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#### I. INTRODUCTION

Colonial governments began to enact hereditary slave laws in the last half of the seventeenth century.<sup>1</sup> African Americans who obtained freedom before racialized slavery became entrenched may appear on tax lists or have created legal documents. As noted below, however, in later times free people of African descent generated unique records such as entries in “Free Negro Registers.”<sup>2</sup>

For decades before the Civil War enslavers could emancipate enslaved people on terms of their choosing. Even though Free people of Color had privileges that were unavailable to enslaved people, they were also subject to legal restraints that did not apply to White people. The following summarizes the variety of ways in which enslaved people could be manumitted before the abolition of chattel slavery via the 13<sup>th</sup> amendment to the U.S. Constitution, as well as the treatment of Free People of Color in the period leading to the Civil War.

#### II. ANTEBELLUM EMANCIPATIONS

There were avenues to freedom for enslaved people Before the Civil War. For example, before 1800 an enslaved person in South Carolina could have been freed by a will on the death of the slave owner, or by any other “thing that showed that the owner had deliberately parted with his property.”<sup>3</sup> Sometimes legislative action resulted in the manumission of an enslaved person. As an example, New Jersey enacted legislation in 1786 that rewarded an African American for his service in the Revolutionary War.<sup>4</sup> By the 1850s, however, only the border states of Delaware, Missouri, and Arkansas gave slaveholders free reign to emancipate the enslaved, and Arkansas eventually prohibited emancipations in 1858.<sup>5</sup> Emancipation for all did not occur until the 6 December 1965

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<sup>1</sup> Higginbotham, *In the Matter of Color*, Ibid. 33-34.

<sup>2</sup> See Library of Virginia, *A Guide To The Amelia County (Va.) Free Negro Registers, 1804-1865*, A Collection In The Library Of Virginia; (<http://ead.lib.virginia.edu/vivaxtf/view?docId=lva/vi00751.xml>).

<sup>3</sup> O’Neill, *The Negro Law of South Carolina*, 10.

<sup>4</sup> “An Act for setting free Negro Prime,” *Princeton & Slavery* (<https://slavery.princeton.edu/stories/legislating-slavery-in-new-jersey>).

<sup>5</sup> Ira Berlin, *Slaves Without Masters, The Free Negro in the Antebellum South*, (New York: The New Press, 1974), 138-139. A page-long footnote in this book documents the various enactments in the Slave South.

effective date of the Thirteenth amendment to the constitution.<sup>6</sup>

### **Enslavement or Freedom Based On Mother's Status**

Under the English common law, the basis for much of American law, the status of a child normally followed that of the father. To accommodate slavery, the American colonies departed from that principle and adopted the approach that a child took the status of its mother. For example, Virginia law provided that children “got by an Englishman upon a Negro woman shall be bond or free according to the condition of the mother.” Conversely, a child born to a woman of European descent with an enslaved father was born free.

### **Gradual Emancipation In The North**

Slavery persisted in the North into the 19<sup>th</sup> century. Vermont's 1777 constitution initiated a process of gradual emancipation, and six northern states followed suit. Gradual emancipation created the need for records to keep track of enslaved people who were eligible for emancipation. As an example, New Jersey did not begin the statewide registration of births until 1848, but 1804 emancipation legislation required birth records for children born to enslaved mothers.<sup>7</sup> When the Civil War began slavery was virtually over in the North.<sup>8</sup>

### **Restrictions on Private Manumissions in the Slave South**

By the 1850s, only the border states of Delaware, Missouri, and Arkansas gave slaveholders free reign to emancipate the enslaved, and Arkansas eventually prohibited emancipations in 1858.<sup>9</sup> Historical slave states also adopted related restrictions such as laws requiring newly emancipated people to emigrate<sup>10</sup> and banning the immigration of Free People of Color.<sup>11</sup>

