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Blurring the Lines of Race and Freedom: Mulattoes in English Colonial North America and the Early United States Republic

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Wilkinson, A.B.

Publication Date
2013

Peer reviewed|Thesis/dissertation
Blurring the Lines of Race and Freedom: Mulattoes in English Colonial North America and the Early United States Republic

by

Aaron B. Wilkinson

A dissertation submitted in partial satisfaction of the requirements for the degree of

Doctor of Philosophy

in

History

in the

Graduate Division

of the

University of California, Berkeley

Committee in charge:

Professor Waldo E. Martin, Jr.
Professor David A. Hollinger
Professor Michael Omi

Spring 2013
Abstract

Blurring the Lines of Race and Freedom:
Mulattoes in English Colonial North America and the Early United States Republic
by
Aaron B. Wilkinson

Doctor of Philosophy in History
University of California, Berkeley

Professor Waldo E. Martin, Jr., Chair

This project investigates people of mixed African, European, and sometimes Native American ancestry, commonly referred to as mulattoes, in English colonial North America and the early United States republic. This research deconstructs nascent African American stratification by examining various types of privilege that allowed people of mixed heritage to experience upward social mobility, with a special focus on access to freedom from slavery and servitude in the colonies and states of the southeast Atlantic Coast. Additionally, this work provides a framework for understanding U.S. mixed-race ideologies by following the trajectory of how people of mixed descent and their families viewed themselves and how they were perceived by the broader societies in which they lived. This study contributes to historiographical and contemporary discussions associated with mixed-heritage peoples, ideas of racial mixture, “whiteness,” and African American identity.
To Millie C. Edwards
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Introduction

Since its earliest days, the United States has had a racial system largely based on the “black-white” binary. Though various groups, such as Native Americans, Latinos, Asians, and others have long complicated the binary over the years, the idea of monoracial categories has dominated racial thinking throughout United States history. However, an increasing number of people in the twenty-first century United States are recognizing their mixed ethnoracial heritage and are choosing to personally identify themselves as having multiple ethnoracial ancestries. Some have tied this trend to a “multiracial baby boom” that resulted from an increase in so-called interracial marriages in the decades that followed the height of the Civil Rights Movements in the 1960s. In 1967, the Supreme Court decision in Loving v. Virginia struck down all state anti-miscegenation laws, or legislation that prohibited interracial marriage. In the following decades, mixed-heritage families flourished and their children have grown up in communities that are largely accepting of racial integration. Arguably, this lack of outwardly restrictive legislation coupled with more tolerant views of racial integration have allowed children of mixed heritage to become more comfortable identifying with more than one racial category. In the twenty-first century United States, it has largely become socially acceptable to identify oneself as mixed.

Many multiethnic families welcomed the 2000 U.S. Federal Census, which allowed parents to “mark one or more” racial box for their children and presented everyone with the option to identity with multiple ancestries for the first time in United States history. Several years later, many of these families joined millions of others who championed the 2008 election of Barack Obama, the first U.S. President of African descent, born of a Kenyan father and European American mother. While growing up, Obama was haunted by fears of racial belonging due to his mixed ancestry. In Dreams From My Father, Obama recounts the feeling that he “didn’t belong somehow” and “would forever remain an outsider, with the rest of the world, black and white, always standing in judgment.” Similar to other people of mixed ethnoracial ancestry, he too struggled with racially tinged questions: “Who was I?” and “Where did I belong?” The young Obama emerged from his crisis of identity as an African American, and his personal journey later became the subject of national debate during his election, inauguration, and tenure as the 44th President of the United States. Many asked if Barack Obama should be considered the first African American or the first multiracial president of the United States?

For African Americans, mixture with other ethnoracial groups has always been a complex issue. Their history in the United States and preceding English colonies evokes a past marked by various systems of racial oppression, first with slavery, then with Jim Crow segregation (both de jure and de facto), and today under the expanding penal system. During the height of Jim Crow in the twentieth century, people of African descent in the United States were labeled under the monoracial category of “black” according to the one-drop rule: whereby a person presumed to have descended from at least one traceable African ancestor is considered to

