outlines the institutionalization of the reportorial functions of newspapers.²¹⁶ Shaw and Slater said that sensational news during

spirit of responsible journalism.” Hutton, *The Early Black Press in America, 1827 to 1860* (Westport, Conn.: Greenwood Press, 1993), 41-42.

²¹¹ *Ibid.*, 22-23.

²¹² *E.g.*, Schlessinger, 8-9. Edwin Emery confirms this assessment of the shift to the “common man” in his journalism history, 149.

²¹³ For an argument supporting this view, see Kemper, “Elitism.” See also Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997), *e.g.*, 16, 189, 222. For a discussion about the types of news printed in the *Cherokee Phoenix*, see Landini, *supra*.

²¹⁴ Schudson, 26.

²¹⁵ *Ibid.*, 31-43.

²¹⁶ Warren Francke, “Sensationalism and the Development of the 19th-Century Reporting: The Broom Sweeps Sensory Details,” *Journalism History* 12, nos. 3-4 (Winter-Autumn 1985): 81.

that age was “interesting, but not especially respectable.”²¹⁷ This included news “about murders, rapes, horse thieves, brides left at the altar, cows with two heads.”²¹⁸ While interesting, these conclusions about important shifts in American journalism need to be understood through the eyes of the minority writers who used journalism for the betterment of their ethnic groups/communities.²¹⁹

Another note needs to be made about the historiographies of journalism during the age of Jackson. Rodger Streitmatter attempted to discuss “the dissident press” during that time frame, hoping to illuminate alternative voices like abolitionist journalists who “not only had to offer a differing view of society but also had to seek to *change society* in some discernible way,” but failing to mention African-American journalists Samuel Cornish or John Russwurm as examples of dissident press during the age of Jackson.²²⁰ To be fair, Streitmatter does give some space to Frederick Douglass, a noted African-American abolitionist and journalist, but usually in the context of Euro-American dissidents such as William Lloyd Garrison.²²¹ But, focusing more upon Euro-American discussions about minority issues rather than minority discussions about minority issues

²¹⁷ Shaw and Slater, “Sensationalism,” 87.

²¹⁸ *Ibid.*

²¹⁹ Landini, *supra*, did do a content analysis about the *Cherokee Phoenix*, looking for different types of news. Perhaps the study could be expanded to account for other variables noted by Shaw, *supra*.

²²⁰ Rodger Streitmatter, *Voices of Revolution: The Dissident Press in America* (New York: Columbia University Press, 2001), xi. Streitmatter’s work appears to focus more upon labor and socialist movements than upon racial issues, and his discussion of early labor papers during the 1820s-1840s adds to our understandings of the age. *E.g.*, 3-19. But his section about abolitionism should have had more of the African-American voice. By contrast, Kessler has an entire chapter devoted to African-American journalists. See Lauren Kessler, *The Dissident Press: Alternative Journalism in American History*, The SAGE COMMTEXT Series, vol. 13, ed. F. Gerald Kline (Beverly Hills, CA: SAGE Publications, 1984), 21-47.

²²¹ Streitmatter, 29, 87, 92. For an intriguing article comparing Douglass and William Apess, see Patricia Bizzell, “The 4th of July and the 22nd of December: The Function of Cultural Archives in Persuasion, as Shown by Frederick Douglass and William Apess,” *College Composition and Communication*, 48, no. 1 (February 1997): 44-60; available at <http://www.jstor.org>.

appears to be a common theme among some journalism historians. Other broader historiographies of American journalism have at least a brief section about African-American journalism during this time period.²²² As Emery notes, “Whenever a mass of people has been neglected too long by the established organs of communication, agencies eventually have been devised to supply that want.”²²³ Though Emery had written that sentence in relation to the advent of the penny press, perhaps that sentence also summarizes the rise of Native American and African-American journalism during the 1820s and 1830s.

In conclusion, the historiographies of the press during the age of Jackson focus upon personalities and issues, but primarily Euro-American personalities and issues, understandable given their prominence but regrettable given the growingly diverse voices in dissident *and* mainstream journalism. Still, the studies help frame the important issues such as the politicization of news coverage, shifts to more localized news despite efforts to gather international news, the advent of penny papers, and broader changes about the nature of news itself. This contextualizes the work of the minority writers highlighted in this dissertation.

(b) Minority journalists and mass communicators

One of the more exciting stories developing in journalism and mass communication history is the contributions of minority journalists during the early nineteenth century, as it puts into historical perspective the experiences of minority journalists today. The academic literature about the people in question – William Apess,

²²² Emery, 218-222. See also Bernell E. Tripp, “The Antebellum Press, 1820-1861,” in *The Media in America: A History*, 3d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 184-188.

²²³ *Ibid.*, 165.

Elias Boudinot, and Samuel Cornish – ranges across academic and epistemological borders. Regrettably, works typically discuss one author without the other, with a few notable exceptions.²²⁴ Perhaps more regrettably, fewer studies overlap the African-American and Native American experiences; though different in many respects, they represent some of the primary struggles issues of race during the age of Jackson.²²⁵ Thus, this dissertation broadens all of the respective historiographies by bringing out similar experiences and related concepts.²²⁶

A good example of the growing literature would be *Outsiders in 19th-Century Press History: Multicultural Perspectives*, edited by Frankie Hutton and Barbara Straus Reed, which details the contributions of African-Americans, Native Americans, Chinese-Americans and others to the battle against misrepresentation.²²⁷ Hutton and Reed's first sentences summarize the issue with precision:

American society has historically been characterized by the marginalization of various sociocultural and religious groups and, by extension, their media. When ignored by the mainstream press, some of these groups established their own newspapers and periodicals. Throughout the 19th century, other groups were severely victimized in the press through misinformation, racist ridicule and overall unfair coverage.²²⁸

²²⁴ Konkle and Peyer, for example, each have chapters in their respective books about Apess and Boudinot, but Native American scholars typically do not include African-Americans like Cornish. This kind of comparative work needs to be developed. Konkle does note that Native American and African-American writers have similarities. See Konkle, *Writing Indian Nations*, 105

²²⁵ One notable exception is Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000).

²²⁶ Even so, Kemper admits that while this literature review represents the major works about the writers and related issues as discussed by journalism and mass communications scholars and others, future research needs to explore even more citations from other disciplines than it does. For instance, late in the process, a bibliography from Western Carolina University about Elias Boudinot was discovered at <http://library.wcu.edu/CherokeePhoenix/>. While much of the journalism citations were known, many of the ethnohistorical and sociological citations were not. These need to be studied during the process of expanding this dissertation into a book.

²²⁷ Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995).

²²⁸ *Ibid.*, 1.

Elias Boudinot and Samuel Cornish are among those addressed in this work.²²⁹ The essays addressing these journalists will be discussed in the sections below regarding the academic literature about Native Americans and African-Americans in early nineteenth century journalism.

(1) Native Americans in general

As illustrated below, Native Americans had a growing and vibrant rhetoric during and since the age of Jackson. William Apess seized upon book publishing and Elias Boudinot seized upon newspaper publishing to disseminate pro-Native American positions. As Lyons described above, they used writing for positive purposes.²³⁰ One early but still relevant work is Murphy and Murphy's *Let My People Know: American Indian Journalism, 1828-1978*, noting the issues of sovereignty, free press, and tribal goals.²³¹ They also recognize the problem with viewing the press as a tool for tribal unanimity:

²²⁹ See, e.g. Frankie Hutton, "Democratic Idealism in the Black Press," in *Outsiders*, 5-20, and Barbara Luebke, "Elias Boudinot and 'Indian Removal,'" in *Outsiders*, 115-144.

²³⁰ For example, in a most recent publication, Loew and Mella conducted an important study of how the Native American press promotes principles of tribal sovereignty during environmental disputes. Patty Loew and Kelly Mella, "Black Ink and the New Red Power: Native American Newspapers and Tribal Sovereignty," *Journalism & Communication Monographs* 7, no. 3 (Autumn 2005): 100. Of pertinence to this dissertation's concerns about misrepresentation of ethnic groups, they say, "The failure of mainstream journalists to understand tribal sovereignty as a *legal* principle and their tendency to confuse it with affirmative action and other programs aimed at minorities has dangerous implications for tribes." *Ibid.*, 104. But, while raising important issues, the study actually does not discuss explicitly how the act of reporting about tribal sovereignty is an act of what this dissertation and other scholars call rhetorical sovereignty. That is, tribal papers can talk about tribal sovereignty because they have sovereignty. Another compelling quote from Loew and Mella bears repeating: "As the Oneida elder succinctly put it in our focus group, 'The land is really the heart of sovereignty and the people are the minds of sovereignty.'" *Ibid.*, 132. Future research can explore "the minds of sovereignty" as expressed in journalism by people in minority ethnic groups, among other issues.

²³¹ Murphy and Murphy, *Let My People Know*, xi-xii.

One cannot talk about a homogeneous Indian press, speaking as “with one voice” for all the people. It just isn’t there. Indians, like all other people the world over, differ in their opinions, their policies, and their solutions to situations affecting the life and death of a tribe and its people.²³²

And, though Natives and non-Natives to this day may not agree with all of their positions, Apess and Boudinot are essential to understanding this issue of speaking “with one voice.”

Also, the role of Native writers in general has contributed to knowledge in all kinds of fields, including American studies, but more importantly, Native writers help scholars to understand more of what it means to be Native. Konkle says of early Native writers, “Their texts taken together dramatize a continuous process among Native intellectuals of essentially thinking one’s freedom into existence in a political and epistemological system that not only oppresses Native peoples but also renders them literally dead.”²³³ Perhaps it also could be argued that Native writers believe that their freedom exists already, ignored by that “political and epistemological system that not only oppresses Native peoples but also renders them literally dead.” That is, freedom also can be considered to be a reality to be grasped rather than an aspiration to be socially constructed. The bottom line is that Native writers are about Native freedom, a key concept in understanding the thesis of this dissertation.

²³² *Ibid.*, xiii.

²³³ Konkle, *Writing Indian Nations*, 41.

a. William Apess

Except for a conference paper and this dissertation by Kemper, William Apess cannot be found in any journalism and mass communications scholarship.²³⁴ American Studies and English literature scholars typically list Apess as requisite reading for students of Native American literature.²³⁵ Perhaps this is because Apess primarily wrote books instead of newspaper articles. Yet, Apess often used extended quotations from newspaper articles in his books, especially *Indian Nullification*, a striking technique for public relations before the discipline had developed into a full-time profession.²³⁶ Karen

²³⁴ See Kemper, "We Can Get Redress Nowhere": Seditious Libel and Free Expression for Early Nineteenth Century Native Americans, as Told in *Indian Nullification* by William Apess," (first place paper presented to the Graduate Student Section of Religion and Media Interest Group of Association for Education in Journalism and Mass Communication, Toronto, Ontario, 2004).

²³⁵ See, e.g., Konkle, *Writing Indian Nations*, Peyer, *The Tutor'd Mind*, and Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005). For a review of *Writing Indian Nations*, see an essay by Elizabeth Cook-Lynn, "Review Essay: Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863," *Wicazo Sa Review* (Spring 2005), 198-199.

Some of the other works about Apess include Karim M. Tiro, "Denominated 'SAVAGE': Methodism, Writing, and Identity in the Works of William Apess, a Pequot," *American Quarterly* 48, no. 4 (1996): 653; Carolyn Haynes, "'A Mark for Them All to ... Hiss at': The Formation of Methodist and Pequot Identity in the Conversion Narrative of William Apess," *Early American Literature* 31, no. 1 (1996): 25; Sandra Gustafson, "Nations of Israelites: Prophecy and Cultural Autonomy in the Writings of William Apess," *Religion and Literature* 26, no. 1 (Spring 1994): 31; Theresa Strouth Gaul, "A Native Tradition: Relocating the Indian in American Literature 1820-1840," (Ph.D. diss., University of Wisconsin-Madison, 1998); Cheryl Walker, *Indian Nation: Native American Literature and 19th Century Nationalisms*, New Americanists, ed. Donald E. Pease (Durham, NC: Duke University Press, 1997); Robert Allen Warrior, "William Apess: A Pequot and a Methodist Under the Signs of Modernity," in *Liberation Theologies, Postmodernity, and the Americas*, ed. by David Batsone, Eduardo Mendieta, Lois Ann Lorentzen, and Dwight N. Hopkins (Routledge: New York, 1997); Randall Brent Moon, "The Return of the Native Repressed: Indian Presence in Early American Literature," (Ph.D. diss., University of California-Riverside, June 2000); Todd William Vogel, "Staging Race and Sabotaging Whiteness: Marginalized Writers Redirect the Mainstream," (Ph.D. diss., University of Texas-Austin, May 1999); and Scott Manning Stevens, "William Apess's Historical Self," *Northwest Review* 35, no. 3 (1997): 67-84.

On online sampling of Apess, along with a bibliography, is Paul P. Reuben, "Early Nineteenth Century: William Apes or William Apess (Pequot) (1798-1839)," in PAL: Perspectives in American Literature – A Research and Reference Guide; available at <http://www.csustan.edu/english/reuben/pal/chap3/apess.html>.

²³⁶ For a discussion of the early development of public relations as a profession, see Karen S. Miller, "Public Relations: 1900-Present," in *The Media in America: A History*, 3d ed., ed by Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 509-528.

Miller said that, as part of the development of what scholars now know as public relations, “abolitionists advocated the end of slavery, the religious sought conversation, and corporations experimented with imaginative product promotions.”²³⁷ The activities of Apess, Boudinot, and Cornish – at least from a modern perspective—at times looked like public relations at times, as well as traditional journalism at times.²³⁸ Thus, like Boudinot and Cornish, William Apess belongs in the historiography of journalism and mass communication.

Apess has been the subject of growing interest recently among literary scholars, as Maureen Konkle’s book, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863*, illustrates.²³⁹ Konkle, who explores Native writers such as Apess and Boudinot, finds common themes involving misrepresentations and minority responses.²⁴⁰ Other scholars see these issues, too. Bernd Peyer’s contributions to the historiography of Apess are many, but one of the most important may be his penchant for including numerous details from other historiographies.²⁴¹ For instance, he takes time to connect the issues of slavery and removal – problems for African-Americans and Native Americans, intertwined in a complicated formula that included progressivism, racism,

²³⁷ *Ibid.*, 509.

²³⁸ In fact, if Boudinot practiced journalism on behalf of the tribe, one wonders if *that* would have been public relations as opposed to journalism. At least it challenges notions of what is journalism. This would make for fascinating research, especially today as scholars deal with issues of whether journalists have distinctive functions apart from public relations. For an articulation of the meaning of journalism today, see Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* (New York: Crown Publishers, 2001).

²³⁹ The intellectual debts to Konkle – from her book to her countless conversations with Kemper – are enormous.

²⁴⁰ Konkle, *Writing Indian Nations*, e.g., 5.

²⁴¹ See Peyer, *The Tutor'd Mind*, 117-165

and expansionism among Euro-Americans.²⁴² One of the more typical works about Apess is the introduction to the compilation of the writings of Apess. Barry O’Connell has an extensive introduction, giving historiographical details and interpretations about Apess.²⁴³ O’Connell, despite his admirable attempt at understanding the nuances of Apess, may have misinterpreted some of Apess’s motivations and religious inclinations. O’Connell does note that Apess turned from religious to more political rhetoric towards the end of his literary career, but O’Connell thinks that Apess was more concerned about politics than religion. He says, “To that end [Apess’s] need was not to convert Native Americans to Christianity but to controvert Euro-Americans’ historical exclusion of his people from the making of America.”²⁴⁴ This misses a point realized from a careful reading of Apess’s writings – Apess wanted *both* goals – spiritual conversion of all of his hearers (Native and otherwise) as well as the recognition of the political legitimacy of his people by the dominant Euro-Americans.²⁴⁵ Apess did not realize much of those goals, but he did give readers profound spiritual insights, something criticized by some scholars apparently critical of Euro-American conceptualizations about religion and how those ideas affected Native Americans.²⁴⁶

²⁴² *Ibid.*, 125.

²⁴³ O’Connell, in Apess, *On Our Own Ground*, xiii-lxxvii.

²⁴⁴ *Ibid.*, lxviii.

²⁴⁵ This conclusion is similar to one made by Arnold Krupat, *The Voice in the Margin: Native American Literature and the Canon* (Berkeley: University of California Press, 1989), 176.

²⁴⁶ See, e.g., Haynes, 25, 27; Tiro, 653, also accessed online at the American Studies Association, linked to <http://www.library.arizona.edu>; Gustafson, 49; and Jill Lepore, “Dead Men Tell No Tales: John Sassamon and the Fatal Consequences of Literacy,” *American Quarterly* 46, no. 4 (December 1994): 499. To be fair, one cannot call these scholars anti-religious; one does, however, see religion as an academic flash point in the historiography of Apess.

By contrast, Robert Warrior eschews criticism of Apess's Christianity, preferring instead to see how Apess contributes to a broader discussion about many issues.²⁴⁷ Warrior says, "Apess offers not so much a specific, self-conscious program, but the most brilliant and challenging vision of being a Native American intellectual up to the middle of the nineteenth century."²⁴⁸ Warrior rejects discussions "about whether [Apess] is Indian enough to belong to the line of Native intellectuals."²⁴⁹ Instead, Warrior looks to Apess and sees a vision for what he calls "a new agenda in Native American critical studies."²⁵⁰ That is, Warrior thinks that Native American researchers ought to explore the "intellectual potential" of Native Americans.²⁵¹ Warrior sees an example of that potential in Apess: "In his seminal nonfiction, Apess raises questions about how an experientially aware intellectual praxis leads us to critical issues – not of how we might uncritically celebrate Native cultures, but of ethics, morality, history, imagination, spirituality, and intellectual development."²⁵²

Randell Brent Moon, in a dissertation, typifies much of the literature concerning Apess, except that he spends more time discussing *Indian Nullification* than most; remember that *Indian Nullification* implicates the issues of this dissertation more than other works by Apess.²⁵³ To Moon, *Indian Nullification* serves at least two purposes:

²⁴⁷ The chapter on Apess is found at Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005), 1-47.

²⁴⁸ *Ibid.*, 2, 47.

²⁴⁹ *Ibid.*, 47.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

²⁵² *Ibid.*

²⁵³ Moon, especially see chapter about Apess, beginning on 298.

besides “defending the actions of Apess and the Mashpee Tribe to the rest of the nation, it will explain why an Indian would further victimize himself by being made an Indian twice over.”²⁵⁴ Walker has implied that *Indian Nullification* puts Native American issues on a national platform for discussion, saying, “By seizing the terms of the dominant discourse, Apess sought to become ... one of those whose control of the language of signs would shape a nation’s understanding of itself and its possibilities.”²⁵⁵ The first purpose mentioned by Moon – that Apess defended himself – makes sense, except that it must be understood in its historical context. Konkle argues that *Indian Nullification* “was the end result of a battle for political control of Mashpee land, a battle in which Apess orchestrated a systematic assault on white authority through various forms of writing.”²⁵⁶ The Congregational minister did not have the confidence of the Mashpee, as did Apess and Blind Jo Amos, a Native Baptist preacher. Thus, the story about Fish in *Indian Nullification* illustrates the dangers of a state-funded missionary in that problems with the missionary cannot be solved easily when the state political machine becomes involved.²⁵⁷ Also, Konkle is among scholars of Apess who discussion sedition as an issue, even though that idea of sedition needs to be conceptualized with the knowledge we have from legal history regarding the term.²⁵⁸ Gaul mentions the charges of sedition, but fails to see the defense against sedition as part of the overall purpose of the book.²⁵⁹

²⁵⁴ *Ibid.*, 363-364.

²⁵⁵ Walker, 58.

²⁵⁶ Konkle, *Writing Indian Nations*, 120.

²⁵⁷ For a contrary view, see Carl Esbeck, “Dissent and Disestablishment: The Church/State Settlement of the New American Republic,” *Brigham Young University Law Review* (2004): 1385-1592.

²⁵⁸ *Ibid.*, e.g., 121.

²⁵⁹ Gaul, “An Native Tradition,” 140-142.

But Gaul does succeed in understanding this in terms of Apess's attempt to respond to misrepresentations.²⁶⁰

Hopefully, scholars will study more of the history of Apess and his use of the press and freedom of expression, as well as the related content of newspapers in the 1830s and reverse the notable absence of Apess from historiographies in journalism and mass communications.²⁶¹ Also, journalism scholars could compare and contrast Apess, Boudinot, and other Native American writers in relation to one another, as well as their relationships to William Lloyd Garrison, Benjamin Lundy, and other abolitionists.²⁶² It is helpful that the article about criminal libel deals with abolitionists who had argued for the rights of an oppressed minority. Even with these few articles, the antebellum era seems to be a rich, generally untapped area for researching freedom of the expression issues in particular and journalism issues in general.

In conclusion, the literature about Apess focuses upon the writings of Apess and their role in helping us to understand race relations during the age of Jackson and beyond. Despite general antipathy towards Apess's religious expressions and beliefs, the literature explores important questions about assimilation, conversion, and other results of cultural interactions. Again, this dissertation moves the literature forward by presenting Apess for consideration by journalism and mass communications scholars who have not connected his work with early American journalism. The dissertation also offers a unique interpretation of *Indian Nullification*, helping scholars from all areas of the academy to understand its genre – a defense against criminal charges, particularly seditious libel.

²⁶⁰ *Ibid.*, 135.

²⁶¹ As mentioned above, Kemper's "*Indian Nullification*" is the only such paper found among journalism and mass communications conferences or publications, though another one may exist.

²⁶² See Amy Reynolds, "William Lloyd Garrison, Benjamin Lundy and Criminal Libel: The Abolitionists' Plea for Press Freedom," *Communication Law and Policy*, 6, no. 4 (Autumn 2001), 577-607.

b. Elias Boudinot and the *Cherokee Phoenix*

The literature about Elias Boudinot usually focuses upon his role as editor of the *Cherokee Phoenix*.²⁶³ But Boudinot's career and life have far more impact. He was embroiled in a major struggle within and without his tribe; he left journalism for politics (though it could be argued that politics permeated his journalism all of the time); he has captured the attention of scholars from different camps within the academy; his writings

²⁶³ This basic historiography includes, e.g., Barbara Luebke's biography of Boudinot, "Elias Boudinot, Cherokee Editor." (Ph.D. diss., University of Missouri-Columbia, 1981); James E. Murphy and Sharon M. Murphy, *Let My People Know: American Indian Journalism, 1828-1978* (Norman: University of Oklahoma Press, 1981) have a detailed discussion about the history of Native American journalism, including a history of the early *Phoenix* and Boudinot, 20-33. For other journalism literature, see also Sharon Murphy, "Neglected Pioneers: 19th Century Native American Newspapers," *Journalism History*, 4, no. 3 (Autumn 1977): 79-82, 98-100; Luebke, "Elias Boudinot, Indian Editor: Editorial Columns from the Cherokee Phoenix," *Journalism History*, 6, no. 2 (summer 1979), 48-53, and "Elias Boudinot and 'Indian Removal,'" in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), 115-144; Wm. David Sloan and James Startt, *The Media in America: A History*, 3^d ed. (Northport, AL: Vision Press, 1996), 221-222; Mark Trahan, *Pictures of Our Nobler Selves: A History of Native American Contributions to News Media*, (Nashville, TN: The Freedom Forum First Amendment, 1995); available at <http://www.freedomforum.org/publications/newsroomtraining/picsnoblerselves/pictureofournoblerselves.pdf>; Richard LaCourse, "An Indian Perspective – Native American Journalism: An Overview," *Journalism History*, 6, no. 2 (summer 1979): 34-38; Sam G. Riley, "The Cherokee Phoenix": The Short, Unhappy Life of the First American Indian Newspaper," *Journalism Quarterly* (Winter 1976): 666-671; Riley, "A Note of Caution – The Indian's Own Prejudice, as Mirrored in the First Native American Newspaper," *Journalism History*, 6, no. 2 (summer 1979): 44-47; Jean Folkerts and Dwight L. Teeter Jr., *Voices of a Nation: A History of Mass Media in the United States*, 3^d ed. (Boston: Allyn & Bacon, 1998), 106-109.

Other books include Ralph Henry Gabriel, *Elias Boudinot: Cherokee & His America* (Norman: University of Oklahoma Press, 1941); and Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997). See also Konkle, *Writing Indian Nations*.

Gaul recently has constructed a history of Boudinot in the context of letters between Boudinot and his wife Harriett Gold and her family. See Theresa Strouth Gaul, *To Marry an Indian: The Marriage of Harriett Gold and Elias Boudinot in Letters, 1823-1839* (Chapel Hill: University of North Carolina Press, 2005).

Some scholars who weave discussions of Boudinot within the broader history of the Cherokee include Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000); and William G. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, NJ: Princeton University Press, 1986) and *The Cherokees and Christianity, 1794-1870: Essays on Acculturation and Cultural Persistence*, ed. Walter H. Conser, Jr. (Athens: The University of Georgia Press, 1994).

A bibliography from Western Carolina University at <http://library.wcu.edu/CherokeePhoenix>, found late in the dissertation process, provides numerous sources from historians, anthropologists, and sociologists regarding Boudinot and the Cherokee in general. This would make welcome research for a possible book. Also, this bibliography verifies that the major works in journalism and mass communication have been discovered. For a fairly comprehensive bibliography about Native American free press, see J. Ruth Hegwood, *Free Press in Indian County: Historical Resource Guide* (Little Rock, AR: Sequoyah Research Center/American Native Press Archives), accessed online at <http://anpa.ualr.edu> during the summer of 2005.

still resonate today. Note from the outset how Boudinot's historiography crosses academic boundaries, despite Gaul's inaccurate statement to the contrary:

There is remarkably little scholarship on Elias's role as editor of the *Cherokee Phoenix* or the work he produced as a prolific author. Despite the availability of many of his writings in Perdue's *Cherokee Editor*, he has not shared in the critical attention accorded other American Indians who produced texts during this period. Possibly the neglect stems from a generic cause, since most of his writings were journalistic, a form of writing often ignored by literary critics.²⁶⁴

One wonders why Gaul has ignored the scholarship of journalism scholars.

Theda Perdue has produced an essential historiography with Boudinot in conjunction with a compilation of his writings.²⁶⁵ Interestingly, Perdue's notes connected with Boudinot's writings have more historiographical meat than the introduction she wrote. Despite the laudatory language about Boudinot's journalism, Perdue's conclusions about Boudinot reflect some contempt. Perdue said about his decision to support removal to present-day Oklahoma and his subsequent assassination:

Elias Boudinot was a tragic figure not just because he made a serious error in judgment or because he paid the ultimate price but because he could not accept his people, his heritage, or himself. He was the product of colonization, and his thoughts and deeds may well tell us as much about our own culture as about nineteenth-century Cherokees.²⁶⁶

As this dissertation demonstrates, Boudinot and his situation had been much too complex for scholars to make such sweeping, disparaging comments. He performed many powerful and sometimes positive tasks for the Cherokee. For instance, Macenczak says Boudinot "was a key arbiter of what Cherokees read and, therefore, thought."²⁶⁷ That

²⁶⁴ Gaul, *To Marry an Indian*, 50.

²⁶⁵ Perdue, ed., *Cherokee Editor*.

²⁶⁶ *Ibid.*, 33.

²⁶⁷ Kimberly Portwood Macenczak, "Educators to the Cherokees at New Echota, Georgia: A Study in Assimilation" (Ph.D. diss., Georgia State University, 1991), ii. Other dissertations relating to Boudinot, but that need to be considered in-depth for future research, are Bethany Suzanne Schneider, "From Place to

gave him power – either good or bad. But that also illustrates the importance of having been educated.

Bernd Peyer covers the standard history of Boudinot but, like Perdue, perpetuates criticism of Boudinot.²⁶⁸ Peyer, most importantly, notes the duality of Boudinot's historiography: "The tragic fate of Elias Boudinot, who is honored as the 'Father of American Indian Journalism,' on the one hand, and stigmatized as a 'traitor' to the Cherokee Nation on the other, well illustrates the vicissitudes of transcultural experience in a colonial situation."²⁶⁹ Like with any other historical figure, fame rides on the same carriage as infamy. But Peyer, like certain other scholars, seems to struggle with the idea of Boudinot having influences from his Native as well as his Euro-American selves. For instance, Peyer frames Boudinot as a "proto-elitist," with both Cherokee and European descent *and* mindsets.²⁷⁰ Despite this mixture, Boudinot developed into what Peyer called "an ardent promoter of Cherokee nationalism."²⁷¹ Konkle says, though, "Neither Boudinot nor the other 'elite' and 'acculturated' Cherokees who made such statements or voiced such opinions ever denied being Cherokee, abandoned the nation, or accepted subordination to whites."²⁷² That is, being educated did not make Boudinot any less

Populace: Indian Removal and State-Formation in Antebellum American Literature" (Ph.D. diss, Cornell University, January 2003), and Phil McFarland, "The Removal of the Cherokee Indians from the State of Georgia, 1824-1835: An Analysis of Rhetorical Strategies" (Ph.D. diss, East Tennessee State University, July 1973).

²⁶⁸ This is unlike the exuberant article about Boudinot in Luebke, "Elias Boudinott."

Also, Perdue ironically and favorably reviews Peyer's *The Tutor'd Mind* at "Native American Missionary-Writers," *Reviews in American History* 26, no. 3 (1998): 541-545; available at http://muse.jhu.edu/journals/reviews_in_american_history/v026/26.3perdue.html.

²⁶⁹ Peyer, *The Tutor'd Mind*, 166.

²⁷⁰ *Ibid.*, e.g., 16, 189, 222. Kemper, "Elitism," also found Boudinot to have an elitist ideology.

²⁷¹ *Ibid.*, 189.

²⁷² Konkle, *Writing Indian Nations*, 79.

Native. To say otherwise would say that being Native American means to be uneducated – *that* would be an unreasonable conclusion. Peyer’s arguments yield a *reductio ad absurdum*, always a logical fallacy, though he likely would not admit that the “proto-elite” theory leads there. By contrast, scholars such as Warrior and Konkle seem to celebrate the intellectual accomplishments of Native writers such as Boudinot as an expected outcome of becoming a part of a written tradition.²⁷³ Macenczak makes an interesting conclusion relating to Boudinot, saying that “Boudinot was not a total assimilationist” because he had decided not “to advocate the physical assimilation of the Cherokee tribe.”²⁷⁴ That is, the decision to remove to Oklahoma may indicate that Boudinot did not want to yield completely to the onslaught of Euro-American society.²⁷⁵

Luebke’s dissertation at the University of Missouri-Columbia does an admirable job with documenting the life of Elias Boudinot, compiling most of the major primary and secondary sources to that date.²⁷⁶ Her conclusions are standard, but intriguingly Luebke in her dissertation does not discuss much the tribal controls over the *Phoenix* in context of freedom of the press. Instead, she spends more time upon the conflict with Colonel C.H. Nelson of the Georgia Guard when discussing “Liberty of the Press.”²⁷⁷ She does, however, discuss “tribal factionalism” as part of the political angst of his

²⁷³ See notes and discussion about Konkle and Warrior, *supra*.

²⁷⁴ Macenczak, “Educators,” 94.

²⁷⁵ See also conclusions in Kemper, “Boudinot.”

²⁷⁶ See Luebke, “Elias Boudinott, Cherokee Editor.” This is much like Gabriel, *Elias Boudinot*, who focused more upon facts than issues.

²⁷⁷ Luebke, 255. Also, since Luebke attempted a comprehensive biography of Boudinot, it would be fair to say that there were numerous other issues to cover besides conflict with the tribal government. This dissertation simply takes a different focus than does Luebke’s.

decision to support removal.²⁷⁸ In a chapter in *Outsiders in 19th-Century Press History*, Luebke continues her general themes, but conforms her discussion to the book's theme of "outsiders."²⁷⁹ This is most helpful as scholars explore the role of Native journalists in offering alternative voices to the mainstream media.

Rennard Strickland helps scholars to understand how who the Cherokee were affected what they became as they assimilated with Euro-American society, and how that influenced issues about law and journalism. He said, for instance, "Public consensus and harmony rather than confrontation and dispute, as essential elements of the Cherokee world view, were reflected in the ancient concepts of the law."²⁸⁰ William Strickland notes that, when the threat of removal fractured the Cherokee society, the rhetoric of Cherokee speakers focused upon tribal unity.²⁸¹ And, language had a profound effect upon the law and therefore journalism of the Cherokee, he argues: "In short, the use of the Cherokee language through the syllabary legitimized the introduction of a questionable legal system drawn from the English-speaking world."²⁸² One wonders, then, if language became a Trojan horse for the Cherokee, bringing influences that forever changes their society. This, of course, is a concern about language noted above by Lyons.²⁸³

²⁷⁸ *Ibid.*, e.g., 275-280.

²⁷⁹ E.g., Luebke, "Indian Removal," 115-116. That chapter appears to have come from her dissertation.

²⁸⁰ Rennard Strickland, *Fires and the Spirits: Cherokee Law from Clan to Court*, Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1975), 11.

²⁸¹ William M. Strickland, "The Rhetoric of Removal and the Trail of Tears: Cherokee Speaking Against Jackson's Indian Removal Policy," *Southern Speech Communication Journal* 47, no. 3 (Spring 1982): 294. Strickland notes that public speeches "had limited effect on the ultimate outcome of the struggle, since the direct appeal of these orations could not be duplicated in newspaper reports." *Ibid.*, 304.

²⁸² Strickland, *Fire and the Spirits*, 107.

²⁸³ See discussion and notes, *supra*.

Konkle examines the nature of the message that Boudinot had for the Euro-Americans during the age of Jackson:

The two main points that Boudinot as a Cherokee spokesman tried to get across to whites were, first, that the Cherokees formed a political entity that was separate from and not subordinate to U.S. authority and, second, that the Cherokees and other Native peoples had been misrepresented by whites as static primitives locked in time, when they in fact had changed over time like whites themselves. Furthermore, he insisted, white people would never understand that on their own; Native peoples must be understood as **authoritative about their own knowledge**, and they must produce that knowledge themselves if they are ever to hope to rectify the situation [emphasis added].²⁸⁴

By contrast, Humphrey argues that the *Cherokee Phoenix* “had two primary goals: to improve the public image of the Cherokee among white Americans and to help fight the growing drive to remove the Native Americans beyond the Mississippi River....”²⁸⁵

Konkle argues that the Cherokee had to have control over their knowledge and its dissemination: In summarizing Boudinot’s rhetoric, she says, “The nation’s progress can be ensured, finally, only by Christianity, literacy, a strengthened government, and, most importantly, control of knowledge about the Cherokees by the Cherokees themselves.”²⁸⁶

Part of that control was the ability to publish news in the Cherokee language, something due to the genius of Sequoyah, a Western Cherokee in Arkansas.²⁸⁷ This discussion about Natives being “authoritative about their own knowledge” leads scholars to a discussion about whether rhetorical sovereignty helps in understanding the conflict over control of communication in tribal media. Interestingly, scholars tend to mention freedom of the press as an issue, but rarely focus upon that angle, preferring to focus

²⁸⁴ Konkle, *Writing Indian Nations*, 50.

²⁸⁵ Humphrey, *The Press of the Young Republic*, 144-145. She also claims that Boudinot and the paper failed in both respects. *Ibid.*

²⁸⁶ *Ibid.*, 54.

²⁸⁷ For a discussion of that important, see LaCourse, “Native American Journalism,” 36.

upon the removal controversy. But what they may miss is viewing freedom of the press (or restrictions thereupon) as an integral part of that controversy.

In sum, scholars view Native American writers like William Apess and Elias Boudinot in two different ways. Some, like Peyer and O'Connell, tend to criticize Euro-Americans influences, insinuating that somehow Euro-Americans diminished the Indianness of the writers. Others, like Konkle and Warrior, take Apess and Boudinot for what they were – human beings trying to make sense of the pressures around them, hoping to use their talents and knowledge in ways that affirmed their ethnic groups and their own selves. This dissertation agrees with Konkle and Warrior, hoping to represent Native American writers as they themselves would want to have been represented, all the while acknowledging that the people who can best represent Apess and Boudinot are Apess and Boudinot.²⁸⁸

(2) African American journalists and Samuel Cornish

The African-American press in the United States holds a place of high esteem in the history of journalism.²⁸⁹ As Lauren Kessler said:

It is the story of persistent struggle against widespread cultural prejudice mirrored by stereotyping and rejection in the conventional white media. It is the story of powerless, often penniless men and women who devoted their energies, and sometimes risked their lives, in hopes of bettering the condition of their race.²⁹⁰

Kessler also understood an important problem for African-American journalists – a lack of access to Euro-American newspapers, which controlled the media during the

²⁸⁸ But this will be an impossible tasks, as discussed in chapter seven, *infra*.

²⁸⁹ Tripp, unlike many journalism historians, place African-American journalists in context with their Euro-American peers. See Tripp, “The Antebellum Press: 1820-1861,” in *The Media in America: A History*, ed. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 184-188.

²⁹⁰ Kessler, *The Dissident Press*, 21.

age of Jackson in the United States.²⁹¹ And, there were “hazards” for African-Americans like David Ruggles for using journalism to promote abolitionism, as Graham Russell Hodges argues.²⁹² Remember the name David Ruggles, for he figures prominently in the later part of Cornish’s career, particularly in an unsavory libel suit that left both of them and *The Colored American* deeply in debt and at odds with each other.²⁹³ Also, one must not think that African-Americans only practiced journalism in the United States. Virginia-born Hilary Teage edited the *Liberia Herald* from 1835 to 1850, while African-American journalism was progressing in the United States.²⁹⁴ Thus, Samuel Cornish had been just one among numerous important African-American journalists during the age of Jackson, journalists who used their position to argue for better treatment and progress for their race.

Samuel Cornish and John Russwurm hold a place of high distinction, as they were the first African-Americans to publish a newspaper in the United States.²⁹⁵ But Cornish,

²⁹¹ *Ibid.*, 21-23.

²⁹² See Graham Russell Hodges, *Media Studies Journal* 14, no. 2 (Spring/Summer 2000); available at <http://www.freedomforum.org/newsstand/reports/msj/courage.summer2000/y02.html>.

²⁹³ See discussion in chapter six, *infra*.

²⁹⁴ See Carl Patrick Burrowes, “In Common with Colored Men, I Have Certain Sentiments”: Black Nationalism and Hilary Teage of the *Liberia Herald*,” *American Journalism* (Summer 1999): 17-35

²⁹⁵ Kessler accurately notes that African-Americans had published their thoughts, albeit in different form, long before the launch of Cornish and Russwurm’s *Freedom’s Journal*. Kessler, *The Dissident Press*, 26-27.

This section relies in part upon sources that helped create and later extend Kemper, “THUNDER TONES.” See, e.g., Lionel C. Barrow, “Our Own Cause’: ‘Freedom’s Journal’ and the Beginnings of the Black Press,” *Journalism History* 4, no. 4 (Winter 1977-78): 118-122; Genevieve G. Caspari, “The Impatient Press: Placing Black Newspapers in the Ideologies of Black Progress” (paper presented at the annual conference of the Association for Education in Journalism and Mass Communication, 69th, Corvallis, OR: August 6-9, 1983); Martin E. Dann, ed., *The Black Press, 1827-1890: The Quest for National Identity*, (New York: G.P. Putnam’s Sons, 1971); Bella Gross, “Freedom’s Journal and the Rights of All,” *Journal of Negro History*, 17, no. 3 (July 1932), 240-286; Frankie Hutton, “Democratic Idealism in the Black Press,” in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995); Frankie Hutton, *The Early Black Press in America, 1827 to 1860* (Westport, Conn.: Greenwood Press, 1993); Henk La Brie III, “Black Newspapers: The Roots are 150 Years Deep,” *Journalism History* 4, no. 4 (Winter 1977-78): 111-113; Kenneth D. Nordin, “In Search of Black Unity: An Interpretation of the

who edited three newspapers during his journalism career, tends to be studied more than Russwurm has been.²⁹⁶ Still, both of their contributions to *Freedom's Journal* begin and accentuate the historiography of African-American journalism.²⁹⁷ Lionel C. Barrow says, “*Freedom's Journal* gave blacks a voice of their own and an opportunity not only to answer the attacks printed in the white press but to read articles on black accomplishments, marriages, deaths, that the white press of its day ignored.”²⁹⁸ Thus, despite the emphasis in this dissertation upon representation, freedom of the press, and rhetorical sovereignty, scholars must not forget the basic service that the African-American press, like its Native American counterpart, has performed for its constituency. They addressed the problems of stereotypes during the early nineteenth century as described by Pride and Wilson:

Content and Function of ‘Freedom’s Journal,’” *Journalism History* 4, no. 4 (Winter 1977-78): 123-130, 131; Armistead S. Pride, “Rights of All’: Second Step in Development of Black Journalism,” *Journalism History* 4, no. 4 (Winter 1977-78): 129; Jane Rhodes, “Race, Money, Politics and the Antebellum Black Press,” *Journalism History* 20, nos. 3-4, (Autumn-Winter 1994): 95-106; Charles A. Simmons, *The African-American Press, with Special References to Four Newspapers, 1827-1965* (Jefferson, N.C.: McFarland & Co., 1998); Bernell Tripp, *Origins of the Black Press: New York, 1827-1847*, (Northport, AL: Vision Press, 1992); Tripp, “Extending the Boundaries: 19th-Century Historical Influences on Black Press Development (paper presented at the American Journalism Historians Association meeting, Louisville, KY, October 1998); Todd Vogel, ed., *The Black Press: New Literary and Historical Essays* (New Brunswick, N.J.: Rutgers University Press, 2001); and Roland Wolseley, *The Black Press, U.S.A.* (Ames: Iowa State University Press, 1972).

For a bibliography of the African-American press, up until 1968, see Armistead S. Pride, “The Black Press to 1968: A Bibliography,” *Journalism History* 4, no. 4 (Winter 1977-1978): 148-155. An important work that touches upon much of the important historical narrative about early African-American journalism is Armistead S. Pride and Clint C. Wilson II, *A History of the Black Press*, Moorland-Spingarn Series, (Washington, D.C.: Howard University Press, 1997), especially 9-38. For an online version of some of the historiography by Pride and Wilson, see Howard University’s ArchivesNet at <http://www.huarchivesnet.howard.edu/0002huarnet/wilson1.htm>.

²⁹⁶ For a brief biography of Russwurm, see, e.g., “A Profile: John Brown Russwurm,” BLACFAX 8, no. 33 (Fall 1996); available at <http://proxy.mul.missouri.edu:2048/login?url=http://search.epnet.com/login.aspx?direct=true&db=aph=an=9703260003&scope=site>.

²⁹⁷ Note that the paper started after a meeting of African-American leaders in New York City. See Pride and Wilson, *A History of the Black Press*, 9-11. Thus, perhaps the start of the paper can be attributed as much to the community as it can to Cornish and Russwurm.

²⁹⁸ Barrow, “Our Own Cause,” 122.

The indigent, ill-housed, underfed, uneducated, disfranchised Negro become stereotyped, and that stereotype was fixed in the public eye by minstrel shows and was prominently displayed on posters, billboards, and cartoons depicting the Black man as a buffoon and an object of ridicule. Driving home the ugly image were a number of newspapers and magazines advertising rewards for capture of escaped slaves, promoting the sale of slaves, and depicting the animal qualities of the freedman.²⁹⁹

Kenneth D. Nordin argues that the purpose of *Freedom's Journal* was “to produce a nationally circulated newspaper which would develop a sense of fraternity, a black consciousness, as it were, among the freemen and ex-slaves living in scattered communities throughout the northern states.”³⁰⁰ But this purpose may have been hindered by practical exigencies, as Jane Rhodes argues: “Poverty, illiteracy, competing political agendas, and the social effects of racism and discrimination contributed to the creation of an audience that could not support—financially or otherwise—a single vision of one newspaper.”³⁰¹

Pride and Wilson thankfully go beyond *Freedom's Journal* to discuss other early African-American newspapers and their key players, including *The Rights of All* and *The Colored American*, both of which Cornish had edited at times after leaving *Freedom's Journal*.³⁰² As described in this narrative by Pride and Wilson, Philip Bell, James McCune Smith, Charles Ray, and others joined Cornish and Russwurm as African-American journalists in New York City during the age of Jackson, setting examples for generations of journalists to come.³⁰³ One of the better historiographies of the early

²⁹⁹ Pride and Wilson, *A History of the Black Press*, 6.

³⁰⁰ Nordin, “In Search of Black Unity,” 123.

³⁰¹ Rhodes, “Race, Money, Politics,” 95.

³⁰² Pride and Wilson, *A History of the Black Press*, 21-37. Simmons, 11, claims that *The Rights of All* was a “revived” version of *Freedom's Journal*. Pride and Wilson, 22, call the paper “the successor to *Freedom's Journal*,” but also refer to it as “a entirely new publication....”

³⁰³ *Ibid.* In a foreword to *A History of the Black Press*, *Washington Post* columnist Dorothy Gilliam talks

African-American press is Frankie Hutton's *The Early Black Press in America, 1827 to 1860*, which organizes discussions about Cornish and his peers by topics such as democracy and social responsibility.³⁰⁴

Genevieve Caspari argues that the African-American press "functions differently from general media," in part because it focuses exclusively upon the African-American community.³⁰⁵ As Pride and Wilson said:

Four basic concerns preoccupied those in the vanguard of efforts to improve conditions that Blacks were forced to endure. The four dealt with employment, education, places of worship, and exercise of citizenship.³⁰⁶

Hutton said, "The messages of the black press were positive in the sense that they were concerned with self-help activities and the spirit of people that was remarkably upbeat amid the most horrible, racist circumstances."³⁰⁷ Not unlike the early Native writers, the early African-American press had "reformist, democratic, and elitist themes," as Hutton has described it.³⁰⁸ Indeed, early African-American editors such as Cornish, himself an ordained Presbyterian minister, were moralistic. "Black editors helped set a path for self-help through messages of personal morality, prudence, temperance, industriousness, and the importance of education, which continued as their focus throughout the era," Hutton

about how the history of African-American press influenced her as an African-American journalist. But, as a non-African-American, the author of this dissertation finds great inspiration from Cornish and other African-American journalists. Thus, this historiography can benefit people of all races and occupations.

³⁰⁴ See Hutton, *The Early Black Press*, passim. Hutton also deals with the topic of democracy and African-American editors in "Democratic Idealism."

³⁰⁵ Caspari, "The Impatient Press," 6.

³⁰⁶ Pride and Wilson, *A History of the Black Press*, 4.

³⁰⁷ Hutton, *The Early Black Press*, xii.

³⁰⁸ *Ibid.*, xvii. Note that Elias Boudinot and William Apess have been considered elitist, as discussed *supra* and *infra*.

Also, among other goals, Hutton wanted with her work "to quell the pervasive view of [the African-American press] as primarily or solely abolitionist during the antebellum era...." *Ibid.*, ix.

concluded.³⁰⁹ Despite these tendencies to moralize, “[b]y today’s standards the early [African-American] papers would not be seen as militant or radical,” O’Kelly said.³¹⁰

Still, being the editor of an African-American paper had risks, as Simmons argues:

In spite of the dangers facing these men and women of the press, many blacks, even though who could barely write, sought the job of editor not merely because they had something to say or because the profits were worth the aggravation but primarily for its position of respect and influence in the black community. The success of that job, however, depended on how well the editor could deliver a resounding blow to whatever was causing the problem and survive thereafter.³¹¹

Scholars rarely note, though, the arguments for freedom of the press that Cornish and others made. But, Bella Gross, who wrote one of the earliest histories of the first two papers edited by Cornish, noted how Cornish looked to “the Constitution of the United States as our polar star.”³¹² Free African-Americans during the age of Jackson expected that the Constitution’s rights and responsibilities applied to them, too. Penn, in another one of the earlier histories about the African-American press, has a brief chapter on free press, but does not connect the issue with the African-American press, the dominant topic of the book.³¹³

Unlike Apress and Boudinot, who have been the objects of study for American Studies and English literature scholars, Samuel Cornish and other early African-American journalists have a straightforward historiography with little criticism or racial

³⁰⁹ *Ibid.*, 41.

³¹⁰ Charlotte G. O’Kelly, “The Black Press: Conservative or Radical, Reformist or Revolutionary?” *Journalism History* 4, no. 4 (Winter 1977-1978): 114-116.

³¹¹ Simmons, 5.

³¹² Gross, “Freedom’s Journal and the Rights of All,” 241, n. 1, citing *Freedom’s Journal* 1, no. 3, 12. Hutton argues that the principles of the U.S. Constitution profoundly influenced early African-American society, including its journalists. See *The Early Black Press*, xiii, 26-35.

³¹³ I. Garland Penn, *The Afro-American Press and Its Editors* (1891; reprint, Salem, N.H: Ayer Co., 1988), 519-523.

theory applied to interpretations. Perhaps this is because journalism and mass communications historians studying these African-American journalists focus more upon reporting about Cornish and his peers than upon interpreting them. They were just who they were. And they were an integral part of the historiography of journalism and freedom of expression during the early nineteenth century.

4. Freedom of expression during the age of Jackson

“The history of freedom of the press since 1800 is largely unwritten.”³¹⁴

That assessment in 1988 by Timothy Gleason remains true today, despite recent attempts by law, history, and journalism and mass communications scholars to explore relevant cases, codes, and constitutions, especially for freedom of the press during the early nineteenth century. Professor David Rabban examined free speech issues between 1870-1920, but argued for “further research into the still largely unknown years between 1800 and the Civil War.”³¹⁵ The possibilities for researchers are numerous, both theoretically and methodologically, as Gleason argues: “Few free-press histories move beyond a focus on the First Amendment doctrine to look at the interplay of social, economic, political, cultural, and institutional forces that shape that doctrine.”³¹⁶ Freedom of expression is essential to journalism yesterday, today, and tomorrow. Emery

³¹⁴ Timothy Gleason, “Historiographical Essay: Historians and Freedom of the Press Since 1800,” *American Journalism* 5, no. 4 (1988): 230.

³¹⁵ David Rabban, *Free Speech in its Forgotten Years*, *Cambridge Historical Studies in American Law and Society*, eds. Arthur McEvoy and Christopher Tomlins (Cambridge: Cambridge University Press, 1997): 1-2.

An important book needing further consideration for future research is Harold L. Nelson, ed., *Freedom of the Press from Hamilton to the Warren Court*, The American Heritage Series, eds. Leonard W. and Alfred Young (Indianapolis, IN: The Bobbs-Merrill Company, 1967). This compilation has numerous primary documents – cases, articles, speeches, etc. – from the age of Jackson. These could shed more light as to what people then thought about the concept of free expression.

