CITIZENS UNDER THE LAW: AFRICAN AMERICANS CONFRONT THE JUSTICE SYSTEM IN KENTUCKY, MISSOURI, AND TEXAS, 1790 – 1877

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The Undersigned, appointed by the Dean of the Graduate School, have examined the dissertation entitled

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And hereby certify that in their opinion it is worthy of acceptance.

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To all my parents, grandparents, and all those before me who blazed the trail. I am your legacy and to you this work is dedicated.

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ABSTRACT

During the nineteenth century, southern African Americans utilized various methods to secure what they believed to be their rights as citizens of the United States. One of their most effective means was the use of the justice system. Although they confronted conflicting concepts of citizenship, changing laws regarding blacks that continuously restricted their rights, and overt racism, black Americans petitioned courts, filed lawsuits, and expressed grievances to federal and local authorities as they fought to protect themselves, their families, and their property. Southern black Americans faced a different set of circumstances than their northern counterparts as they tried to carve out lives within the framework of slavery. In doing so they created a legacy of legal resistance, which in itself was quite radical.

Introduction

Between the years, 1790 and 1877 many Americans obtained the rights and privileges that coincided with being a citizen of the United States. James Madison, considered the father of the Constitution of the United States, and several members of the Revolutionary generation, sought to protect the rights and entitlements of the American citizens from the tyranny of government oppression, yet it was uncertain if the Constitution extended these liberties to all inhabitants of the new Republic. Indeed, some founders, notably southern plantation owners and others in the new nation, did not recognize women, Native Americans, and blacks as citizens entitled to the liberties guaranteed by the new Constitution.[1]

Despite the numerous marginalized non-white males who lived throughout the original thirteen states and participated in the American Revolution as patriots, most were simply outside the scope of inclusion as citizens during the first one hundred years of the United States' existence. A few years before the outbreak of the Civil War, Supreme Court Chief Justice Roger B. Taney gave the most obvious evidence of this notion when he wrote the majority opinion for *Dred Scott v. Sandford* (1857). Taney argued that the Constitution never intended to include blacks as citizens of the United States, nor had they any rights that Anglos were obligated to respect. Arguably, the chief justice's

[1] Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge: The Belknap Press of Harvard University Press, 2000), 24; Gordon Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (New York: Oxford University Press, 2009), 2-3, 67-68.

opinion in *Dred Scott* made that decision the most important case involving black Americans until *Plessy v. Ferguson* (1896) established legal segregation.[2]

Yet, many people of African descent who were alive between the 1790s through the 1870s never lost sight of the Revolutionary promises of independence from tyranny and legal protection of their rights as citizens as articulated in the Constitution of the United States and Bill of Rights. Although legal historian Michael Kent posited, "The original American Constitution of 1787 said that it was designed to secure the blessings of liberty," this became a formidable task for black Americans to accomplish. The Revolutionary War and subsequent Constitution outlined not just a frame of government for the United States, but they also provided black residents with the opportunity to secure their rights and claims towards citizenship through the creation of federalism [the division of national and state political powers] and a justice system that permitted them to file petitions and suits while simultaneously providing protection in a court of law. During the nineteenth century, African Americans relied on various political institutions, both internal and external, to help alleviate their grievances as they bore witness to various economic, social, and political developments. They viewed the legal and political systems as a way to secure not only their rights as citizens, but also to provide security for their families. While some African Americans used self-help institutions, churches, and aid societies, many relied upon political systems established under the law as their mode of assistance. As a point of clarity, the term political system for this study

[2]*Dred Scott v. Sandford*, 60 U.S. 393 (1857); *Plessy v. Ferguson*, 163 U.S. 537 (1896).

refers to any number of government institutions at local, state, and federal levels to which residents may have appealed to help resolve legal grievances.[3]

Making matters more complicated for African Americans was that during the nineteenth century the federal government acknowledges two forms of citizenship, national and state. Furthermore, laws protecting of an individual's national citizenship were not always applicable to the states. As such, many black Americans face many legal obstacles emanating from state courts.[4]

In the process, black Americans force federal, state, and local policymakers to recognize their legal status and influenced the political direction of the United States through the passage of the Thirteenth, Fourteenth, and Fifteenth Amendments. For some nineteenth-century black Americans the focus was on the establishment of institutions within their own communities for the purposes of the stabilization of their place in the United States. Pillars of black communities, such as churches and fraternal organizations, serve to connect members and offer some degree of insulation from the adverse affects of racism and slavery. These institutions also offer African Americans the opportunity to obtain a political voice, albeit minor. Yet African Americans, who

[3]Michael Kent Curtis, *Free Speech, "The People's Darling Privilege": Struggles for Freedom of Expression in American History* (Durham: Duke University Press, 2000), 118; Eric Foner, *A Short History of Reconstruction, 1863 – 1877* (New York: Harper and Row, 1990), 36; John Sibley Butler, *Entrepreneurship and Self-Help Among Black Americans: A Reconsideration of Race and Economics* (Albany: State University of New York Press, 2005), 86-87.

[4] Roger M. Smith, *Civic Ideas: Conflicting Visions of Citizenship in U.S. History* (New Haven: Yale University Press, 1997), 37, 87, 175.

relied upon legal documents to secure their freedom arguably offered the most significant threat to white political authority in slave states.[5]

The purpose of this study is to shed some light on the black political struggle for citizenship through the examination of petitions, court cases, political debates which involved the political rights of African Americans, personal letters, slave manumissions, wills, correspondence to and from government agencies and various other legal documents which affected the lives of African Americans from 1790 to 1877. Furthermore, this research explores the influence of African Americans upon the political dynamics of the nineteenth century, while examining the lives of nineteenth-century black Americans, which was always set against the backdrop of slavery until the ratification of the Thirteenth Amendment in 1865 and, even then, the institution's lasting impact upon the lives of black and white southerners was present. This was never truer than in the former slave states where arguably, it was the legal efforts by people of African descent that offered the greatest threat to established white authority. Black southerners' use of the legal system and government institutions, which conceivably were created for the purposes of protecting white property and liberties, forced many white Americans in southern states to question not only slavery, but also the civic status of local free African Americans. Historian Laura Edwards emphasizes this when she argues that, as state lawmakers in North Carolina further restricted slave privileges granted by slaveholding policymakers, they simultaneously stripped away the rights of free black residents, such as denying free black male suffrage. In the opinions of some white

[5] Leon Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Alfred A. Knopf, 1979), 50; John Hope Franklin, *Reconstruction after the Civil War* 2nd ed. (Chicago: University of Chicago Press, 1994), 61-64, 82-83, 132.

Americans prior to the legal end of slavery there was hardly any difference between enslaved and free African Americans. Even under the law, evidence of this idea culminated in the *Dred Scott* decision. The concept of blacks using legal resources forced many whites in slave states to question their own views on citizenship and the law.[6]

The relationship between African Americans and the political system in nineteenth-century America was complex and therefore difficult to assess. Local and state officials sometimes adopted statutes, such as residency laws that required newly freed persons to leave a state; residents did not always adhere to these laws, which led to difficult legal positions for African Americans. The motive for disregarding such laws was not always clear in records or transcripts, and many primary players in court cases were not able to, or did not care to, leave an account of their thoughts. Nevertheless, it can be inferred that by bringing suits against individuals or governments and petitioning courts, some black people viewed such laws as invalid and a violation of their rights.[7]

The lives and experiences of African Americans during the nineteenth century varied according to locations. Some state and local legal restrictions were not always enforced, which allowed for some to have greater mobility within society. Other black Americans faced tremendous constraints upon their lives, such as the inability to engage in specific commercial trade or laws that restricted them from owning specific types of

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[6] Laura Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 226.

[7] Oliver W. Holmes Jr., *The Common Law* (Boston, MA: Little, Brown and Company, 1881); Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (New York: Oxford University Press, 1981), 102-103; Edward F. Haas, ed., *Louisiana's Legal Heritage* (Pensacola: The Perdido Bay Press, 1983), 5, 56; Paul Finkleman, ed., *Slavery and the Law* (Madison: Madison House, 1997), 4.

property. Additionally, the experiences of urban blacks differed from those who lived in rural areas, but the use of records involving both urban and rural areas allowed for a wider cross section of the legal efforts involving the black population.[8]

Although the experiences of nineteenth-century African Americans were by no means universal, this particular study focuses more specifically upon black Americans who dealt with the justice system and government institutions in Kentucky, Missouri, and Texas. Slavery was a legal institution in the three states, but two of the three states underwent different colonial experiences. Kentucky, created from Virginia and entered the Union in 1792, was steeped in English common law; many statutes adopted by Kentucky greatly restricted the lives of slaves and free blacks. However, Missouri, which was carved from the Louisiana Territory and became a state in 1821, had been part of imperial France and Spain. Differences in these states can be seen by comparing some territorial measures. For example, a December 18, 1789, Kentucky measure called "An Act concerning the erection of the District of Kentucky into an Independent State," shows where authorities adopted Virginia's legal classification of slaves as "moveable property". In Missouri, by contrast, Louisiana Territorial legislators approved the establishment of a district government in 1812 under "An Act providing for the government of the territory of Missouri;" furthermore, legislators in that territory passed "A Law entitled a law respecting Slaves," which also included measures pertaining to free blacks. While slavery and the subjugation of black Americans were ingrained within

[8] Winthrop Jordan, *White Over Black: American Attitudes Toward the Negro, 1550 – 1812* (Chapel Hill: University of North Carolina Press, 1968), viii; Edmund Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: Norton and Company, 1975), 5-6; John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1979), 151, 195-96, 266-267; Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: The Belknap Press of Harvard University Press, 1998), 1-2.

the state through its colonial experience, colonial laws created a legacy of legal expectation among the black population in that state.[9]

Black Texans, after 1845, challenged the legal system for their freedom from slavery and expected rights similar to those in Kentucky and Missouri. Despite being in the Deep South, African Americans in Texas filed hundreds of petitions or were themselves at the center of many cases in which their freedom was at stake. While there was "a settlement of Freedom growing up almost in the heart of the Slavo [*sic*] State" among a growing immigrant population as reported by the *New York Daily Times* in 1854, Texas' slaveholders (along with legislators) were concerned with abolitionism and external influence upon the black population there, which seemed to be more of a peripheral concern. Legally, the Texas Legislature had final approval on whether free blacks remained in the state or were forced blacks to relocate. Some of those freed from slavery through wills or by petition faced state-imposed relocation deadlines. Nevertheless, some black Texans, similar to black Missourians, relied upon that state's colonial connections to Mexico and sought to retain their property and freedom and to circumvent removal notices.[10]

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[9] C. A. Wickliffe, S. Turner, and S. S. Nicholas, *The Revised Statutes of Kentucky* (Frankfort, KY: A. G. Hodges, 1852), 23; William Waller Hening, ed., *The Statutes at Large: Being A Collection of All the Laws of Virginia, from the First Session of the Legislature, in the Year 1619. Published Pursuant to an Act of the General Assembly of Virginia, Passed on the Fifth Day of February, One Thousand Eight Hundred and Eight*. vol. 10 [hereinafter *Statutes of Virginia*] (Richmond, VA: George Cochran, 1822), 93; *Laws of a Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri, up to the Year 1824*. vol. 1 [hereinafter *Laws of Louisiana and Missouri*] (Jefferson City, MO: W. Lusk & Son, 1842), 8, 27-33.

[10] "The Germans in Texas" March 3, 1854 in *New York Daily Times* (ProQuest Historical Newspapers The New York Times (1851 - 2007), 4. http://proquest.umi.com/login?COPT=SU5UPTAmVkVSPTImREJTPTFBQ0QrMUFDQw@@&clientId=45247 (accessed April 21, 2011); "An Act permitting Nancy Coleman, Sen., and other free persons of color therein named, to remain in the State of Texas until the 6th day of April, A.D. 1860," in *Laws of Texas, 1822 – 1897: Austin's Colonization Law and Contract; Mexican Constitution of 1824; Federal Colonization Law; Colonization Laws of Coahuila and Texas; Colonization Law of State of Tamaulipas;*

The examination of the relationship between black Americans and the justice system in nineteenth-century America offers vast insight into the lives of one group of marginalized people. Their use of courts and of appeals to local, state, and federal officials and agencies demonstrated how blacks who lived in slave societies resisted bondage and efforts by slaveholders to keep popular democracy in the hands of white property-holding males. Extending property rights and suffrage to black males would serve to depose white authority in the South; therefore, many of the local and state laws of Kentucky, Missouri, and Texas reflected the effort to preserve white male political power.[11]

The primary reliance upon legal documents enables this study to give a voice to marginalized Americans of African descent, most of whom left no records in their own hand of their struggle to overcome second-class status in the United States. This aspect of *Citizens Under the Law: African Americans Confront the Justice System in Kentucky, Missouri, and Texas, 1790 - 1877* sets it apart from works such as James and Lois Horton's *Hard Road to Freedom* and Steve Hahn's *A Nation Under Our Feet* which rely heavily upon narratives and interviews conducted by the Works Progress Administration during the 1930s. While it is valid to question how much of the "voice" in the legal

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Fredonian Declaration of Independence; Laws and Decrees, with Constitution of Coahuila and Texas; San Felipe Convention; Journals of the Consultation; Proceedings of the General Council; Goliad Declaration of Independence; Journals of the Convention at Washington; Ordinances and Decrees of the Consultation; Declaration of Independence; Constitution of the Republic; Laws, General and Special, of the Republic; Annexation Resolution of the United States; Ratification of the same by Texas; Constitution of the United States; Constitutions of the State of Texas, with all the Laws, General and Specific, passed thereunder, including Ordinances, Decrees, and Resolutions, with the Constitution of the Confederate State and the Reconstruction Acts of Congress. Compiled and Arranged by H. P. N. Gammel vol. 4 [hereinafter referred to as *Laws of Texas*] (Austin, TX: The Gammel Book Company, 1898), 156.

[11]Edwards, *The People and their Peace*, 102; Stephanie McCurry, *Masters of Small Worlds: Yeoman Households, Gender Relations, and the Political Culture of the Antebellum South Carolina Low Country* (New York: Oxford University Press, 1995); 294; Loren Schweninger, *Black Property Owners in the South, 1790 – 1915* (Urbana, IL: University of Illinois Press, 1990), 89-90.

transcripts and petitions, nearly all of which written by white court clerks administrators, and property holders, is authentically provided by African Americans these sources do offer primary accounts of black Americans' fighting to obtain rights in nineteenth-century America. In some instances, records tell a story of southern blacks who initiated lawsuits for freedom. In other cases, the court records provide details about the treatment of blacks, who claimed to be free, by harsh slaveholders. Still other documents recount the requests of free African Americans to state governments to remain in a state or to secure personal property. Regardless of the motivation, the sources used offer the means to narrate the history of selected African American men, women, and children in KY, MO, and TX. The recent argument that legal sources, such as court transcripts, petitions, and one could add statutes, advanced by scholars Jane Baron and Julia Epstein contends that examining "legal communications as stories helps to illuminate how narrative conventions regulate the production of meaning in legal context." In other words, it is possible to interpret legal documents as a means through which greater understanding of the larger political setting during a given period can occur. Laws passed during a given time reflected anxieties of legislators and property holders. Lawsuits and petitions reflected unhappiness with one's status or the desire to protect one's property.[12]

The vast quantity of sources from Kentucky, Missouri, and Texas with enslaved and free black Americans at the center of political, economic, and social struggles presented numerous obstacles for this study, such as identifying the voices of African

[12] James Oliver Horton and Lois E. Horton, *Hard Road to Freedom: The Story of African America* (New Brunswick: Rutgers University Press, 2000), 1-2; Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South From Slavery to the Great Migration* (Cambridge: Belknap Press of Harvard University, 2003), 10; Jane B. Baron and Julia Epstein, "Is Law Narrative," *Buffalo Law Review* 45 (Winter 1997): 150.

Americans in the transcripts. In many instances, petitions and cases followed a similar legal format and did not always include direct commentary from the black litigants, but instead that of legal professionals. Other difficulties include the filing of petitions on behalf of blacks by their white neighbors. While these sources illustrate the relationship between black and white neighbors, the voice of the black complainant is not always obvious. Research for *Citizens Under the Law* centered on African Americans seeking restitution through the use of the justice system for grievances. Furthermore, while some historians have given much attention to the subject of race and criminal courts, this particular study concentrated on legal actions in civil courts. Some of the cases involving free blacks, petitions, and legal documents examined for this study did involve criminal cases, but the assessment is how the courts viewed black litigants in comparison to white litigants. In most instances, courts viewed African Americans as "quasi-citizens" at best and members of a non-citizen caste at worst. The attempts by black Americans to secure freedom and citizenship were civil matters under the law and many of the sources used for this study demonstrate that fact.[13]

What sets this present scholarship apart from other works is the examination of three slave states that entered the United States at different times. Because of this dynamic, it is possible to see broadly the changing nature of laws regarding African Americans throughout the nineteenth century. Although laws at the turn of the nineteenth century restricted the lives of blacks, over the next half century as the American

[13]See Christopher Waldrep and Donald G. Nieman, eds. *Local Matters: Race, Crime, and Justice in the Nineteenth-Century South* (Athens: University of Georgia Press, 2001); Harriet C. Frazier, *Slavery and Crime in Missouri, 1773 – 1865* (Jefferson, NC: McFarland and Company, Inc. Publishers, 2001), 2-5; and Suzanne Lebsock, *A Murder in Virginia: Southern Justice on Trial* (New York: W.W. Norton, 2003); Randolph B. Campbell, *The Laws of Slavery in Texas: Historical Documents and Essays* Compiled by William S. Pugsley and Marilyn P. Duncan (Austin: University of Texas Press, 2010), 62-64, 73, 75-76.

population migrated westward, laws governing African Americans became even more circumscribed.

This study also juxtaposes the legal efforts of enslaved and free southern African American with the various national and state legal changes occurring during the nineteenth century. While the actions of black Americans were not always reactionary to specific laws, many efforts of African Americans were a general response to their legally imposed status.[14]

With this study squarely focused on African American's use of the justice system in securing rights the significance of race is obvious and cannot be separated from the struggle of nineteenth-century black southerners. And while the examination of race within the confines of the legal system is not a new approach for scholars, the present work attempts to add to the scholarly body of works identified as Critical Race Theory through analysis of legal involvement of African Americans during a specific historical period.[15]

Critical Race Theory emerged in the 1970s from legal studies and among the pioneers are Derrick Bell and Allan Freeman while other contributors including Richard Delgado, Jean Stefancic, and Richard Bauman have broadened the field to include anthropology, sociology, history, and other areas of study. With race as an important factor in this current study, it is possible to examine the efforts of black Americans who utilized the legal system as a means to secure their rights and argue that nineteenth-

[14] Thomas D. Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996), 9.

[15] Richard Delgado and Jean Stefancic, *Critical Race Theory: An Introduction* (New York: New York University Press, 2001), 76

century legal cases with race at the center were power struggles over the control of the lives of black Americans.[16]

Scholars addressing the legal efforts of blacks, particularly in Missouri, have focused primarily on the *Dred Scott* case. However, black Missourians were involved in hundreds of suits and filed many petitions as they sought freedom and justice. Furthermore, some free blacks sought legal restitution over property disputes when they filed petitions and, even after the ruling in the Scott case, they continued to use the local, state, and federal political system to secure what they thought were their entitled rights. In addition, Missouri had a unique colonial legal history, and many from both the state's sizable slave population and measurable free black population drew upon this tradition in their legal struggles.[17]

While scholars have given considerable attention to Missouri's black population's utilization of the justice system, there is considerable room to compare the legal efforts of black Kentuckians, Missourians, and Texans as they struggled to claim their rights as citizens. Furthermore, legal documents involving southern African Americans in Kentucky and Texas, such as petitions, complaints to federal agencies, lawsuits, and state laws have served as the basis for substantial scholarly studies focusing on the post-Civil

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[16] Richard W. Bauman, *Critical Legal Studies: A Guide to the Literature* (Boulder: Westview Press a Division of HarperCollins Publishers, 1996), 183-185; Delgado and Stefancic, *Critical Race Theory*, 2, 3, 5, 7.

[17]**See Elbert William R. Ewing,** *Legal and historical status of the Dred Scott decision: a history of the case and an examination of the opinion delivered by the Supreme court of the United States, March 6, 1857* (Washington, D.C.: Cobden Publishing Company, 1909); Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case and Historical Perspective* (New York: Oxford University Press, 1981); and Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge: Cambridge University Press, 2006). For a perspective on African American concepts of frontier justice see, Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (Oxford: Oxford University Press, 2009); Kimberly Shreck, "Her Will Against Theirs: Eda Hickam and the Ambiguity of Freedom in Postbellum Missouri," in *Women in Missouri History: In Search of Power and Influence*, eds. LeeAnn Whites, Mary C. Neth, and Gary R. Kremer (Columbia: University of Missouri Press, 2004), 134.

War era, although much of the work on Missouri has focused on the antebellum period. It is the goal of this work to provide a perspective on the numerous legal resources detailing the lives of nineteenth-century black residents in Kentucky, Missouri, and Texas while simultaneously examining how black Americans navigated the state justice system and fought for their rights as citizens.[18]

This work primarily follows a chronological theme, with major political, economic, and social events, such as the American Revolution, sectional crisis, market and industrial revolutions, and the Second Great Awakening serving as backdrops for the many changes that occurred in the lives of people in Kentucky, Missouri, and Texas.

The first chapter centers on the colonial period and analyzes the relationship between descendents of African, European, and Native Americans under imperial statutes. The colonial era for the three southern states encompassed a time that extended from the early-seventeenth century to the early-nineteenth century, due to the English, French, and Spanish imperial influences. The purpose of such a broad timeframe is simply to reflect the region's period under imperial law and the adopted statutes that had a direct impact on the lives of enslaved and emancipated blacks. The inclusion of this legislative background allows for the discussion of Missouri and Texas prior to its annexation by the United States in 1845. Nonetheless, laws reflecting the influence of Anglo Americans were taking shape during the colonial period in each region and some of these laws had bearings on the lives of colonial blacks. Moreover, this chapter

[18] Victor B. Howard, *Black Liberation in Kentucky: Emancipation and Freedom, 1862 – 1884* (Lexington, KY: University Press of Kentucky, 1983), 2; Anne E. Marshall, *Creating a Confederate Kentucky: The Lost Cause and Civil War Memory in a Border State* (Chapel Hill, NC: University of North Carolina Press, 2010); James Smallwood, *Time of Hope, Time of Despair: Black Texans During Reconstruction* (Port Washington, NY: National University Publications, 1981); Barry A. Crouch, *The Freedmen's Bureau and Black Texans* (Austin, TX: University of Texas Press, 1992); Ruth Winegarten, et. al. *Black Texas Women: 150 Years of Trial and Triumph* (Austin, TX: University of Texas Press, 1995).

examines the relationship between men and women of the different racial and ethnic groups under British, French, and Spanish imperialism. In doing so, this discussion explores how individuals utilized colonial courts and the political system to carve out a space for themselves and their families. Although black men, women, and children did not always initiate litigation, they were at the center of many legal matters. Many of those who found themselves at the center of litigations tried to use the courts to improve their status from non-citizen to citizen, even as colonies promulgated statutes that sought to solidify their position at the bottom of society. Therefore, with race as a factor, and as the central role to this study, residents of Anglo, African, and Native American descent shaped the world of eighteenth and nineteenth-century North America and specifically the justice system. Many of the political and legal precedents black men, women, and children relied upon occurred while the political leaders were establishing the very legal systems of Kentucky, Missouri, and Texas.[19]

The second chapter focuses on the legal efforts of blacks during the territorial stage of Kentucky and Missouri and the years of the Independent Republic of Texas, between 1836 and 1845. Because of the focus on three states and their developments as slave societies, the cases in this chapter cover a broad timeframe from to Kentucky's affiliation with Virginia and subsequent statehood in 1792, through the annexation of Texas in 1845. Selected petitions filed by African Americans reflect their belief that they were entitled to liberties, such as freedom from slavery and the right to acquire property.

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[19] A. Leon Higginbotham, *In the Matter of Color: Race and the American Legal Process, The Colonial Period* (New York: Oxford University Press, 1978), 19, 22, 33; Michael L. Levine, *African Americans and Civil Rights: From 1619 to the Present* (Phoenix: Oryx Press, 1996), 17-19, 45, 48, 51; Edward F. Hass, ed. , *Louisiana's Legal Heritage* (Pensacola: The Perdido Bay Press, 1983), 1; Gwendolyn Midlo Hall, *Africans in Colonial Louisiana: The Development of Afro-Creole in the Eighteenth Century* (Baton Rouge: Louisiana State University Press, 1992), 57-58.

During the early Republic, some blacks found that the promises of the Declaration of Independence and the U.S. Constitution were not universal and expressed their discontent through litigation, while trying to overcome policymakers motivated by racism. The historian Mary France Berry argues that constitutional policies dictating the lives of Americans were born out of racism. Additionally, scholar Paul Gilje stated, "By the mid-1790s there were some disturbing signs suggesting that it would be a long time before the revolutionary vision of equality and the end of slavery would be fulfilled." These signs manifested as territorial, state, and federal governments passed laws solidifying the political and economic status of white males. While on the surface, these laws appeared consistent with the Revolutionary Era's mantra of liberty and the protection of individual property, they belied the fact that most blacks were unable to capitalize on the political changes. Furthermore, the territorial stage of the states coincided with market place changes and the rise of the Cotton Kingdom.[20]

Also covering a broad period is the third chapter, which deals with petitions and suits involving enslaved men, women, and children who sought freedom between 1792 and 1861. For some African Americans, freedom from slavery was the initial step of achieving some measure of liberty and citizenship. While some individuals ran away, attempted armed rebellion, or objected in more subtle forms of resistance, others took a radical approach against slavery by using the courts to gain freedom. Because many of the suits and petitions filed by southern African Americans were set against the backdrop of the Second Great Awakening, the rise of northern abolitionism, and some influential

[20]Mary Frances Berry, *Black Resistance, White Law: A History of Constitutional Racism in America* (1971; revised, New York: Allen Lane The Penguin Press, 1994), x; Paul A. Gilje, *The Making of the American Republic, 1763-1815* (Upper Saddle River, NJ: Pearson, Prentice Hall, 2006), 104; Thomas D. Clark and John D. Guice, *The Old Southwest, 1795-1830* (Norman: University of Oklahoma Press, 1996), 159.

revolts involving black Americans, this meant that those southern blacks engaged in legal efforts took major risks. Nevertheless, most of the court petitions filed by black Americans were unsuccessful and many of the local and state judges rejected the freedom suits heard. While most of the petitions claimed that owners illegally held individuals in bondage, the underlying message in these appeals was that of the immoralities of slavery as well as the proclamation that enslaved African Americans sought equal standing with Anglo Americans under the law.[21]

Chapter four, "Free Black Southerners and the Justice System," concentrates on the legal actions by free blacks who sought to acquire and protect their rights as citizens through the legal system. Historian John Hope Franklin referred to free African Americans as "quasi-free" to reflect their precarious status. While they did not have all the rights and privileges held by white Americans they did have some measure of control over their lives. In some instances, individuals fought to protect their property from confiscation and in others, they petitioned to remain in states, which had made it illegal for them to live there. This chapter also examines the collective political efforts of free African Americans, who organized and attended conventions to express their grievances and displeasures over the status of black Americans to local, state, and national political leaders. While free blacks were no doubt a subjugated class of people, they were more than nominally free and their use of the legal system reflected their belief that they could enact change from within that very system.[22]

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[21] Nathan O. Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989); David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776 – 1820* (Chapel Hill: University of North Carolina Press, 1997). 145, 163, 257.

[22] John Hope Franklin and Alfred A. Moss Jr., *From Slavery to Freedom: A History of African Americans* 7th ed. (New York: Knopf, 1994), 148-51.

The last two chapters, "Southern Blacks and the Justice of War" and "Black Americans, The Freedmen's Bureau and the State During Reconstruction," cover the legal actions taken by blacks during the Civil War and Reconstruction periods, respectively. Major political changes, such as the formation of the Confederacy and subsequent outbreak of war, did not prevent African Americans from seeking freedom from slavery or to gaining greater political equality. Furthermore, some blacks, such as Frederick Douglass, viewed the war and years following as an opportunity to fulfill the failed promises of the American Revolution. Chastising northern state legislatures as cowards, Douglass argued that it was up to the North to prevent the South from extending slavery to all of the states. Furthermore, northern states needed to check against the tyranny of the South and liberate slaves while extending Constitutional liberties.[23]

Between 1861 and 1877, many African Americans in Kentucky, Missouri, and Texas sought out national military forces for protection from hostile whites. In addition, between the Civil War and the end of Reconstruction many black men and boys saw military service as a mode of obtaining freedom from slavery. By serving in the military, they also reclaimed some degree of the masculinity that slavery had denied to them. To emphasize this point, historian LeeAnn Whites asserted, "For black men, military service offered them the opportunity to … lay claim to the social construction of manhood itself." Many enslaved men left their families and risked their lives to reach Union troops and enlistment stations. Not only did this serve to refute southern slaveholders' claims that they were patriarchal, benevolent owners and that their slaves were happy, it also demonstrated that African Americans were fully capable of changing their own political

[23] Frederick Douglass, "The Union and How to Save it," February 1861 in *Douglass' Monthly*, vols. 1-3 (New York: Negro Universities Press, 1969), 401.

landscape during critical moments in time. The sheer numbers of fugitive slaves who fled to federal troops forced the army to consider that African Americans could play a significant role in the war as soldiers. Once mustered into service, black soldiers experienced unequal pay, the lack of promotions, and racism from some white officers. Moreover, several of these soldiers found themselves in military courts facing court martial, for insubordination while others expressed grievances through the chain of military command. Regardless of the changes resulting from the war, these soldiers assumed that with military service they would achieve some degree of equality with white soldiers. When this did not occur, black soldiers became political activists.[24]

The years following the Civil War saw the implementation of presidential and congressional reconstruction both of which sought to transition nearly four million freed people into freedom as seen in "Black Americans, The Freedmen's Bureau, and the State During Reconstruction." The national government tried to accomplish this major undertaking of reconstruction by creating the Bureau of Refugees, Freedmen, and Abandoned Lands, known as the Freedmen's Bureau, and passing the Thirteenth, Fourteenth, and Fifteenth Amendments. However, the federal government underestimated the potential level of resistance from Anglo Americans and former Confederates in Kentucky, Missouri, and Texas. Vigilante groups in Kentucky and

[24] Joseph T. Wilson, *The Black Phalanx: African American Soldiers in the War of Independence, the War of 1812 and the Civil War* (Hartford, CT: Da Capo Press 1887 [1994]); Dudley T. Cornish, *The Sable Arm: Black Troops in the Union Army, 1861 – 1865* (Lawrence, KS: University Press of Kansas, 1987); James M. McPherson, *Battle Cry of Freedom: the Civil War Era* (New York: Oxford University Press, 1988); John David Smith, *Black Soldiers in Blue: African American Troops in the Civil War Era* (Chapel Hill, NC: University of North Carolina Press, 2002). For an account of women in the Civil War, see Judith Ann Giesberg, *Civil War Sisterhood: The U.S. Sanitary Commission and Women's Politics in Transition* (Boston, MA: Northeastern University Press, 2000); Jane E. Schultz, *Women at the Front: Hospital Workers in Civil War America* (Chapel Hill, NC: University of North Carolina Press, 2004), 2,4, 36; LeeAnn Whites, *The Civil War as a Crisis in Gender, Augusta, Georgia, 1860 – 1890* (Athens, GA: University of Georgia Press, 1995), 3.

Missouri terrorized federal veterans, whites who aided freedmen, including those who offered blacks jobs at equal pay, and African Americans. Also, political infighting over the subject of black rights caused a tremendous level of consternation within the Republican Party at local, state, and federal levels. These concerns left some African Americans, who sought to protect themselves and their families, to their own resolve and many relied upon the Freedmen's Bureau and the Federal troops still stationed in those states. Moreover, some family members, primarily women who's loved ones had died while in service, sought pensions to help alleviate financial burdens created by their absence. Women and children of soldiers filed pension requests through the Freedmen's Bureau from 1865 to 1871 when the agency ceased operation. Afterwards, African Americans continued to file requests for pensions through the United States army. Complicating the claims of many wives and children of black veterans who died in service was that neither the state nor the federal government recognized the legitimacy of slave marriages.[25]

Slavery framed the existence of African Americans during the first half of the nineteenth century. Even those who were free were not beyond the "peculiar institution's" reach. Yet, throughout this entire period, people of African descent in the South utilized the very justice system that protected white citizenship and simultaneously denied black citizenship. African Americans filed petitions, suits to protect their property against losses and families from harm, and utilized institutions such as the Freedmen's

[25]See Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the Age of Slave Emancipation* (New York: Cambridge University Press, 1998); Mary Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau: Race, Gender, and Public Policy in the Age of Emancipation* (New York: Fordham University Press, 2010); Donald Shaffer, *After the Glory: The Struggles of Black Civil War Veterans* (Lawrence: University Press of Kansas, 2004).

Bureau to solidify their claims to citizenship in the United States. While many were not successful in their endeavors, the influence black Americans had on the American justice system proved significant. They forced the courts to consider their place as American citizens through their continued actions. As some were freed from bondage, others successfully won cases legally allowing them to remain in slave states when many others were forced to relocate. Still others managed to locate loved ones and secure pensions after the war. Slavery and racism might have framed their lives but African Americans continued to struggle for their rights as citizens.[26]

[26] For well-written works on the institution of slavery and the lives of enslaved black Americans in the South, see Kenneth M. Stampp, *The Peculiar Institution: Slavery in the Antebellum South* (New York: Knopf, 1956); John Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1974); also see, Eugene Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1974); Elizabeth Fox-Genovese, *Within the Plantation Household: Black and White Women of the Old South* (Chapel, Hill: University of North Carolina Press, 1988); Wilma Dunaway, *The African American Family in Slavery and Emancipation* (New York: Cambridge University Press, 2003); Stephanie M. H. Camp, *Closer to Freedom: Enslaved Women and Everyday Resistance in the Plantation South* (Chapel Hill: University of North Carolina Press, 2004).

Chapter One

Southern Blacks and the Law in Colonial America

In June 1675, a colonial court in Virginia grants the slave-born Phillip Gowen freedom after he petitions Governor Sir William Berkeley and the Assembly General of Virginia for his independence. Gowen's journey to liberty was a circuitous one since his indenture lasts more than eleven years and involved service to at least three masters. Gowen's petition declares that on April 9, 1664, Amye Boazlye of Jamestown, who served as Gowen's first owner, stipulated in her will that after eight years of service Phillip be freed and be paid "three Barrels of Corne att the Cropp [*sic*]." Shortly upon completing this document, Boazlye died and Gowen became the property of her next of kin, a cousin Humphrey Stafford. Gowen serves Stafford for several years but before completing the terms of service, Stafford "sold the remainder" of Gowen's time to Charles Lucas. Gowen's petition states that Lucas had held him for three years beyond the terms of Boazlye's will and that he was entitled to his "freedome and be paid three barrels of corne." The court found in favor of Gowen, ordering that he was entitled to his freedom and that Lucas was responsible for payment of the corn.

Gowen filed his petition after laws in the colony had become more rigid in dictating the rights and liberties of African Americans, such as the 1662 act declaring slavery as matrilineal or the 1667 "act declaring that baptisme of slaves doth not exempt them from bondage." Phillip Gowen escaped slavery based on the Boazlye will and the witnesses who validated his claims. Furthermore, he filed his petition during the colonial

period in North American when black Americans establish a foundation of utilizing the justice system to secure what they thought as their rights and liberties.[1]

This chapter examines and compares the development and legacy of colonial legislation from its imperial roots and how some of these inherited laws related to African Americans in territorial Kentucky, Missouri, and Texas. For example, Texas was a colony of Spain and a colonial territory of Mexico, and the early-Texas laws regarding free and enslaved African Americans presented an interesting dynamic due to this region having fallen under the dominion of both Spain and Mexico. Many of the laws governing colonial Texas parallel those Spain imposed on Louisiana after 1769. Additionally, this chapter highlights the struggles of enslaved and free blacks who used legal means to escape bondage and it suggests that southern black colonials develop a foundation of relying upon the justice system to pursue the rights they believed entitled them to freedom and American citizenship.

Much of the legal evidence examined for this chapter originates in British colonial courts, which had very little experience with slavery and Africans during the early-seventeenth century. The English discovery in the early-1600s that tobacco could be cultivated in the Chesapeake led to English demand for labor. The shortage of workers needed to grow tobacco results in the immigration of English indentured servants, the importation of African slaves, and the coercion of Native Americans. This brought many Anglos, Africans, and Native Americans together for the first time. Many of the laboring

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[1] *Negro Phillip Gowen v. Lucas*, McIlwaine 411, June 1675; "Undated Petition of Phillip Gowen to Governor Sir William Berkeley, ca. 1675, (Richmond; Library of Virginia) http://www.virginiamemory.com (accessed June 18, 2011); "Act XII. Negro women's children to serve according to the condition of the mother," December, 1662 in *Statutes of Virginia* vol. 2, 170-71; "Act III. "An act declaring that baptisme of slaves doth not exempt them from bondage," September 1667 in *Statutes of Virginia*, vol. 2, 260.

class had no special skills that would distinguish them from others, which was critical in a developing colonial society. Perhaps historian Warren Billings put it best when he argued, "A man's status in seventeenth-century English society rested upon his possessing certain skills that placed him within a recognizable hierarchy of vocations." With many African slaves unskilled, recognized by the English as non-Christian and savage, it did not take long for lawmakers to issue statutes relegating Africans to second-class status. Legal African slavery in English settlements within its colonial context was, as historian Don Fehrenbacher stated, "At law, a slave was reduced in considerable degree from a person to a thing, having no legitimate will of its own and belonging bodily to its owner." In some instances, cases involved a response to a violation of English colonial laws. Other sources for this discussion include the rare literature authored by African Americans and produced at the beginning of the American Revolution. Some of the source materials showed divergence between southern and northern British colonial black Americans. Because there were fewer Africans in the colonial North there is less emphasis upon their legislative efforts; however, the people in that region also exercised efforts to secure their rights.[2]

Because Missouri was a part of the Spanish and French Louisiana Territory and Texas was a part of Spain and Mexico, their legislation and statutes reflect these historical legacies. Authorities in Missouri and Texas wrote specific detailed laws governing the lives of both free and enslaved blacks; however, available cases pertaining

[2] Gary B. Nash, *Red, White, and Black: The Peoples of Early North America* 5th ed (Upper Saddle River, NJ: Person Prentice Hall, 2006), 57; Warren M. Billings, ed., *The Old Dominion in the Seventeenth Century: A Documentary History of Virginia, 1606-1689* (Chapel Hill: University of North Carolina Press, 1975), 106-7; Don E. Fehrenbacher, *Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective* (Oxford: Oxford University Press, 1981), 7.

to colonial blacks in both states are sparse. Further research is needed to uncover the legal efforts of African Americans in the Spanish and French empires. In spite of the relatively few petitions and court cases in which black Missourians and Texans were plaintiffs, the laws from the colonial era provided necessary precedence. Once Missouri and Texas became states, the black Americans embroiled in court cases there referred to specific colonial statutes to support their claims for freedom and liberty.[3]

Despite differing legislative histories regarding slavery, all North America colonies brought people of different races together. But in nearly all regions, Africans occupied the status of second-class citizen. Moreover, as historian Gary Nash contends, "The mass enslavement of Africans profoundly affected white racial prejudice . . . Initially, unfavorable impressions of Africans had coincided with labor needs to bring about their mass enslavement." Simply, the Africans' degraded social position eventually contributes to their deprived legal status.[4]

Historian Winthrop Jordan pointed out that as the negative perceptions against and attitudes of Europeans and white American colonists towards Africans and black Americans became entrenched, the legal system followed suit to reinforce the belief that whites were entitled to an elevated status over blacks. In addition, Jordan asserted the English laws took cues from ancient Roman statutes. Yet, one should realize that Anglo colonials went much farther in confining blacks to second-class status and, by the early-eighteenth century, the laws essentially defined slaves as chattel property, a departure

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[3] Betty Wood, *The Origins of American Slavery: Freedom and Bondage in the English Colonies* (New York: Hill and Wang, 1997), 28; "Code Noir," March 1685 in Peabody, *Slavery, Freedom, and the Law*, 31-36; "Spanish Slave Codes in the Americas, 1784-1789" in Peabody, *Slavery, Freedom, and the Law*, 106-112.

[4] Nash, *Red White, and Black*, 150.

from English and Roman traditions of slavery. Scholar Betty Wood argues that due to the economic necessity of widespread labor in the Chesapeake and elsewhere, colonial lawmakers wrote laws to support slaveholders' labor needs. Although some colonial laws reduced the status of most Africans to slavery, it does not follow that all persons relegated to that demeaned status accepted their legal classification. Some rebelled outright or absconded, others protested more subtly in day-to-day resistance, and still others, such as Phillip Gowen, resisted by filing suits or petitions to liberate themselves from bondage.[5]

A study on the developing legal status of African Americans throughout the colonial period by historian of race and the law in colonial America A. Leon Higginbotham provides insight into how the law classified colonial black Americans in Virginia, Massachusetts, New York, South Carolina, Georgia, and Pennsylvania. The scholarship of both Jordan and Higginbotham has provides a starting point for this particular chapter, because the authors focused on how race and the legal system intersected during the formative years of the United States. Furthermore, their works provide a foundation for discussing the developing colonial legal system regarding blacks under English, French, Spanish, and Mexican colonial rule. Higginbotham's underlying themes of race and the law were juxtaposed to emphasize his point that as the colonial justice system developed along with society, whites were unsure of exactly how or where blacks would fit. Unsure whether to classify them as persons or property, the court system went back and forth on the decision, which ultimately led to an ambiguous legal status for blacks in colonial British society. However, it was this legal wavering on the

[5] Jordan, *White Over Black*, 51, 104; Walter C. Rucker, *The River Flows On: Black Resistance, Culture, and Identity Formation in Early America* (Baton Rouge; Louisiana University Press, 2006), 6-7; Wood, *The Origins of American Slavery*, 6-7; Reiss, *Blacks in Colonial America*, 189.

classification of colonial black Americans, coupled with their desire to be free and enjoy rights similar to those of whites that prompted many blacks to use the legal system. Black Americans then carried this tradition into the nineteenth century.[6]

Moreover, Higginbotham suggested that colonial lawmakers developed negative views on about Africans because, in contrast, most white indentured servants voluntarily signed contracts to come to the colonies. These contracts limited the time of servitude and stipulated certain rights, although narrow, entitled to servants. Legislators took measures to prevent masters from taking advantage of indentured servants. For example, the February 1676 "act lymiting [*sic*] masters dealing with their servants" made it illegal for masters to renegotiate terms of an indenture, such as changes in the provision of clothes or food that the contract may have stipulated originally, without the presence of a judge. In contrast, since Africans signed no such legal documents setting limits on their length of service, the English could, theoretically, retain an African for life. Despite the lack of a signed contract, lawmakers did not consider African servants slaves for life until 1641when three runaways faced a Virginia court. Two of the runaways were European while the third was African. Higginbotham argued, "Although he committed the same crime as the Dutchman and the Scotsman, John Punch, a black man, was sentenced to lifetime slavery. For the white servants, an additional four years of service was deemed sufficient punishment." Higginbotham's argument was most compelling in his assessment of legal cases from seventeenth-century British North America in which

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[6] Higginbotham, *Matter of Color*, 7; Thomas J. Wren, "A 'Two-Fold Character': The Slave as Person and Property in Virginia Court Cases, 1800-1860," *Southern Studies* 24 (December 1985): 417-31; William W. Fisher III, "Ideology and Imagery in the Law of Slavery," in *Slavery and the Law*, ed. Paul Finkelman (Madison: Madison House, 1997), 44-45.

African servants were litigants. Those cases reflect a gradual development of a race-based caste system. African Americans, as major players in colonial court cases, served to illustrate that they relied upon the justice system to secure their liberty and fight for their rights.[7]

Lawmakers in colonial America created laws seeking to establish the absolute authority of the slaveholder over the slave, while slaves resisted their condition. That said, slavery was never absolute, nor were the laws designed to make it all controlling. Historian Edmund Morgan pointed out that slaves, like the colonial Americans who rebelled against British authority, developed their own ideas of freedom. In addition, historian Eugene Genovese contended that slaves, in developing their own ideas, many of which were based on African traditions, "laid the foundations for a separate black national culture." Black Americans' use of the judicial system in colonial America contributed to this cultural foundation, which centered on freedom and liberty and prevailed throughout the colonies. Furthermore, black American culture was based on the resistance to second-class citizenship.[8]

African American resistance to slavery in northern and southern British colonies differed little, although as scholar John Hope Franklin declared, "Since the number of slaves in New England remained relatively small throughout the colonial period, there was little fear of insurrections." Franklin continued, "Nevertheless, many slaves indicated their dislike of the institution by running away. Others attacked their masters

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[7] A. Leon Higginbotham, "The Ancestry of Inferiority (1619 – 1662)" in *How did American Slavery Begin?* Edward Countryman (New York: Bedford/St. Martin, 1999), 87 – 88; Higginbotham, *Matter of Color*, 28; *Statutes of Virginia*, vol. 2, 388.

[8] Morgan, *American Slavery, American Freedom*, ix; Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Vintage Books, 1976), xv.

and even murdered them." Despite having a smaller number of slaves, policymakers in colonial New England, similar to legislators in other colonies enacted laws in order to control the African population.[9]

Historian Lorenzo J. Greene detailed the existence of African Americans in Puritan New England from 1620 to 1776 and examined the social, political, and economic struggles of colonial blacks in the region. Greene focused on black Americans who had been emancipated from slavery, yet they still faced race-based discrimination as they carved out an existence in a mostly white society. He also examined the impact of slavery upon the development of New England communities. To buttress his claims of black subjugation by white citizens and lawmakers, Greene argued that the black population was never more than about two percent of the total population and by the start of the American Revolution approximately 17,000 blacks lived in the region. Nevertheless, the black population grew gradually during the seventeenth century, and legislators passed laws to "control" blacks in New England.[10]

Greene observed that since "chattel slavery was unknown to Englishmen when America was colonized," the status of colonial blacks there was ambiguous similarly to Virginia. He pointed to a 1641 statute that first sanctioned perpetual slavery in Massachusetts as setting the precedent in New England in distinguishing slaves from indentured servants. This law made no reference to the status of children born to enslaved women. Massachusetts and, indeed, all of New England followed English legal tradition in that the father's status defined the status of the child. Greene contended that

[9] Franklin, *From Slavery to Freedom*, 66-67.

[10] Lorenzo J. Greene, *The Negro in Colonial New England* (New York, NY: Athenaeum, 1969), 124 -25.

by 1670 English slaveholders were anxious about losing their source of labor, namely, female slaves while they were pregnant and immediately after the birth of the child and the potential loss of wealth represented in the child's labor. These colonial slaveholders held enough influence to convince lawmakers to alter the legal tradition of the child to follow that of the mother.[11]

By 1680, lawmakers in colonial New England began passing laws which specifically protected slave property, such as the ordinance that made it illegal for certain ships to transport "any Servant or Negro" without a permit from the colonial governor. The penalty for breaking this law was a fine of twenty pounds. In Greene's work, scholars of African American colonial history gain a sense of fluctuating legal status for colonial blacks: the presence of Africans forced lawmakers in that region to confront the problem of race while simultaneously still trying to organize a society. This gradually changing legal status was true for southern colonial black Americans.[12]

In the years following the adoption of the Constitution, southern lawmakers tightened the laws governing slaves. This in turn meant that southern African Americans faced a different set of circumstances than their northern counterparts, as noted by historian John Hope Franklin, who observed that legislators had sought early on to control the enslaved population. Franklin argued that during the seventeenth century, some southern lawmakers made sure the first blacks in that region held the status of slave. Authorities referred to seventeenth-century philosopher John Locke's

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[11] *Ibid.*, 126.
[12] Greene, *The Negro in Colonial New England*, 7, 63, 125-26, 128; *The Colonial Laws of Massachusetts: Reprinted from the Edition of 1672 with the Supplements through 1686: Containing Also a Bibliographical Preface and Introduction Treating of All the Printed Laws from 1649 to 1686 : Together with the Body of Liberties of 1641, and the Records of the Court of Assistants, 1641-1644* (Boston, MA: Rockwell and Churchill, City Printers, 1890), 281.

"Fundamental Constitutions of Carolina," which stated, "It shall be lawful for slaves as well as others, to enter themselves and be of what church or profession any of them shall think best, and thereof be as fully members as any freeman. But yet no slave shall hereby be exempted from that civil dominion his master hath over him." Franklin's careful study framed the black experience in early North Carolina against the writing of that state's constitution. The experiences of African Americans in some southern territories began during the colonial period as one of rigid legal classification as chattel with very few rights they could call their own. As lawmakers wrote laws governing Kentucky, Missouri, and Texas, these strict statutes dictating the lives of blacks remained rigid.[13]

Understanding the foundations of the American court system and laws is critical to understanding the nature of how the courts and laws affected people of African descent. If the English colonial lawmakers established the courts and laws to solidify the order of society and at the same time colonists developed a negative persona of African slaves due to the Africans' blackness or lack of knowledge regarding English contractual law, then it remained to be seen whether the justice system created by colonial legislators was for the benefit of all, or just for whites. In addition, while there were some extraordinary exceptions, such as Anthony Johnson, an African in colonial Virginia, who did become a moderately wealthy landowner, most blacks in colonial British North America were socially, economically, and politically confined to the lowest rung of society. This was evident in the June 1680 "Act for preventing Negroes Insurrections," which declared "frequent meeting of considerable numbers of negroe [*sic*] slaves under

[13] William L. Saunders, *The Colonial Records of North Carolina: Published Under the Supervision of the Trustees of the Public Libraries, by order of the General Assembly* vol. 1 (Raleigh, NC: P.M. Hale, Printer to the State, 1886), 204; John Hope Franklin, *The Free Negro in North Carolina, 1790 – 1860* (Chapel Hill: University of North Carolina Press, 1943 [reprinted 1995]), 7, 12.

pretence of feast and burials" dangerous. Moreover, the act made it illegal for all blacks in Virginia to carry a gun, club, sword, or "any other weapon of defence or offence [*sic*]."[14]

Although laws limited the freedom and prosperity of the majority blacks in early America, there were exceptions. Anthony Johnson's life has served as an example of a colonial black in the Chesapeake who was able to acquire property and even successfully used the courts to maintain his rights. Johnson and his family were not necessarily typical blacks during this period, as most colonial African Americans in Virginia were slaves. He and his wife had been enslaved, yet they worked their way out bondage around 1635 and subsequently began to buy real and personal property, which made them an anomaly. When Johnson obtained his freedom, lawmakers in the Virginia Assembly had not yet established the permanence of race-based slavery. Due to the lack of laws that would enable them to do so, there were still few people of African descent who managed to secure independence through use of the courts. Ultimately, the laws dictating the lives of blacks would change as lawmakers began to view the status of free blacks as a threat to the social, political, and economic wherewithal of elite whites.[15]

During the mid-1600s, Johnson had accumulated more than two hundred acres of land on which he raised livestock and grew tobacco. Moreover, Johnson was able to acquire the land by investing in the local head right system, which meant he paid for the

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[14] *Statutes of Virginia*, vol. 2, 481; Morgan, *American Slavery, American Freedom*, 331

[15]Jordan, *White Over Black*, 74; Morgan, *American Slavery, American Freedom*, 154-55; Russell Olwell, "New Views of Slavery: Using Recent Historical Work to Promote Critical Thinking about the Peculiar Institution," *The History Teacher*, August 2001. <http://www.historycooperative.org/journals/ht/34.4/olwell.html (accessed July 5, 2010); T.H. Breen and Stephen Innes, *Myne Owne Ground: Race and Freedom on Virginia's Eastern Shore, 1640 – 1676* (New York: Oxford University Press, 1980), 7, 10-11.

passage of individuals to the colony from Europe. For each "head" or servant, the Virginia Company, which purchased land grants from the King of England, granted investors fifty acres of land. These servants were then indentured or obligated to work for Johnson for a set period. Conversely, the law required Johnson to provide the men and women with basic shelter, clothing, and food.[16]

In addition to the indentured labor, Johnson eventually owned slaves. One of whom, John Casor, claimed he was actually indentured and held illegally. This would lead to one of Johnson's several encounters in the colonial courts over property rights. The court ruled in Johnson's favor, stating that Johnson's neighbors tried to interfere with his enslaved property by convincing Casor that Johnson held him in bondage illegally. This favorable court case, albeit rare because of Johnson's use of the justice system to secure his slave property and subsequent court victory demonstrated that free people of color were able to use the courts to protect their property. Johnson was the only free black person in the area with substantial land and property holdings, yet the nature of his relationship with his neighbors was unclear. Regardless, Johnson fought for his property and was able to retain Casor.[17]

A consistent theme throughout Anthony Johnson's struggles to maintain his property was his use of the colonial Virginia courts, which came at a fluctuating time for lawmakers. Historians Thomas Breen and Stephen Innes pointed to a petition filed by Johnson and his wife, Mary, in the Northampton courts for tax relief in 1653. Breen and

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[16] Breen, *Myne Owne Ground*, 10.

