

ABSTRACT

REGAN, CHRYSTAL DAWN. *Maneuvering on the Margins: Free Black Women and the Law in Antebellum North Carolina*. (Under the supervision of Dr. Blair LM Kelley).

The historiography of southern free black women in the antebellum period emphasizes their existence as family units or in urban centers striving to survive as unfree denizens.

Antebellum laws were habitually created and modified to control the bodies and behaviors of free black women in an effort to lessen their impact and influence on free and enslaved populations. This thesis expands the narrative on free black women in North Carolina by exploring ways they used, exploited, and openly defied facto and de facto laws in rural and isolated settings. North Carolina's geographical position, religious and ethnic makeup, status as a society with slavery, and capricious attitude towards free blacks, make the study of the state fertile ground for an historiographical revisioning of the history of free black women.

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Maneuvering on the Margins: Free Black Women and the Law in the Antebellum North
Carolina

by
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DEDICATION

I would like to dedicate my thesis to my nephew, Michael S. Regan Jr. Continue to smile upon us.

BIOGRAPHY

Chrystal Regan is a native of Goldsboro, North Carolina. She holds degrees from North Carolina Agricultural and Technical State University and The University of North Carolina at Chapel Hill in history education and school administration respectively.

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Introduction

On December 5th, 1817, Hannah Allen received news of the General Assembly's position on the emancipation of her children Mary, Sam, Nancy, James and John. Allen sought their emancipation because her late master intended to have her and the children freed simultaneously in his will. Upon her owner's death, the Brunswick County Court freed Hannah but her children remained in bondage. In her petition to the court, Allen pleaded for the freedom her "helpless children" admonishing the court to fulfill her late master's wishes. Allen's strategy was to invoke the written wishes of her late master in a legal document, and emphasize the helplessness of her children as well as, the loyalty and fidelity she showed while in bondage. Her strategy did not work. She was informed that her petition was rejected.¹ Indeed this tragic news only heightened her anxiety and fear. What would be the fate of five children she birthed?

This thesis seeks to analyze the complex and diverse tactics used by free black women in the rural South to defy authority, and assert their independence and humanity. Some of the questions driving this thesis are: Why was North Carolina appealing to some free blacks expelled from other parts of the country? How did the legal, geographical and cultural structures of the state impact the experiences of free black women? How do the experiences of these women inform contemporary issues surrounding rural women of color? Free black women's resistance to social norms and manipulation of legislative mandates is a key part of this study. An exploration of this history reveals that they used whatever tools

¹North Carolina Department of Archives and History, Raleigh North Carolina General Assembly Session Records Brunswick County Filed December 1817.

they had to construct their version of freedom. Their power rested in the very law designed to increase the enslaved population; that law which stated children must take the status of their mother. These women were the producers of free blacks that populated the rural communities of North Carolina birthed revolutionaries like David Walker and John Copeland. Most free black women in North Carolina were common folk; they were poor and geographically isolated from the protections larger communities provided. Yet, they were a threat to the white power structure because of their ability to increase the free black population. They mocked the hypocritical moral standards imposed by authorities. They entered the state illegally, started families with men they could not marry, started businesses, purchased loved ones, harbored fugitives, and, when applicable, they used the fluid construct of whiteness to their advantage. Their lives are lessons in ingenuity. They survived in a society that was troubled by their presence and because they were not enslaved, placed no value on their bodies.

To many white slave masters in the antebellum South, the presence of free blacks was a nuisance and contradiction to the expected order.² Colonial laws and later state laws influenced every aspect of black lives enslaved and free: where they could live, whom they could marry, and the free or enslaved status of their children. Maneuvering in a legal system

² Free blacks in North Carolina were a diverse group in ethnic ancestry, social status, and appearance. Several terms will be used throughout the paper: free negro, free blacks, free people of color, free mulatto. Although the term free blacks will be used to denote any free person of African descent, free person/people of color encompasses any and all free non-whites particularly Native Americans similarly subjected to racialized colonial and antebellum law. Free mulatto in this study refers to any person's label as such in the historical record, or described as having one black and one white parent.

geared to favor and empower slaveowners, free black women faced trying and difficult circumstances. Using the tools of social history (census records, court documents, General Assembly petitions, newspaper articles) allows for an examination of the strategies that free black women employed to negotiate their circumstances, working around and within the law to reshape their lives despite the misogynist nature of antebellum law. Although continuously marginalized, free black women resisted. Using court cases as case studies coupled with tracing the other bits of evidence that survive, including migration patterns, employment histories, and legal confrontations, historians can trace both their struggles and their resistance.

Free black women were not a monolith. Their experiences varied based on many factors including class, region, lineage, and the circumstances allowing for their freedom before 1865. Recent books on free black women underscore all the ways that their existence, in many cases, were not separate from the enslaved. While some came from a line of free people, many had husbands, children, other relatives and friends in bondage. Leveraging the agency and opportunities they had, free black women worked for their own freedom and financial independence, while empowering those still in bondage. A small minority owned slaves, while others risked life and limb to see their loved ones go free. There are stories that describe difficulties of personal survival only, while others focus on the experiences of free black women who chose to empower their kinsfolk in bondage, serve in an activist capacity, defy openly authorities or manipulate the system for their benefit.

At the core of this study is an investigation of how free black women, considering North Carolina's fickle localized legal culture, used legal loopholes and attempted to survive

as unfree women in a slave society. These women did what was necessary within, without, and around the law. They evaded authorities, resisted re-enslavement, advocated for their personal rights, sought the emancipation of family members, protected loved ones from capture. This was perilous because they often did this liberation work without the protection of a large community found in major coastal and urban southern cities, with little to no education, or monetary resources.

By studying and analyzing how rural free black women in North Carolina interacted with the law, this examination contributes to the diversification of the narratives about free black life in the South, and more specifically, the ways in which free black women maneuvered in a society that tolerated their presence while favoring slavery and white male slave owners. With North Carolina as the setting for free black women's experiences, this thesis outlines new distinctions about geography, race, class, and the legal cultures that developed as a result of the state's unique economic and political climate in the antebellum period. With a goal of complicating what we know, this examination will explore the particularities of free black women's lives in a place that is often under analyzed when we look at free black women.

The diversity of free black women both enriches and complicates this study. These women varied in social standing, racial origins, education, occupation, and region. Some hailed from families that had been free for generations while others spent a significant portion of their lives in bondage. Some were described as African while others were phenotypically and racially ambiguous. Still others were described as almost white. The presence of slaves that were phenotypically whites was troubling to their owners and other

members of the community; so much so there were attempts to free enslaved people because they were “so little distinguishable from white persons.”³ Census records remind of the complication involved in describing free black women; some census takers provided a physical description while others employed political and cultural descriptors such as “free negro,” “free black,” “free colored,” “mulatto,” and “free person of color.” In a world where the dividing line between black and white governed much of the law, these complications of race could be exploited to strengthen the claims made by free black women.

Some of the women were also of Native American descent, and the presence of native populations of North Carolina creates another scenario that enriches and complicates the narrative. To sustain the color of white as a superior category, non-white peoples were lumped into one category or assigned a descriptor that as receivers, non-whites may have deemed unfitting. In the antebellum period, Native women were often labeled as black, negro, colored, or mulatto and women of African, Native, and European descent who might have identified as black were labeled as “Indian.” In addition, there were Native people who also had African ancestors. It is also true that Native women that identified as Native/Indian were labeled “black” in sources solely on the perception of an authority figure or description in a document. Analyzing white, black and Native identities in the antebellum period emphasizes the importance of change over time. Free women adopted identities that they

³North Carolina Department of Archives and History, Raleigh North Carolina. General Assembly, Session Records. University of North Carolina at Greensboro Race and Slavery Petitions Project. In 1852 William Gore asked this his slave Rachel be freed because she was “very white.” Gore stated that because of her whiteness, humble, good and obedient character she should be free. Rachel was three years old.

might shift over time. What they called themselves varied depending on the time and the place. Every state in the South had its own legal definition of white, black/negro, and native. State legislators shifted definitions to fit their political and social agendas and maintain the marginalization of free women of color.⁴ However, over time links to whiteness remained important to making arguments for their freedom. This conception explains why in several documents a free woman of color's closeness to whiteness was emphasized-- whiteness could be used as a tool to advocate in her favor.⁵

Much of the historiography dealing with free women of color highlights the larger, urban free black populations. This literature emphasizes the propensity of these free blacks to distance themselves from the enslaved, relationships and liaisons between black women and white men, and the unique status of these in-between communities. In popular literature, there is a tendency to romanticize the position of free black women and free black communities as a whole. Images of communities like the Brown Society of South Carolina, the politically and religiously active free blacks of Philadelphia, and the free people of color in New Orleans are the usual conceptualizations of free blacks. These romanticized perceptions are in stark contrast to the harsh realities of some free black women in rural

⁴ “1777c 115 s 42 1821 c 1123. Against whom slaves and other persons of color may be witnesses. 52. All negroes, Indians, mulattoes, and all persons of mixed blood, descended from negro and Indian ancestors, the fourth generation inclusive (though one ancestor of each generation may have been a white person) whether bond or free, shall be deemed and taken to be incapable in law to be witnesses in any case whatsoever, except against each other...”

⁵ To be consistent in this study the terms “free woman of color and free black woman” will be used along with additional descriptors when possible and necessary.

counties. These women struggled with living in poverty, all the while working to free family members, harbor runaways, and outwit the social system that kept them legally restricted.

The earliest written works on free blacks were John H. Russell's study *Free Negro in Virginia 1619-1865*, and James W. Wright's *The Free Negro in Maryland*. Two monographs were also published by Carter G. Woodson. One publication focused on free black owners of slaves in 1830, and the other was titled *Free Negro Heads of Families in 1830*, published in 1925. John Hope Franklin credited Carter G. Woodson, who was often referred to as the Father of Black History, for initial serious academic inquiries into the lives of free blacks in the 1920s. By the early 1940s, several historians were investigating the lives of free blacks in the North and South as well as rural and urban spaces.⁶

Other significant works published were Leon Litwack *North of Slavery: The Negro in the Free States 1790-1860*, and in 1961 *Liberty Lines* by Larry Gara.⁷ Gara's work examined the attitudes of free blacks in the North towards the abolitionist movement. Since free blacks were mainly urban residents, much of the current scholarship surrounding them is based largely in these areas. Leonard P. Curry's 1981 work *The Free Black in Urban America 1800-1850* discussed the relative safety of the urban environment for free blacks. Ira Berlin's 1974 *Slaves without Masters: The Free Negro in the Antebellum South* created a model work for the field by providing a synthesis of major generalizations regarding free people of color

⁶ John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: The University of North Carolina Press, 1995), x.