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1 Ethnoracial is used throughout as a term that recognizes how both ethnicity and race have been used to categorize descent-based groups through historically constructed processes.
be fully “black,” “colored,” or “Negro,” despite having various degrees of non-African ancestry. For more than a century, the one-drop rule has defined membership within the African American community. More recent debates surrounding the “multiracial baby boom,” Obama’s racial identity, and the “check one or more” 2000 and 2010 censuses have been especially relevant for African Americans, as these issues bring into question the persistence of the one-drop rule. Prior to the 2000 census, leaders in the African American community wanted to ensure that the “check one or more” option would accurately count all those of African descent, thus guaranteeing the correct monitoring and protection of civil rights and federal entitlements. These concerns were real, not only for African Americans, but for other communities of color as well. Giving individuals the option to choose more than one racial category on the U.S. Federal Census could threaten groups of color in terms of personal identity, community involvement, and political power.  

Scholarly explorations of mixed identity have likewise proliferated, and at times provoke controversy. Within African Diaspora Studies, some have characterized “mixed race studies” as an attempt to dissolve African American identity by allowing “mixedness” to favor “whiteness.” For example, people of mixed African and European lineage may choose to distance themselves from negative associations with “blackness” by championing a mixed-heritage identity afforded them by their European ancestry. Others fear that romanticizing mixture as a solution to present-day race problems in the United States feeds into a color-blind approach to multiculturalism, which ignores institutional racism and supports “white supremacist” ideologies. Surely, these concerns are warranted, which is why we need careful, substantive, and more critical “mixed-race studies.”

With the increase of people recognizing their blended ancestry in the twenty-first century has come a boom of lay and professional writing that explores mixed ethnoracial identity. Even though scholarship in the area of “mixed-race studies” has likewise surged in recent years, most research on racial mixture and people of multiethnic heritage has a contemporary focus and largely addresses the past two or three decades. This research project starts at the beginning of U.S. history in order to uncover the foundations of how people thought about racial mixture and people of mixed ancestry in the first English colonies and early U.S. republic. I use historical methodologies consisting of expansive archival collection, reading, and interpretation of seventeenth through nineteenth century primary source materials. I also employ sociological analysis of these sources to reveal the earliest perceptions of mixed-heritage peoples and explain how these beliefs affected the lives of those of mixed ancestry.

Regarding the “mark one or more” U.S. Federal Census of 2000, Kenneth Prewitt, then head director of the U.S. Census Bureau, remarked that the “Census 2000 will go down in history as the event that began to redefine race in American society.” Prewitt was correct in that the new census format implicitly raised a critique of monoracial categories and has changed the way some think about racial mixture in the twenty-first century. However, this was not the first time people of mixed ancestry helped define the way we think about race in the United States, nor was it the first time people of mixed descent were counted in the Federal Census. One hundred and fifty years earlier, the 1850 U.S. census first officially counted Mulattoes, a group

5 See Kim M. Williams, Mark One or More: Civil Rights in Multiracial America (Ann Arbor: University of Michigan Press, 2006).
8 Williams, Mark One or More, 2.
of people who were recognized as having traceable African ancestry along with European and/or Native American lineage. Indeed, the term “mulatto” has a long history, preceding the founding of the United States, going back to seventeenth-century colonial North America.

This dissertation provides a critical legal, social, and intellectual history of people identified as “mulatto,” starting from the early English colonial period in North America up through 1830 in the antebellum United States. Though English colonial and U.S. legislators generally lumped both “negroes and mulattoes” together in law, all people of African descent did not share the same lived experience. Mulattoes were often differentiated from those of full African descent, both in freedom and in slavery. They also complicated the emerging “black-white” racial paradigm by finding and living within spaces in-between the binary. By examining Mulattoes and their descendants in colonial North America and the early United States, we can better understand how ideologies of racial mixture, light-skinned privilege, and color stratification have changed over time for African Americans. This study also has further implications for understanding another degree of “whiteness” that touched people of African descent. Though many scholars have written on these issues, there is still no single academic study that utilizes extensive archival research to examine the ancestral complexity of African Americans from the seventeenth century down to 1830, the year before Nat Turner’s Rebellion. This project expands the intellectual discussions of ethnoracial mixture, in part building upon the previous scholarship. In particular, this work offers a multi-faceted historical examination of mixed-heritage people’s tenuous relationship with freedom.