[17] Breen, *Myne Owne Ground*, 11,13,15; "Richard Johnson Land Grant," November 21, 1654, Virginia, Colonial Land Office, Land Office Patent Book Number 3, 1652–1655, page 294, Library of Virginia, Richmond, http://www.virginiamemory.com/ (accessed June 21, 2011).

Innes highlighted the fact that the court noted the Johnson's residence in the colony for thirty years as a sign of stability and that members of their community viewed them with "widespread respect for their 'hard work and known service'."[18]

The development of a plantation society in Virginia during the seventeenth and eighteenth centuries encouraged the simultaneous freedom of white indentured servants and enslavement of blacks. Also, the concomitant formation of courts and laws to support the society allowed whites to obtain tremendous amounts of wealth as slave traders brought more and more Africans to that colony. The development of this system was rigid and several critical features of slavery, such as its permanence in which enslaved women passed their status down to their children and prohibitions against slaves owning property were in place. Moreover, within twenty-five years, the Virginia courts began wrestling over the definition of slaves as real estate or chattel property. The Virginia legislature resolved the problem in 1792 when it declared that slaves were indeed movable property.[19]

The colonization of French and Spanish North America, like the British, was complex and dynamic. Historian Gwendolyn Hall argues that colonial Louisiana has a "heritage and tradition of official corruption, defiance of authority by the poor of all races, and violence, as well as a brutal, racist tradition," which the colonial leaders

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[18] "From the Minutes of the Judicial Proceedings, of the Governor and Council of Virginia," in *Statutes of Virginia*, vol. 1, 146; Breen, *Myne Owne Ground*, 10; Higginbotham, "Ancestry of Inferiority," 95.

[19] *The Revised Code of the Laws of Virginia: Being a Collection of All Such Acts of the General Assembly, of a Public and Permanent Nature as are Now in Force; with a General Index. To which are Prefixed, the Constitution of the United States; the Declaration of Rights; and the Constitution of Virginia. Published Pursuant to an Act of the General Assembly, Entitled "An Act Providing for the Re-publication of the Laws of this Commonwealth," Passed March 12, 1819*, vol. 1 [hereinafter *Revised Code of Virginia*] (Richmond: Thomas Ritchie, 1819), 432; Higginbotham, "Ancestry of Inferiority," 96; Thomas Morris, *Southern Slavery and the Law, 1619-1860* (Chapel Hill: University of North Carolina Press, 1996), 70-71.

thought was the only way of controlling a "competent, well-organized, self-confident, and defiant Afro-Creole population." Yet, Louisiana also established a legacy of "racial openness" that never disappeared. Nevertheless, this population of American-born blacks developed similar to blacks in other North American colonies due to the ability of Africans to successfully reproduce and to acculturate to French and Spanish systems of rule.[20]

Originally, a part of Spanish claims in the sixteenth century, Louisiana became a French colony after the War of the Spanish Succession (1702–1714), a European conflict over the succession of royal rulers that ended with the Treaty of Utrecht in 1714. The terms of the treaty gave Louisiana and control of the southern access to the Mississippi River to France. However, the French typically viewed the settlement as a backwater region and leaders in France were "reluctant to allow useful subjects to leave the country." Instead, leaders forced the destitute and political prisoners to relocate there. As a result, it gained an unsavory reputation. In fact, during the early years of French colonization in the lower-Mississippi valley, life was so difficult there that even parents threatened to send unruly children to Louisiana. To be sure, by the time the French established New Orleans in 1718, the region was little more than a penal colony where officials had sent prisoners to work for three years. Still, the region became a confluence of European, including former prisoners who received a portion of land they had cleared; Native American; and African cultures by the mid-1720s, when authorities introduced African slavery to the region to solve the labor problems.[21]

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[20] Hall, *Africans in Colonial Louisiana*, xv; Blassingame, *The Slave Community*, 20,26.

[21] Hall, *Africans in Colonial Louisiana,* 2,5,6,27,31 ,34, 276; Charles Gayarre, *History of Louisiana: The French Domination* vol. 2 (New York: Redfield, 1854), 227.

By contrast, slavery emerged differently in early Missouri. The diverse legal heritage of the area led to judicial conflicts as the French, Spanish, and Americans sought to extend legal authority over that region of Louisiana. After the Spanish acquired control from the French in 1762, the Spanish Crown implemented immediate legal changes. However, the two imperial powers viewed Native American slavery very differently. As early as 1542, the Spaniards had adopted an order declaring American Indians as free individuals under the Crown and had prohibited Native American slavery. Indeed, in 1769, Governor Alejandro O'Reilly ordered a decree enforcing this prohibition in Louisiana and other Spanish-held territories, including Texas. The French, by contrast, held no such anti-Indian slave policy. Although masters had significantly fewer Native American bondsmen than African slaves, there were some indigenous American slaves held in the French Louisiana towns of St. Louis and of Ste. Genevieve prior to the Spanish acquisition. Some Spanish authorities were content with the non-enforcement of Crown laws regarding slavery and it was the late 1780s when records began to appear citing the illegal enslavement of Indians with several individuals successfully obtaining their freedom in Louisiana courts. By comparison, as early as March 1657, the Virginia Assembly passed an act "Against Stealing of Indians," which set a fine of five hundred pounds of tobacco for Englishmen who bought Indians from other English colonists. Furthermore, the Virginian Assembly proposed making the enslavement of Natives Americans illegal in May 1683.[22]

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[22] Stephen Webre, "The Problem of Indian Slavery in Spanish Louisiana, 1769 – 1803," reprinted in *The Spanish Presence in Louisiana, 1763 - 1803* vol. 2, ed Gilbert C. Din. (Lafayette: Center for Louisiana Studies University of Southwestern Louisiana, 1996), 353, 355-56.

Although Virginia authorities were lax in their enforcement of the anti-Indian enslavement policy, some people held in bondage saw it as an opportunity for them and their children to escape their condition. Governor O'Reilly's decree served as the basis for the freedom suit *Marguerite, a free woman of color v. Pierre Chouteau Sr.* (1825). Freedom for Marguerite and her children resulted from the culmination of thirty years of suits filed by the progeny of Marie Jean Scypion, a woman of African and Native American heritage, who was born into slavery in the 1740s in French territory in the upper Mississippi Valley. Scypion's mother, a Natchez Indian woman named Marie, had been captured during an Indian war and sold into slavery. After Marie Jean's birth, a French priest purchased her and gave her as a gift to a family member. By 1764, Marie Louise Tayon (Taillon) and her husband Joseph had inherited Marie Jean and moved her to St. Louis.[23]

After O'Reilly's 1769 decree, individuals of mixed Native and African heritage saw a legal opening to their freedom, although many slaveholders in the upper Mississippi area complained vigorously that they should be allowed to keep their slaves. Spanish authorities yielded to the complaints; however, they ordered that no slave of native heritage be removed from the region. Relentless slaveholders who ignored the decree were only part of the problem for Marie Jean and other slaves of native heritage. Another obstacle was the colonial laws that classified many slaves as mulatto, which led courts to identify some, like Marie Jean and her children, as "persons of color." This became important because the phrase allowed the court to deny Marie Jean and her

[23] *Marguerite, a free woman of color v. Chouteau, Pierre, Sr.* Jul 1825 Case no. 26 St. Louis Circuit Court Records, Missouri Historical Society (St. Louis, MO), http://stlcourtrecords.wustl.edu (accessed June 25, 2011); William E. Foley, "Slave Freedom Suits Before Dred Scott: The Case of Marie Jean Scypion's Descendants." *Missouri Historical Review* 79, no. 1 (1984): 2-4.

children their claim of Native American heritage, which served as the very basis of their complaint. Marie Jean, who died in 1802, remained enslaved. However, her children and grandchildren carried on her legacy of fighting for freedom through the courts even as Missouri was admitted to the Union as a slave state.[24]

Spain's legal influence on colonial Louisiana and Texas was significant. Historian Gwendolyn Hall contends that lawmakers applied the "Spanish judicial system" with "thoroughness, fairness, and economy." Hall pointed out that under the Spanish and subsequently the French, authorities in Louisiana observed the "Code Noir," issued in 1724, which allowed slaves some degree of protection from harsh masters. Article 20 under the French code stated that slaveowners were obligated to have "properly fed, clad, and provided for" their slaves. Enslaved persons who considered their masters in violation of this article could file formal complaints with authorities. Furthermore, the law forced inconsiderate masters to estimate the worth of their slave, who could then be bought by another master, who could emancipate the slave.[25]

Several articles within the code pertained to marriage and highlighted a marked difference between French and British laws regarding slaves and free blacks. Under these articles, authorities in colonial Louisiana recognized slave marriages. While authorities outlawed marriages between whites and blacks, the law also made it illegal for free blacks and slaves to cohabitate. However, if an unmarried free black lived with a slave and decided to marry said slave, under the law the slave became free. If there were any children born from the union, those children would also become free. As

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[24] *Ibid.*

[25] Gayarre, "Black Code," March 1724 Appendix I of *Louisiana: Its Colonial History and Romance* (New York: Harper and Brothers, 1851), 537-46; Hall, *Africans in Colonial Louisiana*, 304.

punishment, the law required the violator to pay a fine of three hundred *livres*. Curiously, the law made no mention of compensation to the owner for the loss of enslaved property. Nevertheless, the wording of the law demonstrated the authority of masters over slaves regarding slave marriages. "The consent of the father and mother of the slave is not necessary; that of the master shall be the only one required." However, the law forbade masters from forcing slaves into "marriages against their will."[26]

This Code Noir did allow slaves some protection, such as permitting them to complain to the attorney general of the Superior Council or to authorities should owners fail to provide adequate food and clothing. Owners faced prosecution and fines if found guilty. The code also prevented husbands and wives belonging to the same master from being sold separately or the separation of parents from children under fourteen.[27]

Even though slaves in colonial Louisiana had greater liberties under the law than slaves under colonial British laws, the French and Spanish made sure that there was still a distinction between master and slave. Article 40 under the codes stated slaves were "movables," and that they could not be "seized under any mortgage." In contrast, colonial Virginia officials debated this dilemma for almost a century, from 1705 to finally deciding that slaves were movable property in 1792.[28]

Setting the contrast of French and British heritage against the backdrop of westward expansion, historian Lea VanderVelde compares regional differences between slaveholders from Virginia and French colonial territory. Industrialists from Virginia

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[26] Gayarre, "Black Code," March 1724 in *History of Louisiana*, 538.

[27] *Ibid.*

[28] Gayarre, "Black Code," March 1724 in *History of Louisiana*, 539-40, 544; *Revised Code of Virginia*, 432.

moving west brought their own customs and views on slavery, which could be at the same time more brutal and less familial than old French slaveholders. VanderVelde declares that Virginians' tendency to more quickly sell a belligerent slave (rather than simply send the slave to a relative), or to rent and lease slaves as the need arose, was in deep contrast to old French customs to transfer slaves between family members throughout the region. The constant buying and selling of slaves by Virginians in Missouri prevented the slaves from establishing any real foothold in the region. Furthermore, this constant relocating prevented slaves from becoming too familiar with the colonial or territorial laws pertinent for filing petitions. Regardless of the situation, the desire of colonial African Americans to be free of their bonded condition took root under early statutes as they created a culture of resistance. The enslaved men, women, and children owned by old French families had long-established cultural roots and memories of laws and courts; as one historian has argued, "culture is a creation of the folk and is passed on to a great extent by parents."[29]

As Anglo slaveholders migrated west with their slave property, they encountered territories under French and Spanish rule. This confluence of cultures, resulting in some degree of uncertainty regarding the status of slaves, was a theme that all the colonial regions shared. After independence from Spain in 1821, Mexican legislators attempted to minimize the growth of slavery in their region. On January 4, 1823, the Emperor of Mexico, Agustìn de Iturbide, authorized the "Colonisation Law" [*sic*]. The law did not prevent slaveholders from bringing slaves into Texas, but it decreed that people could not buy and sell slaves brought into Mexico after January 4, 1823. Furthermore, the children

[29] Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier*. (Oxford: Oxford University Press, 2009), 194; Hall, *Africans in Colonial Louisiana*, xiv; Rucker, *The River Flows On*, 6.

of slaves born in Mexico "shall be free at fourteen years of age." Unfortunately, for enslaved Texans whom the law affected, there was little enforcement by authorities. The law did not last beyond February 1823 due to a revolt led by General Antonio Lopes de Santa Anna, which forced the emperor to abdicate. Similar to the colonial French laws that allowed greater slave autonomy, Mexican authorities established laws that permitted slaves to have more control over their lives than slaves in colonial British America possessed. In November 1827, Coahuila and Texas legislators signed a decree that stated a "slave who, for the sake of convenience, shall wish to change his master, shall be permitted to do so," so long as the new master compensated the old for an agreed-upon price.[30]

The Mexican government during the early-nineteenth century had actively promoted American and European immigration to Texas. Historian Mark Carroll has argued that Texas during the middle 1820s witnessed "a massive Anglo-American migration" following Mexican independence from Spain in 1821. Mexican authorities promoted liberal land-grant policies "through generously compensated *empresarios.*" Stephen F. Austin, who migrated from Missouri, purchased one of the first and largest of these enormous land grants, bringing with him approximately 300 families.[31]

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[30] Randolph B. Campbell, ed., *The Laws of Slavery in Texas: Historical Documents and Essays* compiled by William S. Pugsley and Marilyn P. Duncan (Austin: University of Texas Press, 2010), 3, 8; "Laws and Decrees of Coahuila and Texas," November 24, 1827, in Joseph M. White, ed. *A New Collection of Laws, Charters and Local Ordinances of the Governments of Great Britain, France and Spain: Relating to the Concessions of Land in Their Respective Colonies, Together with the Laws of Mexico and Texas on the Same Subject, to Which Is Prefixed Judge Johnson's Translation of Azo and Manuel's Institutes of the Civil Law of Spain* [hereinafter *Collection of Laws of Mexico and Texas*] (Philadelphia T. & J.W. Johnson, 1839), 509; Carolyn Hyman, "ITURBIDE, AGUSTIN DE," *Handbook of Texas Online* http://www.tshaonline.org/handbook/online/articles/fit01, (accessed June 23, 2011).

[31] Mark M. Carroll, *Homesteads Ungovernable: Family, Sex, Race, and the Law in Frontier Texas, 1823 – 1860* (Austin: University of Texas Press, 2001), 3.

Although national authorities wrote laws regarding slavery, American settlers who brought slaves with them into Texas ignored the laws; because of political instability within Mexican leadership, Texan landholders, such as Stephen F. Austin, wrote their own regulations. In 1824, Austin issued his "Colony Criminal Regulations" that began to codify slavery. The several articles relating to slavery actually go beyond protecting the institution. Austin's regulations conceivably link public security with managing the slave population. Austin illustrated this point in Article 13 of the "Regulations," which stated that it was legal for any free white person not only to seize and to hold a slave caught "without a pass from his master or overseer," but also to "tie him up and give him ten lashes." The colonial laws passed during the 1820s in Texas demonstrated the legislative disagreements over slavery. Americans moving into Austin's colony continued to bring slaves with them, which highlighted the lack of Mexican enforcement of anti-slavery laws.[32]

That the colonial legislators in these regions that would become Kentucky, Missouri, and Texas created ambiguous laws regarding slavery and blacks illustrated that the leaders were themselves unsure of what to do about slave labor or with a free black population. Seventeenth- and eighteenth-century laws reflected the complexities of race and labor in colonial North America, regardless of the ethnicity of the people writing those laws. As colonial governments began to define slaves as property in British colonial America, it coincided with the already-developing perceptions of Africans in bondage held by Europeans. As legal historian Thomas Morris argued, "People naturally think in terms of slaves as human beings as it is hard even to conceive of a person as a

[32] Campbell, *Laws of Slavery in Texas*, 11.

thing, and people assume that there is some discrete collection of laws that we can identify as specific to slaves and that we can call the *law of slaves*." Morris contended that although the laws viewed slaves as objects of property claims, in legal disputes the actions of the slaves point to the fact that slaves viewed the matter differently; indeed, some viewed the use of the legal system as the most effective way to resist their legally proscribed status.[33]

By the outbreak of the American Revolution in 1775, lawmakers in colonial British North America had issued tighter restrictions upon the lives of free and enslaved black Americans. However, the revolutionary fervor was not lost on those whom laws had relegated to second-class citizens or defined as chattel property, which owners could buy and sell. Colonial lawmakers quickly discovered that black Americans had their own perceptions of freedom, and that did not include enslavement. During the war, some enslaved blacks took a more radical approach: hundreds seized upon the chance for freedom when Virginia's Lord Dunmore presented an option for those who joined the British forces. Furthermore, authorities found that their legislative inconsistencies led to greater opportunities for enslaved African Americans to secure their freedom. Those freed from bondage during the Revolutionary period continued to rely upon courts to obtain greater degrees of liberty outlined in The *Declaration of Independence*. Yet, some of the best arguments from colonial black Americans for liberties came from the literature produced.[34]

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[33] Thomas Morris, *Southern Slavery and the Law, 1619 – 1860* (Chapel Hill: University of North Carolina Press, 1996), 2.

[34] Michael Levine, *African Americans and Civil Rights: From 1619 to the Present* (Phoenix: Oryx Press, 1996), 39-40.

One of the most notable writers was Phillis Wheatley, an African woman brought to the colonies as a child and who lived in slavery until emancipated by John Wheatley in 1773. Wheatley interpreted the Revolutionary War as more than an opportunity to gain freedom from the institution of slavery. The *Boston Evening-Post* published a portion of a letter written by Wheatley to Reverend Samson Occom on March 21, 1774, in which Wheatley praised Occom's "vindication of their (African American's) natural Rights." Drawing upon her Christian faith, Wheatley argued that civil and religious liberties were inseparable, while juxtaposing the experiences of Africans in British America to the experiences of the Israelites in Egypt. The irony that some British colonists likened subjection under the Crown to slavery does not appear to have been lost on the poet. The fact that she spoke of humans' love of freedom does not just underscore the notion that physical slavery existed in the colonies. Her point also appeared to call attention to the rights and privileges entitled to citizens under law.[35]

The poetry of Phillis Wheatley demonstrated revolutionary influences as some early African Americans sought greater liberties under the law. Through her poetry, Wheatley, who lived in Massachusetts, conveyed a message of protesting her condition and her desire to escape second-class citizenship. Published nearly a hundred years after she penned it in the late-eighteenth century, Wheatley's poetry never lost its messages or her concern regarding the place of Africans in America, while also demonstrating the

[35] "The following is an Extract of a Letter from Phillis, a Negro, Girl to Rev. Samson Occom," in *Boston Evening-Post*, March 21, 1774, 2, in *America's Historical Newspapers: Including Early American Newspapers Series 1, 1690-1876*, http://infoweb.newsbank.com/iw-search/we/HistArchive/?p_product=EANX&p_theme=ahnp&p_nbid=J4DH45NAMTMwMjYzMTI4OS4zMzE4MzE6MToxNToxNjEuMTMwLjE5Mi4xNDA&p_action=doc&s_lastnonissuequeryname=2&d_viewref=search&p_queryname=2&p_docnum=10&p_docref=v2:1089C792E64CF650@EANX-1089CB704D4E8650@2369080-1089CB70708FD6C8@1 (accessed April 12, 2011).

differences between northern and southern black Americans' methods of protesting their condition. In writing about her captivity in Africa and subsequent voyage to the colonies in the mid-eighteenth century, she decried the negative perception some whites held of blacks when she wrote, "…/some view our sable race with a scornful eye, /'their color is a diabolical dye.' /Remember, Christians, negroes, black as Cain, /may be refin'd and join th' angelic train." In this literary passage, Wheatley acknowledged her exposure to and acceptance of Christianity. She noted that some whites viewed blacks as savage, ungodly, and with disdain solely based on skin color, but regardless of skin color, in her opinion, God allowed for heavenly salvation for all.[36]

For African Americans, the challenge of obtaining their freedom and gaining citizenship continued throughout the nineteenth and twentieth centuries. Black Americans under colonial rule resisted enslavement, but they also fought to obtain and keep property. In their struggle to escape slavery, African Americans faced laws designed to confine them to lifetimes of servitude. For those, such as Anthony Johnson, who did manage to escape slavery, their legal struggles persisted as they fought to hold on to their property real and personal.

For many others, such as Marie Jean, death was the only escape from slavery. Although she complained to officials, authorities in St. Louis seeking to distance themselves from their French and Spanish legal history, were not interested in establishing a precedent of slaves evoking their heritage as a means of escaping bondage.

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[36] Phillis Wheatley, "On Being Brought from Africa," in *Poems on various subjects, religious and moral. By Phillis Wheatley, Negro servant to Mr. John Wheatley, of Boston, in New-England* (Albany, NY: 1793), p, 15, *Eighteenth Century Collections Online*. Gale. University of Missouri - Columbia. http://proxy.mul.missouri.edu:2227/ecco/infomark.do?&contentSet=ECCOArticles&type=multipage&tabID=T001&prodId=ECCO&docId=CB3329636153&source=gale&userGroupName=morenetuomcolum&version=1.0&docLevel=FASCIMILE (accessed June 25, 2011).

In addition, black Americans confronting the justice system in the region remained a unique legal conundrum for southern lawmakers. Before the Revolution, most African Americans served as enslaved labor in all of the British North American colonies. To effectively control the enslaved persons, colonial officials established laws to regulate the lives of black Americans. The restrictions over their lives did not escape the minds of some early-black Americans.

Highlighting the legal endeavors of black Americans illustrates that they were more than just aware of the legal system in America. Some viewed it as a way to escape their situation in life, such as Phillip Gowen and Marie Jean Scypion. Others, such as Anthony Johnson, used it to protect what they thought was rightfully theirs, namely, their rights as property owners. Regardless of how they used the court system, they were not passive participants in a society with laws that confined them to the base of society. Blacks in colonial America had to navigate a complex system of legislation that at times reflected Spanish, French, and even British legal ideas regarding them and their status. This legal overlap at times benefited blacks who found freedom and greater liberty under the law. In beginning this study of the struggles of African Americans and their complex relationship with the justice system, it has been necessary to examine the early-Republic as statutes and laws took shape in Virginia. Probably not coincidentally, that state's laws had a tremendous influence over the creation of laws in states such as Kentucky, Missouri, and even Texas: Virginia was the oldest slave state, and had the longest English legal history in defining the place of blacks, free and enslaved.

Chapter Two

Paupers, Wives, and Children: Territorial Laws and Black Americans

Prior to the *Dred Scott v. John Sandford* (1857) decision, most slave states, including Kentucky, Missouri, and Texas, retained many of their colonial and territorial laws. In the cases of Missouri and Texas, it could be argued that the territorial governments adopted statutes specifically to overturn colonial common law practices of the Spanish and French. However, many frontier territories duplicated the 1783 law established in Virginia, which forbade the migration of free blacks into the state. During the early years of the American republic, some lawmakers perceived free blacks as a threat that might incite slaves to rebel or resist bondage by running away. In January 1812, the *Raleigh Star* published a congressional debate regarding the upcoming War of 1812 and the influence of Revolutionary War ideas of liberty upon the black Americans in Virginia. The representative who addressed the House, identified only as Mr. Wright in the article, referred to Virginia's Representative John Randolph's fears that "blacks in the state he represents, impressed as they are with the new French principles of liberty" and of brotherhood "are seriously to be feared." Randolph's anxieties over the desires of black Americans to obtain greater liberty led some to believe that many African Americans would side with the British during the War of 1812. However, what lawmakers did not anticipate were slaves utilizing the courts to secure their liberty.[1]

[1] "Congress, Debate On the Second Resolution Reported by the Committee on Foreign Relations," January 3, 1812 in *The Star* vol. 4, Issue 1 (Raleigh, NC); Michael L. Levine, *African Americans and Civil Rights: From 1619 to the Present* (Phoenix: Oryx Press, 1996), 48.

This chapter examines the efforts by African Americans to utilize the territorial and early state courts to secure their liberties. Furthermore, black Americans struggling for their liberties relied on territorial statutes based on English common law and French and Spanish civil laws as well as the courts to struggle for their rights. Whether it was to be free from slavery, to remain in the region, or to engage in their occupation of choice, people of African descent relied on territorial judicial systems for protection from the very system that sought to deny them a place as citizens in the early republic. From the 1780s through 1840, lawmakers categorically conflated free blacks with the slave population during the territorial stages of Kentucky, Missouri, and Texas. By doing so, legislators attempted to more effectively manage African Americans either by denying them the same rights and privileges as whites, by preventing free blacks from entering territories, or by making freedom more difficult to obtain. Nevertheless, this conflation during the territorial stages allowed some black Americans a small window to secure rights as they sued, petitioned courts, or found themselves involved in cases where their liberty was at stake. Although most of these cases were unsuccessful, black Americans continued to seek redress of grievances through the courts and, in their attempts, many were active participants in their legal efforts.[2]

Scholar John Hope Franklin argued that free blacks served as a source of "embarrassment to slaveholders" by weakening their claims of control over African Americans, especially since slaveholders' political, social, and economic authority was based upon their control over the lives of all black Americans. This became increasingly

[2] Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Pantheon Books, 1974), xiv; John Boles, *Black Southerners, 1619-1860* (Lexington, KY: University Press of Kentucky, 1984), 53; Franklin, *From Slavery to Freedom*, 148.

more difficult as more black Americans became free from slavery through individual acts of emancipation, many of which occurred prior to statehood laws requiring free blacks to leave a state and statutes that prevented free black immigration. Moreover, as territories modified their laws and courts to control the lives of African Americans, blacks would find alternative means to secure their liberty. One such method was the frontier interpretation of justice.[3]

Because the frontier posed a rather unique set of circumstances, including sparse populations and vast numbers of hostile Native Americans, people living on the territorial fringes arguably interpreted the judicial processes differently than places such as Philadelphia, Boston, or Richmond. Historian Lea VanderVelde juxtaposes this understanding of frontier justice with the lives of slaves, specifically Harriet Robinson Scott, who as a co-litigant with her husband Dred Scott, filed suit for their freedom in 1847. VanderVelde contends that Harriet Scott's early life in Minnesota and Wisconsin in the 1830s played a significant role in the Scotts initiating their petition and freedom suit. Harriet epitomized enslaved blacks on the frontier who viewed freedom as legally attainable and well within the bounds of social justice.[4]

Common law based on English legal traditions was already entrenched in Kentucky by 1792, when it was established out of Virginia's westernmost county. Missouri entered statehood in 1821 and had a unique legal history steeped in French and Spanish common laws. Texas's legal history was also unique in that it had been a part of Spanish Mexico, then Mexico, and at the last was its own independent nation prior to

[3] Franklin, *From Slavery to Freedom*, 148-151; Morris, *Southern Slavery and the Law*, 372, 385.

[4] Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (Oxford: Oxford University Press, 2009).

statehood in 1845. Of the three states examined throughout this study, only two, Kentucky and Missouri, entered the United States through the territorial process. The United States annexed the Republic of Texas through a treaty and joint resolution, and so followed the 1820 Missouri Compromise that allowed for involuntary servitude below the southernmost Missouri border. In addition, Texans, as an independent republic, had already written a constitution that closely resembled other southern states.[5]

During America's colonial period prior to 1776, regions such as Pennsylvania restricted the actions of free blacks through ordinances. Colonial statutes barred blacks from intermarriage with whites, and from loitering, and the law required the indenture of free blacks under the age of twenty-one. In addition, one statute passed in 1705 applied to both free and enslaved black Americans. The law made it a crime for any black person to carry a gun, sword, pistol, club, or any other form of weaponry without a license. A person found in violation of this statute faced twenty-one lashes. That same 1705 act also declared that any enslaved black man found guilty of rape, attempted rape of a white woman, or found guilty of stealing was to be whipped with thirty-nine lashes and branded on the forehead with the letter R or T, then be banished from the colony at the expense of the master. Historian A. Leon Higginbotham contended that these legal restrictions sought to suppress the growing black community and to punish those who were able to escape the confines of slavery. As people spread out over the continent, these legal restraints were simply reconstructed by various state legislatures after the Revolution.[6]

[5] Northwest Ordinance, July 13, 1787; "A Treaty of Annexation, concluded between the United States of American and the Republic of Texas, April 12, 1844," in *Treaties and Other International Acts of the United States of America* ed. Hunter Miller vol. 4 Documents 80-121: 1836-1846 (Washington: Government Printing Office, 1934) http://avalon.law.yale.edu (accessed June 7, 2011).; *Statutes at Large*, vol. 5, 797-98.

In the years immediately following the American Revolution, state and federal lawmakers sought to create a society that was more egalitarian than under English rule. Characteristics of such a society included concepts of republicanism: individuals would have greater political autonomy, more genuine representation and the opportunity to achieve greater economic, social, and political equality through hard work. Historian Gordon S. Wood argued that social mobility was at the epicenter of the American Revolution; however, Wood contended that even some individuals in the early Republic, such as nineteenth-century novelist and lawyer Henry Brackenridge, saw the potential for the abuse of social mobility. In his novel *Modern Chivalry*, written from 1792-1815, Brackenridge satirized the social disorder created by excessive democracy. Brackenridge wrote:

> A Democracy is beyond all question the freest government: because under this every man is equally protected by the laws, and has equally a voice in making them. But I do not say an equal voice; because some men have stronger lungs than others …. There is so much pride and arrogance with those who consider themselves the first in a government, that it deserves to be checked by the populace, and the evil most usually commences on this side. Men associate with their own persons, the adventitious circumstances of birth and fortune: So that a fellow blowing with fat and repletion, conceives himself superior to the poor lean man, that lodges in an inferior mansion.[7]

Brackenridge expressed his political views through popular literature although he by no means called for a complete leveling of society. Lawmakers determined that not every man had the talent or character to serve the people, nor did most men meet what appeared to be the most significant underlying qualifications of 'property holder,' which was some

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[6] "An Act for the Trial of Negroes," January 12, 1706 in *The Statutes at Large of Pennsylvania from 1682-1801*, compiled by James T. Mitchell and Henry Flanders vol. 2 (Clarence M. Busch, 1896), 235-36; Higginbotham, *Matter of Color*, 269.

[7] Hugh Henry Brackenridge, *Modern Chivalry: Containing the Adventures of a Captain, and Teague O'Regan, His Servant*, "Social Mobility," in Gordon S. Wood, ed, *Rising Glory of America, 1760 – 1820* (Boston: Northeastern University Press, Orig. pub 1971), 348 – 49.

measure of education, experience, and refinement. These particular requirements eliminated women and others, including people of African descent, even many of whom were recently emancipated. In his novel, Brackenridge's dialogue did contend that individual merit and industrious work should serve as the basis for building an equal society; yet the fears of some white legislators led to the implementation of some of the most strict measures against black citizens.[8]

American victory over the British in the Revolutionary War opened up new lands in the interior of the nation. The Ohio and Mississippi valleys enticed settlers, many of who hoped for a chance to acquire property and thereby improve their personal chances. Coincidentally, economic changes in the textile industry in England led to a tremendous demand for cotton, and southern land was ideal for growing cotton. As a result, by the 1790s, many white settlers who were unable to acquire property in the older states, such as North and South Carolina, Virginia, and Georgia, had already moved into the Mississippi Territory. Although Kentucky was not as suitable for cotton growth as other southern states, settlers from Virginia had already moved into that region by the 1790s as well.[9]

As white Americans spread west into the frontier, they brought with them legal definitions and concepts of laws. These laws focused on the regulation of property, marriage, slavery and the establishment of the courts. By the time Kentucky became a state in 1792, its legal system was virtually a mirror image of Virginia, according to

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[8] Wood, *Rising Glory of America*, 341.

[9] Levine, *African Americans and Civil Rights*, 49-50.

scholar Helen Tunnicliff Catterall; this was especially true of laws pertaining to the institution of slavery.[10]

Some of the old colonial laws were complicated because enslaved persons were considered real estate, but with special conditions. Over the course of the eighteenth century, Virginia had adopted laws that reduced the status of enslaved men and women to human chattel and this remained their status both before and after the Revolution. Kentucky simply adopted some of the oldest of these laws regarding slavery. These regulations and how the state defined the status of slaves played a role in many suits involving persons held in bondage. The territorial statutes of Kentucky, Missouri, and Texas were not constructed for creating or establishing a means of escaping slavery or establishing rights for free blacks, but for securing the liberties of property holders who were mostly white men. By protecting the property rights of white slaveholders and relegating all blacks to the lowest rung of society, the legal systems that emerged proved a nearly impossible obstacle for most blacks to overcome. [11]

Due to some legislation, such as the 1787 Northwest Ordinance, some people of African descent found an additional way to secure freedom and some civil rights. The congressional approval of the ordinance, in theory, barred the introduction of slavery into the region north of the Ohio River. The ordinance stated, "There shall be neither slavery nor involuntary servitude in the said territory;" however, it did include a provision for the reclaiming of fugitive slaves. Although the ordinance prohibited slavery in the region,

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[10] Helen Tunnicliff Catterall, ed. *Judicial Cases Concerning American Slavery and the Negro*. vol. 1 Cases from the Courts of England, Virginia, West Virginia, and Kentucky [hereinafter *Judicial Cases*] (Washington, D. C.; Carnegie Institution of Washington, 1926), 269.

[11] Catterall, *Judicial Cases*, vol. 1, 269; Marian B. Lucas, *A History of Blacks in Kentucky: Volume 1 From Slavery to Segregation, 1760 – 1891* (Frankfort: The Kentucky Historical Society, 1992), xiv.

there was no mention concerning slaveholders who were or would be temporarily residing in the region. It would be this particular ordinance that would serve as the basis for many freedom suits filed by people of color in the frontier states of Kentucky and Missouri. In contrast, because of Texas' location, there do not appear to be any cases citing the 1787 ordinance as the basis for freedom.[12]

The Federal Congress took a different approach in 1790 when it approved a similar ordinance for the organization of the area south of the Ohio River; this decree allowed for the spread of slavery into the region. The ordinance specifically referred to land west of North Carolina, which became the state of Tennessee in 1796. Historian Christopher Tomlin succinctly points out that this was no doubt due to slavery already existing in Kentucky. Furthermore, legislators in North Carolina seeking to protect the property rights of slaveholders passed an act in December 1789 specifically stating, "that no regulations made or to be made by Congress, shall tend to emancipate slaves," clearly demonstrating the acquiescence with slavery's spread west. Slaveholders clearly had a hand in the policies of new states formed on the frontier. [13]

With frontier lands plentiful and at a premium price, the national government sought to preserve these lands for a future influx of white settlers. In 1796, petitioners in Illinois to the House of Representatives requested that the government suspend the denial

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[12] "An Ordinance for the Government of the Territory of the United States Northwest of the River Ohio," July 13, 1787 House Document No. 398 in *Documents Illustrative of the Formation of the Union of the American States.* Selected, arranged and indexed by Charles C. Tansil (Washington, DC; Government Printing Office, 1927) http://avalon.law.yale.edu (accessed June 9, 2011).

[13] United States. Congress, Senate. "An Act for the Government of the Territory of the United States, South of the River Ohio Bill. 1790." Fenno, John, 1751-1798, printer, 1790; Christopher Tomlin, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580-1865* (New York, NY: Cambridge University Press, 2010), 516; "An Act to accept a cession of the claims of the state of North Carolina to a certain district of Western territory." in *Statutes at Large of the United States of America* ed. Richard Peters, ESQ., *(*Boston, Charles C. Little and James Brown, 1845) Page 108.

of slavery in that territory, as there were only four families at the time. Furthermore, in challenging the 1788 federal ordinance, this group of petitioners hoped that a specific area allocated by the territorial government to specific families could be moved, as the land was unsuitable for agriculture. However, not everyone in the northwest would support the expansion of slavery into the region. As slaveholders moved west, both north and south of the Ohio River, they forced legislatures to discuss the topics of slavery and free blacks.[14]

Some individuals contended that they brought their slaves into the territory prior to the passage of the federal ordinance; these settlers sought an exception in order to maintain their bonded property. Furthermore, these Illinois petitioners also argued against the 1789 Ordinance's declaration that the children of slaves born in the territory were legally free. They wanted to follow colonial laws that declared slavery was perpetual and genetically passed from the mother to the child. The attempts to hold on to their slaves brought into Illinois prior to 1789 appeared legitimate from a legal standpoint. However, the petitioners' request that any children born into slavery in the territory remain enslaved seemed to address more than just a personal property interest, but also a desire to prevent a naturally increasing free black population. There was no attempt to establish a gradual emancipation process for the children or make such a suggestion, but the petitioners simply argued that those children should remain enslaved for life. It appeared the federal government granted the petitioners their request to keep slaves: examination of census records throughout the first half of the nineteenth century

[14] "Slavery and the Exchange of Certain Donations of Land in the Northwestern Territory," May 12, 1796 in *The New American State Papers: Labor and Slavery* vol. 4, *Slavery in the Territories* (Wilmington, Delaware: Scholarly Resources Inc., 1973), 17.

indicates that there were more than 900 slaves in Illinois in 1820. That number would decrease to just over 300 by 1840 and no slaves were counted in 1850 or 1860.[15]

Lawmakers in Kentucky, like other southern states, sought to provide legal protection of slave property against federal or even state interference. This also contributed to Kentucky's phenomenal slave population growth. However, those legislative efforts would have been irrelevant without the economic motives of the white citizens of the territory. Certainly, the economic potential of the cash crops of cotton and tobacco and the expansion of frontier plantation societies were tremendous factors in the increase in the number of enslaved laborers.[16]

Furthermore, policymakers aimed to ensure any measure of political equality between whites and blacks would be unevenly stacked in favor of white residents. Political leaders in Kentucky, in the years of the early Republic, made certain that free blacks would be marginalized legally by creating measures such as removing free African Americans' right to vote under the 1799 state constitution. Under Kentucky's 1792 constitution, the law allowed free people of color the right to vote, stating that "all free males over twenty-one" who had lived in the state or county for two years could participate in general elections. The law never placed such restrictions on white residents.[17]

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[15] "To the Senate and House of Representatives of the United States of America in Congress assembled, the humble petition of the Inhabitants of the counties of St. Clair and Randolph, in the Illinois country, respectfully showeth," January 12, 1796, in *The New American State Papers*, 18; Table 28. *Historical Census Statistics*, Illinois - Race and Hispanic Origin: 1800 to 1990, http://www.census.gov/population/www/documentation/twps0056/tab28.pdf (accessed October 3, 2010).

[16] "A Constitution or Form of Government for the State of Kentucky," 1792 Art. 3 Sec. 1, KHS Digital Collections http://www.kyhistory.com: 2010 (accessed June 10, 2011).

[17] Levine, *African Americans and Civil Rights*, 48.

Kentuckians, like Virginians, feared conspiracies orchestrated by free blacks that would free their slaves and unleash centuries of suppressed "imagined" racial anger on white citizens. Historian Winthrop Jordan wrote about the Virginia Assembly of the late 17th century and argued that the colonial body sought to prevent free blacks from full participation in society and was a "guideline which in varying degrees was accepted in every colony." This would include efforts to minimize the chances for enslaved blacks to become free. Probably not coincidentally, the legal efforts in colonial Virginian to restrict freedoms of blacks followed Bacon's Rebellion in 1676. Many of those in rebellion against the colonial government under Sir William Berkley were indentured servants and blacks. The fears of slave insurrections and a multiracial chaotic society led to more oppressive statutes.[18]

Whether conspiracies were real or imagined, African Americans sought the same liberties as white Americans. Historians have successfully documented the legal efforts of blacks to gain freedom and liberties in colonial America. Furthermore, scholars have conducted a tremendous amount of research on the development and relevance of African slavery in colonial America.

During the colonial period, laws governing the lives of African Americans became more restrictive and yet more ambiguous. Examples include a 1715 Maryland law that stated, "all children born of any negro or other slave, shall be slaves as their fathers were for the terms of their lives." Virginia policymakers subsequently adopted this law for a number of years and in 1785, that state exacted another change regarding the status of slaves. The new policy spoke to who was to be enslaved in the state and the

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[18] Jordan, *White Over Black*, 79, 122-23.

status of their descendents. Probably not coincidentally, Kentucky adopted Virginia's post-Revolutionary statute that reinforced "the principle that the status of the child followed the mother."[19]

After Jefferson's acquisition of Louisiana in 1803, the prospects for westward movement increased significantly and many people took advantage of the newly available land in the Mississippi valley. The post-Revolutionary years also saw an increase in the number of slave emancipations as some masters saw a contradiction between the revolutionary rhetoric of liberty and freedom espoused and physically holding a person in bondage. With more free blacks in society, surely those individuals would be seeking to own property, which people equated with independence and freedom. Since the Ordinance of 1790 prohibited the expansion of slavery into the territory north of the Ohio River, southern slaveholders made sure this would not be the case in the area south of the river. In addition to the ordinance that allowed the spread of slavery into the Old Southwestern region, lawmakers also instituted regulations that would prevent free persons of color from maintaining a similar level of existence to that of local whites. Tennessee legislators approved an act in 1815 that made it a crime for blacks to walk about Greeneville without proper reason. Those found in violation of said law faced ten lashes on their bare back. Lawmakers in Greeneville aimed to prevent slaves from moving too freely around town and since legislators assumed it would be difficult to tell the difference between free people and slaves the law simply stated "any negro." Assumptions by whites that a black person was a slave would have added to the difficulty of living in a slave society for a free African American and served to protect

[19] Morris, *Southern Slavery and the Law*, 45,47.

society against insurrections. As such, local lawmakers attempted to preserve the sanctity of white society.[20]

White fears of slave insurrections further impeded any potential legal inclusion for black Americans in the territorial stages of most states during the late-eighteenth and early-nineteenth centuries. These fears resulted in more stringent rules that sought to control the behaviors of free and enslaved blacks. One such event was Gabriel's Rebellion, which occurred in 1800 in Richmond, Virginia. An enslaved blacksmith and others, including a slave preacher, were accused of conspiring to stage a rebellion in which they planned to kill white slaveholders and hold then-Governor James Monroe hostage until slavery was abolished in Virginia. The governor, who later addressed the Virginia General Assembly on the matter, stated:

> It seemed strange that the slaves should embark in this novel and unexampled enterprise of their own accord. Their treatment has been more favorable since the revolution, and as the importation was prohibited among the first acts of our independence, their number has not increased in proportion with that of the whites. It was natural to suspect they were prompted to it by others who were invisible, but whose agency might be powerful. And if this was the case it became proportionally more difficult to estimate the extent of the combination, and the consequent real importance of the crisis.

Governor Monroe seemed bewildered that slaves would rebel against their masters. Arguing that masters had treated their slaves with more sympathy than under British rule, Monroe failed to realize that some slaves associated American independence from England with freedom from slavery. In addition, Monroe hinted free blacks might be a

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[20] United States. Congress, Senate. "An Act for the Government of the Territory of the United States, South of the River Ohio Bill. 1790." Fenno, John, 1751-1798, printer., 1790; "An Act granting additional powers to the commissioners of the town of Greeneville," October 13, 1815 in Edward Scott, *Laws of the State of Tennessee: Including those of North Carolina Now in Force in This State. From the Year 1715 to the Year 1820, Inclusive.* vol. 2 (Knoxville, TN: Heiskell & Brown, 1821), 190-91.

subversive element inciting slaves to rebel against their masters. The consequences of Gabriel's Rebellion stretched well beyond Virginia and slaves in the Chesapeake, and the lawmakers of Virginia set their focus on the free-black population as they feared that such an event "may occur again at any time, with more fatal consequences, unless suitable measures be taken to prevent it." Although Kentucky was its own commonwealth by 1800, one of the greatest fears of southern slaveholders was slave insurrection and the adverse impact of free blacks on the enslaved population. As scholar Winthrop Jordan highlighted in reference to Gabriel's Rebellion, "Even in far-off Lexington, Kentucky, some anxious petitioners declared that the Negroes of the South 'are strongly bent on insurrection' and asked strict enforcement of the town's laws."[21]

Letters between then-President Thomas Jefferson and Governor Monroe in 1802 highlighted slaveholder fears of insurrection: Monroe wrote that the Virginia General Assembly passed two resolutions and at the center of both was the belief that free blacks and mulattos should be removed to federal lands farther west, the West Indies, Africa, or "to such a place as may be acquired." Madison's letter conveyed the belief of the political leaders in Virginia that it was necessary to remove any person of African descent who could be a potential threat to society, including slaves who "commit certain enumerated crimes." Madison did not list the crimes that would lead to banishment, but did state, "such an asylum is preferred on the continent of Africa or the Spanish or Portuguese settlements in South America."[22]

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[21] Governor Monroe to the Speakers of the General Assembly, Richmond, 5 December 1800, "Unsettling of the South," in Wood, *Rising Glory of America*, 354 – 56; Jordan, *White Over Black*, 369.

[22] Governor Monroe to President Jefferson, Richmond, 13 February 1802, "Unsettling of the South," in Wood, *Rising Glory of America*, 365-66.

Jefferson concurred with Monroe's assessment on the presence of free people of color in Virginia, but argued that the most suitable location for colonization would be outside of the Americas. Regarding blacks whom authorities charged with insurrection, Jefferson wrote that Sierra Leone would be an ideal location for colonization. In consulting with a British diplomat in Washington, the president suggested the United States propose to the Sierra Leone Company in London, which was the benevolent company established by English citizens to remove free blacks from England to Africa, to send only blacks "guilty of insurgency" to the colony. Moreover, Jefferson seemed to reject the thought of the establishment of a colony west of the Mississippi in which insurgent blacks might align with hostile Native Americans. He argued, "In looking out for another place we should prefer placing them with whatever power is least likely to become an enemy, and to use the knowledge of these exiles in predatory expeditions against us." In addition to the proposed removal of insurgents, Virginia passed an act in January 1806, which ordered emancipated slaves be removed from the state within a year or face re-enslavement. Clearly the fears of rebellions served as a real threat for political leaders in Virginia. The state explored what it deemed 'benevolent colonization efforts' as well as writing laws that forced free blacks from the state.[23]

Concerned white citizens in Virginia expressed their fears of future subversive actions by all blacks and the belief that too many people of African descent were living too freely in the state. A slaveholder's letter in 1801 to the Virginia legislature called attention to the educational advancements of blacks who then served to teach others to read and write. The writer argued that this "increase of knowledge is the principal agent

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[23] President Jefferson to Governor Monroe, Washington, 2 June, 1802, "Unsettling of the South," in Wood, *Rising Glory of America,* 366; Samuel Shepherd, *Statutes of Virginia,* vol. 3, 252.

in evolving the spirit we have to fear" and that, as black southerners became more literate this led to slave discontent over their status, which was so prominent that any person would notice. The letter also spoke of the love of freedom as an "inborn sentiment" and that even slaves harbored the desires to be free. For at least some slaveholders the combination of black intellectual advancements and the appetite for freedom proved too risky. Civil uncertainty in the wake of the 1800 rebellion led to calls for the legislature to protect white property in Virginia and the removal of free blacks. The implications of such concerns would lead to tighter restrictions on the lives of African Americans in Virginia and greater legal protection of white property rights. An example of the legal changes that limited the lives of black southerners was the January 1804 act amending the regulation of the militia. The statute called for periodic militia patrols of black communities. The objective was to monitor free blacks and radical whites who might incite slaves to rebel. Counties compensated militia officers seventy-five cents for every twelve hours patrolled, but failure of the officers to file patrol reports would result in the forfeiture of twenty dollars for every missed report. In addition to the financial benefit, the law also barred blacks from serving in the militia, while any age-appropriate white male was eligible.[24]

In contrast, Kentucky's 1795 statute called for trustees instead of the militia to patrol the black community of Fayette County. In addition, there was no monetary compensation for reporting to the county authorities. However, by 1852, Kentucky had

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[24] "Letter to a member of the General Assembly of Virginia on the subject of the late conspiracy of the slaves [microform] with a proposal for their colonization." 2nd ed. (Richmond, Virginia: Richmond Printed by H. Pace, 1801), 5, 6, 21. http://docs.newsbank.com/openurl?ctx_ver=z39.88-2004&rft_id=info:sid/iw.newsbank.com:EAIX &rft_val_format=info:ofi/fmt:kev:mtx:ctx&rft_dat=104404BD8292AD18&svc_dat=Evans:eaidoc&req_dat=0E247DA8ED21AAF5 (accessed October 5, 2010); *Statutes of Virginia*, vol. 3, 17.

created special patrol companies whose duties included patrolling black communities and monitoring the counties along the Ohio River. Members of the patrols served twelve months of continuous service and counties paid patrollers up to one dollar for each ten hours of patrol work. Furthermore, if a patrol captured a fugitive, slaveholders were to pay the patroller twenty-five dollars for a fugitive caught in the same county as the slaveholder and fifty dollars if the patrol caught the slave in another county. To pay for the patrols, counties could create a poll tax on the slaves in the county. Moreover, patrols could arrest any free blacks that were found to be in violation by meeting with slaves who did not have their master's authority to assemble; those arrested faced the charge of "evil fame" or "evil behavior."[25]

Intimate relationships between blacks and whites existed from the time black women began to arrive in the colonies. Historian Paul Finkelman argued that as the number of black and biracial people in Virginia began to rise during the seventeenth century, the colonial legislature started to regulate sex in the colony. Finkelman contended that by making interracial sex and marriage illegal the Virginia legislature followed the notion that blacks were heathen savages. Furthermore, he argued that by the time of the Revolution, Virginia's laws were solidly in place regarding sexual relationships between blacks and whites. These laws outlawed marriages between whites and blacks or biracial persons. They deemed that the children would follow the status of the mother. Moreover, historian Kathleen Brown argues that authorities failed "to make special provisions to enforce the prohibition on white male unions with enslaved women" and allowed white men to escape culpability for sex with black women. Policymakers in

[25] Littell, *Laws of Kentucky*, vol. 1, 344; Wickliffe, *Revised Statutes of Kentucky*, 520-21.

Kentucky copied these laws as they developed the statutes of that state in the early 1790s.[26]

One particular legal case was specifically mentioned in the Virginia statutes in the early-nineteenth century. The legislature passed an act granting Daniel Rose a divorce from his wife Henrietta White on December 31, 1806. The couple resided in Prince William County, Virginia, and had recently married in February. According to the divorce decree, White was thought by Rose to be a virtuous woman until she gave birth to a mixed race child. Furthermore, the father was believed to have been a slave, whom Henrietta had "permitted … to have carnal intercourse with her." As a result, the state of Virginia granted Rose his divorce from White declaring her *femme sole* and the child illegitimate. Because the father was a slave, he himself held no parental authority over the child; even if parental authority was an option, he could not marry Henrietta because slaves could not enter into legal contracts.[27]

The act further highlighted the perceptions of blacks as sexually charged and the efforts by southern legislatures to control black behaviors. This period was also a time when castration was an alternative to death as punishment for black men who were convicted of raping white women. Such were the circumstances during a trial in 1810 (also in Prince William County) where Elizabeth Vickers had accused a slave, Ben, of raping her. The laws of Virginia gave juries the power to protect the property of

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[26] Paul Finkelman, "Crimes of Love, Misdemeanors of Passion: The Regulation of Race and Sex in the Colonial South," in *The Devil's Lane: Sex and Race in the Early South* eds. Catherine Clinton and Michele Gillespie (New York: Oxford University Press, 1997), 124, 126-27, 132; Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, NC: University of North Carolina Press, 1996), 196.