⁷ Leon F. Litwack, *North of Slavery: The Negro in the Free States 1790-1860* (University of Chicago Press, 1961).

in the South. Berlin made connections to the social status of free blacks and that of the institution of Southern slavery and, overall attitudes about race and class in the American South.⁸

Years after the printing of its last edition in 1995, John Hope Franklin's *The Free Negro in North Carolina: 1790–1860* still serves as one of the most authoritative works regarding the social history of free blacks in North Carolina. The book identifies and expounds upon some of the methods by which African Americans circumvented colonial and later state laws in an attempt to maintain or gain their freedom. Many focus on the more urban areas where many free blacks chose to live and gather. While Franklin argued throughout the book that the relative rural aspect of the state along with the legal status, left free blacks isolated, backward, inarticulate and culturally sterile, later works explore the agency of free black people, particularly women by citing instances of defiance, manipulation of the system, resiliency and ingenuity on the part of this most marginalized group in the state.

Franklin used tables, maps, charts, and appendices to display show the concentration of free black communities from 1800 to 1860 in various parts of the state. Emphasizing regional differences in local economics and religious beliefs and tracking apprenticeships and occupations of free black people in each county in 1860, Franklin demonstrated that there were limited economic opportunities afforded to free blacks in specific parts of the state in comparison to free white counterparts. Despite the economic and social setbacks Franklin

⁸ Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York and London: The New Press, 2007).

stressed there were success stories providing evidence of free black apprentices, free black property holders, free black owners of slaves, and contributors of North Carolinians to the American Colonization Society. Court manuscripts, lists of taxables, and the private papers of prominent individuals, apprenticeship papers, petitions and autobiographies were used to weave together a cultural and social history of an anomalous group of people. Using these sources, Franklin argued that free blacks did not live independently of whites or the enslaved, and that their peculiar place in the social order was often the result of their influence on or their relationships (family, sexual, religious, business) to enslaved black people and free white people. Since Franklin's *The Free Negro in North Carolina 1790-1860*, there have been a plethora of additional book length works on the free African Americans in antebellum America in numerous states and urban areas; however, none focus exclusively on North Carolina.

While Franklin's *The Free Negro* serves as a general social history of free blacks in the state the text does not fully explore the experiences of free black women in the state. Franklin briefly discussed free black women in North Carolina in terms of court petitions, labor options, and their representation in census data. He noted that the manumission rate of slaves tended to favor black women and a significant number of these women were head of their households in nineteenth-century North Carolina census data. By the eve of the Civil War, a significant number of free blacks sought to be re-enslaved due to the variety of constraints brought on by free living. Of the eleven examples regarding of free blacks

seeking to be re-enslaved between 1860 and 1861, nine of them were women.⁹ His case studies of free black women provide an excellent starting place for further investigation of women's lives.

Since the publication of Franklin's work, many historians have begun to incorporate gender analysis in the history free blacks in the antebellum South. Works that have specifically explored the experiences of free black women help fill in some of the gaps left by earlier writings on free African Americans in the antebellum period. The experiences of free black women in relation to other women are explored in Victoria Bynum's *Unruly Women* which does examine aspects of free black women's lives in the state of North Carolina. Although free black women were more visible in the public sphere because of their need to earn a living. In places like Granville County, court records note free black women were more likely to be charged with acts of public disturbance and violence than their poor white counterparts. She found in her study it was poor white women that found themselves in court more often defending the charge of prostitution, contradicting some common attitudes regarding the sexuality of free black women. The idea that free black women were especially promiscuous was detailed in historical writings as late as 1920.¹⁰ In her discussion of North Carolina's free women in the piedmont region of North Carolina, Victoria Bynum asserts that free black women "escaped the indignity of being owned by another human being, yet

⁹ Franklin, *The Free Negro in North Carolina*

¹⁰ In his study on the social and economic status of the free negro, in *The Free Negro*, Rosser Taylor discussed illicit relationships between free black men and white women. He states "The free negro women, especially the single ones, were mercenary..." page 21.

performed no recognized function in the replenishing of the southern slaveholding order.”¹¹ Throughout her study Bynum makes careful distinctions between the challenges faced by free white and black women but overwhelms those distinctions by consistently reminding the reader of free white and black women's shared experience of patriarchy via the bondage of marriage. While providing a detailed chronicling of the precarious social positions of a few free black artisan families, Bynum’s work fails to account for the challenges faced by free black women with little to no property or few options for legal partnership.¹² There were key differences in daily work life between most free black women and white women. Free black women were required to work in order to survive leading to more visibility in the social spaces (such as domestic laborers.) Lebsack also suggests that white men's access to enslaved black women is the reason why records pertaining to prostitution provide larger numbers of white women.¹³ There are more records detailing instances of violence among free black women than white women. Free black women were more susceptible to sexual violence yet fewer reports are attributed to free black women because of their reluctance to trust white authorities.¹⁴ Despite these observations and distinctions Bynum still states “ White wives, like slaves, were subordinate to white men, but unlike slaves, they shared society’s most intimate bonds and ties of family and race with their masters.”¹⁵ With this statement, Bynum mirrors Elizabeth Fox Genovese’s flawed assessment in *Within the*

¹¹ Bynum, *Unruly Women* 39, 57.

¹² Bynum, *Unruly Women* 60.

¹³ Bynum, *Unruly Women* pps.79-82

¹⁴ Bynum 79-82.

¹⁵ Bynum, *Unruly Women* 82.

Plantation Household- an insistence that black and white women serve the same ‘master’ and the free black women’s defiance of traditional norms somehow gives free black women the opportunity to exercise a sense of freedom that white women did not have.

Fighting back against the establishment was not uncommon for free black women in the state despite the danger. The impact of antebellum law on free black women as it pertained to the production of food, domestic violence and overall rights are discussed in Laura Edward’s *The People and Their Peace*. Suzanne Lebsock provided another case study of the experiences of free black women in her work *Free Women of Petersburg*. These works provide insight into various aspects of the legal, cultural and economic conditions that would directly and indirectly affect free black women of color in the South. ¹⁶

Much of the literature of free women of color highlights the ways that state, region, class, background, and physical characteristics shaped free women’s experiences. A good example of this is in the study *Ambiguous Lives: Free women of color in rural Georgia 1789-1879* Adele Logan Alexander paints a portrait of several families of color in rural Georgia that had been free for generations, “... the children and grandchildren of biracial unions in the antebellum South who never were slaves.” This particular description of a subset of black people is one that is often depicted and contrasts the narrative of the fugitive

¹⁶ Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009), 9. Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South* (Chapel Hill: The University of North Carolina Press, 1992). Suzanne Lebsock, *Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860* (W. W. Norton & Company, 1985).

that made it to Canada, the former slave who purchased her own freedom, the free woman whose relatives and parents remained in bondage.¹⁷

In contrast, Wilma King's study *The Essence of Liberty: Free Black Women During the Slave Era* argues that "the sources of liberty and the amount of time spent in slavery before emancipation shaped the meanings of freedom." This argument suggests the women who spent a longer amount of time in bondage may have had a different outlook on freedom impacting their value on education and their roles as activists in the struggle for emancipation. This conclusion has an added caveat by examining the kind of slavery a woman was exposed to prior to emancipation. Amrita Chakrabarti Myers' study *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* builds and explores some of the questions raised in previous works and provides insight into the myriad of definitions of freedom held by free black women living in Charleston, South Carolina prior to the Civil War. Unlike Alexander's study of the free women in rural Georgia, Myers repeatedly stresses that free women in the port city were not isolated or unattached to their enslaved counterparts. Many of the women introduced in the book either had been enslaved or had family members in bondage. As opposed to the free women discussed in King's chapter on activists and abolitionists, the women in Myers geographical space had different "visions of freedom." Myers argues that legal status, color, age, wealth, and marital status shaped the methods they used to design their own freedom.¹⁸ The Myers study does not note

¹⁷ Adele Logan Alexander. *Ambiguous Lives: Free Women of Color in Rural Georgia 1789-1879*. Fayetteville: The University of Arkansas Press, 1991. p.5.

¹⁸ Myers, Amrita Chakrabarti. *Forging Freedom: Black Women and the Pursuit of Freedom in Antebellum Charleston*. Chapel Hill: UNC Press, 2011. p. 2.

or analyze concrete instances of activism. Emphasis of individual definitions of freedom and the day-to-day survival of these individual women and their immediate families are at the center of her study.

Differing lived and legal experiences among free black women requires an understanding of the law and social status of women, how these laws changed over time, and how those laws impacted them as mothers, wives, daughters and lovers. Laws specifically set aside for free black people varied from state to state and region to region. North Carolina due to its uniqueness provides a good setting to investigate the general limitations imposed on free blacks, especially free black women, in the South.

