THE COMPLICATIONS OF LIBERTY: FREE PEOPLE OF COLOR IN NORTH CAROLINA FROM THE COLONIAL PERIOD THROUGH RECONSTRUCTION

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ABSTRACT

Warren Eugene Milteer, Jr.: The Complications of Liberty: Free People of Color in North Carolina from the Colonial Period through Reconstruction
(Under the direction of Kathleen DuVal and Malinda Maynor Lowery)

From the colonial period through the Civil War free people of color in North Carolina held a sociopolitical status that firmly placed them legally above slaves and below whites. While the degree to which free people of color were the legal superiors of slaves and inferiors of whites varied across time, this dissertation argues that the legal position of free people of color generally remained closer to that of whites than slaves. In contrast to images of a segregated South strictly bifurcated by racial categorization, this dissertation reveals that North Carolinians' beliefs and understandings about hierarchies of gender, class, reputation, and occupation worked in tandem with racial categorization and freedom status to shape the experiences of individual free people of color. Both competition among the ideas that supported these hierarchical structures and the situational use of specific hierarchies allowed for a wide variety of life experiences within the legal middle ground occupied by free people of color. Although free people of color were not the most privileged group in the state, a position held by a minority of slaveholding, propertied white men, they still carved out spaces to raise their families, make a living, and sometimes enjoy life's luxuries. This dissertation also demonstrates that "free people of color" was simply a label of status that denoted a middling position in the sociopolitical hierarchy that ranked the free over the enslaved and the white over the non-white. By the early nineteenth century, North Carolinians lumped within the category of free people of color: free people of African descent,

free people of Native ancestry whom the state did not recognize as politically autonomous, and a variety of individuals with mixed ancestry.

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INTRODUCTION

In 1902, not long after the publication of a series of now famed works including *The Conjure Women, and Other Conjure Tales* and *The Wife of His Youth and Other Stories of the Color-Line*, Charles Waddell Chesnutt sat down to pen a lesser-known article titled "The Free Colored People of North Carolina" for Hampton Institute's *The Southern Workman*. Born to parents who were free persons of color before the Civil War, Chesnutt used his intimate knowledge of the population of his study along with other sources to describe briefly the social position and ancestral origins of the free colored people. He wrote that "the status of these people, prior to the Civil War, was anomalous but tenable." In describing their origins, Chesnutt mentioned mixtures between "Negroes," "whites," and "Indians." He argued that many free people of color, "perhaps most of them, were as we have seen, persons of mixed blood, and received, with their dower of white blood, an intellectual and physical heritage of which social prejudice could not entirely rob them, and which helped them to prosperity in certain walks of life."[1] I have found it difficult to determine the extent to which kin connections with whites influenced the lives of the greater free non-white population before the Civil War. More importantly, I reject that so-called "white blood" tied free people of color to a particular level of intellect or that physical attributes are an endowment of racial heritage. Yet a careful search through court records, censuses, vital records, church minutes, wills, deeds, newspapers,

[1] Charles W. Chesnutt, "The Free Colored People of North Carolina," *The Southern Workman*, 31, no. 3 (1902): 136-141.

pensions, and oral histories confirm a picture of life for free people of color remarkably similar to the one described by Chesnutt over a century ago.

From the colonial period through the Civil War, free people of color in North Carolina held a sociopolitical status that firmly placed them legally above slaves and below whites. While the degree to which free people of color were the legal superiors of slaves and inferiors of whites varied across time, this dissertation argues that the legal position of free people of color generally remained closer to that of whites than slaves. Orlando Patterson explained that slaves were the "socially dead" agents of their masters with no legally recognized connection to kin or ancestors.[2] Historians have repeatedly shown that slaves in every society did develop strong social bonds, but none of those relations were legally binding. In contrast, North Carolina law always allowed free people of color, like whites, legal personhood and recognized connection to kin. Even during the 1850s and 1860s, when legal limitations were greatest, free people of color retained numerous privileges unavailable to enslaved persons including the right to own property, access to the courts, the right to keep their wages, and the freedom to leave the state without permission.[3]

In contrast to images of a segregated South strictly bifurcated by racial categorization, this dissertation reveals that North Carolinians' beliefs and understandings about hierarchies of gender, class, reputation, and occupation worked in tandem with racial categorization and

[2] Orlando Patterson, *Slavery and Social Death: A Comparative Study* (Cambridge: Harvard University Press, 1982), 1-14.

[3] My contentions about the status of free people of color in North Carolina generally agree with the findings of Judith Kelleher Schafer. In her study of New Orleans, Schafer argued that "Although city ordinances and state law conspired to deprive free and freed people of color from social, political, and economic equality, being able to function as an autonomous individual and keep one's own wages represented tremendous advantages over being a slave." See Judith Kelleher Schafer, *Becoming Free, Remaining Free: Manumission and Enslavement in New Orleans, 1846-1862* (Baton Rouge: Louisiana State University Press, 2003), xiv.

freedom status to shape the experiences of individual free people of color. Both competition among the ideas that supported these hierarchical structures and the situational use of specific hierarchies allowed for a wide variety of life experiences within the legal middle ground occupied by free people of color. For most of the period in which free people of color existed as a legally distinct group, free men of color, who could vote until 1835, had more political rights than white women. In a society that privileged the wealthy over poor, propertied free people of color had access to exclusive social networks and, for a short period, additional political privileges such as the right to vote for senators, which neither women nor property-less white men could access. Occupation and possession of valued skills shaped the lives of free people of color by allowing them to find niches in a labor-short economy and even opportunities to negotiate with people higher in their society's racial and class hierarchies.

Although free people of color were not the most privileged group in the state, a position held by a minority of slaveholding, propertied white men, they still carved out spaces to raise their families, make a living, and sometimes enjoy life's luxuries. Free people of color built a variety of social networks with neighbors, both free and enslaved, white and of color. Class, personal reputation, and ancestral background determined the level of intimacy within these relationships. Free people of color never made up a segregated racial community of their own, nor did they form a wide alliance with enslaved people. Sometimes the political or social objectives of free people of color and enslaved persons intersected, just as the objectives of whites and free people of color overlapped, but shared goals could not overshadow significant differences in legal and social positions.

Enumerators for the 1860 census tallied 30,463 free people of color in North Carolina, counting 21,808 as "mulatto" and 8,655 as "black."[4] These numbers suggest that free people of color did not fit the stereotypical African representation common in popular imagery. Behind these numbers is a story of ancestral complexity that goes beyond the alleged simplicity of racial or color categories. "Free people of color" was simply a label of status that denoted a middling position in the sociopolitical hierarchy that ranked the free over the enslaved and the white over the non-white. By the early nineteenth century, society labeled free people of African descent, free people of Native ancestry whom the state did not recognize as politically autonomous, free persons of South Asian background, and a variety of individuals with mixed ancestry as "free people of color." North Carolinians sometimes used "free negro," "free mulatto," and "free black" interchangeably with "free person of color," but "free person of color" was the most frequent and, because of its ambiguity, most accurate general term. For this reason, this is term I use throughout the dissertation. Modern historians have used "Negro," "black," and "African American" instead or in conjunction with "person of color." However, all of these terms, especially "African American," are loaded with connotations of African ancestry, which do not necessarily apply to the subjects of this study or their descendants. As this dissertation demonstrates, not all free people of color had African ancestry, and they are not collectively the ancestors of people described today as "African Americans." Large numbers of people who self-identify as "white" and "Indian" today are the descendants of free people of color.[5] The story of

[4] *Population of the United States in 1860*, by Joseph C. G. Kennedy, Superintendent of Census (Washington: Government Printing Office, 1864), 348-361.

[5] See Karen Blu, *The Lumbee Problem: The Making of an American Indian People* (Cambridge: Cambridge University Press, 1980); Gerald Sider, *Living Indian Histories: Lumbee and Tuscarora People in North Carolina With a New Preface* (Chapel Hill: University of North Carolina Press, 2003); Malinda Maynor Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation* (Chapel Hill: University of North Carolina Press, 2010).

free people of color maybe one of the best examples of racial categories being made and remade in American history. In this dissertation, I demonstrate that racial labels are fluid categorizations designed to support the needs of an ever-changing social hierarchy and not indelible markers of ancestry, culture, or community affiliation.

During the 1940s, John Hope Franklin wrote the first book-length study of free people of color in North Carolina by a professional historian. In *The Free Negro in North Carolina 1790-1860*, Franklin sought to place North Carolina within a larger discussion about free people of color in the slave states. Before Franklin, historians had completed volumes on free people of color in Maryland and Virginia, the two slave states with free non-white populations greater than North Carolina's.[6] Franklin's study largely followed these studies in format but greatly exceeded them in depth of research and variety of source materials. He gave his readers a clear sense of the lived experience of free people of color and showed class and educational diversity, self-determination, and participation within the larger society. Yet Franklin's argument did not reflect the complex reality shown by the totality of his evidence. Giving most credence to the series of discriminatory laws passed by the General Assembly primarily after 1830, radical pro-slavery propaganda, and the development of a mostly ineffective colonization movement, Franklin argued that by the 1850s "there was a growing hostility to the very presence of the free Negro in North Carolina" making them "an unwanted people."[7] In coming to this conclusion, Franklin ignored his own findings of substantial property ownership, court victories, and the ultimate failure of political radicals to remove free people of color from North Carolina's economy and

[6] See John Henderson Russell, *The Free Negro in Virginia 1619-1865* (Baltimore: Johns Hopkins Press, 1913); James M. Wright, *The Free Negro in Maryland 1634-1860* (New York: Columbia University Selling Agents, 1921).

[7] John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: University of North Carolina Press, 1943), 225. For more on the colonization movement in North Carolina see Claude A. Clegg, III, *The Price of Liberty: African Americans and the Making of Liberia* (Chapel Hill: University of North Carolina Press, 2004).

society. I argue that these findings demonstrate that North Carolinians largely rejected harsh measures and derogatory rhetoric aimed at free people of color.[8]

In the 1970s, Ira Berlin produced a study of free people of color in the antebellum South largely following Franklin's work in its structure and arguments. In *Slaves without Masters: the Free Negro in the Antebellum South*, Berlin like Franklin suggested that free people of color experienced a steady decline in their status. He argued that "once free, blacks generally remained at the bottom of the social order, despised by whites, burdened with increasingly oppressive racial proscriptions, and subjected to verbal and physical abuse." Berlin took his contentions a step further and suggested that "Free Negroes stood outside the direct governance of a master, but in the eyes of many whites their place in society had not been significantly altered. They were slaves without masters." Berlin's work also paints a picture of Southern society highly bifurcated by racial categorization. While noting exceptions in Lower South cities such as Charleston and New Orleans, Berlin contended "free Negroes and slaves" more generally joined together "to create a united black caste." He cites evidence of joint institutions such as churches, schools, and benevolent societies in some Southern cities. However, this conclusion, like much of his work, depends on sources about cities although the majority of Southern free people of color lived in rural areas where such institutions were largely non-existent.[9] Of all the works on free people of color, this dissertation contrasts most clearly with Berlin's findings and conclusions. Berlin's arguments overextended the applicability of "slave" as a legal concept and

[8] For further discussion of the Slave Power's failure to push white Southerners fully against free people of color in other areas see Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground* (New Haven: Yale University Press, 1985), 63-89; William Freehling, *The Road to Disunion Volume II: Secessionists Triumphant, 1854-1861* (New York: Oxford University Press, 2007), 185-201.

[9] Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: The New Press, 1974), xiii.

status while at the same time downplayed the variations of privilege found within free status. Free and slave statuses are not so much fixed in lived experiences but in their relative relation. In societies with slavery, free people have legal personhood while the law denies slaves such personhood.

Since the publication of Franklin's and Berlin's works, a series of local studies on free people of color have caused historians to rethink old conclusions about the position of this group in the pre-Civil War South. Works on individual free families of color in Louisiana, South Carolina, Georgia, Virginia, and Missouri by Gary B. Mills, Michael P. Johnson and James L. Roark, Adele Logan Alexander, Thomas E. Buckley, and Julie Winch described families who defied legal discrimination and second-tier status to find personal and financial success.[10] In all of these works, free people of color were active participants in society, not unwanted pests living on society's black, segregated periphery. This dissertation provides additional examples of families who found similar positions in North Carolina. Some free people of color in North Carolina were propertied, many were "respected," and even a few could be described as "wealthy."

In their county studies, Melvin Patrick Ely and Kirt von Daake found wide webs of social entanglement among free people of color, whites, and slaves in antebellum Virginia. In his work on Prince Edward County in the Virginia piedmont, Ely argued "many Southern whites felt

[10] Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge: Louisiana State University Press, 1977); Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Company, 1984); Michael P. Johnson and James L. Roark, *No Chariot Let Down: Charleston's Free People of Color on the Eve of the Civil War* (Chapel Hill: University of North Carolina Press, 1984); Adele Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789-1879* (Fayetteville: University of Arkansas Press, 1991); Thomas E. Buckley, S. J., "Unfixing Race: Class, Power, and Identity in an Interracial Family," *Virginia Magazine of History and Biography* 102 (July 1994): 346-380; Julie Winch, *The Clamorgans: One Family's History of Race in America* (New York: Hill and Wang, 2011).

secure enough to deal fairly and even respectfully with free African Americans partly because slavery still held most blacks firmly in its grip. That paradox helped make room for a drama of free black pride and achievement to unfold in an Old South where ties of culture, faith, affection and economic interest could span the barrier between black and white."[11] In the hierarchical society of Prince Edward County, he discovered justice for free people of color from all-white juries, close personal relationships between whites and non-whites, and regular local disregard for state acts discriminating against free people of color. Von Daacke uncovered many similar findings in Albemarle County. He contended that in Albemarle County, reputation often influenced the social interactions of free people of color. Whites may have discussed free people of color as a despised group in political debates, but at home, he found whites judged free people of color based on their personal interactions.[12] My findings suggest that the situation across North Carolina largely paralleled the experiences of free people of color in Prince Edward County and Albemarle County. I agree with Ely that common social practices and background joined together people of color and whites and will demonstrate that this commonality largely existed because free people of color and whites belonged to the same communities in which cooperation was necessary in order for society to function sufficiently.

Studies on cities in South Carolina and North Carolina also have challenged the slaves without masters model and revealed that free people of color could overcome legal limitations to find personal and financial success. In her study on free women of color in Charleston, South Carolina, Amrita Chakrabarti Myers discovered women who in the face of gender and racial

[11] Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s Through the Civil War (*New York: Alfred A. Knopf, 2004), x.

[12] Kirt von Daacke, *Freedom Has a Face: Race, Identity and Community in Jefferson's Virginia* (Charlottesville: University of Virginia Press, 2012).

discrimination found ways to "obtain, define, and defend their own concept of freedom." Free women of color in Charleston acquired financial assets, developed associations with people in power, most notably white men, and found ways to use the courts and laws to support their own interests.[13] Richard C. Rohrs argued that the conditions in antebellum Wilmington, North Carolina for free people of color cannot be deduced from the long list of discriminatory laws targeting this population. He concluded that "the free black men and women of Wilmington, aided by the humanity of some white residents, endured and even prospered through hard work."[14] My dissertation demonstrates that free people of color across North Carolina experienced similar successes and also highlights the importance of whites' attitudes in curbing the influence of discriminatory laws.

All of the scholars who have written since the publication of *Slaves without Masters*, with the exception of Alexander in *Ambiguous Lives* and Johnson and Roark with *Black Masters* assumed that all free people of color were of African descent and therefore make a problematic assumption about the people they examined and historical context in which those people belong. The stories of free people of color do not simply reflect the experiences of people of African descent. Like Alexander and Johnson and Roark, I find evidence that free people of color included people without African ancestry, most notably Native peoples. Scholars of Native American history have uncovered numerous examples of Native people being categorized as "black," "colored," or "mulatto." Such findings appear in the works of James H. Merrell, Helen

[13] Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* (Chapel Hill: University of North Carolina Press, 2011), 2.

[14] Richard C. Rohrs, "The Free Black Experience in Antebellum Wilmington, North Carolina: Refining Generalizations about Race Relations," *Journal of Southern History* 78 (August 2012): 613-638.

Rountree, Daniel Mandell, Ruth Wallis Herndon, Ella Wilcox Sekatu, and Jean M. O'Brien.[15] Herndon and Sekatu argued that such labeling of Native people was a form of "documentary genocide."[16] I agree that such labels obscure ancestral distinction. However, I also think that racial terminology never has been truly intended to serve as an accurate indicator of ancestry. Whites in nineteenth-century North Carolina were quite aware that they had branded Native peoples as "colored" and even after such labeling retained memory, or at least a belief, that certain free people of color were Native peoples. With this understanding, I urge scholars to reimagine the genesis of racial categorization for Native peoples. In the United States, as in other parts of the Americas, all Native people did not fall into the Indian category. Some Native people lived under the designation "colored," experienced the legal limitations associated with such a designation, lived in communities in which racial categorization was imposed and not self-ascribed, and described themselves as "colored" people while still retaining memories of their indigenous heritage.[17]

Jack D. Forbes's important, but often neglected, *Black Africans and Native Americans* showed that the categorization of a diversity of people including Africans, South Asians, and

[15] James H. Merrell, *The Indians' New World: Catawbas and the Neighbors from European Contact Through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989), 108-109; Helen C. Rountree and Thomas E. Davidson, *Eastern Shore Indians of Virginia and Maryland* (Charlottesville: University of Virginia Press, 1997); Ruth Wallis Herndon and Ella Wilcox Sekatu, "The Right to a Name: The Narragansett People and Rhode Island Officials in the Revolutionary Era" in *After King Philip's War: Presence and Persistence in Indian New England* ed. Colin G. Calloway (Hanover: University Press of New England, 1997), 114-143; Ruth Wallis Herndon and Ella Wilcox Sekatu, "Colonizing the Children: Indian Youngsters in Servitude in Early Rhode Island" in *Reinterpreting New England Indians and the Colonial Experience* ed. Colin G. Calloway and Neal Salisbury (Boston: The Colonial Society of Massachusetts, 2003); Daniel R. Mandell, *Tribe, Race, History: Native Americans in Southern New England, 1780-1880* (Baltimore: Johns Hopkins University Press, 2008); Jean M. O'Brien, *Firsting and Lasting: Writing Indians Out of Existence in New England* (Minneapolis: University of Minnesota Press, 2010).

[16] Herndon and Sekatu, "The Right to a Name," 118.

[17] Andrew B. Fisher and Matthew D. O'Hara, ed., *Imperial Subjects: Race and Identity in Colonial Latin America* (Durham: Duke University Press, 2009).

Native peoples as "black," "colored," and a host of other ambiguous color terms dates back to at least the development of global trade in the sixteenth century. Even before this point, Europeans used color to describe a diversity of people. Forbes showed that racial categories had their earliest origins in attempts to describe and order human beings.[18] I find that "Negro," "colored," and other terms did the same work in eighteenth- and nineteenth-century North Carolina. Racial categories served as descriptors of difference between the dominant group and subordinate groups. In North Carolina, as in most of the European colonized world, law was not primarily concerned with specific ancestry but most interested in differentiating between the privileges of those categorized as white people and the limitations on those classed as non-white people. Today's racial and ethnic language blurs distinctions among racial categorizations, ancestry, and culture. We discuss whites, European Americans, and Caucasians as one people, blacks or African Americans as another, and speak about other racial groups in a similar fashion. However, as this dissertation shows and many Americans who have traced their history know, not all people of African descent are black or African American today, all white people are not purely of European descent, and all Americans with indigenous heritage are not Indians. Historians of the United States have rarely taken this reality into serious consideration, but the story of free people of color demonstrates why we should.

This dissertation is divided into seven chapters, each reflecting on the diversity of ancestries and life experiences of free people of color in North Carolina. Chapter 1 explores the origins of free people of color and offers new evidence that challenges previous assumptions of African ancestry for all free people of color. This chapter repositions the story of free people of

[18] Jack D. Forbes, *Black African and Native Americans: Color, Race and Caste in the Evolution of Red-Black Peoples* (New York: Basil Blackwell, 1988).

color into the ancestral diversity described by Charles Chesnutt and others who knew free people of color, their experiences, and their backgrounds. I show that free people of color gained their status through birth to free mothers, white and non-white, and through manumission, brought about by self-purchase, special service to masters, and military accomplishment. This chapter also explores the processes that led to the mass re-categorization of Native peoples east of the Appalachian Mountains from "Indian" to "people of color." Chapter 2 follows the first chapter's theme of diversity within the free population of color and explores the diversity of family life and social organization experienced by free people of color. I argue against Berlin's depiction of a highly bifurcated society and show that free people of color lived in variety of family arrangements. As Berlin demonstrated, some free people of color maintained close bonds with slaves, especially enslaved family members. Yet other free people of color had limited social ties with enslaved people and generally associated with and married others like themselves. Defying racial boundaries, certain free people of color built family ties with whites. Free people of color had white mothers and fathers as well as white extended kin. Such arrangements would not exist in a highly bifurcated society with a clearly distinguishable "black community."[19]

Chapters 3 through 7 continue to deal with the topic of diversity within the free population of color but turn to a chronological evaluation of the social position of free people of color from the colonial period through Reconstruction. Chapter 3 examines life for free people of color during the colonial period. Before the Revolution, the laws discriminating between free people of color and whites were largely undeveloped. In North Carolina, most laws that discriminated between people based on racial categorization dealt exclusively with apprentices,

[19] See Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Belknap Press, 1998), 256. Berlin argued that "freedom and slavery evolved in a parallel course that entwined free and slave blacks in the same families, workplaces, churches, and communities" and has concluded that this process created a "two-caste system with rigid divisions between black and white" in the post-Revolutionary Upper South.

indentured servants, and single women. As Kathleen M. Brown and Kirsten Fischer showed in British colonial North America and Ann Laura Stoler showed in other parts of the world, rules regulating the lives and sexual behavior of women, especially poor women, were fundamental to the development of laws in colonial and post-colonial societies.[20] Free people of color outside of the sphere of poverty, especially men, could obtain substantial prosperity, contest and win grievances against whites, and participate in all functions allowed by their status.

After the American Revolution the legal status of free people of color gradually began to change. In Chapter 4, I show that slowly state lawmakers chipped away at the liberties of free people of color, especially beginning in the 1830s. However, I argue that these legal handicaps never made free people of color "slaves without masters" and that white North Carolinians disagreed about the proper position of free people of color. At every attempt to impose additional handicaps upon them, free people of color and their white allies vocally opposed legislation, petitioned for exceptions, and sometimes ignored discriminatory laws. Chapter 5 goes beyond the legal debates about the position of free people of color and evaluates their lived experiences. I demonstrate that free people of color were tightly integrated into the economy and general operation of the larger society. For many whites, free people of color were neighbors, friends, trusted business associates, essential laborers, fellow religious congregants, and a general non-threat. In the courts, where influential whites could have easily cheated and discriminated against them, free people of color regularly found address for grievances, solutions for disputes, and sometimes even leniency in punishment.

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[20] See Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996); Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca: Cornell University Press, 2002); Ann Laura Stoler, *Carnal Knowledge and Imperial Power: Race and the Intimate in Colonial Rule With a New Preface* (Berkeley: University of California Press, 2010).

Although most studies of free people of color end at the start of the Civil War, Chapters 6 and 7 explore the position of free people of color during the most socially disruptive period of the nineteenth century. In Chapter 6, I argue that the Civil War brought about the most important changes in the lived experiences of free people of color before the end of slavery. Free people of color continued to hold a clear middle status, but the Confederate government and its agents trampled upon the self-determination of free people of color by impressing many free men of color into the Confederate labor service. Throughout the war, most free people of color sympathized with the Union. When the opportunity allowed, they supplied and hid Union troops behind Confederate lines. After the Emancipation Proclamation, which allowed the Union Army to enlist people of color, those who could get to the Union lines joined the Federal army and served with recently emancipated people to defeat their common enemy. However, a few free people of color openly supported the Confederate cause through small financial contributions and, in rare cases, military service.

Chapter 7 continues into the Reconstruction period, and I argue that free people of color sought and staked a claim in the political process. At both the local and state level, free people of color succeeded in pushing the collective position of all people of color forward. Yet the developing influence of conservatives in the 1870s through 1890s hampered the greater possibilities for all people of color, and the rise of Jim Crow limited the efforts of antebellum free people of color to segregated institutions and local spaces. Along with changes in the political status of free people of color after the war, major alterations took place in North Carolina's racial order. Emancipation brought an end to the legal distinction between antebellum free people of color and the freedmen. Yet I find some people who were free during the antebellum era continued to distinguish themselves from other people of color and in some

instances succeeded in obtaining alternative racial classification. Long before the Civil War, the category “free people of color” developed as a catch-all term for people previously categorized under different racial labels. After emancipation, “free people of color” disappeared from use as North Carolinians sought to restructure the racial hierarchy in order to meet the objectives of post-war politics.

CHAPTER 1: THE ORIGINS OF FREE PEOPLE OF COLOR

Introduction

For generations, the assumption that all people categorized as "free people of color," "free negroes," or "free mulattoes" were persons of African descent has undergirded the historiography of colonial America and the United States. Scholars have developed studies on free people of color in North Carolina and other parts of the American South premised on this idea and have approached their subject matter unaware that people in the eighteenth and nineteenth century did not share their assumption.[1] Eighteenth- and nineteenth-century North Carolinians lived in a world in which people with various ancestral backgrounds could share the same racial designation. In their world, people with African, Native, or even South Asian ancestry could all fit into the same racial category. For local North Carolina officials, understanding who was white and who was non-white was fundamental. With that goal, "person of color," "mulatto," and "negro" served as broad categories of social distinction. During the eighteenth and nineteenth centuries, people of African, Native, or South Asian descent fell into these broad categories.

Transformations brought about by slavery and colonization as well as the legal structure designed to uphold them helped to create the desire for a separate sociopolitical designation that

[1] See John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: University of North Carolina Press, 1943); Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: The New Press, 1974). Exceptions include Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Company, 1984); Michael P. Johnson and James L. Roark, *No Chariot Let Down: Charleston's Free People of Color on the Eve of the Civil War* (Chapel Hill: University of North Carolina Press, 1984); Virginia R. Dominguez, *White by Definition: Social Classification in Creole Louisiana* (New Brunswick: Rutgers University Press, 1986); Adele Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789-1879* (Fayetteville: University of Arkansas Press, 1991).

meant free and non-white. Legislators used the law to build a social hierarchy that privileged whites through limitations on the liberties of non-whites and their descendants, slave and free. Even as some Africans and Natives moved from slavery and servitude to freedom or from citizenship in foreign states to being British colonial subjects, they could move only to a middling position. The rules of colonization and slavery made no room for full equality between white and non-white, colonizer and colonized, master and slave. The creation of the category, "free person of color," helped to maintain that social divide.

Defining "Free People of Color"

Nineteenth-century North Carolinians understood that the group of people they called "free people of color" or "free negroes" were not simply people of African descent and that these categories incorporated a diversity of people. William D. Valentine, an active member of the Whig Party and attorney in eastern North Carolina, explained that "Free negroes are slaves and their descendants emancipated by Quakers and other benevolent whites once owners of them. The mulatto is the offspring between the white and the negro, or between the Indian and the negro, or between the white and the Indian."[2] Valentine's definitions of free negroes and mulattoes revealed that people of African descent and those without that ancestry all fell into common categories. This statement also suggests that there were many free people of color without African ancestry living in North Carolina during the 1850s when Valentine wrote about the free negroes and mulattoes.

Other North Carolinians commented on the complex ancestry of the population categorized as "free people of color" or "free negroes." Oscar William Blacknall, who grew up

[2] William D. Valentine Diary, Volume 12, 164-165, Southern Historical Collection.

during the 1850s and 1860s in Kittrell and published under the pseudonym "David Dodge," wrote about the "free negroes" in North Carolina in 1886. Often pulling from memories of his youth as well as his research on the subject, Blacknall paid careful attention to the diversity within the "free negro" population. Blacknall wrote that free negroes

> are almost wholly a hybrid race, and therefore deficient in stamina, as hybrid races are in general and the mulatto in particular. According to the census of 1860, fifty-five per cent of all the free-negro population consisted of mulattoes, a proportion eight times greater than existed among the slaves. Of course the proportion of those with blood more or less mixed was very much larger. Indeed, of all the hundreds of free negroes that I have known from childhood, I cannot now recall a dozen black or very dark ones… many, if not the larger part, of the free negroes whose freedom dates back further than this century show traits of mind and body that are unmistakably Indian. In many instances, long, coarse, straight black hair and high cheek-bones are joined with complexions whose duskiness disclaims white blood and with features clearly un-African. True, these extreme types are the exception; but the majority shade up to it more or less closely. These traits are more noticeable among women, forming no exception to the usual accentuation of racial characteristics in the female.[3]

Although Blacknall's writing is heavily infused with the racial ideology of his day, which tied racial categorization to blood and blood to specific traits, his statement confirms the diversity in the "free negro" population cited by Valentine in the 1850s.

Local observers were not the only people to recognize that free people of color derived from a variety of origins. In 1857, the North Carolina Supreme Court offered a definition of free person of color in the case *State v. William Chavers*. In their ruling against Chavers, the justices wrote that "free persons of colour may be then for all we can see, persons coloured by Indian blood, or persons descended from negro ancestors beyond the fourth degree."[4] This judicial opinion reiterates that North Carolinians, even during the late antebellum period, understood that free people of color could be the descendants of Native peoples or Africans.

[3] David Dodge, "The Free Negro of North Carolina," *Atlantic Monthly*, January 1886, 29-30. David Dodge was the pin name of Oscar William Blacknall.

[4] *State v. William Chavers* (Dec. 1857), Supreme Court Cases, North Carolina State Archives.

A diversity of people fell under the category of "free persons of color," but two questions still remain: How did such a diverse group of people become categorized under this label? and What transformations took place that allowed North Carolinians to understand this diversity of people as members of the same group? The rest of this chapter will explore these issues and attempt to answer these questions based on the available evidence.

Creating People of Color in the Law and Society

During the colonial period, there is no mention of a category "free people of color." Instead, county clerks and other officials used terms such as "Indian," "mulatto," "mustee," "mixed blood," and "negro" to describe the sub-segment of the population who by the late eighteenth century often would be called "free people of color." Although officials used different names to describe this portion of the population during the colonial period, lawmakers early on lumped these different people together when formulating laws to distinguish the colonizers or whites from Natives, Africans, South Asians, and their descendants. The category "free person of color" was born out of a developing system of inequality that attempted to both justify the ascendancy of European colonizers upon the Americas and solidify the power of the most prosperous of this class, most notably those who sought to profit from the enslavement and servitude of Natives, Africans, South Asians, and their descendants.

The laws of colonial Virginia served as templates for many of the laws North Carolina enacted to separate colonizers from those deemed as outsiders to or subordinates within English colonial experiments. During the earliest days of colonization in Virginia, lawmakers distinguished the colonizers from others through the language of religious difference. A 1682 act to convert non-Christians to Christianity was the first law to explicitly group together a diversity

of non-whites. The law required that "all servants, except Turks and Moors,…whether Negroes, Moors, mulattoes or Indians who and whose parentage and native countries are not Christian at the time of and before their importation in this country they shall be converted to the Christian faith."[5] However, with the growing number of Christians beyond the colonizer population, the Christian faith quickly ceased to be the dividing line between colonizers and those they viewed as "others." After decades of mixture between colonizers and others, some Virginia colonists felt this "abominable mixture" threatened the colonial order. The colonial order, which at the arrival of the English was divided between colonizers and colonized and masters and slaves, now had an ambiguous middle population that tore holes in the boundaries supporting the exploitation of Native lands and the labor of the enslaved. In 1691, Virginia lawmakers attempted to mend these whittled boundaries by imposing a law that targeted intermarriage. The Virginia law stated:

> And for the prevention of that abominable mixture and spurious issue which hereafter may increase as well by Negroes, mulattoes and Indians intermarrying with English, or other white women, it is enacted the for the time to come, that whatsoever English or other white man or woman, bond or free, shall intermarry with a Negro, mulatto, or Indian man or woman, bond or free, he shall within three months be banished from this dominion forever.[6]

This law banning intermarriage between whites and non-whites attempted to use the separation of different categories of people to solidify the social hierarchy. Virginia legislators set a pattern that North Carolinians would follow as lawmakers in the colony became increasingly interested in strengthening the divide between whites and non-whites. The privileges of whiteness, which included membership in the colonizer group, would define the lines of separation between whites and non-whites for many decades to come. In theory, only whites could inherit the prizes of the

[5] June Purcell Guild, ed., *Black Laws of Virginia* (Richmond: Whittet and Shepperson, 1936), 46. "Moors" is repeated twice in this law in a contradictory manner.

[6] Guild, *Black Laws of Virginia*, 24.

colonial experiment. The children of non-whites, even if they were also the children of the colonizers, were bastardized by colonial law and seen as unfit to inherit the benefits of colonialism, many of which came at the expense of those illegitimate children's non-white forebears.

Twenty-four years after the passage of the Virginia act dealing with intermarriage, North Carolina followed suit by enacting a similar law, which imposed a fine on any "White man or Woman" who "shall Intermarry with any Negro, Mulatto or Indyan Man or Woman" and any "clergyman, Justice of the Peace or other person licensed to marry" who presided over such a marriage. In the same year, North Carolina also passed a law penalizing "any White women whether Bond or Free" who gave birth to an illegitimate child by a "Negro, Mulatto or Indyan."[7] This edict was directed at servant women, many of whom lived in close quarters to non-white men, and imposed an additional two years of service for white women who bore the illegitimate children of non-white men. The new law served as a powerful statement from the colonial elite to the most underprivileged segment of the colonizer group, poor white servant women. This legislation attempted to maintain the status quo, which allowed servants of all backgrounds to work together and live near one another for the benefit of their masters while simultaneously upholding the divide between colonizers (and the potential mothers of colonizers) and the colonized and enslaved. Colonial elites deemed white servant women as the social segment most likely to break the rules of the colonial order by birthing sons and daughters of slaves, who by the status of their mother, would be free and therefore could compete for a place in the colonial regime.

[7] Walter Clark, ed., *The State Records of North Carolina,* vol. 23 (Goldsboro: Nash Brothers, 1904), 62-66.

The laws of 1715 and those that followed them throughout the century theoretically transformed Native peoples, Africans, South Asians, and their descendants into a single group. The same legal process that Edmund Morgan discovered in Virginia took place in North Carolina.[8] The legal subjugation of non-white people helped to solidify the legal dominance of the colonizers or white people in the colonial and eventually United States experiment. Early laws labeled the blood of non-whites as a taint to whiteness, and later laws that prohibited non-whites from voting and imposed discriminatory taxes upon their families created literal inequality between whites and non-whites. The law provided lines of difference between whites and non-whites that biology and religion failed to produce. A white person was not simply a person with relatively pale skin and sharp features, for by the eighteenth century, many non-whites possessed those features as well. Instead a white person was someone with free access to inherit property from another white person for simply being a natural born heir. A white man was the only person who could legally marry a white woman without penalty. White women were the only women whose racial categorization was the sole determinant of their children's status as free. By defining whiteness, the law also helped to define the sociopolitical position of non-whites. Free Indians, mulattoes, and negroes were not entitled to the privileges of whiteness, nor were they bound by the laws and customs that attempted to control slaves. The colonial laws defined them as a middling group. Free Indians, mulattoes, and negroes would maintain this

[8] See Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton and Company, 1975), 386. Morgan argued that the "lumping "of "Indians, mulattoes, and Negroes in a single pariah class" allowed Virginians to lump all white "small and large planters in a single master class." Yet Virginians or North Carolinians grouping of non-white people into a single classification did not reflect a lack of diversity in class, reputation, and privilege among non-whites. As Theodore W. Allen noted, white Virginians, even after Bacon's Rebellion, continued to be divided by different class interests. The same divisions appeared among non-whites and had significant impacts on their daily social interactions. See Theodore W. Allen, *The Invention of the White Race: The Origin of Racial Oppression in Anglo-America* (New York: Verso, 1997), 253-256.

middling position throughout the colonial period. The law would attach this same middling position to the "free person of color" category in the post-Revolutionary era.

Transformations in slavery and servitude also helped to perpetuate a hardening of lines between whites and non-whites and a blurring of lines among people of Native, African, and South Asian descent. Across the colonies there are examples of people described as both "Indians" and "negroes" or "Indians" and "mulattoes."[9] Such was the case with Peter, who sued for his freedom in Hyde County court. In the court minutes from 1771, the clerk described Peter as "a Mollato [sic] or Indian."[10] In some instances, record keepers could not distinguish people of mixed ancestry from those with less ambiguous heritage. On other occasions, they may not have cared to make distinctions.

It also is possible that in the minds of some whites there was no real distinction between a "negro," "mulatto," or "Indian." In records of Virginia, there are examples of Indian servants and slaves being taxed as Indians in one year and taxed as Negroes in another. In a 1733 list of tithables, James, a servant in the house of Captain Nathaniel Tatem of Norfolk County, Virginia, is listed as "an Indian," but in the next year's list, James is among the "negroes" in the household.[11] Although this example is from Virginia, historians have demonstrated the significant influence Virginia had on the social and political development of North Carolina. A considerable number of North Carolina's free Indians, negroes, and mulattoes had their origins in

[9] For further discussion of this transformation in racial categorization, see Jack D. Forbes, *Black African and Native Americans: Color, Race and Caste in the Evolution of Red-Black Peoples* (New York: Basil Blackwell, 1988), 191-220; James H. Merrell, *The Indians' New World: Catawbas and the Neighbors from European Contact Through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989), 108-109; Ruth Wallis Herndon and Ella Wilcox Sekatu, "Colonizing the Children: Indian Youngsters in Servitude in Early Rhode Island" in *Reinterpreting New England Indians and the Colonial Experience* ed. Colin G. Calloway and Neal Salisbury (Boston: The Colonial Society of Massachusetts, 2003), 140.

[10] Hyde County County Court Minutes, Volume 3, September 1771, North Carolina State Archives.

[11] Elizabeth B. Wingo and W. Bruce Wingo, *Norfolk County, Virginia Tithables 1730-1750* (Berryville: Virginia Book Company, 1979), 89, 122.

Virginia. It is very possible that some of the "negroes" and "mulattoes" from this area were actually indigenous peoples and not people of African descent. Virginia's politics of racial categorization had already influenced many of colonizers who came into North Carolina from Virginia the time they arrived in North Carolina. The belief that Native peoples could be equated with Africans and their descendants would culminate with the development of the "free colored" category in the post-colonial era.[12]

The unwillingness of lawmakers and colonists to differentiate among "Indians," "negroes," and "mulattoes" led to creation of the category "free persons of color," but the question still remains: What processes took place to allow such a diverse of people to all fall into a middling position between white freedom and enslavement? The next part of this chapter will look at the multiple answers to this question. Manumission, freedom suits, birth from free mothers, and transformation of "Indians" into "colored" people played a role in the increasing number of North Carolinians living between white freedom and enslavement. All of these processes started in the colonial period and continued past the Revolution.

The historical records do not definitively show which of these processes produced the greatest growth in the free population of color. Some historians have suggested that manumission was the primary way free people of color acquired their freedom, but there is no concrete evidence for this assertion.[13] The lack of manumissions in colonial records in addition to the strict colonial law forbidding emancipated slaves from remaining in the colony suggest that most of those families that have origins in the colonial era did not acquire their free status through this

[12] For discussion of Virginia's influence on North Carolina, see William S. Powell, *North Carolina trough Four Centuries* (Chapel Hill: University of North Carolina Press, 1989), 55-70.

[13] John H. Russell, *The Free Negro in Virginia 1619-1865* (Baltimore: Johns Hopkins Press, 1913), 41; Berlin, *Slaves without Masters*, 15-50.

process. In several areas of antebellum North Carolina, the descendants of the colonial era free non-whites made up a significant portion if not the majority of the free non-whites in their localities. Such was the case Granville County, Hertford County, and Robeson County, which also were among the counties with the largest populations of free people of color by 1860.[14]

Descent from Free Women

An indeterminable number of families of color in antebellum North Carolina could trace their heritage back to a free white woman, free Native woman, or in a few cases a free woman of African or Asian descent. If manumission was not the most frequent way families obtained their freedom, descent from a free woman was the most likely way free families of color acquired their middling position. North Carolina law both sanctioned and discouraged the growth of a free non-white middling group descended from free women. Following the lead of Virginia, North Carolina law required that children follow the status of their mothers. If their mothers were free, then they too were free. At the same time, in cases where the children's mothers were white, North Carolina attempted to curb the growth of this population with fines if their parents chose to marry and prosecution for fornication and adultery if the parents were unmarried. Furthermore, bastardization of most children born to unmarried white mothers left white women victim to social stigmatizations that frowned upon unwed women with children. Still, white women did have non-white children, and by North Carolina law, those children were free.

Cases of white women giving birth to children deemed non-white commonly appear in the North Carolina county records. Oscar William Blacknall remembered that even during the late antebellum period "Hardly a neighborhood was free from low white women who married or

[14] *Population of the United States in 1860*, by Joseph C. G. Kennedy, Superintendent of Census (Washington: Government Printing Office, 1864), 350-353.

cohabited with free negroes."[15] Several families in Pasquotank County obtained their middling status in the colonial era as a result of their descent from a free white woman. In 1746, the Pasquotank County court apprenticed Delany, a "Mallato [sic] Girl," to James Burnham. The apprentice document explains that Delany's freedom was based on her descent from her mother, "Lydia Bright a White Weoman [sic] that was killed by a Tree that fell upon her."[16] Patience Griffen, "a molatto [sic] bastard child" born in 1754 and the daughter of Jamima Griffen, a "hired servant" to the wife of James Hodges, also was free because of her mother's classification as a white woman.[17]

Outside of these early examples from Pasquotank County, countless other free non-whites derived their freedom from white women ancestors. In Gates County the Rooks family, most of whose members were classified as "free people of color" in the antebellum period, appear to have wholly obtained their liberty as the descendants of several related white women. In 1794, the court bound out Jesse Rooks, the son of Edith Rooks, a white woman. The clerk of the court described as Jesse Rooks as "a Molatto [sic] Boy…about five years of age."[18] Later another county official described Barshaby Rooks, another member of this family, as "a molatto [sic] woman the daughter of a white woman."[19] Other examples of children owing their freedom to their white mothers can be found in other parts of North Carolina. During July 1799, Sarah Bennett submitted a statement to the Wayne County court attesting to the freedom of Isaac

[15] Dodge, "The Free Negro of North Carolina," 29.

[16] Pasquotank County Apprentice Bonds and Records, Box 1, Apprentice Bonds and Records B, North Carolina State Archives.

[17] Pasquotank County Apprentice Bonds and Records, Box 1, Apprentice Bonds and Records G, North Carolina State Archives.

[18] Gates County County Court Minutes, Volume 3, 221, North Carolina State Archives.

[19] Gates County Slave Records, Box 2, Non-Registration of Free Blacks 1818, North Carolina State Archives.

Edens. Bennett explained that she was "well acquainted with a woman by the name of Ann Edens and the said Ann Edens was Delivered of a black child who is now Isaac Edens" and declared that "Isaac Edens was Free born as his mother was a White woman."[20] The Rookses and Isaac Edens were among countless non-white children born to white mother from the colonial period to the Civil War. Direct descent from a white woman was the most legally defensible claim to liberty for non-whites. In North Carolina, there were no enslaved white women, and no child of a white woman could be a slave.

Still, sometimes masters challenged the freedom of non-white children born to white mothers, and attempted to hold free children in bondage. Cases of masters keeping free non-white children as slaves or beyond the periods of apprenticeship were not uncommon in North Carolina both before and after the Revolution. In 1788, Joel Brown attempted to claim Elizabeth "Bess" Tootle, a "mulatto," and her children as his slaves. Countering Brown's claim were many of Tootle's former neighbors who knew of her free status. Susannah Grover testified in a deposition that she was familiar with the origins of Tootle. She explained that Tootle was the daughter of Dorcas Letchworth, a white woman, and a slave of Dorcas's father, Sesar. Dorcas's husband, Absolem Tootle, had forced Dorcas to give up her child and leave Bertie County for the Tar River region so the baby would "not be any stain to his children's carricter [sic]." Other deponents explained that Elizabeth Tootle eventually had ended up with the family of Dr. Seay in Bertie County. Henry Abbott, who lived with Dr. Seay, at the time of Elizabeth Tootle's arrival, recalled that Dr. Seay "purchased" Bess. However, Abbott recalled that Dr. Seay and his wife were "convinced" that Bess was "free born," and the doctor returned to Tootle's seller in order to be refunded for the purchase. Since Dr. Seay's death, Elizabeth Tootle's neighbors all

[20] Deposition Sarah Bennett, Wayne County Records of Slaves and Free Persons of Color, Box 4, Deposition of Sarah Bennett re: Isaac Edins, free born son of Ann Edins 1799, North Carolina State Archives.

recognized her as free, but Brown wanted to claim Tootle under the technicality that Dr. Seay was refunded for the purchase of Tootle. He asserted that Tootle was actually his slave even though she had lived with Dr. Seay from time she was a small girl into her adulthood.[21] Only local knowledge of descent from a white woman protected Elizabeth Tootle from a system designed to keep most non-whites in subjection.[22]

Proving descent from a white woman through the maternal line was only one way free people of color attested to their freedom. Some non-white people derived their liberty from an "Indian" mother or grandmother. These cases appear less often in the county records than those of children born to white mothers. One problem in tracking these cases is that the definition of free person of color included Indians, and therefore Native or South Asian ancestry is not specifically referenced in documents describing free people of Native or South Asian descent. A few references to "Indian" women as mothers to free children exist from the last areas of eastern North Carolina where some indigenous people continued to be regularly categorized as "Indians." In 1804, Hyde County officials bound Jordan Longtom the son of "Polly alias Mary Longtom an Indian woman" and "a negro."[23] Ten years before Longtom's apprenticeship, Gates County officials gave Joseph Bennett and George Bennett certificates attesting to their freedom. The Bennetts apparently planned to travel into Virginia in search of work, and left these certificates in the hands of officials in Norfolk County, Virginia. The certificates stated that each of the Bennetts' "mother was an Injen [sic] and a free woman."[24] At some point, George Bennett

[21] Bertie County Slave Records, Box 6, Slave Papers 1787-1790, North Carolina State Archives.

[22] Similar situations also occurred in Virginia. See J. Douglas Deal, *Race and Class in Colonial Virginia: Indians, Englishmen, and Africans on the Eastern Shore during the Seventeenth Century* (New York: Garland Publishing, 1993), 399-403.