[27] *Statutes of Virginia*, vol. 3, 321 – 22; Amy Dru Stanley, *From Bondage to Contract: Wage Labor, Marriage, and the Market in the age of Slave Emancipation* (Cambridge: Cambridge University Press, 1998), 11.

slaveholders and a death sentence for rape would have meant Ben's master would have lost a potentially valuable labor source. Instead, castration of a male slave meant he would no longer be a sexual threat for white men, and would at the same time preserve the master's property. The outcome of the Vickers case was similar to the earlier 1806 divorce request by Daniel Rose in that the accuser's reputation was questioned by the defense. Vickers was allegedly a woman of low standing in Prince William County, who consorted with both black and white men and gave birth to a child out of wedlock. The broader legal consequences were that other southern states mimicked statutes like those instituted in Virginia in the late-eighteenth and early-nineteenth centuries that denied black men and women any legal standing.[28]

At the turn of the nineteenth century, the United States was experiencing dramatic economic and political developments, such as the rise of the "Cotton Kingdom" in the Upper and Lower South and the presidential election of Thomas Jefferson in 1800. These events signaled the continued spread of the southern plantation economy further west and the peaceful transition of political opponents at the highest level and gave birth to the concept that opportunities were abundant in the United States. Historian Winthrop Jordan argued that by 1793, cotton growth flourished in the lower South and that the expansion of slavery west and the rise of cotton was coincidental, while historian John Hope Franklin contended "the price of slaves was declining, and there was reason to believe that the institution would deteriorate." Furthermore, Franklin argued the "invention of the cotton gin and the extension of the area of cotton cultivation" led to widespread changes in the South. One of these changes was the "increased demand for

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[28] Catherine Clinton and Michele Gillespie, eds. *The Devil's Lane: Sex and Race in the Early South* (New York: Oxford University Press, 1997), 74-76.

black slaves." Regardless, political leaders at state and federal levels made sure laws primarily protected white speculators and settlers.[29]

White men from southern slave states, where land acquisition was becoming more difficult, could venture west and purchase vast amounts of quality land and eventually become wealthy plantation owners. Cotton had become the staple crop. One resident of Kentucky openly expressed his wish that the United States acquire all of Britain's colonial possessions in North America, which spoke to many frontier attitudes about westward migration.[30]

As lands on the frontier became available, more white slaveholders moved to Kentucky, Missouri, and (after Mexico opened) Texas for American settlement in 1825. For poorer whites unable to purchase lands east of the Appalachian Mountains, migration westward translated into the owning of large cotton plantations and the ability to purchase many slaves in order to process the crop. Moreover, any measurable liberties held by slaves, such as being able to even petition for their freedom, lawmakers eventually denied as territories became states. Scholars James and Lois Horton argue that some early political leaders continued to fear the power of a strong federal government and that some of those southern leaders wanted the matter of slavery left to each state. Political leaders' fear of a tyrannical national government combined with white fears of slave insurrections, economic potential of cotton in the west, and the planters' need to maintain a steady slave labor source led to more strict laws regulating the lives of free and enslaved blacks in the first half of the nineteenth century. Historian John Hope

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[29] Jordan, *White Over Black*, 318; Franklin, *From Slavery to Freedom*, 87-88; Appleby, *Inheriting the Revolution*, 27.

[30] Franklin, *From Slavery to Freedom*, 105, 110-11.

Franklin has argued, "this land beyond, the frontier land, rapidly became an influence in the evolution of the institution of slavery and therefore, in the history of blacks in America." African Americans felt the effects of migration as they moved with their masters to the frontier.[31]

As white settlers and their slaves migrated, some early territorial statutes seemed to weaken owners' holds on their slaves. In 1789, Benjamin Stevenson found himself in violation of a Virginia act, which required slaveholding residents from other areas to take an oath regarding the importation of their slaves into Virginia. Initially, citizens in Kentucky filed a petition on behalf of Stevenson to the General Assembly of Virginia in August 1789 maintaining that Stevenson, a Maryland slaveholder who moved to the District of Kentucky in 1787, was a productive citizen of good character. Two months later, Stevenson petitioned the General Assembly himself and swore that he was not aware of such a requirement until April of 1789. Stevenson learned that under the statute his slaves were entitled to their freedom and that he would be responsible for financial penalties. The state would deprive Stevenson of both property and finances. Although the petition was referred to the court of justice and the outcome is unknown, Stevenson's petition demonstrated not only the movement of slaveholders to the frontier but also the implications of frontier laws upon slaveholders and their property.[32]

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[31] James Oliver Horton and Lois E. Horton, *The Hard Road to Freedom: The Story of African America* (New Brunswick, New Jersey: Rutgers University Press, 2001), 77, 78, 84, 87-89; Franklin, *From Slavery to Freedom*, 105, 110-11.

[32] "Petition of Benjamin Stevenson," Number 61 in James Rood Robertson, *Petitions of the Early Inhabitants of Kentucky to the General Assembly of Virginia, 1769 to 1792* (Louisville, KY: John P. Morton & Company, 1914), 125-26; "Petition of Benjamin Stevenson," October 28, 1789 in Schweninger, *Microfilm Petitions* Ser. I. PAR 11678902.

In the wake of the Revolution, as people moved to the interior of the continent and land acquisition was more possible, some black Americans sought to become landholders. Although there were several instances during seventeenth-century British colonial rule where blacks did acquire land, such as Sebastian Cane, Manuel Rodriggus, Francis Paine, and Anthony Johnson, all of Virginia, legislation passed during the late-seventeenth and early-eighteenth centuries made it more difficult for free blacks to acquire real and personal property. Holding blacks to a different standard, in 1668, the Virginia Assembly issued an act declaring that freed black women were not exempt from taxes. Under this act, free black women in Virginia, "though permitted to enjoy their freedome [*sic*] yet ought not in all respects to be admitted to a full fruition of the exemptions and impunities of the English, and are still lyable [*sic*] to payment of taxes." In 1670, lawmakers declared it illegal for free blacks to buy Christians. Colonial laws created an uneven financial burden on free blacks as well as prevented them from enjoying the same economic liberties as whites. Furthermore, in the years after the Revolution, when cotton became a staple in the southern interior, some territorial and state laws continued to restrict opportunities for free blacks to become significant property owners.[33]

The same territorial laws adopted were typical of colonial English Common laws and in specific instances served to exclude anyone of African heritage and Native Americans from full participation in society. Various laws applied specifically to slaves, such as the 1785 Virginia Act that outlawed enslaved blacks from holding arms unless authorized by the slave's master or employer or while in the company of the slaveholder.

[33] Loren Schweninger, *Black Property Owners in the South, 1790 - 1915*, ed. August Meier, Blacks in the New World (Champaign: University of Illinois Press, 1990), 30 – 31; Hening, *Statutes at Large of Virginia*, Vol 2, 267, 281.

Obviously, these laws sought to prevent slave insurrections and maintain social control over the base labor source. Furthermore, Virginia and Kentucky enacted statutes that empowered trustees to "visit all negro quarters and other places suspected of entertaining unlawful assemblies of slaves or other disorderly persons." These statutes spoke to white assumptions that black communities were associated with social and political disruption, and of the notion that blacks were conspiring to usurp white liberties by force. However, for many early African Americans, they were more concerned with obtaining their own liberty. [34]

Many blacks associated liberty with the ability to own property, which some even under slavery managed. Scholar Eugene Genovese argued, "slaveholders relied heavily on local custom and tradition; so did the slaves, who turned this reliance into a weapon." Continuing, Genovese stated, "If the law said they [slaves] had no right to property, …, but local custom accorded them private garden lots, then woe to the master or overseer who summarily withdrew the 'privilege,'" which slaves identified as a right. Even for slaves, property meant rights.[35]

The numbers of free black property holders during the territorial development of the United States is difficult to determine. Census records list heads of household but do not enumerate the amount of property held by individuals. There are instances in some counties where tax records do list the amount of property held by free blacks; however

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[34] "An Act concerning slaves," William Littell, *The Statute law of Kentucky [microform] with notes, praelections, and observations on the public acts comprehending also, the laws of Virginia and acts of Parliament in force in this commonwealth the charter of Virginia, the federal and state constitutions, and so much of the king of England's proclamation in 1763 as relates to the titles to land in Kentucky together with a table of reference to the cases adjudicated in the Court of Appeals by William Littell* vol. 1 (hereafter cited as *Statute law of Kentucky*) (Frankfort, Kentucky: Printed by and for William Hunter, 1809-1819), 243, 344.

[35] Genovese, *Roll, Jordan, Roll*, 30-1.

those records were collected after statehood and the numbers are minuscule in relation to the numbers of white property holders.[36]

Historian Loren Schweninger's description of a domestic slave economy in his 1990 text *Black Property Owners in the South, 1790 – 1915* points out that during the late-eighteenth and early-nineteenth centuries some slaves, especially in places like Virginia, were "allowed to plant gardens of their own," and that this practice continued as slaveholders moved farther west into what would become Kentucky. The significance of this practice was twofold. First, slaves who were able to grow their own food relieved some of the financial burden of slaveholders who where normally responsible for feeding slaves. Second, these gardens were plots of land slaves indentified as their own, through customary rights, even if they could not own property legally. Ultimately, slave owners held a tremendous amount of control over the lives of their slaves who developed a small sense of autonomy based on the ownership of personal property which some maintained as free persons.[37]

The laws of Colonial Virginia and Kentucky even defined racial categories, presumably to more easily organize society and to prevent casual race-mixing between white and black residents. Commenced on January 1, 1787, "An ACT declaring what Persons shall be deemed Mulattoes" stated anyone whose grandfather or grandmother was of African descent, regardless of recent white ancestry, would be classified as mulatto, including residents who were a quarter black. The Missouri Territory adopted a similar description of biracial individuals in 1804. This decree also served to prevent

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[36] *Ibid.*, 68 - 69.

[37] *Ibid.*, 30 - 31.

residents with an ambiguous racial heritage from gaining entrance into the more privileged class.[38]

Statutory efforts to prevent early-free African Americans from participating in the electoral process were additional ways territorial and state legislators denied black residents claims to citizenship. The Kentucky Assembly passed a law in 1797 that denied free blacks, women, people under twenty-one, and anyone classified as mulatto the right to vote in elections for trustees. This law, although passed after Kentucky statehood, underscored the significance of color as it concerned citizenship. Furthermore, the 1797 law highlighted the importance of who would enforce the laws, which would be white males elected by other white males. Allowing people of African descent a voice in deciding how and by whom laws would be enforced would have empowered a marginalized group that the white majority feared and at times despised, yet needed in order to buttress claims of liberty and freedom. Historical scholar Winthrop Jordan argued that the African's physical distinctions from Europeans enabled Europeans to justify enslaving blacks. Americans carried this legacy of racial dissimilarity through the Revolution. Furthermore, white Americans categorized free African Americans with slaves as a second-rate group of people. Yet even the poorest white shared European heritage with the wealthiest planter.[39]

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[38] "An Act declaring what persons shall be deemed Mulattoes." *Statute Law of Kentucky*, vol. 1, 244; "An Law Entitled a Law Respecting Slaves," in *Laws of a Public and General Nature of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri and of the State of Missouri, up to the year 1824*, vol. 1. [hereafter cited as *Laws of Territorial Missouri*] (Jefferson City: W. Lusk and Son, 1842), 28.

[39] "An Act to amend and reduce into one the several acts regulating the town of Lexington, and for other purposes," *Statute Law of Kentucky*, vol 1, 573 – 74; Jordan, *White Over Black*, 252-53, 261.

In spite of legal restrictions aimed at controlling the lives of blacks from the late-eighteenth through the mid-nineteenth centuries, people of African descent challenged the very laws by petitioning local, state, and in rare instances, the federal government for what they believed where their entitled rights as citizens. Historian Ira Berlin argued that during the early republic, some state legislatures such as Maryland passed laws that made it more difficult for blacks to petition for their freedom. Berlin pointed out that the 1790s saw an increase in abolitionist societies in states such as Maryland and Virginia, and to counter this anti-slavery sentiment, Maryland passed a 1792 resolution that held supporters of freedom suits responsible for all of the defendant's expenses along with court costs; this resolution also prevented cases from being moved to more sympathetic counties. By 1795, the Virginia General Assembly followed Maryland's lead and adopted laws to eliminate anti-slavery sentiment. Berlin argued the lawmakers in Maryland and Virginia targeted abolitionist societies with their restrictive laws as evidenced by the resolutions passed. In addition, these laws led to the eventual dissolution of abolitionist societies in those states.[40]

However, black Americans, such as Nathaniel Allen of Maryland, a bonded servant, argued in 1794 that Richard Higgins illegally held him as a slave. Allen petitioned the Anne Arundel County court in September on the grounds that he was descended from an indentured white woman. Based on 1715 laws passed in colonial Maryland, which were still in effect, the state required all illegitimate children of free women of any racial classification to remain in a state of servitude until age thirty-one.

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[40] Berlin, *Slaves Without Masters*, 79, 81-2; *The Laws of Maryland: With the Charter, the Bill of Rights, The Constitution of the State, and its Alterations, The Declaration of Independence and The Constitution of the United States and its Amendments; with a General Index. In Three Volumes*, revised by Virgil Maxcy vol. 1 (Baltimore, MD: Philip H. Nicklin & Co., 1811), 185-86.

The court heard Allen's petition and he won the initial case. However, Higgins appealed and the state supreme court reversed the lower decision and ordered Allen to remain bonded until 1803 when he turned thirty-one.[41]

Although Allen did not win his freedom immediately, his argument for freedom in the years following Maryland's lawmakers' decision to make freedom suits more difficult is an example of an individual who used the justice system in an attempt to gain their freedom. The free-black population presented a legal obstacle for states: they were not property, and black males theoretically had the same rights and privileges as white males, yet nearly all states were careful to limit the liberties of this population.[42]

Another instance where racial classification and the justice system coincided was a 1798 Kentucky law regarding all illegitimate free black and multiracial children. This state law allowed churchwardens to bond out the male children until they were twenty-one years of age, and females until they reached eighteen years of age. The law appeared to remove any civic responsibilities of the local populace and to place that burden upon local churches, which was not uncommon. Furthermore, the law allowed churches to bond out the illegitimate children of free white women. Kentucky lawmakers afforded no such accommodations to those children of mixed race women. Nevertheless, legislators' attention to race highlighted legal and political efforts in the Commonwealth to protect the wealth of the slaveholders, while simultaneously severely limiting opportunities for people of African descent.[43]

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[41] "Nathaniel Allen Petition," September 1794 PAR 20979401 in Schweninger *Microfilm Petitions* Series II; Peter Wallenstein, *Tell the Court I Love my Wife: Race, Marriage, and Law – An American History* (New York, NY: Palgrave MacMillan, 2002), 24-5.

[42] *Ibid.*

[43] *Statute Law of Kentucky*, vol. 2, 7.

At the turn of the nineteenth century, in some parts of the south, population figures reflected the impact of slaveholders moving into the region. Moreover, the census numbers indicated a significant presence of free colonial African Americans, many of whom migrated from the Caribbean as refugees from the Haitian Revolution. The 1810 census counted 76,556 total citizens in the Louisiana territory, of which 7,585 were listed as free blacks and 34,660 were enslaved. Although the status of free blacks in Louisiana was that of second-class citizen, many historians agree that their status was better than free blacks living on the eastern coast of the United States. [44]

The territorial government in Louisiana approved a pauper law in 1807 that allowed indigent persons to escape forced servitude. Initially, this law did not mention race or gender as an exclusionary characteristic and enabled some black Americans to petition for their freedom. It was not until 1824, three years after Missouri entered the Union that the legislature passed an "Act to enable persons held in slavery to sue for their freedom." This measure allowed bonded men and women to petition the courts citing the 1807 pauper statute as the basis for their illegal captivity. When Missouri's territorial government was established in 1812, that territory had adopted similar laws as the Louisiana territory regarding free and enslaved African Americans. Under this statute, a person held in bondage could petition the court to sue "as a poor person." This act legally prevented the accused from removing the petitioner from the jurisdiction while the court examined the petition. However, the act stated the burden of proof was with the

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[44] U. S. Census Bureau, Population Division, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for the United States, Regions, Divisions, and States,* [hereinafter cited as *Historical Census Statistics*] Table 33. Louisiana - Race and Hispanic Origin: 1810 to 1990, http://www.census.gov/population/www/documentation/twps0056/tab33.pdf (accessed August 25, 2010); Berlin, *Slaves Without Masters*, 110; Franklin, *From Slavery to Freedom*, 89.

petitioner. The act was vaguely worded and, because of its ambiguity, lawyers applied the pauper law broadly in cases that involved enslaved black men and women.[45]

For example, the enslaved man William Tarlton of St. Louis filed a petition for his freedom in 1813 under the auspices of the pauper law. Tarlton, also known as Bill or Billy, stated he had been born free in Virginia, taken against his will to Kentucky, where he was sold to Jacob Horine and subsequently taken to the Missouri territory. Prior to the United States' acquisition of the Louisiana Territory in 1803, the region had been under French and Spanish imperial rule for nearly 125 years. As a consequence of being a colonial territory, the region was traditionally governed by laws of those two imperial powers: beginning with the French until 1763, then the area came under Spanish authority, who remained in control of the territory of Louisiana until 1800 when Napoleon reacquired the region. At the time of Tarlton's suit, Spanish and French statutes still influenced many of the laws of the territory.[46]

Tarlton claimed he was born free in Virginia and had been illegally enslaved and held by the defendant Horine for a "long time." Horine swore that he had purchased Tarlton in 1800 and that he had been enslaved since birth. The 1810 federal census listed Horine as a male head of household in Jefferson County, Kentucky. Although there were six people listed as being a part of his household, including three additional males and

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[45] "An Act to enable persons held in slavery, to sue for their freedom," June 27, 1807, Legislature of Louisiana, Freedom, Chapter 35, in *Laws of A Public and General Nature, of the District of Louisiana, of the Territory of Louisiana, of the Territory of Missouri, and of the State of Missouri up to the Year 1821* [hereinafter cited as *Territorial Laws of Louisiana and Missouri*] vol. 1 (Jefferson City, Missouri: W. Lusk & Son, 1842), 96; "An Act to enable persons held in slavery to sue for their freedom," January 27, 1835 in *Revised Statutes of Missouri*, 286. "An Act Providing for the Government for the territory of Missouri," June 4, 1812, Acts of Congress Organizing The Territorial Government, Chapter 4, *Territorial Laws of Louisiana and Missouri* vol. 1, 8 – 13.

[46] "Petition of William Tarlton," October 3, 1813, PAR 21181301 in Loren Schweninger, ed. *Microfilm Petitions* Series II.

two females, there were no slaves listed. It appeared that the inconsistencies over when and how Horine acquired Tarlton caused the court to question the legality of Billy's enslavement. Furthermore, Horine failed to produce a bill of sale proving he had legitimately made the purchase. [47]

The pauper law was no guarantee of liberation, but it did allow slaves access to the judicial system, which for many simply meant an opportunity to secure freedom. Furthermore, the law explicitly stated that the petitioner could "direct an action of assault and battery, and false imprisonment." Under such auspices, this meant that a successful petition and victory in court validated that territorial laws enabled enslaved men and women some civil liberties. Unfortunately, in the years leading up to the Civil War, as the numbers of free blacks in slave states increased, courts began to eliminate those liberties.[48]

Similar to the territorial organization of Kentucky, many of the initial statutes of the Missouri territory sought to protect the rights of white citizens, while at the same time seeking to control the fledgling free black population. The territorial legislature approval of an 1812 act containing a clause stating only free white males over the age of twenty-one who resided in the territory for more than a year since 1803 were eligible to serve as

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[47] Coincidentally, the 1810 federal census listed two individuals in Kentucky named Jacob Horine. One Horine resided in Jefferson County and the other in Jessamine County, yet neither listed any slaves as a part of his household. There appeared to be no census records during that same year for anyone with that name in Missouri or Virginia or any listing under the 1800 records. While it is possible that this was simply an oversight by the census taker or a form of miscommunication, it does appear odd that a slaveholder would deliberately withhold claiming his human property, since such an omission would lower his social status as a property holder. See, "Petition of William Tarlton," in *Series II, Petitions to Southern Legislatures*; Horine, Jacob, 1810 U.S. Census Kentucky, Jefferson, NO TWP Listed (Series: M252 Roll:7 Page 11) http://persi.heritagequestonline.com.proxy.dbrl.org/hqoweb/library/do/census/results/hitcounts?surname=Horine&givenname=Jacob&series=3&state=10 (accessed August 28, 2010)

[48]"An Act to enable persons held in slavery, to sue for their freedom, *Territorial Laws of Louisiana and Missouri*, 96.

jurors of the grand or petit courts effectively eliminated all non-white males from jury duty. One obvious consequence of this measure was that no person of African descent could judge the guilt or innocence of a white person. As historian Ira Berlin stated, "Often the laws, attitudes, and institutions which victimized Negro freemen during the slave years – political proscription, segregation, and various forms of debt peonage – became the dominant modes of racial oppression ensnaring all blacks after slavery." Fears of vengeance by blacks against white slaveholders played a role in the enactment of such measures; the irony of former slaves and their descendants administering justice against whites was not lost on those who drew up this statute. Regardless, white lawmakers in the territory did not view African Americans as peers of any white citizen.[49]

Some of the laws adopted by the Missouri territory were holdovers from Spanish and French rule. Some of these statutes allowed greater access to the court system for marginalized citizens such as women, free and even enslaved blacks, and poor people. The territorial laws of Missouri classified free people of African descent alongside slaves although free persons did have a small degree of freedom within a slave society. Under a section entitled "A Law entitled a law respecting Slaves," issued October 1, 1804, there were specific clauses that addressed rights of free blacks. The first clause stated that blacks could serve as witnesses only in cases where defendants were blacks or biracial. Similar to barring African American residents from serving on juries, this order appeared

[49] "An Act Providing for the government of the territory of Missouri," *Laws of Territorial Missouri,* 12; Ira Berlin, "The Structure of the Free Negro Caste in the Antebellum United States," *Journal of Social History* vol., no. 3 (Spring, 1976): 297, 306.

to prevent blacks from influencing a guilty verdict against white citizens. This law also limited black exposure to the legal system.[50]

In curtailing black legal exposure, this 1804 territorial statute denied blacks sovereignty by allowing general white citizens a great deal of authority over slaves. The law made no distinction between slaveholders and non-slaveholders, as it applied generally to all whites. Should any slave be found away from their master's land without written permission the slave was to be apprehended and taken to the justice of the peace and whipped. The motivations behind such laws seemed to ensure that white residents of the territory would police their communities in order to prevent slaves from moving about too freely. Furthermore, if a slave was found on another slaveholder's property without written permission that slaveholder could order that slave to receive ten lashes. While white non-slaveholders could serve as slave catchers, only slaveholders could order punishment. This presented an interesting distinction within the white population that clearly highlighted the significance of wealth and property.[51]

Various legal restrictions enacted in the Missouri Territory included slaves being prohibited from possessing arms and free blacks needing a special license from the justice of the peace to own a gun and only then if they lived on a "frontier plantation." All people of African descent who "lifted his or her hand in opposition to any person not being a negro or mulattoe [*sic*]" was subject to receiving lashes. Any black found to be

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[50] "An Law Entitled a Law Respecting Slaves," October 1, 1804, *Laws of Territorial Missouri*, vol. 1, 28.

[51] *Ibid.*

conspiring to rebel was subject to being put to death "without the benefit of clergy." This also the case with any black person found guilty of attempting to administer medicine.[52]

These Missouri regulations clearly underscored the fear of blacks held by legislators and by white residents in general. The law placed greater restrictions on blacks than whites. Free people of color had special circumstances, such as needing a license to own firearms, and even then, they had to reside in remote locations. Legislators sought to make absolutely sure that blacks and whites knew their places in society, as even the raising of a black person's hand against a white person meant severe punishment.

A curiosity about the 1804 statute of Missouri, which in 1810 was still a part of the Louisiana Territory, was the mention to the forfeiture of seeing a priest should a black person be found guilty of conspiracy inciting an insurrection or administering medicine. Obviously, white residents were terrified of widespread slave rebellions, since 45 percent of the population was enslaved in Louisiana by 1810. However, these laws also sought to strike fear in blacks who might have been Catholic. For those who were Catholic, the failure to confess sins or to receive last rites meant that one would have been barred from entering heaven, so serving an eternity in purgatory or worse.[53]

In Louisiana and Missouri, both of which had a significant Catholic influence prior to the United States' acquisition of the territory in 1803, the administering of last rites and other sacraments, such as baptism, demonstrated the importance of religious

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[52] *Ibid.*, 28, 30.

[53] *Historical Census Statistics,* Table 33. Louisiana - Race and Hispanic Origin: 1810 to 1990 http://www.census.gov/population/www/documentation/twps0056/tab33.pdf (accessed September 14, 2010).

rituals in society and perhaps became a method of controlling the actions of the black community. Some slaveholders sponsored baptisms for slaves from plantations. Furthermore, owners allowed slaves to receive sacraments from priests, yet masters sought to prevent any deeper informational exchange between slaves and priests, which some feared could lead to slaves questioning their master's authority. This also spoke to the lack of religious instructions by the Catholic Church in Louisiana during this time. Everyone in a slave society was expected to know his or her proper place.[54]

As blacks struggled for their rights and liberty during the antebellum period, people of all races found that policymakers sought more than social controls, such as the slaves' access to religion. Lawmakers also sought to control the economic well-being of blacks. What seemed to complicate this matter were the French and Spanish territorial property laws. Territorial leaders used ordinances to control the lives of free and enslaved blacks as well as lives of poorer whites. Furthermore, the laws regulating race relations in the territories, in places like Missouri and Texas, aimed to remove aspects of civil laws as common law took their place during the first half of the nineteenth century.

The October 1833 case *Hill & Thomas v. Wright* was a suit that made it to the Missouri State Supreme Court. It detailed land concessions made in the late eighteenth century by either French or Spanish territorial administrators, although the case itself is unclear which group made the grants. The Missouri Supreme Court recognized the legitimacy of these grants, which also included a tract held by a free biracial woman named Esther, and ruled that those given concessions under territorial law could not be

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[54] Albert J. Raboteau, *Slave Religion: The "Invisible Institution" in the Antebellum South* (Oxford: Oxford University Press, 1978), 113-14.

evicted from their land. This case held significance in that it took at least twenty years for common law to replace civil law, which still offered some measure of legal protection.[55]

The territory of Texas presented an interesting challenge as most white settlers from the United States came there while it was a part of Mexico and subject to the statutes of that nation. Laws rooted in Spanish civil law served to govern disputes over property, marriage, and slavery; these were sometimes vastly different from those to which Americans from Kentucky or Missouri were accustomed.[56]

The struggle for the rights of citizens and a place in society in Texas had been occurring throughout that state's history. Historian Angela Boswell argues that while Texas was still a Mexican territory, it was even more possible for people of African descent to elevate their status in that region, because of its social and political differences from Anglo-British rule. This drew many runaways from the South to Texas prior to the 1830s. However, as white southerners migrated, they sought to recreate a plantation society with cotton as a staple crop, and slaves were the best available source of labor. Boswell contended that after Texas independence in 1836, authorities quickly passed laws prohibiting free blacks of other states from seeking residence in Texas. Yet, between 1836 and 1860, African Americans still petitioned Texas courts in order to remain in the state.[57]

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[55] *Hill & Thomas v. Wright,* Oct. 1833, Louis Houck, ed. and ann. *Reports of Cases Argued and Determined in the Supreme Court of The State of Missouri, from 1829 to 1835*, vol 3 (St. Louis, MO: The Gilbert Book Company), 134.

[56]Morris, *Southern Slavery,* 6-8.

[57] Angela Boswell, "Black Women during Slavery to 1865" in Bruce A. Glasrud and Merline Pitre, eds. *Black Women in Texas History* (College Station, TX: Texas A&M University Press, 2008), 14-15.

The legislature of the Republic of Texas quickly ensured that it would guard the lands in the new republic from an influx of blacks with a statute passed in January of 1836. A recommendation from a committee for the safety of Beaumont had recommended that any "importation or emigration" of free blacks be prohibited by law. While the law specifically addressed the fears of slave insurrection orchestrated by free people of color, the reference to non-bondsmen as "vagabond free negroes" who were outside white society was of particular interest. It is possible that the committee and perhaps most Texan slaveholders viewed free blacks as unsettled, worthless, even nomadic and by default incapable of being citizens of the Republic. By instituting such a statute, unclaimed lands and any future property to be sold by large plantation holders were safely preserved for future white owners.[58]

The restrictive laws in Texas were on par with the laws of other slave states. Examples of such laws included statutes preventing interracial marriages, strict laws against the emancipation of enslaved persons and the 1840 law barring free people of color from entering the state. Moreover, laws of Texas included an added financial burden on people of African descent. The 1840 motion to dismiss the case of *Mary Harvey et al. v. Jno.*[sic] *T. Patterson et al.*, in which all the appellants were black and unable to pay the court fees, speaks to this burden. In addition, based on the state constitution, blacks were unable to take the oath in order to testify against white residents. According to the court transcripts, had Harvey and the other plaintiffs been able to take the oath and testify against white citizens then "they would not have thereby

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[58] Laws of Texas, 1822 – 1897 compiled and arranged by Hans Peter Mareus Neilsen Gammel, with introduction by Cadwell Walton Raines vol. 1 (Austin, Texas; Gammel Book Company 1898: Second Work Austin, Texas; Von Boeckmann-Jones Co. 1906: Clark, New Jersey: The Lawbook Exchange Ltd. 2004), 172 – 73.

been exempted from giving the bond and security required by law in the cases of appeals." While Harvey was able to file the initial case, any appeals to the Texas Supreme Court would be at the plaintiffs' expense, which created extra undue financial burdens on African Americans who sought to utilize the justice system in that state. [59]

The territorial laws and The Constitution of the Republic of Texas were used to restrict any liberties by black Texans. It was the opinion of the Texas Supreme Court in 1840 to dismiss *Harvey v. Patterson*, based on the 20th section of the act organizing the district courts, which stated that appeals to the Texas Supreme Court could not be extended to those without bond or security. Unfortunately, in addition to laws racially subjugating black Texans, African Americans in the republic were some of the poorest members of society.[60]

The legality of marriage between whites and blacks was also a concern that played out in the judicial system. In many states, including Missouri and Texas, interracial marriages were deemed illegal by state legislatures. However, there were some cases in which plaintiffs relied upon territorial laws to remain together with their spouses. In Texas in 1871, the children of a multiracial woman named Sobrina claimed their mother was the wife of John C. Clark, a white slaveholder, who had died in 1862. Sobrina's children, Bishop, Lorinda, and Nancy, sought to lay claim to an estate left by Clark valued at a half a million dollars, in which they thought they were legally entitled. The problem was that Texas law did not recognize marriages between slaves, nor did it

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[59] *Mary Harvey et al. v. Patterson, January 1840* "Opinions of The Supreme Court of Texas, From 1840 to 1844 Inconclusive. James Wilmer Dallam. 1844 (St. Louis, MO: The Gilbert Book Company, 1883), 370.

[60] *Ibid.*

recognize marriages between blacks and whites. As such, the law did not view Sobrina's children as legal heirs to Clark's estate after their mother died in 1869.[61]

The appeals case of *Honey, Treasurer v. Clark et al.,* (1872) set forth the argument that John and Sobrina came to Texas prior to its independence and the creation of the Republic of Texas and had remained there together until Clark's death. Both black and white witnesses disputed the legitimacy of their marriage and the courts did not view the marriage as legal. Because the law did not recognize the marriage, neither the Republic nor the state of Texas considered their children legitimate heirs and the court affirmed this notion. Not only does this particular case demonstrate the willingness of some individuals to utilize the courts to secure and maintain their civil rights, but also indicated the legacy of the territorial statutes pertaining to slavery; and unfortunately, also exposes the inability slaves possessed to negotiate contracts, such as marriage or even common law marriage.[62]

The legacy of discriminatory laws instituted during the territorial and early statehood of slave states that sought to preserve lands for white citizens remained long after the Civil War. One case, *St. Louis Public Schools v. Schoenthaler's Heirs* in 1867, brought up the legitimacy of property ownership by free blacks during the first decade of the nineteenth century. The case was a land dispute over the legitimate ownership of a plot of land and the desires of the city to acquire that property. Court records gave the impression that the family of a former slave, Charles Leveille, had abandoned the land. However, Leveille's former slave master, Louis Robert, had conceded the land to

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[61] *Honey, Treasurer v. Clark et al*., 37 Tex. 686, 1872-3

[62] Catterall, *Judicial Cases Concerning American Slavery and the Negro*. vol 5, 268, 269; *Honey, Treasurer v. Clark et al.*, 37 Tex. 686, 1872-3.

Leveille and his wife in 1803. After Leveille's death in 1810, his widow remained on the property until her death in 1826. In the meantime, she sold part of the lot, which subsequently came into the hands of Gottfried Schoenthaler; at the time of the case, that section of the lot was in the possession of his children. The outcome of this case affirmed that Leveille had acquired the property legally. Although this case was successful, it took place after the Civil War, and shows that states such as Missouri continued to question whether blacks legitimately acquired land in the early-nineteenth century.[63]

As territories were established, they instituted statutes that regulated the lives of residents. Although there were free blacks, many of the people in places such as Kentucky, Missouri, and Texas were enslaved men and women. The laws created in those territories regulating the lives of all African Americans were based on English, Spanish, and French legal traditions. In some situations, such as marriage and property rights, those statutes that followed the civil traditions granted blacks more liberties than common laws. Furthermore, as states developed a court system and laws with the purpose of protecting property holders and settlers, that system and laws also sought to preserve unclaimed lands for future white migrants to the frontier.

The long-term impact of laws adopted in the territorial phases was present even after the end of the Civil War. Because the law did not recognize slaves' marriages, the law did not recognize their children as legitimate heirs. This was the ruling in the unfortunate case involving Bishop Clark and his siblings in their 1872 Texas suit to claim his father's estate.

[63] *St. Louis Public Schools v. Schoenthaler's Heirs, 40 Mo. 372, March 1867* vol. 5. 222.

Kentucky, Missouri, and Texas all carried over laws pertaining to blacks as state governments were developed. Furthermore, as the number of African Americans grew in each region, the restrictions on the lives of blacks tightened. This was never truer than after violent insurrections or conspiracies by slaves, such as Gabriel Prosser's or Nat Turner's Rebellions. Even though those rebellions occurred in Virginia, they stirred deep fears among whites, and especially slaveholding whites, throughout the nation. The result of those fears was seen in more stringent laws regarding manumissions and even in laws preventing free blacks from residing in some states.

Chapter Three

Freedom and the Court

In 1854 the last will and testimony of Benson Coleman, a free black man in Kentucky, listed Caroline Coleman and her two children, Orlando and Benson, among his personal property. According to the will, Coleman planned to emancipate all four individuals upon his death. The will does not provide details about how Coleman came to own slaves. However, under Article 1, "Slaves, Runaways, Free Negroes, and Emancipation", of the 1852 *Revised Statutes of Kentucky* free blacks could purchase spouses, children, and parents as slaves. Presumably, Caroline was Benson's wife (partner—since slaves were not legally married) and the two children were his sons. Coleman's relationship to Spears is undefined, although Spears may have been a close relative.[1]

Regardless of how or why Coleman came to own slaves, the 1852 statute governing emancipations required Coleman's estate to post a bond covering the cost of freeing Caroline and her children. His estate issued a bond payment of five hundred dollars to the Commonwealth for those costs; yet this was not a guarantee that Caroline and her children would remain free from bondage. The terms of Coleman's bequest became void should Caroline and her children become dependents of a county or the state.[2]

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[1] *Benson Coleman Manumission September 4, 1854*, Kentucky Historical Society - Digital Collections (hereafter cited as KHS-DC), http://kydgi.ky.gov:2005/u?/MS,410 (accessed June 27, 2011).

[2] *Benson Coleman Manumission* KHS -DC; Wickliffe, *Revised Statutes of Kentucky*, 628-29.

The manumission of Coleman's slaves also came at a politically heightened time in United States history, as the debates over slavery and westward expansion turned into violence in Kansas. Policymakers in Kentucky, Missouri, and Texas were making it more difficult to manumit slaves as fears of abolitionists and free-soil advocated insurrections escalated in slave states. Moreover, state legislators sought to prevent freed persons from becoming financial burdens to local governments. Coleman's emancipation demonstrated the particularly fragile claims to rights by enslaved women and children and the desire of Coleman to prevent his presumable family from falling into a dependent status after his death or becoming the property of another who might treat them harshly. As historian Ira Berlin explained, "They [free blacks] could see how their status might degenerate, and they knew that whites needed only the flimsiest excuse to take their liberty.

This chapter examines the efforts of enslaved men, women, and children who used the court system and various legal methods, such as wills, to remove themselves and others from slavery between 1800 and 1857, when the U. S. Supreme Court handed down the ruling in *Dred Scott v. Sandford* (1857). Numerous sources, including petitions, lawsuits, and wills serve as evidence of the ways in which antebellum black Americans fought for their freedom at a time when southern lawmakers designed regulations that made freedom for many a more difficult achievement. Historians have noted that black Americans prior to the *Scott* case filed hundreds of petitions for freedom either on behalf of others or for themselves. Interwoven into the context of this discussion are the policy changes regarding black Americans. Many of the strategies instituted by state legislators were responses to ongoing national social, economic, and political changes such as

religious revivals, reform movements, migratory shifts, population expansions, technological changes, and federal policies as various means to preserve southern society during the first half of the nineteenth century. Regardless of the legal changes implemented by state authorities, African Americans continued to fight to be free from bondage. Many times they relied upon colonial and territorial statutes, the status of a parent, ancestral heritage, or federal ordinances to buttress their arguments. Certainly many individual actions by enslaved blacks depended on the efforts of sympathetic whites who helped them navigate through the sometimes convoluted legal system. This study recognizes that those men, women, and children of African descent were indeed at the center of the endeavors of southern black Americans to be free from slavery.[3]

The changes in the American social, economic, and political climates that took place during the first half of the nineteenth century afforded more individuals the liberties that stemmed from independence from England. These included the establishment of various church denominations and the thought of even greater liberties for previously marginalized groups, such as African Americans. Scholars have argued that the rise of Evangelical Christianity coincided with the rise of popular democracy in America, although there are disagreements as to when this trend started and its effectiveness.[4]

Historians Nathan Hatch and Christine Heyrman contended that the Baptist Churches and Methodism exerted an influence upon the general population as hundreds

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[3] Foley, "Slave Freedom Suits Before Dred Scott," 1; Schweninger, *Black Property Owners*, 247-258; Franklin, *From Slavery to Freedom*, 159; Horton and Horton, *Hard Road to Freedom*, 97, 103; Joyce Appleby, *Inheriting the Revolution: The First Generation of Americans* (Cambridge: Belknap Press of Harvard University Press, 2000), 243-45.

[4] Nathan O. Hatch's *The Democratization of American Christianity* (New Haven, CT: Yale University Press, 1989), 3-4; Christine Leigh Heyrman, *Southern Cross: the Beginnings of the Bible Belt* (Chapel Hill: University of North Carolina Press, 1997), 4, 26, 67-8.

of thousands of white and black Americans converted. However, Hatch argued this trend in conversions started just as the American Revolution began, while Heyrman suggested the evangelical influence really commenced around 1810. Moreover, Heyrman argued that in order for evangelical Christianity to permeate into the South during the first thirty years of the nineteenth century, southerners, who viewed evangelicals as threats to authority, forced ministers to reconcile their problems with slavery and accept the nature of the southern social order.[5]

Although scores of free and enslaved southern blacks converted to those denominations, the Baptist and Methodist churches reinforced southern notions of white racial superiority. This led to the rise of southern black churches as a form of protest for the poor treatment of blacks. One such instance Heyrman examined occurred in 1820 when a Baptist minister in Tennessee requested that blacks leave their seats to make room for whites. Many black members left the church in protest, and sought to form their own congregations. Due to white fears of slave rebellions, which were ostensibly planned by congregations, authorities constructed laws during the 1820s and 1830s, including the January 28, 1830 "Act to amend the law concerning slaves and for other purposes" by Kentuckians, that allowed authorities to police the meetings of free and enslaved black persons or to prevent the assembly of blacks without white supervision. Southern leaders seeking to relegate African Americans to second-class status first tried to dictate where they could worship. When blacks resisted their treatment and left churches to form their own congregations, lawmakers responded by issuing measures that enabled whites to closely monitor the actions of African Americans. Conversely, many blacks continued to

[5] *Ibid.*

resist their treatment under the law. The most overt methods of resistance by enslaved persons were to petition the courts for freedom and to file a freedom suit.[6]

The significance of *Scott v. Sandford* in scope and outcome regarding African Americans of the nineteenth century and judicial history is unquestioned. This was not necessarily due to Scott losing the case for his freedom; many southern blacks trying to escape slavery had lower courts deny freedom. The Scott case holds its place in history primarily because the trial reached the highest court in the land and because the resulting opinion of Chief Justice Roger Taney, who declared the Northwest Ordinance of 1787 and the 1820 Missouri Compromise unconstitutional, that black Americans had no rights that whites were obligated to respect and that the founders of America never intended that blacks be citizens, has served as a watershed moment in African American legal history.[7]

However, Scott and his wife Harriet were by no means unique in their filing of a suit for their freedom. People of African descent had long used courts to secure and maintain their freedom by filing suits and using personal manumission documents such as wills in the territories and states of Kentucky, Missouri, and Texas, some as early as the 1790s, which this study will examine. Some of these won their freedom. Moreover, astute attorneys and plaintiffs in the above-mentioned states relied upon territorial statutes such as the eighteenth-century Spanish laws that dealt with slavery; the 1780

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[6] Hatch, *Democratization of American Christianity*, 3-4; Heyrman, *Southern Cross*, 4, 26, 67-8; "An Act to amend the law concerning slaves, and for other purposes" in *Acts Passed at the First Session of The Thirty-Eight General Assembly for the Commonwealth of Kentucky Begun and Held in the Town of Frankfort, on Monday the Seventh Day of December, in the Year of Our Lord One Thousand Eight Hundred and Twenty-Nine and of the Commonwealth the Thirty-Eight* [hereafter *Acts of Kentucky*] (Frankfort: J.G. Dana and A. G. Hodges, 1830), 173.

[7] Paul Finkelman, *Dred Scott v. Sandford: A Brief History with Documents* (1997), 2; Sanford Levinson, "Slavery in the Canon of Constitutional Law," in *Slavery and the Law* ed. Paul Finkelman (Madison: Madison House, 1997), 90-91, 103; Mark Graber, *Dred Scott and the Problem of Constitutional Evil* (Cambridge: Cambridge University Press, 2006), 1-2. Lea VanderVelde and Sandhya Subramanian, "Mrs Dred Scott," in *The Yale Law Journal*; Jan 1997; 106, 4; ABI/INFORM Global pg. 1033.

statute in Pennsylvania that began the gradual emancipation of slavery in that state; the Ordinance of 1787; the 1824 Constitution of Mexico, the territorial laws of Coahuila and Tejas; loopholes in state and federal laws, and legal precedents as the basis of their claims for freedom and to legitimize their rights as citizens. The reliance upon these colonial and territorial laws came to the dismay of southern lawmakers who were seeking to maintain southern civil order while simultaneously protecting southern white rights. Before examining some of the petitions and suits filed by southern blacks, it is important to discuss some state judicial matters involving slavery. These concerns included some northern states and became significant when enslaved persons referred to specific northern state laws regarding slavery when arguing for their freedom.[8]

In the years after the Revolution, northern states found slavery difficult to digest. Many northern slaveholders did not consider the institution socially, economically, and politically viable. Some revolutionary slaveholders in the newly formed northern states fully accepted widespread emancipation as this action further legitimized their beliefs that the rebellion was necessary to secure liberty. In some places in the United States, such as Pennsylvania, the revolutionary fervor led to the belief that slavery was inconsistent with the ideas of liberty and freedom. In 1790, Benjamin Franklin, serving as president of the Pennsylvania Society for Promoting the Abolition of Slavery, petitioned Congress and wrote:

> From a persuasion that equal liberty was originally the portion, and is still the birthright of all men, and influenced by the strong ties of humanity and

[8] Peabody, "Spanish Slave Codes in the Americas, 1784-1789," in *Slavery, Freedom, and the Law*, 106-111; Foley, "Slave Freedom Suits Before Dred Scott," 3; "An Act for the gradual abolition of slavery," in *Laws of the Commonwealth of Pennsylvania: from the Fourteenth Day of October, One Thousand Seven Hundred, to the Sixth Day of April, One Thousand Eight Hundred and Two* vol. 2 (Philadelphia: M. Carey and J. Bioren, 1803), 246-47; Gammel, "Laws, Orders and Contracts for Austin's Colony," in *Laws of Texas, 1822-1897*, vol. 1, 30.

> the principles of their institution, your memorialists conceive themselves bound to use all justifiable endeavors to loosen the bonds of slavery and promote a general enjoyment of the blessings of freedom.[9]

While leaders of the Pennsylvanian anti-slavery society objected to the continuation of slavery in the United States, enslaved blacks persisted in their legal struggles against the bondage, which the U.S. Constitution protected under the form of a fugitive slave clause.[10] However, southern states, including Kentucky, Missouri, and Texas, enacted laws barring freed blacks from remaining in the state beyond a specific time once emancipated. Moreover, in the wake of social and political changes during the first half of the century, all three made emancipation much more difficult. Regardless, southern black Americans continued to pursue freedom from slavery as the laws regarding freedom and citizenship tightened.[11]

The importance of state and local cases in Kentucky, Missouri, and Texas, most of which were filed before *Scott v Sandford*, speak to the perseverance and ingenuity of both claimants and their attorneys. So does the fact that several people were successful in their petitions. Yet, the hundreds of men, women and children who filed these cases, like *Winny, a free woman of color v. Phebe Whiteside, alias Pruitt* (1821), those involved in

[9] "Petition from the Pennsylvania Society for the promoting the abolition of slavery to United States Congress," February 3, 1790, in *The New American State Papers, 1789 – 1860.* ed. Thomas C. Cochran (Wilmington, Delaware: Scholarly Resource, Inc., 1973), 12-13.

[10] U. S. Constitution, art. 4, sec 2, cl. 3.

[11] All three state Constitutions addressed the topic of slavery, declaring that state assemblies could not interfere with the institution. Moreover, by 1850 all three passed restrictive laws on the emigration of free blacks into their boundaries. For more on the Kentucky, Missouri, and Texas state constitutions relating to slavery, see A Constitution or form of Government for the State of Kentucky, 1792 art. 9 sec. 1; Constitution of Missouri, 1820 art. 3 sec 26; and Constitution of the Republic of Texas, 1836 General Provisions sec. 9 – 10.

the case of *Robbins' Administrator v. Walters* (1847) and in the emancipation of Caroline Coleman have been largely overlooked due to the magnitude of the *Scott* case.[12]

Although some enslaved black women, like Winny and Caroline, relied upon promises of manumissions by masters or on legal documents such as wills granting freedom to them and to their children, they also utilized colonial and territorial laws to assist them. This was especially true in cases in Kentucky, in which authorities not surprisingly created territorial laws and statutes that the Commonwealth had inherited from Virginia from the late eighteenth century. During the 1790s, lawmakers in Kentucky wrote two constitutions, one in 1792 and the other in 1799, both of which outlined the rights of its citizens and slaves. Missouri's territorial laws regarding slaves were heavily influenced by the region's French and Spanish heritage, and Texas had the unique legal history of Spanish roots and even being part of the territory of the Spanish colony Mexico after that nation gained independence in 1821. The territorial ordinances in Missouri and Texas offered some enslaved black Americans opportunity to escape bondage based on their heritages. Furthermore, some African Americans caught in slavery in Texas argued they or their parents had come to slavery while the state was under Mexican authority. Regardless, people of African descent relied upon various laws to resist bondage and some of the earliest efforts occurred in Kentucky shortly after statehood.[13]

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[12] *Winny, a free woman of color v. Phebe Whiteside, alias Pruitt* April 1821 case 190 Circuit Court Case Files Office of Circuit Clerk – St. Louis MSA – St. Louis Office of the Secretary of State, http://stlcourtrecords.wustl.edu (accessed July 3, 2011); *Elisha Clapp, Administrator of Nathaniel Robbins, Deceased, v. Hannah Walters*, 2, Tex. 130, December 1847; *Benson Coleman Manumission* (1854).

[13] *A Constitution or form of Government for the State of Kentucky*, 1792 art. 9 sec. 1 KHS – DC http://205.204.134.47:2005/u?/MS,134, 13 (last accessed 7/3/2011); *A Constitution or form of Government for the State of Kentucky*, 1799, art. 7, sec. 1, KHS-DC, http://205.204.134.47:2005/u?/MS,619 (accessed

Freedom for Caroline Coleman and her children came by way of will. However, many others found that freedom involved the use of courts, which required slaves to file petitions for freedom, and some of the earliest instances occurred in Kentucky while the Commonwealth was still a Virginia county and just shortly after statehood. Because settlers had already brought their slaves into the region before the United States had admitted Kentucky, authorities in Kentucky who penned the first Kentucky Constitution, adopted in 1792, specifically sought to protect slave property from overzealous legislators and enable migrants into the state the ability to bring their chattel property with them. Article 9, section 1 stated:

> The Legislature shall have no power to pass laws for the emancipation of slaves without the consent of their owners, or without paying their owners previous to such emancipation a full equivalent in money for the slaves so emancipated …. They shall have no power to prevent emigrants to this state from bringing with them such persons as are deemed slaves by the laws of any one of the United States, so long as any person of the same age or description shall be continued in slavery by the laws of this state.[14]

While settlers had been bringing slaves into Kentucky for decades, the first constitution of the Commonwealth also supported the westward expansion ideas of slaveholders and followed the federal ordinance of 1790, which organized the territory south of the Ohio River as permitting slavery. In writing the first of two state constitutions in the 1790s, Kentucky legislators seemed particularly anxious about allowing slaveholders to maintain their chattel property. The territory of Kentucky extended from Virginia to the Mississippi River and would border future free states and due to the Commonwealth's proximity to free territories, legislators imagined a greater threat to the liberties of white

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July 3, 2011); *Constitution of Missouri*, 1820 art. 3 sec 26; *Constitution of the Republic of Texas*, 1836 General Provisions sec. 9 – 10.

[14] *A Constitution or Form of Government for the State of Kentucky*, 1792. KHS – DC http://205.204.134.47:2005/u?/MS,134, 13 (accessed July 3, 2011).

property holders. By the 1790s, political leaders of Kentucky had written laws that strengthened the rights of white males, and by default, severely limited opportunities for slaves to sue for their freedom, including an act passed in 1794 called "an Act for granting relief to certain Persons migrating into this State," which stated that masters who freed their slaves would be responsible for paying a bond to the county. Such a bond would add to slaveholders' financial burdens and so prevented masters with fewer slaves from freeing them.[15]

In spite of the early legal barriers facing people of African heritage, many still attempted to use the justice system to acquire freedom. One of the early cases that made it to the Kentucky Court of Appeals centered on both Kentucky and Virginia statutes and the exchange of property between slaveholders. The case of *Beall v. Joseph (a negro)* (1806) highlighted an effort to obtain freedom by an enslaved man who, according to testimony and corroborating witnesses, had been promised his freedom by two different masters.[16]

According to court transcripts, Joseph had indeed been born into bondage and held by a man known only as Woods. In 1799, his original master sold a tract of land and other property to another individual identified only as Edwards. Moreover, Woods "agreed to let Edwards have Joseph for a period of four years and after that time, Joe was to be free." Although it is not clear from the transcripts if Joseph and Woods had worked out a manumission agreement prior to the negotiations with Edwards, or if this was a

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[15] No 53 "Ordinance of 1787, July 13, 1787" in *Document Source Book of American History, 1606 – 1913* (hereafter cited as *Source Book*) ed. William McDonald (New York: The Macmillan Company, 1916), 209; Ordinance of 1790, May 26, 1790 *An Act for the Government of the Territory of the United States south of the river Ohio*; "An Act for granting relief to certain Persons migrating into this State," November 1794, *Statutes of Kentucky*, vol. 1, 246-47.

[16] *Beall v. Joseph (a Negro)*, Hardin 51, May 1806, 56-7.

stipulation of the land transaction, there were witnesses who supported the claim that Joseph was to be freed at the end of his four years of service to Edwards. Unfortunately for Joseph, some time before the end of his four years of service Edwards sold him to Beall who either disregarded or was unaware of any agreement of manumission by Woods or Edwards. At the end of his time, Joseph filed a suit accusing Beall of "false imprisonment," which assumed that Joseph was a freeman and entitled to the rights and privileges that accompanied free citizens of the Commonwealth.[17]

What this case illustrated was that although he was held in slavery, Joseph was aware of the agreement between his original master, Woods, and Edwards at the time of the land transaction in 1799. Legal verbiage used by Joseph's attorney accused Beall of "false imprisonment," indicating that Joseph believed that he was a freeman and entitled to certain rights and privileges that were not granted to enslaved people. One such right was the right to seek restitution in a court of law. Initially the circuit court ruled in Joseph's favor that he was indeed free. Despite there being no will or other legal manumission document, the Mason County court relied upon the witnesses' accounts that supported Joseph's claims that Woods and Edwards had an agreement between them that they would emancipate Joseph after a period of four years. Based on this testimony, that court awarded Joseph his freedom. But this would not be the end of Joseph's struggle.[18]

The Kentucky Court of Appeals reversed the circuit court's decision, stating that a legal document was necessary for masters to free their slaves in Kentucky, and that no law in that state or in Virginia stated otherwise. The absence of a legal document, such

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[17] *Ibid.,* 56-7.

