



Publishing license: <https://creativecommons.org/licenses/by/4.0/> CC-BY 4.0

Title:	Petitioning for Freedom: Habeas Corpus in the American West, 1812-1924
Author(s) and contributors:	Katrina Jagodinsky Cory Young
Issue:	1
Year:	2023
DOI:	10.21825/dlh.89671
Keywords:	Database, Unpublished Archival Records, Tribal Constitutions, Slavery, Habeas Corpus
Abstract:	Tribal Constitutions, Citing Slavery, and Petitioning for Freedom are digital legal history projects focused on expressions of sovereignty within tribal constitutions, the remnants of slavery in modern law, and the underexamined role of habeas petitioners in challenging coercion and confinement in the long-nineteenth-century United States. Each project deploys legal databases differently, but with the shared goal of contributing key insights to legal historical scholarship and offering interfaces that appeal to a broad, public audience.

Petitioning for Freedom: Habeas Corpus in the American West, 1812-1924

Katrina Jagodinsky and Cory Young

petitioningforfreedom.unl.edu

1. Overview

On November 21, 1885 Fannie Fowle told a Washington District Court Justice in Seattle that British Captain George Finlayson had made her “his slave and that she [could] not depart from him,” though she “often and frequent made attempts to get away, and [Finlayson] would...force her to return to him and severely beat and wound her for so attempting to gain her freedom.”¹ Fowle’s brief petition bears little detail beyond this graphic charge, but newspaper coverage and habeas petitions from the crew on Finlayson’s ship reveal that Finlayson had abducted the aboriginal woman near Sydney, Australia and kept her chained in his cabin throughout a Pacific voyage including stops in Hong Kong and Victoria, British Columbia before Fowle and the crew could petition for their freedom in Seattle. Their petitions are among thousands filed throughout the American West in the long nineteenth century.²

Petitioning for Freedom (PFF) highlights marginalized people’s challenges to coercion and confinement throughout the American West during the long nineteenth century.³ Based primarily on unpublished legal records from county, state, and federal courts in six strategically selected states, this database reveals the incomplete nature of legal histories of the American West that rely solely on appellate reporters.⁴ Far more people of color and white women emerge in the unpublished lower court records than in higher court records, skewing scholarly assumptions about such petitioner’s legal mobilization and conceptions of justice. Letting the records lead our inquiry, our team is scouring state and federal legal archives for habeas petitions to chronicle and characterize the efforts of people like Fannie Fowle to redeem themselves.

Petitioners used habeas to challenge enslavement, Indigenous child removal and federal Indian boarding school abuses, controlling spouses and parents, xenophobic immigration policing, and detention in private and state asylums and institutions caging everyone from the dependent to the delinquent, the

¹ In the Matter of Fannie Fowle, November 20, 1885, Case No. 4714, Third Judicial District Court for Washington Territory; Washington State Archives, Puget Sound Regional Branch (Bellevue, WA). <https://petitioningforfreedom.unl.edu/cases/item/hc.case.wa.0077>

² This essay continues the conversation started at the 2022 Law & Society Association Conference roundtable entitled “Citations, Constitutions, Conventions, and Corpuses: Digital Methods and Projects Featuring Marginalized People’s Rage, Reckoning, & Remedies,” that included scholars representing the Citing Slavery Project at Michigan State University, the Tribal Constitutions Project at Northwestern University, the Colored Conventions Project at Penn State University, and the Petitioning for Freedom Project at University of Nebraska Lincoln.

³ Visit the site at petitioningforfreedom.unl.edu

⁴ Eager to share preliminary findings and invite community and scholarly inquiry, the PFF database is being launched while archival fieldwork and encoding remain ongoing. As jurisdictions are completed, announcements are shared via Instagram @DigLegalRschLab and the Locations page of the site will always show the updated totals for petitions in completed jurisdictions. When completed, the site will hold data from petitions in Arizona, Iowa, Kansas, Missouri, Nebraska, New Mexico, Oregon, and Washington. As of August 2023 the database mainly consists of petitions from Nebraska and Washington, though federal petitions from all states except Arizona and New Mexico have been collected. The petitions available to us are subject to the archival conditions, so some jurisdictions are more complete than others; such uneven-ness is explained in greater detail on the site itself.

indigent to the insane.⁵ In addition to challenging gendered and racialized confinement, petitioners used habeas more conventionally to challenge wrongful arrest and claim due process in Western jurisdictions that featured erratic legal practices and favored expanding territorial, state, and federal authority over the course of the nineteenth century. Figure 1 illustrates the diverse range of petitions uncovered thus far. As expected, carceral petitions, those filed against jailors, sheriffs, and other carceral agents, are in the majority; but a third of petitions are interpersonal disputes between non-state actors or challenges against confinement in institutions that were not jails. Our data structure allows researchers to identify the specific nature of each carceral, institutional, and interpersonal petition type, as Figure 2 indicates.

