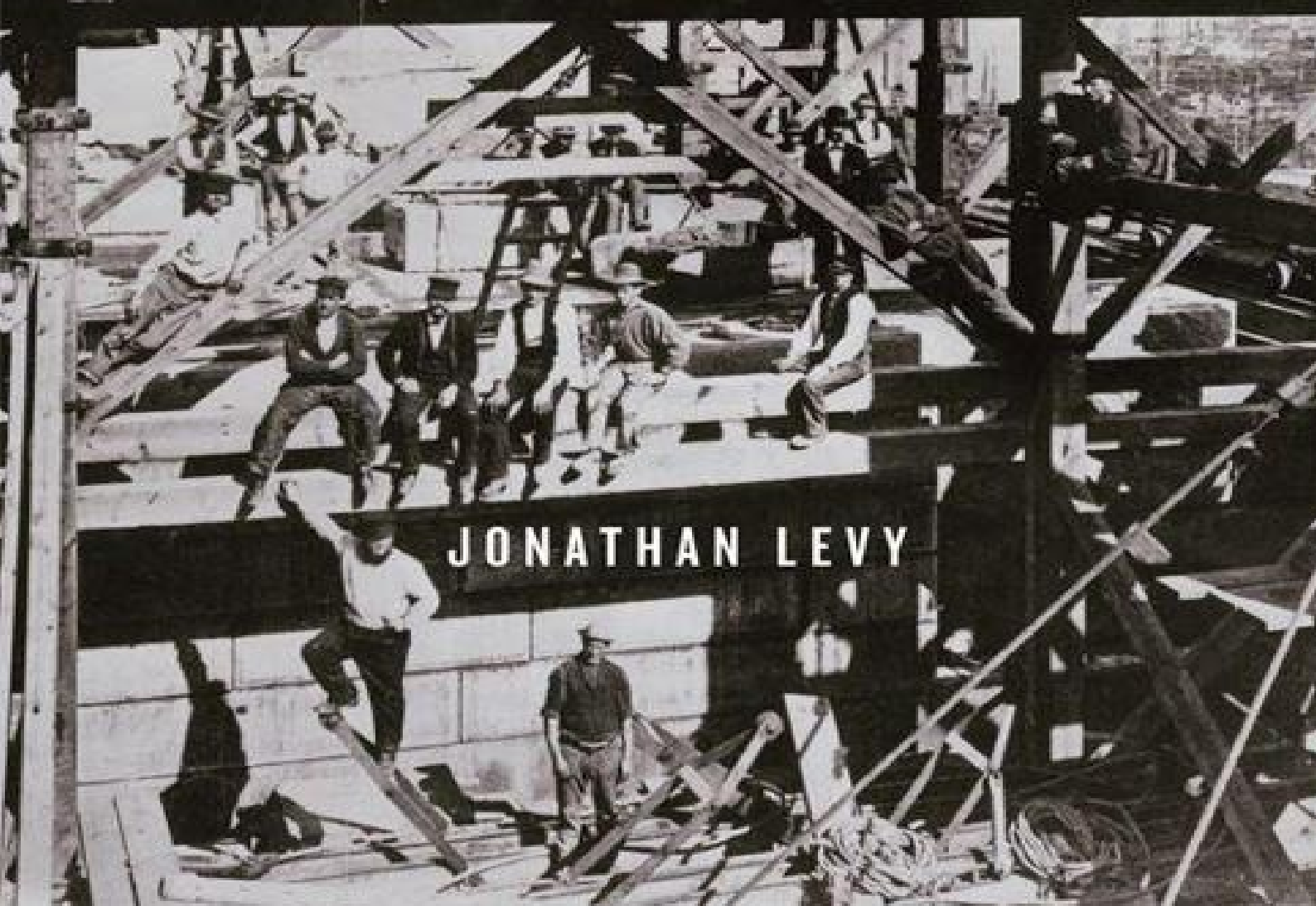
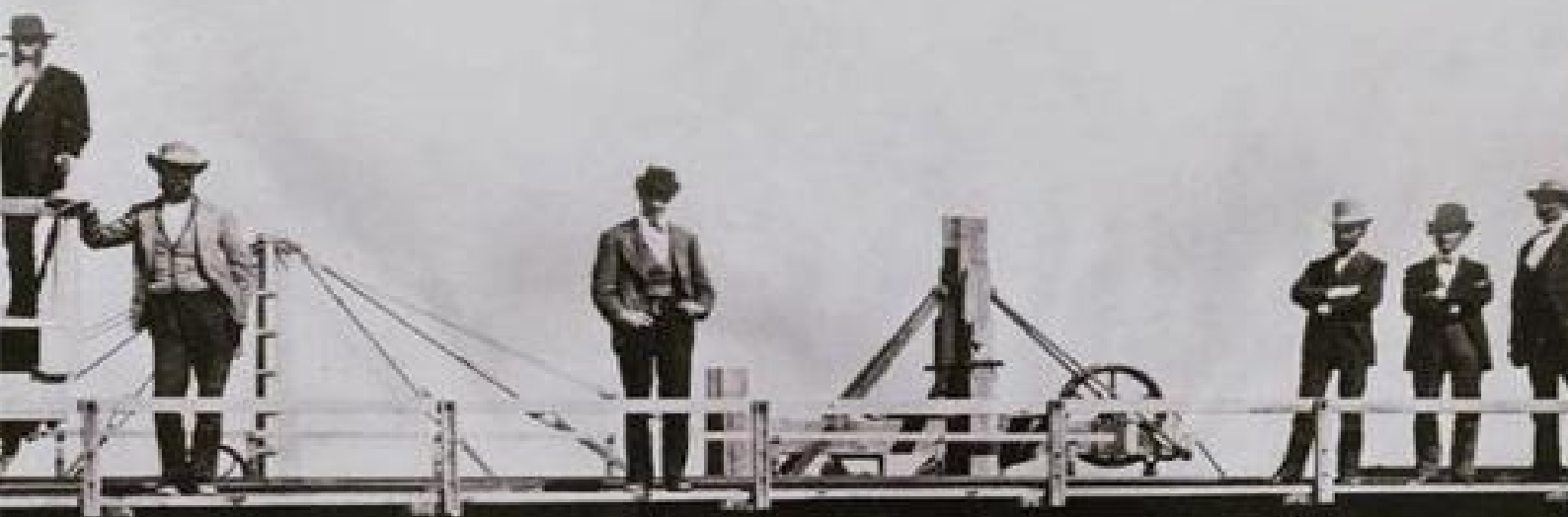


# FREAKS OF FORTUNE

THE EMERGING WORLD OF CAPITALISM AND RISK IN AMERICA



JONATHAN LEVY

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## Freaks of Fortune

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**THE EMERGING WORLD OF CAPITALISM AND RISK IN AMERICA**

Jonathan Levy

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For my parents, Joanne and Martin Levy

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... this savage's sword, thought I, which thus finally shapes and fashions both warp and woof; this easy, indifferent sword must be chance—aye, chance, free will, and necessity—no wise incompatible—all interweavingly working together. The straight warp of necessity, not to be swerved from its ultimate course—its every alternating vibration, indeed, only tending to that; free will still free to ply her shuttle between given threads; and chance, though restrained in its play within the right lines of necessity, and sideways in its motions directed by free will, though thus prescribed to by both, chance by turns rules either, and has the last featuring blow at events.