In *The People and Their Peace*, Edwards expounds on the legal culture of South and North Carolina during the antebellum period. She argues that the law published and often presented by the state did not necessarily coincide with what was executed at the local level. There were occasions that persons (such as women, free blacks, and slaves) who traditionally had no rights often used local pressure to execute and expedite justice on their own behalf. Edwards stated that in the early national period a system of localized law developed so that the de facto execution of the law that could be profoundly different from what was passed in the legislature. Most of the records analyzed by Edwards involved disputes regarding slaves and marital issues. These records provide evidence of the specified social order of each local area and prove that there were unwritten rules or codes that individual communities lived by in order to “keep the peace.” She argued that while the American Revolution was essentially a non-event for the powerless on paper, the impact of the Constitutional Convention of 1835

would have enormous effects on the law particularly as it related to the rights of individuals.¹⁹

Edwards also argued that a closer relationship, from a legal standpoint, regarding people of color existed in the Carolinas. There were major differences in the colonies as South Carolina had closer ties to England particularly during the Revolution and was a solidified slave society, while North Carolina was considered “backwater” a place for “misfits” and persons deemed unsuccessful in life. Despite this stereotype, North Carolina developed into a state that thrived on a mixed economy not quite as dependent on slavery as other southern states—a society with slavery versus a slave society.²⁰ Despite this contrast there were several similarities in how the two states managed social order. Everyone, no matter the social status, had some influence over the local law and cultural code of conduct. White men were those with legitimate rights and were considered free because of the rights they held over others. Their rights extended not only over their own property, to those persons dependent on them, the persons they owned, and persons subordinate to them based on gender or race; therefore, the authority exercised over people was essentially over all

¹⁹ Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009), 9.

²⁰ Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009), 6.

black people slave or free and “no black person fully possesses his or her own body or the product of his or her labor.”²¹

Why North Carolina? Geography, Religion, Expulsion, and the Law

North Carolina was a state apart. In 1790, most of the population was comprised of small farmers. Very few of the large plantations replicated the ones that comprised the Virginia and South Carolina agricultural aristocracy. Many of North Carolina’s people were of Quaker, Moravian, and Lutheran religious persuasions, religious groups which had considerable progressive views on abolition and unique attitudes toward free persons of color. Quaker attitudes and their reputation for buying and freeing slaves provided a window for blacks enslaved and free to maneuver socially and politically. Another characteristic that differentiated the experience of free black people in North Carolina from those in other states would be the relatively rurality of the state. There were fewer free black people in North Carolina than in Virginia or Maryland, yet North Carolina would become home to more free black people than any other southern state south of its borders.²² Migration of many free people of color to North Carolina heightened the fear of the influence of their presence on the

²¹ Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009) 9.

²² John Hope Franklin, *The Free Negro in North Carolina 1790-1860*, (Chapel Hill: The University of North Carolina Press, 1995), 6. Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: The University of North Carolina Press, 2009), 214.

slave population. Their experiences in the state were fluid and arguably empowering and limiting at the same time.

North Carolina is not a state envisioned by most when imagining the quintessential antebellum picture. In the mid 1800's there were few very large plantations. The aristocracy of the state could not brag about enormous sugar cane, rice, and large cotton plantations. The agrarian society consisted of undesirable whites settling into the backcountry. There were no large port cities save Edenton, New Bern, and Wilmington, and these largest North Carolina ports paled in size next to Charleston, Savannah, New Orleans, Baltimore, and Petersburg. However, these North Carolina port cities were home to a substantial number of free black families and communities. There they huddled for jobs, protection, and the sustenance of community. By the mid-19th century free black families could be found throughout North Carolina predominantly rural counties. Ultimately North Carolina's free black population, like the rest of her people, were mostly rural, poor, and using the state and local systems in place to eke out the best living possible for themselves and their families.

Laws restricting free black land rights and economic mobility in the neighboring states of Maryland and Virginia made life as a free black person almost entirely unbearable. In contrast to the states where free black people faced increased hostility from their white neighbors, North Carolina was a bit more permissive. As a result, an influx of free black people moved to parts of North Carolina in the early 1800s. A law 1795 North Carolina law that permitted some free blacks to move into the state as long as they could post a bond of

two hundred pounds to ensure good behavior made conditions in the state more favorable.²³ That legacy made the state more attractive to newcomers. But North Carolina did have a history of laws that attempted to stigmatize free black people; a 1785 law required free black people living in the cities to register with the town commissioner and wear a patch on their shoulder with the word “FREE” embroidered on the garment.²⁴

The social constructs and the defined identity of free black people in North Carolina was indeed varied and murky. This was a time when there were often shades of slavery and freedom for some and periods of significant freedom and mobility for other free blacks. A prime example is that of the lives of Thomas Day and his wife Aquilla. Day was a famous furniture maker and made his home as well as his fortune in Caswell County, North Carolina. The economic success of free people of color is popularly viewed through the lenses of his life, yet his life was not that of the typical person in the South let alone of a free person of color in North Carolina. While he was revered for his artistic talents in furniture making, Day owned slaves. These enslaved persons worked in his furniture shop. His father, John Day was a direct descendant of an affluent slave owning white family from South Carolina and his mother, Mourning Stewart, was the daughter of a mulatto plantation owner from Dinwiddie County, Virginia.²⁵

Due to his talent, religious affiliation, financial success, and overall social standing, the Day family was able to circumvent the cultural norms that usually restricted free blacks

²³ Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South*. (New York and London: The New Press, 2007), 92.

²⁴ Berlin, Ira, *Slaves Without Masters* 93.

²⁵ Berlin, Ira, *Slaves Without Masters* 45.

and he lobbied legislative powers to do so on at least a few occasions. In 1830 Day secured the safe one-way passage of his new wife Aquilla, to North Carolina by way of Virginia. He did this by garnering the support of prominent lawmakers in the state.²⁶ The measures Day employed to secure her voyage to North Carolina were required because of a law passed by the NC legislature in 1826 to prevent increased migration of free African Americans into the state.

Free black women in North Carolina were predominantly rural, impoverished, and connected to the enslaved populations. In general, they did not enjoy the privileges associated with the Day's, Stanley's and other free prominent or slave holding free black women. They loved and created families with men who were legally unavailable and accepted the consequences. Unlike the ladies of the Brown Society of South Carolina, who lived as urban domestics living in the larger port cities like Charleston, or the free women of color who lived in the middle of large free artisan communities in Baltimore, or Philadelphia, or the creole and free black communities of New Orleans. Free black women in North Carolina survived in a rural slave society that became increasingly hostile to their legal rights and social standing. In North Carolina, their lives were intimately entwined with the enslaved, they toiled on small farms, evaded the authorities, built lives with their enslaved and free husbands, operated businesses legal and illegal, and watched the children they bore apprenticed until the age of twenty-one. Some were the daughters of those that sneaked into

²⁶ John Hope Franklin, *The Free Negro in North Carolina 1790-1860*, (Chapel Hill: The University of North Carolina Press, 1995), 45.

the state when Virginia expelled them, some were descended from a line of free folks, others were manumitted.

North Carolina state lawmakers constantly added and amended laws to control free blacks. Events of the 1820's and 1830's led to even more oppressive measures. The question regarding the definition of a freeman was answered during the North Carolina Constitutional Convention of 1835 which stripped free blacks from voting altogether as the terminology of the 1830's would make "freemen synonymous with white men."²⁷ A year after the convention, over seventy residents of Cumberland County asked that no changes be made that would prohibit free people of color from voting and they wished to adhere to the original charter of the town allowing for the political participation by free people of color.²⁸ Years later in neighboring Robeson County, about a dozen citizens petitioned the legislature to add more laws to the books limiting the freedoms of free people of color. These restrictions included limiting the number of dogs they could own, prohibiting firearm ownership and filing suit in court. The concerned citizens also suggested that free people of color unable to pay debts or taxes be sold at the courthouse for the amount they owe.²⁹

Throughout the early national and antebellum period white citizens across the state signed and presented petitions demanding laws be enforced or passed to control the free

²⁷ Edwards, Laura *The People and Their Peace*, 9.

²⁸ North Carolina Department of Archives and History, Raleigh, North Carolina. General Assembly Session Records, Senate Committee Reports, November 1836-January 1837.

²⁹ North Carolina department of Archives and History, Raleigh, North Carolina General Assembly Session Records.

persons of color. In 1831, over one hundred and fifty residents in New Bern located in Craven County objected to some of the free black people in their community exercising their voting rights. Referencing the state constitution, which at that time did not prohibit free blacks that met certain requirements from voting, the petitioners argued that free black men were in fact not “freemen.” Citing the fact, they were restricted to marriage in their own class, prohibited from sitting on juries in most cases, and could be subjected to the testimony of a slave, petitioners asked, “Can these disabilities belong to a freeman?”³⁰

In the 1820’s and 1830’s a series of laws passed by the North Carolina General Assembly regarding slaves and free people of color further delineated the differences between the states races. No longer were there clear distinctions between the free and unfree. It became distinctly racial limiting the freedoms of people of African descent to the “fourth generation inclusive” having a black great-grandparent was the difference between being free and unfree. The rule determined who could be entertained in the home, social activities, whom they could legally marry, whether they could teach or preach. The state again clarified its use of the terms free Negroes, former slaves, mulatto, and free person of color. When combining the laws restricting free people of color and the legal status of women, free black women were especially vulnerable.³¹

³⁰ North Carolina Department of Archives and History, Raleigh, North Carolina. General Assembly session records, November 1831-January 1832.

³¹ “1794c 406 s 2 Negroes not to meet for the purposes of dancing without written permission. 35. No person shall grant permission for any meeting or meetings of the negroes of others, or people of colour, at his, her or their houses, or on his, her or their plantation for the purpose of drinking or dancing, under the penalty of forfeiting twenty dollars on conviction of such offense, in any court having jurisdiction thereof, unless such slave shall have a special permit in writing or otherwise from his or her owner for that purpose.”

The reactions of free blacks and enslaved blacks to assault, disfranchisement, unemployment, isolation, and restricted mobility were as diverse as they were. Many were indeed runaway slaves that may or may not have returned to their owners depending on their mood or the status of family they left behind. Some forged freedom papers or lived an outlaw lifestyle amongst Native American peoples or in places like the Great Dismal Swamp. The activities of these extra-legal free communities often resulted in backlash toward free blacks. The rebellious and unpredictable tactics of these maroon communities and daring individuals struck fear in the hearts of local whites. Communities of free black people were often viewed to have no regard for the law and often served as a refuge for runaway slaves.³²

Some free blacks were a nuisance and an irritant to whites in their communities. They were thought to be negative examples to enslaved people. While others like John Day, the brother of Thomas Day surrendered the prospect of living a decent and free life in North Carolina all together and moved to Liberia or Haiti. Some blacks would eventually make the harrowing decision to seek re-enslavement under the power of the most decent person they could find. They hoped that by taking such action some sort of legal value or protection would be placed on their lives. This phenomenon, employed predominantly by women became especially prevalent in the decade leading to the Civil War.