[18] *Ibid.,* 56.

as a will, prevented Joseph from obtaining his freedom. The judgment in this case cited Virginia law as precedent in withholding freedom from Joseph. In this instance, the law of another state worked against a person held in bondage. Another trial with a similar result also relied on the laws of other states to prevent slaves from gaining freedom. The case of *Hazelrigs v. Amos, Jane et als.* (1809), which went to the Kentucky Court of Appeals, offered a legal twist involving disputed territory between states.[19]

In late 1780, the appellant Hazlerigs left Virginia intending to resettle in Kentucky with his family and slaves (the case only named two, Amos and Jane). However, due to an impassable Ohio River and hostile Native Americans he and his family eventually settled in a region claimed by both Virginia and Pennsylvania, which neither state legislature had been able to resolve. Court transcripts' description of the area stated, "officers of both States exercised jurisdiction therein, and that great public commotion was produced and existed among the people."[20]

The opinion of the case delivered by Judge John Boyle paid special attention to the territorial conflict between the two states. In the original circuit trial, the jury's ruling centered on location and the amount of time Hazlerigs remained in the area, which was from 1781 to 1783. Virginia and Pennsylvania finally resolved the matter in 1784, and the territory officially became a part of Pennsylvania. However, because the territory had been in dispute and there was no way for an inhabitant to know which commonwealth was responsible for the region, a citizen "was bound to render obedience to the laws of the government whose citizen he was … that he should have the benefit of the protection

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[19] *Hazlerigs v. Amos, Jane et als.*, 1 George M. Bibb. 425, (1809).

[20] *Ibid.*, 426.

of those laws which he was bound to obey." With this as the basis of the court's opinion, the judgment was reversed and the appellees were denied their freedom; in the process, the court disregarded Hazlerig's extraordinary amount of time spent in the disputed region.[21]

The original argument given by the enslaved men and women demonstrated another creative legal measure used by those seeking freedom and their attorneys. Their position was that, because they had spent two years in a disputed territory that was eventually afforded to the free state of Pennsylvania, Hazlerigs illegally held them against their will and they were entitled to their freedom. Moreover, the opinion in the case pointed even more to the importance of freedom for some black people held in slavery. Boyle stated that because Hazlerigs was a citizen of Virginia "he was bound to obey the laws of Virginia, and, in his turn, was entitled to the benefit of their protection." More importantly, the court protected the right of Hazlerigs to keep his property. The enslaved African Americans at the center of *Hazlerigs v. Amos, Jane et al.* lost; however, their case appeared to be the first in Kentucky where slaves and their attorneys used the laws of another state as a claim to freedom. Subsequently, residence in a free state or territory as a legal argument would serve as the basis for numerous freedom suits, including the *Scott* case in 1857.[22]

Another case involving an enslaved person claiming residence in a free territory, this time in Missouri, took place shortly before statehood in 1818. Winny, a black woman claiming to be free, filed a suit for her independence, and her case eventually

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[21]*Ibid.,* 427.

[22]*Ibid.,* 427.

made its way to the Missouri State Supreme Court. The argument in *Winny, a free woman of color v. Phebe Whiteside, alias Pruitt* (1821) relied on two laws: the first was an 1807 pauper law and the second claimed that her master held her in bondage in Indiana and Illinois, states organized from the Old Northwest Territory. The plaintiff's attorney, Archibald Gamble, also included the charges of trespass and false imprisonment in the case. The 1807 Louisiana Territorial statute declared it "lawful for any person held in slavery to petition the general court or any court of common pleas" to sue for his or her freedom. Repealed in 1825, this pauper law was the basis for many freedom suits filed by African American men and women or on the behalf of children during the first years after statehood in Missouri. Winny sought justice and she petitioned the courts to obtain it. For her and others like her, she viewed the court as a legitimate means for her and her children to escape bondage. Territorial laws provided Winny with a way to change her status from enslaved to emancipated, which conveyed legally recognized rights. Because she had lived in a free state, she assumed she was entitled to rights as a citizen and that the defendant, Phebe Whiteside, denied her and her children those rights. Winny's attorneys cited the Ordinance of 1787 that outlawed slavery in the Old Northwest. The fact that she had resided temporarily in the Northwest Territory became a key point in her case, which highlighted the subject of federal laws dictating property rights for individuals.[23]

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[23] *Laws of the Territory of Louisiana, 1805 - 1812: passed by the Governor and Judges Assembled in the Legislature, in the Month of October, 1810* (St. Louis, Joseph Charles, 1810), 96 – 7; *Winny, a free woman of color v. Phebe Whiteside, alias Pruitt* April 1821 case 190 Circuit Court Case Files Office of Circuit Clerk – St. Louis Missouri State Archives – St. Louis Office of the Secretary of State, http://stlcourtrecords.wustl.edu (accessed July 3, 2011); *Winny (a free woman held in slavery) v. Whiteside,* 1 Mo. 472, November 1824, 474.

Winny's case is significant because in citing the federal ordinances her case set a precedent by which slaves in Missouri could escape bondage. Winny alleged that Whiteside, along with her first husband, John, came to St. Louis in the mid-1790s bringing Winny with them after having stayed in Indiana and Illinois for several years. It was during that time in which Winny had ten children and according to the slave laws of Missouri, her children followed her status as slaves.[24]

To strengthen her case, Winny's attorney called the defendant's reputation and character into question. The testimony of one Thomas R. Musick claimed that around 1810 Phebe remarried one Fields Pruitt and that Phebe and Pruitt had "conveyed all their interests in the said Winnie [*sic*] to the children of the said Phebe." Musick's sworn testimony perhaps is even further damaging to Phebe when he later contended that she and Pruitt separated and that she quit her job as a housekeeper, "and has ever since that time lived among her children from house to house without ever claiming any interest in the said Winnie [*sic*]." One point of Musick's testimony seemed to demonstrate to the jury that Mrs. Pruitt was irresponsible and of poor character. Furthermore, as historian Dennis Bowman argued, the case determined that slavery and freedom were not fluid and that by returning to Missouri, slavery "did not reattach itself to her." [25]

One of the most unique freedom suits took place more than twenty years before Dred Scott filed his lawsuit. In 1825, the children of an enslaved woman, Marie Jean Scypion, who died in 1802 while struggling for her freedom in the courts, relied on colonial statutes in tracing her claims for freedom back two generations. The case was

[24] *Winny, v. Whiteside* 1821

[25] *Winny, v. Whiteside* 1821; Dennis K. Boman, *Lincoln's Resolute Unionist: Hamilton Gamble, Dred Scott Dissenter and Missouri's Civil War Governor* (Baton Rouge: Louisiana University Press, 2006), 69.

the culmination of twenty years of legal struggle and ultimately led to freedom. Scypion's daughter, Marguerite, filed a court petition in 1825, which led to the suit, *Marguerite, a free woman of color, v. Pierre Chouteau Sr.* (1825), and argued that her grandmother, Marie, was Native American. During Marie Jean's life, Missouri was a Spanish territory, and in 1769, the governor declared Native American slavery illegal. Moreover, following the 1807 pauper statute, Marguerite filed her petition as an illegally enslaved poor person. Marguerite's claim of Native American ancestry went even further in her claims for freedom and spoke directly to the multicultural legal heritage of the region. Her petition contended that she was entitled to her rights based on her heritage, in addition to her economic status. Furthermore, Marguerite's suit was actually one of a series of freedom suits filed in 1805 by the children of Marie Jean Scypion against members of the Tayon (Taillon) and Chouteau families; these freedom suits claimed that Marie was of Afro-Indian descent and therefore illegally enslaved. Marguerite lost her case at the circuit level; however, she appealed and won a temporary victory. [26]

Marguerite's case underscored not only the premise that southern state legislatures and lower court judges sought to protect the rights of slaveholders, such as Joseph Tayon and Pierre Chouteau, but also that it was necessary for state legislatures to replace colonial and territorial laws, such as the Spanish law that made Indian slavery illegal. Moreover, this case demonstrated how some lower court judges viewed the testimony of women in cases involving property. To solidify the defendants' claims to

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[26]*Marguerite a free woman of color v. Pierre Chouteau Sr.* July 1825 case 26 Circuit Court Case Files Office of Circuit Clerk – St. Louis Missouri State Archives – St. Louis Office of the Secretary of State, http://stlcourtrecords.wustl.edu; Catteral, *Pierre Choteau, senior v. Marguerite (a woman of color),* 12 Peters 507, January 1838. 152; Konig, *Long Road to Dred Scott,* 59; Foley, "Slave Freedom Suits Before Dred Scott," 2.

their slave property, it was imperative for the courts to dispute Marguerite and her relatives' heritage—even to the point of ignoring the testimony of Joseph Tayon's daughters, who swore in court that Marguerite's mother had indeed been of Indian heritage. Regardless, the St. Louis Circuit Court found in favor of Chouteau in 1828. Five years later, Marguerite's attorney requested a review of the case by the Missouri State Supreme Court, which declared the ruling invalid and ordered a retrial. In addition, Marguerite asked for and received a change of venue to Jefferson County, arguing that she could not receive a fair trial in St. Louis. By this time, attorneys had consolidated Marguerite's case with those of her relatives and on November 8, 1836, the court found that the children of Marie Jean were free. Not deterred, Chouteau, appealed to the state supreme court, which denied his plea. He then filed a federal appeal in 1838 for a writ of error to the U. S. Supreme Court, but the court dismissed the case due to "lack of jurisdiction." In spite of the decisions in the lower courts, Marguerite persisted in her goal to be free from slavery, which she achieved after many long years of legal struggles. However, her journey was one of a legacy that started with her mother's efforts to be free and to prevent her children from bondage.[27]

While some petitioners such as Winny and Marguerite were successful, many others, like Joseph, Amos, and Jane, failed in their struggle for freedom. For some individuals seeking to escape slavery in the south, their cases presented complicated legal concerns for courts because the suits involved several states with different laws regarding slaves. Cases that involved state jurisdiction and the problem of free black slaveholders would affect status of enslaved blacks in those two states. *Hazlerigs v. Amos, Jane et al.* (1809) centered around disputed territory between Virginia and Pennsylvania, and judges

[27] Foley, "Slave Freedom Suits Before Dred Scott,"17, 19-20.

found in favor of the slaveowner. And Winny's suit, involving a slaveholder who moved slaves from one state to another, highlighted additional nuances within slave laws, such as women slaveowners.

A Kentucky suit that involved Pennsylvanian slavery statutes was *Gentry v. Polly McMinnis* (1835), an appellant case, which the defendant originally filed as a freedom suit based on McMinnis' birth in Pennsylvania after 1780. After the American Revolution some of the members of the Society of Friends, or Quakers, and other influential citizens in Pennsylvania, such as Benjamin Franklin, found slavery incongruous with the rhetoric of the Revolution and the Declaration of Independence. In 1779, a Pennsylvanian merchant and the president of the Supreme Executive Council in that commonwealth George Bryan argued, "slavery was a disgrace to any people, and more especially to those who have been contending in the great cause of liberty themselves." In January of that next year, Pennsylvania passed a contentious statute that allowed for the gradual abolition of slavery in that state and stipulated that all children born after March 1, 1780, would be held as apprentices until their 28th birthday and then would be freed; but the statute did not free any person who was already enslaved. It was under this law that Polly McGinnis filed her suit for freedom from slavery and for rights as a citizen.[28]

Witnesses' testimonies stated they believed Polly McGinnis arrived in Kentucky with her owner sometime around 1787, and in 1804, was sold to John Courtney. Moreover, according to the circuit court opinion, it was difficult for others to discern

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[28] *Gentry v. Polly McGinnis.* 3 Dana 382, Fall Term 1835, 382; Gary B. Nash, *The Unknown American Revolution: the Unruly Birth of Democracy and the Struggle to Create America (New York: Viking Press, 2005), 323.*

Polly's racial identity, which presented a conundrum, as white slavery was illegal in Kentucky. Regardless of her racial ambiguity, she had been held in slavery for more than 30 years when she legally sought her freedom based on trespass and that she was born in Pennsylvania after the year 1780. The Garrard County Circuit Court, basing its opinion on her racial appearance, ruled in favor of Polly and granted her freedom, largely based on contemporary social constructions of race.[29]

Polly's complexion added a dynamic to the case, and much of the testimony regarding her race stated that she was virtually indistinguishable from a white woman. During the initial suit, the judge instructed the jury to rule in favor of Polly should they find evidence *prima facie* that she was a white woman. While the point of race in this case becomes immaterial during the appellant case, it did speak to nineteenth-century assumptions of who was free and who was enslaved. Any person who at first glance appeared to have any hint of African blood, or at least a quarter, was assumed a slave, while the adverse was true of those who appeared to have more than three quarters of European blood. But more important to the final ruling was that Polly relied upon an old statute for her freedom.[30]

According to the appeal, the circuit court justice informed the jury about "disregarding certain portions of the deposition" and the judge refused to convey that the jury should presume that Polly was enslaved based on the length of her servitude. On the question of irrelevant depositions, the father of one of the witnesses, one Mr. McKee,

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[29] *Gentry v. Polly McGinnis.* 3 Dana 382, Fall Term 1835, 382; Ian F. Haney López, "The Social Construction of Race: Some Observations on Illusion, Fabrication, and Choice," in *Harvard Civil Rights-Civil Liberties Law Review* vol. 29, 1 (Winter 1994): 3.

[30] *Gentry v. Polly McGinnis*, (1835), 390-91.

testified that his daughter or his son-in-law sold Polly to Courtney during a trip to Kentucky. It appeared that the son-in-law made this transaction without her owner's consent and McKee claimed that McGinnis was entitled to her freedom presumably based on the 1780 gradual emancipation law of Pennsylvania. McKee's testimony included discourse regarding the documentary evidence of Polly's right to her freedom, although he produced no written records. The appeal sought to exclude McKee's entire testimony that would have been damaging to Polly's claims to freedom; however, the court allowed his deposition. [31]

Moreover, the appeal included the claim that the judge erred in not instructing the jury that they should presume Polly a slave based on her more than 30 years of bondage. The appellant justice opinion argued:

> Prescription alone can not be proof of slavery, - and if it be entitled to any influence, it can only be that of a slight circumstance, corroborative, or rather illustrative, in a remote degree, of a more decisive fact, such as color or reputation as to maternity. . . . The evidence tends to prove: first, that the defendant was born in Pennsylvania, since the abolition statute of 1780 took effect and that therefore, . . . she was born free, even though her mother may have been a slave.[32]

Based on this contention, the court ruled that the circuit judge had not erred in his refusal to instruct the jury to assume Polly was a slave. Relying upon these points, the judge denied the appeal and Polly was granted her freedom based on the 1780 Pennsylvania gradual emancipation law.

Coincidentally, the Kentucky courts heard Polly's case in the wake of the 1833 Nat Turner slave rebellion in Virginia that had led to the death of about sixty whites.

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[31] *Ibid.*, 382 -83.

[32] *Ibid.*, 384.

Authorities captured, tried, and executed Turner along with seventeen other rebels. Yet Polly's case brought up several points about state statutes and assumptions of freedom and race as they related to the rights of citizens. First, although contentious, the 1780 gradual emancipation law of Pennsylvania entitled Polly to her freedom, and the Appellant Court in Kentucky upheld the law more than 50 years after its passage. There is no way of truly knowing how many men, women and children who were born after March 1, 1780, in Pennsylvania were sold by slaveholders and others in that state to buyers and sent further South without knowledge of their rights to freedom under the law. Second, the circuit judge informed the jury not to assume that Polly was a slave simply because she had been held for more than 30 years in servitude. This fact pointed directly to the inability to distinguish Polly's racial heritage. Based on early-nineteenth century assumptions about race and status, if she had been clearly of African descent the jury would have fewer questions about her status as a slave; however, because her appearance made it difficult to determine, the judge instructed the jury to avoid that assumption. In addition, the courts by default assumed that she was entitled to liberties reserved for white members of society, most important of which was freedom.[33]

Also in 1835, although in Missouri, a woman, Julia Logan, filed a petition for her freedom and for that of her child against a John Berry Meachum. The case of *Judy or Julia Logan v. John Berry Meachum* (1835) added the rare dynamic of black slaveholders in Missouri. Meachum, a Baptist preacher and a barrel maker, purchased upwards of twenty slaves, most of whom were family members. Meachum allowed his slaves to purchase their freedom from him only after learning a trade. Those who failed to repay

[33] Kenneth S. Greenberg, ed. *The Confessions of Nat Turner and Related Documents* (Boston: Bedford Books of St. Martin Press, 1996), xi.

him found themselves restrained at Meachum's home. Although he freed numerous slaves, three of his slaves sued him for freedom.[34]

As with previous freedom suits, Judy's attorney tried to "establish her right to freedom" by entering a plea of trespass, assault and battery, and false imprisonment, and sought five hundred dollars in damages. In addition, the basis for her argument appears to be that she had spent time in a free state and that she was poor. According to the disposition of one Benjamin Duncan of Davis County in Kentucky, a white man whose father had owned Judy in Kentucky, Duncan revealed that Judy had spent time in Indiana prior to Meachum purchasing her. The jury ruled that Judy was entitled to her freedom and awarded her one dollar. The case demonstrated that there were individuals of African descent living in St. Louis who were productive property owners and merchants, as was the case with Meachum. In addition, that not only class and social expectations were in conflict with each other, but that civil rights and race further complicated these expectations. With legal statutes and social customs as the backdrop, courts recognized people such as Meachum, or property holders, as legitimate citizens of the community.[35]

The defense in the case of *Judy v. Meachum* relied upon the court testimony of an enslaved man, Louis, which was a source of controversy. An 1836 Bill of Exceptions filed by Meachum's attorney, Charles Drake, pointed out that Louis claimed Judy's then owner Benjamin Duncan (Sr.) sent her to Indiana to work for the family of Edward Jennings. While in Indiana, Duncan sold Judy to James Newton who then sold her to

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[34] VanderVelde, *Mrs. Dred Scott*, 224-25

[35] *Judy, alias Julia Logan v. John Berry Meachum* March 1835 case 11 Circuit Court Case Files Office of Circuit Clerk – St. Louis MSA – St. Louis Office of the Secretary of State, http://stlcourtrecords.wustl.edu (accessed July 3, 2011); Loren Schweninger, *Black Property Owners in the South, 1790-1915* (Urbana: University of Illinois Press, 1990), 66, 123.

Meachum. It appeared that Newton was never able to testify on behalf of Meachum prior to the verdict to validate Meachum's purchase of Judy. Moreover, in his attempt to get a new trial, Drake contended that Meachum "did not know or suspect in the slightest degree that a person of color was to be introduced as a witness Louis…." Drake's complaints revolved around Louis' enslaved status and the fact that Newton, "a white man," was unable to testify on behalf of the defendant and this should have barred Louis from testifying. Drake and Meachum's efforts at getting Louis' testimony removed not only demonstrated Louis' lack of standing, but also seemed to elevate Meachum's status in the community.[36]

Judy won her case against Meachum and, though she did not receive much monetary compensation for her time as a slave, she did gain her freedom. Like Judy, enslaved blacks in other states such as Texas also relied the courts to gain their freedom. Similar to African Americans in other slave states, they met with various results.

The legal history of blacks in Texas must begin with the examination of the late-colonial period of Spanish Mexico, territorial laws of Coahuila and Tejas, and the Mexican Constitution of 1824. At the turn of the nineteenth century, Spanish colonial officials in Mexico sought to populate the northern regions of the territory and promise large tracts of land to settlers, which includes Americans and their slaves. Unhappy with Spanish imperialism, the people of Mexico fought a long and bloody revolution against the Spanish crown. The conflict ends in 1821 with the Manifesto of Iquala, which grants Mexico its independence. Faced with a sparsely populated northern region, the new

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[36] *Judy v. Meachum*, March 1835.

Mexican government continued to actively encourage Americans to settle in the region during the 1820s.[37]

The continued efforts by Mexico to populate the Coahuila and Tejas territories encouraged many slaveholders from places like Kentucky, Missouri, and Tennessee to migrate. Known as *empresarios*, these primarily white American men and their families who migrated to Texas received large tracts of land, purchasing upwards of fifteen-hundred acres in some cases, as they sought like most in their time to improve their personal economic situations by becoming substantial property holders. However, by the early 1830s, southerners from the United States heavily populated the region and then sold large tracts of their land to other Americans.[38]

Conflicts over slavery began quickly due to the abolition decree ordered by the Mexican government in 1829. The Constitution of Coahuila and Tejas "provided that no one shall be born a slave in the state, and after six months, the introduction of slaves, under any pretext, shall not be permitted." Within two years, the president of Mexico, Vicente Guerrero, a man of African descent, formally abolished slavery in that country in September 1829. Slaveholders in Texas objected so vigorously, the president exempted Texas from this abolition decree in December of that same year. It became even more problematic for Mexico to enforce the territorial constitution and decrees because of sheer distance and fragmented political power as more Americans migrated to Texas during the first half of the 1830s. Eventually, during the 1830s the citizens of Texas, which included Tejanos, blacks, and whites, would fight for and win independence and

[37] Joseph E. Chance, *Jose Maria De Jesus Carvajal: The Life and Times of a Mexican Revolutionary* (San Antonio: Trinity University Press, 2006), 3-4.

[38] *Ibid.*, 4.

establish a republic in 1836. Some of the black men who fought against Mexico for Texan independence, along with their spouses, children, and other loved ones, saw this revolutionary act as a means to secure their freedom from slavery. What is more, because of the ambiguous and conflicting laws of Texas, such as Guerrero's anti-slavery order, its rescinding three months later, and that the law ended slavery in a majority of Mexican territory, some people of African descent who had been held in slavery during the colonial period filed petitions during this time requesting freedom. Regardless of the context of why they filed petitions, many enslaved men, women, and children were at the center of several freedom cases in Texas courts. While there are fewer court petitions and actual cases involving blacks attempting to gain their freedom than in states like Kentucky or Missouri, some enslaved Texans made similar arguments for their freedom by referencing territorial laws.[39]

From nearly the beginning of the Republic of Texas, Anglo-Americans sought to solidify and legally protect the institution of slavery as they expanded the Cotton Kingdom. Under the General Provisions section of the 1836 Republic Constitution, slavery would continue, congress had no right to interfere with the institution, and the constitution barred slaveholders from emancipating slaves without the consent of congress. The constitution of Texas went even further, declaring "no free person of African descent, either in whole or in part, shall be permitted to reside permanently in the Republic, without consent of congress." After winning independence from Mexico, white slaveholders in the Republic constructed a constitution that made it difficult to free

[39] Helen Tunnicliff Catterall, ed., James J. Hayden, additions. *Judicial Cases concerning American Slavery and the Negro* vol. 5 (Washington, D.C., Carnegie Institution of Washington, 1937), 268; Stanley C. Green, *The Mexican Republic: The First Decade, 1823 – 1832* (Pittsburgh: University of Pittsburgh Press, 1987), 53.

slaves, and would ensure that the free black population would be miniscule with very little social or political wherewithal. However, there were a small number of free blacks who had migrated to the territory during Mexican authority, including some who owned slaves. After independence in 1836, it would not take long before black Texans would test the new laws of slavery.[40]

In 1841, Samuel McCullock (McCulluck, McCollock or McCulloch), a free black man who volunteered to fight in the war for Texas independence, filed a petition for a "deed of emancipation expressive of the forging parts," for two women whom he had previously held as slaves. He came to Texas just prior to independence and was one of the first casualties of the conflict. He was severely wounded in the shoulder at the Battle of the Goliad in 1835. McCullock seemed to be an exceptional individual: he was a slaveholding war hero who was literate, or at least able to sign his own name, and had the character endorsement of his commanding officer, George M. Collinsworth. Yet, because of laws stating he would need to petition congress in order to free his slaves, McCullock faced the same problems as any Anglo-American slaveholder in Texas.[41]

According to McCullock's petition for emancipation, he brought the two women, "Peggy and Rose," with him to Texas and assumed, based on their arrival before the outbreak of war, that he and the two women would be exempt from some of the articles stated in the General Provisions of the Constitution of the Republic, such as those

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[40] *Constitution of the Republic of Texas*, Gen. Pro. sec. 9. (1836)

[41] "Samuel McCullock Petition," December 1841, PAR no. 11584105 Texas, Reel 15, in Loren Schweninger, ed., *Microfilm Edition of Race, Slavery, and Free Blacks: Series I, Petitions to Southern Legislatures, 1777 – 1867* [hereinafter referred to as *Microfilm Petitions*] (Bethesda, University Publications of America, 1998); Harold Schoen, "Free Negro in the Republic of Texas II", vol 40, Number 1, *Southwestern Historical Quarterly Online*, http://www.tsha.utexas.edu/publications/journals/shq/online/v040/n1/contrib_DIVL455.html (accessed July 3, 2011).

requiring freed blacks to leave the state within an allotted period. McCullock's assumption about the laws of the state proved problematic because Peggy and Rose entered the state as slaves. What is more, McCullock appealed to the state of Texas on his own behalf because the state constitution seemingly drew no distinctions between free and enslaved blacks but simply stated, "All persons, (Africans, the descendants of Africans, and Indians excepted,) … shall be considered citizens." This clause combined with the state constitution barring free blacks from residing in Texas explained why McCullock petitioned for congressional permission for himself and on behalf of Peggy and Rose.[42]

McCullock's efforts to emancipate Peggy and Rose highlighted the dilemma of the possibility of a growing free black population in the Republic. Anglo Texans decided that the republic would follow the southern United States and use slavery as its main agricultural labor. However, some whites viewed free blacks as a threat to the institution of slavery. Free blacks proved that freedom was a very realistic concept for enslaved people of African descent. It is also strongly possible that Texan legislators during the republic years feared the possibility of conspiracies and slave insurrections such as the alleged 1822 Denmark Vesey conspiracy in South Carolina, which was believed to have been organized by Vesey, a free black man who combined Christian principles with abolitionist rhetoric.[43]

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[42] "McCullock Petition," December 1841, in Schweninger *Microfilm Petitions*, Series I; *Constitution of the Republic of Texas*, Gen. Pro. sec. 10. (1836)

[43] Douglas Edgerton, *He Shall Go Out Free: The Lives of Denmark Vesey*, revised and updated (Lanham, MD Rowman and Littlefield, 2004); 88; Michael P. Johnson, "Denmark Vesey and His Co-conspirators" in *The William and Mary Quarterly* 58, no. 4 (2001); 915-16.

Moreover, that conspiracy and Turner's violence perpetrated against whites in Virginia in 1831 were real radical actions orchestrated by black men, and were a direct affront to the institution of slavery. To combat this, policymakers and courts over the course of the nineteenth century made it more difficult for slaveholders to free their slaves. Moreover, since many of the Anglo slaveholders migrated to Texas from Kentucky, Missouri, and Tennessee the fears of slave insurrections came with them as well, which in turn led to restrictions on manumissions and the strict regulation of slaves.[44]

The complexity of some cases filed by African Americans in Texas occurred because some slaveowners brought their slaves to the state prior to independence. Some of the initial state cases such as *Robbins' Administrators v. Walters* (1847) cited the territorial constitution of Coahuila and Tejas as to the illegality of a master holding an unnamed enslaved child. Article 13 of the territorial constitution stated, "From and after the promulgation of the constitution in the capital of each district, no one shall be born a slave in the state, and after six months the introduction of slaves under any pretext shall not be permitted." This particular freedom case involved accounting for territorial statutes and questioning the legitimacy of the claims of people brought into the Texas prior to independence. Similar to the *Marguerite v. Pierre Chouteau Sr.* (1825) case brought before the courts in Missouri, enslaved persons in Texas state forced the judicial system to contend with colonial legislative matters relating to slavery.[45]

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[44] Campbell, *Gone To Texas: A History of the Lone Star State* (New York: Oxford University Press, 2003), 207, 219; Greenberg, *Nat Turner*, 193.

[45] *Robbins'Adm's v. Hannah Walters*, 2. Tex. 130, (1847), 130; *Constitution of Coahuila and Texas* in *The Laws of Texas, 1822 – 1887* vol. 1 compiled and arranged by Hans Peter Mareus Neilsen Gammel (Austin: The Gammel Book Company, 1898), 423.

In 1847, Elisha Clapp, serving as the administrator for Nathaniel Robbins, filed his appeal to the Texas Supreme Court in an attempt to maintain possession of an enslaved woman kept by Robbins and his family members. This suit involved two litigants who sought to gain possession of a woman held in slavery or at least be compensated for her. Coincidentally, the appellant's case brought up the matter of the 1827 constitution of Coahuila and Tejas. Justice Abner S. Lipscomb of the Texas Supreme Court, in giving the opinion, contended that the circuit court's initial ruling to disregard the territorial constitution was immaterial because "the claim of the property in the slave before the date of the Constitution of Texas was not repugnant to the section cited from the Constitution of Coahuila and Texas." In addition, there appeared to be no evidence entered by the defense that confirmed when the enslaved woman was born. [46]

The inability to provide documented proof of birth prevented the woman from gaining her freedom. Moreover, Justice Lipscomb's opinion highlighted the lack of territorial enforcement of the 1827 constitution to Tejas. Unfortunately, due to the popularity of slavery in this region during early-nineteenth century, Mexican authorities disregarded the constitutional ban on slavery. An enforcement of this measure theoretically would have emancipated the woman; however, the Mexican officials were inconsistent and allowed slavery to persist. As such, the Texas courts saw fit to protect the property rights of slaveholders. But because of the colonial territorial laws, freedom suits filed in Texas and Missouri came under the added complexity of determining the actual birth of enslaved persons. French or Spanish statutes entitled slaves to certain enumerated rights and privileges, including their personal freedom or the freedom of their

[46] *Robbin's v. Walters*, 135.

children in some cases, which were not afforded to those same people under state and federal laws of the United States. Another suit that reached that Texas Appeals Court in 1847 questioned the legality of a woman's enslavement because of her confinement in the Chickasaw Nation in the Mississippi territory.[47]

The case of this woman, Laney, born into slavery in 1811 and owned by a man named James Gunn, is another freedom suit that involved a Native American. The state supreme court case of *Robert M. Jones v. Laney et al.*, (1847) questioned Gunn's (who had died by the time of the trial) emancipation of Laney and his diplomatic relationship with the Chickasaw nation. In this particular case, the Texas courts would rely on Federal precedent on recognizing the Chickasaw Nation as a foreign nation with the ability to dictate their own civic customs and laws.[48]

Laney was born in the old Chickasaw Nation (Mississippi), and, when she was two years old, Gunn emancipated her and filed documents with two witnesses. Gunn wrote a letter of emancipation for Laney dated January 28, 1814 that also includes his seal and states, "of my own free will and accord, to enfranchise a mulatto female child named Laney…. I hereby give to Laney her freedom from this date." Although free, Laney continued to live with her mother whom Gunn also held as a slave, but, according to Laney, Gunn never treated her as a slave and after his death, Laney went to live with a Chickasaw woman until 1846.[49]

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[47] Chance, *Jose Maria De Jesus Carvajal*, 88; *Marguerite v. Chouteau Sr.*; Konig, *Long Road to Dred Scott*, 63.

[48] *Robert M. Jones v. Laney et al.*, 2 Tex. 342, (1847), 343; *Cherokee Nation v. State of Georgia.* V. U.S. 1 (1831)

[49] *Ibid.*, 344-45.

From the transcript, it is unclear why Gunn made the decision to emancipate Laney during her infancy. There is no mention of Laney being of Chickasaw descent, only his description of her being mulatto. However, the transcripts do name Gunn's daughter Rhoda Potts, and her claim as "residuary legatee," under her father's will. Moreover, Rhoda and her husband Joseph B. Potts sold Laney and her children to the appellant, Robert M. Jones, who was seeking to recover what he believed to be his property. Regardless, Laney, like other people who found their status challenged, relied upon the justice system to maintain her freedom, and, as national politics over slavery grew even more contentious, southern African Americans continued to struggle for freedom.[50]

The 1850s, arguably the most politically heated decade prior to the Civil War, were highlighted by national efforts driven by influential federal congressional members, such as Henry Clay, the aging senator from Kentucky and composer of The Compromise of 1850, seeking to appease southerners on the topic of slavery. This federal legislation included a stronger fugitive slave clause as slaveholders pressured the government into greater protection of the institution of slavery. The clause, as historian Eric Walther explained, "compelled Northerners to assist Southerners in apprehending slaves who attempted to escape," and made slave catching a federally enforceable offense for those who refused to comply. Without documentation of emancipation or validation of their birth as free person, authorities, and theoretically any free person, could accuse a black American of being a runaway slave.[51]

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[50] *Ibid.*, 344.

[51] Eric Walther, *The Shattering of the Union: America in the 1850s* (Wilmington, Delaware: Scholarly Resources, Inc., 2004), 7.

The political controversy between pro and anti-slavery factions in Missouri and Kansas territory had become violent by 1854. High profile politicians such as Stephen Douglas, senator from Illinois, who would seek the presidency in 1860, saw an opportunity to introduce his Kansas-Nebraska Act of 1854. Douglas' push for passage of the bill, perhaps as a measure for him to gain support from southern Democrats, served to further fracture the already tenuous ties between the regions. The 1854 act sought to repeal the prohibition of slavery in territories north of the 36° 30' line, as outlined in the Missouri Compromise of 1820, by introducing popular sovereignty. This would allow settlers in a territory to decide through elections whether they would be free or slave. While many black Americans were struggling to gain freedom from bondage, the United States Congress was pushing for the expansion of slavery.[52]

The contentious 1850s underscored the relatively few freedom petitions and suits filed in some states, like Texas. With state legislatures having passed stronger measures to prevent manumissions, black Texans had very few options to gain their freedom. Despite such restrictions, enslaved black Americans there, as well as in Kentucky and Missouri, continued to rely upon the courts to achieve the goal of freedom. Some of the cases filed in the 1850s would reach the highest court in the land.

The United States Supreme Court case of *Randon v. Toby* (1850) began as a petition filed by Thomas Toby of Louisiana in January of 1847 in an attempt to collect on a debt owed him by David Randon. What made this case particularly interesting was that part of the payment included compensation in slave property. But the twenty-one slaves

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[52] Walther, 36, 39, 45; No. 112 "Extract from the Act to organize the Territories of Nebraska and Kansas," in MacDonald, *Document Source Book*, 403-4.

acquired by Toby were African slaves believed to have been brought from Africa to Cuba around 1835 and then to Texas. While the decision offered the enslaved Africans no judgment on the legality of their enslavement, the ruling theoretically opened the door for a subsequent freedom suit similar to the *United States v. Libellants and Claimants of the Schooner Amistad* (1841) case which involved a group of Africans who had been illegally enslaved in Africa and transported by Spanish ship to the Caribbean. The Africans subsequently mutinied, and, while attempting to sail back to the West Coast of Africa, were captured off the coast of Connecticut. The arduous journey of this cohort of West Africans ultimately led them to the United States Supreme Court, where judges ruled that slave traders had illegally enslaved them, and that they were entitled to use whatever means they could to secure their freedom.[53]

Defining the nature of African slavery in the Randon case was a witness for the defense, Thomas M. League, who stated that he had made at least two trips to the West Coast of Africa in the mid-1830s, and, during the course of his visits, he observed the following practices. "A large proportion of the people were slaves, masters held great numbers, slavery which existed was slavery for life, and was of the most despotic and arbitrary character," League declared. Yet, when asked under cross-examination to elaborate on the breadth of his knowledge of West Africa and the laws regarding slavery, League could only speak of his observances in "Liberia, the Slave Coast, and the Grain Coast," which was a very limited portion of the West African coast. What is also of

[53] *David Randon, Plaintiff in Error v. Thomas Toby*, 11, Howard 493, 1850; For further information on the 1841 United States Supreme Court Amistad case, see Howard Jones, *Mutiny on the Amistad: The Saga of a Slave Revolt and Its Impact on American Abolition, Law, and Diplomacy* rev. ed. (New York: Oxford University Press, [1997], 1987); Iyunolu F. Osagie, *The Amistad Revolt: Memory, Slavery, and the Politics of Identity in the United States and Sierra Leone* (Athens: University of Georgia Press, 2000).

interest was League's assertion that a large proportion of the people were slaves, but according to the transcripts, there was no further elaboration on this subject. League's testimony also highlighted the continued illegal slave trade involving the United States, which supports the argument by scholars Anne Farrow, Joel Lang, and Jennifer Frank that although "trafficking in slaves was made an act of piracy and a capital crime for U. S. citizen" in 1820, "the law was hardly a deterrent." [54]

Justice Robert C. Grier, who wrote the opinion stated, "It will be unnecessary to decide whether the judge erred in his construction of the laws of Africa!!! And other questions of a similar character." From the outset, it appeared the U.S. Supreme Court sought to avoid any diplomatic legal problems between Spain, Africa, and the United States over slavery, as was the concern with the 1841 *Amistad*. *Randon v. Toby* was not about the enslavement of those Africans, but instead about the breach of a contractual obligation that happened to involve the transfer of chattel property who were African and not native-born American slaves. Randon's attorney argued that from the *Amistad* case it was learned that African slavery was reliant upon force, and that usually captives were prisoners of wars not recognized by civilized nations. The implication here was that the institution of slavery in the United States was devoid of such force, and chattel properties were not prisoners of war. However, with the passage of a stronger fugitive slave law,

[54] *Randon v. Toby*, 501; Anne Farrow, Joel Lang, Jenifer Frank, Complicity: How the North Promoted, Prolonged, and Profited from Slavery foreword Evelyn Brooks Higginbotham (New York: Ballantine Books, 2005), 123; Ernest Obadele-Starks, Freebooters and Smugglers: The Foreign Slave Trade in the United States after 1808 (Fayetteville: University of Arkansas Press, 2007), 192-93; W. E. B. Du Bois, The Suppression of the Slave Trade to the United States of America, 1638-1870 (New York: Longmans, Green and Co. 1896). 109.

even free-born or emancipated people of color could theoretically be forced into slavery should they fail to provide legal proof of their free status.[55]

In the *Randon v. Toby* opinion, the U. S. Supreme Court contended that the real problem was not about slavery, but about a repaying a debt. Further complicating the suit was the illegal enslavement and transportation of Africans to Cuba and then to Texas. Although the ruling in the case left the door open for those enslaved to file a suit for their freedom, the court ultimately decided they were to remain in their status. Nevertheless, some black southerners legally confined to slavery found ways to use the justice system to fight against proslavery legislation while others inadvertently found themselves involved in lawsuits.

Just two years after *Randon*, several Kentucky slaveholders filed the suit *Graves, etc., v. Allan, etc.,* (1852) to recover property bequeathed to several slaves from Charles Allan, a free black man. Charles Allan's will lists specifically an enslaved woman and her children, whom he'd fathered, but all were owned by other individuals. The listed slaves were to receive bequeathed gifts from Allan, yet the owners of those slaves sought to recover the gifts left by Allan. The lower court dismissed the case, and the court of appeals followed this decision and made its ruling based on the interpretation that slaves could not be the owners of property and disagreed that the bequeathed property was to go to the slaves' masters.[56]

The case of *Graves v. Allan* not only demonstrated the limits Anglo-American law placed on slaves in terms of what they could and could not receive through wills, but

[55] *Randon v. Toby,* 535, 544.

[56] *Graves, etc., v. Allan, etc.*, 13 B. Mon. 190, Summer Term 1852.

also, by default, placed restrictions on those intending to administer the gift. The case strictly stated that the only "device to a slave" that could be bequeathed through a will was that of freedom. This also meant that masters had nearly absolute authority over their slaves. Allan attempted to leave his belongings to his children and their mothers, yet the court in Kentucky limited him on whom he could name as benefactors of his earthly possessions. Because many southern free blacks started families with people still in bondage, who could not legally own property, this made the legal transition of property within black families of mixed free and slave status extremely difficult for antebellum southern blacks. The courts decided that masters were the only people who could grant slaves a gift, the only gift that could be granted was freedom, and even by the 1850s, this gift became difficult to come by.[57]

Even though the 1850s appeared to be a decade in which fewer African Americans successfully petitioned or won their freedom in courts, in most southern states owners still possessed the authority to emancipate their slaves by wills or deeds of emancipation. In a Texas case filed in 1854, while federal political arguments over the expansion of slavery into previously barred territories occurred in the background, the case of *Purvis and others v. J. L. Sherrod, Ex'or* (1854) in Texas underscored how difficult it was for enslaved people to gain their freedom under the changing political nature of the country. In addition, *Purvis v. Sherrod* also begged the question: did state governments have the authority to regulate what a person did with their private property and if so, how much authority?

[57] *Ibid.,*194.

William T. Weathersby, a slaveholder in Harrison County, had drawn up a will that emancipated three specifically named slaves. Moreover, Weathersby explicitly stated that Charlott [*sic*], her son Julian, and another young male, George Washington, were to be left under the charge of his sister Lucinda Sherrod (and by default her husband John L. Sherrod) should any of Weathersby's other relatives raise questions over their manumission. The will outlined or made provisions for how, if it was possible, that the freed slaves were to remain in Texas that they should remain close to Sherrod. However, if there were any problems with them staying, Sherrod was to have "full power to send them to a free state, or to Liberia, as she and the negroes may agree." Weathersby anticipated potential problems with Charlott, Julian, and George Washington remaining in the state due to the strict laws against freed persons remaining in Texas.[58]

Weathersby's will also left property to Charlott. The will stated, "I give my negro woman Charlott, my horse Charley, two cows and calves, one plough and gear, and meat for one year, and I give three hundred dollars to enable her to live her comfortably." Furthermore, he left his sister Lucinda sixteen hundred dollars in case there were any legal contentions of the will, which, of course, occurred when Purvis and his wife objected to the will and filed a petition. That Weathersby bequeathed a fair amount of personal property and appeared to establish a trust for a slave caused his relatives to object to the legality of the gift. Furthermore, even though the items left to Charlott were property that could be moved, it was uncertain how she and her children could remain in

[58] *Purvis and Others v. J. L. Sherrod Ex'or*, 12 Tex. 140, 1854. 141-42.

Texas when the law explicitly stated that persons emancipated were prohibited from living in the state.[59]

The petitioner's attorney raised several key questions, one of which regarded whether a master could create a trust for a slave. The court in Texas, similar to the Kentucky State Supreme Court in the Benson Coleman manumission case that also was filed in 1854, stated that slaves cannot own property nor have property left to them by owners. The Texas judge cited an Alabama constitutional article adopted by Texas in 1845 that stated, "there can be no trust created in favor of a slave." However, what Weathersby did do was to establish a trust in his sister's name and not in the name of Charlott, Julian, or Washington.[60]

In addition, Purvis' attorney raised several other significant questions. Such as, could a will free a person in Texas or does it take congress and can an executor take a slave out of the state and then free them? While the attorney is arguing for his client's claim on Weatherby's estate, it seemed that his argument questioned the right of individuals to manage their own property. If these slaves were Weatherby's, then it seemed only fitting that he could do whatever he wished with them. This demonstrated the incredible amount of power slaveholders had over the lives of slaves. If a person wanted to emancipate a person through their will, then that person had the right to do so. What became the question here was could that freed person remain in the state or not.[61]

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59 *Purvis and Others v. J. L. Sherrod Ex'or* 141-42; *The Constitution of the Republic of Texas* Gen. pro. sect. 9, 10 (1836).

60 *Benson Coleman,* 1854; *Purvis v. Sherrod,* 145.

61 *Pervis v. Sherrod,* 146.

As it turned out, the courts in Texas did not believe that the established trust was illegal as Weathersby had established the trust in the name of Lucinda Sherrod. Nor did the courts believe that at that particular time state legislature held to power to dictate what Weathersby wanted to do with his property since all of his debts had been paid. However, Judge Lipscomb, who delivered the opinion, did state that this type of regulation of personal property could change. However, Weathersby had a contingency plan that called for Charlott, Julian, and Washington to move to either a free state or Liberia. The court marginalized the three people at the center of the case, and did not allow them to issue a testimony. Furthermore, this was one of the final cases in which the Texas state courts confirmed the freedom of enslaved blacks before the U.S. Supreme Court ruled in *Dred Scott* and the outbreak of the Civil War in 1861.[62]

The 1850s served as a contentious decade for southern black Americans and in the same year that the *Scott* case reached the federal Supreme Court, two sisters filed an appellant suit in Kentucky contesting the freedom of a black woman and her children. Raised by their aunt and uncle, Lucinda Martin and Sarah Jane Gum attempted to claim a Kentucky woman and her 16 children and grandchildren as their slaves. In the Kentucky appellant case *Martin etc., v. Letty, etc. (of color)* (1857) stated Letty and her daughter Paulina had been sold by the two sisters' grandfather, William Caldwell and their father, James, to Andrew Barnett in 1819. James died while the two sisters were very young and their mother died just prior to the filing of the suit in 1853. However, the two sisters

[62] *Ibid.*, 160, 165.

contended that William and James intended for Barnett to keep Letty and her daughter until the two sisters were no longer infants.[63]

Barnett held Letty and her children in slavery until he died in 1847. His last will and testament emancipated all of his slaves, and did so without specifying any previous agreement between him and Caldwell, nor did it specifically make mention of Letty or any of her children. Based on this ambiguity and probably their association of Barnett and his wife as their master and mistress for 28 years, when the will was administered Letty and her family assumed they, like Barnett's other slaves, were free. This seemed to be important as Letty and her kin began to act themselves as freepersons would and remained in Green County, Kentucky, along with the plaintiffs in the case. Judge James Simpson, in delivering the opinion of the court stated Barnett's manumission wishes did include Letty and her kin and there was no way to validate Martin and Gum's claims to them as property. As such, judges affirmed the decision of the circuit court, and freed Letty and her family from slavery.[64]

As the United States and Americans moved west, they forced lawmakers to reconcile concerns over rights and property. Slaveholders such as William Caldwell sought to do with his slave property as he wished, and that wish was to free Letty and her children from slavery. However, with the number of free black southerners growing, some policymakers sought to limit the rights of slaveholders, or at least make it more difficult for them to free their slaves.

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[63] *Martin, etc. v. Letty (of color),* 18 B. Mon. 573, Winter Term 1857.

[64] *Ibid.*, 579.

Furthermore, the constant changes of the time—such as the rise in popular democracy, growth of Protestant Christianity among whites and blacks, economic changes and the increased importance of cotton in the South, and political debates over the spread of slavery into the western territories occurring within the United States from the 1790s until the late 1850s—dramatically affected the lives of enslaved African Americans. However, many black Americans continued to work within the legal system as they struggled to obtain freedom. While most Anglo Americans experienced greater social, economic, and political equality in the wake of the American Revolution, these measures were not options for slaves. Social changes might have led to greater dynamics within the Methodist and Baptist churches as the matter of slavery became a moral question. Northern churches could condemn the institution, while southern churches of the same denomination rigorously defended it. The May 1859 *New York Times* article, "The Texan Church and Slavery," reported that there was even a split within the Methodist Church in Texas over slavery as residents in Collin County questioned the presence of ministers and members as being a "screen for the 'Northern political faction known as abolitionist'." Although Evangelical Christianity had made headway into Texas and other parts of the South, denominations like the Methodists faced sharp opposition over slavery. Moreover, fearful whites and political leaders offered enough resistance to force Evangelicals Christians to compromise on views on slavery.[65]

The economic changes of the early-nineteenth century opened many doors of prosperity for white Americans. The industrial north provided a consistent domestic customer for the plantation south, which more than supplied enough cotton. However,

[65] Hatch, *Democratization of American Christianity*, 110; "The Texan Church and Slavery," *New York Daily Times* (1851-1857), May 6, 1859, http://proxy.mul.missouri.edu:2087/ (accessed July 2, 2011).

with this ever-increasing need for cotton by northern mills, a growing labor force, and the drive to expand westward, by 1860 plantation-owning slaveholders acquired substantial sums of money in places like Harrison County, Texas, where there were a reported one hundred forty-five individuals who held at least twenty slaves and produced more than twenty-one thousand bales of cotton.[66]

The states of Kentucky, Missouri, and Texas all had measures written into their constitutions protecting slaveholders from state legislatures that might deprive them of their chattel property. The Missouri state constitution, for instance, declared that the legislature could not pass laws for the emancipation of slaves without their owner's permission, nor could the legislature pass laws to allow slaveowners to emancipate slaves in order to escape debt collection. Interestingly, the state's constitution also prevented congress from enacting laws "to oblige the owners of slaves to treat them with humanity, and to abstain from all injuries to them extending to life or limb." By the time Dred and Harriet Scott petitioned the court and filed their freedom suit in Missouri in 1846, policymakers in the state had removed nearly all the remnants of colonial and territorial statutes in the state that had served to limit the authority of slaveholders. Like all slave states, protecting the rights and property of slaveholders translated into maintaining social order. Maintaining that order also meant the subjugation of black Americans. Yet, in spite of the legal changes in southern states that made freedom an even more difficult prospect, some blacks did obtain their freedom by using the justice system.[67]

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[66] *Handbook of Texas Online*, s.v.","," http://www.tshaonline.org/handbook/online/articles/HH/hch8.html (accessed 5/2/ 2010).

[67] No. 78, "Constitution of Missouri," in MacDonald, *Document Source Book*, 316-17.

The harsh reality was that most people confined to slavery did not escape their condition. Moreover, most of those who relied upon the justice system also failed. However, they continued to utilize whatever means they could manage. For most, resistance was an everyday struggle with some of the most radical slaves orchestrating and conspiring to stage rebellions against slaveowners, although this was even more rare than slaves who filed petitions and suits for their freedom. Still others ran away from plantations; however, these efforts could bring down the wrath of authorities and white residents upon an entire black community. Yet, as historian John Blassingame asserted, "the more slaves knew of freedom, the more desirous they were of obtaining it." To counter the level of knowledge slaves had of freedom and the number of free African Americans in southern states meant that lawmakers had to change laws to make freedom less likely.[68]

It is true that the *Dred Scott* case overshadows all the other individuals' legal efforts, such as those by Caroline Coleman, Julia Logan, Laney, and others who filed petitions and suits for freedom. They were not always central players to the actual civil trials, and sometimes their actual voices were never heard, but their cases challenged the legal system designed to empower slaveholders and make it hard for blacks to gain freedom. Nevertheless, for those blacks who were able to obtain freedom, their struggle continued as they fought in courts to maintain that freedom and the rights that theoretically accompanied citizenship, and their cases also illustrated the changing nature of nineteenth-century state politics regarding race.

[68] Berlin, *Slaves Without Masters*, 347; Blassingame, *The Slave Community*, 192, 195-96.