³¹⁶ Gleason, “Historians,” 234.

describes the concept as part of the essential purpose of journalism history.³¹⁷ When society undergoes massive changes – such as during the age of Jackson – freedom of expression undergoes pressure and sometimes changes. Frederick Siebert once hypothesized, “The area of freedom contracts and the enforcement of restraints increases as the stresses on the stability of the government and of the structure of society increases.”³¹⁸ This indeed could be a template for discussing freedom of expression during the age of Jackson, though testing that hypothesis by the historical data would be for another study.³¹⁹

Likely one of the most detailed and prolific scholars of the late twentieth and early twenty-first centuries regarding the early nineteenth century’s historiography on free expression would be Professor Michael Kent Curtis.³²⁰ Through painstaking

³¹⁷ Emery, iii.

³¹⁸ Frederick S. Siebert, *Freedom of the Press in England, 1476-1776* (Urbana: University of Illinois Press, 1952), 10, quoted in David Paul Nord, “First Steps Toward a Theory of Press Control,” *Journalism History* 4, no. 1 (Spring 1977) 9.

³¹⁹ Nord, “First Steps,” 9, then cites John Steven’s two additional propositions (as extensions of Siebert’s). See John Stevens, “Freedom of Expression: New Dimensions,” in *Mass Media and the National Experience*, eds. Ronald T. Farrar and John D. Stevens (New York: Harper and Row, 1971), 17, 26. They include:

Proposition III – The more heterogeneous a society, the more freedom of expression it will tolerate.

Proposition IV – The more developed a society, the more subtle will be the controls it exerts on expression.

These also could be compared to what scholars know about William Apess, Elias Boudinot, and Samuel Cornish. And though Nord, “First Steps,” 9, claims that Proposition II has been tested, nothing would preclude testing all four propositions – Siebert’s and Steven’s – by the history presented in this dissertation. For alternative typologies, see Jeffery A. Smith, “Further Steps Toward a Theory of Press Control,” *Journalism History* 8, nos. 3-4 (Autumn-Winter 1981): 93-95.

³²⁰ E.g., Michael Kent Curtis, “The Curious History of Attempts to Suppress Antislavery Speech, Press, and Petition in 1835-37,” *Northwestern Law Review* 89 (Spring 1995): 785-870; available at <http://www.lawschool.westlaw.com>; “The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens,” *UCLA Law Review* 44, (April 1997): 1109-1184; available at <http://www.lawschool.westlaw.com>; *Free Speech, ‘The People’s Darling Privilege’: Struggles for Freedom of Expression in American History*, Constitutional Conflicts Series, ed. Neal Devins (Durham, N.C.: Duke University Press, 2000), 216-270; “Teaching Free Speech from an Incomplete Fossil Record,” Symposium: Education and the Constitution: Shaping Each Other and

historical research and searching philosophical analyses, Curtis develops an argument that issues about freedom of expression during the age of Jackson – rather than being focused upon the rare court cases about them – actually informed more “struggles for democratic government” and “widely divergent ideas about the meaning of freedom of speech and about how literally to take the creed that in the United States ‘we the people’ rule.”³²¹ Thus, Curtis develops a discussion about how abolitionism and related issues provoked and confronted “legal theories of suppression” used by those in power: These theories included treason, seditious libel, group libel, libel of a private person, prosecution under the common law, and extradition.³²² These likely refer to civil or criminal causes of action in courts, but they by no means were the only tools used to silence opposition.³²³ Also, Curtis has done extensive and helpful research into the murder of the Reverend Elijah Lovejoy, an abolitionist journalist, by an anti-abolitionist mob.³²⁴ But perhaps Curtis’s most helpful contribution to this dissertation is his framing of how views about freedom of expression had changed during the age of Jackson to a

the Next Century,” *Akron Law Review* 34 (2000): 231-260; available at <http://www.lawschool.westlaw.com>.

³²¹ Curtis, *Free Speech*, 3. One scholar, in reviewing Curtis’s book, thought two other books could have been written:

The first is a work of constitutional history examining the distinctive Jacksonian political practices that explain why Republicans thought nationalizing the First Amendment would bar state laws repressing speech analogous to antislavery advocacy, even though a legal tradition existed that understood the First Amendment as not necessarily prohibiting laws repressing antislavery advocacy....The second is a work of constitutional theory exploring the justification of Jacksonian practice. See Mark A. Graber, “Antebellum Perspectives on Speech,” *William and Mary Bill of Rights Journal* 10 (April 2002): 790. Available at <http://www.lawschool.westlaw.com>.

³²² For an outline and discussion, see *ibid.*, 194-205.

³²³ E.g., *ibid.*, chapter seven, 155-181, for a discussion about the attempts to censor abolitionist materials in the U.S. mail. See also Kemper, “WE SHALL NOT SUBMIT!”

³²⁴ E.g., Curtis, *Free Speech*, chapters 10-11, 216-270; and “Lovejoy.” This incident will be discussed in chapter six, *infra*, regarding Samuel Cornish’s reaction to Lovejoy’s murder and the threats to the liberty of the press.

broader expectation by the populace.³²⁵ Curtis argues that abolitionism did not have an impact on the views about freedom of expression as much as the suppressions against abolitionism awakened fears that such suppressions “would undermine the citadel protecting free expression and leave free speech vulnerable to a variety of other assaults.”³²⁶ That is, people in general cared more about free expression than they did abolitionism during the age of Jackson. This dissertation argues that slavery was one of the most pernicious controls of information, and that promoting the loss of liberty for some diminishes liberty for all.³²⁷

Earlier scholars detailed similar incidents and drew similar conclusions. For instance, Clement Eaton noted the inherent problems with censoring the mail to purge it of abolitionism: “The Southern record demonstrates the difficulty of suppressing pernicious and dangerous propaganda without at the same time destroying the literature of reform, of protest, and of sanative criticism.”³²⁸ But Eaton, a noted historian, does not examine the legal and philosophical implications in the way that Curtis has. In fact, Eaton made a curious note: “The Southern censorship of the mails during the last three decades before the Civil War could be justified only on the ground that the safety of the people is the supreme law.”³²⁹ This buys into the arguments put forth by Holmes, *supra*.

³²⁵ Curtis, “Lovejoy,” 1171-1172. Though Lovejoy’s murder occurred during the Van Buren administration, the ideas about free expression came from the context of the Jackson Administration.

³²⁶ Curtis, “Curious History,” 789-790.

³²⁷ See chapter two, *supra*, and chapter six, *infra*.

³²⁸ Clement Eaton, “Censorship of the Southern Mails,” *The American Historical Review* 48, no. 2 (January 1943), 266; available at <http://www.jstor.org>. A more detailed account of these issues is in Eaton, *Freedom-of-thought in the Old South* (New York: Harper & Row, 1964).

³²⁹ *Ibid.*, 278.

One of the important issues from the early nineteenth century is whether seditious libel and other related causes of action were threats to the U.S. press. Scholars typically say little of substance about threats to the press during a gap between the Alien and Sedition Acts and World War II.³³⁰ The evidence says otherwise. For instance, Kelly concludes, “what actually happened was that with the declining significance of state and federal prosecutions for criminal libel, actions for damages under the law of civil libel assumed increasing importance as a means of controlling false, reckless, and defamatory utterances, both in politics and public life and in the private affairs of men.”³³¹ Civil libel indeed was a threat, but this dissertation illustrates that seditious libel and other forms of criminal libel also were still a threat during the age of Jackson.³³² For instance, William Lloyd Garrison and Benjamin Lundy were charged and tried for criminal libel in 1829-1831, as Reynolds details in an article that illustrates both the historical arguments and the potential for this type of research.³³³ King said, “The direction of the American law of defamation was also influenced by the ideology that equal legal rights were each citizen’s republican birthright.”³³⁴

³³⁰ Gleason, “Historians,” 235, citing Margaret A. Blanchard, “Filling in the Void: Speech and Press in State Courts Prior to Gitlow,” in *The First Amendment Reconsidered*, eds. Bill F. Chamberlain and Charlene J. Brown (New York: Longman, 1982): 14. Gleason and Blanchard both have attempted to find historical evidence to question what this dissertation will call the “gap theory.” For another example of a history ignoring free speech during much of the nineteenth century, see Nat Hentoff, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1980).

³³¹ Alfred H. Kelly, “Constitutional Liberty and the Law of Libel: A Historian’s View,” *The American Historical Review* 74, no. 2 (December 1968): 429; available at <http://www.jstor.org>.

³³² For an example of the threat of civil libel, see Richard Scheidenhelm, “James Fenimore Cooper and the Law of Libel in New York,” *American Journalism* 4 (1987), 19-29. Scheidenhelm makes an interesting argument that the cases show “an autonomous legal system at work, where concepts central to the development of a free press were recognized almost in a haphazard fashion, through procedural wrangling rather than substantive debate.” *Ibid.*, 19.

³³³ Reynolds, “Abolitionists’ Plea,” 577.

³³⁴ Andrew J. King, “The Law of Slander in Early Antebellum America,” *The American Journal of Legal History* 35 (January 1991): 7.

Even though more recent scholars have done a better job with pointing out threats, a problem still exists with understanding what the laws and philosophies of the early nineteenth century meant. As Gleason says, “The paradox is the apparent *compatibility* in eighteenth and nineteenth century society of laws and practices which are incompatible with twentieth-century views of freedom of the press.”³³⁵ One of Rabban’s criticisms of Leonard Levy, who had raised questions about the true intent of the Framers regarding the First Amendment, was that Levy “appl[ied] a twentieth century to standard to the eighteenth century...”³³⁶

Levy, by studying eighteenth and nineteenth century laws and practices, argued that seditious libel was still a possible charge after the expiration of the Alien and Sedition Acts at the beginning of the nineteenth century, saying, “In effect, any malicious criticism about the government that could be construed to have the bad tendency of lowering it in the public’s esteem, holding it up to contempt or hatred, or of disturbing the peace was seditious libel, exposing the speaker or writer to criminal prosecution.”³³⁷

³³⁵ Gleason, “Historians,” 233.

³³⁶ David Rabban, “The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History,” *Stanford Law Review* 37 (February 1985): 795.

³³⁷ The following discussion comes from a revision of Kemper, “*Indian Nullification*,” 18-21. This quote comes from Leonard Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985), 8. This was a later edition of *Freedom of Speech and Press in Early American History: Legacy of Suppression*, Torchbook ed. (New York: Harper & Row, 1963). For more information about the controversy about freedom of the press and seditious libel, see also Levy, ed., *Freedom of the Press from Zenger to Jefferson: Early American Libertarian Theories*, The American Heritage Series (Indianapolis, IN: The Bobbs-Merrill Co., 1966), *Origins of the Bill of Rights* (New Haven, CT: Yale University Press, 1999); “Liberty and the First Amendment: 1790-1800,” *The American Historical Review*, 68, no. 1 (October 1962): 22-37; available at <http://www.jstor.org>; and “The Legacy Reexamined,” *Stanford Law Review* 37 (February 1985): 767-793. See also Rabban, *Forgotten Years*, and “The Ahistorical Historian,” Philip Hamburger, “The Development of the Law of Seditious Libel and Control of the Press,” *Stanford Law Review* 37 (February 1985): 661-765; P. Harling, “The Law of Libel and the Limits of Repression, 1790-1832,” *Historical Journal* 44, no. 1 (March 2001): 107-134; and Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press, 1948), and *Three Human Rights in the Constitution of 1787* (Lawrence: University of Kansas Press, 1956).

This dissertation, like earlier papers, accepts Levy's premise that freedom of the press in early American history consisted of freedom from prior restraint, not freedom from punishment for publishing comments critical of government.³³⁸

Levy argued from primary documents that the framers of the Bill of Rights did not intend necessarily to eliminate libel – especially seditious libel – from common law.³³⁹ In fact, Levy based much of his premise upon the views of Blackstone, the pre-eminent legal scholar of the early United States:

Where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by the English law ... the liberty of the press, probably understood, is by no means infringed or violated. The *liberty of the press* is indeed essential to the nature of a free state; but this consists in laying no *previous* restraints upon publications, and not in freedom from censure for criminal matter when published.³⁴⁰

Levy thought that the colonial and early American press could not have been truly free because it could have been punished (and was punished) for criticisms of the government.³⁴¹ Levy also argued that there were two goals for journalists in their defense of press liberties: for libel to be decided by a jury, and for truth to be a defense.³⁴² He claims, "That standard, which prevailed in the United States until 1964, effectively protected freedom of the press."³⁴³ Some might argue that the framers intended to do

³³⁸ Levy, *Emergence*, 13.

³³⁹ *Ibid.*, 1.

³⁴⁰ *Ibid.*, 12-13, citing William Blackstone, *Commentaries on the Laws of English, Book 4, Ch. 11* (London: 1765-1769), 151-152.

³⁴¹ Levy, *Emergence*, 38.

³⁴² *Ibid.*, 131. See also Levy, *Origins*, 132.

³⁴³ *Ibid.* This assessment appears to be more than optimistic, given the challenges to free press before 1964, when the U.S. Supreme Court articulated an actual malice standard for libel cases involving public figures. See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). See, e.g., Rabban, *Forgotten Years, supra*.

away with seditious libel by passing the First Amendment.³⁴⁴ Yet, Levy presents the advent of the Alien and Sedition Acts as evidence to the contrary.³⁴⁵ The recently expanded historiography of seditious libel *after* the expiration of the Alien and Sedition Acts provides additional evidence for his thesis.

During the early nineteenth century, the concept of seditious libel diminished in frequency, but did not disappear. This diminishment did open more democratic debate, as Duniway said.³⁴⁶ Gleason cites Duniway as “representative of the dominant view of the freedom of the press in the nineteenth century,” as Duniway thought that the press had been set free in 1827 by a state libel law and therefore had little with which to be concerned.³⁴⁷ The problems William Apess encountered, *infra*, calls into question Duniway’s enthusiastic assessment of free press in Massachusetts during the early nineteenth century. Also, Samuel Cornish knew what it was like to lose a libel suit, and Elias Boudinot knew what it was like to be threatened with a libel suit.³⁴⁸

Gleason also notes how Levy’s work has implicated whether the founders had “original intent” to protect press liberties.³⁴⁹ From jurisprudence in the latter part of the nineteenth century, Gleason concludes “that 19th-Century judges did not view freedom of

³⁴⁴ Levy, *Legacy*, x, specifically focused his thesis upon refuting the arguments of those like Chafee and Justice Hugo Black, who believed that the revolutionary generation “sought to wipe out the idea that the government might be criminally assaulted by words and words alone.” Of course, these would not be the only dissenters to Levy; e.g., Rabban, “The Ahistorical Historian,” and William T. Mayton, “Seditious Libel and the Lost Guarantee of a Freedom of Expression,” *Columbia Law Review* 84 (January 1984): 91-142; available at <http://lawschool.westlaw.com>.

³⁴⁵ Levy, *Emergence*, 220.

³⁴⁶ Clyde Augustus Duniway, *The Development of Freedom of the Press in Massachusetts* (New York, 1906), 148-149.

³⁴⁷ Gleason, “Historians,” 236, quoting Duniway.

³⁴⁸ See also Reynolds, “Abolitionists’ Plea,” for a discussion about criminal libel during that time frame.

³⁴⁹ *Ibid.*, 232-233.

the press through the same libertarian prism used in the 20th Century and that the law did not reflect the broad libertarian view of freedom of the press attributed to the founding fathers.”³⁵⁰ This was because, as Gleason said, “[t]hroughout the 19th Century lawyers and judges looked to the common law, not to the intent of the framers of state or federal constitutional guarantees of freedom of the press, to determine the meaning of both common law and constitutional protection of press freedom.”³⁵¹

The controversy engendered by Levy’s findings about the meaning of free press during the nineteenth century has had a profound effect upon the historiography of freedom of the press in the United States, as Sloan and Schwartz documented in a most helpful essay.³⁵² In fact, Sloan and Schwartz give convenient labels to the differing approaches – the Nationalist school, the Progressive school, the Professional school.³⁵³ For the most part, scholars look for evidence to justify or debunk the libertarian notion that the framers intended for the First Amendment to guarantee as much press freedom as possible.³⁵⁴ This dissertation may well fall in the Progressive school, as Sloan and Schwartz has described it: “Progressive historians of the twentieth century also believed that most Americans were libertarians but that wealthy and aristocratic classes had

³⁵⁰ Timothy Gleason, “19th-Century Legal Practice and Freedom of the Press: An Introduction to an Unfamiliar Terrain,” *Journalism History* 14, no. 1 (Spring 1987): 26.

³⁵¹ *Ibid.*, 31.

³⁵² Wm. David Sloan and Thomas A. Schwartz, “Historiographical Essay: Freedom of the Press, 1690-1801: Libertarian or Limited?” *American Journalism* 5, no. 3 (1988): 159-177.

³⁵³ *Ibid.*, 161-164. They said, “The Nationalist historians wrote of freedom of the press in terms of the fulfillment of the individual, incorporating the Enlightenment concept of natural rights into the romantic ideal of the perfection of mankind. *Ibid.*, 161. Then, Sloan and Schwartz argue that the Progressive School claimed “that total victory of human freedom from government oppression had not been achieved with independence.” *Ibid.*, 162. Finally, they described the Professional School in terms of a “libertarian interpretation of freedom of the press....” *Ibid.*, 164.

³⁵⁴ *Ibid.*, 160.

attempted to suppress freedom of the press.”³⁵⁵ Or, freedom goes through a “slow evolution,” like Sloan and Schwartz said about Duniway’s view.³⁵⁶ But this dissertation also argues for “[t]rue libertarianism,” which Sloan and Schwartz say “means essentially that one believes not only in his own right to freedom of expression but in that of opponents as well.”³⁵⁷

In the context of abolitionism, it would be difficult to find those who would have granted the right of free expression to the other side, but the problem of slavery did provoke discussion and debate about the meaning of free expression.³⁵⁸ Russell Nye, in his seminal work *Fettered Freedom*, puts the issue of freedom of expression within the context of slavery, discussing censorship of mails, limits on academic freedom, seditious libel charges, and other attempted controls of information during the pre-Civil War era.³⁵⁹ Nye recognized the importance of abolitionism for freedom of expression in the United States: “Abolition was, except for the alien and sedition laws, the first really important issue in the struggle for freedom of the press that the nation had encountered since the founding of the republic.”³⁶⁰ Nye differentiates between the protections in the North versus the problems in the South. He said, “The restrictive laws of the South, and the almost universal failure of Southern newspapers to continue publication if they were critical of domestic institutions, showed that a powerful minority of vested interests

³⁵⁵ *Ibid.*

³⁵⁶ *Ibid.*, 162, citing Duniway.

³⁵⁷ *Ibid.*, 176.

³⁵⁸ See, e.g., Kemper, “WE SHALL NOT SUBMIT!”

³⁵⁹ Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (Lansing: Michigan State University Press, 1963; Urbana: University of Illinois Press, 1972).

³⁶⁰ *Ibid.*, 172.

could, by controlling legislatures and molding public opinion, effectively nullify Federal and state constitutional guarantees of free speech and press.”³⁶¹ By contrast, Nye said, “By 1840, Northern public opinion had accepted a definition of freedom of the press which allowed the editor to espouse unpopular minority causes, to criticize popular institutions, or to attack, with the intention of changing, the *status quo*.”³⁶²

Thus, based upon the preceding works, it can be seen that freedom of expression during the age of Jackson had boundaries – shifting, unclear, hazy boundaries. Despite the desires by some to have a libertarian utopia for the press, the real story is that some people and governments did censor the press when possible, though freedom likely outweighed controls. While some people might like to look to that censorship as an excuse for censorship today, a better view would be to remember the problems caused by censorship and to reject censorship altogether.

Conclusion

In conclusion, the historiographical foundations for this dissertation cover many areas of society, all with the focus upon three men in a particular time frame. The age of Jackson as an age of progression also was an age of oppression and suppression. The Jackson Administration, more concerned about political aspirations for Euro-American supporters than the civil rights of African-Americans and Native Americans, suppressed dissent when it suited its purposes and when it could get away with it. For journalism, to borrow the oft-used phrase from Charles Dickens’s *A Tale of Two Cities*, “It was the best of times, it was the worst of times.”³⁶³ The penny press, fueled by a growing population and speedier technologies, brought in a new era for journalism. But the partisanship of

³⁶¹ *Ibid.*

³⁶² *Ibid.*

³⁶³ See Charles Dickens, *A Tale of Two Cities* (London: Chapman and Hall, 1859).

the newspapers, the scandals, the troubles all served to darken an otherwise bright future for journalism. Minority writers such as William Apess, Elias Boudinot, and Samuel Cornish used journalism for their own purposes. But they had important purposes – represent their people, fight for freedom of expression, search for rhetorical sovereignty, among others. Like all of history, things change *and* things stay the same. As journalism and society changed, the minority writers wanted positive change for the benefit of their people, as the following historical narratives will illustrate. They asked for a lot, got a little, and left an enduring legacy.

CHAPTER 4

WILLIAM APESS

Introduction

“Though an Indian, I am at least a man....”

William Apress’s quest for his humanity.³⁶⁴

Pequot writer and minister William Apress sought freedom of expression and therefore perhaps rhetorical sovereignty during the early nineteenth century so that he

³⁶⁴ This section discusses the works of William Apress, who wrote, among other books, *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained*, (Boston, MA: Press of Jonathan Howe, 1835). For a modern printing of *Indian Nullification* and other works by Apress, the dissertation mainly relied upon *On Our Own Ground: The Complete Writings of William Apress, A Pequot*, ed. and with an introduction by Barry O’Connell (Amherst: University of Massachusetts Press, 1992). A later version, *A Son of the Forest and Other Writings*, by William Apress, a Pequot, ed. and introduction by Barry O’Connell (Amherst: University of Massachusetts Press, 1997), omits *Indian Nullification* and *The Increase of the Kingdom of Christ: A Sermon and The Indians: The Ten Lost Tribes* (1831) for no explicit reason. Other primary works by Apress in the compilation include, in order, *A Son of the Forest: The Experience of William Apes, A Native of the Forest, Comprising a Notice of the Pequod Tribe of Indians, Written by Himself*, 1829; *The Increase of the Kingdom of Christ, a Sermon*, 1831; *The Experiences of Five Christian Indians of the Pequod Tribe; or An Indians’s Looking-Glass for the White Man*, 1833; and *Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston, by the Rev. William Apes, an Indian*, 1836. For an online example of Apress’s work, see <http://www.csustan.edu/english/reuben/pal/chap3/apess.html>.

Some of this chapter, particularly the section about *Indian Nullification*, comes from Kevin R. Kemper, “We Can Get Redress Nowhere”: Seditious Libel and Free Expression for Early Nineteenth Century Native Americans, as Told in *Indian Nullification* by William Apress,” (first place paper presented to the Graduate Student Section of Religion and Media Interest Group of Association for Education in Journalism and Mass Communication, Toronto, Ontario, 2004).

The quote comes from Apress, *Indian Nullification*, in *On Our Own Ground*, 274.

This entire chapter, as well as much of this dissertation, relies upon the scholarship of Maureen Konkle, a dissertation committee member and a leading scholar on Apress. Her works include a chapter about Apress in *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004) and the book’s early drafts that were freely shared with Kemper and quoted from during an independent study that produced the first paper by Kemper about Apress. Another work is Konkle, “Indian Literacy, U.S. Colonialism, and Literary Criticism,” in *American Literature*, 69, no. 3 (September 1997): 457-486; available at <http://links.jstor.org>. This dissertation extends some of that research in Konkle’s book, as well as provides a fresh reading of the primary materials and an updated literature review. The idea about Apress addressing misrepresentation came from, e.g., Konkle, *Writing Indian Nations*, 108, and from Kemper’s own analysis of Apress’s writings.

could combat misrepresentations of him and any other Native American.³⁶⁵ Apess took great pains to explain his religious experience, his own abilities, and the general character and abilities of his own people, despite misrepresentations by the press and others. Apess thought that the press could be a tool of wickedness, exacerbating conflict between the Native Americans and Euro-Americans, and a tool of righteousness, vindicating the character of the Native Americans. He said:

The Indian character, I have observed before, has been greatly misrepresented. Justice has not and, I may add, justice cannot be fully done to them by the historian. My people have had no press to record their sufferings or to make known their grievances; on this account many a tale of blood and woe has never been known to the public. And during the

³⁶⁵ This conclusion resembles some made by Deborah Gussman, "Rhetorical Sovereignty in William Apess' Indian Nullification of the Unconstitutional Laws of Massachusetts" (paper presented at the annual meeting of the American Literature Association Annual Conference, May 2004), and Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005). Yet, neither spent much time explicating the meaning of Lyons's theory and applying it to Apess's historiography in detail.

For other sources contributing to this chapter, see, e.g., Konkle, *Writing Indian Nations*, Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997), and Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005). For a review of *Writing Indian Nations*, see Elizabeth Cook-Lynn, "Review Essay: Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863," in *Wicazo Sa Review* (Spring 2005): 198-199.

Some of the other works about Apess include Karim M. Tiro, "Denominated 'SAVAGE': Methodism, Writing, and Identity in the Works of William Apess, a Pequot," *American Quarterly* 48, no. 4 (1996): 653; Carolyn Haynes, "'A Mark for Them All to ... Hiss at': The Formation of Methodist and Pequot Identity in the Conversion Narrative of William Apess," *Early American Literature* 31, no. 1 (1996): 25; Sandra Gustafson, "Nations of Israelites: Prophecy and Cultural Autonomy in the Writings of William Apess," *Religion and Literature* 26, no. 1 (Spring 1994): 31; Theresa Strouth Gaul, "A Native Tradition: Relocating the Indian in American Literature 1820-1840," (Ph.D. diss., University of Wisconsin-Madison, 1998); Cheryl Walker, *Indian Nation: Native American Literature and 19th Century Nationalisms*, New Americanists, ed. Donald E. Pease (Durham, NC: Duke University Press, 1997); Robert Allen Warrior, "William Apess: A Pequot and a Methodist Under the Signs of Modernity," in *Liberation Theologies, Postmodernity, and the Americas*, ed. by David Batsone, Eduardo Mendieta, Lois Ann Lorentzen, and Dwight N. Hopkins (Routledge: New York, 1997); Randall Brent Moon, "The Return of the Native Repressed: Indian Presence in Early American Literature," (Ph.D. diss., University of California-Riverside, June 2000) and Todd William Vogel, "Staging Race and Sabotaging Whiteness: Marginalized Writers Redirect the Mainstream," (Ph.D. diss., University of Texas-Austin, May 1999).

On online sampling of Apess, along with a bibliography, is Paul P. Reuben, "Early Nineteenth Century: William Apes or William Apess (Pequot) (1798-1839)," in *PAL: Perspectives in American Literature – A Research and Reference Guide*; available at <http://www.csustan.edu/english/reuben/pal/chap3/apess.html>.

wars between the natives and the whites, the latter could, through the medium of the newspaper press, circulate extensively every exaggerated account of “Indian cruelty,” while the poor natives had no means of gaining the public ear.³⁶⁶

Apess, in his book *Indian Nullification*, became a sort of public relations agent for himself and other Natives, seeking to clarify the reporting of the dominating Euro-American press.³⁶⁷ The writings of Apess, by naming the worst and the best of the press and the society underlying that press, ought to challenge writers of all ages and cultures as they consider how they represent others. Without a certain amount of free expression, Apess could not have accomplished what he did. In fact, he railed his loudest when that freedom was threatened. And those who threatened Apess were threatened by the prophetic writings and speeches of Apess. Without freedom and opportunity, Apess could not have represented himself and his people, and thus could not have rhetorical sovereignty.³⁶⁸ And the lies would have continued unabated, unabashed. Apess still critiqued social problems, including slavery of African-Americans:

³⁶⁶ Apess, *A Son of the Forest*, in *On Our Own Ground*, 60. This book was published first in 1829, the year after the first tribal newspaper, *The Cherokee Phoenix*, began. See chapter five of this dissertation for an extended discussion of the role that paper had to play in representation of Native Americans in the press.

³⁶⁷ This comes a few decades before historians acknowledge the official “birth” of public relations. For a discussion of the early development of public relations as a profession, see Karen S. Miller, “Public Relations: 1900-Present,” in *The Media in America: A History*, 3d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 509-528. See also chapter three, *supra*. Also, it remains unexplained why scholars have not understood Apess’s writings from a journalistic or mass media perspective, though the fact he chose the medium of book publishing may well account for why he has been embraced by literary scholars. Apess, especially in *Indian Nullification*, used press clippings in an organized, purposeful fashion, perhaps more of a journalistic than a common literary technique. Thus, journalism and mass communications historians ought to examine more closely this man who railed about the press, but then used it for his own purposes.

³⁶⁸ One must note that many scholars do not believe that Apess properly represented Native Americans, as he had embraced Christian ideals. See chapter three, *supra*, for a discussion and more detailed citations. But a representative discussion would be Konkle, who claims that such scholarship about Apess not being able to represent Native Americans “is the legacy of the same U.S. colonialism that William Apess analyzes in the Eulogy of King Philip.” “Indian Literacy,” 458. This dissertation argues that to deny Apess and others of the right to represent themselves in “Native writing in colonial language,” as Konkle called it, is to deny them the right to be human. *Ibid.*, 460.

But I would speak, and I could wish it might be like the voice of thunder, that it might be heard afar off, even to the ends of the earth. He that will advocate slavery is worse than a beast, is a being devoid of shame, and has gathered around him the most corrupt and debasing principles in the world; and I care not whether he be a minister or member of any church in the world—no, not excepting the head men of the nation. And he that will not set his face against its corrupt principles is a coward and not worthy of being numbered among men and Christians – and conduct, too, that libels the laws of the country, and the word of God, that men profess to believe in.³⁶⁹

This chapter will answer the basic research questions in light of the writings of Apess and explore what scholars may learn about representation, freedom of expression and controls of information, and rhetorical sovereignty. Thus, the historical data will be used to frame answers to the research questions and ascertain the value of the concept of rhetorical sovereignty.

1. Rhetorical sovereignty and representation

Did William Apess use journalism and mass communications in ways that resemble rhetorical sovereignty?

In what ways did he believe that he and his ethnic groups had been misrepresented?

William Apess, a Pequot minister and writer, sought what might be termed now as rhetorical sovereignty. But to understand that concept as it applies to Apess, one first must examine his concerns about representation, or rather what he saw as misrepresentation. But know from the outset that even the basic historiography of William Apess contains questions about whether he has been represented accurately and whether he himself represented accurately his own story. As discussed in chapter two, Edward Said did not think it important to ascertain the accuracy of representations.³⁷⁰

³⁶⁹ Apess, *Eulogy*, in *On Our Own Ground*, 301.

³⁷⁰ Edward Said, *Orientalism* (New York: Vintage, 1977), 21.

But the act of journalism involves verifying and accurately reporting facts.³⁷¹ And William Apess, among others, complained about inaccurate reporting. But, scholars have been concerned about the accuracy of Apess's own reporting on certain matters. Ultimately, the wisest approach is to ask critical questions, but also to listen to Apess to see what he has to say about important issues, regardless of any inconsistencies with his stories or behavior.

For instance, Apess said he was born on January 30, 1798, in New England, the son of a "partly white" father and a Pequot mother, claiming to be the great-great grandson of King Philip, who led the Pequots in a war against Pilgrim settlers in 1675-76.³⁷² O'Connell claims that Apess's mother – Candace Apess – could have been a "Negro" slave, with perhaps some Euro-American ancestry: O'Connell says, "Apess's insistence in the autobiography that his mother was a full-blooded Pequot princess cannot

³⁷¹ See, e.g., Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* (New York: Crown Publishers, 2001), 70-93.

³⁷² For a discussion of his alleged relation with King Philip, see *A Son of the Forest*, in *On Our Own Ground*, 3-4. Despite Apess's claims, O'Connell insists that Apess's ancestor Philip was "the sachem of the Pokanokets located in and around Mount Hope in Rhode Island." *Ibid.*, 4, n. 2. See also Roumiana Velikova, "Philip, King of Pequots': The History of an Error," *Early American Literature* 37, no. 2 (2002): 311-355; available at http://muse.jhu.edu/search/pia.cgi?action=refine&search_id=216480647&numterms=5&sort=rank&show=10&include_jstor=&search5=boudinot§ion5=document. Velikova argues "that as a Christianized spokesman for native rights and a surviving member of a decimated New England tribe, Apess read strategically Puritan colonial histories and their nineteenth-century Romantic revisions, in both of which King Philip was featured so prominently." *Ibid.*, 314. So, she insinuates that Apess misled for rhetorical purposes. But Velikova does note, "Notably absent from the *Eulogy* is any mention of a direct family tie between Apess and King Philip, a sign that Apess may have silently corrected his earlier error." *Ibid.*, 313. See also Konkle's discussion. *Writing Indian Nations*, 100-102, 114.

For a chronology of Apess's life, see O'Connell, *On Our Own Ground*, lxxix-lxxx.

Warrior believes "Apess's ancestry was a mix of Pequot, white, and black." See Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005), 201.

Peyer makes an interesting observation while examining O'Connell's discussion of Apess's ancestry: "If O'Connell's assumption is correct, then Apess was either ignorant of his African American ancestry or purposely chose to ignore it in his writings for some unknown reason." Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997), 130. Konkle questions the idea that Apess was African-American. *Writing Indian Nations*, 115, 158.

be altogether trusted either....”³⁷³ This ironic assessment of Apess’s representation of his parentage and ethnicity raises more questions than it answers; Apess spends his entire literary career and ministry complaining about misrepresentation, and scholars still debate his ethnicity. Yet, Apess did express ethnicity and other issues with inconsistency at times. For instance, in *A Son of the Forest*, Apess said his father was white, but in *The Experiences of Five Christian Indians of the Pequod Tribe*, he said his father was “partly white.”³⁷⁴ And Apess apparently could not decide whether his birth date was January 31, as discussed in *A Son of the Forest*, or January 30, as related in *Experiences*.³⁷⁵ If in fact he misrepresented about his history, as O’Connell’s historiography implies, then Apess’s claims of misrepresentation sound empty and disingenuous; if in fact Apess told the truth about his ancestry despite the internal inconsistencies or because of incomplete understanding, then scholars’ attempts to argue against Apess may exacerbate the misrepresentation.³⁷⁶ The mistake on the birth date could have been a typographical error; there are myriad possibilities as to the internal inconsistencies. Thus, it seems more reasonable to accept Apess’s own assertions at face value, unless conclusive evidence suggests otherwise. Note that O’Connell acknowledges the inconsistencies of racial denomination in the federal census of the early nineteenth century, and especially as Apess cared so deeply about the matter of believing his own assessments about

³⁷³ O’Connell, *On Our Own Ground*, xxvii, n. 17. The idea of intermarriage among Natives and African-Americans “offers new insight into the complexity and uncertainty of ethnic identity and assimilation,” Mandell says. Daniel R. Mandell, “Shifting Boundaries of Race and Ethnicity: Indian-Black Intermarriage in Southern New England, 1760-1880,” *The Journal of American History* 85, no. 2 (September 1998): 466-501. There are two salient points. First, ethnicity and race are difficult at best to define and understand. Secondly, Apess’s ethnic ratio really does not matter, and scholars need to quit being hung up regarding that point.

³⁷⁴ *Ibid.*

³⁷⁵ Apess, *A Son of the Forest*, in *On Our Own Ground*, 3. See note 1 by O’Connell. See also *Experiences*, 120, n. 2, where O’Connell notes the discrepancy.

³⁷⁶ See introduction by O’Connell in *On Our Own Ground*, xxvii, n. 17.

himself.³⁷⁷ But, to clarify misrepresentations, the facts need to be sought and verified by scholars. The irony is that the act of verification raises the charge of misrepresentation, something Apess would have fought.

Even more complex would be the childhood of Apess, who knew little except abject poverty and severe abuse.³⁷⁸ He became an indentured servant in various houses with varying levels and types of Christian faith. Apess converted to Christianity on March 15, 1813, despite misgivings about the veracity and sincerity of some of the Christians to whom he had been exposed while working as an indentured servant.³⁷⁹ After preaching for a few years and then becoming an ordained Protestant Methodist minister, Apess wrote and published books and sermons, including *A Son of the Forest: The Experience of William Apes, A Native of the Forest, Comprising a Notice of the Pequod Tribe of Indians, Written by Himself* in 1829, the year of his ordination; *The Increase of the Kingdom of Christ, a Sermon*, 1831; *The Experiences of Five Christian Indians of the Pequod Tribe; or An Indian's Looking-Glass for the White Man*, 1833. During that same year, Apess took part in the Mashpee Revolt, when the tribe declared itself to be autonomous and therefore refused to accept a state-funded missionary, whom they resented.³⁸⁰ After the initial years of controversy, Apess wrote and Jonathan Howe published *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained* in 1835. Finally, Apess delivered

³⁷⁷ *Ibid.*

³⁷⁸ E.g., Apess, *A Son of the Forest*, in *On Our Own Ground*, 5-6. For a discussion about the effects of this upon Apess, see Warrior, *The People and the Word*, 15-18.

³⁷⁹ For a focused autobiographical discussion of his conversion to Christianity, see Apess, *A Son of the Forest*, in *On Our Own Ground*, 18-21.

³⁸⁰ For discussions about this revolt, see Apess, *Indian Nullification* in *On Our Own Ground*, 166-274; Konkle, *Writing Indian Nations*, 119-131; and Kemper, "Indian Nullification."

and then published the public lecture *Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston, by the Rev. William Apes, an Indian* in 1836. His works focus upon both his view of Christianity, as well as Native rights. Towards the end of his career, Apess moved from explicit preaching to fiery political action. By using words, he more and more demanded more and more rights for himself and his people, something similar to the concept of rhetorical sovereignty.

The story of William Apess – as told in his first work and autobiography, *A Son of the Forest: The Experience of William Apes, A Native of the Forest, Comprising a Notice of the Pequod Tribe of Indians, Written by Himself* – is about lies and mistreatment resulting in part from those lies.³⁸¹ As discussed above, representation was a major theme for Apess, as illustrated in the appendix of *A Son of the Forest*.³⁸² An essential point of Apess's narrative involves his hatred of the lie as lies about him often led to abuse, while lies by him upset his "conscience."³⁸³ In part because his own admissions of lying, and despite his hatred of lying, one does wonder the accuracy of his own representations.³⁸⁴ Perhaps this explains O'Connell's reticence, discussed above, to accept Apess's account of ethnic heritage in the face of possibly contradictory evidence.

³⁸¹ See Apess, *A Son of the Forest*, in *On Our Own Ground*, 3-97.

³⁸² *Ibid.*, 52-97. Interestingly, Konkle notes that Apess in his later work *Experiences* "understands that misrepresentation is the means for whites of both justifying political and economic oppression and remaining unable to recognize the humanity of other human beings." Konkle, *Writing Indian Nations*, 108.

³⁸³ Apess tells several stories about how lies about him would result in whippings or other punishments by his masters. *Ibid.*, 11-12, 16-17, 22. For instance, he said one chambermaid "would not hesitate to tell a falsehood in order to have me whipped." *Ibid.*, 22. But he himself also struggled with telling lies. He claimed, in a story about how he had run away from his indentured servitude and lied about his condition, "I could not lie without feeling my conscience smite me." *Ibid.*, 22-25.

³⁸⁴ Ethicist Sissela Bok explores the nuances of lying, noting different purposes and strategies by some relating to lying. See *Lying: Moral Choice in Public and Private Life*, 2d Vintage ed. (New York: Pantheon Books, 1978; Vintage Books, 1989, 1999). Then again, given Apess's religious mindset and the prohibitions in the Bible against lying, one would not be surprised that Apess would "hate a lie." He likely would be considered what Bok calls an absolutist in his view about lying. See *ibid.*, 32-46.

Apess appears to always justify himself, while usually questioning the motives and actions of others. Perhaps this self-justification fuels his intense desire to express himself, to explain his actions. One would be naïve to believe that Apess was unlike any other human being, without frailties and tragic flaws. And, perhaps he struggled with a double-consciousness of dual ethnic pressures – a Native American man in a Euro-American world.³⁸⁵ Still, the scourge of lying and other misrepresentations dominate Apess’s literature. He likely would have agreed with a psalmist, who said: “I hate and abhor lying”³⁸⁶ And the command, “Thou shalt not bear false witness against thy neighbor,” probably resonated with Apess’s religious inclinations.³⁸⁷ In the midst of religious groping, Apess quickly accused the devil of being a “liar,” obviously connecting lying to some sense of evil and other diabolical motivations.³⁸⁸ So Apess may have viewed the battle with the lies as a battle with the devil; and the battle with any lies within himself may have been Apess’s battle with what he may have viewed as his own metaphorical demons. Apess’s first master – a Mr. Furman of Colchester, Massachusetts – once flogged him for allegedly being filled with “the devil.”³⁸⁹ So, internal struggle magnified by religious rhetoric apparently became a crusade against lying, among other “evils.”

³⁸⁵ For a conceptualization of the double-consciousness of African-Americans in a Euro-American world, see W.E.B. DuBois, *The Souls of Black Folk in Writings* (Chicago: 1903; reprint New York: The Library of America, 1986), 364. This also is quoted in Earnest Perry, “Voice of Consciousness: The Negro Newspaper Publishers Association During World War II” (Ph.D. diss., University of Missouri-Columbia), 32. See also discussion in chapter two, *supra*.

³⁸⁶ Ps.119:163 KJV; available at <http://www.crosswalk.com>.

³⁸⁷ Exod. 20:16 KJV; available at <http://www.crosswalk.com>.

³⁸⁸ Apess, *A Son of the Forest*, in *On Our Own Ground*, 38.

³⁸⁹ *Ibid.*, 13.

Though perhaps it is not an issue of veracity, there is a problem with Apess's style of rhetorical hyperbole. For instance, in the quote cited above about exaggerations of newspapers, Apess offers little exact proof of these alleged misrepresentations. Of course, authors like Coward have indeed documented gross misrepresentations about Native Americans in early (and current) U.S. newspapers.³⁹⁰ But Apess apparently contradicts himself by republishing an extended example of favorable press right after he rails against the press in general.³⁹¹ Apess does, though, adopt a more thorough practice of citation in *Indian Nullification*, as he lists many of the exact articles in question.³⁹² Yet, one must admit that Apess's penchant for rhetorical hyperbole – perhaps a product of his times and of his profession – causes a cautious reader to pause.

Still, scholars do *not* have to reject Apess because of some alleged inconsistencies or embellishments in his story. Rather, scholars need to understand the battle over the telling of his story, how people did not want him saying what he had to say, how scholars to this day battle over the meaning of his message. Though it seems necessary to discuss the problems in his storytelling, it seems more necessary to keep it in perspective. Here was a man who could not get a complete hearing of his grievances because of the color of his skin, who had serious complaints about the degradation and suppression of rights for him and his people. That problem with representation far outweighs any small inconsistencies or embellishments that could be found.

³⁹⁰ See, e.g., John Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-1890* (Urbana: University of Illinois Press, 1999) and James E. Murphy and Sharon M. Murphy, *Let My People Know: American Indian Journalism, 1828-1978* (Norman: University of Oklahoma Press, 1981).

³⁹¹ The reprint of the article "Traits of Indian Character" from *The Analectic Magazine* appears in Apess, *A Son of the Forest*, in *On Our Own Ground*, 60-69. Neither Apess nor O'Connell provides the exact citation. Future research could involve double-checking citations like these for understanding context and verifying claims, as microfilm exist of the Philadelphia-based magazine from at least 1813-1820.

³⁹² See Apess, *Indian Nullification*, in *On Our Own Ground*, 166-274.

One must not underestimate the theme of stereotypes with Apess as he struggled with issues of representation. For instance, he loathed the term “Indian.”³⁹³ Apess said, “I thought it disgraceful to be called an Indian; it was considered as a slur upon an oppressed and scattered nation, and I have often been led to inquire where the whites received this word, which they so often threw as an opprobrious epithet of the sons of the forest.”³⁹⁴ Though he often used the phrase “Indian,” Apess preferred for Indians to be called “*Natives*,” saying that Natives “are the only people under heaven who have a just title to the name”³⁹⁵

The word “heaven” was more than just a metaphor, as evangelical Christianity and its views on afterlife played a significant part in his life and therefore his work. Under alternating influences of several Protestant teachings – including Baptist, Presbyterian, early forerunners of Disciples of Christ, and ultimately various forms of Methodism – Apess wrestled with becoming a Christian.³⁹⁶ Apess feared death and what he saw as the possibility of going to hell instead of heaven.³⁹⁷ And death was an ever-present prospect, whether from child abuse, poverty, and even war; Apess fought for the United States Army during the War of 1812 after having run away at the age of 15 from his indentured servitude.³⁹⁸ He again discussed his fear: “I was at times tormented with

³⁹³ Apess, *A Son of the Forest*, in *On Our Own Ground*, 10.

³⁹⁴ *Ibid.* Konkle, *Writing Indian Nations*, 110 connects this conceptually to Boudinot’s “Address to the Whites.” See chapter five, *supra*. Boudinot’s “Address to the Whites” may be found at “An Address to the Whites Delivered in the First Presbyterian Church, on the 26th of May, 1826, by Elias Boudinot, A Cherokee Indian” (Philadelphia: William G. Geddes, 1826) in Elias Boudinot, *Cherokee Editor: The Writings of Elias Boudinot*, ed. Theda Perdue (Athens: Brown Thrasher Books of the University of Georgia Press, 1996), 65-83, including forward by Perdue and footnotes.

³⁹⁵ Apess, *A Son of the Forest*, in *On Our Own Ground*, 10.

³⁹⁶ *Ibid.*, 18-21.

³⁹⁷ E.g., *ibid.*, 13.

³⁹⁸ For a discussion about Apess’s military service, see *ibid.*, 26-31.

the thoughts of death, but God had mercy on me and spared my life, and for this I feel thankful to the present day.”³⁹⁹

And Apess thought that Christianity could send him to heaven; but the brand of Christianity called “evangelical Methodism was Apess’s means of establishing equality with whites,” as Konkle said.⁴⁰⁰ Despite early inclinations towards religion, Apess claimed his conversion occurred March 15, 1813, under the ministry of Methodists, who apparently emphasized a freer, more expressive version of Christianity, when compared to certain Baptists or Presbyterians of the time who had influenced Apess. Indeed, during this time called “The Second Great Awakening,” certain Christian groups encouraged more expression of emotions and emphasized personal religion and democratic principles in church government.⁴⁰¹ Apess was not baptized until December, 1818, about four years after his military service had ended.⁴⁰² Indeed, Apess started giving “exhortations” to gatherings of Christians between 1819 and 1821, though being only in his early twenties; Apess also preached his first official sermons during that time.⁴⁰³ Members of the audience exhorted or challenged other members during the worship service; a sermon would have been the official speech of the service. Apess also profited somewhat from shoemaking, a trade he learned from his biological father during that time.⁴⁰⁴

³⁹⁹ *Ibid.*, 25.

⁴⁰⁰ Konkle, *Writing Indian Nations*, 111. See also O’Connell, in *On Our Own Ground*, xxxv.

⁴⁰¹ For a discussion about the democratization of the American churches during the age of Jackson, see Nathan O. Hatch, *The Democratization of American Christianity* (New Haven, CT: Yale University Press, 1989), and chapter two of this dissertation, *supra*. Also, the Protestant Methodist church was “antiepiscopal,” meaning that it had a more democratic government. See O’Connell in Apess, *A Son of the Forest*, in *On Our Own Ground*, 51, n. 50.

⁴⁰² Apess, *A Son of the Forest*, in *On Our Own Ground*, 42.

⁴⁰³ *Ibid.*, 44-45. See note 41.

⁴⁰⁴ *Ibid.*, 43.

William Apess, as he became a minister, also began a new family life on December 16, 1821, marrying Mary Wood of Salem, Connecticut; Apess said she “bore a pious and exemplary character.”⁴⁰⁵ From this union, “a son, and possibly two daughters” were born, O’Connell said.⁴⁰⁶ Mary Apess even had her own brief literary career, writing at least “The Experiences of the Missionary’s Consort” in *The Experiences of Five Christian Indians*, a compilation by Apess of conversion narratives.⁴⁰⁷ From this narrative, Mary Apess tells of her birth in Lyme, Connecticut, on January 3, 1788 – a full decade before Apess’s birth – and her own ethnic heritage of a Spanish father and an English mother.⁴⁰⁸ Indeed, she says her “father was a descendant of one of the Spanish islands, or a native of Spain,” implying possible Hispanic ancestry.⁴⁰⁹ Thus, William and Mary Apess – given possibilities of Euro-American, African-American, Native American, and Hispanic-American ancestries in this one couple – provide glimpses into multi-cultural issues of the early nineteenth century.⁴¹⁰

Because of this heritage, and to his ultimate disappointment, accepting and preaching Christianity did not place Apess on equal footing with members of Euro-American society. Indeed, some Euro-Americans questioned whether Native Americans

⁴⁰⁵ *Ibid.*, 46.

⁴⁰⁶ O’Connell, *On Our Own Ground*, lxxx.

⁴⁰⁷ Mary Apess, “The Experience of the Missionary’s Consort,” in *Experiences*, in *On Our Own Ground*, 133-144.

⁴⁰⁸ *Ibid.*, 133.

⁴⁰⁹ *Ibid.*

⁴¹⁰ See *ibid.*, 46, n. 45 for discussion about the possible ethnic backgrounds of this couple. Apess himself said Mary was “of nearly the same color as myself...” *Ibid.*, 46. Perhaps it did not matter the source of the brown color, since non-Euro-Americans were not considered by many Euro-Americans to be equals with them in early nineteenth century America.

had the moral and intellectual capacity to understand and practice Christianity.⁴¹¹ Apess – either from an attempt at public humility or from a nagging sense of low self-esteem – would call himself “a poor ignorant Indian.”⁴¹² Euro-Americans called Native Americans “savages,” but these same “savages” were converting to Christianity, allegedly a sign of being “civilized” during the early nineteenth century in the United States.⁴¹³ O’Connell argues that, in the first edition of *A Son of the Forest*, Apess had bitterly complained about being excluded from ordination and preaching “because he was an Indian.”⁴¹⁴ Yet, Apess himself indicates that preaching without ordination may have been the impetus for the exclusion from ministry by the church.⁴¹⁵ One preacher in Providence, Rhode Island, hesitated to grant a license for Apess to preach until an investigation had cleared him because “he had heard evil reports respecting” Apess.⁴¹⁶ Yet, the “evil reports” did not keep Apess from being ordained by the Protestant Methodists in 1829 or 1830.⁴¹⁷

Apess, by writing books like *A Son of the Forest*, confronted misrepresentation of Native Americans and himself, all while continuing his evangelical ministry. In fact, one could argue that his battles against misrepresentation were an essential part of that ministry. In the even shorter *The Indians: The Ten Lost Tribes*, Apess continues the overt use of religious rhetoric – and perhaps again the rhetorical hyperbole – as he compares

⁴¹¹ *Ibid.*, 33-34.