Slaves and Free Persons of Color, an Act Concerning Slaves and Free Persons of Color 1831
North Carolina Collection, UNC

³² John Hope Franklin and Loren Schweninger, *Runaway Slaves: Rebels on the Plantations*, (Oxford University Press, 1999), 27.

Chapter 1

Re-enslavement and Manumission

The eve of the Civil War proved to be a particularly hostile time for free blacks in North Carolina and many free blacks including a significant number of women petitioned the courts so that they could be re-enslaved. “That all free persons of color over twenty-one years of age, married or unmarried, possessing a sound and contracting mind shall have full right power and authority to enslave themselves to any white citizen of this State... All free persons thus enslaving themselves shall be forever thereafter regarded in law and equity as negro slaves to all intents and purposes.”³³ The danger in this choice was many-fold. Should the selected owner die without a will or go into serious debt the threat of being sold or transferred to a less desirable owner was highly probable, yet this option was selected by several free blacks. They came to the conclusion that it was safer to be the legal property of another than to continue to try and earn out a living in a state that provided them no protection, or social security in older age.

Of the eleven examples given by Franklin in *The Free Negro in North Carolina* of free blacks seeking to be re-enslaved between 1860 and 1861, nine of them were women. Celia Lynch stated that her current state of freedom did not bring her not even the level of happiness that she witnessed by those enslaved. She successfully became the property of another in February 1861.³⁴ Three weeks later in one legislative session ten free blacks were

³³ John Hope Franklin, “Enslavement of Negroes in North Carolina,” *The Journal of Negro History*, vol. 29, no. 4 (October 1944), pp. 401-428, p. 413.

³⁴ John Hope Franklin, *The Free Negro in North Carolina 1790-1860*, (Chapel Hill: The University of North Carolina Press, 1995), 219.

enslaved. Two women, Julia Dickenson and Susan Lewis were permitted to become the slaves of a man in Halifax County. A group of eight people with the same last name (presumably a family) were made the property of a man from Jones County. Ellen Ransom worried as to what would become of her in old age, attached herself as property of a Mr. Perry of Franklin County in January 1861. One can only imagine the social persecution or financial struggles a person must endure to even fathom the idea of returning to slavery or entering the institution for the first time. Even when attached to a benevolent owner, that owner's financial stability and legal wishes upon his or her death would have serious implications for the slaves he or she owned.

With the threat of sexual violence, separation from enslaved family members, the passing of expulsion laws many free black women were in an especially precarious position. Even when favored by white relatives, for those of mixed parentage the slightest overstep of the social norms would invoke a harsh reminder from those who sought to keep all free people of color in their place regardless of their connections or hue. State laws demonstrated through course of action that free blacks were not wanted in North Carolina free society. As a result, people were forced to find undesirable, yet creative means by which to protect themselves, their families and whatever property they might have had. The law and its eventual enforcement would eventually erase the earlier traces of liberalism in the state regarding free blacks. 1831 through 1859 were the crucial years. Legal, economic and social restrictions would prove impossible to bear at time. They were not accepted by whites,

forbidden at times to associate with slaves and provided very limited educational opportunities. The view of the average free person of color in North Carolina was depressingly bleak.

The manumission rate of slaves tended to favor black women and a significant number of them were head of their households in nineteenth century, according to North Carolina Census data. Some historians argue that free women were less threatening than free men and liaisons between free white men and free black women resulted in the higher number of petitions and manumissions.³⁵

In Jean Fagan Yellin's book on the life of escaped slave and author Harriet Jacobs in Edenton, North Carolina, Yellin described the relationship between Harriet and her free grandmother Molly Horniblow. Molly was the head of her household and a well-respected member of both the black and white community. Her circumstances had not always been so stable. She was born free, but during the Revolution she was separated from her family, sold into slavery, and brought to Edenton. Things changed for her drastically again with the death of her mistress in 1827.³⁶

The doctor that tended Horniblow's deceased mistress Elizabeth Horniblow during her illness informed Molly of his intentions to sell her, her son, and her grandson to pay the debt for Elizabeth's medical bills.³⁷ When the doctor told Molly that he planned to sell her

³⁶ Jean Fagan Yellin, *Harriet Jacobs a Life: The Remarkable Adventures of the Woman Who Wrote Incidents in the Life of a Slave Girl*, (New York: Basic Civitas Books, 2004), 21.

³⁷ Jean Fagan Yellin, *Harriet Jacobs a Life: The Remarkable Adventures of the Woman Who Wrote Incidents in the Life of a Slave Girl*, (New York: Basic Civitas Books, 2004), 21.

privately as a favor to spare her embarrassment, she protested. It was known that Elizabeth had planned to free Molly. She was keenly aware of what the people in the community thought of her so she insisted the doctor do the deed publically. No one in the town bid on Molly on the day of the auction. Eventually Elizabeth Horniblow's sister stepped forward and purchased Molly and her son Mark. She did this with Molly's own money. Molly Horniblow was officially manumitted that spring and soon purchased her son. Once freed, she moved into the empty home of an attorney who helped her obtain her freedom and began her own business selling pies and other goods. Although *Incidents in the Life of a Slave Girl* deals with the perils of Harriet's life, her grandmother's life reminds us of the broader challenges women seeking freedom faced.³⁸

At the center of many antebellum court cases involving free women of color was the attempt to liberate children they birthed prior to being manumitted. Seeking to be proactive in securing the freedom of her husband and children, Mourning Ivins worked and saved money so that she could buy her husband. In 1804, she received a bill a sale from his owner. Ivins was concerned for the legal status of her husband and children in the event of her death. She petitioned for her husband's freedom, stating "he has been a most faithful husband and loving father."³⁹In 1808 Chowan county Rose had recently been given her freedom because of some meritorious service provided. Her owner also "gifted" her two children to her. While

³⁸ Jean Fagan Yellin, *Harriet Jacobs a Life: The Remarkable Adventures of the Woman Who Wrote Incidents in the Life of a Slave Girl*, (New York: Basic Civitas Books, 2004)., 21.

³⁹ North Carolina Department of Archives and History, Raleigh, North Carolina. Private Collections, Nathaniel Macon Papers box 1773.

acknowledging the kindness of her owner, Rose feared the fate of the children should something happen to her so she worked to have them legally emancipated.⁴⁰

Supplementing the influx of free blacks were several acts passed in 1791 by the General Assembly allowing for the manumission of slaves. Even families that had enjoyed some semblance of freedom for over a generation were never more than a court date away from potential return to bondage. In the case of *Sampson v. Burgwin* a young black woman petitioned for her right to remain free after she had been emancipated along with her mother since age two. Her mother had been granted her freedom under the meritorious service act in 1809. Almost thirty years later the original owner of the woman sought to re-enslave her. The owner argued she was too young to have performed any meritorious act at the age of two.

The plaintiff in the case was a woman named Caroline Sampson of New Hanover county. When the case went before the circuit judge in New Hanover county Sampson admitted that she had once been the property of Burgwin. She provided to the court as evidence a copy of the record given to the court in 1809. In short the court record stated “ Upon the petition of George W. B. Burgwin, ordered that a female negro slave by the name of Marian, and her child called Caroline, the property of said petitioner, be emancipated and set free from slavery-- the said George giving bond...”⁴¹The judge presiding over the case

⁴⁰ North Carolina Department of Archives and History, Raleigh North Carolina General Assembly session record file date Dec 7 1808.

⁴¹ North Carolina Reports Vol. 20 Cases at Law argued and determined in the Supreme Court of North Carolina. From June Term, 1838, To December Term 1839. Reported by Thomas P. Devereux and William H. Battle. (Vols. 8 and 4). Annotated by Walter Clark. Reprinted by

told the jury that it “was incumbent on the plaintiff to show that she had been emancipated in the manner prescribed by law; that she must show that the defendant had filed his petition in writing alleging meritorious services on the part of the plaintiff, and expressing a wish to emancipate her; that it was further necessary for her to show that the Court had adjudged that she had performed meritorious services, and had given license to the defendant to emancipate her”⁴² Caroline in effect had done what the judge had required. Her first obstacle was the testimony of the gentleman who served as clerk of court at the time the alleged petition was submitted to the court. He claimed that he had never seen such a petition and was unable to find it. Caroline was also provided the statements of witnesses attesting that they had always known her to be a free woman for the past 12 years. Burgwin countered with a testimony from the Sheriff who claimed to have seen her when she was about 12 with Burgwin. The sheriff also stated that Caroline was sold to a Mr. John London because of Burgwin’s debts and that even after that she was still seen with Burgwin on occasion. Burgwin provided another witness disputing Caroline’s freedom stating that her own mother Marion arranged for Caroline to be hired out and the money was given to the defendant Burgwin.⁴³ The jury’s verdict was for the defendant. The plaintiff decided to appeal to the Supreme Court.

the State. Raleigh: Edwards and Broughton, and E. M. Uzzell, State Printers. Presses of Edwards and Broughton. 1901. 21.

⁴² North Carolina Reports Vol. 20 Cases at Law argued and determined in the Supreme Court of North Carolina. From June Term, 1838, To December Term 1839. Reported by Thomas P. Devereux and William H. Battle. (Vols. 8 and 4). Annotated by Walter Clark. Reprinted by the State. Raleigh: Edwards and Broughton, and E. M. Uzzell, State Printers. Presses of Edwards and Broughton. 1901. 22.

⁴³ North Carolina Reports Vol. 20 Cases at Law argued and determined in the Supreme Court of North Carolina. From June Term, 1838, To December Term 1839. Reported by Thomas P. Devereux and William H. Battle. (Vols. 8 and 4). Annotated by Walter Clark. Reprinted by

The North Carolina Supreme Court did not revoke her freedom citing that “If the court corruptly granted the license in an improper case, the judges were punishable, but the act was valid.”⁴⁴ The opinion of the court written by C. J. Ruffin summarily deferred to the original transcript of the New Hanover court in 1809. He stated that if anyone was at fault it was the sitting judge allowing for such a petition to be approved and that Sampson should not be punished because of the mistake of the local court. Ultimately the case was won by the statement of white witnesses and the judgement of a “liberal” judge willing to uphold the decision originally made at the local level.