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<sup>6</sup> Library of Congress, “Research Guides: 13<sup>th</sup> Amendment to the U.S. Constitution,” *LOC.gov* (<https://guides.loc.gov/13th-amendment>)

<sup>7</sup> “An act for the gradual abolition of slavery ... Passed at Trenton Feb. 15, 1804. Burlington, S. C. Ustick, printer [1804]”; *Library of Congress* (<https://www.loc.gov/resource/rbpe.0990100b/?st=gallery>). Also, “Birth Certificates of Children of Slaves,” *New Jersey State Archives* (<https://www.nj.gov/state/archives/guides/cbuc1001.pdf>).

<sup>8</sup> See James W. Petty, “Black Slavery Emancipation Research in the Northern States,” *National Genealogical Society Quarterly* 100 (December 2012) 293.

<sup>9</sup> Ira Berlin, *Slaves Without Masters, The Free Negro in the Antebellum South*, (New York: The New Press, 1974), 138-139. A page-long footnote in this book documents the various enactments in the Slave South.

<sup>10</sup> See, e.g., *Acts of the General Assembly of Virginia, Passed in 1852, in the Seventy-Sixth Year of the Commonwealth* (Richmond: William F. Ritchie, Public Printer, 1852) 330. Also, “No. 125: “An Act: The more effectual to prohibit free negroes and persons of color from entering into and remaining in this State,” *Acts Passed at the Annual Session of the General Assembly of the State of Alabama, December 1838 through February 1839* [title page missing]. 134-136; *Internet Archive* ([https://archive.org/details/alabama-acts-1838-1839/Acts\\_1838\\_1839\\_transcript/page/n141/mode/2up?q=An+Act+The+more+effectual+to+prohibit+free+negroe+s+and+persons+of+color+from+entering+into+remaining+in+this+State](https://archive.org/details/alabama-acts-1838-1839/Acts_1838_1839_transcript/page/n141/mode/2up?q=An+Act+The+more+effectual+to+prohibit+free+negroe+s+and+persons+of+color+from+entering+into+remaining+in+this+State)).

<sup>11</sup> See, e.g., David J. McCord, *The Statutes at Large of South Carolina: Acts Relating to Charleston, Courts, Slaves, and Rivers*, Volume Seventh (Columbia: A.S. Johnson, 1840) 463.

## The Emancipation Proclamation

President Lincoln's Emancipation Proclamation freed enslaved people in states that were "in rebellion," but had no practical effect in Confederate strongholds (and no application at all to states such as Maryland that had not joined the rebellion).<sup>12</sup> In the District of Columbia enslaved people were freed about nine months before the effective date of Lincoln's Emancipation Proclamation, under a congressional law that provided compensation to their owners.<sup>13</sup> Slaveholders could claim up to \$300.00 for each enslaved person.<sup>14</sup>

## Slave Claims Commission

The War Department's General Order 329, dated 3 October 1863, created the Slave Claims Commission, pursuant to which a slaveholder could offer an enslaved person for enlistment into the Union Army and become entitled to compensation.<sup>15</sup> Claims papers are in the compiled service records of individual soldiers.<sup>16</sup>

The payment was capped at \$300 and conditioned on the filing of a valid deed of manumission and proof of ownership in the form of a title. Only slaveholders in six states under Union control were eligible—Delaware, Maryland, Kentucky, Missouri, West Virginia, and Tennessee. Reportedly, no payments were made with respect to the majority of claims that were made in the postbellum period.<sup>17</sup>

### III. FREE PEOPLE OF COLOR

Free persons of color were enumerated in the United States Federal Census records prior to emancipation. The term free people of color, in the context of the history of slavery in America, first specifically referred to persons of African descent who were not enslaved. The term was in

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<sup>12</sup> National Archives and Records Administration, *The Emancipation Proclamation, Record Group 11 General Records of the United States*; viewed on Archive.gov (<https://www.archives.gov/exhibits/featured-documents/emancipation-proclamation>).