⁴¹² *Ibid.*, 44.

⁴¹³ *Ibid.*, 51-52.

⁴¹⁴ *Ibid.*, 51, n. 50.

⁴¹⁵ *Ibid.*, 46.

⁴¹⁶ *Ibid.*, 50-51. O’Connell in note 50 said that Apess softened his complaints in the subsequent edition of *A Son of the Forest*.

⁴¹⁷ *Ibid.*

the Natives to Christ himself in his sufferings and death.⁴¹⁸ Again, Apess sees misrepresentation as being part of those sufferings:

It is a matter of deep and lasting regret that the character of the Indians, who occupied this widespread and goodly heritage, when men of pale faces came over the pierceless solitudes of the mighty ocean, with their large canoes, and were received with all the kindly feelings of native innocence—I say that it is deeply to be regretted that their character should be so grossly misrepresented and misunderstood.⁴¹⁹

Here, too, Apess expresses a form of egalitarianism referenced above, as he asserts that both Native American and Euro-Americans are “sinful,” needing redemption. Perhaps this view explains how Apess justifies his own negative comments about fellow Native Americans. Yet, he expected to someday be treated as an equal by Euro-Americans, because of a scripture that says “God is no respecter of persons.”⁴²⁰ Perhaps that would have been part of the millennial blessings he had envisioned.

In *The Experiences of Five Christian Indians of the Pequot Tribe*, Apess alludes to the issue of group libel: “We suffered ... calumny heaped upon us by the whites to an intense degree.”⁴²¹ Over a century before the U.S. Supreme Court upheld in *Beauharnais v. Illinois* the “power of a State to punish utterances promoting friction among racial and religious groups,” William Apess in essence accused Euro-Americans of libeling Native Americans, a theme that he expounds more fully in *Indian Nullification*.⁴²²

⁴¹⁸ Apess, *The Indians: The Ten Lost Tribes*, in *On Our Own Ground*, 113-115. Also, this dissertation does not contain a discussion about *The Increase of the Kingdom of Christ: A Sermon* by Apess, also found in *On Our Own Ground*, because it provides repetitive information about Apess’s religiosity that does not further the discussion about free expression, representation, or rhetorical sovereignty.

⁴¹⁹ *Ibid.*, 114.

⁴²⁰ *Ibid.*, 113, perhaps citing Acts 10:34 KJV; also available at <http://www.crosswalk.com>.

⁴²¹ Apess, *Experiences*, in *Our Own Ground*, 120.

⁴²² *Beauharnais v. Illinois*, 343 U.S. 250, 252 (1952); available at <http://web2.westlaw.com>.

Before that, in *Experiences*, Apess plays the role of a reporter about the values of certain Natives, though he “reports” about himself at certain points; Apess records the conversion narratives of five “Indians,” including his wife Mary. Of course, one may wonder her Native ancestry given her own account of Spanish and English parentage.⁴²³ Yet Apess again sets about the task of communicating the value of Native Americans to a disbelieving Euro-American audience.

The first chapter of *Experiences* relates a synopsis of Apess’s life, not unlike what may be found in *A Son of the Forest*, despite a few internal inconsistencies. One more explicit inconsistency would be the evolving portrayal of his falling out with the Methodist Episcopal Church. As O’Connell notes above, Apess softened this account in subsequent editions of *A Son of the Forest*. In *Experiences*, Apess claimed he had departed from the Methodist Episcopal church “in good standing, and with good credentials,” even though the church would not ordain him.⁴²⁴ Perhaps his view of the incident softened from wisdom of passing years; or perhaps it served his purposes better to speak more positively about the situation.

The second experience – “allegedly written by herself” – involved Mary Apess, William’s wife.⁴²⁵ Like her husband, Mary also had been an indentured servant who came under the influence of Christianity from her masters.⁴²⁶ But Christianity initially

⁴²³ See *Experiences*, in *On Our Own Ground*, 119-153; for Mary Apess’s account, see “The Experience of the Missionary’s Consort,” in *The Experiences of Five Christian Indians*, ed. William Apess, in *On Our Own Ground*. Or, perhaps Mary Apess simply identified with the Pequot because of her marriage to William Apess. Or, perhaps her father’s heritage came from natives among the Spanish, and therefore she identified with Native Americans in general. Or, perhaps Apess took advantage of that relationship for rhetorical effect.

⁴²⁴ Apess, *Experiences*, in *On Our Own Ground*, 132-133.

⁴²⁵ Mary Apess, “The Experience of the Missionary’s Consort (Written by Herself),” in *Experiences*, in *On Our Own Ground*, 135.

⁴²⁶ *Ibid.*, 133. Apess had married a woman named Elizabeth after Mary’s death. See brief discussion in Konkle, *Writing Indian Nations*, 154-155.

repulsed her; she thought at one point that the Bible was “a libel upon the world....”⁴²⁷ It seems ironic that William Apess as editor would allow this to be in the work, as he himself used “biblical” terms to disparage his own people, as well as the Euro-Americans. But Mary had her own conversion to Christianity in perhaps 1813.⁴²⁸ In this year, Mary joined the Methodists and became increasingly occupied with revivalistic fervor.

The other “experiences” – that is, of Hannah Caleb, Sally George, and Anne Wampy – typically followed the same narrative about regeneration, or the evangelical Christian doctrine about being “born-again.” Interestingly, and not surprisingly, these echoed Apess’s earlier works. For instance, Caleb complained that professing Christians “would backbite each other,” a reference to what likely were oral misrepresentations.⁴²⁹ One also sees Apess’s value on words and language. Apess glowingly described Sally George as someone who “was counted almost a preacher; her language was free, lively, and animating.”⁴³⁰ Yet, in an odd fashion, Apess used broken prose to describe the speech of Anne Wampy, apparently portraying her as an ignorant Native American: she allegedly said in one of the more coherent sentences, “I wish I could talk like white folks, me would tell everybody how I love Jesus.”⁴³¹ One wonders why Apess would portray

⁴²⁷ *Ibid.*, 135.

⁴²⁸ O’Connell argues this date is 1813, despite it reading 1823 in the 1837 edition of *Experiences*. See 141, n. 12.

⁴²⁹ William Apess, “The Experience of Hannah Caleb (by the Missionary),” in *Experiences*, in *On Our Own Ground*, 145. Also, if Apess reported the experiences of Hannah Caleb and others, then he functioned somewhat like a reporter, though for religious and political reasons.

⁴³⁰ Apess, “The Experience of Sally George (by the Missionary),” in *Experiences*, in *On Our Own Ground*, 150.

⁴³¹ Apess, “The Experience of Anne Wampy (by the Missionary),” in *Experiences*, in *On Our Own Ground*, 152.

her broken English in such a condescending way, or what rhetorical value he thought that would have had, given his goal of promoting the Native Americans.

In *An Indian's Looking-Glass for the White Man*, Apess wraps up his series of overtly religious writings with a continuation of the themes of racism and misrepresentation, though one must see inconsistencies between the laudatory language about Native Americans in this work and the condescending language about Natives in some of *Experiences*. Yet, *Looking-Glass* actually has a bit softer language about Apess's themes; he even confesses that he sees "a confused world...."⁴³² Apess appeals more to the egalitarian notions discussed above and cites some of the New Testament directives about love.⁴³³ Rather than primarily speaking from the position of a preacher and an evangelical Christian, Apess had turned into a more of a political activist, ultimately taking on state government and becoming the target of libel and charges of seditious libel. He claimed that the prejudice by the Euro-Americans had resulted in the denial of "our unalienable and lawful rights."⁴³⁴ Apess began to question more seriously the missions movement that had brought to him the gospel in which he exulted.⁴³⁵ He bemoaned a Massachusetts law fining ministers for performing interracial wedding ceremonies with Native Americans and Euro-Americans.⁴³⁶ His career took on a legal seriousness that overshadowed his earlier religious enthusiasm.

So, misrepresentation drove a great deal of Apess's attempts to represent himself

⁴³² Apess, *Looking-Glass*, 157. Konkle, *Writing Indian Nations*, 108, says Apess in this essay "understands that misrepresentation is the means for whites of both justifying political and economic oppression and remaining unable to recognize the humanity of other human beings."

⁴³³ *Ibid.*, 158.

⁴³⁴ *Ibid.*, 156.

⁴³⁵ *Ibid.*, 159.

⁴³⁶ *Ibid.*

and Native Americans. From reading Apess, one may feel the visceral frustration, the earnestness, the agitation in his words. Representation represents a major issue for Apess, one that he did not resolve, as the historical record indicates.

2. Freedom of expression and controls of information

To what extent did he believe that he as representative of his ethnic groups had “the inherent right and ability” to communicate for those ethnic groups?

How was control exerted over representations of his ethnic groups?⁴³⁷

William Apess’s best explanation of “the inherent right and ability” of the Native American to express themselves is in *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained*. In that book, Apess uses the journalism of others to build two cases: the first addresses criminal charges (including seditious libel) against him, and the second accuses Euro-Americans of libeling him and other Native Americans.⁴³⁸ By the end, one gets the sense that Apess had begun to grow more strident and insistent in his rhetoric. As Konkle said, “When the misrepresentation of the Mashpees in English is endemic, their ability to communicate the truth of their experience in English is imperative.”⁴³⁹

Apess, who had become somewhat of a spokesman for the civil rights of Native Americans, insisted he and his people had “inherent rights.”⁴⁴⁰ For instance, the

⁴³⁷ Both of these questions will be discussed at the same time because the attempted controls on Apess’s communication provoked his most articulate and forceful defense for the right to control the communication, and because the issues overlap in context of the incidents.

⁴³⁸ Also, much of this part of the chapter comes from a rewriting of Kemper, “*Indian Nullification*,” and re-analyses of *Indian Nullification* and new analyses of Apess’ other writings, especially given the refocusing upon the dual concepts of representation and freedom of expression in light of the idea of rhetorical sovereignty.

⁴³⁹ Konkle, *Writing Indian Nations*, 129.

⁴⁴⁰ Apess, *A Son of the Forest*, in *On Our Own Ground*, 4; see also the discussion in O’Connell, in *On Our Own Ground*, xxxv.

Mashpee, who had adopted Apess as a member and a spokesperson, were forced by the state to accept a minister, Phineas Fish, whom they did not respect and support. Fish had denied access to the Mashpees' own property as the state used that property to support him. Thus, the Mashpee believed their rights had not been honored and protected.⁴⁴¹ Apess led the Mashpee to attempt to nullify their laws with Massachusetts and declare their independence.

In a related incident detailed below, authorities charged and convicted Apess of "riot, assault, and trespass."⁴⁴² The rhetoric (and hyperbole) of the day charged Apess with seditious libel, an unfortunately common means in the eighteenth and nineteenth centuries of muzzling political dissent in the United States and beyond. Apess in turn charged some of his chargers with personal libel. That discourse reflects Native Americans asserting their rights to free expression and belief, regardless of the political climate. This courageous effort may well place the minister among the honored in the history of freedom of expression.

To argue his position in the libel case, Apess compiled *Indian Nullification of the Unconstitutional Laws of Massachusetts Relative to the Marshpee Tribe: or, The Pretended Riot Explained*.⁴⁴³ O'Connell called this treatise "odd," as he apparently considered its genre to be unclear.⁴⁴⁴ For some reason, few scholars could be found who

⁴⁴¹ See legal argument by attorney and editor Benjamin F. Hallett, "Boston, October 2, 1834, To Whom It May Concern," in *Indian Nullification*, in *On Our Own Ground*, 167. Konkle notes that Hallett, who represented the Mashpee as an attorney, wrote *Rights of the Marshpee Indians*, which "outlines in detail the history of the Mashpee Indians' relation to European authority and their current demand for self-government." Konkle, *Writing Indian Nations*, 125.

⁴⁴² Apess, *Indian Nullification*, 37. This citation is to the original edition.

⁴⁴³ O'Connell thinks William G. Snelling served as editor, with Democratic editor and lawyer Benjamin Franklin Hallett as a contributor. O'Connell, in *On Our Own Ground*, 165. Indeed, Hallett signed some of the work, especially a legal argument towards the end.

⁴⁴⁴ *Ibid.* Konkle compares *Indian Nullification* to abolitionist William Lloyd Garrison's *Thoughts on African Colonization: Or an Impartial Exhibition of the Doctrines, Principles, and Purposes of the*

have connected this concept of seditious libel in connection with *Indian Nullification*.⁴⁴⁵ Yet, a student of freedom of the press immediately could recognize *Indian Nullification* as a defense argument against seditious libel and a plaintiff's argument by Apess for personal libel. This book illuminates the meaning of seditious libel and libel *per se*, and therefore the meaning of freedom of the press, during the 1830s.⁴⁴⁶

Thankfully, Andrew King explains the details of a libel case during the age of Jackson in an article titled "The Law of Slander in Early Antebellum America."⁴⁴⁷ In the exceptional work, King explained that the plaintiff's libel or slander case had "three components: the averment, the colloquium, and the innuendo."⁴⁴⁸ Then, the case had "three elements: a formal statement of the plaintiff's good character, the defendant's attack on that character, and the resulting injury."⁴⁴⁹ King then defines averment as "added additional extrinsic facts to show which category the defamatory utterance fell into," or whether the statements were "libel *per se*."⁴⁵⁰ Then, "the colloquium simply forged the link between the defendant and the spoken words."⁴⁵¹ Finally, "(t)he innuendo

American Colonization Society: Together with the Resolutions, Addresses and Remonstrances of the Free People of Color (Boston: Garrison and Knapp, 1832). Konkle, *Writing Indian Nations*, 120. Such a comparison would make for an interesting study.

⁴⁴⁵ For example, an important book in this regard is Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997). Peyer takes Apess' words at face value and appreciates Apess's attempt to improve his own reputation after having been accused of sedition, among other things. *Ibid.*, 159.

⁴⁴⁶ Carter et al. says libels *per se* are "libelous communications plain upon their face such as 'John Doe is a bastard'" T. Barton Carter, Juliet Lushbough Dee, and Harvey L. Zuckman, *Mass Communication Law in a Nutshell* (St. Paul, MN: West Group, 2000), 59-60.

⁴⁴⁷ Andrew J. King, "The Law of Slander in Early Antebellum America," *The American Journal of Legal History*, 35 (January 1991): 1-43.

⁴⁴⁸ *Ibid.*, 26.

⁴⁴⁹ *Ibid.*

⁴⁵⁰ *Ibid.*

⁴⁵¹ *Ibid.*

... explained the words of the defamation.”⁴⁵² Whether he intended to or not, Apess included all of these elements as he defended his own character, discussed the attack on that character, and reflected upon the injury.⁴⁵³ Perhaps this was because of the influence of the editor/attorney Benjamin Hallett of Boston, who contributed to the book and surely would have known how to plead libel suit in the courts of Massachusetts. Perhaps this was a Native American writer who was brighter than many gave him credit for being.

Apess explicitly said *Indian Nullification* is a defense against charges of sedition and other misconduct. The last paragraph of the treatise summarizes the purpose of the book and its relevance to this dissertation:

For troubling my readers with so much of my own affairs, I have this excuse. I have been assailed by the vilest calumnies; represented as an *exciter of sedition*, a hypocrite and a gambler. These slanders, though disproved, still continue to circulate. Though an Indian, I am at least a man, with all the feelings proper to humanity, and my reputation is dear to me; and I conceive it to be my duty to the children I shall leave behind me, as well as to myself, not to leave them the inheritance of a blasted name. In so doing, I humbly presume to think, I have not exceeded the moderation, proper for a Christian man to use [emphasis mine].⁴⁵⁴

Interestingly, the first paragraphs of the book are an affidavit from three Mashpee leaders – Israel Amos, Isaac Coombs, and Ezra Attaquin – who affirm the character of Apess.⁴⁵⁵ So, from start to finish, Apess explicitly tells the readers the book’s purpose is to clear his name.

⁴⁵² *Ibid.*

⁴⁵³ See Apess, *Indian Nullification*, in *On Our Own Ground*, as discussed, *infra*.

⁴⁵⁴ *Ibid.*, 274. It must be noted that the clippings are accepted as true renditions, but further research would need to double-check their veracity with available copies of the cited publications. Also, copies of the original cases were not immediately available. Some of this section is cited by scholars like Peyer, 159.

⁴⁵⁵ Interestingly, Konkle said Sylvannus Pinney of the *Barnstable Patriot* “observed that Apess feel out of favor with the Mashpees ‘from the suspicion, we believe, that his interest in their welfare was not from the most disinterested and patriotic motives....’” Konkle, *Writing Indian Nations*, 156, citing Sylvannus Pinney, “Death of the Indian Preacher,” *Barnstable Patriot*, 17 April 1839.

Because of intrusions upon their property, among other reasons, the Mashpee passed a series of resolutions in 1833 whereby they “nullified” Massachusetts law over them.⁴⁵⁶ They rejected the concept of Euro-American overseers, forced missionaries, etc. Euro-Americans had become afraid “that the Indians were in open rebellion and that blood was likely to be shed....”⁴⁵⁷ To enforce Mashpee claims to their property, Apess challenged some Euro-American woodcutters when they took wood from Marshpee land.⁴⁵⁸

Apparently because of that conflict between a Native and Euro-Americans, Apess was accused of riot, trespass, and assault, to which he pleaded not guilty.⁴⁵⁹ The riot charge reflects the concept of sedition, especially given the rhetoric used by accusers in the press. It was likely given because the Mashpee resolutions were seen as treasonous.⁴⁶⁰ For instance, Apess said Gideon Hawley had told the governor of Massachusetts “that the Indians were in open rebellion and that blood was likely to be shed.”⁴⁶¹ *The Barnstable Journal*, one of the closet newspapers on Cape Cod, said the

⁴⁵⁶ See resolutions by Mashpee in *Indian Nullification* (original edition), 20-24. Also, this must be understood in the context of the South Carolina Nullification Crisis, whereby certain Southerners believed they had a right to nullify a federal tax that conflicted with Southern economic interests. For a discussion on how this doctrine influenced attempts to suppress the press during the Jackson Administration, see Kevin R. Kemper, “WE SHALL NOT SUBMIT! How the 24th Congress and the Jackson Administration Attempted to Stop the Circulation of Abolitionist Materials Through the United States Post Office During the Late 1830s” (third place paper presented in Graduate Student History Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004).

⁴⁵⁷ Apess, *Indian Nullification*, in *On Our Own Ground*, 180, cited by Konkle, *Writing Indian Nations*, 121 as part of a letter from the Reverend Phineas Fish to Governor Levi Lincoln. This may or may not be a direct quote from the letter, given how Apess represents it in *Indian Nullification*. Verification would be needed.

⁴⁵⁸ See Apess’s discussion of the incident in *Indian Nullification*, in *On Our Own Ground*, 181.

⁴⁵⁹ See Apess, *Indian Nullification*, 37.

⁴⁶⁰ See “Marshpee Indians,” *Barnstable Patriot*, 5 February 1834, in Apess, *Indian Nullification* (original edition), 98. These documents and others, provided personally by Konkle from her primary research, need to be examined more thoroughly for future research.

⁴⁶¹ See especially Apess, *Indian Nullification* (original edition), 23-46.

attempt for redress by the Mashpee was a “revolt.”⁴⁶² *The Liberator* said it more plainly: “... it is sedition, it is true; but only the sedition of freedom against oppression; of justice against fraud; of humanity against cruelty.”⁴⁶³ Alleged “TRUE FRIENDS OF THE INDIANS” in a letter to *The Barnstable Patriot* accused Apess of “ribaldry, misrepresentation and nonsense.”⁴⁶⁴ Further, the Euro-American editor claimed:

[Apess] stirs up them up to sedition, riot, *treason*! Instigates them to declare their independence of the laws of Massachusetts, and to *arm themselves* to defend it. ... An agent was sent by the Governor, to inquire into the cause, and if possible, to remove it. That agent found it to be his duty to arrest Apes, (that *pious* interloper,) as a riotous and seditious person, and bind him over for trial, at the Common Pleas Court.⁴⁶⁵

This makes an explicit connection between the riot charge and the concept of sedition. *The Patriot* continued by blaming Apess as “the whole cause of the disgraceful sedition at Marshpee the last summer... .”⁴⁶⁶ Governor Levi Lincoln had written to Josiah Fiske, an emissary from Massachusetts to the Mashpee, that, “If there should be any seditious or riotous proceedings, let the ringleaders be arrested and delivered over to the civil power, under the ordinary processes of Law, and if more serious consequences than are now apprehended are likely to ensue, advise me by express, if necessary, or otherwise, as the urgency of the case may require.”⁴⁶⁷ Apess, as if he had been trained as an attorney, turned the charge of seditious libel against his detractors, raising the possibility of a civil libel suit with Apess as the plaintiff. For example, he responded to the *Patriot*’s claim of

⁴⁶² “The Indian,” *Barnstable Journal*, 22 August 1833, in Apess, *Indian Nullification*, 60-61.

⁴⁶³ “The Marshpee Indian,” *The Liberator*, 25 January 1834, in Apess, *Indian Nullification*, 92.

⁴⁶⁴ “Marshpee Indians,” *Barnstable Patriot*, 5 February 1834, in Apess, *Indian Nullification*, 98.

⁴⁶⁵ *Ibid.*

⁴⁶⁶ *Ibid.*, 99.

⁴⁶⁷ Letter from Levi Lincoln to Josiah Fiske, 20 June 1833, Folder 1-1, Marshpee Disturbance, 1833-34, Guardians of Indian Plantations, Massachusetts Archives, Boston, cited by Konkle, *Writing Indian Nations*, 121.

sedition, saying, “The editors and his correspondents, (if he did not write the article himself,) have rendered themselves liable to a suit for defamation; but I think it best to let them go.”⁴⁶⁸ Hallett may have helped with Apess’s writing, and thus with the legal concepts; but Apess may have been on his own in dealing with the criminal charges, as Hallett had said in a pleading that he had refused “to defend Mr. Apes, who is charged with being the leader of the ‘sedition.’”⁴⁶⁹

Again, Apess claimed that he himself had been libeled.⁴⁷⁰ Apess apparently thought that Euro-Americans had libeled Native Americans. Apess was infuriated that Euro-Americans scoffed at Native abilities and intellect. Apess goes to great detail to build his case, again by appealing to press clippings and legal documents. Even though Apess had used and appreciated the press received during the crisis, he had pointed criticism of the newspapers. He said, “All the editors were very willing to speak on the favorite topic of Indian wrongs; but very few of them said any thing about redress.”⁴⁷¹

As Konkle notes, the most serious incident of Apess accusing someone of personal libel involved John Reynolds, a rival preacher.⁴⁷² Apess reported in *Indian Nullification* that the *Boston Gazette* on an unstated date had run an article by Reynolds which claimed Apess was a gambler and a beggar for money for his gambling habit, as well as a misappropriator of church funds.⁴⁷³ In response, Apess printed an affidavit from E.W. Stickney, a preacher for the Methodist Episcopal Church, denouncing

⁴⁶⁸ Apess, *Indian Nullification*, 100.

⁴⁶⁹ Hallett, in Apess, *Indian Nullification*, 100.

⁴⁷⁰ E.g., Apess, *Indian Nullification*, in *On Our Own Ground*, 274.

⁴⁷¹ Apess, *Indian Nullification*, 47

⁴⁷² For a brief discussion of this suit, see Konkle, *Writing Indian Nations*, 149-150.

⁴⁷³ Apess, *Indian Nullification*, 120-122.

Reynolds as one who “does not deserve the confidence of any respectable body of people.”⁴⁷⁴ Apess caused Reynolds – and two reputed accomplices, David Ayers and G. Thomas – to be indicted by a Boston grand jury. Apess later dropped the charges, explaining:

They had put it in my power to punish them very severely for giving rein to their malignant passions, and they asked mercy. I granted it, in order to show them that I wanted nothing but right, and not revenge; and that they might know that an Indian’s character was as dearly valued by him as theirs by them. Would they ever have thus yielded to an Indian, if they had not been compelled?⁴⁷⁵

Note that, even as he dealt with legal issues, Apess kept the issue of Native “character” at the center of his rhetoric. Apess then printed Ayers’ and Thomas’ confession and apologies in *Indian Nullification*.⁴⁷⁶ Reynolds’ confession had been lost, but Apess included an affidavit from Thomas Norris, president of the Protestant Methodist Conference of Massachusetts, that Reynolds had retracted his statements.⁴⁷⁷

Looking back at King’s explanation of pleading procedure for libel cases in Massachusetts in the early nineteenth century, and comparing that to Apess’ *Indian Nullification*, a clear pattern emerges. Apess included an “averment,” or explanation of facts. Through the “colloquium” of press clippings and correspondence, Apess “forged a link between the defendant and the spoken words.” Then, through “innuendo,” Apess explained the defamation that had been leveled at him.⁴⁷⁸

As a defendant and plaintiff, Apess simply relied upon his version of the truth.

⁴⁷⁴ E.W. Stickney, Letter of 27 June 1832, in *Indian Nullification*, 120-121.

⁴⁷⁵ Apess, *Indian Nullification*, 123-124.

⁴⁷⁶ See extracts from alleged letters from David Ayres and G. Thomas during 1833 to Apess in *Indian Nullification*, in *On Our Own Ground*, 245-246.

⁴⁷⁷ Thomas Norris in *ibid.*, 247.

⁴⁷⁸ See notes about King *supra*.

He supported his ideas through press clippings, anecdotal evidence, affidavits, legal arguments, etc. This is the sum of *Indian Nullification*. Apess may or may not have intended to devise *Indian Nullification* as a precise libel pleading, but this paper would argue that Apess intended *Indian Nullification* to be a legal argument. Scholars rightfully may want to examine the underlying issues of race, identity, and image, but they must not overlook some of the obvious historical and political context of *Indian Nullification*.

William Apess felt it was his right under God and the United States Constitution not to be libeled.⁴⁷⁹ The Euro-American society often took away the rights of Native Americans. The Mashpee saw their land and resources taken by a missionary they did not want, and Apess apparently had a measure of rights taken away through unsubstantiated libel and charges. Many more examples could be gathered from *Indian Nullification* to demonstrate Apess' case. Apess believed and spoke and wrote and assembled and petitioned – that is, he exercised his rights – whether the Euro-American society opposed him or not.

Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston was William Apess's final public act, at least the final one recorded for posterity; it reflects more law, history and political science than it does religion.⁴⁸⁰ It strikes at the issue of rhetorical sovereignty, or whether Native Americans can and should create their own messages and meanings. It summarizes the public ministry of someone passionately devoted to the cause of the Native American, though some have argued that he could not

⁴⁷⁹ See Apess, *Indian Nullification*, in *On Our Own Ground*, 168, 252 for examples of his references to God or the U.S. Constitution as sources of rights for Natives.

⁴⁸⁰ See Konkle, "Indian Literacy," for a complete discussion of *Eulogy*. Konkle, *Writing Indian Nations*, 143, notes this shift to a "legal" discourse. Perhaps Apess turned to legal and political rhetoric towards the end of his life because of the Marshpee incidents discussed, *supra*; then again, given his overt frustration with established religion, as discussed, *infra*, he may have felt as if no one would heed the religious rhetoric.

have spoken for the Native American because he used colonial and Christian concepts.⁴⁸¹

Yet this amalgam of cultural norms happens each time cultures collide.⁴⁸² This argument resembles something Konkle noted:

The collision of Enlightenment theory of Indian difference and the practical necessity of political relations with Indian nations produced a convoluted discourses on Native peoples that, for all the apparent rigidity of the knowledge about Indians' difference, inferiority, and disappearance, was also peculiarly volatile because of the presence of treaties.⁴⁸³

Konkle also argues that focusing upon the differences misses the point about Apress's argument for equality: "In the *Eulogy* Apress rejects the notion of an innate Indian consciousness because he understands that the positing of inherent difference between Indians and Europeans is a crucial step in denying Indians' political status."⁴⁸⁴ And Apress wanted Native Americans to have at least the same rights that the Euro-Americans had. Perhaps it could be said that Apress at the end of his public writings came to view Native Americans and Euro-Americans as all in need of reformation, with his view of Christianity as his centering principle. The following discussion illustrates that Apress had come to the point that he separated his view of Christianity from a bastardized version.⁴⁸⁵ Perhaps the scholars discussed above who have questioned Apress having both Christianity and "Indian consciousness" have not differentiated the "son of the forest" among the differing theological and philosophical trees.

⁴⁸¹ *Ibid.*

⁴⁸² For a broad discussion of this, see, e.g., Paul Hiebert, "Culture and Cross-Cultural Differences," in *Perspectives on the World Christian Movement: A Reader*, ed. by R.D. Winter and S.C. Hawthorne (Pasadena, CA: William Carey Library, 1981), 367-379, and discussion in chapter two, *supra*.

⁴⁸³ Konkle, *Writing Indian Nations*, 7.

⁴⁸⁴ Konkle, "Indian Literacy," 458.

⁴⁸⁵ Konkle, *Writing Indian Nations*, 139, also came to a similar conclusion: "Rather than the narrative of Indians' inherent inability to survive in coexistence with civilization, Apress argues that it was not only false Christians' misrepresentations to themselves but also to Native peoples through which Native peoples themselves were destroyed."

On January 8 and again on January 26 of 1836, Apess railed in public in Boston against those who used Christianity to hurt rather than to help others.⁴⁸⁶ It was the 160th anniversary of the death of King Philip, who had led Natives in a war against the Pilgrims and who still represented terror and fear in the minds of the Massachusetts residents.⁴⁸⁷ Apess said, “Justice and humanity for the remaining few prompt me to vindicate the character of him who yet lives in their hearts and, if possible, melt the prejudice that exists in the hearts of those who are in the possession of his soil, and only by the right of conquest—is the aim of him who proudly tells you, the blood of a denominated savage runs in his veins.”⁴⁸⁸

One of Apess’s rhetorical strategies connected Philip – allegedly his great-great grandfather – with George Washington and other Euro-American “patriots.”⁴⁸⁹ In fact, Apess could not understand how Euro-American people who “defend their country’s rights” could be “Christians and patriots,” but Native Americans who do the same are “savages.”⁴⁹⁰ This strategy may well have been rooted in a lifetime of anger; he had embraced and preached Christianity, only to be abused and misrepresented by some who professed it.⁴⁹¹ Apess said, “How they could go to work to enslave a free people and call it religion is beyond the power of my imagination and outstrips the revelation of God’s

⁴⁸⁶ For a discussion by O’Connell and text by Apess, see *Eulogy*, in *Our Own Ground*, 275-310. Konkle also makes this point in *Writing Indian Nations*, 139. Konkle connects the timing of *Eulogy* with the timeframe of the Treaty of New Echota, which Elias Boudinot and others signed to agree to the removal of the Cherokee to present-day Oklahoma. *Ibid.*, 133-134.

⁴⁸⁷ For a discussion about Apess’s possible mistakes in relaying this history, see Velikova, discussed *supra*.

⁴⁸⁸ Apess, *Eulogy*, in *On Our Own Ground*, 277.

⁴⁸⁹ *Ibid.*

⁴⁹⁰ *Ibid.*, 280-282.

⁴⁹¹ Konkle, *Writing Indian Nations*, 138, alludes to this purpose of combating misrepresentation.

word.”⁴⁹² Apess at this point found little consolation with Christianity: “... through the prayers, preaching, and examples of those pretended pious has been the fountain of all the slavery and degradation in the American colonies toward colored people.”⁴⁹³

Instead, he had appealed to the courts, only to be rebuffed: “And, indeed it would be a strange thing for poor unfortunate Indians to find justice in those courts of the pretended pious in those days, or even since; and for a proof of my assertion I will refer the reader or hearer to the records of legislatures and courts throughout New England, and also to my book, *Indian Nullification*.”⁴⁹⁴ Apess then argued about the injustice of the charges against Philip as a result of the war with the Pilgrims.⁴⁹⁵ He complained about “the disgraceful laws, disfranchising us as citizens.”⁴⁹⁶ He therefore apparently expected to have been treated as having the same rights as U.S. citizens.

And, like most of the works of Apess, the public issues in *Eulogy* had become personal. He exclaimed in the midst of his rhetoric, “My image is of God; I am not a beast.”⁴⁹⁷ Then, in the contradictory, deferential manner reflected throughout his writings, Apess concludes his public career by calling himself “a poor Indian.”⁴⁹⁸ Apess

⁴⁹² Apess, *Eulogy*, in *On Our Own Ground*, 279.

⁴⁹³ Jim Wallis claims that the theft of Native American land and the enslavement of Africans stands as “the original sin of the American nations.” Wallis, *The Soul of Politics: Beyond ‘Religious Right’ and ‘Secular Left,’* (San Diego, CA: Harvest, 1995), 101. See chapter two, *supra*. In a similar note, the Reverend Samuel Cornish once wrote, “Slavery is A GREAT SIN, A NATIONAL DISGRACE to any people or government who upholds it.” Samuel Cornish, “Why always harping at the Church?” *The Colored American*, 8 September 1838, 114. Apess and Boudinot both saw the theft of tribal land – as well as the treatment of Native Americans in general – as sin.

⁴⁹⁴ Apess, *Eulogy*, in *On Our Own Ground*, 291. Also cited and elaborated upon by Konkle, *Writing Indian Nations*, 143.

⁴⁹⁵ *Ibid.*, 292-293.

⁴⁹⁶ *Ibid.*, 304.

⁴⁹⁷ *Ibid.*, 278.

⁴⁹⁸ *Ibid.*

was a man who hated to be lied about and who cherished the right to complain about it. He happened to be Pequot. He claimed to have been a Christian. Regardless of all of the past and present questions, only Apess really knew Apess, and therefore only Apess could give the most detailed and honest accounting of his experience.

Scholars typically do not record a clear history of Apess following *The Eulogy*, though he “died of apoplexy, or a cerebral hemorrhage in modern medicine, in New York City in 1839,” Konkle said.⁴⁹⁹ O’Connell does note an attachment in 1838 against his property for debt, a problem that had haunted him his entire career.⁵⁰⁰ Apess says nothing more. Apparently he already said what he had to say. The kingdom he sought had not arrived. There was no grand resolution to the conflicts that haunted his life. The lies had not stopped.

But at this point, one must not fall into what Konkle calls “sentimentality that is difficult to dislodge” relating to Apess’s death and similar incidents for Native Americans as they struggle for their place in the dominant Euro-American society.⁵⁰¹ That is, scholars must respect Native Americans and not just feel sorry for them because of past and present wrongs perpetrated by certain Euro-Americans. Though his life became

⁴⁹⁹ Konkle, *Writing Indian Nations*, 147. For an example of a contrary view of Apess’s death, see Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005) and Warrior, “Eulogy on William Apess: His Writerly Life and Speculations on his New York Death” (a paper at New Directions in American Indian Research: A Gathering of Emerging Scholars at the Graduate School of the University of North Carolina at Chapel Hill, November 2004); available at <http://www.gradschool.unc.edu/natam/panels/warrior.html>. See also Warrior, “Eulogy on William Apess: Speculations on His New York Death,” *Studies in American Literature* 16, no. 2 (2004): 1-13; available at http://muse.jhu.edu/journals/studies_in_american_indian_literatures/v016/16.2warrior.html.

⁵⁰⁰ O’Connell, *On Our Own Ground*, lxxxi. In Konkle’s collection of copies of primary materials, one may find examples of Apess having been sued for bad debts. This would make for interesting research in the future, especially exploring the issues of finances and the ability to publish. Indeed, Samuel Cornish’s money problems likely contributed to his departure from journalism. See discussion and citations in chapter six, *infra*.

⁵⁰¹ Konkle, *Writing Indian Nations*, 147.

tragic and reflected tragic themes, Apess stands for the proposition that people can speak and write as they stand up for their own rights and the rights of others. Apess illustrates the yet unfulfilled quest for “rhetorical sovereignty” that Lyons and others promote.⁵⁰² Apess shows, as Konkle argues, “the importance for Native peoples of representing themselves in writing, of having authority for the representation of their own experience, and the intellectual and material means to accomplish it.”⁵⁰³

So, the give and take of political and religious debate led to attempts by people to punish Apess for his words, which could have had the proverbial “chilling effect” upon Apess’s rhetoric. Apess, of course, argued for his own rights. But he also viewed himself as representative of Natives as a whole, and the Mashpee and Pequots in particular.

3. Conflicting concepts

To what extent did the goals of political entities of those ethnic groups conflict with Apess’s individual rights?

Unlike Elias Boudinot, who will be discussed in the next chapter, William Apess appears to have enjoyed for at least awhile the support of the Mashpee tribal government as he spoke for it.⁵⁰⁴ But, by choosing to publish his books independent of the editorial process for newspapers, Apess by and large controlled the content of his message. This is a most important point in understanding the differences between Apess and Cherokee editor Elias Boudinot.⁵⁰⁵ It could be argued that Apess had broader goals than did the

⁵⁰² Gussman throughout her article and Warrior, 35, argue this explicit connection.

⁵⁰³ Konkle, *Writing Indian Nations*, 108.

⁵⁰⁴ See discussion, *supra*.

⁵⁰⁵ For an extended discussion of Boudinot, see chapter five, *infra*.

elders of the Marshpee, but this would be unlikely.⁵⁰⁶ Despite tribal differences and even conflicts, Native Americans typically respected and promoted the rights of other Native Americans, especially as they confronted Euro-Americans

Conclusion

As stated at the beginning of this chapter, Pequot writer and minister William Apess sought freedom of expression and therefore perhaps rhetorical sovereignty during the early nineteenth century so that he could make certain that no one misrepresented him or any other Native Americans. He had asserted the right to “set the story straight,” as the saying goes. More than that, he had the right to control each facet of that story. One wonders whether Apess cared about the right of others to communicate their views, whether they were faulty or not. From start to finish, Apess struggled with others over control of his message and its meaning. And in a real sense, that struggle continues to this day, as scholars examine Apess’s writings to search for that meaning. Apess would have been offended by any representation that did not match his own intent or purposes. As Konkle says, Apess discusses “the power of knowledge about Indians and of writing to both oppress and liberate Native peoples to the more complex task of describing how that power works in society and how Native peoples must claim it for themselves.”⁵⁰⁷ This sounds like rhetorical sovereignty. Communicators then and now have had a measure of freedom to say what they think about Native Americans, whether or not the Native Americans agree with those assessments. A question needing more explanation is, Can rhetorical sovereignty accommodate the communicative needs and desires of all of the players, or is it just a political tool for Native Americans to use for survival, even if at the expense of the rights of individuals and other ethnic groups?

⁵⁰⁶ Comparing the goals and strategies of Apess and the Mashpee would make for a fascinating article.

⁵⁰⁷ Konkle, *Writing Indian Nations*, 118-119.

CHAPTER 5

ELIAS BOUDINOT

Introduction

“We shall also feel ourselves bound to correct all misstatements” –

Elias Boudinot’s campaign for individual and corporate freedom⁵⁰⁸

Cherokee editor Elias Boudinot relied upon freedom of expression to empower his efforts through journalism and public service to battle misrepresentations and controls of information, thereby promoting a form of rhetorical sovereignty. Boudinot, known primarily as the first editor of the first Native American newspaper, *The Cherokee Phoenix*, also became the first but not the last Native American editor to be forced out of his position by tribal leaders at a tribal-owned newspaper.⁵⁰⁹ As the Cherokee struggled

⁵⁰⁸ Besides copies of the *Cherokee Phoenix*, this chapter relies mostly upon two books: Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), and Elias Boudinot, *Cherokee Editor: The Writings of Elias Boudinot*, ed. by Theda Perdue (Athens: Brown Thrasher Books of the University of Georgia Press, 1996). This chapter uses extensive materials from Kevin R. Kemper, “Native American Free Press’ Is NOT an Oxymoron: How History and Culture Inform Law and Practice (research presentation delivered at the Brown Bag Series of the Department of History, University of Arizona, Tucson, 4 October 2005); “Native American Free Press’ is NOT an Oxymoron: A Legal and Historical Perspective for Current Concerns” (research presentation delivered at the Department of Journalism, University of Arizona, Tucson, 21 January 2005); “Freedom of the Press for the Cherokee Nation During the Early Nineteenth Century: An Elegant Dream, an Elusive Myth” (paper presented at the annual Scholar-to-Scholar Poster Session of Law Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004); “Civilization, Christianity, and Cherokeeness: The Three Layers of Elitism in the Writings of Cherokee Editor Elias Boudinot” (paper presented to the Scholar-to-Scholar Poster Session, Cultural and Critical Studies Division of Association for Education in Journalism and Mass Communication, Kansas City, Missouri, 2003); and “The *Phoenix* Rose, But With Restraints: How Culture May Have Influenced Early 19th Century Ideas About Freedom of the Press for the Cherokee Nation” (paper for Doctoral Seminar course, University of Missouri-Columbia, April 2002). This dissertation uses primary documents used in earlier studies, as well as more primary documents, to provide fresh analyses focusing upon freedom of expression, representation, and rhetorical sovereignty.

The quote comes from Elias Boudinot, “TO THE PUBLIC,” *Cherokee Phoenix*, 21 February 1828, in *Cherokee Editor*, 94.

⁵⁰⁹ This basic historiography includes, e.g., Barbara Luebke’s biography of Boudinot, “Elias Boudinot, Cherokee Editor.” (Ph.D. diss., University of Missouri-Columbia, 1981); James E. Murphy and Sharon M. Murphy, *Let My People Know: American Indian Journalism, 1828-1978* (Norman: University of Oklahoma Press, 1981) have a detailed discussion about the history Native American journalism. For other journalism

with Euro-Americans over land ownership in Georgia and other southeastern states,

literature, see also Sharon Murphy, "Neglected Pioneers: 19th Century Native American Newspapers," *Journalism History*, 4, no. 3 (Autumn 1977): 79-82, 98-100; Luebke, "Elias Boudinot, Indian Editor: Editorial Columns from the Cherokee Phoenix," *Journalism History*, 6, no. 2 (summer 1979): 48-53, and "Elias Boudinot and 'Indian Removal,'" in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), 115-144; Wm. David Sloan and James Startt, eds., *The Media in America: A History*, 3d ed. (Northport, AL: Vision Press, 1996), 221-222; Mark Trahan, *Pictures of Our Nobler Selves: A History of Native American Contributions to News Media*, (Nashville, TN: The Freedom Forum First Amendment, 1995); available at <http://www.freedomforum.org/publications/newsroomtraining/picsnoblerselves/pictureofournoblerselves.pdf>; Richard LaCourse, "An Indian Perspective – Native American Journalism: An Overview," *Journalism History*, 6, no. 2 (summer 1979): 34-38; Sam G. Riley, "A Note of Caution – The Indian's Own Prejudice, as Mirrored in the First Native American Newspaper," *Journalism History*, 6, no. 2 (summer 1979): 44-47; Jean Folkerts and Dwight L. Teeter Jr., *Voices of a Nation: A History of Mass Media in the United States*, 3^d ed. (Boston: Allyn & Bacon, 1998), 106-109.

Other books include Ralph Henry Gabriel, *Elias Boudinot: Cherokee & His America* (Norman: University of Oklahoma Press, 1941); and Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997).

Another most influential source for this chapter's historical facts and theoretical considerations is Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), especially the introduction, 1-41, and chapter one, 42-96.

Some scholars who weave discussions of Boudinot within the broader history of the Cherokee include Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000); and William G. McLoughlin, *Cherokee Renaissance in the New Republic* (Princeton, NJ: Princeton University Press, 1986) and *The Cherokees and Christianity, 1794-1870: Essays on Acculturation and Cultural Persistence*, ed. Walter H. Conser, Jr. (Athens: The University of Georgia Press, 1994).

A bibliography from Western Carolina University at <http://library.wcu.edu/CherokeePhoenix>, found late in the dissertation process, provides numerous sources from historians, anthropologists, and sociologists regarding Boudinot and the Cherokee in general. This would make welcome research for a possible book. Also, this bibliography verifies that the major works in journalism and mass communication have been discovered. For a fairly comprehensive bibliography about Native American free press, see J. Ruth Hegwood, *Free Press in Indian County: Historical Resource Guide* (Little Rock, AR: Sequoyah Research Center/American Native Press Archives), accessed online at <http://anpa.ualr.edu> during the summer of 2005.

For examples of other tribal editors forced out of office, see, e.g., Karen Lincoln Michel, "Repression on the Reservation: Native American Journalists Are in a Tough Fight for Their Basic Freedoms Under the First Amendment" and Richard LaCourse, "A Native Press Primer," *Columbia Journalism Review* (November/December 1998): 48-52; available at <http://archives.cjr.org/year/98/6/res.asp>.

Also, the name of the newspaper changed to *The Cherokee Phoenix and Indian's Advocate* on February 11, 1829. For ease of citation, the paper will be known throughout this dissertation as the *Cherokee Phoenix* or just *Phoenix*.

A bibliography from Western Carolina University at <http://library.wcu.edu/CherokeePhoenix>, found late in the dissertation process, provides numerous sources from historians, anthropologists, and sociologists regarding Boudinot and the Cherokee in general. This would make welcome research for a possible book. Also, this bibliography verifies that the major works in journalism and mass communication have been discovered.

Boudinot struggled with Euro-Americans and his own tribe over whether he could support editorially the forced removal of the Cherokee to present-day Oklahoma, as well as other issues. Boudinot lost more than just his position as editor; he lost his own life in the process of being true to his beliefs. Yet, those beliefs had negative consequences for others. To this day, Boudinot carries dual roles of hero and villain, of persecuted and persecutor. He still occupies a special place in the consciousness of those who promote the concept that all people – including Native Americans – ought to have the right to represent themselves freely.

Elias Boudinot – reportedly one-sixteenth Euro-American and the rest Cherokee – was named Gallengina, or Buck Watie, at birth in 1804 to a family of Cherokee who wanted him and his brother Stand Watie to become educated and prosperous, scholars say.⁵¹⁰ In keeping with a Cherokee tradition, Buck Watie later took the name and patronage of someone he admired – Elias Boudinot, a former member of the Continental Congress who served as president of the American Bible Society.⁵¹¹ Missionaries and supporters had enormous influences upon the Cherokee Boudinot's life: he studied at a mission school in Georgia and then at the Foreign Mission School of the American Board of Commissioners for Foreign Missions in Cornwall, Connecticut. Boudinot's marriage in 1826 to Harriet Ruggles Gold, a Euro-American woman he met while studying in Connecticut, created an immediate controversy among Euro-Americans in her family and community.⁵¹²

⁵¹⁰ For Boudinot's early history, see, e.g. Perdue, ed., *Cherokee Editor*, 3-7, and Konkle, *Writing Indian Nations*, 49-50.

⁵¹¹ Perdue, ed., *Cherokee Editor*, 6

⁵¹² *Ibid.*, 9-10. For an excellent account of this controversy and then later familial relations, see Theresa Strouth Gaul, *To Marry an Indian: The Marriage of Harriett Gold and Elias Boudinot in Letters, 1823-1839* (Chapel Hill: University of North Carolina Press, 2005).

At least once, Boudinot expressed a desire to become a missionary to his own people.⁵¹³ Yet, in a letter published two months later in *The Religious Remembrancer*, Boudinot backed away from that hope, saying, “I feel myself deficient in those important Christian graces which constitute a true preacher of the gospel.”⁵¹⁴ Rather than becoming an ordained pastor or official missionary, Boudinot focused his work upon writing about and for the “civilization” of himself and the Cherokee.⁵¹⁵

1. Rhetorical sovereignty and representation

Did Elias Boudinot use journalism and mass communications in ways that resemble rhetorical sovereignty?

In what ways did he believe that he and his primary ethnic group had been misrepresented?

In 1827, the Cherokee Nation hired Boudinot as editor of the inaugural *Cherokee Phoenix*, a bilingual newspaper meant for Cherokee and Euro-American benefactors alike. Boudinot had some literary credentials before being hired as editor. Boudinot’s first known published article – a letter in *Missionary Herald* to a benefactor of the Foreign Mission School– was at the age of 17, just a year after his conversion to Christianity.⁵¹⁶ Before he took the position as editor, Boudinot delivered and later published “An Address to the Whites,” an appeal for money for Cherokee publishing and other ventures, but also a positive statement about the character of the Native

⁵¹³ Elias Boudinot, “LETTERS TO PERIODICALS,” to Baron de Compagne, *The Missionary Herald*, August 1821, in *Cherokee Editor*, 43-44.

⁵¹⁴ Elias Boudinot, in *The Religious Remembrancer*, 13 October 1821, in *Cherokee Editor*, 44-45. See letters about his participation in a traditional Native ball game, to the chagrin of missionaries who thought that Boudinot had not been thoroughly converted, in Gaul, *To Marry an Indian*, 19-21.

⁵¹⁵ Perdue, ed., *Cherokee Editor*, 10. For a discussion about why Boudinot did not become ordained, see Gaul, *To Marry an Indian*, 19-23.

⁵¹⁶ Elias Boudinot, “LETTERS TO PERIODICALS.”

Americans.⁵¹⁷ Elias Boudinot had the longest running tenure as a journalist at one newspaper than any of the other subjects of this dissertation, editing the *Cherokee Phoenix* from at least October, 1827, until August 11, 1832. Though his later support of the removal of the Cherokee hurt his integrity and standing among the Native Americans, Boudinot still has received praise for being the first Native American to use journalism for the benefit of the tribes.⁵¹⁸

One of these benefits was that Boudinot addressed misrepresentations of the Cherokee and other Native Americans.⁵¹⁹ One of his more notable works, *An Address to the Whites Delivered in the First Presbyterian Church on the 26th of May, 1826*, involves battling both misrepresentations and his own perceptions of Native Americans.⁵²⁰ Boudinot wanted the audience to donate to Cherokee causes, including the need for a tribal press.⁵²¹ He began the address, though, by commenting upon Euro-American perceptions and prejudices about Native Americans:

To those who are unacquainted with the manners, habits, and improvements of the Aborigines of this country, the term *Indian* is pregnant with ideas the most repelling and degrading. But such impressions, originating as they frequently do, from infant prejudices, although they may hold too true when applied to some, do great injustice to many of this race of beings.⁵²²

⁵¹⁷ Boudinot, "An Address to the Whites Delivered in the First Presbyterian Church, on the 26th of May, 1826, by Elias Boudinott, A Cherokee Indian," in *Cherokee Editor*, 65-83, including discussion and footnotes by Perdue.