It has long been recognized that African Americans have a richly blended ethnoracial heritage. Much of this mixture came through rape or other types of coerced sexual relationships between African slave women and European men, who often owned these women or wielded power over them. Less understood is that a significant amount of this ethnoracial mixture can be tied to relationships between African men and European women, especially during the early colonial period. Most of these children were born free within consensual relationships. By the late eighteenth and nineteenth centuries, thousands of free people of color could connect their lineage back to free European maternal ancestry.

This research addresses the various origins of the people who were the product of both illicit and romantic relationships, yet it goes beyond these interracial liaisons and focuses directly on the product of these unions: the mixed-heritage people themselves. How were people of mixed ancestry perceived by those in their local communities and in the broader society? How did people having multiple ancestries see themselves? And in what ways did the ethnoracial makeup of one’s parents matter for people of blended heritage, especially in terms of gaining freedom, establishing successful lives, and providing autonomy and prosperity for their descendants?

While many historians have noted the prevalence of mixed-heritage peoples within the free African American population, some still apply the one-drop rule anachronistically to earlier time periods. My work shows that Mulattoes occupied various degrees of freedom and social

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9 Mulatto is a historically constructed racial term that will be used here throughout in the context of Colonial, Revolutionary, and Early National history. Though some early colonial definitions included people of mixed European and Native American ancestry, the term was primarily applied to people of mixed heredity who had at least some traceable African descent. After the early colonial period, Mulattoes were widely known as people of mixed descent having some African ancestry.

10 Like mulatto, I will use the phrase free people of color here in its historical context, to describe people of African descent who lived as free men and women outside the bounds of slavery. It should also be noted that the term people of color has made a resurgence today, but in its modern form it has come to designate all “non-white” persons or people having non-European ancestry in the United States.
acceptance in mainstream society, and that the one-drop rule did not operate with the same rigidity in the colonial and early antebellum periods as it did in the postbellum and Jim Crow eras. The social positioning of Mulattoes spanning the seventeenth into the early nineteenth century is more aptly connected to the idea of hypodescent: whereby a person identified as having more than one distinct ethnoracial heritage is generally relegated to the position of their socially inferior parentage. Hypodescent and the one-drop rule are related. Indeed, the notion that one drop of African blood in one’s ancestral line makes one fully “black” is the strictest adherence to the rule of hypodescent.

It is often assumed in U.S. history that the one-drop rule was ever-present, yet this was not the case. Such misleading generalizations evade the historical complexity of the development of hypodescent and the one-drop rule. These ideas, and the related social practices that help mark and sustain the racial order, deserve closer scholarly attention within discourses in the fields of African American Studies, Ethnic Studies, and broader U.S. History. In order to clearly understand how the United States reached the one-drop rule, we need to examine the historical development of state legislation and social practices grounded in notions of racial mixture. The following work provides a nuanced view of this history by tracing the historical development of hypodescent. There was greater fluidity in the mid-seventeenth century, which solidified later in the colonial period. Strikingly, there was a return to more fluidity marked by the revolutionary era and its immediate aftermath, yet the early national period was an era marked by an increasing return to rigidity.

This project utilizes archives from five states: Virginia, Maryland, North Carolina, South Carolina, and Georgia. While I rely on an exhaustive array of documentation (newspapers, personal papers, etc.), the bulk of my sources consist of judicial and legislative records (court cases, petitions, deeds, wills, etc.). This study is split into two sections, each containing three chapters. The first section covers the English colonial period in North America. Chapter 1 explores the social climate of the Chesapeake Bay during the seventeenth century, where the largest sustained ethnoracial mixture took place between Africans and Europeans. Special attention is given to colonial legislation that targeted intermarriage and sexual liaisons among Africans, Europeans, and Native Americans in the colonies of Virginia and Maryland. These laws reveal how colonial elites structured racial hierarchy to try to prevent ethnoracial mixture. These laws underwrote the early colonial evolution of ethnoracial classifications, particularly monoracial and mixed-race categories. This discussion treats how efforts to define and socially locate mixed-heritage peoples helped create the racial order that characterized them as belonging to the lower racial class.