[23] Hyde County Apprentice Bonds and Records, Box 1, 1771-1811, North Carolina State Archives.

[24] Norfolk County Free Negro and Slave Records, 1718-1862, Library of Virginia.

returned to Gates County, and the census taker enumerated him as a "free colored" person in several census records.[25] Other free persons of color likely had similar connections to "Indian" women as Longtom and the Bennetts; however, the documentation does not exist to support it.

Memories of ancestral connections to "Indian" women were often the only evidence some families could muster in defense of or in order to explain their liberty. Such was the case of the Simmons family in Wayne County. During her childhood, William Burnham brought Feraby Simmons from Bertie County to Wayne County, and held her as an apprentice. Burnham had acquired Simmons after the death of her father during the Revolution. Simmons's mother could not support Feraby or the rest of her children, and decided to bind out her children to masters who could raise them. In 1853, when Simmons was about 80 or 90 years old, her family attempted to document her freedom and heritage. In a letter dictated by Feraby Simmons's son, Calvin Simmons, Calvin explained the heritage of his family. He stated that Feraby's parents were Jim Simmons and Sally Simmons, and explained that "Sally Simmons was probably part Indian. Jim Simmons was nearly black or quite."[26]

"Indian" ancestry most often appears in the historical record documenting freedom suits. On several occasions, non-whites held as slaves sued for their freedom based on their descent from an "Indian" woman. In 1782, "Limeric a mullato [sic] man held in Slavery by Samuel Cotten" petitioned the justices of Edgecombe County for his freedom. In his petition, Limeric declared that his mother was "an Indian woman and free" and that by his mother's status he was "entitled to a Liberation from servitude."[27] In a similar petition from the 1780s, Jenny Ash, "a

[25] 1810 United States Federal Census, Gates County, North Carolina.

[26] Letter, Bertie County Slave Records, Box 8, Slave Papers 1851-1855, North Carolina State Archives.

[27] Petition of Limeric, Edgecombe County Slave Records, Box 4, Slave Papers 1780-1788, North Carolina State Archives.

mulatto woman," asked the justices of the Bertie County court to grant freedom to her children and herself. Jenny declared that she was the daughter of Nanney Ash, "an Indian and Free born" and that James Gardner was holding both herself and her children in slavery under the threat of sending them out of the state.[28] In both the case of Limeric and that of Jenny Ash, the petitioners specified that their mothers were "free" in order to counter any claims that their mothers were legitimately enslaved.[29]

During the colonial and early national periods, the term "Indian" was not limited to indigenous Americans. People in colonial America also applied this term to people from Asia and the Indian Ocean region. Some free people of color could trace their ancestry back to these "East Indians," as persons from South Asia were called in the British colonial empire. The Dove family of Craven County obtained their freedom by proving their matrilineal descent from an "East Indian" woman. During the 1740s, Mary Dove pursued a case against Leonard Thomas for her freedom and that of her children. She claimed that her grandmother was an "East Indian" woman and free. With the help of William Smith of Craven County and the testimony of Alexander Sands alias "Indian Sawony," the son of an "East Indian" woman, Mary Dove and her children secured their freedom. Ann Ridgely of Anne Arundel County, Maryland, many years after the case dictated a history of the Dove family in order to support the case of William Dowry, a grandson of Mary Dove, who remained in slavery into the 1790s. Ridgely's deposition explained that "The Grand Mother of Mary Dove was a yellow woman and had long black hair, but this deponent doth not know whether she was reputed to be an East Indian or a

[28] Petition of Jenny Ash, Bertie County Slave Records, Box 6, Slave Papers 1781-1786, North Carolina State Archives.

[29] For further discussion of enslaved people seeking freedom through Indian ancestors, see Peter Wallenstein, "Indian Foremothers: Race: Sex, Slavery, and Freedom in Early Virginia," in *The Devil's Lane: Sex and Race in the Early South* ed. Catherine Clinton and Michele Gillespie (New York: Oxford University Press, 1997), 57-73.

Madagascarian, but she has understood that she was called in the family Malaga Moll, her name being Mary."[30]

Malaga Moll was probably one of many people from the Indian Ocean region brought to the British Colonies during the colonial period. From the late seventeenth century into the eighteenth century, people from the Indian subcontinent became important parts of the developing British Empire. Many of them became servants in British households or sailors on transoceanic voyages.[31] The Dove case demonstrates that some masters attempted to blur the lines between servants and slaves, and hold South Asian servants and their American-born descendants in slavery. However, the judgment of the court suggests that colonial Americans assumed that South Asians were free people by birth and their descendants, if descended from a South Asian woman through the mother's line, were also free.

The very limited discussion of South Asians in the historical record makes it impossible to determine the extent of their role in the growth of the free population of color. There are no good estimates of the number of South Asians present in British colonial America at any time. The South Asian ancestors of free people of color are likely invisible for many of the same reasons that there is limited discussion of Native peoples in connection to the free population of color. South Asians, if denoted in the records, are often categorized as "East Indians," "East Indy Indians," or simply "Indians." "Indian" of course was a term used to categorize indigenous Americans as well as South Asians. As explained earlier, colonial officials, and later state

[30] Craven County Slaves and Free Negroes, Box 10, Petition for freedom in the General Court, Maryland, Willliam Dowrey vs. Francis Thomas 1793, North Carolina State Archives.

[31] Michael H. Fisher, *Counterflows to Colonialism: Indian Travellers and Settlers in Britain 1600-1857* (Delhi: Permanent Black, 2004), 20-102; Michael H. Fisher, Shompa Lahiri, and Shinder Thandi, *A South-Asian History of Britain: Four Centuries of Peoples from the Indian Sub-Continent* (Oxford: Greenwood World Publishing, 2007), 1-21.

officials often conflated people once described as "Indian" with others understood by colonial society as being non-white. In some instances, the British categorized South Asians as "blacks."[32] Some people of South Asian descent, like the Dove family, were of mixed ancestry and may have had Native, African, or European ancestors. Colonial officials may have described these people, like others of mixed heritage, with ambiguous terms such as "mulatto" or "negro." A researcher would find difficulty discerning whether a person of mixed ancestry had South Asian heritage.

A few free people of color likely obtained their free status as descendants of free women of African descent; however, the historical record does not provide any concrete examples for North Carolina. T. H. Breen and Stephen Innes investigated the freedom of several families with African foremothers during the seventeenth century in Virginia.[33] It is possible that some free people of color in North Carolina descended from African women who gained their liberty before the solidification of the slave system in the British colonies during the mid-seventeenth century. Other families may have traced their descent to an African woman manumitted before the North Carolina law required emancipated slaves to leave the colony.

More than likely, the vast majority of free non-whites in colonial North Carolina descended from a free non-African woman. The growing number of manumissions after the Revolution probably provided the first significant number of free non-whites who could trace their freedom to a forebear with matrilineal descent from an African woman. However, it is difficult to determine the extent to which African matrilineal lines propagated the free non-white

[32] Folarin Shyllon, *Black People in Britain 1555-1833* (London: Oxford University Press, 1977), 122-124; Roxann Wheeler, *The Complexion of Race: Categories of Difference in Eighteenth-Century British Culture* (Philadelphia: University of Pennsylvania Press, 2000), 160-161.

[33] See T. H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640-1676* (New York: Oxford University Press, 1980).

population in the post-colonial era. Some emancipated slaves may have been the matrilineal descendants of enslaved Native women.

From Indians to Colored People

A portion of the free population of color was composed of "Indians" and their descendants. Several examples of people claiming their freedom from a matrilineal line going back to a Native woman have already been discussed in this chapter. Yet another related social phenomenon took place beside the growth of free people of color descended from Native women. This phenomenon was the transformation of Native peoples in the eyes of their white neighbors from "Indians" to "negroes," "mulattoes," and "colored persons." From the colonial period into the early national era, whites began a slow process of reclassifying Native peoples from "Indians" into ambiguous non-white others, thereby eliminating the legal distinctions between a diversity of Native peoples and other non-whites. From their arrival in the Americas, colonists bound Native peoples to certain areas of land just as they associated their neighbors in Europe to certain territories. The earliest maps of North Carolina show territorial boundaries for each Native nation that inhabited a particular area. From this point on, the colonists would associate particular land masses with particular Native people. However, colonization itself threatened to destroy the colonizers' system of organizing Native people. Through the seventeenth and eighteenth century, the colonizers appropriated thousands of acres of Native land for their own use and thus pushed Native people off the lands these colonists had used to define the different Native groups. Native peoples no longer fit definitions of "Indian" created during the earliest days of colonization as Native peoples' life ways changed from those observed by the earliest colonists, and the lands once controlled by Native people transferred to

the hands of whites.[34] In the eyes of some whites, these Native peoples were no longer "Indians" but simply "colored people."

Along with changes in life ways and land ownership, North Carolina law and later federal law discouraged local officials from continuing to count Native peoples as "Indians" in certain areas of the state. North Carolina and federal law gave Indians certain protections unavailable to other people. During the colonial period, North Carolina required official approval of all land sales between Indians and colonists in order to prevent the colonists from acquiring Indian lands through unscrupulous means. With the ratification of the United States constitution, the federal government forced North Carolina and its inhabitants to rescind all rights to deal with Indians, and prohibited land purchases without the federal government's involvement.[35] Federal law created problems for local officials who did not want this law to interfere with the way they dealt with Native peoples. The neighbors of Native people also likely detested the tax exempt status of Indians since many of their Native neighbors lived in a manner very similar to their non-Native neighbors. They owned farms, spoke English, and participated in the market economy. Tax-free status potentially gave "Indians" surround by non-Natives a special privilege in a society designed to promote white domination.

There is also a possibility that at least a few Native people did not want to be classified as Indians and went along with attempts to categorize themselves under more ambiguous terms. In the colonial context, "Indian" had many negative connotations associated with it, including savagery and primitivism. "Indians" in the colonial context were situated as social and political outsiders in opposition to the colonizers. "Negroes," "mulattoes," and "colored people" were not

[34] For further discussion of "Indian" as a social construction, see Alexandra Harmon, *Indians in the Making: Ethnic Relations and Indian Identities around Puget Sound* (Berkley: University of California Press, 1998).

[35] Clark, *The State Records of North Carolina*, vol. 23, 62-66.

equal to whites in the colonial and early national context, but they were not outsiders. Evidence suggests most people accepted that if these non-whites were free, they were entitled to liberties associated with that freedom, including citizenship. Native people living as a part of the surrounding society may have actually benefited from not being categorized as Indians. In the contexts of colonial and early national North Carolina, being indigenous was not necessarily equivalent to being an "Indian." The idea of an "Indian" in the colonial context was an invention of the colonizers, and the presence of indigenous Americans preceded its invention. The Native life ways that played such an important part in the colonizers' definition of "Indian" were not fully understood by the colonizers when creating the "Indian" concept.[36]

The historical record provides a few examples of the reclassification of Native peoples from "Indian" to others.[37] The Chowans, Mattamuskeets, and Tuscaroras all went through processes that convinced local officials to reclassify them. These processes generally included the dissolution of their reservations in eastern North Carolina and changes in their life ways including the incorporation of European-colonial methods of farming into Native agricultural practices. Many other Native peoples in North Carolina likely went through similar processes during the colonial period but have stories that are less well documented than those of Chowans, Mattamuskeets, and Tuscaroras. The number of Native people who eventually became classified as "colored" is not clear, but these examples counter the arguments of some historians who are

[36] Robert F. Berkhofer, Jr., *The White Man's Indian: Images of the American Indian from Columbus to the Present* (New York: Alfred A. Knopf, 1978); James Axtell, *The European and the Indian: Essays in the Ethnohistory of Colonial North America* (New York: Oxford University Press, 1981), 39-86.

[37] For other studies discussing the reclassification of specific indigenous population from Indians to racial others, see Helen C. Rountree and Thomas E. Davidson, *Eastern Shore Indians of Virginia and Maryland* (Charlottesville: University of Virginia Press, 1997); Daniel R. Mandell, *Tribe, Race, History: Native Americans in Southern New England, 1780-1880* (Baltimore: Johns Hopkins University Press, 2008).

not persuaded by the countless stories of Native heritage given by free people of color and their descendants.[38]

By the end of the Tuscarora War in 1715, the outcomes of a series of conflicts between Native peoples and colonists had largely determined the situations of the Chowans, Mattamuskeets, and Tuscarora of eastern North Carolina.[39] In 1677, the colonists forced the Chowans to cede all of their lands in exchange for a twelve-square-mile reservation on Bennett's Creek after the colonists defeated the Chowans in a two-year war. The colonists created the Mattamuskeet and Tuscarora reservations after the defeat of the southern portion of the Tuscarora and their allies. The creation of these reservations represented the first large scale efforts to gain Native lands in North Carolina under European rules of war. The creation of the reservations was the colonists' attempt to control Native access to land and the resources provided by that land.[40]

On the reservations, Native peoples raised crops and livestock like many of their colonist neighbors. By the 1710s, the Chowans raised hogs, kept horses, grew corn, and maintained fruit orchards.[41] They used fences to protect their claims. The Mattamuskeets appear to have also kept orchards and gardens. John Brickell reported that both the Chowan leader, Thomas Hiter, and Tuscarora leader, Thomas Blount, were familiar with English ways including language and dress. Both men lived in dwellings in the style of their colonist neighbors. [42]

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[38] For argument against free people of color's claims to Native ancestry, see Berlin, *Slaves without Masters,* 164.

[39] For further discussion on the Tuscarora War, see David La Vere, *The Tuscarora War: Indians, Settlers, and the Fight for the Carolina Colonies* (Chapel Hill: University of North Carolina Press, 2013).

[40] Douglas L. Rights, *The American Indian in North Carolina* (Durham: Duke University Press, 1947), 31-34, 58.

[41] William Saunders, ed., *The Colonial Records of North Carolina,* vol. 2 (Raleigh: P. M. Hale, 1886), 140-141.

[42] John Brickell, *The Natural History of North-Carolina,* ed. J. Bryan Grimes (Raleigh: Trustees of the Public Library, 1911), 282-291.

These Native peoples probably adopted some of the life ways of their neighbors for both practical and political reasons. Raising livestock would have been important for Native peoples who no longer had access to the large areas of territory for hunting. Under the constant threat of land theft, the Native peoples possibly used fences to signal their understanding of European customs and show their neighbors that they intended to protect the boundaries of their limited land holds. Knowledge of English was imperative for Natives living near the colonists for several reasons. English was important in negotiations with colonist neighbors, including trade deals and filing grievances to the colonial administration. Understanding English also demonstrated Native peoples' ability to operate successfully within a foreign system. Dress played a similar role by further indicating a familiarity with the English ways. The Native peoples likely understood that certain manners of dress translated into a symbolic language of respectability. People who adorned themselves with certain types of clothes garnered a specific level of respect from their neighbors based on their dress. By adopting certain non-Native ways, the Chowans, Mattamuskeets, Tuscarora, and other Native people distinguished themselves from their predecessors. These distinctions had currency in the minds of colonial spectators. They viewed these adaptations as gradual steps by Native people that made recent generations a little less "Indian" than their predecessors.[43]

Native adaptations to European ways did not fully protect them from the greed of their neighbors looking to expand their land holds. Neighbors of the Chowans, Mattamuskeets, and Tuscaroras both convinced and forced Native leaders to cede track after track. The Mattamuskeets had lost all of their reservation by the 1760s. Late in the eighteenth century,

[43] For further discussion on Native people's adaptations and colonists' response to those changes in life ways, see James H. Merrell, *The Indians' New World: Catawbas and Their Neighbors from European Contact through the Era of Removal* (Chapel Hill: University of North Carolina Press, 1989).

many Tuscaroras left the Indian Woods reservation to join their Iroquois brethren in New York. Representatives of the New York faction of Tuscaroras sold off the last piece of the Indian Woods reservation in Bertie County in the early nineteenth century. In 1791, the Chowans sold the remaining piece of the Bennett's Creek reservation, and 30 years later, their last piece of communally-held land was broken up by Gates County officials. [44] At least one historian believed that these lands sales represented the extinction of the Chowans, Mattamuskeets, and Tuscarora in North Carolina, for soon after these lands sales, "Indians" ceased to appear in the official county records.[45]

However, the Chowans, Mattamuskeets, and Tuscarora remained in North Carolina. Government officials had simply re-categorized them. In Gates County, Chowans appeared in court minutes and deeds as "Indians" during the 1770s and 1780s. However, by the first census in 1790, these "Indians" had become "free others" and later "free colored persons."[46] For example, in a 1782 deed, the county clerk described James, Benjamin, Patience, Sarah, Nancy, Elizabeth, Darkes, and Christian Robbins as "Indians."[47] Yet in the 1800 census James, Sarah, and Darkes Robbins were listed as heads of households of "other free persons" in contrast to "white persons."[48] Record keepers categorized the descendants of the Mattamuskeets, who had intermarried with both people of European and African descent, in nineteenth century records as

[44] Patrick H. Garrow, *The Mattamuskeet Documents: A Study in Social History* (Raleigh: Division of Archives and History, 1995); Hyde County Record of Deeds, Volume A, 793-796, North Carolina State Archives; Rights, *The American Indian in North Carolina*, 59-60; Gates County Record of Deeds, Volume 2, 275, North Carolina State Archives; Gates County Record of Deeds, Volume 11, 40-44, North Carolina State Archives.

[45] Powell, *North Carolina through Four Centuries*, 22.

[46] 1790 United States Federal Census, Gates County, North Carolina.

[47] Gates County Record of Deeds, Volume A2, 33, North Carolina State Archives.

[48] 1800 United States Federal Census, Gates County, North Carolina.

"mulattoes" and "free persons of color." The Tuscaroras who remained near the Indian Woods reservation also appear to have faced a similar reclassification. Throughout the late seventeenth and early eighteenth century, the courts bound out several children, categorized as "mulattoes" in the county records, with the surnames Wiggins and Pugh.[49] These two surnames appear among the signers of the land sales between the Tuscarora and the colonists. In all of these cases, there is no evidence that any emancipated slaves took the same surnames as the Native peoples.[50]

Without central governmental organizations recognized by whites and no communally held territory, white officials no longer regarded the Native peoples in their midst as "Indians." The non-Native inhabitants of Gates, Bertie, and Hyde counties did not believe that their Native neighbors fit the "Indian" stereotype that their colonist forefathers devised in the fifteenth and sixteenth centuries. Many whites believed Indians were incapable of change, and those people who changed with time certainly could not be Indians.[51] White North Carolinians no longer perceived the Native peoples of Gates, Bertie, and Hyde counties along with others who had lost their communal lands and possibly the familial alliances years earlier as social outsiders or foreigners. Instead, they perceived these Native peoples as insiders in their political and social order. Of course being an insider in a society does not equate to being equal among all citizens. Like other free non-whites, Native people categorized as "colored" had the privileges attached to a middling status. Unlike slaves, they could own private property, exercise many civil rights, and live without a master. However, local officials shift in categorization did not reflect a personal

[49] See Bertie County Apprentice Indentures, Box 1, North Carolina State Archives.

[50] For a broad account of Tuscarora history, see Anthony F. C. Wallace, *Tuscarora: A History* (Albany: State University of New York Press, 2012).

[51] For further discussion of non-Native peoples view of Indians as permanently pre-modern, see Jean M. O'Brien, *Firsting and Lasting: Writing Indians Out of Existence in New England* (Minneapolis: University of Minnesota Press, 2010).

disassociation by people now labeled "colored" from their indigenous past. Many indigenous and non-indigenous people alike continued to remember the connections of certain people of color to their "Indian" ancestors.

Manumission

The growth of slave manumission accompanied the process of transforming Native peoples from "Indians" to "colored people." From the Revolutionary era onward, manumission was one of the most important methods in which former slaves became part of North Carolina's middling sociopolitical group. During the colonial period, masters could emancipate their slaves; however, a law passed in 1715 that required former slaves remove from the colony after their emancipations under the threat of re-enslavement if they did not follow through. A 1741 law reiterated this provision and also limited manumissions to slaves who completed some sort "meritorious service." If North Carolinians followed these rules, it seems unlikely that many former slaves joined the free non-white group before the Revolution. After American Independence, a 1777 act still required "meritorious service" for all acts of emancipation but did not demand the removal of emancipated persons.[52] This law likely was the catalyst for the numerous emancipations that took place in the few decades after the Revolution.

Legislators failed to define "meritorious service," and this omission led to emancipations taking place for numerous reasons. "Meritorious service," included lifelong service to a master, participation in the American Revolution, or caring for a sickly master. Kinship to a master or descent from a faithful enslaved person required an even broader interpretation of the law, but the liberal attitude that spanned the fledgling country led to loose enforcement of the

[52] Clark, *The State Records of North Carolina*, vol. 23, 65, 203; Walter Clark, ed., *The State Records of North Carolina*, vol. 24 (Goldsboro: Nash Brothers, 1906), 14.

manumission law. Many of the northern states designed plans to emancipate their entire enslaved populations. Southern states, such as Virginia and Maryland, allowed a great deal of flexibility in the enforcement of manumission laws after the Revolution, and by the antebellum period, these states would be the only two states south of the Mason-Dixon line with more free non-whites than North Carolina. Some Americans in the post-Revolutionary era questioned whether any person should be enslaved in a nation that that made the phrase "all men are created equal" its creed. Some North Carolinians took advantage of this era of independence in order to secure the freedom of friends, loved ones, and in some cases, themselves.[53]

After the Revolution, an unknown number of enslaved people gained their freedom through emancipation granted for "meritorious service." One form of meritorious service recognized by officials across North Carolina was service in the American Revolution. In 1784, the state legislature passed a bill granting freedom to Ned Griffin, the slave of William Kitchen of Edgecombe County, as a reward for his service in the Continental Army during the American Revolution. Jack, who was also a slave during the Revolution, obtained his liberty in 1792 based on his service. Jack's former master recalled that Jack single-handedly took prisoner the whole crew of a British privateer, and in the process, released his master and others who were imprisoned on an enemy cruiser.[54] In a slightly different case, George Merrick of New Hanover County asked that General Assembly to grant freedom to his slaves Richard, Dolly, and Nathan. In his 1791 petition, Merrick explained to the Assembly that during the American Revolution

[53] Historians have debated the degree to which Revolutionary ideology drove post-Revolution manumissions. Gary Nash argued that Revolutionary ideology drove the increase in manumissions while Eva Sheppard Wolf's more recent work suggest that the personal agendas of the enslaved and their masters typically drove the emancipation process. See Gary B. Nash, *Race and Revolution* (Madison: Madison House, 1990); Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: Louisiana State University Press, 2006).

[54] Petition of Samuel Jasper, General Assembly Session Records, November 1792-January 1793, Box 3, Petitions (Emancipation), North Carolina State Archives.

Richard and Dolly were instrumental in preventing many of Merrick's slaves from deserting to the British. Taking this explanation into account, the General Assembly passed a bill to free Merrick's bondspeople.[55]

Other former slaves gained their freedom through more quotidian service to their masters and communities. In February 1797, 12 petitioners from Perquimans County asked the county court to liberate Phillis on the grounds of her service as "a Midwife and Doctress," and the court granted their request.[56] Delia gained her liberty after her former master petitioned the Craven County Court for her removal from bondage. In his 1791 petition, Samuel Street explained that he was "the owner of a negro woman slave called Delia aged about forty" and wished to free her on the grounds that she "acted as a faithful & attentive nurse to his oldest son & that from her breast his infancy was supported."[57] Mingo, an enslaved Baptist preacher, gained his freedom with the support of his master and congregation. In 1822, Jesse Person, Esq., Mingo's master, asked the Franklin County Court to emancipate Mingo for his meritorious service as a preacher to a congregation in Louisburg. He explained that at the death of Mingo's former master, Captain William Green, he, Mingo, and the members of his congregation, pooled their money for Mingo's purchase.[58] The cases of Phillis, Delia, and Mingo demonstrate the significance of close relations with whites in the emancipation of some slaves. Most slaves probably performed some sort of "meritorious service" during the course of their lives, but freedom required that masters

[55] Petition of George Merrick, General Assembly Session Records, December 1791-January 1792, Box 3, Petitions (Miscellaneous), North Carolina State Archives.

[56] Petition of James Sumner et al, Perquimans County Slave Records, Box 2, Slave Papers-Petitions for Emancipation 1776-1825, North Carolina State Archives.

[57] Petition of Samuel Street, Craven County Slaves and Free Negroes, Box 10, 1822-1829, North Carolina State Archives.

[58] Petition of Jesse Person, Franklin County Miscellaneous Records, Box 7, Slaves – No Date, 1787, 1818-1861, North Carolina State Archives.

and members of the community believe that those services translated into the basis for liberty. "Meritorious service" appears to have been a legal concept that gave the appearance of creating a restricted system of emancipation while still giving masters privilege to do as they wished with their human chattel.

Some slaves obtained their freedom through agreements with their masters to purchase their liberty. In 1812, Jim Williams's master, Augustus Cabarrus, petitioned the Chowan County court on Williams's behalf for his liberty. Cabarrus explained to the court that Williams was "an orderly, well behaved fellow, that he has paid your petitioner his full value, and for his meritorious services" Cabarrus desired to set Williams free. After liberating Williams, Cabarrus and two others posted a bond certifying that Williams would not become a charge to the county.[59] Molly Horniblow, also of Chowan County, gained her liberty through a similar arrangement. Hannah Pritchet, the sister of Horniblow's mistress, purchased Horniblow at her sister's estate sale. After purchasing Molly, Pritchet petitioned the court and secured Horniblow's freedom. In exchange for securing her liberty, Pritchet required Horniblow to pay back the cost of her purchase.[60] Enslaved people whose masters allowed them to purchase their freedom were fortunate. The earnings of slaves legally belonged to their masters, and the law did not require masters to share any wages with slaves. Slaves who purchased their own liberty usually had to be very industrious and skilled in order to raise the funds for self-purchase. Enslaved people also had to have the appropriate social skills to build strong trusting relationships with their masters. They had to be able to persuade their masters that they deserved

[59] Petition of Augustus Cabarrus, Chowan County Miscellaneous Slave Records, Box 33, Petition for Emancipation, North Carolina State Archives.

[60] Petition of Hannah Pritchet, Chowan County Miscellaneous Slave Records, Box 33, Petition for Emancipation 1828, North Carolina State Archives. Also see Harriett Jacobs, *Incidents in the Life of a Slave Girl* for a more detailed account of the arrangement between Horniblow and Pritchet.

privileges beyond the limitations imposed on them by a slave system that implied that slaves existed for the sole benefit of their masters.

An undetermined number of slaves gained free status by the efforts of their families. Amelia Green of Craven County, a free woman of color, worked diligently to purchase and then emancipate several of her daughters. Between 1795 and 1806, some of Green's descendants gained their liberty through the efforts of her family. First Amelia purchased her daughter Princess Green from Isabella Chapman of New Hanover County and her daughter Nancy Handy from William Howe. She then successfully petitioned the county court for the liberty of both daughters. Princess's liberty was premised on being "a good girl, a good daughter" that "possesses mild and peacefull [sic] disposition and industrious habits."[61] After Amelia purchased Nancy, Nancy saved up enough money to purchase and emancipate her daughters Louisa and Betsy. By 1806, Amelia and Nancy had accumulated sufficient funds to purchase and emancipate Amelia's daughter, Harriett Green.[62]

Other free persons of color worked and saved in order to liberate their family members. During the 1810s, Robert Lisbon of Craven County, a free man of color, labored to emancipate his two daughters Myrtilla and Evelina. In 1813, Lisbon submitted a petition to the county court supported by twelve of his neighbors for the liberation of his daughter Myrtilla based on her "industrious, honest & sober" behavior.[63] Three years later, he asked the court to support his

[61] Petition of Amelia Green, Craven County Slaves and Free Negroes, Box 10, 1795-1799, North Carolina State Archives.

[62] Petition of Amelia Green and Nancy Handy, Craven County Slaves and Free Negroes, Box 10, 1800-1809, North Carolina State Archives.

[63] Petition of Robert Lisbon 1812, Craven County Slaves and Free Negroes, Box 10, 1810-1819, North Carolina State Archives.

desire to liberate Evelina, and the court granted his request.[64] Another similar situation involved the family of Bill Friday. During the April 1830 term of Lincoln County Superior Court, Bill Friday, a free man of color, submitted a petition to emancipate his wife Sally of approximately twenty-seven years. Friday told the court that he and Sally had eleven children together, and described Sally as "a woman of good character" who had performed "meritorious services." The Lincoln County court allowed Friday to emancipate Sally. Friday along with two other men posted bond assuring that Sally would never become "a charge to the county."[65]

Some slaves gained their liberty by the efforts of white family members. In 1798, Ann G. Daly petitioned the Craven County Court on behalf of her deceased brother, John Daly. She explained to the Court that she was in possession of "a certain female mullattoe [sic] slave named Mary about the age of twenty years" and that "Mary has always been reputed to be the child of the said John Daly decd, and in that light treated & regarded by the said John in his life time." She testified that her brother stated repeatedly that he desired that Mary receive her freedom. On these grounds, Daly requested that the court give Mary her liberty, and the court granted her application. Other free people of color received their liberty through the same means. However, these cases are often difficult to document because most applications by white family members rarely stated the relationship between the emancipated person and the former master or mistress.

Petitions for emancipation also cite the fair complexions of particular slaves as grounds for emancipation. Although meritorious service was a requisite according to law, it appears

[64] Petition of Robert Lisbon 1816, Craven County Slaves and Free Negroes, Box 10, 1810-1819, North Carolina State Archives.

[65] Petition of Bill Friday, Lincoln County Miscellaneous Records, Box 7, Emancipation of Slaves 1801-1830, North Carolina State Archives.

lawmakers occasionally accepted white appearance as grounds for liberation. Stephen L. Ferrand asked the Craven County Court to liberate his slave woman Caroline on the grounds she "hath conducted herself with a propriety and decency" and "that she has been brought up in virtuous habits [and] is scarcely distinguishable from a white person in complexion." The county court granted Ferrand's request, and Caroline was liberated under the name "Caroline Lane."[66] Other petitions and wills used similar language to request the freedom of slaves with light complexions. The petitions did not always succeed, but some slave owners hoped that the physical features of their slaves might sway the sympathies of officials towards their cases. The European ancestry of some slaves was problematic for the slave system on several fronts. Physical difference was supposed to serve as a barrier, but when an observer could not tell that a person was not white, fissures threatened in the whole racial hierarchy. Secondly, the laws of North Carolina and several other states provided legal whiteness to people of mixed ancestry with limited numbers of distant non-white forebears. However, under the American system of slavery, any person born to a slave mother, no matter how many white ancestors he or she had, still remained a slave. Therefore, theoretically there were enslaved people who, if emancipated, could go directly from slavery to whiteness.

Conclusion

This chapter has covered both the diversity of ancestries among free people of color and the various ways people from different social positions fell into the free non-white category. The examples in this chapter demonstrate that the origins of free people of color go beyond the African roots traditionally ascribed by past scholarship. African, European, Native, and South

[66] Petition of Stephen L. Ferrand, Craven County Slaves and Free Negroes, Box 10, Petitions to emancipate slaves, petitions for freedom and bonds for emancipated slaves 1822-1829, North Carolina State Archives.

Asian roots all have a place in the genesis of North Carolina's free population of color. Nineteenth-century North Carolinians recognized this diversity of origins, but somehow more recent generations failed to recognize it. Perhaps changing definitions of "colored" and "Negro" in the more recent context explain part of the problem. In the twentieth century, arguably most of the people who used terms like "colored" and "Negro" as personal descriptors in the twentieth century accepted that they had some African heritage. With the rise of Jim Crow segregation, many of those people believed that this African heritage bound them together and therefore shaped their understanding of African heritage as a link among all colored people.

Further complicating the question of ancestral origins are the overlapping processes by which people became part of the free colored category. During the colonial period, the free population of color developed as a result of several social shifts. Historians have long acknowledged the role of manumission and births from free mothers as sources of the free non-white population. However, this chapter has gone beyond previous studies of free people of color in North Carolina by emphasizing the important role Native peoples, Asians, and their descendants played in these processes. Furthermore, this chapter has included the systematic re-categorization of "Indians" into "free people of color" in the list of processes that produced the middling free non-white group. This chapter is not attempting to argue that Native people were of greater importance than people of African descent in the growth of the free population of color since historians have produced no evidence to support such an assertion. Yet the cases discussed in this chapter suggest that historians will need to reevaluate their conclusions about the disappearance of Native people east of the Appalachian Mountains. Scholars cannot assume that all Native people or their descendants will appear in the source materials as "Indians." In the same light, scholars should not be so comfortable ascribing African descent to all free people of

color, and later chapters will provide basis to question the upstreaming of present-day terminology on people of the past. Scholars cannot assume that pre-Civil War racial categories are accurate markers of ancestry. They have been too quick to replace the historically specific terms "Negro" or "colored" with "African American." As this chapter has demonstrated, not all colored people were of African ancestry, and not all people of African descent were "colored."

The findings in this chapter also should cause scholars to think more critically about the diversity of life ways employed by various free persons of color in the post-Revolutionary era. The values and manners of Native, African, European, and South Asian ancestors all had a part in the ways free people of color saw themselves within their localities and in the larger world. Free people of color came from long legacies of cross-cultural interaction and undoubtedly adapted various parts of their heritages to their daily lives. Some scholars have assumed the ascendancy of African traditions among people of color in the United States, but even those free people of color with African heritage may have understood the origins of their life ways much differently. Native, European, and South Asian parents certainly shaped the worldviews of their children of color whether or not those children were of African descent.[67]

[67] Historians have generally ignored the influences of non-African ancestors on the values and manner of their descendants with African ancestry. This has also been a problem with studies of people of European and Native ancestry. Some scholars have assumed that the "mixed-bloods" tended to assume the traditions and values of their European predecessors. Theda Perdue has offered a counterargument to this interpretation. See Theda Perdue, *Mixed Blood Indians: Racial Construction in the Early South* (Athens: University of Georgia Press, 2003).

CHAPTER 2: FAMILY AND SOCIAL RELATIONS

Introduction

Chapter 1 explored the diverse origins of free people of color in an attempt to clarify how people of color obtained their liberty and explain exactly who North Carolinians included in the broad category of "colored people." This chapter expands on those findings by exploring the various family and social arrangements of free people of color. From the colonial period through the Civil War, free people of color lived under a variety of family structures and were intertwined in a multitude of social organizations. At least some of this social variety related directly to the diverse historical origins of free people of color. Family constructions, marriage choices, and socialization patterns created a level of diversity among free people of color that prevented the development of any form of broad social congruence among them. The happenings on the ground do not support the existence of a socially cohesive "colored community" in North Carolina before the Civil War.[1]

"Free person of color" was a broad categorization for people who were not enslaved and not white. It was a catch-all category, not an ethnic group or a community. Some free people of color were emancipated slaves or their descendants, and, as a result, shared close familial and social bonds with slaves. Some had enslaved spouses and children, and if their ancestral backgrounds were similar, may have seen no intrinsic difference between themselves and some

[1] Some historians have suggested that significant social interaction between whites and non-whites continued into the Jim Crow era in many parts of the South. They have argued against historical models that view the South as highly bifurcated into white and non-white groups. See Nell Irvin Painter, *Southern History across the Color Line* (Chapel Hill: University of North Carolina Press, 2002); Mark Schultz, *The Rural Face of White Supremacy: Beyond Jim Crow* (Urbana: University of Illinois Press, 2005).

slaves. Many free people of color in North Carolina also descended from Native people, white women, or others who had been free for so long that they did not share close bonds with slaves. Many of these people lived in what were called "colonies" or neighborhoods primary composed of free people of color. They practiced endogamous marriage, usually based on class or kinship, including cousin marriage or marriage within a small group of interrelated families. Free people of color in these neighborhoods did not view slaves as acceptable spouses and only occasionally received outsiders into their networks. A few free people of color identified more closely with whites and other free people of color who did the same. These individuals often had children with whites and encouraged their children to associate only with whites or the mixed children of whites. In the eyes of all of these people, there were substantial differences among free people of color.[2]

Family Relations among Free People of Color

The legal recognition of unions between free persons of color suggest that most free families of color descended from free women of color and free men of color. Marriages between free persons of color were the most socially acceptable unions. By discouraging marriages between persons of color and whites, North Carolina law implicitly encouraged marriage between free men of color and free women of color. By the 1830s, state law prohibited marriage between whites and non-whites. During most of the period between British colonization and the Civil War, free people of color and slaves could join in marriage-like unions, but no marriage

[2] Gary B. Mills made a similar argument about the social organization of free people of color in Louisiana. See Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge: Louisiana State University Press, 1977).

involving a slave was legally binding because slaves as legal non-persons could not make contracts.[3]

Records created from the mid-1700s through the nineteenth century suggest that many of the earliest free families of color in North Carolina built very strong alliances and familial networks, which allowed them to thrive socially without much influence from outside groups. Free families of color composed of free men and women of color appear frequently in the tax records of the colonial era. Surviving records for counties such as Bertie and Granville give examples of these family arrangements and reveal widespread endogamy among the earliest free families of color in North Carolina.[4] The behavior of these early families parallels the kinship structure of white early settler clans that migrated to North Carolina in the eighteenth century. Regardless of racial categorization, close bonds among families played a pertinent role in the development of social life.[5]

One of the largest and oldest kinship networks in North Carolina originated among the free people of color in Granville County. In Granville County, the colonial tax records give the names of some of the earliest free families of color to settle in the area. Most of these families settled around the developing town of Oxford and the Fishing Creek District. Among these were

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[3] Walter Clark, ed., *The State Records of North Carolina*, vol. 23 (Goldsboro: Nash Brothers, 1904), 65, 160; *Acts Passed By the General Assembly of the State of North Carolina at the Session of 1830-1831* (Raleigh: Lawrence and Lemay, 1831), 9-10.

[4] Bertie County Tax List for 1751, Colonial Court Records Taxes and Accounts, Box 190, Tax Lists-Bertie-1751, 1753, 1754 Estate Tax-Beaufort Pet., n. d., North Carolina State Archives; List of Taxables, Granville County Taxables, Box 20, 1758, North Carolina State Archives; List of Taxables, Granville County Taxables, Box 20, 1760-1761, North Carolina State Archives. Herbert G. Gutman surmised that free people of color, unlike the slaves in his study, may have practiced endogamous marriage for economic purposes, but his study did not explore the subject further. The evidence from North Carolina suggests that Gutman may have been at least partially correct. See Herbert G. Gutman, *The Black Family in Slavery and Freedom, 1750-1925*(New York: Vintage Books, 1976), 90. Gary Mills's findings in the Cane River settlement of Louisiana also support this assertion. See Mills, *The Forgotten People*, 210.

[5] Robert C. Kenzer, *Kinship and Neighborhood in a Southern Community: Orange County, North Carolina, 1849-1881* (Knoxville: University of Tennessee Press, 1987), 6-17.

the Chavis, Bass, Anderson, Tyler, Mitchell, Pettiford, Evans, Gowings, Hawley, and Harris families. By the late-eighteenth century, these families and a few others such as the Days and Taborns had begun to build an extensive network of kinship. The 1785 will of Lewis Anderson reveals that his daughters had married into the Taborn, Bass, and Tyler families. The estate records of Lewis Anderson's son Lewis Anderson show an even more extensive kinship reach with his daughters having married into the Mitchell, Bass, and Gowings families. Many of the marriages of the Andersons into these other families likely resulted from the alliances of previous generations. For example, a close relationship existed between the younger Lewis Anderson and Edward Bass, since Bass named Anderson the co-executor of his estate. At some point before Lewis Anderson's death, his daughter Rhoda Anderson married Darling Bass, the son of Edward Bass.[6]

Late-eighteenth- and nineteenth-century marriage records further reveal the interconnections between the earliest free families of color in Granville County. Of the thirty-one male members of the Bass family with recorded marriages in Granville County before the end of the Civil War, seventeen are between Bass men and one of the early settler families. For the Pettiford men, the percentage is slightly less with eleven of twenty-seven marriages being contained within these families. The ratio of marriages inside the group of old settler families is fairly similar for the other families. These numbers do not include men who married descendants of the old settler families with surnames other than those previously mentioned. Further genealogical research would likely reveal that many of the names that appear to be those of

[6] See Granville County Taxables, Box 20, North Carolina State Archives for records showing presence of free non-white families in early Granville County; Will of Lewis Anderson, Granville County Wills, Box 2, Lewis Anderson 1785, North Carolina State Archives; Lewis Anderson Estate Papers, Granville County Estates Records, Box 5, Lewis Anderson 1805, North Carolina State Archives; Will of Lewis Anderson, Granville County Wills, Box 2, Lewis Anderson 1805, North Carolina State Archives; Will of Edward Bass, Granville County Wills, Box 3, Edward Bass 1800, North Carolina State Archives.

outsiders may have actually been the names of descendants of the settler families that married outside of the group in one generation and returned to the core group in the next. These numbers also exclude men who married free women of color from the closely related families in surrounding counties in both North Carolina and Virginia. The kinship networks of the Granville County settler families often extended into areas such as Wake and Warren Counties in North Carolina along with Mecklenburg County, Virginia, which is confirmed by records from these localities.[7]

Extensive kinship networks among free people of color existed in other parts of North Carolina beyond Granville County. In Bertie County, and later in the area of the county that became part of Hertford County, the Archer, Manley, Hall, Nickens, Weaver, and Shoecraft families built an extensive kinship network that actually began before these families' arrival in North Carolina during the 1740s and 1750s. Interactions among the Nickens, Weaver, and Shoecraft families appear in the records of early eighteenth-century Lancaster County, Virginia. The members of these families along with the other families of color lived in the Tidewater Region of Virginia before moving to North Carolina. Records from Norfolk and Princess Anne Counties in Virginia along with documents from Hertford County show that these families maintained an extensive kinship network from at least the 1730s to the Civil War era. Members of the families in Hertford County tended to marry people descended from these early settler families. Occasionally descendants from the Virginia group traveled into North Carolina to

[7] See Marriage Bonds for Wake and Warren Counties, North Carolina State Archives. Examples also appear in the Mecklenburg County Free Negro Register located in the Mecklenburg County Courthouse in Boydton, Virginia.

marry into the Hertford County group and vice versa. Relations among descendants of the earlier settlers in the old Bertie County still exist to the present day.[8]

By the Civil War, there were many kinship networks that were more expansive among free people of color across North Carolina. Kinship networks stretching through Robeson, Cumberland, and Richmond Counties and into some parts of South Carolina kinship networks included members of the Locklear, Lowery, Hunt, Jacobs, Chavis, Goins, and many other families. In the old Orange and Caswell Counties, strong bonds existed between the Jeffries, Guy, Whitmore, Corn, and Haithcock families, all which originally came out of Virginia, settled together, and married among one another. Other counties had similar situations, and in many cases, kinship networks extended well past county and often state boundaries.[9]

In some instances, individuals inside kinship networks went beyond simply marrying into families with close ties and decided to marry cousins. Cousin marriage was particular common within kinship networks that had remained close for generations. The records for Halifax County show an extensive pattern of cousin marriage among members of the Richardson family. Between 1824 and the beginning of the Civil War, county marriage records show fourteen unions between Richardson brides and Richardson grooms. The Jeffries family of Orange and Caswell Counties exhibited a similar pattern. Between 1809 and 1841 fourteen members of the Jeffries clan formed seven cousin marriages. Further genealogical research would likely show

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[8] See Will of Edward Nickin, Lancaster County Wills, 1719-1749, Library of Virginia; Bertie County Tax List for 1751, Colonial Court Records Taxes and Accounts, Box 190, Tax Lists-Bertie-1751, 1753, 1754 Estate Tax-Beaufort Pet., n.d., North Carolina State Archives.

[9] See Marriage Bonds for Orange and Robeson Counties, North Carolina State Archives. For further discussion of the kinship networks in Robeson and Orange Counties, see Malinda Maynor Lowery, *Lumbee Indians in the Jim Crow South: Race, Identity, and the Making of a Nation* (Chapel Hill: University of North Carolina Press, 2010); Forest Hazel, "Occaneechi-Saponi Descendants in the North Carolina Piedmont: The Texas Community," *Southern Indian Studies* 40 (1991): 3-30. Adele Logan Alexander found similar networks among free people of color in antebellum Georgia. See Adele Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789-1879* (Fayetteville: University of Arkansas Press, 1991), 103-106.

that the cousin marriage patterns of the Richardsons and Jeffrieses were more extensive than the marriages between cousins with the same surname. In the case of the Jeffries, two descendants of the family, brothers Dixon and Dickerson Corn married two Jeffries women. Without knowing that Dixon and Dickerson Corn's mother, Jane Jeffries Corn, was a member of the Jeffries family, their marriages would appear to be simple marriages of alliance, but the genealogical information shows that the bonds between the Jeffries and Corn families were much older and much closer.[10]

Up to this point, this chapter has demonstrated that many free people of color, especially those families that settled earliest in North Carolina, developed close and often interwoven kinship networks that created alliances among certain families. The motivations of the free people of color that developed these kinship networks are difficult to find in the historical record. The information that is available about these people does not precisely explain their motives for building strong alliances or reinforcing alliances among their own kin by marrying cousins.

From a historical perspective, strong kinship networks were not a rarity among people in the United States and other parts of the world. Many white elites in the American South married into similarly bound kinship networks and occasionally married their own kin. Elites across the world have intermarried for generations in order to maintain wealth and status. The idea of maintaining bloodlines has also been part of many elite ideologies. The circumstances of pre-Civil War North Carolina suggest that free people of color had many of the same goals as their more elite contemporaries. Landownership was particularly common among the families that

[10] See Marriage Bonds for Halifax and Orange Counties, North Carolina State Archives.

descended from North Carolina's earliest settlers. Close kinship networks allowed free people of color to pool and maintain economic resources.[11]

Ancestry also may have played a particular important part in the marriage choices of some free people of color. The neighbors of all of the kinship networks mentioned in this section categorized these people as "mulattoes" up to the Reconstruction Era. The individuals in these kinship networks had various heritages, but what would have been most important during the era of slavery was that their ancestors had been born free and that they kept a familial distance between themselves and slaves. They could demonstrate to whites and to each other they were untainted by the stain of slavery and had no personal connection to the slaves who perhaps held a grudge against the prevailing system. When political agitators attempted to ignite fear and prejudice against colored people both slave and free, these families could show that they were different from the vast majority of non-white people.