⁵¹⁸ See, e.g., Trahant, 2-11.

⁵¹⁹ This conclusion came from a careful study of the historical documents, but confirmed by other scholars like Konkle, *Writing Indian Nations*, 49-61.

⁵²⁰ Boudinot, "An Address to the Whites."

⁵²¹ *Ibid.*, 76

⁵²² *Ibid.*, 68.

Boudinot continues this oxymoronic approach, presenting the civilized as well as the savage Native American: “Though it be true that he is ignorant, that he is a heathen, that he is a savage; yet he is no more than all others have been under similar circumstances.”⁵²³ Boudinot then reveals more of his self-perception: “You here behold an *Indian*, my kindred are *Indians*, and my fathers sleeping in the wilderness grave—they too were *Indians*. But I am not as my fathers were—broader means and nobler influences have fallen upon me.”⁵²⁴ The rhetoric ascends to an religious exclamation: “The shrill sound of the Savage yell shall die away as the roaring of far distant thunder; and the Heaven wrought music will gladden the affrighted wilderness.”⁵²⁵ Perhaps Boudinot spoke this way to allay the fears of the listeners, or perhaps he wanted to be accepted by them, or perhaps he truly saw the Native American as a savage, and therefore really did not see himself as a Native American. Regardless, his rhetoric had a practical goal as he worked to raise money for a printing press that would inculcate “civilization” among these alleged “savages.” He apparently thought the vision of the educated Native American represented the Native Americans more accurately – and therefore made the Native Americans more palatable to Euro-Americans – than did the picture of the uneducated Native American.

The most informed and judicious of our nation, believe that such a press would go further to remove ignorance, and her offspring superstition and prejudice, than all other means.... Such a paper, comprising a summary of religious and political events, &c. on the one hand; and on the other, exhibiting the feelings, disposition, improvements, and prospects of the Indians; their traditions, their true character, as it once was and as it now

⁵²³ *Ibid.*, 69. For a discussion about how Euro-American newspapers viewed “noble” Natives versus “ignoble” Natives, see also John Coward, *The Newspaper Indian: Native American Identity in the Press, 1820-1890* (Urbana: University of Illinois Press, 1999), 6.

⁵²⁴ *Ibid.*

⁵²⁵ *Ibid.*, 74.

is; the ways and means most likely to throw the mantle of civilization over all tribes; and such other matter as will tend to diffuse proper and correct impressions in regard to their condition—such a paper could not fail to create much interest in the American community, favourable to the aborigines, and to have a powerful influence on the advancement of the Indians themselves.⁵²⁶

Boudinot closes this address with an act of supplication to the Euro-Americans, accepting a subordinate position either from the reality of European conquest or from his own loathing of his Native heritage. He says, “They hang upon your mercy as to a garment. Will you push them from you, and will you save them? Let humanity answer.”⁵²⁷ Boudinot did not always look to the Euro-American for salvation, as his attitudes adjusted from hope to bitterness during his tenure as editor of the *Cherokee Phoenix*. Yet, he embraced Euro-American values, putting himself in a precarious position with Euro-Americans and Cherokee alike.

Elias Boudinot’s tenure as editor of the *Cherokee Phoenix* began with all the hope and enthusiasm of the new republic, the Cherokee Nation, located in northern Georgia and parts of North Carolina, Tennessee, and Alabama.⁵²⁸ Thanks to the written alphabet developed by George Guess, also known as Sequoyah, the Cherokee could learn to read and write in their own language; and the Cherokee also grew more proficient in English: Boudinot saw all of this as evidence “of Indian improvement.”⁵²⁹ The tribe published the bilingual *Phoenix* in its capital of New Echota, located in present-day Georgia. Boudinot

⁵²⁶ *Ibid.*, 76.

⁵²⁷ *Ibid.*, 79.

⁵²⁸ Boudinot claimed in “An Address to the Whites” that the nation touched upon Alabama, Georgia, and Tennessee. 71. Perdue wonders if Boudinot omitted the North Carolina Cherokee because the land “inhabited by the most conservative Cherokees, of whom Boudinot strongly disapproved.” 79-80, n. 4. Interestingly, some of these Cherokee managed to hide in the mountains and avoid removal to present-day Oklahoma. For a brief history, see the Eastern Band of the Cherokee Nation’s website at http://www.cherokee-nc.com/history_main.php.

⁵²⁹ Boudinot, “An Address to the Whites,” 73-74.

also had worked for a time as clerk for the National Council.⁵³⁰ One of the first articles written also dealt with the two major themes of this dissertation – representation and freedom of expression.⁵³¹ Boudinot saw himself as a spokesman for the Cherokee: “We shall also feel ourselves bound to correct all misstatements, relating to the present condition of the Cherokees.”⁵³² Yet, he spoke for other Native Americans, even though not all Natives would have welcomed his philosophies: “Those therefore, who are engaged for the good of the Indians of every tribe, and who pray that salvation, peace, and the comforts of civilized life may be extended to every Indian fire side on this continent, will consider us as co-workers together in their benevolent labors.”⁵³³ Yet, Boudinot did not write as bombastically about rhetorical representation as did Apress. Rather, he explicitly and matter-of-factly explored legal and political issues, hoping for legislative and judicial solutions to executive abuses.⁵³⁴

To accomplish this, Boudinot in that article looked to freedom of the press, thinking the First Amendment guaranteed the liberty for the Native Americans as well as for the Euro-Americans.⁵³⁵ Boudinot was not an absolutist, however:

As the liberty of the press is so essential to the improvement of the mind, we shall consider our paper, a *free paper*, with, however, proper and usual restrictions. We shall reserve to ourselves the liberty of rejecting such communications as tend to evil, and such as are too intemperate and too

⁵³⁰ See *Cherokee Phoenix*, 25 June 1828.

⁵³¹ Elias Boudinot, “TO THE PUBLIC,” *Cherokee Phoenix*, 21 February 1828, in *Cherokee Editor*, 91-95.

⁵³² *Ibid.*, 94.

⁵³³ *Ibid.*, 91-92. Also, see Joel Spring, who sharply criticizes the introduction to the tribes of the Protestant work ethic and other philosophies of certain Euro-Americans. Joel Spring, *The Cultural Transformation of a Native American Family and Its Tribe, 1763-1995: A Basket of Apples* (Mahwah, N.J.: Lawrence Erlbaum Associates, 1996).

⁵³⁴ Apress later, though, turned to more of a political, rather than religious, focus. See chapter four, *supra*.

⁵³⁵ See Boudinot, “TO THE READERS OF THE CHEROKEE PHOENIX,” *Cherokee Phoenix*, 27 August 1831, in *Cherokee Editor*, 135.

personal. But the columns of this paper shall always be open to free and temperate discussions on matters of politics, religion, &c.⁵³⁶

Regrettably, as discussed below, Chief John Ross did not support that last promise, as he would not allow for Boudinot to argue a different political position than that of the tribal government.⁵³⁷ And, Boudinot did decide himself to limit the content of the newspaper, a right belonging to most if not all editors. This reflects free expression and rhetorical sovereignty.

One of the more pressing issues facing the Cherokee during the 1820s and 1830s was the effort to remove them from their ancestral lands to present-day Oklahoma. At first, Boudinot dismissed the idea of removal as an impertinent and unnecessary idea, given the efforts by some of the Cherokee to become more “civilized.”⁵³⁸ Yet, just a few months later, Boudinot began to entertain the possibility of removal: “If we fail to improve under such efforts, we will then agree to remove.”⁵³⁹ Even though this controversy would not reach its zenith for another four years, Boudinot illustrates a willingness quite early to criticize the staunch position of tribal elders against removal. Thus, Boudinot continued to expound upon the achievements of the Cherokee and other Native Americans, hoping to convince others of the propriety of allowing the Cherokee to keep their lands and other property.

⁵³⁶ Perdue argues, “The law which specified the responsibilities of the editor of the Phoenix provided that ‘he is also expressly empowered to use his discretion in every respect, in order that the Nation may be benefited by the institution.’ *Laws*, 86. Nevertheless, the Council did issue directives to the editor occasionally ... and the Cherokee Constitution of 1827 did not guarantee freedom of the press.” *Cherokee Editor*, 146, n. 7. Interestingly, none of those early tribal constitutions explicitly mentions freedom of the press. The citation to *Laws* likely is to *Laws of the Cherokee Nation: Adopted by the Council at Various Periods. Printed for the Benefit of the Nation* (Tahlequah, C.N., 1852).

⁵³⁷ See, e.g., John Ross, “To the Committee and Council General Council convened:,” in “TO THE READERS OF THE CHEROKEE PHOENIX,” in *Cherokee Phoenix*, 11 August 1832, in *Cherokee Editor*, 165.

⁵³⁸ Elias Boudinot, *Cherokee Phoenix*, 13 March 1828, in *Cherokee Editor*, 95-96.

⁵³⁹ Elias Boudinot, “Indian Emigration,” *Cherokee Phoenix*, 14 May 1828, in *Cherokee Editor*, 99-100.

Boudinot also continued to react negatively to perceived misrepresentations of the Cherokee by Euro-Americans. For instance, on April 21, 1830, the *Phoenix* reported findings by the U.S. House's Committee of Indian Affairs that questioned, among other things, whether the "Southern Indians" could find enough food through hunting, their traditional means of acquiring food.⁵⁴⁰ Boudinot attacked these and other assertions, claiming "*the common Indian among the Cherokees is not declining, but rising.*"⁵⁴¹

Boudinot thought that progress would be aided in part by Christianity. Though not to the extent that it did for William Apress, evangelical Christianity clearly played a large part in the life of Boudinot and some of the Cherokee in general during the early 1800s. This era saw the Second Great Awakening, a time when religious fervor swept across the eastern United States.⁵⁴² This fervor affected the Native Americans, as missionaries had become full of zeal to convert them.⁵⁴³ Certain Native Americans such as Boudinot evangelized their own people. Boudinot railed from his editorial pulpit of the *Cherokee Phoenix* against "intemperance," noting that instances of drunken Native Americans had soured Euro-American dispositions towards Natives in general; Boudinot did point out how Euro-Americans themselves had introduced alcohol to the Natives.⁵⁴⁴ "It has been our shame in the eyes of other people, and has planted the common opinion, that the love of whiskey is a necessary trait of the Indian's character," Boudinot said.

⁵⁴⁰ Elias Boudinot, *Cherokee Phoenix*, 21 April 1830, in *Cherokee Editor*, 114-117.

⁵⁴¹ *Ibid.*, 116.

⁵⁴² See, e.g., Jill Norgren, *The Cherokee Cases: Two Landmark Decisions in the Fight for Sovereignty* (New York: Mc-Graw Hill, 1996), 78, and Edward S. Gaustad, *A Religious History of America*, new revised ed. (New York: HarperCollins, 1966, 1974, 1990),

⁵⁴³ See, e.g., an account of the famous missionary David Brainerd and his ministry to the Cherokee in Joyce B. Philips and Paul Gary Philips, eds. *The Brainerd Journal: A Mission to the Cherokees, 1817-1823*, Indians of the Southeast series (Lincoln: University of Nebraska Press, 1998).

⁵⁴⁴ Elias Boudinot, "INTEMPERANCE," *Cherokee Phoenix*, 1 October 1828, in *Cherokee Editor*, 100-102.

“Though this opinion is erroneous, yet the fact that intemperance is sadly prevalent and its effects awfully great among the Indians, we cannot deny.”⁵⁴⁵ Again, this angst between the Cherokee and Boudinot’s expectations for the Cherokee created stress.

Despite the affinity for religion, Boudinot’s journalism emphasized more the law and public issues.⁵⁴⁶ Perhaps this was because the newspaper was the national organ of information, the only outlet that the Cherokee apparently had to read the tribal legislation. The newspaper carried front-page recitations of laws passed by the tribe, the state of Georgia, the federal government, and other entities. These at times read more like legal notices of today’s newspapers. Boudinot outlined the major emphases of the bilingual paper in a prospectus published before the first newspaper had been printed:

As the great object of the Cherokee Phoenix will be the benefit of the Cherokees, the following subjects will occupy its columns.

1. The laws and public documents of the Nation.
2. Account of the manners and customs of the Cherokees, and their progress in Education, Religion and the arts of civilized life; with such notices of other Indian tribes as our limited means of information will allow.
3. The principal interesting news of the day.
4. Miscellaneous articles, calculated to promote Literature, Civilization, and Religion among the Cherokees.⁵⁴⁷

⁵⁴⁵ *Ibid.*

⁵⁴⁶ That conclusion is based upon the findings of Landini, who calculated that Boudinot only spent 5.9 percent of editorial content on religion, as opposed to 12.5 percent by his successor, Elijah Hicks. Ann Lackey Landini, “The ‘Cherokee Phoenix’: The Voice of the Cherokee Nation, 1828-1834” (Ph.D. diss., University of Tennessee, 1990), 93. One item of note: Boudinot did devote 2.3 percent of editorial material on the topic of intemperance, an arguably religious topic, given the nature of the times. *Ibid.* More importantly, content with a legal or public policy angle apparently amounted to at least 27.5 percent, based upon Kemper’s calculations of various percentages reported by Landini. *Ibid.*

⁵⁴⁷ Elias Boudinot, “Prospectus For Publishing at New Echota, in the Cherokee Nation, A WEEKLY NEWSPAPER TO BE CALLED THE Cherokee Phoenix,” October 1827, in *Cherokee Editor*, 90. In fact, Boudinot printed the Cherokee Constitution, among other legal documents. See the first three editions, which ran from February 21, 1828, to March 6, 1828. It is of note that freedom of the press is not mentioned anywhere in the original Cherokee constitution. See, e.g., Stephen A. Smith, “Freedom of Expression in Native American Constitutions,” *Journal of Communication Inquiry* 15, no. 1 (Winter 1991): 39.

Probably the clearest example of this public affairs journalism would be his coverage of the political struggle over whether the Cherokee ought to be removed to present-day Oklahoma, as well as of the related “Cherokee cases” which were decided by the U.S. Supreme Court. These provide the context not only for Boudinot’s stand for liberty of the press, but also for his downfall as the editor of the *Cherokee Phoenix* and for his subsequent execution. Boudinot cared deeply about the image of the Cherokee in particular and Native Americans in general. Through vigorous public affairs journalism, wide-ranging reporting about society, and editorializing, Boudinot used journalism to promote accurate representation of Native Americans. To finish the job, he wanted freedom of the press, promoting what we may call rhetorical sovereignty. But he faced a growing crisis that threatened his own life and the lives and future of the Cherokee people.

2. Freedom of expression and controls of information.

To what extent did he believe that he as representative of his ethnic group had “the inherent right and ability” to communicate for those ethnic groups?

How was control exerted over representations of his primary ethnic group?⁵⁴⁸

“Liberty was as dear to Boudinot and to the Cherokee as it was to the founders of the United States of America,” as Trahan says.⁵⁴⁹ But liberty had been threatened. The more the Cherokee attempted to negotiate a way to stay in their ancestral lands, the less likely it appeared that they would be successful. The state of Georgia became more strident in its efforts to drive away the Cherokee, to undermine their long-standing sovereignty. The actions of the federal government, which was led by Native American-

⁵⁴⁸ Like Apess in the previous chapter, these two questions will be answered simultaneously. See chapter four, *supra*.

⁵⁴⁹ Trahan, *Pictures of Our Nobler Selves*, 7.

hating Andrew Jackson and threatened by sectional controversies, ranged from ineffective to down-right hostile regarding the Cherokee. One example of the rhetoric would be a speech by Jackson to Congress in 1833:

It is to be hoped that those portions of two of the Southern tribes [Cherokees and Seminoles] ... will realize the necessity of emigration and will speedily resort to it....Those tribes cannot exist surrounded by our settlements and in continued contact with our citizens....They have neither the intelligence, the industry, the moral habits, nor the desire for improvement which are essential to any favorable change in their condition. Established in the midst of another and superior race and without appreciating the causes of their inferiority or seeking to control them, they must necessarily yield to the force of circumstances and ere long disappear.⁵⁵⁰

In the midst of these threats, the tribe broke into factions, with Elias Boudinot and Chief John Ross ultimately on opposing sides. This was part of the gravest crisis in the history of the Cherokee people – they were about to be removed to present-day Oklahoma, to lose their ancestral lands, to lose a measure of their sovereignty. The survival of the tribe hung in the balance. The stakes for this journalist were enormous. Elias Boudinot would die in part because of his journalism – and *that* would be the greatest control of information of them all.

Gold! The cry of it, the allure of it, excited the people of Georgia, who believed that the country occupied by the Cherokee – and the wealth within it – was their property. Young notes correctly that Georgian policy was based upon more than just a desire for land and glad, but also upon the desire to rid the state of “free people of color and, as such, unacceptable neighbors to race-proud Georgians.”⁵⁵¹ The U.S. Supreme Court in

⁵⁵⁰ Andrew Jackson, Message to Congress, December 3, 1833, Congressional Serial House Documents, Twenty-third Congress, *American State Papers*, vol. 234, 14, quoted in William G. McLoughlin, *Cherokee Renascence in the New Republic* (Princeton, NJ: Princeton University Press, 1986).

⁵⁵¹ Mary Young, “The Exercise of Sovereignty in Cherokee Georgia,” *Journal of the Early Republic*, 10, no. 1 (Spring 1990), 44; available at <http://www.jstor.org>. Another related work by Mary Young is “The Cherokee Nation: Mirror of the Republic,” *American Quarterly* 33, no. 5, Special Issue: American Culture and the American Frontier (Winter 1981), 502-524; available at <http://www.jstor.org>.

Fletcher v. Peck (1810) legitimized Euro-American claims to southern lands to the Mississippi River, perpetuating what some call “the doctrine of discovery.”⁵⁵² Even if gold had not been found in the Cherokee Nation, Georgians and other Americans likely would have wanted the land, anyway. The Cherokee decision to become a republic threatened the status quo of the Euro-Americans. “The subject of your having formed a constitution, and constitutional government, has raised a considerable clamour, particularly in the adjoining States,” the U.S. agent to the Cherokee said in a letter reprinted in the *Phoenix*.⁵⁵³ And though having the constitution may have produced a “clamour,” having a newspaper at least produced confusion among the Euro-Americans. Boudinot tells about how *The Philadelphia Democratic Press* had reported “A second Indian newspaper” called “Columbus Enquirer” was “published under the patronage of the Cherokee Nation.” Boudinot’s response takes a humorous jab: “The above is altogether a mistake, which probably originated from the establishment of the Cherokee Phoenix, the only Indian paper, we believe, in existence.—At present, Georgia would be quite an unfavorable place for publishing an Indian paper.”⁵⁵⁴

The people of Georgia wanted the land of the Cherokee, so the state government advocated the removal of the Cherokee. The idea of removal existed when the printer lifted the first issue of the *Phoenix* off of the press. Boudinot said in his first column:

In regard to the controversy with Georgia, and the present policy of the General Government, in removing, and concentrating the Indians, out of the limits of any state, which, by the way, appears to be gaining strength, we will invariably and faithfully state the feelings of the majority of our people. **Our views, as a people, on this subject, have been sadly**

⁵⁵² *Fletcher v. Peck*, 10 U.S. 87 (1810); available at <http://web2.westlaw.com>. For discussion of this case, see, e.g., Norgren, 87-88.

⁵⁵³ Col. H. Montgomery, “COMMUNICATION TO THE CHIEFS OF THE CHEROKEE NATION, 16 APRIL, 1828,” *Cherokee Phoenix*, 21 April 1828, 2.

⁵⁵⁴ Elias Boudinot, “A MISTAKE CORRECTED,” *Cherokee Phoenix*, 17 April 1828, 2.

misrepresented. These views we do not wish to conceal, but are willing that the public should know what we think of this policy, which, in our opinion, if carried into effect, will prove pernicious to us [emphasis added].⁵⁵⁵

Here, Boudinot explicitly purported to represent “the feelings of the majority of our people” in the pages of the *Phoenix*, asserting himself more as a democratic spokesman than as a governmental spokesman. So, when he later adjusted his view to support removal, perhaps he felt as if he spoke for the majority of the people, and the tribal council and chief did not.

The threat of violence grew during Boudinot’s coverage – and related editorializing – about the removal and related legal issues. In early 1830, certain Georgians killed a Cherokee man and captured at least three others after the Cherokees had been exercising police authority over their own people.⁵⁵⁶ Boudinot uncharacteristically justified any “self defence” that would be exercised by the Cherokee if Chief John Ross and Major Ridge, two important Cherokee leaders, were arrested, as feared.⁵⁵⁷

Boudinot expressed displeasure and disdain towards Euro-Americans who mistreated the Cherokee, even calling them “savages.”⁵⁵⁸ But he believed in the concept of legal rights, noting, “We were in hopes the executive of the United States would respect the laws entrusted to their administration, although they may be inclined to question many of our rights. One right, however, the United States cannot possibly deny

⁵⁵⁵ Elias Boudinot, “TO THE PUBLIC,” in *Cherokee Phoenix*, 21 February 1828, in *Cherokee Editor*, 93.

⁵⁵⁶ Elias Boudinot, “FIRST BLOOD SHED BY THE GEORGIANS!” *Cherokee Phoenix*, 10 February 1830, in *Cherokee Editor*, 112-113.

⁵⁵⁷ *Ibid.*, 113.

⁵⁵⁸ Elias Boudinot, *Cherokee Phoenix*, 9 September 1829, in *Cherokee Editor*, 111.

us—the right of calling upon her to execute her own laws.”⁵⁵⁹ But, in 1829 and again in 1830, the Georgia legislators asserted jurisdiction over the Cherokee Nation, despite the tribe’s long-standing sovereignty.⁵⁶⁰ One of the most fundamental legal issues in this entire historical narrative involves who would have authority over the Cherokee. For instance, when the United States intimated that it might allow the Cherokee to stay, the Georgians claimed they would nullify that law, just as neighboring South Carolina had attempted to nullify a tariff law.⁵⁶¹ Nullification, as Perdue notes, involves the political position “that the states created the union and that when the union exceeded powers expressly granted it, a state could nullify that action.”⁵⁶² In fact, Miles hypothesized that the United States Supreme Court may have decided *Cherokee Nation v. Georgia* and later *Worcester v. Georgia* in such a way as to have quieted the talk of nullification in South Carolina, which some feared could have led to civil war.⁵⁶³ Boudinot, at least because of the position of the Cherokee, sternly criticized talk of nullification by Georgians: “If such proceedings are sanctioned by the majority of the people of the U. States, the Union is but a tottering fabric, which will soon fall and crumble into atoms.”⁵⁶⁴ Questions did exist at the time about the state of the union. One good example would be President Jackson’s later unwillingness to enforce the U.S. Supreme Court’s decision in *Worcester v.*

⁵⁵⁹ *Ibid.*

⁵⁶⁰ See “Laws Extending Jurisdiction over the Cherokees, December 19, 1829, and December 22, 1830,” in Theda Perdue and Michael D. Green, eds., *The Cherokee Removal: A Brief History with Documents*, 2d ed., The Bedford Series in History and Culture (Boston: Bedford/St. Martin’s, 2005), 76-79.

⁵⁶¹ For a discussion about this crisis, see, e.g., Edwin A. Miles, “After John Marshall’s Decision: *Worcester v. Georgia* and the Nullification Crisis,” *The Journal of Southern History* 39, no. 4 (November 1973): 519-544; available at <http://www.jstor.org>.

⁵⁶² Perdue, ed., *Cherokee Editor*, 150, n. 69, citing John C. Calhoun’s *A Disquisition on Government*, ed. Richard K. Cralle (New York: 1943).

⁵⁶³ E.g., Miles, 522, 533. See also Norgren, *supra*.

⁵⁶⁴ Elias Boudinot, *Cherokee Phoenix*, 8 January 1831, in *Cherokee Editor*, 121.

Georgia and release a missionary imprisoned for living in the Cherokee Nation, all to the pleasure of the Georgians; yet, Jackson was more than willing to send troops to South Carolina to enforce the tariff bill.⁵⁶⁵ Apparently, unclear jurisdictional disputes could not have been resolved in this context of personal political gain and prejudice, as Jackson benefited more from galvanizing the Union against the tribes than he did from upholding the rights of an oppressed people. Jackson had been a notable (or notorious) “Indian fighter,” leading armies against the tribes such as the Seminole and Creek nations before ascending to the White House.

Despite the antagonism of Jackson’s administration, the fate of the tribes appears to have been in the hands of the U.S. Supreme Court. On Christmas Eve, 1830, the state of Georgia hanged a Cherokee named George Tassel for the murder of a Cherokee.⁵⁶⁶ The issue in *State v. Tassels* had been whether Georgia or the Cherokee had jurisdiction over this murder. But that did not stop Georgia from performing the execution, as after the trial judge “refused to grant an appeal by a writ of error, to the Supreme Court of the United States, and even refused to certify that Tassel was tried,” Boudinot reported.⁵⁶⁷ He said even “a writ of error sanctioned by the Chief Justice of the United States [John Marshall] and served upon Governor Gilmer” failed to have its intended effect of stopping the execution.⁵⁶⁸

⁵⁶⁵ For a comparison of the two issues, see, *e.g.*, Miles, 519-520.

⁵⁶⁶ For an example of Boudinot’s reporting on this issue, see *Cherokee Phoenix*, 8 January 1831, in *Cherokee Editor*, 120-121.

⁵⁶⁷ *Ibid.*, 120.

⁵⁶⁸ *Ibid.*, 121.

In another case, the tribe sued the state of Georgia to resolve questions over whether the state had authority over the tribe.⁵⁶⁹ Boudinot did not believe that *Cherokee Nation v. Georgia* stood for the proposition that the question over the dispute over tribal lands had been solved. Indeed, Boudinot knew, “The only question before [the U.S. Supreme Court] was, whether it had original jurisdiction—whether the Cherokee nation was a foreign state in the sense of the constitution, & the decision went no further than to say, as we understand it, that the Court has *not* original jurisdiction, and that the Cherokee nation was *not* a foreign state in the sense of the constitution.”⁵⁷⁰ Indeed, the High Court held in part that the Cherokee, like other Native tribes, were “domestic-dependant nations,” in a sense having sovereignty, but not complete sovereignty like a foreign nation.⁵⁷¹

Apparently the Supreme Court decision in *Cherokee Nation v. Georgia* had excited some “fears” by certain Euro-American editors of Native uprisings, for Boudinot used a cliché “buried the hatchet” to indicate a Cherokee desire for peace.⁵⁷² The controversy did create some angst, as Boudinot noted in a peculiar story about how Cherokee women should avoid insulting the Georgia Guard, lest they be “very undignified” and receive “corporeal punishments,” and how the Georgia Guard would be “equally undignified” by providing the punishments.⁵⁷³

⁵⁶⁹ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); available at <http://web2.westlaw.com>.

⁵⁷⁰ Elias Boudinot, “CHEROKEE NATION vs. THE STATE OF GEORGIA,” *Cherokee Phoenix*, 16 April 1831, reprinted in *Cherokee Editor*, 125-126.

⁵⁷¹ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); available at <http://web2.westlaw.com>.

⁵⁷² *Ibid.*, 127

⁵⁷³ Elias Boudinot, “CHEROKEE WOMEN, BEWARE,” *Cherokee Phoenix*, 16 July 1831, in *Cherokee Editor*, 132.

The conflict escalated when Colonel Charles H. Nelson accused Boudinot of libel and allegedly threatened to “whip” and “castigate and flagellate” Boudinot.⁵⁷⁴ One of the editor’s responses, an editorial on August 27, 1831, called Nelson’s accusations and actions “an invasion of the liberty of the press.”⁵⁷⁵ Boudinot and Nelson met in private to discuss the matter.⁵⁷⁶ Nelson reportedly did not detail the libel, but instead “spoke of the *Phoenix* in its general course and character.”⁵⁷⁷ Boudinot apparently was not able to give his side of the story in the private meeting:

I had intended, if any specification had been made, and if I had been permitted to speak and to explain fairly and freely upon the subject, to say to him that I stood ready to do him justice if I had injured him. I had intended to tell him that there was a wide difference between a deliberate falsehood and a mere misstatement. I was not conscious of being guilty of the former, but that it was more likely I had made some misstatements in attempting to relate particulars founded upon information; that if I was convinced of any such error I was prepared at all times to repair the wrong.⁵⁷⁸

Note that Boudinot differentiated “a deliberate falsehood and a mere misstatement,” indicating that he may have viewed intent as an element of libel. Boudinot disliked defamation – he did not want to commit it, and he did not want to suffer from it.⁵⁷⁹ In an early issue of the *Phoenix*, for example, Boudinot ran an article criticizing those who slander others.⁵⁸⁰ Yet, he recognized that those in public life carried a risk of being

⁵⁷⁴ Elias Boudinot, “TO THE READERS OF THE CHEROKEE PHOENIX,” *Cherokee Phoenix*, 27 August 1831, in *Cherokee Editor*, 132-135.

⁵⁷⁵ *Ibid.*

⁵⁷⁶ *Ibid.*, 132-133.

⁵⁷⁷ *Ibid.*, 133.

⁵⁷⁸ *Ibid.*, 133.

⁵⁷⁹ For an example of his philosophy, see Elias Boudinot, “ON SLANDER,” *Cherokee Phoenix*, 10 December 1828, 2.

⁵⁸⁰ Elias Boudinot, “SCANDAL,” *Cherokee Phoenix*, 13 March 1828, 1.

slandered, saying, “A person who can live in this world without suffering slander, must be too stupid or insignificant to claim attention.”⁵⁸¹ Apparently charges of defamation during the age of Jackson had some severe consequences, as illustrated by a brief story in the *Phoenix*:

Slander—A case of slander, Captain A. Pullen vs. John Donaldson, was lately tried in Georgia. The jury gave verdict of \$10,000 damages. The defendant having announced his inability to pay so large a sum, the plaintiff struck off \$9,000 leaving Mr. Donaldson \$1000 to pay for slandering his neighbor.⁵⁸²

Apparently that first interview did not result in any kind of resolution; Boudinot reported in the same article that “seven armed men” came to insist that Boudinot again meet with Nelson.⁵⁸³ During these interviews, Nelson apparently claimed that Boudinot was too “ignorant” to have been the real editor, that the Euro-American missionaries apparently were the editors of the *Phoenix*.⁵⁸⁴ Boudinot dismissed these claims:

I was conscious of ignorance myself, besides I had never placed myself before the public as a man of information.... The intimation as to the part which the Missionaries have taken in conducting the Cherokee Phoenix, that is, in writing the editorial articles, is too foolish to demand any attention ...Among [the missionaries] I have the honor to number some of my best and nearest friends, but they have as little desire to interfere with my duties as editor as to interfere with any other person.⁵⁸⁵

Boudinot, after this meek explanation, railed against what he saw as a violation of the freedom of the press:

⁵⁸¹ *Ibid.* Interestingly, this line of thinking resembles the argument that public officials ought to have a higher standard of proof – that is, actual malice – before being able to win a libel suit. See *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964); available at <http://web2.westlaw.com>.

⁵⁸² *Cherokee Phoenix*, 28 May 1828, 4.

⁵⁸³ Boudinot, “TO THE READERS,” in *Cherokee Editor*, 133-134.

⁵⁸⁴ *Ibid.*, 134.

⁵⁸⁵ *Ibid.*

If it is possible that a white editor can be treated in this manner, what would be the feelings of the people? In this free country, where the liberty of the press is solemnly guarantied [sic], is this the way to obtain satisfaction for an alleged injury committed in a newspaper? I claim nothing but what I have a right to claim as a man—I complain of nothing of which a privileged white editor would not complain.⁵⁸⁶

Thus, Boudinot made a not so subtle reference to the First Amendment of the U.S. Constitution, which he viewed as a means of protecting the press, though he himself was not a citizen of the United States. And, given the holding and interpretation of *Cherokee Nation v. Georgia*, as well as free press jurisprudence of the time, Boudinot likely could not have made a successful defense of the First Amendment in a U.S. court. Therefore, Boudinot also appealed to broader principles of freedom of expression, arguing that as a human being he deserved to be protected, just like any other. Boudinot saw freedom of expression as integral to his role as an editor as well as to his humanity. No man would threaten his liberty without Boudinot defending that liberty. This visceral, courageous response illustrates that freedom of expression benefited and would benefit Native Americans and that those who practice journalism sense and cherish this innate value that crosses cultural and political boundaries. Though he did not and likely could not have cited a law case for the proposition that the United States would guarantee free press for Native Americans, Boudinot knew in his heart that free press was good and right for him and his people. Boudinot continued his public defense, for Nelson had sent a letter to Boudinot, castigating the editor for his actions and attributing much of the paper's content to the Euro-American missionaries.⁵⁸⁷ Boudinot tried to dismiss these claims, but one can sense the frustration coming from his columns.

⁵⁸⁶ *Ibid.*, 135.

⁵⁸⁷ Elias Boudinot, *Cherokee Phoenix*, 17 September 1831, in *Cherokee Editor*, 135-139.

Then, another law passed by the Georgia Assembly negatively affected the Cherokee, resulting in a landmark decision by the U.S. Supreme Court that would be ignored by the federal and state governments. During the George Tassels affair, just two days before his execution, Georgia outlawed “white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians....”⁵⁸⁸ The punishment would be “confinement at hard labour in the penitentiary for the space of four years.”⁵⁸⁹ Boudinot foreshadowed the showdown among the Cherokee, Euro-American missionaries, and Euro-American governments, saying about the new law, “If we introduce a minister of the Gospel to preach to us the way of life and salvation, here is a law of Georgia, a Christian law too it is said, ready to seize him and send him to the Penitentiary, in violation of the constitution of the state itself. (See Constitution of Georgia, Art. 4—Sec. 10,) If we bring in a white man to teach our children, he is also arrested and suffers a similar punishment.”⁵⁹⁰

This is what happened to the Reverend Samuel A. Worcester and five other Euro-American men who were arrested by the Georgia Guard, led by Colonel Charles H. Nelson, during March 1831 while on Cherokee land.⁵⁹¹ Worcester, a missionary from the American Board of Commissioners for Foreign Missions, also had helped Boudinot with printing; some had even accused Worcester of being the real editor of the paper, though he and Boudinot denied it.⁵⁹² At first, Worcester and the Reverend Thompson

⁵⁸⁸ Worcester v. Georgia, 31 U.S. 515 (1832), citing legislation passed by the Georgia legislature on December 22, 1830; available at <http://web2.westlaw.com>.

⁵⁸⁹ *Ibid.*

⁵⁹⁰ Elias Boudinot, *Cherokee Phoenix*, 19 February 1831, in *Cherokee Editor*, 121-122.

⁵⁹¹ Elias Boudinot, *Cherokee Phoenix* 26 March 1831, in *Cherokee Editor*, 122-124. The missionary's name actually is spelled Wocheater, but the *Phoenix* and the U.S. Supreme Court spelled it “Worcester.”

⁵⁹² See Perdue, ed., *Cherokee Editor*, 151, n. 73; see a letter to the editor from Worcester, and Boudinot's

were freed because the judge viewed them as “*Agents of the Government*.”⁵⁹³ Perdue notes this, saying the judge “based his decision on the assistance that the federal government provided for mission schools.”⁵⁹⁴

Boudinot said Governor Gilmer had accused the missionaries “with crimes, such as *sedition, opposing the HUMANE policy of the Government, exciting the Indians &c.....*”⁵⁹⁵ Thus, though the charge officially related to being on Cherokee lands, the state of Georgia viewed Worcester’s actions as seditious; and remember that seditious libel still was a plausible cause of action during the age of Jackson.⁵⁹⁶ The Marshall Court reversed Worcester’s sentence, saying the decision by the Georgia court was “repugnant to the constitution, treaties, and laws of the United States, and ought,

response, at *Cherokee Phoenix*, 12 November 1828, 2. See also the interchange of letters between the Reverend Nicholas D. Scales and Worcester that erupted in the pages of the *Phoenix*, in Jack Frederick Kilpatrick and Anna Gritts Kilpatrick, eds, *New Echota Letters: Contributions of Samuel A. Worcester to the Cherokee Phoenix* (Dallas, TX: Southern Methodist University, 1968), 34-40.

⁵⁹³ Elias Boudinot, *Cherokee Phoenix*, 26 March 1831, in *Cherokee Editor*, 123.

⁵⁹⁴ In today’s era of “faith-based initiatives,” given the history of federally funded missions to Natives, one wonders the propriety and practicality of churches receiving federal funds especially for religious purposes. But, for a detailed argument for faith-based initiatives, see Carl Esbeck, “Dissent and Disestablishment: The Church/State Settlement of the New American Republic,” *Brigham Young University Law Review* (2004): 1385-1592.

⁵⁹⁵ Elias Boudinot, *Cherokee Phoenix*, 17 September 1831, in *Cherokee Editor*, 139-140.

⁵⁹⁶ See Leonard Levy, *Emergence of a Free Press* (New York: Oxford University Press, 1985), 8. This was a later edition of *Freedom of Speech and Press in Early American History: Legacy of Suppression*, Torchbook ed. (New York: Harper & Row, 1963). Not all scholars have agreed with Levy’s assessment. For more information about the controversy about freedom of the press and seditious libel, see also Levy, ed., *Freedom of the Press from Zenger to Jefferson: Early American Libertarian Theories*, The American Heritage Series (Indianapolis, IN: The Bobbs-Merrill Co., 1966), *Origins of the Bill of Rights* (New Haven, CT: Yale University Press, 1999); “Liberty and the First Amendment: 1790-1800,” *The American Historical Review*, 68, no. 1 (October 1962): 22-37; available at <http://www.jstor.org>; and “The Legacy Reexamined,” *Stanford Law Review* 37 (February 1985): 767-793. See also Rabban, *Forgotten Years* and “The Ahistorical Historian;” Philip Hamburger, “The Development of the Law of Seditious Libel and Control of the Press,” *Stanford Law Review* 37 (February 1985): 661-765; P. Harling, “The Law of Libel and the Limits of Repression, 1790-1832,” *Historical Journal* 44, no. 1 (March 2001): 107-134; and Zechariah Chafee, Jr., *Free Speech in the United States* (Cambridge, MA: Harvard University Press, 1948), and *Three Human Rights in the Constitution of 1787* (Lawrence: University of Kansas Press, 1956).

therefore, to be reversed and annulled.”⁵⁹⁷ But, despite this decision, Worcester stayed in jail.⁵⁹⁸ Allegedly, President Jackson said, “Well: John Marshall has made his decision: now let him enforce it!”⁵⁹⁹

This may have been the proverbial straw that broke Boudinot’s back. Perdue surmises:

Boudinot arrived in Washington shortly after the *Worcester v. Georgia* decision, and he became convinced that the federal government would not act to free the missionaries. The Cherokees, he believed, were powerless, and their only alternative was removal. Restrained by the Cherokee authorities for publicizing his views, Boudinot resigned as editor of the *Cherokee Phoenix*, and the possibility of debating the removal issue in the Cherokee Nation disappeared.⁶⁰⁰

In sum, Elias Boudinot practiced free expression with boldness, even in the face of threats to that freedom, but pressures somewhat beyond his control moved him out of the editorship of the *Phoenix* and into his final foray into politics. Boudinot must have believed that he had that right of free expression – as a man, as a citizen of the Cherokee Nation, even as a beneficiary of the protections of the U.S. Constitution. As he responded to those threats, the danger increased. The stakes were raised. Boudinot engaged in a classic struggle over control of the message of the Cherokee Nation. But, as discussed in the following section, Boudinot struggled over that message with the Cherokee Nation itself, leading to his own death.

⁵⁹⁷ Worcester, 31 U.S. at 562-563.

⁵⁹⁸ For a brief discussion, see Perdue, ed., *Cherokee Editor*, 25.

⁵⁹⁹ Miles says that Horace Greeley quoted Jackson as saying this. See Edwin A. Miles, “After John Marshall’s Decision: *Worcester v. Georgia* and the Nullification Crisis,” *The Journal of Southern History* 39, no. 4 (November 1973): 519, quoting Horace Greeley, *The American Conflict: A History of the Great Rebellion in the United States of America, 1860-’64*, 1 (Hartford, CT: 1865), 106.

⁶⁰⁰ Perdue, ed., *Cherokee Editor*, 157.

3. Conflicting concepts

To what extent did the goals of political entities of those ethnic groups conflict with Boudinot's individual rights?

Historical and legal evidence exists of the Cherokee suppressing their own press, or at least dictating by what terms the press would function.⁶⁰¹ In its first constitution in 1827, the Cherokee Nation only included one of the five First Amendment-type guarantees – freedom of religion; for some reason, freedoms of press, speech, assembly, and petition were omitted.⁶⁰² Perhaps scholars of early Cherokee jurisprudence could find more primary sources to explain this better. Perhaps the Cherokee adopted Euro-American values that fit their own, but rejected others that threatened social cohesion.⁶⁰³ Obviously, something that criticized tribal government would threaten that government. Also, the Cherokee have been more communal than individualistic, which means that they highly value social cohesion.⁶⁰⁴ However, unequivocal evidence has not surfaced to explain the lack of a Cherokee free press law until the twenty-first century.⁶⁰⁵

⁶⁰¹ This section is a rewrite of Kemper, “Freedom of the Press,” 22-27.

⁶⁰² *1827 Constitution of the Cherokee Nation*, in Rennard Strickland, *Fires and the Spirits: Cherokee Law from Clan to Court*, Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1975), 234. See note 42. Also see Smith, “Freedom of Expression,” as well as discussion about his theories in chapter two, *supra*.

⁶⁰³ See Duane Champagne, *Social Order and Political Change: Constitutional Governments Among the Cherokee, the Choctaw, the Chickasaw, and the Creek* (Stanford, CA: Stanford University Press, 1992), 28-55.

In fact, Champagne makes an interesting assertion: “In the ancient theocratic Cherokee society, the religious side of Cherokee life was given precedence over the civil side.” *Ibid.*, 39. Perhaps this explains why religious freedoms were guaranteed, but not speech or press freedoms. Then again, with the enormous influence of missionaries, it would not be surprising that the Cherokee emphasized religious issues in its constitution. But this was not complete religious freedom, as Christian ministers were not allowed to hold office in the Cherokee government and civil administrators had to pass a religious test, unlike the prohibition of a religious test in Article 6 of the U.S. Constitution. See Strickland, 234.

⁶⁰⁴ Norgren, 44.

⁶⁰⁵ See Cherokee Leg. Act 11-00; quoted in Stacey J.T. Hust, “Performing the Watchdog Function: An Investigation of the Status of Freedom of Expression Within Native American Tribal Courts” (paper

The first issue of the *Cherokee Phoenix* was published in February 21, 1828. Some of the acts of the Cherokee Legislature give troubling evidence that the Cherokee Nation attempted to dictate the contents of the *Phoenix*. Levy interestingly notes that “the legislatures rather than the courts were the chief suppressive agencies” of free press during early American life.⁶⁰⁶ Strickland, in his excellent work about early Cherokee law, compiled references to early Cherokee legislation. At least thirteen laws from 1825 to 1829 dealt specifically with printing, the *Phoenix*, or with a free press or speech issue.⁶⁰⁷ So, the Cherokee legislature mandated some of the content and conduct of the

presented at the Minorities and Communication Division of the Association for Education in Journalism and Mass Communication, Kansas City, Missouri, August 2003): 13, n. 7.

⁶⁰⁶ Levy, *Legacy*, p. ix.

⁶⁰⁷ Strickland compiled these from *Laws of the Cherokee Nation Adopted at Various Periods* (LCN) (1852). The citations are direct quotations from Strickland, 211-228. They included:

- 68. *A Resolution passed on October 15, 1825*. Provisions for financing and obtaining English and Cherokee type (LCN 47).
- 106. *A Resolution passed on October 14, 1826*. Punishment established for abortion and infanticide and for slander with accusation of the same (LCN 79).
- 107. *A Resolution passed on October 18, 1826*. Provisions for printer and journeyman with salaries and duties (LCN 84-85).
- 108. *A Resolution passed on October 18, 1826*. Provision for establishment of a “newspaper at New Echota, to be entitled, the ‘*Cherokee Phoenix*’” and the hiring of an editor who shall also “translate matter in the Cherokee language for the columns of said paper as well as to translate all public documents ... submitted for publication” (LCN 85).
- 113. *A Resolution passed on November 4, 1826*. Order “to translate eight copies of the laws of the Cherokee Nation ... into the Cherokee language, written in characters invented by George Guess, and also to translate one copy of the New Testament into the same characters” (LCN 81).
- 114. *A Resolution passed on November 16, 1826*. Appropriation of funds for and provisions for erection or building of the printing office at Echota (LCN 82).
- 131. *A Resolution passed on October 19, 1828*. Additional regulations and duties associated with the *Cherokee Phoenix* and the newspaper staff (LCN 85-86).
- 151. *A Resolution passed on November 10, 1828*. Compensation to individuals “for translating the laws of the Nation from English into the Cherokee language” (LCN 105).
- 169. *A Resolution passed on November 19, 1828*. Business requirements of editor of the *Cherokee Phoenix* plus statement of additional duties as follows (1) “to withhold ... scurrilous communications which ... excite and irritate personal controversies,” (2) “not support or cherish ... any thing on religious matters that will savor sectarianism”; (3) collect and publish as much original Cherokee material as possible; and (4) “have the manuscript laws printed in pamphlet form and attach to the printed laws” with index (LCN 114).

newspaper, as well as its political leanings. Boudinot even had to enlist the help of the government to oust a printer for the *Phoenix* who, in Boudinot's estimation, had "been secretly circulating falsehoods" about Boudinot and the paper.⁶⁰⁸ The printing business of the nation and the newspaper were inextricably intertwined. This indicates an overt, explicit control of the newspaper by the tribal government. The tribe also apparently used the *Phoenix* for its own survival, as Boudinot and other tribal leaders conducted what at least one scholar has called "a sophisticated campaign of public relations."⁶⁰⁹

Boudinot, despite these controls, had insisted upon the right of a free press for the Cherokee. As he had said in the first issue of the *Phoenix*, "As the liberty of the press is so essential to the improvement of the mind, we shall consider our paper, *a free paper*, with, however, proper and usual restrictions. ... But the columns of this newspaper shall always be open to free and temperate discussions on matters of politics, religion, and so forth."⁶¹⁰ Unfortunately, this was not always the case.

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- 183. *A Resolution passed on October 22, 1829.* Appointment of translator to prepare "the journals of the two branches of the Legislative Council ... for publication in the Cherokee language ... weekly in the Cherokee Phoenix [sic]" (LCN 135).
 - 185. *A Resolution passed on October 27, 1829.* Provisions for translation and publication of a pamphlet in Cherokee and English in parallel columns of a series of anti-Jackson essays from the *National Intelligencer* (LCN 126).
 - 194. *A Resolution passed on November 4, 1829.* Additional pay for the editor of the Cherokee Phoenix (LCN 144).
 - 195. *A Resolution passed on November 4, 1829.* Appointment of an assistant editor for the *Cherokee Phoenix* whose "duties shall be to translate all public documents from the English into the Cherokee language and all English news deemed useful" (LCN 144).

⁶⁰⁸ See Elias and Harriett Gold Boudinot to Herman and Flora Gold Vaill, 23 January 1829, in Gaul, *To Marry an Indian*, 161-164.

⁶⁰⁹ Norgren, 44. Konkle notes, "In an organized and diligent public campaign, which included sending Elias Boudinot and John Ridge out on speaking tours of northeastern cities, publishing the *Cherokee Phoenix*, submitting memorials to Congress, and drawing on the aid of missionary organizations ... the Cherokees added the argument that they were becoming more and more civilized, and thus did form legitimate political entities." *Writing Indian Nations*, 44. For a discussion and notes about Apess and public relations for Natives, see chapter three, *supra*.

⁶¹⁰ See Trahant, 1995, 5, and Perdue, 1996, 92.

Boudinot at one point had attempted unsuccessfully to resign, claiming that the overwhelming duties of the job negatively affected his health, looking to the tribe's General Council to find a suitable replacement.⁶¹¹ In this resignation letter, Boudinot extolled the press as "the safe guard of liberty, civil and religious—the medium of intelligence, and when under suitable regulations it is the scourge of vice, and the protector of virtue."⁶¹² That editorial does not argue explicitly that the tribe *ought* to control the newspaper. But given his acquiescence to the tribal authority for naming an editor, he surely accepted at least some control by the tribe. After about five years of service, on August 1, 1832, Boudinot tendered his resignation, saying he could not reconcile his position about removal and perhaps other issues with "the views of the authorities of the nation."⁶¹³ Ross, on August 4, accepted Boudinot's resignation, saying:

The *views* of the *public authorities* should continue and ever be in accordance with the *will of the people*; and the *views of the Editor of the National paper* be the same. The toleration of *diversified views* to the columns of such a paper would not fail to create fermentation and confusion among our citizens, and in the end prove injurious to the welfare of the nation. The love of our country and people demands *unity of sentiment and action for the good of all*. The truth, and the whole truth, has always been, and must still continue to be, told.⁶¹⁴

⁶¹¹ Elias Boudinot, *Cherokee Phoenix*, 3 December 1828, 2. Boudinot a few weeks later noted in an editorial that a replacement could not be found and that the *Phoenix* needed more financial support from subscribers, suggesting that perhaps his real illness was more of a financial nature. "TO THE PUBLIC," *Cherokee Phoenix*, 31 December 1828, 2.

Note that Chief Ross in November 1829 had approached the tribal leaders to find extra funding so Boudinot would stay as editor, and had even guaranteed the funds personally. See John Ross to the National Committee and National Council, 4 November 1829, in *The Papers of Chief John Ross, 1807-1839*, 1, ed. Gary E. Moulton (Norman: University of Oklahoma Press, 1985), 176-177.

⁶¹² *Ibid.*

⁶¹³ Elias Boudinot to John Ross, 1 August 1832, in *Papers*, 247-248. See also publication of the exchange of letters in Boudinot, "TO THE READERS OF THE CHEROKEE PHOENIX," *Cherokee Phoenix*, 11 August 1832, in *Cherokee Editor*, 162-174

⁶¹⁴ See Perdue, ed., *Cherokee Editor*, 165.