—Herman Melville, *Moby-Dick*

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# Prologue

## *Voyage*

Sail forth! Steer for the deep waters only!  
Reckless, O soul, exploring, I with thee, and thou with me;  
For we are bound where mariner has not yet dared to go,  
And we will risk the ship, ourselves and all.

—Walt Whitman, “Passage to India” (1871)

IN THE NINETEENTH-CENTURY UNITED STATES, voyage was an image that Americans invoked time and time again to capture what it was like to live on the stormy seas of capitalism. In 1871 Walt Whitman offered a maritime allegory of the experience of individual freedom. To do so he evoked risk. Long a technical concept in the financial arena of marine insurance, at the end of the eighteenth century “risk” still simply referred to the commodity bought and sold in an insurance contract. Outside the world of long-distance maritime trade risk had very little meaning or use.

Sometime during the nineteenth century it became all but impossible to imagine the modern condition without the word “risk.” By 1871 Whitman was able to invest risk with great lyrical power. Capitalism—an economic system that thrives off radical uncertainty—was asserting control. Meanwhile, men had begun to insure their own lives, brokers had begun to sell mortgage-backed securities, and farmers were beginning to buy commodities futures contracts. Uncertainties and anxieties—some old, some new—had to be managed and coped with, perhaps even capitalized upon. Risk management was born.

The spread of capitalism had brought the insecurity of the sea to the land. Human beings had long associated the power of chance with the capricious tides of the high seas. Now the image of the ship on stormy waters became a powerful metaphor for the perils and possibilities of life under capitalism. Nineteenth-century Americans spoke of howling winds, thunder claps, unknown breakers, and tempests and storms and cyclones that swept over the deep—for which they were not responsible. But they had to learn to cope with them, and even to profit from them. As daunting as the task of managing risk could be, there was also the existential thrill of taking a risk. That tension was at the very operational and moral heart of both capitalism and a rising liberal order.

In the nineteenth-century Americans had their own term for this tension, for all of the sudden economic twists and turns, booms and busts, and ups and downs that were newly and inexplicably in their midst. They called them “freaks of fortune.”

Within the context created by the freaks—by the economic chance-world of capitalism—the history



risk comes into view. The notion that risk has a history might come as a surprise. Or, it may seem that an obsession with risk is recent, dating to some time after the 1970s and the onset of crisis for industrial capitalism in the West. An era of pervasive insecurity ensued, one in which risk had to be “embraced.”<sup>2</sup> Newly emboldened entrepreneurs began to take “risks.” Sociologists began to speak of a “risk society.” Engineers began to practice “risk assessment.” Financiers began to promise “risk management.” As the contemporary sociologist François Ewald explains, risk was now “in human beings, in their conduct, in their liberty, in the relations between them, in the fact of their association in society.”<sup>3</sup> Since risk is now so ubiquitous, it might seem impossible to write its history.

Yet, risk does have a history. As a human invention, as a historical protagonist, risk has a biography. In the United States, the most decisive chapters in risk’s history were written in the nineteenth century. For by the end of that century, much like throughout the world today, risk was in fact everywhere. Before that century of capitalist transformation, however, it was not. But risk did not appear out of nowhere. It was born on the deep, in the act of maritime voyaging.

Risk was first synonymous with marine insurance—a financial instrument for coping with the uncertainty of transporting commercial goods across maritime space. Buying and selling “risks” long-distance trading merchants purchased from each other financial compensation in the contingent event that a “peril of the seas” or an “act of God” struck their long-distance voyages and destroyed their property. Risk did not then mean extreme peril, hazard, or danger.<sup>4</sup> It did not refer to the immaterial fear of an undesirable event. Rather, it originally referred to something material: a financial instrument for coping with the mere *possibility* of peril, hazard, or danger.

The etymology of the word reflects this historical origin. It can be traced back to the sixteenth-century French *risqué*, and even further to the thirteenth-century Italian *rischio*. Beyond that, a possible roots, including the likely Arabic candidate, appear in maritime “commercial contexts.” It is possible that mariners invented the term to refer to uncharted waters upon which they would not voyage. The *Oxford English Dictionary* emphasizes that risk connoted the possibility of “damage to merchandise when transported by sea.”<sup>5</sup> Risk made its appearance in the English language in the sixteenth century, but in the United States even as late as the 1820s it had yet to be fully anglicized from “risque”—the commodity exchanged in a marine insurance contract. Then, rather suddenly, risk exploded in everyday language. So would financial risk management.

Risk management was one way to cope with an uncertain future. But at the opening of the nineteenth century there were other ways to do the same. Commerce was ever-present, but America was still very much a rural and hierarchical society. The large majority of persons were legal dependents: wives, children, servants, and slaves. Households and communities achieved social security by coping with the burden of peril together. For men who were masters of households, the ownership of physical forms of capital and wealth—slaves and above all land—anchored economic security. Risk management was for offshore hazards, inapplicable to dangers onshore, where men might tremble before “acts of God” instead of commodifying them. Many onshore dangers—fire, disease, a bad

harvest, a premature death—were after all still biblical in nature. Religious authorities counseled that in the end divine providence ruled over the future. And if the future was certain because God determined it, then risk management might be unnecessary, if not all together wrong. After migrating inland risk management competed with other ways to cope—socially, economically, culturally—with the perils of an uncertain future. It would always remain in competition.

Nevertheless, across the nineteenth century Americans began to react to the insecurities of capitalism and its “perennial gale of creative destruction” in a new way.<sup>6</sup> As slavery was abolished and the United States became more urban and industrial, increasingly men began to hedge the perils of life under capitalism by using financial instruments born of capitalism itself. Finance transformed perils, hazards, and dangers—some perennial, some new because of capitalism—into risks. An insurance policy offset the risk of losing the ability to earn income in a market economy; a derivatives contract hedged against the risk of future market price volatility. Nonfinancial collective strategies did not completely die off. Families still shouldered burdens together. Many individuals still believed in an otherworldly fate. But this transformation was ultimately momentous, marking the emergence of risk as we know it today.