Chapter 2 moves into the eighteenth century along the same vein as the previous chapter, yet lays out how evolving notions of hypodescent became a widespread ideology through both law and social practice. This chapter also broadens the geographical scope from the Chesapeake to include North Carolina as well as the Lowcountry colonies of South Carolina and Georgia. Here, a central theme of the project is explored in greater depth: Mulattoes who had mothers of European ancestry had a clear comparative advantage over those who had mothers of African ancestry. I call this comparative advantage mulatto privilege. This relative racial privilege was

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12 This is similar to what Carl Degler discusses as “the mulatto escape hatch. Part of my argument presented here is that there indeed was a “mulatto escape hatch” for mixed-heritage people who had European mothers. Carl N. Degler, *Neither Black nor White: Race Relations in Brazil and the United States* (London: Macmillan Publishing Co., 1971), 222.
most prevalent in the Chesapeake and stands in contrast to the Lowcountry, where variations in culture and demographics often led to different social dynamics. For example, compared to the Chesapeake, European fathers in South Carolina were more likely to free their mulatto children. Juxtaposing these two regions reveals the importance of place and parentage in the colonial era.

Chapter 3 takes a closer look at Chesapeake families of mixed heritage who could trace their maternal ancestry to European women. Most of these women were poor European immigrants indentured by authorities as servants in Virginia or Maryland. These women bore children fathered by African or Indigenous men, and colonial authorities placed their mulatto offspring in extended terms of indenture. Over several generations their descendants would also be indentured, which resulted in a type of multigenerational servitude that replicated slavery. In other cases, masters held these mulatto peoples indefinitely as slaves. This meant that bondage could become perpetual servitude either by custom or in fact. Here I follow a number of families over several generations, paying special attention to their struggles to gain and maintain freedom. For many families of African descent, the late colonial period and the dawn of the revolutionary era brought a moment of greater access to liberty compared to previous decades, which also increased access to freedom for people of mixed descent.

The second half of this dissertation moves into the early national period. This section follows Virginia, Maryland, North Carolina, South Carolina, and Georgia, as they become states. Chapter 4 looks specifically at individuals who were identified as being of mixed descent and claimed rights for having contributed to the Revolutionary War and the founding of the United States. During the last quarter of the eighteenth century, more liberal manumission laws increased access to freedom for people of both partial and full African heredity. I argue that hypodescent ideology weakened during this time, owing primarily to the liberationist notions and emancipationist practices spawned by the era. This can be seen in Virginia’s 1785 statute that defined “what persons shall be deemed mulattoes.” The law relaxed previous legal codes regarding who would be recognized as a “mulatto,” allowing a greater number of mixed-heritage people to enjoy rights associated with “whiteness.” While there was a relative softening in the restrictions placed on people of African descent in the late eighteenth century, these rights were increasingly circumvented in the early nineteenth century as the Haitian Revolution (1791-1804) and Gabriel’s Rebellion (1800) greatly intensified European American fears of the growing slave population.

Chapter 5 shows that people of mixed heritage enjoyed privileges both in slavery and in freedom, even as state legislators retracted slave emancipation and the rights of free people of color from the 1790s through the 1810s. Elite fears of slave insurrection and the explosion of cotton production reinvigorated the institution of slavery, which led to large changes in slavery. Still, innumerable people of mixed ancestry successfully used legal and informal means to maneuver around increasing restrictions. Though state legislators began rejecting freedom petitions with more regularity in the first decades of the nineteenth century, local governments regularly made concessions that granted emancipation to those in bondage, which benefitted Mulattoes at a higher rate compared to Negroes, or those of full African descent. Along with more constraints placed on emancipation, state assemblies placed residency restrictions on free people of color in certain states, demanding that they leave the state, typically within a year after their emancipation. These laws affected many freed Mulattoes. In fact, these laws disproportionately affected people of mixed heritage who had previously enjoyed mulatto

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privilege during the revolutionary era. Even as state politicians passed laws circumscribing the rights and privileges of all those of African descent, those of mixed ancestry with strong connections to European American heritage and especially those with “white” patronage continued to gain liberties. Put another way, in this period, as rights and privileges for all free people of color were diminishing, Mulattoes still retained a general advantage over their fully African brethren.