Marriage between free people of color also guaranteed the succession of property. Many free people of color owned significant amounts of property including land, livestock, and in some cases slaves. Only one free person could legally inherit from another free person. A free person of color who married a slave could not guarantee support to that enslaved spouse and could not pass on any property to their children if the enslaved spouse was a woman, since slave status passed on from the mother to the children. A free man hoping to pass on property to his enslaved family could only do this by finding a way to emancipate his family. A free woman married to an enslaved man could pass on her wealth to her family more easily because her children were free if she was born free or emancipated before the birth of her children. Yet even

[11] E. Horace Fitchett found evidence of economically-driven endogamy among free people of color in Charleston, South Carolina. See E. Horace Fitchett, "The Traditions of the Free Negro in Charleston, South Carolina," *Journal of Negro History* 25 (April 1940): 139-152.

in this case, the slave husband could not legally inherit anything his wife wanted to leave him. If his wife left him something, he would have to depend on the children to execute her wishes and his master to allow his relationship with his children to continue. All of these complications could be avoided, however, if both partners in a relationship were free born.

The desires of cautious slaveholders also played a role in strengthening the bonds between free people of color by preventing slaves from joining their ranks. George W. Hilliard, who was born Halifax County in the 1840s, remembered that the "free born people and the mixed bloods…were colonized down there [in North Carolina], the Waldens, Byrds, Jones Locklayer[s], Hilliards, some of the Sho[e]crafts, the Roberts, Berts, Revels, and several others all lived down there in a sort of colony, they were not allowed to mix up with the slaves down there."[12] John H. Jackson of Wilmington, who was born a slave in 1851, recalled,

> We had a lot of these malatto negroes round here, they was called "Shuffer Tonies," they was free issues and part Indian. The leader of 'em was James Sampson. We child'en was told to play in our own yard and not have nothin' to do with free issue chil'en or the common chil'ren 'cross the street, white or colored, because they was'nt fitten to 'sociate with us.[13]

Free people of color created close-knit networks among themselves and many members of the slaveholding class, who hoped to keep free non-whites from interacting with their slaves, helped reinforce those bonds. The 1830 law outlawing marriages between free people of color and slaves confirms the statements of Hilliard and Jackson. Indeed some slave masters were wary of the idea of free people of color influencing their enslaved people. The existence of free people of color represented an alternate way of life. James Sampson was not "fitten" to associate with the

[12] Application of George Hilliard, File 34532, *Eastern Cherokee Applications of the U.S. Court of Claims, 1906-1909,* National Archives Microfilm Publication.

[13] "Memories of Uncle Jackson," *A Folk History of Slavery in the United States from Interviews with Former Slaves, 1936–1938,* vol. 11, 3, Federal Writers' Project of the Works Progress Administration.

slaves of Jackson's master because he represented something the master hoped his young slaves would never desire—freedom, personal success, and prestige. James Sampson was one the wealthiest free men of color in North Carolina at the brink of the Civil War—a position Jackson's master never wanted for his young slaves.[14]

Family Relations among Free People of Color and Slaves

As civil war loomed, slaveholders' attempts to build a wedge between their slaves and free people of color increased. However, some free people of color and slaves found ways to cross the boundaries that separated slaves from the free. From the colonial period into the Civil War era, many families across the state had both free and enslaved members. The mixed families were most common in situations where some members of a family gained their freedom through emancipation while others remained in bondage. Although free to move away from the places of their enslavement, some emancipated persons could not fathom leaving the areas in which their loved ones and friends still remained in bondage. In other instances, free born people married enslaved people. Some of these free born people had fathers born in slavery or parents with slave families and saw no difference between themselves and the enslaved population. Others worked in close proximity to enslaved people and established close bonds with people they saw as their peers.

The family of Lunsford Lane was one of the many families divided by freedom status during the era of slavery. In 1803, Lunsford Lane was born a slave on the estate of Sherwood Haywood of Raleigh. While still in bondage, Lane married Martha Curtis with the consent of her master, Mr. Boylan. Lunsford and Martha soon began to build a family with the birth of their first son. Several children would follow; all were the property of Martha's master. Sometime

[14] *Acts Passed By the General Assembly of the State of North Carolina at the Session of 1830-1831*, 9-10.

after his marriage, Eleanor Haywood, Lane's mistress, allowed him to go into business for himself. Lane promised to share his earnings with Haywood. Although Lane's business was technically illegal, he was able to accumulate $1,000 selling tobacco and pipes. After working many years to accrue this sum, Lane inquired with his mistress on the price of his freedom. Lane's savings met her price, and she attempted to obtain his freedom through the courts. The courts denied Lane his freedom because they claimed he had done nothing "meritorious." Although the court did not recognize Lane's freedom, his mistress was determined to make her wishes official. In 1835, Lane received his freedom on a trip to New York with his wife's master.

Lane's 1835 trip to the North allowed him to secure his own liberty, but his wife and children remained enslaved. Three years after his official manumission, Lane arranged for the purchase of his family on yearly installments. For a couple of years, Martha Lane's master allowed her and the children to live at her husband's house. Like many families, the future of the Lanes was uncertain as long as Martha and the children still remained in bondage. In 1841, local officials brought Lane to court on the charge that he had illegally migrated into North Carolina. Since he had left North Carolina in order to receive his freedom, state law did not recognize him as a legal resident and prohibited free people of color from migrating into the state. Lane had to leave his wife, children, and parents behind. Lane eventually secured the freedom of his wife and children by purchasing their liberty with his earnings as an anti-slavery lecturer in the North. Mrs. Haywood allowed Lunsford to take his mother to Massachusetts with him. Lane's father joined the family later after he was granted his freedom. Lane overcame the odds of that slavery imposed on him and gradually secured the freedom of his family members. His story reveals the

rationale of free people of color who continued to stand by their enslaved family members even as greater opportunities to enjoy their freedom lay elsewhere.[15]

In many ways, the story of the Johnson family of Chowan County and that of Lunsford Lane's family are very similar. Yet the Johnson family's experience illustrates that social divisions could complicate the relations between ex-slaves and those who remained in bondage. Gustavus Adolphus Johnson was born around 1791 to an enslaved woman. His father was his white master, Charles Johnson of Chowan County, a United States Congressman. When Gustavus was four years old, Charles Johnson petitioned the General Assembly for his son's freedom. Never mentioning any form of meritorious service performed by a boy so young, the elder Johnson explained to the General Assembly that he held:

> A certain boy of colour of about four years of age as a slave, being born as such by the Laws of the Country, by the name of Gustavus Adolphus Johnson, and that the white Blood do far prevail that it is almost impossible for any person to discern that he is of mix'd blood. Therefore he your petitioner conceives that from principals [sic] both of policy and Humanity, that the said boy…should be freed & Liberated, and that you will pass a Law for that purpose and he will ever pray.[16]

Without questions about meritorious service, which burdened Lunsford Lane's attempt to gain freedom, the young Johnson was emancipated by act of the General Assembly. Unlike Lane and many others like him, this child had the benefit of being tied to one of the most influential men in North Carolina. Time and time again, the General Assembly would reject similar requests for emancipation of children, including mulatto children, because no one could prove their meritorious service.

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[15] Lunsford Lane, *The Narrative of Lunsford Lane, Formerly of Raleigh, N. C.* (Boston: J. G. Torrey, 1842).

[16] Petition of Charles Johnson, General Assembly Session Records, November-December 1795, Box 2, Senate Bills (Dec. 1), North Carolina State Archives.

Although born a slave, Gustavus Adolphus Johnson would live out the rest of his life as a free man, but not a typical free man. In 1802, Charles Johnson died dividing his estate between his legitimate children and Gustavus. The young boy's father left him $2,500 for his education and support, an enslaved woman named Lettice and her children, and one third of the remaining estate not devised to other heirs. From this point on, Gustavus would have relationships with slaves untypical of most formerly enslaved people: he was a slave master. As Gustavus grew into an adult, he continued to hold slaves, and at his death an enslaved woman Barbara and her children as well as old woman named Lucy would be part of the estate left to his heirs.[17]

Complicating the picture of Gustavus Johnson's relations with slaves is the origins of his family. In his early adulthood, Gustavus purchased "a certain yellow girl named Betty" from James R. Bent. This young enslaved woman became Gustavus's wife. While still legally the slave of her husband, Betty gave birth to three children Mary, Ann, and Charles. In 1822, nine years after purchasing Betty, Gustavus arranged for and secured the emancipation of his wife and three children. Gustavus and Betty remained married for another 20 years before Gustavus's death in the winter of 1842-1843.[18] His choice to marry an enslaved woman and simultaneously keep slaves to labor for him demonstrates that Johnson did not view all enslaved people as equal and instead saw enslaved people as falling into different levels of a hierarchy. Like his father before him, Gustavus felt that some slaves, especially those related to him, deserved special privileges. At the same time, his actions show that he accepted the idea that other slaves were born to toil for their masters with no prospect of ever enjoying freedom. Gustavus's feelings

[17] Chowan County Wills, Volume B, 270-274, North Carolina State Archives; Chowan County Wills, Volume C, 237, North Carolina State Archives. For an examination of a similar situation, see Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Company, 1984).

[18] Petition of Gustavus Adolphus Johnson, Chowan County Miscellaneous Slave Records, Box 33, Petition for Emancipation 1822, North Carolina State Archives.

were not unique. Slave masters all across the country struggled with their love for and unwillingness to bind certain people while collecting the profits from the hard labor of others.[19]

In some instances, the free people of color not born in slavery built relationships with slaves and traversed socially imposed boundaries meant to separate and distinguish the free from the enslaved. Rachel Overton, a "mollatto" woman, was the servant of Aron Jackson of Pasquotank County during the 1750s. While in service to Jackson, Rachel established a family with a "Negro Husband," who presumably was a slave. So often, the circumstances of servitude and slavery placed servants and slaves side by side in their masters' houses and fields. Although their legal statuses were different, relationships between free servants and enslaved people suggest that these legal dissimilarities made little difference when their daily lives were so similar. By 1755, Rachel and her husband had three children, Daniel, Samuel, and Perthenia, who by the laws also became the servants of Aron Jackson. Fifteen years later, Rachel appears to have gained her freedom from indentured servitude but was still too poor to support a family. That same year, Rachel, now living in Perquimans County, allowed the court to bind her son Lemuel Overton to Charles Blount for eight years. The historical record does not clarify whether Lemuel Overton shared the same father as Rachel's other children.[20]

In the next generation, Lemuel Overton made a choice similar to that of his mother and took up with an enslaved woman named Rose, who was the property of John Mullen of Pasquotank County. While Rose was still the slave of Mullen, she gave birth to the couple's first son John. Unlike the situation of his mother, Lemuel Overton's relationship had produced a child

[19] For similarly complicated master-slave relationships in South Carolina, see Larry Koger, *Black Slaveowners: Free Black Slave Masters in South Carolina, 1790-1860* (Columbia: University of South Carolina Press, 1985), 82-84.

[20] Pasquotank County Apprentice Bonds and Records, Box 2, Apprentice Bonds and Records O, North Carolina State Archives.

who was enslaved. By 1795, Lemuel had saved up enough money to purchase his wife and young son from Mullen. When Lemuel and Rose had another son, Burdock, by law he was the slave of his father. Three years after purchasing Rose and their first son, Lemuel Overton petitioned the state legislature with the support of seven white men from his community, including John Mullen, for the freedom of his wife and children. The legislature granted Overton's request, which gave him the liberty to manumit his family. Lemuel was one of the more fortunate free people of color who were able to see his family out of bondage.[21]

Many free people of color were never able to purchase and liberate their families and instead had to adjust to the circumstances they inherited through their familial association with slaves. This was the case for Polly Mitchell of Chatham County, who was a free born woman. Polly's daughter Emma recalled years after emancipation that "My mammy wuz a Free Issue an' my pappy belonged ter de Bells in Chatham County. Pappy wuz named Edmund Bell, mammy wuz named Polly Mitchel…When my mammy married pappy she moved ter de Bell's plantation so we chilluns, longs wid her, wuz lak de udder slaves."[22] Although Polly Mitchell and her children were born free, Polly apparently did not have the resources to purchase and liberate her enslaved husband and allow him to enjoy the same status. The connection between Polly and Edmund caused Polly to choose to stay near her husband and expose her children to plantation life. The children of this couple would have experienced freedom much differently than the children of Lunsford Lane, Gustavus Johnson, or Lemuel Overton. Although the Mitchell-Bell children were free, they were not privileged. Emma may have been too young to know that the possibilities for her and for the slave children she grew up around were supposed to be vastly

[21] Petition of Lemuel Overton, General Assembly Session Records, North Carolina State Archives.

[22] "Interview with Emma Stone," *A Folk History of Slavery in the United States from Interviews with Former Slaves, 1936–1938,* vol. 11, 325, Federal Writers' Project of the Works Progress Administration.

different. Although Emma was born poor, she was not a slave. The potential always existed that she could elevate her economic status. However, the state legislated several checks, which did not apply to Emma, to keep enslaved people from having the same prospects.

All of the examples in this section demonstrate the complexity and variety of relationships between free people of color and enslaved people and reveal that building and maintaining families across the divide between freedom and slavery was difficult. Couples who preserved their families against the odds and often against the law used ingenuity and supportive relationships with their neighbors to provide for their families and raise their children in the highest standard that their circumstances could provide. The struggle of these mixed-status couples also helps to explain why so many free people of color rejected these relationships across the boundary between freedom and slavery. As examples in this section show, some free people of color saved up enough money to buy their family members; however most free people of color never had this chance. Purchasing family members required not just hard-earned money but also the cooperation of spouses' masters, which was something free people of color could not depend on. At the same time, once a free person of color had family members who were in bondage, that person found it hard to leave them behind.[23]

Family Relations among Free People of Color and Whites

The historical record for North Carolina is sprinkled with cases of familial and sexual relationships between free persons of color and whites. From the colonial period into the twentieth century, the law always discouraged relationships between men and women of

[23] For further discussion about the problems Southern families that were part free and part slave faced, see Emily West, *Family or Freedom: People of Color in the Antebellum South* (Lexington: University Press of Kentucky, 2012).

different racial categorizations. However, free people of color and whites found ways around these laws, and in many cases their neighbors ignored their illicit behavior.[24] The North Carolina legislature did not outlaw marriage between whites and persons of color until 1830. Once marriage between people of color and whites was prohibited, couples continued to live together in legally adulterous situations, not dissuaded by legislators' political-motivated prohibitions. The preponderance of people of mixed ancestry among free people of color suggests that these relationships may have been more significant in the lives of free people of color than previously believed. Many free people of color grew up with white parents, grandparents, aunts, uncles, cousins, and half-siblings. Racial categories could not delineated the difference between social insiders and outsiders for these youngsters. Relationships between free people of color and whites reveal that racial communities are something scholars have imposed on nineteenth-century social relations. Society classified people as colored or white, but racial classifications did not necessarily define the way people saw themselves in relation to others. Racial boundaries could be less important than the bonds of family that so many North Carolinians depended on to survive in a mostly rural agricultural economy.

The historical record makes it very difficult to determine whether relationships between free men of color and white women or between free women of color and white men were more common. Both types of relationships appear in the stories free people of color and their descendants told about their families and the court records that document these cases. Marriage

[24] Scholars have found similar conditions in other parts of the antebellum South. See Gary B. Mills, "Miscegenation and the Free Negro in Antebellum 'Anglo' Alabama: A Reexamination of Southern Race Relations," *Journal of American History* 68 (June 1981): 16-34; Thomas E. Buckley, S. J., "Unfixing Race: Class, Power, and Identity in an Interracial Family," *Virginia Magazine of History and Biography* 102 (July 1994): 346-380; Martha Hodes, *White Women, Black Men: Illicit Sex in the Nineteenth-Century South* (New Haven: Yale University Press, 1997); Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003); Kirt von Daacke, *Freedom Has a Face: Race, Identity, and Community in Jefferson's Virginia* (Charlottesville: University of Virginia Press, 2012).

records give little insight into the question of which relationship was more common since few of these couples went to the courts for marriage bonds or licenses. White men often disguised their relationships with free people of color and slaves in official records such as wills and deeds by never mentioning their connections to their children and common-law wives in these documents. Many couples also maintained separate official residences making their relationships invisible in census records. Prosecutions for fornication and adultery or bastardy mention free men of color and white women much more regularly than free woman of color and white men, but their predominance is probably more of a sign of white male immunity from prosecution than a lack of relationships between white men and non-white women. William D. Valentine of Hertford County complained about the preponderance of white men living in adultery with women of color, not the opposite case, in his community, but the courts charged only two couples with fornication and adultery in his home county.[25]

Christian Wiggins, a free woman of color, and Noah Cotton, a white man, were one of the many couples engaging in sexual and familial relations across the racial divide. Not much is known about the daily interactions between these two people, but several important features of the relationship are clear. At the time of Noah Cotton's death in 1815, some people in Hertford County occasionally referred to Christian Wiggins as "Christian Cotton." Although the historical record clearly confirms that Christian and Noah never married, references to Christian as "Christian Cotton" suggest that her neighbors viewed Christian as the common-law wife of Noah Cotton and not simply his mistress. There is no evidence that Noah Cotton was engaged in any other relationship at the time of his death other than the one he maintained with Christian. While engaged in their relationship, Noah and Christian had at least nine children. Before his death,

[25] William D. Valentine Diary, Volume 13, 85, Southern Historical Collection; Hertford County County Court Minutes, Volume 3, March 1854, North Carolina State Archives.

Noah left his plantation and all of his possessions to Christian and their children. Like many white men of his era, Noah Cotton did not declare his relationship to Christian and their children in the text of his original will. However, in the codicil to that will Noah described his children as his "sons" and "daughters." In their adult lives, all of the surviving children were called by their father's name, Cotton.[26]

As a well-connected member of his community, Noah Cotton made important arrangements to insure the care of Christian and their children. Noah's friend and local attorney John Vann was the executor of Noah's estate. Vann arranged for the care of the children by securing their room and board and paying a private teacher to instruct them. Noah's estate records suggest that Christian Wiggins died immediately after Noah Cotton leaving their children orphans, so Vann was forced to split Noah's and Christian's minor children up among different households. Solomon and Phereby Keen, both free people of color, took in Ricks and John Cotton, two of the couple's sons. Lucinda Cotton, a daughter of the couple, moved between the homes of James Weaver and David Weaver, who both were free men of color. The children had several white aunts and uncles, but John Vann must have believed it was best to place these children with people of their same status. Vann raised money to support the children by selling the perishable items from Noah's estate, renting out Noah's plantation, and leasing out Harry and Lucy, two enslaved people owned by the estate.[27]

[26] John Vann Papers, Box 4, Will Noah Cotton 1815, North Carolina State Archives; John Vann Papers, Box 3, Estate Cotten, Christian 1816, North Carolina State Archives.

[27] In early nineteenth century North Carolina, there could be a very strict line between the freedom enjoyed by some free people of color and the burden of slavery held by many in slaved persons. Free people of color could and in the case of the Cottons did benefit from slave labor. In this case, the intellectual development of the Cotton children was funded by the work of a class of people who prohibited from enjoying any sort of formal education. John Vann Papers, Box 3, Estate Cotten, Christian 1816-Estate Cotten, Noah 1815, North Carolina State Archives.

Many of Hertford County's early records were destroyed by fires, making it impossible to know if Noah and Christian's children received all of the benefits of their father's wealth. However, surviving records demonstrate that both people of color and whites had a considerable amount of respect for the Cotton children and the relationship of their parents. In 1825, James Copeland, one of Hertford County's representatives in the General Assembly, submitted a bill to legitimize Wiley, Ricks, Micajah, and John Wiggins and officially change their last names to Cotton. Legislators regularly proposed legal actions to legitimize children born illegitimate, but a request to legitimize the non-white children of a white man was an anomaly. The bill to legitimize the Wiggins-Cotton children was defeated in the General Assembly, but its proposal reveals the differing reactions white North Carolinians had to relationships across racial boundaries.[28] Local officials were willing to ignore relationships that violated the law, but there was little political will among lawmakers to give those relationships sanction. Politicians could purport to believe that relationships between white and non-whites should not be a part of their society by failing to officially recognize the children of mixed unions, while at the same time, support white male dominance over non-white bodies by ignoring their sexual liaisons and relieving them from prosecution.

Other couples in the same situation as Christian Wiggins and Noah Cotton used a variety of methods to overcome laws that attempted to invalidate their relationships. In Gates County, Sarah Rooks, a woman of color, and John Brady, a white man, enjoyed a relationship that lasted several years. Sometime around 1819, Sarah delivered their first and only child that survived to maturity, Joseph Rooks. Around the time that Joseph was born, John gave Sarah a lifetime-

[28] A Bill to alter the names of Wiley Wiggins Ricks Wiggins Micajah Wiggins and John Wiggins and to legitimate them, General Assembly Session Records, November 1825-January 1826, Box 3, Senate Bills (Dec. 24), North Carolina State Archives.

guaranteed lease for a 20-acre tract. The deed for this lease secured Sarah from any challenges brought about by any of John's white relatives in a case where someone might try to challenge her claim to the land. By 1822, Sarah's and John's relationship had ended, and Sarah married another man. Yet the historical record shows that Sarah continued to live on the leased land. Both Sarah and John participated in their son's life. John Brady had Joseph bound to him as an apprentice, which allowed him to have rights over his son. In their community, John's and Joseph's neighbors openly acknowledged the connection between father and son, sometimes referring to the son as "Joseph Brady."[29]

South of Gates County in Cumberland County, Ann Chesnutt, a woman whom one observer described as "very bright yellow," and Waddle Cade, a white man, lived together in a partnership for many years. Waddle successfully cared for his children during his lifetime. Census records reveal that Waddle was almost 40 years older than Ann, who was born in the 1810s. Maybe this age differential made the relationship beneficial to both parties as Waddle had lived long enough to build a small fortune and could easily provide for a family and Ann was young enough to take care of the daily needs of an aged man. The census suggests that Ann and Waddle did not live together during the early stages of their relationship or that the couple kept separate official residences. Those white men who had enough money to maintain residences for themselves and their partners often kept two homes. These men appear to have been presenting a façade of respectability and legality. An unmarried couple living in the same house could be

[29] Gates County Record of Deeds, Volume 10, 544, North Carolina State Archives; Marriage Bond for Mills Reed and Sarah Rooks, Gates County Marriage Bonds, North Carolina State Archives; Gates County County Court Minutes, Volume 8, November 1821, North Carolina State Archives; 1850 United States Federal Census, Gates County, North Carolina, 53.

prosecuted for committing fornication and adultery, but if that same couple officially maintained separate residences, neighbors would not have to admit that a crime was taking place nearby.[30]

Despite separate homes, the couple spent enough time together to produce six children, the first born around 1831. Soon after the birth of Ann's and Waddle's first two children, George Washington Chesnutt and Andrew Jackson Chesnutt, Waddle made arrangements for their future financial security. He transferred to the boys a track of land in Fayetteville.[31] This transaction protected the boys from any further threats from the legitimate heirs of Waddle's estate. Andrew Jackson Chesnutt continued to own this tract of land until his death, when he passed it on to the next generation.

Like couples composed of free women of color and white men, many free men of color and white women developed strong relationships and raised children together. Some jurisdictions may have sanctioned some of these unions since the law did not completely prohibit marriages between free people of color and whites until 1830 but instead imposed fines on these couples and the magistrate or minister who married them. A few couples may have had the money to pay the fines that lawmakers had created to discourage such marriages. However, the historical record suggests that the vast majority of these unions were outside of legal marriage.

From the colonial era into last years before the Civil War, free men of color and white women could be found cohabitating in almost any community with a significant free population of color. Unlike most parings between free women of color with white men, these couples sometimes faced legal challenges. The courts forced these couples to appear in court on charges

[30] Claim of Ann Revels 55190, Southern Claims Commission Records; 1850 United States Federal Census, Fayetteville District, Cumberland County, North Carolina, 3a-3b, 4b.

[31] Cumberland County Record of Deeds, Volume 41, 398, North Carolina State Archives. By 1860, Ann and Waddle openly lived in the same house with their children Mary and Dallas. See 1860 United States Federal Census, Fayetteville, Cumberland County, North Carolina, 87.

of fornication and adultery. In some cases, the men were charged with bastardy. Even with the law against them, these couples found that their neighbors were willing to turn a blind eye to the illegality of their living arrangements.

For example, a visitor to Hertford County during the mid-1800s would have found many parings between free men of color and white women. From at least the 1840s up to their deaths, Henry Best, a free man of color and carpenter, and Elizabeth Baker, a white woman, lived as man and wife, although their union had no legal sanction. The couple maintained a household and raised four children. David Boon, a free man of color and blacksmith, and Louvenia Britt, a white woman, also lived together in the county during the 1840s. At the birth of their son, Richard Britt, the courts began to harass David and brought him into court in 1847 on charges of bastardy. The court required David to post a bond and pay child support to Louvenia. Louvenia apparently would not have had a difficult time tracking down David to pay child support as the couple continued to live together after the birth of Richard. The courts apparently wanted David to pay child support but not live in the same household with Richard and his mother. In 1848, the justices of the peace required David to appear in court again on charges of fornication and adultery. At the court appearance, the jury found David guilty and fined him five dollars. In most cases, fines did not discourage couples from living together. Many couples simply paid the fines and moved on with their lives. After David's court appearances, the couple removed from Hertford County and resettled in Northampton County, where they resided up to the Civil War.[32]

Free men of color and white women in Northampton County also sought to overcome the limitations on marriage proposed by the law in order maintain their relationships and take care of their families. Nathaniel Turner, a free man of color, and Rebecca Garner, a white woman, lived

[32] Hertford County County Court Minutes, Volume 2, 126, 156, North Carolina State Archives.

together as a couple for several decades. In 1838 and 1842, county justices called the couple into court to face fornication and adultery charges. As in the case of David Boon and Louvenia Britt, Nathaniel and Rebecca continued their relationship for many years and raised several children. In a slightly different case, Exum Allen, a free man of color, and Judy Hart, a white woman, faced charges in 1849 for unlawfully cohabitating. Maybe as an attempt to combat these charges, Exum and Judy went to the courthouse to obtain a marriage bond and in March 1849 received one. A clue from the 1850 census suggests that Exum may have convinced the magistrate who issued the bond that he was white. In 1850, the census taker counted Exum as a white man and not a mulatto or black man. After their trial, Exum and Judy, like the other couples, continued to live as man and wife.[33]

Free men of color and white women outside of northeastern North Carolina also challenged the bounds of the law and lived together in long-term partnerships. The 1850 census shows these couples all over the state. In Union County, William Chavers, a free man of color, and Elizabeth, a white woman, lived together with their children. Lewis Grimes, a free man of color, and his partner Rebecca, a white woman, and their children lived in Buncombe County. Rockingham County was the home of James Curtis, a free man of color, Mary, a white woman, and their six children. In all of these cases, the census taker used the same surname for all members of the household, which suggests that the neighbors of these couples accepted them as united under common law.[34]

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[33] *Stave v. Nathaniel Turner and Rebecca Garner*, Northampton County Criminal Action Records, Box 17, 1839, North Carolina State Archives; *State v. Nathaniel Turner and Rebecca Garner*, Northampton County Criminal Action Records, Box 19, 1842, North Carolina State Archives.

[34] 1850 United States Federal Census, Union County, North Carolina, 3a; 1850 United States Federal Census, Buncombe County, North Carolina, 289b; 1850 United States Federal Census, Western Division, Rockingham County, North Carolina, 81b.

While not the norm, familial relationships between free persons of color and white people were not uncommon in North Carolina. Although the law attempted to dissuade people from engaging in these relationships, many couples disregarded the rules, and many more North Carolinians silently ignored the illegality of their neighbors' decisions. The cases in which local justices charged free people of color and whites with fornication and adultery reveal that members of local power structures at times defended their laws, but their purposes are less clear. Local government officials targeted free men of color and white women more often than white men and free women of color, even in situations where the number of white men and free women of color committing the crime was likely greater. There is no evidence to suggest that local officials were particularly interested in preventing free non-white men's access to white women's bodies. They rarely attempted to break up these homes and allowed people to continue their illicit relationships after their appearances in court. After all, laws discouraging unions between people of color and whites had failed since their inception, as the "mulatto" majority among free people of color clearly demonstrated to everyone in nineteenth-century North Carolina.

Local officials viewed sex between a white man and any woman a private act as long as that sex did not violate the claim of another white man over that woman. However, free men of color did not enjoy this right to privacy. Local officials could more easily object to the sexual activities of free men of color because their surveillance did not interfere with their dedication to members of their white social circles; it did not challenge the power attached to white manhood. Bring free men of color into court for their relationships with white women likely had some political incentive for local powerbrokers as well. Whites who despised free people of color in

general and felt threatened by any advancement made by this group likely enjoyed the spectacle of seeing one of their non-white neighbors put in "his place."

Although some white people disliked free people of color and reacted to the pandering of politicians, many whites clearly viewed free people of color as faithful spouses, determined providers, and responsible parents. Some free people of color and white people realized that difference in racial categorization did not determine one's fitness to be a potential partner. The laws to prevent marriages between non-whites and whites were political statements intended to make white families superior to all other families and to provide those families with the benefits of legitimacy. As with most political statements, there are always people within the society who disagreed with the reigning political agenda; this was the case of the white-non-white couples of the eighteenth and nineteenth centuries. Although some white men attempted to use the law and their political voices to convince the public that they were indeed superior, many white women understood that many of them simply were not the social and financial equals of the most successful free men of color. Some free men of color were more financially secure and better able to provide for a family than some of their white counterparts. Many free men of color in relationships with white women were tradesmen such as blacksmiths and carpenters. For similar reasons, many free women of color may have found white men to be attractive mates. In a society that often denied women the chance to make their own livelihoods, a man's ability to provide for a wife and children was imperative to any woman pursuing a stable family life.[35]

[35] Scholars have uncovered numerous examples of free women of color who had relationships with white men obtaining significant financial benefit as a result of those relationships. See Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston* (Chapel Hill: University of North Carolina Press, 2011), 135-138; Emily Clark, *The Strange History of the American Quadroon: Free Women of Color in the Revolutionary Atlantic World* (Chapel Hill: University of North Carolina Press, 2013), 97-131. However, discussion of the possible benefits free men of color could provide white women is absent from the literature.

The connection of free people of color to whites is often ignored when examining their reasons for engaging in relationships with whites. Many free people of color had more European ancestry than non-European heritage. Without local knowledge of their non-European heritage, officials outside of their communities probably would have classified some of them as white. Even those whites who were prejudiced to the darker skin and different features of many non-whites may have found many members of the free population of color physically attractive. It is likely that many free people of color saw whites in the same view. Physical appearance in conjunction with many free people of color's kinship connections to whites may have played an important role in the choices made by mixed status couples. This seems to have been the case with the Hussey family of Montgomery County. The children of John and Eleanor Hussey had many generations of white ancestors including their mother who was white. Whites in Montgomery County could not agree whether the Hussey children were white or colored often classifying them both ways. However, the Hussey children seem to have associated most closely with whites. All of the Hussey children married into local white families. The ownership of slaves by one son in the family further suggest that although some people placed the Hussey's in the non-white category, they did not see themselves in common with most non-whites.[36]

Single-Parent Families

Most of this chapter has focused on two parent families; however, many free children of color never lived with both parents. Many children grew up solely under the care of a mother or father. Other children left both parents at an early age to serve as apprentices. These various experiences greatly affected free children of color's views about their place in society. Some

[36] Affidavit of John Blackman and James Lane, Montgomery County Miscellaneous Records, Box 3, Statement Concerning Turner and Hussey families whose ancestor was a mulatto 1860, North Carolina State Archives.

children lived with single parents who had strong ties to other free people of color, and these children related closely to members of their mothers' or fathers' social circles. In many cases, free children of color grew up primarily outside of the influence of free people of color. Some of these children were born to white parents and experienced life inside of social circles composed primarily of white people. In other cases, free children of color lived with white masters as their apprentices and servants and may have had little exposure to other non-white people. Children in these situations may have been treated like members of an extended family and may have had access to white social networks. Of course, the historical record also demonstrates that many free people of color lived harsh lives under the dominions of their masters. They likely did not relate much to their masters, and in many cases, may have rejected their masters and other people of those masters' station.

Most children raised in single parent households lived with their mothers. Many of these children probably associated with their mothers' relatives and associations and developed their self-understanding in reaction to those relations. Eliza Cummings, a free woman of color from Robeson County, raised several children by herself during the middle of the nineteenth century. David Strickland, a free man of color more than a decade her junior, was the father to at least some of Eliza's children. David paid child support but never married Eliza. Eliza and her children appear to have associated mostly with free people of color, and several of her children married into free non-white families in her county. In another example, Kitty Paul of Alamance County, a free person of color, grew up in a slightly different single parent household. Kitty's mother was Mary Paul, a white woman, who had children by various men both white and non-white. By the time Kitty was a young girl, she was the only of her mother's children still in their household classified as a free person of color. As an adult, Kitty followed in the footsteps of her

mother by becoming the mother of several illegitimate children, including some who were fathered by a married free man of color in her neighborhood.[37]

The courts sometimes removed free children of color from the care of single mothers and bound them out to serve as apprentices to both white and non-white masters. Some bound children continued to live in the households of their mothers after the courts issued their apprenticeships, while others lived with their court-appointed masters. Mary Ann Cooper, "a free mulatto girl," lived with her white mistress, Jane Mulder of Davie County, from 1824 until 1836. After living with Mulder, Mary Ann moved into the home of Clement Whittemore, a white man, who allegedly abused his apprentice. In 1841, Pasquotank County justices bound out nine of Nancy Hiter's children to Miles Sawyer, a white farmer in the county. As late as 1850, some of Nancy's children still lived without their mother as a part of Sawyer's household. [38]

Living outside of a family composed of a father and mother shaped the lives of free children of color in a variety of ways. These situations likely presented many free children of color with complex questions about their place in the social order. Many free children of color discovered different answers to queries about their relationship to those who surrounded them. Some chose to associate with other free people of color of similar background as adults, while others decided to abandon the social circles that society suggested that they should join.

Conclusion

[37] David Strickland Bastardy Bond, Robeson County Bastardy Bonds and Records, Box 1, 1854, North Carolina State Archives; 1850 United States Federal Census, The Northern District, Alamance County, North Carolina, 69a; 1860 United States Federal Census, Alamance County, North Carolina, 81 (Kitty Paul is listed as white in this census enumeration); Death Certificate for Jennie Dickey, Alamance County, North Carolina, North Carolina State Archives.

[38] Petition of Jane Mulder, Davie County Miscellaneous Records, Box 8, Slaves and Free Negroes, Petition regarding mistreatment of free Negro bound as apprentice, 1837, North Carolina State Archives; Pasquotank County Apprentice Bonds and Records, Box 1, Apprentice Bonds and Records H, North Carolina State Archives.

This chapter has explored the diversity of family situations free people of color experienced up to the Civil War. Their various family experiences contributed to the great diversity of primary social networks used by free people of color in their daily lives. Some free people of color identified with particular free families of color and limited their primary social interactions to those circles of interrelated people. Other free people of color did not draw such solid lines but still tended to interact with people of similar economic status whether they were free people of color or whites. In many cases, free people of color did not belong to strong networks of other free people of color because they were outside of the kinship networks of these families. People born into slavery may have experienced their first social exposures within slave networks. Of course, even among enslaved people, there were social hierarchies and different circles of association, which was most clearly demonstrated by the example of Gustavus Adolphus Johnson.

The diversity of social experiences among free people of color demonstrates that people of color whether free or enslaved used a variety of criteria often excluding racial categorization as a means to discern social insiders from outsiders. Under the law and in the minds of the many whites, all non-white people were monolithic in the sense that their social position in the racial hierarchy was below that of whites. However, scholars should not take this legal positioning as a reflection of community or commonality among non-whites. Physical segregation in the form of separate neighborhoods and towns was uncommon in pre-Civil War North Carolina.

The surviving historical sources provide little insight into the role that varying ancestral backgrounds played in the creation of separate social spheres among free people of color. However, the historical record demonstrates that ancestral variations existed among free people of color, and scholars should not underestimate the influence of this ancestry in shaping of social

networks. The comments of George Hilliard and John H. Jackson show that some families of mixed ancestry viewed themselves and were understood by others to be connected socially through their mutual exclusion of others whom they clearly defined as outsiders. The cousin marriages found in some groups of free people of color also show that some free people of color were interested in preserving and propagating certain lineages within their networks. Spouse selection had more meaning for these people than simply finding a decent wife or husband. These people demonstrated an interest in preserving the past. Maybe the past they attempted to preserve was composed of traditions from long-ago or long-held family alliances. Whatever their motivations, their actions reveal the problem with using racial community as a paradigm to understand their experiences in relations to other people.

CHAPTER 3: COMPETING COLONIAL HIERARCHIES

Introduction

When William Chavis of Granville County died sometime in the 1770s, he left an estate of hundreds of acres of land, 11 enslaved women, men, and children, livestock, and numerous trinkets. Chavis was a literate man who owned books and an ink stand. During his life, he operated his own inn or tavern, was politically active, and regularly appeared in the county courts to conduct business. As one of the most affluent people in his part of North Carolina, people in Granville County continued to remember Chavis's name and legacy at least until the 1890s. In many ways, his life was a model of how Britain's American colonial scheme not only paid off for the British crown and aristocracy, but also how slavery and the appropriation of Native lands could make common men into masters of their own small worlds. William Chavis was the master of his household, a master over men and women, yet categorized in his community as a "Negro."[1]

Chavis's categorization as a "Negro" exposed him to discriminatory taxation and probably subjected him to the sneers of white people who equated his racial categorization with inferiority. Yet Chavis was still among the fortunate in colonial America. Living in a society that assessed human value based on competing hierarchies of legal status (slave and free, head of household or dependent), national origin, sex, religious affiliation, reputation, family connection,

[1] Granville County Record of Wills, Volume 1, 164, 176-179, North Carolina State Archives; Chavis Bond to Keep Ordinary, Granville County Ordinary Bonds, Box 1, Ordinary Bonds 1748, North Carolina State Archives; O. W. Blacknall, "Negro Slave Holders and Slave Owners," *The News and Observer*, October 31, 1895, 2.

and skin color, Chavis was far from the bottom of the social order.[2] As a free man and head of household with wealth and respectability, his overall social position was clearly above that of most non-white people in the colony, and because of the pronounced importance of gender discrimination, legal status, and wealth disparity in the shape of society, Chavis, even as a "Negro," had more political privileges, rights, and power than every woman and girl and every servant or slave, regardless of racial categorization.

Some scholars have suggested that racial categorization was the most important form of social hierarchy in the British North American colonies.[3] Yet in colonial North Carolina, free status protected non-whites like William Chavis from the almost unlimited power masters wielded over slaves and firmly placed all free non-whites in a legal position above slaves. Social customs and the law created critical distinctions in the life experiences of free non-whites based on sex, servitude status, and personal wealth. The white versus non-white racial dichotomy used in theory to divide masters from slaves and the colonizers from the colonized indeed promoted and produced inequality. Yet the colonists' belief in race and a hierarchy of racial categories could only partially dictate the outcomes of those deemed non-white. As Anne McClintock argued, "no social category exists in privileged isolation; each comes into being in social relations to other categories, if in uneven and contradictory ways."[4] Racial categorization did not overshadow but instead competed with gender and wealth. Colonial North Carolina lawmakers had not concluded that racial categories were society's most valuable hierarchical

[2] Kathleen Wilson, *A New Imperial History: Culture, Identity and Modernity in Britain and the Empire, 1660-1840* (Cambridge: Cambridge University Press, 2004), 6.

[3] See Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge: Belknap Press, 1998), 123; Alan Taylor, *American Colonies* (New York: Viking Penguin, 2001), xii-xiii.

[4] Anne McClintock, *Imperial Leather: Race, Gender and Sexuality in the Colonial Contest* (New York: Routledge, 1995), 9.

concepts. The general public was less than fully convinced that categorization as a negro, mulatto, mustee, or Indian denoted a caste-like second-class status for free non-whites that overrode all other highly-valued forms of hierarchy.[5]

Racial Categorization, Gender, and Class in the Law

Generally, colonial laws that pertained to any particular group of free non-whites used some combination of racial categorizations, sex, and class, sometimes in conjunction with age in order to provide North Carolinians with a guideline for appropriate social behavior and to construct social boundaries. During the colonial period, only one law equally applied to all non-whites regardless of freedom status, gender, or wealth. North Carolina's political elites concerned themselves primarily with providing the master class with the legal tools to extract work from and control the lives of slaves and servants. As a result, with few exceptions, most of the laws that mention racial categories primarily affected slaves and non-white servants, especially women and girls. The law exempted free non-whites without apprenticeship or servitude contract obligations from the majority of laws that discriminated between whites and non-whites. Consequently, for most of the colonial period, those free non-whites who could disqualify themselves from North Carolina's harshest discriminations based on racial categorization, free non-white men who were heads of households and property holders, held a

[5] There is a large and growing literature relationship between racial categorization and gender in British Colonial America. This recent scholarship has argued that "race" in Colonial America cannot be fully understood without close attention to importance of gender and regulation of sexuality in shaping how people conceived and regulated "race" in the colonial context. See Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996); Kirsten Fischer, *Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina* (Ithaca: Cornell University Press, 2002); Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004); Jennifer M. Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore: Johns Hopkins University Press, 2009).

legal status only slightly below that of free white men of the same class and maintained privileges unavailable to women of all classes and servants of any racial classification.

The General Assembly did not pass the first laws to draw distinctions among North Carolinians based on racial categories until 1715. By 1715, the General Assembly sought to bring North Carolina's legal code up to par with those of other colonies such as Virginia, which had begun to encode racial distinctions in its laws during the second half of the seventeenth century.[6] Passed that year, "An Act Concerning Servants and Slaves" sought to control the behavior of members of the servant and slave classes and discourage sexual and familial relations between whites and non-whites. Many of the rules regulating the behavior of those categorized as "Negro, Mulatto, or Indyan" only applied to slaves and not to free persons. The act's provisions highlight the important distinction North Carolinians made between free persons regardless of class or racial categorization and slaves.

Most of the act's sections that focused on servants and apprentices made no distinction based on racial categorization including the law requiring all apprentices to serve until age 31 and the law describing the rewards to be given to servants by masters after servants fulfilled their terms of service. However, sections XIV, XV, XVI, and XVII sought to control sexual and familial interactions between whites and non-whites and sought to punish whites who blurred informal distinctions between the European-colonizer and slaveholding class and those supposed to be part of the subjugated non-white mass. Section XIV targeted "White women whether Bond or Free" who had "a Bastard child by a Negro, Mulatto or Indyan" and required those women to pay a six pound fine or to be sold by the Parish into two years of servitude. Section XV required

[6] For further discussion of racial categorization and law in other colonies see Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York: W. W. Norton and Company, 1975); A. Leon Higginbotham, Jr., *In the Matter of Color: Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978).

that the children born to these women be bound out as servants until they reached the age of 31. The next section penalized white men and women who married "any Negro, Mulatto or Indyan Man or Woman" with a fine of 50 pounds. The following section mandated the same fine for any person that might marry such couples.[7] These sections of the act punished white women and men as well as the children of white women because the law presumed all of these parties as free and therefore able to pay fines or fulfill servitude obligations. These regulations, like those passed in other colonies, particularly focused on the activities of white women because not only were they free and able to serve punishments, but also because the appearance of children who came from their bodies could be used as evidence to prove or disprove that illicit relations took place between white women and non-white men. Magistrates could not make convincing assumptions about the paternity of a non-white woman's child using the same type of evidence and in the case of most non-white women, who were slaves, the fathers' identities had no legal significance.

By 1723, the General Assembly had determined that the sections of the act concerning servants and slaves which sought to curb sexual and familial interaction between whites and non-whites were insufficient, especially in its ability to halt unions between whites and free non-whites. During this year, the assembly passed the colony's first law specifically targeting free non-whites and their associates in order to remedy this alleged problem. "An Act for an additional tax on all free Negroes, Mulattoes, Mustees, and such Persons, Male and Female, as now are, or hereafter shall be, intermarried with any such Persons, resident in this Government" targeted what the assembly described as "great Numbers of Free Negroes, Mulattoes, and other persons of mixt Blood, that have lately removed themselves into this Government." This law imposed a tax on "free Negroes, Mulattoes, and other Persons of that kind, being mixed Blood,

[7] Walter Clark, ed., *The State Records of North Carolina*, vol. 23 (Goldsboro: Nash Brothers, 1904), 62-66.

including the Third Generation…both Male and Female, who are of the age of Twelve years and upwards." The act also punished the white spouses of members of this class by also making them tithable.[8] This law actually had no direct effect on the tax status of white or non-white men, as both groups had been tithable before 1723. However, in seeking to discourage marriage between whites and free non-whites as well as to dissuade the settlement of free non-whites in North Carolina, the General Assembly had changed the tax status of all free non-white women, white women married to non-whites, and free non-white children 12 years old and over. Before this point, the only women and children who were taxable were slaves and the master of those slaves not the slaves themselves were responsible for paying the tax. This law imposed a true burden for families with a free non-white husband or wife, especially for poorer families that were unable to pay the tithe. Nevertheless, the law apparently did little to prevent marriage between whites and free non-white, particularly if the husband was a non-white male because the law made no distinction between the tax on a white wife or free non-white wife if the husband was non-white.

The law of 1723 also sought to curb the growth of the free non-white population in North Carolina by placing restrictions on recently emancipated persons. In 1715, the General Assembly had passed a requirement that prohibited emancipated persons from remaining in North Carolina more than six months after receiving their liberty. According to the 1723 act, recently freed persons had tried to overcome the law by removing temporarily from North Carolina and then returning after briefly living in another jurisdiction. In order to close this loophole in the law, lawmakers now required that all freed persons who illegally reentered North Carolina be sold

[8] Clark, *The State Records of North Carolina*, vol. 23, 106.

into seven years of additional service.[9] This provision, unlike the sections dealing with taxes, focused on a particular class of free non-whites and likely only had a very limited effect on free non-whites as a whole. Even emancipated persons could avoid the consequences of this law by moving to jurisdictions where the people were unaware of their past enslavement. A colony such as North Carolina was a particularly apt place for such deception because of the rapid westward movement that took place in the colony in the 1700s and the constant influx of new settlers into the colony. Furthermore colonial officials in newly settled areas, where the local economy needed laborers and artisans, were unlikely to press any new settlers about their previous status if they could somehow contribute to the community.