Chapter Four

Free Black Southerners and the Justice System

The struggle for liberty for free people of color during the antebellum years was complex, and this was especially true for those who lived within slaveholding states. During the mid-nineteenth century, free black residents of Kentucky, Missouri, and Texas fought to maintain what few rights they had as citizens, while simultaneously presenting a dilemma for the white population, particularly slaveholders. Free African Americans went to great lengths to protect themselves and their families from constantly changing state and local legislation and many used the justice system to fight for or guarantee their liberties. Historian John Hope Franklin argued that free black Americans were "quasi-free," meaning that it would be difficult to classify them as "entirely free" regardless of regional location. Franklin also spoke to their legal status as citizens since state statutes did not always make clear distinctions between enslaved and emancipated persons. As a result, the phrase "quasi-slave" is equally applicable. In addition to facing social and economic injustice, free African Americans confronted political and legal obstacles from 1790 through 1877.[1]

Although northern blacks faced racism and many forms of political restrictions, their lives varied from their southern counterparts. Arguably, northern state laws limiting African Americans' social, economic, and political activities were generally less restrictive. In addition, free states never developed into slave societies, in which, as

[1] John Hope Franklin Jr. and Alfred A. Moss, *From Slavery to Freedom: A History of African Americans*, 7th ed. (New York: Alfred A. Knopf, 1994), 170.

historian Ira Berlin pointed out, "slavery stood at the center of economic production, and the master-slave relationship provided the model for all social relations." As a result, northern African American's political protest regarding their inferior status was more obvious. Northern Black Americans organized conventions, produced abolitionist literature, and aimed to create a collective effort to protest their second-class status. However, many southern free African resorted to an alternative means of challenging societal notions of their "proper place". Arguable the most effective method used to protest for their rights as citizens was the courts. Moreover, by utilizing the justice system, they protected themselves from local whites who no doubt would have focused hostilities towards local free blacks.[2]

Although some free African Americans in the South, such as South Carolina's Denmark Vesey whose 1822 alleged conspiracy to stage a widespread rebellion gained far reaching attention from the white American populace, there were few acknowledged conspiracies and even few actual rebellions. However, white fears of free black insurrections led to greater legal restrictions for blacks. Furthermore, some free blacks were involved in court cases in which white citizens and officials called their rights as citizens into question. Nevertheless, white fears of black rebellions provided the context by which some southern lawmakers issued restrictive statutes and provisions, including Missouri's 1835 "Act concerning free negroes and mulattoes," that required freed blacks

[2] Berlin, *Slaves Without Masters*, 21-2; Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Belknap Press of Harvard University Press, 1998), 8.

to obtain a special license from the county court and pay a bond to remain in the state or Texas' 1836 constitution requiring freed slaves to leave the state.[3]

By examining the legal encounters and struggles of free black southerners for citizenship, this chapter attempts to accomplish two major points. First, it enables readers to scrutinize laws passed that adversely affected free African Americans while simultaneously allowing readers to contrast the efforts of northern free blacks with those of southern free blacks. Second, the legal efforts and involvement of African Americans in the Kentucky, Missouri, and Texas were a part of a larger historical trend in which black southerners utilized the justice system to solidify their claims as citizens and to improve their status.

Prior to the Civil War, the lives of many free southern African Americans were severely restricted due to state and local legislation. By 1845, Kentucky, Missouri, and Texas had passed laws that prevented free African Americans from participating in various forms of political assemblies, including political conventions; ownership of specific types of property, such as guns or even slaves other than close family members; entering into certain types of occupations, such as selling alcoholic beverages; or even remaining in southern states after emancipation. One could argue that the justice system offered one of the most effective ways to resist challenges to their status and solidify their arguments for first-class citizenship by giving them a stage in the public arena. As a

[3] For opinions on the Denmark Vesey conspiracy see, Douglas R. Edgerton, *He Shall Go Out Free: The Lives of Denmark Vesey* (Madison, WI: University of Wisconsin Press, 1999); Michael P. Johnson, "Denmark Vesey and His Co-Conspirators" in *William and Mary Quarterly* 3rd Series vol. 58 No. 4 (October 2001), pp. 915-976; "An Act Concerning Free Negroes and Mulattoes." March 14, 1835, in *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly During the Years Once Thousand Eight Hundred and Thirty Four, and One Thousand Eight Hundred and Thirty-Five Together with the Constitutions of Missouri and the United States* (St. Louis, MO: Argus Office, 1835), 414; *Constitution of the Republic of Texas*, Gen. Pro. sec. 9. (1836)

result, civil cases, initiated by individual free persons and occasionally a group of free persons in Kentucky, Missouri, and Texas between 1820 and 1865 provide sources for this chapter.

Furthermore, this study juxtaposes the actions of free African Americans between the 1820s and 1840s against larger social, political, and economic events occurring in the United States, such as the Second Great Awakening, widespread acceptance and rise of popular democracy, and the market revolution drawing while special attention to the differences between the political actions of northern and southern free blacks. Northern blacks attempted to enact changes that created greater social, economic, and political advantages for all African Americans through the establishment of schools and organized political entities. Northern blacks also challenged the second-class status of black Americans and protested slavery by establishing anti-slavery newspapers. And, northern blacks blatantly attempted to generate widespread black popular support to achieve their agenda although they and some radical whites lacked the protection of civil liberties by local and federal officials who sought to mollify local white citizens. Historian Mary Francis Berry argued that the 1829 mob attack on Cincinnati's black neighborhoods "wreaked destruction and devastation." Another example of northern authorities overlooking violence against blacks and the breakdown of civil liberties, according to Berry, occurred in Berry a1834 when mobs ravaged New York City's black community and the mayor blamed abolitionists. Regardless of efforts to deprive northern blacks of their liberties, they engaged in overt protests against such treatment. The same cannot be said of free southern African Americans.[4]

[4] Mary Frances Berry, *Black Resistance White Law: A History of Constitutional Racism in America* (New York: Penguin Press, 1994), 53-4.

Southern black Americans faced similar violence against their communities, even federal enforcement of laws such as the U. S. Supreme Court case *Barron v. Baltimore* (1833), which Berry declared "reinforced the legal position of the proslavery forces by asserting that Congress could not intervene if a state chose to prohibit free speech." The *Barron* case highlighted the attempted application of the Bill of Rights to state governments when entrepreneur, John Barron's business diminished because the city of Baltimore had altered the waterways. The appellate court ruled in favor of Baltimore arguing that so long as the city provided compensation for private property then states could secure private lands. The Supreme Court's decision confirmed the appellate ruling stating that the Bill of Rights were applicable to the federal government and not states. This case established a precedent for the application of the Bill of Rights to the federal government and it also underscored the notion of two different ideas of citizenship, national and state.[5]

As such, southern states continued and enforced laws that restricted free blacks from enjoying all of the privileges that southern white southern citizens enjoyed. As a means of resisting their second-class citizenship, free African Americans in Kentucky, Missouri, and Texas petitioned state legislatures and found themselves in courts fighting for their rights. Moreover, even when they did not initiate legal actions, free blacks found themselves at the center of court cases that added credence to free black claims for greater equality under the law.[6]

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[5] Otis H. Stephens and John M. Scheb, *American Constitutional Law: Civil Rights and Liberties vol. 2 of American Constitutional Law*, 4th ed. (Belmont, CA: Thomson Wadsworth, 2008), 50 – 51.
[6] *Ibid.*, 53.

The use of specific state laws pertaining to southern free African Americans allows for the exploration of how they resisted the laws by using the justice system. The contexts of the petitions, wills, court cases, and news articles involving free black southerners provided evidence about their unique situation, which set them apart from their northern counterparts. Historian Leah VanderVelde, in discussing the *Dred Scott* case, argued, that "By suing, the Scotts had staked out a defiant position that subjected them to possible retaliation. Just signing the papers was an act of resistance." Although VanderVelde applied this argument to a freedom suit, a similar act of resistance could apply to free black southern who faced any laws restricting them to second-class status.[7]

By the early-nineteenth century, both northern and southern states had passed laws preventing free African American from having many of the same rights as white Americans, including barring free black residency and emigration. There were also laws that made it illegal for them to attend school, own guns and ammunition, or even to possess or sell alcohol. Regardless of these prohibitions, some free blacks utilized the justice system to challenge the legality of those state laws. Similarly, many enslaved southern African Americans used the courts to argue that they had been illegally enslaved, and therefore their rights as citizens had been violated. Additionally, they filed petitions to remain in their home states and petitioned local courts to challenge their racial classification.[8]

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[7] Lea VanderVelde, *Mrs. Dred Scott: A Life on Slavery's Frontier* (New York: Oxford University Press, 2009), 235.

[8] Fehrenbacher, *Slavery, Law and Politics*, 34-38; Gayle T. Tate, *Unknown Tongues: Black women's Political Activism in the Antebellum Era, 1830-1860* (East Lansing: Michigan State University Press, 2003), 78, 137; Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 102, 258-59.

What set the free people of color in Kentucky, Missouri, and Texas apart from northern African Americans was the large enslaved population in those three states. While African Americans in states such as Massachusetts, New York, and Pennsylvania certainly faced prejudice and racial bigotry, they were not surrounded by a large slave population which would have served as a constant reminder of how truly fragile their standing as free persons truly was. More free northern blacks lived in larger cities or urban settings than those in Kentucky, Missouri, and Texas. Boston, New York City, and Philadelphia were three of the largest cities in the United States by 1830 with each having at least 61,000 residents. By contrast, the populations of Louisville, Kentucky was just over 10, 000 residents; Lexington, Kentucky was over 6,000; and St. Louis was slightly less than 5,000 residents. The 1850 Census, the first to include Texas, reported that New York, Boston, and Philadelphia had over 120,000 inhabitants in each city. St. Louis experienced a significant population growth and counted more than 77,000 residents, yet that city was still very much a frontier town. The 1850 census counted a population of over 43,000 residents in Louisville, while Lexington had just over 8,000 and had been surpassed in population by Covington, Kentucky.[9]

Another contrast between northern and southern free African Americans was the freedom of northern blacks to organize and host national conventions that served to protest the unequal status of people of color in the United States. Between 1830 and 1864, African Americans in several northern states held periodic conventions and

[9] The port cities of Baltimore and New Orleans were both in slave states and were two of the largest cities in the United States between the years of 1830 and 1860. In fact, Baltimore had the largest population of urban free African Americans by the Civil War, with more than 25,000 inhabitants. See, U.S. Census Bureau "Population of the 100 Largest Cities and Other Urban Places in the United States: 1790 – 1990. http://www.census.gov/population/www/documentation/twps0027/twps0027.html (last accessed 5/14/2011); Christopher Phillips, *Freedom's Port: The African American Community of Baltimore, 1790-1860* (Urbana: University of Illinois Press, 1997), 15.

delegates, such as Reverend Richard Allen, a founder of the African Methodist Episcopal Church, and abolitionist Frederick Douglass, usually voiced their outrage about slavery continuing to exist in the United States. The delegates also expressed their displeasure with colonization efforts, the lack of educational opportunities for black children, and northern economic ties to the South. The conventions gave northern blacks a political platform to express their anguish over the place of blacks in America; however, delegates from southern states such as Peter Gardiner and Abraham D. Shadd of Delaware attended. The number of southerners present was always small, and their arguments often revolved around the continued existence of slavery in the South. While delegates like Reverend Richard Allen, who was a founder of the African Methodist Episcopal Church, and abolitionist Frederick Douglass usually voiced their outrage that slavery continued to exist in the United States they also expressed their displeasure with colonization efforts, the lack of educational opportunities for black children and even the North's economic ties to the South. Early on, these conventions gave northern African American men a political platform to express their anguish over the place of blacks in America. However, as the United States moved closer to the Civil War, there would still be few delegates from the South in spite of democratic political changes occurring throughout the nation during the first half of the nineteenth century.[10]

Northern black Americans such as Reverend Allen, James Cornish of Philadelphia, Charles Remond of Massachusetts, and William Wells Brown of New York were able to formally organize political efforts against the injustices facing blacks.

[10] Howard Holman Bell, ed. *Minutes of the Proceedings of the National Negro Conventions, 1830-1864* (New York: Arno Press and The New York Times, 1969), i-ii; Howard Holman Bell, *A Survey of the Negro Convention Movement, 1830-1861* (New York: Arno Press, 1969), 18.

Beginning in 1830, black men in several northern states organized twelve conventions to address the status of African Americans, with the last being held in 1864. Although they faced racism, black Americans in Northern states faced fewer repercussions from local whites for their political actions. The organizers of these meetings attempted to fix concerns of black Americans, such as civil rights and education, and they called for the abolition of slavery in the South. Those who served as leaders in these conventions were usually more economically prosperous than many of those men and women who were petitioning for their freedom or attempting to maintain their family connections in Kentucky, Missouri, and Texas. Some were ministers and members of well-known churches, such as Allen, who co-founded the African Methodist Episcopal Church after having purchased his freedom from slavery; or others such as Brown, who became a source of literary inspiration after he escaped from slavery in Missouri, became very active in the abolitionist push in 1843 and advocated increased educational opportunities for black Americans; these men were typical representatives of the delegates for the conventions.[11]

The first convention of free black Americans held in Philadelphia in 1830 established the broadly focused "The American Society of Free Persons of Colour," and adopted a constitution that aimed to improve the condition of persons of color in the United States. The constitution of the organization created the position of President and delegates elected Reverend Richard Allen of Philadelphia as its first executive. In

[11] Richard S. Newman, *Freedom's Prophet: Bishop Richard Allen, the AME Church, and the Black Founding Fathers* (New York: NYU Press, 2008), 269-70; William Wells Brown, *William Wells Brown: A Reader* ed. Ezra Greenspan (Athens, University of Georgia Press, 2008), 86-7; William Wells Brown, *Narrative of William W. Brown, an American Slave: Written by Himself* (London, EN: Charles Gilpin, 1849), iv.

addition, it called for four of the Vice Presidents to be from Philadelphia. This made certain that the city held political sway over the organization and conventions. Furthermore, the organization proposed the purchase of lands in Canada for the purpose of resettlement and created a Committee of Correspondence, which would establish political connections with "Auxilary [*sic*] Societies that may be formed." With the creation of the American Society of Free Persons of Colour (ASFPC), northern African Americans took the initiative in creating their own political organization that would concentrate on the needs of black Americans as well as offer a platform to express grievances. Moreover, free blacks established this organization three years before the creation of the American Anti-Slavery Society (AASS) in 1833 that focused more narrowly on the abolition of slavery.[12]

The goals of the conventions and the ASFPC society attempted to focus on African American efforts to secure and maintain "civil and religious liberty." Furthermore, the minutes of the convention detailed ideas of collecting twenty thousand dollars for the creation of a school for black Americans that would allow, "in connexion [*sic*] with a scientific education they may also obtain a useful Mechanical or Agricultural profession." The attendees of this first convention were interested in the acquisition of land, which they clearly thought was difficult, if not impossible, in the United States.[13]

The desire to create a school for black Americans would allow boys and men to obtain a practical education while simultaneously strengthening free black American solidarity amongst themselves. In addition, leaders of the convention aimed to connect

[12] "1830 – Philadelphia 'Constitution of the American Society of Free Persons of Colour and The Proceedings of the Convention'" in *Minutes of the Proceedings of the National Negro Conventions, 1830 – 1864* ed. Howard H. Bell (New York: Arno Press and the New York Times, 1969), 5-6.

[13] *Ibid.*, 5.

with other free blacks in the Western Hemisphere by encouraging them to send their sons to the school, that they proposed be established in New Haven, Connecticut. Leaders suggested New Haven because that city had "laws that are salutary and protecting to all, without regard to complexion" and that the town had an extensive trade connection with the West Indies. The hope was that the wealthy black residents in the West Indies would be compelled to send their sons to the school to be educated. Establishing a school for African Americans served more than to simply provide practical education to young black males. This school could potentially form the basis for economic and political autonomy for free African Americans. The school would not be reliant upon Anglo Americans for financial support, but instead the school would enable black Americans to establish a financial connection with rich black West Indians. Furthermore, the fact that the laws of New Haven allowed for political freedoms such as assembly and the press would potentially enable blacks to experience the promises of the United States Constitution.[14]

There was no doubt that delegates present at the 1830 convention recognized the importance of improving the economic standing of black people in the United States. However, the importance of ensuring the protection of black political liberties was ever pressing among the organizers of the convention. Belfast Burton, Junius C. Morel, and William Whipper, all of Philadelphia, wrote the convention address and argued that efforts to keep people of color ignorant served to prevent blacks from "knowledge which abounds in civilized and enlightened communities, has resulted from no other causes than our unhappy situation and circumstances." For the authors of this address the political

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[14] *Ibid., 6.*

status of black Americans rested upon their liberation from slavery and their own efforts to maximize their potential through practical and classical education. This would serve to prove to Anglo Americans that blacks should be entitled to the liberties afforded under the United States Constitution.[15]

Missing from the inclusion in efforts to secure black political rights in the 1830 conventions were black women. Neither the preamble nor the convention address made specific mention of a school or any other organization that would allow black women to gain status as citizens. Historian Wilma King argues that although society demanded that free black women, like other women during the nineteenth century, maintain specific "respectable behavior and gender roles," and submit to their fathers and husbands, some African American women such as Sojourner Truth challenged this expectation by arguing that she could work like a man, endure the same hardships as a man, yet received no less harsh treatment because of her sex. Even though free black women held a different status than enslaved women in that they were legally free, it was generally presumed that free women would be subjects of their husband's or father's households. Despite contemporary perceptions of a woman's place in society, free African American women were not without a voice and struggled alongside free black men to obtain rights protected under the federal constitution.[16]

Historian Gayle Tate argues that free black women's political activities during the antebellum period were intimately connected to methods of resistance utilized by enslaved women. This was linked to the "culture of resistance" created by enslaved

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[15] *Ibid.,* 12, 14.

[16] Wilma King, *Essence of Liberty: Free Black Women During the Slave Era* (Columbia: University of Missouri Press, 2006), 39-40.

women struggling to free themselves and their children from bondage, and the concept was transported to northern cities by freed women who struggled to end slavery, while also fighting against racism and gender oppression. Tate contends that because of this connection between enslaved and free women they relied upon each other to strengthen their efforts to obtain racial equality. That there were no women delegates present at the 1830 Philadelphia convention is not surprising, however, Tate argues that free women contributed in the establishment of the national black convention movement, which initially centered on the abolition of slavery. Furthermore, the free women in Kentucky, Missouri, and Texas who found themselves involved in legal situations were very much a part of Tate's "culture of resistance" and had long struggled for legal recognition and equality as citizens.[17]

As states issued more laws that restricted the lives of free African Americans some black Americans saw an opportunity to overtly protest their conditions. National conventions organized by black men continued to press for equal rights, including the 1843 convention, which was held with the purpose to examine the moral and political condition of African Americans as American citizens. The organizers of the convention openly questioned the effectiveness of petitioning for their rights, which they argued had improved their condition very little. Yet, for many people of color in the South, petitioning was one of the most effective forms of resisting their condition. Furthermore, that southern free African Americans utilized the courts was one method of exerting their

[17] Gayle T. Tate, *Unknown Tongues: Black Women's Political Activism in the Antebellum Era, 1830 – 1860* (East Lansing, MI, 2003), 16, 140, 191.

political rights, while also confronting the very system that restricted their rights as citizens.[18]

One right that black leaders continuously stressed was the right to an education. As early as the first convention in 1830, advocates proposed the creation of a school for black children. Unfortunately, these conventions never resulted in the creation of a school that would prepare African American children for mechanical and agricultural professions. The committee overseeing the plan submitted its last report at the 1853 convention in Rochester, New York. The report mentioned the creation of a section in the school that would provide African American girls with skills in textile production. The discussion of an industrial school did arise at the 1855 convention; however, there was no committee report. It appeared that due to "deep-rooted prejudice" and the overall cost, they were unable to create the school. There were just not enough affluent African American parents who could afford to start the school. Furthermore, it did not appear that the support from the West Indies ever materialized. Many of those who could afford to send their children to schools simply sent their children to schools that accepted black children, yet, collectively they were unable to establish a school.[19]

There were three national conventions from 1853 to 1864 as blacks continued the trend of protesting the inequality of black Americans and calling for the destruction of slavery in America. These conventions seemed to center African American reformists'

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[18] "Minutes of the National Convention of Colored Citizens: Held at Buffalo, on the 15th, 16th, 17th, 18th and 19th of August 1843. For the Purpose of Considering Their Moral and Political Condition as American Citizens." *National Negro Conventions*, 6.

[19] "Proceedings of the Colored National Convention, held in Rochester, July 6th, 7th, and 8th, 1853" in *National Negro Conventions*, 32; "Proceedings of the Colored National Convention, held in Franklin Hall, Sixth Street, Below Arch, Philadelphia, October 16th, 17th and 18th, 1855" in *National Negro Conventions*, 11.

attention on some of the fundamental civic deficiencies of black Americans, while at the same time establishing a political platform for African Americans. In addition, conferences attempted to generate a consensus among the black population; while northern African Americans might have had greater access to national black conventions southern blacks continued to utilize the courts to struggle for their rights. While both groups had limited success, free African Americans in the South took a different approach, especially as states began to issue even stronger measures to limit the rights of free blacks. Furthermore, conventions were an overt manner in which free African Americans could object to their place as second-class citizens. These political assemblies all took place in northern states although some southern free blacks participated. Yet for many free southern African Americans, their resistance to their status involved the justice system. To understand their legal efforts to oppose second-class status it is important to understand the southern laws that restricted their lives.

Nineteenth-century National Negro Convention delegates were typically men and social leaders in their respective communities. As far as financial wealth, men such as William Whipper, Frederick Douglass, James Forten, and Martin R. Delany paled in comparison to their European American contemporaries; however, they would have been considered the black-upper class of their day. Scholar Juliet E. K. Walker argues, "Within the context of American law, race mattered a great deal in determining not only the legal and economic status of African-Americans but also their societal status." The convention delegates challenged their status by convening periodically from 1830 to 1864. Yet, for many southern blacks of modest means they challenged their status as

second-class citizens in courts. This included some free African Americans who had their freedom questioned by whites.[20]

While free blacks were making their protests against second-class citizenship at their conventions, the inclusion of more white people in the national political process was occurring simultaneously occurred throughout the United States. For example, historian James Oakes contends, "political democracy – became inextricably linked to the slaveholders' defense of bondage." Moreover, Oakes argued, "In the 1830s, new constitutions in Arkansas, Virginia, Mississippi, and Tennessee, and amendments to the constitutions of Maryland and North Carolina all tended away from property qualifications and towards universal white manhood suffrage." Furthermore, policymaker's efforts to democratize states required "the subjugation of blacks," to justify the political changes.[21]

The 1830s was a decade in which tremendous changed occurred in the United States. Even before Andrew Jackson's election in 1828, there had been a swell of democratic fervor in the United States. Much of this excitement over politics has been attributed to changes in state and local voting rules, such as the relaxation of property requirements for political participation. Furthermore, many of the citizens on the frontier identified with Jackson.[22]

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[20] Juliet E. K. Walker, *The History of Black Business in America: Capitalism, Race, Entrepreneurship* (New York: Macmillan Library Reference USA, 1998), 127.

[21] James Oakes, *The Ruling Race: A History of American Slaveholders* (New York: W. W. Norton, 1998), 138-39, 141.

[22] William McDonald, *Jacksonian Democracy, 1829-1837* (New York: Harper and Brothers Publishers, 1906), 263-265; Harry L. Watson, *Liberty and Power: The Politics of Jacksonian America* (New York, NY: Hill and Wang, 2006), 50.

Universal white male suffrage in combination with northern free African Americans organizing conventions that sought to protest the inferior status of all black citizens throughout the nation and the occurrence of Nat Turner's rebellion in 1831 led to many southern states passing laws that are more restrictive. For example, Kentucky adopted an 1837 statute saying that a free black person found guilty of assaulting a white person could be fined not more than one hundred dollars and imprisoned up to three months. This law made it more than just a crime for a free person of color to attack a white person. It intended to make it a criminal offense for free African Americans to make any attempts to challenge white societal superiority. If found guilty of such a crime, free blacks faced often times brutal punishments, which white assailants often avoided for the same crimes against free blacks. The racial distinctions outlined in some state's punishments and the potential for violent retribution from local whites appeared to serve as a significant deterrent or control mechanism for free African Americans in Kentucky during the 1830s.[23]

Similar efforts to control the behavior of free blacks occurred in Missouri. For example, an 1835 statute entitled "An act concerning free negroes and mulattoes" explicitly required free people of color to obtain a license from a county court that would permit them to remain in the state. What is more, in order to obtain those licenses, free African Americans had to bind themselves to individuals for as little as three hundred dollars and as much as one thousand dollars. To illustrate the significance of the law, consider the case of Aaron M. Parker. On December 10, 1846, Parker bonded himself to

[23] Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815-1848* (Oxford,UK: Oxford University Press, 2007), 275; C. A. Wickliffe, S. Turner, and S. S. Nicholas, *Revised Statutes of Kentucky* (Frankfort, Kentucky: A. G. Hodges, 1852), 633, 638 – 642.

Edwin Ellis of St. Louis for one thousand dollars and as a condition for Parker to secure his bond and received a license that enabled him to remain in Missouri. For the county to grant Parker a bond and licenses he had to verify that he was in good local standing, presumably that he would not become a financial burden upon the local white population or refuse work. If authorities found Parker in violation of his agreement he would forfeit the bond. Such an act for Parker relegated him to dependant status. If Ellis decided to move then Parker could have faced separation from family members. Furthermore, individuals unable to post the bond faced expulsion from Missouri. [24]

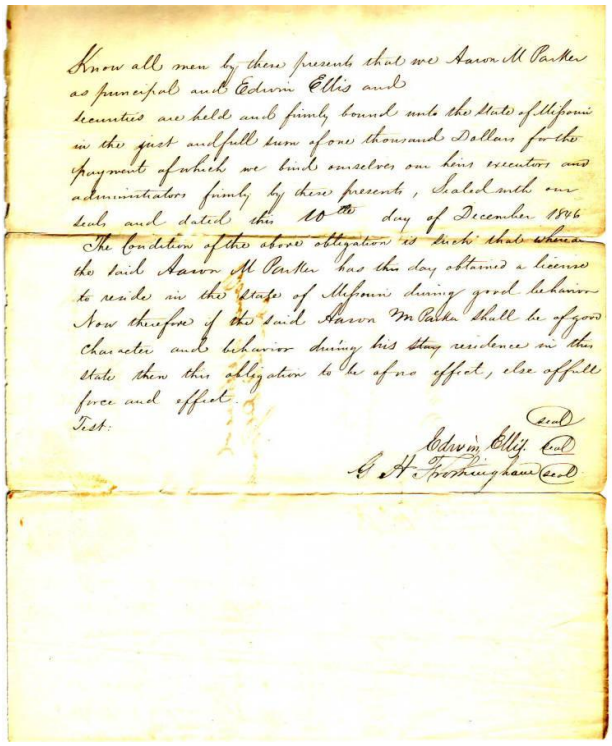
Know all men by these presents that we Aaron M Parker as principal and Edwin Ellis and securities are held and firmly bound unto the State of Missouri in the just and full sum of one thousand Dollars for the payment of which we bind ourselves our heirs executors and administrators firmly by these presents, Sealed with our Seals and dated this 10th day of December 1846
The Condition of the above obligation is such that whereas the said Aaron M Parker has this day obtained a license to reside in the State of Missouri during good behavior Now therefore if the said Aaron M Parker shall be of good character and behavior during his stay residence in the State then this obligation to be of no effect, else of full force and effect
Test.
Edwin Ellis (Seal)
G A Trotter (Seal)

Figure 1.Aaron Parker Free Negro Bond. From Missouri History Museum Digitized Documents.

[24] "An Act Concerning Free Negroes and Mulattoes." March 14, 1835, in *The Revised Statutes of the State of Missouri, Revised and Digested by the Eighth General Assembly During the Years Once Thousand Eight Hundred and Thirty Four, and One Thousand Eight Hundred and Thirty-Five Together with the Constitutions of Missouri and the United States* (St. Louis, MO: Argus Office, 1835), 414; "Aaron Parker Free Negro Bond, December 10, 1846," Missouri Museum of History: Digitized Documents: http://contentdm.mohistory.org/u?/archives,2214 (last accessed 6/4/2011).

Although some former slaves were successful in acquiring licenses, those who did obtain them faced racist restrictions. For example, if a free person of color wanted to move to a different county they would have to apply for a license in the county in which they sought to relocate. The 1840 census indicated that more than 1,500 free blacks lived in Missouri, many of whom were in St. Louis. During the March 1849 state supreme court term the case *Carroll vs. The City of St. Louis* pointed to the large number of cases involving the prosecution of blacks who did not have a residency license. Attorney C.C. Carroll sought payment for services rendered in 200 cases in the St. Louis area where he defended free blacks before the city courts in 1846. Not surprisingly, the state actively prosecuted any African Americans without paperwork proving they were free. Although the supreme court affirmed the circuit court ruling and denied payment to Carroll, this case demonstrates the severity of the law's impact on blacks in St. Louis. Free blacks, without licenses, faced the very real threat of re-enslavement or removal from the state, yet many continued to use the court system in an attempt to preserve what little rights they did have.[25]

This 1835 licensing law also affected orphaned and poor free African American children between the ages of seven and twenty-one whose parents could not support them. The state bound out such children to guardians where they would learn skills or trades. Although white parents could also bound out or agree to apprenticeships for their children in order to acquire a trade the 1835 statute specified that free children of color

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[25] United States Census, *Missouri - Race and Hispanic Origin: 1810 to 1990* Table 40 www.census.gov/population/www/documentation/twps0056/tab40.xls. (last accessed 11/17/10); *Carroll vs. The City of St. Louis* March 1849. Missouri Supreme Court Records. 444.

could not be placed alongside white children or to be 'taught any trade or occupation, except by the consent of the parents or guardian of such white apprentice. Presumably, legislators in Missouri sought to separate young people of color and young white children in order to prevent any sort of transracial bond that could possibly threatened the social order. By placing the decision in the hands of the white parents, the social contact between young whites and free blacks could be monitored closely. Furthermore, the 1835 act would provide protection to the more lucrative trades filled by white apprentices. Ultimately, this act prevented black families from having much control over which practices their children entered, while at the same time limiting black economic progress.[26]

Missouri's law requiring free blacks to acquire licenses and forcing them to apprentice their children was only one statute relegating free blacks to second class citizenship with which they contended. Most southern state legislatures passed laws confining free blacks to this status; however, there was never an organized effort, comparable to the northern convention movement, by southern blacks to protest the discrimination. It is difficult if not impossible to draw connections to the efforts of African Americans who used the legal system to combat what they deemed as violations of their rights and an organized effort, such as the northern convention movement, to challenge inequality. Any large well-organized movement by blacks to petition a state or federal court would have brought down the wrath of local white population and the families of those who organized such an effort would have no doubt endured immense suffering. However, while there was no large united civil rights movement during the

[26] "Act Concerning Free Negroes and Mulattoes, 414.

nineteenth century it does not eliminate the possibility that individual actions of blacks having a collective impact. Solitary legal actions by free blacks, such as filing petitions against slaveowners who held them against their wishes or petitioning state legislatures to remain in a state, may be viewed as more than just the efforts of a few individuals who protested against injustice. These actions can also be read as specific political efforts by some to secure the rights of free people of color.

Many of the individual efforts of free people of color in using the courts during the antebellum period were to protect their families. Mothers and fathers, and petitions and suits filed on behalf of children in many instances to protect loved ones from state and local regulations. Similar to the slave population, free people of color, struggled make sure that both they and their children survived. Moreover, historian Wilma King argued that "within the slave community that this burden primarily rested upon the shoulders of slave mothers."[27]

An example of a free black mother seeking to protect herself and her child occurred when the Kentucky State Supreme Court ruled in favor of the appellant in *Williams v. Blincoe* (1824). The case revolved around the matter of a free biracial woman who made an oath to the Hardin County justice of the peace alleging that the appellee fathered her child. Prior to the suit, Kentucky adopted a measure that specifically addressed the subject of illegitimate children. The legislature passed the statute "An Act to amend and reduce into one act the several acts concerning Bastardy," December 14, 1795. This act allowed any single free woman who delivered a child to make an oath before a justice of the peace and charge the father of the child, but the

[27] Wilma King, '"Suffer with Them Till Death' Slave Women and Their Children in Nineteenth-Century America," in *More Than Chattel*, 147.

statute made no mention of the color. However, by1852 the statute regarding illegitimate children stated that only an "unmarried white woman" could go before a judge and give an oath charging the father of the child. By all appearances, this change removes legal leverage, which unmarried free black women had to hold fathers for providing for their children. In addition, this legal alteration could enable married white men who had extra marital affairs with or raped free black women to escape culpability and embarrassment.[28]

In response to the charge, Williams' attorneys argues that the judge erred in issuing a warrant for their client's arrest on the grounds that by law, no black person, free or slave, could testify or serve as witness against a white person. This law was based on the perception that no person of color was competent and it served to protect white citizens from being convicted by the testimony of black residents.[29]

In *Williams v. Blincoe*, the appeal favored the mother because she had only complained and swore that the appellee had fathered her child, which led to the court issuing a warrant for his arrest and charges of fathering an illegitimate child. In this instance, the mother utilized what little resources she had, which consisted of complaining to the justice of the peace that the man responsible for fathering her child had abandoned his responsibility. Her reaction to the circumstances as an unprotected mother underscored a political action by using the courts as method of solving grievances. In addition, she also benefited from the Kentucky government's effort to

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[28] William Littell, *The Statute Law of Kentucky; with Notes, Praelections, and Observations on the Public Acts. Comprehending also, the Laws of Virginia and Acts of Parliament in Force in this Commonwealth; the Charter of Virginia, The Federal and State Constitutions, and so much of the King of England's Proclamation in 1763, as Relates to the Titles to the Land in Kentucky. Together with A Table of Reference to the Cases Adjudicated in the Court of Appeals.* vol. 1 (Frankfort, KY: William Hunter, 1809), 282; Wickliffe, *Revised Statutes of Kentucky*, 141.

[29] *Williams v. Blincoe*, 5 Littel 171, May 1824

"remedy" such instances where illegitimate free black and white children were being abandoned by their fathers and becoming wards of counties.[30]

For some free southern black women the court was the most viable option to keep their families together. In struggling to maintain their families these women initiated legal procedures and persisted during the appeals process. This was the situation when "Free Lucy" filed a suit in Pulaski County, Kentucky, in 1824 against William Denham who had owned Lucy, but emancipated her in 1817. After his death in 1819, the administrator of his estate, Denham's son Obediah, discovered a written contract between Denham and Lucy's partner, "Free Frank" or Frank McWorter, alleging that the couple owed a $212 to Denham's estate. Obediah requested a writ ordering Lucy and Frank detained in order to collect the money. The nature of the contract between Denham and Frank is not explained although historian Juliet Walker suggests the sum "must have been the payment Free Frank received for the services he provided Denham, not a debt for an unsecure loan." Walker suggests it was not uncommon for Frank to "hire out" his time. While Walker's interpretation is plausible, it cannot be proved since the Pulaski County court prevented the admission of evidence supporting such a claim or the basis for Frank's defense to be a part of the record. Lucy, in turn filed a plea, arguing that she was married to Frank in the hope that she would not be incarcerated under the premise of covertures. In response, the circuit court found that the law did not authorize free African Americans to marry, as they were incompetent to contractual marriage.[31]

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[30] *Williams v. Blincoe.*

[31] Walker, *Free Frank: A Black Pioneer on the Antebellum Frontier* (Lexington: University of Kentucky Press, 1995), 50; *Free Frank and Lucy v. Denham's Administrator.* 5 Littell 330, June 1824.

Based upon the available evidence it appeared that courts sought to remove any claim or defense that could be made by Frank. However, Lucy's response to the court's decision was not passive. She and her attorney, John Crittenden, filed an appeal and the state supreme court overruled and remanded the circuit court's decision. At issue for the Kentucky supreme court was the idea that free people of color were incapable of negotiating marital contracts. The opinion of the state supreme court stated:

> So long as they remain in that condition [enslaved], they possess no freedom of will or of action, and of course, by no contract, can they either acquire any legal rights, or impose upon themselves any additional incapacity; but immediately upon being emancipated, the restraint which was imposed upon their will and actions, by their bondage is removed, and with that their competency to contract matrimony is restored.

The Kentucky Appeals Court decided that because their masters had freed them from bondage, Lucy and Frank were legally entitled to be married and the Commonwealth of Kentucky recognized that marriage. Juliet Walker argues that if the state supreme court upheld the Pulaski County circuit court's initial decision that Lucy and Frank's marriage was illegal then the case would have set a "precedent which would impair the contractual obligations on which the whole of social structure rested."[32]

While financial concerns relating to the $212 were certainly critical in the McWorter's appealing to the Kentucky State Supreme Court, it is also important to recognize the political stance taken by Lucy who used the court system to protect her family. It is clear that if the circuit court's decision had stood then contractual obligations of all Kentuckians, white and black might have come under scrutiny. However, the wording of the lower court's ruling specifically identified free blacks as

[32] *Free Frank and Lucy v. Denham's Adm'r*; Walker *Free Frank*, 52.

being incapable of entering into marital obligation. If the court had deemed the McWorter's marriage illegal by reason that free people of color were incapable of being legally married then it is reasonable to assume that the legitimacy of free black families would come into question. In such cases, property could not pass legally into the hands of spouses or to children. Although Lucy left no written records detailing her thoughts about the case, it is not difficult to view her use of the court as a means to protect her family at a time when the justice system seemingly denied her husband that same opportunity.[33]

One possibility for the court's ruling on Lucy and Frank's marriage may have been due to the rise of popular democracy was spreading throughout the frontier. An example of the changing dynamics of frontier politics was evident in an editorial in the *Baltimore Patriot* that reprinted an excerpt on May 15, 1823 from *The Ohio National Republican* detailing the "large and respectable meeting of the citizens of that place, and of Jefferson County," had nominated General Andrew Jackson as a candidate for President by a majority of 170 votes to 164 over Henry Clay. Furthermore, the editor stated, "the meeting in Louisville may be considered the commencement of a counter current in public mind …. The people are determined to put down legislative usurpation, and to re-invest themselves with all the prerogatives and immunities of freemen." For many on the frontier the chance to participate more fully in the political process was "the most valuable inheritance of freedom" and an opportunity to exact the "will of the

[33] *Ibid.*

people." As the political arena spread to include more people on the frontier, this was bound to affect the lives of some people of African descent.[34]

Many African Americans on the frontier carried the burden of slavery with them as they migrated West with their masters. However, some free blacks also carried the idea of liberty, which was intimately bound to freedom from the existence of slavery. As slaveholders emancipated more African Americans during the first quarter of the nineteenth century, many freed blacks expected laws and local governments to protect their rights. Moreover, as slave states enacted laws that prevented free blacks from achieving political equality with whites, such as barring them from assembling, free African Americans continued to assert what they perceived to be their political rights such as petitioning their local courts and governments. It is possible that black Americans' brought revolutionary beliefs in the rights of men and the Constitution's promise to protect to the rights of all men with them to the frontier and that these political beliefs combined with rising popular tide of democratic change further strengthened free black notions of liberty and equality under the law.[35]

Similar to Kentucky's legislature, which made it a misdemeanor for a free person of color to "keep a disorderly house," "loiter about" or "engage in no honest calling to obtain a support," the legislatures of Texas and Missouri aimed to limit any rights African Americans may have gained through emancipation. For example, an 1837 ordinance in Texas, known as "An Act to Provide for the punishment of Crimes and Misdemeanors committed by slaves and free persons of color," made it crime for a slave

[34] "Presidential Nomination in Kentucky," *Baltimore Patriot* May, 15, 1823 vol. 21 Issue 108 p. 2.

[35]Edwards, *People and Their Peace*, 82; Howe, *What Hath God Wrought*, 497.

or free person of color to use abusive or insulting language or threaten any white person. If convicted of this crime a person faced a punishment of between twenty-five and one hundred lashes. The Republic of Texas fully expected black social deference to whites. Furthermore, Kentucky, Missouri, and Texas employed the punishment of whipping free blacks for seemingly minor offenses and like legislators in other southern states, lawmakers maintained control over the free African American population.[36]

That Missouri lawmakers made legal distinctions between blacks and whites was clear when they approved an "Act concerning slaves" in March 1835. Authorities fined whites and free African Americans ten dollars for unregulated assemblies with slaves. In addition, the act stated, "if a free negro or mulatto, shall moreover receive any number of lashes, not exceeding thirty, by the order of any justice of the peace." The act made no mention of physical punishments for white violators, only the ten-dollar fine. Legislators aimed at preventing whites and people of color from interacting; however, the law provided an extra punishment for free blacks.[37]

On other occasions, free blacks were subjected other discriminatory laws such as an 1836 statute passed by the Texas legislature that made the emigration of free blacks and mixed race blacks into Texas illegal. Similar to statutes in other slaveholding states, this ordinance gave judges and sheriffs the authority to question the legitimate residency qualifications of blacks. Moreover, the ordinance stated that any citizen could legally apprehend suspected violators and take them before a municipal judge. Should the courts find the violators guilty, the punishment was sale at a public auction to the highest bidder with one-third of the proceeds going to the apprehender. After covering the court costs,

[36] *Revised Statutes of Kentucky*, 642; *The Laws of Texas, 1822 – 1897* vol. 2, 1386.

[37] *Revised Statutes of Missouri*, 585.

the remainder of the proceeds were deposited in the treasury of the Republic. This ordinance made any white citizen of the Republic of Texas acutely aware of nonwhites in Texas and provided a monetary motivation for turning suspected violators in to authorities. Furthermore, free blacks, especially those who migrated to the Republic prior to the passage of the statute or who became free while the region was under Mexican authority, also had a financial motivation to turn in violators.[38]

Not only did the 1836 ordinance speak volumes about the precarious situation of free black Texans, but it also addressed slaveholder's desires to preserve as much land for white settlement as possible while ensuring that the number of free blacks in the area would remain miniscule. At any moment, a white person could accuse African Americans in Texas to be in violation of this ordinance, be confined, and brought in front of a judge where blacks must proved that they were legally entitled to be in Texas. If accused of violating the states, blacks were detained, brought to court, and required to prove their right to reside in Texas. Even if when black Texans were legal residents of Texas and the legislature had granted approval, if their standing (economic status) were to ever fall they faced the prospects of being sold into slavery or removal from the Texas.[39]

A concern facing the Texas legislature concerning black Texans was that some blacks came to the area prior to independence. The Texas legislature grappled with the status of blacks, including Lewis B. Jones, in the area before independence. Jones moved to Texas in 1826 and received a land grant from Stephen F. Austin in 1831. Although

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[38] "An Ordinance and Decree to Prevent the importation and emigration of Free Negroes and Mulattoes into Texas," January 5, 1863, *The Laws of Texas, 1822 – 1897* vol. 1, 1024 – 25.

[39] *Ibid.*

Jones resided on the land for three years and petitioned the legislature in October 1837 for a title it was unclear in the petition why there was delay in his request. In validating his property claim, Jones included a land certificate from Austin. The fact that he obtained land initially seemed to speak more about the relaxed property restrictions under Mexican authority regarding blacks than anything. While it was highly probable that African Americans who moved to Texas prior to independence experienced varying degrees of discrimination, at least in some cases the authorities protected their efforts to secure property. However, this prospect changed promptly in 1836 when Texans elected a white pro-slavery legislature that would insure long-term property rights for whites by eliminating black competition for land. Legislative efforts to deny people of Mexican descent claims to lands would have been much more difficult to accomplish due to Tejanos, Mexican-born Texans, having a longer social, political, and economic footprint in the region. Conversely, free blacks, had come to Texas much more recently. In addition, the presence of free blacks served as a potential incentive of insurrection by enslaved blacks. It appeared that the legislature granted Jones the title, yet, he was quick to acknowledge that the Constitution of Texas prevented him, a descendant of African parents from "exercising the privileges of a citizen." In spite of his limited rights under the Republic of Texas law, Jones petitioned the government and through his own initiative along with the aid of local whites he was able to hold on to his land.[40]

Free blacks in Texas, similar to free people of color elsewhere, encountered laws that were severely limiting, but they never lost sight of securing and keeping their rights.

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[40] Lewis B. Jones Petition, October 8, 1837, PAR 11583701 Texas, Reel 15, Schweninger, *Microfilm Petitions*, Ser. I.

And, there were instances where they overcame legal restrictions and managed to carve out an existence in the region. Black residents of the Texas Republic who fought for independence were able to rely upon courts and the aid of white citizens to achieve a small measure of liberty, as was the circumstance in 1840 in Jefferson County, where dozens of white residents filed petitions on behalf of the Ashworth brothers.[41]

No fewer than seventy-two white citizens, including members of the Board of Land Commissioners of Jefferson County, filed at least three petitions between September 1840 and December 1842 on the behalf of many black Texans who had contributed to Texas' independence from Mexico. William, Abner, Aaron, and David Ashworth; Elisha and Eliza Thomas, Henry and John Bird; and, Aaron Nelson sought to remain in the Republic and hold on to their land even though the legislature had passed laws making these prospects very difficult. The December 1842 petition identified all of the men as "good and worthy members of this community," "industrious and orderly citizens," and "patriotic" in the hope that the Texas Legislature would grant a favorable exemption of the law forcing them to leave the Republic. Yet, the petition by the Land Commissioners went further requesting that those named by the petition retain their Head right claims to the land that they owned. [42]

The fact that the county Land Commissioners appealed to the legislature of Texas on behalf of free black Texans illustrates the rather unique relationship between some blacks and whites in Jefferson County. This appeared to be the only instance in which a petition was supported by land commissioners on the behalf of African Americans living

[41] Ashworth Petition, September 1840, PAR 11574004 Texas, Reel 15, Schweninger, *Microfilm Petitions,* Ser. I

[42] "Ashworth Petition, September 1840"; "Petition of the Board of Land Commissioners," December 1842, PAR 11584202 Texas, Reel 15, in Schweninger, *Microfilm Petitions,* Ser. I.

in Texas. Although the legislature went to great lengths to replicate the race-based society in older slave states by writing laws that prevented free blacks from emigrating to Texas or making it very difficult for them to own land at least in some cases these views regarding blacks did not always filter down to the county level. Many free blacks who lived in the Republic validated their claims as citizens by arguing that they came to Texas as free persons while it was still a Mexican territory and that they had fought or contributed to Texas's cause for independence. In a September 1840 petition filed on behalf of William and Abner Ashworth, local residents contended that the Ashworths had "for a great length of time been citizens of Texas" and that they "contributed generously to the advancement of the Revolution." In spite of efforts by the Texas legislature, it seemed that whites and free blacks at the more local level established a more significant social rapport than the state legislature anticipated and that free blacks utilized these connections as they fought resisted legislation to remain in Texas and hold on to their lands. Historian Ira Berlin pointed out "by the 1840s, some sympathetic courts granted permission [to remain in states] so regularly that their assent had become a mere formality." Berlin continues and explains, "When sheriffs pursued [violators of removal laws] they [blacks] appealed to white friends, armed themselves with letters of recommendation attesting to their good character, and petitioned the General Assembly."[43]

Although the Ashworth petitions demonstrates the persistence of the black and some white citizens in Texas as they fought sought to get concessions for blacks under the laws of the Republic, the petitions also highlighted the impact of the laws upon black

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[43] "Ashworth Petition," September 1840; Berlin, *Slaves Without Masters*, 147.

families. Arguing for the preservation of black land rights would mean that newly arriving white settlers had fewer options once they came to Texas during the mid-nineteenth century, while simultaneously ensuring that African Americans who acquired land rights under territorial laws were able to secure a means to support their families. However, these early-black Texans needed validation from local whites and those who received it seemingly were able to remain in Texas, keep their land, and carve out a measure of economic independence in order to provide security for their families. The circumstances of Fanny McFarland and Zeliah (Zylpha) Husk and her daughter Emily were similar to that of the Ashworths; however, when denied the right to remain in Texas, the women simply defied the law and stayed.[44]

In October 1840, eighty white residents of Houston signed a petition on behalf of McFarland whose owner, William McFarland, had brought her to Texas in 1827. The petition declared that McFarland "gave her her freedom in 1835," and with the outbreak of war with Mexico in 1835, Fanny lost her possessions in Austin and relocated to Houston in 1837. The underlying nature of the petition seems to focus on McFarland's economic standing in Houston. Although the petition does not mention any work performed, it affirms that she had acquired property through her diligence and "industry prudence." While her economic standing might have played a significant role for those signing the petition, but for McFarland the critical point was her "four children held as

[44] "Ashworth Petition," September 1840; "Fanny McFarland Petition," October 30, 1840, PAR 11584006 Schweninger, *Microfilm Petitions*, Ser. I; "Zeliah (Zylpha) Husk Petition, December 14, 1840, PAR 11584005 in Schweninger, *Microfilm Petitions*, Ser. I; "Zylpha Husk Petition, December 16, 1841, PAR 11584104 in Schweninger, *Microfilm Petitions*, Ser. I.

slaves in this Republic." If forced to leave, she faced the possibility of never seeing them again.[45]

The importance of family integrity and established connections within the greater community might have been enough for some free people of color to violate state laws. McFarland, only five years removed from slavery herself, surely felt the pull of wanting to remain close to her children. They were probably the only family with whom she shared a close relationship since she had been brought to Texas as a teenager. While McFarland was fortunate to be freed from slavery, her children remained enslaved. Even though the laws of Texas do not prevent free people from purchasing slaves it was a very rare occurrence. Owners were not always willing to sell slaves, and freed persons did not always have enough resources to purchase loved ones.

Regardless of the actual situation, McFarland turned to the courts and local whites in order to remain in Texas. The legislature denied her request, yet she simply refused to leave. Her choice to resist demonstrated a political stance against what she thought was her right to watch over her children, notwithstanding the law. Her bold stance was not highly unusual, according to historian Ira Berlin who asserted, "When the law failed to give way before their petitions, free Negroes generally stayed anyway, adding to the illegally freed population." By 1860 the census counted 355 free blacks in Texas. Of course, it was highly possible that the number of free persons was larger than reported because census takers missed them or they were avoiding census takers because they

[45] "Fanny McFarland Petition."

were in the state illegally. Neither scenario fit the fifty-eight year-old Fanny McFarland who appeared in the 1860 Harris County, Texas, census. [46]

Zeliah Husk, like McFarland resisted to law requiring free persons to emigrate. In 1840, nearly sixty petitioners appealed to the Texas Legislature on behalf of a woman who did not appear willing to abandon the life she had built in Houston. The petition is not clear about whether Husk was free or enslaved when she arrived from Georgia in 1835 or 1836. However, between 1836 and 1840 she had become a successful laundress. Perhaps some of the signatures had retained her services during her four year stay in Texas.[47]

On December 16, 1841, Husk submitted a second petition to the Texas legislature with somewhat different language from the December 14, 1840 petition. The second petition stated if she left Texas it "would bear heavily upon her . . . as she would know not where to go if driven hence." The petition also mentions her daughter Emily, an apprentice in nearby Washington Count. The mother and daughter may have seen each other infrequently due to the distance; however, if McFarland had to leave the state chances for visits were nil to nonexistent. Fortunately for Husk, who arrears to have been economically stable based on the dozens of signatures obtained from blacks and whites.

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[46] Ruthe Winegarten et. al. eds., *Black Texas Women: A Sourcebook* (Austin: University of Texas Press, 1996), 9-10; Berlin, *Slaves Without Masters*,147; *Historical Census Statistics* ,"Table 58. Texas - Race and Hispanic Origin: 1850 to 1990" http://www.census.gov/population/www/documentation/twps0056/twps0056.html (accessed May 26, 2011); McFarland, Fanny (1860 U.S. Census) Texas, Harris, 1-WD Houston, Age: 58, Female, Race: Black, Born: VA, Series: M653 Roll: 1296 Page: 391, http://persi.heritagequestonline.com.proxy.dbrl.org/hqoweb/library/do/census/results/hitlist?surname=McFarland&series=8&state=7&countyid=1015&hitcount=2 (last accessed 5/26/11).

[47] "Husk Petition, December 14, 1840,"; Mark Carroll, *Homesteads Ungovernable: Family, Sex, Race, and the Law in Frontier Texas, 1823 – 1860* (Austin, University of Texas Press, 2001), 66

Yet, being able to live near her daughter was significant. In fact, it was so important that Husk ignored the legislature's denial of her petition and remained in Texas.[48]

McFarland and Husk both refused to leave Texas after the legislature denied their requests to remain. Although neither woman left written records concerning their petitions, it is likely that their refusal to leave had to do with a combination of their ability to support themselves in Houston and their desire to remain near their children. The refusals and the fact that local whites did not protest the violations of the Texas law spoke to an underlying belief among many on the frontier of the significance of local rules and regulations. Although they recognized the laws of the Republic, what appeared to take precedence was the maintenance of local order. The Houstonians sought to decide for themselves who should be allowed to remain in their presence.[49]

By the time the United States admitted Texas to the Union in 1845, the state's legislature had removed nearly all of its relatively lenient civil laws steeped in Spanish and Mexican traditions that governed the lives of free and enslaved blacks. Yet, many black Texans continued using the courts to protect their perceived rights as citizens. Petitioning to remain in Texas was as important as ever. However, in the instances of McFarland and Husk, they took extra-legal actions to remain close to their children. No doubt the mothers' abilities to placate white locals was paramount. The women were able to remain in Texas in violation of the removal law and although these two women demonstrated efforts to resist laws in which they deemed in violation of their rights as citizens there were others who were more successful in petitioning state legislatures.

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[48] "Husk Petition, December 16, 1841."

[49] Edwards, *The People and Their Peace*; see note 29.