Boudinot's response illustrates the value he put in the press as a means of national discussion:

I cannot agree with the Principal Chief in regard to the admission of 'diversified views' in the columns of the paper. I am for making the situation of the Cherokees a *question* of momentous interest, subject to a free and friendly discussion among ourselves, as the only way to ascertain the will of the people as to what ought to be done in the last alternative.⁶¹⁵

In an interpretation of this interaction between Boudinot and Ross, Luebke concludes: "Ross's position—that the tribally funded newspaper must reflect the views of the tribal government—and Boudinot's adherence to a basic premise of a democratic press—the freedom to and necessity of expressing contrary points of view—had come to an inevitable conclusion."⁶¹⁶ The only conclusion apparently given by Luebke is a stand-off existed between Ross and Boudinot. The historiography of Boudinot and other Native American journalists needs theoretical direction to resolve this stand-off: Perhaps rhetorical sovereignty can help scholars sort out those issues, because, as Luebke notes, Native journalists "sooner or later found themselves confronted with the same dilemma."⁶¹⁷

Ross had been more interested in the effect the *Phoenix* would have upon Euro-American perceptions, once saying that lobbying in Washington "and the wide circulation of the Cherokee Phoenix throughout the United States, have had a very salutary & happy effect in counteracting the misrepresentations which are fabricated

⁶¹⁵ Boudinot, *Cherokee Phoenix*, 11 August 1832, in *Cherokee Editor*, 166.

⁶¹⁶ Luebke, "Elias Boudinot and 'Indian Removal,'" in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), 141. For similar discussion, see, e.g., Barbara Luebke "Elias Boudinot, Cherokee Editor." (Ph.D. diss., University of Missouri-Columbia, 1981), 275-280.

⁶¹⁷ *Ibid.*

against us for the purpose of aiding the unjust policy of our oppressors....”⁶¹⁸ As long as Boudinot had followed the party line, Ross supported Boudinot’s efforts, even once saying, “Much credit is due to the Editor [Elias Boudinot] for the ability and integrity manifested by him in conducting the paper; particularly is much credit due in reference to the honorable course of conduct pursued in his narration of facts &c, under the pressure of circumstances peculiarly offensive.”⁶¹⁹

But Elias Boudinot’s decision to support the removal party may have been the turning point in how the tribal officials dealt with him. Peyer argues that “the [American Board of Commissioners for Foreign Missions]’s defection from the Cherokee cause must have been the single most conclusive factor behind his decision to join the minority proremoval faction.”⁶²⁰ That is, the missionaries had given up hopes of the Cherokee staying in Georgia, once Jackson had been re-elected in 1832, Peyer argues.⁶²¹ Thus, Boudinot’s relationship quickly deteriorated with the Ross camp. At one point, Chief Ross even accused Boudinot of publishing a “slandorous pamphlet” against him; but, no evidence has been found that a lawsuit had been brought regarding that pamphlet.⁶²²

But Ross, despite his earlier struggle with Boudinot over control of the newspaper, reacted strongly to the seizure of the Cherokee printing press in 1835: As Conser argued, “Since the press was the principal means of communicating to northern

⁶¹⁸ John Ross to the Cherokees, 14 April 1831, in *Papers*, 217.

⁶¹⁹ John Ross, “Annual Message,” 24 October 1831, in *Papers*, 230.

⁶²⁰ Bernd Peyer, *The Tutor’d Mind: Indian Missionary-Writers in Antebellum America*, Native Americans of the Northeast: Culture, History, and the Contemporary, eds. Colin G. Calloway and Barry O’Connell (Amherst: University of Massachusetts Press, 1997), 203

⁶²¹ *Ibid.*

⁶²² See, e.g., John Ross to George Lowery, 27 January 1838, in *Papers*, 585; to John Howard Payne, 27 January 1838, in *Papers*, 588; and to Francis P. Blair and John C. Rives, prior to 8 February 1838, in *Papers*, 590-593.

supporters the injustices done to them, its loss was a serious obstruction to effective continuation of the Cherokee resistance campaign.”⁶²³ While transferring the press and materials to Richard Fields as editor, the Cherokee Nation lost control of the press when the Georgia Guard seized it.⁶²⁴ Ross said, “Thus the public Press of the Cherokee Nation has been lawlessly taken, is yet retained, and has been recently used by the agents of the United States, in the publication of slanderous communications against the constituted authorities of the nation, &c.”⁶²⁵

One must be careful not to assume that the Cherokee did not and do not care about liberty or even freedom of the press. Ross himself supported the reinstitution of the newspaper, but of course as a tool for his administration.⁶²⁶ The treaty party were “[i]dentifying themselves as ‘friends of free discussion,’ as Konkle said.⁶²⁷ Native Americans have had their own conceptions of freedom that may vary from Euro-American ideas.⁶²⁸ “Liberty was as dear to Boudinot and to the Cherokee as it was to the founders of the United States of America,” Trahant says.⁶²⁹ The problem for “free press”

⁶²³ Walter H. Conser, Jr., “John Ross and the Cherokee Resistance Campaign, 1833-1838,” *The Journal of Southern History* 44, no. 2 (May 1978): 207.

⁶²⁴ John Ross to Lewis Cass, 22 April 1836, in *Papers*, 417-418.

⁶²⁵ *Ibid.*

⁶²⁶ See John Ross, “Annual Message to the General Council,” 11 October 1834, in *Papers*, 309. See also a letter from Benjamin F. Currey of the Cherokee Agency, noting a squabble that Ross had with Boudinot’s brother Stand Watie over property relating to the *Phoenix*, Currey said. “Watie also states that Ross and his partisans ‘compelled’ Boudinot to give up the editorship because Ross ‘would not permit them to conduct it in a fair, candid and impartial manner, by giving both sides....’” Benjamin Currey, 9 September 1835, in *Papers*, 353. Ross later told the U.S. Senate, “The Press was the property of the [Cherokee] nation....” John Ross to the Senate, 8 March 1836, in *Papers*, 404.

⁶²⁷ Konkle, *Writing Indian Nations*, 93, citing Boudinot, “Letters and Other Papers Relating to Cherokee Affairs: Being a Reply to Sundry Publications Authorized by John Ross,” in *Cherokee Editor*, 176.

⁶²⁸ See, e.g., Alvin M. Josephy Jr., Joane Nagel, and Troy Johnson, eds., *Red Power: The American Indians’ Fight for Freedom*, 2d ed. (Alvin M. Josephy Jr., 1971; Lincoln: University of Nebraska Press, 1999).

⁶²⁹ Trahant, 1995, 7.

as understood in today's scholarship is that freedom has been hindered for the Native Americans, and certain Native Americans believe they have the sovereignty to decide issues about freedom for themselves.

But the story about freedom of the press and Boudinot does not end there, for Boudinot paid the ultimate price for his editorial decision – death! Boudinot later was assassinated in present-day Oklahoma, reportedly because of his signing the Treaty of New Echota.⁶³⁰ Removal had resulted in about 4,000 deaths, so surely those who had survived had carried a grudge against the removal party, which included Boudinot.⁶³¹ The Cherokee had long abolished “the principle of retaliation” as a sentence for murder, as Boudinot reported February 1829.⁶³² But, as Peyer notes, “On July 7, 1818, the National Council passed a law determining that any Cherokee who agreed to sell land belonging to the nation without the consent of a full council would be subject to the death penalty.”⁶³³ So, Boudinot likely died because of his decision to support the Treaty of New Echota. After his death, the tribal divisions continued. Ross even feared for his own life because of the assassination, saying, “Stand Watie [Boudinot's brother] had determined on raising a company of men for the purpose of coming forthwith to take my

⁶³⁰ In reference to this article, Perdue cites conflicting scholarship regarding this. “Gabriel suggests that Boudinot's own death was an act of vengeance, while accounts of the Council that condemned him indicate that his kinsmen made the decision and thus relieved the executioners of any fear of retaliation under the old law of blood.” *Cherokee Editor*, 149, n. 38. Perdue cites Gabriel, 177, and Thurman Wilkins, *Cherokee Tragedy: The Story of the Ridge Family and the Decimation of a People* (New York: 1970), 320-21. The assassination appears to be more of an act of ancient Cherokee law than it does of anything else.

⁶³¹ “A Brief History of the Trail of Tears,” available at <http://www.cherokee.com/Culture/HistoryPage.asp>. The most recent website for the Cherokee Nation is <http://www.cherokee.org>.

⁶³² Elias Boudinot, “Indian Clans,” *Cherokee Phoenix*, 18 February 1829, in *Cherokee Editor*, 107-108.

⁶³³ Peyer, 176, citing *Laws of the Cherokee Nation*, 4-53, 79, 199, 136-141.

life!’’⁶³⁴ But Boudinot’s death had produced sympathy, too. Samuel Worcester told with sadness how Boudinot had been knifed in the back and then attacked with a hatchet.⁶³⁵ Boudinot had been silenced – or so they thought.

Conclusion

Elias Boudinot spoke for the Cherokee – or so he thought. As editor of the official tribal newspaper, Boudinot claimed to have represented the “majority” of Cherokee.⁶³⁶ When he signed the Treaty of New Echota with other Cherokee leaders, the chief and his supporters claimed that Boudinot did not represent the feelings of the people.⁶³⁷ As discussed above, the chief believed that Boudinot and the *Phoenix* ought to have reflected official tribal policy. Whether or not one agrees with removal, the tension between the tribe and the tribal press becomes evident. The question is, Who has the right to represent the people rhetorically or even politically? The chief? The tribal council? The editor? The people? And how do they express themselves without a council or a newspaper?

Boudinot vigorously fought for the right to represent the people, to seek political survival. He came to resent the U.S. government, one that had broken promises, oppressed the Cherokee, and ignored the holdings of its highest court in *Worcester v. Georgia*. But when Boudinot found himself at odds with his own people, nothing good would happen. He became *persona non grata* in a practical sense. Because of supporting removal, Boudinot suffered the most extreme control of information – death.

⁶³⁴ John Ross to Matthew Arbuckle, 22 June 1839, in *Papers*, 717.

⁶³⁵ Samuel A. Worcester to General D.B. Brinsmade, 26 June 1839, in Gaul, *To Marry an Indian*, 202-203. For a compilation of major writings of Worcester, see *New Echota Letters*.

⁶³⁶ See discussion and notes, *supra*.

⁶³⁷ See discussion and notes, *supra*.

In conclusion, it appears from the primary documents, as well as from trusted secondary sources, that the suppression of the Cherokee press came from various sources for various reasons, many of which were out of the control of the editor of the *Phoenix*. This futile situation surely contributed to the resignation of Boudinot and exacerbated the turmoil between the Euro-Americans and Native Americans during what historians call “The Removal Era.” Rather than attempting to place blame for the lack of free press for the Cherokee exclusively upon a race or a creed, it would be more constructive to understand the suppression as a part of a complicated historical situation. The Native Americans and the invading Euro-Americans were at odds during the early nineteenth century, and the press environment at the time did not allow for more vigorous debate, especially by the Natives, who appeared to have wanted to enter the political arena to press for their democratic rights. They could not press their rights because they did not have the right to a truly free press. One wonders the difference that would have been made in history if the opposite had been true, if the Euro-Americans and Native Americans alike had truly, fully accepted a free, vigorous *Cherokee Phoenix*. Perhaps the vision of a free Native American press for all tribes would be closer to fulfillment today.

CHAPTER 6

SAMUEL CORNISH

Introduction

“THUNDER TONES” – Samuel Cornish’s mission for civil rights⁶³⁸

The Reverend Samuel Cornish spent his journalistic career, which mirrored much of President Jackson’s administration from the late 1820s until the late 1830s, arguing against the misrepresentation of himself and fellow African-Americans in the United States and for freedom of expression, among other important rights.⁶³⁹ This erudite editor exuded enthusiasm and love for his work and for the African-American community. But perhaps more so he hated whatever he saw as evil, including misrepresentation and controls of information; for instance, he resented a libel suit he had lost, decried the murder of a fellow minister and journalist, and clashed with fellow African-American journalists when he thought that they did not correctly represent or properly lead the causes he supported. Though he, like all humans, had flaws, Cornish

⁶³⁸ Samuel Cornish, “Prejudice in the Church,” *The Colored American*, 9 December 1837, 2. The phrase comes from Cornish’s assessment of a letter from J.W. Duffin.

Also, while this chapter focuses upon Cornish, some of the pertinent material comes from people with whom Cornish had worked closely, including John Russwurm at *Freedom’s Journal* and Philip Bell at *Weekly Advocate* and *The Colored American*. Future research could build upon established historiography of the African-American press to explore further the relationships and similarities among these men, especially relating to issues of representation, free expression, and rhetorical sovereignty.

⁶³⁹ This chapter represents a reanalysis and rewrite of an earlier conference paper by Kevin R. Kemper, “THUNDER TONES’: The Battle Cry for Freedom of the Press During the Early Nineteenth Century Through the Eyes of the Reverend Samuel Cornish, an Abolitionist and One of the First Black Journalists in the United States” (paper presented at the annual meeting of the American Journalism Historians Association, Cleveland, Ohio, October 2004). Much of the prose will be similar. While the earlier paper primarily involved online searching at Accessible Archives at <http://www.accessible.com> for instances of free expression in an online archive of *Freedom’s Journal* and *The Colored American*, this chapter resulted from actual reading of copies of both papers, as well as of *The Rights of All*, from microform and online PDF files from the Wisconsin Historical Society; available at <http://www.wisconsinhistory.org/libraryarchives/aanp/freedom/index.asp>.

Then, the results were synthesized and rewritten, focusing upon the dual themes of free expression and representation.

worked to eliminate those flaws. His journalism focused upon what he viewed as moral improvement. A careful reading of the newspapers he edited – *Freedom's Journal*, *The Rights of All*, and *The Colored American* – as well as his own writings in those newspapers reveals a man who vigorously defended the character of himself and other African-Americans in the United States, as well as a man who valued freedom of expression as a guarantee for rhetorical representation.

Cornish's entire journalism career – from his first editorial until his last – advocated the abolition of slavery and the promotion of the African-American person in the United States. Representation played an enormous role in the formation of Cornish's journalism. Also, there were at least three major issues concerning free press that Cornish discussed while at *Freedom's Journal*, *The Rights of All*, and *The Colored American*. First, he bemoaned the slander and subjugation of African-Americans by Euro-American newspapers and the lack of access by African-Americans to those newspapers, as well as oppression of the abolitionist movement in general; secondly, he decried the murder of fellow Presbyterian minister, abolitionist and journalist, the Reverend Elijah Lovejoy; thirdly, Cornish and *The Colored American* lost an expensive private libel suit. These larger issues stand out among numerous instances of arguments for true representation and freedom of the press. And the discussions that follow indicate how certain themes waned and others developed during Cornish's brief but broad career. It is as if the longer Cornish dealt with these issues, the louder and more articulate and more frequent he became in discussing them.

Samuel Cornish was born in 1795 to free parents, as Pride and Wilson discuss, but not much more has been documented about his predecessors or childhood.⁶⁴⁰ Apparently,

⁶⁴⁰ Armistead S. Pride and Clint C. Wilson II, *A History of the Black Press* (Washington, D.C.: Howard University Press, 1997), 11. This chapter also relies upon basic biographical information from other

Cornish came of age in Philadelphia, where he taught school children in the beginning of his career after having graduated from the Free African School.⁶⁴¹ Cornish had two brothers – also ministers – and an educated mother, Pride and Wilson said.⁶⁴²

Cornish's birth was just eight brief years after Delaware – then a slave-holding state – became the first of the thirteen original colonies to ratify the U.S. Constitution and just four years after the ratification of the First Amendment. Despite the recalcitrant attitude of the state about officially keeping slavery, some 76 percent of African-Americans in Delaware were free by 1810, when Cornish would have been coming of age.⁶⁴³

Cornish's later career revolved around being a Presbyterian minister, journalist and abolitionist, all during an age of profound scientific and philosophical progress. Society hindered this progress for disenfranchised groups such as Native Americans, women, and African-Americans, although free African-Americans in small numbers did have the vote in certain circumstances in certain states.⁶⁴⁴ During that time, Cornish became one of the most erudite, articulate voices for African-American progress, the

scholars like Frankie Hutton, "Democratic Idealism in the Black Press," in Frankie Hutton and Barbara Straus Reed, eds., *Outsiders in 19th-Century Press History: Multicultural Perspectives* (Bowling Green, OH: Bowling Green State University Popular Press, 1995), e.g., 6, citing Howard Nathaniel Christian, "Samuel Cornish: Pioneer Negro-Journalist," (M.A. thesis, Howard University, 1936), 11. See also Hutton, *The Early Black Press in America, 1827 to 1860* (Westport, Conn.: Greenwood Press, 1993), e.g., 4-9. Online resources include http://www.africawithin.com/bios/samuel_cornish.htm. Also, an excerpt of Pride and Wilson may be found at <http://www.huarchivesnet.howard.edu/0002huarnet/wilson1.htm>.

See also notes and discussions in chapter three, *supra*.

⁶⁴¹ Bernell Tripp, *Origins of the Black Press: New York, 1827-1847*, (Northport, AL: Vision Press, 1992), 13.

⁶⁴² Pride and Wilson, *A History of the Black Press*, 11-12.

⁶⁴³ Peter T. Dalleo, "The Growth of Delaware's Antebellum Free African American Community," at the University of Delaware's website; available at <http://www.udel.edu/BlackHistory/antebellum.html>.

⁶⁴⁴ For a discussion of African-American suffrage, see Samuel Cornish, "Right of Suffrage," *The Colored American*, 15 July 1837, 3.

abolition of slavery, and the promotion of religion.⁶⁴⁵ During 1827, Cornish and lawyer John Russwurm co-edited and published *Freedom's Journal*, the first newspaper in the United States to be owned and operated by African-Americans. While editing the paper, Cornish held the pastorate of the First Colored or African Presbyterian Church in New York City.⁶⁴⁶ The newspaper only circulated among a small number of educated, typically religious African-Americans in New York City, where it was published.⁶⁴⁷ Yet, the proprietors dreamed of using the paper to create "a black consciousness" across the nation, as Nordin said.⁶⁴⁸

After only six months as editor, Cornish left for New Jersey, while keeping a hand in the paper as its general agent until its demise.⁶⁴⁹ Division among African-Americans over colonization had caused a division between Cornish and his partner Russwurm at

⁶⁴⁵ Hutton argues that progress typifies the messages of journalists such as Cornish: "Black newspapers and magazines of the antebellum years made their mark because they were uplifting, positive, and forward thinking both in the messages conveyed and in spirit." Hutton, *The Early Black Press*, 157. Dann says:

Two currents in black intellectual history evident in the black press converge repeatedly: a response to white racism and an assertion to self-determination.... It is important to remember that these choices were not mutually exclusive and existed conjointly. The final aim of both was manhood, dignity, and self-respect—the goal with which black nationalism has become synonymous. Martin E. Dann, ed., *The Black Press, 1827-1890: The Quest for National Identity*, (New York: G.P. Putnam's Sons, 1971), 12.

⁶⁴⁶ Dann, 24.

⁶⁴⁷ Pride and Wilson say some 15,000 African-Americans lived in New York City at that time. *A History of the Black Press*, 5. Frankie Hutton says, "(D)uring the early years, (the African-American press) interfaced with the top 10 percent or so of over 300,000 free black people..." *The Early Black Press in America, 1827 to 1860* (Westport, Conn.: Greenwood Press, 1993), xii; see also 18. And of all pre-Civil War African-American newspapers, "circulation ranged from 1,500 to 3,000." *Ibid.*, xiv. Barrow claims that no circulation figure is available for *Freedom's Journal*, but "its successor, Rights of All, had 800 subscribers." 119, citing Bella Gross, "Freedom's Journal and Rights for All," *Journal of Negro History*, 17, no. 3 (July 1932): 250.

⁶⁴⁸ Kenneth D. Nordin, "In Search of Black Unity: An Interpretation of the Content and Function of 'Freedom's Journal,'" *Journalism History* 4, no. 4 (Winter 1977-78): 123.

⁶⁴⁹ Dann, 24.

Freedom's Journal.⁶⁵⁰ Cornish advocated emancipation and progress for African-Americans within the United States, while Russwurm later embraced colonization in Africa as a reasonable option for freed slaves.⁶⁵¹ In fact, Russwurm later immigrated to Liberia, where he spent his days until 1851 as a journalist, educator, and government official.⁶⁵²

Cornish re-entered editing in 1829 when he published *Rights of All* for a brief time, putting out just six issues. Still, he did not develop a more consistent involvement in journalism until 1837-1839, when he edited the *Colored American*, which was owned by Philip A. Bell.⁶⁵³ All three papers at which Cornish worked were centered in New York City, the largest city in the burgeoning United States and a home of limited yet possible opportunity for free African-Americans.⁶⁵⁴

Severe personal problems haunted Cornish's career, "leaving him "emotionally wrought," as Hutton said.⁶⁵⁵ For instance, one son William followed Russwurm to Liberia, and in "[t]he same year, Cornish's daughter Jane became mentally deranged; his wife [Jane Livingston] had died two years earlier."⁶⁵⁶ During his short stints as editor of

⁶⁵⁰ See Charles A. Simmons, *The African-American Press, with Special References to Four Newspapers, 1827-1965* (Jefferson, N.C.: McFarland & Co., 1998): 10. See also Penn, 26, who gives more credit to Russwurm for the work at *Freedom's Journal* and *Rights of All*, and Dann, 39-41, citing *Rights of All*, May 29, 1829. For another discussion, see Pride and Wilson, *A History of the Black Press*, 16-17.

⁶⁵¹ Simmons, 10.

⁶⁵² Dann, 29.

⁶⁵³ *Ibid.*, 24. After Cornish left *The Colored American*, Dr. James McCune Smith joined Bell as co-editor. See Todd Vogel, "The New Face of Black Labor," in Todd Vogel, ed., *The Black Press: New Literary and Historical Essays* (New Brunswick, N.J.: Rutgers University Press, 2001): 42.

⁶⁵⁴ *Ibid.* Later in his career, *The Colored American* also claimed to be published simultaneously in Philadelphia. See discussion in Pride and Wilson, *A History of the Black Press*, 37.

⁶⁵⁵ Hutton, *The Early Black Press*, 21.

⁶⁵⁶ *Ibid.*, 8, citing Christian, 56-58, concerning Cornish's daughter. During the gathering of primary materials, Kemper found an instance where Cornish's other son drowned in a river while fishing. Regrettably, that citation could not be found again before the completion of this dissertation. That would

papers, Cornish had financial problems, which may have been why he resigned from *The Colored American*.⁶⁵⁷ “None of the (early African-American) editors was able to earn a living solely from publishing, but they managed to lumber along, confident that their papers somehow made a difference in the uplift of black people,” as Pride and Wilson said.⁶⁵⁸ Hutton argues that Cornish had rejected the profit motive of others papers, but this appears unlikely given his ongoing concerns about the lack of money; he may not have wanted to have gotten rich, but at least he had to pay the bills.⁶⁵⁹ Here, Hutton draws an important conclusion:

What Samuel Cornish and other black editors write about the duty of editors to put their own selfish interests aside to make way for responsibility is exceedingly important in its implications for journalistic theory and practice in the twentieth century. If we are guided by the major journalism histories, few other editors were actually espousing ethics and responsibility in journalistic practices during this period, although there apparently were some practitioners of these precepts.⁶⁶⁰

Little is known about Cornish’s later years, and few details have been found of his death in 1858.⁶⁶¹ He attempted to sell land in New York to create a community for African-Americans, but it appears that the venture never culminated.⁶⁶² At one time

make an interesting note in a future article, as it seemed to have coincided with Cornish’s departure from one of his editorships.

⁶⁵⁷ Pride and Wilson, 36.

⁶⁵⁸ *Ibid.*, 22.

⁶⁵⁹ Hutton, *The Early Black Press*, 43.

⁶⁶⁰ *Ibid.*, 45.

⁶⁶¹ For a mention of his death, see http://www.africawithin.com/bios/samuel_cornish.htm. Another website says the death occurred in 1859. <http://www.answers.com/topic/samuel-cornish>. Another, <http://www.spartacus.schoolnet.co.uk/USAScornish.htm>, gives his exact date of death at November 6, 1858. For these discrepancies and other reasons, more research needs to be done in primary sources as to Cornish’s later life and death.

Hutton says that Cornish “after a myriad of personal problems following the death of his wife in 1844, died of typhoid fever at his home in Brooklyn in 1858.” *The Early Black Press*, 163.

⁶⁶² See Dann, 186-187, citing a long-standing advertisement by Samuel Cornish, *Freedom’s Journal*,

Cornish – ever the advocate for education – served as an agent for African Free Schools in the United States.⁶⁶³ He continued to help with African-American causes, serving with the American Anti-Slavery Society until he criticized what he saw as its “paternalism.”⁶⁶⁴ He also at times fought with Euro-American abolitionist editor William Lloyd Garrison of the *Liberator* in what has been characterized as Garrison’s jealousy of the African-American press and his dislike for Cornish.⁶⁶⁵ Despite his personal and professional difficulties, Cornish continues to be honored as a founder of the African-American press and an advocate for African-American progress.⁶⁶⁶

1. Rhetorical sovereignty and representation

Did Samuel Cornish use journalism and mass communications in ways that resemble rhetorical sovereignty?

In what ways did he believe that he and his ethnic groups had been misrepresented?

Cornish’s entire journalism career – from his first editorial until his last – advocated the abolition of slavery and the promotion of the African-American person in the United States. Representation played an enormous role in the formation of Cornish’s journalism. In the first column in *Freedom’s Journal*, the first newspaper owned and published by African-Americans in the United States, Cornish and Russwurm explained the passionate motivations for publishing the newspaper:

We wish to plead our own cause. Too long have others spoken for us.
Too long has the publick been deceived by **misrepresentations**, in things

March 23, 1827.

⁶⁶³ See Dann, 293.

⁶⁶⁴ *Ibid.*, 322-324, citing *The Colored American*, 4 April 1840; and Tripp, *Origins*, 28.

⁶⁶⁵ Armistead S. Pride, “Rights of All”: Second Step in Development of Black Journalism,” *Journalism History* 4, no. 4 (Winter 1977-78): 131, n. 16.

⁶⁶⁶ For instance, see http://www.africawithin.com/bios/samuel_cornish.htm.

which concern us dearly, though in the estimation of some mere trifles; for though there are many in society who exercise towards us benevolent feelings; still (with sorrow we confess it) there are others who make it their business to enlarge upon the least trifle, **which tends to the discredit of any person of color**; and pronounce anathemas and denounce our whole body for the misconduct of this guilty one [emphasis added].⁶⁶⁷

In that same column, Cornish and Russwurm then outlined a program for self-improvement – education and industry – by African-Americans.⁶⁶⁸ Then, they used the phrase “civil rights,” which has resonated to this day:

The **civil rights** of a people being the greatest value, it shall ever be our duty to vindicate our brethren, when oppressed, and to lay the case before the publick [sic]. We shall also urge upon our brethren, (who are qualified by the laws of the different states) the expediency of using their elective franchise; and of making an independent of the same [emphasis added].⁶⁶⁹

A letter to the editor from an anonymous African-American writer illustrates the role played by *Freedom's Journal* in responding to what the writer called “libels” of the African-American people.⁶⁷⁰ The writer had been on a steamboat, when some confused an unnamed publication denigrating African-Americans with *Freedom's Journal*:

The subject of the late African celebration in this city occupied the attention of not a few, and many an inquisitive glance was cast at me; which, certainly, you know, could not arise from any thing remarkable about me; but from the perusal of a certain sheet, sold by a rascally set of villains, to defame and lower us as much as possible in public estimation.⁶⁷¹

⁶⁶⁷ Samuel Cornish and John Russwurm, “TO OUR PATRONS,” *Freedom's Journal*, 26 March 1827, 1. See also citation in introductory chapter of this dissertation, *supra*. For discussion about the first issue, see Pride and Wilson, *A History of the Black Press*, 13-14.

Simmons argues that the paper's “initial role was to confront all charges made by the *New York Enquirer*,” after editor Mordecai Noah had “insulted” free African-Americans. Simmons, *The African-American Press*, 9. Though the first issue of *Freedom's Journal* does appear to address that issue, it seems more plausible that the paper had broader goals and issues. See, e.g., Hutton, *The Early Black Press*, *passim*.

⁶⁶⁸ *Ibid.*

⁶⁶⁹ *Ibid.* Dann notes that themes in the early African-American press included “the struggle for civil rights....” *The Black Press*, 13-14.

⁶⁷⁰ “Letter to Editor,” *Freedom's Journal*, 3 August 1827, 3.

⁶⁷¹ *Ibid.*

Apparently, the letter writer wanted to affirm publicly his appreciation for *Freedom's Journal* and what it meant to the African-American cause.

Much meaning may be found in the name of the newspaper itself – *Freedom's Journal* – as well as its original motto – “RIGHTEOUSNESS EXALTETH A NATION,” if one considers the contextualizing of morals with a discussion about freedom, not unsurprising for an ordained minister.⁶⁷² In fact, Cornish believed that the press was “the most efficient means” for carrying out his evangelical efforts.⁶⁷³ Thus, the prospectus for the newspaper, first published in this first issue, furthered this theme of moral improvement, but also illustrated the practical and political problems at hand: “Daily slandered, we think that there ought to be some channel of communication between us and the public: through which a single voice may be heard, in defence of *five hundred thousand free people of colour*.”⁶⁷⁴

Cornish and Russwurm in fact spent time vigorously defending the slave and promoting abolition, though any discussions in the late 1820s about slavery met with resistance, especially in the South.⁶⁷⁵ In the fourth issue of *Freedom's Journal*, the lede

⁶⁷² This citation of Proverbs 14:34 does not contain the rest of the verse, which says, “but sin is a reproach to any people.” See Proverbs 14:34 KJV; available at <http://www.crosswalk.com>. Though not used, the program of moral improvement in *Freedom's Journal* – indeed, in all of the newspapers edited by Cornish – reflected both what he viewed as righteousness and as sin. Pride and Wilson note that “[w]ith the second volume Russwurm changed the motto to ‘Devoted to the Improvement of the Colored Population.’”

⁶⁷³ See Samuel Cornish, “PHILADELPHIA COMMITTEE,” *The Colored American*, 9 December 1837, 3.

⁶⁷⁴ Samuel Cornish and John Russwurm, “PROPOSALS FOR PUBLISHING The FREEDOM'S JOURNAL: PROSPECTUS,” *Freedom's Journal*, 16 March 1827, 4.

⁶⁷⁵ For a discussion about some of these attempted controls, see Kemper, “WE SHALL NOT SUBMIT! How the 24th Congress and the Jackson Administration Attempted to Stop the Circulation of Abolitionist Materials Through the United States Post Office During the Late 1830s” (third place paper presented in Graduate Student History Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004).

of an unattributed article on the front page mentioned the danger: “Every attempt at a thorough discussion of this subject has always been met with a cry of *danger*. ‘You will excite the slaves to insurrection,’ say they.”⁶⁷⁶ This account resembles rhetoric from politicians of the South who feared servile insurrection, as well as the demise of their slave-based economy.⁶⁷⁷ For instance, Whitemarsh Seabrook, a South Carolinian state legislator and later governor, voiced concern as early as 1825 about the rising tide of abolitionist sentiment, saying that Northeastern papers were enemies of slavery.⁶⁷⁸ In 1827, the same year as the founding of *Freedom’s Journal*, South Carolinian Robert Turnbull wanted to stop the discussion of slavery because he feared that such a debate would force Congress “officially to express its opinion against slavery as an *evil*, and the profession of a desire to eradicate it from the land.”⁶⁷⁹

Cornish, despite being the lead editor and having a measure of respect for his work, announced his resignation in the September 14, 1827 issue, claiming that he had “resolved to remove to the country” and pursue Christian ministry.⁶⁸⁰ He had agreed, however, to continue as an agent of the newspaper.⁶⁸¹ This seemed consistent with an

⁶⁷⁶ “PEOPLE OF COLOUR,” *Freedom’s Journal*, 6 April 1827.

⁶⁷⁷ See discussion in Kemper, “WE SHALL NOT SUBMIT!” Indeed, Nat Turner’s revolt in 1831 Virginia proved that subjugation of the slaves could lead to uprising and death. But the question remains whether that was a sufficient reason for suppression.

⁶⁷⁸ Whitemarsh Seabrook, “A Concise View of the Critical Situation and Future Prospects of the Slave-Holding States in Relation to Their Coloured Population” (Charleston, S.C.: 1825), in William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836*, (New York City: Harper & Row, 1996), 16. Some of this account may be found in Kemper, “WE SHALL NOT SUBMIT!” 7-8

⁶⁷⁹ Robert Turnbull, *The Crisis*, in William W. Freehling, *Prelude to Civil War: The Nullification Controversy in South Carolina, 1816-1836*, (New York City: Harper & Row, 1996), 41.

⁶⁸⁰ Samuel Cornish, “TO THE PATRONS AND FRIENDS OF ‘FREEDOM’S JOURNAL,’” *Freedom’s Journal*, 14 September 1827, 3.

⁶⁸¹ *Ibid.* See editor’s note under the article, as well as discussion by Pride and Wilson, *A History of the Black Press*, 16-17.

advertisement which had run continuously in *Freedom's Journal*, where Cornish promoted a plan for the sale of land to African-Americans who wished to farm, an activity that Cornish believed was essential for African-American improvement.⁶⁸² Though Cornish endorsed Russwurm as the successor to the lead editorship and sole ownership of the paper, Cornish later admitted misgivings to Russwurm's promotion of the colonization of Africa, a consistent topic in the early pages of *Freedom's Journal*.⁶⁸³ It does not seem accidental that the first edition under Russwurm's sole editorship carried another front-page article favorable for the American Colonization Society.⁶⁸⁴

Samuel Cornish's resignation as an editor of *Freedom's Journal* did not mean he would forever cease to be a journalist, as he began his own newspaper, *The Rights of All*, a weekly that became a monthly before it died prematurely only five months after it began in May 1829 in New York City.⁶⁸⁵ This newspaper continued the abolitionist and moral improvement themes of his earlier journalism; more importantly to this dissertation, Cornish also continued his battles against misrepresentation of African-Americans in Euro-American newspapers. In his first editorial in the first issue on May 29, 1829, Cornish said of the paper:

⁶⁸² See example of advertisement in the same issue as Cornish's resignation column. *Freedom's Journal*, 14 September 1827, 4.

⁶⁸³ For examples, see Samuel Cornish, "Address to the Reader," *Rights of All*, 29 May 1829, cited by Pride and Wilson, *A History of the Black Press*, 23.

⁶⁸⁴ See "AMERICAN COLONIZATION SOCIETY, NO. II," *Freedom's Journal*, 21 September 1827, 1. Russwurm's last edition of *Freedom's Journal* was on March 28, 1829, and then he moved to Liberia in November 1829. See Pride and Wilson, 17, 19.

⁶⁸⁵ Only five of the six editions of *The Rights of All* were available on the microform secured for research.

It will at all times, give a **correct representation** of that people, in opposition to the persecuting, slanderous accounts, too often presented to the publick eye, it will be the constant aim of the Editor, as far as in his power, to remove the many abuses which exist among his brethren, to promote habits of industry and economy, and to inculcate the importance of an improved education [emphasis added].⁶⁸⁶

This interesting contrast – a promise to correct misrepresentations and as well a promise to correct misbehavior on the part of African-Americans – perhaps indicates that Cornish had doubts about the behavior of certain other African-Americans, and thus about the prospects of a prosperous African-American community in the United States. Or perhaps he had a condescending attitude towards African-Americans who had not risen to his perceived level of education and civilization.⁶⁸⁷ So, did Cornish think those “persecuting, slanderous accounts” have some truth in them? Cornish hated misrepresentations of the African-American community *and* “evil” behavior by certain members of the African-American community. Cornish said, “WE have suffered too much from the cord of caste from another quarter, to have cords and castes among ourselves.”⁶⁸⁸ So perhaps Cornish

⁶⁸⁶ Samuel Cornish, “TO OUR PATRONS, AND THE PUBLICK GENERALLY,” *The Rights of All*, 29 May 1829, 2.

⁶⁸⁷ Scholars note this phenomenon among educated Native Americans of that time. See, e.g., Bernd Peyer, *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America*, Native Americans of the Northeast: Culture, History, and the Contemporary, eds. Colin G. Calloway and Barry O'Connell (Amherst: University of Massachusetts Press, 1997) and Kevin R. Kemper, “Civilization, Christianity, and Cherokeeity: The Three Layers of Elitism in the Writings of Cherokee Editor Elias Boudinot” (paper presented to the Scholar-to-Scholar Poster Session, Cultural and Critical Studies Division of Association for Education in Journalism and Mass Communication, Kansas City, Missouri, 2003). Certain Native Americans had an ideology of elitism that separated them in their own minds from those who were not as educated or refined as they thought they ought to have been. One of the problems with that theoretical explanation, though, is that it fails to account for legitimate developments in the lives of individual Native Americans, making it sound like that being educated and religious somehow undermines being Native American. Kemper, being dissatisfied with some of his previous conclusions, plans to do additional research to explore these issues of assimilation and progress.

For African-Americans, perhaps the explanation lies in what W.E.B. DuBois called “double-consciousness.” See W.E.B. DuBois, *The Souls of Black Folk in Writings* (Chicago: 1903; reprint New York: The Library of America, 1986), 364. This also is cited by Earnest Perry, “Voice of Consciousness: The Negro Newspaper Publishers Association During World War II” (Ph.D. diss., University of Missouri-Columbia, 1998), 32. See also discussion in chapter two, *supra*.

⁶⁸⁸ Samuel Cornish, “Wicked Conspiracy,” *The Colored American*, 30 December 1837, 2.

moralized not just from a sense of religious superiority but also from a concern that Euro-Americans would use certain behaviors by certain African-Americans as excuses for more mistreatments.

One of the first instances of alleged misrepresentation may be found in the second edition of the paper, published on June 12, 1829.⁶⁸⁹ Cornish claimed *The New York Observer* had accused him of starting *The Rights of All* merely out of opposition to John Russwurm's embracing of colonization doctrines in *Freedom's Journal*.⁶⁹⁰ Cornish took offense to any question of his "veracity" and purpose: "The improvement of our society is our object, and were there not a coloured man in American, save the Editor of this paper; and as much corruption and sin as there now is, we should feel it our duty to issue this *publication*."⁶⁹¹ Perhaps the editors of *Observer*, also Presbyterian like Cornish, had doubts as to the value of *The Rights of All* in general, as well as to the value of Cornish and other African-American leaders. Or perhaps the topic of colonization excited Cornish. Or perhaps this interchange between Cornish and the *Observer* continued a disagreement that stretched back to at least the end of Cornish's editorship at *Freedom's Journal*. In the issue following Cornish's resignation, Russwurm noted a controversy with the *Observer* over *Freedom's Journal* and whether it had supported colonization of Africa by freed African-American persons from the United States.⁶⁹² Regardless of its impetus, the alleged misrepresentation of African-Americans apparently merited major attention from Cornish.

⁶⁸⁹ Samuel Cornish, "AN ERROR CORRECTED," *The Rights of All*, 12 June 1829, 10.

⁶⁹⁰ *Ibid.*

⁶⁹¹ *Ibid.*

⁶⁹² John Russwurm, *Freedom's Journal*, 21 September 1827, 2.

Cornish had received criticism for other issues. In his first column for *The Rights of All*, Cornish intimated that there had been criticism for his leaving earlier editorial posts.⁶⁹³ He gives no clear explanation, but rather asks “that neither his friends nor brethren, will prejudge the future by the past, but all will give this paper a fair trial, and let it stand or fall by its merits.”⁶⁹⁴ Cornish had split with John Russwurm over the issue of colonization by African-Americans of Africa itself, a split that he duly noted in this first issue of *The Rights of All*.⁶⁹⁵ And the financial travails of these early papers affected Cornish’s abilities to pursue journalism.⁶⁹⁶ Cornish apparently owned *The Rights of All* with the help of stockholders: To earn money for the paper, he sold subscriptions and advertising and provided job printing.⁶⁹⁷ Cornish had said to his readers, “The paper was not undertaken by him for his individual benefit, but for our general good, and to that he is willing to sacrifice his time and labor. But to expect him to suffer pecuniary loss is too much.”⁶⁹⁸

To sell subscriptions, Cornish appeared to have had a much broader range of authorized agents than in earlier newspapers, including some in southern slave states such as Louisiana, North Carolina, and Virginia, as well as some in other nations such as Canada, England, and Haiti. With the short lifespan of the newspaper, one wonders the effectiveness of these agents in securing necessary subscriptions. Yet, given the paucity of abolitionists in Southern states, as well as the general literacy levels of slaves, the

⁶⁹³ Cornish, “TO OUR PATRONS,” 2.

⁶⁹⁴ *Ibid.*

⁶⁹⁵ *Ibid.*

⁶⁹⁶ See discussions, *supra* and *infra*.

⁶⁹⁷ See *ibid.* and Pride and Wilson, *A History of the Black Press*, 22-25.

⁶⁹⁸ Cornish, *Rights of All*, 7-14 August 1829; also quoted in Pride and Wilson, 24.

newspaper likely did not receive a warm or immediate welcome in the South. But, no evidence has been found that *The Rights of All* met the same fate as other abolitionist publications, which were censored by the United States Post Office.⁶⁹⁹

After resigning from *Freedom's Journal* to pursue the pastorate in a more pastoral, rural setting, Cornish did not take long before returning to journalism. But after the failure of *The Rights of All*, it took almost a decade before Cornish would again take a leadership position at a newspaper. *The Weekly Advocate*, owned by P.A. Bell, announced on February 23, 1837, that Cornish would become its editor.⁷⁰⁰ The next edition was called *The Colored American*.⁷⁰¹ In that first edition that he had edited for Bell, Cornish said:

We are written about, preached to, and prayed for; as *Negroes*, *Africans*, and *blacks*, all of which have been stereotyped, as names of reproach, and on that account, if no other, are unacceptable. Let us and our friends unite, in baptizing the term "*Colored Americans*," and henceforth let us be written of, and prayed for as such. It is the true term, and one which is above reproach.⁷⁰²

In sum, Samuel Cornish and his journalism directly addressed misrepresentation of African-Americans in U.S. society. He had the courage and the ability to fight the battles against these stereotypes; in doing so, he provided an important service to African-Americans, other minority groups, and U.S. society as a whole. This illustrates the need for minority groups to have their own press, to have a voice in the press of others, and to have the freedom to say what they want.

⁶⁹⁹ See Kemper, "WE SHALL NOT SUBMIT!"

⁷⁰⁰ *The Weekly Advocate*, 23 February 1837, 3.

⁷⁰¹ *The Colored American*, 4 March 1837.

⁷⁰² Samuel Cornish, "TITLE OF THIS JOURNAL," *The Colored American*, 4 March 1837, 2. Bell had said, "We are Americans—colored Americans, brethren,—and let it be our aim to make the title "Colored American," as honorable, and as much respect before the world, as white Americans," or any other." *The Weekly Advocate*, 23 February 1837.

2. Freedom of expression and controls of information

To what extent did he believe that he as representative of his ethnic group had “the inherent right and ability” to communicate for those ethnic groups?

How was control exerted over representations of his ethnic groups?⁷⁰³

As mentioned above, there were major issues concerning free press that Cornish discussed while at *Freedom's Journal*, *The Rights of All*, and *The Colored American*. For example, he complained about the slander and subjugation of African-Americans by Euro-American newspapers and the lack of access by African-Americans to those newspapers, as well as oppression of the abolitionist movement in general. This has been discussed in the preceding section, but will be further developed in this section. Secondly, he decried the murder of fellow Presbyterian minister, abolitionist and journalist, the Reverend Elijah Lovejoy. Thirdly, he and *The Colored American* lost an expensive private libel suit. This will be discussed in more detail in answer to research question four. Thirdly, the historical data argues that Cornish had been a passionate believer in the ideas of freedom of expression, both as a matter of principle as well as out of practical concerns. Thus, he believed he had “the inherent right and ability” to speak for African-Americans and as well as for himself.

In *Freedom's Journal*, Cornish and Russwurm early in their career expressed an interest in freedom of the press, not only in the United States but also in other countries such as Haiti and England.⁷⁰⁴ *Freedom's Journal* once claimed “[t]ruth will have its weight” after reporting the dismissal of a libel suit against a Euro-American newspaper,

⁷⁰³ Like the earlier chapters, this chapter will address those two questions at the same time.

⁷⁰⁴ *Freedom's Journal*, 2 November 1827. Cornish was general agent and not editor for this issue. For the cite about England, see *Freedom's Journal*, 23 March 1827.

perhaps indicating a belief in truth as a defense against libel.⁷⁰⁵ In the next lines, the paper favorably reported about the editor Elias Boudinot and the first Native American newspaper, *The Cherokee Phoenix*.⁷⁰⁶ Though likely not intentional, the juxtaposition was interesting.

While owner and editor, Cornish did not devote all of *The Rights of All* to abolitionism, though it had been a major theme. He also connected the sufferings of African-Americans in the United States to sufferings of other ethnic groups. One interesting article, called “Civil Rights of the Jews,” spoke glowingly of efforts in England by Jews to ask Parliament for “the extention [*sic*] of their civil rights.”

We live in an eventful period of the world, the work of emancipation, civilisation [*sic*] and religion seems to have taken the wings of the wind, surely the millennium glory is rolling on, a reign of righteousness, in which even prejudice will not be known, and shall we as an oppressed people, not be interesting amidst such a state of things?⁷⁰⁷

This article is remarkable in that it reveals some of Cornish’s own religious inclinations. Apparently his Christianity did not keep him from wishing the best for people of other faiths.⁷⁰⁸ In this article, Cornish did not call for the conversion of the Jews, but only for their freedom and well-being. Also, Cornish articulated post-millennial views about the

⁷⁰⁵ That became standard sometime after the famous trial of John Peter Zenger. For a discussion, see, e.g., Margaret Blanchard, “Freedom of the Press, 1690-1804,” *The Media in America: A History*, eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 127-132.

⁷⁰⁶ “Summary,” *Freedom’s Journal*, 7 December 1827. Cornish was general agent and not editor for this issue. Information about editor Elias Boudinot and the *Cherokee Phoenix* may be found in chapter five, *supra*. Interestingly, the historiography of Native press deals more with free press issues than does the historiography of the African-American press. This presents opportunities for scholars for further research. For a discussion about the struggles between the Cherokee Nation and its editor, see again chapter five, *supra*.

⁷⁰⁷ Samuel Cornish, “CIVIL RIGHTS OF THE JEWS,” *Rights for All*, 12 June 1829, 11.

⁷⁰⁸ *Ibid.*

future, hoping that the progress of society would usher in a perfect life for all people.⁷⁰⁹ Freedom, especially free press, mattered to the proprietor and editor of *The Colored American*. In fact, at least one reader in a letter to the editor believed “the permanent establishment of a FREE PRESS, among our colored brethren” would lead to abolition.⁷¹⁰ In the first edition of *The Weekly Advocate*, which later become *The Colored American*, Philip Bell had operationalized free press for that particular endeavor, a goal mirrored in Cornish’s own writings, a clarion call that may have influenced Cornish’s decision to re-enter journalism. Bell wrote in that issue:

The advantages of the present undertaking are not to be estimated by words, they are incalculable.- If th[e] Press, a “FREE PRESS,” be a foe to the tyrant—if its blessings be so great and innumerable, the Question naturally presents itself, why may we not have one of our own! We now have a Press and Paper under our own entire control, and we call upon our friends, one and all, to come forward and assist us in this work and labour of love, and share in the consequent blessings thereof.⁷¹¹

One cannot underestimate the power of having control of a press. As the old saw goes, “Freedom of the press is guaranteed only to those who own one.”⁷¹² Bell, right before hiring Cornish, also complained about “AWFUL CALUMNIES” about African-Americans, as well as threats to “the Liberty of the Press.”⁷¹³ For instance, he reprinted some of an atrocious article by a Euro-American publication that slandered African-

⁷⁰⁹ *Ibid.* For a discussion of postmillennialism and its variants, see Kim Riddlebarger, “A Study of American Postmillennialism,” available at <http://www.reformedreader.org/amerpost.htm>.

⁷¹⁰ R.S., “ANOTHER TESTIMONY,” *The Colored American*, 8 July 1837, 2.

⁷¹¹ Philip Bell, “OUR UNDERTAKING,” *Weekly Advocate*, 7 January 1837, 1.

⁷¹² This commonly is attributed to journalist A.J. Liebling. See “A.J. Liebling” at Wikipedia; available at http://en.wikipedia.org/wiki/A.J._Liebling.

⁷¹³ See Philip Bell, “AWFUL CALUMNIES” and “The Right of Petition,” *Weekly Advocate*, 21 January 1837, 2; “AWFUL CALUMNIES” quotes the *Lying Transcript*, 11 January 1837. Also note that sometimes other journalistic personalities besides the main characters have been quoted in this dissertation for similar propositions. This means that others agreed at times with the main characters. Also, people such as Philip Bell, John Russwurm, David Ruggles, and others would warrant studies of their own.

Americans: “The colored population are becoming intolerably base and wicked. Hundreds, yes thousands, who are either too indolent to labor, or too improvident to retain any part of their earnings, subsist, almost solely by theft, or other vicious means.”⁷¹⁴

Cornish once accused the *New York Times* of “base slander” for misreporting that a procession of African-Americans had been protesting the trial of an “alleged fugitive slave.”⁷¹⁵ Cornish claimed the procession had to do with the anniversary of a benevolence society, though he did condemn the idea of any kind of procession.⁷¹⁶ “All this the ‘Times’ knew, or might have known. We leave an enlightened public to estimate the man, who *wilfully, or carelessly*, insults a whole people, *at such a time*, and under *such circumstances*.”⁷¹⁷ Cornish also once published, under the front page headline, “SLANDER REFUTED,” the exchange of letters between Benjamin Banneker and President Jefferson, noting how the president recognized in his letter that African-Americans “had a right for their justification against the opinions which have been entertained of them.”⁷¹⁸ Not all Euro-American newspapers treated the African-Americans and their press with viciousness, as Bell reported in the February 4, 1827, edition.⁷¹⁹ Those who *did* support the African-Americans and their press appear to have been abolitionists, especially religious abolitionists, who already had worked on similar

⁷¹⁴ *Ibid.*, “AWFUL CALUMNIES.” Bell reported that this came “from the Lying Transcript, of January 11....”

⁷¹⁵ Samuel Cornish, “BASE SLANDER,” *The Colored American*, 29 April 1837, 3.