There were instances in which freedom for a spouse or loved one was not possible. In 1813, Hannah Allen of Brunswick County proved unsuccessful in obtaining freedom for her five children. Allen argued that her late master intended to free her along with her children. The court rejected the petition on the grounds that her children had not performed meritorious acts and therefore they were not eligible for emancipation on the same grounds as she had been given her freedom.⁴⁵ The definitions of meritorious acts seemed aligned with the politics of the times. As the fear of an increasing free black population grew, emancipation by way of meritorious service became more difficult to accomplish.

After being allowed to purchase herself along with her two children, Nancy Handy asked the court to emancipate her two children. She described herself as “peaceable, useful

the State. Raleigh: Edwards and Broughton, and E. M. Uzzell, State Printers. Presses of Edwards and Broughton. 1901. 22.

⁴⁴ John Hope Franklin, *The Free Negro in North Carolina 1790-1860*, (Chapel Hill: The University of North Carolina Press, 1995), 22.

⁴⁵ North Carolina Department of Archives and history, Raleigh, North Carolina General Assembly Session Records file date December 5, 1817.

and valuable.”⁴⁶ Her need to reassure the authorities that she would not be a nuisance to the county is not surprising considering the attitudes many white people had regarding the growing free black population.

For free black women, being forced to return to slavery was a real and constant threat and returning or entering slavery for the first time was unfathomable. In January of 1860 the *Newbern Weekly* reported the arrest of a free black woman for moving to North Carolina from another state. In doing so she “forfeited her freedom” and was enslaved.⁴⁷ As mentioned previously some free black women were driven by desperate circumstances to seek re-enslavement. In addition to the laws that prohibited or complicated the manumission of slaves, the poverty of the free spouses or unwillingness of the enslaved spouse’s owner to sell him left some with the option of enslaving or re-enslaving herself to the owner of their spouse so she could be with the significant other. Percy Ann Martin chose the route of enslavement when it was brought to her attention that her marriage with her husband was unlawful and must be broken off. Martin referenced her love for her husband, her lack of money and property, and her inability to support herself in her plea to become the property of her husband’s owner.⁴⁸ *The Morning Post* newspaper in Raleigh, North Carolina reported a similar story regarding a woman named Polly Day. It stated, “Polly Day, the cook’s wife, was a free negro woman who went into bondage to marry. She was a skilled tailor and

⁴⁶ North Carolina Department of Archives and History, Raleigh, North Carolina Records of the County Courts, Slaves and Free Negroes 1775-1861 Craven County.

⁴⁷ *Newbern Weekly Progress* (New Bern, North Carolina) Tuesday, January 31, 1860. Page 4.

⁴⁸ North Carolina Department of Archives and History, Raleigh, North Carolina General Assembly, Session Records, Petition, January—February 1863 Box 2.

dressmaker.”⁴⁹ With no husband to help support her financially or emotionally, young Sally Scott struggled to support herself and her young baby John. Sally asked to be enslaved stating “she was tired of being free—and found it difficult to support herself and is desirous of having a master.”⁵⁰ Sally’s statement tells us that she felt being owned was necessary for survival and that she lived in a society, arguably by design that made it nearly impossible for her to earn a living as a free person.

⁴⁹ The Morning Post, Raleigh North Carolina Sunday, December 1, 1901. Pg. 11.

⁵⁰ North Carolina Department of Archives and History, Raleigh, North Carolina General Assembly, Session Records, House Committee Report, November—December 1862

Chapter 2

Sex, Love, and Decontrol:

While some sources argue that the number of free black women in the United States in general outnumbered free black men was connected to the women's relationships with white men and the idea that they were somewhat less threatening, their proclivity to produce more free black people actually proved a major challenge for whites in power. These laws regulating interracial marriage and marriage between free blacks and the enslaved ensured that free black women (void of partners with the same legal status) would face dire consequences should they decide to produce a family. Bastardy laws and the forced apprenticeships of free black children born to unwed free black mothers served a deterrent to those women that sought meaningful relationships with free white men or black men in bondage.

Free women of color were in an especially precarious and vulnerable situation when it came to partnerships, love, and sex. In many parts of the state there were no laws or customs that acknowledged, respected, or encouraged matrimony between free persons of color and the object of their affections. In *Unruly Women: The Politics of Social and Sexual Control in the Old South*, Victoria Bynum explains that North Carolina laws against fornication, bastardy, and prostitution were specifically put in place in an attempt to limit the reproduction of "dangerous classes."⁵¹ Often the children produced by the union between free black women and enslaved husbands were apprenticed to white masters. This was the

⁵¹Victoria E. Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South*, (Chapel Hill: The University of North Carolina Press, 1992), 10.

case with several if not all of Vacey Artis and Solomon Williams children.⁵² Vacey Artis was a free black woman who lived in Greene and later Wayne county.

In the eastern part of the state, where Vacey and Solomon's children were born, the number of free black children apprenticed far outnumber that of white children. Due to the number of slaves in the east the apprenticeship was not a main method of securing labor until the latter part of the antebellum period. In addition, North Carolina's 1826 law regarding free people of color ensured that the children of free black women out of wedlock would be subjected to apprenticeships.⁵³ The argument for the statutory clause of 1826 by some white was that it relieved the single women of the household, "mother and grandmother of a vast number of children whom they cannot support." Arguably another version of slavery by another name these women were forced to surrender all rights to their children,⁵⁴ Even in this condition young black women were often found to be defiant and rebellious. Master's placed ads in local newspaper not unlike the ones used to describe runaway slaves. In September of 1832 Stephen Harper placed an ad for an indentured girl that ran away from him in August. "Tempe Jones, in the 20th year of her age, 5 feet 4 or 5 inches high, stout built, and bright yellow complexion. The above reward, but no charges, will be paid on her apprehension and delivery to the Subscriber. All persons are hereby forbid harboring or

⁵² 1850; Census Place: Greene, North Carolina; Roll: M432_632; page:237B; Image: 53. (household of Silas Bryant).

⁵³ Zipf, Karen L. *Labor of Innocents: Forced Apprenticeships in North Carolina 1715-1919*. Louisiana State University Press, Baton Rouge. 2005. pg. 33

⁵⁴ Zipf, Karen L. *Labor of Innocents: Forced Apprenticeships in North Carolina 1715-1919*. Louisiana State University Press, Baton Rouge. 2005. pg. 79

employing said girl under penalty of the law.” Although Harper was only offering five cents, a meager amount compared to the rewards for runaway slaves, he was careful to remind the readers that anyone harboring her or employing her was breaking the law.⁵⁵

Born at the turn of the nineteenth century in North Carolina, Vacey Artis was another one of a number of free black women listed as ‘head of household’ in antebellum North Carolina. Although records about her, like many other records of free black women, are generally limited to oral histories and census records, hints of a sense of dignity, self-awareness and pride are etched in the choices she made. One of the choices was to bear eleven children with her enslaved husband Solomon Williams whom she could not legally marry. The eldest of her sons she named Adam Toussaint Artis, who was born just one month before Nat Turner’s rebellion in neighboring Virginia. Having the ability to name one’s own children was a privilege often not afforded to slaves. For names speak to identity and history something that slaveholders stripped from their property. Although Artis is a French surname, the fact that Vacey named her eldest son Toussaint is not a coincidence. Records indicate that Vacey was born around 1805 and possibly descended from one of the many free black families that came into North Carolina when expelled by Virginia. There is little doubt that she and her family like many Africans in America had not been influenced by the events on the Caribbean island of Saint Domingue and held the Haitian leader Toussaint L’Ouverture in high esteem. A young black man walking around rural North Carolina with the given name Adam Toussaint; son of a free mother and enslaved father is a testament and

⁵⁵ North-Carolina Free Press (Halifax, North Carolina) Tuesday, October 2, 1832. Page 4.

symbolic of the political and social threat of free blacks in a slave society. It was not until after emancipation that Vacey and Solomon able to legally marry. They made it official in the month August, 1866 in Wayne County.⁵⁶

Several historians have examined the relationships between free black women (including those of mixed ancestry) and white males. They have argued that these women sought out these relationships in part because they found them to be financially and socially advantageous. Although marriages between whites and non-whites were illegal, many of the couples still operated openly sometimes raising families yet, they had no legal standing. However, there are records that indicate many free black women, including those described of having mixed ancestry did not chose this route. This group of women outnumbered the one sub-group they could legally marry, free black men, and were often involved in loving relationships with enslaved men. The reason for this is because there were risks involved in this process. The enslaved partner was always at risk of being sold, depending on the leniency of an enslaved husband's owner the family could experience financial strain and the children of the union could be subject to abusive apprenticeships due to bastardy laws. Although faced with these circumstances many black women chose love over the law or the chance of a more leisurely life with a white man with financial stability.

The coverture laws that burdened white women conversely failed to protect free black women. Many of them were not protected physically or financially by propertied white husbands, fathers, and brothers. Free black women who chose to enter into partnerships not

⁵⁶ North Carolina, Marriage Collection, 1741-2004. North Carolina State Archives.

sanctioned by law did so understanding the vulnerable situation they placed themselves and their children. Bastardy laws and laws against fornication basically branded any black woman who dared to love a man not white or free a criminal.

The audacity of many women of color to openly address or seek the help of the courts when it came to their children, spouses, or property rights can in a sense be viewed as a form of activism. The outcome of any particular case would possibly set a precedent for the success of future women seeking justice from the courts. One could argue that the courts were another site of activism; a deliberate, dangerous, and defiant way in which free black women could seek justice, freedom, and equality for the race. The activism of free women of color not only included the building of churches and schools, abolitionist lectures, smuggling and hiding of runaway slaves, and the publication of fiery anti-slavery literature, it also includes petitioning the courts. This history of legal dissent serves as a reminder that there were some free black women who had experienced the pains of slavery and remained committed to much more than their own individual day to day survival.