During the 1740s, the General Assembly passed reiterations and amended versions of the laws of the 1710s and 1720s, possibly in reaction to their limited success in earlier decades or because of general ignorance of the previously issued laws. The General Assembly of 1741 reissued the laws concerning intermarriage between whites and non-whites and those concerned with white women who bore non-white children. In the same year, the governing body amended the laws dealing with emancipated person. The new legislation required meritorious service, which would be defined by the county courts, for all emancipations and increased the penalty from sale into seven years of service to re-enslavement for all freed persons who attempted to return to North Carolina after their required removal. In 1749, legislators amended the tax imposed on free non-whites that applied to all non-whites up to the third generation from the original African or Indian ancestor by extending it to "all Negroes, Mulattoes, Mustees Male or Female, and all Persons of Mixt Blood, to the Fourth Generation."[10]

[9] Clark, *The State Records of North Carolina,* vol. 23, 106-107.

[10] Clark, *The State Records of North Carolina,* vol. 23, 345.

In 1754, the legislators passed the first law to privilege clearly and without exception all whites over all non-white regardless of freedom status, class, gender, or age. A portion the law entitled "An Act, for Establishing the Supreme Courts of Justice, Oyer and Terminer, and General Gaol Delivery of North Carolina" declared "that all Negroes and Mulattoes, bond or free, to the Third Generation, and Indian Servants and Slaves, shall be deemed and taken to be incapable in Law to be Witnesses, in any Cause whatsoever, except against each other."[11] From this point on, no non-white person could provide testimony against any white person even in cases where a free non-white person was a plaintiff against a white defendant. For the first time, white North Carolinians, even those who in every other way were the inferiors of wealthier, better educated, and more highly respected free non-whites were in North Carolina courtrooms the legal superiors of all non-whites, bond or free. For over a century after the passage of this law, both non-whites as well as whites concerned with maintaining order and protecting the potency of the law would have to develop creative strategies to overcome the inherent white supremacy imbedded in the North Carolina court system. Although this law undoubtedly had great consequence for generations of free non-whites, its influence on the patterns of daily life should not be overestimated. The happenings in any particular courtroom cannot be assumed to be a direct reflection of daily life outside of its limits. Countless free non-whites never faced a situation in which their testimony against white persons would have altered the overall direction of their lives.

Legislators at the 1760 session of the General Assembly passed a reform that overall improved the condition of non-white and white apprentices by changing their terms of service from up to their thirty-first birthdays to their twenty-first or eighteenth birthdays depending on

[11] The General Assembly passed a reworded iteration of this law in 1760. Walter Clark, ed., *The State Records of North Carolina*, vol. 25 (Goldsboro: Nash Brothers, 1906), 283, 445.

their racial categorization and sex. The law now required all boys to serve their masters until reaching the age of 21. The law also obligated courts to bind "every Female" apprentice to "some Suitable Employment 'til her age of eighteen years." Without a clearly stated purpose or logic, this law also required that "every such Female Child being a Mulatto or Mustee" shall serve "until she shall attain the Age of Twenty one Years."[12] The only logic that can be extracted from this law is legislators believed that mulatto and mustee girls had less of a right to their freedom than white girls. The wording of this law undoubtedly confused many court magistrates when deciding how to apply the law to the larger mass of non-white girls. The law does not specifically mention other categories of non-white girls except mulattoes and mustees. Furthermore, the law failed to define a "mulatto" or "mustee" or to explain how to delineate between categories of non-white persons.

The laws passed by the General Assembly during the colonial period set a precedent for a larger body of discriminatory laws that would appear in the late eighteenth and nineteenth centuries that curbed the rights and privileges of free non-whites during the national period. The majority of the colonial era laws, unlike those of the future, focused heavily on particular classes of free non-whites.

The Lives of Servants and Apprentices

Throughout the colonial period, economic status and gender shaped the lives of free non-whites in such a way that the experiences of those in servitude varied significantly from the lives of unbound free non-whites. The authority that both the law and society at large granted masters over servants and apprentices limited the life possibilities of all bound servants, especially

[12] Clark, *The State Records of North Carolina,* vol. 25, 418-419.

women. Masters had almost unlimited rights to the bodies and labor of their servants, and across the colony, they generally sought to take full advantage of these privileges. The apprenticeship law of 1760 granted apprentices more legal protections than in the past; nonetheless, they had to depend on a political apparatus that was inherently biased to the master class to protect their rights. Servants and apprentices, regardless of racial categorization, were not slaves and had the right to complain to local courts about abuses by masters. In this arrangement, protecting oneself from abuse of masters was difficult but not impossible.

The historical record suggests that free non-whites became part of North Carolina's system of bound servitude largely through legal actions against their mothers. Free non-whites generally did not enter the system of servitude through contractually-arranged indentured servitude like many European immigrants who paid their passage to the colonies through this method. Across North Carolina, courts bound free non-white children to masters as punishment for their mothers' offences of having children out of wedlock. The laws punishing women and children for bastardy were part of a long English and later British-colonial tradition of regulating the sexuality of the poor and protecting the labor interests of masters who would be responsible for providing housing and provisions for pregnant servant women, whether or not they could work. Even the children who may have been the products of rape or the children of their mothers' masters were forced into servitude. Like neighboring Virginia, North Carolina treated the sexual acts that produced bastard children as consensual regardless of whether mothers actually consented to the acts that led their children's births.[13]

Generations of non-white children found themselves circumscribed by North Carolina's system of servitude largely as the result of their white female ancestors' perceived sexual

[13] Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs*, 192-193.

indiscretions. The laws of servitude prevented servant women, many of whom were in their reproductive primes, from marrying while obligated to their masters' service. As a result, children born to servant white women were bastards, and because North Carolina law required the "mulatto" children born to servant women to be bound out, from birth children known to have non-white fathers automatically joined the servant class.

Delany Bright was one of the non-white children who fell into the colony's system of servitude because of the circumstances of her birth and North Carolina lawmakers' desire to control poor servant women and their illegitimate children. On July 10, 1746, Pasquotank County justices bound the two year old Delany who they described as a "Mallatto [sic] Girl" and daughter of "Lydia Bright a white weoman [sic] that was killed by a Tree that fell upon her" to James Burnham. Burnham agreed to provide Delany with "Sufficient Meat Drink Washing Lodging and Apparel fitting for Mallatoes."[14] This agreement between the justices of the court and Burnham demonstrates that North Carolina law provided both local magistrates and masters with broad powers in the lives of young non-white servants. By requiring "Meat Drink Washing Lodging and Apparel fitting for Mallatoes," the justices provided Burnham with legal protection if he decided to treat Delany as less than the typical white servant. The apprenticeship agreement gave Delany the opportunity to survive but did not guarantee that she would have the tools to move beyond the servant status of her youth.

The children of Christian Finny, a white servant woman who lived in Carteret County, became servants at birth as a result of North Carolina law's explicit bias against unmarried white mothers and their non-white children. By the early 1740s, Finney had begun to cohabitate with a "Negro" who belonged to Cary Godby. While living with Godby's enslaved man, Finny became

[14] Delany Mallato's Indenture, Pasquotank County Apprentice Bonds and Records, Box 1, Apprentice Bonds and Records B, North Carolina State Archives.

pregnant, and during December 1741, Godby appeared at the county court on her behalf because she was "big with child." Shortly after the court appearance, Finny gave birth to a "Mulatto Boy." As the law proscribed, Finny's child was bound out by the local court. Almost two years later, Godby presented to the Carteret County court "a Mulatto Boy born of Christian" and secured an indenture on the boy until he reached 31 years of age. Later that year, the court bound another of Finny's sons, who was only 2 months old, to her master Daniel Rees. Along with having the guardianship of her children transferred to her partner's master and her own master, Finny also saw her period of servitude extended by the courts. In 1745, Finny asked the courts to relieve her from Daniel Rees's service. However, the local magistrates rejected her request and ordered her to serve Rees for an additional year as punishment for the birth of a "mulato [sic] child" during her term of servitude.[15]

The descendants of Ann Burk, a white servant woman from Chowan County, also found themselves trapped in a web of multigenerational servitude. On May 26, 1733, Ann Burk gave birth to a "mulatto" daughter, Judah Burk. Less than two years after her daughter's birth, Ann agreed to bind Judah to Charles and Abigail Jordan. The January 31, 1735 agreement required Judah to "obey" her masters "in all lawfull [sic] services and commands whatsoever fit to employ her about untill [sic] she shall come to the full age and maturity of thirty and one years old." The agreement also prohibited Judah from contracting "matrimony with any person" during her period of service.[16]

Judah Burk's children also fell into North Carolina's system of servitude because their mother was still a servant during her reproductive prime. Judah's inability to contract marriage

[15] Carteret County County Court Minutes, Volume 1, 50, 57-59, 62, 70, North Carolina State Archives.

[16] Chowan County Miscellaneous Records, Volume 1, 86, North Carolina State Archives.

during her service along with the laws binding out bastard children subjected her children to the same conditions of limited freedom that she had experienced from an early age. From the 1750s into the early 1770s, Judah gave birth to several illegitimate children whom the Chowan County court bound as apprentices. Even into the nineteenth century, Judah's descendants continued to serve as apprentices to various whites in the area.[17] The experiences of Ann, Judah, and their descendants support historian Karin Zipf's argument that "apprenticeship was an institution employed by the white patriarchal elite as a measure of social control." Without protection of their parental rights, Ann and Judah lost access to their children's labor and "consequently lacked the opportunities of independence enjoyed by white men" who benefitted from the work of these women's children.[18] As a result, the Burk family became stuck in successional generations of bound servitude even with the weakening of the servitude system after the American Revolution.[19]

An apprentice's sex not only determined what might happen to his or her children if born during an apprenticeship but largely dictated what kind of training that young servant would receive from the master. Regardless of apprentices' racial categorizations, masters only trained girls in certain tasks while boys learned skills viewed by both their masters and local officials as appropriate for men. The tasks given to Amiah Sanderlin and Pen Pugh were typical of those assigned by the courts to most girls. In 1756, Elizabeth Lockhart of Bertie County promised to

[17] Chowan County County Court Minutes, Volume 6, January 1767, North Carolina State Archives.

[18] Karin L. Zipf, *Labor of Innocents: Forced Apprenticeship in North Carolina, 1715-1919* (Baton Rouge: Louisiana State University Press, 2005), 7.

[19] For further discussion of the multigenerational influence of the servitude system see Fischer, *Suspect Relations*, 128-129. For further discussion of changes in the apprenticeship system after the American Revolution see Holly Brewer, "Apprenticeship Policy in Virginia: From Patriarchal to Republican Policies of Social Welfare," in *Children Bound to Labor: The Pauper Apprentice System in Early America* ed. Ruth Wallis Herndon and John E. Murray (Ithaca: Cornell University Press, 2009), 183-197.

train "Amiah Sanderlin Daughter of Ann Sanderlin a Free Mullattoe Woman" in "the art and Mistery of household Business." During 1765, Bertie County officials bound Pen Pugh, a "mulatoe" girl, to John Pearson in order to learn spinning. Boys had the opportunity to learn a wider range of trades. In April 1763, the Chowan County court bound four of Rachael Read's "mulatto" sons, Masheck and Shadrack to learn the cooper's trade and Reuben and Jacob to become cordwiners.[20] Other boys learned trades such as farming, carpentry, and blacksmithing.[21] Through the energies and prerogatives of both the local government and the master class, the apprenticeship system served as an important apparatus for the production of a gendered labor force.

North Carolina law required servants to submit to their masters in most instances. However, unlike enslaved persons, both non-white and white servants had the right to challenge excessive abuses in court. Servitude was a temporary status and not intended to completely override a servant's freedom. Local courts were willing to hear and often protect the servants of overbearing masters. The courts heard complaints from servants who believed their masters held them beyond the agreed upon term of service.[22] In October 1745, Sarah Overton alias Boe, "a servant mallatto [sic] wench," asked the Pasquotank County court to grant her liberty from Edmund Chaney after being held beyond the agreed period of service. In order for her to prove her case, the court allowed Overton to locate a bible that would provide the court proof of her age. Overton apparently produced evidence of her age, and the court ordered Chaney to give her

[20] Chowan County County Court Minutes, Volume 5, 131, North Carolina State Archives.

[21] Chowan County County Court Minutes, Volume 6, January 1767, North Carolina State Archives.

[22] Historians have found contrasting situations in other colonies. John Wood Sweet argued that "Town officials typically failed to provide free people of color the same protections they routinely granted to even the poorest whites." See John Wood Sweet, *Bodies Politic: Negotiating Race in the American North, 1730-1830* (Baltimore: Johns Hopkins University Press, 2003), 66.

freedom along with freedom dues.[23] Fifteen years after Overton's case, Bob Boe, her son made a similar complaint to the Pasquotank County court and argued that his master held him "unlawfully & illegally restrained [him] of his liberty."[24] The court found in his favor.[25] Local officials also handled complaints about cruelties. At the November 1756 session of Craven County Court, James Dove, "a negro servant," complained to the court on "behalf of himself and Nelly, Sue, Sarah, Moll, and William Dove" of "misusage" by their master, William Smith. The court directed Smith to appear before the court in order to answer the complaint.[26]

Historians have demonstrated that servants sometimes resorted to absconding from their masters rather than taking their complaints to the courts. The courts were a particularly unsatisfactory option for servants who felt in immediate danger or did not trust local officials, many of whom were the peers of their masters. Yet running away was not necessarily a solution, especially if their masters recaptured them. Nevertheless, the courts still provided runaway servants with due process after their recapture. John Nead alias Ned John "an Indian man servant" and Solomon Poker "an Indian servant" fled their masters and lived on the run until their masters had them captured. Later, the two servant men appeared at the September 1730 term of Carteret County court where justices required them to serve their masters for an additional three years as punishment for running away. In 1750, Violet a "free negro" from Craven County ran away from her master and successfully avoided capture for eleven days.

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[23] Pasquotank County County Court Minutes, Volume 1, October 1745, January 1745, North Carolina State Archives; Chaney Mallattoes Bonds, Pasquotank County Apprentice Bonds and Records, Box 1, Apprentice Bonds and Records B, North Carolina State Archives.

[24] Petition of Bob Boe, Pasquotank County Apprentice Bonds and Records, Box 1 Apprentice Bonds and Records B, North Carolina State Archives.

[25] Pasquotank County County Court Minutes, Volume 2, October 1760, North Carolina State Archives.

[26] Craven County County Court Minutes, Volume 5, 247, North Carolina State Archives.

Once Violet's master retrieved her, he brought her into the county court. The justices required Violet to return to her master and serve him for an additional 22 days.[27]

The cases of these runaways suggest that the courts had little sympathy for servants who tried to better their circumstances by leaving their masters without permission. The courts clearly viewed absconding as a breach of contract and sought to remedy these breaches by forcing servants to fulfill the terms of their service. On the other hand, the courts' treatment of runaway servants highlights the status difference between servants and slaves. Although servants and slaves sometimes lived under similar environmental conditions and worked the same tasks, slaves did not enjoy the same legal privileges as servants. Regardless of their racial categorization, servants had the right to have the courts assign their punishments while masters had the freedom to choose their slaves' punishments. Historians have demonstrated that punishment for slaves could be much harsher than a return to service or additional years of service. Masters had complete control of their slaves' lives while servants continued to maintain limited legal protections.

The power masters had over the lives of non-white servants, sometimes for successive generations, limited servants' life choices. Colonial legislators' preoccupation with policing the sexuality of women and girls caused servant women and girls additional hardships. Nevertheless, servant status failed to strip free non-whites, regardless of sex, of the privileges of freedom. Unlike slaves, non-white servants, even those who lived the most miserable everyday existence, maintained their legal personhood throughout their terms of service. Although lawmakers designed the law in favor of masters over servants, non-white servants still had opportunities to express grievances, and more importantly, they had service agreements that provided them with

[27] Craven County County Court Minutes, Volume 6, 65, North Carolina State Archives.

very basic protections. Whatever influence others' beliefs about racial categorizations had on the lives of these servants, those opinions, under law and in practice, could not translate into the legal chattel position of slaves.

The Lives of All Other Free Persons

Much like the free persons described in T. H. Breen's and Stephen Innes's work on Virginia's Eastern Shore during the seventeenth century, free non-whites in colonial North Carolina who were neither servants nor apprentices "made personal decisions, and planned for the future in the belief that they could in fact shape their physical and social environments."[28] The acts of their neighbors determined how their second-class racial categorization actually influenced their lives. The law made slight distinctions between the privileges of free persons based on racial categorization. However, only neighbors' and officials' desires to enforce that law made legal discrimination a burden. Therefore racial categorization, even among those non-whites that shared a common free status, did not produce a uniform experience. Free non-whites' life outcomes varied according to their wealth, gender, work, and reputation. Some non-whites became more affluent than most of their white neighbors, while other non-whites could barely afford life's basic necessities. Both the laws and societal norms that produced gender distinctions created a wedge between the lives of free non-white men and women and particularly limited women's opportunities in the political and economic realms. Work and reputation operated side by side in a society that valued free people based on their contribution to the local community's day to day operations and their adherence to societal norms. Whites who believed themselves superior in some ways to non-whites could also respect their non-white neighbors who helped

[28] T. H. Breen and Stephen Innes, *"Myne Owne Ground": Race and Freedom on Virginia's Eastern Shore, 1640-1676* (New York: Oxford University Press, 1980), 22.

them kill their hogs and plow their fields. Circumstances forced them to value the only blacksmith who provided the community with all of its nails and tools and just happened to be non-white.

Economic success distanced a few free non-white masters and major landholders from the mass of people in their localities. Their existence in colonial North Carolina rebukes historical arguments that suggest that racial categorization became the primary social hierarchical structure in British Colonial North America. Mentioned at the beginning of this chapter, William Chavis lived a life that drastically contrasted with that of both most non-white people and most colonists in general. Through land grants, inheritance from his father, and other unknown means, Chavis acquired over 1,000 acres of land in several North Carolina counties. He was also one of the largest slaveholders in his Granville County community. According to tax records from 1758, Chavis's six slaves made him the largest slaveholder in his tax district that year. Three years later, only one person in the Fishing Creek District of Granville County owned more slaves than Chavis.[29] Chavis exploited a system that placed capital acquisition over white racial domination, and he profited through careful decision making and successful negotiation within the colonial power structure.[30]

Between the most accomplished free non-whites, such as William Chavis, and the poorest free non-white persons was a class of non-white yeomen. These yeomen owned small collections of personal property and possibly dozens of acres of arable land, but were the masters of no one beyond their dependent family members. Peter George of Craven County was one of these

[29] List of Taxables, Granville County Taxables, Box 20, 1758, North Carolina State Archives; List of Taxables, Granville County Taxables, Box 20, 1760-1761, North Carolina State Archives.

[30] In his study of colonial Mexico City, R. Douglas Cope argued that when one non-white could own another "property rights prevailed over racial order." See R. Douglas Cope, *The Limits of Racial Domination: Plebeian Society in Colonial Mexico City, 1660-1720* (Madison: University of Wisconsin Press, 1994), 162.

yeomen. At his death in 1763, George owned 250 acres of land, five head of hogs, carpenter and shoemakers tools, and several items, which he distributed among his two sisters and brother in his will.[31] The families of Thomas Archer, Gabriel Manley, James Nickens, Joseph Hall, and William Weaver, all described as "mulattoes" in a 1751 Bertie County tax list, also fell into North Carolina's non-white yeomanry.[32] The heads of these families owned from one hundred to several hundred acres of land.

These small landholders not only were successful in providing for themselves but also demonstrated to their community that their work was imperative to that community's survival and development. Members of these families were skilled tradesman, such as Gabriel Manley, a cooper who made barrels for his community. They also provided labor for public projects. In 1754, when Bertie County officials called for the construction of a road from Alexander Cotton's ferry to Deep Creek, the court recruited William Weaver, Thomas Archer, and Archer's two sons, John and Hancock, along with several of their white neighbors to construct the thoroughfare.[33]

Below the free non-white master class and yeomen were the free non-white poor whose lives contrasted drastically from those of propertied persons and were only a step up from those bound in servitude. The major difference between the free non-white poor and servants was the law obliged the latter to serve a master and follow that master's guidance while the poor had freedom of choice. Nevertheless, the poor did not always have the resources to exercise or

[31] Inventory of the Estate of Peter George, Craven County Estates Records, Box 54, George, Peter 1763, North Carolina State Archives; Craven County Record of Deeds, Volume 8, 221, North Carolina State Archives.

[32] Bertie County Tax List for 1751, Colonial Court Records Taxes and Accounts, Box 190, Tax Lists-Bertie-1751, 1753, 1754 Estate Tax-Beaufort Pet., n. d., North Carolina State Archives.

[33] Order for a Road from Cotton's Landing, Bertie County Road, Bridge, and Ferry Records, Box 1, Road Papers 1751-1755, North Carolina State Archives.

protect that freedom of choice. Stuck between the inconsistences of poverty and freedom, "Negro Toney" of Pasquotank County struggled to maintain the little semblance of liberty in his possession. In 1748, Toney landed in court after James Cleeves complained that Toney had borrowed his canoe and not returned it. Toney explained to the court that he "happened to loose" the vessel, and in response, the court ordered him to pay Cleeves a fine of three barrels of corn. Toney was too poor to pay this fine, but the court was determined that its judgment would be fulfilled. The court sent Bennett Morgan, the constable, to confiscate from Toney several pigs, an iron pot, pot hook, a pot lid, runlet, lye tub, and two turkeys, which Toney later described as "all the things [he]…had in the world."

The court's decision could have ruined Toney. Toney was free, but without his few worldly possessions, he likely would have struggled for the most basic necessities; necessities that were available to fairly well-taken-care-of slaves and servants. Not long after the confiscation of his property, Toney's luck seemed to turn when the canoe resurfaced in "good order as when borrowed." Toney attempted to restore the canoe to Cleeves, but he refused to accept the vessel. In a petition to the court, Toney requested that the constable return his property, which Morgan had yet to sell, and that the court require Cleeves to accept the canoe. Toney also offered to "pay the corn" owed if his property was returned to him.[34] The court granted Toney's request and ordered that the court evaluate the canoe for damage.[35] Toney's dilemma demonstrates the significance of freedom in his life while highlighting the difficulties poverty imposed on him. As a free person, Toney had the right to challenge Cleeves's claim against him and to petition the court in order to protest what he viewed as an injustice. These

[34] Negro Toney's Petition, Pasquotank County Civil Action Papers, Box 3, 1748, North Carolina State Archives.

[35] Pasquotank County County Court Minutes, Volume 1, July 1748, North Carolina State Archives.

privileges were totally inaccessible to enslaved persons, including those who lived in better physical circumstances than Toney. Yet poverty placed Toney in constant jeopardy of being unable to provide for his survival.

Poverty always had the potential to threaten freedom's potency, but gender norms and laws that defined women and girls as permanent dependents stood as a threat to the lives of women across the wealth spectrum and racial hierarchy.[36] For non-white women in propertied families, the deaths of husbands led to the dispersion of family property. Frances Chavis, the wife of William Chavis of Granville County, was forced to purchase many of her husband's personal items at public auction after his death.[37] At the 1760 sale of Joseph Hall of Bertie County, Margaret Hall was unable to purchase any of her husband's personal effects.[38] Regardless of class, women with underage children, if married, could lose direct influence over their children at the deaths of their husbands. According to the law, the children of unmarried women automatically fell under the jurisdiction of local courts, and courts used their legal power to remove children from their mothers' households and place them under the care of masters. Such was the case of several non-servant single women in Beaufort County. At the June 1758 term of court, local officials ordered Rachel Blango, Sarah Blango the younger, Dinah Blango, Bett Moore, Mary Moore, and Keziah Moore, all described by the clerk as "Negroe" women, to appear before the court so that their children could be bound out to "masters."[39]

Wealth disparities and the gender hierarchy displaced much of the potential power of racial categorization in the daily lives of free non-whites. Yet the personal relationships whites

[36] For examples of white women dealing with similar issues, see Zipf, *Labor of Innocents*, 20-22.

[37] Granville County Record of Wills, Volume 1, 164, 176-179, North Carolina State Archives.

[38] Bertie County Estates Records, Box 35, Joseph Hall, North Carolina State Archives.

[39] Beaufort County County Court Minutes, Volume 1, 46, North Carolina State Archives.

built with their free non-white neighbors along with those whites' determination to see their non-white associates treated as neighbors and not second-class subjects performed an equally pertinent role in the actual lived experiences of free non-whites. The battle against the additional tax burden imposed on free non-white men with dependents highlights some whites' desire to protect their free non-white neighbors and the resources those neighbors contributed to their communities. In 1762, several inhabitants of Granville, Edgecombe, and Northampton Counties petitioned the General Assembly for a repeal of the 1723 law taxing the wives and daughters of free non-whites. Noting their non-white neighbors' intrinsic value to their localities, they argued that "many Inhabitants of the sd. Counties who are Free Negroes & Mulattoes and Persons of Propbity [sic] & good Demeanor and cheerfully contribute towards the Discharge of every public Duty injoined [sic] them by Law." They further commented that "But by reason of being obliged by sd. Act of Assembly to pay Levies on their Wives and Daughters as therein mentioned and greatly Impoverished and many of them rendered unable to support themselves and Families with common Necessaries of Life."

The extra tax liability on free non-white families extracted financial resources that they could have used to invest in more land, purchase more supplies, and feed more hungry mouths.[40] The petitioners recognized that the law negatively affected their non-white neighbors and likely believed that their neighbors' poverty could ultimately become their own burden. The financial status of individual families was the collective concern of all people in a particular community. The potential detriment of the 1723 law was not the individual problem of an imagined non-white racial community on the society's periphery but an attack on friends and neighbors. The

[40] North Carolina was not the only colonial society to impose discriminatory taxes on free non-whites. For other examples, see David W. Cohen and Jack P. Greene, ed., *Neither Slave Nor Free: The Freedmen of African Descent in the Slave Societies of the New World* (Baltimore: Johns Hopkins University Press, 1972), 38, 153.

line of argumentation presented by the mostly white group of petitioners in 1762 failed to persuade lawmakers to amend the colony's statutes. However, the petitioners' attempt reveals the importance of personal beliefs in shaping the potency attached to racial categories.

In 1771, residents of Granville County again sought to weaken legal discrimination against their free non-white neighbors and impose an alternative set of values. Unlike the previous generation of petitioners, these men used the rhetoric of the enlightenment to argue their case versus opposing the 1723 law on the grounds of its impracticability. Seventy-five white and non-white petitioners declared that "The Petition of the Inhabitants of Granville County Humbly Shewith that by the act of assembly concerning Tythables it is among other things enacted that all free negroes & mulato [sic] women and all wives of free negroes & mulatoes [sic] are Declared Tythables & chargable for Defraying the Public County & Parish Leveys [sic] of this province which Your Petitioners Humbly conceive is highly Derogatory of the Rights of Freeborn Subjects." Calling free non-whites "Freeborn Subjects" suggests that the petitioners believed that English laws and English rights protected all freeborn colonists regardless of racial categorization. They asked the General Assembly to remedy this miscarriage of privilege by passing an act "Exempting such free negroe [sic] & mulatoe [sic] women and all wives other then [sic] slaves of free negroes & mulatoes [sic] from being Listed as Tythables & from paying any Public County or Parish Leveys [sic]."[41]

The General Assembly failed to respond to this petition as it had in 1762. The body's failure to act highlighted a disjuncture between the political goals of North Carolina lawmakers and the principles and needs of people at the local level. In most situations, local people determined the treatment of both whites and non-whites. They used an equation that took

[41] Petition from the Inhabitants of Granville County, General Assembly Session Records, November-December 1771, Box 5, Nov-Dec 1771 Lower House Papers Petitions rejected or not acted on, North Carolina State Archives.

respectability, usefulness, wealth, and gender into consideration when making decisions about how to interact with their neighbors and how to regulate those interactions. The kind of discrimination supported by the law of 1723 challenged their ability to shape their own social order and made racial categorization more than simply a method to uphold slavery but also a burden on their society.

Colonial government mandates weakened the impact of white people's affinity for their non-white neighbors. Nevertheless, face to face interactions regulated by local people rather than discriminatory laws shaped the daily routines of most free non-whites. The courtroom was one place where the opinions of local whites about their free non-white neighbors counted most. In the courtroom, all-white juries could and did rule on behalf of their free non-white neighbors, sometimes against their white neighbors. In 1739, the General Court charged Joseph Bass a "mulat[t]o" along with Cambridge "a slave" with breaking into and stealing from the house of Hugh Allen of Chowan County, a white man. At the November term of court, Allen presented evidence against Bass and Cambridge but failed to persuade the court of their guilt.[42] In a 1758 case, Gabriel Manley, a free non-white, sued Barnaby Goodwin, a white "planter," for 10 pounds after Goodwin allegedly assaulted Manley. After several witnesses, all white men, testified in the case, the Bertie County court issued a verdict in favor of Manley.[43] In these courtrooms, jurors used an evaluative process that privileged evidence, reputation, and argument over assumptions

[42] Dom. Rex v. Joseph Bass, Colonial Court Papers Criminal Papers-General Court 1735-1737 Criminal Papers-General and Assize Courts 1738-1739, Box 176, General Court and Assize Criminal-1739, North Carolina State Archives; Colonial Court Records Miscellaneous Dockets-General Court 1739, Volume 119, October 1739, North Carolina State Archives.

[43] Manley v. Goodwin, Bertie County Civil Action Papers, Box 5, 1758-1, 1759-1, North Carolina State Archives; Manley v. Goodwin, Bertie County Civil Action Papers, Box 6, 1760, North Carolina State Archives.

about a person's racial categorization. These colonial courts and the white men who administered them sought to uphold the public peace over a strict racial hierarchy.[44]

The essential roles wealth, gender norms, work, and community dependence played in determining the life outcomes of free non-whites reveal that racial categorization was an important but not the dominant form of social hierarchy in colonial North Carolina. Free status placed non-whites in circumstances that contrasted with the legal limitations imposed on servants and the non-personhood given to slaves. In a limited numbers, free non-whites not only had more liberty to make life choices than servants and slaves but dictated orders to such persons. In a strict racial hierarchy, such events never should have happened.

Conclusion

Scholars have overstated the importance of racial hierarchy in the lives of colonial North Carolinians. In his history of North Carolina, William S. Powell contended that in the colonial period, "Blacks, both slave, and free, were considered to be a separate social group."[45] Ira Berlin argued that in the eighteenth-century Chesapeake, which included North Carolina, "tobacco planters collapsed all black people, free and slave, into one subaltern class, in which color–not nationality, skill, or religion–defined all."[46] In reality, other forms of hierarchy competed with and regularly trumped a rigid racial order. North Carolina law, like the laws of many other

[44] Laura Edwards defined "keeping the peace" as "keeping everyone—from the lowest to the highest—in their appropriate places, as defined in specific local contexts." She argued that local courts in post-Revolutionary North Carolina sought to maintain the peace even by providing subordinate people with "direct access to localized law." Although her arguments focus on the post-Revolutionary South, colonial period court cases suggest that her contentions about the peace could easily be extended to colonial North Carolina. See Laura F. Edwards, *The People and their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 7.

[45] William S. Powell, *North Carolina through Four Centuries* (Chapel Hill: University of North Carolina Press, 1989), 116.

[46] Berlin, *Many Thousands Gone*, 123.

colonies, erratically interjected racial categorization in the lives of North Carolinians. It failed to place racial categorization solidly above distinctions between free persons and enslaved persons or even beyond the legal differences between servants and slaves.

Through the early national period, wealth, sex, respectability, and other forms of hierarchy would continue to compete with racial categorization and prevent the implementation of a rigid racial order in North Carolina. During the American Revolution, white and free non-white men and women joined together to protest the rule of King George III and the British Parliament. Whatever value they gave to imagined racial differences, both whites and non-whites submerged those beliefs as they fought together in the same regiments as neighbors and allies on the battlefields of Trenton, Charleston, Eutaw Springs, and Guilford Courthouse. When North Carolinians wrote their first state constitution in 1775, they developed qualifications for voting that took account of wealth, gender, and free status. Yet they left out qualifications based on racial categorization.[47]

[47] Application of Benjamin Reed, File S41976, *Revolutionary War Pension and Bounty-Land Warrant Application Files*, National Archives Microfilm Publication; Application of William Lomack, File S41783, *Revolutionary War Pension and Bounty-Land Warrant Application Files,* National Archives Microfilm Publication; Application of Benjamin Richardson, File W4061, *Revolutionary War Pension and Bounty-Land Warrant Application Files*, National Archives Microfilm Publication; Application of William Taburn, File W18115, *Revolutionary War Pension and Bounty-Land Warrant Application Files,* National Archives Microfilm Publication.

CHAPTER 4: DEBATING THE POSITION OF FREE PEOPLE OF COLOR

Introduction

Historians have characterized the time between the Revolution and the Civil War as an era of growing hatred towards free people of color and have argued that by the late antebellum period whites had come to a general consensus that free people of color had no place in their society. Whites wanted either to enslave them or remove them from their midst. Scholars have cited the barrage of laws targeting the liberties of free people of color as a reflection of white Southerners' general attitude towards them.[1] However, laws passed by the legislature reflect only the position of the side that won the debate in the state capitol, not a consensus or even a major shift in public opinion. Scholars' conclusions ignore the ultimate failure of radical pro-slavery ideologues and lawmakers to remove free people of color from their society. Their failure is a clear reflection of their opposition's success in protecting many of the rights of free people of color. Free people of color and their white allies offered strong opposition to legislative prohibitions and successfully held back a total denigration of free non-whites' rights. [2]

Since the seventeenth century, free people of color had adapted to life within a society dependent on slavery and rarely displayed any desire to risk their own freedom in order to secure the liberty of slaves. However, free people of color increasingly became the targets of pro-

[1] John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: University of North Carolina Press, 1943), 211-225; Ira Berlin, *Slaves without Masters: The Free Negro in the Antebellum South* (New York: Pantheon, 1974), 343-380.

[2] For further discussion of pro-slavery ideologues' failure to strip freedom from free people of color see J. Merton England, "The Free Negro in Ante-Bellum Tennessee," *Journal of Southern History* 9 (February 1943): 50; William W. Freehling, *The Road to Disunion: Secessionists Triumphant 1854-1861* (New York: Oxford University Press, 2007), 185-201.

slavery ideologues seeking to protect slavery in a nation growing increasingly intolerant of the South's peculiar institution.[3] The most radical pro-slavery ideologues saw all non-slaveholders, including the majority of whites, as potential allies to the hundreds of thousands of people held in bondage but understood that the political situation of the time prevented them from controlling all threats to slavery. Attacking non-slaveholding white men in order to protect slavery would have confounded the pro-slavery agenda and highlighted the exclusivity of slaveholding. In order to solve this conundrum, radical pro-slavery ideologues sought to convince the majority of whites, who had no direct financial interests in human bondage, that slavery was something they should protect and that the inferior status of non-whites helped to uphold their own superior social position.[4]

For radical pro-slavery ideologues, free people of color, who were second-class citizens and a minority population, were a safer target for direct attack. Slavery's advocates strengthened existing beliefs that free people of color were not equal to whites and linked their inequality with the condition of slaves by stressing the importance of racial categorization over free status.[5] They tried to convince the majority of whites that non-white status created a bond between free people of color and slaves that threatened the freedom of all white people. Their narrative suggested that free people of color and slaves together would ultimately conspire to overthrow

[3] For further discussion of the growing movement against slavery, see Eric Foner, *Free Soil, Free Labor, Free Men* (New York: Oxford University Press, 1970).

[4] Bill Cecil-Fronsman, *Common Whites: Class and Culture in Antebellum North Carolina* (Lexington: University of Kentucky Press, 1992), 82.

[5] Watson Jennison found this to be the approach of Georgia pro-slavery ideologue Joseph Lumpkin. See Watson Jennison, "Rewriting the Free Negro Past: Joseph Lumpkin, Proslavery Ideology, and Citizenship in Antebellum Georgia," in *Creating Citizenship in the Nineteenth-Century South*, ed. William A. Link, David Brown, Brian Ward, and Martyn Bone (Gainesville: University Press of Florida, 2013), 41-63.

the white power structure in the United States, just as the free people of color and slaves destroyed French authority in Saint Domingue during the Haitian Revolution.[6]

Yet many whites recognized that the United States was structurally different from the Caribbean nation in its social order and demographics. Unlike in Haiti, slaves never made up a majority in the United States, and free people of color had little incentive to join up with rebellious slaves who could easily be crushed by larger numbers of white men.

Whites' numerical dominance and collective power within the political and economic systems induced most free people of color to cooperate with whites rather than build alliances with slaves. Many whites viewed free people of color as their friends, neighbors, business partners, in some cases family members, and most importantly as fellow citizens. Some slaveholders saw free people of color, especially those who owned slaves, as potential allies if slave rebellion ever broke out. Unconvinced by the narrative provided by extremist pro-slavery ideologues, some whites worked with free people of color to fight radical legislation and maintain the status quo. Through the Civil War period, they provided an effective opposition to the most insidious attacks on the liberties of free people of color.

The Debate during the Early National Period

The North Carolina General Assembly hosted many of the fiercest debates over the rights and privileges of free people of color. The legal codes passed between the Revolution and 1830 reveal the lack of consensus over defining the position of free people of color in society. The legislature passed relatively few laws to limit the liberties of free people of color. At the same time, it regularly entertained and often passed manumission bills, which helped to increase the

[6] For further discussion of the alliance of free people of color and slaves during the Haitian Revolution, see Laurent DuBois, *Avengers of the New World: The Story of the Haitian Revolution* (Cambridge: Belknap Press, 2004).

size of the free non-white population. On a few occasions, the legislature passed laws protecting the rights of free people of color. Although ostracizing free people of color was not the primary goal of legislators during this era, white supremacist sentiments and demands to protect slavery sometimes interfered with lawmakers' general apathy towards free people of color.

Beginning in the 1780s, the North Carolina General Assembly began to approve legislation that targeted free people of color found guilty of crimes and placed limits on manumission. However, these acts had relatively little effect on the vast majority of free persons of color who abided by the law. Among the discriminatory laws that specifically targeted criminals was the 1787 "act to prevent thefts and robberies by slaves, free negroes, and mulattoes." This law prohibited free negroes and mulattoes from "entertaining" slaves in their homes during the Sabbath and required a fine for any person found guilty of this crime. The law further stated that any free person of color who could not pay the fine could be hired out to someone willing to pay the penalty.[7] This law was problematic for free people of color who were convicted and then could not afford or could obtain a loan to pay the convicting court's fine. This law never affected most free people of color, either because they abided by the law or because the law was rarely enforced. In 1826, the legislature passed a bill preventing the migration of free people of color into the state. This law like the 1787 act, affected only a few free people of color living in North Carolina, most likely those with family members living across the borders in Virginia and South Carolina. Local officials enforced this law irregularly, as the 1850 census for many counties show people born in other states living in North Carolina.[8]

[7] Walter Clark, ed., *The State Records of North Carolina*, vol. 24 (Goldsboro: Nash Brothers, 1906), 890-891.

[8] See 1850 United States Federal Census, North Carolina.

From the Revolutionary era up to the 1810s, North Carolina's legislature demonstrated a relatively liberal attitude towards free people of color and in some cases sought to safeguard their legal rights. An 1810 law protected free people of color who loaned money by requiring all insolvent debtors to pay their creditors, even if those creditors happened to be free persons of color.[9] The 1810 law supported the claims of creditors of color, but more importantly protected the larger institution of credit. Had the state allowed its citizens not to pay debts to free people of color, the legislature would undoubtedly opened the door to unreasonable excuses for insolvency. Insolvent debtors and their lawyers would have attempted to deflect the payment of debts with charges that creditors, whether considered white or non-white, were free persons of color. The courts would then have to determine whether a creditor was truly white before entering a judgment for the creditor. Some legislators may have truly believed free people of color had the right to collect debts regardless of their debtors' racial categorizations, but the chicanery that a law discriminating against free people of color might bring to debt cases was likely too big a risk for most state lawmakers.

With break out of the War of 1812, the General Assembly's attitude towards free people of color began to shift. Although legislators seem to have been unwilling to jeopardize the state's system of credit in 1810, some were willing to discriminate against free people of color in order to strengthen the position of whites in other sectors in the following years. Up to the War of 1812, free men of color had most of the privileges and responsibilities of citizens. Like white men, they could vote for members of the lower house and could also vote for members of the upper house if they met property qualifications. Free men of color also served in the militias as they had since the colonial era. Like whites, free people of color in many jurisdictions were also

[9] *Laws of the State of North Carolina Revised, Under the Authority of the General Assembly* (Raleigh: J. Gales, 1821), 1196-1197.

protected from the testimony of enslaved people, whom many jurists believed could not be trusted because of the unusual influence masters had over their slaves. A slave could provide important testimony, which could help to determine a trial's outcome, but the legislature recognized that slave masters ultimately decided how their slaves testified in court. A true statement from a slave in court that was unacceptable to his or her master could be followed by a violent punishment after such a public betrayal of a master's wishes.

At the outbreak of the War of 1812, militia units around the state enlisted both free people of color and whites in the defense of the oncoming British invasion. Regiments from counties with large free non-white populations such as Halifax, Hertford, Robeson, and Granville all had free people of color attached to their local units.[10] However, the General Assembly took action to cancel the enlistments of free people of color as armed militiamen. During the first year of the war, the state legislature passed a law prohibiting militia officers from enrolling free people of color in their units unless enlisted as musicians. Some free people of color served in this capacity during and after the war.[11]

The historical record provides little insight into North Carolinians' reaction to this restriction on free people of color or the legislature's motive for passing the law. Free men of color who enlisted in the fight to protect their country, a nation many of their forebears had fought to create just a generation and half before, must have been shocked by the legislature's actions. How could the legislature remove men from action at the same time the nation was mounting a defense against stronger and better equipped British forces? How could a white militiaman be more worthy of service than a non-white one? The legislature's answers to these

[10] *Muster Rolls of the Soldiers of the War of 1812: Detached from the Militia of North Carolina in 1812 and 1814* (Raleigh: Ch. C. Raboteau, 1851), 7-8, 18-19, 30-31, 36-37.

[11] Franklin, *The Free Negro in North Carolina*, 102-103.

questions are not explained in the surviving historical record, but their reasoning might have revolved around some political motivation to diminish the equality between white men and non-white men. Free people of color could not serve beside white men as equals because some legislators clearly believed they were not equals.

During the state's attempt to clarify the language of its laws, the developing campaign to mark free people of color as clearly unequal to whites made inroads. Since the colonial era, the law prevented non-whites, both free and enslaved, from testifying against whites in court. Yet the law did not specifically clarify whether slaves could testify against free people of color, although many jurisdictions prohibited slave testimony in the cases of all free persons. A Revolutionary War era law establishing courts in the new state of North Carolina declared that "all Negroes, Indians, Mulattoes, and all Persons of mixed Blood, descended from Negro and Indian Ancestors, to the fourth generation inclusive…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."[12] Courts interpreted this law to mean non-whites could not testify against whites. However, there was no consensus among courts as to whether slaves could testify against free people of color. Some courts discriminated between free people of color and slaves, and prevented slaves from testifying in the cases of all free persons. Other courts drew no distinction between various groups of non-whites. The 1821 General Assembly sought to clarify this law's purpose and prevent courts from drawing distinctions between enslaved and free non-whites. The legislators passed a law declaring that all non-whites "whether the person or persons whose

[12] Walter Clark, ed., *The State Records of North Carolina*, vol. 25 (Goldsboro: Nash Brothers, 1906), 445.

evidence is offered, be bond or free, shall be admissible and the witness competent, subject nevertheless to be excluded upon any other grounds of incompetency which may exist."[13]

The 1821 law that made slaves competent witnesses against free people of color was a direct challenge to the long established position of free people of color as members of a distinct middling group. Legislators lowered the status of free people of color by making them equals with slaves in the courtroom. This action blurred the distinction between freedom and enslavement, and reaffirmed racial categories as key social dividers. Being non-white was gradually becoming more of a problem for free people of color living in a society that some white men proclaimed was designed and created only for them. However, legislators had a long way to go if they intended to make slaves out of free persons of color. Through the 1820s, free people of color maintained numerous privileges including the right to vote and the right to petition the legislature.

Beyond the halls of the General Assembly, debates over the proper position of free people of color took place at the local level. The submission of legislative petitions by individual citizens served as a key method used by the many sides of the debate over the positions of free people of color in North Carolina society. Petitioners both white and non-white expressed their opinions to lawmakers on the appropriate position of free people of color in the state. Petitions served as a means for members of the general public to express their grievances, and allowed legislators to receive feedback from their constituents.

Local discussions on the place of free people of color in society produced joint action between free persons of color and their white allies, which sought to challenge the developing political campaign against free people of color. The 1821 law allowing slaves to testify against

[13] *The Laws of North-Carolina, Enacted in the Year 1821* (Raleigh: Thomas Henderson, 1822), 41-42.

free people of color became the target of several Hertford County citizens. In 1822, fifty-two free men of color petitioned the legislature in protest of the new law. They challenged the contention that slaves were their legal equals and asked the legislature:

> whether their situation even before the Revolution was not preferable to the one in which their dearest rights are so slight a tenure as the favour of slaves and the will & caprice of their vindictive masters for it cannot escape the notice of your Honorable Body that persons of this description are bound to a blind obedience, and know no Law, but the will of their masters.

In an attempt to strengthen their argument, they also highlighted the participation of several of their number in the American Revolution. The legislature's attempt to conflate the status of free people of color with that of slaves appalled these citizens of Hertford County. The petitioners, as free people, valued the distinct separation between their own status and that of slaves. Slaves had an opposing position to free persons of color in a society that drew a stark line of separation between the rights of the free and limited personhood of slaves. Free people of color fought in the American Revolution in order to progress further up the ladder of freedom, not to fall below the status they had during the colonial days.

An even larger number of white men from Hertford County joined their neighbors of color in protest, submitting their own petition. Among this group of 84 white men were many slaveholders. Yet they seemed to have feared the empowering of corrupt slave masters and argued that the new law would produce "the most serious mischief."[14] The General Assembly ultimately ignored these calls to repeal the 1821 law. However, this joint protest demonstrates that opinions about proper position of free people of color in society were spread across the spectrums of racial classification and wealth status. Many free people of color refuted attempts to downgrade their position in society, but they were not alone. There were always at least a few

[14] Petition of Sundry Persons of Colour of Hertford County, General Assembly Session Records, November-December 1822, Box 4, Petitions (Miscellaneous), North Carolina State Archives.

whites who understood that attacks on the rights on free people of color threatened the political and social system in general. Many free people of color had received their liberty because of their former masters' determination that they deserved the same privileges as all other free men. This law challenged the right of those former masters to pass on full civil rights to their former bondspeople. Probably of more importance, discrimination against free people of color conflicted with many well-to-do whites' sense of respectability and honor. The white men who supported their neighbors' attempts to fight injustice believed that many free people of color fit their ideal of respectability and industry. Free people of color were dependable, sober, hardworking citizens and valued neighbors. Many well-respected whites knew that the same could not be said about the scattering of whites in their neighborhoods who violated the values of industry, Christianity, and decency. The socially inept carried the scorn of their neighbors and the fear of their often abused slaves. Yet the new law enhanced their power while demoting more respectable and valuable community members who just happened to be non-white.