The world of capitalism and risk thus formed as nineteenth-century Americans became ever-more dependent upon new financial institutions, markets, and forms of wealth for their security. They included insurance policies, savings accounts, government debt markets, mortgage-backed securities markets, bond markets, futures markets, and stock markets. With this, the corporation became risk management’s institutional home ground. Corporate risk communities offered a new form of social security. To provide economic security, corporate actors accumulated financial forms of capital and wealth. Doing so corporations also brought about a cultural transformation. They became the reservoir of new probabilistic, statistical explanations of future change that secularized old providential beliefs. In sum, by the opening of the twentieth century the modern American corporate financial system had come to life.

Risk thus recasts the history of American capitalism from the standpoint of powerful new financial corporations. Finance is an expansive terrain. But analyzing the nitty-gritty details of new financial practices demonstrates how risk burrowed into popular consciousness. Moreover, following risk across many registers of thought, action, and experience captures much of the human drama of the capitalist transformation. The spread of commerce; the rise and fall of American slavery; the Industrial Revolution; the economic development of the West; the ascendance of the corporation—these were at stake in the rise of corporate risk management. But so was how Americans thought about the future, felt about the future, acted upon it, managed it, and sometimes simply resigned themselves to it.

The thread that runs most consistently through risk’s history is a moral one. For risk triumphed in the nineteenth-century United States in the context of the nation’s moral struggle over freedom and slavery. A generation—financiers, abolitionists, actuaries, jurists, preachers, legislators, corporate executives, philosophers, social scientists—developed a vision of freedom that linked the liberal ideal of self-ownership to the personal assumption of “risk.” In a democratic society, according to the ne

gospel, free and equal men must take, run, own, assume, bear, carry, and manage personal risks. This involved actively attempting to become the master of one's own personal destiny, adopting a moral duty to attend to the future. Which meant taking risks. But it also meant offloading one's risk on new financial corporations—like when a wage worker insured his productive labor against workplace accident, an ex-slave opened a savings account, or a Wall Street financier hatched a corporate profit sharing and employee benefit plan. A new vision of what it meant to be a free and secure actor thus took shape in the new material and psychological reality created by the modern American corporate financial system.

Liberal notions of selfhood had long emphasized the need for self-mastery, even in the face of uncertainty. But only in the nineteenth century did self-ownership come to mean mastery over personal financial “risk.” The moral conundrum that posed, and still poses, is that individual freedom required a new form of dependence. A dependence, that is, upon a new corporate financial system, the central nervous system of a rising capitalism that fed off radical uncertainty and ceaseless change.

Therefore corporate risk management time and again manufactured new forms of uncertainty and insecurity.<sup>7</sup> That was the essential truth taught by the freaks—economic events that eluded the grasp of corporate risk management. As free men began to assume their own personal risks, old forms of security and dependence perished. Not assuming risk, that is, no longer became an option. Whitman was right. Once at risk the only thing certain on life's voyage would be uncertainty itself. Within the economic chance-world of capitalism, desire for risk management and longing for the freaks fortune constitute one and the same history.

# The Assumption of Risk

Safety from an evil which may lurk in the future is as real as any other commodity.

—Elizur Wright, “Life Insurance for the Poor” (1876)

IN 1836, NICHOLAS FARWELL WAS AN ENGINE-MAN on the one-year-old Boston and Worcester Railroad when a train ran off the tracks because a fellow employee mislaid a switch. Farwell and his car were thrown from the rail, and the railcar crushed and permanently destroyed his right hand. His career as an engine-man over, Farwell asked the Railroad for compensation but it refused. Farwell hired a lawyer and took his case eventually all the way to the Massachusetts Supreme Court. He valued his right hand at \$10,000.

Chief Justice Lemuel Shaw’s 1842 decision in *Farwell v. Boston and Worcester R.R. Corp.* ruled that Farwell himself was responsible for the “peril” that had destroyed his right hand.<sup>1</sup> Farwell therefore also personally assumed a “risk.” By invoking risk Shaw’s decision rested upon precedent in the international law of marine insurance.<sup>2</sup> In 1842 railroad wage work was new. Maritime commerce was old. Shaw granted “that the maritime law has its own rules and analogies” not always applicable to other “branches of law.” Applying the moral logic of risk to a dispute concerning an industrial workplace accident followed no direct legal precedent. But Shaw still held it a “good authority” for the case at hand. To grapple with a novel aspect of American economic life, Shaw invited risk inland.

In ruling Farwell personally responsible for the “risk,” Shaw also led the wage worker, almost by the nose, to a fledgling corporate financial system. There the wage worker might offload risk commercially, that same personal “risk”—just like merchants offloaded the risks of long-distance trade. *Farwell* was thus an early and emblematic agent of the larger dynamic that launched risk in national history in the United States, which eventually drew almost all Americans within its orbit. Shaw attached “risk” to the very meaning and substance of Farwell’s personal freedom, empowering both his individual autonomy and what would become, by the end of the nineteenth century, modern American corporate risk management. Therefore *Farwell* provides the opportunity to concretely establish the historical problem of risk.

The Massachusetts Court ruled against the crippled workingman. According to Shaw, Farwell, by contracting out his productive labor, had taken “upon himself the risks and perils incident to his situation” as an engine-man. The two words “risk” and “peril” did not then have the same meaning, and Shaw was not being loose with language. The peril of the accident, Shaw reasoned, was already priced into Farwell’s wage, which was higher than the wages paid to workers who were engaged

less hazardous tasks. Within his two-dollar-per-day wage was a “premium for the risk which he thus assumes.” Therefore, the railroad corporation was responsible to Farwell for no further compensation.

*Farwell* stated that as a free man the plaintiff was a proprietor of a personal “risk.” The risk he assumed was an element of his self-ownership—the same as the productive labor embodied in his now mangled and disabled right hand. No different than his own body, Farwell’s “risk” was part of his selfhood. Like his productive labor, it was his private property, a thing over which he held absolute dominion. The peril was not conceived along propertied terms.

Shaw arrived to this ruling in a series of related moves. For one, Farwell became the owner of what might be termed a downside risk. He became responsible for the possibility of an abnormal future peril, hazard, or danger. The cost of this industrial accident was his own, and the Boston and Worcester Railroad owed him no compensation for his injury. It was a “pure accident,” Shaw declared, as the freak event was neither the fault of Farwell nor of the railroad corporation.<sup>4</sup> But Farwell was ruled responsible for its consequences.

Yet, as a free man, Farwell also owned an upside risk—an equally abnormal and corresponding future pecuniary reward. In this case, it was represented monetarily in his higher wage. Both Farwell and the Boston and Worcester Railroad were ruled free and equal contracting parties in like pursuit of commercial gain. In contracting out his productive labor for the new, hazardous employment of railroad work, Farwell—Shaw held—had bargained for extra money compensation for “the risk which he thus assumes.” This was a moral idea, the notion that more “risk” assumed justified more reward. As a free man, Farwell was entitled to an upside. But, for the same reason, he assumed a downside. Linking together freedom, self-ownership, and the personal assumption of risk, it was as if Shaw had enclosed a new “risk” within the sphere of Farwell’s individual autonomy.