Free black women in North Carolina frequently petitioned the court to fight back against white and black members of their community who abused and wronged them. They sought the return of their stolen property, granting of divorce from abusive husbands, and freedom of the children they bore still held in bondage. Equally significant are the instances in which they are listed as perpetrators and defendants in petitions regarding stolen property, assault, and alienation of affection by the jealous wives of their alleged lovers. Often, in these petitions “free negro woman”, “free black woman,” or “free mulatto woman” is the only description given regarding the accused. When these are the only descriptors in a case, the

stereotypes regarding free blacks and their association with chaos, immorality, and crime is magnified.

The 1858 case of Malinda McCullough of Wayne County involved theft and fraud. Although not recognized by the law, McCullough was the wife of an enslaved mechanic by the name of Lawrence. Lawrence, who belonged to Nancy Ward. McCullough sought to free her husband and enlisted the help of a man named Edward Houston to devise a plan to retrieve him. Houston and McCullough went to Ward's home and somehow convinced her to sign an absolute bill of sale releasing Lawrence. Ward told the courts that she had no idea that she had signed over Lawrence and that McCullough and Houston had convinced her that the document was related to a mortgage. Ward told the court that she could not read or write. McCullough later sold her husband to Edward Houston, bought a parcel of land, and continued to live with Lawrence as his wife.⁵⁷

The myriad of methods by which free black women attempted to maintain a sense of matrimony with their slave husbands, and in some cases white partners, provide insight to their understanding of the law and the unfortunate predicament the law created should their neighbors decide to enforce it. In 1809, a period that seemed to show more leniency regarding movement and lifestyles of free blacks, John Waters, a white man described as very poor— and his free black partner Elisabeth Culms found themselves paying heavy fines for love. They had lived together for sixteen years and she had borne him six children.

⁵⁷North Carolina Department of Archives and History, Raleigh NC Records of the County Court, slaves and Free Persons of Color 1830-1869, Copy of Petition, Nancy Ward, 6 February 1858, Answers Edward Houston, Blaney Williams, James O. Daniel, 25 March 1858.

Waters, obviously unashamed, shared with the court that he had every intention of marrying the mother of his children but knew it was unlawful, thus, making cohabitation their only option. After sixteen years of relative peace a neighbor reported the family to the area solicitor. Shortly thereafter John and Elisabeth were fined twenty-five pounds each.⁵⁸ Considering that John Waters was a poor man, the burden of paying the courts what was probably two years pay was certainly stressful. The court rejected his plea to cancel the fines. If John had been Elisabeth's owner the vindictive reporting of his neighbor to the solicitor would have had no impact regarding the law and the family would be able to live unmolested—at least as long as John was alive and out of serious debt. In this case, clearly John was not a wealthy white man “keeping” a black mistress. His poor social and economic status combined with his determination to openly acknowledge Elisabeth as his wife in all but legal name placed him at risk in his community, thereby disrupting the family.

There were other cases regarding the unions of free women of color and the men in their lives that resulted in happier endings. Just seven years before the Waters and Culms petition, Mary Carter, a free black woman in Craven County petitioned the court to emancipate the husband she owned. Carter cited her husband's “upright conduct and manners.” The court granted Carter's request.⁵⁹ Although the result of her petition is not known, Margaret Moore, a free black woman also of Craven County petitioned for her slave husband's freedom as well. Moore was the owner of a two-hundred-acre plantation with

⁵⁸ North Carolina Department of Archives and History, Raleigh, North Carolina General Assembly Records, Wilkes County, December 18, 1809.

⁵⁹ North Carolina Department of Archives and History, Raleigh, North Carolina Records of the Court, slaves and Free Negroes 1775-1861.

livestock. In her petition, she credited her husband for the acquisition of her plantation stating if it were not for his labor and the money he acquired she would not have her land and wealth.⁶⁰

Although an enslaved man named Jonas spent the most promising years of his life in bondage to another master, Ruth Evergain his free black wife had recently purchased and sought to emancipate him through the courts. In a petition signed by more than ten residents of Pasquotank County, Jonas's conduct and manner were cited to gain the favor of the court and it worked. The court granted his emancipation was granted by the court in June of 1813.⁶¹ Ruth's reputation in the community as well as Jonas' advanced age most likely worked in their favor. Jonas's purchase by Ruth also relieved his former master of any responsibility to care for Jonas in his later years.

In an interesting twist, some petitions free black women filed that sought the emancipation of the husbands they owned requested the surname of the man be changed to theirs. In 1814, Jenney Pearson of Pasquotank County purchased her husband Richard. She petitioned the court to free her and simultaneously asked his name to be changed to Richard Pearson.⁶² Pearson seemed to be following a common trend or expectation as almost twenty years before Lovey Sampson also of Pasquotank County with the "assistance industry,

⁶⁰ North Carolina Department of Archives and History, Raleigh, North Carolina Record of the Court, slave and Free Negroes, 1788-1860. Craven County filed June 1797.

⁶¹North Carolina Department of Archives and History, Raleigh North Carolina, Records of the County Court, slaves and Free Persons of Color 1733-1866. Filed June 1813.

⁶² North Carolina Department of Archives and History, Raleigh, North Carolina Records of the County Court, Slaves and Free Persons of Color 1733-1866.

prudence and economy” of her husband and slave David was eventually able to buy him. She also requested a name change when she petitioned for his emancipation.⁶³

While having a husband who owned his own person and labor was the ideal situation for any wife and mother, the abuses that came from the actions and hands of free men both black and white, were a major reality for all women and some free black women sought relief through legal means. In the midst of the Civil War, Zilpha Dungee of Guilford County had her stallion stolen by a group of men claiming to be bestowed with the authority to take animals that were needed, (presumably for the war effort). A year later she married Thomas Dungee and became stepmother to the eight children he brought to the marriage. With the help of her new husband she sued the men that stole her horse and was awarded two hundred fifty dollars. Shortly thereafter her husband began an affair with another free woman of color and left Zilpha. Zilpha successfully petitioned the court for a divorce, alimony, and the part of the two hundred fifty he took from the earlier suit.⁶⁴

Just two years before the start of the Civil War, Jane Milton, also of Guilford County asked the courts to grant her a divorce from her free black husband, Elisha. She accused her husband of abusing her and their children in a variety of ways. She stated that he “sold” their three children for temporary servitude so that he might fund his drinking habit. According to the petition he was also physically abusive to her and once “fell upon her with a walking stick, on which he had a large Buckhorn handle or head, and abused her by beating her over

⁶³ North Carolina Department of Archives and History, Raleigh, North Carolina Records of the county Court, Slaves and Free Persons of Color 1733-1866.

⁶⁴ North Carolina Department of Archives and History, Raleigh, North Carolina, Guilford County Divorce Records March 2, 1867, Box 3.

the head and legs and shoulders in a most shameful and disgraceful manner.” She stated that she could not walk for at least one month. Elisha reportedly took one of their children, the only daughter, with him when he moved in with another free woman of color. Jane asked for damages, and all right and privileges due to her in addition to the divorce. The courts granted her request.⁶⁵ Mary Hubbard of Guilford County filed for a divorce from her husband John as began to behave violently toward her a few years after they were married. It was not until John became intimate with another woman and move in with her that Mary finally filed for a divorce in 1866. ⁶⁶ Free black women were sometimes the defendant and or the offender in court cases and petitions.

While the McCullough case mentioned earlier involved fraud, free black women were also implicated in cases regarding abuse and adultery. A white couple going through a nasty divorce in Franklin County in 1856 seemed to have everything go wrong in their marriage. Mary Ann Williams sought to sever her marriage with her husband whom she accused of cheating, physical abuse, and excessive alcohol consumption. To make matters worse Mary Ann was dealing with the social embarrassment of her husband taking on a free woman of color as mistress. The free black woman named Martha Fogg had reportedly given birth to a “white child.” Mary Ann had just recently suffered the loss of her father and so she asked the court for custody of her father’s estate, which by law would have passed on to her husband, a

⁶⁵ North Carolina Department of Archives and History, Superior court Guilford County January 30 1856, 1858, Box 3.

⁶⁶ North Carolina Department of Archives and History, Raleigh, North Carolina Divorce Records, Box 3.

divorce and alimony.⁶⁷ Hannah Hussey of Stokes County had only been married to her husband Thomas for five years when things began to fall apart. In her plea to be granted a divorce, Hussey stated that Thomas was exceedingly cruel and often sided with slaves who took “improper liberties” with her. Rachel, a free black woman and wife of a slave named Jack one of the slaves lived in the house with the Hussey’s. Rachel is the only offender listed by name as being “insolent” and “abusive” to Hannah. Hannah noted that Thomas often sided with Rachel and that he eventually put her (Hannah) out of their house.⁶⁸

While there was a pattern of separation from the enslaved in many free communities of color throughout the South. There is no shortage of instances of well off free women, cohabiting and marrying enslaved men Celia Artis arguably one of the wealthiest free black women in the Black Creek District of Wayne County owed a considerable amount of land. The 1850 US federal Census slave schedule indicates she one male slave about the age of 60. Ten years later the same family is in the Davis District and a one Simon Pig is listed as head of household.^{69 70}

⁶⁷ North Carolina Department of Archives and History, Raleigh, North Carolina, Superior court of law for Franklin County Court Divorce Records, 1865.

⁶⁸ North Carolina Department of Archives and history, Raleigh, North Carolina Stokes County Court Divorce Records.

⁶⁹ United State of America, Bureau of the Census. Seventh Census of the United States, 1850. Washington, D.C.: National Archives and Records Administration, 1850. M432, 1009 rolls. (Ancestry.com Slave Schedules on-line database (follow up on Simon Pig evidence of his enslavement).

⁷⁰ 1860; Census Place: Davis, Wayne, North Carolina; Roll: M653_917; Page: 423; 239; Family History Library Film: 803917 (Original Data 1860 US Census population schedule. NARA microfilm publications M653, 1,438 rolls. Washington DC National Archives and Records Administration, N.D.