<sup>13</sup> Hilary Parkinson, "Pieces of History," *Prologue Blog*; (<https://prologue.blogs.archives.gov/2011/04/15/emancipation-for-dc/comment-page-1/>). D.C. Emancipation Act, Also, DC Emancipation Act, 04/16/1862; Record Group 11; General Records of the United States Government; National Archives.

<sup>14</sup> Ibid.

<sup>15</sup> See Michael Hait, transcriber. *Records of the Slave Claims Commission Volume I: Register of Claims of the Delaware Commission*. Hait Family Services Research Services, 2010.

<sup>16</sup> "Compiled Military Service Records of Volunteer Union Soldiers Who Served With the United States Colored Troops: Infantry Organizations, 36<sup>th</sup> Through 40<sup>th</sup>," NARA publication M1993 (National Archives and Records Administration, 2006) (<https://www.archives.gov/files/research/microfilm/m1993.pdf>) 6.

<sup>17</sup> Michael Hait to author, E-MAIL, 28 May 2020, "Question about the Slave Claims Commission"; author's electronic file.

use before the independence of the Thirteen Colonies and elsewhere in British North America until the abolition of slavery in the United States in 1865.

### **Born Free or Manumitted**

Researchers need to determine how free people of color became free - were they born free, or freed from their slaveholder through the process known as Manumission? A manumission is the formal process by which a slaveholder would give legal freedom to a slave. The most common scenario was the freeing through the master's will. These records usually can be found in the county courthouses, universities, public and genealogical libraries, and repositories. Slaveholders often used the promise of manumission to ensure the obedience of enslaved people and sometimes rewarded faithful servitude with manumission.

### **History, Federal Laws, State Laws/Constitutions**

Throughout history, the Mason-Dixon Line has often been used to distinguish the Old South from the North and the Confederacy from the Union. Because the U.S. Constitution made no mention of race or color, the laws that governed the movement of free people of color were defined by the federal government and each individual state. Both, agreed, that being African American constituted an inferior status and therefore should be held to lower social and economic conditions. Lawmakers operated on the ideas that African Americans, whether born free, manumitted, or enslaved were not U.S. citizens and or otherwise entitled to the rights of the white population.

Slavery is usually accepted as an outstanding feature of the South, but people often forget there had been slavery in all the colonies. Slavery in the North never approached the numbers of the South. In colonial times, Northern freemen, like slaves, were required to carry passes when traveling in some places and were forbidden to own property in others. In Rhode Island, they could not own horses or sheep. In New England, they could only use ferries under certain conditions. In some southern states African Americans could not carry a cane unless they were unable to walk without one.

Having set controls on their black residents, the Northern states busied themselves in passing laws to make sure no more blacks moved within their boundaries. Like the black codes of the South and Midwest in the 19th century, enforcement of Northern colonial race laws was selective, and their real value lay in harassment and discouragement of further settlement, and in being a constant reminder to free blacks that their existence was precarious and dependent on white toleration.

### **Registers of Slaves, Registers of Freedmen, and Manumission Papers**

By the time of start of the Civil War in 1861 about ten percent of African Americans were free. Most free African Americans carried their own papers, but these could be stolen or lost. To

distinguish between slaves, runaways, and free African Americans, many counties or states in the upper South, border states and northern states, kept one or more sets of registers. Some had registers of slaves, some kept registers of freedmen, "free men of color," or "free negroes." Some kept copies of manumission papers of people freed from enslavement. These kinds of records can be found at state libraries, archives, or historical societies, in land and property deeds, probate records, or taxation records.

One resource that should not be overlooked is *The Digital Library on American Slavery* which has legislation petitions containing information about slaves, slaveholders, and free people of color. This website provides access to information gathered and analyzed over an eighteen-year period from southern legislatures and county courts filed between 1775 and 1867 in fifteen slaveholding states in the United States and the District of Columbia. This is a free resource provided by the University of North Carolina at Greensboro library.