⁷¹⁶ *Ibid.*

⁷¹⁷ *Ibid.*

⁷¹⁸ “SLANDER REFUTED,” *The Colored American*, 20 May 1837, 1. The article included letters from Benjamin Banneker, Baltimore, Maryland, August 19, 1792, and the future President Jefferson, Philadelphia, Pennsylvania, August 30, 1792.

⁷¹⁹ Philip Bell, “Opinion of the Press,” *Weekly Advocate*, 4 February 1837, 3.

causes. But those aspersions that did exist fueled Cornish's vision of the need for the press:

The PRESS must be supported, that by it our people may be reached, their minds cultivated, their habits changed, and their moral and religious character raised and made uniform, or we never can occupy a higher level in Society nor sustain suitable relations to God and to man. Then let us again say to our friends, and brethren, come forward and help us to sustain this enterprise [sic]. It will send instruction to all God's oppressed poor, and lead them to the appropriate means of improvement. It will tell them, the elements of their respectability are in themselves, and that God requires they should be speedily brought into action.⁷²⁰

Cornish, as an educated businessman, was living proof that the African-American person could not only survive but also thrive in the United States, despite racism and other obstacles. The point was that African-American people were capable of anything they so chose. Yet, the racism kept down the African-Americans during the early nineteenth century, as Cornish discussed earlier in *Freedom's Journal*.

From the press and the pulpit we have suffered much by being incorrectly represented. Men, whom we equally love and admire have not hesitated to represent us disadvantageously [sic], without becoming personally acquainted with the true state of their honor discerning between virtue and vice among us.⁷²¹

Cornish – as a Christian and as an ordained evangelist – saw his task as missionary and prophetic in nature. In an early issue of *The Colored American*, an article entitled, “WHY WE SHOULD HAVE A PAPER,” detailed the paper's vision:

Colored men must do something, must make some effort to drive these “abominations of desolation” from the church and the world; they must establish and maintain the press, and through it, speak out in THUNDER TONES, until the nation repent and render to every man that which is just and equal - and until the church possess herself of the mind which was in Christ Jesus, and cease to oppress her poor brother, because God hath dyed him a darker hue.⁷²²

⁷²⁰ “READ THE FOLLOWING,” *The Colored American*, 18 March 1837.

⁷²¹ “TO OUR PATRONS,” *Freedom's Journal*, 16 March 1827.

⁷²² *The Colored American*, 4 March 1837. Pride and Wilson argue that Cornish monitored a truculent,

This vision enraptured local African-Americans, thirty of whom formed yet another committee to voice support for the paper. And their ensuing resolution echoed Cornish's vision and reflected what the *readers* thought about free press during the early nineteenth century, showing the sophistication of African-Americans in understanding the elements of liberty and democracy.⁷²³

Despite the support of free African-Americans who read the papers, not all people thought the African-American papers would carpet the road to heaven. Some even thought the papers and freedom of expression led to hell, as *Freedom's Journal* reported:

The Rev. Dr. Miller of New Jersey, has pronounced, from the pulpit a sentence of eternal condemnation, against the "Freedom's Journal," a paper printed in New York, because it exercises the liberty of free speech in favour of the abolition of slavery.... We know that the pulpit has been converted into a fortress, to batter down the influence of the press, and we believe the clergy will find endeavours [sic] to be vain and nugatory. - N. Star.⁷²⁴

These invectives did not stop the African-American journalists from using as much free speech as they dared. And the threats of hell were not as immediate as were the "clear and present dangers" of having free speech and press strangled by anti-abolitionists. As *Freedom's Journal* once said, "The influence of slavery upon slaveholders and the slave states, are - an abiding sense of insecurity and dread - the press cowering under a censorship - freedom of speech struck dumb by proscription - a standing army of patrols to awe down insurrection...."⁷²⁵

Euro-American penny press that continuously misrepresented African-Americans. *A History of the Black Press*, 31.

⁷²³ *The Colored American*, 29 August 1838, signed by people like F.A. Hinton, W.F. Keeling, Jas. Bird, James Needham, and John E. Rolley.

⁷²⁴ *Freedom's Journal*, 26 October 1827. Cornish was general agent and not editor for this issue.

⁷²⁵ "DECLARATION OF SENTIMENTS, ON THE SIN OF SLAVERY," *Freedom's Journal*, 17 June 1837.

African-American journalists were not alone in this fight. Supportive readers passed more resolutions calling for a free and vigorous press, indicating that at least some of the public expected freedom of the press: For example, a group of readers wrote, “Resolved, that the press in all ages of the world has been the successful opponent of tyranny and oppression, and where a free press can speak and is tolerated, tyranny and oppression cannot long survive.”⁷²⁶ The Zion Baptist Anti-Slavery Society wrote a letter to the editor connecting religious and press liberty: “And this we purpose to accomplish in the name of the Lord, by the free exercise of our constitutional liberty of speech and the freedom of the press.”⁷²⁷ Note that the society based its arguments upon the Constitution, though much of the oppression came from private citizens and local governments. The Fourth of July served as a perfect opportunity for one group of African-Americans to voice its support for freedom of the press:

Resolved, That we regard the PRESS as the palladium of the liberties of the people; as a powerful means of enlightening the public mind, on subjects of public interest, - that we confidently hope that it will not only protect the liberties that some of us now enjoy, but will make such incessant appeals to the judgment, the patriotism, the magnanimity, and the good sense of the community, in such a manner as to arouse a state of moral feeling that will not rest short of the full and complete enfranchisement of her now oppressed and degraded colored citizens.⁷²⁸

Slavery itself may have been the most pernicious and effective control of information from African-Americans during the early nineteenth century. Slavery kept African-Americans from receiving and often disseminating information, and it attacked

⁷²⁶ “PUBLIC MEETINGS IN NORWICH,” *The Colored American*, 25 December 1841, signed by supporters like Joseph Guy and Uriah Pellom. Cornish was not the editor for this issue.

⁷²⁷ *The Colored American*, 23 December 1837.

⁷²⁸ “PUBLIC MEETING ON THE 4TH OF JULY,” *The Colored American*, 14 July 1838. Cornish may or may not have been involved with this issue, as he left sometime during the summer of 1838.

the free press of Euro-Americans, too.⁷²⁹ Cornish saw slavery as harming the entire country, and not just African-Americans:

[Slavery] is a system most peculiar which influences all our elections - muzzles the press - prevents free discussion - destroys the right of petition - desecrates the pulpit - leads professed divines to attempt to justify iniquity from the Bible - affects nearly all our business operations, and throws the whole country into a state of bankruptcy.⁷³⁰

In fact, one reader worried out loud that the loss of liberty in general for African-Americans would lead to the loss of liberty of the press.⁷³¹ This did not stop the rolling, inevitable tide, as new African-American papers – such as *The Mirror of Liberty* in New York during 1837 – were started as a means of combating slavery.⁷³²

One of the more pernicious controls of information, one that surely never has been allowed by the First Amendment, one that far exceeds libel in its chilling effects, would be violence against journalists.⁷³³ Perhaps that never has been better illustrated than by the lynching of pro-abolitionist editor Elijah Lovejoy in Alton, Illinois.⁷³⁴ Nye

⁷²⁹ “MEAN RESORT,” *The Colored American*, 28 July 1838. Cornish may or may not have been involved with this issue, as he left sometime during the summer of 1838. For accounts of how speaking against slavery resulted in controls of information, see Kemper, “WE SHALL NOT SUBMIT!” 18-19.

⁷³⁰ “PECULIAR INSTITUTION,” *The Colored American*, 3 April 1841. Cornish was not editor, but his influence appears to have continued with the paper.

⁷³¹ Junius C. Morel, *The Colored American*, 3 May 1838.

⁷³² “THE MIRROR OF LIBERTY,” *The Colored American*, 8 September 1838, signed by supporters such as Zachariah S. Barbary and John J. Zuille. Cornish was not editor for this issue, but he and Ruggles would have a free press struggle of their own, *infra*.

⁷³³ For one of the most detailed and lucid accounts of the growing concern of mob violence against journalists during the early nineteenth century, see Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (Lansing: Michigan State University Press, 1963; Urbana: University of Illinois Press, 1972), chapter four, “Abolitionism and Freedom of the Press,” 117-173, and chapter five, “The Day of the Mob,” 174-218.

⁷³⁴ For accounts of Lovejoy, see, e.g., Nye, *Fettered Freedom*, 145-152; Paul Simon, *Freedom's Champion—Elijah Lovejoy* (Carbondale: Southern Illinois University Press, 1994); Stanley Kobre, “Antislavery Editor Elijah Lovejoy: Early Press Martyr,” *Media History Digest* 6, no. 2 (Fall-Winter 1986): 63; and Michael Kent Curtis, “The Curious History of Attempts to Suppress Antislavery Speech, Press, and Petition in 1835-37,” *Northwestern Law Review* 89 (Spring 1995): 785-870; available at <http://www.lawschool.westlaw.com>; “The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens,” *UCLA Law Review* 44,

claimed this was “[t]he most important case involving the freedom of the press, and the one which did more than any other to enlist support for abolitionists in the North....”⁷³⁵

Though likely not present at the scene in Alton, Cornish wrote a defiant, detailed 867-word article about the death of Lovejoy, which occurred on November 7, 1837.⁷³⁶ The headline in *The Colored American* screamed: “AN AMERICAN CITIZEN MURDERED!! THE PRESS DESTROYED!!! THE SPIRIT OF SLAVERY TRIUMPHANT!!!”⁷³⁷ The columns were lined in black, apparently a means of communicating sorrow and grief in newspapers during the early nineteenth century.⁷³⁸ Cornish, after using extraordinary detail of the assault on Lovejoy and the press, then laid

(April 1997), 1109-1184; available at <http://www.lawschool.westlaw.com>; *Free Speech, ‘The People’s Darling Privilege’: Struggles for Freedom of Expression in American History*, Constitutional Conflicts Series, ed. Neal Devins (Durham, N.C.: Duke University Press, 2000), 216-270; “Teaching Free Speech from an Incomplete Fossil Record,” Symposium: Education and the Constitution: Shaping Each Other and the Next Century, *Akron Law Review* 34 (2000): 231-260; available at <http://www.lawschool.westlaw.com>.

⁷³⁵ Nye, *Fettered Freedom*, 145.

⁷³⁶ Though newspapers during the early nineteenth century borrowed articles from each other, original reporting based upon interviews and articles did exist, as apparently evidenced in Cornish’s article.

⁷³⁷ Samuel Cornish, “An American Citizen murdered!! The Press destroyed!!! The Spirit of Slavery triumphant!!!,” *The Colored American*, 25 November 1837, 2.

For interesting insights into the views of editor Horace Greeley and the murder of Lovejoy, see Daxton R. Stewart, “Freedom’s Vanguard: Thoughts on the Freedom of the Press by Journalist Horace Greeley from the Revolution of the Penny Press to the Civil War” (paper completed at the University of Texas at Austin School of Law for a course by Professor David Rabban, 15 August 1997). With language similar to that of Cornish’s, Greeley wrote:

We dare not trust ourselves to speak of this shocking affair in the language which our indignation would dictate. It forms one of the foulest blots on the page of American history, and will be trumpeted through Europe as an unanswerable evidence of National anarchy, barbarism, and approaching dissolution – of the utter futility of all republican theories and pretensions...Every single participant, however passive, in this execrable attempt to prevent by violence the expression of a freeman’s opinions, is, in the eye of God and of justice, a murderous felon, and his hands are reeking with the blood of a martyr to the cause of liberty of speech and of the press. Horace Greeley, *The New-Yorker*, 25 November 1837, cited by Stewart, 10.

⁷³⁸ Cornish included this note under the main article: “LINES, Occasioned by the death of the Rev. Elijah P. Lovejoy, at Alton, Ill.” Also, an example of this technique can be found in the *Boston Gazette*, 5 October and 21 December 1767 after the Boston Massacre, reprinted in Carol Sue Humphrey, “The Revolutionary Press,” *The Media in America: A History*, 3^d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 77.

the blame upon Euro-American journalists and ministers – “the Pulpit and the Press” – for the crimes of slavery and related suppressions.⁷³⁹

Who are guilty in this matter? Is it the poor, ignorant, sunken and abandoned wretches who consummate the work planned out by “gentlemen of property and standing?” No! They know not what they do. But the Press, which from the commencement of the Anti-Slavery controversy, has kept alive by base **misrepresentation**, the worst passions of the human heart and pointed out abolitionists as fit subjects for the assassin’s dagger—the press—Political and religious, by baptising [*sic*] itself in all manner of abominations, in order to oppose the progress of pure principles, is guilty of this crime [emphasis added].⁷⁴⁰

Cornish then scolds the “pulpit” for complicity with the press – apparently, misrepresentations led to censorship and even murder. Thus, freedom of the press allowed for people like Cornish to represent their peoples; but suppression would lead to more misrepresentation. Therefore, Cornish must have viewed Lovejoy’s death as a threat to his own work.

Obviously, the rhetoric over slavery had reached new lows; within a quarter of a century, the United States would be embroiled in civil war over these and other issues that divided it. Abolitionism created controversy, to be certain; but now the movement had a notable martyr. Lovejoy had caused a stir wherever he practiced advocacy journalism for the sake of abolitionism. For instance, enraged citizens supporting slavery had driven Lovejoy from St. Louis, Missouri, across the Mississippi River from Alton, Illinois. Interestingly, those St. Louis citizens recognized that Lovejoy had the First Amendment right to the press, but distinguished between that civil right and what they viewed as his “moral right” not to publish something incendiary.⁷⁴¹ This principle, called

⁷³⁹ Cornish, “An American Citizen murdered!!”

⁷⁴⁰ *Ibid.*

⁷⁴¹ Nye, *Fettered Freedom*, 145.

salus populi suprema lex, implies that the wants and needs of society outweigh the rights of the individual.⁷⁴² In fact, the state motto of Missouri today is “*Salus Populi Suprema Lex Esto*”, or ‘Let the welfare of the people be the supreme law.’”⁷⁴³

With the welfare of African-Americans and Euro-Americans in mind, a few weeks after Lovejoy’s murder, a committee of African-American leaders met at a Presbyterian church in New York “to express their sympathy with the widow and orphans of the late Rev. Elijah P. Lovejoy....”⁷⁴⁴ Resolutions such as the following – making a clear connection between free press and abolitionism – were to have been “published in the *Liberator*, *Colored American*, and *Emancipator*.”⁷⁴⁵

Resolved, That among our rights, we hold none dearer than the freedom of the speech, and of the press: and that whilst in the land off [sic] the free, we can never relinquish that freedom for the dumb eloquence of the down-trodden slave.⁷⁴⁶

The abolitionists for the most part rejected violence as a means of freedom or revenge. A frequent contributor to the *Colored American* – Junius C. Morel of Harrisburg, Pennsylvania – also thought the best weapons against slavery would include expression, not violence: “The powerful and irresistible engines of our warfare, the Press, the Pulpit, and the mouth of Truth, are unmuzzling. – Free Discussion furnishes ample ammunition. The foe, public opinion, begins to falter in view of this mighty array.”⁷⁴⁷

⁷⁴² *Ibid.*, 172.

⁷⁴³ See http://www.netstate.com/states/symb/seals/mo_seal.htm.

⁷⁴⁴ “NEW YORK, Dec. 18, 1837,” *The Colored American*, 23 December 1837, signed by supporters such as Thomas Van Rensselaer and Jacob Francis. Note that Lovejoy, like Cornish, had been a Presbyterian minister. In fact, Lovejoy had graduated from Princeton Theological Seminary, something unlikely at the time for an African-American man like Cornish. Nye, *Fettered Freedom*, 145.

⁷⁴⁵ *Ibid.* See also “ELIJAH P. LOVEJOY,” *The Colored American*, 2 December 1837, 3.

⁷⁴⁶ *Ibid.*

⁷⁴⁷ Junius C. Morel, “From the National Enquirer. COLORED PEOPLE. EDITOR. Harrisburgh, Sept. 19th, 1837,” *The Colored American*, 11 November 1837.

More importantly, Lovejoy's death marked a turning point in the abolitionist movement. "The death of Lovejoy at Alton crystallized support for a broad and general view of free speech in the North and dramatically strengthened the view that mobs and the institution of slavery threatened liberty and representative government," Curtis said.⁷⁴⁸ Thus, Cornish's journalism must have contributed to this awakening, helping his readers to see that the diminution of freedom for African-Americans would contribute to the diminution of freedom for all Americans, regardless of race.

As the crisis over Lovejoy's murder began to wane, the crisis over the finances of *The Colored American* again began to wax heavy, thanks in large measure to the loss of the libel suit by John Russell.⁷⁴⁹ In 1837, Joseph Gavino had told African-American journalist David Ruggles in a letter that another African-American – John Russell – had forced three Africans into a ship at New York, heading for New Orleans.⁷⁵⁰ Kidnapping of African-Americans in the North for slavery in the South had been a growing concern, especially to the New York Committee of Vigilance, which did what it could to combat the problem.⁷⁵¹ Cornish and Ruggles each had participated in the committee.⁷⁵² Ruggles was active in the efforts to free slaves, even conducting on the famous Underground Railroad, leading slaves to freedom in the northern United States and Canada.⁷⁵³

⁷⁴⁸ Curtis, 241.

⁷⁴⁹ However, coverage continued at least into June 9, 1838, when Cornish ran an article entitled "BROTHER LOVEJOY'S LAST SPEECH," *The Colored American*, 62. In the speech, Lovejoy speaks of his religious repose in the face of threats of mob violence.

⁷⁵⁰ See Dorothy B. Porter, "David N. Ruggles, An Apostle of Human Rights," *Journal of Negro History* 28 (January 1943): 40, n. 36, quoting *The Colored American*, 7 and 28 October 1837.

⁷⁵¹ See, e.g., *The Colored American*, 7 October 1837, 2-3.

⁷⁵² See Porter, 20. Ironically, Nye, *Fettered Freedom*, 180-181, says that the South had vigilance committees for slavery, but those at times would result in mob violence.

⁷⁵³ See Porter, 36.

Ruggles sent Gavino's accusatory letter to Cornish, who published the account in *The Colored American*.⁷⁵⁴ Russell then sued for libel, winning a verdict against Ruggles, Cornish, and *The Colored American*.⁷⁵⁵ The liability in the suit became a great strain for an already cash-poor venture.⁷⁵⁶ Scholars disagree about the specific financial impact. Porter, citing *The Colored American*, claims that Cornish had been fined \$220 and perhaps had to pay \$600 in damages and attorney fees.⁷⁵⁷ Hutton, quoting *The Mirror of Liberty*, claims the amount totaled \$1,500.⁷⁵⁸ Pride and Wilson give the same figure.⁷⁵⁹ Regardless, Cornish spent time – that otherwise could have been spent earning a living – in raising money to pay the fees.⁷⁶⁰

In a notably somber and frank editorial, Cornish bluntly told his readers about his own needs:

If our brethren and friends would see the Colored American what it ought to be, they must assist in raising a small salary for the Editor. We have given our services, the last year, for less than one hundred dollars

⁷⁵⁴ *The Colored American*, 7 October 1837, 2-3.

⁷⁵⁵ This civil suit resembles the civil and criminal suits filed against William Lloyd Garrison and Benjamin Lundy for their denunciations of a ship captain. Garrison served time in jail and later lost a civil suit for which he did not pay damages, while Lundy saw his charges dropped. See Reynolds, "Abolitionists' Plea," 591-594. See also Tripp, "The Antebellum Press: 1820-1861," in *The Media in America: A History*, 3^d ed., eds. Wm. David Sloan and James D. Startt (Northport, AL: Vision Press, 1996), 179-180.

⁷⁵⁶ Indeed, Cornish had to have known the expenses of losing a defamation case. He reported in *Freedom's Journal* of four expensive slander cases involving others, including one resulting in a liability of \$1,200 for a female chastity case. See *Freedom's Journal*, 13 April 1827, 4. That amount represented twelve times Cornish's annual salary at *The Colored American*. See Samuel Cornish, "The Editor's Difficulties," *The Colored American*, 16 December 1837, 3.

⁷⁵⁷ Porter, 40, n. 37, citing *The Colored American*, 3 November 1838. See also Samuel Cornish's claim that the total "cost and damages" were \$500, "LIBEL SUIT," *The Colored American*, 20 October 1838, 139. Adding the attorney's fees, with some other adjustments, the total cost was "not far short of 600 dollars," Cornish said in "LIBEL SUIT," *The Colored American*, 3 November 1838, 147. Cornish believed that the costs of the suit should have been borne by the New York Vigilance Committee. *Ibid.*

⁷⁵⁸ Hutton, *The Early Black Press*, 20, n. 52, citing *The Mirror of Liberty*, August 1838.

⁷⁵⁹ Pride and Wilson, 32.

⁷⁶⁰ *Ibid.*, 32-34.

remuneration. The consequence of which has been a very defective paper. The Editor, to do justice to himself, to the subject of human rights, and to the talent of colored men, ought to have some time to read and think; this has not been the case with us. ... This, brethren, ought not to be.⁷⁶¹

Cornish even reached the point of the proverbial “take this job and shove it” attitude:

If any of them should plead, that they are not pleased with our course—that our paper is not a fair specimen of the talent, nor representation of the views of intelligent colored men, we say to all such, APPOINT YOUR MAN, and that moment you bring into the field more talent and experience, we will gladly yield our place, and pledge towards the salary of our successor, at least \$50 annually. But until they do this, we demand their support, and brand them as imbecile, impolitic and cowardly if they withhold.⁷⁶²

After the April 19, 1838 issue, the weekly paper next published on May 3, and then again on June 2. Cornish foretold this irregular publishing in an April 12 editorial: “We had no expectation of issuing a paper the present week, having determined not to involve our Committee in debt, nor defraud our printer, by receiving at his hands unrequited labor.”⁷⁶³

Bell had quit as “proprietor,” turning over the financial affairs to the committee. But he returned in June 1838 with Charles B. Ray of New York, who had been working for the paper as publishing agent, and Stephen H. Gloucester of Philadelphia to be co-proprietors.⁷⁶⁴ The paper officially began “publishing” in both New York and Philadelphia, apparently in an attempt to widen the circulation and impact of the

⁷⁶¹ Cornish, “The Editor’s Difficulties.”

⁷⁶² Samuel Cornish, “OUR NOBLE COMMITTEE,” *The Colored American*, 12 April 1838, 46. Note that page numbers in Volume 2 of *The Colored American* ran consecutively through all of the issues, which still usually had only four pages.

⁷⁶³ *Ibid.*

⁷⁶⁴ The paper reflected this in the masthead on June 16, 1838’s edition of *The Colored American*, 65.

struggling newspaper.⁷⁶⁵ This continued the publication for awhile, but did not keep Cornish from resigning over financial difficulties.

Just a few weeks after editorializing about the costs of the libel suit by Russell, Cornish printed on the front page an article from the *New York Observer* about “EVILS OF BEING IN DEBT.”⁷⁶⁶ In the same issue, Cornish notes that the debt had been demanded that particular day, but that the paper was \$210 short, and therefore needed “IMMEDIATE AID” to be able to satisfy the judgment and other costs.⁷⁶⁷ The next week, the paper still went to press, but this time announcing new assistant editor Dr. James M’Cune Smith as the editor, and the proprietors had decided that they would “enlarge the paper” for the third volume.⁷⁶⁸ Though Bell in the editorial said the expansion would add “more reading matter,” perhaps the expansion was to add more readers and, therefore, more revenue.⁷⁶⁹ As co-publisher Charles Ray said, the newspaper would continue to be a vehicle “to represent the real character and condition of the free colored people ... to disabuse the public mind in their views of this people”⁷⁷⁰ Ray must have written that article with knowledge of the editorial to come from

⁷⁶⁵ *Ibid.* See also a prospectus of the new arrangements in “To the Public and the Subscribers of the COLORED AMERICAN,” *The Colored American*, 16 June 1838, 3. Here, the proprietors raised subscription prices and promoted advertising, among other means of rescuing the paper. Apparently, “The Committee of Publication” still maintained a “friendly connection” with the newspaper, despite the change in ownership. *Ibid.*

⁷⁶⁶ “EVILS OF BEING IN DEBT,” *The Colored American*, 1 December 1838, reprinted from the *New York Observer*.

⁷⁶⁷ Samuel Cornish, “LIBEL SUIT,” *The Colored American*, 1 December 1838, 163. By the December 15 issue, the paper only had “paid over about \$300” of the debt. See Cornish, “Our Libel Suit,” *The Colored American*, 171.

⁷⁶⁸ Philip Bell, “Our Next Volume,” *The Colored American*, 8 December 1838, 167. For brief biographies of Ray and Smith, see Pride and Wilson, *A History of the Black Press*, 34-36.

⁷⁶⁹ *Ibid.* It is not coincidental that Bell also discusses in the same editorial the paper’s new policy about requiring subscription payments “in ADVANCE ... as the life and existence of a newspaper is ready money.”

⁷⁷⁰ Charles B. Ray, “This Paper-its Objects,” *The Colored American*, 15 December 1838, 171.

Cornish, when Cornish resigned his position as editor, handing over his duties to Smith.⁷⁷¹ Yet, a peculiar note under this editorial hinted that Cornish and the owners were unsure about what would happen at the newspaper: “Since writing the above the proprietor has determined to public another number, during the next week, which he himself will superintend.”⁷⁷² When the third volume of *The Colored American* published on January 12, 1839, Cornish and Smith both were listed as editors in the masthead.⁷⁷³ But soon after, Cornish would cease his journalistic career.

But during that journalistic career, Samuel Cornish made a profound impact upon society. He argued for freedom of expression, particularly liberty of the press. He confronted incidents and ideas that threatened the freedom of that press. Anything that determines the content and viability of a publication is a control of information – mobs, racism, slavery, etc.⁷⁷⁴ Cornish wanted the freedom so he could address the misrepresentation of African-Americans in Euro-American papers and society. No freedom, no representation – so he battled anything that got in his way of securing those values.

⁷⁷¹ Samuel Cornish, “The Editor to his readers,” *The Colored American*, 22 December 1838, 175.

⁷⁷² *Ibid.*

⁷⁷³ *The Colored American*, 12 January 1839. Note that pages numbers were not listed in Volume 3.

⁷⁷⁴ See discussion in chapter two, *supra*.

3. **Conflicting concepts**

To what extent did the goals of political entities of those ethnic groups conflict with Cornish's individual rights?

Because free African-Americans did not organize into governmental units in the United States, unlike existing indigenous tribes, one cannot say that Cornish's individual rights conflicted with a free African-American government in the United States. But, as discussed above, Cornish did conflict with those who ultimately established a free African-American government on the African continent in Liberia. And he struggled with another African American journalist – David Ruggles – during and after a libel suit that may have cost Cornish more than just money. Though he was not a “political entity,” Ruggles wrestled with Cornish over control of the message of the free African-American community.

Euro-Americans were not the only antagonists with the African-American press; sometimes African-Americans conflicted with one another over philosophy, politics, and personalities. At times the African-American journalists became so intense in their war against slavery that they injured themselves during the process. Such was the private libel case and subsequent verdict against Cornish and *The Colored American*, as discussed above, which led to a lifelong conflict between Cornish and African-American journalist David Ruggles, founder of the short-lived *The Mirror of Liberty*.⁷⁷⁵

⁷⁷⁵ See discussion, *supra*. An account of the libel suit also may be found in Pride and Wilson, *A History of the Black Press*, 32, and Hutton, *The Early Black Press*, 19-21. Hutton relied greatly upon the account in Porter, 23-50, especially 39-42. Hutton's note 49 appears to have a citation error. David Ruggles edited and published only three issues of *The Mirror of Liberty* from 1837 until 1838. See Porter, 31.

Ruggles and Cornish were on opposite sides of the debate over colonization, as were Cornish and his early partner Russwurm.⁷⁷⁶ Apparently both Ruggles and Cornish agreed about the necessity of an African-American press to promote African-American causes, but perhaps the strong personalities of both had difficult times sharing the spotlight of that press.⁷⁷⁷ Porter in her article about Ruggles noted what she saw as “the scorpion-like harassment of Cornish” against Ruggles after the libel suit.⁷⁷⁸

Obviously, Cornish did not want to have to pay the fines and fees, as discussed above, and therefore he “insisted that the suit was really a suit for the New York Committee of Vigilance, and that the Committee should therefore pay the cost and damages,” Porter said.⁷⁷⁹ Cornish also blamed Ruggles for the false letter; Cornish said that he did not question the letter because, as Porter described, “he respected the signature over which it was sent.”⁷⁸⁰ Cornish reprinted the libelous letter in question on November 3, 1838, in an attempt to explain his actions: “The above was put in type in our office, without the Editors [*sic*] knowledge, and remained on the gally [*sic*] for two or three weeks before its insertion in the paper, and when inserted, it was done on the eve of our leaving the city, and without our knowledge of its contents.”⁷⁸¹ The next week, Cornish, likely not accidentally, ran a front page reprint of an article about the “vicious habit” of

⁷⁷⁶ Porter said Ruggles had argued perhaps as early as 1834 for African-Americans to colonize Africa, quoting in 30, n. 20 a treatise written by Ruggles, *The Abrogation of the Seventh Commandment, by the American Churches* (New York: David Ruggles, 1835).

⁷⁷⁷ For Ruggles’ view of the need for an African-American press, see Porter, 31, n. 21, citing “Appeal to the Colored Citizens of New York and Elsewhere in Behalf of the Press,” *The Emancipator and Journal of Public Morals*, 3 (13 January-10 February 1835): 2-6

⁷⁷⁸ Porter, 41.

⁷⁷⁹ *Ibid.*, 40.

⁷⁸⁰ See, *ibid.*

⁷⁸¹ Samuel Cornish, “LIBEL SUIT,” *The Colored American*, 3 November 1838, 147. Also, this dissertation lists the letter as libelous only because a jury had decided it was libelous.

slander.⁷⁸² Perhaps Cornish felt himself slandered by the intimation that he had libeled another; he wanted Ruggles to take responsibility for any errors. Despite their differences over colonization, the same differences that had led Cornish and Russwurm to part ways, Cornish at least had respect for Ruggles' word before 1837. That was not so after the suit, as the two went to war by using their respective publications against each other.⁷⁸³

We have occupied a large portion of our paper this week, in the vindication of our own, and of the character of the gentlemen connected with us in this publication. We have done it, because every statement respecting ourself [*sic*] and Mr. Bell, is FALSE, and because the spirit sought to be engendered and inflamed among our brethren, by the author of this mischief, we consider so very wicked.⁷⁸⁴

Cornish and Ruggles struggled in the columns of *The Colored American*, but that had not been always the case. Cornish courteously printed accounts of a meeting meant to support the periodical *The Mirror of Liberty*, which Ruggles published.⁷⁸⁵ Later, in an editorial entitled "CAUTION TO OUR READERS," Cornish chastised those who would promote "mis-statements, the prejudiced reports and the falsehoods" about Ruggles and abolitionist Barney Corse.⁷⁸⁶ A month later, Cornish complained publicly about the cost

⁷⁸² The Reverend Alex Young, "Slander," *The Colored American*, 10 November 1838, reprinted from "The Watchtower," a sermon given in Boston, 1829.

⁷⁸³ Hutton, *The Early Black Press*, 25, n. 49, says Ruggles' account may be found in *The Mirror of Liberty*, August 1838. Porter, 41, nn. 38 and 40, cites *The Colored American*, 3 November 1838; 17 November 1838; December 1838; 15 December 1838; 19 January 1839; 26 January 1839; 23 February 1839; 18 May 1839; and 27 July 1839. Of course, Cornish was not editor for some of the time, but was in fact a topic of intense discussion.

⁷⁸⁴ Samuel Cornish, "READERS, EXCUSE US," *The Colored American*, 30 December 1837, 2.

⁷⁸⁵ "THE MIRROR OF LIBERTY," *The Colored American*, 8 September 1838, 115. See also "MIRROR OF LIBERTY," *The Colored American*, 20 October 1838, 139, reprinted from *The Liberator*.

⁷⁸⁶ Samuel Cornish, "CAUTION TO OUR READERS," *The Colored American*, 15 September 1838, 119. The Barney Corse to which this refers may well have been the abolitionist noted in Graham Russel Hodges, "The Hazards of Anti-Slavery Journalism," *Media Studies Journal* 14, no. 2 (Spring/Summer 2000); available at <http://www.hartford-hwp.com/archives/45a/394.html>. This article details the life and work of Ruggles, sympathizing with Ruggles over the conflict with Cornish. Hodges discusses how Corse and Ruggles had been accused of grand larceny over an escaped slave who had stolen money from his owner; Corse and Ruggles apparently paid some, but not all, of the money, in exchange for the slave's freedom. So, despite his disagreements with Ruggles, Cornish apparently was willing to support the man's reputation when he thought criticism was incorrect and unwarranted.

of the lawsuit.⁷⁸⁷ The libel suit, by spending precious political and financial capital, fractured the free African-American community and wounded African-American journalism at the time it needed to be united in its causes against slavery and for African-American progress. And the free African-American community apparently either was unwilling or unable to support the paper financially. Jane Rhodes said, “Poverty, illiteracy, competing political agendas, and the social effects of racism and discrimination contributed to the creation of an audience that could not support – financially or otherwise – a single vision of one newspaper.”⁷⁸⁸ LaBrie notes that during the nineteenth century, African-Americans had “a custom of pass-on readership” whereby “a single copy of a black newspaper would circulate through an entire neighborhood.”⁷⁸⁹ Problems like these continued to hinder the African-American press.⁷⁹⁰

Cornish had at least one more public complaint about Ruggles and the libel suit, as he printed a demand letter from the law firm of Burr and Benedict for the remainder of the costs and damages.⁷⁹¹ Cornish appealed again to readers for help: “Our friends will please to help our feeble establishment out of this scrape, and we will pledge ourselves to have no more to do with R*****l nor R*****s.”⁷⁹² As promised in that editorial, and had been requested by a reader, Cornish in the next issue published “a full and correct

⁷⁸⁷ See Samuel Cornish, “LIBEL SUIT,” *The Colored American*, 20 October 1838, 139.

⁷⁸⁸ Jane Rhodes, “Race, Money, Politics and the Antebellum Black Press,” *Journalism History* 20, nos. 3-4, (Autumn-Winter 1994): 95.

⁷⁸⁹ Henk LaBrie III, “Black Newspapers: The Roots are 150 Years Deep,” *Journalism History* 4, no. 4 (Winter 1977-78): 111.

⁷⁹⁰ Rhodes, 99.

⁷⁹¹ Samuel Cornish, “THE LIBEL SUIT,” *The Colored American*, 19 January 1839. The letter was dated January 10, 1839.

⁷⁹² *Ibid.* These apparently were references to Russell and Ruggles.

account of our receipts and expenditures in the suit.”⁷⁹³ In the column below, Cornish also published a letter from Ruggles, who claimed to be Cornish’s “*deeply injured* and afflicted friend.”⁷⁹⁴ On February 23, Cornish published letters from people criticizing Ruggles and *The Mirror of Liberty*, another letter from Ruggles himself, and an editorial lamenting the controversy.⁷⁹⁵ To vindicate himself, Ruggles “demanded a public investigation of his conduct,” as Cornish reported on March 2.⁷⁹⁶ But later accounts in *The Colored American* simply trailed away, apparently failing to give Ruggles the full moral accounting he had requested. Given that Cornish could not live upon the proceeds of the paper and that he obviously had neither the time nor the technology to double-check every fact of every piece sent to his attention, one would not be surprised that a falsehood would have been printed inadvertently in *The Colored American*, or any other paper at the time or at any other time, for that matter.⁷⁹⁷ The ensuing financial pressures of the suit, combined with the mental energy spent in fighting over culpability and liability, must have distracted Cornish and Ruggles from their common goals of abolition and progress.⁷⁹⁸ Also, the suit illustrates that the First Amendment was not then – nor has it ever been – an absolute protection for editors.

⁷⁹³ *Ibid.* The account ran under “READER’S NOTICE,” *The Colored American*, 29 January 1839, 3.

⁷⁹⁴ David Ruggles, “AGENT OF THE VIGILANCE COMMITTEE,” *The Colored American*, 29 January 1839, 3.

⁷⁹⁵ See “AN ABOLITIONIST, ‘DAVID RUGGLES,’” 2, and “MIRROR OF LIBERTY,” editorial and letter from Ruggles,” 3, in *The Colored American*, 23 February 1839.

⁷⁹⁶ “MR. DAVID RUGGLES,” *The Colored American*, 2 March 1839, 3.

⁷⁹⁷ Interestingly, Ruggles once belonged to a committee of those contributing to Cornish’s salary. See Philip A. Bell, “To the Public, and the Friends of the Colored American,” *The Colored American*, 22 July 1837, 3. For Cornish’s doubts in having time to do his work properly, see “The Editor’s Difficulties,” *The Colored American*, 16 December 1837, 3.

⁷⁹⁸ See, e.g., Pride and Wilson, 32-34, for a discussion about financial problems for early African-American journalists.

As his editing career drew to its close, Cornish reminisced in *The Colored American* about the value of the newspaper and complained about the lack of financial support: “We now have a press and office of our own. So far as these things and self-exertion go, we are independent. It remains but for our brethren and friends to furnish us the means to getting paper, paying printers and office rent, and they shall have, weekly, the result of our *best thoughts and researches*.”⁷⁹⁹ Thus, Cornish recognized that continued liberty of the press for *The Colored American* would have to be predicated by financial independence, or at least financial interdependence with its supporters.

Apparently, any support would have been too late for Cornish to stay in journalism. Cornish’s last edition as editor was May 18, 1839, with no resignation letter or no editorial asking money. He simply dropped from the masthead. Yet, Cornish did not drop from active work. In the June 1, 1839 edition, Cornish was listed in an advertisement as a committee member promoting a school.⁸⁰⁰ On August 17, 1839, the newspaper printed Cornish’s request to write a regular political column, which continued at least three issues.⁸⁰¹ And then he dropped from continuous, active journalism.

Conclusion

Samuel Cornish, like the other writers discussed in this dissertation, reacted strongly to misrepresentations of those of his ethnicity, as well as to threats to freedom of the press. And he reacted strongly to anything that threatened his position. His life and work supports the thesis of this dissertation, that during the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States

⁷⁹⁹ Samuel Cornish, “NEW AUSPICES,” *The Colored American*, 11 May 1839.

⁸⁰⁰ *The Colored American*, 1 June 1839.

⁸⁰¹ The first article apparently was called “THE SIGNS OF THE TIMES.” See *The Colored American*, 17 August 1839.

because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty. Without freedom of the press, Cornish could not have accomplished what he did for the cause of African-American progress. Of course, the libel suit, the Lovejoy murder, and other intrusions into the freedom of the press had the proverbial “chilling” effects upon Cornish’s journalism; yet the bottom line is that the paper’s bottom line kept him from continuing his career. With a family and obligations, Cornish simply had to find other ways to accomplish his work.

Also, it would be too much to argue that Cornish believed in an absolute freedom of the press, as he saw freedom of the press as a means to a specific end:

There is nothing more abused, at the present day, than the liberty of the press. The world seems to have forgotten and lost sight of what this liberality consists in. Instead of liberty in conscience, before God, to warn men of their danger and to enforce their duty; regardless of their frowns or of their favors, liberty to support their own party, to seek their own interests, and to maintain, however wicked, or absurd, their own principles, seems to be assumed and conceded on all hands.⁸⁰²

Thus, he apparently believed that the press abused its liberty for personal gain. This became evident in an article, “TWO SOURCES OF LICENTIOUSNESS,” reprinted from an unnamed source, which criticized novels and other publications that promoted what the author called “evil.”⁸⁰³

This final anecdote reveals a dual nature about Cornish. While wanting liberty of the press so he could accomplish his ministerial purposes, Cornish was quick to criticize the use of the press if it contradicted his evangelical or other personal beliefs. So, it remains to be seen how much he valued freedom of expression for ideas that were

⁸⁰² Samuel Cornish, “Design of the Press,” *The Colored American*, 28 October 1837, 3.

⁸⁰³ “TWO SOURCES OF LICENTIOUSNESS,” *The Colored American*, 4 August 1838, 1. The other alleged source of “licentiousness” was “the Theatre,” the author said.

contrary to his own. The battle with Ruggles, for example, illustrates that Cornish does not appear to have been afraid to battle anyone or anything that had threatened his own goals. Cornish wanted improvement by the press, the government, African-Americans, Euro-Americans, Native Americans, and himself. This theme of moral improvement, reflected in so much of his work, illustrates the value of freedom of expression because people in society cannot rid it of destructive behaviors such as slavery if they cannot negotiate these changes for themselves.

CHAPTER 7

SYNTHESIZING THEORY, HISTORY, AND PRACTICE

Introduction

“[T]he manipulation of man is the destruction of self-government.”⁸⁰⁴

That salty quote by free speech theorist Alexander Meiklejohn speaks volumes to the issue of whether people ought to control the thoughts and expression of others. To find rhetorical sovereignty, people need as much freedom as possible.⁸⁰⁵ Manipulation diminishes rhetorical sovereignty. As Professor Dershowitz argues, people need to protect “a conception of rights that consists of restrictions on the power of government to deprive anyone of those basic liberties that experience has shown are essential to prevent the recurrence of acknowledged wrongs.”⁸⁰⁶ The protections allegedly guaranteed by

⁸⁰⁴ Alexander Meiklejohn, *Free Speech; And Its Relation to Self-Government* (New York: Harper, 1948), 8.

⁸⁰⁵ As discussed above, the idea of rhetorical sovereignty will be cited to Scott Richard Lyons, “Rhetorical Sovereignty: What Do American Indians Want from Writing?” *College Composition and Communication*, 51, no. 3 (February 2000), 447-468; available at <http://links.jstor.org>. See also Scott Lyons, “Rhetorical Sovereignty: American Indian Writing as Self-Determination” (Ph.D. diss., Miami University of Ohio, 2000); available at <http://proquest.umi.com>.

The basic ideas of freedom of expression will be cited primarily to Thomas I. Emerson, *Toward a General Theory of the First Amendment* (New York: Random House, 1966), and *The System of Free Expression* (New York: Random House, 1970). Another seminal source for this dissertation is Nat Hentoff, *Free Speech For Me—But Not For Thee: How the American Left and Right Relentlessly Censor Each Other* (New York: HarperCollins, 1992). For his history of free expression, see Hentoff, *The First Freedom: The Tumultuous History of Free Speech in America* (New York: Delacorte Press, 1980).

For ideas about representation, primarily see Edward Said’s *Orientalism* (New York: Vintage, 1977, 1994) and *Culture and Imperialism* (New York: Vintage, 1994).

⁸⁰⁶ Alan Dershowitz, *Rights from Wrongs: A Secular Theory of the Origins of Rights* (New York: Basic Books, 2004), 16. In this book, Dershowitz vehemently opposes both natural (external) law and positive (internal) law as providing answers to society’s current questions; rather, he suggests that we should embrace “an experiential approach based on nurture rather than nature.” *Ibid.*, 5-6. He said, “It is more realistic to try to build a theory of rights on the agreed-upon wrongs of the past that we want to avoid repeating.” *Ibid.*, 7. The problem is that Dershowitz fails to acknowledge sufficiently the contributions of both positive and natural law in articulating why something would be “wrong.” But, that does not mean that he does not make cogent points about “agreed-upon wrongs,” as the theft of Native land and forced servitude of Africans likely would be included as “agreed-upon wrongs.”

natural law and positive law had not been applied to Native Americans and African-Americans during the age of Jackson, G. Edward White argued:

The reconstituted natural law argument, on its face, seemed particularly germane to cases affecting two racial minorities in the early American republic, black slaves and Indians. Black slaves were persons unquestionably deprived of liberty in a nation that had declared itself to be committed to liberty as a natural right; Indians were persons being dispossessed of property, because of their status, in a nation whose founders had taken the right to hold property to be inalienable. That these commitments had not been embodied in positive laws giving unqualified protection to the liberty and property rights of black slaves or Indians was not necessarily decisive, given the respectability of unwritten maxims of natural justice and common humanity as sources of early American law. Indeed, the stature of the natural law argument and the contradictions between natural law precepts and the treatment of slaves and Indians created pressure on positive law itself.⁸⁰⁷

In sum, whether or not one looks to natural law or positive law or any other conceptualization of law, Native Americans and African-Americans suffered despite ideals and laws that were supposed to have protected them. One wrong leads to other wrongs, which lead to other wrongs. Slavery resulted in suppression of the press, for instance. Some might argue that the law failed Native Americans and African-Americans; but law, as a dynamic force, played both negative and positive roles in the early nineteenth century. Native Americans and African-Americans sought to strengthen their positions through the law. And then they used the press to promote their positions politically. That is, they used the institutions of journalism and law for their own purposes, to assert themselves, to seek even sovereignty. Even though the results were not always uniform or preferred, African-Americans and Native Americans made

⁸⁰⁷ G. Edward White, *The Marshall Court and Cultural Change, 1815-1835*, abridged edition, with aid of Gerald Gunther (New York: Macmillan, 1988, Oxford University Press, 1991), 680-681. Konkle notes White's assessments. Maureen Konkle, *Writing Indian Nations: Native Intellectuals and the Politics of Historiography, 1827-1863* (Chapel Hill: University of North Carolina Press, 2004), 20. Dershowitz throughout his book criticizes both natural and positive law, but this dissertation does not. But Kemper would agree that natural law and positive law each raises interesting possibilities and frustrating limitations.

progress in their quest for survival. Rhetorical sovereignty – though they did not use the phrase to describe their goal – made somewhat of a difference.

The preceding historiographies have been developed and examined by many qualified scholars, almost two full centuries since William Apess, Elias Boudinot, and Samuel Cornish used the written word to seek rhetorical sovereignty for themselves, their families, and their ethnic groups. Altogether, the historiographies have taught us basics about the early minority press, as well as some insights into the politics and cultural issues of the age of Jackson. But this dissertation synthesizes those historiographies in a way that helps us to understand better philosophical foundations and expressions of people wanting to participate more in representative democracy. In sum, through these men, scholars can learn more about the quest for representation, freedom of expression, and rhetorical sovereignty. As mentioned earlier, this concept of rhetorical sovereignty has both promise and problems. This chapter will detail the answer to the final major research question listed in chapter two: In what ways do the experiences and views of the writers support or not support the basic premises of rhetorical sovereignty? A conclusion is that rhetorical sovereignty could describe a goal for any ethnic group wanting more freedom and self-determination, but those groups need to consider the issues about guaranteeing freedom and self-determination for individuals. Rhetorical sovereignty – as essential for group survival – sounds appealing to groups who have been marginalized and persecuted by majority groups. Also, rhetorical sovereignty works best for governmental units, though its principles may be applied to any group. The bottom line is that people become offended and defensive when their freedom is threatened. That is a natural reaction to a common problem. The interesting issue is what those same people do when guaranteeing their own freedom compromises the freedom of others, exploring

just how far people are willing to go in making sure that others have what they have or want.

Also, and more importantly, this chapter discusses in more detail how the historical narratives support the thesis statement: During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty.

1. In what ways do the experiences and views of the writers support or not support the basic premises of rhetorical sovereignty and thereby inform the concepts of representation and freedom of expression?

The lives and writings of William Apess, Elias Boudinot, and Samuel Cornish illustrate some of the value of freedom of expression, especially for ethnic minorities. This value sometimes is minimized in important discussions about representation and diversity; yet, freedom of expression is *essential* to representation and diversity, for without freedom of expression, people do not have the opportunity to share their perspectives. Of course, controls of information are measured along a continuum, and not by extremes. That is, freedom of the press is not a zero-sum game. Even in the most oppressive societies, people speak and write, though often with grave consequences, as Nobel laureate in literature Alexander Solzhenitsyn illustrated when he was unable to accept the prize because of the controls by the Soviet Union.⁸⁰⁸ Apess, Boudinot, and Cornish each had their “say,” their proverbial “15 minutes of fame,” when they published or preached. But others attempted to keep them from saying what they wished. Still,

⁸⁰⁸ See presentation speech by Karl Ragnar Gierow on behalf of Solzhenitsyn December 10, 1970, to the Swedish Academy; available at <http://nobelprize.org/literature/laureates/1970/press.html>.

people today read their words of representation, as this dissertation demonstrates. But a subtle tug o' war always has existed among those who want to be the ones doing the representing. The winners of this tug o' war have the real power. The research questions of this dissertation asked what the writers said in the press and other means about representation of themselves and their people and about freedom of expression. They also explored how the local, state, federal, and tribal governments and others in the United States during the age of Jackson attempted to control the writers' freedom of expression. But, more importantly, they explored how representation, freedom of expression, and controls of information interact. Without freedom of expression, or rather with controls of information, minorities cannot battle misrepresentation effectively.

Of course, this dissertation posits that, during the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty. This chapter summarizes the findings of the research questions, as discussed in the preceding chapters. Yet, underlying those questions and that thesis is a larger philosophy, a belief that freedom of expression is good, helpful, and even necessary. More so, the dissertation argues the relevancy and saliency of freedom of expression for the most marginalized in society, for if the most marginalized in society do not have that freedom, then that society cannot say it is free. And specific societies must negotiate the boundaries of those freedoms for themselves. But if they do not expand those boundaries, then they suffer.

Freedom of expression is *good* for any society. Those societies have to negotiate those boundaries for themselves even though they can learn from other societies, and

people in those societies cannot represent themselves and their societies rhetorically – especially in the face of misrepresentation and controls of information – unless they have freedom of expression. The ability for a group to express itself without external controls would be what Lyons must have meant by rhetorical sovereignty.

Before summarizing and synthesizing what the writers said that resembled rhetorical sovereignty, remember the definition of rhetorical sovereignty, as promulgated by Scott Lyons: “Rhetorical sovereignty is the inherent right and ability of *peoples* to determine their own communicative needs and desires in this pursuit, to decide for themselves the goals, modes, styles, and languages of public discourse.”⁸⁰⁹

(A) William Apess and the Pequot or Mashpee?

Robert Warrior – in a passing comment – connects William Apess with rhetorical sovereignty, without performing a detailed analysis.⁸¹⁰ He simply makes the connection because Apess’s writings were a “message of resistance,” as Warrior called them.⁸¹¹ This sounds sensible – Apess wanted to be able to say what he wanted to say for himself and for the Mashpee in particular and Native Americans in general. But answering whether

⁸⁰⁹ Lyons, “Rhetorical Sovereignty: Writing,” 449-450, also cited by Deborah Gussman, “Rhetorical Sovereignty in William Apess’ Indian Nullification of the Unconstitutional Laws of Massachusetts” (paper presented at the annual meeting of the American Literature Association Annual Conference, May 2004): 7.