Similar to McFarland, Husk, and others, In 1850, Mary Madison, a free woman of color in Galveston, Texas petitioned for the right to remain in the state in 1850. Eighty-two citizens signed the petition and averred to Madison's status as a good citizen. Furthermore, the signers highlighted her occupation as a nurse and said that her service to Galvestonians was of considerable value. Similar to McFarland and Husk, the local community deemed Madison's economic stability significant. Madison's successful petition illustrated the inconsistency of states regarding free blacks. Furthermore, according to historian Harold Schoen, Madison, although she illegally entered the Republic, was permitted to remain unmolested without formal exception from the law because she was a good nurse," and provided a valuable service.[50]

The acquisition of land real and personal property by blacks was a difficult prospect throughout the United States and even more difficult in slave states. Any accumulation of land by blacks served as a potential threat to the economic and social status of whites, especially those whites of a middling and lower status. Perhaps further complicating the concept of property holding blacks were those who owned slaves albeit few in numbers. Among the black owners of personal property was John Berry Meachum of St. Louis, who was at the center of suits filed by slaves. Interestingly, some states sought to prohibit black slave ownership.[51]

In seeking to prevent or at the very least minimize the means of economic independence and security by African Americans in Kentucky as well as other slave

[50] Harold Schoen, "The Free Negro in the Republic of Texas: The Extent of Discrimination and its Effects," in *The Laws of Slavery in Texas: Historical Documents and Essays* ed. Randolph B. Campbell, Compiled by William S. Pugsley and Marilyn P. Duncan (Austin, University of Texas Press, 2010), 125; Gammel, *The Laws of Texas* vol. III, 1042.

[51] Schweninger, *Black Property Owners*, 63-65.

states issued statutes limiting their ownership to immediate family members. There were no such regulations preventing whites from owning slaves unless that person had been convicted of a crime and properly tried in a court. Obviously, slave ownership indicates one had elevated social status and the laws of the Commonwealth made sure only those of European heritage occupied those ranks. Perhaps threatened by the potential of a widespread slave uprising, legislators in Kentucky also aimed to deny blacks access to the very democratic changes that enabled some lower class whites greater political and economic opportunities.[52]

Many black slaveholders in the South were interested only in owning and protecting their family members from separation by sale or from harsh treatment. Yet, at times those who managed to purchase relatives found that their property titles were precarious. In 1857, the Kentucky Supreme Court heard *Kyler and Wife v. Duncan* that juxtaposed the issues of free black slaveholders with slaveholder debt and threatened to separate a husband and wife.[53]

Court records indicated that Stephen Kyler, was a free man of color, while his wife Cynthia remained in bondage. Some years prior to the court decision, Joseph Kyler, Stephen's owner freed Stephen and subsequently purchased Cynthia in order for the couple to remain together. Perhaps Stephen remained in Kentucky, no doubt due to Joseph freeing him prior to June 11, 1850, when the state made it illegal for emancipated slaves to remain there. Since emancipation for Cynthia came afterward, authorities could force her to leave the state. To prevent the separation, Joseph sold Cynthia to Stephen.

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[52] *Statutes of Kentucky*, 682.
[53] Schweninger, *Black Property Owners*, 104-5, 11; *Kyler and Wife v. Dunlap*, 18 B. Mon. 561, December 1857.

Problems for the Kylers arose when Stephen was unable to pay his debts and Cynthia was legally a slave whom authorities could confiscate in order to cover the debts. The Kyler's case affirmed that argument and the state supreme court upheld the circuit court's ruling.[54]

Although there few free black slaveholders in Missouri and Texas, laws preventing them from owning slaves were less restrictive generally in terms of who free African Americans could own. While rare, there were instances in which black slaveowners faced petitions and freedom suits initiated by their slaves. Between 1834 and 1840, slaves belonging to Meachum, a St. Louis businessman and Baptist minister, filed no less than seven petitions against him for their freedom and that of their children. Several cases against Meachum cited the 1787 Northwest Ordinance, which outlawed slavery in the territories and subsequent states carved from the region north of the Ohio and east of the Mississippi Rivers. But, a series of petitions filed by two siblings, Brunetta and Archibald Barnes, in 1840 claimed that they were free-born and that Meachum held them illegally.[55]

The Barnes petitions relied solely upon the status of the parents as free persons. The Barnes argued that their mother, Leah, had sued slaveowner Arthur Mitchel in Ohio in 1826 and subsequently won her freedom. The foundation of her case centered on Mitchel's extended residency in Ohio, according to guidelines established under the 1787 Northwest Ordinance. At the time of Leah's case her son, Archibald, was two or three

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[54] *Kyler and Wife v. Dunlap*; "Slaves, Runaways, Free Negroes, and Emancipation," Wickliffe, *The Revised Statutes of Kentucky* (Frankfort, KY: A.G. Hodges, 1852), 647.

[55] *Brunetta Barnes vs. Berry Meachum*, July 1840, No. 40 St. Louis Circuit Court Case Files, http://stlcourtrecords.wustl.edu (Date Accessed January 5, 2009); *Archibald Barnes vs. Berry Meachum*, November 1840, No. 41 St Louis Circuit Court Case Files, http://stlcourtrecords.wustl.edu (Date Accessed December 12, 2010).

years old, and she was pregnant, presumably with her daughter Brunetta. In a sworn deposition from Jesse R. Grant of Clement County Ohio, he stated that while Mitchel had kept Leah as a servant he had also lived in Brown County Ohio for up to three years. Further, Grant stated that Peter Grant of Maysville, Kentucky, sought to assist Leah in establishing her freedom. Although her prior knowledge of the federal ordinance cannot be ascertained, it is obvious that Leah fully understood the consequences of using the legal system in establishing her freedom and that of her children.[56]

With the aid of white St. Louis resident, Peter Charleville, both Brunetta and Archibald petitioned for their freedom in 1840. Brunetta filed her petition filed in July, four months prior to her brother's. Yet, Brunetta actually filed two petitions in 1840. The first of which stated that she was born free to free parents in Ohio, whom were still free and claimed Meachum was unlawfully holding her against her wishes. Nevertheless, her petition for freedom was granted and a plea of trespass was entered in the court. However, her ordeal was not over.[57]

In September 1840, Brunetta filed her second petition against Meachum, which sought to prevent him from sending her aboard steamships on the St. Louis docks. Brunetta claimed that Meachum forced her to sell milk on the steamships during the dawn hours, which put her in the company of some unscrupulous characters and unruly young men. According to her complaint, she was subjected to verbal insults by men on the steamships, and she communicated with Meachum regarding the matter. She claimed that he decidedly threatened to get rid of her and that her loss would not mean much to

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[56] *Archibald Barnes vs. Berry Meachum.*

[57] *Brunetta Barnes vs. Berry Meachum.*

him. For Brunetta, the fact that Meachum subjected her to such a task was demeaning. As a free woman she would have the liberty to avoid such settings.[58]

In addition, some blacks who could obtain land found their paths blocked by the law as some states sought to preserve prime property for white residents. One such law was the 1855 Missouri statute that prohibited free African Americans from pre empting or squatting on lands until the property could be paid for and titles acquired. Individuals practiced this method of land acquisition to prevent others from claiming the same parcel of lands. The implication was that any attempt by free black Missourians to acquire land had to go through counties or the state first if they hoped to acquire land. Whereas as white Missourians simply could squat on unclaimed lands prior to any attempts to purchase property. While the state appeared to regulate illegal property claims by unqualified individuals, it also appeared to be preserving unclaimed lands in the state for potential white settlers as the law specifically mentioned free black and mixed race blacks in the statute. Furthermore, this meant that free blacks who sought to acquire land from the state faced the predicament of also proving their residency. Under the 1835 act that required free blacks to obtain a license from their county court that proved they were legally able to live in the state and paying a bounty to the county.[59]

In most instances, cases involving African Americans in the nineteenth century, black residents of slave states faced statutes that did not apply to white residents. Furthermore, there were laws preventing blacks from engaging in certain types of

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[58] Petition of Brunetta Barnes, September 1840, Missouri, Reel 18, *Microfilm Petitions*, Ser. II.

[59] *Revised Statutes of Missouri*, vol. 2, 1008; "An Act Concerning Free Negroes and Mulattoes." March 14, 1835, *Revised Statutes of Missouri*, vol. 2, 414.

businesses, such as the manufacture or sale of alcohol, unless a free white person had hired the seller. What was peculiar about this statute was its obvious social connotations that no matter the economic or social status of a free black person, in the state of Kentucky, a free black person was always subjected to the whims of a free white person.[60]

A challenge to the 1852 Revised Statutes of Kentucky that stated" If a free negro sell or give ardent spirits to a slave, without the consent of the owner, he shall be deemed guilty of a misdemeanor" came in the Kentucky State supreme court case *Commonwealth vs. White (Free Negro)* (1857). The case was an appeal from the Marion circuit court in which the state of Kentucky had accused Charles White, a free man of color, of selling alcohol in violation of article eight under the 1852 Revised Statutes of Kentucky. This was the same statute that made it illegal for free blacks to manufacture alcohol. White's counsel objected to the vague charge that he "did unlawfully sell whiskey, brandy, and other spirituous liquors, against the peace," to which the lower court sustained. Judge Alvin Duvall, in delivering the opinion of the court, stated that the indictment was "obviously too general, and lacks the ordinary certainty requisite to give the defendant any available notice whatever of the particular act or acts constituting his offense." Yet, two things stand out about the case. First, it did not seem to take much, if any evidence, to bring an indictment against free blacks. This illustrates how delicate the situation was for free blacks living in a slave state. Ostensibly, if any white person could find fault with a free black, which in some cases might have even been economic competition, then the laws of the Commonwealth could and did criminalize specific actions by blacks. It is

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[60] C. A. Wickliffe, S. Turner, and S. S. Nicholas, *Revised Statutes of Kentucky* (Frankfort, Kentucky: A. G. Hodges, 1852), 642-43.

possible that some of these laws simply sought to eliminate free black economic competition.[61]

Second, it appears that Kentucky was intent on prosecuting violators of this law who may pose a threat to the liquor production in the state. The fact that the state brought the case to the appeals court indicated a clear intent of controlling the actions of African Americans. The attorney general, James Harlan, prosecuted the case under vague accusations against White; however, Harlan did so under the general definitions of the law. The transcripts do not confirm if White had engaged in any illegal activities, yet, the fact that the state of Kentucky sought to minimize or prevent free or enslaved blacks from having contact with a vice underscores the dual social expectations of African Americans. There were no such laws preventing whites from engaging in such a business, which offered another economic opportunity for whites to support themselves and their families. By contrast, the Commonwealth of Kentucky considered this very same business opportunity as a criminal offense if a black person engaged in the same activities. At least in some instances under the law it was a criminal offense for African Americans to pose any economic threat to whites.[62]

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[61] *Commonwealth v. White (Free Negro)* Monroe, 18, 391: Kentucky State Supreme Court, 1857. "Of Misdemeanors by Free Negroes," Wickliffe, *Revised Statutes of Kentucky*, 643.

[62] *Ibid.*

Chapter Five

Southern Black Americans and Wartime Justice

In an August 3, 1863, letter to the Headquarters of the Department of Missouri, Brigadier General Thomas Ewing, Jr., expressed his thoughts on both the lack of security for black Missourians and their growing unrest in the wake of federal orders. General Ewing points out that many had been enslaved by those in open rebellion and freed by the July 17, 1862, Confiscation Act. Ewing states, "Many of them have escaped from their masters [*sic*] farms to adjacent military stations – but many more are being still held and worked as slaves." The General added, "Nearly all feel unsafe where they are, and wish to get to Kansas where they will be able to support themselves, and enjoy the freedom declared theirs by the act of Congress." In describing the general political and social conditions in Missouri, Ewing found that among those loyal to the Union there was a "beleif [*sic*] that such a league exists, and that the guerillas are being supported and used by men enjoying in person & property the protection of the Government, for the purpose of preventing these freedmen obtaining actual liberty …." Ewing voiced concern over the Confiscation Act, which freed only those individuals whose masters were rebels, yet resulted in extralegal activities by guerrillas and intimidation of former slaves and those loyal to the Union. He highlighted his anxiety by requesting that the former slaves of rebels receive "military escort out of those Counties." What is more, his request underscored the reliance of southern blacks upon the government to protect their rights.[1]

[1] "Commander of the District of the Border to the Headquarters of the Department of the Missouri," August 3, 1863, in *The Black Military Experience, Freedom, a Documentary History of Emancipation, 1861-1867* eds. Ira Berlin, Joseph P. Reidy, and Leslie S. Rowland Ser. 2 (New York: Cambridge University Press, 1982), 228.

This chapter focuses on the Civil War years, 1861-1865, and the continued attempts by southern blacks to secure their liberties by using the justice system. That was possible due to the expanded military role and presence in the South. For many southern African Americans during the Civil War years, the *Dred Scott* (1857) decision and the continuation of slavery served as a stark reminder that the American legal system did not recognize blacks as citizens. Conversely, many people of African descent viewed the outbreak of war and the federal military presence as an opportunity to destroy the court's decision while others saw the war as an opportunity to escape slavery. Historian William Link argues, "The Civil War was a political process involving the most serious breakdown of the constitutional system in American history." This breakdown included the destruction of slavery and the dismantling of a legal system that categorically denied black Americans rights, citizenship, and privileges, which, many argued, the Constitution guaranteed. The legal changes that occurred from 1861 to 1865 theoretically served to grant black Americans greater social, political, and economic equality with white Americans. However, due to legal loopholes, executive and military disputes , federal political bickering, and the belief by some that blacks simply had no place in America, most black southerners did not fully realize the liberties, political rights and citizenship, until after the war.[2]

Early on during the Civil War, federal officials recognized Missouri and Kentucky as strategic political, social, and economic locations; this made these states a priority for Union officials to prevent them from joining the Confederacy. On April 25, 1861, William T. Sherman wrote to his brother John Sherman saying that "it was a fatal

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[2] William A. Link, *Roots of Secession: Slavery and Politics in Antebellum Virginia* (Chapel Hill: University of North Carolina Press, 2003), xiii.

mistake in Mr. Lincoln not to tie to his administration by some kind of link the Border States." With respect to the economic reverberations in Missouri Sherman added, "All the heavy trade with groceries and provisions is with the South, and this order at once takes all life from St. Louis." Moreover, the Border States practically served as a buffer against southern states and controlled a major transportation artery in the Mississippi and Ohio Rivers.[3]

In Missouri, Federal troops held control over much of that state by mid-1861. It was also during this time that General John C. Frémont issued an August 30, 1861 proclamation, which declared martial law in Missouri. Under this proclamation, Federal troops would shoot Confederates found in open rebellion behind federal lines and confiscate their property. The proclamation also declared the slaves of those in rebellion were free. Lincoln never authorized Frémont or any Federal officer to have this type of authority, but for many blacks, the abolition of slavery was the true nature of the war.[4]

Yet, for President Abraham Lincoln it was critical to keep more slaveholding states from leaving the Union as well as to maintain executive control. The president quickly countermanded the proclamation and ordered Frémont to "shoot no man." The president suggested that the general comply with the Confiscation Act of 1861 that simply regarded slaves as confiscated property. General Frémont had exceeded his authority , the disconnect between Commander-in-Chief and field generals over what to

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[3] "William Tecumseh Sherman to John Sherman," April 25, 1861, in *The Sherman Letters: Correspondence between General and Senator Sherman from 1837 to 1891*. ed. Rachel Sherman Thorndike (New York: Charles Scribner's Sons, 1894) The American Civil War: Letters and Diaries http://solomon.cwld.alexanderstreet.com/ (accessed July 12, 2011); James M. McPherson, *Battle Cry Freedom: The Civil War Era* (New York: Ballantine Books, 1989), 284-297.

[4] General John C. Fremont, "Proclamation," August 30, 1861, in *The War of the Rebellion: A Compilation of the Official Records of the Union and Confederate Armies*. (hereafter *O.R.*) Series I, vol. 3 (Washington D. C.; Government Printing Office, 1881), 466-67.

do about the slaves caught in the middle of the war quickly became a critical matter regarding a slave's legal status.[5]

Some prominent African Americans, such as Frederick Douglass, let known their displeasure of the slow-handedness of the Lincoln administration. Douglass, who published *The Douglass Monthly*, included an editorial, "The Real Peril of the Republic," in which he argued

> Does Major-General Fremont [*sic*] proclaim that the slaves of traitors and rebels shall be hereafter treated as freemen - the President of the United States comes promptly forward to shield the rebels from such extreme punishment…. while a faithful General was levelling [*sic*] his heaviest bolt at the head of rebellion in Missouri, the President was interposing a statute book to soften the blow.

By the time of the Civil War, Douglass had become a radical abolitionist and lived in the North with his family. He quickly seized the chance to press the matter by appealing to the northern abolitionist sentiment. Douglass contended that President Lincoln's intent was simply to avoid punishing those in rebellion with his reprimand of General Frémont, and, in doing so, the President also avoided issuing any legal change in the status of enslaved blacks. Nevertheless, some free and enslaved people viewed General Frémont's orders as means of escaping bondage and potentially a means of securing the rights and privileges associated with freedom.[6]

Renowned historian of the nineteenth-century James M. McPherson argued that Frémont's arrogance and inability to perceive Lincoln's suggestion as an order led, in

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[5] "Letter to General John C. Frémont from President Abraham Lincoln September 3, 1861" in *Collected Works of Abraham Lincoln,* edited by Roy Basler, vol. 4 (New Brunswick, NJ: Rutgers University Press, 1959), 506.

[6] Frederick Douglass, "The Real Peril of the Republic," *Douglass Monthly,* (October 1861), 530.

part, to the president removing the general from his position, which in turn led to a firestorm of resentment of the president by abolitionists, including Douglass. McPherson further pointed to Douglass' personal concern over fighting a war against slaveholders without seeing slaves and liberty as a critical point was a 'half-hearted' effort at best. Federal officers, such as General Benjamin F. Butler who was in command in Virginia in 1861, responded to Confederate requests to return slaves who fled to Union lines by claiming that once states had left the Union they forfeited their rights to claim slaves under the 1850 Fugitive Slave Act. Butler's response to those requests foretold the changes in the legal status of enslaved men, women, and children: they were no longer slaves, yet, they were not quite legally free. They were simply confiscated property.[7]

Slaves running away to Union lines, also known as contraband, were concerned about what would happen to their families as arguably, the Civil War strengthened the bonds of family for southern Blacks. Historical scholar Herbert Gutman contended, "Radical external changes regularly tested the adaptive capacities of several different slave generations." The generation that lived through the Civil War and emancipation was the final of these changes, but many of those who were enslaved between 1861-1865 put forth a tremendous effort to keep their families together.[8]

A May 25, 1861, letter from General Butler highlighted this point. Butler wrote to the aging General Winfield Scott saying that two of the men who had made it to his encampment had left behind wives and children behind, and that one of the women was free. The letter expresses the idea that slave husbands and fathers were more concerned

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[7] McPherson, *Battle Cry Freedom*, 354-55.

[8] Herbert G. Gutman, *The Black Family in Slavery and in Freedom, 1750-1925* (New York: Pantheon Books, 1976), 34.

about what would happen to their families. Sadly, there was very little, if any, legal protection afforded during the Civil War for many black Americans, enslaved or free, who remained in Confederate areas.[9]

With eleven states in open rebellion and potentially millions of slaves caught in the middle, the legal changes regarding black Americans were traumatic to many Americans. During the first two years of the war, Lincoln issued two Confiscation Acts that served to punish rebellious slaveholders and the second of the two acts granted "federal courts ultimate responsibility of determining the loyalty of the slaveholder. Moreover, the second act deemed the slaves owned by rebels as 'captives of war'" and declared fugitive slaves of rebels free. In Missouri, this act officially turned the federal army into harbingers of freedom for enslaved blacks as hundreds fled slaveholders. Yet, neither act freed the slaves of those persons who were loyal to the Union. It would be another six years before a Constitutional amendment would free slaves.[10]

For many black Americans held in slavery, the opportunity to provide for themselves and their family through service was a tremendous pull and in 1863 the most effective and legal way to do so was in the military. For those individuals close enough to states, like Illinois, which were recruiting black volunteers and rumored to be paying a state bounty for volunteers, running away was worth the risk. In 1863, dozens of black men from Pike County, Missouri, ventured to Quincy, Illinois, in hopes of enlisting and receiving a state-sponsored bounty and protection for their families, which both turned

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[9] "Benjamin Butler to Winfield Scott," May 25, 1861, in *Private and Official Correspondence of General Benjamin F. Butler during the Period of the Civil War*, 5 vols. (Norwood, Mass., 1917), . I.:106, I: 519.

[10] Ira Berlin, Joseph P. Reidy, and Leslie S. Rowland eds., *The Destruction of Slavery, Freedom: A Documentary History of Emancipation, 1861 - 1867*,vol. 1 [hereafter *The Destruction of Slavery*] (Cambridge: Cambridge University Press, 1985), 30.

out to be only rumors. Although this policy in pay eventually changed in 1864, it took the tremendous resolve and efforts of black soldiers, along with some of their white officers and even some state politicians, to get this policy changed.[11]

One real test for black men who served was how they would protect their families. Unfortunately, there were instances where soldiers themselves or the army could offer very little aid. Many enslaved men in Kentucky, Missouri, and Texas thought of the Civil War as a means to secure freedom and citizenship for themselves and that of their family. Both enslaved and free black men thought of the War as way to prove to white men that they possessed nineteenth-century masculine characteristics, such as courage, resolution, and patriotism. By serving in the military, black men provided income for their families, but their service did not enable them to protect their wives and children from hostilities on the homefront. As historian Ira Berlin cogently argued, "The federal government's decision to recruit slaves as well as free blacks increased the number of families exposed to retaliation by angry masters."[12]

The realities of a husband/father/son or other loved one serving in the military was the topic of several letters of wives who pleased with their spouses to return as soon as possible. In December 1863, Martha Glover pleaded with her husband Richard to come home to protect her and their children from abusive whites in Mexico, Missouri. Martha's letter highlighted the anguish, no doubt, experienced by many African American wives who remained at home. Her communication referenced her warnings to Richard before he left that she would face such possible treatment by whites. She wrote,

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[11] *Statutes at Large*, vol.13, 129; Miller, *Black Civil War Soldiers of Illinois*, 23.

[12] Berlin et al., *Black Military Experience*, 657.

"They abuse me because you went and say they will not take care of our children." Martha went further, adding that because of her current condition at home she would not continue to help Richard in his request to recruit other black men in the area. For Martha, the idea of other wives and children being unprotected was too much of a burden for her to bear.[13]

Martha's plea to her husband illustrates one aspect of how the Union use of black men as soldiers affected black families. Soldiers themselves also faced anxious moments while away from home.

Although Richard's response to Martha's plea is not known, it is evident that Black soldiers communicated concerns regarding the safety of their families to military officers. Such communications reflect the black soldiers' expectations of the federal government. The October 1864 affidavit of Assistant Quartermaster Joseph Miller, who enlisted in the 124 USCI at Camp Nelson, Kentucky, the primary recruiting station for black soldiers in Kentucky, detailed the hardships of his wife and four children at a nearby refugee camp. Miller brought his family with him when he enlisted, as he feared his master, George Miller of Lincoln County, would resort to abusing them. Shortly after arriving in the camp, a guard told Miller's family to leave although his seven-year-old son was sick. The commanding officers had issued orders to remove non-military personnel despite the bitter cold and lack of food for refugees. Miller's family attempted to follow the company via wagon; however, his sick son died, which Miller attributed to exposure. Quartermaster Miller's example demonstrated the difficult situation faced by black soldiers and their families. Military laws did not provide protection for families of

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[13] Martha Glover, "Missouri Slave Woman to Her Soldier Husband," December 30, 1863, in Berlin, *Black Military Experience*, 244.

black soldiers and there was very little soldiers themselves could provide. Yet, when families faced with the choice between remaining enslaved, the prospect of being sold further south, and brutality, or following troops to be close to the men in their lives despite having no resources and being exposed to the elements, many chose the uncertainty of being close to the men in their lives and following federal troops which they associated with freedom.[14]

During the war, military and political officials were also aware of the threat to the families of black soldiers in the upper South who served in the Union Army. On February 26, 1864, Brigadier General William Pile, who was at Benton Barracks, Missouri, detailed his concerns to Missouri Congressman Henry T. Blow. Pile asserts that not only were families of black volunteers being removed to "Kentucky clandestinely," but "many more by permission from Government Officers [*sic*]." General Pile's claim that slaveholders in Missouri were receiving permission from federal officers illustrated the sympathy some officers held towards slaveholders and the contempt they held towards blacks. Furthermore, the actions of federal officials who allowed slaveholders to transport slaves further south demonstrated the absence/lack of legal recognition of black citizenship even by whites who were legally obligated to do so by federal orders. there was no legal recognition of the citizenship of blacks by even some of the whites who were legally obligated to do so under federal orders.[15]

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[14] "Affidavit of a Kentucky Black Soldier," November 26, 1864, in *Black Military Experience,* 269 – 70.

[15] Brig. General William A. Pile, "Brig. General William A. Pile to Honorable Henry T. Blow," Feb. 26, 1864, in *Black Military Experience,* 248 – 49.

In June 1864, Senator Henry Wilson, a Republican from Massachusetts, pushed for the adoption of a resolution that would enable agents of the American Missionary Association (AMA), a non-denominational anti-slavery organization established in 1846, to work with the military at Camp Nelson to offer aid to families of black recruits. Wilson sought relief for the families because he, according to historian Victor Howard, knew that while the men "were fighting the battles of the country, their masters, who were generally opposed to their enlistment, could sell into perpetual slavery their wives and children', that the dire circumstances facing the families of recruits influenced him profoundly.[16]

Recruiters, soldiers, and others knew that owners used enlistees' wives as leverage to persuade recruits to return to slavery. In May 1864, a report from Thomas Butler of the United States Sanitary Commission, a federal bureau established at the beginning of the Civil War to promote cleanliness, maintain healthy conditions in federal camps, and raise funds to purchase supplies, discussed slaveholders' uses of the wives of former slaves to encourage them to return to slavery. Butler, also stationed at Camp Nelson in Kentucky, wrote, "slaveholders frequently sent their wives, who brought with them the wives of the would-be soldiers, and through them they attempted to bring back the servant and husband to slavery." Slaveholders sought to recover their labor source by using their authority over the slave family to manipulate the black male. Butler pointed out that about twenty men chose to return to slavery, although he was unclear of "the

[16] Victor B. Howard, *Black Liberation in Kentucky: Emancipation and Freedom, 1862-1884* (Lexington: University Press of Kentucky, 1983), 120; Joe M. Richardson, *Christian Reconstruction: The American Missionary Association and Southern Blacks, 1861-1890*), vii, 14.

nature of the inducement," but this indicated that some slaveholders retained a strong influence on black men and black families.[17]

Although the safety of black families could never be guaranteed during the war, General Pile suggested an official stance regarding those left on the homefront. Because of the added threats to black families by whites, it was not a surprise that the recruitment goals, as Pile pointed out, were "almost suspended." Pile's observation that black men had nearly ceased to volunteer spoke volumes about the responsibility they felt towards their families and the fragile nature of life within black families. They could still be torn apart at any moment in spite of black men achieving a small measure of civil equality. The general's request for immediate and unconditional emancipation for the enslaved families of the volunteers included the suggestion for a new department to oversee the "protection and supervision" of the "freed people; so that they can be looked after and hired out at fair wages to such Loyal persons as may wish to have their services."[18]

Some southern African Americans who sought to enlist, such as William Jones of Scott County, Kentucky, filed complaints with the army in an attempt to capitalize on the legal changes occurring during the war in March 1865. Jones, who had been enslaved by Newton Craig, tried to reach Camp Nelson to enlist when a civilian James Cannon arrested him and his wife and confiscated their money, which amounted to $66. According to Jones' sworn statement, Cannon turned Jones and his wife over to Harry Smith who was charged with returning the two to Craig. However, the Joneses

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[17] "Reports of Mr. Butler. What the Sanitary Commission did for Colored Recruits at Camp Nelson, Ky," in *The U. S. Sanitary Commission in the Valley of the Mississippi, During the War of the Rebellion, 1861-1866. Final Report of Dr. J. S. Newberry, Secretary Western Department* (Cleveland: Fairbanks, Benedict & Co., Printers, Herald Office, 1871), 519-522; Richard D. Sears, *Camp Nelson, Kentucky: A Civil War History* (Lexington: University of Kentucky Press, 2002), 84.

[18] "Pile to Blow," *Black Military Experience*, 248-49.

discovered that Cannon had kept their money and sought redress by filing a complaint. Jones asserts that he desired to enlist in order to free himself and his wife and in the process serve the government. However, he clearly had an expectation that he was entitled to the money taken from him and that through service he and his wife would be granted certain rights.[19]

Many enslaved family members of volunteers also assumed that they were freed once the volunteer had enlisted and this was true of slaves owned by persons who were loyal to the Union. Unfortunately, this was a misinterpretation also held by some federal military officers. Provost Marshal Samuel S. Burdett wrote to Major General William S. Rosecrans in early 1864 expressing his concern about officers' complaints about the returning of slaves to their masters by the army in Missouri. Burdett wrote, "under existing laws and regulations no remedy is known for the evils complained." Many black soldiers expressed their views on this lack of legal protection, which extended beyond 1865.[20]

Private Spotswood Rice's efforts to remove his children from slavery based on his military service were evident in the letters he sent to both his children and their owner in September 1864. Certain that if Kittey Diggs would not release them from bondage that the government would, Rice confidently informed his two children he would rescue them with the support of the United States Army. In a correlating letter to Diggs, Rice proclaimed that "this whole Government gives chear [*sic*] to me and you cannot help

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[19] "Affidavit of a Kentucky Black Soldier and His Wife, March, 1865," in *Black Military Experience*, 276-77.

[20] Letter from Act'g Provost Marshall General Samuel S. Burdett to Major General William S. Rosecrans, February 9, 1864, RG 107: Records of the Office of the Secretary of War, G-71 1864, Letters Received.

your self." Moreover, Rice seemed astonished that Diggs had accused him of trying to "steal" his own children. "God never intended a man to steal his own flesh and blood." Rice's emotional letters illustrates the effort of a father attempting to save his children and the expectations held by at least some blacks as the war slowly destroyed the slave system that the government would play a role in their emancipation. Rice thought he was entitled to his children and he expected the government to play a role in the emancipation of slaves by supporting black servicemen as they sought to reconstruct their families.[21]

Some mothers and children faced incredible situations of desperation when their loved ones died while in service. Many times these resourceful women appealed for help from the Bureau of Refugees, Freedmen, and Abandoned Lands, or Freedmen's Bureau, established by Congress in March 1865 to aid former slaves, war refugees, and to redistribute confiscated lands to assist them, which was the case of Patsey Leach whose partner Julius enlisted in early 1865 and served in the USC Cavalry until his death at the Salt Works, Virginia. In the meantime, Warren Wiley of Woodford County, Kentucky, held Leach who sought to escape from slavery. She pleaded for help from the Bureau claiming that Wiley knew of her husband's enlistment, and that he beat her repeatedly because of this and his Confederate sympathies. Furthermore, Leach swore that on two separate occasions during beatings Wiley declared he would "kill her piecemeal" and said, "When I am done with you tomorrow you never will live no more." Fearful for herself and her children, Leach, who was unable to remove all five of her children from slavery, absconded with her youngest child, eventually making her way to Lexington.

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[21] Spotswood Rice, "Private Spotswood Rice to my Children, September 3, 1864," *Freedom's Soldiers*. *131*-32; "Private Spotswood Rice to Kittey Diggs," September 3, 1864, *Freedom's Soldiers*. 133

Unfortunately, the sources do not reveal the fate of her children who remained enslaved.[22]

While it is important to note the lack of protection afforded black families who remained in slavery and the brutal treatment they faced from vengeful slaveholders, it is significant to note that Leach's statement, similar to others who remained enslaved in federally held states, also expected the enforcement of military laws. It is not beyond reason to suspect that the pressure applied by former slaves upon military field officers to provide protection for their families led to policy changes. Historian Amy Dru Stanley argues that the March 1865 congressional enlistment resolution, which freed the wives and children of former slaves who enlisted, was more than an act of abolition. Stanley contended the measure linked emancipation with marriage. Slaves, although obviously not versed in legal definitions or all of the laws of the land, were astute enough to recognize that slaveholders who were Confederate sympathizers and supplied Confederate troops were in violation of federal laws. To Leach, the fact that Wiley "often sends Boxes of Goods to Rebel Prisoners," was a clear violation of the Conscription Acts and the 1863 Emancipation Proclamation. Such a violation of military and federal laws by owners led to freedom for the slaves.[23]

After the official end of the war, many black soldiers sought to return to their families immediately to provide some measure of protection since slavery did not

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[22] "Affidavit of a Kentucky Black Soldier's Widow," in *Black Military Experience*, 268 – 269.

[23] "Affidavit of a Kentucky Black Soldier's Widow," in Berlin, *Black Military Experience*, 269; "A Resolution to encourage Enlistments and to promote the Efficiency of the military Forces of the United States," March 3, 1865, *U. S. Status at Large*, vol. 13, 571; Amy Dru Stanley, "Instead of Waiting for the Thirteenth Amendment: The War Power, Slave Marriage, and Inviolate Human Rights," *The American Historical Review* 115, no. 3 (June 2010): 733.

officially end until the ratification of the 13th Amendment went into effect at the end of 1865. This meant that even loyal slaveowners were no longer obligated to provide for slaves and the residual effects were obvious.[24]

James Herney, a black soldier in the 56th United States Colored Infantry (USCI), was still on duty in 1866 and stationed in Helena, Arkansas. On May 15, he addressed a letter to Secretary of War Edwin Stanton and pleaded for a leave of absence in order to return home on furlough to visit his family. Herney, who had enlisted in Columbia, Missouri, in January 1864, wrote,

> We stood on the bank and shed teers [*sic*] to think that we who had battled for our country over two years should still be retained and deprived of the privilege of seeing those who are so dear to us … my actions have proved that I have ben [*sic*] true to my government and I love it dearly now the war is over and I now want to see those who are dearer to me than my life.

The loss of two children exacerbated Herney's anguish yet, as a soldier, he was bound by military orders to fulfill his duties or face dire consequences. The War might have ended slavery, but it resulted in a great deal of legal uncertainty for black Americans, especially those whose loved ones had served in the U. S. military as well as others.[25]

As a result, African Americans continued to rely upon the legal system to help change their circumstances. The destruction of slavery allowed former slaves to utilize the courts to enforce marital obligations such as desertion or to engage in custody battles. Prior to the war, marriages between bonds men and women were tenuous, and states did not consider slave marriages legally binding agreements. Yet, the newfound freedom and

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[24] The House Joint Resolution proposing the 13th amendment to the Constitution, January 31, 1865; Enrolled Acts and Resolutions of Congress, 1789-1999; General Records of the United States Government; Record Group 11; National Archives. URL: http://www.ourdocuments.gov/doc.php?flash=true&doc=40 (accessed July 14, 2010).

[25] James Herney, "Letter from James Herney to Secretary Stanton," May 15, 1866, in *Black Military Experience*. 778-79.

rights that accompanied the Civil War enabled many black women to challenge masculine notions of a woman's proper place in society, including the role of black women within the black family. While there are numerous cases of marital desertion and children, two such cases stand out due to their scope and the determination of the women who sought justice.[26]

In Louisville, Kentucky on July 6, 1866, Sarah Fields registered a complaint against her husband, Jackson in an attempt to force him to pay her $50 in order to support her and her child. According to the affidavit, she claimed that she married Jackson in 1863 and their first child born in August 1864, did not survive. However, the couple became parents of a second child, born after Jackson enlisted in the U. S. Army, who was one year old at the time of the filing of the sworn statement. The Commissioner of the Kentucky Freedmen's Bureau awarded Sarah Fields $50, to be paid by Jackson in order to support their child.

Although she received a favorable judgment, Sarah Fields filed a second complaint in an attempt to dissolve Jackson's marriage to a woman with whom he was living at the time of Sarah's complaint. The problem, for Sarah, appears to be a lack of protection for herself. As an abandoned woman, she had very little recourse since the state did not recognize her marriage to Jackson Fields. The actual ceremony, a celebratory event may have been conducted by their owner or even a local black preacher. Susan Taylor, a witness in Fields' complaint, swore that she was present when Sarah and Jackson married "in the usual manner of slaves marrying." Although marriage among slaves had no legal standing, it was "legitimate" in the eyes of bond men and women.

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[26] Marion B. Lucas, *A History of Blacks in Kentucky: From Slavery to Segregation, 1760 – 1891,* vol. 1 (Frankfort: Kentucky Historical Society, 1992), 19.

For Sarah and Jackson, unfaithfulness was a violation of their marriage vows. Susan Taylor claimed to have "heard it said that Sarah was unfaithful, but . . . She never witnessed any wrong conduct in Sarah." Regardless of the veracity of the charge, unfaithfulness on Sarah's part was the basis for Jackson's decision to remarry.[27] Nevertheless, following his discharge from the military, Jackson remarried. And, the state deemed his second marriage legitimate because Jackson followed proper legal procedure, applied for and received a marriage license from the county clerk in Jefferson County, Kentucky. By doing so, Jackson was not in violation of the law and Sarah was left without her husband.[28]

In another situation that involved the custody of a child, it was a father seeking to claim his child from the mother who allegedly had taken up residence with another man. In April 1867 the office of the Freedmen's Bureau in Louisville received a letter from Minta Smith on behalf of her brother-in-law, Harrison Smith, who was then serving in Texas, regarding custody of his child from his wife Harriet Ann Bridwell.[29]

Smith, stationed at Ft. Bliss, Texas, expressed his concern for the well-being of his son when he wrote to his sister-in-law a month earlier stating that his wife was not being a responsible mother or wife since she was living with another man. In the letter, Harrison requested that Minta "take my boy" and "keep him untill I com home [*sic*]," which would be the fall of 1868. According to Minta's April 3, 1867 affidavit, during the time of Harrison's service, Bridwell, who was ill, had asked Minta to care for her child

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[27] Lucas, *A History of Blacks in Kentucky*, 19; "Affidavit of Susan Taylor," July 7, 1866, in *Black Military Experience,* 674; "Affidavit of Jackson Fields," July 6, 1866, in *Black Military Experience,* 674.

[28] Berlin et. al., *Black Military Experience*, 675.

[29] Harrison Smith, "Kentucky Black Soldier to His Sister-in-Law," March 9, 1867, in *Black Military Experience*, 677-78

while she recovered. In addition, Bridwell was forced to relocate temporarily because her neighborhood flooded. It was during this time that Bridwell took custody of the boy. Lastly, Smith swore that Bridwell had "commenced living with a man … together as man and wife without being married."[30]

What should not be lost in this complaint by Harrison Smith are his wishes to protect his son. Harriet Bridwell's circumstances were such that she was unable to support herself and her child once Harrison enlisted. In her affidavit she swore, she was forced to "accept the offers of protection made her by James Bridwell … she is now living with and keeping his house as his wife although they have not been married by license obtained from the proper authority[*sic*]." Moreover, Harriet indicated she would be "willing to deliver the child to his father but she does not want others to have him before the father come home." Unfortunately, for Harriet the Freedmen's Bureau sided with Harrison and granted temporary custody to Minta Smith. The official endorsement from the bureau asserted that the "child be kept for him [the father] by claimant, [Smith] so as not to be ruined by its Mother's shame."[31]

Smith's efforts to gain custody of his son spoke to the lengths to which some black parents went to protect their children. Historian Wilma King argued, "With courage bolstered by freedom, ex-slave women demanded a shared responsibility for their children." In the situation involving Harrison Smith and Harriet Ann Bridwell, the

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[30] Smith, "Kentucky Black Soldier to His Sister-in-Law," March 9, 1867, in *Black Military Experience*, 677-78; "Affidavit of a Kentucky Black Soldier's Sister-in-Law," April 3, 1867, in *Black Military Experience*, 676-77.

[31] "Affidavit of a Kentucky Black Soldier's Wife," April 3, 1867 and endorsements, in *Black Military Experience*, 678-79.

father sought sole custody of his child, although this appeared to be the exception rather than the rule.[32]

Prior to the destruction of slavery, enslaved families were always in a precarious situation as slaveowners could break them up at anytime. The Civil War resulted in legal changes that directly affected these families and led to greater protective measures, such as being able to file complaints with the Freedmen's Bureau. The war also raised the black expectations of the law and contributed to the destruction of Chief Justice Taney's opinion of black citizenship and rights that were outlined in the *Dred Scott* (1857). Although the U.S. Supreme Court had decided black Americans were not citizens and the law did not grant them equal rights with white Americans, black Americans continued to rely upon the legal system to secure their freedom and rights. Joseph T. Wilson, black Civil War veteran, references the motivations of free and enslaved blacks when he declares, "besides the free negroes, the slave population for miles around were eager to enlist, believing that with the United States army uniform on, they would be safe in their escape from 'ole master and the rebs'." Black Americans continued to imagine a world where they were granted the status to which they thought they were entitled and for many African Americans service in the military presented an opportunity to achieve a measure of equality.[33]

With the outbreak of war in 1861 many southern black men, most of whom where slaves, recognized the possibility of obtaining freedom through military service for

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[32] Wilma King, *Stolen Childhood: Slave Youth in Nineteenth-Century America* (Bloomington: Indiana University Press, 1995), 149.

[33] Joseph T. Wilson, *The Black Phalanx*, ed., William Loren Katz (New York: Arno Press and The New York Times, 1968), 111.

themselves and their families. For many southern black women and children, the presence of federal troops represented protection from abusive and vengeful owners while offering the prospect of being closer to their male loved ones. Yet, the process of enlisting black soldiers in the Civil War consisted of constant pressure from black refugees upon federal camps and troops, and the belief by some white leaders that the Union army could benefit from the service of black men. Historian Joseph Glatthaar argued, "Bondsmen from Border States or in areas where fighting took place learned rather quickly that the war offered them the possibility of freedom." Furthermore, according to Glatthaar, "Huge numbers of slaves, who had regarded the Union Army as a sanctuary or who received encouragement from Federal soldiers, escaped bondage by fleeing to Yankee lines." Attempts by federal forces to return slaves to owners met with consternation from some white troops and officers, newspapers, and abolitionist Republicans.[34]

In November 1861, General Alexander McDowell McCook, who commanded Camp Nevin in Kentucky, wrote to General William T. Sherman, commander of the Cumberland Department, to report that the number of runaways claiming their owners were Confederates or were aiding the Confederacy was increasing. McCook believed the numbers would increase and in the process damage federal chances of retaining Kentucky. Moreover, he stated, "I am satisfied they [slaveholders] bolster themselves up, by making the uninformed believe that this is a war upon African slavery." McCook deferred his on what to do about the number of runaways to General Sherman who replied, "I have no instructions from Government on the subject of Negroes, my opinion

[34] Joseph T. Glatthaar, *Forged in Battle: The Civil War Alliance of Black Soldiers and White Officers* (New York: The Free Press, 1990), 4-5.

is that the laws of the state of Kentucky are in full force and that negroes must be surrendered on application of their masters or agents or delivered over to the sheriff of the county." Generals McCook and Sherman recognized the fragility of Kentucky's status in the Union and they were correct in their assessment that slaveholders from that state were legally entitled to their enslaved property. On the other hand, this view failed to consider those slaveholders in active rebellion against the United States as potentially forfeiting their rights to their property. Furthermore, the generals did not seem to grasp the blacks' views on the impact of the conflict.[35]

Some Union soldiers viewed contraband differently and saw the potential for a change in the legal status of those held in slavery. Upon being mustered out, federal soldier John M. Richardson wrote a December 1, 1861, letter in which he complained to Secretary of War Simon Cameron about the status of a runaway from Christian County, Missouri, who was assigned to Richardson. The soldier's grievance revolved around his belief that the fugitive, Kelly owned by James Vaughn, was being held by the army and was to be returned to Vaughn, whom Richardson contended held open contempt for the government. Richardson acknowledges that he held no legal claim to Kelly, yet argues, "as he was legally in my possession & my servant he is entitled to my protection [*sic*]." The soldier requests that Kelly be returned to his charge, "at which time I shall see whether he is a free man or not." Richardson appeared to question the purpose of the army holding Kelly if only to return him to an openly rebellious slaveholder. Richardson

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[35] "Commander at Camp Nevin, Kentucky, to the Commander of the Department of the Cumberland: and the Latter's Reply," November 5, 1861," in *Destruction of Slavery*, 519; William T. Sherman, "Brigadier General William T. Sherman to Brigadier General Alexander M. McCook, November 8, 1861," in *Destruction of Slavery*, 520.

mentioned that Kelly risked being sent south without being given a "chance to establish his freedom" based on the political status of his owner.[36]

Subsequently in a December 26, 1861, correspondence, Major General Henry W. Halleck, who was commander over Missouri and western Kentucky, wrote to his subordinate General Alexander S. Asboth in Missouri asserting that,

> the relation between the slave and his master, or pretended master, is not a matter to be determined by military officers, except in the single case provided for by congress. This matter in all other cases must be decided by the civil authorities . . . Masters or pretended masters, must establish the rights of property to the negroes as best they may, without our assistance or interference, except were the law authorized such interference.

For General Halleck, the legal status of enslaved men, women, and children was a civil matter and he clearly sought to avoid any involvement in property matters. Moreover, he hoped to remove the slave presence from the Union Army. Yet, his orders, for those under his command to not interfere with owners reclaiming their chattel property, demonstrated the confusion and ambiguity caused by the war itself. Many of the slaves viewed the Union Army as a means of escaping slavery. Even some Union soldiers, such as John Richardson, saw federal forces as liberators of those held in bondage by subversive slaveholders. Nevertheless, early on in the war, some military leaders followed the line of the White House, which was to preserve the Union. This ideology led to confusion over the legal dynamics resulting from the war. Many federal leaders failed to or refused to understand the potential consequences of the war on slavery and

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[36] John M. Richardson, "Missouri Former Soldier to the Secretary of War, and Commander of an Army Camp to the Commander of the Post of Rolla, Missouri," December 1, 1861," in *Destruction of Slavery*, 417-18.

many probably only saw blacks, free or enslaved, as being an obstruction to their military objectives. Still others sought only to prevent any further secession of states.[37]

For some black Americans, such as Martin Delany, the Civil War years served as a means to prove and solidify their claims as citizens. Delany, born free in Virginia in 1812, worked to reform the United States' perceptions of blacks by advocating greater social and political equality. He organized black conventions during the mid-nineteenth century and worked as a publisher and physician. After being dismissed from Harvard's medical school in 1850 because of racism, he wrote *The Condition, Elevation, Emigration and Destiny of the Colored People of the United States*, which offered a scathing criticism of America's failure to include blacks as citizens and suggested a colonization effort by blacks to leave the United States.[38]

Prior to the Civil War, Delany worked with contemporaries Frederick Douglass and William Wells Brown (who like Douglass was born into bondage) although Delany argued in favor of emigration to Africa for black Americans. Later in his life, Delany's stance on this topic would change to coincide with Douglass' integrationist beliefs. Early on during the war, as blacks were excluded from service, Delany saw service by black men as futile for changing white perceptions of blacks. In an 1862 letter to James McCune Smith, an abolitionist and supporter of the war as a means to eradicate slavery, Delany asked, "must we either be abject slaves, the personal property of the Caucasian, or the submissive drudges of their social industrial element, ever ministering as domestics

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[37] Henry W. Halleck, "Major General Henry W. Halleck to General Alexander S. Asboth," December 26, 1861," in *Destruction of Slavery*, 423.

[38]Robert S. Levine, ed. *Martin R. Delany: A Document Reader* (Chapel Hill: University of North Carolina Press, 2003), 1

to their pride and arrogance?" What seemed to change his views was the failure of his trip to Africa to meet his expectations of that continent and the enlistment of his son, Toussaint L'Ouverture Delany into the army in 1863.[39]

For those blacks held in servitude in Kentucky and Missouri, their prospects for joining the military were minor until President Lincoln officially issued his Emancipation Proclamation on January 1, 1863. This order frees slaves held in bondage only in those states in rebellion, Specifically, the proclamation mentions Mississippi, Alabama, Arkansas, Texas, and Louisiana, with the exception of thirteen parishes. In addition, it also covers Florida, Georgia, South and North Carolina, and Virginia, save for West Virginia and seven counties in Virginia. The Emancipation Proclamation in reality served to free no slaves. But, it provided for the confiscation and enlistment of black men into military service, specifically, those held in servitude by rebels. Many slaves held in federally controlled Border States such as Kentucky and Missouri, misinterpret the order as an indication of their own freedom; however, it only applied to those whose owners were in rebellion against the United States. Many of the slaveholders in those two respective states remained loyal to the Union and therefore were entitled to retain their slave property. Under the proclamation, for slaves to be granted freedom it would require "conclusive evidence" proving a slaveholder was engaged in rebellious activities. Theoretically, slaves held in Texas were freed by the presidential proclamation issued in 1863, however the problem for blacks in Texas as the case in other areas, was enforcement of the order.[40]

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[39]Martin R. Delany, "Letter to James McCune Smith, 11 January 1862," in *Martin R. Delany*, 371; Levine, *Martin R. Delany*, 373.

Although steps were gradually taken by the federal government to address the legal problem of slavery those progressions were ambiguous since they did not apply to all slaves. President Lincoln was faced with field generals such as Frémont, who took it upon themselves to address the problem more directly and broadly. Some generals saw the use of black soldiers as a means to deprive the Confederate Army of a labor source while enhancing the federal labor forces. For some African Americans, service in the military meant an opportunity to strike a blow for civil equality, while others saw it as an opportunity to gain freedom. Regardless of the perception, the legal changes enacted during the Civil War created the chance for many blacks to overcome racist claims that they were not intended to be citizens of the United States.[41]

Even before Lincoln issued his 1863 Proclamation, Congress passed the Militia Act of 1862 which stipulated that African Americans be "received into the service of the United States, for the purpose of constructing intrenchments [*sic*], or performing camp services, or any other labor." Furthermore, those enrolled under this act would be paid $10 a month, of which $3 would be for clothing allowance. In spite of the 1863 Proclamation, which stipulated military service of black men, the War Department kept African American soldiers at the same pay rate as laborers under the Militia Act. The testimony of Colonel William A. Pile to the American Freedmen's Inquiry Commission in November 1863 pointed out that white soldiers received $13 a month plus $3.50 for a clothing allowance. The colonel adds, "I understand that one of the purposes of the Gov't in enlisting the negro is to prepare him for his position as a freeman; to elevate

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[40] Abraham Lincoln, "Emancipation Proclamation," January 1, 1863, in William MacDonald, ed. *Documentary Source Book of American History, 1606 - 1913,* 2nd ed. (New York: The MacMillan Company, 1916; reprint, 1916), 458.

[41] *Dred Scott vs. Sandford,* 19 Howard, 393, 1857.

these people from a condition of slavery to a condition of freedom." Further compounding the concern over unequal pay was the denial of $100 federal bounty to be paid to black enlistees, but to which white enlistees were entitled. Colonel Pile recognized the changing status of the former slave; however, he also saw limits still facing blacks as even non-commissioned black officers received the same pay as privates. His testimony highlighted the value the War Department placed on the service of black soldiers, which was obviously less than that of white soldiers and non-commissioned officers.[42]

Prior to the official executive acceptance of black men into service in the Union Army that occurred with federal measures such as the Militia Act and the Emancipation Proclamation of 1863, field leaders such as General James H. Lane of Kansas were recruiting many volunteers from Missouri into an unofficial regiment of black soldiers. General Lane, an ardent abolitionist, viewed the recruitment and service of black soldiers as a means of combating the rebellion by hindering a valuable labor source for Confederates and increasing the number of soldiers in the federal ranks. Lane also signed off on officer commissions for black soldiers within his Kansas regiment. Unfortunately, the United States War Department did not recognize these commissions as official and therefore denied African American soldiers access to advancement opportunities that were afforded white soldiers. Despite federal mandates calling for the recruitment and service of black soldiers, many still faced unwritten obstacles such as the War

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[42] *Statutes at Large, Treaties, and Proclamations of the United States of America*, vol. 12, (Boston, Little, Brown and Company, 1863), 599; "Testimony of Col. William A. Pile before the American Freedmen's Inquiry Commission," November 29, 1863, in *Black Military Experience* 375-76; Edward A. Miller, *The Black Civil War Soldiers of Illinois: The Story of the Twenty-ninth U. S. Colored Infantry* (Columbia: University of South Carolina Press, 1998), 2.