“Enclosure” is a term that can only be historically associated with one specific kind of commodity: land. In England, from the fifteenth to the nineteenth centuries, parliamentary magistrates, lawyers, landowners, mortgage lenders, and enterprising farmers conducted the slow process of “enclosing” the common-fields system that dated back to early medieval times. Land previously held in common became the exclusive property of private individuals. The word “enclosure” referred to the technique of demarcating newly private property—the building of hedges, fences, and drainage canals, or the filings and petitions of lawyers and magistrates—along the way to the creation of early modern English agrarian capitalism. By the nineteenth century, the crazy quilt of mutualist obligations that had been early modern landed property was all but gone. An old set of hedges that had allocated some land to individual households and some to broader collectivities was replaced by a new set demarcating absolute, and therefore alienable, individual property rights.<sup>5</sup>

In the seventeenth century, when English colonists arrived on American shores, one of the first things they did was to begin to enclose the land, and to claim it as their own. Some New England villages had a full-blown common-field system, and all colonies to some degree maintained collective use-rights in land. They did so through a blend of customary practices that treated the land as a social good as much as an individual commodity. But in America as well, by the nineteenth century a not too dissimilar set of actors had enclosed the land.<sup>6</sup>

*Farwell* provided a legal technique for an analogous, later enclosure. “Risk,” the commodity long exchanged in a marine insurance contract, was something that a person could in fact “assume” and

own, alienate, or contract out to another to “carry.” And yet, in the early modern period, outside the world of long-distance trade the notion that the cost of a contingent event could be priced and enclosed into a commodity that could then be offloaded through a financial instrument called “insurance” would have baffled most people. At least a fence, a hedge, or a drainage canal could demarcate an enclosed piece of land for the naked eye to see. But a future peril was much more abstract and ephemeral.

A legal precedent, however, could do something like the boundary work of a physical hedge. Enclosed “marine risks” had existed for centuries. In 1842, Shaw enclosed the new personal “accident risk” of the modern industrial workplace. Just as Farwell could sell his productive labor to a boss, he could he sell his accident risk to an insurance corporation. Farwell’s employment implicated two commodities which existed in tandem—his productive labor and now the “risk” attendant to its hire. *Farwell* perfectly captured the capitalist approach to peril: commodify it.

To do so Shaw first had to dispense with a legal principle in which the burden of hazard was held in common, much like the land had once been. If the early modern enclosure of land had commodified the commons, then Shaw’s enclosure of an “accident risk” commodified a contingency. The common fields system was after all a form of safety-first agriculture, a communal hedge against the danger of a bad harvest or a bad market.<sup>7</sup> Farwell had sued under the English common law rule *respondere superior*, which rendered “masters” responsible for accidents caused by their “servants.” This paternalist legal rule was premised upon a status-based hierarchy, and was typical of the many high personal, if asymmetrical, social bonds that persisted into nineteenth-century America. Such bonds had achieved social security but were not predicated upon the demand for individual autonomy—and certainly not the individualist moral logic of risk. To understand just how remarkable a decision *Farwell* was, consider that according to the international law of marine insurance—at the time Shaw handed *Farwell* down—a seaman’s wages were not legally insurable. As Shaw’s contemporary Theophilus Parsons wrote in 1859, masters were legally responsible to directly care for and compensate a seaman who became “sick, or wounded, or maimed in the discharge of his duty, provided it was “not by his own fault.”<sup>8</sup>

Shaw departed with *respondeat superior*. Speaking of the “pure accident” that had befallen Farwell, he snapped one chord in the dependent bond between “masters” and “servants,” enshrining the Nicholas Farwells of the world as masters and proprietors of their own personal risks. Having personally assumed a risk, Farwell appeared to have no social recourse whatsoever.

For this reason, through the years *Farwell* has struck many as a callous decision—an early blow to the incipient American working class, an implicit subsidy for nascent railroad corporations. That was, although for what it is worth in the end the Boston and Worcester Railroad, seemingly from charitable impulses, provided Farwell some compensation, even if it was far less than the \$10,000 he thought he was owed. And, over time, American courts would begin to recognize employer negligence and liability for some categories of workplace accident. Further down the road, railroad brotherhoods and a new collective strategy, would cope with the individual cost of workplace accident. In time, in the early twentieth century, states would pass workmen’s compensation laws.<sup>9</sup>

All of these paths run through *Farwell* and have been illuminated by historians with great care. The reason to linger over *Farwell*—besides, at the outset, to emphasize the crucial role of the law

setting the working rules of risk—is to pin down the maritime source of its individualist logic. But it is also to underscore the practical endpoint it implied: the potential offloading of Farwell’s freshly minted personal risk onto a financial corporation.

An “assumption of risk” occurred because Farwell was a free man. But that very same freedom suggested a financial solution for the peril at hand. Departing with the domestic law of master–servant relations, Shaw sure enough turned to the international law of marine insurance. Marine insurance had for centuries offered long-distance trading merchants financial compensation in the contingent event their cargoes were lost to the “perils of the seas.” One merchant assumed another merchant’s risk. Shaw cited an 1841 decision of his own, *Copeland v. New England Marine Ins. Co.*, in which he held that a marine insurance corporation was responsible for a cargo lost due to the “insanity” of the ship’s captain. The owner of the ship was bound “*in the first instance*, to provide the ship with a competent crew; but he does not undertake for the conduct of the crew in the subsequent part of the voyage.” Likewise, the fellow servant responsible for mislaying the switch that destroyed Farwell’s hand was by all accounts “a careful and trustworthy servant.”<sup>11</sup> The loss thus fell with Farwell; unless he had insured it. Notably, Shaw equated Farwell not with a waged seaman, but with a ship’s owner—the railroad wage not with the seafaring wage (which was not then legally insurable) but with the ship’s cargo (which was). Farwell’s productive labor was lost, Shaw analogized, to the “perilous incident” to his industrial employment.

Shaw had further ruled that Farwell’s wage had a “premium” in it—monetarily representing a slight but ideologically significant upside—representing the risk he had assumed. If Farwell had absolute dominion over the assumed risk, why could he not alienate a portion of his upside—just like merchants insured their cargoes? Shaw did not say so, but presumably Farwell could have taken the “premium” paid to him in the labor market and through an insurance contract financially offset the potential loss of his productive labor. There was only one problem: there were no accident insurance corporations in the United States when Shaw issued his opinion in 1842.