Chapter 6 investigates the deteriorating rights of free people of color, many of whom were Mulattoes, through the first three decades of the nineteenth century. The heavy slave labor requirements of the cotton plantation economy undermined the rights of free people of color, whom the planter class viewed as more likely to identify with the enslaved. Thus, many elites believed free people of color posed a serious threat to slavery. European American officials long associated free Mulattoes with their African lineage, and though many people of mixed ancestry did not share this view, this characterization increasingly informed restrictive legal statutes at the state level. Virginia, and other states, passed restrictive legislation that influenced neighboring state assemblies. As state legislatures continued to strip away the rights of free people of color, Mulattoes were disproportionately affected because they made up a high percentage of the free population of African descent. In this manner, Mulattoes were routinely pushed towards only being identified with their African ancestry. Though mulatto privilege continued to exist amongst both slaves and free people of color, this gap was all but legislatively closed by 1830 as the United States moved towards a stricter line of hypodescent, which later solidified under the one-drop rule.

In the twenty-first century, many important questions have been raised for African Americans regarding racial mixture and group identity. These issues are nothing new, even though they are often described as such. The actual history of mixed-heritage peoples comes out of practices, traditions, and laws spanning back at least 350 years to the first English colonies of North America. In the seventeenth century, early notions and practices regarding racial mixture contributed to the initial formation of racial categories. It was here that discussions concerning mixture between Africans and other ethnoracial groups first took place and it is here that the racial category of “mulatto” was created in the English colonial mind. Instead of looking backwards from the present in analyzing mixed-race issues in the African American community and U.S. society, this study takes a historical approach starting at the beginning of English colonization in North America and moving forward through the 1820s. By uncovering the ideological foundations and development of notions concerning people of mixed ancestry in North America, this work sheds new and revealing light on race and race-making before 1830. In helping us to understand some of the ways in which we first came to think about and deal with the idea of racial mixture, this work also seeks to inform contemporary discussions surrounding issues of both African American and multi-ethnoracial identity.

Although this study focuses on mulatto privilege, or the comparative advantage those of mixed descent had over those of full African heredity, it should never be forgotten that Mulattoes had a relative disadvantage when juxtaposed next to those of full European lineage. Mulattoes were a relatively advantaged group among the enslaved, because they had a disproportionately higher chance of achieving freedom compared to slaves of full African lineage. In both colonial North America and the United States, both Negro and Mulatto slaves hoped that one day they would be able to achieve complete liberty for themselves and their families. Those in bondage fought to become more autonomous in their daily lives as well. Both in and outside of slavery, many people of blended ancestry achieved liberties due to mulatto privilege. Still, hypodescent
ideology meant that mixed-heritage peoples would be associated with their African or Native American ancestry, in spite of the fact that their European heritage and patronage ties to “whiteness” might elevate their legal and social position.

**Historicizing and Re-Mapping Mixed-Race Studies**

Various forms of writing on Mulattoes began in the mid-nineteenth century, emanating largely in the form of fiction and non-fiction literature concerning slavery. Those commonly recognized as “mulattoes” published many of the most famous and important antebellum slave narratives. Narratives by former slaves Frederick Douglass, Harriet Jacobs, William Wells Brown, Henry Bibb, and others explore the common theme of mixed family origins.

Additionally, novels such as Harriet Beecher Stowe’s *Uncle Tom’s Cabin* (1852), William Wells Brown’s *Clotel; or, The President’s Daughter* (1853), Charles W. Chesnutt’s *The House Behind the Cedars* (1900), James Weldon Johnson’s *The Autobiography of an Ex-Coloured Man* (1912), Nella Larsen’s *Passing* (1929), and numerous others explore the fictional lives of mixed-heritage peoples spanning the nineteenth century forward into the twentieth century. Fiction writing has often used the trope of the “tragic mulatto” to illustrate psychologically distressed characters who are troubled by their mixed racial origins and inability to resolve an identity that leaves them in-between “black” and “white” worlds.\(^\text{14}\)

Scientific ideas concerning “mulattoes” also proliferated in the mid-nineteenth century forward into the postbellum era. Ethnologists, later termed anthropologists, began publishing specifically on Mulattoes in the 1840s. Naturalists had taken scientific approaches to race prior to this period, and though findings based in nascent racial science were heavily biased and fundamentally wrong, they dominated academic circles nonetheless. Josiah Nott and Samuel Gliddon published on the idea human hybridity in *Types of Mankind* in 1854, claiming that Mulattoes were naturally degenerate and less prolific in terms of reproduction. They incorrectly compared people of mixed heritage with mules, claiming these people were similarly sterile. Therefore, these ethnologists decried the fall of “white” civilization if those of African descent were allowed to intermingle with those of European heredity. Harvard’s Louis Agassiz, Samuel Morton, and others supported these findings and gave credibility to these misguided beliefs. Racial science exacerbated negative perceptions of mixed-heritage peoples during the Civil War, as many European Americans feared newly freed slaves of African descent might mix with “whites” after earning rights to U.S. citizenship. In 1864, the term *miscegenation* came to identify the mixing of races that had previously been referred to as *amalgamation* in the antebellum period. From the postbellum era into the twentieth century, academics, politicians, and other professionals helped fuel the belief that the so-called races should not mix, building on the widespread belief that people of mixed ancestry were biologically deficient.\(^\text{15}\)