Newspaper ads for runaway slaves often mentioned the home of the free spouse as a possible place of refuge or where the runaway servant or slave may be “lurking” because some free black women were married to enslaved husbands.⁷¹ Whenever possible descriptions of the free spouse were given along with their place of residence. These instances of free women harboring their runaway husbands undoubtedly impacted the attitudes of whites in the state by adding to their anxiety regarding not only the aid given to the enslaved by free family but the influence of free persons on their enslaved spouses and relatives.

⁷¹ Eastern Carolina Republican (New Bern) 20, November 1850 (On Sally Bozeman and runaway husband. 150 reward for the Head of her husband- article states that she was “removed to Wilmington”).

Chapter 3

Aiding and Abetting Accomplices

The grim reality of re-enslavement by kidnapping was a constant threat to free black men, women and children, throughout the antebellum period, particularly after the passing of the Fugitive Slave Act. In these instances, communal protection was especially important. Since black people's testimony against whites was generally not accepted by fact and de facto antebellum law, free blacks had to depend on the benevolence of white neighbors during the attempted kidnapping of spouses, children and other relatives. These neighbors were in a position to vouch for blacks in jeopardy or in some cases to make them more vulnerable or victim to some random, often unenforced law as discussed in the previous case of John Waters and Elisabeth Culms). In a rare instance, a newspaper reported that free black man and woman were participated in a kidnapping scheme. In 1838, Daniel McKinnon of Stewartsville was duped by the pair when they sold him “as a slave a free mulatto boy named Dennis.” In an effort to bring the kidnapper who jilted him to justice McKinnon posted an ad and offered a fifty-dollar reward for anyone apprehending the man who unlawfully sold the free child. The culprits in this incident were described as William Allen and a “bright mulatto free woman named Mary.” Free black women could be especially vulnerable to crimes like kidnapping as any children they birthed as while in bondage became the property of the new illegitimate owner.⁷²

⁷² Fayetteville Weekly Observer (Fayetteville, North Carolina Wed. November 28, 1838 page 3.

Free black women did not hesitate to help loved ones evade their owners and escape bondage even at their own peril. They were often mentioned and accused in runaway ads as accomplices to crimes and aiding their runaway lovers and husbands. Slaver masters sometimes described their runaway slaves as “likely lurking” with their free wives.⁷³ A one hundred twenty-five dollar award was offered for Henry Barnes by his owner. The ad stated “He has a free mulatto woman for a wife, by the name of Sally Bozeman, who has lately removed to Wilmington, and lives in that part of town called Texas, where he will likely be lurking.”⁷⁴ Many of these ads were run in multiple newspapers over a period of months demonstrating the desperation of some owners.

In an effort to retrieve his slave Mark, James Hanrahan could only offer ten dollars. His description of Mark in the newspaper ad included a description of the free black woman Mark ran off with. Her name was Dill Moore, a mulatto woman in possession of a free pass headed for New Bern.⁷⁵

Maybe emboldened by the start of the Civil War an enslaved black man in Alamance County threatened to take his master's life then ran away in May of 1861. According to the North Carolina Argus he took the risk of hiding out locally, “prowling about the neighborhood” being harbored by a “free negro woman” by the name of Jane Day. According to the North Carolina Argus, Day operated a gambling house as a place for enslaved and free blacks to congregate and socialize. Several slaves knew of his whereabouts

⁷³ Wilmington Journal (Wilmington, North Carolina) Fri, November 29th 1850 page 1.

⁷⁴ Wilmington Journal (Wilmington North Carolina) Fri, August 23, 1850.

⁷⁵ New Bern Sentinel (New Bern, North Carolina) Sat, June 13, 1829 page 4.

and eventually one of them betrayed him. The man refused to be taken alive. After the house was surrounded he climbed through the chimney. Those waiting on the ground in pursuit of him gave him warning to stop. He was shot, fell from the house and was dead shortly thereafter.⁷⁶ The man spent the final six months of his life as a free man largely due to a free black woman willing to conceal and protect him.

The aforementioned incident like many others regarding runaways was reported in several newspapers across the state.⁷⁷ The frequency by which free black women were identified and vilified for harboring enslaved black men shows the extent to which free black women were willing to risk their own freedom to secure the freedom of others. This is a risk that even slavery abhorring whites were often not willing to take for fear of social retribution and legal consequences. Although many historians have provided insight as to the reasons free black women outnumbered men, sighting their less threatening nature, not enough emphasis has been placed on the threat free black women in particular posed to the institution.

Lebsock's urban analysis of methods free black women in Petersburg used to survive and maintain economic autonomy shows the propensity of propertied black women to avoid marriage to maintain their economic autonomy. There were specific limitations on free black women regarding marriage since they could not marry an enslaved or white man.⁷⁸ Unlike Sally and Dill, an ad regarding a free black woman named Mary Locust did not describe her

⁷⁶ North Carolina Argus (Wadesboro, North Carolina) Thursday Jan 30, 1862. page 3.

⁷⁷ Fayetteville Semi-Weekly Observer (Fayetteville, North Carolina) Thursday, January 23, 1862 page 3.

as being on the run with an enslaved black man but “lurking” with him somewhere in Nash county. While there is no description of their relationship in the runaway ad that fact that they were believed to be “lurking” together leaves room for inference.⁷⁹

During the antebellum period, most free blacks needed to be covert yet in some cases they show no concern for the law or society’s perception of them. Considering the number of free black women was larger than free black men in North Carolina during the antebellum period relationships between free black women and enslaved men were not uncommon. Enslaved men in relationships with free black women could at least take solace in knowing that their children would be born free. Arguably this is a preferable relationship because they would not have to watch their wives live out a life in bondage along with the constant brutality and sexual abuse that came with that lifestyle. As in all times, places, and social classes a woman could be at the center of a love triangle leading to trouble with the law. This happened to Lucinda Hines of Bethania, North Carolina. In April of 1858 the Western Sentinel reported that she had been arrested in conjunction with the murder of an enslaved man named Eli. Apparently, he and another man, Frank both claimed to be married to Lucinda. Both of them were at her home on a Sunday night. A fight ensued. Stains of blood were found throughout her house and “tracks” of it from the house to a mill-pond where Eli’s body had been dumped. Eli’s body was found with his “head horribly mangled...wounds from a knife or other instrument.”⁸⁰ Either way Eli’s owner was now owner of one less slave. At any time, the owner of said enslaved man could try to prevent or end these relationships

⁷⁹ Tarboro Press (Tarboro, North Carolina) Saturday October 26, 1844 page 3.

⁸⁰ The Western Sentinel (Winston-Salem, North Carolina) Fri, April, 2 1858 page 3.

and the threat of sale always loomed. With the end of the international slave trade in 1808 slave owners worked hard to reproduce their laborers. Slaves entering into relationships with free women did produce an investment for slaveholders.

For many free black women, there were no privileges afforded because of paternal or familial ties and the protections afforded by marriage were only given if marrying a free black man. Some historians argue that ideas surrounding sexual norms in the black community existed a remnant of various West African cultures. After generations of captivity and sexual exploitation, slave masters refused to recognize marriage. The resistance of slave masters to legally recognize marriage between the enslaved, forced unions and birthing children out of wedlock caused marriage to be viewed differently in black communities than in white communities. Due to these laws, free black women were not in control of their reproductive and sexual rights. By denying free black women the legal options afforded to white women regarding marriage white authorities attempted to control and criminalize the sexual behavior of black women. Freedom wasn't guaranteed by paternal familial ties.

It is no coincidence that the North Carolina General Assembly produced a barrage of new laws regulating free blacks in 1830. While many historians point to the wave of slave codes that swept the South after Nat Turner's rebellion, it was the rhetoric of man born to a free black woman that also struck fear in the hearts of slave owning individuals. With the distribution of David Walker's Appeal to the Colored Citizens of the World in 1829 among free and enslaved folks along the east coast, the set of laws passed in 1830 were especially surgical in their effort to control free negroes and their contact with their enslaved counterparts. Some of the laws were new while others provided tighter constraints on

restrictions passed during previous generations before. For instance, the North Carolina General Assembly passed a law in 1787 forbidding free negroes from entertaining slaves in their houses at *certain times* such as sunrise to sunset. Violation of the law resulted in a series of fines depending on the number of offenses.⁸¹ By 1830 the North Carolina General Assembly passed a slew of very specific laws targeting the freedoms of free negroes, Native Americans and people of color as they pertained to their relationship with the enslaved. These laws included (but were not limited to gambling, marriage, and trade.)⁸² The 1830 law prohibiting free blacks from marrying an enslaved person hit hard especially for free black women of marrying age for they outnumbered free black men. The law also prohibited cohabitation unless the couple resided together before the passing of the law. ⁸³It is not coincidental that these were common behaviors among free blacks and their enslaved counterparts. Noteworthy is that several of the women discussed previously in this paper were infamous or accused of the infractions previously listed. As in all other southern states the anxiety about rebellions and insurrections made free blacks a target for white frustration and fear. The black codes sought to place all black people and other people of color into one legal category and at the same time attempted to maintain a dividing line between the groups so as to prevent any unification that could lead to rebellion. As a result of the 1835 North Carolina State Constitutional Convention many of the most basic rights of free black people

⁸¹ Slaves and Free Persons of Color, An Act Concerning Slaves and Free Persons of Color 1831 North Carolina Collection, UNC pg. 9.

⁸² Slaves and Free Persons of Color, An Act Concerning Slaves and Free Persons of Color 1831 North Carolina Collection, UNC pg. 9.

⁸³ An Act Concerning Slaves and Free persons of color (revised code 1855) 1830 c4s3

and others of color had been rescinded-trial by a jury of one's peers, freedom to worship and assemble and speech.

Depicting free black women as lacking in decency and moral character was not an unusual media tactic. In an article from Fayetteville's weekly Courier the death of a black woman in the local jail was cause for an investigation. While there is no mention of the conditions during her confinement an open indictment of her drinking habits relieved the state of any responsibility and deemed her "worthless." "Inquest -Death in Prison- Coroner Jones held an inquest on yesterday over the body of a free negro woman named Mary Beach, who was found dead early in the morning. It appears that the deceased had been drinking freely a day or two previous, and reeling through the streets exposing herself to the gaze of all, she was committed to jail. The verdict of the Jury was that "she came to her death from the too free use of liquor."⁸⁴

In an article on free blacks in Wilmington during the Antebellum period, R.C Rohrs points out that Wilmington was the largest city in Antebellum North Carolina and did not have a reputation for being kind to free black people.⁸⁵ The slew of laws targeting blacks in the state it is important to recognize the gap between "the intent of the regulations and the reality of daily life." This is another echo to Edwards argument concerning the relationship between local communities and the laws they choose to enforce.