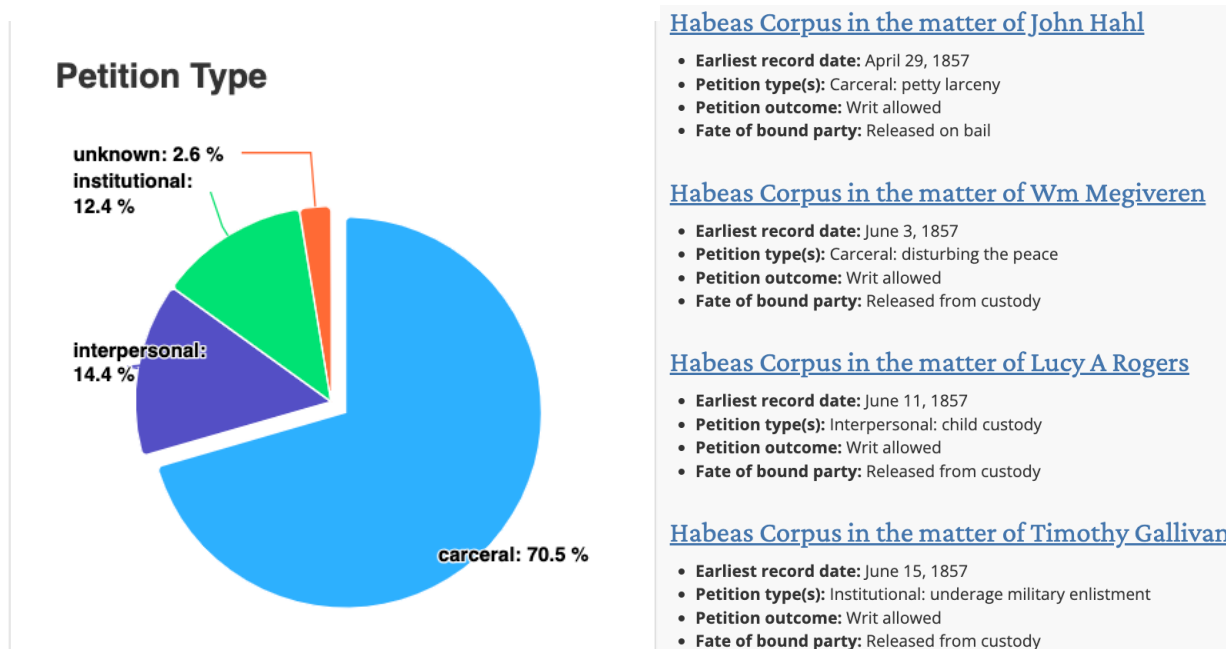


Figure 1: Petition Type Screenshot Reflecting Dataset on July 21, 2023 and Figure 2: Cases Page Screenshot Indicating Range of Petition Types in Dataset on July 21, 2023

Employing digital methods allows us to take on such an ambitious project, helps to quantify trends among habeas petitioners, and invites scholars to develop qualitative studies of their own based on the patterns the database reveals. Offering a rich database that will contain thousands of habeas corpus petitions, this project demonstrates the collective experiences and influence of individual petitioners on statutory habeas procedure and family law, federal Indian law, immigration law, and institutional policy. While focused primarily on petitioners and bound parties, the project also chronicles legal decision-making among judges and exposes the development of legal professional networks and practices over time within and across jurisdictions. Scholars concerned with crime, violence, and policing, or with punishment and corrections, will also find tremendous evidence within the database of petitioners' challenges to criminal charges, excessive punishments, and violations of due process. Overall, PFF reveals that habeas petitions

⁵ Habeas corpus, a legal mechanism based in British Common Law and incorporated in the U.S. Constitution and the Constitutions of American states and territories, allowed petitioners to challenge wrongful arrest, violations of due process, and wrongful confinement at the hands of individuals and institutions in addition to state and federal carceral agents. This project demonstrates the diversity of habeas practice throughout the American West, since each state developed its own habeas procedures, and highlights the fissures between federal and state habeas practice. As a legal mechanism guaranteed to petitioners regardless of their citizenship status, habeas corpus provides a lens into the legal strategies of a remarkably diverse set of actors who are otherwise excluded from other legal privileges.

served as a powerful weapon of the oppressed. Individuals not only challenged confinement over the long nineteenth century, but also compelled jurists to consider the legal logics that bound them.