⁸¹⁰ Robert Warrior, *The People and the Word: Reading Native Nonfiction*, Indigenous Americas, eds. Robert Warrior and Jace Weaver (Minneapolis, MN: University of Minnesota Press, 2005), 35. Warrior says that “rhetorical sovereignty” resembles his own theory of “intellectual sovereignty,” noting examples of when Native Americans have “asserted control ... over their own communicative needs.” *Ibid.*, 88. See a development of this concept of “intellectual sovereignty” in Robert Warrior, *Tribal Secrets: Recovering American Indian Intellectual Traditions* (Minneapolis: University of Minnesota Press, 1995), 87-126. Drawing from scholars such as Vine Deloria, Jr., Warrior argues “that it is now critical for American Indian intellectuals committed to sovereignty to realize that we too must struggle for sovereignty, *intellectual sovereignty*, and allow the definition and articulation of what that means to emerge as we critically reflect on that struggle.” *Ibid.*, 97-98, alluding to works by Deloria like *Custer Died for Your Sins: An American Indian Manifesto* (New York: Macmillan, 1969) and “Indian Affairs 1973: Hebrews 13:8,” *North American Review* (Winter 1973). Future research needs to explore in more detail the intellectual roots of rhetorical sovereignty and intellectual sovereignty. See discussion of rhetorical sovereignty in chapter two, *supra*.

⁸¹¹ *Ibid.*

Apess represents rhetorical sovereignty requires a consideration of both Apess's writings and their historical context. Remember the differences between speaking for one and speaking for others.

Apess, for the most part, had the support of the Mashpee. They had similar goals. As long as Apess followed the official and unofficial expectations of the Mashpee, Apess had few problems with the Marshpee. Warrior claims, without much citation to historical data, "There are indications that [Apess's] adoption into the Mashpees was eventually seen as detrimental, as least by some in the community."⁸¹² Regardless of whether he enjoyed lasting support, Apess indeed had the blessing of the tribal elders when he argued in *Indian Nullification* for their rights and against the Reverend Phineas Fish.⁸¹³

In considering the overall importance of Apess, Warrior cites a quote from Apess that seems to summarize the message of the Pequot writer: "And while you ask yourselves, 'What do they, the Indians, want?' you have only to look at the unjust laws made for them and say, 'They want what I want.'"⁸¹⁴ People want to be in control of their own communication and lives, without interference from others. Though written in the context of the constitutional republic practiced in the United States, the conceptualizations of Thomas Emerson about freedom of expression help. Emerson said that free expression must be "reconciled with *equal opportunity for other persons or groups*" to have those rights and "with other individual and social interests" [emphasis

⁸¹² *Ibid.*

⁸¹³ The first pages of *Indian Nullification*'s text contain a letter from Mashpee leaders Israel Amos, Isaac Coombs, and Ezra Attaquin, support Apess and his efforts. Israel Amos, Isaac Coombs, and Ezra Attaquin, "TO THE WHITE PEOPLE OF MASSACHUSETTS," 19 March 1835, in *Indian Nullification*, in *On Our Own Ground*, 166.

⁸¹⁴ *Ibid.*, 1, citing William Apess, *Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston, by the Rev. William Apes, an Indian, 1836*, in *On Our Own Ground: The Complete Writings of William Apess, A Pequot*, ed. Barry O'Connell (Amherst: The University of Massachusetts Press, 1992, 1997), 310.

added].⁸¹⁵ Remember also that he listed general benefits for free expression, especially in a democratic society:

1. Freedom of expression is essential as a means of assuring individual self-fulfillment.
2. Freedom of expression is an essential process for advancing knowledge and discovering truth.
3. Freedom of expression is essential to provide for participation in decision making by all members of society.
4. Freedom of expression is a method of achieving a more adaptable and hence a more stable community, of maintaining the precarious balance between healthy cleavage and necessary consensus.⁸¹⁶

Lyons's ideas of community rights over communication seem to be consistent with the final three benefits mentioned by Emerson, but not the first. Freedom of expression would allow ethnic groups to get feedback from all of their members, allowing for those members to have a sense of ownership in the process. And widespread input allows for decision-makers to know the truth about matters. But Lyon's conceptualization leaves no room for individual needs as expressed by Emerson, unless the community has subsumed those needs. Much of the negative literature cited in chapter three regarding Apess perhaps could be explained by this tension between individualism and communalism. Apess chose to embrace certain ideas from Euro-Americans – evangelical Christianity, political principles from the Enlightenment, the use of mass communications, etc. This embracing of Christianity and the Enlightenment stood in contrast to choices of many other tribes at the time, even though some tribes such as the Cherokee officially had embraced those ideas for the most part. From a careful reading of his writings, including his autobiography *A Son of the Forest*, Apess

⁸¹⁵ Emerson, *System*, 3.

⁸¹⁶ Emerson, *System*, 6-7. Emerson, *Theory*, 3, also expresses these, but with slightly different wordings.

functioned more as an individual than as a member of a community. He seemed to have spoken as much more about himself as he did about his ethnic groups. This does not, of course, mean that Apess at times did not have communalistic attitudes or actions. Indeed, he argued for a particular group of people – the Mashpee – in *Indian Nullification*. But, again, he used a lot of that book to defend *himself*. The idea of rhetorical sovereignty as conceptualized by Native scholars simply does not account for the needs and wants of individuals like Apess. Groups do not function in a vacuum; they include individuals operating in contexts inside as well as outside the group. Those individuals need to be protected so that the groups can realize their potential. Life is more like a complicated Venn diagram: People have convergent and divergent interactions.

(B) Elias Boudinot and the Cherokee?

Perhaps the most compelling example of the promise and problems of the theory of rhetorical sovereignty was the story of Elias Boudinot and his departure from the “official” position of the Cherokee. Boudinot believed he represented the true feelings of the people, though Chief Ross disagreed.⁸¹⁷ Boudinot did make overtures to the tribe, hoping to ameliorate what Luebke called “tribal factionalism” with the Cherokee, saying:

We would respectfully caution our Cherokee friends against the many reports which are circulating about *certain things* and *certain persons*. This is no time to be impugning each other’s motives, and doubting each other’s patriotism. We hope there will be no attempt made to create the idea that there is a faction formed or forming, and by that means destroy the reputation of certain individuals. We know of no such faction—we say to all, be *national*—look to the interest of the people—*nothing but the interest of the PEOPLE*.⁸¹⁸

⁸¹⁷ See discussion in chapter five, *supra*.

⁸¹⁸ Elias Boudinot, *Cherokee Phoenix*, 21 July 1832; quoted in Barbara Luebke, “Elias Boudinot, Cherokee Editor.” (Ph.D. diss., University of Missouri-Columbia, 1981), 275.

As Peyer notes, Boudinot promoted Cherokee nationalism, writing:

While he possesses a national character, there is hope for the Indian. But take his rights away, divest him of the last spark of national pride, and introduce him to a new order of things, invest him with oppressive laws, greivous to be borne, he drops like the fading flower before the noon day sun.⁸¹⁹

Thus, Boudinot acted in what he thought would be the best interest of the Cherokee. But who gave him *that* right? Peyer said:

In claiming the unorthodox right for himself to make political decisions over the heads of the Cherokee populace, Boudinot was acting in accordance not only with the elitist Anglo-Protestant social standards taught to him by his Presbyterian mentors but also with the patronizing stance of the Cherokee mixed-blood proto-elite as savants of a new and better way of life.⁸²⁰

The problem with Peyer's assessment is that it smacks of resentment for the fact that Boudinot had Euro-American blood and ideas (as if you could generalize the experience of having mixed ethnic origins). This appears to be a common theme among certain Native American scholars – criticize the Euro-Americans and Christians any chance you get (as if the two are joined at the hip).⁸²¹ And the Euro-Americans and the Christians have a lot for which answer. But the “good Indian, bad cowboy” routine (just like the “bad Indian, good cowboy” motif typified in early western movies) exacerbates long-standing hatred and misunderstandings and hinders the serious conversations needed for

⁸¹⁹ Peyer, 189, citing Elias Boudinot, *Cherokee Phoenix*, 28 January 1829, 2, cited in Perdue, ed., *Cherokee Editor*, 103-106.

⁸²⁰ Peyer, 214. For more discussion about the “proto-elite” theory, see Jean Folkerts and Dwight L. Teeter Jr., *Voices of a Nation: A History of Mass Media in the United States*, 3^d ed. (Boston: Allyn & Bacon, 1998), 109, who cite Theda Perdue, “Rising from the Ashes: The *Cherokee Phoenix* as an Ethnohistorical Source,” *Ethnohistory* 24 (Summer, 1977), 207-218; and Theda Perdue, “Native American Missionary Writers,” a Review of *The Tutor'd Mind: Indian Missionary-Writers in Antebellum America* by B.C. Peyer, *Reviews in American History*, 26:3, 541-545; available at http://muse.jhu.edu/journals/reviews_in_american_history/v026/26.3perdue.html. White, 716, cites William McLoughlin and Walter H. Conser, Jr., “The Cherokees in Transition: A Statistical Analysis of the Federal Census of 1835,” *Journal of American History*, 64 (1977): 678-703, among others, to support such an argument.

⁸²¹ See discussion in chapter two-five, *supra*.

racial and social harmony.⁸²² Peyer does acknowledge the *ad hominem* arguments against mixed-blood Natives: “Labeled contemptuously as sellouts, apples, Uncle Tomahawks, or, in its kindest form, progressives, transcultural Indians often found themselves stigmatized as the bastard offspring of two incompatible societies.”⁸²³

Thus, Boudinot could not please the Euro-Americans because of being Native, and he could not please the Cherokee because of being Euro-American, or so they thought. He stood in the middle of a conflict, dissenting and debating, which resulted in his death by assassination. His story stands for the proposition that no one person can represent the views of a group all of the time in every way. He sought a form of rhetorical sovereignty as he sought survival for the Cherokee, but what he found was that he did not control the outcome. Thus, though the Cherokee survived, Boudinot did not.

(C) Samuel Cornish and free African-Americans?

Again, perhaps Samuel Cornish’s historiography has been the most difficult to illustrate the concept of rhetorical sovereignty from a historical perspective, especially as Lyons discussed the concept *only* in relation to Native American tribes. But comparing the position and desires of another minority group allows us to see both the strengths and the weaknesses of the theory. Martin Dann said:

Two currents in black intellectual history evident in the black press converge repeatedly: a response to white racism and an assertion of self-determination....The final aim of both was manhood, dignity, and self-respect—the goal with which black nationalism has become synonymous.⁸²⁴

⁸²² For a discussion about the need for racial and social harmony, see Cornel West, *Race Matters*, 2d ed. (Boston: Beacon Press, 1993; New York: Vintage Books, 2001).

⁸²³ *Ibid.*, 13.

⁸²⁴ Martin E. Dann, ed., *The Black Press, 1827-1890: The Quest for National Identity*, (New York: G.P. Putnam’s Sons, 1971), 12. Of course, the intellectual history of ethnic minorities must not exclude women, as Mary Apess illustrates in chapter four, *supra*.

The African-American press and the abolitionist press played integral roles in promoting freedom of expression during the age of Jackson.⁸²⁵ Note, though, that the First Amendment may have hurt African-Americans, too, as it empowered and enabled certain Euro-Americans to publish freely their hate.⁸²⁶ Based on the evidence discussed in chapter six, it would appear that the principles of rhetorical sovereignty could be applied to African-Americans.⁸²⁷ In fact, if rhetorical sovereignty informs more groups than Native tribes, then scholars need to look for evidence in many ethnic groups, including Hispanic-Americans, Asian-Americans, and others.⁸²⁸ As discussed above, Kant's categorical imperative would argue that rhetorical sovereignty either belongs to all groupings of people, or no groupings of people.⁸²⁹

(D) Bringing them together

William Apess, Elias Boudinot, and Samuel Cornish have numerous similarities in their quest for rhetorical sovereignty, representation, and freedom of expression. They each sought similar goals at similar times in similar ways, though in differing contexts. Konkle details the one known time that Apess and Boudinot shared a stage – while both

⁸²⁵ See Curtis, *supra*. Justice Potter Stewart recognized the role of the abolitionist press and its connection with free press. See Stewart, "Or of the Press," *Hastings Law Journal* 26 (January 1975): 632.

⁸²⁶ Armistead S. Pride and Clint C. Wilson II, *A History of the Black Press*, Moorland-Spingarn Series, (Washington, D.C.: Howard University Press, 1997), 6. But the First Amendment also can be a friend to the African-American, but not without raising interesting questions. See Harry Kalven, Jr., *The Negro and the First Amendment* (Columbus: The Ohio State University Press, 1965; Chicago: Phoenix Books of The University of Chicago Press, 1966).

⁸²⁷ Pride and Wilson talk about how African-Americans use the press, especially in the early nineteenth century, to seek "the full realization of citizenship and equality in all aspects of American life" *A History of the Black Press*, 15. See also 4-6, where Pride and Wilson discuss citizenship and other aspirations of African-Americans.

⁸²⁸ For example, an article to study in the future would be D. Meyer, *Speaking for Themselves: Neomexicano Cultural Identity and the Spanish-Language Press, 1880-1920* (Albuquerque: New Mexico University Press, 1996), cited in Diana Dixon, "Annual Review of Work in Newspaper and Periodical History," *Media History* 6, no. 1 (2000), 86.

⁸²⁹ For a brief discussion of Kant's categorical imperative, see Philip Patterson and Lee Wilkins, *Media Ethics: Issues and Cases*, 2d ed. (Madison, WI: Wm. C. Brown Communications, Inc., 1991, 1994), 8-9.

spoke of Native rights, apparently Apess made a better impression on the public than did Boudinot.⁸³⁰ An observer said, as quoted by Konkle:

[Apess] was evidently not quite so well educated, had not the same familiarity with choice language, and was not so *civilized* as his companion [Boudinot], but there was more native eloquence in his address; his earnestness was evidently sincere, and I felt the difference between hearing an actor on the stage, or even a lawyer defending a client—and listening to a patriot engaged bona fide, with all his heart and soul, in stating the wrongs and pleading the cause of his oppressed country.⁸³¹

Gaul said, “Like Apess, Elias [Boudinot] in his writing displays not so much an unthinking internalization of Western values as a redeployment of them in strategic and resistant ways as he criticizes the acquisitiveness and greed driving white Americans’ treatment of Cherokees.”⁸³²

Apess was aware of the situation of the Cherokee, for he could not understand why the Euro-Americans in Massachusetts sympathized with the Cherokee but would not support the Mashpee. Apess wrote:

As our brethren, the white men of Massachusetts, have recently manifested much sympathy for the red men of the Cherokee nation, who have suffered much from their white brethren; as it is contended in this State, that our red brethren, the Cherokees, should be an independent people, having the privileges of the white men; we, the red men of the

⁸³⁰ See Konkle, *Writing Indian Nations*, 97-100, citing in part a letter from an observer, Louisa Jane Park to Agnes Major Park, 29 April 1832, Park Family Papers (1800-1890), American Antiquarian Society, Worcester, Mass.

Also, Konkle compares Boudinot, Apess, and African-American journalist David Walker, who “produced analyses of the early uses of discourses of racial difference as the means of justifying the oppression of Native and African American people in both the Indian removal and African colonization schemes, and they all produced more or less the same critique: they reject racial differences, claim history and therefore political equality for themselves, and, often through the use of sustained textual analysis, refute whites’ knowledge about them as politically self-interested misrepresentations.” *Writing Indian Nations*, 50-51. The same could be said of Boudinot, Apess, and Cornish, or for that matter ethnic writers who want to assert the interests of their people. This assessment by Konkle confirms a major finding of the dissertation.

⁸³¹ *Ibid.*, 99.

⁸³² Theresa Strouth Gaul, *To Marry an Indian: The Marriage of Harriett Gold and Elias Boudinot in Letters, 1823-1839* (Chapel Hill: University of North Carolina Press, 2005), 50.

Marshpee tribe, consider it a favorable time to speak. We are not free. We wish to be so, as much as the red men of Georgia. How will the white man of Massachusetts ask favor for the red men of the South, while the poor Marshpee red men, his near neighbors, sign in bondage? Will not your white brothers of Georgia tell you to look at home, and clear your own borders of oppression, before you trouble them?⁸³³

Cornish also empathized with the plight of the Cherokee, as the lead article of the April 12, 1838 issue of *The Colored American*, written by someone with a pseudonym, illustrates:

The Cherokee Indians have again presented a memorial to Congress setting forth their grievances, and praying to be saved from the exterminating and sinister designs of the American Government, and its authorized agents. They may well complain, for a more base and foul perfidy was never perpetrated.⁸³⁴

Also, Apess identified with the sufferings of the African-American slaves.⁸³⁵ As Dannenberg argues, “From 1833 on, Apess’s writings mark the kinds of connections between enslavement of African-Americans and the dispossession of Native Americans that would be fully articulated by other activists and scholars only much later.”⁸³⁶ But

⁸³³ William Apess, *Indian Nullification*, 205, cited in Bernd Peyer, *The Tutor’d Mind: Indian Missionary-Writers in Antebellum America* (Amherst: University of Massachusetts Press, 1997), 146. Note that Apess speaks of men but not women – perhaps he meant “mankind” or perhaps he was chauvinistic or perhaps he reflected society at the time. Regardless, Native women “suffered much from” Euro-Americans, too. See, e.g., Theda Perdue, *Cherokee Women: Gender and Culture Change, 1700-1835*, Indians of the Southeast series (Lincoln: University of Nebraska Press, 1998).

⁸³⁴ Phileleutheras, “THE CHEROKEES: Address to the People of the United States,” the *Commonwealth*, reprinted in *The Colored American*, 12 April 1838.

⁸³⁵ See William Apess, *Eulogy on King Philip, as Pronounced at the Odeon, in Federal Street, Boston, by the Rev. William Apes, an Indian, 1836*, in *On Our Own Ground: The Complete Writings of William Apess, A Pequot*, ed. Barry O’Connell (Amherst: The University of Massachusetts Press, 1992, 1997), e.g., 277, 306, cited in Anne Marie Dannenberg, “‘WHERE, THEN, SHALL WE PLACE THE HERO OF THE WILDERNESS?’ William Apess’s *Eulogy on King Philip* and Doctrines of Racial Destiny,” in *Early Native American Writing: New Critical Essays*, ed. Helen Jaskoski (Cambridge: Cambridge University Press, 1996), 74-75.

See also Apess in *Experiences*, in *On Our Own Ground*, 155-161.

This concern by Apess also has been noted in Konkle, *Writing Indian Nations*, 157-158.

⁸³⁶ Dannenberg, 75.

Dannenberg apparently recognizes that the sympathetic impulses of those who care about the plight of the African-Americans and Native Americans do not diminish the fundamental differences in the legal and political positions of those ethnic groups. She says:

Although blacks in contacts with whites would always remain blacks, Indians mingling with whites ceased to be truly Indian. Indians who coexisted with whites either degenerated (becoming less Indian) or, in rare instances, assimilated (becoming less Indian). Either way, prolonged contact eroded true Indianness.⁸³⁷

Yet, this perspective by Dannenberg diminishes the experience of the African-Americans during the age of Jackson – the freed people at times were assimilative, as Cornish and his emphases of incorporating many Euro-American values show. Assimilation is a problem not confined to Native Americans. Also, Dannenberg implies that assimilation diminishes cultural distinctiveness. Indeed, this seems logical. But is there a point that someone is no longer a Native American, despite having Native blood? This is a troubling question, for it gets at the heart of race and representation.⁸³⁸ And Dannenberg's perspectives exacerbate the maddening notions by some scholars that Apess and Boudinot, because they became Christians and educated, were somehow less Native.⁸³⁹ As Warrior intimates above, perhaps becoming Christian and educated may have enhanced rather than diminished their Indianness.⁸⁴⁰

Religion does complicate matters, in relation to the issues of this dissertation. As

⁸³⁷ *Ibid.*, 79.

⁸³⁸ For scholars who have wrestled with the official question of “who is an Indian?”, see, e.g., Stephen L. Pevar, *The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights*, 3d ed., An American Civil Liberties Union Handbook, ed. Eve Cary (New York: New York University Press, 2004), 18-20; and Jack Utter, *American Indians: Answers to Today's Questions*, 2d ed. (Lake Ann, MI: National Woodlands Publishing Co., 1993; Norman: University of Oklahoma Press, 2001), 25-29.

⁸³⁹ See related discussions and notes, *supra*.

⁸⁴⁰ See discussion and notes, *supra*.

the findings show, Boudinot, Cornish, and arguably more so Apess were explicitly religious in their viewpoints. While needing and wanting free expression for their religious beliefs, the writers may or may not have realized the tension that religion and liberty often have. John Stuart Mill – not an evangelical Christian by any definition – worried about the effects of religion upon liberty:

What is boasted of at the present time as the revival of religion, is always, in narrow and uncultivated minds, at least as much the revival of bigotry; and where there is the strong permanent leaven of intolerance in the feelings of a people, which at all times abides in the middle classes of this country, it needs but little to provoke them into actively persecuting those whom they have never ceased to think proper objects of persecution.⁸⁴¹

Mill, in his own note of the previous sentence, voices concern over rhetoric from evangelicals of the time that argued as a colonial policy “that no schools be supported by public money in which the Bible is not taught, and by necessary consequence that no public employment be given to any but real or pretended Christians.”⁸⁴²

Locke, more explicit in his religious loyalties, said:

For if men enter into seditious conspiracies, it is not religion inspires them to it in their meetings, but their sufferings and oppressions that make them willing to ease themselves. Just and moderate governments are everywhere quiet, everywhere safe; but oppression raises ferments and makes men struggle to cast off an uneasy and tyrannical yoke. I know it is true that seditions are very frequently raised upon pretense of religion, but it is as true that for religion subjects are frequently ill treated, and live miserably. Believe me, the stirs that are made proceed not from any peculiar temper of this or that Church or religious society, but from the common disposition of all mankind, who when they groan under any heavy burden endeavor naturally to shake off the yoke that galls their necks.⁸⁴³

⁸⁴¹ John Stuart Mill, *On Liberty: Annotated Text, Sources and Background Criticism*, A Norton Critical Edition, ed. by David Spitz (New York: W.W. Norton & Co., 1975), 31

⁸⁴² *Ibid.*, 31, n. 9, citing Lord Palmerston’s speech as quoted in *The (London) Times* (14 November 1857). Spitz as editor of the volume of Mill added the specific citation.

⁸⁴³ John Locke, *A Letter Concerning Toleration* (1685), reprinted in *John Locke: On Politics and Education*, with an introduction by Howard R. Penniman (Walter J. Black, Inc., for the Classics Club: Roslyn, N.Y., 1947), 60. This sounds similar to Dershowitz’s concerns about how wrongs results in the desire for rights, *supra*.

Just because a culture or society needs sovereignty to make its own decisions does not mean that the culture or society always makes the best choices. As Mill says, “though culture without freedom never made a large and liberal mind, it can make a clear *nisi prius*.”⁸⁴⁴ So, the presumption of validity made in the precedence of law must be tested at times by reason and experience.⁸⁴⁵

As Said once wrote:

All cultures tend to make representations of foreign cultures the better to master or in some way control them. Yet not all cultures make representations of foreign cultures *and* in fact master or control them.⁸⁴⁶

Interestingly, then, representations (or, more so, misrepresentations) indeed can become controls of information. Konkle says, “If the problem is that whites grievously misrepresent Native peoples, with disastrous personal and political results for Native peoples, then knowledge has to be produced by Native peoples for it to be accurate about Native peoples.”⁸⁴⁷ Also, she says, “When the knowledge about Native peoples has

⁸⁴⁴ The editor’s note to this clause says *nisi prius* means “[a] term derived from English legal proceedings; used more generally to mean that a law is presumed valid unless shown otherwise.” Mill, *On Liberty*, 38, n. 3, ed. by Spitz.

⁸⁴⁵ Of course, the concept of precedents undergirds the common law systems in the United States and many other English-speaking countries. But without getting into the seemingly never-ending conflict of whether judges ought to “legislate from the bench,” as President George W. Bush has been fond of saying, note that the concepts of “reversing and overruling” and “res judicata and stare decisis” means that jurisprudence has both fluidity and stability, needing new knowledge to inform the old. For more on President Bush’s rhetoric, see his 2005 State of the Union Address, where he said, “Because courts must always deliver impartial justice, judges have a duty to faithfully interpret the law, not legislate from the bench.” Available at <http://www.whitehouse.gov/news/releases/2005/02/print/20050202-11.html>. Of course, critics imply that this is a double-standard. See Michael Kinsley’s comments about how Bush and Republicans wanted judges to “legislate from the bench” by keeping Teri Schiavo’s life support on her case: “Bush Gets B+ for Honesty, Even Courage, on Social Security,” 1 May 2005; available at http://www.latimes.com/news/opinion/la-oe-kinsley1may01_0,1111008.print.column?coll=la-util-op-ed.

For the four concepts of “reversing and overruling” and “res judicata and stare decisis,” see Eva Hanks, Michael E. Herz, and Steven S. Nemerson, *Elements of Law* (Cincinnati, OH: Anderson Publishing Co., 1994), 26-29.

⁸⁴⁶ Edward Said, *Culture and Imperialism* (New York: Vintage, 1994), 100

⁸⁴⁷ Konkle, *Writing Indian Nations*, 56.

construed them as different and sought to account for their difference ad infinitum, and when Native intellectuals have recognized that that knowledge about their difference is the means to justify political oppression, it should come as no surprise when efforts are made to counter and stop the flow of misrepresentation.”⁸⁴⁸ Also, to develop that theme, if Euro-Americans tell stories about African-Americans, and African-Americans do not have the freedom or opportunities to tell stories about themselves, then truth gets lost. If Said is correct that it is possible to represent other cultures in writing and *not* control them, then what makes that possible? Freedom of expression for all of the players in the drama. Control involves the maintenance of power or domination. Thus, a dominating culture in fact exerts controls in every way. By exercising free expression, whether allowed to or not, the non-dominant players counterbalance the controls and therefore the power. Rousseau argues, “The problem is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.”⁸⁴⁹

By entering into a social contract, people ought to receive protections of individual liberties, as Rousseau says: “What man loses by the social contract is his natural liberty and an unlimited right to everything he tries to get and succeeds in getting; what he gains is civil liberty and the proprietorship of all he possesses.”⁸⁵⁰ If left unchecked, government starts to degenerate, as Rousseau argues: “The body politic, as well as the human body, begins to die as soon as it is born, and carries in itself the causes of its

⁸⁴⁸ *Ibid.*, 292.

⁸⁴⁹ Jean Jacques Rousseau, *The Social Contract and Discourses*, translated with an introduction by G.D.H. Cole (New York: E.P. Dutton and Co., Inc., 1950), 13-14.

⁸⁵⁰ *Ibid.*, 18.

destruction.”⁸⁵¹ Mills’s view that the social contract is an instrument of racism would resonate with those who have been oppressed by Euro-American institutions.⁸⁵² But that view engenders stereotypes about Euro-Americans and fails to solve the problems of stereotypes by Euro-Americans. It is one thing to curse the darkness, and it is another thing to turn on the light, as the proverb goes. Regardless of whether Rousseau’s social contract has racist foundations, one must acknowledge that individuals give up something when they enter the body politic, when they attempt to interact with and govern with their neighbors. Thus, individual freedoms go along with social concerns. The society that rejects individual freedoms is totalitarian. And this totalitarianism stands inapposite to freedom of expression, and vice versa.⁸⁵³ The Native American tribes have “decided” – forced or otherwise – to embrace a form of democratic government. As mentioned earlier, some even argue that the founders of the United States were influenced by ideas of democracy from tribes such as the Iroquois.⁸⁵⁴ So, if early Natives tribes practiced a form of democracy, and democracy requires freedom of expression, then those Native tribes likely had some form of freedom of expression.⁸⁵⁵

Even democratic governments press against freedom of the press, as the governments believe they ought to be doing the representing, and not the press. One of

⁸⁵¹ *Ibid.*, 85, 88.

⁸⁵² See Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997).

⁸⁵³ Emerson, *System*, 4-5, reminds us of this.

⁸⁵⁴ Bruce Johansen and other scholars such as Vine Deloria, Jr., argue that certain founders of the U.S. government actually learned lessons about democracy from tribes. See Johansen, *Debating Democracy: Native American Legacy of Freedom*, with chapters by Donald A. Grinde, Jr., and Barbara A. Mann, with forward by Vine Deloria, Jr. (Santa Fe, N.M.: Clear Light Publishers, 1998), and *Native America and the Evolution of Democracy: A Supplementary Bibliography*, *Bibliographies and Indexes in American History*, 40, compiled by Bruce E. Johansen (Westport, CT: Greenwood Press, 1999). See discussion notes and discussions in earlier chapters of this dissertation.

⁸⁵⁵ That presumes that Emerson is correct that democracy requires free expression and Johansen and Deloria are correct that Natives practiced democracy.

the first, and likely most important, contributions of this dissertation is the reminder that the problems with freedom of the press among tribes began in the 1820s. Regrettably, those issues remain.⁸⁵⁶ Ultimately, tribes that own media outlets may want to control the content.⁸⁵⁷ This undermines freedom of the press and the rhetorical sovereignty the tribes want to keep. Hust said:

Until the newspapers are no longer a part of the tribal government, no journalist will be truly free to criticize or write freely about the government. In this manner, tribal journalism may be unable to serve the watchdog function that is so treasured by American journalists.⁸⁵⁸

Tribal officials might retort that censorship *is* practicing rhetorical sovereignty – they get to decide the communication for the tribe. That is why tribes and other ethnic groups who practice rhetorical sovereignty need to be challenged to make decisions that support freedom of expression as understood by those cultures. It is one thing to say that free expression is good for Americans, so it must be good for Natives. It is another to say that Natives have believed in a form of free expression all along.

Despite similar concerns, Native Americans and African-Americans had dissimilar political positions during the early nineteenth century, as well as today, which complicates matters regarding free press and other political and philosophical issues. As Konkle said:

⁸⁵⁶ See, e.g., Karen Lincoln Michel, ed., *From the Front Lines: Free Press Struggles in Native America: Essays by Native Journalists* (Minneapolis, MN: Native American Journalists Association, 1998) and numerous articles in “Covering Indian Country,” *Nieman Reports* 59, no. 3 (Cambridge, MA: The Nieman Foundation for Journalism at Harvard University, Fall 2005).

⁸⁵⁷ *Ibid.*

⁸⁵⁸ Stacey J.T. Hust, “Performing the Watchdog Function: An Investigation of the Status of Freedom of Expression Within Native American Tribal Courts” (paper presented at the Minorities and Communication Division of the Association for Education in Journalism and Mass Communication, Kansas City, Missouri, August 2003): 34, and “Performing the Watchdog Function: Freedom of the Press on Tribal Land” (paper presented at Many Ways to See the World: Fusing Indian and Non-Indian Legal Systems in the Modern World: New Directions in American Indian Research: A Gathering of Emerging Scholars at the Graduate School of the University of North Carolina at Chapel Hill, November 2004); available at <http://www.gradschool.unc.edu/natam/panels/many.html>.

It is often noted that support for the Cherokees dissipated rapidly, especially after the passage of the Removal Act, or was supplanted by white support for the nascent antislavery movement. The demands of African Americans held as slaves are in some respects easier to assimilate and easier to subvert: African Americans couldn't demand political autonomy, as they had no land; they could only claim inclusion in the political system, which allows for a benevolence that essentially keeps the oppression of African Americans in place. The fact that Native peoples had a well-known, well-discussed, and to many whites highly convincing argument for political autonomy (and therefore equality) leads to the disappearance of their conflict as a political issue. It disappears because the only way it can truly be solved, at least from the perspective of EuroAmerican authority, is if Indians themselves disappear.⁸⁵⁹

And there is historical evidence that Native Americans and African-Americans had racial conflicts between themselves during the age of Jackson and beyond, and that Elias Boudinot himself voiced questionable attitudes about African-Americans.⁸⁶⁰ And note that certain southeastern tribal members also owned slaves. But, despite their disparate positions, African-Americans and Native Americans had at least one thing in common: They wanted what now can be understood as rhetorical sovereignty and the related freedom of expression, so they could fight for survival in the face of misrepresentations and controls of information. As Murphy said in reference to Native newspapers:

They offered news, information and advertising for Indian communities. But they also sounded the alarm when Indians needed to be warned about dangers to themselves and their communities.⁸⁶¹

⁸⁵⁹ Konkle, *Writing Indian Nations*, 71.

⁸⁶⁰ See, e.g., Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000), 87. See also Sam G. Riley, "A Note of Caution – The Indian's Own Prejudice, as Mirrored in the First Native American Newspaper," *Journalism History*, 6, no. 2 (summer 1979): 44-47.

⁸⁶¹ Sharon Murphy, "Neglected Pioneers: 19th Century Native American Newspapers," *Journalism History*, 4, no. 3 (Autumn 1977): 79.

Rennard Strickland makes an interesting observation: "Reading the *Phoenix* and *Advocate* was about all the legal education some early lawyers received...." Rennard Strickland, *Fires and the Spirits: Cherokee Law from Clan to Court*, Civilization of the American Indian Series (Norman: University of Oklahoma Press, 1975), 110. This means that the Native press served specific functions that differentiated it from its Euro-American counterparts.

Americans were becoming Americans during the age of Jackson, as Walker notes, and some Native Americans wanted to be a part of that.⁸⁶² About this process of achieving “nationness” in the United States, Walker says, “What has not been adequately recognized before is that Native Americans also participated in this cultural process, sometimes in order to distinguish themselves from the invaders but sometimes in the interests of revising notions of America to include the tribes themselves.”⁸⁶³

Also, do not forget the African-Americans, who also were seeking their position in the United States of America. They, too, wanted (and still want) to be a part of what America would become, a part of a more positive future, a part of the political process. But the bottom line is that ethnic minority groups need to be accepted as part of the process, or even recognized as having their own process, if America wants to become a truly diverse society.

2. Fresh directions for the concept of rhetorical sovereignty, and therefore freedom of expression and representation

Scott Lyons, a Native writer apparently hoping to justify his own need for writing, argues that tribes ought to have power over their own communication.⁸⁶⁴ The quest for rhetorical sovereignty really is a quest for political and cultural sovereignty and survival, as Lyons’s work argues.⁸⁶⁵ Konkle says, “To the extent that scholars refuse to recognize Native political autonomy as a category for analysis, they continue to participate in a

⁸⁶² Cheryl Walker, *Indian Nation: Native American Literature and 19th Century Nationalisms*, New Americanists, ed. Donald E. Pease (Durham, NC: Duke University Press, 1997), 6-7.

⁸⁶³ *Ibid.*, 7.

⁸⁶⁴ See Lyons, “Rhetorical Sovereignty: Self-Determination,” *supra*, e.g., 6, 22, 40-41, 154, 206.

⁸⁶⁵ *Ibid.*

colonial epistemology.”⁸⁶⁶ And without this political autonomy, ethnic minorities cannot have control over their own communication. But if they have control, then they have the authority to decide whether to control others. It is difficult to scold oppressed ethnic groups too much for controlling what they see as an additional threat to the groups’ survival. Konkle says, for instance:

Native peoples were acting as best they could to preserve their political autonomy—their control of their lives—and their authority for their knowledge in the face of an invasion that would destroy their freedom, their political organization, and their knowledge in order to assert authority over their land. As a result of treaty relations and other historical factors (the loss of language as a result of colonization being predominant among them), it became crucial—a point agreed upon by Native leaders throughout history to the present moment—that Native peoples learn to use and manipulate English in order to preserve themselves.⁸⁶⁷

This arrives from different paths at a similar conclusion by Lyons that Native peoples need writing to survive – they need rhetorical sovereignty.⁸⁶⁸ But rhetorical sovereignty also threatens freedom of expression from two fronts – utilitarian concerns about the survival of the tribe, and cultural arguments against the veracity and appropriateness of freedom of expression for all ethnic groups. Each of these concerns can be seen in ethnic groups’ desires to fight off anything that appears to be a threat.

First, utilitarianism often arises when different concerns compete for attention and therefore need to be balanced.⁸⁶⁹ At first glance, the broad conceptualization of freedom

⁸⁶⁶ Konkle, *Writing Indian Nations*, 291.

⁸⁶⁷ *Ibid.*, 38.

⁸⁶⁸ See discussion and notes about Lyons’s theory, *supra*.

⁸⁶⁹ Judge Learned Hand expressed a utilitarian formula when he weighed the burden of avoiding an accident with the liability if the accident occurs. See *United States v. Carroll Towing Co.*, 159 F.2d 169 (2nd Cir. 1947), in Victor E. Schwartz, Kathryn Kelly, and David F. Partlett, *Prosser, Wade and Schwartz’s Torts*, 10th ed. (New York: Foundation Press, 2000), 141. See also how the U.S. Supreme Court applied a similar test by Hand to expression: “In each case [courts] must ask whether the gravity of the ‘evil,’ discounted by its improbability, justifies such invasion of free speech as is necessary to avoid the danger.” See *Dennis v. United States*, 341 U.S. 494, 510 (1951), citing *U.S. v. Dennis*, 183 F.2d 201, 212 (2nd Cir. 1950), cited by T. Barton Carter, Marc A. Franklin, and Jay B. Wright, *The First Amendment and the*

of expression in this dissertation resembles the philosophy of John Stuart Mill, the epitome of utilitarianism during the early to mid nineteenth century:

[Liberty] comprises, first, the inward domain of consciousness; demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it. Secondly, the principle requires liberty of tastes and pursuits; of framing the plan of our life to suit our own character; or doing as we like, subject to such consequences as may follow: without impediment from our fellow-creatures, so long as what we do does not harm them, even though they should think our conduct foolish, perverse, or wrong. Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.⁸⁷⁰

Fourth Estate: The Law of Mass Media, 9th ed. (New York: Foundation Press, 2005), 75. So, what if tribes weigh the burdens of free press with potential harm and decide that free press is just not worth the risk? That is why this dissertation prefers Kant's categorical imperative to Hand's utilitarianism. See Patterson and Wilkins, 6-15, for a comparison of categorical imperative, utilitarianism, and other theories. Future research could explore whether those theories, their variants, or other theories – can be found in discussion and jurisprudence about free press for ethnic minorities. And then, one can examine which makes more sense for ethnic groups to adopt for themselves.

⁸⁷⁰ Mill, *On Liberty*, 13-14.

Spitz includes in this edition some biting criticisms of Mill, 123-190, including an anonymous essay, "Mill on Liberty," from *National Review*, 8 (1859), 393-424; James Fitzjames Stephen, "Mill's Fallacies," excerpts of *Liberty, Equality, Fraternity* (London, 1873), 8-15, 22-23, 26-27, 43-44, 46-48, 76-79, 123, 130-131, 145-149, 153, 154, 184-185; Willmoore Kendall, "The 'Open Society' and Its Fallacies," from *The American Political Science Review* 54 (1960), 972-979; Maurice Cowling, "The Illiberalism of John Stuart Mill," from *Mill and Liberalism* (Cambridge, 1963), 12-15, 22-23, 25-26, 28-33, 41-44, 98-105; and Patrick Devlin, "Morals and the Criminal Law," from *The Enforcement of Morals* (London, 1965), 1-25.

A pertinent sample of these critiques would be Stephen's thesis:

The real question is as to social intolerance. Has a man who believes in God and a future state a moral right to disapprove of those who do not, and to try by the expression of that disapproval to deter them from publishing, and to deter others from adopting their views? I think that he has if and in so far as his opinions are true. Mr. Mill thinks otherwise. Stephen, "Mill's Fallacies" in Spitz, 149.

Stephen apparently does not realize his false assumption that truth is ascertained in a vacuum, if at all. And how may truth be ascertained, if people may not express freely their views?

In defense of Mill, Spitz includes the following essays, 191-252: Albert William Levi, "The Value of

This utilitarian perspective, though, contains a major hazard for free expression: When people, groups, or societies think that they have been or will be “harmed,” they will find justification for suppression, though that justification may not survive on other grounds. This philosophy currently reflects itself in the writings of utilitarians such as Professor Stephen Holmes, who seem willing to accept censorship in some circumstances for pressing reasons.⁸⁷¹ But, if one can accept censorship for a narrow reason, it would be

Freedom: Mill’s Liberty (1859-1959),” from *Ethics* 70 (1959): 37-46; Spitz, “Freedom and Individuality: Mill’s *Liberty* in Retrospect,” from *Liberty*, ed. by Carl J. Friedrich (New York, 1962), 176-226; C.L. Ten, “Mill on Self-Regarding Actions,” from *Philosophy* 43 (1968): 29-37; H.L.A. Hart, “Immorality and Treason,” from *The Listener* 62 (30 July 1959): 162-163.

A pertinent example of these defenses would be Levi’s summary of Mill’s argument: “*at some central core of individuality a line of strict demarcation must be drawn*, and it must be maintained with all the resources of political or philosophical power.” “Value of Freedom” in Spitz, 202. Then, Levi notes “the wise admonitions of Zacariah [*sic*] Chaffee or Alexander Meiklejohn” regarding “the claim of the civil liberties to absolute respect against the counterclaim of the political state.” *Ibid.*

⁸⁷¹ See Stephen Holmes, *Passions and Constraint: On the Theory of Liberal Democracy* (Chicago: University of Chicago Press, 1995). Holmes, for instance, does not think that *On Liberty* informs representative government as much it informs personal behavior. *Ibid.*, 182. Holmes also claims, “Even John Stuart Mill, who was probably the greatest liberal advocate of freewheeling debate, recognized the disadvantages of uninhibited discussion in some settings.” *Ibid.*, 10. An example Holmes gives makes some sense:

Democratic majorities in multidenominational societies are more likely to resolve their other problems rationally if religious disputes are confined to the private sphere. Indeed, negative liberty (freedom from politics) is vital to positive liberty (participation in politics) in precisely this sense. *Ibid.*

Mill himself said “that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishment, if society is of opinion that the one or the other is requisite for its protection.” Mill, *On Liberty*, 87. Also, Mill complained that, during the mid-nineteenth century, “from the highest class of society down to the lowest, every one lives as under the eye of a hostile and dreaded censorship.” *Ibid.*, 58.

So, Holmes uses his introduction to set up a strange argument in chapter seven, among others, justifying the Gag Rule of 1836, when the U.S. House of Representatives prohibited any discussion about slavery as a part of House business. Holmes, 213. Holmes’ reasoning?

A conversation is invariably shaped by what its participants decide not to say. To avoid destructive conflicts, we suppress controversial themes. *Ibid.*, 202.

This reasoning seems perverse, given the audacity and evil of slavery. In fact, it resembles the cry of certain leaders of the antebellum South that the Union (or rather its political and economic exigencies) was more important than the abolition of slavery. See *ibid.*, 214-215. Surely Holmes would agree that slavery has been an evil needing to be addressed. For a discussion about how slavery prompted attempts to control information, see Kemper, “WE SHALL NOT SUBMIT! How the 24th Congress and the Jackson Administration Attempted to Stop the Circulation of Abolitionist Materials Through the United States Post

easy to broaden our justifications to suit pressing exigencies. Then, the concept of freedom of expression becomes more of a practical tool than an enduring value. Judge Richard Posner – likely the most prolific of the law and economics scholars – applies utilitarian approaches consistently in his research and jurisprudence.⁸⁷²

Office During the Late 1830s” (third place paper presented in Graduate Student History Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004). This also includes a brief critique of Holmes. *Ibid.*, 3.

To be fair, Holmes does not appear to espouse explicitly any variant of utilitarianism, even though his argument of balancing unity with liberty, as well as his citations of Mill et al., reflect utilitarian thought. Holmes identifies his penchant for Mill as “classical liberal theory,” though he recognizes that “free-speech absolutists” claim Mill as intellectual heritage. Holmes, 1-2.

⁸⁷² For a discussion of Posner’s views on free expression, see Richard Posner, “Free Speech in an Economic Perspective,” *Suffolk University Law Review* 20 (Spring 1986); *Overcoming Law* (Cambridge, MA: Harvard University Press, 1995); and a recent edition of *Economic Analysis of Law*, 6th ed. (New York: Aspen Publishers, 2003).

While noting that Mill “was a famous economist but didn’t use economics in his analysis of free speech,” Posner then applies his famous economics analysis to speech. See especially “Free Speech,” 1-3, 8-9.

In *Overcoming Law*’s Introduction, 1-29, Posner describes his pragmatic liberalism, ala Mill; and Posner as usual applies economic analysis to a concept such as free expression. But even Posner recognizes the negative consequences of censorship:

The point is not that the censor’s beliefs are false in every case; they may well be true in many. It is that the practice of censorship, by curtailing competition in ideas, retards the growth of knowledge and the benefits that knowledge brings. *Ibid.*, 396.

But Posner, citing Cass Sunstein’s *Democracy and the Problem of Free Speech* (1993), then looks at pragmatic justifications for controls upon free expression. *Ibid.*, 396-397.

Also, in chapter 28 of his most notable and quotable treatise, *Economic Analysis of Law*, 6th edition, Posner argues the practicability of Justice Holmes’s conceptualization of a “marketplace of ideas” in our search: “This pragmatic conception of truth undermines efforts to suppress ideas or to forbid their expression or dissemination.” 693 (he cites the reference to Holmes and “marketplace of ideas” to *Abrams v. United States*, 250 U.S. 616, 630 (1919) (dissenting opinion)). But then Posner launches into a cost-benefit analysis, attempting to justify some bans on speech. See Posner, *Economic Analysis*, 693-702. So, again, exigencies can outweigh the value of free expression, to these thinkers. The best primer for understanding this basic economic approach would be Posner’s chapters one-two, *ibid.*, 3-28.

Overall, Posner apparently would be satisfied with negative consequences if the benefits of censorship outweigh the costs. Perhaps the ultimate way to respond to this argument would be to detail the costs of censorship. Perhaps, then, this dissertation would be the beginnings of such a response. Future research could build upon the proposition that the final costs of censorship *always* outweigh its benefits.

Mill himself seems to have previewed Posner’s analysis because he argued that “the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection.” Mill, *On Liberty*, 10.

Future research could flesh out whether censorship based upon weighing utilitarian concerns is a true

Mill himself appears to have anticipated some of these objections, noting,

[T]here needs protection also against the tyranny of the prevailing opinion and feeling; against the tendency of society to impose, by other means than civil penalties, its own ideas and practices as rules of conduct on those who dissent from them; to fetter the development, and, if possible, prevent the formation, of any individuality not in harmony with its ways, and compels all characters to fashion themselves upon the model of its own. There is a limit to the legitimate interference of collective opinion with individual independence: and to find that limit, and maintain it against encroachment, is as indispensable to a good condition of human affairs, as protection against political despotism.⁸⁷³

Thus, Mill recognizes –despite his libertarian ideals – that society needs to protect values that exigencies cannot overcome: He said, “... in political speculations ‘the tyranny of the majority’ is now generally included among the evils against which society requires to be on its guard.”⁸⁷⁴ This gives added meaning to what Spitz notes as “one of the quoted

reading of Mill, a *reductio ad absurdum*, or a bastardization of Mill’s liberalism and utilitarianism. But suffice it to say that this dissertation chooses, rather, to search for more deontological bases for arguing free expression, bases that do appear in Mill and others like him. Regardless, one cannot fail to see utilitarianism and its variants at play in First Amendment jurisprudence, especially as it seeks to balance free expression with other concepts such as fair trials or national security. See, e.g., Matthew Bunker, *Justice and the Media: Reconciling Fair Trails and a Free Press* (Mahwah, N.J.: Lawrence Erlbaum Associates, 1997) and Bunker, “Closing the Courtroom: Judicial Access and Constitutional Scrutiny After Richmond Newspapers,” in Charles N. Davis and Sigman L. Splichal, eds., *Access Denied: Freedom of Information in the Information Age* (Ames: Iowa State University Press, 2000). This dissertation does not dismiss completely utilitarianism or its variants, *per se*, though critiquing utilitarianism’s impact upon First Amendment jurisprudence would make interesting research. Rather, it notes that those who argue *for* censorship more often appear to use utilitarian rather than deontological arguments, with much effect.

⁸⁷³ Mill, 6. Spitz says, note 7: “This way of putting the central problem of the essay—that society, through both government and social pressure, can legitimately interfere with individuals, but that in a good society there must be some principles limits to such interference—has, despite Mill’s anticipation to the contrary ... given rise to great consternation.” Spitz then cites to “critical essays” he had included in that edition of *On Liberty*, cited *supra*.

⁸⁷⁴ *Ibid.* In close proximity to this quote, Spitz cites James Madison, *The Federalist* (1787-88), no. 10, as a source of this basic idea. Quinn in his introduction to a version of *The Federalist Papers* ties together Madison’s views with Locke’s:

In Madison’s view, government was a framework, a mechanical structure to keep political currents within acceptable limits, as a carefully engineered watercourse contains raging streams. Madison was much like Locke in this regard and saw government as a neutral agent brokering competing interests, an umpire among contending forces, an agent to protect property rights, on which the well-being of the fragile new nation rested. *The Federalist Papers: Reader*, ed. by Frederick Quinn, preface by Warren E. Burger, forward by A.E. Dick Howard (Washington, D.C.: Seven Locks Press, 1993), 24.

Locke said civil government is necessary to avoid problems such as sedition. See John Locke, *The Second*

sentences” from Mill’s *On Liberty*: “If all mankind minus one were of one opinion, and only one person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he, if he had the power, would be justified in silencing mankind.”⁸⁷⁵ Note that “mankind” implies all people, regardless of gender, race, religion, ethnicity, or any other demographic denominator.

Secondly, some might claim that freedom of expression belongs only to certain cultures. But freedom of expression, rather than being the product and property of Euro-American men, always will be the product and property of all people in all ages. What they do with the concept is *their* choice. But the progress of society requires a reassessment of our real commitment to free expression. As Professor Smolla argues:

The gathering momentum of international change should challenge Americans to consider the extent to which freedom of speech, particularly freedom to dissent from policies of the existing government, is gradually being accepted across the globe as a basic human right. We have witnessed restless winds of democracy, self-determination, and openness, stirrings that cross international borders and cultural traditions, as the peoples of the world struggle toward the ideals of stable democracy, human rights, and the rule of law. America has only a limited ability to influence these events, and Americans should not be arrogant or condescending in their reaction to them. Rather, we should share, with modesty and tolerance for cultural diversity, the history of our own often painful struggles to achieve these ideals.⁸⁷⁶

Treatise on Civil Government (1689), reprinted in *John Locke: On Politics and Education*, with an introduction by Howard R. Penniman (Walter J. Black, Inc., for the Classics Club: Roslyn, N.Y., 1947) 75-76.