Department's dismissal of field commissions of African Americans as unofficial and the discrepancy in pay between black and white soldiers.[43]

By 1864, the Lincoln administration finally having tied the problem of slavery to the war, officially established the Bureau of Colored Troops under the War Department's General Order 143 to organize the recruitment of black soldiers. In such states such as Kentucky and Missouri, the recruitment of black troops presented a unique challenge for the Lincoln administration, which was trying desperately to prevent any more states from seceding. Enslaved blacks in those two border states had been fleeing to Union lines, and some black men were volunteering for service in adjacent states such as Kansas and Ohio as early as 1861. The establishment of the bureau also created the United States Colored Troops (USCT) and set recruitment quotas for each state to meet. Although the way had been cleared for the recruitment of black soldiers, federal efforts were met with staunch resistance from those who supported Confederate efforts or simply opposed the service of black men as their recruitment into the military would not only deplete a valuable labor source on the homefront, it might also serve to validate the claims of African Americans as rightful citizens. One particular petition from Kentucky slaveholders to President Lincoln asked Lincoln to prevent the army from removing their slaves unless the army provided, "some timely notice that they might prepare for so great a change." The petitioners were adamant about "exercising their 'right of petition'" in the protection of

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[43] *Statutes at Large,* 599, 1268 – 69; Ira Berlin, Joseph P. Reidy, and Leslie S. Rowland, eds. *Freedom's Soldiers : The Black Military Experience in the Civil War* (Cambridge, U.K. ; New York: Cambridge University Press, 1998), 8, 27.

their property. They expected not only notice, but also some measure of compensation for their losses, which another slaveholder expressed.[44]

During the summer of 1864 Elizabeth Minor, a resident of Jefferson County, Kentucky, expressed her concern in a letter to Lincoln about slaves entering into military service. Minor contended that "excitement of the times" induced her servants to enlist. Minor found that her slaves who had left were "young and inexperienced," and "did not appreciate their high privileges but rushed into the army without any reflection," having done so because they witnessed others leaving to enlist. She further asserted that many who volunteered had not been promised freedom by their masters. Minor and many other slaveholders failed to recognize that many blacks connected the war with the end of slavery long before any legislative emancipation efforts ever took place. For many held in slavery, military service brought with it the promise of fighting for one's legal freedom and rights as a citizen, in addition to proving one's manhood.[45]

Other examples of the recruitment of black volunteers highlighted an irony of the Civil War, that of forcing someone to do something against their free will. The slaveholder, E. H. Green of Henderson, Kentucky, expressed his concern about the recruitment of black troops to Secretary of War Stanton in early 1865, stating that three of his slaves had been "forced into service … against their free will and consent." Green declared that had the three volunteered on their own accord or if they had been drafted into service according to proper laws, he would have consented to such actions. Green

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[44] General Order No. 143, May 22, 1863, in *Black Military Experience*, 8-9; Orders and Circulars, 1797 – 1910; Records of the Adjutant General's Office. 1780's – 1917; RG 94; NA. http://www.ourdocuments.gov/doc.php?doc=35&page=transcript (accessed June 24, 2010); "E. S. Edmunds et al. to the President, January 1864," in *Black Military Experience*, 252.

[45] Elizabeth Minor, "Kentucky Slaveholder to the President," July 1864, in *Black Military Experience*, 265.

refused to accept the fact that his slaves volunteered to enlist and therefore were forced to do so against their free will by recruiters seeking to deprive white citizens of their property.[46]

It was the role of the Freedmen's Bureau to control all aspects of life "relating to refugees and freedmen from Confederate states, or from any district of country within the territory embraced in the operations of the army." The bureau and officials would also serve as the location for millions of people freed from slavery to voice any grievances, which ranged from complaints over abuse by whites to custody battles between black parents.[47]

For many enslaved men who enlisted, military life was not very different from their condition of bondage. Scholar Ira Berlin wrote, "Ex-slave soldiers thus exchanged obedience to a white slave master for obedience to white officers, and to some the new relationship differed little from the old." The men attempting to escape bondage found that life in the military was predicated on order and discipline. Disobedience of rules and regulations led to punishments not unlike what many endured under slavery. Some black soldiers suffered brutal treatment such as whipping while in service which was in contrast to white soldiers of the same rank who rarely received such treatment from their superior officers. If the war meant the destruction of slavery and rulings such as the one handed down in *Dred Scott* in 1857, then it was crucial for blacks to understand the vast military rules and regulations. Many of the soldiers were just removed from a life of servitude,

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[46] E. H. Green, "Kentucky Slaveholder to the Secretary of War," March 14, 1865, in *Black Military Experience*, 272.

[47] "The Freedmen's Bureau," March 3, 1865, U. S. Statutes at Large vol. 13, p. 507; Barry A. Crouch, *The Freedmen's Bureau and Black Texans* (Austin: University of Texas Press, 1992), xiii.

through familiarizing themselves with military rules and regulations, viewed their new situation as guaranteeing their rights and privileges as citizens.[48]

Obviously, many black soldiers faced harsh punishments from some white officers who were motivated by racist means. Fortunately, by fall1864, the government issued General Orders that prohibited punishments such as stretching men up by their hands, thumbs, or wrists; gagging, unless a man refused to stop talking or making noise after being ordered to do so; extra guard duty, or carrying extra equipment. For some African Americans their treatment by white officers failed to meet their expectations of respect and equality earned through their service. Some enlisted men followed proper military procedure in filing complaints and the results varied. Others embarked on a more radical solution such as refusing to follow orders or mutiny, both of which resulted in field and general court-martials.[49]

Court-martials are legal proceedings designed to determine if military personnel are in violation of military codes of law, such as mutiny, desertion, or insubordination. During the Civil War, there were three types of army court-martials: general, regimental, and garrison; only general court-martials tried officers and capital offences such as mutiny, murder, rape, or desertion. Furthermore, general court-martials were the only military proceedings that handed down death sentences. General court-martials differed in that generals presided over hearings, whereas other commanding officers oversaw regimental and garrison trials. Moreover, regimental and garrison trials handed down lesser punishments. To prevent soldiers from violating military codes, commanders read

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[48] Berlin et al., *Black Military Experience,* 433-34.

[49] "Order by Commander of a Division of Black Troops," August 28, 1864, in *Black Military Experience,* 452.

rules and regulations aloud to soldiers, especially former slaves. Arguably, for former slaves, the regulation of their lives by abstract military laws may have reinforced their perceptions of obtaining greater equality through their service. The same laws that regulated their lives were supposed to apply and be enforced in the same manner as with white servicemen. Furthermore, court-martials allowed blacks to testify on their own behalf.[50]

A military code of conduct regulated the lives of all soldiers, and Congress adopted the Articles of War, April 10, 1806, which established the standards by which all military personnel were to live. Furthermore, officers were to read the rules and regulations to the enlisted men every six months. The principal point in the Articles, as Ira Berlin argued, was "obedience to the commands of superior officers." In addition, Berlin contended, "military regulations undergirded the obligation of obedience with the threat of force."[51]

In November 1864, the commanding officer of the 62nd USCI, stationed in Brazon Santiago, Texas, learned that black enlisted men were suffering abusive treatment by commissioned officer. Lieutenant Colonel David Branson pointed out that several officers regularly struck men under their command with their fists and swords and even kicked soldiers "when guilty of very slight offences." Lt. Col. Branson observed that the guilty officers claimed that those who received the harsh treatment were "lazy, dirty, and inefficient and provoking to any high spirited officer." Notwithstanding the rationale for

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[50] Berlin et al., *Black Military Experience*, 433, 435-36.

[51] "Articles of War," April 10, 1806, in *Revised United States Army Regulations of 1861. With an Appendix Containing the Changes and Laws Affecting Army Regulations and Articles of War to June 25, 1863.* (Washington: Government Printing Office, 1863), 485-502; Berlin et al., *Black Military Experience*, 433.

their behavior, Branson contended that men would not follow a harsh, brutal leader, nor would such efforts reform the men. Although federal regiments of black soldiers were being recruited in some cases, those men enlisting faced "relentless prejudice" and some who objected to such treatment that "beared resemblance to their former treatment while slaves" found themselves in front of military courts.[52]

For example, a spring 1865 incident resulted in the court-martial of several black soldiers from Kentucky. The trial of Private Burrill Clark of Company G, 100th USCI, took place March 11, 1865, with the Private facing two charges: conduct prejudicial to good order and military discipline, and disobedience of orders. Specifically, a superior officer found Private Clark down at his post. Upon being discovered, the private "jumped up and said, 'hello'." Clark plead guilty to both charges and his punishment was to stand on a small stump for six hours a day for three consecutive days while wearing a knapsack weighing at least ten pounds. In addition, he was made to carry a rail on his shoulders and when he was not standing on the stump he was to perform hard labor. [53]

In the same hearings, another private in the same company, Ned Bowman, was charged with absence without leave and drunkenness, to which Bowman also pled guilty. The court sentenced Bowman to thirty days of hard labor while wearing a ball and chain

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[52] While there appeared to be no direct evidence of field or general court-martials resulting from this particular incident, the claims of disobedience could have been the result of the black soldiers' unmet expectations of military service. See, "Order by the Commander of a Missouri Black Regiment," November 9, 1864, in *Black Military Experience*. 454; Levine, *Martin R. Delany: A Document Reader*, 386.

[53] "Proceedings of a Regimental Court-Martial in a Kentucky Black Regiment," March 22, 1865 in *Black Military Experience*. 460.

to his legs and a placard tied to his back with the word "Drunk" on it. Additionally, he was to be fed only bread and water for half the time of his sentence.[54]

These incidents that resulted in a court martial demonstrate the confluence of military laws with misplaced expectations. In theory, rules were to be applied fairly regardless of race. However, both blacks and whites had expectations of the military and of each other. Blacks expected to fight and by doing so, they expected a measure of equal treatment as many assumed that by enlisting they were ensuring their rights as men and citizens. Many white soldiers and officers assumed that black soldiers lacked characteristics that would make them disciplined soldiers, yet they were perfectly suited for garrison duty, teamster work, and other types of physical labor. In many of the court-martials of black soldiers, the testimonies and proceedings demonstrated confusion over military rules and regulations and showed racially motivated mistrust between federal military authorities and southern blacks.[55]

The October 1865 testimony in the court-martial of black Kentucky soldiers stationed in Texas highlighted the confusion and mistrust in military courts. Captain Samuel W. Campbell of the 109th USCT was a witness who testified that Private Edward Hawes instigated a mutiny. Campbell declared that while the troops were stationed on a steamer, Private Hawes objected to being punished for "having dirty guns," when "officers came out of their nice rooms with damned dirty swords." According to Hawes, "it was impossible to keep any thing [*sic*] clean on the boat." Captain Campbell then testified that Hawes' reaction stemmed from a previous incident where two soldiers from

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[54] *Ibid.*

[55] Howard C. Westwood, *Black Troops, White Commanders and Freedmen During the Civil War* (Carbondale: Southern Illinois University Press, 1992), 10; Berlin et al., *Black Military Experience*, 22-24.

Co. D "were put on guard" for having dirty guns, which they refused to clean. This action resulted in the two soldiers being questioned by a superior officer who in turn "sauced" the officer. Moreover, Campbell's testimony stated that the two soldiers presented the officer with false identification. Officers subsequently restrained the two men, which drew further attention and led to the gathering of a crowd of black soldiers, who voiced their anger.[56]

The incident demonstrated that black soldiers perceived dual standards for white officers and black soldiers. Private Hawes voiced his objection to the punishments handed out for having "dirty guns" while officers, who were all white, faced no such punishment for having "dirty swords." Captain Campbell's testimony offers insight into the significance of how blacks viewed orders. Hawes voiced his displeasure among a crowd of "eight or ten men;" however, it is probable that the private understood this to be his right (as granted by the First Amendment) to voice his complaint, not as inciting a mutiny among the men. Furthermore, the voicing of his displeasure was in the proximity of other enlisted soldiers. Campbell argued that he "was up at the bow of the boat, near the Pilot-House." The captain heard Hawes only when he "went over where they were." It is possible that the private never intended his words to be heard by white officers. Being from Kentucky and most likely a former slave, Hawes would have known such conduct would have resulted in such severe punishment.[57]

Some white officers held black soldiers to a different standard than white soldiers. Based on court-martial testimonies from black soldiers, white officers expected

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[56] "Testimony in the Court-Martial of Kentucky Black Soldiers," October 4, 1865, in *Black Military Experience*. 465-66.

[57] *Ibid.*

extremely high levels of order and cleanliness and among some officers the prevailing thought was that such responsibilities given to blacks would lead to greater enthusiasm among black soldiers in following orders rather than the belief that blacks were capable of actual leadership roles. This appeared to be the premise behind a general order issued by Lieutenant Colonel Henry Stone of the 100 USC Infantry on January 30, 1865.[58]

Stone's orders declared that non-commissioned officers would be "responsible for the good order, cleanliness, obedience and prompt conduct of the men." Should a squad fail to meet such expectations the non-commissioned officer would be "reduced to the ranks." While demotion was the punishment for non-commissioned officers, the order made no mention of similar punishments for company commanders whose squads failed in their responsibilities. As a means to encourage troops to "exhibit somewhat more promptitude and spirit in the execution of orders," Stone ordered that punishments of troops failing inspections were to be restrained by their thumbs. Such treatment spoke to military expectations of black soldiers as being incapable of maintaining proper decorum.[59]

Freedom from slavery and rights as citizens served to motivate many former slaves to enlist, while some volunteers saw service as an opportunity to earn income for their families. For many black soldiers, this too proved to be a source of racial discrimination. As historian Howard Westwood pointed out, "Even as the Confederates

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[58] "Order by the Commander of a Kentucky Black Regiment," January 30, 1865, in *Black Military Experience* 457.

[59] *Ibid.*, 457 – 58.

were discriminating against black Union soldiers, the Union's own Executive was doing so too, albeit in a different way. That way was in the black soldier's pay."[60]

In June 1863 the governor of Ohio, David Tod, wrote to Secretary Stanton and expressed that recruitment efforts in that state were "progressing handsomely," and followed with the subject of black enlistees getting "the usual pay and bounty allowed white soldiers." Stanton responded to Governor Tod, indicating that, "the Government can pay to Colored troops only ten dollars per month and no bounty – a months [*sic*] advance pay will be authorized." Stanton further stated that any bounty or additional pay would need to emanate from state funds or from a Congressional approval at the next session. While Secretary Stanton may have been sympathetic to the inequalities of black soldiers the blame for unequal pay and unpaid bounties to African American enlistees fell squarely on the shoulders of the members of Congress and the president. Despite state and military leaders like Governor Tod who asked the question of Secretary Stanton, "Why can you not authorize me to raise a Reg't of Colored Troops under the law providing for the raising of white troops," it would take another year before laws would change regarding pay.[61]

Some of the strongest discontent over the discriminatory pay came from enlisted soldiers from northern states and Louisiana, as many of these men were freeborn and held a different perspective on the legislative dynamics during the Civil War. In September 1863, Corporal James Henry Gooding of Massachusetts wrote to President Lincoln saying, "We have done a Soldiers Duty," and asked, "Why cant [*sic*] we have a Soldiers

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[60] Howard C. Westwood, *Black Troops, White Commanders, and Freedmen During the Civil War* (Carbondale: Southern Illinois University Press, 1992), 11.

[61] David Tod and Edwin M. Stanton, "Governor of Ohio to the Secretary of War and Subsequent Correspondence," in *Black Military Experience*, 370.

pay?" Corporal Gooding went further when he argued that the obvious differences between the status of the slave-born black and that of freeborn blacks. He contended that former slaves' service was indeed significant, however, they were "freed by military necessity, and assuming the Government, to be their temporary Gaurdian [*sic*]." Gooding, who was freeborn, claimed that this was not the case for freeborn blacks who had the "advantage of thinking, and acting" for themselves. Gooding thought of freeborn blacks, including himself, as U. S. citizens exempt from the Contraband Act and entitled to the same rights and privileges as whites.[62]

Southern blacks also voiced their displeasure to the pay discrepancy. This was the situation with Sergeant William J. Brown of the 3rd U.S. Colored Heavy Artillery (USCHA) at Fort Halleck in Columbus, Kentucky. In April 1864, Sergeant Brown wrote to Secretary of War Stanton expressing his concern over the pay discrepancy between white and black enlisted soldiers. What appeared to be unknown to Sergeant Brown and other black Americans was that in his December 1863 annual report, Secretary Stanton not only praised the efforts of the (USCT), but also urged equal pay. Unfortunately, it would still be six months before Congress would authorize equalized pay for black and white soldiers. At least one historian, John David Smith, attributed the delay to partisan bickering and racism. For Sergeant Brown, his concern over equal pay juxtaposed his anxiety with the subject of rights, which he and other black soldiers sought to confirm by their service.[63]

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[62] Corporal James Henry Gooding, "Massachusetts Black Corporal to the President," September 28, 1863, in *Black Military Experience*, 386.

[63] William J. Brown, "Black Sergeant to the Secretary of War, April, 1864" in *Black Military Experience*, 377; Stanton, "Report of the Secretary of War," December 5, 1863, in *Message of the President of the United States, and Accompanying Documents, to the Two Houses of congress, at the Commencement of the*

The outspoken Brown pointed out that he was freeborn and of limited education. Yet, he contended that he and the men of his regiment were uneasy over never having been granted their "Just Rights, by the Officers who command us [them]" and "the white officers of other Reg." Brown implied that when he was "persuaded" to join the military, enlisting officers promised him the same wages, rations, and clothing as white soldiers. While black soldiers had been promised equal rations and clothing as white enlisted men, Brown claimed that "they . . . for the time but have not paid us our Money according to promise [*sic*]." According to Brown, the government paid black soldiers only $7 per month wages versus the $13 per month to whites and blacks had been informed by their commanding officers that this was all that was "allowd [*sic*] by the Government of the United States." The premise of Sergeant Brown's concern may appear to be unequal pay and how many of the soldiers had families were unable to sustain them at this low wage. However, deeper analysis points to his displeasure with the federal government's legal stance on unequal pay based on race. Furthermore, it appears as though Sergeant Brown assumed that, if the government viewed black soldiers as equal to white soldiers this attitude might filter down into the ranks. By highlighting the subject of rights, Brown had thus informed Secretary Stanton of the expectations of black soldiers. The unequal pay was simply a manifestation of this inequality. For Brown and other blacks, the contention by white officers that this was all that was allowed by the government was an empty claim. Furthermore, Sergeant Brown's letter delivered through the care of one

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First Session of the Thirty-Eighth Congress (Washington, D.C.: Government Printing Office, 1863), 8; John David Smith, "Let Us All Be Grateful," in *Black Soldiers in Blue: African American Troops in the Civil War Era,* editor John David Smith (Chapel Hill: University of North Carolina Press, 2002), 51.

Lieutenant Adams, which illustrates Brown's understanding of utilizing proper military channels of communication.[64]

Even well-known black leaders, such as Frederick Douglass, who had pushed for black recruitment and encouraged black enlistment recruitment for service, voiced his disapproval at the government's "refusal to pay them [black troops] anything like equal compensation, though it was promised them when they enlisted," in a letter published in renown abolitionist William Lloyd Garrison's paper *The Liberator* in late 1864. Douglass also appeared to scoff at any connection between military equality and popular views of whites towards black social equality by pointing to Lincoln's insistence that black soldiers and the general black populace be patient while white Americans adjusted to the concept of black soldiers. However, the prolonged promise of equal pay was simply another cause for contention among many soldiers of African descent who viewed the delay as a means of denying blacks rights to which they were entitled. By the midpoint of the war, black soldiers were losing patience with unequal treatment.[65]

In the Spring of 1864, the level of discontent over pay had reached mutinous levels among some black soldiers. "Trouble has been brooding for a long time," in the 11th U.S. Colored Heavy Artillery regiment, stationed in Fort Esperanza, Texas, according to Major J. J. Comstock Jr., It culminated with Company A's refusal to "answer to their names at Monthly Inspection by the Act. Asst. Inspector Genl." More than twenty non-commissioned officers and privates declared that they "would not be mustered to take seven (7) dollars pr. month." Because of their mutinous actions, the

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[64] Brown, "Black Sergeant to the Secretary of War," in *Black Military Experience*, 377 – 78.

[65] "Frederick Douglass on President Lincoln," *The Liberator*, vol. 34 (September 16, 1864).

soldiers were court-martialed and sentenced to between three months to one year of hard labor at Fort Jefferson, Florida.[66]

Another displeased soldier was seventeen-year-old Private Warren D. Hamelton of Louisiana who also wrote to Secretary of War Stanton regarding unequal pay. In May 1865, after having been imprisoned for more than six months in Florida, Hamelton explained

> When I enlisted I had no other entention then perform my duty faithfully as a soldier. . . . My Crme was (dissertion) not wishing to justify myself althou I though at the time that one breack of enlissment was quite sufficient to justify another perticulurly when it was transacted on the part of the gov . . . . [*sic*]

Although Private Hamelton chose an extralegal military action by deserting, he did so under the belief that the federal government had failed to uphold its end of a binding agreement. Moreover, Hamelton thought the federal government deliberately misled him and other blacks who volunteered.[67]

The actions in Texas by the 11th USCT and by Private Hamelton were no doubt violations of military regulations and warranted military proceedings; however, both incidents emphasized forms of political protest. Black soldiers who saw their treatment by the army as unequal based on race also viewed the military's actions as a violation of a contractual agreement.

Despite the unfair treatment received my many during the Civil War, Free black men associated the secession of southern states as an opportunity to solidify their claims

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[66] Major J. J. Comstock Jr., "Commander of a Rhode Island Black Artillery Regiment to the Office of the Governor of Rhode Island," April 16, 1864, in *Black Military Experience*, 396.

[67] Warren D. Hamelton, "Louisiana Black Soldier to the Secretary of War, May 1865," in *Black Military Experience*, 384.

as citizens of the Union and to prove their roles as men and this was especially true of those in Northern states. Black men such as Frederick Douglass, Martin Delany, and those who served in the Massachusetts' black voluntary regiments made arguments that projected their views on what the war might mean for the place of black men as soldiers in the eyes of white men. Although the chance to destroy slavery and free the nearly four million people held in bondage served as an additional motivation, the concept of masculine prowess should not be ignored when examining the thoughts of free black men and their expectations during the Civil War.

For enslaved blacks, many assumed the war meant the chance for freedom and by default all rights and privileges that accompanied freedom. At the outbreak of war, many blacks in Kentucky and Missouri fled from captivity in hopes of reaching federal lines that many associated with freedom. From 1861 to 1865 men such as Richard Glover, Spotswood Rice, and William Jones sought to escape slavery through service in the army. For these men, their families, and others, the legal effects of their service remained uncertain. Freedom from slavery also meant the ability to control their economic situations, which would allow many former slaves the opportunity to provide for their families. The years following the official end of the war led to legal changes in the status of southern blacks that included emancipation and legal citizenship under the United States Constitution. Although African Americans gained these liberties, their struggles continued.

Chapter Six

Black Americans, the Freedmen's Bureau, and State during Reconstruction

Historian Leon Litwack argued, "for the black men and women who lived to experience the Civil War . . . they learned a complex of new truths: they were no longer slaves, they were free to leave the families they had served … they could aspire to the same rights and privileges enjoyed by their former owners." During the years immediately following the Civil War, black Americans born into slavery had greater influence over their lives than ever before. Many black Americans hoped that a Union victory would mean greater protection of their rights under the law in the post-war years. Convincing evidence to support their aspirations existed. An example was under the general provisions passed in 1866 when Missouri declared it illegal for people of African descent to be "subjected to any other or different punishment for an offense against any law of this state, than such as would be inflicted upon a white person, convicted of a like offense." For some freed from slavery this was a step towards legislative changes that would be more inclusive of black Americans who also anticipated recognition as citizens of the United States. However, many African Americans throughout the southern states were fully aware of the bitterness harbored by ex-slaveholders, and many whites in the former slave states. Making matters more complicated was that while many free blacks anticipated actual citizenship most of those held in slavery before the war sought freedom from bondage in addition to becoming legal citizens of America.[1]

[1] "General Provisions," *The General Statues of the State of Missouri: Revised by Committee Appointed by the Twenty-Third General Assembly, under a Joint Resolution of February 20, 1865, Amended by the Legislature, and Passed March 20, 1866: To Which the Constitutions of the United States and the State of*

This chapter centers on the period from 1865 to 1877, in which the federal government continued to exert national authority over the defeated Confederate States of America in order to rebuild the southern political and economic infrastructure. Critical to this reconstruction effort was the transition of millions of slaves to free status, which hinged upon federal and state legal changes and the establishment and role of the Bureau of Refugees, Freedmen, and Abandoned Lands from 1865 to 1872. For hundreds of thousands of former slaves in Kentucky, Missouri, and Texas the formal destruction of slavery served as the first real blow in their struggle for citizenry in the United States, and, for some, the government served to secure their rights as citizens during a tumultuous period in southern states. Yet, for many ex-slaves the legacy of slavery proved a difficult obstacle to overcome. State laws prohibiting slaves from owning property made it burdensome for some freed men, women, and children to secure lands and property, which they thought were owed them. Laws, such as those preventing slaves from entering into contracts like marriage, made it difficult for family members to obtain benefits of their loved ones who served during the Civil War. Some freedperson who found themselves in such situations relied upon the justice system for recompense. By the end of the Civil War, southern African Americans already had an established legacy of utilizing the justice system to fight for their rights. And, during the period from 1865 through 1877 former slaves continued to use legal means to hold on to their newly

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Missouri, Together with the Ordinances of the Convention, Are Prefixed: With an Appendix, Including Certain Local and General Acts of This State, Laws of Congress, and Forms: A Glossary and Index Are Added (Jefferson City: Emory S. Foster, 1866) , 829; Leon F. Litwack, *Been in the Storm So Long: The Aftermath of Slavery* (New York: Alfred A. Knopf, 1979), xii.

found liberties in the wake of widespread social, economic, and political changes occurring in the South to lower them to their former status.[2]

In comprehending the efforts of former slaves as they navigated the transition from slavery to freedom, it is important to understand many of the details of the southern restoration efforts and the federal legislative wrangling that took place. With the war still ongoing, Before the war ended, President Abraham Lincoln issued a Proclamation of Amnesty and Reconstruction on December 8, 1863. Under this plan Lincoln offered southerners, with the exception of some high-ranking Confederate political and military leaders, a full pardon to individuals who swore an oath of loyalty to the United States and accepted the abolition of slavery. Once 10 percent of a state's voting population, based on the 1860 elections, had sworn to this oath, states could hold conventions in order to establish a new state government with a new constitution that abolished slavery. The conventions and new constitutions became centers of heated debates between state leaders, some of whom were anti-secessionist while others were former Confederates. Caught in the middle of these debates were ex-slaves. Although Lincoln's plan required states to abolish slavery, it offered no protection for former slaves nor did it include provisions for black suffrage. Historian Eric Foner argues that Lincoln assumed slaveholders who were reluctant to secede would accept the plan's "lenient terms" of amnesty; however, Foner adds, a plan that would force former slaveholders to accept black suffrage would alienate them, making Reconstruction a more difficult prospect.[3]

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[2] Cimbala and Miller, *The Freedmen's Bureau and Reconstruction*, xiv; Steven Hahn, *A Nation Under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Belknap Press of Harvard University Press, 2003), 2.

[3] Foner, *A Short History of Reconstruction*, 16-17.

Aside from the president's plan for reconstruction, Missouri, along with Maryland and West Virginia undertook reconstruction efforts which historian Steve Hahn contends, "promised dramatic shifts in the balances of power." Groups connected to "urban centers, free labor, and the Republican party availed themselves to the dislocations and military supports of wartime to seize control of the state governments and rewrite constitutions to consolidate their political ascendency." As these new political regimes assumed control, they sought to punish former Confederates by restricting the franchise, yet, ignoring the political wherewithal of blacks.[4]

After Lincoln's assassination in April 1865, Vice President Andrew Johnson, who became president, continued the reconstruction process building from Lincoln's 1863 plan. On May 29, 1865, Johnson issued two proclamations: one required ex-Confederates to take a loyalty oath and support emancipation and offered amnesty and pardons while restoring all property rights except for slaves. In the second proclamation, Johnson required prominent Confederate leaders and property holders to apply for Presidential pardons as an effort to punish the elite southern slaveholders, whom Johnson believed would form a political bloc with former slaves. Johnson believed such a bloc would deprive the poor whites 'of a fair participation in the labor and productions of the rich land of the country'.[5]

Under Johnson's plan, black Americans "would remain outside the bounds of citizenship," while non-elite whites would rebuild southern states. Arguably, Johnson's reconstruction plan failed as both upper and lower south states elected ex-Confederate to

[4] Hahn, *A Nation Under our Feet*, 102-3; Foner, *A Short History of Reconstruction*, 17.

[5] Foner, *A Short History of Reconstruction*, 84-6.

prominent leadership positions, including senators and representatives to serve in Congress. Once in office, state lawmakers passed legislation that effectively confined ex-slaves to free person status in name only. In Mississippi, the law required all African Americans to provide written proof of employment for the upcoming year, and if they failed to provide proof they forfeited wages already earned. In addition, blacks in Mississippi and other former slave states faced arrests by any white person and subjected to fines for breaking a labor contract. Furthermore, Texas's laws required all members of black families to work, which specifically addressed black women who chose to remain home and take care of their families. With southern states denying blacks any rights under the law, many southern African Americans began to appeal to the Bureau of Refugees, Freedmen, and Abandoned Lands (Freedmen's Bureau), for aid. Furthermore, some congressional Republicans, such as senators Charles Sumner of Massachusetts and Thaddeus Stevens of Pennsylvania, aimed at punishing the South, while rejecting the presidential reconstruction efforts of Lincoln and Johnson as too lenient and ineffective.[6]

After two years of what Republicans considered as failed reconstruction policies under Johnson, they passed a series of Military Reconstruction Acts from March 1867 through March of 1868 for the "more efficient government of the rebel states" and declared that the governments established under presidential reconstruction were illegal. Under this Congressional act, the federal government had "unprecedented power to reorganize the ex-Confederate South." Included in these legislatively granted powers was the ability to deny ex-rebel leaders and subversive slaveholders political authority and the capacity to extend black male suffrage. Even after Congress issued these acts,

[6] *Ibid.*, 92-3, 104.

southern leaders openly defied the law, refusing to accept the votes of black men. Furthermore, the act divided the southern states into five military districts for more effective monitoring of rebellious activities of political leaders and embittered whites. From 1867 to 1877, Congressional Reconstruction enforced by military authority attempted to influence the political and economic direction of the South. However, federal leaders found this to be a difficult prospect and by the official end of reconstruction in 1877, state and local policymakers had assumed control over state governments, and southern blacks continued to struggle for their rights as citizens.[7]

Going from slavery to freedom was only part of the dilemma for blacks. By 1868 rampant racism and vigilante behaviors by former Confederates and their sympathizers, including the Ku Klux Klan, made this change difficult for many blacks. Historian Mary Farmer-Kaiser asserts the Klan employed some of its most brutal tactics against black children and women. Arguing that the Klan used the rape of black girls and women as a political instrument, Farmer-Kaiser states this act of terrorism was a method of controlling the voting rights of black men.[8]

Even before much of the animosity directed towards African Americans manifested during state constitutional conventions, the leaders passed codes specifically targeting African Americans as a means to navigate federal laws designed to protect their civil rights. In 1866, the Texas legislature issued codes that provided blacks with very

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[7] U. S. Congress. Senate March 7, 1867. *In the Senate of the United States. March 7, 1867. -- Ordered to lie on the table and be printed. Mr. Sumner submitted the following resolutions, declaring certain further guarantees required in the reconstruction of the rebel states* Serial Set vol. 1309, Session Vol. No.1, 40th Congress, 1st Session, S.Misc.Doc. 1; U.S. Congress. House. March 7, 1867. *Alexandria election. Memorial from electors of elections in Alexandria, Va*. Serial Set Vol. No. 1312, Session Vol. No.1, 40th Congress, 1st Session, H.Misc.Doc. 3; Hahn, *A Nation Under our Feet,* 163, 312-313.

[8] Mary Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau: Race, Gender, & Public Policy in the Age of Emancipation* (New York: Fordham University Press, 2010), 162-63.

little protection under the law and made it difficult to find any restitution. Policymakers in Texas and elsewhere passed apprenticeship laws, which bound African American children to employers, who were often their former owners. These laws exploited the economic status of former slaves, many of whom had very little or no steady source of income. Furthermore, these laws ordered apprenticeships, without the parents' consent, which led to the separation of families and sometimes placed black children under the authority of former masters. Historian Wilma King argued, "Poverty and the subsequent inability to provide for their children made freedpeople vulnerable to losing their offspring to a labor system that robbed them of wages along with their children."[9]

The defeat of the Confederacy forced southern officials to reconcile the economic impact of ending slavery and for most freedmen and women, this meant taking control of their labor and that of their children. William M. Adams, who was born into slavery and moved to Ft. Worth, Texas, after the war pointed out that there was a great deal of excitement among the slaves. "Dey was rejoicin and singin …. Lots of em stayed and worked on the halves. Others hired out. I went to work in a grocery story" where he was paid $1.50 a week. "I give my mother de dollar and keeped de half." There was also Joe Barnes, born a slave on a plantation in Tyler County, Texas, who after emancipation alternated between working in a sawmill in Beaumont and farming in Tyler. Regardless of their occupation, former slaves had greater liberty to choose how and where they worked.[10]

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[9] "An Act Establishing a General Apprentice Law, and defining the obligations of Master and Mistress and Apprentice," in Gammel, *Laws of Texas*, vol. 5, 61; King, *Stolen Childhood*, 151.

[10] Litwack, *Been in the Storm So Long*, 340-41; "Interview with William M. Adams," no. 420192, *Slave Narratives: A Folk History of Slavery in the United States From Interviews with Former Slaves*, Works Progress Administration, Texas Narratives, vol. 16 [hereinafter *Texas Slave Narratives*] (Washington, D.C.;

The transition from slave to free labor became a constant source of contention between state policymakers, some of whom sought to maintain control over the work lives of former slaves, and the Freedmen's Bureau, created by Congress in March 1865 under the Department of War. Southern blacks who hoped to assume personal autonomy over their labor, found themselves caught in the middle of bureaucratic debates charged with racism and political animosity between state leaders and bureau agents. Historians have debated whether federal authorities conspired with southern leaders and employers to coerce former slaves into returning to plantation. Leon Litwack placed Union soldiers and agency authorities alongside southern planters and policymakers in compelling ex-slaves to return to the field. However, Barry Couch contends that the reactions of Bureau agents to the restrictive black codes that included labor and vagrancy laws passed by the Texas Legislature in 1866, "suggest that a majority of the Bureau personnel perceived the code as oppressive and took active steps to negate its pernicious influence." Furthermore, historian John Rodrique, who discusses labor issues in Louisiana, argues that in the years following the end of slavery employers complained of their labor problems, which consisted of their wage negotiations with former slaves and the ability of blacks to select their own work, and employers "inability to achieve control over labor." The same was true of former slaves throughout the South. Making matters more complicated was the perception many blacks held of the Freedmen's Bureau as the government with numerous individuals seeking restitution for discriminatory practices by white employers demonstrating that at least some ex-slaves found the federal government as a more suitable authoritative option than local or state officials. Regardless, the

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Library of Congress, 1941), 12; "Interview with Joe Barnes," no. 420133, *Texas Slave Narratives*, vol. 16, 48.

relationship between the bureau, state and local authorities, and former slaves was a complicated power struggle.[11]

In 1869, the General Assembly in Kentucky granted counties and towns the right to prosecute vagrancy. Blacks were the primary targets of these new laws in Lexington and Louisville where authorities forced them to work or charged them with vagrancy. The laws often overlooked white unemployment in the same areas. At the heart of this issue in Kentucky was the prosecution of ex-slaves in order to compel them to work for former owners. Since employers still needed workers, former owners tried to hire many of their former slaves at lower rates. Many blacks thought their former owners were underpaying them and refused to accept the low wage rates. Aside from trying to force former slaves to work for former owners, but the primary purpose of such laws were to remove black male Kentuckians from the voting population altogether by incarcerating them, compel them into a perpetual state of dependency upon their former masters, or force blacks to leave the Commonwealth. Such laws, which potentially served only to benefit black males, could be seen as potential that if a person had no means of supporting himself or his family financially, then he forfeited the right to political participation.[12]

One of the most recognizable roles played by the Bureau was making sure blacks factored into the economic renovation of the South by transitioning blacks into a wage labor system, and that employers compensated black workers for their industry. Included

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[11] Litwack, *Been in the Storm So Long*, 304; Barry A. Crouch, '"To Enslave the Rising Generation': The Freedmen's Bureau and the Texas Black Code," in Cimbala and Miller, *The Freedmen's Bureau and Reconstruction*, 261-62; John C. Rodrique, "The Freedmen's Bureau and Wage Labor in the Louisiana Sugar Region," in Cimbala and Miller, *The Freedmen's Bureau and Reconstruction*, 212-13.

[12] Victor B. Howard, *Black Liberation in Kentucky: Emancipation and Freedom, 1862 – 1884* (Lexington: University of Kentucky Press, 1983), 100–101.

within Bureau records are indenture contracts approved by district agents. One such agreement dated March 28, 1866, was between twelve-year-old Ellmore Boyce of Daviess County, Kentucky, and A. M. Mayor. Boyce's contract bound him to Mayor until he turned twenty-one and stated that during his indenture he was forbidden from "playing cards or any unlawful game," getting married, or skipping work obligations to Mayor. In return, Mayor was to teach Boyce how to read and write along with "the ground rules of Arithmetic and the Rule of Three." Upon completion of the agreement, Mayor was to give Boyce two sets of clothes and $50. There was also former slave, Cato Carter of Dallas, Texas, who told of Bureau agents examining workers' contracts "to see they [workers] didn't git skunt out their rightful wages." And, according to an October 20, 1869 report from Major Oliver Otis Howard, a Freedmen's Bureau commissioner, after an examination of contracts, there was "not a single instance of complain by employe [six} and employer." In short, the Bureau did see that workers "didn't git skunt."[13]

However, for contracts negotiated directly between employees and employers with no oversight by the Bureau, complaints "have been frequent." While this was a critical element in the lives of many former slaves, they also sought equal footing with whites in the eyes of the law. Eric Foner stated maintains that by mid-1865, blacks in upper South states such as Virginia had organized 'secret political Radical Associations' "to protest the army's rounding up of 'vagrants' for plantation labor, but soon expanded their demands to include the right to vote and the removal of the 'Rebel-controlled local

[13] "Indenture of Ellmore Boyce," March, 28, 1866, Records of the Field Offices for the State of Kentucky, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872. National Archives M1904 RG105 Roll 64; "Interview with Cato Carter," no. 420216, *Texas Slave Narratives*, vol. 16, 211

government.'" Unfortunately, for many freed persons in Kentucky, Missouri, and Texas, some whites simply saw no place for free blacks within their state. They made concerted efforts to limit any liberties gained by blacks, such as earning fair wages for their work or negotiating their own contracts. Some white residents held the view that any economic gains by blacks would come at the expense of local whites and even some Republicans took issue with that prospect. Furthermore, some southern policymakers and former slaveholders sought to restore social, economic, and political order to its antebellum state.[14]

In theory, the Freedmen's Bureau job was to oversee and manage lands abandoned by rebels and Confederate sympathizers during the war as well as "control of all subjects relating to refugees and freedman from rebel states or from any district of the country within the territory embraced in operations of the Army." The Bureau would resell or rent lands at a discount to freedmen and refugees who proved they had remained loyal to the United States during the conflict. In an interview, the former slave Hannah Allen of Fredericktown, Missouri, later recalled, "My first husband gave $50 for dis lot I'm living on. Dat was just at de end of de war." Moreover, Allen worked as a domestic for her former mistress' sister making $10 a month.[15]

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[14] "Report of the commissioner Bureau Refugees, Freedmen, &c.," October 20, 1869 in *Report of Brevet Major General O. O. Howard Commissioner Bureau, Refugees, Freedmen, and Abandoned Lands, to the Secretary of War, October 20, 1869* (Washington: Government Printing Office, 1869), 9; Foner, *A Short History of Reconstruction*, 49.

[15] "Bureau of Refugees, Freedmen, and Abandoned Lands," March 3, 1865 in *Legislative History of the General Staff of the Army of the United States (Its Organization, Duties, Pay, and Allowances), from 1775 – 1901* complied and annotated by Raphael P. Thian (Washington: Government Printing Office, 1901), 655; "Interview of Hannah Allen, no. 240104 in *Missouri Slave Narratives: A Folk History of Slavery in Missouri from Interviews with Former Slaves from the Federal Writers' Project, 1936-1938* [hereinafter *Missouri Slave Narratives*] (Bedford, Massachusetts: Applewood Books, reprinted 2006), 10-11.

Some of the most vehement opposition to the presence of freed men and women was in the lower South. This was also the location of some of the most heated confrontations faced by the Bureau, as many former slaveholding planters and non-slaveholding whites withheld news of emancipation from slaves for as long as possible. Historians have argued that emancipation substantiated southern white fears of society being turned upside down with whites being at the bottom and former slaves at the top as the Bureau was set to redistribute confiscated lands to ex-slaves.[16]

An example of white fears occurred in Texas in November 1865. After touring throughout several East Texas counties that fall, Lieutenant Colonel Jacob C. DeGress recounted, "the sentiment among the people is one of disloyalty, and they threaten union men with death as soon as the United States troops are removed." Prideful Texans used mental and physical coercion tactics to control the lives of both blacks and whites who might have aided blacks or Bureau agents in any attempt to rebuild the social, economic, and political infrastructure in Texas. The colonel's excursion included Montgomery, Walker, Trinity, Polk, and Liberty counties, and his report also stated blacks in those counties were not free and that in fact 'the old system of whipping and abusing them has not been abolished.' DeGress, serving as sub-assistant commissioner for the Bureau, pointed out that whites hunted freedmen with bloodhounds and compelled whites who would hire black workers to get permission from former owners or face being killed. Some southern whites prevented freedmen from leaving areas and some employers refused to compensate blacks for their work. DeGress also claimed that the number of freed black murdered was high in East Texas. The tone of his letter is one of great

[16] Hahn, *A Nation Under our Feet*, 128-29; Franklin, *From Slavery to Freedom*, 225.

uncertainty and pessimism, claiming that neither the agency nor federal troops could do much to rectify the situation in the region and that freedom for black Texans would come later rather than with the end of the War. Furthermore, the letter indicated that the transition from slavery to freedom would entail a struggle between federal officials and the southern whites who still maintained control over local economic and political systems.[17]

DeGress' report came during the first year of the Bureau while many of the logistics regarding managing the agency were still in question. In theory, the bureaucracy of the agency and the presence of troops in Texas, while a cause of consternation for belligerent white Texans, gave many freedmen and women a means to protect their freedom and rights. At issue was not only contentious whites who prevented the dissemination of information about emancipation and labor regarding southern blacks and intimidated other whites, but the political uncertainty over the exact place of the federal agency and how it should manage the relationship between former masters and slaves. Many times federal officials simply were unable to, or neglected to build any relationship between former masters and slaves and left this task to local authorities—many of whom had long-standing relationships with former slaveholders or were former slaveholders themselves. This gave ex-masters a decided economic and political advantage over former slaves and Bureau agents.

Even when local white citizens did work with the Freedmen's Bureau, there was confusion over the exact role locals would play in the reconstruction of states. This was evident in a December 1865 letter to Bureau commissioner General Edgar M. Gregory

[17] "Freedmen's Bureau Subassistant Commissioner for the District of East Texas to the Texas Freedmen's bureau Assistant Commissioner," doc. 33 in *Freedom* ser. 3, vol. 1, 167.

from Colorado County, Texas, Justice of the Peace Fred E. Miller seeking a commission as a subagent of the Labor Bureau. Miller had been operating in an official capacity for the Bureau less than a month, yet in that short time he appeared overwhelmed by the sheer quantity of work as he drew up labor contracts between former masters and slaves. Furthermore, Miller observed, "there is a considerable growling from those who try to cheat the negroe [*sic*] out of his labor."[18]

To control their own labor Justice Miller observed here the sheer effort by freed Texans to gain more control over their labor. Probably to the dismay of some former masters, many freedmen and women hired themselves out to Germans and Bohemians. It is probable that many black Texans found the prospect of working for former masters distasteful as they sought to separate themselves as far as possible from former slaveholders, even if that meant working for less money. Miller observed that blacks had a desire to leave their own homes in order to create new ones and that they were more willing to work for lower wages paid by Germans than the higher wages paid by ex-slaveholders "where they dont [*sic*] feel 'free'."[19]

The situation described by Justice Miller underscored considerable legal and economic dilemmas that arose in former slave states in the years immediately following the Civil War. What place if any should local civilians, especially blacks, have in efforts to reconstruct Texas and the South? Should local whites, some of whom harbored resentment at the presence of federal troops and officials in their state, influence the design of economic laws and how much impact should locals have? Should local

[18] "Texas Justice of the Peace to the Texas Freedmen's Bureau Assistant Commissioner," doc. 289 in *Freedom* ser. 3 vol. 1, 975.

[19] *Ibid.*

authorities enforce newly implemented laws? In addition, what political role should former slaves have in legislating in the region? As officials confronted these questions there appeared to be significant mistrust between federal officials and state officials and local white residents. Mississippi Provisional Governor William L. Sharkey highlighted this mistrust in an October 10, 1865, letter to Bureau Commissioner General Oliver O. Howard. Sharkey took issue with the presence of black troops in Jackson; however, he also took issue with what he viewed as the undermining of the rebuilding of Mississippi. The Governor claimed subagents of the Bureau encouraged blacks to be idle, commit crimes and demand the redistribution of property from the state. In response to the Governor's claims, Colonel Sam Thomas, assistant commissioner who visited with Governor Sharkey, wrote, "if any of my sub-commissioners have failed to do their duty, and he [the governor] is acquainted with the fact, it is his fault that the evil was not remedied …. He has never made a complaint to me …. In fact the Governor's writings are different from his talk." Thomas struck at the heart of the true nature of the precarious place of the Bureau in former slave states:

> The simple truth is, that the Bureau is antagonistic to what the white people believe to be their interest. The Governor, legislature, &c are of course opposed to it. A large party in the North thinks it a tremendous engine of oppression. It receives but little support from the National Government. The only friend it has in the world is the poor negro, who is without wealth and political power.[20]

Thomas also included the resolutions passed at a meeting of black Mississippi residents in Vicksburg held October 30, 1865, at which they complained not only of low

[20] "Provisional Governor of Mississippi to the Freedmen's Bureau Commissioner, Enclosing a Letter from a White Mississippian to the Governor," doc. 239a in *Freedom* ser. 3, vol. 1, 814-15; "Mississippi Freedmen's Bureau Assistant Commissioner to the Freedmen's Bureau Commissioner," doc. 239b in *Freedom* ser. 3, vol. 1, 816-17.

wages for their labor, but the lack of state laws protecting their property or laws that would allow them to collect wages. It is unclear how Thomas came into possession of the resolutions although it is probable that the citizens sent a copy to the local Bureau commissioner hoping that the agency would assist in addressing issues. This meeting underscored the grassroots political actions of African Americans in the South during the mid-1860s. There were numerous issues the citizens sought to address, but the consistent theme appeared to be the topic of citizenship. Newly freed black residents of Mississippi called for the state to "remove legal disability" and "give us the right of citizens in law." The organizers of the Vicksburg meeting sought to hold the state of Mississippi, the federal government and specifically the Freedmen's Bureau accountable for protecting black citizens.[21]

The colonel closed his letter pointing out the administrative and executive difficulties facing Bureau officers. They could not execute laws, collect fines or taxes or interfere with courts. The fact that the federal government was already stretched thin in resources and manpower by the end of the war and ideological political differences served to empower former Confederates, which enabled them to assume political authority in areas with high concentrations of former slaves, further exacerbated feelings of mistrust. Also, there was very little consistency in the management of the Bureau and it is probable that many commissioners and sub-commissioners were unqualified to oversee such a rebuilding effort. Last, the issue of race compounded this mistrust and it appeared that since most of those freed from slavery would remain in the South, in some cases there seemed to be very little vested interest in ensuring that black and white local

[21] "Mississippi Freedmen's Bureau Assistant Commissioner to the Freedmen's Bureau Commissioner," doc. 239b in *Freedom* ser. 3, vol. 1, 817-18.

residents engaged in a sustained Reconstruction. It is also possible that race factored into just how committed some federal agents were to aiding black refugees.[22]

In reality, most of the four million former slaves were simply not able to afford the rent on those abandoned lands managed by the Bureau. Furthermore, many of the employment prospects came from their former masters, some of who were still bitter over the destruction of the Confederacy and the loss of their property. Former slaveholders might have had their political differences, but many bristled at the notion of losing precious land to their former slaves. For most blacks, neither the Bureau nor the occupying Army regiments in the South offered protection from white resident's terrorist actions that would deprive black residents of the rights they assumed came with a Union victory.

There were instances where local citizens did attempt to assist by drawing attention to the economic exploits of ex-slaveholders who presented an obstacle for both the Bureau and freed people. Daniel S. Hays brought attention to one such incident in a letter dated On November 27, 1865. Hays, a Bureau superintendent in Hopkinsville, Kentucky and civilian, wrote to General Clinton B. Fisk that Rebels were denying freedmen the opportunity to rent land and "fixing their wages at too low a rate." Hays described how the former owner of one African American soldier wanted his former slave to work without pay. When the former soldier refused, the embittered former

[22] *Ibid.*

master hired Rebels to intimidate the soldier and force him to work. According to Hays, the soldier was beaten and his Army-issued guns confiscated by the Rebels.[23]

While Hays' letter does not contain the direct voices of the African Americans involved, it further demonstrated that some Bureau agents saw some local officials as being a hindrance to their duties. He argued that Trigg County, Kentucky, was a "hot bed of Traitors," however legal efforts there to arrest Rebels would probably be futile, because Hays thought the sheriff there was also a Rebel.[24]

While some former slaves struggled to adjust to their newfound freedom, others who escaped slavery prior to the war found themselves involved in lawsuits over controversial property disputes. Such was context of a Texas Supreme Court case, *Betsy Webster vs. Heard* (1870). In May 1856, slaveowner David Webster emancipated Betsy in his will. To further complicate matters, Webster wanted all of his property, valued at $22,000, in Galveston to pass to Betsy at his death. The property was to be held in a trust and administered by Mrs. E. J. Hardin, who at the time resided in Columbus, Georgia. Shortly after making the will, Webster died but the will was admitted to Galveston county court and accepted. Similar to other cases involving large quantities of property that passed into the hands of former slaves, distant relatives of the grantor filed suits disputing the will. This was the case Martha Greenwood, a New York resident who claimed to be a cousin of David Webster, sought to challenge the will in a suit. Fortunately for Betsy Webster, the Galveston district court dismissed the case in 1858

[23] "Freedmen's Bureau Superintendent at Hopkinsville, Kentucky, to the Freedmen's Bureau Assistant Commissioner for Kentucky and Tennessee," doc 205 in *Freedom* ser. 3, vol. 1, 725; Hays, Daniel S. Kentucky, Christian, Hopkinsville, in *1860 U. S. Census Series*, M653 Roll: 362 Page: 668.

[24] *Ibid.*,725.

and according to the State Supreme Court decision, she agreed to pay her attorneys, H. N., M. M. Potter and W. P. Ballinger, with property she received as a result of a court decree.[25]

The dispute in the suit turned to whether both Betsy Webster and Mrs. Hardin actually understood and consented to the contract with the lawyers to settle the payment for the 1858 suit. This belied the belief that women during the mid-nineteenth century were incapable of understanding legal concepts and rights, which were thought to be the man's domain. Betsy Webster and Hardin signed a contract for the transfer of seven lots valued at more than $3,000, yet both women disputed the verdict and accused the attorneys of fraud and forgery. In reality, because she did not comprehend the nature of property law, Betsy lost her property in this case. Furthermore, this case also revealed the precarious nature of black women who owned property in former slave states. For Betsy to administer the property left to her by Webster she needed a trustee. Hardin had to approve any decision made regarding the property, which in this particular case, she argued she did not sign. Interestingly, the final judgment appeared to hinge upon the reputation of the lawyers who defended Betsy in the initial suit brought by Webster's cousin. This case also indicated how little standing some freed blacks had in some areas. Regardless of how much property she came into, Betsy's argument that the lawyers deprived her of property challenged conventional notions of a proper place of a black woman. The fact that "she was either a slave or free person of color, neither of which is recognized as citizens of the state and capable of contracting" spoke directly to this point.

[25] *Betsy Webster v. T. J. Heard* 32, Tex. 685 1870.