⁸⁴ The Weekly Courier (Fayetteville, North Carolina)- Saturday, July 21st 1960. page 3. Newspapers.com retrieved February 26th, 2017.

⁸⁵ "The Free Black Experience in Antebellum Wilmington, North Carolina: Redefining Generalizations about Race Relations," Rohrs, R.C, (2012). The Journal of Southern History, 78 (3), 615-638.

On the eve of the Civil War there were over 30,000 free black people accounted for in the state of North Carolina in the South only Virginia had a larger free black population. It should also be noted that the free black population numbers were closely aligned with the enslaved population. Small free black communities were spread out all over the state but only Halifax, Wake, Hertford, and Robeson counties did individuals listed as free blacks exceed nine hundred. It is important to remember that records showing these free black populations often included Native American Communities.⁸⁶

As in many of other parts of the state in 1860 there were more free black women working in Wilmington than black men. This may not be unusual as black women outnumbered black men and the 1860 census was the first to provide a category for the occupations of free black women. They worked as laundresses, seamstresses, and other skilled occupations as they did in many other southern cities.⁸⁷ The attack on the economic opportunities denied to free blacks was especially if not more than the focus on social behaviors. Mary Cruise of New Hanover county was penalized for both. A free woman of color originating from Guadeloupe, Cruise had been selling liquor to patrons since the mid 1840's when the state passed a law forbidding free blacks to sell liquor to other free blacks or slaves. In 1854, her liquor license was denied. Fortunately for her, Cruise's financial portfolio was diverse as she was not totally dependent on the sale of alcohol. She was a local

⁸⁶ Johnson, Guion Griffis, 1900-1989 Chapter 20 The Free Negro Ante-Bellum North Carolina: A Social History pg 582.

⁸⁷ "The Free Black Experience in Antebellum Wilmington, North Carolina: Redefining Generalizations about Race Relations," Rohrs, R.C, (2012). The Journal of Southern History, 78 (3), 615-638.

madam and was worth a considerable sum of money by 1850. Her financial success may have been a factor in the rejection of her liquor application.⁸⁸

⁸⁸ Rohrs, R.C., and Wilmington Town Minutes see Rohrs footnote again 46, 47.

Conclusion

It is clear the roles of local magistrates, the written law as well as de facto laws practiced by individual communities were significant in antebellum North Carolina. North Carolina was a peripheral southern state. It was a relative safe harbor for free blacks expelled from other states, yet consistently passed laws that were hostile to free black women; the primary producers of the social class in the antebellum period. As a rural slave state, North Carolina free blacks posed a constant threat to the institution. In spite of this environment, there were times that “free blacks expected the protections of the law to apply to them just as they expected law’s representatives to act justly and they went to considerable lengths to hold the system to those expectations.”⁸⁹ Since they were living in a society that placed a peculiar legal status on all persons of color, and attempted to control every aspect of their lives, they well knew the limitations of those protections.

Even though free black women were operating with significant odds against them, in countless situations they took advantage of any situation where they may have had even a slight chance at justice. Antebellum laws passed in response to abolitionist writings, the expulsion of free blacks from other states, the relationship to enslaved and free black people, and regular attempts of the enslaved to escape or rebel, created a political climate that left free blacks especially vulnerable and unprotected. At times, it was only the reputation of individual free blacks and in some cases the decency of local magistrates and white neighbors willing to speak on their behalf that created any “expectation” of justice in the

⁸⁹ Edwards, Laura. *The People and Their Peace* p. 82. See *State v. William Mallory*, 1816 and *State v. John Stephenson*. Criminal Action Papers, Granville County, NCDAH

courts or before the General Assembly. Conversely there were situations when there were expectations to be protected from the law. In the previously mentioned case regarding a North Carolina couple who had lived for years as husband and wife only to be fined for interracial cohabitation, one can safely assume they never expected the law to be enforced. But the instant fickleness of white neighbors could put the written law into motion in ways that were not advantageous to free black women. What free black women expected from the law varied from town to town, county to county, and moved fluidly with the political climate. Status, as in many situations also played a role. The expectations of a free black slave owning family such as the Day's and the Stanley's was different from those with the reputation of entertaining and harboring slaves. While Aquilla Day crossed the state line to wed her husband Thomas without fear of fines, arrest, or deportation, the interracial family was expected to pay an unbearable fine and reconsider their living arrangements. One free black woman's life comes together while another is torn apart and an explicit law is on the books to govern them both. The history of differential treatment requires additional analysis of *which* free black women held the power to set expectations about their rights. Free black women refusing to submit to specific aspects of the social order could expect the law to be enforced - - and not in necessarily in their favor. Influence and a willingness to submit to the social order of the day were factors in the relationship between free black women and the law. Over time the laws governing free black people in North Carolina became so arduous that some petitioned to be re-enslaved.

Between 1830 and 1860 free blacks in the state increased in number by 50 percent, greater than the rate of the enslaved. Unlike other southern states with free black populations,

the larger majority of free black people did not live in the larger cities or towns. In 1860, less than 10 percent would be concentrated in what towns. They remained a rural subgroup, and thus proved to be susceptible to the vices often attributed to antebellum rural people: isolation, lack of education, poverty, among other struggles.⁹⁰ Yet the free black population of North Carolina maintained political and civil liberties longer than their free black counterparts in other states.⁹¹ Much of that changed by 1835, for the constitutional convention of 1835 had profound impacts on education, voting, and transitory freedoms of free blacks. Throughout the colonial and antebellum period, free black women worked around the legal and social restraints placed on them and use the legal system to seek and obtain justice. They fought for the freedom of their children and spouses, sought legal recognition of their unions, filed for divorce and compensation in abusive situations, and at times, cheated the system that sought relegate them to an enslaved status.

Kidnapped in June of 1834 by two men, Lydia Campbell experienced the cruelty of being black and female and the exhilaration of the law working in her favor. She also belonged to a subgroup of free black women that had experienced the humiliation and confinement of slavery in her earlier years. Lydia's situation however was complicated by the fact that she was originally from Virginia and sought her freedom on the grounds that her owner, Thomas Campbell left clear instructions in his will that "...my will and desire is... that

⁹⁰ John Hope Franklin, *The Free Negro in North Carolina 1790-1860*, (Chapel Hill: The University of North Carolina Press, 1995), 19.

⁹¹ Carter G. Woodson, *Free Negro Heads of Families in the United States in 1830, Together with a Brief Treatment of the Free Negro*. (Washington, DC: The Association for the Study of Negro Life and History, 1925), xxxvii.

all my black people shall serve until my youngest child shall be the age of twenty-one for the use of raising my children and young negroes. After my youngest child, be of age my will is that all my negroes shall have their freedom and liberty...”⁹² Lydia Campbell’s mother, Bina was enslaved to Campbell at the writing of the will. A 1782 Virginia law allowed masters to free their slaves via will or deed. By the time of this case in 1840, North Carolina had passed a series of additional laws complicating and limiting manumission.⁹³ According to court documents Campbell’s youngest son John turned twenty-one in 1815 and for close to the next twenty years Lydia Campbell lived as a free woman--that was until John Campbell illegally sold her to James Overby his business partner. Lydia Campbell ended up in Person County, North Carolina and was held and treated as a slave for months.

Eventually Campbell was able to secure legal representation and her case went before the Person County Court. The verdict returned in her favor and her captors appealed to the

⁹² North Carolina Reports. Vol. 23. Cases at Law Argued and Determined in the Supreme Court of North Carolina, From June Term 1840, to June Term 1841, Both Inclusive. Reported by James Iredell. (Vol.1) Raleigh: E.M. Uzzell, Steam Printer and Binder. 1890. Campbell V. Street 1840. p. 82-85.

⁹³ “1830 c 9 s How slaves may be emancipated. 59. An inhabitant of this State Desirous to emancipate any slave or slaves, shall file a petition, in writing in some one of the Superior Courts of the State, setting forth, as near as may be, the name, sex, and age of each slave intended to be emancipated, and praying permission to emancipate the same; and the court before whom such petition shall be filed, shall grant the prayer thereof on the following conditions, and not otherwise, viz. the petitioner shall show that he has given public notice of his intention to file such petition; and that the petitioner shall enter into bond with two securities, each to be good and sufficient, payable to the state of North Carolina, in the sum of one thousand dollars for each slave named in the petition... and that he, she, or they will, within ninety days after granting the prayer of the petitioner to emancipate him, her, or them, leave the state of North Carolina, and never afterwards come within the same...”
Slaves and Free Persons of Color, An Act Concerning Slaves and Free Persons of Color 1831, North Carolina Collection, UNC p. 7

State Supreme Court. In an unlikely outcome, the court considered the will of the senior Thomas and deferred to the laws of Virginia regarding the power of wills and deeds concerning slaves. Lydia was able to use the court's determination to uphold the wishes of a deceased slaveholder to do what he pleased with his property for her benefit. Ultimately the North Carolina Supreme Court ruled in favor of Lydia Campbell; not because she was taken against her will and not because of any crimes against her person, but because the court determined that "...she was his property, as an incident to, and fruit of, the property which he held in her mother-- and he by law, had a right to emancipate her with her mother."⁹⁴

Dancing between liberty and bondage, the history of free black women in North Carolina reminds us of all the ways that the fight for freedom was difficult in the face of the arbitrary nature of slavery and its laws.

⁹⁴ North Carolina Reports. Vol. 23. Cases at Law Argued and Determined in the Supreme Court of North Carolina, From June Term 1840, to June Term 1841, Both Inclusive. Reported by James Iredell. (Vol.1) Raleigh: E.M. Uzzell, Steam Printer and Binder. 1890. Campbell V. Street 1840. p. 85.

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