A year before the Hertford County petitions, Ephraim Hammonds, a free person of color, presented his own grievance to the General Assembly. On behalf of himself and the other free people of color in town of Fayetteville, Hammonds asked the legislature to extend the rights of the "Book Debt Law" to all persons, including free people of color. The Book Debt Law allowed creditors to collect balances from their debtors, through lawsuits if necessary. As previously noted, the General Assembly had extended the privileges of creditors to free people of color in 1810. However, it left an obstacle in place for those free people of color attempting to collect debts from whites. Since the colonial period, North Carolina law prohibited free people of color from testifying in court against white people. The law allowed free people of color to file suit

against white persons, but they could not serve as witnesses in those cases. Hammonds explained in his petition:

> That your petitioners are generally industrious mechanics and in the course of their labor are frequently compelled to give credit for small sums of money and the same difficulty which first induced the Legislature to pass the Book debt Law for the benefit of small creditors bears equally hard upon them and indeed much more so for their boys and young men being of the same complexion with themselves they cannot have the benefit of their testimony.

The prohibition of free people of color as witness against whites caused great difficulty for many creditors of color. They could submit documents to the court, such as notes detailing the agreement between the defendant and the plaintiff. However, non-white creditors had to depend on white witnesses to provide testimony in their favor against white defendants. The General Assembly tabled Hammonds's petition indefinitely, but his effort demonstrates that at least some free people of color were willing to publicly argue against what viewed as injustice in their society.[15] A portion of society believed that all whites should be the legal and social superiors of all other people, free or enslaved, but their belief did not go uncontested. Free people of color and their friends believed that the Constitution gave them grounds to protest injustices. By using the right to petition the government, free people of color established that they were citizens with constitutionally-protected rights. Some North Carolinians tried and succeeded in making them second-class citizens, but nonetheless free people of color were citizens.

The Debate in the Antebellum Era

[15] Petition of the Free Colored Inhabitants of the Town of Fayetteville, General Assembly Session Records, November 1821-January 1822, Box 4, Petitions (Miscellaneous), North Carolina State Archives. North Carolina's prohibition of non-white testimony against white persons followed law of most Southern and some Northern states. Louisiana was one of the few southern states that allowed free people of color to testify against whites in court. See Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge: Louisiana State University Press, 1977), 200-203.

By the 1820s, the General Assembly had successfully chipped away at a few of the privileges of free people of color, but most North Carolinians generally agreed that free people of color were still citizens of the state. By the end of the decade, free men of color continued to vote in significant numbers. They retained the right to own all types of property, including real estate and slaves, and maintained all of their constitutionally guaranteed rights including the right to bear arms.[16] However, the politics of the 1830s altered the trajectory, and free people of color would face unprecedented challenges to their rights as citizens. Yet free people of color, their attorneys, and their supporters sought ways to overcome the tide of injustice sweeping across North Carolina. They fought the new status quo in which white people, no matter their class or reputation, would be presumed both socially and legally the betters of all free persons of color.

Most of the restrictions placed upon free people of color by the legislature during the early 1830s did not specifically target free people of color. Instead, they sought to limit the influence of all free persons, whether whites or persons of color, on enslaved people. As historian William W. Freehling explained, "Slaveholders admitted they feared white no less than black dissent."[17] Even before Nat Turner's August 1831 rebellion across the northern border in Southampton County, Virginia, pro-slavery politicians attempted to protect slave property by challenging enslaved people's access to literacy education through restrictions on their access to basic educational materials. During the winter of 1830-1831, the General Assembly passed a series of laws, all of which attempted to limit slaves' access to outside ideas of rebellion or emancipation.

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[16] Scholars have suggested that legal entitlement to political rights largely constituted citizenship in the late eighteenth and nineteenth centuries. See William A. Link and David Brown, "Introduction," *Creating Citizenship in the Nineteenth-Century South*, 1-2.

[17] William W. Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854* (New York: Oxford University Press, 1990), 292.

In order to enhance the social divides among free people of color, whites, and slaves, the lawmakers passed an "act more effectually to prevent intermarriages between free negroes or free persons of colour and white persons and slaves, and for other purposes." This law, passed during the 1830-1831 winter session of the General Assembly, strengthened the colonial law that discouraged marriage between whites and non-whites. The act declared a marriage between "any free negro or free person of colour to a white person" unlawful, and all marriages contracted after the law's passage were "null and void." Before the passage of this law, free people of color and whites could still marry, but the threat of fines had prevented most such marriages. Like the colonial law, this legislation threatened any minister or magistrate conducting such marriages with fines and imprisonment at the "discretion of the court." The final section of the law declared unlawful "any free negro or free person of colour to intermarry or cohabit and live together as man and wife with any slave." Any "free negro or person of colour" found guilty of breaking this law could face a fine and imprisonment or "whipping not to exceed thirty-nine lashes."[18] This part of the law gave slave masters more control over who had interaction with their slaves. Before the passage of this law, a slave master could do little to protect his or her slave from engaging in a relationship with a free person, and even less to keep the free person physically away from an enslaved spouse or lover outside of the bounds of the master's land. After the law's passage, the threat of fines, whippings, and jail time undoubtedly pushed at least a few free persons, both white and non-white, to reassess or better conceal their interactions with slaves.

Several other laws, primarily proposed to curb the chance of slave rebellion, only mentioned free people of color in reference to their interactions with slaves. A law entitled "An act to prevent from teaching slaves to read or write, the use of figures excepted" required fines

[18] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31* (Raleigh: Lawrence and Lemay, 1831), 9-10.

and imprisonment or whipping for free people of color found guilty of teaching slaves to read or write or providing them with reading materials. Whites faced the same punishment as free people of color with the exception of whipping.[19] This law undoubtedly was in reaction to the proliferation of abolitionists' materials circulating in the country. Approximately a year before the passage of this law, David Walker, a free person of color originally from North Carolina, published his *Appeal to the Coloured Citizens of the World*. Walker's *Appeal* highlighted the injustices of slavery and the hypocrisy within the American political system.[20] Many slaves and free people of color knew the social and political system was not designed in their favor, but Walker reiterated these beliefs for the general public, and confirmed masters' suspicions that many non-whites were not content with their lot. Only the most naïve of politicians would have believed that the law banning literacy education for slaves would actually curb bondspeople's desires for freedom. Furthermore the inclusion of potentially harsher punishment for free people of color versus whites convicted of educating slaves played more into the pro-slavery ideology and scapegoating than serving as a reaction to a real threat. Since the Quakers had begun to question the morality of slavery in the eighteenth century, white people always had been and would continue to be the major propagators and funding agents of anti-slavery activity.[21]

A law prohibiting free persons from gaming with slaves also targeted both free people of color and whites who might potentially threaten slave masters' property rights through their

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[19] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31*, 11.
[20] See David Walker, *Walker's Appeal, In Four Articles; Together with a Preamble, To the Coloured Citizens of the World, But in Particular, and Very Expressly, to Those of the United States of America* (Boston: David Walker, 1830).

[21] For further discussion of North Carolina Quakers and the anti-slavery movement, see Guion Griffis Johnson, *Ante-Bellum North Carolina: A Social History* (Chapel Hill: University of North Carolina Press, 1937), 458-462; Hiram H. Hilty, *Toward Freedom For All: North Carolina Quakers and Slavery* (Richmond: Friends United Press, 1984); Cecil-Fronsman, *Common Whites*, 88; Hiram H. Hilty, *By Land and By Sea: Quakers Confront Slavery and Its Aftermath in North Carolina* (Greensboro: North Carolina Friends Historical Society, 1993).

interactions with slaves. Like the literacy law, free people of color potentially faced worse punishment than their white counterparts found guilty of the same crime. All free persons could face fines and imprisonment, but only a "free negro, mulatto or person of mixed blood" could receive whipping as punishment.[22] The threat of extra aggressive punish for free people of color reflects some lawmakers belief in white superiority. In theory, this law protected the property rights of masters and sought to prevent slaves from gambling away their masters' property, which included any property or money held by a slaves. The state did not recognize the property ownership of enslaved people although many masters allowed slaves to keep personal property.

Two additional acts passed during the 1830-1831 session also sought to contain the social influence and political voice of free people of color. One law reinforced the 1826 law preventing free people of color from moving into North Carolina from outside of the state. This legislation created a new problem for those who were legal residents of North Carolina. The new law stated that "any free negro or person of colour, who may be a resident of this State, shall migrate from this State and go into any other State, and shall be absent for the space of ninety days or more, it shall be unlawful for such free negro or person of colour to return to this State."[23] Any free person of color needing to travel for business such as merchants and sailors now could face problems returning home if they left the area for more than ninety days. Most free people of color did not travel out of the state for such long periods, but the passage of this law created another limitation on free people of color that further distinguished their status from that of whites.

[22] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31,* 14-15.

[23] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31,* 16.

The second of these laws sought to prevent non-resident free people of color, who legislators believed could potentially spread abolitionist propaganda, from interacting with non-whites inside the state. The law sought to thwart communication between free people of color working on incoming ships and resident slaves and free people of color. The law imposed a serious fine of $500 on ship captains who allowed free people of color aboard their ships to communicate by writing or spoken words with resident people of color. This act prescribed harsh punishment for any free person of color or enslaved person engaging in the prohibited conversations. A free person of color found guilty of this crime would face "thirty nine lashes on his or her bare back." The law also required free persons of color to remain on board their ships for at least thirty days while docked. Those brought on shore before thirty days while their ships were anchored were to be placed in jail at their own expense until their ship left. If a free person of color remained in North Carolina after the ship departed, that person could also face up to thirty nine lashes.[24]

Both laws directly affecting free people of color are indeed tied to legislators' attempts to use free people of color as scapegoats for the spread of anti-slavery sentiments in the nation as a whole. Members of the General Assembly certainly knew that free people of color were not the agents primarily responsible for the growing distaste for slavery in the nation. They may have tried to convince themselves or at least the more ignorant mass in the general public that free people of color were a menace to society, but facts on the ground rarely supported this position. Lawmakers attacks on free people of color from outside the state was part of a developing radical

[24] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31*, 29-30. For further discussion of runaways and maritime North Carolina, see David S. Cecelski, *The Waterman's Song: Slavery and Freedom in Maritime North* Carolina (Chapel Hill: University of North Carolina Press, 2001), 53-55, 121-151. For further discussion of restrictions on free seamen of color after the publication of Walker's *Appeal*, see W. Jeffrey Bolster, *Black Jacks: African American Seamen in the Age of Sail* (Cambridge: Harvard University Press, 1997), 197-202.

pro-slavery tactic that tried to play on white southerners fear and dislike of outsiders and outside influence in their local politics.[25]

Through many of their acts, members of the 1830-1831 General Assembly characterized free people of color as potential vagrants and leaders of slave rebellion. Yet individuals within the legislative body understood that at least some free persons of color did not fit this negative portrayal. In December of 1830, the legislature passed a bill to make an exception to the 1826 law preventing free people of color from moving into North Carolina, a law which this same legislature would reinforce with the previously mentioned acts regarding the entrance of free people of color into the state. At the town of Milton, 59 white men from Caswell County signed a petition asking the legislature to allow Thomas Day, a free person of color and local cabinetmaker, to bring his wife, Aquilla Wilson Day, into North Carolina from neighboring Halifax County, Virginia. The General Assembly responded favorably to this request and passed a special bill allowing Aquilla Day to reside in North Carolina.[26]

Thomas Day's reputation undoubtedly swayed his supporters and the General Assembly to take action in his favor. Day was a regionally renowned master craftsman and came from a slave-owning family. In a note attached to the petition, Romulus M. Saunders, Milton native and former speaker of the state house, wrote:

> I have known Thomas Day…for several years past and I am free to say that I consider him a free man of color of very fair character—an excellent mechanic, industrious, honest and sober in his habits—and in the event of any disturbance amongst the Blacks, I should rely with confidence upon a disclosure from him as he is the owner of slaves as well as of real estate.[27]

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[25] Freehling, *The Road to Disunion: Secessionists at Bay, 1776-1854*, 292, 302.

[26] Memorial of the Inhabitants of the Town of Milton, General Assembly Session Records, November 1830-January 1831, Box 2, House Bills (Dec. 23), North Carolina State Archives; *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1830-31*, 79.

[27] Memorial of the Inhabitants of the Town of Milton, General Assembly Session Records, November 1830-January 1831, Box 2, House Bills (Dec. 23), North Carolina State Archives.

According to Saunders, the other petitioners, and the members of the legislature who voted in support of Thomas Day's and Aquilla Wilson Day's cause, Day's reputation and business success were grounds to exempt him from the law. By passing the bill in favor of the Days, legislators publicly admitted that their own prescriptions could be unjust in at least certain special cases, such as those of well-established free people of color of high repute. In theory, members of the legislature cast a wide net of suspicion upon all free non-whites, yet recognized that the interests of free people of color in the anti-slavery cause varied among individuals. Legislators knew that the sentiments of all free people of color could not easily fall into one simple set of beliefs. However, they did not recognize that as the General Assembly continued to target free people of color with further restrictions, oppression slowly pushed free people of color into circumstances that bred common cause with anti-slavery advocates. Slavery was always an affliction for the enslaved person seeking freedom, but slowly efforts to secure slavery were beginning to affect all Americans, especially the South's free people of color.

Legislative attacks on free people of color continued into the 1831-1832 session of the General Assembly as radical pro-slavery ideologues linked free people of color to abolitionism and slave rebellion. The birth of William Lloyd Garrison's *Liberator*, an abolitionist weekly, on the first day of 1831 and the rebellion of Nat Turner in Virginia later that year motivated the General Assembly to respond through legislative action. A slave-based economy existing in a nation born under a proclamation of widespread freedom was always in jeopardy, but every agitation against slavery reminded its public defenders in the statehouse that the pro-slavery constituency now required swift reaction after every impending threat, no matter how minor. Among the legislation passed during the 1831-1832 session was "An act pointing out the mode

whereby the militia of this State shall hereafter be called into service in cases of insurrection or invasion, and outlawed runaway negroes."[28] Legislators passed this law as an assurance that if a slave insurrection occurred like the one led by Turner in neighboring Virginia, North Carolina would be prepared to swiftly quell it.[29] Free people of color were included in the language of the law alongside slaves as possible agents of insurrection although most of them, apprentices being the exception, had no bondage to rebel against. A few free people of color had slaves who indeed may have risen against them and slaughtered them in their beds as Turner and his accomplices did to members of the slaveholding class of Southampton County.

Motivated by their belief that slaves would conspire with free people of color in order to gain their liberty, the General Assembly also passed "an act for the better regulation of the conduct of negroes, slaves and free persons of color." This law placed severe restrictions on slaves whose masters allowed them to go about under their own discretion. The act also declared that "it shall not be lawful under any pretence for any free negro, slave or free person of color to preach or exhort in public, or in any manner to officiate as a preacher or teacher in any prayer meet or other association for worship where slaves of different families are collected together."[30] This law like previous acts implied that free people of color were among the primary agents of rebellion. According to the pro-slavery ideology of the 1830s, free people of color were more likely than whites to promote rebellion among the slaves. Nearly thirty years later, white men like John Brown would prove them wrong.

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[28] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1831-32* (Raleigh: Lawrence and Lemay, 1832), 28-29.

[29] For further discussion of the South's reaction to the Nat Turner rebellion, see Alfred L. Brophy, "The Nat Turner Trials," *North Carolina Law Review* 91 (2013): 1817-1880.

[30] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1831-32*, 7.

During the 1831-1832 session, lawmakers not only sought to limit the interactions of free people of color with slaves but convinced themselves that some free non-whites should have a legal condition very similar to enslavement. "An act to provide for the collection of fines imposed upon free negroes or free persons of colour" allowed sheriffs to hire out free people of color found guilty of crimes who could not afford to pay their assessed fines. The poorest of free people of color were now subject to peonage in which a person would pay the fine on the convict's behalf, and in exchange, the law required convicts to serve that person for up to five years. The new act instructed that the rules that applied to apprenticeships would guide the relationship between masters and their convict servants.[31] The law did not push free people of color into slavery, as most would find ways to pay their fines; however, poor free people of color could now end up in a situation only one step above it.

The laws of the early 1830s did not escape public scrutiny after their passage, and many whites were unsupportive of the legislature's most recent actions. North Carolinians of this era like those of the previous decades expressed their displeasure in the form of petitions. In 1831, 114 residents of Wilmington, the state's most important port, petitioned the legislature to amend the quarantine act of 1830, which required free people of color to remain on board ships docked at North Carolina ports for at least thirty days. The petitioners argued:

> This act, which is ostensibly an act for the regulation of the ingress of free persons of colour into the State—To effect which object it compels vessels having such persons of colour on board to ride at quarantine for thirty days previously to a prohibition of entry & which your petitioners think more injurious to the commercial and mercantile interests of our Town than the polluting intercourse of the blacks possibly could be to its political safety.

[31] *Acts Passed by the General Assembly of the State of North Carolina, at the Session of 1831-32*, 10-11.

The Senate committee of finance took up the Wilmington residents' grievances, but concluded a final decision was outside of their power to determine.[32]

The Quakers, as adamant supporters of the rights of free people of color, expressed their disgust with legislators and condemned them for interfering with the teaching of God's word. In November 1834, the Society of Friends meeting at New Garden in Guilford County petitioned for the repeal of several laws passed earlier in the decade. They asked the General Assembly to rescind the law banning the literary instruction of slaves and the act prohibiting people of color, bond or free, from public preaching and exhorting. The Quakers explained that "We consider these laws unrighteous, offensive to God and contrary to the spirit and principles of the Christian Religion; and your Memorialists believe, if not repealed, will increase the difficulties and danger they were intended to prevent." The Quakers' warning seems to suggest that divine providence could come in the form of slave rebellion. They argued that God would seek retribution upon those who prevented others from reading and preaching his word. The Society explained that the legislators had the choice to be on the side of either good or evil. They ended their petition with the following:

> And may you be influenced by that wisdom which is from above, which is profitable to direct, and which, the Apostle says, "is first pure, then peaceable, gentle and easy to be entreated, full of mercy and good fruits." That you may be enabled to enact righteous laws, the operation and execution of which may be a terror to evil-doers, an encouragement to those that do well, and to the praise of God.[33]

These words of inspiration fell on deaf ears in the General Assembly. The legislators ultimately failed to respond to the request of the Society of Friends, yet the Quakers' prediction would

[32] Petition of the Subscribers Citizens of Wilmington, General Assembly Session Records, November 1831-January 1832, Box 5, Senate Committee Reports, North Carolina State Archives.

[33] Memorial and Petition of the Religious Society of Friends, convened at New Garden, in Guilford County, North-Carolina, in the Eleventh month, 1834, General Assembly Session Records, November 1834-January 1835, Box 5, Petitions (Miscellaneous), North Carolina State Archives.

come true. Slaves, free people of color, and their allies would rise against oppression in the bloodiest carnage nineteenth-century Americans would ever see.

Around the same time that the Quakers submitted their objections, some North Carolinians, especially those in the western counties, began a serious conversation about amending the state constitution. Since the establishment of North Carolina as a colony, the eastern counties had dominated internal politics and by the 1830s were over represented in the General Assembly. The east continued to dominate state politics because representation was apportioned equally among the counties instead of by population. In 1835, North Carolinians voted by a close margin to hold a convention to amend the constitution in order to remedy this problem and take up other issues of constitutional concern. The suffrage of free people of color was one of these issues brought up at the constitutional convention.[34]

Members of the constitutional convention generally divided themselves between two positions, allowing free people of color to retain the vote or taking their ballot away. By 1835, North Carolina was the only state in the South that still allowed free people of color to vote. Tennessee had taken the franchise away from free people of color one year earlier. North Carolina's neighbors to the north and south, Virginia and South Carolina, never allowed free people of color to vote during the national era. Some members of the convention believed that North Carolina should follow the example of its fellow southern states. James W. Bryan of Carteret County told the convention:

> I have ever entertained the opinion that they had no right to vote, and must confess, that I have heard no argument that convinces me of the incorrectness of that opinion. North Carolina is the only Southern State in the Union that has permitted them to enjoy this

[34] For further discussion of the debate over suffrage for free people of color, see John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: University of North Carolina Press, 1943), 107-120; Lacy K. Ford, *Deliver Us from Evil: The Slavery Question in the Old South* (New York: Oxford University Press, 2009), 418-445.

> privilege; and I venture to assert, that the welfare and prosperity of those States that have excluded them, have been very materially advanced, by denying to them the elective franchise. As I previously remarked, this is a nation of white people—its offices, honors, dignities and privileges, are alone open to, and to be enjoyed by, white people. I am for no amalgamation of colors.[35]

Several generations of voting by free men of color convinced others that they should retain the right to vote. Supporters pointed to acts of citizenship, such as the payment of taxes, which suggested free men of color should continue to vote like other citizens. Weldon Edwards of Warren County asked the convention:

> An article in the Bill of Rights says, "that the people of this State ought not to be taxed or made subject to the payment of any impost or duty, without the consent of themselves or their Representatives in General Assembly, freely given." If this article bears upon our colored freemen equality with the whites, it would appear wrong, while we continue to tax them, to deny them a vote for members of Assembly…Ought they not to be represented in the Legislature also?[36]

Comments made by other members of the convention are similar to the comments of either Bryan or Edwards. Most delegates either believed that the founders designed the franchise and government in general for the sole benefit of white men or that the founders did not to intend to privilege white men over free non-whites because they never provided a limitation on voting based on racial categorization.

The status quo lost the debate at the convention, and the delegates voted to disenfranchise free men of color by a narrow margin of 66 to 61. North Carolinians only supported amending the state Constitution 27,550 to 21,694.[37] The vote totals demonstrate that North Carolina as a whole struggled to define the proper place for free non-whites in society. Even though the South as a region had generally turned against allowing free people of color to live as political equals to

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[35] *Proceedings and Debates of the Convention of North-Carolina, Called to Amend the Constitution of the State; Which Assembled at Raleigh, June 4, 1835* (Raleigh: Joseph Gales and Son, 1836), 67.

[36] *Proceedings and Debates*, 61.

[37] "Convention Question," *The Raleigh Register-Weekly*, 21 April 1835.

whites, many North Carolinians still resisted changes that made no sense to them. These North Carolinians understood that neither the national constitution nor their state constitution clearly discriminated against free people of color. Those who voted to continue the status quo interpreted the words of the founders literally. They understood that in many ways free people of color were no different from themselves. Whites and free people of color alike fought for American independence, built the economy of the state, and through their taxes supported their local governments' operations. Yet those who supported the disenfranchisement of free people of color set an important new precedent. Now that free people of color could no longer vote, a larger question lingered on the state: Are free people of color citizens at all? Many members of the convention argued that free people of color were not citizens and therefore had no guarantee to the rights of citizenship. The question of citizenship and the suggestion that they were not citizens would shape the debate over the position of free people of color into the Civil War era.[38]

Although the legislature had successfully stripped free people of color of some of their most important rights, lawmakers continued their diatribes against them, and convinced their colleagues to enact further restrictions. By the 1840s, radical pro-slavery propagandists and politicians had successful attached free people of color to the abolitionist cause. In January of 1841, the legislature passed a law requiring a license for "any free Negro, Mulatto, or free Person of Colour, [who] shall wear or carry about his or her person, or keep in his or her house, any Shot gun, Musket, Rifle, Pistol, Sword, Dagger or Bowie knife." According to the new legislation, any of these persons carrying the named weapons without license was guilty of a

[38] Lacy Ford also suggests that the results of the convention "determined once and for all that political participation was the exclusive domain, not of all freemen, but of free white males." Ford, *Delivery Us from Evil*, 443.

misdemeanor.[39] Lawmakers clearly designed this legislation under the assumption that free people of color were not citizens of the state or nation. Americans during this time generally interpreted broadly the Bill of Rights' guarantee to bear arms. Now the legislature had passed a law that appeared to supersede the national Constitution by challenging one of its principle amendments. Yes, the law still allowed free people of color to bear arms, but now the extension of that privilege was in the hands of local courts instead of the individuals wanting to exercise the right to own weapons.

The legislature's action to restrict free people of color's access to weapons was at least partially in direct response to petitions submitted to the General Assembly over the previous decade, which tied free people of color to potentially rebellious slaves. In 1835, a group of 39 white men from Craven County petitioned the legislature to require free people of color to obtain licenses to carry guns and ammunition. This group cited the possibility that the free persons of color might "distribute guns and ammunition among the slaves for [the] purpose of rebellion and insurrection." The General Assembly apparently made note of this concern but took no direct action at the time.[40] However, the attitude of lawmakers had changed by the 1840s when 50 white citizens of Halifax County requested that the assembly "prohibit Free Negroes and molatoes [sic] from carrying or using fire arms under any circumstance what ever."[41] The assembly did not follow this extreme prescription to the growing concern but instead chose to follow the model supplied by the petitioners of 1835. Members of the General Assembly were

[39] *Laws of the State of North Carolina Passed by the General Assembly at the Session of 1840-41* (Raleigh: W. R. Gales, 1841), 61-62.

[40] Petition of Citizens and Inhabitants of the County of Craven, General Assembly Session Records, November-December 1835, Box 6, Petitions, North Carolina State Archives.

[41] Petition of Subscribers of the County of Halifax, General Assembly Session Records, November 1840-January 1841, Box 5, Petitions, North Carolina State Archives.

likely more comfortable with the plan of the 1835 petitioners because it still allowed them to privilege favored free people of color in their communities and also did not challenge the Constitution in the same way as a complete ban. Legislators could argue that free people of color still fundamentally had the right to bear arms, but now they simply needed to apply for a license in the interests of the common good. By comparison, free people of color in states such as Maryland and Virginia, where they lost their right bear arms, free people of color in North Carolina still enjoyed relative legal flexibility.[42]

Continuing to use the rationale that free people of color were a menace to society, in 1845, the legislature gave whites control over the production of spirits. A group of 36 white men from Robeson County had petitioned the legislature in 1840 requesting that the General Assembly take away the right of the "free colored population" to sell spirits.[43] The request made no headway until 1845, when a law banning free people of color from selling liquor passed. The legislature clearly approved this law in order to grant a monopoly to white liquor producers.[44] Among the interests lobbying for the law was Sion Alford, who appears in the 1850 census as a Gin Maker.[45] The court records of most counties clearly demonstrate that drunkenness was

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[42] See James M. Wright, *The Free Negro in Maryland, 1634-1860* (New York: Columbia University Press, 1921), 106-107; Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s through the Civil War* (New York: Alfred A. Knopf, 2004), 278. Although Maryland and Virginia prohibited firearm ownership by free people of color, both Wright and Ely find that free people of color did overcome these bans. In Maryland, the weapons ban only last from 1824 to 1831, and later the state legislature replaced the ban with a licensing program similar to North Carolina's weapons law. Ely found that free people of color in Prince Edward County continued to own firearms after Virginia prohibited free people of color from owning guns after the Nat Turner rebellion in 1831.

[43] Memorial of Sundry Citizens of Robeson County, General Assembly Session Records, November 1840-January 1841, Box 4, Senate Committee Reports, North Carolina State Archives.

[44] *Laws of the State of North Carolina Passed by the General Assembly at the Session of 1844-45* (Raleigh: Thomas J. Lemay, 1845), 123-124.

[45] 1850 United States Federal Census, Robeson County, North Carolina, The Upper Division, 321. For further discussion of economic competition between white and non-white North Carolinians, see Cecil-Fronsman, *Common Whites*, 80-82.

common among all segments of the North Carolina population, so the legislature's actions were not a serious attempt to curtail alcohol abuse. Furthermore, the law did not keep free people of color from consuming liquor; they simply could no longer sell it.

Beyond using the law to place restrictions on free people of color, the General Assembly also worked to buttress social divisions between whites and non-whites. In 1839, legislators passed a bill establishing common schools for white children. Recognizing that it would be unfair to tax free people of color for the support of these schools or hoping to prevent free people of color from arguing that they had a right to attend these schools, in 1843, the legislature passed a law to relieve free people of color from any taxation used to support the common schools. In 1845, the General Assembly amended the 1830 law that prohibited marriages between various combination of whites, free people of color, and slaves. The legislature passed a new law allowing free people of color to marry slaves with the consent of the slaves' masters.

These laws furthered the importance of racial categories in North Carolina society. The common schools amendment clearly defined public schools as institutions established for the advantage of white children. Free people of color had no claim to these schools if the legislature did not require them to pay for those schools support. This amendment helped lawmakers to avoid the taxation without representation arguments presented by the proponents of free non-white suffrage during the debates of 1835. The marriage law amendment similarly solidified divisions based on racial categorization by allowing free people of color and slaves to marry while prohibiting all marriages between whites and non-whites, even if both parties were legally free.

During the 1850s, the legislature continued to use the law as tool to curb the liberties of free people of color. The most potentially damaging of these their acts was the 1854 law that

allowed courts to bind out the children of free non-white couples. Courts had apprenticed free children of color born to single women since the colonial period, but now the new legislature allowed the courts to bind out "the children of free negroes, where the parents with whom such children may live, do not habitually employ their time in some honest, industrious occupation." The legislature never defined an "industrious occupation," so each locality was left to determine the specific situation in which the court had the right to apply the law.[46] For generations, the courts only could bind out white and non-white orphans and the children of single mothers. Now the courts had the right to break apart what the public generally considered "normal" patriarchal families. The apprenticeship laws had contained a bias against free girls of color since the colonial period because the law allowed them to be bound until age 21 while white girls only served until age eighteen. However, now all free people of color could potentially become victims of the apprenticeship system. The historical record demonstrates they did not, but the potential reinforced a dividing line based on racial categorization instead of freedom status and gender.

Driven by arguments that free people of color might help slaves obtain ardent spirits, the 1859 legislature strengthened the 1845 restriction on the sale of spirits. For fourteen years, the law had forbade free people of color from selling liquor, now the legislature prohibited anyone from selling liquor to free non-whites:

> That no person shall sell, or deliver to, or buy for, or be instrumental, either directly or indirectly, in procuring for any free person of color, for cash, or in exchange for articles delivered, or upon any consideration whatever, or as a gift, any spirituous liquors, or liquor of which alcohol is an ingredient, except upon the written certificate of some practicing physician or magistrate stating that the same is necessary for medicinal purposes.

[46] *Revised Code of North Carolina Enacted by the General Assembly at the Session of 1854 Prepared Under the Acts of the General Assembly* (Boston: Little, Brown and Company, 1855), 77-79.

This law failed to stop free people of color from obtaining alcoholic beverages, simply forcing the trade underground. The argument for this law was probably the least sound of all the laws passed discriminating against free people of color. In 1850, a large contingent of white men from Washington County argued for the ban in order "to prevent the sale of spirituous liquors to slaves." They claimed that "free negroes" had become the "tools" of slaves trying to obtain spirits. The supporters of the liquor ban never contended that free people of color had become the tools of white liquor dealers, the only people who could legally sell liquor in the state at this time, nor did they acknowledge that whites had equal if not more access to slaves and were therefore the most likely parties to dispense spirits to enslaved people.[47]

As with much of the General Assembly's agenda targeting free people of color, the liquor ban was not a reflection of consensus among North Carolinians, but simply a victory for one side of a larger debate. In 1852, when the legislature had considered a bill similar to the one eventually passed in 1859, 55 white men in Hertford County requested an exemption from the ban for their county. The petitioners gave no reasoning for their request, but the size of Hertford County's free population of color probably influenced their proposal.[48] By 1860, approximately 1,000 free people of color resided in Hertford County, giving the county one of the largest free non-white populations in the state. In the county, non-whites, a group mostly composed of slaves, outnumbered whites by a sizable margin.[49] Liquor distributors only could sell their merchandise to a minority of the county's residents even without the ban, so implementation of

[47] Memorial from the Citizens of Plymouth, General Assembly Session Records, November 1850-January 1851, Box 8, Petitions, North Carolina State Archives.

[48] Petition of Hertford County Citizens, General Assembly Session Records, October-December 1852, Box 8, Petitions (Liquor), North Carolina State Archives.

[49] *Population of the United States in 1860*, by Joseph C. G. Kennedy, Superintendent of Census (Washington: Government Printing Office, 1864), 358.

the law would further diminish the number of potential buyers. Distributors of ardent spirits in other parts of the state saw this potential problem become a reality after 1859. The 1859 liquor ban especially burdened sellers in the east, where non-whites often made up majorities. In these particular cases, restrictions on the rights of free people of color were not just bad for them, but bad for business in general.

Although unmistakably less liberal than their predecessors, lawmakers of the 1850s did not legislate solely against the interests of free people of color. On a few occasions the legislature made special laws in favor of free people of color. Like previous legislatures, members of the General Assembly granted the manumission of several slaves, and then allowed those people to continue to reside in North Carolina without prosecution. During the 1856-1857 legislative session, lawmakers also voted to allow a small group of free people of color from Virginia to settle temporarily in Northampton County from the Virginia. Neighbors of the families of Anthony Copeland, Joshua Small, and Warren Boon, all free persons of color, asked the legislature to allow their immigrant neighbors to remain in the county. The petitioners stated that members of these families were "industrious, honest and law abiding people." They showed particular discomfort in losing the skills of Anthony Copeland from the neighborhood as he was "a Brick Mason by trade and a great convenience to the neighborhood." The legislature granted the petitioners' request over a counter petition from another group of Northampton County citizens who argued that the migrants from Virginia were "no better than the generality of that class of people."[50] The debate over families of Copeland, Small, and Boon demonstrate that even in the late-1850s North Carolinians still had not come to consensus on the proper place of free people of color in their society. As historian Melvin Ely noted, "Aggressive defenders of slavery

[50] Petition of Citizens of the County of Northampton, General Assembly Session Records, November 1856-February 1857, Box 10, Petitions, North Carolina State Archives.

thus faced a dual challenge in the 1850s. They sought to repel the antislavery onslaught emanating from elements in the North, but they also had to discredit the liberal ideas of some of their own white Southern neighbors."[51] Even with all of the laws passed against the favor of this group, some North Carolinians continued to enjoy and support the presence of free people of color in the state. For every person who feared that free people of color might aid potentially rebellious slaves, there was another person directly benefiting from the skills, business, and neighborly support of a free person of color.

Although the legislature succeeded in seriously diminishing the legal entitlements of free people of color during the antebellum era, many of their acts continued to be debated in public forums several years after their passage. County officials often chose to enforce many of the antebellum era laws selectively. The immigration law and the law banning marriage or cohabitation between free people of color and slaves were among the laws most selectively and irregularly enforced by local officials. Free people of color sometimes fought those discriminatory laws that officials chose to enforce. Several cases involving free people of color accused of breaking these laws appeared in front of the North Carolina Supreme Court. Lawyers and defendants came up with several crafty explanations and appeals in attempts to circumvent or directly challenge discriminatory legislation.

The immigration of ban of 1826 and the strengthened version of the law issued five years later may have been the most irregularly enforced of the laws targeting free people of color. Since the colonial era, people of all backgrounds living on the borders with Virginia and South Carolina regularly crossed their borders to conduct business, visit family, start new lives, and find marriage partners. The previously mentioned cases of Thomas Day and Aquilla Wilson Day

[51] Ely, *Israel on the Appomattox*, 388.

and the immigrants to Northampton County are just a few of the examples of free people of color moving across the state border. Unlike these individuals, the vast majority of free people of color who traveled across the border to settle in North Carolina never requested permission from state officials. Movement across the border apparently was so commonplace that county officials generally ignored it, and even selective enforcement does not appear to have become widespread until the 1840s and 1850s. In 1844, the Gates County court attempted to institute a mass round up of illegal immigrants from Virginia. The court called in at least twelve free people of color that illegally entered the state. It does not seem Gates County officials ultimately made much of an attempt to remove these persons as many of them still lived in the county six years later during the enumeration of the 1850 census.[52] Officials in other counties took similar action against immigrants from South Carolina. In 1851, Cleveland County Justice of the Peace John L. Gladden issued a warrant for Sarah Ann Wright, Ruthy Wright, and Seneth Elizabeth Wright, all "Free Negroes" who came into North Carolina "out of the state of South Carolina contrary to the Laws of the State."[53] The Wrights appear to have moved out Cleveland County by 1860, but at least half a dozen free people of color born in South Carolina still resided in the county by that time.[54]

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[52] Franklin, *The Free Negro in North Carolina*, 185. See 1850 United States Federal Census, Gates County, North Carolina; Gates County Criminal Action Papers, North Carolina State Archives.

[53] *State v. Ruthy Wright, Sarah A. Wright, S. E. Wright*, Cleveland County Records of Slaves and Free Persons of Color, Box 3, Criminal actions concerning slaves and free persons of color 1850-1859, North Carolina State Archives.

[54] See 1860 United States Federal Census, Cleveland County, North Carolina. Historians have discovered similar lack of enforcement of the immigration laws concerning free people of color in other southern states. See Luther P. Jackson, "Free Negroes of Petersburg, Virginia," *Journal of Negro History* 12 (July 1927): 371; Andrew Forest Muir, "The Free Negro in Harris County, Texas," *The Southwestern Historical Quarterly* 46 (January 1943): 220-224; England, "The Free Negro in Ante-Bellum Tennessee," 49; Gary B. Mills, "Shades of Ambiguity: Comparing Antebellum Free People of Color in 'Anglo' Alabama and 'Latin' Louisiana" in *Plain Folk of the South Revisited* ed. Samuel C. Hyde, Jr. (Baton Rouge: Louisiana State University Press, 1997), 170-173. Historians studying free people of color in Virginia also have found that county governments sporadically enforced that state's removal law, which required emancipated persons to leave Virginia shortly after gaining their freedom. Both the removal law and

Irregular enforcement and prosecution also curbed the influence of the 1830-1831 law banning marriage or cohabitation between free people of color and slaves. Similar to the cases of enforcement of the immigration law, local officials usually prosecuted this law through random round ups. At the Spring 1844 term of court in Caswell County, officials decided for the first and only time to round up free people of color to prosecute them for living as man and wife with slaves. The court called in twelve men and women to face charges under the law.[55] The court action clearly had some purpose outside a desire to enforce the law. Maybe the justices of the peace wanted to send a signal to free people of color and slaves in attempt to prevent further relationships from developing. Perhaps these court orders responded to outcries from the public over the general lack of enforcement of the law. Officials most likely only became concerned with the marital activities of slaves and free people of color when neighbors of the couples or masters of the enslaved partners expressed concern.

For some politicians, the place of free people of color was settled, but many free people of color, even into the late 1850s, still believed that they were citizens with rights that white men had to respect. They were unwilling to comply with the increasingly unreasonable and politically-motivated demands of the slave power. North Carolina's free people of color led the most important opposition to the antebellum actions of the legislature. Using the courts as their tool, free people of color and their attorneys mounted well-argued attacks against the laws, often citing conflicts with the federal Constitution. However, most of their arguments failed to convince a judiciary that fundamentally believed that free people of color were not citizens

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state immigration laws in theory sought to limit the free non-white population. See John H. Russell, *The Free Negro in Virginia, 1619-1865* (Baltimore: Johns Hopkins Press, 1913), 156; Luther P. Jackson, "Manumission in Certain Virginia Cities," *Journal of Negro History* 15 (July 1930): 298-300; Kirt von Daacke, *Freedom Has a Face: Race, Identity, and Community in Jefferson's Virginia* (Charlottesville: University of Virginia Press, 2012), 75-112.

[55] See Caswell County Criminal Action Papers, Box 22, 1844; Caswell County Criminal Action Papers, Box 23, 1844-1845.

protected by the Constitution. Although their line of reasoning could not convince the highest court in the state, their attacks on the discriminatory laws expose an important contest taking place in antebellum America.

Free people of color used one of the legal privileges that they still retained, the right of trial by jury, to show that the public debates over their rights remained unsettled. In 1837, the North Carolina Supreme Court heard the case of Charles Oxendine, a free person of color, charged almost two years earlier with assault and battery. At the fall 1835 term of court in Robeson County, justices ordered Oxendine to appear in court to face charges for allegedly assaulting another free man of color, Alfred Lowry. The sheriff could not locate Oxendine, and even a year later, he was nowhere to be found. During the Spring of 1837, Oxendine turned up to face justice. Presented to a jury of white men, Oxendine pled guilty, and the court required him to pay the significant fine of fifteen dollars. Oxendine explained to the court that he was unable to pay the substantial fine, so the court offered an alternative punishment. Based on Oxendine's categorization as a "free negro," the court decided to apply to the defendant the 1831 act allowing sheriffs to hire out free persons of color unable to pay their fines. Oxendine and his lawyers decided not to accept this punishment and appealed to the state Supreme Court on the grounds that "the Act of Assembly of 1831 authorizing the hiring of free persons of color to pay the fines imposed on them is unconstitutional and void." The court granted Oxendine's appeal and the local court passed the case to the state's most esteemed jurors. In a somewhat convoluted decision, the Supreme Court ruled that because Oxendine pled guilty instead of being found guilty, the county court "erred," and could not apply the law of 1831 to Oxendine's case. Thus

the court avoided ruling on the law's constitutionality, but another case would force the court to make a decision.[56]

Less than a year after Oxendine appeared in front of the high court, William Manuel, another free man of color, took on the fight against the law of 1831. At the Spring 1838 term of Superior Court in Sampson County, a jury found Manuel guilty of assaulting John Wadkins and ordered the defendant to pay a 20 dollar fine. Like Oxendine, Manuel was also unable to pay the hefty penalty. The Sampson County court followed the Robeson County precedent and ordered the sheriff to hire out Manuel. Manuel's lawyers took up the argument of the Oxendine team and sought a reversal of Manuel's sentence based on the unconstitutionality of the 1831 act. In front of the Supreme Court, Manuel's lawyers argued that hiring out free people of color to pay their fines constituted cruel and unusual punishment and violated the laws protecting insolvent debtors from imprisonment for debts. The state offered the court the counterargument that free people of color were not citizens, and therefore the laws about cruel and unusual punishment and insolvent debtors did not apply to them. In its decision, the Supreme Court disregarded the arguments of the state, which made its case based on the recent decision to disenfranchise free people of color and the belief that free people of color had no part in the foundation of the state government during the Revolution. The court offered the most obvious counterargument and listed all of the numerous other inhabitants of the state including women, minors, and landless men who in some form also fit the prosecution's definition of non-citizens. This clarification could be celebrated as a small victory for free people of color as a whole, but the overall decision was not so favorable.

The Supreme Court ruled that the law of 1831 was constitutional and allowed the sheriff of Sampson County to hire out Manuel. Free people of color indeed could be hired out for failure

[56] *State v. Charles Oxendine* (1837), Supreme Court Cases, North Carolina State Archives.

to pay fines, and the court records of many counties demonstrate that a few, but nowhere near a majority, of convicted free people of color became the victims of this decision. However, the Manuel case was just the beginning of resistance by free people of color. While the defense's arguments in the Manuel case failed, free people of color found other issues to challenge, and for the next two decades, the Supreme Court would continue to hear their voices.[57]

Arguing that the law was unconstitutional, free people of color and their attorneys challenged in the Supreme Court the law requiring free people of color to obtain licenses in order to carry weapons. In 1844, the Supreme Court heard the case of Elijah Newsom, a free person of color from Cumberland County. In the summer of 1843, the Cumberland County court formally charged Newsom with carrying a shotgun without obtaining a license to carry the gun within the last year. In April of the following year, Newsom finally appeared in court where a jury found him guilty. Newsom and his defense appealed the decision to the Superior Court, which concurred with the original guilty decision. Unwilling to accept this judgment, the Newsom team asked the Supreme Court to reconsider the case. In front of the Supreme Court, Newsom's defense argued that the law of 1841 requiring free people of color to acquire licenses to carry weapons was unconstitutional because it conflicted with the Second Amendment of the U.S. Constitution and North Carolina's Bill of Rights.

The court responded to this line of argumentation by stating that "The constitution of the United States was ordained & established by the people of the United States for their own government & not for that of the different States—the limitations of power contained in it & expressed in general term are necessarily confined to the General government & not for that of the different states." The court further denied that the weapons law conflicted with the state Bill

[57] *State v. William Manuel* (1838), Supreme Court Cases, North Carolina State Archives.

of Rights. The Supreme Court also decided to use this opportunity to further clarify the position of free people of color in North Carolina. The court ruled that "We must therefore regard it as a principle settled by the highest authority, the organic Law of the country, that the free people of colour are not to be considered as citizens, in the largest sense of the term, or if they are, they occupy such a position in society as justifies the Legislature in adopting a course of policy in its acts peculiar to them."[58] Basing its decision on this logic, the court found in favor of the state. Free people of color could no longer grasp to the federal constitution in order to protect themselves from the tyranny of the state. The Newsom decision affirmed the position of free people of color as a legal middling group in the state, who were free, yet subjected to handicaps which free whites could avoid. For the next two decades, free people of color would have to deal with the implications of this decision. Throughout the period, local courts frequently prosecuted free people of color for carrying weapons without licenses. Yet large numbers of free people of color continued to resist.

After the Newsom decision, free people of color and their attorneys changed their tactics. The Supreme Court heard several cases in which free people of color challenged guilty verdicts on the grounds that they were not free people of color at all or that their amount of Indian or Negro "blood" did not meet the required amount in order to classify them as people of mixed blood or free persons of color. Couples challenged verdicts based on the law forbidding marriage between free people of color and whites on these grounds but failed to win their cases.[59] Several individuals defended themselves from prosecution for violating the weapons law of 1840 by claiming they did not fit the legal definition of a free person of color. These claims were

[58] *State v. Elijah Newsom* (1844), Supreme Court Cases, North Carolina State Archives.