By 1846 there would be such corporations, present on both ends of Farwell’s old line in Boston and Worcester. The legal precedent of *Farwell* helped drag railroad workers to the front doors of the new accident insurance corporations that first sprung up in the United States during the 1840s. In 1850 the *American Railway Times* reported that one “Mr. W. Richardson, a conductor on the Worcester and Norwich Railroad, received Two Hundred Dollars from the Franklin Health Assurance Company for injury received at Fisherville, by the cars falling through the bridge.” He had been “insured at the office against railroad accidents, and paid but fifteen cents for his policy.”<sup>12</sup>

Wage workers could now insure their newly coined personal risks against workplace accidents. *Farwell* thus hedged a risk, as in to enclose and bound a future contingency within the inviolate sphere of self-ownership. But it also suggested the second historical meaning of the word “hedge.” For the outcome of the decision was that the same personal “risk” could be offloaded onto an insurance corporation and thus hedged financially. An accident insurance policy could not bring back Farwell’s right hand. The peril inextricably rested with him. But the risk did not have to.<sup>13</sup>

Shaw found a solution to a pressing new legal problem—fashioning a new legal doctrine, the personal “assumption of risk.” He articulated a new model of liberal economic personhood in which the moral logic of risk was central. That logic cannot be uncritically assumed to have applied to the

particular case at hand. Shaw had to work to insinuate risk into the wage relation. *Farwell* thus looks backward to risk's maritime origins, but also forward to the end of the nineteenth century. By the time modern American corporate risk management would be in place—there to serve the imperative of a triumphant liberal creed. As *Farwell* well illustrates, from the start the identification of running one's own risk with personhood and freedom went hand in glove with new efforts to financially manage that very same risk.<sup>14</sup>

The task now is to explore in greater depth and detail, across many levels of thought, action, and experience, this double arc: the emergence, in tandem, of a new individualism and a new corporate financial system in nineteenth-century America. To do so will require enlisting a wider cast of characters in addition to the jurist and the wage worker—the rebellious slave, the abolitionist actuary, the proslavery ideologue, the financial speculator, the farm housewife, the fraternal brother, the corporate executive, and even, as risk became increasingly politicized, the occasional president.

That double arc spawned a double freedom. A liberal freedom, that is, *from* traditional, often authoritarian, patterns of social life that achieved security as security moved into the new corporate financial system of risk management. The freedom *from*, as it were, that was declared in *Farwell* when Shaw rejected the legal principle of *respondeat superior*. But the other side of the same coin was the freedom *to* call one's upside risks—however freakish—one's own. Therefore what must now be considered is the ideological significance and economic function of the upside.<sup>15</sup>

The economic phenomenon we call “risk-taking” is as old as commerce itself. For-profit commercial transactions very often involve contingent outcomes.<sup>16</sup> Commercial profit-making feeds off and breeds uncertainty—like the uncertain fate of a long-distance sea voyage.<sup>17</sup> In this sense to some degree every commercial exchange is a speculation.

Seemingly every theorist of capitalism—from Marx to Hayek, Weber to Sombart, Schumpeter to Keynes, Knight to Braudel—has taken the next step and argued that capitalism thrives off unceasing and unpredictable historical change. Noting this fundamental indeterminacy, Keynes most memorably referred to a “radical uncertainty.” By this he meant future uncertainties that are qualitative in kind—future possibilities that cannot be assigned a “calculable probability” by any forward-looking agent. The future, that is, whose content “We simply do not know.” It is this quality of the future that capitalism is constantly seeking to generate, manage, and exploit.<sup>18</sup>

Nineteenth-century Americans created for themselves a radically uncertain future, although not from whole cloth. From the earliest of colonial times America was a commercial society. Many of its members—willingly or not—had left an old world behind for a new. Yet, when *Farwell* came down in 1842 commerce newly flourished in Jacksonian America. A remarkable surge of commercialization was responsible, but so was the speculative itch of a democratizing culture. The continued rise of American democracy made the social order more liquid, tempting individuals to chase the possibility of a better future state of affairs through commercial gain.<sup>19</sup>

In antebellum America, more and more men were reaching for the main chance via commerce. Southern slave masters feverishly raised cotton for sale on world markets. Free farm households produced great marketable surpluses of grain. Americans flocked to cities and their commercial



emporiums, which spread the dominion of the emerging national market economy westward. Linking that economy together was an ongoing transportation revolution—new roads, turnpikes, canals, and even railroads, like Farwell’s employer, the Boston and Worcester. In the Northeast, there were the beginnings of industrialization.<sup>20</sup>

In this era, one of staggering wealth creation, most Americans believed that wealth and value were the products of human labor.<sup>21</sup> Part of the upside vision however was that commercial risk-taking—speculation—could be “productive labor.”<sup>22</sup> When Anglo-Americans and European immigrants conquered, settled, and economically developed an entire continent, at the cutting edge was land speculation. When southerners built one of the richest plantation societies the world had ever known, at the cutting edge was a speculative market in human chattels. When railroad directors constructed a transcontinental railroad network, at the cutting edge was financial speculation. For every confidence game that was never more than a figment of the imagination, a future projection became real—California, the Pacific venture, a railroad, a city of Chicago. Later, looking back at a century of capitalist transformation, Charles Hamill, president of the Chicago Board of Trade, explained before Congress in 1892:

It is too late, in view of what has been accomplished, to deprecate speculation in its proper sense as an element in mercantile life. It has uncovered resources ... it has created values; it has quickened industry ... awakened ambition, augmented the comfort of life; it has introduced delicacies and luxuries, it has brought refinement and development to human character, built churches, constructed railroads, discovered continents, and brought together in bonds of fellowship the nations of the world; it is aggressive, courageous, intelligent, and belongs to the strongest and ablest of the race; it grapples undismayed with possibilities; it founded Chicago; it rebuilt a great city upon smoldering ruins, and impels it in the march of progress. Whenever this kind of speculation is denounced it is misunderstood, and it is often decried by those who unconsciously share its benefactions.<sup>23</sup>

Perhaps there were better ways to have economically developed the American continent.<sup>24</sup> But the nineteenth-century American economy was a textbook case of private, speculative-driven “creative destruction,” to invoke Schumpeter, producing hitherto unimaginable levels of economic growth and material wealth. Higher money incomes made it possible for many individuals to newly purchase economic security from financial corporations.<sup>25</sup>

Nevertheless, moral, productive risk-taking could pass an elusive threshold and become immoral, unproductive gambling. Indeed, the gambler and the confidence man were the nagging evil alter ego of the productive risk-taker.<sup>26</sup> In particular, many Americans, especially those who worked with their hands, were always suspicious that financiers—who often did nothing but take risks—were unproductive “parasites” on the “real” economy. And yet, pure muscle-and-brawn producerism—the kind that demonized all commercial risk-taking—while present, was never dominant. It was more critical of the “money power” than opposed to the economic activity of risk-taking per se. The reams upon reams of religious and political jeremiads against gambling and “overspeculation” in the nineteenth century were evidence of acute anxiety about the proper scope of commercial risk-taking, but hardly a demand for its wholesale eradication. If anything, such anxiety and unease was evidence of its proliferation.