⁸⁷⁵ *Ibid.*, 18. Also, Christians who think that they have a moral mandate to censor need to consider Mill’s salient point that the execution of Jesus Christ was a suppression of thought: In fact, as Mill said, “Orthodox Christians who are tempted to think that those who stoned to death the first martyrs must have been worse men than they themselves are, ought to remember that one of those persecutors was Saint Paul.” *Ibid.*, 25-26. Thus, Mill supports essential points of this dissertation, that censorship of any side results in censorship of all, that censorship makes little sense if the ultimate goal would be to find and promote what is true and good.

⁸⁷⁶ Rodney Smolla, *Free Speech in an Open Society* (New York: Alfred A. Knopf, 1992; Vintage, 1993), 346.

This conceptualization of the need for “the peoples of the world” to have and practice self-determination, particularly in the context of communication, resembles the idea of rhetorical sovereignty that has been examined in this dissertation. Rather than focusing this upon *just* Native Americans, or even African-Americans, people need to develop a vision of rhetorical sovereignty for *all peoples*.

Andsager, Wyatt, and Martin explore whether real people in various cultures worldwide really support freedom of expression:

Public support for free expression is crucial to any nation intending to inaugurate or retain some form of democracy. Although appropriate legal strictures are also important in any democracy, the degree to which a nation’s population is willing [to] protect its own speech rights as well as the rights of the media is one measure of the level of freedom its citizens hope to enjoy. Whether citizens agree to support forms of expression that they may consider noxious, threatening, or harmful points toward a society’s fundamental grasp of the role that free speech and a free press play in maintaining a social and political order in which the people, rather than despots, rule. Thus, understanding who among the population is likely to protect such rights is crucial.⁸⁷⁷

Andsager, Wyatt, and Martin used the American Society of Newspaper Editors’ “Free Expression Survey, 1990-1991,” to gauge support in societies such as the United States, Russia, and Jews and Arabs in Israel.⁸⁷⁸ Interestingly, Euro-Americans reported a slightly higher support for individual speech rights than did African-Americans and “other” racial minorities.⁸⁷⁹ This survey along with the study’s methodology could be applied to individual tribes, or in a comparative study of Native Americans, African-

⁸⁷⁷ Julie Andsager, Robert O. Wyatt, and Ernest Martin, *Free Expression in 5 Democratic Publics: Support for Individual and Media Rights* (Cresskill, N.J.: Hampton Press, 2004).

⁸⁷⁸ *Ibid.*, 261-270 for the survey.

⁸⁷⁹ *Ibid.*, 83. Chickasaw legislator Lisa Johnson-Billy once said about Native Americans, “We’re the minority of minorities; we often just get classified as ‘other.’” Quoted in Ronald Alsop, “SMU Program Courts Native American Talent;” available at <http://www.careerjournal.com/specialreports/bschool03/articles/20020909-alsop-native.html>.

Americans, and Euro-Americans. The overall value for that study would be to see the ways in which the people within the *peoples* have opinions about free press. William Apess, Elias Boudinot, and Samuel Cornish were far more educated and may have had many more opportunities than many of the people within their respective ethnic groups. As Peyer notes, Boudinot and Apess were among “proto-elites” who had more control over information than did the people they reported to serve.⁸⁸⁰ For instance, maybe the Cherokee people wanted more free press, or less, in comparison with their elected officials. But it would be difficult to gauge what they thought, unless scholars can find historical evidence to document those attitudes. Instead, future research might have more currency if it focused upon what ethnic minorities and others think today regarding free expression. As George Orwell once said:

If large numbers of people believe in freedom of speech, there will be freedom of speech, even if the law forbids it. But if public opinion is sluggish, inconvenient minorities will be persecuted, even if laws exist to protect them.⁸⁸¹

But, as discussed above, this concept of rhetorical sovereignty does not address the issues of individuals within those ethnic groups. If people are to respect group sovereignty, then they must look to those groups to make those decisions for themselves. Again, this is the basic point of *Santa Clara Pueblo v. Martinez*, when the U.S. Supreme Court in 1978 put the responsibility of applying the federal Indian Civil Rights Act – which includes provisions guaranteeing free speech and press – to their own people.⁸⁸² But the tribes may think that those ideas are simply more colonialism.⁸⁸³ A question is

⁸⁸⁰ See Peyer, 214, and discussion and notes, *supra*. Also, being “elite” does not mean that they were not Cherokee, argues Konkle. *Writing Indian Nations*, 79.

⁸⁸¹ George Orwell, quoted in Hentoff, *Free Speech*, vii.

⁸⁸² *Santa Clara Pueblo v. Martinez*, 436 U.S. 49 (1978); available at <http://web2.westlaw.com>.

⁸⁸³ For an example of the concern about colonialism in cases about Native Americans, see Robert A.

whether scholars can find within the hearts and histories of ethnic minorities the roots and values of freedom of expression.

Winfield, Mizuno, and Beaudoin address similar issues when they examined cultural roots in conceptualizations of freedom of the press in China and Japan.⁸⁸⁴ They contrasted individualistic notions of freedom of expression in Western culture with group notions of freedom of expression in certain Asian cultures and philosophies, including Confucianism and Buddhism.⁸⁸⁵ These translate into Asian notions of “hierarchy [which] assigns particular places for groups in society and for the individual in the group.”⁸⁸⁶ While this recognition of various cultural interpretations or conceptualizations of freedom of expression comports with the thrust of this dissertation, the authors of the article make some surprising and even disconcerting conclusions. First, they bluntly say, “Individualism and individual expression are too disruptive, threatening social harmony.”⁸⁸⁷ This is the very excuse given by authors such as Stephen Holmes for implementing controls of information, even in “individualistic” societies like the United States.⁸⁸⁸ Secondly, they say, “Caution is advised when using western press standards in

Williams Jr., *Like a Loaded Weapon: The Rehnquist Court, Indian Rights, and the Legal History of Racism in America*, Indigenous Americas series, eds. Robert Warrior and Jace Weaver (Minneapolis: University of Minnesota Press, 2005), 57. See also Williams, *The American Indian in Western Legal Thought: The Discourses* (New York: Oxford University, 1990).

⁸⁸⁴ Betty H. Winfield, Taketa Mizuno, and Christopher E. Beaudoin, “Confucianism, Collectivism and Constitutions: Press Systems in China and Japan,” *Communication Law and Policy* 5 (2000): 323-347; available at <http://web2.westlaw.com>.

⁸⁸⁵ *Ibid.*, 323-325.

⁸⁸⁶ *Ibid.*, 346.

⁸⁸⁷ *Ibid.*, 347.

⁸⁸⁸ Given the various political philosophies and cultures in the United States, it would be too generalized to say U.S. culture is “individualistic.” Perhaps on a continuum, in contrast with other cultures, the United States may be considered more individualistic than other countries; *i.e.*, China and Japan, as discussion by Winfield, et al. For discussion of Stephen Holmes and his attempted justifications for controls of information, see *Passions and Constraint*, *supra*. See also Kemper, “WE SHALL NOT SUBMIT!” 3. See discussion, *supra*.

evaluating Asian journalism. Scholars need to include these two countries, yet on their own terms.”⁸⁸⁹ Yes, people need to respect other cultures, and they must not impose our standards upon others. On the other hand, given the record of abuses of freedom of expression in countries such as China, scholars must not give the impression that cultural respect translates into cultural acceptance. That is, scholars and others need to be able to voice concerns about what other cultures and nations do. Otherwise, all would devolve rather than evolve socially and philosophically.

Here are two current examples. First, China jailed – without trial – a researcher for *The New York Times*, claiming “that he leaked state secrets” to the newspaper, *The Times* reported.⁸⁹⁰ *The Times* said the arrest related to an article that predicted the retirement of a leading state official; the article relied in part upon “two anonymous sources”⁸⁹¹ U.S. Secretary of State Condoleezza Rice protested Zhao Yan’s arrest. This article came the same summer that Judith Miller, another *New York Times* reporter, was jailed in the United States for not revealing confidential sources relating to leaks from the White House.⁸⁹² No evidence has emerged that Rice has protested the arrest of Miller. The governments of China *and* the United States both deserve criticism from journalists and others for the jailing of the two journalists. Secondly, in what appears to be a perverse cooperation between the U.S.-based Microsoft Corporation and the Chinese

⁸⁸⁹ Winfield, et al., “China and Japan”, 347.

⁸⁹⁰ Jim Yardley, “Secrecy Veils China’s Jailing of a Journalist,” *The New York Times*, 31 August 2005,; available at <http://www.nytimes.com>.

⁸⁹¹ *Ibid.*

⁸⁹² See, e.g., “Judith Miller Goes to Jail,” *The New York Times*, 7 July 2005; available at <http://www.nytimes.com>. Miller later was released, though she has come under criticism for her reporting and behavior in relation to the broader issues of covering the war in Iraq and the Bush Administration. For an example of that criticism, see Wendy Hoke, “Seeking Accountability in the Miller Saga,” *Quill* online; available at http://www.spj.org/quill_issue.asp?REF=843.

government, words such as “democracy, freedom, and human rights” were banned from certain blogs entering China through web portals, the Associated Press reported at <http://www.livescience.com>.⁸⁹³

Given these examples, one may wonder why scholars need to consider Confucianism before they can criticize Chinese censorship or even Christianity before they can criticize U.S. censorship. Controls are controls, regardless of the language or culture used to describe the concept, and regardless of their theoretical foundations. Freedom of expression is freedom of expression, regardless of the language or culture used to describe the concept. Yet, as Winfield et al. point out, “Western scholarship on press systems tends to disregard the cultures, philosophies and traditions that distinguish Asian mass media.”⁸⁹⁴ Disregarding these foundations causes us to disrespect and misunderstand others, thereby dislodging rationality from the debate. But, respecting and understanding culture does not mean that people cannot ask that culture to improve, to seek a greater good, especially in relation to freedom of expression. And this can be accomplished without doing violence to religious, political, or philosophical positions, as Ladenson argues.⁸⁹⁵ Differing positions indeed do need to be respected. A conclusion one may make with this dissertation is that there ought not to be differences, even among the races. Indeed, a society without the need to criticize race might be appealing. But race is an important concept; people from ethnic groups often are *proud* of their race. To deny them the right to distinguish themselves denies them their rights of self-determination, and therefore undermines rhetorical sovereignty. Mills seems to argue for

⁸⁹³ Elaine Kurtenbach, “Freedom’ a Taboo Word on Chinese Internet,” Associated Press, 14 June 2005; available at http://www.livescience.com/technology/ap_050614_china_blog.html.

⁸⁹⁴ Winfield, et al., “China and Japan,” 324.

⁸⁹⁵ See Robert F. Ladenson, *A Philosophy of Free Expression and Its Constitutional Applications* In Philosophy and Society series, ed. Marshall Cohen (Totowa, N.J.: Rowman and Littlefield), 13.

the right of and practical reality of being black, for instance, saying, “The ‘Racial Contract’ as a theory is explanatorily superior to the raceless social contract in accounting for the political and moral realities of the world and in guiding normative theory [emphasis in original removed].”⁸⁹⁶ Rather than one race asserting superiority over other races, we can accept that you are you, and I am me, and that we are us; we can respect each other’s differences as we discuss them. And people cannot bridge those divides without having the discussions. Apess, Boudinot, and Cornish forced the discussion, even when others did not want to listen.

Finally, reconsider the thesis statement: During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty. The whole of the dissertation shows a slow but forward movement in race relations during the age of Jackson. African-Americans would not enjoy abolition until 1865, and they still seek their rightful place in society, despite continued racism. Native Americans never have recovered their lands and original autonomy, though they have some of what they had and what they want. The point is that this is a process, fueled by the ability to articulate positions during battles for political and cultural survival. The ultimate goals never can be realized unless the ethnic groups and their individual members are guaranteed and then will practice

⁸⁹⁶ See Charles Mills, *The Racial Contract* (Ithaca, NY: Cornell University Press, 1997), 120. Note also that certain Native Americans have criticized the social contract on similar grounds. See Deloria and Wilkins:

Absent an informed consent by a tribe to be included within the constitutional framework, any action of the United States, no matter what the intentions, violates the basic premise of the social contract – that government depends upon the consent of the governed. Vine Deloria, Jr., and David E. Wilkins, *Tribes, Treaties, and Constitutional Tribulations* (Austin: University of Texas Press, 1999), xi.

freedom of expression. Another conclusion of this dissertation is that, without freedom of expression, ethnic groups are less likely to survive and thrive.

Conclusion

In sum, the concept of rhetorical sovereignty needs to be globalized in the sense that it informs what indigenous and other ethnic groups across the world think about self-determination of communication, of freedom of expression, of the right to represent themselves. But those groups can consider whether freedom of expression would benefit them. This gives all people the opportunity to represent themselves rhetorically, something cherished by William Apess, Elias Boudinot, and Samuel Cornish.

Rhetorical sovereignty as a theory helps, but does not answer all of the questions raised. This, in turn, teaches an important lesson in using theory with history. As Spencer said:

In the final analysis, the addition or inclusion of theory is very much a desired aspect of journalism history. Its use, however, must be guarded and employed only when it can assist in explaining and revealing phenomenon from our past. The past can come alive in several different aspects. We can certainly explain modern phenomenon by the actions of those who went before us. But for knowing what exactly as [*sic*] on someone's mind one hundred years ago, it remains a shaky proposition.⁸⁹⁷

Journalism and mass communication benefits from a better understanding of the role of ethnic minorities in the shaping of the destinies of their own groups, the United States, and its institutions. For too long, journalism and mass communication scholarship has focused upon the dominant groups in society. The voices of ethnic minorities need to be heard. The theory of rhetorical sovereignty recognizes both the visceral and rational

⁸⁹⁷ David R. Spencer, "To Theorize or Not to Theorize," *American Journalism* 22, no. 1 (Winter 2005): 141-145. Also presented as part of "Theories and Constructs in Media History: Their Uses and Abuses" (panel presentation at American Journalism Historians Association Annual Convention, October 4, 2003, Billings, Montana). For another part of that discussion, see Jim McPherson, "Theory in History May Have Uses – But Not Many," *American Journalism* 22, no. 1 (Winter 2005): 137-139, also presented as part of "Theories and Constructs in Media History: Their Uses and Abuses" (panel presentation at American Journalism Historians Association Annual Convention, October 4, 2003, Billings, Montana).

desires of ethnic minority groups as they want as much control as possible over their own destiny and survival; they need control over communication of their messages. As Konkle described Boudinot's attitude, "The nation's progress can be ensured, finally, only by Christianity, literacy, a strengthened government, and, most importantly, control of knowledge about the Cherokees by the Cherokees themselves."⁸⁹⁸ Again, this does not take into account the needs and wants of the individuals, but does imply that the Cherokee are responsible for individuals within the tribe.

This dissertation has not attempted to ascertain whether groups' conceptualizations of community exclude the individual. What this dissertation has done is to document historically three individuals who struggled with group pressures from within and without their ethnic groups. This establishes the fact that there are individuals who desire freedom, for themselves as well as for others. The validity of those desires has to be examined in numerous ways – legally, historically, philosophically. Some might claim that these desires were rooted in the influences of Euro-Americans; others might claim those desires needed to have been rooted out of their thinking, regardless of their source. Rather, it would be better to accept these desires as reasonable and then attempt to understand how to integrate individual versus group concepts of freedom of expression. Again, Emerson tells us that people have to ensure free expression for *all* people and peoples, despite Lyons desire to just worry about the "*peoples*."⁸⁹⁹

⁸⁹⁸ Konkle, *Writing Indian Nations*, 54.

⁸⁹⁹ See notes and discussion about both, *supra*.

CHAPTER 8

FINAL THOUGHTS

Introduction

This concluding chapter offers a final discourse about the value of the study, a frank discussion about its strengths and weaknesses, and future directions for research. This dissertation extends a body of research and pedagogy that continues the good work by others by promoting freedom of expression, true representation, and rhetorical sovereignty, among other positive values.

1. Value of the study

This dissertation provides both a glimpse into the past and a roadmap into the future, arguing that freedom of expression, representation, and rhetorical sovereignty have been and will continue to be important issues in the United States, especially for minorities. The basic thesis statement has been answered, based upon the historical narrative discussed in this dissertation: During the age of Jackson, freedom of expression benefited Native Americans and African-Americans in the United States, because it helped them to battle against misrepresentation and controls of information and to develop a form of rhetorical sovereignty, despite pressures that put some limits upon that freedom of expression and form of sovereignty. Without having some measure of freedom, Apess, Boudinot, and Cornish simply could not have published or preached what they wished. Though they had pressures, they had some measure of freedom. They expected and even demanded that freedom.

This dissertation moved forward important discussions about the historiographies of the people and issues; the meaning of freedom of expression in the United States,

especially for minority groups; and the needs of individuals in the context of group goals. First, this dissertation synthesized and expanded important historiographies of the people and issues. Though they find themselves together in books about Native American literature, William Apess and Elias Boudinot need to be understood together in the history of journalism and mass communication.⁹⁰⁰ Each spoke for an ethnic group, though Boudinot diverged from his group in ways that Apess did not. During the process, it felt awkward at times to include the discussion about Samuel Cornish, given all of the discussion about Native American issues. First, the experiences of Native Americans and African-Americans have as many if not more dissimilarities than similarities. Secondly, studying two Native Americans but one African-American might have short-changed the African-American experience.⁹⁰¹ But including Cornish helped at certain levels. At least, Cornish provided a means for comparison because he had a somewhat different political but fairly similar social predicament as the Native Americans. Also, his historiography overlaps in time with the historiographies of Apess and Boudinot. And the issues of abolitionism and removal actually have similar roots – again, Wallis claims that slavery and dispossession of land are the two original sins of the United States.⁹⁰²

Secondly, this dissertation explored the meaning of freedom of expression in the United States, including for minority groups, during the age of Jackson. As Gleason argues, and as mentioned above, “The history of freedom of the press since 1800 is

⁹⁰⁰ See discussion in chapter three, *supra*.

⁹⁰¹ As discussed in chapter four, *supra*, Apess may have been part African-American. The bottom line is that the mixture of race really does not matter – what matters is that people disenfranchised for whatever reasons spoke out regarding their rights.

⁹⁰² Jim Wallis, *The Soul of Politics: Beyond ‘Religious Right’ and ‘Secular Left,’* (San Diego, CA: Harvest, 1995), 100-101.

largely unwritten.”⁹⁰³ But every word about the topic moves us to a greater understanding; no one can hope to know everything but we can learn something more. As John Stuart Mill says: “However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth.”⁹⁰⁴ Freedom of expression, as Emerson noted earlier, is *essential* to democracy.⁹⁰⁵ And freedom of expression is essential for truth-finding and truth-telling.⁹⁰⁶

Thirdly, this dissertation explored issues of individual versus group rights of free expression. Minority groups in the United States still recoil at misrepresentations.⁹⁰⁷ So, those minority groups benefit from freedom of expression as they correct those misrepresentations and promote diversity in society. But minority groups have to deal with diversity within their own ranks. As said so many times in this work, no one person can claim to represent an entire group in every way, though some may make the attempt. The act of representing an entire group may even exacerbate the very stereotypes that the group hopes to overcome. But people can attempt to reconcile individual rights with group rights, something the political process illustrates every day, though people have to admit that the process actually may accomplish less than it promises.

⁹⁰³ Timothy Gleason, “Historiographical Essay: Historians and Freedom of the Press Since 1800,” *American Journalism* 5, no. 4 (1988): 230.

⁹⁰⁴ Mill, *On Liberty*, 34-35.

⁹⁰⁵ See discussion and notes in chapters two and seven, *supra*

⁹⁰⁶ For a discussion about the role of truth in journalism, see Bill Kovach and Tom Rosenstiel, *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* (New York: Crown Publishers, 2001), 36-49.

⁹⁰⁷ E.g., Fernando Dovalina, “Diversity Questions,” Institute for Midcareer Copy Editors; available at <http://www.ibiblio.org/copyed/diversity.html>.

And scholars have to face the daunting issue of whether a concept such as freedom of expression can be found and/or used in any group or society. Emerson argues:

To some extent the hostility to freedom of expression may represent merely general disagreement with the main political, economic, and social institutions of our society. This is wide of the mark. The system of freedom of expression is not inevitably tied to existing institutions. It is applicable to any open society.⁹⁰⁸

The key is to have an “open society,” which Popper reminds us has pernicious enemies.⁹⁰⁹ But Popper sees a few limits for the right for openness: “In a democracy, the full protection of minorities should not extend to those who violate the law, and especially not to those who incite others to the violent overthrow of the democracy.”⁹¹⁰ But despite disagreements as to how far expression ought to extend, scholars can agree in principle that freedom of expression and information facilitates self-governance: As James Madison once said:

A popular government, without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy; or perhaps both. Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives.⁹¹¹

⁹⁰⁸ Thomas I. Emerson, *The System of Free Expression* (New York: Random House, 1970), 725.

⁹⁰⁹ Karl Popper, *The Open Society and Its Enemies*, 5th ed. hardcover (New York: Routledge, 1945, 1952, 1957, 1962, 1966, 2002).

⁹¹⁰ *Ibid.*, 425.

⁹¹¹ Letter from James Madison to W.T. Barry, 4 August 1822, in *Writings of James Madison* 9, ed. G. Hurst (1910), 103, cited by Thomas I. Emerson, “Symposium: The First Amendment and the Right to Know: Legal Foundations of the Right to Know,” *Washington University Law Quarterly* 1 (1976), 1. Emerson in that article explored the right to access information as a companion of the right to communicate information. See, *contra*, Halstuk, who decided after a review of the XYZ Affair in the late eighteenth century “that historical evidence during the events and years examined fails to support the view that there is a historical rationale for special press rights of access to government information and a public right to know about governmental activities.” Martin E. Halstuk, “Policy of Secrecy—Pattern of Deception: What Federalist Leaders Thought About a Public Right to Know,” *Communication Law and Policy* 7 (Winter 2002): 54.

Thus, this study opens the possibilities of exploring how far people can take freedom of expression, as it contextualizes incidents involving people committed to the idea of freedom of expression for groups beyond the Euro-American system.

2. Strengths and weaknesses of the study

“Doctoral dissertations succeed not just by virtue of delivering new research on a detailed topic but also by using that research to revise existing interpretations in a wider field,” Richard Evans once said.⁹¹² Hopefully, this dissertation will help scholars to see concepts from different and productive vantage points. Its greatest strength may be that it combined and thereby expanded numerous historiographies. Too often, scholarship fails to inform other scholarship in meaningful ways. Another strength would be that it furthers the cause of freedom of information and expression, especially as it applies to minority groups. This in turn helps minority groups as they assert their political and social desires. A weakness is that, by touching upon numerous historiographies, the dissertation could not go into more detail because of time and space constraints. And books and articles discovered late in the process would have given even more texture and depth to the discussions.⁹¹³ So they were set aside for future research and studies. The more you dig for gold and then find it, the more you want to dig. But one person only has so much time and energy.

The following observation at first may seem to reflect a weakness, but rather it more forecasts positive directions for theoretical development. At the very end of the dissertation process, it appeared that the struggle between group and individual rights get

⁹¹² Richard J. Evans, *In Defense of History* (New York: W.W. Norton, 1999), 142.

⁹¹³ These include, but are not limited to, Donald L. Fixico, *The American Indian Mind in a Linear World: American Indian Studies & Traditional Knowledge* (New York: Routledge, 2003), which could explain differences in how Natives and Euro-Americans view the world, and therefore view free expression; and *Native American Sovereignty*, ed. John R. Wunder (New York: Garland Publishing, 1999), which could explore how far indigenous tribes can and would take sovereignty.

to the heart of classic struggles over socialist versus libertarian visions of politics and society.⁹¹⁴ The framers of the U.S. Constitution wrestled with “drives for self-gratification” by the populace and the countervailing needs of the community, as McDonald said.⁹¹⁵ Rather than arguing one or the other, this dissertation merely states that both group and individual rights may be valid and therefore must not be ignored. As discussed above, tribes tend to be communalistic. Raising libertarian criticisms – ala Emerson – opens discussions about the nature of government among ethnic minorities, particularly indigenous peoples. This would require much more study into the nature of political theory. But this author freely admits, in retrospect, that libertarian concerns fueled many of his concerns about conceptualizing rhetorical sovereignty as a communal rather than an individual right. Regardless of political perspective, one must admit that the historical data reports concerns for individual liberties by individual writers, and these concerns must be accounted for as scholars consider the boundaries and nature of freedom of expression.

Another weakness of this study actually led to a clearer conceptualization about the nature of representation. Especially because the writers in question were so vociferous about misrepresentation, and because of a personal commitment to “getting the story right,” this author struggled with making sure the authors were not misrepresented. On the other hand, studying them led to new conclusions, unforeseen issues, previously unknown facts. The old saying that getting a Ph.D. is knowing more and more about less and less ought to be revised to say that getting a Ph.D. is knowing

⁹¹⁴ For a discussion of this during the early nineteenth century, see Frederic Bastiat, *The Law*, trans. Dean Russell (1850; Irvington-on-Hudson, NY: The Foundation of Economic Education, 1998), 51-52; also available at <http://www.fee.org/library/default.asp?c=books/>.

⁹¹⁵ Forrest McDonald, *Novus Ordo Seclorum: The Intellectual Origins of the Constitution* (Lawrence: University Press of Kansas, 1985), 125. The bulk of his book examines the philosophical influences upon the framers of the U.S. Constitution.

less and less about more and more. It is impossible to understand completely the situation of another. But unless the attempt is made, people will languish in misunderstanding and misrepresentation. So, representation is a process, something to seek, but not something that ever will be complete. Even Apess, Boudinot, and Cornish did not know everything about themselves or their peoples, because all people have blind spots.⁹¹⁶ So, any inaccuracies or misrepresentations in this dissertation are unintentional, and this author would correct any of which he becomes aware in future research.

Another weakness of this dissertation, and perhaps of historiographies about ethnic groups, is that it focuses upon discussions of how those ethnic groups have been misrepresented and misunderstood. Konkle says, for instance, these types of issues “continue to animate Native writing in its myriad forms today.”⁹¹⁷ It seems perverse to focus knowledge about ethnic groups upon victimization; that could exacerbate misunderstandings and cloud enormous amounts of cultural knowledge. It would be refreshing for scholarship to examine what is good about ethnic writing rather than how ethnic writing focuses upon what is bad. Konkle says, “They are not the only things that Native writers write about by any means, but they recur enough to be fundamental.”⁹¹⁸ It would be interesting to research what is *good* about Native American or African-American journalism, for instance, without regard to how that interacts with Euro-American concepts and cultures.

Rather than saying this chapter is a conclusion, it would be more accurate to say it is a transition. For, despite all of the known and unknown, admitted and denied strengths

⁹¹⁶ This is part of the premise of Johari’s window, a theory by Joseph Luft and Harry Ingham. See, e.g., http://www.noogenesis.com/game_theory/johari/johari_window.html or <http://www.developingteachers.com/tips/pasttips28.htm>. See also Joseph Luft, *Group Processes: An Introduction to Group Dynamics*, 3d ed. (Palo Alto, CA: Mayfield Publishing Co., 1984).

⁹¹⁷ Konkle, *Writing Indian Nations*, 293.

⁹¹⁸ *Ibid.*

or weaknesses of this dissertation, research and thinking must continue, grow, and improve. As discussed above, thoughtful scholars make articulate arguments for clearer boundaries for expression. They accurately note the danger, illegitimacy, and even potential evils of imposing a value such as freedom of expression upon unwilling people. Yet, despite all of those arguments, scholars cannot escape the beauty, practicality, and essential value of freedom of expression.

In conclusion, this dissertation articulates a growing frustration with this racism, whether practiced by Euro-Americans, Native Americans, African-Americans, or whomever. Colonialism appears to mean that Euro-Americans sought to impose their values, institutions, and cultures upon people of color. Post-colonialism appears to mean that people of color (or perhaps more thoughtful Euro-Americans) criticize that colonialism, but sometimes that degenerates into the returning of racism for racism. Anger would be justified as a response to past and current wrongs; bitterness and vindictiveness cannot be justified on either moral or utilitarian grounds. Nations can fight for sovereignty and survival without becoming like the very things they resent.

Colonialism needs to be addressed, even in strong words, but perhaps post-colonialism does, too.⁹¹⁹ In the process of responding to wrongs – real or imagined – people have exacerbated conflicts and dichotomies. Then, people want to censor the racist language. That is an essential point of Nat Hentoff, who presciently notes the desire of peoples on both sides of dichotomies to censor each other.⁹²⁰ Professor Cornel West intimates in *Race Matters* that the kind of leadership needed in minority

⁹¹⁹ See discussion and notes about Hiebert in chapter two, *supra*.

⁹²⁰ See discussions and notes about Hentoff, *Free Speech*, in chapter three, *supra*.

communities attempts to make the world a better place.⁹²¹ As the old saying goes, “Let no one say, to your shame, that things were better before you came.” We need mutual understanding, not mutual condemnation.

3. Future research

This dissertation has produced a bounty of opportunities for future research. The following ideas may be developed into books and journal articles after the completion of the law degree part of the dual program, as anticipated coursework in indigenous and international law and other issues can supplement current knowledge. This represents current goals that could take an entire career to fulfill. The dissertation presents certain interesting legal issues, including the legal precedents created in the Cherokee Cases and their implications for current Native American and other indigenous laws, the nature of free expression in general during the age of Jackson, how concepts in First Amendment jurisprudence were understood during that time, the legal position of Native Americans and African-Americans during the age of Jackson, and how views about property may have influenced these positions, among other ideas.

Another area of fruitful research would be about the role of religion with these and other writers. During the age of Jackson, evangelical Christianity dominated the public discussion, especially because of the Second Great Awakening, a time of religious fervor and mass conversion. Today, evangelical Christianity still makes inroads into public discussion, but the United States is decidedly more pluralistic, with religious and irreligious people of many types. It would be interesting to explore how much religion fuels journalism, and how much journalism fuels religion.⁹²²

⁹²¹ See Cornel West, *Race Matters*, 2d ed. (Boston: Beacon Press, 1993; New York: Vintage Books, 2001), e.g., chapter three, “The Crisis of Black Leadership,” 51-70.

⁹²² Kevin R. Kemper, “What Motivates and Influences Media Practitioners of Religious Organizations in Oklahoma: a Qualitative Study” (M.A. thesis, University of Oklahoma, 1999).

Scholars need to explore more about how these issues inform our knowledge and policies about race, a controversial topic in most any conversation. The annotated bibliography about race produced by the Missouri School of Journalism argues that this process of building bridges needs to continue, that race is not accurately portrayed in the media, though “[t]he most blatant examples of racial stereotyping are rare in media content today.”⁹²³ Regrettably, racism and misunderstanding continue to this day, resulting in hatred and bitterness and strife. While U.S. society has made progress, Americans have not reached Martin Luther King Jr.’s dream that his children, as well as all children, “will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”⁹²⁴ For example, Apess, Boudinot, and Cornish reacted strongly and negatively when people applied stereotypes to an entire race. Stereotypes are subtle, creeping into thinking, creating blind spots to our own prejudices.⁹²⁵

One example of this knotty problem of prejudice would be ethnic identification, or who should decide who is of what ethnicity. For instance, scholars ought not question the ethnicity of someone such as Apess just because of his religion because that may show their own religious biases more than it does the religious biases of the subject.⁹²⁶ People need to have the right to represent themselves, and perhaps this extends to racial identification. Yet, tribes have the right to determine who ought to be considered

⁹²³ See *The Missouri School of Journalism, Guide to Research on Race and News* (Columbia: Missouri School of Journalism, 2000), 3.

⁹²⁴ Martin Luther King, Jr., “I Have a Dream,” (sermon preached at the Lincoln Memorial, Washington, D.C., 28 August 1963), accessed at <http://www.mecca.org/~crights/dream.html> on November 8, 2005.

⁹²⁵ See Johari’s window. *supra*.

⁹²⁶ See discussions in chapters two and four, *supra*.

members, which is a sign of sovereignty or self-government.⁹²⁷ And African-Americans have been forced to take a different position, whereby “one drop of blood,” or a trace of African-American ancestry, makes a person a part of that ethnic designation.⁹²⁸ There is no easy answer to balancing these conflicting concerns; that is, race remains a difficult question for society. And journalism plays a role in how race is understood and shaped in society.

Disputes over race led in part to the Civil War and the Indian wars, all of which left deep scars upon this nation. Differences among people – whether religious or political or racial – divide when people decide to let them divide, and unite when people decide to let them unite. During the age of Jackson, the president sometimes ignored the U.S. Supreme Court, and states often ignored the president, and people at times ignored basic issues of common decency, executing people without authority, taking property that did not belong to them, and otherwise mistreating others. Today, in a growing anti-federalism, people show a profound disrespect for the political process, but more so for the people themselves. Some of the issues of the age of Jackson sound like issues today – red states versus blue states, Republicans versus Democrats, pro-life versus pro-choice. Again, the inability to navigate national issues with civility and respect could lead to national disaster, with the consequences reaching further than just the latest polls or the prices on the stock market. When people cannot resolve their problems, the Union hangs in the balance. More so, humanity itself hangs in the balance.

⁹²⁷ See Stephen L. Pevar, *The Rights of Indians and Tribes: The Authoritative ACLU Guide to Indian and Tribal Rights*, 3d ed., An American Civil Liberties Union Handbook, ed. Eve Cary (New York: New York University Press, 2004), 19.

⁹²⁸ See Scott Malcomson, *One Drop of Blood: The American Misadventure of Race* (New York: Farrar Straus Giroux, 2000) for a long narrative about African-American and Native American issues relating to blood quantum and other racial identifiers.

What follows are concrete ideas for future research that have emerged from the foregoing discussions.

(A) Book concepts

The conversation about rhetorical sovereignty, freedom of expression, representation, and related issues promotes ideas for future research, including for some books. While not reflecting commitments with publishers, the following discussion simply outlines some ideas that could bear some future fruit.

(1) Freedom of expression: a universal human right.

As discussed above, the idea of freedom of expression creates some tension with utilitarian concerns like tribal sovereignty. That leads one to ask whether freedom of expression is a universal right, deserving of attention and protection in every cultural or ethnic group and governmental unit, or simply a Western idea, not suitable for other cultures. Franck said:

Various forces and tendencies contending in the world of ideas bear directly on the identity of each person. The nation, the tribe, the state, the ‘ethnie’ or sociocultural group, international institutions, and several nongovernmental transnational actors, including the great religions—all contend for adherents. Two things stand out in this cacophony: first, that individuals, nowadays, may have more than one affiliation; and, second, that affiliative choices increasingly can be made by individuals acting autonomously.⁹²⁹

The theoretical framework in chapter two of this dissertation explicated the concept, implying that freedom of expression can be found in various societies, even though it may have different understandings and levels of commitments. If freedom of expression merely has to be balanced with other concerns, then perhaps it does not deserve as much

⁹²⁹ Thomas Franck, “Is Personal Freedom a Western Value?” *The American Journal of International Law* 91, no. 2 (October 1997): 593; available at <http://www.jstor.org>.

protection in times of great crises.⁹³⁰ But if freedom of expression stands as a universal right, then all other considerations rise or fall upon its protection. This idea motivates this author's future research more than any other.

(2) Freedom of expression and abolitionism.

Late in the dissertation process, *Abolition: A Sedition* was found at the University of Arizona's Main Library.⁹³¹ This diatribe from the age of Jackson reveals the deep concerns that people in the South and the North had regarding the growing debate over abolitionism. This relates to a conference paper Kemper wrote about how the Jackson Administration, South Carolina officials, and certain people in Congress wanted to censor the U.S. mails to keep abolitionist papers from reaching the South.⁹³² The historiography of abolitionism has been replete with examples of attempted controls of information.⁹³³ Given current interests in this time frame and the issue of abolition, a book about how freedom of information informs abolitionism could be well received by scholars and general readers alike, especially if fresh anecdotes were found in the historical record.

⁹³⁰ See Richard Reuben, "Fear and Risk in Times of Crisis: The Media's Challenge," *Missouri Law Review* 69 (2004): 1123; and Christina Wells, "Questioning Deference," *Missouri Law Review* 69 (2004) 903. These were part of a symposium, "Interdisciplinary Perspectives on Fear and Risk Perception in Times of Democratic Crisis" at the Missouri School of Law.

⁹³¹ Calvin Colton, *Abolition a Sedition* (Philadelphia, 1839; New York: AMS Press, 1973).

⁹³² Kevin R. Kemper, "WE SHALL NOT SUBMIT! How the 24th Congress and the Jackson Administration Attempted to Stop the Circulation of Abolitionist Materials Through the United States Post Office During the Late 1830s" (third place paper presented in Graduate Student History Division of Association for Education in Journalism and Mass Communication, Toronto, Ontario, August 2004);

⁹³³ See, e.g., Russel B. Nye, *Fettered Freedom: Civil Liberties and the Slavery Controversy, 1830-1860* (Lansing: Michigan State University Press, 1963; Urbana: University of Illinois Press, 1972); and Clement Eaton, "Censorship of the Southern Mails," *The American Historical Review* 48, no. 2 (January 1943), 266; available at <http://www.jstor.org>. A more detailed account of these issues is in Eaton, *Freedom-of-thought in the Old South* (New York: Harper & Row, 1964).

(3) Freedom of expression and Native American tribes: The quest for rhetorical and political sovereignty.

Of course, issues like rhetorical sovereignty and tribal sovereignty have been the central focus of much of the historical and legal literature regarding Native Americans. A discussion about Native American law always goes to the issue of sovereignty, with precedent set in the infamous Cherokee Cases of the Marshall Court during the Jackson Administration. Even though many scholars bemoan the lack of complete sovereignty for tribes – and rightfully so – few explore how freedom of expression would enhance this sovereignty and the practice of representative democracy by the tribes.

Much of the literature, as discussed above, calls for the decolonization of law regarding the Native Americans. That means that a discussion of freedom of expression must be as indigenous as possible. That does not mean that Native Americans cannot learn from Euro-Americans, or vice versa. In fact, this dissertation stands for the proposition that cultures interacting with each other never will be the same, and therefore must look for as much good as possible from the interactions.⁹³⁴ Focusing upon the bad results in fatalistic, frustrating attitudes do not lead to better lives for the people involved. Therefore, a book about the promises of freedom of expression and sovereignty could be a welcome addition to the conversation about the future of tribes within the United States, as well as for tribes in other countries.

(4) Freedom of expression and religion: Historical and conceptual roots and relationships.

Something mentioned often but not analyzed deeply enough is the role of religion in William Apess, Elias Boudinot, and Samuel Cornish. They represented some of the

⁹³⁴ See Hiebert, *supra*.

religious fervor of the Second Great Awakening, which drove evangelical Christianity during the early nineteenth century. They, as religious people, valued freedom. But today, the religious right *and* left get accused of censoring the other. So which is a more “Christian” response – censorship or freedom of expression? And what do Judaism, Islam, Buddhism, and other major religions say about censorship and freedom of expression? And how do these compare?

(5) Freedom of expression during the first half of the nineteenth century.

The early goal of this dissertation was to ascertain the boundaries of freedom of expression during the first half of the nineteenth century. Works like those of Curtis do a better job of looking at how freedom of expression was controlled during the age of Jackson.⁹³⁵ But even Curtis’s work has limitations. For example, he failed to discuss the censorship of mails, and he could have given more examples of seditious libel charges. Thus, the historiography needs to be expanded.

Perhaps that work could use a theory that if those who are at the fringes of society (like Native Americans and African Americans during the age of Jackson) do not have complete freedom of expression, then society as a whole does not have as much as it thinks it does. This could be understood in a historical context, using some events discussed in this dissertation, plus others not yet examined. The issues about civil rights in the age of Jackson resonate to this day. As Russel Nye argued, “The America of Garrison and Calhoun, the America of today, and the America of tomorrow have at least

⁹³⁵ See Michael Kent Curtis, “The Curious History of Attempts to Suppress Antislavery Speech, Press, and Petition in 1835-37,” *Northwestern Law Review* 89 (Spring 1995): 785-870; available at <http://lawschool.westlaw.com>; “The 1837 Killing of Elijah Lovejoy by an Anti-Abolition Mob: Free Speech, Mobs, Republican Government, and the Privileges of American Citizens,” *UCLA Law Review* 44, (April 1997): 1109-1184; available at <http://lawschool.westlaw.com>; *Free Speech, ‘The People’s Darling Privilege’: Struggles for Freedom of Expression in American History*, Constitutional Conflicts Series, ed. Neal Devins (Durham, N.C.: Duke University Press, 2000), 216-270; “Teaching Free Speech from an Incomplete Fossil Record,” Symposium: Education and the Constitution: Shaping Each Other and the Next Century,” *Akron Law Review* 34 (2000): 231-260; available at <http://lawschool.westlaw.com>.

this much in common, that they were, are, and will be concerned with the vital question of what constitutes civil liberties, who possesses them, how many of them may be possessed and used, and what means may be taken to protect or to infringe upon them.”⁹³⁶

(B) Journal article ideas

The following ideas are for journal articles, which either could stand alone or form a basis for the book ideas discussed in this chapter. For simplicity, these will be listed, rather than explained in more detail.

- (1) Native Americans and journalism: Can (and should) freedom of expression and tribal sovereignty co-exist?
- (2) Native American thinking and implications for tribal and mainstream journalism: Circular, linear, or both?
- (3) Native American and African-American writers and editors during the age of Jackson: a comparative study of minority journalism and civil rights.
- (4) Cherokee editor Elias Boudinot: New perspectives on his editorial and political support for the Treaty of New Echota and the removal of the Cherokee to present-day Oklahoma.
- (5) Free expression and information among Native American tribes in Arizona.
- (6) Freedom of expression as a fundamental human right: A cultural perspective.
- (7) Freedom of expression during the age of Jackson: Fresh

⁹³⁶ Nye, *Fettered Freedom*, xi.

perspectives from minority journalists.

- (8) Journalistic publications and broadcasts: Reliable primary sources for journalism history?
- (9) The necessity for freedom of expression in developing democracies: Case studies of the Choctaw, Chippewa, and Navajo Nations.
- (10) Religious influences upon minority journalists during the age of Jackson.
- (11) Representation and freedom of expression: A necessary relationship for minority journalists during the age of Jackson.
- (12) The Reverend Phineas Fish and the Reverend Samuel Worcester: Whether federal funding of faith-based programs worked during the age of Jackson and whether it would work today?
- (13) Rising voices: The value of tribal press in the United States.
- (14) The Second Great Awakening and the development of advocacy journalism.
- (15) Training Native Americans for mainstream journalism: Pedagogical and cultural concerns.
- (16) Tribal press: Journalism, public relations, or both?
- (17) William Apess: Using journalism and public relations to advocate for Native American rights during the early nineteenth century.

Conclusion

This dissertation affirms the fundamental value of journalism in society. Yet, people tend to turn pale when they meet journalists. And people tend to blanch at the idea of others having free expression, especially if they disagree with others. Some may wonder whether free expression is in the best interests of ethnic minorities. Some may wonder whether journalism is a *good* thing, especially for people who have been mistreated and misrepresented by journalists. But journalism, whether or not by and for ethnic minorities, can be a good thing, if practiced ethically and effectively. People can get answers and then decide what they want to do with the information they receive. As Kovach and Rosenstiel argue, “The primary purpose of journalism is to provide citizens with the information they need to be free and self-governing.”⁹³⁷ *That* is part of the essence of rhetorical sovereignty. In retrospect, it seems that Scott Lyons spent his dissertation arguing that writing is *not* a bad thing – it is only “bad” when used for bad purposes. When you choose, of your own volition, to write for the good of others, then you have captured the essence of the good of journalism and, therefore, the good of freedom of expression.

William Apress, Elias Boudinot, and Samuel Cornish were complicated, imperfect, fascinating human beings who said some things worth considering. They lobbied through the press – among other outlets – for basic human rights for themselves and others. The fact they are being discussed in the twenty-first century speaks to their impact upon this country and beyond. They are examples of what it means to fight back when others hurt you, of using education for something more than just a diploma on a wall, of helping others to help themselves.

⁹³⁷ Kovach and Rosenstiel, 17

Each of the characters of this dissertation have become personal heroes. Each had prodigious talents and erudition, and therefore took advantage of opportunities to use those advantages for the benefit of others. Each stood in the face of opposition; for example, though this author cannot agree with Boudinot's decision to support Cherokee removal, scholars can admire the courage it took for Boudinot to articulate that position in the newspaper and to continue his arguments after he had lost his position as editor. Of course, each like this author had experience or training in the ministry, while also practicing journalism. Each reflects a deep, abiding faith that led them to self-improvement. Each, like tragic characters, had tragic flaws, as all people do. Yet their otherwise positive examples still can inspire us to be better people, meaning that they accomplished something good.

Perhaps this dissertation has accomplished something good. Perhaps a discussion about representation, freedom of expression, and rhetorical sovereignty would continue the dreams of William Apess, Elias Boudinot, and Samuel Cornish. Perhaps a day will come when all people everywhere will have the opportunity to tell their stories without fear of someone silencing them. Perhaps a day will come when people always will act ethically in their communications and then will not need to resort to rhetoric or even the law to defend themselves. Until that day, the discussions need to continue.

But scholars need to recognize that not every person embraces the idea of free expression; if they did, scholars would not have to advocate for it. Fred Schauer once said "that the view that a broadly protective understanding of the First Amendment is taken as an orthodoxy – or ideology, as I prefer to call it – in a large number of academic and professional environments, but that that is a phenomenon to be bemoaned and

resisted rather than accepted or celebrated.”⁹³⁸ Stanley Fish says in a book with the saucy title *There’s No Such Thing as Free Speech, and It’s a Good Thing, Too*: “[The] truth is not that freedom of speech should be abridged but that freedom of speech is a conceptual impossibility because the condition of speech’s being free in the first place is unrealizable.”⁹³⁹ In sum, Fish sees boundaries of speech as being determined by political exigencies.⁹⁴⁰ This cynical view does not look at freedom of expression as a value. This does not recognize that politics needs to be guided by principles.

The potent words of John Stuart Mill challenges scholars:

No one can be a great thinker who does not recognise [*sic*], that as a thinker it is his first duty to follow his intellect to whatever conclusions it may lead. Truth gains more even by the errors of one who, with due study and preparation, thinks for himself, than by true opinions of those who only hold them because they do not suffer themselves to think. Not that it is solely, or chiefly, to form great thinkers, that freedom of thinking is required. On the contrary, it is as much and even more indispensable to enable average human beings to attain the mental stature which they are capable of. There have been, and may again be, great individual thinkers in a general atmosphere of mental slavery. But there never has been, nor ever will be, in that atmosphere an intellectually active people. Where any people has made a temporary approach to such a character, it has been because the dread of heterodox speculation was for a time suspended. Where there is a tacit convention that principles are not to be disputed; where the discussion of the greatest questions which can occupy humanity is considered to be close, we cannot hope to find that generally high scale of mental activity which has made some periods of history so remarkable. Never when controversy avoided the subjects which are large and important enough to kindle enthusiasm, was the mind of a people stirred up from its foundations, and the impulse given which raised even persons of the most ordinary intellect to something of the dignity of thinking beings.⁹⁴¹

⁹³⁸ Fred Schauer, “The First Amendment as Ideology,” *William and Mary Law Review* 33 (Spring 1992): 853.

⁹³⁹ Stanley Fish, *There’s No Such Thing as Free Speech, and It’s a Good Thing, Too* (New York: Oxford University Press, 1994), 115.

⁹⁴⁰ *Ibid.*, 110.

⁹⁴¹ John Stuart Mill, *On Liberty: Annotated Text, Sources and Background Criticism*, A Norton Critical Edition, ed. David Spitz (New York: W.W. Norton & Co., 1975), 33-34.

Thus, with the examples of William Apress, Elias Boudinot, and Samuel Cornish, along with the points and counterpoints of so many diverse thinkers, this dissertation ends with a simple conclusion.

We – meaning all people, all groups, all societies, all over the world – must have freedom of expression. Whether or not minority groups decide to recognize that in others and even themselves remains a political and a philosophical question to be decided by those groups. Perhaps that is the best thing that can be gleaned from the concept of rhetorical sovereignty at this point is the idea that these groups the inherent sovereignty to make that decision. Again, having rhetorical sovereignty does not guarantee that free expression will be protected, or that true representation occurs. But, for those who cherish freedom of expression and representation as fundamental human rights, at least the process moves forward.

As the liberal French journalist from the early nineteenth century, Frederic Bastiat, once said:

Actually, what is the political struggle that we witness? It is the instinctive struggle of all people toward liberty. And what is this liberty, whose very name makes the heart beat faster and shakes the world? Is it not the union of all liberties—liberty of conscience, of education, of association, of the press, of travel, of labor, of trade? In short, is not liberty the freedom of every person to make full use of his faculties, so long as he does not harm other persons while doing so? Is not liberty the destruction of all despotism—including, of course, legal despotism? Finally, is not liberty the restricting of the law only to its rational sphere of organizing the right of the individual to lawful self-defense; of punishing injustice?⁹⁴²

The answer to these questions is an unequivocal yes!

⁹⁴² Bastiat, 51-52.

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VITA

Kevin R. Kemper was born February 6, 1967, at Edwards A.F.B., California, to Fred Franklin and Sandra Louise Cagle Kemper. After attending public schools in New Mexico, Nebraska, West Virginia, and Oklahoma, and graduating from Moore High School in Moore, Oklahoma, he earned the following degrees: bachelor's in arts with honors and academic achievement in speech with a minor in mass communications from East Central University at Ada, Oklahoma (1989); and master's of arts in journalism and mass communication from the H.H. Herbert School of Journalism and Mass Communication from the University of Oklahoma in Norman (1999). Kemper, ordained as a minister in 1989, attended Southwestern Baptist Theological Seminary in Fort Worth, Texas. He also has worked a journalist and a journalism educator. He continues a dual law degree from the School of Law at the University of Missouri-Columbia with an anticipated graduation for May of 2007. He plans to earn the remaining credits as a visiting student at the James E. Rogers College of Law at the University of Arizona in Tucson, and then take the Arizona bar examination. After completion of the Ph.D., he will be an assistant professor in the Department of Journalism at the University of Arizona in Tucson, teaching and researching media law, among other topics. His research focuses upon how freedom of expression for all people, especially for ethnic groups.