[59] See *State v. Harris Melton and Ann Byrd* (Dec. 1852), Supreme Court Cases, North Carolina State Archives.

generally difficult to prove, especially if a defendant's community had generally recognized him and his family as free persons of color for generations. Prosecutors usually found some older person who would attest to one of the ancestors of the accused being a "coal black negro."[60]

The outcomes of most of these cases failed to affect the overall status of free people of color. However, the case the *State vs. Chavers* was an important exception to this trend. In the Spring of 1857, a jury in Brunswick County found William Chavers guilty of carrying a weapon without a license. Chavers and his defense appealed this decision to the Supreme Court on the grounds that the prosecution was unable to prove definitively that William Chavers was indeed a "free negro." Chavers did not contend that he had no "negro" ancestors but instead argued that he did not fit the definition of a negro, which required that a person descend from "negro ancestors to the fourth generation." The defense asserted "to the fourth generation means that the propositus [person involved] must be five steps or descents removed from a black ancestor, whether attended with purification of blood or not, for being a penal statute, it must be construed strictly." The Chavers team's explanation did not intend to challenge definitions of whiteness and proclaim that Chavers was white, but that a free negro had a specific ancestral requirement that Chavers did not meet. The Supreme Court rejected this argument, but entertained another idea based on Chavers categorization as a "free person of color" in his indictment.

The defense argued that the law clearly defined who counted as a free negro under the law but failed to specify who could be counted as a "free person of color." As a result of this failure to define free person of color, the defense contended that it would be impossible for a jury to determine whether Chavers was a free person of color and whether the law applied to him. The Supreme Court ruled that the lower court's judgment against Chavers could not be sustained

[60] See *State v. Whitmel Dempsey* (Jun. 1849), Supreme Court Cases, North Carolina State Archives; E. Franklin Frazier, *The Negro Family in the United States* (Chicago: University of Chicago Press, 1939), 254.

on these grounds. Without a clear definition of free person of color "a person who is not a free negro" could potentially fit with the definition of the act. In order to correct the problem for future cases, the court offered a definition of free persons of color—"may be then for all we can see, persons coloured by Indian blood, or persons descended from negro ancestors beyond the fourth degree."[61] The Chavers case was a significant ruling for the defendant, but more importantly, the case displayed the illogic and weakness encoded in some of the state's discriminatory legislation.

The cases presented to the Supreme Court demonstrate that even at the eve of the Civil War, white supremacists and pro-slavery ideologues had failed to build full consensus over the social position of free people of color. Some lawyers and judges argued and ruled in support of discrimination. Other jurists, not necessarily the friends of free non-whites, understood the shortcomings in the discriminatory legislation, and in the Chavers case, recognized when these gaps in the law jeopardized the freedoms of the greater populace. These cases also reflect the willingness of free people of color to defend their own position in society. With the passage of every discriminatory law, their legal position slightly diminished. Yet these cases demonstrate that free people of color recognized themselves as free subjects and not slaves without masters. Slaves had no citizenship to defend, no gun license to refuse to obtain, no legal right to marriage to protect, and no cruel or unusual punishment that the law could protect them from.[62]

Conclusion

[61] *State v. William Chavers* (Dec. 1857), Supreme Court Cases, North Carolina State Archives.

[62] For more on the connection between marriage and citizenship, see Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge: Harvard University Press, 2000), 5.

From the early national period to the last days before the outbreak of Civil War, North Carolinians argued over the place of free people of color in their society. Since the colonial era, free people of color had maintained a position somewhere between white freedom and slavery but closer to that of white freedom. At the beginning of the national era, free men of color actually enjoyed a privilege, the right of suffrage, that no white woman or white minor enjoyed in North Carolina or any other part of the country. In 1835, a constitutional convention denied free men of color the vote, but only by a slight majority.

The legislature passed a series of bills in the name of curbing the complicity of free persons of color with potentially rebellious slaves but failed to convince the entire populace of their argument's merits. Lawmakers could not respond to questions of the sanctity of their actions, and at times, even agreed to make special provisions for free people of color who indeed were uninterested in conspiring with slaves and unwilling to jeopardize their own freedoms and families in order to procure the liberty of the enslaved. In reality, lawmakers were not at war with free people of color, a group that barely made up ten percent of the state's non-white population at any particular time, and composed an even smaller percentage of the state's general population. The proponents of slavery and white supremacy faced a greater problem coming from the North, and in some instances, from within. Free people of color served as the scapegoat of the pro-slavery ideologues and the antithesis of the argument that the promises of life, liberty, and the pursuit of happiness did not belong to non-white people. Pro-slavery advocates could not defend slavery from abolitionists' attacks suggesting that all people deserved freedom if they admitted that some non-whites acted as their equals in courts and voting booths. They could not effectively argue for white supremacy and simultaneously court people of African descent, people of mixed ancestry, and Native peoples for votes. In the minds of the enemies of abolition,

North Carolina could not save the peculiar institution and protect the liberty of free people of color, many of whom were the children of slaves or had been slaves themselves. Yet this is what a divided North Carolina did from the Revolution into the American Civil War.

CHAPTER 5: BEYOND RACIAL COMMUNITY

Introduction

Historians have depicted the post-Revolutionary Upper South as a society strictly bifurcated into black and white. In this depiction of southern life, free people of color and slaves formed one community while all whites fell into a separate community. According to Ira Berlin and historians who have made similar assumptions, racial categorization trumped class divisions, personal interests, and even cross-racial family associations. Scholars have coded racial categories in the language of ethnicity so that nineteenth-century "colored people" are replaced by African Americans all connected together by a common African heritage.[1] Chapter 3 demonstrates that colonial North Carolina was not so easily divided on lines of racial categorization and that free status, gender, and wealth played a pertinent role in the actual life experiences of free people of color. The first chapters of this dissertation have shown that not all free people of color were of African descent, and that many free people of color lived with whites not only as neighbors, but as family; so how does such a strictly bifurcated society instantaneously appear in the post-Revolutionary Upper South? In the case of North Carolina,

[1] See Ira Berlin, *Many Thousands Gone: The First Centuries of Slavery in North America* (Cambridge: Belknap Press, 1998); Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: Pantheon Books, 1974); Sylvia R. Frey, *Water From the Rock: Black Resistance in a Revolutionary Age* (Princeton: Princeton University Press, 1991). The concept of the "slave community" operates under the assumption of social bifurcation between black slaves and free whites. For more on the slave community see John W. Blassingame, *The Slave Community: Plantation Life in the Antebellum South* (New York: Oxford University Press, 1972).

such a structured divide never existed, and preexisting divisions continued to shape the daily experiences of North Carolinians of all backgrounds.[2]

The post-Revolutionary debate over the proper position of free people of color in North Carolina developed largely because free people of color were so highly integrated in society. Pro-slavery advocates would not have made their case that free people of color were a problem within the state if this population truly lived on the periphery of society. The opponents of free non-whites, whether pro-slavery or white supremacist, drew their arguments from the reality that some free people of color were well connected, lettered, mobile, influential, and prosperous. The friends of free people of color constructed their rebuttals to these arguments from similar evidence that showed free people of color were essential to the social and economic well-being of local communities throughout the state. While some free people of color indeed had strong ties to enslaved people in their neighborhoods and shared a common existence that included similar work, food, and family, these bonds did not preclude incorporation into the broader neighborhood.

At the local level, even those whites who believed that non-whites were their inferiors could not easily choose the persecution of free people of color over the maintenance of the general order because free people of color were so ingrained in the larger society. Chapter 4 reveals the contempt some white North Carolinians had for free people of color, and other scholarship has shown a minority of whites were willing to pay for the permanent removal of

[2] See Gary B. Mills, *The Forgotten People: Cane River's Creoles of Color* (Baton Rouge: Louisiana State University Press, 1977), xvi. Mills made a similar argument in his work on free people of color on the Cane River in Louisiana and offered a reasonable rationale. He argued that "Apparently the modern emphasis upon 'black brotherhood' leads many to think that all nonwhites feel, and have always felt, a bond of unity—that the color of their skin, which sets them apart from white Americans, has forged a spiritual bond between Americans of African descent that has always transcended less consequential social and economic differences. This assumption is fallacious." His suggestion that racial categorization and skin color are equivalent is problematic, but the findings in this dissertation agree with his larger point.

free non-whites from the state. [3] Nevertheless, no evidence exists to prove that this was the general sentiment of whites. Into the 1850s, whites continued to depend on their free non-white neighbors in business, friendship, and socialization. After the 1830s, whites generally failed to defend the rights of free people of color to political power yet continued to believe free people of color had rights to property, a fair court trial, and most importantly their basic liberty.

Many of the findings in this chapter correlate with the conclusions in more recent studies, most notably Melvin Ely's examination of free people of color in Prince Edward County, Virginia. Ely found numerous examples of close social interaction between free people of color and whites at work, at home, and in other daily dealings. His investigation of the legal system, which in Virginia too appeared significantly biased against the interests of non-whites, shows that courts in Prince Edward County produced favorable verdicts for free non-white plaintiffs and defendants. Ely argued against interpretations that suggest that free people of color lived among whites who wholly despised them and were angered by their every triumph.[4]

Like this chapter, Michael Johnson and James Roark's work on the Ellisons, a free family of color in South Carolina, demonstrated the significance of freedom in the actual experiences of free people of color. Their study revealed that even in the most pro-slavery state in the country, many whites tolerated and even embraced free people of color because of the intangible benefits they provided their wider communities.[5] In a state such as North Carolina, where free people of color were more numerous and the power of the pro-slavery ideologues less influential, the

[3] See John Hope Franklin, *The Free Negro in North Carolina 1790-1860* (Chapel Hill: University of North Carolina Press, 1943); Claude A. Clegg, III, *The Price of Liberty: African Americans and the Making of Liberia* (Chapel Hill: University of North Carolina Press, 2004).

[4] See Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s through the Civil War* (New York: Alfred A. Knopf, 2004).

[5] See Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Company, 1984).

evidence in this chapter shows that many whites understood free people of color as part of their plans for community stability and improvement.

Social Relations and Community

Daily life for North Carolina's free people of color involved regular interactions with people of varying racial classifications, social positions, family backgrounds, and classes. Free people of color, whites, and slaves lived as neighbors, prayed in the same churches, worked on the same land, and sometimes socialized together. Economic hardship placed most free people of color in a lower class than the most influential whites, and some other free people of color. At the same time, free status positioned all free people of color above enslaved people, who were at the bottom of the Southern social hierarchy. Free people of color sometimes worked and lived side by side with enslaved people, but on some occasions free people of color owned and leased slaves in order to extract their labor.

At the local level free people of color and whites regularly interacted in relationships of mutual dependence. The most influential whites, planters, merchants, lawyers, and doctors depended on both other whites and free people of color to buy their goods and services and work their property. Free people of color, who were skilled artisans, millers, and small merchants, required business from all groups of people in order to succeed. Outside of the realm of commerce, free people of color and whites built personal relationships simply because they were neighbors. Long shared histories that stretched back into the colonial era bound together many white and non-white families. Shared drinks and other forms of socialization further cemented these bonds.[6]

[6] Bill Cecil-Fronsman argued that "For reasons of their own, common whites periodically sought to blur the racial lines between themselves and blacks and forge an alliance with them. They were not uniformly racist and were at

Nothing more clearly demonstrates white people's acceptance of free people of color as part of their communities than the many efforts individual whites made to secure and protect the free status of their neighbors of color. Free people of color, especially before traveling outside of their home counties, often went to court to obtain free papers, which they could carry on their person to prove their free status. In support of their applications and to prove their claims to freedom, free people of color sought testimony from their neighbors, generally whites who had known them a for long time. In 1831, Sarah Turner, a free woman of color, had her white neighbor, Sarah Jackson, swear a statement of her status. Affirming her intimate knowledge of Turner's condition, Jackson told the Pasquotank County justice of the peace that she knew Turner's "mother to be a free woman & that the said Sall was born in her kitchen in her presence."[7] In the case of Mary, a free person of color, Nancy Wilson wrote to the justice of the peace: "please …give Mary her free papers I know her to be free for I raised her for I took her from A white woman her mother."[8] The multigenerational associations of whites and free people of color offered further support for the applications of free people of color. William Gregory of Pasquotank County wrote of Sarah and Courtney Spellman: "I have no doubt but they are [free born]. Their grandmother was a free woman & lived on my father's land—and to the best of my knowledge, I have never known a Spellman that was a slave."[9] The statements given by these

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times quite capable of treating blacks in a manner that approached equality." The findings in this chapter support Cecil-Fronsman's thesis but also suggests that his arguments could easily apply to some of North Carolina's elite whites. See Bill Cecil-Fronsman, *Common Whites: Class and Culture in Antebellum North Carolina* (Lexington: University of Kentucky Press, 1992), 87-88.

[7] Statement of Sarah Jackson, Perquimans County Slave Papers, Box 2, Certificates of Free Negroes, No Date, 1733-1861, North Carolina State Archives.

[8] Statement of Nancy Wilson, Perquimans County Slave Papers, Box 2, Certificates of Free Negroes, No Date, 1733-1861, North Carolina State Archives.

[9] Statement of William Gregory, Perquimans County Slave Papers, Box 2, Certificates of Free Negroes, No Date, 1733-1861, North Carolina State Archives.

white supporters demonstrate that free people of color and whites had knowledge of one another's lives and also reveal that their interactions often were very intimate. People could not produce such levels of familiarity in a truly bifurcated society.

As the values of slaves continued to increase up to the Civil War, criminals found the prospect of making a small fortune by stealing a free person of color and selling that person for a profit overly tempting. Kidnappings of free people of color occurred with some regularity across the country including in North Carolina.[10] The white neighbors of free people of color often abhorred learning about the kidnapping of their community members, and posted ads in newspapers requesting the return of their neighbors and friends. An ad in the December 15, 1801 edition of the *Raleigh Register* reported the kidnapping of Lettice Burnett, "a free girl of colour, about twelve or thirteen Years of Age," from Wayne County. The ad promised that "Whoever shall give information on the said free Girl, so that she may be restored to her friends, on giving Notice to Levin Watkins, Esq. of Duplin County, will be well rewarded for their Trouble."[11]

Distraught by the kidnapping of a young free girl of color, Catherine Free of Craven County, a white woman, issued a similar notice in several March 1820 issues of the *Hillsborough Recorder*. Free reported:

> On the evening of Saturday the 19th instant, the house of the subscriber on Swift Creek was entered during her absence by John Bryan and a free mulatto girl named Dicey Moore, the daughter of Lydia Moore, was forcibly taken and carried away in a chair by the said Bryan. It is believed that he has a forged bill of sale for the girl, purporting to have been executed by her mother.

Free did not promise a reward for Dicey Moore's return, but offered a plea: "The editors of southern papers are requested to give the foregoing ad insertion in their respective papers, as

[10] For an in-depth discussion of free people of color and kidnapping, see Carol Wilson, *Freedom at Risk: The Kidnapping of Free Blacks in America, 1780-1865* (Lexington: University Press of Kentucky, 1994).

[11] "Girl of Colour," *Raleigh Register*, 15 Dec 1801.

possibly it may save from a state of slavery this girl, who has an unquestionable right to her freedom."[12] Free, Moore, and their associates had to depend on the will of white southerners to respect the status of a free girl of color. Although Moore's freedom was the object most in jeopardy, any person who located Moore and refused to notify Free of her whereabouts, not only respected criminality over the right to liberty of a free person but additionally challenged white southerners' abilities to maintain their social order.[13]

Beyond securing the freedom of their free non-white neighbors, whites supported the expansion of liberty of their neighbors. Using petitions, white neighbors of free people of color spoke out on their behalves in regards to a variety of issues. In 1842, the white neighbors of Thomas Lowry, a free man of color from Robeson County, petitioned the governor for Lowry's release from prison after the local court found Lowry guilty of assault and battery. In the first petition to the governor, fourteen of Lowry's neighbors proclaimed that "Tom…has hitherto sustained a peaceable character and we believe this is the first time he has been called to a charge of a breach of the peace. Tom has never been insolvent to white men. He has pursued a more lofty course and scorned that groveling meanness that characterizes most of his colored brethren."[14] A second petition signed by additional fourteen supporters of Lowry explained to the governor that "Lowry is an aged man of colour who was sentenced to three months imprisonment at the last term of our court for an offence committed on another man of colour &

[12] "Notice," *Hillsborough Recorder*, 15 Mar 1820; "Notice," *Hillsborough Recorder*, 22 Mar 1820; "Notice," *Hillsborough Recorder*, 29 Mar 1820.

[13] Carol Wilson suggested that "what made the practice of kidnapping possible was the strong and deeply rooted belief in white superiority." Yet as the North Carolina examples show, the kidnapping of free people of color was not so much a product of white superiority as it was the result of individuals' criminality and greed. White North Carolinians and other white Americans could easily have believed that they were superior to people of color and still stood against kidnapping. At least some whites saw kidnapping as a crime against their communities and a threat to their preferred social order. See Wilson, *Freedom at Risk*, 1.

[14] Petition of Citizens of the County of Robeson, Governor John M. Morehead Papers, Box 100, Correspondence, Petitions, etc., April 1, 1842-April 29, 1842, North Carolina State Archives.

of very bad character. The prisoner Thomas Lowry has always sustained an honest & industrious character and ranked in Society far above the majority of his colour in this county."[15] Although Lowry's neighbors knew that he was guilty of a crime, their long acquaintance with Lowry as member of their community motivated them to seek clemency on his behalf. Lowry's neighbors believed that all free persons of color, just like all white people, were not equal in character. They wanted to restore Lowry as a member of their community because throughout his life, with this one exception, he represented their ideal of proper behavior and industry, which made him a valued member of their community, regardless of color.

The white neighbors and friends of William B. Hammons of Buncombe County held him in similar esteem and petitioned the state legislature on his behalf and that of their community. In 1840, 31 of Hammons's white supporters, including three pastors, requested that he be exempt from the law prohibiting free people of color from exhorting and preaching in public. They declared that "William B. Hammons who we believe if he was tolerated to speak in Publick [sic] would be a means of doing much good we think his gifts and graces will well justify him to speak in Publick [sic]." In an attempt to appeal to the sensibilities of a largely pro-slavery assembly concerned with the potential influence of free people of color over slaves, the petitioners noted that Hammons "keeps company with no negroes all his association is with white people and no person that knows him doubts his sincerity as a religious carracter [sic]."[16] The Buncombe County petition clearly demonstrates that Hammons's supporters saw him as an insider in their community and not someone living on society's margins because he was not white. Hammons's supporters not only viewed him as a respectable person but also believed he

[15] Petition in Favor of Lowery (Man of Colour), Governor John M. Morehead Papers, Box 101, Correspondence, Petitions, etc., June 2, 1842-June 30, 1842, North Carolina State Archives.

[16] Petition for William B. Hammons to Preach, General Assembly Session Records, November 1840-January 1841, Box 4, House Committee Reports, North Carolina State Archives. This petition was discharged in committee.

was a valuable asset to their community. White neighbors defend Hammons's right to preach because they were most concerned with filling their preaching position with someone who could best fulfill their spiritual needs. In this situation, lawmakers had imposed qualifications based on racial categorization that challenged the independence of religious institutions.

The daily social interactions of Thomas O'Dwyer, a Scottish-born doctor who resided in Murfreesboro during the 1820s, reveal the significance of mutual dependence in the lives of free people of color and whites. Free people of color were among O'Dwyer's many patients, who sought relief for various ailments. Jacob Boon, a free man of color, was one of O'Dwyer's most frequently visited patients during July of 1825. Almost every other day, O'Dwyer set off to visit Boon and offered the ailing man prescriptions. During these visits, O'Dwyer stayed at Boon's residence to socialize. Some patients required less attention and simply sought out O'Dwyer for medicine. Tryal Williamson, a free man of color, "called" on the doctor to provide a prescription for his wife and himself. O'Dwyer's dealings with free people of color extended into other forms of business beyond doctor and patient relationships. He frequently hired out his slaves, Bob and Peter, to Peggy Weaver, a free woman of color. O'Dwyer purchased goods from free people of color including Jesse Weaver, who provided him with corn. He also lent money to free people of color including his one-time patient, Tryal Williamson, who paid his note in installments. Beyond his business relationships, O'Dwyer also took notice of free people of color simply as his neighbors. During the spring of 1825, O'Dwyer recorded the deaths of two of his free non-white neighbors. On April 9, he wrote "Heard Nathan Boon, mul[att]o, about 45 yrs old, died yesterday. He has labored under Rheum[atis]m for some yrs & was taken with convuls[ive] fits." Later that month he noted the death of a free woman of color: "Heard Nancy Tann a mul[att]o

girl, about 18 yrs old died this afternoon—she was sister to Harrison."[17] In O'Dwyer's experience, free people of color were patients, friends, and neighbors, not the plague on society described by radical pro-slavery ideologues.

The mentions of free people of color in the diary of William D. Valentine of Bertie and Hertford County, a white lawyer, also reveal the extent to which the lives of whites and free people of color were intertwined. Valentine, who at one time railed against the continued presence of free people of color in North Carolina and advocated for their colonization in Africa, relied upon and sometimes found himself indebted to free people of color. Vely Bizzell, a free woman of color, washed and mended Valentine's clothes at the rate of one dollar per month. In 1854, Valentine owed his house to Nat Turner, a free man of color. During the morning of November 17th, Valentine and his guests found the kitchen roof on fire. Hearing the alarm, Turner came to Valentine's house and then proceeded to climb to the kitchen roof where he received buckets of water from a series of people below. With the help of Turner and others, Valentine's kitchen sustained little damage. After the event, Valentine described Turner's aid as "good service, grateful service."[18] Even though Valentine's politics sometimes belittled free people of color as a group, in daily life, he realized how valuable individual free people of color were to maintaining his own existence and community stability. [19]

Sometimes communities reflected on and celebrated the intertwined histories of free people of color and whites and publicly displayed continued tolerance for social interactions

[17] Thomas O'Dwyer Diary, Samuel Wheeler Jordan Diaries, Volume 1, Southern Historical Collection.

[18] William D. Valentine Diary, Volume 14, 110, Southern Historical Collection.

[19] Seth Rockman discovered similar contradictory stances among white employers in Early National Baltimore, Maryland. He concluded that "As unwilling as they may have been to consider free people of color as citizens, and as wedded as they were to stereotypes that deemed free blacks lazy and irresponsible, Baltimore employers had no problem hiring them as workers." See Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009), 42.

across racial boundaries. In 1858, citizens of Fayetteville celebrated the sixty-fifth anniversary of the Fayetteville Independent Light Infantry, apparently a post-Revolutionary militia unit. The commemoration included target firing, a dinner at "Farmers' Hall," and reciting of the ode "The Grave of Hammond." The celebrated Hammond in the grave was the infantry's former musician Isaac Hammonds, a free man of color and Revolutionary War veteran.[20] Even right before the Civil War, North Carolinians still could gather to celebrate the accomplishments of their communities without excluding the memory of non-whites' participation.

Estate sales for both free people of color and whites were community events in which the deceased's family and neighbors, both free people of color and whites, came together to purchase various pieces of personal property. On December 22, 1837, the personal property of Nathan Bass of Granville County, a free man of color, came up for sale after his death. Bass's administrator offered an assortment of tools, livestock, and perishable goods for sale. Several local free people of color attended the sale including William Pettiford, Warner Bass, Arthur Taborn, Lewis Pettiford, Polly Bass, Polly Evans, and Morris Evans. William Pettiford purchased the most valuable lot at the sale, five barrels of corn. Several white men also attended the sale including D. T. Paschall, John Jenkins, William D. Allen, Edward Speed, William Dickerson, and Benjamin Knight. After the death of Henry Bow of Pasquotank County, a free man of color, Bow's administrator sold an assortment of property from a sorrel horse to kitchen furniture. Bow's wife Polly Bow and relative Tully Bow purchased several of the items at the 1845 sale. Wilson Brothers, Moses Overman, and Isaiah Simpson, all white men, purchased livestock.[21]

[20] "Military Celebration- 65th Anniversary," *Fayetteville Observer*, 26 August 1858.

[21] Nathan Bass Estate, Granville County Estates Records, Box 8, Nathan Bass 1837, North Carolina State Archives; Henry Bow Estate, Pasquotank County Estates Records, Box 11, Bow, Henry 1845, North Carolina State Archives.

Historians have focused on the segregated nature of American religious life, most notably in their discussions of "African-American religion."[22] However, churches in pre-Civil War North Carolina were important sites of interaction among people of different racial classifications and classes. Records for churches across the state reveal the presence of free people of color among congregations with white and enslaved members. Free people of color, as subscribers of a diversity of beliefs, were members of various Christian sects including the Baptists, Catholics, Methodists, Episcopalians, Moravians, and Presbyterians.[23] On April 18, 1824, Louisa Lewis and Mary Jane Hamilton, "coloured children," became members of the Christ Church of New Bern after their baptisms.[24] The minister of the Sacred Heart Cathedral Catholic Diocese of Raleigh traveled the state to baptize people including Thomas, "a colored and freed child three months old the son of Miles Howard & Matilda" of Halifax County in 1842.[25] In 1855, Pleasant

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[22] Some historians have suggested that separate religious practices and institutions distinguished what they see as separate black and white communities. Separate religious institutions are one of the key features of the black community composed of free people of color and enslaved people described by Berlin. See Berlin, *Slaves without Masters*, 69-73; Berlin, *Many Thousands Gone*, 256, 288-289. In her chapter titled "Black Religion," Marina Wikramanayake argued that in South Carolina "the free black was closely associated with the slave in his religious activity…The same inadequacy in his social life as in the slave's led him to rely on the church for the fulfillment of his social needs." See Marina Wikramanayake, *A World in Shadow: The Free Black in Antebellum South Carolina* (Columbia: University of South Carolina Press, 1973), 113-114. Albert J. Raboteau used concepts such as "African-American religion" and "African-American Christianity" in his work. His choice of words suggests that the people he called "African Americans" had a distinct brand of religion and Christianity. He also contends that a particular point in time, the "black church had been born." See Albert J. Raboteau, *Canaan Land: A Religious History of African Americans* (New York: Oxford University Press, 2001), esp.20.

[23] See Jon F. Sensbach, *A Separate Canaan: The Making of an Afro-Moravian World in North Carolina, 1763-1840* (Chapel Hill: University of North Carolina Press, 1998); Christ Church, New Bern Parish Register, Volume 1, North Carolina State Archives; Cool Springs Baptist Church (Eure) Minutes, North Carolina State Archives; Meherrin Baptist Church Minutes, North Carolina State Archives; Milton Presbyterian Church Session Minutes and Register, Volume 1, North Carolina State Archives; Mt. Tabor Baptist Church Minutes and Various Records, North Carolina State Archives; Oxford Presbyterian Church Session Minutes, North Carolina State Archives; Sacred Heart Cathedral Catholic Diocese of Raleigh, Baptisms, Marriages, Deaths, Originals, Volume 1, North Carolina State Archives; St. John's Episcopal Church (Fayetteville) Parish Register, Volume 2, North Carolina State Archives.

[24] Christ Church, New Bern Parish Register, Volume 1, 11, North Carolina State Archives.

[25] Sacred Heart Cathedral Catholic Diocese of Raleigh, Baptisms, Marriages, Deaths, Originals, Volume 1, 6, North Carolina State Archives.

Spencer, “coloured member” of Oxford Presbyterian Church in Granville County, received a letter from his congregation allowing him to transfer his membership to the Presbyterian Church in Raleigh.[26]

The extent to which free people of color participated in religious activities and institutional administration varied from church to church. The surviving minutes of churches with free non-white members suggests that most churches did not offer leadership roles to free people of color. One exception was the Meherrin Baptist Church in Murfreesboro, which allowed both free people of color and slaves to participate in the judgment of non-white members of the church charged with breaking church rules. Some congregations depended on free people of color to maintain the church buildings. In October of 1839, the Meherrin Baptist Church congregation paid Selia Weaver five dollars for “having attended to the meetinghouse.”[27] Similarly, in 1852, the congregation at Mount Tabor Baptist Church in Hertford County compensated Jesse Reynolds “the sum of four dollars for repairs done by him to the meetinghouse.”[28]

Churches attended only by free people of color appear to have been rare in pre-Civil War North Carolina and only appeared in the middle of the nineteenth century. Still these congregations maintained close connection to churches with mixed memberships, and whites played an important role in their regular operations. Pleasant Plains Baptist Church in Hertford County and New Hope Baptist Church in Gates County, both established in the 1850s, belonged to Chowan Baptist Association, which was composed mostly of churches with both white and

[26] Oxford Presbyterian Church Session Minutes, 92, North Carolina State Archives.

[27] Meherrin Baptist Church Minutes, October 1839, North Carolina State Archives.

[28] Mt. Tabor Baptist Church Minutes and Various Records, September 1852, North Carolina State Archives.

non-white attendees. At annual meetings of the Chowan Baptist Association, white men represented all churches, including Pleasant Plains and New Hope. The first pastor of Pleasant Plains, Thomas Hoggard, was a white man. White leadership of these churches reflects the domination of white men in North Carolina more generally, but white representation of non-white people was not the extent of white interaction in the religious services of free people of color. William D. Valentine noted his attendance at a meeting at Pleasant Plains on October 4, 1854. He also was present at a baptism of twenty new members of the church on October 15, 1855 and remarked later that "many colored people" along with "some few white persons" were part of the assembly on the Chowan River.[29]

A few free men of color ministered in religious establishments and preached to audiences that included both whites and non-whites. John Chavis, a Presbyterian minister, was one of the most influential. During the beginning of his career in the early 1800s, Chavis traveled widely in both North Carolina and Virginia preaching the word, converting souls, and taking notes on the state of religious activity in individual localities. Working during a time when free people of color could still legally minister to slaves, Chavis paid particular attention to the "blacks" in each community and cheered any sign that were willing to join the growing religious population. Reporting on his travels through Chatham County, he noted:

> There are hopeful appearances in this county, particularly among the blacks. They are extremely friendly, and when I left them they gave me the most pressing invitation to return. Here I met with a black woman, an African born, with whom I had a pretty long and most agreeable conversation. And I do not recollect ever to have met with a person, of any description, who had clearer views of the wisdom, power, goodness, and mercy of

[29] William D. Valentine Diary, Volume 15, 72-73, Southern Historical Collection. For further discussion of free people of color's participation in mixed congregations in other parts of the United States and their eventual movement away from those institutions see James Oliver Horton and Lois E. Horton, *In Hope of Liberty: Culture, Community and Protest among Northern Free Blacks, 1700-1860* (New York: Oxford University Press, 1997), 125-154.

> God to mankind in the plan of salvation, and the great distinction between him and his creatures, than she had.

By the 1830s, pro-slavery advocates began to target ministers like Chavis, arguing that free people of color who preached to slaves were likely agents of agitation among the enslaved population. Chavis and other preachers like him may have been progressive in their beliefs about delivering a Christian message to all people regardless of racial categorization, but he was no political radical. In his report, Chavis vehemently stated that "it is truly a matter of thankfulness to black people, that they were brought to this country; for I believe thousands of them will have reason to rejoice for it in the ages of eternity."[30] This position undoubtedly made slave masters comfortable and therefore allowed Chavis to complete his work for whites and non-whites alike.

Beyond religious life, free people of color and whites shared spaces in their criminal lives. Evidence suggests that local jailors generally did not practice segregation by separating people of color and whites.[31] In 1803, Jacob Hammonds, "a mulatto man," along with Littleberry Wilson and Jesse Robinson, both white men, escaped together from a Fayetteville jail where Hammonds and Robinson awaited trial for horse stealing and Wilson for murder.[32] In Robeson County, the jailer housed all prisoners together. At the February 1842 court, the county paid the jailer for housing Elizabeth Cumbo, David Revels, Sampson Revels, and Alfred Lowery, all free persons of color, along with eight white men.[33]

Free people of color and whites played the role of both teachers and pupils in mixed educational settings. At the beginning of the nineteenth century, the minister John Chavis

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[30] "Religious Intelligence," *General Assembly's Missionary Magazine*, September 1805.

[31] Another historian has found a similar arrangement in the jails of Philadelphia, Pennsylvania. See Noel Ignatiev, *How the Irish Became White* (New York: Routledge, 1995), 42-51.

[32] "Sixty Dollars Reward," *Wilmington Gazette*, 5 May 1803.

[33] Robeson County County Court Minutes, Volume 4, 257, North Carolina State Archives.

operated a school in Raleigh for both white children and children of color. At Chavis's school, white children received their lessons during the day, and children of color obtained their instruction during the evening. In an advertisement for his school, Chavis promised parents that they "may rely upon the strictest attention being paid, not only to their Education but to their Morals."[34] Whites also played an important role in the education of free people of color, both as teachers and supporters. When parents of free children of color could secure the funds, they paid white tutors to educate their children. During the 1810s, the guardians of the mixed-ancestry children of Noah Cotton, a white man, paid a white tutor to educate the Cotton children. In the 1850s, Mahala Buffaloe, a free woman of color from Wake County, paid Isabella Hinton Harris, a white woman, to educate her daughter. When the state of North Carolina established public schools in 1839, legislators explicitly prohibited free people of color from attending these schools. However, this law did not determine how free people of color or whites could be educated in private settings.[35]

Civic duty brought free people of color and whites together to serve the common defense, work on community projects, and vote. Since the colonial period, free men of color served in their local militias along with their white neighbors. At the beginning of the War of 1812, free men of color enlisted along with white men in local units. John Scott, John Scott, Halvin Ash, James Ash, Solomon Locklear, Samuel Locklear, Arthur Manly, and Hansel Hathcock, all free men of color, were members of Halifax County regiments. Non-white members of the Granville County units included Lemuel Tyler, Thomas Evans, William Evans, Jeremiah Anderson, Moses

[34] "Education," *Raleigh Register, and North-Carolina Weekly Advertiser*, 25 August 1808.

[35] John Vann Papers, Box 3, Estate Cotton, Christian 1816, North Carolina State Archives; Receipts from Isabella Hinton Harris, James Boon Papers, Correspondence and Accounts, Box 1, Correspondence, etc., 1839-1851, N. D., North Carolina State Archives. For more about the education of free people of color in other parts of the United States, see E. Franklin Frazier, *The Free Negro Family* (Nashville: Fisk University Press, 1932), 14-16.

Pettiford, Lervey Pettiford, and Zachariah Mitchell. Moses Pettiford served as fourth sergeant in his regiment, ranking seventh in a company of 78 white and non-white men.[36]

While the war against Britain was in progress, the state legislature stripped the privilege of armed service from free men of color and allowed them only to serve as musicians in militias. Free men of color continued to serve along with whites in this capacity through the Civil War. In 1821, William Boon was the fifer and David Rooks was the drummer in Captain William Lee's Gates County militia company. During the 1830s, Isham Locklear of Robeson County served as the musician in Captain McNeill's militia company.[37] These musicians' participation in the militias was a continuing symbol of the interconnection between whites and free people of color in North Carolina communities. Although the state legislature severed a broader level of camaraderie between free men of color and white men during the War of 1812 by prohibiting free men of color from serving as the equals of white militiamen, the presence of free men of color as musicians continued to symbolize the mutual duty of all free men to serve their common localities.

As in the colonial period, free men of color and white men shared duties in county public works projects up to the Civil War. Road work was the most common task. At an 1842 session of Robeson County court, officials required Jeremiah Revels and John Revels, free men of color, and 10 white men to work the road between "the Whiteville Road and Elizabeth Road."[38] In 1853, the Hertford County court ordered Thomas Robbins, Jr, Arthur Reynolds, Joseph Hall, Washington Lang, Boon Nickens, William Nickens, Manuel Reynolds, Smith Green, Thomas

[36] *Muster Rolls of the Soldiers of the War of 1812: Detached from the Militia of North Carolina, In 1812 and 1814* (Raleigh: C. Raboteau, 1851), 18-19, 36-37.

[37] Gates County County Court Minutes, Volume 8, 121, North Carolina State Archives; Robeson County County Court Minutes, Volume 5, 224, North Carolina State Archives.

[38] Robeson County County Court Minutes, Volume 5, 268, North Carolina State Archives.

Reynolds, and L. Reynolds to work along with 12 of their white neighbors "or their hands" to repair county roads.[39] Road work by law was a shared duty for non-wealthy free men, regardless of racial categorization. Only the wealthiest members of a community could exempt themselves by sending substitutes, many who were probably slaves.

Beyond road work, some localities entrusted individual free people of color with other important duties to the county. In May 1847, the Wake County court paid William Chavers, a free man of color, for repairing the pump in front of the county courthouse.[40] At the February 1853 session of Nash County court, officials appointed Perry Locus, a free man of color, overseer of the road "from John Peele's to Hinesberry Eatman's."[41] Free people of color rarely held Locus's position at any point, and the majority of counties never appointed non-whites as overseers. However, some communities believed that keeping common spaces in good working order was more important than making sure a white man was the overseer of every community project.

Up to 1835, polling places were another set of shared spaces where free men of color and white men showed open support for political candidates. Free people of color appear to have participated in the elective franchise in some communities. The scant surviving evidence does not reveal whether free people of color collectively voted the same ticket. Even if they did, free people of color never swayed an election without unity with both one another and significant numbers of their white neighbors. In 1819, Micajah Reid was the only free person of color to cast a vote in the Gates County election for a member of the U. S. House of Representatives.

[39] Hertford County County Court Minutes, Volume 3, 545, North Carolina State Archives.

[40] Wake County County Court Minutes, Volume 19, 30, North Carolina State Archives.

[41] Nash County County Court Minutes, Volume 13, 120, North Carolina State Archives.

However, in 1835, during the last election in which free people of color in Orange County participated, 24 percent of the voters at Lee's Store were free men of color. Voting records for the counties with the largest free populations of color are not among the surviving county records, but free men of color undoubtedly turned out in larger numbers in these counties. One of the delegates at the 1835 Constitutional Convention claimed that Halifax County, which consistently had one of the largest free non-white populations during the 1800s, had 200 to 300 voting free men of color.[42]

Commerce

The economy bound together free people of color, whites, and slaves in networks of commerce that powered the movement of people, goods, and services in their localities, state, and nation. One of the most important services free people of color provided to their larger communities was their labor as farmers, tradesmen, peddlers, and workers in the fishing industry. The attempt of a minority of white men to create all-white trade unions to limit and destroy the influence of non-white tradespeople in the antebellum era reveals the important role free people of color played in local economies. In 1850, a group called the "Mechanics of Fayetteville" passed a number of resolutions targeting their non-white competitors. These resolutions sought legislative action to limit the growth of the free population of color by outlawing manumission and called for the eventually removal of free people of color from North Carolina to Liberia and other places. During the same year, the "Mechanics of Washington, NC" passed resolutions with

[42] Election begun and held at Powell's place in Gates County, Gates County Election Records, Box 2, 1819, North Carolina State Archives; Election began and held at G. B. Lee's Store, Orange County Election Records, Box 4, 1835, North Carolina State Archives; *Proceedings and Debates of the Convention of North-Carolina, Called to Amend the Constitution of the State; Which Assembled at Raleigh, June 4, 1835* (Raleigh: Joseph Gales and Son, 1836), 70. Voters in the Orange County election included members of the Jeffries, Corn, Guy, Stewart, Wadkins, Jones, and Whitmore families.

similar objectives.[43] These mechanics groups clearly understood that free people of color held important positions in the North Carolina, which they hoped to seize and monopolize.

Yet the importance of free people of color in the economies of so many localities ultimately explains why these calls for action generally failed. Pleas to colonize free people of color outside of the United States floundered in North Carolina for exactly the reason some white mechanics wanted them gone: free people of color were vital to local economies.[44] As skilled laborers and low wage workers, free people of color provided North Carolina with labor that could not be replaced easily. Radicals may have argued for the removal of free people of color from the state, but only the most self-destructive actually tried to put the idea into practice. Through the Civil War, white North Carolinians depended on free people of color to construct their buildings, work their farms, and fish their waters.

The interactions of Thomas Day, a free man of color and carpenter out of Milton in Caswell County, demonstrate the extent to which communities valued free non-white laborers. Day had established himself in Milton by the late 1820s, and by the 1830s, his work had the attention of many of North Carolina's most influential whites. Day's shop, which employed both white and non-white craftsmen, produced furnishings for the homes of Caswell County elites.

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[43] "Mechanics' Meeting," *Carolina Watchman*, 19 December 1850; "The Mechanics of Washington, *Carolina Watchman*, 15 Aug 1850. These mechanics protest were part of a much larger national protest movement targeting non-white workers. See Berlin, *Slaves without Masters*, 350-351.

[44] Luther P. Jackson concluded that the contribution of "free Negroes" to the Virginia economy caused "all the schemes to deport the entire group" to meet "dismal failure." See Luther Porter Jackson, *Free Negro Labor and Property Holding in Virginia, 1830-1860* (New York: D. Appleton-Century Company, 1942), 229. H. E. Sterx similarly concluded that importance of free people of color to the Louisiana economy "goes a long way toward explaining why schemes to deport free colored persons as a group met with such dismal failure." See H. E. Sterx, *The Free Negro in Ante-Bellum Louisiana* (Rutherford: Fairleigh Dickinson University Press, 1972), 239; Barbara Jeanne Fields found a similar situation in Maryland. She concluded that "The perennial movement to colonize free black people in Africa failed for a number of reasons…but the most important reason was that, whatever white Marylanders might say or think about the danger or mischief of the free black population, the economy of the state could not dispense with them." See Barbara Jeanne Fields, *Slavery and Freedom on the Middle Ground: Maryland during the Nineteenth Century* (New Haven: Yale University Press, 1985), 71.

The Day operation also obtained major contracts from the University of North Carolina, former North Carolina Governor David Settle Reid of Rockingham County, and the Milton Presbyterian Church, of which Day and his wife, Aquilla Wilson Day, were members.[45] Day and his employees produced everything from coffins to fine staircases making Day one of the most important craftsmen in the region. His popularity and success allowed him to own several properties in Milton, purchase slaves, and send his children to private school in New England. Most importantly, Day's work made him a person of great repute among his neighbors.[46] Romulus Mitchell Saunders of Caswell County, a onetime state legislator and Congressman, described Day as "an excellent mechanic, industrious, honest and sober."[47]

The business relationships of James Boon of Franklin County, a free man of color and carpenter, further reveal the importance of free people of color to the state economy and their local communities. Boon worked in several North Carolina counties and in each built a strong record and good reputation. Throughout his career, white men wrote letters of recommendation, which highlighted his value to the communities in which he worked. In 1842, Richard H. Mosley of Halifax County wrote Jesse Faulcon that James Boon "is an orderly and well behaved man, and attentive to his business. His work is executed better and with more taste than any persons within my knowledge in this section of country."[48] The next year, Nathan W. Edwards, also of Halifax County, proclaimed that Boon was "an honest straight forward hard working man, in

[45] Milton Presbyterian Church Session Minutes and Register, Volume 1, 250-251, North Carolina State Archives.

[46] Patricia Phillips Marshall and Jo Ramsay Leimenstoll, *Thomas Day: Master Craftsman and Free Man of Color* (Chapel Hill: University of North Carolina Press, 2010).

[47] Memorial of the Inhabitants of the Town of Milton, General Assembly Session Records, November 1830-January 1831, Box 2, House Bills (Dec. 23), North Carolina State Archives.

[48] R. H. Mosley to Jesse Faulcon, James Boon Papers, Box 1, Correspondence, etc., 1839-1851, N. D., North Carolina State Archives.

short he is in my opinion a gentleman."[49] Free people of color in North Carolina had enemies across the state, but they failed to convince the friends of free people of color, who often benefited greatly from their work, that a purely white society could offer a better alternative to artisans like James Boon.[50]

Beyond the realm of craftsmen, certain industries, most notably shipping and fishing, depended on the labor of people of color and never warmed to calls to remove free people of color from the state. Free people of color partially and sometimes fully composed crews that headed in and out of North Carolina ports. Besides the captain, every member of the crew of the schooner *Sally Ann* docked in Beaufort and bound for Haiti was a free person of color. In 1826, John Savastan of Beaufort, Benjamin Gray and Doxy Lee of Currituck County, Thomas Scott and James Hathway of Pasquotank County, and George Elshone, originally from Jamaica and a British citizen, all free people of color, manned the schooner, which successful transported a shipload of emigrants to the Caribbean.[51]

In the eastern part of the state, including Chowan, Hertford, Bertie, Washington, Tyrell, and Carteret Counties, free women and men of color held irreplaceable positions in the production of fish for the national market. In an 1849 report on North Carolina's fishing industry Lemuel Sawyer, Esq. wrote of the fisheries: "A large gang of hands is required to work them, generally 30 or 40 hands, besides the scores of women, principally negroes, to clean the fish."[52] Whites, slaves, and free people of color worked as hands at the Mount Gallant fishery on the

[49] James Boon Papers, Box 1, Correspondence, etc., 1839-1851, N. D., North Carolina State Archives.

[50] Seth Rockman came to a parallel conclusion about the attitudes of whites in Baltimore. See Rockman, *Scraping By*, 13.

[51] List of Persons Composing the Crew of the Schooner Sally Ann, Manumission Society Papers, Series 1, 1826 June #3, Southern Historical Collection.

[52] Lemuel Sawyer, Esq., "On the Fisheries of North Carolina," *Plough, the Loom and the Anvil*, March 1859.

Chowan River in Hertford County. During the 1830s, John Bizzell, Simon Bizzell, Jacob Smith, Joe Archer, Drew Smith, Tom Weaver, and Henry Chavis, all free men of color, were among the hands at the fishery. These men harvested thousands of shad and herring from the river to be exported through the Dismal Swamp Canal to ports such as Norfolk and from there to other parts of the country. Locals also purchased some of the fish processed at Mount Gallant.[53]

By the 1840s, people who could work in the fisheries were in high demand, and free people of color with experience in the field found work. In Gates and Hertford Counties, locals regularly held what was referred to as the "fishing court" where fishermen from around the region came to hire hands for their fishing operations. [54] In 1849, John A. Anderson attended a fishing court in Hertford County in order to procure workers for the Chesson and Armstead firm out of Washington County. After bargaining with potential laborers at the fishing court, Anderson successfully collected a team of workers, all "mulatto" hands, to send to Chesson and Armstead via the next available ship. Anderson's assembly included four free women of color and 13 men, some of whom were hired slaves and some free men of color. Writing to Chesson and Armstead, Anderson informed them of the difficulty he had in finding women who could work as fish cutters. The women Anderson found had forced him not only to pay them a wage but also required him to guarantee that they would receive part of the catch. He explained: "The women I could not get on better terms and had to grant them the privaledge [sic] of putting up a Barrell of offal fish each." In addition to guaranteeing the women fish in addition to their salaries, Anderson also warned that "I am yet afraid I shall loose Sally Butler…I learn much larger prices have been offered her…and perhaps for a different use than what you want her

[53] Account Book, John Vann Papers, Box 2, Fishery Accounts (Mount Gallant), North Carolina State Archives.