By the mid-nineteenth century, with commerce expanding and intensifying in a democratic society in the United States an old commercial truism was becoming an essential ingredient of a new liberal

creed. Productive risk-taking was the rightful activity of a free man. “A man has a right,” wrote Edward Freedley, as if stating the obvious in his popular 1856 *A Practical Treatise on Business*, to “risk his own capital.” Commercial “gain” was the product of “risk.” An individual who took a risk was responsible for a moral/pecuniary reward. He had earned it, no differently than if by the sweat of his own brow. The risk taken was an element of self-ownership. To run commercial risks was part of what it meant to be, as nineteenth-century Americans put it, “independent.”<sup>27</sup>

Given a radically uncertain future, from where exactly this moral/pecuniary reward for risk-taking came was, and still is, a contentious subject.<sup>28</sup> For individual risk-taking to be productive, some of the reward—some of the profit—had to be attributable to human faculties: prudence, effort, intelligence, foresight. The market economy was, after all, a field of competition between men, a test of skill. Blind, reckless overspeculation or gambling could only lead to something for nothing, or nothing for itself.

Providentialist explanations of future change persisted within nineteenth-century American economic culture. The upside might be evidence of God’s inscrutable grace. “God,” once said John D. Rockefeller, “gave me my money.” Meanwhile, some began to naturalize, in a newly scientific tone, the competitive market economy. Religious and scientific appeals could mix together but free men took risks within an increasingly naturalized abstraction—what would later be known as “the market” or “the economy.”<sup>29</sup>

Perhaps it was, in the end, all a game of chance. Fortuna, a “fickle goddess,” as a New Orleans newspaper explained in an 1861 article entitled “A Lucky Freak of Fortune,” possessed a capricious mood. For no reason, “she snatches some unfortunate mortal, and drags him down to obscurity, and then she raises some humble child of poverty and insignificance to affluence and social distinction. The amorality is striking. Providence too posited a mysteriously working cosmic order, but it was ultimately a just one. If the future was ruled by pure chance, reward for risk-taking was simply the serving of moral luck. Or perhaps the psychological labor of assuming a risk in a market economy governed by brute luck alone warranted an economic desert? The novelist William Dean Howells, in his *A Hazard of New Fortunes* (1890)—in which the waning of providence and the impotency of human will were both great themes—spoke of the power of an “economic chance-world.” Perhaps going toe to toe with it alone merited a moral/pecuniary reward.<sup>30</sup>

Still, to many nineteenth-century Americans, the original antebellum mix between chance, the competitive marketplace, and democracy was a potent ideological brew. Chance struck a blow at the kind of aristocratic, hierarchical social order detested by so many antebellum Americans busily on the make. In the nineteenth century freaks of fortune were in fact a common literary plot device—the democratic *deus ex machina*.<sup>31</sup> Freaks were a more preferable source of power and authority compared not only to a king, but also a father, a husband, a town elder, or a slave master. Better to let the freak who could in fact energize the democratic will, have at one’s fate. Tocqueville already wrote in 1835 that Americans enthused at “all undertakings in which chance plays a part.” Americans were “all led to engage in commerce, not only for the sake of the profit it holds out to them, but for the love of the constant excitement occasioned by that pursuit.” Life became a “vast lottery,” a “game of chance.” Many nineteenth-century Americans continued to invoke a “providential hand” guiding the centrifugal forces of their republic. But they also invoked the wheel of fortune—a long-enduring, original

maritime image—to describe the secular voyage of a commercial, democratic social order, buzzing with so many uprooted and masterless people.

Nevertheless, in 1839 when the newspaperman John O’Sullivan announced the “Manifest Destiny of the American republic to conquer the West, guided by God’s beneficent hand, the title of the article was “The Great Nation of Futurity.” The United States was said to have plenty of room for upside risk—in every possible sense of the term—for many, if by no means all, of its members. To assume a risk to take it, make it your own, to master it, or even just to enjoy the existential thrill of it, was a birthright of the democratic soul, a soul born in commerce.<sup>33</sup>

What follows however is the history of the nineteenth-century American countermovement against the generative insecurity and radical uncertainty of capitalism, as corporate risk management—through a proliferating series of profit-seeking and offsetting financial transactions, calculations and counter-calculations—increasingly insinuated itself into the equation.

The term “countermovement” invokes Karl Polanyi’s celebrated notion of a “double movement.” Polanyi argued that what propelled nineteenth-century liberal capitalism forward was the simultaneous expansion of markets on the one hand and a countermovement that checked that expansion on the other. Through this dynamic, “Society protected itself against the perils inherent in a self-regulating market system.” Polanyi focused on the commodification of land, labor, and money. But nineteenth-century liberal capitalism proved equally insistent upon commodifying Polanyi’s “perils” into financial “risks.” That effort—to depart from Polanyi’s dichotomist and moralistic framework, with the “great and permanent evils” of “the market” in pitched battle with the “self-protection of society”—must be taken up on its own terms. For in the end capitalism itself assumed the risk. It assumes, in other words, that financial instruments of its own making can adequately stabilize its own unpredictable rhythms. Projecting its own vision of security, stability, and control, corporate risk management was a candidate in the broader countermovement against the perils of capitalism.<sup>34</sup>

Ultimately, in tandem with a new liberal creed corporate risk management came to life. But the outcome was not foreordained, and to address it on its own terms is not to assume its success. Polanyi’s skepticism of what he called the utopian elements of the “self-regulating market” is worth keeping in mind. For the upside had widespread allure to many nineteenth-century Americans. That was especially true if the downside could be offloaded to others, ideally the state, without cost.<sup>35</sup> But risk-taking came with dangers, perils, and hazards, which—everyone agreed—had to be coped with. And, as much as the freaks of fortune were welcomed, trailing after them was a long admonition. A tradition abounding with storm-tossed marine imagery, with one clear message: do not look to the markets, which are perilous, for protection from the perils of markets. It was one thing to be involved in the commercial game but it was quite another to take the game too far, and become fully dependent upon its vicissitudes. That was a life of economic and also existential risk.<sup>36</sup>

Risk’s history was thus marked by tension and oftentimes conflict. In this history financial panics and their aftermath—1837, 1873, 1893, and 1907 being the great ones—loom large. Corporate risk management actually spread its wings in the aftermath of the panic of 1837. But so too did other collective strategies. The countermovement of landed independence, premised upon land ownership

not self-ownership, asserted itself. So did the countermovement of slave mastery, premised upon slave ownership, until it met its fate in the Civil War. Later, following the panic of 1873 there was an outgrowth of new fraternal societies. After the panic of 1893, with the Populist Revolt, land independence made its last political stand. But then the trust question—whether or not an industrial economy of corporate ownership could adequately stabilize capitalism—took center stage. By the opening of the twentieth century, and following the panic of 1907, with the increasing politicization of risk the state began to make its presence felt in the business of risk management.