2. Methodology

This project is steeped in critical and digital legal history methodologies that center the experiences and engagement of marginalized people. Our dataset has been structured with the understanding that the law is contradictory and indeterminate, reflective and reifying of socially constructed and historically contingent biases and hierarchies.⁶ Our data structure accommodates multiple petition types for one case, for instance, to demonstrate where confinement is both institutional and carceral in the case of juvenile detention or is both institutional and interpersonal in the case of parental claims to children detained in orphanages and asylums. We also encode relationships to identify instances where a case that seems like a child custody dispute is in fact a minor marriage challenge. Our archival fieldwork is extensive, searching for habeas in multiple jurisdictions to account for the irregular practice of law in the nineteenth century, and the result is that we are finding habeas petitions in courts not typically associated with the writ—and petitioners not typically considered rights-bearing. The database is built to highlight evidence of gendered and racialized contestation and negotiation. Recognizing the carceral nature of legal records and their fallibility in chronicling the full lives of petitioners facing sometimes momentary and sometimes lifelong episodes of coercion and confinement, our team recognizes the constraints imposed by legal practitioners within a hegemonic system. Such critical understanding informs the strategic choices we made in using flexible models when structuring the data.⁷

Countering the widespread problem of archival silencing, this project prioritizes habeas corpus as a legal remedy widely available to disenfranchised people. This focus on habeas petitioners as primary actors highlights the critical stance and storytelling of minoritized people and renders visible their persistence and persuasiveness even in the context of trauma and violence. Employing strategies of empathy and care, this project positions petitioners as the narrators of their own lives and experiences whose petitions express powerful hope in a more just future (or at least a less coercive one). Presenting these stories of survivance requires a deft balance of mixed methods such as thick description, close readings of individual cases and the supplemental sources that expand their meaning, demographic encoding that highlights intersectional identities and unequal power dynamics, and relational data that reveals the intimate and official connections both within and across cases. For instance, Fowle’s petition contains no reference to race, but her description of being treated like “a slave” prompted us to consult additional sources to learn that she was “a Native of Australia,” while Finlayson was a “British subject.”⁸

⁶ Arlette Farge and Natalie Zemon Davis, *The Allure of the Archives*, trans. Thomas Scott-Railton, Lewis Walpole Series in Eighteenth-Century Culture and History (New Haven: Yale University Press, 2013); Evelyn Araluen Corr, “Silence and Resistance: Aboriginal Women Working within and against the Archive,” *Continuum: Journal of Media & Cultural Studies* 32, no. 4 (August 2018): 487–502, <https://doi.org/10.1080/10304312.2018.1480459>; Marisa J. Fuentes, *Dispossessed Lives: Enslaved Women, Violence, and the Archive*, Early American Studies (Philadelphia, Pennsylvania: University of Pennsylvania Press, 2016).

⁷ Jason Eiseman et al., “Litchfield Unbound: Unlocking Legal History with Metadata, Digitization, and Digital Tools,” *Law and History Review* 34, no. 4 (2016): 831–56; Radhika Gajjala, “Caring Archives of Subalternity?,” in *Debates in the Digital Humanities 2019*, ed. Matthew K. Gold and Lauren F. Klein (University of Minnesota Press, 2019), 431–33; Safiya Umoja Noble, “Toward a Critical Black Digital Humanities,” in *Debates in the Digital Humanities 2019*, ed. Matthew K. Gold and Lauren F. Klein (University of Minnesota Press, 2019), 27–35; Eric C. Nystrom and David S. Tanenhaus, “The Future of Digital Legal History: No Magic, No Silver Bullets,” *American Journal of Legal History* 56, no. 1 (2016): 150–67; Stephen Robertson, “Searching for Anglo-American Digital Legal History,” *Law and History Review* 34, no. 4 (2016): 1047–70.