[54] William D. Valentine Diary, Volume 7, 91, Southern Historical Collection.

for."[55] Anderson's statements clearly suggest that no person involved in the fishing industry would have supported the removal of free people of color to Africa. While white fishermen in North Carolina would not have welcomed the competition of free people of color's own firms, they needed experienced workers, regardless of racial categorization or status, to keep their operations in production.[56]

Free people of color also played a critical role in North Carolina's agricultural economy. They participated at every level of agricultural production from apprentice farm laborers to planters. Most free people of color in the farming industry labored on others people's farms either as temporary laborers or apprentice farmers. Robert A. Jones, a white planter in Halifax County hired several free men of color to complete short-term work on his farm. On December 14, 1819, Jones paid King James, a free man of color, $10 for work on his barn. In Fall 1821, Jones employed Buck Francis, Dolphin Francis, Thoroughgood Dempsey, Arthur Manly, Billy Taylor, Dempsey Haithcock, James Haithcock, Hartwell Haithcock, and Littleberry Haithcock, all whom Jones described as "Mulatto Labourers" to labor at his farm and mill. All their assignments were short-term, and none of the men worked for Jones more than two weeks. Although Jones gave the men temporary positions in 1821, this was not the only time he depended on them. Three years later, Jones reemployed James Haithcock to labor on a monthly basis at the Wyche Plantation in Halifax County.[57]

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[55] J. A. Anderson to Chesson and Armstead, John B. Chesson Papers, Box 1, Chesson Papers Miscellaneous, North Carolina State Archives.

[56] For more on people of color in North Carolina's maritime industries and a description of the "fishing courts," see David S. Cecelski, *The Waterman's Song: Slavery and Freedom in Maritime North Carolina* (Chapel Hill: University of North Carolina Press, 2001), 90-91.

[57] Robert A. Jones Account Book, 34, 329-332, Southern Historical Collection.

Into the antebellum period, child laborers played significant roles in North Carolina's agricultural production as farm hands. The court records of most counties show that agricultural work was the most common task assigned to child apprentices of color. In February 1829, the Orange County court bound "Matthew Burnett son of Edith Burnett," a free boy of color, to William Thompson to "learn the art & mistery [sic] of a farmer."[58] At the June 1853 term of court, Cumberland County officials bound William H. Norris, a free boy of color, to learn the "trade of a farmer."[59] During the November 1856 term, the Rockingham County court bound Elizabeth Kimmins, a 10 year old free girl of color, to learn "common household and field labor."[60] The regular use of child laborers suggests that farmers and planters were comfortable with exploiting the apprenticeship system for cheap laborers. However, this demand also reflects the limited likelihood that white farmers and planters who used non-white child hands would have been open to losing such a cost-effective source of labor. The law only required masters to feed and clothe apprentices until they reached age 21 and excluded apprentices from receiving regularly wages.[61]

Beyond working as laborers on other people's property, free people of color in almost every community with a significant free non-white presence could be found working their own farming operations. Most of these agricultural ventures were small scale farms with no slave laborers. Some farmers worked rented land while others grew crops and raised livestock on their own property. In rare instances, free people of color owned farming operations worked by slave

[58] Orange County County Court Minutes, Volume 20, 431, North Carolina State Archives.

[59] Cumberland County County Court Minutes, Volume 33, June 1853, North Carolina State Archives.

[60] Rockingham County County Court Minutes, Volume 15, 601, North Carolina State Archives.

[61] For further discussion of North Carolina's apprenticeship system see Karin L. Zipf, *Labor of Innocents: Forced Apprenticeship in North Carolina, 1715-1919* (Baton Rouge: Louisiana State University Press, 2005).

labor. John Carrathurs Stanley of New Bern, one of the few free non-white planters in North Carolina, owned a cotton plantation worked by dozens of slaves. According to the 1820 census, Stanley had 95 slaves on his Craven County plantation.[62] North Carolinians could easily discern that free people of color played crucial roles at every level of the economy. Free people of color were not on the fringe of the society but part of the mechanism that made North Carolina function.

A Single System of Law and Politics

As members of the same political communities, free people of color, whites, and slaves were bound together by a single system of law. Free people of color never controlled North Carolina's legal system, but up to 1835, some voted for its representatives, and most would come in contact with local officials at some point in their lives. As free members of the same municipalities as their white neighbors, free people of color interacted with local officials to pay taxes, vote, record legal documents, and participate in the legal justice system. Although white men dominated political leadership, public offices, and juries, this reality did not lessen free people of color's connection to the political system nor remove them from its jurisdiction. Historians who argue for the existence of racial communities ignore the importance of the common legal system in connecting people in political communities and understate the importance of the political process in propagating racial difference. In the case of North Carolina and the rest of the pre-Civil War South, political leaders were decisive in creating and maintaining "racial divides." Lawmakers, judges, and other officials helped to define who could be categorized as a "free person of color," and most importantly, they codified, enforced, or

[62] Franklin, *The Free Negro in North Carolina*, 134-135; Loren Schweninger, "John Carruthers Stanly and the Anomaly of Black Slaveholding," *The North Carolina Historical Review* 67 (April 1990): 159-192.

failed to enforce the rules that separated free people of color from whites and distinguished the free from the enslaved. Slaves and free people of color were not united as a single community by a common culture as some scholars have argued. Their connection was based on their non-white status, which was a product of living in a society in which white was a preferential status in opposition to a "colored" racial classification. The fact that "colored" were the racial "other" in itself demonstrates their inherent connection to whites who they sat juxtaposed to in the law and society.

The law and social custom made free people of color second-class citizens or as some argued at the time, not citizens at all, by prohibiting them from testifying in court against whites, denying them the opportunity to serve in public office, and prohibiting them from sitting on juries. However, legal and social discrimination in certain situations does not equate discrimination in other situations. Ira Berlin declared that "free Negroes rarely received justice at the hands of all-white judicial systems."[63] Yet county records from across the state suggest that local courts varied in their approach towards free people of color, and strong evidence reveals that many juries and judges evaluated the cases of free people of color individually and did not prejudge free people of color as inherently criminal. Free people of color walked into courts to record legal documents, file petitions, and apply for licenses. They filed lawsuits against their neighbors, both free people of color and whites. Across the state there are examples of free people of color securing favorable outcomes including beating murder charges and securing licenses to carry guns.

Repeated favorable outcomes for free people of color suggest that many all-white juries and judges had a greater interests in maintaining social stability over compromising the integrity

[63] Berlin, *Slaves without Masters*, 335.

of their courts for the sake of furthering white supremacy.[64] Even before the convention of 1835 stripped the franchise from free men of color, white men's domination of political offices and courtrooms as judges, attorneys, and juries was secure. Whites dominated the legal system and generally had no need to use to courts to reinforce an already evident ascendancy. Favorable outcomes for free people of color reveal a separation between local needs, peace and order, and state and national political agendas, which included radical pro-slavery arguments that sought to subordinate free people of color.

As constituents of their municipalities, not people on the fringe, free persons of color used local courts for their benefit. They came to the local courts to procure licenses in order to proceed with many ordinary tasks. Free people of color requested and obtained licenses from the county courts to peddle goods. In 1846, Amelia Sawyer received a license from the Gates County court to sell "oysters and cakes."[65] After the passage of the law requiring free people of color to obtain licenses in order to carry weapons, free persons of color regularly came to the courts to procure licenses. Some counties handed out weapons licenses only sparingly while other counties offered them more liberally. In March 1855, the Cumberland County court issued a single license to Matthew Leary, a free man of color, to carry his shot gun for one year. At the May 1848 court, Halifax County officials issued shot gun licenses to Joseph Archer, Ambrose Hawkins, Edmund Ashe, Wilkins Harris, and Henry Harris. At the next court session, an even larger group of 21 free men of color received licenses to carry their shot guns.[66] Hertford County

[64] Laura F. Edwards argued that "In public legal matters that involved the peace, the point was to restore order, not to protect individual rights." In such an arrangement, the reinforcement of the racial order was of secondary importance in relation to maintaining the peace and order. See Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 103.

[65] Gates County County Court Minutes, Volume 11, November 1846, North Carolina State Archives.

[66] Halifax County County Court Minutes, Volume 7, May 1848, North Carolina State Archives.

officials may have been among the most liberal in the state. In November 1847, court officials issued 35 gun licenses to free men of color and three years later allowed 43 free men of color to carry their guns.[67] The reasons for the wide range of licensures are unclear. Some counties may have enforced the licensure law irregularly, and free people of color with weapons simply ignored registering in their jurisdictions. Other localities simply may have reserved the right to carry weapons for their most favored free people of color, but the truth of the situation cannot be discerned from the existing evidence.

Settling property issues was one of the most important functions of local courts for both free people of color and whites. Free people of color and their agents regularly came to court to record their land purchases and sales, probate wills, and record estate sales. Deeds involving free people of color are too numerous to count. These deeds appear in local records from the colonial period through the Civil War. The wills of free people of color are less numerous than deeds. Many free persons of color died without leaving wills, possibly dying before the issuance of such a document ever came to mind. Some undoubtedly were too poor to consider producing such a document while others likely believed that matters of their estate could be handled by their heirs without dispute. Free people of color who left wills generally owned real estate, livestock, or slaves, which they sought to give to specific individuals. In his 1818 will Thomas Stuart of Person County wanted most of his property to go his wife, and requested that the property be divided among his children after her death. He left special instructions for the division of some his livestock, which he wanted to go immediately to his sons. In 1838, Eliza Hammond of

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[67] Cumberland County County Court Minutes, Volume 34, March 1855, North Carolina State Archives; Hertford County County Court Minutes, Volume 2, 132, 403, North Carolina State Archives.

Cumberland County used her will to divvy up her town lots in Fayetteville and distribute other personal goods between her daughter Martha and son James Sampson.[68]

The appearances of free person of color in courts as plaintiffs and defendants in civil and criminal actions demonstrate that officials incorporated them into local political communities and saw them as within bounds of their society, not on its periphery or beyond its limits. Free people of color appeared in courts across the state as both plaintiffs and defendants in civil suits, with whites and sometimes free people of color on the other side. They more frequently appeared in the courts to face criminal charges as well as to support criminal cases against others. Determining a general set of statistical outcomes for these cases is impossible because of the varying condition of court records across the state. The existing records, however, provide insight into the spectrum of situations free people of color faced within the justice system and the diversity of outcomes produced by judges and juries.

Courts across the state heard numerous civil disputes between free people of color and their neighbors over debts, property, and damages. Although the law prevented free people of color from testifying against whites in court, they still successfully battled whites in civil cases. In local courts, judges allowed whites, especially those considered credible by the community, to speak on the behalf of non-whites and present their arguments and observations.[69] During the late 1830s and early 1840s, Reuben Day, a free man of color from Orange County, pursued a case against James Waller, a white man who was in his debt. In the lower court, a jury found against Waller and ordered him to pay Day. Dissatisfied with the order, Waller appealed to the county's Superior Court. In the Superior Court, Day found similar success, and the court ordered

[68] Person County Record of Wills, Volume 1817-1820, 77-78, North Carolina State Archives; Cumberland County Record of Wills, Volume B, 290, North Carolina State Archives.

[69] Edwards, *The People and Their Peace*, 116.

Waller to compensate him.[70] In 1829, juries in Gates County awarded David Rooks and Jesse Reid, both free men of color, judgments against white men. Free people of color as defendants also won cases against whites. In 1849, a Gates County jury found for Meredith Lee, a free man of color, in a lawsuit claiming Lee owed a debt to the estate of William Jordan, a white man.[71]

Victories against white defendants were not limited to civil disputes over money. Some free people of color used civil suits to challenge abuse. In 1856, Elizabeth Patrick, a free woman of color, filed a complaint against Joseph Green, a white man who held Patrick's two children Betsey and Alexander as apprentices. Patrick declared that Green abused her children and asked the court to rescind the bonds of apprenticeship on Betsey and Alexander. The Brunswick County court found that Green had "not kindly treated and properly provided for" Betsey and Alexander Patrick, and "rescinded and cancelled" the apprenticeships. The court restored custody of the Patrick children to their mother by apprenticing them directly to Elizabeth.[72] In this case, the court demonstrated that free people of color, even as servants, had certain rights and could not be freely abused by their masters. Whites who owned slaves had the right to abuse their bondspeople without public correction, but free people of color were not property, and as free agents had the right to challenge violations of their basic liberties.

Free people of color across the state also lost cases to white plaintiffs, especially in cases of debt in which plaintiffs could produce promissory notes and witnesses to testify on their behalf. In 1839, the Robeson County court required Raiford Revels to pay debts to three different

[70] *Reuben Day v. James Waller*, Orange County Civil Action Papers, Box 93, 1844, North Carolina State Archives; Orange County Superior Court Minutes, Volume 3, June 1843, North Carolina State Archives.

[71] Gates County Superior Court Minutes, Volume 2, March 1829, October 1829, North Carolina State Archives; Gates County County Court Minutes, Volume 11, May 1849, North Carolina State Archives.

[72] *Betsey Patrick v. Joseph Green*, Brunswick County Apprentice Bonds and Records, Box 1, 1850-1859, North Carolina State Archives.

white plaintiffs. Unable to pay his creditors, the court ordered his land sold in order to satisfy the plaintiffs' claims.[73]

Civil cases involving free persons of color were not limited to disputes between free people of color and whites; free people of color used the courts to settle disputes with one another. In 1813, Elizabeth Gaudett, a free woman of color, took John Dove, William Physioe, and William Dove, both Doves being free men of color, to court in order to collect a debt. The Craven County court that heard Gaudett's plea awarded her 14 pounds damages plus court costs.[74] Civil disputes with free people of color as both plaintiffs and defendants sometimes situated family members on different sides. During the 1830s, Catharine Lowry of Robeson County, with the assistance of her guardian, pursed legal action against her uncle Thomas Lowry over the disputed estate of her father, James Lowry.[75]

When their intimate relationships fractured, free people of color occasionally used civil suits in the local courts to make complaints against their spouses and file divorces. In 1846 at the Chowan County court, Eliza Deal Jordan sued for divorce from her husband of six years, Theophilus Jordan. Eliza claimed that she and Theophilus had lived together for about three years after their marriage. Later Theophilus abandoned her, and after leaving, he had lived in an adulterous relationship with Mary Ann Banks of Hertford County. Eliza proclaimed that she was "unwilling longer to be the subject to an individual so fruitless to his marriage vows."[76]

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[73] Robeson County County Court Minutes, Volume 4, 33, North Carolina State Archives.

[74] Craven County County Court Minutes, Volume 23, June 1813, North Carolina State Archives.

[75] *Catharine Lowrey v. Thomas Lowrey*, Robeson County Estates Records, Box 38, Lowrey, James 1832, North Carolina State Archives.

[76] *Eliza Jordan v. Theophilus Jordan*, Chowan County Divorce Records, Box 2, Divorce- Eliza Jordan vs. Theophilus Jordan, North Carolina State Archives.

Criminal cases involving free persons of color, like civil suits ended with both guilty and not guilty verdicts. Yet the punishments for convicted free people of color varied. Free people of color faced a range of charges from petit larceny to murder, and juries found individuals both guilty and innocent of this assortment of charges. With exonerations spread across the county records, the likelihood that many free people of color found justice in the North Carolina local courts appears definite. At the October 1845 session of Craven County Superior Court, jurors acquitted George Robeson, Jerry Johnston, Theophilus George, William Cally, Jacob Sampson, Amos Sampson, and Richard Morris, all free men of color, of carrying muskets without licenses.[77] In February 1847, Wake County jurors found Betsey Copeland and Wyatt Locklear, both free people of color, innocent of assault and battery charges.[78]

At least some jurisdictions in North Carolina, believing that free people of color deserved fair trials, granted the transfer of controversial trials to other counties. In 1834, John Allen of Granville County, charged with murder, successfully had his trial moved to Orange County after complaining that the minds of the people in his neighborhood were "so much excited by prejudice."[79]

When the courts did not exonerate accused free persons of color, they sometimes showed leniency. In 1827 and 1851, free people of color appeared in Gates County Superior Court on charges of murder. At the end of both trials, juries found the defendants, Peter Price, accused of murdering his son Milo, and Betsey and Blake Smith, charged with killing their brother-in-law

[77] Craven County Superior Court Minutes, Volume 4, October 1845, North Carolina State Archives.

[78] Wake County County Court Minutes, Volume 19, 18, North Carolina State Archives.

[79] *State v. John Allen*, Granville County Criminal Action Papers, North Carolina State Archives.

Timothy Mansfield, guilty on the reduced charge of manslaughter. [80] Manslaughter convictions spared these defendants the hangman's noose. These outcomes would be impossible in a system devoted to punishing free people of color with the harshest penalties possible.

Maybe the most important questions to understand about the justice system is whether or not free people of color received the same punishments for the same crimes as whites. Transcripts of courtroom testimony and descriptions of other evidence are rarely part of the surviving county court records making it difficult to determine what the verdicts of court cases say about discrimination in courtroom procedure. Furthermore, only Supreme Court cases at the state level provide insight into the logic used to determine case outcomes. Most criminal cases fell within the local jurisdiction, and local juries determined the fate of nearly all non-white and white defendants.

The historical record reveals that some North Carolina courts handed down punishments created specifically for free people of color convicted of crimes. North Carolina law offered courts penalties that could only be assigned to free people of color, and some courts took advantage of those laws. Courts across North Carolina punished free people of color by assessing court costs and fines that the defendants could not pay, and then requiring them to be sold as servants to bidders willing to pay off their debt. In 1860, the sheriff of Camden County auction Edmond Perkins and Milbey Griffin, "free negroes," to the highest bidder. After the sale, the court required Perkins and Griffin to serve the highest bidder for a term of five years.[81]

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[80] *State v. Peter Price*, Gates County Criminal Action Papers, Box 6, 1826, State Archives of North Carolina; Gates County Superior Court Minutes, Volume 2, September 1827, State Archives of North Carolina; *State v. Blake and Betsy Smith*, Gates County Criminal Action Papers, Box 16, 1851, State Archives of North Carolina; Gates County Superior Court Minutes, Volume 3, March 1851, State Archives of North Carolina.

[81] Returns of Sales of Certain Free Negroes, Camden County Miscellaneous Records, Box 3, Return of the Sales of Certain Freedmen of Color 1860, North Carolina State Archives.

Although some county courts sold free people of color into servitude, maybe even making the decision with ease, the historical records suggests that the individual counties had not come to a consensus about how often or in which cases to use discriminatory punishments. In Gates County, the selling of free people of color was only suggested once in the county's pre-Civil War history, and the historical record does not make it clear whether the sheriff sold Betsey and Blake Smith, defendants found guilty of manslaughter. In other jurisdictions, the courts used the selling of free people of color as punishment more liberally. In 1855, after a jury found Roland Lomack guilty of assault and battery, the Cumberland County court ordered the sheriff to hire out Lomack to anyone willing to pay his $15 fine. On the steps of the courthouse in 1859, the sheriff of Craven County sold Abby Lewis into servitude for an unspecified period after a jury found her guilty of drunkenness and fined her $40.[82] Although the county proscribed harsh punishment in these cases, tough penalties for such crimes should not be view as typical. Free people of color across the state were found guilty of numerous misdemeanors, and the vast majority of courts never handed down such cruel punishments. The case of Abby Lewis is a clear outlier, and her punishment must have been handed down under circumstances that the historical record fails to explain. The reputations of the defendants in the community undoubtedly played an important role in the process of deciding punishments.[83]

Although public sales were undeniably degrading punishments, being condemned to forced servitude for a set time was far from being enslaved. The experience of Elizabeth Post, a free woman of color hired out by officials in Cumberland County, clearly demonstrates the

[82] Cumberland County County Court Minutes, Volume 34, March 1855, North Carolina State Archives; Craven County County Court Minutes, Volume 38, 278, 308, North Carolina State Archives.

[83] For further discussion, see Kirk von Daacke, *Freedom Fas a Face: Race, Identity, and Community in Jefferson's Virginia* (Charlottesville: University of Virginia Press, 2012), 113-138.

difference. In 1857, Post appeared before a court in Wilmington claiming that her temporary master, James Bryant, had attempted to remove her from North Carolina in order to sell her as a slave. With no one to contest her claim, a judge set Post free.[84] In North Carolina, an enslaved person could not challenge sale out of the state in the courts, but Post was a free woman of color, and the fact that she was a hired out could not override the rights she held as a free person.

Whether free people of color engaged the court to obtain licenses and record deeds or faced a jury to decide a case, their participation in the legal system clearly demonstrates that they were part of their larger communities. Free people of color at this time faced discrimination within the legal system, but the law never viewed them as legal non-persons. They depended on the courts to uphold their rights, and many of them found relief despite the system's domination by white men. The power structure in North Carolina's legal system was white and upper-class, yet the men who ran that system generally believed in pursuing justice for the sake of order, even when free people of color were involved. Free people of color retained their freedom throughout the pre-Civil War era in part because many whites viewed them as integral. Furthermore, abuses in the justice system in order to persecute free people of color would have made a mockery of the system as a whole and challenged the maintenance of peace and order.

Conclusion

Previous scholarship has stressed segregation and discrimination against free people of color in the Upper South. Yet this chapter demonstrates that the level of segregation in the pre-Civil War South has been overstated and reveals that cooperation and interaction between free people of color and whites shaped patterns of daily life in North Carolina. Some whites disliked

[84] "Habeas Corpus Case," *The Weekly Raleigh Register*, 9 December 1857.

free people of color, and radical pro-slavery politicians took advantage of this contempt and passed laws limiting the liberties of free non-whites. However, these actions should not be viewed as the consensus position of North Carolinians. Many whites saw free people of color as neighbors, friends, family, essential laborers, and community business people. By the time secession became part of daily conversation in North Carolina, free people of color had become so intertwined in society that their removal was impractical.

The findings discussed in this chapter reveal the limitations of the slaves without masters model of life for free people of color in pre-Civil War North Carolina and demonstrate how starkly different the lives of free people of color could be from the conditions experienced by the majority of slaves in the American South. Most free people of color never experienced the physical and mental brutality of cruel masters. Those who were abused by white employers or neighbors had a right to legal recourse, which slaves by definition of their status never had. Unless a free person of color had enslaved kin, the ever-present possibility that someone could legally sell a family member hundreds of miles away did not exist. The vast majority of free people of color had sole rights to their labor, and the most successful lived comfortably as a result. In contrast, slaves' labor was the sole property of their masters, and ultimately slaveholders determined the extent to which bondspeople received any benefit from their own work. A slave's agency was only as good as the inability or unwillingness of the slave master to control that slave actions. Even during the most restrictive years of the 1850s, the status of free people of color continued to be more similar to that of whites than the chattel status imposed on enslaved people.

CHAPTER 6: CIVIL WAR

Introduction

The historiography of free people of color in the South, with a few exceptions, is silent on the Civil War's influence in the lives of free non-whites.[1] Yet the Civil War era was the most important point of change for free people of color in North Carolina. The most significant debates over their social and political position took place during this time. At the onset of the war, state lawmakers stripped the right to bear arms from free people of color, prevented them from employing slaves, and began to impress them into the service of the Confederacy as laborers. For the first time, North Carolina imposed forced labor on significant numbers of free people of color. Before this period, jurists typically ignored many of the laws proscribing forced labor for free people of color found guilty of crimes. However, during the war, they imposed forced labor even on law-abiding non-whites. These actions suggested to free people of color that North Carolina law no longer would protect their rights to life, liberty, and property.

As a diverse population with various opinions about slavery, secession, and simply how to survive, free people of color responded in a variety of ways to the major changes in their

[1] Partial exceptions include Michael P. Johnson and James L. Roark, *Black Masters: A Free Family of Color in the Old South* (New York: W. W. Norton and Company, 1984); Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s through the Civil War* (New York: Alfred A. Knopf, 2004); Gary B. Mills, "Patriotism Frustrated: The Native Guards of Confederate Natchitoches," *Louisiana History* 18 (Autumn 1977): 437-451; Edna Greene Medford, "'I Was Always a Union Man': The Dilemma of Free Blacks in Confederate Virginia," *Slavery And Abolition* 15 (December 1994): 1-16. Both of these works only comment briefly on the war's impact on free people of color. John Hope Franklin's study of free people of color in North Carolina ends in 1860. Richard Reid's work on North Carolina's U. S. Colored Troops mentions some free people of color by name but does not examine how the war specifically affected free people of color, and instead offers analysis of the war's effect on "blacks" as a whole. See Richard M. Reid, *Freedom for Themselves: North Carolina's Black Soldiers in the Civil War Era* (Chapel Hill: University of North Carolina Press, 2008).

society. Most free people of color quietly supported the Union cause or stayed neutral, which were easy choices since North Carolina law banned them from membership in the state regiments. The majority proceeded with their pre-war daily activities and continued to interact regularly with their pro-Confederate white neighbors. A few free people of color, many whose appearances could not distinguish them from white men, illegally joined the Confederate army. However, most of North Carolina's free men of color who served during the war fought for the Union. They battled those who challenged their basic civil liberties and attempted to place them on an equal footing with slaves. Pro-Confederate forces had become the common enemy of most free people of color and slaves alike, therefore setting many members of both groups on the course to develop a political alliance in the years to come.

Although the political interests of many free people of color and enslaved people united as the Civil War progressed, the diversity of ways free people of color reacted to and participated in the Civil War demonstrates how different their position continued to be in comparison to enslaved people. Though some whites sought to intrude in their lives through the introduction of additional legal restrictions during the war, free people of color ultimately continued to maintain a status closer to white freedom than enslavement. When free people of color made decisions during the war years, they took the maintenance of the freedoms that they already possessed into consideration. On the other hand, slaves sought a freedom that they did not have but wanted to realize by generally supporting Confederate defeat.

Life in a Confederate State

Building on their argument that the liberties of free people of color jeopardized the maintenance of slavery, radical pro-slavery ideologues continued to attack the position of free

people of color and called for increased limitations on their basic civil rights. Calmer voices held off full assaults on free people of color, including demands for their enslavement, but many free people of color found the actions of pro-slavery ideologues too grave to ignore. In the coming years free people of color generally proceeded silently but did not overlook their neighbors' hostilities. Some free people of color, for their own profit or more likely for their own survival, continued to work side by side with their Confederate white neighbors. Others hoped for Union victory and the end of the radical pro-slavery regime.

Obsessed with protecting slavery and preventing collusion between slaves and free people of color, radical pro-slavery ideologues enacted two laws explicitly limiting the civil rights of free people of color. Five months before secession, the state legislature passed laws preventing them from keeping weapons and severely limiting their control of and interaction with slaves. The weapons law prohibited free people of color from keeping on their person or in their homes shotguns, muskets, pistols, swords, sword canes, daggers, bowie knives, powder, or shot. Keeping a weapon was only a misdemeanor; however, the law explicitly stated that if found guilty, a free person of color would be fined no less than $50, a hefty penalty, which for most would mean hiring out at public auction. The law reducing free people of color's control of slaves offered a similar fate and levied a $100 fine for each offense. This act prohibited free people of color from buying or hiring slaves and prevented slaves from working as apprentices to free people of color. Those free people of color who had slaves before the passage of the act could continue to own those slaves, but additional purchases were banned.[2]

These legislative acts reminded free people of color and maybe even some concerned whites of radical pro-slavery ideologues' willingness to compromise the liberties of the free in

[2] *Public Laws of the State of North Carolina Passed by the General Assembly at its Session of 1860-61* (Raleigh: John Spelman, 1861), 68-69.

order to preserve and expand slavery. The new legislation drastically challenged the civil rights of free people of color, limited their access to certain types of private property, and denied them the right to bear arms, even in the defense of their own homes. These laws chartered the course of life for most free people of color under the Confederate regime. Free people of color remained unbounded to slave masters in law, but in practice pro-slavery ideologues had the right to impose themselves in the daily lives of free people of color. Under the guise of war effort, pro-slavery radicals now mandated significant restrictions on and power over the activities of free persons of color. However, it is unclear whether North Carolinians more generally supported these actions or to what extent local officials actually enforced the new laws. Local officials certainly failed to confiscate every weapon owned by free persons of color.

Although their political and social position was at its lowest point just prior to and during the Civil War, the enemies of free people of color still failed to suppress fully their liberties. Even in the midst of war, several bills restricting the rights of free people of color failed in the state legislature, and the laws that passed faced public protests. In 1863, the House Judicial Committee considered a bill to "prevent slaves and free persons of color from having and owning dogs," which died in the legislature.[3] The state assembly also debated a bill to enslave all of the state's free people of color convicted of crimes. A more rigid piece of legislation requiring the removal or enslavement of all free people of color passed in Arkansas, but all mass enslavement attempts failed in North Carolina.[4]

[3] Resolution Headen of Chatham, General Assembly Session Records, January-February 1863, Box 2, House Resolutions (250-390 and unnumbered), North Carolina State Archives.

[4] Bernard H. Nelson, "Legislative Control of the Southern Free Negro, 1861-1865," *The Catholic Historical Review* 32 (April 1946), 28-46.

Even when discriminatory legislation passed in the General Assembly, radical proslavery ideologues still encountered challenges from their more moderate constituents. After the passage of legislation limiting the rights of free people of color in early 1861, 15 white justices of the county court of Hertford County, most of whom were wealthy and heavily involved in local politics, petitioned the legislature in protest of the weapons ban. They requested a "modification" of the ban that would allow county courts to decide who among the free persons of color should or should not be allowed to carry weapons. The petitioners argued that "a just discrimination among applicants and the grant of such favor to deserving persons is itself a strong incentive to persons of this class to maintain a good character and deport themselves properly."[5] These men recognized that stripping additional rights from free people of color only made them more likely to rebel against the political system. As free people of color began to feel increasingly powerless and grew to understand that the law treated them not only as second-class, but as non-citizens, they were less likely to support other objectives of that law including the protection of slavery.

Although the most radical pro-slavery advocates despised them, some officials understood that free people of color could play an important role in the Confederate war effort. With North Carolina's secession from the Union in the middle of 1861, county officials enlisted the aid of free people of color to help the secessionist cause. State law prohibited free people of color from enlisting in the military service as soldiers. Nevertheless, free people of color served both willingly and through coercion in other capacities. Throughout the war, county and Confederate officials called free people of color to work on a variety of military-related projects.

At the beginning of the war, neither the state nor the Confederate government had concluded that laborers needed to be obtained through conscription, and white North Carolinians

[5] Petition of Justices of the County Court of Hertford, General Assembly Session Records, August- September 1861, Box 4, Petitions (Aug.- Sept. 1861), North Carolina State Archives.

recruited free people of color to work for pay as laborers and cooks. In April 1861, before North Carolina formally left the union, officials in Gates County offered "all the free negroes who shall volunteer to cook or do other service shall be paid and if their families want any meat and bread they shall be furnished."[6] Offers like this one enticed at least a few free people of color, desperate for work, to labor for the Confederates. Unlike enslaved people, free people of color were financially responsible for themselves and their families. North Carolina's secession and changes in the state's commercial alliances pulled free people of color into the Confederate economy. Some free people of color, who owned their own businesses or farms, had to participate in that economy, but did not necessarily have to work overtly under the direction of the Confederate forces. Those with few financial opportunities had less of a choice. Such was the case of E. P. Reid, John Reid, and Fletcher Smith of Gates County, whom county officials removed from their apprenticeships in October 1861 to work on Roanoke Island's fortifications. In September 1861, two crews of free men of color from Orange County, totaling 16 men, received pay from the state for working on Beacon Island. During July 1862, Thomas, Peter, and George Clark all filed claims for work done under the commissary at Garysburg. The men only received $10 per month for their labor, but for some this pay undoubtedly was better than no allowance.[7]

By 1862, some Confederate officials were no longer willing to let free people of color decide whether they wanted to apply their labor to Confederate effort. In April 1862, the *Fayetteville Observer* reported that "it is difficult to procure free colored men as servants, cooks

[6] Gates County County Court Minutes, Volume 13, 108, North Carolina State Archives.

[7] Gates County County Court Minutes, Volume 13, 136, North Carolina State Archives; List of Claims, General Assembly Session Records, August-September 1861, Box 4, Miscellaneous Reports, North Carolina State Archives; List of Claims, General Assembly Session Records, January- February 1863, Box 2, Jan.-Feb. 1863 Misc. Reports, North Carolina State Archives.

& c." The paper's source for the story suggested that "the Convention give us authority to impress them into that service with responsable [sic] pay."[8] In several parts of the state, officials began the mass conscription of free men of color into the government's service. In December 1862, Cumberland County officials, with instructions from the Confederate commander in Wilmington, ordered "all free negroes between the ages of sixteen and fifty years inclusive except… Blacksmiths, Pilots on boats running between Fayetteville and Wilmington, one Barber for each shop… shoemakers & harness makers" to work the fortifications at Wilmington.[9] Ten months later, Cumberland County officials issued a comparable order requiring free men of color to work Cumberland County's fortifications. Similar impressments took place in other parts of the state. Solomon Oxendine of Robeson County recalled that Confederate officials arrested him and sent him to help construct the breastworks at Fort Fisher. Other free men of color from Robeson County also labored at this fort.[10]

The conscription of free people of color into the Confederate service strengthened the state's manpower for the war, but the removal of able-bodied men from the home front could create serious problems for people simply trying to survive. In August 1861, this potentially was the case of Jeremiah Day, a free man of color from Orange County. With the support of four white men, Day complained to the governor that Captain Miller, commander of a Confederate volunteer unit, wanted to impress Day's two nephews, Sterling and Leonidas Day. He explained that the Confederate army had already taken five of his sons, and at 70 years of age, he and his

[8] "Camp Servants," *Fayetteville Observer*, 7 April 1862.

[9] Cumberland County County Court Minutes, Volume 40, 327, North Carolina State Archives.

[10] Claim of Solomon Oxendine 21329, Southern Claims Commission Approved Claims, National Archives and Records Administration.

wife would become destitute and dependents of the county if Captain Miller took the two boys.[11] The impressments of free people of color also threatened the livelihoods of white families who depended on free non-white laborers. On May 5, 1864, Delia Wilder of Wake County, a white woman, petitioned Confederate Secretary of War James A. Seddon to protect Bryant Morgan, a free man of color, from possible impressment. With her husband in the army, her eldest son dead, and left with an elderly mother, a "very infirm" enslaved woman, and eight small children, Wilder employed Morgan as a field laborer on her farm. Wilder's representative explained that if Morgan "is taken from her by the Government that it will be with great difficultly for her to carry on her farm & support herself & family."[12] Even during the divisive times of the Civil War, the lives of free people of color and their white neighbors continued to be indelibly intertwined. As before the war, free people of color were essential participants in local economies. Now that the Confederate government had removed thousands of white men from their communities to the battlefields, the importance of free non-white laborers at home only increased.[13]

As the war dragged on, Confederate officials not only became more insistent that free men of color work for the Confederate cause but also decided that expanding their role in the war effort called for a reduction in the benefits free people of color could receive for their service. In

[11] Application to Discharge Jerry Day a free person of color, Governor's Papers, Governor Henry T. Clark, G. P. 154 Correspondence September 1861, G. P. 155 Correspondence October 1861, Correspondence: August 21-31, 1861, North Carolina State Archives.

[12] Mrs. Ashley Wilder to James A. Seddon, Alonzo T. and Millard Mial Papers, Correspondence 1862- 1871, Box 3, Folder 1, North Carolina State Archives. The literature on the relations between white women and people of color on the home front has focused exclusively on interactions between white women and enslaved people. For further discussion of the relationships between white women and people of color on the Southern home front, see Drew Gilpin Faust, *Mothers of Invention: Women of the Slaveholding South in the American Civil War* (Chapel Hill: University of North Carolina Press, 1996), 62-79; Laura F. Edwards, *Scarlett Doesn't Live Here Anymore: Southern Women in the Civil War Era* (Urbana: University of Illinois Press, 2000), 76-84.

[13] Local stands against the conscription of free people of color were not limited North Carolina. Ervin L. Jordan found similar reaction to the impressments of free people of color in some areas of Virginia. See Ervin L. Jordan, Jr., *Black Confederates and Afro-Yankees in Civil War Virginia* (Charlottesville: University of Virginia Press, 1995), 203.

Chowan County, local officials rescinded their offer to provide for the families of free men of color serving the Confederacy. In February 1862, the officials ordered that "hereafter no orders for provisions be given to families of free negroes in the service of the State."[14] This order probably allowed Confederate officials to divert increasingly limited provisions to the families of white Confederate troops.

The lack of volunteer participation early in the war suggests that most free people of color were unwilling to support the Confederate effort directly. When white Confederates finally attempted to force free men of color from their homes, many resisted or attempted to escape. The October 16, 1861 issue of *The Raleigh Register* reported that in Wilkes County a "free negro," only referred to as "Fletcher," fled from a group of men who sought to impress him as a servant in the army. Fletcher ran from the men, but was "pursued and caught." Cornered, Fletcher pulled a pistol and killed one of the men. After killing the pursuer, the surviving men hauled Fletcher to the jail in Wilkesboro. In Wilkesboro, an "excited crowd" gathered around the jail, removed Fletcher, and proceeded to hang him.[15] Since direct resistance often was dangerous, some free people of color simply sought to evade impressments. Isaac Griffin of Pasquotank County avoided forced labor by staying away from home anytime the Confederates were near and recalled years later that he "had to leave home several times to keep from being carried off by the rebels."[16] George, James, and Richard Gray, all free men of color from Haywood County, attempted to evade impressments by arguing that someone else owned their services. In

[14] Chowan County County Court Minutes, Volume 21, February 1862, North Carolina State Archives.

[15] "A White Man Murdered by a Free Negro—The Murderer Hung," *The Raleigh Register*, 16 October 1861.

[16] Claim of Isaac Griffin 20625, Southern Claims Commission Approved Claims, National Archives and Records Administration.

September 1864, each man responded to their recruitments by claiming they had deeded their labor to James R. Love for 99 years and could not be taken from his service.[17]

Some free people of color avoided impressments but still had to deal with trouble from Confederates at home. During the war, the rebels twice confiscated property from John A. Chavers, a fairly well-to-do free man of color from Wilkes County. Chavers claimed that in 1863 the Confederates took several hundred pounds of bacon and corn without providing payment. Near the close of the war in 1865, rebel forces again visited Chavers, and took away his clothing, watch, money, and bed clothing. Isaiah Simmons, a free man of color from Fayetteville, faced harassment from members of the local rebel home guard. In 1863, the home guard arrested Simmons and detained him for a day for allegedly providing "information" to Confederate deserters. Towards the end of the war, Confederate soldiers picked up Simmons for being a "damned union rascal." They attempted to hold Simmons, but he made a successful escape during the middle of the night.[18]

Although most were less than willing supporters of the Confederacy, a minority of free people of color placed their stakes with the rebels. Their cooperation with the Confederates demonstrates the diversity of opinions among free people of color about survival strategy, secession, political loyalties, and Confederate social policy.[19] An undeterminable number of free people of color from Robeson County supported the Confederacy by both offering money and

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[17] Habeus Corpus Petitions for George Casey, James Casey, and Richard Gray, Haywood County Miscellaneous Records, Box 6, Habeus corpus petitions to be exempted from military service for James L. Edwards, Griffin Henson, Whipple C. Hill, and Jesse R. Palmer, 1863; George Casey, James Casey, and Richard Gray, free negroes, 1864, North Carolina State Archives.

[18] Claim of Isaiah Simmons 10953, Southern Claims Commission Approved Claims, National Archives and Records Administration.

[19] Studies on free people of color in Louisiana suggest that such a diversity of opinions existed among this population. See Mary F. Berry, "Negro Troops in Blue and Gray: The Louisiana Native Guards, 1861-1863," *Louisiana History* 8 (Spring 1967): 165-190; Mills, "Patriotism Frustrated," 437-451.

provisions and volunteering for the army. In 1862, Washington Lowery and Joseph Locklear donated one pair of socks each, Ollen Hammons contributed $3, and Ferebe Chavis gave three pairs of socks to Col. T. J. Moirsey's North Carolina Confederate unit. Confederate officials listed Henry Revels, Stephen Hammons, and B. J. Chavis, all free men of color, among a roster of volunteers from Robeson County in 1861. Whether they actually saw battle is unclear. The law disqualified non-whites from serving as soldiers in the Confederate forces, and since these men volunteered for local units, the commanders of their outfits likely knew that they would not be able to employ these men as soldiers. Some free people of color discovered ways to get around the law and join the Confederate forces. Solomon Oxendine, a free man of color from Robeson County, explained that some of his cousins joined the Confederate Army by crossing into South Carolina to enlist.[20] In South Carolina, officials did not know these men's history, which gave them a better chance of fighting without being detected.

For those free men of color in other parts of North Carolina who desired to join the Confederate forces, officials in charge of enlistments appear to have allowed certain men honorary white status. These free men of color joined regiments from their home counties, and certainly those who enlisted them knew they were considered non-whites. In September 1861, Samuel Chavers, a free man of color from Orange County, volunteered for the rebel army, and fought with a Confederate regiment at several battles until found to be "partly of negro descent." Discharged from the army at the end of 1862 for this reason, Chavers later re-enlisted in the same regiment, and continued to fight for the Confederacy until he met his death in May 1864 at Jericho Ford, Virginia. Several members of the Goins family, a free family of color from Moore

[20] "Contributions from Col. T. J. Morisey's 58th N. C. M. (Robeson)," *Fayetteville Observer*, 29 December 1862; Robeson County County Court Minutes, Volume 10, 250-253, North Carolina State Archives; Claim of Solomon Oxendine 21329, Southern Claims Commission Approved Claims, National Archives and Records Administration.

County, also fought for the Confederacy. Henry, Andrew, Richard, and John W. Goins all served with the 35th North Carolina Troops. In July 1862, Andrew Goins died during a battle outside of Richmond, Virginia leaving a wife and children back in Moore County. Rachel Goins, Andrew's wife, successfully collected her husband's back pay. Although the Goins were not white, army and local government officials provided them with the same treatment as if they were any other Confederate military family.[21]

Free non-white North Carolinians who aided the Confederacy left no evidence to explain their motivations for supporting a regime that clearly demonstrated public distain for non-whites, both free and enslaved. Maybe their motives were similar to the rationale of the free people of color of New Orleans who offered their services to the secessionists. These men claimed that they submitted themselves to the Confederates in hopes that their allegiance would convince the rebels to treat them as equals to whites.[22] Some free people of color may have been motivated by individual allegiances to white friends and family members who served with the Confederates. Others may have saw publicly supporting the Confederacy as means of gaining favor from rebel whites and removing suspicion that they might be secretly supporting Union victory.[23] In some

[21] Samuel Chavers Service Record, Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration; Henry Goins Service Record, Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration; Andrew Goins Service Record, Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration; Richard Goins Service Record, Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration; John W. Goins Service Record, Compiled Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration.

[22] James M. McPherson, *The Negro's Civil War: How American Negroes Felt and Acted during the War for the Union* (New York: Pantheon Books, 1965), 23-24.

[23] Melvin Ely offers similar possible motivations for support of the Confederacy by free people of color. See Ely, *Israel on the Appomattox*, 404. John Hope Franklin and Loren Schweninger discovered a free man of color from Missouri who considered supporting the Confederacy for economic reasons and the preservation of relations with whites. See John Hope Franklin and Loren Schweninger, *In Search of the Promised Land: A Slave Family in the Old South* (New York: Oxford University Press, 2006), 196-200.

of the rarest cases, free people of color may have actually agreed with the radical pro-slavery and secessionists' propaganda, which labeled the North as the oppressor of the South. Maybe they, like so many of their white neighbors, believed that the Union was trying to impose its will, and interfere with the South's peculiarities.[24] Regardless of their motives, the free people of color who supported the Confederacy attempted to distinguish themselves from the majority of people of their status who did not support secession. Nevertheless, their actions should not negate the intertwined interests of white supremacy, radical pro-slavery thought and pro-slavery dollars as the major causes, goals, and assumptions behind the Southern war for independence.[25]

The state's secession from the Union interfered in the lives of all North Carolinians at one time or another, but many free people of color found ways to continue experiencing a semblance of their antebellum lives during the war years. As in the antebellum period, free people of color still played critical roles in agricultural production and helped to shape social life. Free people of color across the state continued to operate farms and do other kinds of work for their livelihood. Living in Harnett County during the war, Raleigh Seaberry moved his family back and forth between Averysboro and Smith's Ferry to farm rented land at the best price that he could get. Seaberry also worked as a cooper during this time. Exempt from service on account of rheumatism, William H. Haithcock cultivated 20 acres of rented land in 1864. Free children of

[24] Barbara Jeanne Fields noted that " When propagandists for secession before the Civil War emphasized the danger that the Northerners might encroach upon Southerners' right of self-determination, they emphasized a theme that resonated as well with the world of non-slaveholders as with that of planters, even though the two worlds differed as night from day." This type of propaganda may have resonated with some free people of color and may have produced an equal result. A free person of color did not have to be an ardent defender of slavery to find the pro-slavery ideologues' propaganda appealing. See Barbara Jeanne Fields, "Slavery, Race and Ideology in the United States of America," *New Left Review* (May-June 1990): 111.

[25] Since the end of the war, several pro-Confederate interests have attempted to argue that because some free people of color fought for or supported in some other capacity the Confederacy, Southern secession was not about the racial order or about slavery. However, this dissertation and many other works have clearly demonstrated that the legislative battles before secession and secession itself are indelibly linked to the radical pro-slavery movement. White supremacists ideology and the political targeting of free people of color were essential parts of the radical pro-slavery methodology.

color continued to work apprenticeship assignments. Free people of color also attended church with whites through the war. In June 1864, white members of the Meherrin Baptist Church in Hertford County approved the establishment of a Sabbath school for the children of free congregants of color.[26]

Free people of color found a variety of ways to survive the tumultuous years of war behind the Confederate lines. Continuing on with their daily lives was the primary strategy for most of them. However, some people of color responded to Confederate pressure through active resistance, while others conformed to local officials' demands. Through further legal restrictions, forced labor, and discriminatory pay for work, Confederate officials generally demonstrated to free people of color that the state needed them as a means to its goal of independence and had no intention of placing them and whites on equal footing. Nevertheless, in a few cases, Confederate officials broke ranks with the general opinion and allowed free people of color to participate in the Confederate war effort side by side with whites as their peers. Most North Carolina officials agreed that the war with the Union was a battle for Southern independence and an endeavor for the protection of slavery, but whites never came to a clear consensus about role free people of color should play in their struggle.

The Union Effort

As the war progressed, several small victories allowed Union forces to capture parts of eastern North Carolina and southern Virginia. These developments along with Abraham

[26] Claim of Raleigh Seaberry 10453, Southern Claims Commission Approved Claims, National Archives and Records Administration; Claim of William H. Haithcock 20604, Southern Claims Commission Approved Claims, National Archives and Records Administration; Meherrin Baptist Church Minutes, 228, North Carolina State Archives.