However, this case became even more complex as Betsy continued to utilize the legal system to retain her property.[26]

In a separate case filed by Betsy in 1870, *Betsy Webster v. John Corbett*, the Texas Supreme court overruled *Webster v. Heard* and reversed and remanded the second appellate case. The court decision in *Webster v. Corbett* contended that Betsy was still enslaved at the time she agreed to sell the land bequeathed her. Plots of property valued at $2,800 had been sold by whom to 70-year-old John Corbett of Galveston, who had been accused of fraud. Because Hardin failed to remove Betsy in accordance with a state law that required free blacks to receive permission from the legislature to remain in Texas or relocate to another state, the court determined that Betsy remained in a state of slavery. As such, the court deemed any contract between her and another party invalid. Although the court ordered Betsy to repay the $2,800, she was able to retain her property and since the case occurred during Reconstruction her status as a free person and as a citizen allowed her to enter into legal contracts.[27]

While the Federal government faced the problem of what to do with millions of former slaves, in terms of transitioning them from slave to free labor while simultaneously managing a contentious relationship with former slaveholders and local southern politicians, many former slaves were just as concerned with reuniting with loved ones separated by slavery. Freedmen, women, and children recognized the agency as a legal instrument by which they retool their family situations. Some used the Bureau to

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[26] *Ibid.*

[27] *Betsy Webster v. John Corbett* 34, Tex. 263 1870 – 1871; "1870 United States Census ,Texas", *HeritageQuest Online*. http://persi.heritagequestonline.com.proxy.dbrl.org Series: M593 Roll: 1586 Page: 169 (accessed March 11, 2011).

protect distant family members from hostile southern whites, as a justice of the peace for marriages, or to appeal for the pensions of family members who served during the Civil War. The black reliance upon the Freedmen's Bureau reinforced the notion that former slaveholders no longer had control over southern society. Furthermore, and perhaps to the chagrin of southern whites, the agency's presence was a constant reminder of Union victory and the federal effort to rebuild the South in the image of the industrial North. States such as Kentucky and Missouri faced rebuilding efforts and were also occupied by military forces, however, for some whites in these two states, the fact that they would now have to compete economically with blacks only compounded the fact that blacks were subject to full political equality. However, for many former slaves, finding, reuniting with lost family members, and strengthening family ties became a priority.[28]

Mary Armstrong, a 91-year-old ex-slave living in Houston, Texas, agreed to an interview as a part of the Works Progress Administration (WPA) in the early-twentieth century and recalled efforts to find family members after her master freed her. Armstrong, born in St. Louis, Missouri, and owned by William Cleveland, spent a considerable amount of time with Cleveland's daughter Olivia. Armstrong recalled that Olivia's husband, Will Adams, purchased her from Cleveland for $2,500 and that she was "happy to be with Miss Olivia and away from old Cleveland and old Polly [Olivia's mother], cause they kilt my litter sister." Armstrong pointed out that when she was about four-years-old, Polly whipped her nine-month-old sister to death, which was an event that she never forgot.[29]

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[28] For more on the concept of federal efforts to rebuild the South in the image of the North, see Eric Foner, *Reconstruction*. Farmer-Kaiser, *Freedwomen and the Freedmen's Bureau*, 1, 8.

[29] "Interview with Mary Armstrong," no. 420056. *Texas Slave Narratives*, vol. 16, 26-27.

Armstrong did not state the specific year but did recall hearing that "old Cleveland done took my mamma to Texas," but there was nothing that neither she nor her mistress could do. Through no fault on his part, Armstrong did not have as strong a bond with her father. She recalled, "I hears my papa is sold some place I don't know where. Course, I didn't know him so well, jes' what mamma done told me, so that didn't worry me like mamma being took so far away." In 1863 when Adams freed the seventeen-year-old Armstrong and gave her emancipation papers, she was ready to search for her mother in Texas. Adams told her to present the papers to the folks in Texas, but to never "let 'em out of your hands." Armstrong's journey took her to Austin where she was nearly sold back into slavery until she presented her papers to Charley Crosby, to whom she referred to as "a good man." Crosby aided Armstrong and informed her of a refugee camp in Wharton County, where she reunited with her mother and there was "cryin and singin and cryin some more." The Civil War provided Armstrong, along with millions of others, an opportunity to find family members separated by slavery. Most who undertook such ventures proved less successful.[30]

The reconstruction of Texas after the war appeared even more complicated than in Kentucky and Missouri due to the presence of Mexicans, recent German immigrants and Native Americans, in addition to black and white Americans. Obviously, blacks were the only group among those who faced the transition from slavery to freedom, which itself brought added complexities, but which seemed to reverberate throughout the population. A February 1866 *New York Times* editorial covering the conditions in Texas noted the animosity that existed when the author pointed out that "several bullet-eyed 'Greasers'

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[30] *Ibid.*, 28-30.

surveyed him" while he danced the fandango with a Mexican woman. While it was very possible that Mexican men sought to control the level of social interaction that Mexican women had with strangers, this also belies the continued struggle for various groups to fill the void left by Texan slaveholders who seemed to have lost power in the state during the war. The irony was that while some of those slaveholders forfeited their roles as leaders in the state, presidential Reconstruction efforts under Johnson enabled many former Confederates to assume political roles under the new state constitution. This effectively minimized any political advancement blacks or any other marginal group might have gained in the years immediately following the war. Even the provisional governor of Texas, Andrew J. Hamilton, conveyed the notion of political exclusion of non-white males during the 1866 State Constitutional Convention when he thanked God that "this is a white man's government."[31]

Although states rescinded many of the legal gains made by blacks in the years immediately following the war, some individuals continued to make use of other various legal means to protect their rights. In 1875, family members of black soldiers filed suit against attorney Louis Benecke, who represented many African Americans in Missouri after the war, seeking to collect pensions and bounties entitled to loved ones who had died during the Civil War.

Benecke, born in Germany, moved to Missouri in 1860 and volunteered to serve in the fall of 1861; throughout the war, he served in several Missouri units that took him to Tennessee, Louisiana, and Alabama where he was mustered out of service in August

[31] "Condition of Texas," in *The New York Times*, March 5, 1866 (ProQuest Historical Newspapers The New York Times (1851 – 2007) pg. 1. http://proquest.umi.com/pqdweb?RQT=302&COPT=SU5UPTAmVkVSPTImREJTPTFBQ0QrMUFDQw@@&clientId=45247&cfc=1 (accessed March 7, 2011).

1865. After the war, Benecke became a lawyer and played an important role in the lives of newly emancipated African Americans in Missouri. In 1866, he was appointed Justice of the Peace of Chariton County and became a claims agent for the Freedmen's Bureau in Missouri. As Justice, he would be responsible for performing marriages, but it was his position as claims agent that brought him into very close proximity with freed black men, women, and children seeking financial retribution for loved ones who had died in service.[32]

For many former slaves federal agents and the bureau represented the possibility of hope. Yet, some blacks found the aid of agents, such as Benecke, questionable and after generations of treatment as second-class status, there is little wonder as to the skepticism of white authorities. With many African Americans adjusting to a new life some trying to put their families back together after the war efforts to recover pensions from the government became a formidable task. In some instances, the actions of agents and former slaves over military pensions led to disagreements, which appear to illustrate the idea that African Americans were adamant about seizing control over their lives.[33]

The case *U.S. v. Louis Benecke* (1875) was actually several combined cases, but two of the most significant were filed by Emma Warden and Ann Parks. Warden's husband Asbury served in the 68th USCT and Parks' three sons, Thomas, John, and

[32] Some Germans in Missouri also worked closely with Democrats in Missouri during the late 1860s as that party sought to weaken the legislative hold of the Republicans. Emil Preetorius was the editor of St. Louis's largest German newspaper and firmly opposed the effort of some Republicans who pushed for political equality of black Missourians as well as the continued disfranchisement of former Confederates and their sympathizers. With Preetorius's aid, Democrats were able to secure enough votes in the 1870 Missouri election to effectively end Republican control of the state. This also enabled Democrats to begin blocking state and federal efforts to protect black rights gained because of the war. Thomas Barclay, *The Liberal Republican Movement in Missouri, 1865 – 1871* (Columbia; State Historical Society of Missouri, 1926), 18 – 19; Andrew L. Slap, *The Doom of Reconstruction: The Liberal Republicans in the Civil War Era* (New York City: Fordham University Press, 2006), 9.

[33] Hahn, *A Nation Under Our Feet*, 136; James M. McPherson, *Battle Cry of Freedom: The Civil War Era* (New York: Oxford University Press, 1988), 842, 859.

Robert all served in the 65th USCT; these men were all entitled to receive pensions and bounties from the United States Treasury that should have been made payable to their next of kin. However, Emma and Ann claimed that the lawyers representing them had withheld monies from what the federal government entitled them, a sum of more than $1,000. The case went all the way to the United States Supreme Court where Benecke and his colleagues were found innocent of withholding pension money from Warden and Parks, but the case also demonstrated the continued resolve of black women in using the justice system through the years of Reconstruction.[34]

It is possible that Warden and Parks expected more from the state, which was under Republican control with a significant presence of Radicals in the legislature, when they filed their cases in 1868. Furthermore, it is likely that financial burdens facing both Warden and Parks were magnified without their husbands and sons to contribute to the family's wellbeing. In such situations, some black women used legal means to recover funds thought due them. In some instances, this even meant accusing attorneys assigned to aid them in making claims of wrongdoings. Despite their lack of success in their cases, Emma Warden and Ann Parks continued a trend of black Americans utilizing the justice system to protect property and secure their rights.[35]

Coincidentally, it was while the cases against Benecke made its way through the state and federal justice system that Reconstruction in Missouri and elsewhere began to collapse. In some states, Democrats effectively factored race into their political platforms

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[34] "U.S. v. Benecke," September 1875. Folder 2425 in *Benecke Papers*, SHSM.

[35] "Memo of Evidence." Folder 2426, *Benecke Papers*, SHSM; Emma Warden's "Notes of Evidence." Folder 2430, *Benecke Papers*, SHSM; Walter Barlow Stevens' *Centennial History of Missouri: the Center State One Hundred Years in the Union, 1820-1921* vol. 4 (St. Louis: The S. J. Clarke Publishing Company, 1921), 61-2.

and portrayed Radical Republicans as attempting to elevate ex-slaves over their former masters and ordinary white citizens. In Missouri, Democrats seized political authority in that state by 1870 by forcing the removal of a controversial oath that had prevented former Confederates and their supporters from voting. This led to the legal depoliticizing of black Missourians.

Black Americans in border slave states and the Deep South met with varying degrees of resistance as many whites, including some who had supported federal efforts during the Civil War, opposed political efforts to secure black Americans' equal political status. One concerned resident from Macon, Missouri, writing to Abner L. Gilstrap, an elected member of the January 1865 Constitutional Convention and state senator from Macon, worried that a "perfect storm of indignation" was forming in opposition to efforts in the state to "put the negro on a perfect equality with the white race." It is possible that members of the state convention were aware of the pending passage of the 13th Amendment formally abolishing slavery in America, while the writer of the editorial letter was not; however, it also might be that the citizen recognized that an attempt by the state government to end slavery in the state was simply pointless if such a sweeping measure was on the verge of being passed by the federal government. If Washington passed an amendment then citizens could direct their anger towards federal leaders and Bureau agents without much potential backlash towards local officials.[36]

While the Bureau fell short in many instances, it did offer the chance for some African Americans to achieve and maintain their rights as citizens. Local or state governments offered even fewer means of protection for blacks against mobs of angry

[36] The House of Representatives passed the 13th Amendment January 31, 1865. *Columbia Missouri Statesman*, February 10, 1865, pg. 2, col. 3.

southern whites. As a result, some blacks filed grievances with the Freedmen's Bureau, and, as one historian has argued, the Bureau served as the government for free blacks. It was probably not a coincidence that, as African Americans filed numerous complaints and petitions to the Bureau, the result was greater government intervention into the lives of private citizens. Yet, it was apparent relatively soon after the creation of the Bureau that it was becoming a massive undertaking that even federal authorities did not fully understand nor expect. The *New York Times* at the time reported, "the necessity for enlarging the powers of the Freedmen's Bureau becomes everyday more apparent, and every day brings with it the evidence that it is the only necessary, and, at the same time, the best and most practicable protection to the freedmen in their present condition." [37]

The overwhelming problem with the administration of the Bureau was twofold. First, Republicans failed to reach any real consensus over the scope of the Bureau and how far it should reach into the lives of citizens. This led to uncertainty about how the Bureau would offer any legitimate social and political protection from white southerners. Second, President Andrew Johnson, a Republican, and the northern Democrats provided a political obstacle to the Bureau as efforts to readmit southern states also meant the pardoning of former Confederate leaders who would then assume political control of the state legislatures. These problems resulted in states quickly stripping blacks of most political gains obtained during the early years of Reconstruction.[38]

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[37] Cimbala and Miller, *The Freemen's Bureau and Reconstruction,* xv; Farmer-Kaiser, 8; "From Washington," January 8, 1866 in *New York Times* (ProQuest Historical Newspapers The New York Times (1857 – 2007) [hereafter cited as ProQuest] pg. 5 http://proquest.umi.com/pqdweb?RQT=302&COPT=SU5UPTAmVkVSPTImREJTPTFBQ0QrMUFDQw@@&clientId=45247&cfc=1 (accessed March 7, 2011).

[38] For a well-written brief work on President Johnson's administration and his issues with the Freedmen's Bureau, see Hans L. Trefousse, "Andrew Johnson and the Freedmen's Bureau," in Cimbala and Miller, xiv, 29 – 45.

The magnitude and scope of re-admitting the southern states placed the federal government in unprecedented territory. Never before or since has there been a rebuilding effort undertaken such as Reconstruction. One particular concern of authorities was over enforcing authority. Problems in legislating order mainly stemmed because of vigilantes and hordes of vengeful ex-Confederate soldiers, former slaveholders, and those who still held Rebel sympathies that were roaming the countryside in Kentucky, Missouri, and Texas. The terrorizing of blacks and some whites who sided with the Union led to changes in the manner in which the Bureau and the Army managed re-admittance. Furthermore, the violence caused by these vigilantes and the sheer number of freedmen, women, and children caused officials of the Bureau to rethink their policies continuously during its seven year existence.

Protecting former slaves from terrorism was only part of the role of federal authorities. Officials also aided black citizens in using federal means by providing blacks with political connections that assisted in strengthening the black community. Furthermore, some black soldiers saw in themselves a way to serve black citizens, and to serve as a political connection to federal authorities in the years immediately following the Civil War. Because of their position and direct connection to the military, it is possible that some of the black soldiers thought they would be more effective in communicating the grievances of freedmen, women, and children to Bureau commissioners and agents. Furthermore, some soldiers began to see themselves as de facto spokesmen for the recently freed slaves, many of whom were illiterate.

This was the very situation when John Sweeny, a sergeant in the 13th United States Colored Infantry, appealed to the Freedmen's Bureau in Kentucky and Tennessee

in October 1865 for assistance in establishing a school in his regiment. A Kentuckian, Sweeny sought to bring the lack of educational opportunities to the attention of Bureau leaders when he wrote to the assistant commissioner Brigadier General Clinton B. Fisk. Sweeny saw the creation of an educational institution as a means that would aid ex-slaves in their transition from slavery to freedom. Sweeny contended, "We have never had an institutiong [*sic*] of that sort …. We wish to have some benefit of education to make ourselves capable of business in the future." Sweeny further argued that the soldiers and more importantly, freed blacks wanted to be a "people capable of self support," yet, in Kentucky no such facility was available because of widespread prejudice against former slaves.[39]

Sweeny's primary concern seemed to be black Kentuckians' ability to become self-reliant. His appeal pointed out that most freedmen, women, and children were unable to write out their complaints. He also inferred that for blacks, since the Bureau was the proper authority, that body was therefore obligated to provide protection for citizens. In this case, the creation of a school in their regiment that would enable the soldiers, once mustered out, to educate former slaves, which would result in less reliance on the government for assistance. The formal education of the soldiers meant the possibility for a career beyond backbreaking labor and the chance for black self-sufficiency. His appeal did not go unheard by the Bureau, and upon his return to Kentucky, he embarked upon a teaching career.[40]

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[39] "Kentucky Black Sergeant to the Tennessee Freedmen's Bureau Assistant Commissioner," October 8, 1865 and subsequent letters in *Black Military Experience* Ser. 2, 615.

[40] *Ibid.* 615 – 16.

Politics in the lower South were contentious during Reconstruction as white voters in Texas sent a clear message to Radical Republicans and freed blacks that former Confederates would play a critical role in the political rebuilding of Texas in 1866. First, delegates voted James W. Throckmorton, of the Conservative Unionist Party, president of the Constitutional Convention in 1866. In his convention acceptance speech, the president-elect expressed the appropriate views considering the circumstances that the state was attempting to formally re-enter the Union and under military occupation. Throckmorton, who, although he had voted against secession, became an officer in the Confederate army; after the war, he expressed his patriotism as well as his desire to work with federal authorities in rebuilding Texas. His very presence elicited a tremendous level of consternation from those individuals who supported the Union throughout the war. The hisses and cries of "Put him out" and "Hang him" indicated to Throckmorton that there would be very little middle ground. Yet, with their ballots, voters at the 1866 constitutional convention sent a message that former slaves would gain very little political ground once the federal government restored Texas to the Union. The fact that Throckmorton defeated Alexander H. Latimer, a farmer from Sherman, Texas, whom political opponents and allies alike described as a "straight out radical Union man, and remained firm on this stance during the entire existence of the rebellion," for the convention presidency highlighted this concept. Even Latimer, along with other white political leaders, such as Governor Hamilton, championed educational voting requirements for black Texans.[41]

[41] Consisting of primarily former Confederates, supporters in Texas established the Conservative Unionist Party in late 1865 mostly in response to the policies of provisional Governor Andrew Hamilton, which appeared to cater to Radical Republican interests, and to the presence of the Freedmen's Bureau and the army. For more information regarding the political breakdown of Reconstruction in Texas and significance

President Johnson declared the rebellion in Texas officially ended when Throckmorton was elected Governor in June 1866. With this, Johnson sought to restore control of the state to local and state authorities. The removal of federal authority coincided with local efforts to strip freed black Texans of liberties gained by the federal victory and subsequent federal legislation. Members of the Conservative Union Party accused Republicans of seeking to elevate former slaves to the detriment of white Texans. Throckmorton and the conservatives thwarted efforts to create schools or redistribute lands held by the Bureau. The results led to so much consternation that General Phillip H. Sheridan removed Throckmorton, arguing that he was "an impediment to the reconstruction of that State under the law." By military appointment, Elisha M. Pease replaced Throckmorton, yet the contentious subject of free blacks and their entitled rights under the law continued to serve as a sore spot for many white Texans—some of whom assumed, argues historian James McPherson, that white supremacy was at stake.[42]

In Texas, land was also a contentious subject and for African Americans who were unable to acquire land, their employment prospects served as a reminder of their former status. In the early years of Reconstruction in Texas, many freed blacks who sought employment found few opportunities outside of work offered by former masters. The process of limiting their employment choices took the form of a gentleman's agreement between planters where only the former masters would offer work to their ex-slaves. Not only did this unwritten deal serve to limit freedmen to their former work, but

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of the Conservative Unionist Party see, Carl H. Moneyhon, *Texas after the Civil War: The Struggle of Reconstruction* (College Station: Texas A and M University Press, 2004; "Conditions of Texas," March 5, 1866.

[42] Randolph B. Campbell, *Grass-Roots Reconstruction in Texas, 1865 – 1880* (Baton Rouge: Louisiana State University Press, 1997); 10 – 11; "Reconstruction in Texas," July 31, 1867, *New York Times* [ProQuest] p. 1; McPherson, *Battle Cry of Freedom*, 243.

it also limited them to specific geographic areas of Texas. Although the Federal government attempted to rebuild the South through the Freedmen's Bureau and military occupation, there was very little officials could do to compel planters to hire government-assigned employees. Also, the poor economic conditions of many black families prevented them from any type of organized labor actions. Some former slaves complained about their employment situations to the Bureau agents. Although this was one of the primary objectives of the agency, agents could provide little aid. It would take more federal intervention in 1866 to strengthen the Freedmen's Bureau.[43]

In July 1866, Congress issued an act expanding the scope of the agency and used the vague terminology "an act to continue in force and to amend … and for other purposes." Included in this act was the desire to oversee the progression of freed blacks to become "self-supporting citizens of the United States," and to assist them in enjoying their newfound freedom recently conferred by the Thirteenth Amendment, which abolished slavery but made no mention of citizenship for African Americans. The wording of the July 1866 Bureau act suggested that there would still be a process for the former slaves, most of whom were born in the United States, to become American citizens. It was not enough for freed men, women, and children to be born in America. Those nearly four million freed individuals would need to continue to prove their worth as laborers under a wage labor system that would support the political agendas of both

[43] J. Mason Brewer, *Negro Legislators of Texas and Their Descendants* (Austin, TX: The Pemberton Press, 1970), 10.

Republicans and Northern Democrats, whose objectives became intimately attached to the administration of the Freedmen's Bureau.[44]

The changing political dynamics in Missouri led to the creation of political parties that pulled the state in different directions. Factions established after the 1865 constitutional convention, such as the Radical Party and the Conservative Unionist Party, competed fiercely over the political direction of Missouri. Similar to Texas, one of the primary issues facing these political leaders was how to deal with ex-Confederates and Bushwackers, who were still patrolling in some rural areas of Missouri and terrorizing blacks and whites alike. Another question was how to fully incorporate former slaves into the political fabric of the state while reintegrating those who supported the Confederacy. What made Missouri different from Kentucky and Texas was that the Radicals actually held control of the state government from 1865 to 1870. This led to much political turmoil within the state as leaders sought to adopt a new state constitution that included amendments for black suffrage.[45]

Political debates also led to intra-party issues that actually benefited the conservatives. Members of the Radical and Conservative Parties held heated debates on suffrage as evidenced in a March 8, 1867, letter from Radical party member Albert Griffen to his friend, attorney Louis Benecke. Griffen pointed out that when a caucus of Radicals proposed submitting an amendment in favor of black suffrage, the party could not reach consensus, an indication of how uncertain some members were in securing

[44] "An Act to Continue in Force and to Amend 'An Act to establish a Bureau of the Relief of Freedmen and Refugees,' and for other purposes." July 6, 1866, *Legislative History*, 656.

[45] Eugene Morrow Violette, *A History of Missouri* (Boston: D. C. Heath & Co., Publishers, 1918), 407, 417.

black suffrage. The disagreement led to the party proposing to postpone the debate on the subject until the winter session. The proposal failed to pass when brought to a vote before the House. As a result, the Radicals were unable to maintain any advantage regarding the issue of black suffrage and Griffen ominously predicted that "the negro has lost the franchise and that, the Rebels through this move will gain it."[46]

Some black Missourians tied their political futures to the political parties that developed after the Civil War. Arguably, the most significant of these would be the Radical Party. Although they would contend with the perception that they were inferior to their white counterparts, the destruction of the institution of slavery allowed blacks to take some necessary steps in determining their own political futures. One problem faced by many black Missourians was the lack of practical experience in the political arena. When forced to choose between the two, all of the former slave states elected ex-Confederates.[47]

While the Republicans had a majority in the state legislature, the Radical Party drew a great deal of notable attention because of members such as James Milton Turner, a former slave from St. Louis, who vigorously spoke out in opposition to injustices he saw against freed blacks. For Turner, the most prominent of these transgressions was lack of suffrage.

Manumitted by Theodocia Young in 1843, Turner learned to read and write at the Sunday school led by John Berry Meachum, a free black minister, businessman, and slaveowner in St. Louis, at a time when it was illegal for any person of African descent to

[46] "Albert Griffen to Louis Benecke," March 8, 1867. Folder 1480 in *Benecke Family Papers*, SHSM.

[47] "Albert Griffen to Louis Benecke," March 8, 1867. Folder 1480 in *Benecke Family Papers*, SHSM.

be educated in Missouri. In furthering his educational needs, Turner attended Oberlin College in Ohio during the mid-1850s and returned to St. Louis. In 1860, while working as a porter and living in St. Louis' Fourth Ward, Turner accumulated a modest amount of property valued at $30. At the end of the Civil War Turner turned his attention to improving the general condition of newly freed African Americans. By 1870, his efforts shifted mostly to ensuring educational opportunities for them. Yet, his involvement with the Radical Party in the mid-1860s served to underscore the political efforts of some black Americans during the years following the war.[48]

Turner's qualifications and background served him well both as a voice for black Missourians and a leader in the Radical Party. He had firsthand knowledge of the local black community and the many deficiencies facing former slaves. He traveled to places such as Sedalia, Jefferson City, and Cape Girardeau, speaking out against inequality. In 1870 as the Radical Party tried to grasp political control in the state, Turner and Missouri's African Americans created a stir among the white population by attaching their agenda for equality to the party platform. State newspapers published articles, no doubt to spread fears of such an agreement among the general white voting populace. Fears of a mixed race and order less society increased as the Radical Party provided blacks with a platform to express their grievances. In return, most radicals hoped to receive the black vote in conjunction with their white followers to hold enough significant offices to maintain their policies aimed to punish those who fought for the

[48] Gary R. Kremer, *James Milton Turner and the Promise of America: The Public Life of a Post-Civil War Black Leader* (Columbia: University of Missouri Press, 1991), 14-15; "1860 United States Census, Missouri" in *Heritage Quest Online*. http://persi.heritagequestonline.com.proxy.dbrl.org Series M653 Roll 649 Page 194 (accessed February 22, 2011); and "1870 United States Census, Missouri" *Heritage Quest Online*. *persi.heritagequestonline.com.proxy.dbrl.org* Series M593 Roll 771 Page 232 (accessed February 22, 2011).

Confederacy or provided assistance to rebels. It is likely that, because the black male voting populace was small, white party members assumed they held an influence over their black constituency. However, white Radicals learned that black citizens were not monolithic in their political objectives.[49]

While the party did offer freedmen a chance to further their political ideas in a very public setting, blacks in Missouri were organizing their own venues to express their complaints. In 1870, several prominent black residents, including Turner, met to discuss the conditions of black Missourians. The meeting resulted in passing several resolutions regarding the political future of Missouri's African Americans. The first expressed outrage that a constitutional amendment submitted to the General Assembly would allow former Confederates and current Bushwhackers to hold publicly elected offices. Calling this proposed amendment "unjust and particularly offensive to the patriotism of colored men," the members of the Sedalia convention held tremendous value in their loyalty to Missouri and to the United States. More importantly, with former Confederates back in office laws adversely affecting the lives of African Americans would soon follow. It was probable that former Rebels would be judges and jurors hearing cases involving black Missourians. Such a political measure appeared repulsive to some black Missourians.[50]

Furthermore, they pointed out that the state sought to pass an additional amendment that would "indiscriminate enfranchisement of our late enemies before our equality." Black members of the Radical Party attempted to leverage any political influence they could manage, such as trying to remove the word "white" from the state constitution and requesting that any attempts to incorporate liberal amendments that

[49] "The Radical Platform," *Jefferson City People's Tribune*, May 25, 1870, pg. 2, col. 3.
[50] *Ibid.*

would benefit former Confederates into the Radical Party be met with resistance by blacks. This revealed the complexities of racial politics during the late-1860s. Most blacks were more moderate in their political thoughts and feared that opening up the franchise to all whites would in turn cost them their own rights as citizens.[51]

The political climate in Missouri differed from what existed in Kentucky or Texas. For example, Democrats never lost political control in Kentucky, which meant that the Federal Government faced a different set of problems in transitioning from a slave society into one that included free blacks. Yet, in Missouri, Republicans had established their political footprint, which left former slaves throughout the state to face immense political opposition that in turn affected nearly all aspects of their lives. Regardless of racism, many blacks in the border states never lost sight of their own version of citizenship, which in reality was no different from the expectations of white citizens.[52]

One instance of black residents seeking to maintain their liberties came in 1867. The black residents of Pike County, Missouri, composed a petition addressed to the state legislature for the removal of all legal restrictions based on color. Black residents in Pike County recognized the fragile nature of their political rights when they wrote, "Our position under the law, was kind of medium between that of men and that of brutes – being treated under those laws as men, so far as punishment for crimes … but as brutes so far as personal rights or privileges." Though many southern African Americans appealed to the Freedmen's Bureau, this particular instance demonstrated that at least some blacks

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[51] *Ibid.*

[52] Foner, *Short History*, 182.

continued to use known avenues to solve legal issues, such as working through state governments or even local courts. Perhaps realizing that the federal agency would not always be there to provide protection to residents of Pike County, black Missourians referenced that blacks in the county had survived the injustices of slavery, which deprived them of making decisions on their own accord not only because they were subject to the will of their former masters, but also because of the laws of the state. The signers of the petition appealed to the recent federal changes that abolished slavery. They also pointed out the recent changes in the law and the inconsistencies to that law practiced in Missouri. The African American residents of Pike County, although still in a precarious situation due to some bitter former slave masters and resentful whites, actively sought to change their own situation by using their political rights. Perhaps they were hoping that the use of state government demonstrated their loyalty to Missouri and not to federal authorities and that, this might have a wider effect on their economic and social circumstances.[53]

Missouri lawmakers expected former slaves to pay the same taxes required of whites as well as perform civic duties, although many black Missourians failed to obtain legal rights. For many blacks, the reality was that white citizens along with state leaders prevented blacks from fully participating in the state's political system, although many black residents recognized the political repercussions of the war and thought they were entitled to legal recognition as citizens (to include women), to hold property and to marry. There is no denying that for some African Americans, being able to marry legally

[53] "Memorial from the Colored Citizens of Pike County to the Missouri State Legislature," 1867, Missouri State Archives, Jefferson City, MO (Record Group 550 Missouri General Assembly (1821 – Present); box 78; folder 29:145).

would unite families separated by slavery. For others, legal marriages provided greater protection of their property once they died. Widows, Widowers, and children stood to inherit any lands a loved one might have owned, assuming all debts were paid. Aside from the right to inherit property, marriage legitimized the husband's role as the head of the household and it protected children from falling victim to undesired apprenticeships.[54]

For some black males, what seemed to be most important to them was "manhood," which they directly connected to their political status. As men, not simply black males, they were entitled by law to political rights. For those blacks who believed that when states overlooked race as disqualifying factor and demanded that black men performed obligatory duties as soldiers those state conceded that they were indeed citizens of the state regardless of their status. As such, the petitioners saw the state as denying petitioners their rights to civil equality, to fully participate in the political process, to enter into contracts of their own volition and to move throughout the state without restrictions. Their fear was that the political influence of those in the state who were clandestinely disloyal would continue to deprive black Missourians of these rights as citizens.[55]

The fact that political debates in Washington over the ratification of the Fourteenth Amendment, which in theory constitutionally declared and confirmed that all persons born or naturalized in the United States were citizens, did not prevent people of African descent from using their own voices to seek political justice. Indeed, congressional Republicans introduced the Fourteenth Amendment to the United States

[54] *Ibid.*

[55] *Ibid.*

Constitution to both Houses of Congress June 16, 1866. However, final ratification of the amendment was not until July 9, 1868.

What seemed to set many post-war freedmen, women, and children apart from their predecessors who were freed before the war was that many of these newly freed citizens attempted to enact widespread political change within the states of their enslavement. Prior to the war, the law forced emancipated slaves to migrate from the state; however, a few states, including Missouri allowed blacks to petition the local court or state legislature to remain in their places of residency. In Missouri, an 1835 law required free blacks or biracial persons to apply for a license to remain in the state. Texas's General Council passed an ordinance on January 1, 1836, preventing free blacks from migrating into the Republic of Texas and the law required freed slaves to leave the state although they could petition the Texas legislature to remain. Historian Ira Berlin points out that by the 1850s most states required freed blacks to leave or face criminal charges, which was the case with Kentucky's 1852 constitution that barred free blacks from "immigrating to" that state and required freed slaves to leave or face a felony charge. Yet, after the war, they could form a collective body, draft a memorial and seek far-reaching political changes. Their political protest would have appeared very real regardless of the judicious positioning of the letter itself.[56]

[56] Many newly freed black Americans, similar to those in Pike County, Missouri, argued for their legal rights as citizens nearly as soon as the war ended. Persons who were free before the war argued for their legal rights continuously. See Loren Schweninger ed. *Race and Slavery Petitions Project*, University of North Carolina – Greensboro, Digital Library on American Slavery (Greensboro; University of North Carolina-Greensboro Libraries) http://library.uncg.edu/slavery_petitions/index.aspx?s=1 (accessed July 29, 2011); "An Act Concerning Free Negroes and Mulattoes," "Report from Committee on State and Judicial Affairs," January 1, 1836 in *Laws of Texas*, vol. 1, 720-21; March 14, 1835 in *The Revised Statutes of the State of Missouri*, 414; "Concerning Slaves," in Wickliffe, *The Revised Statutes of on and Horton , 72*; Berlin, *Slaves Without Masters*, 138.

Theoretically, in the post-War years the testimonies of black citizens could be used to convict whites in trials. Furthermore, it was now theoretically possible for black testimony to aid in preventing a conviction of a black defendant. Yet, some blacks found that very little changed in this regard to the legal system. Prior to the Civil War, laws in many southern states prevented blacks from testifying against whites, but they were able to serve as witnesses. While the war might have enabled blacks to testify against whites, the outcome of the war did very little to alter white perceptions of blacks as witnesses or litigants in cases.[57]

White negative perceptions of blacks as witnesses against whites appeared to be the situation when an individual sought to appeal a court decision in *Seal (A Freeman) v. The State* (1866). A Texas jury found Seal, a freed black man, guilty of stealing a collar and bell worth $2.50 and sentenced him to two years in a penitentiary. The report indicated that Seal and a young African American boy, Charley, were traveling by wagon near Brooksville, Texas, when Seal's accuser, William B. Henry, "charged" him with taking his bell and collar. Henry did find the items in the wagon and it is possible that Seal and/or Charley did unlawfully remove the collar and bell from Henry's oxen. However, both Seal and Charley swore that an unknown black man approached them while they were traveling prior to their encounter with Henry and offered to sell them the collar. During the initial trial, the jury found no reason to believe the testimony of Seal or Charley, whom the defense called as a witness. Also, Henry was the only witness for the prosecution and his sworn statement was enough for the jury to convict Seal.

[57] Franklin, *From Slavery to Freedom*, 153-54.

Furthermore, this evidence was enough for the Texas Supreme Court to uphold the conviction.[58]

Additional actions taken by some white citizens to limit political gains made by blacks in the post-War years involved in-depth investigations by the federal government. Because most of the South was still under military occupation, the army headed these inquiries. Although states such as Missouri and Kentucky remained a part of the Union, the instances of insubordinate and rebellious activities remained high. Ardent rebels still roaming through Kentucky orchestrated one such instance of violence in the summer of 1867 and led to the murder of several blacks and one white former officer.

Investigating an incident in 1867 where Kentucky Regulators killed 30 people, General Benjamin P. Runkle found himself in Stanford, Kentucky, where he interviewed numerous character witnesses who testified on behalf of Major James H. Bridgewater, whom a group of regulators killed as the major was playing checkers while sitting in a store with friends. According to Runkle, Bridgewater served in the Union Infantry under Runkle and during the war Bridgewater was a "terror to rebels." It is possible the major's prior actions during the war, which included accusations of confiscating money from rebel prisoners of war, later led to his murder.[59]

The mob action by bitter ex-Confederates, which targeted Major Bridgewater, was not limited to seeking out former Union officers. Several witnesses and individuals

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[58] *Seal (A Freeman) v. The State*, 28 Tex. 491 December 1866.

[59] "How Major Bridgewater was Killed – Thirty Men Murdered and Outraged – Reported Death of Major Carpenter." In *The New York Times*, August 27, 1867; "Letter from General Benjamin P. Runkle to General John Ely, Louisville, KY, June 21, 1867" in United States. National Archives and Records Administration. *Records of the field offices for the state of Kentucky, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865–1872*. (hereafter known as *Freedmen Bureau Field Records*) Microfilm Publication M1904 Roll 48. (Washington, D.C. : National Archives and Records Administration, 2003); Civil War Soldiers and Sailors System Database, http://www.itd.nps.gov/cwss/ (accessed February 21, 2011).

interviewed by Runkle described how Regulators terrorized freedmen, although some of the witnesses swore that the group was not organized against blacks or the Bureau. John Shelby, a 30-year-old farmer from Lincoln County, Kentucky, gave a statement in which he thought that Rebel soldiers were "simply tools of the leaders," who were "settling old war grudges." Even worse was the belief, expressed Shelby, that "civil authorities do not and cannot enforce the law." Regardless of the original intent of former Confederates, black Kentuckians felt the brunt of their actions and the lack of legal enforcement left black residents very little recourse.[60]

The opinions of local white residents varied over the real causes of the mob actions in central Kentucky. However, those interviewed by General Runkle all agreed that very little if any civil order existed, officials were generally too terrified to execute the law, and that Regulators were targeting not only Union supporters, but freedmen and women. Danville, Kentucky attorney Thomas Quisenberry, whom Runkle reported as "very radical in his politics," stated that "a reign of terror so intense exists that men dare not report outrages and appear as witnesses." Even more perceptive was Quisenberry's observation regarding the situation of free blacks: referring to them as "nominally free," blacks were "so terrified as to be actually slaves." By Quisenberry's observation, one objective of the roving bands of regulators was to "keep the negro down and they do it."[61]

In the years following the Civil War, some states adopted ordinances similar to laws prior to the war, which granted certain rights to whites or required freedmen to pay extra taxes or fees. Quisenberry even pointed out that legislators forced blacks to pay

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[60] "Runkle to Ely," *Freedmen's Bureau Field Records, Kentucky*, M1904 Roll 48.

[61] *Ibid.*

taxes to support their own schools, schools for the poor, and schools for whites, whereas whites only paid taxes to support schools for the poor and white schools.[62]

The actions of southern state lawmakers were under the guise of trying to control former slaves and reestablishing the Democratic Party. Historian John Hope Franklin argued that once Radical Reconstruction made this concept impossible in 1867, southerners "struck with fury and rage." Quisenberry described some of this rage against blacks and former Union soldiers in his reports from Kentucky. The actions of Regulators would prevent ex-slaves from receiving or using their political liberties by terrorizing individuals through threatening acts and violence. It is probable that some whites viewed any rights gained by blacks came at a loss to their own personal rights. The fact that local authorities either supported mobs or did not have the wherewithal to keep order no doubt contributed to some blacks' reliance upon the Freedmen's Bureau instead of local officials as a means to protect their new found liberties. The entire system created to rebuild the South and transition blacks into free society left most of those same blacks with little more political protection than they had under slavery. Regardless of their treatment as second-class citizens, blacks remained resilient and continued to struggle for their rights under the law.[63]

Under the rubric of political action, the KKK rose to prominence. As scholars have argued, this group terrorized southern blacks in the years following the Civil War hoping to "influence" blacks to vote for Democrats in elections and to "keep the negro in his place." In a WPA interview, the 80-year-old Betty Bormer who was born into slavery

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[62] *Ibid.*

[63] Runkle to Ely," *Freedmen's Bureau Field Records, Kentucky*, M1904 Roll 48; Franklin, *From Slavery to Freedom*, 249.

in Texas recalled the fear blacks exhibited regarding the Klan's presence. Boomer stated that she "seen de Klux after de war but I has no sperience wid em." However, she did point out that the Klan whipped her uncle and that when they arrived, blacks hid wherever they could. "Some climb up de chimney or jump out de winder and hide in de dugout and sich." Former slave Will Adams, who lived in Marshall, Texas, told interviewers that he believed northerners and educated blacks led to the rise of the Klan, at least in Texas. "Them carpet-baggers start all the trouble at lections [*sic*] in Reconstruction." Adams argued that blacks "didn't know anythin bout politics," and that the Klan targeted them for their involvement in politics and "sassing the white folk what done fed them." Eli Davison of Madisonville, Texas stated in a WPA interview that because of the Klan he never voted. Former slave George Henderson of Versailles, Kentucky, conveyed that in the years following emancipation he "heard the Klu Klux Klan ride down the road, wearing mask." Although he pointed out they never bothered him. The presence of the Klan and other vigilante groups in the South had a tremendous impact upon southern blacks as many feared physical harm for any display of political participation and many whites feared losing political control over their states.[64]

In February of 1870, the Governor of Texas, Edmund J. Davis, acknowledged that a military presence was still needed primarily because of the State legislature's acceptance of the Fourteenth and Fifteenth Amendments and the presence of Native Americans in the "Panhandle." For Governor Davis and some white Texans, they feared

[64] Shaffer, *After the Glory*, 90; Horton and Horton, *Hard Road to Freedom*, 191; Franklin, *From Slavery to Freedom*, 249; "Interview with Betty Boomer," no. 420102, in *Texas Slave Narratives*, vol. 16, 112; "Interview with Will Adams," no. 420241, in *Texas Slave Narratives*, 4; "Interview with Eli Davison," no. 420281 in *Texas Slave Narratives*, vol. 16, 298; "Interview with George Henderson," Federal Writer's Project, *Kentucky Slave Narratives: A Folk History of Slavery in Kentucky from Interviews with Former Slaves, from the Federal Writers' Project, 1936-1938* [hereinafter *Kentucky Slave Narratives*] (Bedford, Massachusetts: Applewood Books, 2006), 7.

losing political control of the state. Although as one historian explained the state congress "ratio of blacks to whites was small," and that in Texas in 1867, "only nine out of ninety members of the state constitutional convention were black." Yet, some whites who thought of former slaves as "savages" were the primary threats to white security! White fears of the political gains made by marginalized people were very real and for some whites, these gains called for acts of desperation to protect white liberties.[65]

White fears of a black political takeover permeated through much of southern white society throughout the 1870s, and newspapers ran stories that only served to agitate citizens. On May 25, 1870, the *Jefferson City People's Tribune* ran an article about black political office holders based on excerpts from the *St. Louis Tribune* which argued that blacks in Missouri, presumably based on population alone, were entitled to "one fifth of the offices," and that "we believe that those negroes will be fully equal to those that will sit in convention with them." The reprinted story also directly connected suffrage with the right to hold office and that any black elected to office, such as governor, member of the state or federal legislature, judge, mayor or president of the United States would be protected by the United States. Theoretically, this appears to be the case; however, it also appears that the Missouri editors sought to create a wave of fear throughout the state. [66]

It was very possible that newspapers in the former slave states contributed to the eventual breakdown of Reconstruction and the loss of black liberties, such as black male suffrage, and opportunities for elected state positions. Fears of black political rights by

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[65] "Situation in Texas," March 12, 1870 (ProQuest Historical Newspapers *The New York Times* (1851 – 2007) pg. 5. http://proquest.umi.com/pqdweb?RQT=302&COPT=SU5UPTAmVkVSPTImREJTPTFBQ0QrMUFDQw@@&clientId=45247&cfc=1 (accessed March 7, 2011); Franklin, *From Freedom to Slavery*, 237.

[66] "Colored Office Holders," *People's Tribune*, May 25, 1870, pg. 2, col. 2.

white Missourians were echoed when the *People's Tribune* reprinted an editorial from the *Missouri Democrat* dated May 13, 1870. The article, "What will the Colored Men do," detailed a speech from James M. Turner regarding the Radical Party's stance on granting universal white male suffrage, which included former Confederates. Turner vehemently opposed the adoption of a state amendment to enfranchise former rebels, such a move, he thought, would eliminate any prospect for black political gains in Missouri for "at least a generation." This perception became reality when many white Missourians, even some within the Radical Party, did side with liberal Republicans regarding former rebels. The process of relegating black Missourians, similar to blacks in Kentucky and Texas, to the political and economic margins began as state policymakers rewrote their constitutions between 1865 and 1870.[67]

Legal changes in the South, such as the destruction of slavery, the creation of the Freedmen's Bureau, and federal Reconstruction efforts allowed southern blacks greater access to the justice system. Although freedpeople faced economic, social, and political obstacles, such as state vagrancy laws, forced child apprenticeship, separation from loved ones, and acts of political intimidation from southern whites, they continued to rely on the justice system and legal institutions to express grievances in order to protect themselves and their families. Moreover, many of those who were petitioning the Freedmen's Bureau and courts were black women, perhaps because man black women working as domestic servants were in closer proximity to the individuals who discussed the politics of the day. Overhearing rhetoric about emancipation or the changing political climate very well might have inspired some black women to seek legal aid in escaping

[67] "What Will the Colored Men Do!" *Jefferson City People's Tribune*, May 18, 1870, pg 2, col. 3.

their situations or at the very least be able to provide information to other slaves. As the slave-born Tempie Cummins, who lived in Jasper, Texas recalled in an interview, "Mother was workin in the house . . . She say she used to hide in the chimney corner and listen to what the white folks say. When freedom was clared, marster wouldn' tell em, but mother she hear him tellin mistus that the slaves was free …."[68]

The period after the Civil War was the first time in United States history when the federal government of the land had deemed slavery illegal throughout the land. With freedom from slavery came the opportunity for African Americans to secure rights as citizens, which many blacks linked together. Black women, like their men and children, had been struggling for rights as citizens throughout U. S. history, which had always been under the pretense of slavery. With the institution destroyed, some black women and men expected that the law would protect their rights. Although they were cautious in managing their expectations of how much protection they would have, some blacks women and men still hoped that the changes occurring during the Reconstruction would benefit them and their families, and that the presence of the Freedmen's Bureau and the army would ensure this security.

Toward the end of Reconstruction many whites in Kentucky, Missouri, and Texas viewed their world as being turned upside down. For other whites the reasons for the political changes varied, but what remained consistent was the perceived threat of a black male voting bloc that would strongly influence state politics. For many African Americans it was critical to capitalize in the immediate changes after the war. Black men, women, and children complained to Freedmen's Bureau agents of ill treatment from

[68] "Interview with Tempie Cummins," no. 420124 in *Texas Slave Narratives* vol. 16,265.

local whites who were fearful of losing their place in society. White fears materialized with black male suffrage during the mid-1860s, and political groups like the Radical Republicans and other radical groups sought the black vote.

Once free African Americans could use their newly acquired rights and resources to establish schools, which would benefit the entire population of blacks. Black Americans created schools such as Harris-Stowe State University (1857), and Lincoln University (1866) in Missouri; Paul Quinn College (1872), Wiley College (1873), Prairie View A&M University (1876), and Huston-Tillotson University (1881) in Texas; and Kentucky State University (1886) in Frankfort, Kentucky, that provided for the practical educational needs of black Americans. Access to education was an opportunity for self-sustained support. For most, they simply thought the state and federal governments should protect their basic rights, which according to the Thirteenth, Fourteenth, and Fifteenth Amendments were the same rights as enjoyed by white citizens.

If the rights defined in the amendments were not forthcoming, black Americans would rely upon the long history of using the justice system to secure and protect their rights as citizens. The long history of black Americans using the justice system to secure and protect their rights as citizens continued through Reconstruction.

Conclusion

Historically southern blacks refused to accept their consigned status as second-class citizens and were resourceful in their fight to change it. They used the courts and relied upon colonial British, French, and Spanish statutes as ways to secure their liberties. Individuals such as Anthony Johnson, who worked his way out of slavery in seventeenth-century Virginia and became a property owner, used the court to successfully petition and sue his neighbors in 1655 for abducting and trying to persuade John Casor, an indentured servant, that he was a free man. And, in 1675 Phillip Gowen, an indentured servant, petitioned the governor of Virginia for his freedom after his owner held him eight years longer than required by the terms of the agreement.[1]

African Americans found that changes in federal and state laws made obtaining freedom straightforward in the first decades after the American Revolution. Some states eased emancipation laws and many slaveholders freed servants. However, by the 1820s legislatures started to restrict the ability of owners to manumit slaves. As historian Ira Berlin declared, "The rapid growth of the free Negro population which followed the Revolution abruptly ended during the early years of the nineteenth century." Berlin attributed this decline to slaveholders who "were determined to eliminate the source of this unwanted [free black] people." Nevertheless, the legislative changes that made liberty from slavery more difficult to obtain did not deter blacks from appealing to courts.[2]

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[1] Breen and Innes, *Myne Owne Ground*, 92; *Negro Phillip Gowen v. Lucas*, McIlwaine, June 1675.

[2] Gilje, *Making of the American Republic*, 100; Berlin, *Slaves Without Masters*, 15, 30, 135, 138.

Although politically, economically, and socially marginalized, black Americans worked within the justice system to secure rights they believed were guaranteed to them by the federal and state constitutions. Black men and women resorted to petitioning, filing lawsuits, or complaining to legal authorities. While some African Americans who petitioned and sued did triumph, there were many more who were unsuccessful in acquiring liberties. Individuals such as Marie Jean, an enslaved woman of Native American and African heritage in St. Louis at the turn of the nineteenth century, died in 1802 never seeing freedom. However, her children and grandchildren continued the court fight she had initiated by relying upon their Native American heritage and the colonial Spanish laws that declared indigenous slavery illegal. The descendants of Marie Jean finally won their freedom in 1838.[3]

African Americans in the South encountered laws that authorized special patrols of their communities, demanded special residency licenses, or required them to leave the state once emancipated. No such laws written for white southerners; therefore, blacks resisted the laws that they thought invalid. While they did not organize protests or hold conventions as did their northern counterparts, many resorted to the use of the justice system. Other free blacks used different tactics. For example, when the recently emancipated Fanny McFarland wanted to stay in Texas to be close to her four children, she petitioned a Texas court in 1840 to remain in the state despite its law requiring her to migrate. When the court denied her petition, she simply defied both the law and court decision. She refused to comply with state-ordered separation from her family in

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[3] *Marguerite, a free woman of color v. Chouteau, Pierre, Sr.*, Jul 1825; Foley, "Slave Freedom Suits Before Dred Scott," *Missouri Historical Review* 79, no. 1 (1984): 22.

Houston. McFarland, like many African Americans during the nineteenth century, found that there were two forms of citizenship in the United States. National and state and in many instances the privileges many blacks assumed protected by the U. S. Constitution extended to individual states. However, this was not always the case. As a result, this led to many instances where the justice system failed to live up to expectations for southern blacks.[4]

The turbulence of the Civil War created opportunities for many blacks to reunite with family members who had been separated by slavery. Furthermore, black soldiers and refugees from southern plantations put such a considerable amount of pressure on military leaders that the army eventually agreed to offer limited protection for the displaced family members of black soldiers. Also, black soldiers exerted pressure in other ways. They faced unequal treatment never encountered by their white counterparts, such as lower pay. When this occurred, Sergeant William Brown of the 3th USCHA in Kentucky, protested the unequal pay by writing an April 27, 1864, letter to Secretary of War Edwin Stanton calling attention to the absence of black rights and the broken promises of equal pay . . . Sergeant Brown's letter may not have had a direct impact on military pay changes, but his protest does reflect his assertion of rights and his objection to second-class citizenship.[5]

The official end of slavery came in December 1865 with ratification of the Thirteenth Amendment to the U.S. Constitution. As a result, southern blacks found themselves freed from bondage, yet still struggling for their liberties. As a result, they

[4] Winegarten, *Black Texas Women*, 9-10.

[5] Brown, "Black Sergeant to the Secretary of War," in *Black Military Experience*, 377 – 78.

continued their quest for rights as they made the transition from slavery to freedom with the help of the Freedmen's Bureau during Reconstruction.[6] Compounding the reconstruction process for individuals were state and national political problems, such as the re-admission of southern states, political encounters with federal authorities, most of whom were Republicans. In the process, former slaves were caught in the middle of policy changes that did not alter their situation drastically from when they were enslaved. One of the clearest illustrations of that reality occurred in Texas. Even though the U. S. Army occupied Texas in November 1865 and slaves were freed by the Thirteenth Amendment in December 1865, Lieutenant Colonel Jacob DeGress, commissioner of the Freedmen's Bureau discovered that employers had to get permission from the former slaves owners before they could to hire the freedmen and women.[7]

Notwithstanding the realities, such as discriminatory laws that made black access to equal rights under the law a difficult prospect, freedmen and women remained undeterred. When reviewing their legacy of struggle for equal rights and first-class citizenship, before and after the Civil War, they seemingly always included the use of the justice system. Although that system was often flawed and at times itself a barrier to African Americans, they continued to believe it was an appropriate way to wage their fight for equal rights and first class citizenship.

[6] Berlin et al., *Freedom's Soldiers*, 42.

[7] "Freedmen's Bureau Subassistant Commissioner for the District of East Texas to the Texas Freedmen's Bureau Assistant Commissioner," doc. 33 in *Freedom* ser. 3, vol. 1, 167.

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