⁸ “An Extraordinary Case,” *Seattle Daily Post-Intelligencer*, November 21, 1885, *Chronicling America*. By separating case data and people data, we are able to note where such demographic attributes are indicated in the case file or are indicated in supplemental primary sources. When found, these supplemental primary source references are included in the person’s profile within the database while it remains clear whether such data was included in the case or not. None of the demographic data encoded in the

Further, none of Finlayson's captive crew reference one another in their petitions, but all cite Finlayson as the villainous respondent, allowing us to connect their petitions across the database. Alone in the archive, these petitions would seem compelling but confusing and disconnected. In our dataset, they are complex and connected not only to one another, but to a Pacific World of coercion and confinement.

An interest in asserting the dignity and power of bound people also shaped the selection of the digital legal methodologies employed in this project. Data feminism informs the concern with recognizing women and children's unique status as petitioners restrained within the parameters of coverture that made them dependents of men while also being recognized as citizens invested with some but not all rights.⁹ Our schema moves far beyond encoding cases by party name, year, and criminal or civil case type because such attributes stifle gendered and racialized analysis. Marking sex and age among case parties renders visible key trends in women and minors' petitions, while encoding relations among case parties illustrates the gender hierarchies imposed on the same women and minors. Applying such concepts and tools brings minor marriage challenges out of the larger category of child custody petitions, inviting scholars to apply greater scrutiny to this troubling phenomenon in the American West.

Digital ethnic studies and data sovereignty principles are also essential.¹⁰ Indicating race and nationality as primary attributes among petitioners and other parties occupying central case roles invites scholars to conduct quantitative assessments of racial-ethnic trends across the database. We are committed to amplifying racial silences in the legal records by encoding not just where racial categories are noted, but also where they are left unidentified. We have elected to refer to African-descended people as Black (rather than African American or Afro-Caribbean) as an acknowledgement that we are rarely aware of individual nativity. As Indigenous people and members of tribal nations emerge from the archives, they are noted under the racial category of Indigenous and the national category of their tribal affiliation when such information is indicated to document their simultaneous racialization and sovereign status. Having the ability to tag individuals as "multiracial" affords us precision in those instances when the archives are especially forthcoming. As noted in Fowle's case, the database also allows for racial-ethnic and other demographic data to be assigned to individual case parties from primary sources other than case files so that database users can benefit from supplemental data. At no time are researchers making assumptions about racial, ethnic, or national origin, and instead we are attempting to document and supplement silences and coded language in the legal records with supplemental primary sources.

We are also complementing these quantitative aspects of the dataset with qualitative analysis of cases to add depth and nuance to our understanding of the stories petitioners shared. Working with a team of undergraduate researchers to develop individual cases more fully supports our goal of bringing more under-represented scholars to digital legal studies. This work is not merely institutional in nature. Our team is also engaged in outreach with community constituents whose histories are reflected in these records. Such restorative methodologies require creative and critical reflection on carceral archives as the source of community histories. A focus on the bound parties as the primary actors in each case casts these petitions as cumulative acts of resistance against coercion and confinement over the long nineteenth century rather than individual stories of rights and wrongs. Returning evidence of such acts to their constituent communities supports current movements such as the Department of Interior and tribal investigations of federal Indian boarding school abuses or the National Park Service investigation of slavery

project is generated without a linked primary source and the researchers do not assume all primary source evidence accurately reflects key attributes such as age, race, or sex.

⁹ Catherine D'Ignazio and Lauren Klein, *Data Feminism*, Strong Ideas (Cambridge, Massachusetts: The MIT Press, 2020).

¹⁰ Monica Muñoz Martinez, "Mapping Segregated Histories of Racial Violence," *American Quarterly* 70, no. 3 (2018): 657–63, <https://doi.org/10.1353/aq.2018.0049>; Jacqueline Wernimont, "Knowing Why Revolution Must Come: Digital Humanities as Poetry and Prayer," *American Quarterly* 70, no. 3 (2018): 671–75, <https://doi.org/10.1353/aq.2018.0051>; Jessica Marie Johnson, "4DH + 1 Black Code / Black Femme Forms of Knowledge and Practice," *American Quarterly* 70, no. 3 (2018): 665–70, <https://doi.org/10.1353/aq.2018.0050>.