Nevertheless, by the end of the nineteenth century the American corporate financial system was in place. But in the end risk management—as much as it could offer its own brand of security—worked to obscure the clean moral accounting of risks and rewards, costs and benefits, that the attachment of “risk” to individual freedom had promised. For in the very act of *underwriting* liberal self-ownership the financial system also had the capacity to *overwrite* it.

The evolving corporate financial system opened up new pathways for the accumulation of financial capital. That meant opportunities for speculative profit-making by powerful finance capitalists. Freedley’s *A Practical Treatise on Business* stated that a man had a moral “right to risk his own capital.”<sup>38</sup> But he had “no right to risk the property of others.” There would have to be new legal and political regulations of this kind of financial behavior—while not denying the financial system its lifeblood of circulating capital. If not, Americans would learn the hard way that financial dispossession and plunder would accompany the assumption of risk. Risk management, that is, put financiers in possession of other people’s money.

At the same time, the new financial system of corporate risk management constructed abstract, highly mediated, and seemingly unreachable financial circuits. Another crazy quilt, this one of financial obligations, was stitched together. In a turbulent and panic-ridden century, new financial instruments—government debt, railroad bonds, commodities futures, mortgage-backed securities, corporate stocks—multiplied and circulated at an astonishing frequency and speed. The intricate web ultimately made risk systemic, enveloping everyone—including that system’s very architects. Risk management constantly manufactured new forms of uncertainty and insecurity—freaks of fortune.

But this flashes ahead to the end of risk’s nineteenth-century drama. To enter that history, what is first needed is an excursion back to the maritime world that Shaw drew upon in *Farwell* to enunciate a new vision of personal freedom. That excursion, curiously enough, leads directly to the history of New World slavery.

## The Perils of the Seas

It may, in general, be said that everything happening to a ship, in the course of her voyage, by the intermediate act of God, without the intervention of human agency, is a peril of the sea.

—*American Ship-Masters Assistant* (1807)

RISK'S HISTORY BEGAN with the extension of commerce over space, with the daring and audacity of long-distance seaborne trade. Risk was the fruit of merchant capital—of the early modern networks of mercantile commerce and credit that mobilized and knitted together different geographical arenas of economic production.<sup>1</sup> The specific branch of merchant capital that invented risk management was marine insurance.

In North America, the great colonial merchants were the first men to commodify perils in financial “risks”—or “risques,” as they were known in the seventeenth and eighteenth centuries. Through marine insurance they purchased from one another financial compensation in the event that their property was lost to a “peril of the seas,” or an “act of God.” A storm destroyed a vessel, a ship was seized by pirates—the merchant-insurer provided the merchant-owner compensation for the lost value of his cargo. To cope with the perils of seaborne trade, the insurance principle was born.

From the ports of Boston, New York, Philadelphia, Baltimore, and Charleston colonial merchants exported the great American staples—fish, timber, rum, tobacco, indigo, rice, and later cotton. They brought to the New World the European indentured servants and the African slaves whose labor was required to produce them. Insuring the passage of their cargoes, merchants sold their “risks” to each other: risks on timber bound from New England to the West Indies; on rice bound from the Carolina coast to London; on slaves bound from West Africa to the Chesapeake. Much like there was a commercial trade in rice, so was there a commercial trade in risk.

Merchants thus turned the for-profit engine of a financial market into a collective strategy for economic security. Running the risks of long-distance trade, they strained to foresee, control, and manipulate the contingent link between present and future. They also sought to profit from it.

Merchants formed what might be termed “risk communities”—collectivities that socialized personal financial “risks.” When used in conjunction with security the term “community” often connotes traditional, noncommercial values rooted in specific places. But community in that sense of the word was after all an invented tradition of the nineteenth century. The term “risk community” therefore meant to invoke risk management’s countermovement against capitalism’s generative insecurities and radical uncertainties—in particular the abstract social interdependencies created by the commodification of peril and the financial circulation of risk.<sup>2</sup>

By the time of the American Revolution, the North American British colonies had become strikingly commercial in their character.<sup>3</sup> Yet, the insurance principle was still a rather unique response to hazard. It was “Merchants only that make Insurances,” as one English merchant explained in 1720. The same could be said, more or less, in the America of 1800.<sup>4</sup> In subsequent chapters there will be the occasion to examine in depth the late antebellum collision of a number of collective strategies with the evolving corporate financial system of risk management, so dependent upon the insurance principle. But first the origins of the insurance principle must be explored in long-distance seaborne trade.

Within this maritime history are also the roots of the nineteenth-century marriage of risk with liberal notions of self-ownership and freedom.<sup>5</sup> Those roots intertwined, it turns out, with merchant capital’s inhuman embrace of New World slavery. For before men became the proprietors of “risks” on their own free selves, they first owned the “risks” on the bodies of their slaves. Before risk was an element of self-ownership, that is, it was an element of slave ownership.<sup>6</sup>

One episode draws together all of these currents, charting risk’s winding maritime origins up to the final antebellum decades—when the idea of the personal assumption of risk began to express a new vision of freedom. In October of 1841 the brig *Creole* set sail from Norfolk, Virginia, bound for New Orleans with a cargo of 135 slaves. The lives of the slaves, for the duration of their transit, had been insured by their masters. None of this was unusual and the voyage of the *Creole* is a fitting entry point into both the transnational maritime origins of risk and its subsequent nineteenth-century career in the United States.

Out on the Atlantic, nineteen male members of the cargo of 135 mounted a successful insurrection. Taking control of the brig, the rebels sailed to freedom in the Bahamas, a British possession where slavery had been abolished by act of Parliament in 1833. Back in New Orleans, the owners of the *Creole* slaves sued their marine underwriters for financial compensation for the lost value of the slave property. The case ended in the Louisiana Supreme Court in 1845. With lawyers quoting English, French, Dutch, Spanish, Portuguese, and Italian treatises, cases, and ordinances stretching back centuries, the transcript of *Thomas McCargo v. The New Orleans Insurance Company* alone is an adequate history of risk’s centuries-long maritime origins. Yet the decision itself took shape in a roundabout way, when the Louisiana Supreme Court faced the vexing question of whether or not a slave revolt was one of the “perils of the seas.” Was a slave revolt an act of God?