Lincoln's Emancipation Proclamation opened the doors for anti-rebel forces in North Carolina, including free people of color, to work towards Confederate defeat. Lincoln's proclamation, issued at the beginning of 1863, reintroduced slave emancipation as a war tactic to weaken the Confederate war effort and economy.[27] Yet more importantly for free people of color, the proclamation offered them the opportunity to serve in the United States Army and Navy. Free people of color, tired of cooperating with Confederates simply to survive, now had an opportunity to redirect their efforts. The Emancipation Proclamation, applying primarily to territories held by the Confederates, liberated few slaves, but gave free people of color a chance to resist further collaboration with the rebels. As free people of color began to enlist in the Union Army after the issuance of the Emancipation Proclamation, they joined bands of runaway slaves and recently emancipated people to serve the Union cause. Their fight for Confederate defeat was the first significant collaborative effort between free people of color, many of whose families had been free for generations, and men and women whose newfound freedom could only be retained with the defeat of the slave power.[28]

Lincoln's call for the enlistment of colored troops at the beginning of 1863 opened the doors for free people of color in the eastern part of North Carolina to join the Union war effort. With the piedmont and western North Carolina in Confederate hands during most of the war, free men of color in these areas typically could not risk running away from their obligations at home to fight for the Union. However, their eastern brethren took advantage of the new situation. Free

[27] James Oakes argued that from the beginning of the war the Republicans viewed emancipation as a key objective and important war tactic. See James Oakes, *Freedom National: The Destruction of Slavery in the United States, 1861-1865* (New York: W. W. Norton and Company, 2013).

[28] For further discussion of the lives of people of color in Union-occupied North Carolina, see Judkin Browning, "Visions of Freedom and Civilization Opening before Them: African Americans Search for Autonomy during Military Occupation in North Carolina," in *North Carolinians in the Era of the Civil War and Reconstruction* ed. Paul D. Escott (Chapel Hill: University of North Carolina Press, 2008), 69-100; David S. Cecelski, *The Fire of Freedom: Abraham Galloway and the Slaves' Civil War* (Chapel Hill: University of North Carolina Press, 2012).

men of color from eastern counties, especially those with significant free non-white populations such as Hertford, Pasquotank, and Craven, trickled into the Union ranks between 1863 and 1865. Fighting for the Union gave free men of color the opportunity to earn steady incomes, escape the vigilance of Confederate officials, learn new skills, and work to preserve and expand their civil liberties.

At the first chance after the Emancipation Proclamation, free men of color from northeastern North Carolina who could evade Confederate troops and home guards rushed to Union strongholds in New Bern, Roanoke Island, and Plymouth, North Carolina and Portsmouth and Norfolk, Virginia, to enlist with the Union Army. By July 1863, Washington County residents including George Boston, Friley James, and Charles Pierce made their way to Plymouth and New Bern to enlist with the 36th U.S. Colored Infantry. Brothers Parker D. Robbins and Augustus Robbins, who lived in Bertie County at the beginning of the war, crossed over the state border to sign up with the 2nd U.S. Colored Calvary on January 1, 1864.[29]

Union invasion in Hertford County along with the new policy of enrolling colored troops into the United States Army shifted the circumstances of impressed free men of color by 1864. Advancing Union troops removed the men from Confederate service at Pitch Landing, carried them from Hertford County to Roanoke Island, and then moved them on to New Bern. James Turner, who also worked at Pitch Landing, remembered that upon their arrival in New Bern,

[29] George Boston Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration; Friley James Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration; Charles Pierce Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration; Parker D. Robbins Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: 1st through 5th United States Colored Cavalry, 5th Massachusetts Cavalry (Colored), 6th United States Colored Cavalry, National Archives and Records Administration; Augustus Robbins Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: 1st through 5th United States Colored Cavalry, 5th Massachusetts Cavalry (Colored), 6th United States Colored Cavalry, National Archives and Records Administration.

Union officials mustered the free men of color into service.[30] These free men of color, along with recently emancipated slaves, served in the 14th U.S. Colored Heavy Artillery stationed on the North Carolina coast. Many other free men of color may have arrived to join the Union in a similar fashion. The Union Army offered free men of color a refuge from Confederate authority and an opportunity to earn wages once again.

Life for free men of color in the 14th U.S. Colored Heavy Artillery and many other units exposed them to a world they had never seen before. The majority of the men from Hertford County had worked as farm hands before their arrival in the east and had never lived away from home. Most of them resided in tight circles of kin and close friends and rarely had intimate interaction with enslaved people. Many of these men continued these practices in the army, sharing tents with men from home, who were often brothers or childhood friends. However, some branched out, and made acquaintance with men recently emancipated from slavery. King Outlaw of Bertie County was one of the ex-slaves with whom Hertford County free men of color became friendly during the war. After the war, Outlaw married the stepdaughter of one of his Hertford County comrades, Enoch Luton, a free man of color, and eventually settled in his wife's home county.[31]

Along with new people, free men of color came into contact with a host of new diseases. Small pox, dysentery, typhoid fever, and tuberculosis debilitated and often killed troops by the thousands.[32] In 1864, while serving with the 38th U.S. Colored Infantry, Raynor Lilly of Perquimans County contracted smallpox. Lilly entered the smallpox hospital in Norfolk,

[30] John Cumbo Pension File, National Archives and Records Administration.

[31] King Outlaw Pension File, National Archives and Records Administration.

[32] Drew Gilpin Faust, *This Republic of Suffering: Death and the American Civil War* (New York: Alfred A. Knopf, 2008), 4.

Virginia, where he lingered with the painful disease for weeks before succumbing. Within four months of his enlistment in 1863, George Boston of Washington County, a member of the 36th U.S. Colored Infantry, passed away under the same circumstances while stationed in Portsmouth, Virginia.[33]

The fight against Confederate oppression also entailed many costs on the battlefield for free men of color. One mishap in battle could lead to serious injury and even death. During an engagement at Deep Bottom, Virginia in 1864, a shell exploded and injured the eye of Washington Flood of Northampton County, who fought with the 37th U.S. Colored Infantry. At the same battle, Levi Collins of Hertford County suffered a wound to his hip while fighting with the 38th U.S. Colored Infantry. The wound eventually led to Collins's death a year after the war. As a participant in a Union charge in 1864, Isaac Overton of Pasquotank County died on the battlefield while serving with the 36th U.S. Colored Infantry at New Market Heights, Virginia.[34]

Although away from their communities, some free men of color attempted to reconstruct some semblance of home by bringing family along with them or finding a wife while stationed with the army. Martin Rooks, originally from Gates County, carried his son Henry with him during the war. The time Henry spent with his father would be the last moments that the two would spend together. On their return home, Martin Rooks succumbed to smallpox. Martha Newsome of Hertford County recalled going to New Bern with her first cousin Boon Nickens,

[33] Reynold Lilly Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration; George Boston Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration.

[34] Washington Flood Pension File, National Archives and Records Administration; Levi Collins Pension File, National Archives and Records Administration; Isaac Overton Service Record, Compiled Military Service Records of Volunteer Union Soldiers Who Served with the United States Colored Troops: Infantry Organizations, 36th through 40th, National Archives and Records Administration.

who was a soldier in the 14th U.S. Colored Heavy Artillery, and Nickens's wife and children. She stayed in New Bern with her relatives until her cousin's discharge.[35]

The opportunity to send money home served as an important motivating force for free men of color in the Union Army. John Godett of Craven County was one of countless men who recognized military service as means to provide for their families. After the deaths of their parents, George and Elizabeth, Godett and his brother had taken charge of their younger siblings. After the Emancipation Proclamation, Godett joined the Union Army, securing regular wages. Isaac Carter, Godett's bunk mate and neighbor, remembered that Godett put money "in a letter at Morehead City, N. C. and sent it to his brother Jesse P. Godett for the support of his two sisters & brother."[36]

Military service was an opportunity for illiterate people of color, both free and recently emancipated, to learn to read and write. Teachers in the army camps helped soldiers study reading and writing in their spare time. While stationed at Jacksonville and Beaufort, Frances Beecher taught troops in the 35th U.S. Colored Infantry, commanded by her husband Colonel James Beecher, to read and write. She recalled that some soldiers found the lessons difficult, "while others learned at once." Beecher further remembered that "Whenever they had a spare moment, out would come a spelling-book or a primer or Testament, and you would often see a group of heads around one book."[37] Julius Mackey of Hyde County, who served with the regiment taught by Beecher, recalled "I learned how to write after I enlisted and toward the last

[35] Martin Rooks Pension File, National Archives and Records Administration; Boone Nickens Pension File, National Archives and Records Administration.

[36] John Godett Pension File, National Archives and Records Administration.

[37] McPherson, *The Negro's Civil War*, 211.

of my service, I signed the muster roll."[38] The literacy training that Mackey and other soldiers received during their stint in the army provided them with a critical life skills advantage, which served them long after the war's end.

Naval service offered free men of color who had familiarity with water navigation the optimal opportunity to use their expertise. Joshua Nickens of Hertford County, who had been a boatman before the war, joined the Union Navy after the announcement of the Emancipation Proclamation. Nickens's younger cousins Thomas P. and Lawrence E. Weaver became first class boys on the U.S.S. Miami, which sailed in the same fleet with Nickens's ship, the U.S.S. Whitehead. The crews of both ships engaged in several battles against the Confederates on the waters of North Carolina and Virginia.[39]

Aiding the Union was a costly effort for free people of color who lost limbs, lives, and treasure in the process. However, the cost of war ultimately brought the defeat of the Confederacy and the collapse of an oppressive regime. When President Lincoln issued the Emancipation Proclamation, he not only ushered thousands of former slaves into the Union ranks but also offered free people of color the opportunity to assert themselves against a political system that had slowly stripped away their civil liberties for generations. When North Carolina's political leaders joined the Confederacy, they forced pro-Union supporters non-white and white alike into silence. Their closed lips were a tactic for survival, but when the Union offered the opportunity, silent free men of color quickly turned into war-ready troops. These soldiers may have fought against their state government's political goals, but ultimately they still stood for the fundamental protection of their homes.

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[38] Julius Mackey Pension File, National Archives and Records Administration.

[39] Joshua Nickens Pension File, National Archives and Records Administration; Lawrence E. Weaver Pension File, National Archives and Records Administration.

Victory at Home

Serving in the armed forces was not the full extent of free people of color's participation in the Union effort. Free people of color still at home aided recently escaped Union runaways from Confederate camps. Several households sacrificed precious foodstuffs to passing Union regiments on the march without rations. Many families surrendered their valuable property to Union troops in need of horses, wagons, boats, and other modes of transportation. The sacrifices of free people of color often were very costly for families barely scraping by in a disastrous Southern economy. However, their contributions were invaluable to the Union victory and the end of Confederate injustices against free people of color.

While traveling through Confederate territory attempting to reach the federal lines, Union troops who had recently escaped from Confederate prisons depended on free people of color to provide them with shelter and provisions. William Jacobs of Richmond recalled helping a Union soldier who had escaped from a Confederate prison in South Carolina. About a year before the end of the war, the Union soldier stayed with Jacobs for more than a week. After the soldier had recovered some of his strength, Jacobs sent him under the cover of darkness by wagon to his cousins Edmond and William Chavers in Fayetteville. Once the soldier arrived in Fayetteville, the Chaverses gave the soldier a map and sent him across the Cape Fear River. From there, the soldier continued on towards the Union line.[40]

Free people of color sacrificed for the Union victory, both willingly and unwillingly. On numerous occasions, Union Army officials asked free people of color to forfeit their necessities and provide Union soldiers on the move with provisions. Free people of color gave freely to the

[40] Claim of William Jacobs 301, Southern Claims Commission Approved Claims, National Archives and Records Administration.

army. However, sometimes overly aggressive Union troops left their gracious hosts without many of their most precious assets. Confiscations of property tended to affect the most successful free people of color, those with their own farms. Sometime during July 1864, a Pennsylvania Calvary unit passing through Gates County via Suffolk, Virginia stopped at the house of Asbery Reid and requested provisions. Reid recalled that the soldiers took corn, fodder, and the vegetables growing in his garden. Once the troops seized the provisions, the troops commenced to cook in Reid's house and yard. In 1865, Union troops visited Bryant Simmons's home in Wayne County. Simmons remembered that the troops took corn, lard, bacon, peas, and fodder from his residence. The confiscation took place without Simmons's permission.[41] Union actions at the homes of Reid and Simmons certainly set back their families financially. Crops had to be replanted and provisions replaced during the most difficult times of the war.

The cost of supporting the Union also included the loss of transportation. Union officials fulfilled their needs by confiscating boats, horses, carts, and other modes of transport from locals near their encampments. These confiscations often left free people of color without horses to plow their fields, carts to move their goods, and boats to navigate the rivers. Soon after the capture of New Bern, Union Army officials seized the *Susan* and the *Water Witch*, both partially owned by William Martin, a farmer in Craven County who had used the boats to transport lumber and rosin from his farm to New Bern. Union troops depleted the William and Dizzy Snellings family farm in Wake County of its most valuable assets. For three or four days in April 1865, Union troops seized from the Snellings place two horses, two carts, harnesses, and saddles in addition to corn, syrup, cattle, sheep, chickens, and goats. Dizzy Snellings remembered that

[41] Claim of Asbury Reid 4303, Southern Claims Commission Approved Claims, National Archives and Records Administration; Claim of Bryant Simmons 12254, Southern Claims Commission Approved Claims, National Archives and Records Administration.

"Nearly everything we had was taken from us except our beds- everything in the house and outside was taken."[42]

The cost of Union victory for free people of color sometimes included dealing with general unruliness from Union troops. Some Union troops preyed upon North Carolinians regardless of which side they supported during the war. At the war's end, the Scott family, who lived on the outskirts of Raleigh during war, had a run in with troops. William Scott, who was a boy at the time, recalled Union troops came to his family's house and took their rations. Scott's father, angered by the abusive troops, sought out their commander and reported the incident. The Scotts were lucky, and the Union officers responded kindly to the report by sending them replacement rations. Scott's mother returned the officers' kindness by cooking for them.[43]

Free people of color on the home front were critical participants in the Union triumph in North Carolina. They sacrificed their time, safety, and most precious possessions to Union troops. Some free people of color happily gave to the Union cause, while others found the extent to which Union troops were willing to take from them extremely trying. Whether they gave freely or by force, their contribution helped the success of the Union campaign in North Carolina. For some free people of color, the death of slavery and the defeat of the radical pro-slavery regime must have been well worth the short-term costs.

Conclusion

[42] Claim of William Martin 20239, Southern Claims Commission Approved Claims, National Archives and Records Administration; Claim of William Snellings Estate 13204, Southern Claims Commission Approved Claims, National Archives and Records Administration.

[43] "William Scott," *A Folk History of Slavery in the United States from Interviews with Former Slaves, 1936-1938*, vol. 11, 261-262, Federal Writers' Project of the Works Progress Administration.

The Civil War ushered in social and political changes that significantly altered the position of free people of color in North Carolina. During the years 1861 to 1865, the radical pro-slavery political machine in North Carolina took its most oppositional stance against free people of color. They lost their right to defend themselves with weapons, and masses of free men of color temporarily lost the privilege to determine the use of their own labor. However, the most pivotal change brought on by Civil War came with its aftermath. The conclusion of the Civil War and the death of slavery officially ended the legal distinctions between people of color. Free people of color no longer existed as a distinct sociopolitical category.

In some sense, the radical pro-slavery politicians and pundits of the antebellum period had been correct in their assertion that free people of color were a threat to slavery. At the point free people of color stood against the pro-slavery regime, slavery indeed met its death. When Union troops advanced into North Carolina, they persuaded hundreds of free men of color to take up arms against the Confederacy, and by default, fight for the defeat of one the most radical pro-slavery movements the world had ever seen. Since the beginning of the century, pro-slavery radicals had engaged in a political offensive against free people of color, stripping them of many of their civil liberties. The majority of free people of color, primarily focused on day-to-day survival and surrounded by Confederates, waited to see what would happen to the few precious freedoms they still retained by 1861. Their inaction did not imply consent to what was going on around them. Many of them realized that slavery was a constant threat to their freedom and a problem for whites in their society. When slavery's demise became the military and political objective of the Union, free people of color then felt safe to take a stand. There is nothing to suggest that free people of color were particularly interested in ending slavery for the sake of those who were enslaved, but they had every reason to fight against slavery for the threat it

imposed against their own freedom. Yet the shared objective of free people of color and slaves would have important effects on future relations between the two groups.

CHAPTER 7: RECONSTRUCTING SOCIETY

Introduction

The outcome of the Civil War shattered the segmented social order of North Carolina, which divided the enslaved from the free. Lincoln's Emancipation Proclamation led slavery to its legal death, and the Thirteenth Amendment ratified at the end of 1865 became final nail in the coffin of human bondage in the United States. Following the war, the period of Reconstruction defined the future for generations of North Carolinians. The latter half of the 1860s ushered in a contest for power among the various elements of society. Free people of color and the newly emancipated slaves sought seats at the victors' table, a voice in the political dialogue, and a guarantee of long-denied civil privileges. Pro-Union whites and those whites who became dissatisfied with the old Confederate regime pursued the chance to take power after years of bending to the demands of radical pro-slavery ideologues. The defeated, yet not destroyed, pro-slavery and white supremacist conservative element hunted for a strategy to take back control and prevent non-whites as a whole from gaining political advantage.

In a political situation so contested, how would pre-war free people of color fare? Soon after the Confederate defeat, free people of color in several localities dealt with backlash from supporters of the old regime. They generally had been against that regime, and many taken up arms in its defeat. People of color, both long free and recently emancipated, became the targets of infuriated whites seeking revenge against the victors. Conservative whites assaulted them, destroyed their property, and created a variety of other schemes meant to derail their progress in

society. Yet in the face of these obstacles, people of color sought power and gained political influence. With the ascension of the Republicans in the South, members of the old free colored group entered state and local politics. They also found a place in less formal political activity as preachers, teachers, and community organizers. Pre-war free people of color, who were propertied and educated because of the liberties they enjoyed during slavery, had an advantage in North Carolina's new social order.[1]

A shared desire for political privilege brought most people of color, both long free and formerly enslaved, together against the old conservative political agenda. Nevertheless, shared political goals did not completely overshadow dissimilarities among so-called "colored" people. Free people of color had always recognized the ancestral, economic, and ideological differences among them, and slavery's end did not change those beliefs. Those people of color who understood themselves to be different from other non-whites sought to reshape the racial order to their own liking. Some individuals and their descendants once categorized as "free people of color" or "free negroes" assumed new public faces as "Indians" and even in some cases as "whites."

The Political Contest

Union victory and the policy decisions that accompanied it destroyed the legal supports and economic apparatus of slavery in the South, but North Carolinians were unsure what their

[1] For more on violence against people of color during Reconstruction, see Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper and Row, 1988). Other historians have found free people of color played a major role in Reconstruction politics and often held disproportional influence in Reconstruction politics. See Thomas Holt, *Black over White: Negro Political Leadership in South Carolina during Reconstruction* (Urbana: University of Illinois Press, 1977); Edmund L. Drago, *Black Politicians and Reconstruction in Georgia: A Splendid Failure* (Athens: University of Georgia Press, 1992).

state would look like without human bondage. Facing an uncertain future, members of the old free non-white group staked claims to citizenship and sought a voice in discussions of the state's future. They pursued remedies for the wrongs of the past and access to political and economic power. During North Carolina's long Reconstruction period, this group won many victories: at the ballot box, in the form of social programs, and as the voice of non-white constituencies. However, conservatives, who looked to the past for a model of the appropriate social order, fought to slow the progress of non-whites in society.

After the war's end, antebellum free people of color met numerous challenges from former Confederates who hoped to maintain power even after their defeat. Returning to Hertford County after their service with the 14th United States Colored Heavy Artillery, John Bizzell, John Collins, Andrew Reynolds, James Manly, Richard Weaver, Miles Weaver, and Bryant Manly ran into a militia under Colonel Joshua Garrett. Garrett's men "formed in a line of Battle" and halted the discharged troops. Claiming he had orders from the Department of War, Garrett demanded that the men of color surrender their arms. The discharged troops later found out that Garrett seized their guns because they "had bin [been] in the U S Servis [Service]." They recognized that Garrett had taken the guns of no one else. After John Bizzell reached home he met another challenge. A gang of four or five armed men led by Jesse Sewell, a white man, demanded to search his house. Under threat, Bizzell granted the invaders permission to search. They "plundered" the home and stole the ammunition for Bizzell's recently-seized gun.[2]

Following the Union victory, Confederate sympathizers continued to control many county governments and used their position to challenge the newly-won rights of people of color.

[2] John Bizzell et. al. Complaint, Records of the Field Offices for the State of North Carolina, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, Roll 35, National Archives and Records Administration.

On February 1, 1866, William Reid, Moses Boon, Orrell Green, William Rooks, and several freedmen complained to officials at the Freedmen's Bureau about abuses by pro-Confederate officials. They asked for protection from "unloyal white men" who took away their children and hired them out to "the white man." These men of color also asked for the removal of Dr. O. B. Savage, the acting Freedmen's Bureau official in Gates County, whom they claimed "confused both black and white." Their request for correction of abuses and the removal of a pro-Confederate official was a defensive act but also had proactive implications. The Gates County people of color explained that action on the part of the Freedmen's Bureau would allow them to "take care" of their wives and children and "do all public Dutys [sic]."[3]

Although pro-Confederate whites attempted to block people of color from social advancement, they continued working towards political inclusion and increased social privilege. At the local level, members of the old free group worked for the improvement of people of color and their home communities by serving as educators, establishing social organizations, seeking official positions, and fighting for the rights of the underprivileged. Through pre-war advantages of wealth, literacy, and social connections, they provided North Carolina with crucial leadership during an era of social instability. Steven Hahn suggested that antebellum free people of color "had come to see their destinies as inextricably linked" to the interests of the non-white masses, "some because they saw no real possibility for a meaningful separate peace with any group of southern whites, and most because the process of mobilization had increasingly acquainted them with the political sensibilities and styles of the freedpeople."[4] Alliances between those long free

[3] James Gillem & Others Complaint, Records of the Field Offices for the State of North Carolina, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, Roll 36, National Archives and Records Administration.

[4] Steven Hahn, *A Nation under Our Feet: Black Political Struggles in the Rural South from Slavery to the Great Migration* (Cambridge: Belknap Press, 2003), 210.

and those who obtained their freedom through war were relationships of convenience, not manifestations of selfless political unity based on common racial categorization.

Several men who eventually became important figures in state politics began their work closer to home. On June 5, 1867, John T. Reynolds of Northampton County wrote Captain Alexander Moore of the Second Military district requesting an appointment as a Register of Voters. As a key figure in the Baptist movement for people of color, Reynolds's presence at the upcoming local election would assure people of color the right to vote without intimidation. Reynolds would later enter state politics as a representative from Northampton and Halifax Counties.[5] Parker D. Robbins of Bertie County, a Union Calvary veteran and skilled mechanic, worked for the protection of people in his home community before entering state office. On May 28, 1868, Robbins wrote to the Commanding Officers at Goldsboro on behalf of Mustapha Holley, a man of color. He complained that Amos Peel, "a white rebble [sic]," attacked Holley with a stick and "[k]nocked him down."[6] Incapacitated and possibly illiterate, Holley would have been in no position to present a grievance to federal officials, but Robbins's assistance made this injustice public.

From the time the Union Army began to seize parts of North Carolina into the twentieth century, antebellum-era free people of color were instrumental in the development of local education. Henry Sampson and Matthew Locklear, both born free, were among the first teachers at local Freedmen's schools in Robeson County. In the post-war years, John P. and Susan W.

[5] John T. Reynolds to Capt. Alexander Moore, Records of the Field Offices for the State of North Carolina, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, Roll 32, National Archives and Records Administration; Jeffrey J. Crow, Paul D. Escott, and Flora J. Hatley, *A History of African Americans in North Carolina Revised Edition* (Raleigh: North Carolina Office of Archives and History, 2002), 235.

[6] Parker D. Robbins to Commanding Officer of the Post, Records of the Field Offices for the State of North Carolina, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, Roll 49, National Archives and Records Administration.

Sampson, children of a wealthy free man of color, James D. Sampson, served the people of Wilmington as teachers. In addition to teaching, John P. Sampson worked as clerk to the superintendent of schools for the Freedmen's Bureau in Wilmington.[7] These trailblazers in the post-war education of people of color overcame obstacles of student poverty and limited funding to help elevate those long denied formal education. Their participation in the mass education of people of color was a political act that challenged the social order of the past, which failed to support and often denied non-white people basic literacy.[8]

Some people of color were not content with their roles as local leaders, and several key local political figures pursued influence at the state level. In October 1866, 117 delegates, some free during the antebellum period and others recently emancipated, gathered for the Freedmen's Convention in Raleigh. Led by James H. Harris of Wake County, a free man of color who had recently returned to North Carolina after years spent in Ohio and parts of Africa, the convention set out to organize and demand the vote for people of color in the state. The North Carolina State Equal Rights League was born of this convention. The constitution of the League, developed during the Convention, declared that the goal of the League was "to secure, by political and moral means, as far as may be, the repeal of all laws and parts of laws, State and National that make distinctions on account of color."[9] In July 1867, a delegation under James H. Harris, acting

[7] Monthly Report of Sub-Assistant Commissioner (or Agent) February 1868, Records of the Field Offices for the State of North Carolina, Bureau of Refugees, Freedmen, and Abandoned Lands, 1865-1872, Roll 77, National Archives and Records Administration; 1870 United States Federal Census, City of Wilmington, New Hanover County, North Carolina, 41; "James D. Sampson," *The Negro History Bulletin* 3(January 1940): 56; Eric Foner, *Freedom's Lawmakers: A Directory of Black Officeholders During Reconstruction Revised Edition* (Baton Rouge: Louisiana State University Press, 1996), 188.

[8] For more on education of people of color after the Civil War and the experience of teachers in the Freedmen's Schools see Heather Andrea Williams, *Self-Taught: African American Education in Slavery and Freedom* (Chapel Hill: University of North Carolina Press, 2005).

[9] *Minutes of the Freedmen's Convention, Held in the City of Raleigh, on the 2nd, 3rd, 4th and 5th of October 1866* (Raleigh: Standard Book and Job Office, 1866), 3-7, 26-27; Foner, *Freedom's Lawmakers*, 96-97.

president of the State Equal Rights League arrived in Washington, D.C., to request the dissolution of North Carolina's state government.[10]

Through Congressional action, the demands of people of color and other pro-Union activists succeeded with the call for a constitutional convention at the beginning of 1868. Free-born delegates from the Freedmen's Convention James H. Harris and Cuffee Mayo of Granville County participated in the constitutional convention and helped craft the state's new supreme law. Parker D. Robbins of Bertie County and Henry C. Cherry of Edgecombe, both free before the war, joined these men in drafting new legislation for North Carolina.[11]

With many of the obstacles preventing people of color from voting and serving in public office removed, several men of color who were free before the war ran for and won positions as senators and representatives in the North Carolina General Assembly. From 1868 to 1899, all four free-born participants in Constitutional Convention represented their localities in Raleigh. All of these men came from the eastern and northern piedmont counties of the state, where people of color made up significant portions of and sometimes the majority of the population.[12] Craven County, a county with one of the largest free non-white populations before the war, sent several men of that background to Raleigh, including Israel B. Abbott, John R. Good, Edward H. Hill, and Willis D. Pettipher.[13]

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[10] "Negro Delegation from North Carolina," *The Raleigh Register*, 19 July 1867.

[11] Foner, *Freedom's Lawmakers*, 44, 97, 144, 184.

[12] For further discussion of majority non-white areas' roles in North Carolina politics, see Eric Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge: Louisiana State University Press, 1981).

[13] Crow, Escott, and Hatley, *A History of African Americans in North Carolina*, 235.

People of color, including those free before the war, played a crucial role in the development of post-slavery society, but their influence never reached its full potential. In 1872, Conservatives took control of state government with the help of the Klu Klux Klan.[14] People of color continued to participate in both formal and informal politics after this temporary but significant switch in state political power. However, they never secured any significant additional gains in power after this point. Their inability to secure more power at the state level restricted most of their political influence to the local level and within segregated institutions such as schools and churches. Yet their work at the local level and within segregated institutions allowed people of color to continue with personal development through education and small business ownership long after the war's end.

Racial Categorization in the Post-War Period

Although common cause brought members of the old free and recently emancipated groups together, the ancestral, historical, and social differences that had divided so many of them before the Civil War did not completely dissipate. In many parts of North Carolina, whites and members of the old free group sought to continue and sometimes reinforce old social divisions. In some communities, members of the old free group used endogamous marriage and separate social institutions, such as churches and schools, to hold onto or create social distinctiveness. Localities often treated members of these groups as socially and even racially distinct from the freedmen.

[14] Crow, Escott, and Hatley, *A History of African Americans in North Carolina*, 88-93.

Long after the Civil War, individuals once categorized as "free people of color" and their descendants in communities across the state continued to view themselves as distinct from the freedmen. In most areas, these people failed to acquire an officially-recognized separate racial category from the freedmen. However, some communities used the term "Old Free Issue" to refer to people of color free before the Civil War and "New Free Issue" for those who gained their liberty after the Confederate defeat.[15] These unofficial categories provided members of the old free group with social distinction without privileging them over freedmen. Such a social arrangement existed around Kittrell in Vance County (formerly Granville County). In 1886, O. W. Blacknall recalled, "My neighborhood contains an 'Ol' Isshy' town…It stands about five miles from the railroad station, and consists of some half a dozen families, scantily provided with fathers, crowded into as many little huts scattered here and there on a 'slipe' of very poor, rocky ridge." He described the people in the Old Issue neighborhood as "intensely clannish and loyal to each other, timid and suspicious of the outside world." Although the people of the Old Issue town fell into the same racial category as the freedmen, Blacknall observed that the Old Issue had "an abiding dislike of the 'New Isshy,' especially if he is black." The Old Issue drew a strict line between themselves and freedmen, which had harsh consequences if broken. Blacknall explained that "A marriage, even a *liaison,* with one would be instantly fatal to the reputation of any female among them."[16]

Some descendants of free people of color attempted to impose this informal racial divide on institutions as well as sexual relations and close social interactions. While conducting research on people of color in Hertford County, E. Franklin Frazier learned from a local minister

[15] E. Franklin Frazier, *The Negro Family in the United States* (Chicago: University of Chicago Press, 1939), 237.

[16] David Dodge, "The Free Negro of North Carolina," *Atlantic Monthly* (January 1886): 30.

about a plan to separate "mulattoes" and "blacks" within a local school. Frazier's informant, who ran the school, explained, "the feeling was such between mulattoes and blacks that they wanted me to place the mulattoes on the second floor and the blacks on the third floor of the school dormitory."[17] A similar situation existed in neighboring Gates County. Before the Civil War, the people in Gates County established New Hope Baptist Church for free people of color in the area. Before emancipation, slaves could not attend this church. According to Isaac Harrell, freedmen could not participate in church services long after the war ended. He wrote that "The church was built in 1859 and no slaves were admitted; even after the war it would not for a long time admit any negro who had been a slave, the line always being drawn between those 'born free and those shot free.'"[18] Legal distinctions between free and slave ended with emancipation, but that change did not necessarily correlate to social practices. Post-war North Carolina was legally divided through racial categories, but these legal divisions did not create racial community among people classified as "colored."

By the late nineteenth century, informal social distinctions became racialized in parts of southeastern North Carolina. With the support of neighboring whites, some members of the old free group pushed for and won recognitions from their localities and the state as a distinct "Indian" racial category. Individuals with a wide variety of ancestral backgrounds fell under the "free people of color" category. After the Civil War, the category had no legal significance in a society where all people were "free," and the disparate people who coalesced under the category began to fall away.

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[17] Frazier, *The Negro Family in the United States*, 136-137.

[18] Isaac S. Harrell, "Gates County to 1860," in *Historical Papers of the Trinity College Historical Society* (Durham: Seeman Printer, 1916), 66.

Beginning in the 1880s and continuing into the first decades of the twentieth century, widespread re-categorization of individuals from "colored" to "Indian" took place in the southeastern part of North Carolina. In 1885, the state created a new "Croatan Indian" racial category. The state's recognition of a "Croatan Indian" racial category allowed some individuals once considered "free people of color" in counties such as Robeson, Richmond, and Sampson to create their own institutions, most notably public schools.[19] This move from "colored" to "Indian" was most notable in Robeson County where hundreds of families long classified as "colored," "mulatto," or "negro" took on a new classification. The family of Hugh Oxendine provides a glimpse into the larger phenomenon. In the 1860 census, the enumerator classified Hugh Oxendine, his wife Eliza, and all of their children as "mulatto."[20] Census enumerators continued to categorize the Oxendine family as "mulatto" in subsequent censuses up to 1880.[21] When a federal official visited Robeson County to discuss Oxendine's claim against the government for property taken during the late war, he asked him whether he took the Confederate loyalty oath. Hugh Oxendine gave the standard response given by non-white people, "that oath was not taken in this county by col'd [colored] people."[22] This statement suggest that Oxendine understood himself to be "colored," that his neighbors recognized him as such, and most importantly that the limited legal privileges forced on people of color applied to him.

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[19] Karen I. Blu, *The Lumbee Problem: The Making of an American Indian People* (Cambridge: Cambridge University Press, 1980), 62-65; George E. Butler, *The Croatan Indians of Sampson County, North Carolina: Their Origin and Racial Status A Plea for Separate Schools* (Durham: Seeman Printery, 1916), 28-45. For the original texts of 1885 law, see *Laws and Resolutions of the State of North Carolina, Passed by the General Assembly at Its Session of 1885* (Raleigh: P. M. Hale, 1885), 92-94.

[20] 1860 United States Federal Census, North Division, Robeson County, North Carolina, 78.

[21] 1870 United States Federal Census, Burnt Swamp Township, Robeson County, North Carolina, 11; 1880 United States Federal Census, Burnt Swamp Township, Robeson County, North Carolina, Supervisor's District No. 3, Enumeration District No. 178, 25.

[22] Claim of Hugh Oxendine 21330, Southern Claims Commission Approved Claims, National Archives and Records Administration.

However, Oxendine's acknowledgement of being a "colored" person does not say anything about his heritage other than people in his community believed that Oxendine had some non-European ancestry. Indeed, by 1900, Oxendine's racial categorization had changed. The enumerator of the 1900 census, classified Hugh Oxendine and his family as "Indian," and upon Oxendine's death, the local registrar categorized him as "Indian."[23]

Post-Civil War social reorganization did not limit racial re-categorization for members of the old free non-white groups to the new "Indian" categorization. Re-categorization as white had always been an option for those free people of color whose physical appearances signified whiteness to most observers. Free people of color who could be assumed as "white" because of their appearances but known in their communities as non-white could escape second-class racial status by leaving their homes and resettling where local people were unfamiliar with their family histories. This process proceeded into the post-war era, and continues into the present. Local knowledge was an important part of determining racial categorization in rural communities. In any neighborhood, community members may have denied "white" racial status to people whose physical features met accepted criteria of whiteness because they belonged to families generally known to be "colored." However, by moving to areas where that local knowledge did not exist, people once labeled "colored" immediately became "white." This transformation happened to the son of Hugh Oxendine. In 1860, the census enumerator listed Hugh's son John Wesley Oxendine, like the rest of his family, as "mulatto."[24] Yet sometime before his death in 1927, John Wesley Oxendine left Robeson County and moved to Henderson County, on the other side

[23] Hugh Oxendine Death Certificate, North Carolina State Archives.

[24] 1860 United States Federal Census, North Division, Robeson County, North Carolina, 78.

of the state. In Henderson County, the people believed John Wesley Oxendine was "white."[25] This racial transformation could not have happened in Robeson County because locals knew the history of the Oxendine family and understood that all Oxendines in the county, regardless of their appearance, were "people of color" or "Indian."

In an unknown number of instances, communities occasionally granted members of the old free group white status, allowed them to stay in their communities as such, and even permitted these former non-whites to marry legally among whites in their localities.[26] Confederate service may have placed some free people of color onto the path of being reclassified as white by their communities.[27] Two men with connections to the Confederate cause, Sherard F. Nickens and Bilson B. Barber, both made the transition from non-white to white during the war. In the 1850 census for Duplin County, Nickens along with other relatives are listed as "mulatto."[28] Yet in 1863 Nickens joined the Confederate Army, which prohibited people of color from enlisting.[29] Confederate enlistment agents either did not know Nickens's background or ignored any signs or information suggesting Nickens was a person of color and decided to pass him as white. Nickens's position as a nominal white man stuck after the Civil War. In the 1870 Duplin County census, Sherard F. Nickens and his mother Margaret, both

[25] John W. Oxendine Death Certificate, North Carolina State Archives.

[26] For further discussion of free people of color and their descendants "passing" for white, see Virginia R. Domínguez, *White by Definition: Social Classification in Creole Louisiana* (New Brunswick: Rutgers University Press, 1986); Daniel J. Sharfstein, The Invisible Line: Three American Families and the Secret Journey from Black to White (New York: Penguin Press, 2011).

[27] In his study of Edgefield, South Carolina, Orville Vernon Burton discusses an example of this practice. See Orville Vernon Burton, *In My Father's House Are Many Mansions: Family and Community in Edgefield, South Carolina* (Chapel Hill: University of North Carolina Press, 1985), 222-223.

[28] 1850 United States Federal Census, North Division, Duplin County, North Carolina, 45b.

[29] Sheridan F. Nickens Service Record, Complied Service Records of Confederate Soldiers Who Served in Organizations from the State of North Carolina, National Archives and Records Administration.

counted as "mulatto" in 1850, now appeared as "white."[30] In 1880, the census enumerator again counted Nickens and his family as "white."[31] Death records for Nickens's children show that the registrar categorized all of them as "white."[32] With the help of local officials, the Duplin County Nickens family had made a permanent transition to white. The same shift occurred for Bilson B. Barber, who served with the Yadkin County Home Guard during the Civil War.[33] The home guard, like the Confederate army, was an institution officially limited to whites. In 1850 and 1860, census enumerators in Surry and Yadkin Counties described Barber and his relatives as "mulatto."[34] However, by the 1870 census, Barber, his wife, and children all appear as "white."[35] From this point on, the Barber family appears as "white" in subsequent records. Whatever memory of the Barber's pre-war non-white status remained in the Yadkin County community, it failed to alter the new consensus that the Barbers were "white."

Decades after the Civil War, other communities gave those individuals once categorized as "free people of color" the opportunity to become white. This new categorization allowed them to avoid Jim Crow restrictions placed on "colored" people. Sometime between 1880 and 1900, the Jacobs family of Richmond County made the transition from "colored" to "white." Before

[30] 1870 United States Federal Census, Kenansville Township, Duplin County, North Carolina, 29.

[31] 1880 United States Federal Census, Magnolia Township, Duplin County, North Carolina, Supervisor's District No. 3, Enumeration District No. 78, 19.

[32] Joe Edward Nickens Death Certificate, North Carolina State Archives; Alice Willis Death Certificate, North Carolina State Archives; Ida Nickens Bland Death Certificate, North Carolina State Archives.

[33] Claim of Bilson B. Barber 4090, Southern Claims Commission Approved Claims, National Archives and Records Administration.

[34] 1850 United States Federal Census, The Southern Division, Surry County, North Carolina, 176b; 1860 United States Federal Census, Yadkin County, North Carolina, 112.

[35] 1870 United States Federal Census, Buck Shoal Township, Yadkin County, North Carolina, 7.

the Civil War, census records for the family of William Jacobs list members as "mulatto."[36] In 1870 and 1880, the census enumerators continued to categorize the Jacobs family as "mulatto."[37] William Jacobs seemed to understand that people in his neighborhood considered him a "colored" person. In 1874, when interviewed by federal officials about his Civil War experience, Jacobs claimed he was "on the Union side as much as I could being a col'd [colored] man I had no vote or influence."[38] Nevertheless, by the 1900 census, the Jacobses who remained in Richmond County were no longer "colored." The enumerator of that census counted all of William Jacobs's descendants as "white."[39] Locals continued to view the Jacobs family members who remained in the county after 1900 as "white" and local registrars listed the Jacobs as "white" on vital records.[40]

Divisions within the "colored" racial category and occurrences of racial re-categorization demonstrate the limitations of studying racial categories as reflective of stable social divisions. People constantly make and reshape racial categories and their defining attributes for various social purposes.[41] With few exceptions, historians who have studied free people of color have come into their studies believing that all free people of color were of African descent. Historians

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[36] 1850 United States Federal Census, Wolf Pit District, Richmond County, North Carolina, 280a; 1860 United States Federal Census, Rockingham District, Richmond County, North Carolina, 66.

[37] 1870 United States Federal Census, Wolf Pit Township, Richmond County, North Carolina, 31; 1880 United States Federal Census, Wolf Pit Township, Richmond County, North Carolina, Supervisor's District No. 3, Enumeration District No, 170, 33.

[38] Claim of William Jacobs 301, Southern Claims Commission Approved Claims, National Archives and Records Administration.

[39] 1900 United States Federal Census, Marks Creek Township, Richmond County, North Carolina, Supervisor's District No. 4, Enumeration District No. 86, 17.

[40] Anderson Jacobs Death Certificate, North Carolina State Archives.

[41] Ariela J. Gross, *What Blood Won't Tell: A History of Race on Trial in America* (Cambridge: Harvard University Press, 2008), 8.

have comfortably used "African American" or "Afro-" interchangeably with or to replace "colored" or "Negro."[42] Similarly, those scholars who study the free people of color whose descendants now live as "Indian" have made a similar terminology swap.[43] Yet those individuals who lived as "free people of color" lived in a society where racial categorization was not a self-identification used to reflect heritage. Racial categories were constantly changing concepts used for hierarchy building. Communities and politicians sometimes changed the rules of racial categorization in order to reshape the hierarchy or enhance the status of someone by removing them from a less privileged racial category. Some people once categorized as non-white exploited fissures in racial rationale, which depended so much on physical appearance or local historical knowledge, to become white. As social and political needs changed, the racial order followed suit to meet those demands.[44]

Conclusion

[42] See Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s through the Civil War* (New York: Alfred A. Knopf, 2004); Kirt von Daacke, *Freedom Has a Face: Race, Identity, and Community in Jefferson's Virginia* (Charlottesville: University of Virginia Press, 2012).

[43] William McKee Evans mistakenly asserted that the ancestors of the present-day Lumbees were designated as "free persons of color" after the passage of the 1835 North Carolina Constitution. He wrote that "In 1835 the North Carolina legislature had designated the Indians along the Lumber River as 'free persons of color,' and had taken away their right to bear arms, as well as their right to vote." A close examination of newspapers, court records, and census records created as early as the mid-to-late 1700s show that North Carolinians had long considered Lumbee ancestors to be "mulattoes" or "colored." Lumbee ancestors lost their right to vote in 1835, not because the Constitution made them "free persons of color", but because their neighbors had long considered them "colored" and therefore subjected to disfranchisement. Furthermore, the 1835 constitution did not prohibit free people of color from bearing arms. See William McKee Evans, *To Die Game: The Story of the Lowry Band, Indian Guerrillas of Reconstruction* (Baton Rouge: Louisiana State University Press, 1971), 5. Other historians have reiterated this flawed information in their own works.

[44] For further discussion of the importance of local beliefs and knowledge in determining racial categorization, see Gross, *What Blood Won't Tell*.

The end of the Civil War and the ratification of the Thirteenth Amendment to the Constitution marked the end of the legal distinction between free people of color and the formerly enslaved. During the second half of the 1860s, North Carolina officially recognized two distinct sociopolitical groups, white people and colored people, with the Cherokees in the western mountains as the exception. In many cases, the results of this political transformation created significant changes on the ground. Members of the old free group, often referred to as the "Old Issue," and the recently emancipated people, regularly denoted as the "New Issue," joined together in politics, religion, and through kinship. During Reconstruction, people of color joined with moderate and liberal whites to support the Republican political control. Both those newly free and those recently-liberated relied upon federal assistance to support their civil rights against defeated white conservatives hoping to reinstitute the racial hierarchy of the pre-war period. Their shared fight against the Confederacy, common goal of equality with whites, and white supremacists' dislike for members of both groups pushed members of the old free group and recently free people into a political coalition. This coalition produced North Carolina's first elected representatives of color, countless religious organizations, and educational institutions.

Yet some former free people of color were dissatisfied with the new order. Some sought to create a separate social sphere for those families long free by strengthening existing family networks, excluding outsiders, and adopting separate institutions such as schools and churches. In the southeastern part of North Carolina, families with deep roots in freedom succeed in not only creating physical separation but also a new "Indian" racial categorization. In the end, this new racial category was not a complete coalescence of Native-descendants, as countless people of Native-descent remained "colored" throughout the Jim Crow era, and innumerable relatives of those re-categorized as "Indian" lived as "white" or "colored." Instead this re-categorization and

the other racial re-categorizations discussed in this chapter are reflections of racial remaking under the demands of social pressure and political necessity. As this chapter and previous chapters have shown, racial categories cannot and were not intended to reflect common ancestry, culture, or on the ground social relations. Racial categories in the late nineteenth century were about hierarchy and power.

CONCLUSION

The story of free people of color in North Carolina is part of the history of people who today claim various racial and ethnic backgrounds. This current reality highlights how racial categories and the criteria used to define them change over time. Just as North Carolina grouped people of African descent, Native descent, and South Asian ancestry into a single racial classification in order to prop up the social hierarchy of the late-eighteenth and nineteenth centuries, North Carolinians, and Americans more broadly, in the twentieth and twenty-first centuries have continued to reshape racial categories to support contemporary social and political objectives.

Free people of color from the colonial period through Reconstruction faced many social, economic, and legal challenges. Yet these challenges never condemned them to anything close to slave status. The ability to own real and personal property, seek restitution in the courts, and maintain legally-recognized bonds to family distinguished even the poorest free person of color from the most privileged slaves. At any moment, the circumstances of an enslaved person could change forever with the death of a master, a collection of a debt, or a master's decision to sell an enslaved person away from all things familiar. Many enslaved people never met such changes in circumstance, but the possibility that lingered over them made their position distinct in comparison to all free persons. Even as North Carolina's free people of color saw the state strip them of their privileges to vote and bear arms, the law never took away their legal personhood or commodified their bodies. The legal rights of free people of color by the 1850s were limited in

comparison to the liberties most people enjoyed at the end of the twentieth century, but such a comparison should not be grounds to declare a group “slaves without masters.”

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