outside of the American South and beyond the antebellum period, and certainly reveals the extent to which challenging racialized interpersonal and institutional confinement is a hallmark of the American experience.¹¹

3. Methods and Database Design

Characterizing habeas petitions as a central chapter in American legal history requires a broad survey of multiple jurisdictions over more than a century. It also requires substantial investment and staffing and we attribute our progress to funding from the National Science Foundation and the collaborative and interdisciplinary team within the Center for Digital Research in the Humanities and Department of History at UNL. PFF will launch with petitions from Nebraska and Washington and will grow to include Arizona, Iowa, Kansas, Missouri, New Mexico, and Oregon. These states constitute the borderlands of slavery and freedom, documenting far-ranging histories of coercion and confinement across American, British, French, and Spanish jurisdictions with important regional distinctions. Indigenous petitioners appear in all states, as do immigrants, women, and people of color. They told harrowing tales of abduction and abuse throughout Pacific Rim ports and courts, immigrant challenges to racist and reactionary deportation policies, and attempted escapes from domestic and institutional abuses throughout the Great Plains. Jurists heard stories of domestic strife that pervaded westering and homesteading families in communities typically depicted as homogenous and, as problematically, as idyllic or normative sites of American legal culture.

Identifying suitable states for a comprehensive survey is one thing, obtaining habeas petitions from each of those states is another thing entirely. When habeas hunting, the PFF research team relies heavily on federal and state archivists and county clerks to navigate mixed legal archives. Without reliable indexes, our team scours bound volumes page by page and flips through files box by box to locate habeas petitions. Nearly every petition in the database, and as of August 2023 there are more than 1500, has been manually identified and photographed or scanned. We repeat this process for each jurisdiction, slowly but surely creating our own index of all surviving habeas corpus petitions for the states under examination. The inconsistent archival terrain ensures that gaps will remain in our coverage, but our team's persistent and thorough efforts have generated significant findings that allow for broad analysis.

Once we have digitized the archival materials, the encoding work begins. Through an iterative process in consultation with the project manager, the development team at the Center for Digital Research in the Humanities, and feedback from undergraduate researchers and legal scholars, we have developed an Airtable interface that allows researchers to capture essential variables and attributes that are ingested into a database that allows for compound queries and applies filters to yield search results.¹² Our structured database supports a diverse range of searches with a relational interface. The data is organized around cases and people so that users can design searches based on certain features of habeas or on certain features of people, ensuring that petitioners and bound parties remain visible as the primary actors in the database. Users searching for cases can filter through the database with a variety of queries including variables such as petition type and court type, county or state, date or decade. Those searching for people can filter by case roles, relationships to others in the dataset, and place or date of birth. Of

¹¹ Linda Tuhiwai Smith, *Decolonizing Methodologies: Research and Indigenous Peoples* (Bloomsbury Academic, 2022; 3d edition). Maggie Walter and Michele Suina, "Indigenous Data, Indigenous Methodologies, and Indigenous Data Sovereignty," *International Journal of Social Research Methodology*, vol. 22 no. 3 (2019): 233-243. For Department of Interior Boarding Schools Initiative see: <https://www.doi.gov/priorities/strengthening-indian-country/federal-indian-boarding-school-initiative> (accessed January 27, 2023). For National Park Service Network to Freedom Initiative, see: <https://www.nps.gov/articles/000/exploring-the-underground-railroad-in-the-west.htm> (accessed January 27, 2023).

¹² Airtable is collaborative software that combines aspects of databases and spreadsheets. It allows users to dynamically link multiple spreadsheets (or "tables") together into a single database (or "base"). For example, our base contains individual tables for Cases, People, Relationships, and other object categories.

course, standard searches by case name or party name remain viable, but users are invited to be more exploratory, searching for instance by case role for bound parties who are minors, or by petition type across jurisdictions and over the span of a remarkable century. Scholars are also able to conduct searches by case role and relationship, such as attorney and judge, or point of law cited to render visible the developing legal professional network across the American West.