If your ancestry is Louisiana, you cannot overlook the Louisiana State University Libraries digital collection, *Free People of Color in Louisiana: Reveal an Unknown Past*.

<https://lib.lsu.edu/sites/all/files/sc/fpoc/collections.html>

This collection has digitized significant collections of public records from the New Orleans Public Library's Louisiana Division, including a four-volume "Register of Free Persons of Color entitled to remain in the state" (1840-1864), four different collections of emancipation records, which often include testimony regarding why the enslaved person was deserving of freedom and provide other information about the enslaved person and slave owner, and an extensive collection of indenture records (1809-1843) in which at least one participant (the person being indentured, his/her sponsor, or the artisan/merchant to whom the servant was being bound) was a free person of color.

### **Free Negro Registers**

These registers were kept in both southern and northern states to monitor the number of African Americans living within the various states. Finding these registers is not easy, but if located, can prove to be a gold mine for genealogists. Those that have survived are a rich genealogical and historical resource. Luckily, most states that have these registers have provided indexes that help with locating this resource. The registers usually include the name of the individual registering himself/herself, age, the state of prior residence, a personal description, place of birth, date registered and some may include names of parents/relatives, and possibly the name of the former slave holder.

The registers also may indicate the nature of the proof provided, be it references to wills, deeds, and bills of sale, or affidavits by "credible" witnesses (many of such witnesses were white). Without this registration a free person could be sold into slavery if they were unable to produce sufficient proof of their status. Enforcement of these laws were done locally and often inconsistent. In the area(s) where you are researching contact the county clerk of courts, the

recorder of deeds, the county public library, archives of colleges/universities, state/county genealogical societies, and historical societies. Search to see if anyone has Negro Registers in their collection or are aware of their existence.

### **Negro Registers in the Beginning...**

The Commonwealth of Virginia was the first, when all counties in Virginia were required by a 1793 act to register free Negroes. In 1803 the General Assembly of Virginia passed an act that required every free person of color or mulatto to be registered in a book to be kept by the county clerk. These registers listed the age, name, color, stature, marks, or scars of the registrant, and in what court the person was emancipated or whether the person was born free. A free person was required to carry a copy of this register on them to prove their free status. A free person could be free by virtue of being the child of a free mother, by manumission under a wide variety of conditions (such as at the owner's death per the terms of the owner's will), or by self-purchase, etc. The law was enforced until 1865.

As an example, in Northampton, Virginia free Negroes were required to be registered and numbered in a book to be kept by the town or county clerk. Each free Negro was to be measured and weighed. Their height and weight along with age, name, color, distinguishing scars, free status and by whom, and in what court emancipated were recorded. Annually, each free Negro was to be delivered a copy of their freedom papers for twenty cents. A penalty was levied for employing a black person who did not possess a certificated of freedom and the free Negro could be committed to jail. Free Negroes were to secure a new certificate every three years at the cost of seventy-five cents. *The register of Free Negroes for Northampton Co., Virginia can be found in the Clerk's Office in Northampton County, Virginia.*

### **The Northwest Territory**

The Northwest Territory, or Old Northwest, refers to the area that became the states of Ohio, Indiana, Illinois, Michigan, Wisconsin, and a portion of Minnesota. On July 13, 1787, the Confederation Congress passed the Northwest Ordinance. It established a form of government and specified how the various parts of the Northwest Territory could become states. The Northwest Ordinance required the creation of at least three but not more than five states from the Northwest Territory. The first state to be formed from the Northwest Territory was Ohio (1803), the seventeenth state of the United States of America. Ohio was followed by Indiana (1816), Illinois (1818), Michigan (1837), and Wisconsin (1848). Ohio was the first northern state to follow the laws of Virginia regarding the immigration and movement of African Americans within its borders and the other states followed suit.

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