The brig *Creole* sat moored near Norfolk, Virginia, on October 31, 1841, with a cargo of tobacco in addition to 135 slaves. Its captain was Robert Ensor. Zephaniah C. Gifford was first mate. Onboard were five white mariners, a free black cook, and a slave overseer named William Henry Merritt. There were also a number of free white passengers, including Captain Ensor’s family and Theophilus McCargo, the son of Thomas McCargo, who owned twenty-six of the slaves. In the United States there thrived a domestic slave trade—a forced migration of somewhere between 750,000 and 1.2 million—where the large majority of slaves traveled overland. Yet, there was a riverine trade on the Mississippi linking the Upper and Lower South, and a larger coastwise trade connecting the Eastern seaboard with the Gulf of Mexico. Norfolk to New Orleans was a common route among others. No less than 38,000

slaves passed through U.S. waterways from 1817 to 1852.<sup>7</sup>

Having set sail for New Orleans on November 6, 1841, the *Creole* experienced nothing out of the ordinary until the night of November 7.<sup>8</sup> The crew secured the slave women in the afterhold and the men in the forehold. Only the men were occasionally permitted on deck, although the house slaves and the McCargo family slept in the main cabin. The night of November 7 was First Mate Gifford's watch. At nine o'clock, the slave Elijah Morris informed him that a male slave was in the afterhold with the women, which was strictly forbidden. Gifford roused the slave overseer William Merritt from his sleep. Merritt descended into the hold, lit a match, and found Madison Washington.

Washington was a Virginia slave who had once escaped to Canada. He returned to Virginia in search of his wife but had been recaptured and sold to Thomas McCargo. "Madison," Merritt shouted, "is it possible that you are down here! You are the last man on board of the brig I expected to find here." Washington responded, "I am going up, I cannot stay here," and leapt on deck. Gifford chased him, but then a pistol fired, the ball grazing the back of Gifford's head. Most likely, Morris fired the shot. Stunned, Gifford retreated back to the main cabin and sounded the alarm. Washington proceeded to the forehold shouting, "We have commenced, and must go through. Rush, boys, rush aft. We have got them now!"<sup>9</sup>

Nineteen slaves, all male, gathered on the deck. The women remained in their hold—the white women would later recall hearing them crying and praying during the fateful moments of the mutiny. The slave overseer Merritt somehow had escaped from the women's hold and slipped into the main cabin. Gifford, after sounding the alarm, climbed up the rigging to the main-topsail, where he hid. Now, with Merritt in the main cabin were the young Theophilis McCargo and his house slaves, a free black cooper, and the white passengers. The group of nineteen closed on them. A white passenger, John R. Hewell, an owner of slaves onboard, grabbed a musket, opened the cabin door and fired. He drew a knife and plunged forward and the nineteen men seized upon him with their bare hands. Hewell staggered back into the cabin and later bled to death. Everyone in the main cabin now surrendered, except for Merritt, who hid under a blanket. Washington ordered them all into the forehold.

Captain Ensor, asleep in his private quarters with his family, had heard the alarm. Now he appeared on deck calling his crew to fight. Only two sailors showed (one stayed at the wheel, all the others hid in the riggings). These two were knocked down to the deck but not further harmed. Ensor was stabbed numerous times before he too escaped to hide in the main-topsail. Washington, Morris, and two other slaves, Ben Blacksmith and Doctor Cuffin, searched for Merritt and finally found him in the main cabin hiding underneath the blanket.

When Merritt was discovered, he assumed he would be killed. But instead Washington directed him into the main cabin with the slaves Blacksmith, Cuffin, and a few others—to "have a conversation." Washington demanded that Merritt navigate the *Creole* to Liberia. Merritt said there was not enough water or provisions. Blacksmith and Cuffin and the others then demanded to go to a British possession. They insisted, according to Merritt, that, "they did not want to go anywhere else but where Mr. Lumpkin's negroes went last year," referring to the 1840 shipwreck of the *Hermosa*, also bound from Virginia to New Orleans with a slave cargo.<sup>10</sup> British wreckers carried the *Hermosa* slaves to the port of Nassau in New Providence, where British authorities pronounced them free. Ninety of the 133 slaves onboard the *Creole* came from Robert Lumpkin's infamous Richmond, Virginia, slave pen.

Obviously, they knew of the *Hermosa*. Merritt grabbed a chart and illustrated the route to Nassau.

The group of nineteen put their former overseer in charge of the *Creole's* navigation. Shouting upward into the sails, they persuaded the remaining white crewmembers to descend from the rigging and to assist Merritt. The sailors later said they feared for their lives. But Morris, when asked once by a sailor if the whites would be killed, reportedly responded, "No, I expect we shall rise again among ourselves, but the white people will not be hurt." The whites, including the captain, were allowed to dress their wounds and they dined and drank in the main cabin with the group of nineteen, who told them "all they had done was for their freedom." The slaves who did not participate in the mutiny were not allowed out of the hold and supposedly "behaved precisely as they had done before the mutiny."<sup>11</sup>

At ten o'clock at night on November 8, the *Creole* arrived at the port of Nassau in New Providence and a ship with a free black pilot and crew greeted the brig. A quarantine boat, with a white officer also came alongside. In a daring move, First Mate Gifford jumped from the *Creole* and into the boat. He was ferreted off to the American consul and the two proceeded to the governor of the Bahamas demanding a guard placed over the vessel and its "cargo." The governor sent a guard of twenty-four black, uniformed soldiers with a white commanding officer who all openly fraternized with the insurrectionists. In the next few days, British magistrates boarded the *Creole* and deposed the white crew and passengers.<sup>12</sup>

While the *Creole* then sat, the American consul hatched a secret plan. The captain and crew of the American bark *Louisa* would surprise and forcibly retake the *Creole*, which would then sail to Indian Key where a U.S. vessel of war awaited. On November 12, the *Louisa* crew rowed out to the *Creole*. But they were too late. That morning a crowd, mostly black, gathered on shore in sight of the brig. A number of boats, all manned by blacks armed with clubs, had encircled the *Creole*, and were shouting instructions to those onboard. The Americans were turned back without a fight.

The British had not been caught by surprise by the arrival of the *Creole*. Only two years before, in 1839, the Colonial Office dispatched from London instructions on how to proceed in such an event. Before British emancipation, two slave-laden American vessels—the *Comet* and the *Encomium*—had been wrecked in the British Bahamas and a number of American slaves had gone free (146 from the *Comet* and thirteen from the *Encomium*). After British emancipation, a third vessel, the *Enterprise*, was driven by "stress of weather" to the Bahamas and all of its slaves were pronounced free. The U.S. government had requested compensation from the British for the American owners of slaves on all three lost vessels. Parliament agreed to compensate the owners of the *Comet* and the *Encomium* slaves at the insured value but not those of the *Enterprise*, which landed in the Bahamas after British emancipation. The Colonial Office then issued instructions that when American slave vessels entered British ports for whatever reason, at "that moment" the slaves "were Free, as Slavery had been abolished throughout the British Empire, and they had acquired Rights which the Courts there were bound to recognize and protect." That was why the *Hermosa* slaves subsequently found freedom on British soil. The Colonial Office added only one caveat. With respect to fugitive slaves, officials might not "shield" a "Criminal from Justice" and must return slaves guilty of "Murder," "Rape," or "Arson." Thus British officials held the *Creole* four days, deposing white crewmembers. They were investigating the possible murder of the white passenger John R. Hewell.<sup>13</sup>

Likely perturbed at American duplicity, at two o'clock on November 12 British magistrates arrived



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