4. Early Findings

At this stage, our team is continuing to collect petitions from archival repositories and encode them into the database. Nebraska and Washington jurisdictions are the most complete at the state court level, and all available federal court cases have been collected but are not yet fully encoded. Even with an incomplete dataset, it is clear that where local practice and relevant statutes allowed for a diverse application of habeas, petitioners from all walks of life were ready to wield the great writ for their creative critiques of interpersonal, institutional, and carceral confinement. Early findings as of August 2023, which are based on 1437 cases that we have processed and encoded in Airtable, indicate that women constitute petitioners or bound parties in 30% (432) of cases, and women act as petitioners almost twice as often in county and state cases compared to federal cases (87% or 204 cases, versus 12% or 28 cases). Interpersonal child custody is the most prevalent petition type that women filed. Children emerge as the bound party in nearly 20% (280) of the cases and are also more widely represented at the county and state rather than the federal court level. Such prevalence suggests that family law scholars ought to examine habeas more closely to understand not only shifting trends in coverture and child custody practice, but also to chronicle the myriad forms of coercion that child custody disputes document over the long nineteenth century. It also challenges characterizations of Western legal history as a primarily male domain.

Although not prevalent in number, Indigenous petitioners appear in every state to challenge boarding schools and other forms of coercive confinement and women are included as a significant portion of this group as well. Of a total 17 petitions involving Native bound parties, 5 of them feature women either as petitioners or bound parties. Beyond boarding school challenges, petition types specific to Indigenous petitioners are those used to challenge child removal at the hands of neighboring settler colonists, Indian agents' authority to restrict Native men's off-reservation mobility, or state jurisdiction over and/or policing of Indigenous crimes before and after the 1855 Major Crimes Act. So far, only Indigenous mothers used habeas to challenge interpersonal confinement and no Native women used habeas individually against an Indian agent, suggesting a gendered trend in Indigenous habeas practice that corresponded to the gendered practices of settler-colonialism.

As it stands, the dataset primarily features Black Americans as parties to fugitive slavery and wrongful enslavement cases in antebellum St. Louis. The handful of postbellum petitions we have encoded so far reveal troubling, if unpredictable continuities in the policing of free Black communities, with petitioners challenging slavery-like detentions, coercive adoptions, and racist vagrancy laws. Legal strategies that Black communities had first employed to challenge slave law remained necessary and potent at the dawning of Jim Crow. Such findings indicate that historians of birthright citizenship should more closely trace Black usage of habeas throughout the long nineteenth century for important trends in creative and critical citizenship claims. PFF scholars are also looking for patterns to indicate how Black petitioners influenced habeas usage among other petitioners; Indigenous women's petitions on behalf of children bound in settler households closely resemble Black women's petitions on behalf of their wrongly enslaved children in the antebellum period, for instance. Collectively, these petitions are demonstrating overlapping legal strategies among marginalized people over the long nineteenth century.

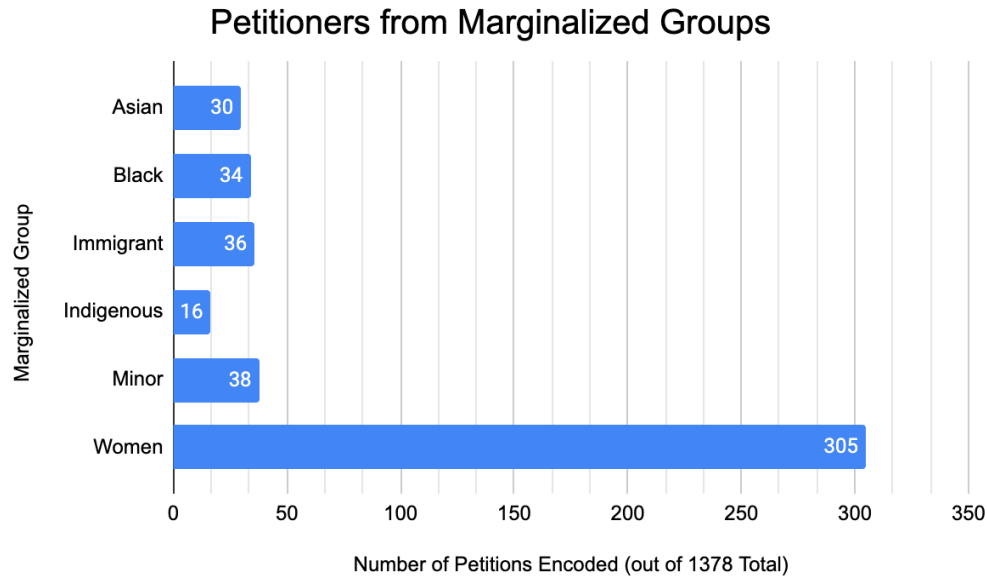


Fig 2. Petitioners from Marginalized Groups¹³

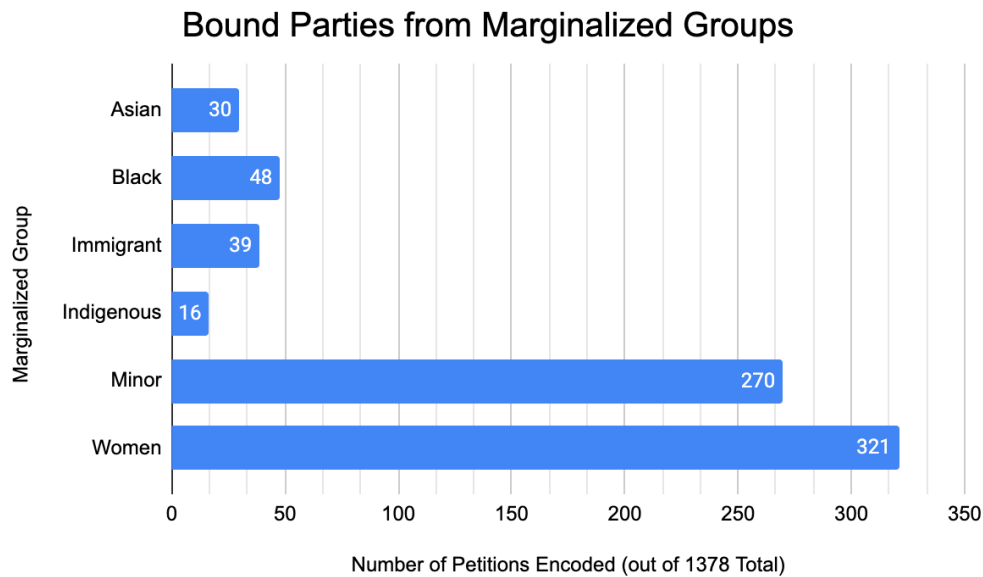


Fig 3. Bound Parties from Marginalized Groups¹⁴

¹³ Figure 2 draws on the subset of 1378 petitions fully encoded in Airtable by the Petitioning for Freedom team to date. 400 of them (29%) are from petitioners from the marginalized groups identified above. It should be noted that the results sum to more than 400 because the graph treats these intersecting identities discretely. Black women petitioners, for example, add to the totals for “Black” and “Women.” Graph generated by Cory James Young using Google Sheets, July 21, 2023.

¹⁴ Figure 3 draws on the subset of 1378 petitions fully encoded in Airtable by the Petitioning for Freedom team to date. 520 of them (38%) concern bound parties from the marginalized groups identified above. It should be noted that the results sum to more

5. Significance

Ultimately, Petitioning for Freedom is about much more than the thousands of habeas petitioners who lodged their complaints and civil rights claims throughout the American West between 1812 and 1924. The structure of the database is intended to upend conventional legal indexing practices that prioritize known cases and party names, thus fetishizing—intentionally or not—benchmark cases and elite legal actors over lower court cases and ordinary litigants that constitute a far more representative legal history dataset. We expect this dataset to dramatically reshape scholarly and public understanding of and access to unpublished legal collections that constitute the bulk of the American legal canon.

In boldly setting its sights on primarily unpublished and often unindexed state court legal records, PFF offers heretofore unaccessed and unassessed historical legal data to revise our assumptions about developing legal culture and jurisprudence in a central period of American history. PFF will prove useful not only for legal scholars, but also for social historians, scholars of race and Indigeneity, and women’s and gender scholars interested in legal records relevant to their own studies. Constituent and descendant communities may also use the database as a portal to their own histories of resistance and persistence housed in state and federal archives throughout the American West. Featured cases are annotated on the site, which also offers an intuitive design to enhance user experience and invite a broad range of visitors to the dataset of petitions for freedom. Taken individually, these petitioners told compelling tales in their appeals for liberty; collectively, they made powerful contributions to the American legal history canon that deserve our attention.

than 520 because the graph treats these intersecting identities discretely. Black women bound parties, for example, add to the totals for “Black” and “Women.” Graph generated by Cory James Young using Google Sheets, July 21, 2023.