In the first half of the twentieth century, other academic work on Mulattoes emerged in sociology, notably from sociologists Edward B. Reuter and Robert E. Park. Reuter published *The Mulatto in the United States* in 1918, a pioneering work that also included an overview of the history of “Mixed-Blood Races” in the world. Park, who advised Reuter’s study, later published in 1931 on Mulattoes as a “racial hybrid” group. Much of Reuter and Park’s work is dated, especially in terms of identifying separate races as measurable categories. They also relay

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\(^\text{14}\) Werner Sollors has written extensively on literary interpretations of interracial mixture and people of mixed ancestry. Werner Sollors, *Neither Black Nor White Yet Both: Thematic Explorations of Interracial Literature* (New York: Oxford University Press, 1997).

the idea of racial inferiority among Mulattoes and Negroes, though the former were portrayed as feeling “superior” to the latter due to having partial European ancestry. Reuter and Park’s conclusions end up much along the lines of the “tragic mulatto” literary motif, as they find those of mixed ancestry to be psychological unstable due to the “warring ancestry in [their] veins” and racial prejudice that kept Mulattoes from accessing “white civilization.” Despite obvious bias and unreliable source material, Reuter’s work is the first to give an overview of the history of Mulattoes beginning in colonial North America, through the antebellum United States, and up to his current time in the early twentieth century.16

Though Reuter’s research was clearly not as scientific as he claimed, he attempted to deal seriously “with the sociological consequences of race intermixture, not with the biological problems of intermixture.” Indeed, he argued that it was the “biological phenomenon” of mixture that gave rise to the “sociological problem” of racism in the United States. Reuter compellingly argued that “the mulatto is the key to the racial situation” or “race problem” in the United States, because government policy towards the mixed group reflected how the most racially subordinate group would be treated in society. In other words, he surmised that one could gauge how a government treated the lowest racial group in a society based on how they treated their people of mixed ancestry. If Mulattoes were elevated in society, then Negroes, or all those of full African descent, would be raised up as well. This claim lends support to the argument in Chapter 1 concerning the importance of mixed-heritage peoples in creating and upholding racial hierarchy. Seventeenth-century English elites helped create notions of monoracial groups and a racial order in North America through legislating against ethnoracial mixture and mixed-heritage peoples.17

Scientists have since proved that races, or groups of people that are part of static and innate racial categories, do not biologically exist. Still, many writers since Reuter have continued to allow social beliefs to influence the idea that racial difference, racial groups, and racial mixture are still physiologically real. While this project addresses the concept of racial mixture extensively, I must emphasize that I am addressing the sociology behind the idea of ethnoracial mixture in the following work. Technically, all people are mixed because they have two parents who have dissimilar ancestries.18 Unfortunately, the “biological phenomenon” of racial mixture that Reuter spoke about in 1918 – the idea that races, in fact, do mix – is still commonly accepted almost one hundred years later. Today, more people are becoming aware that “common-sense” understandings of race are indeed socially constructed notions of difference. However, ideas that races biologically exist, and can thus actually mix, remain prevalent and continue to persist. Biologically, there is no such thing as interracial couples, racial mixture, or mixed-race people. Historically and socially, these beliefs are extremely real and continue to have concrete effects in our lives everyday.

Academics are all influenced by their times, and the social climate along with common understandings of race have largely affected how historians have understood and written about people of mixed descent. The most influential twentieth century historians lived during the time of Jim Crow segregation, when U.S. society drew little difference between those of partial and full African heredity. The one-drop rule upheld the racial regime of Jim Crow by labeling those of both mixed and unmixed African ancestry as completely Negro. This strict understanding of

17 Reuter, The Mulatto in the United States, 6-7, 103-104.
18 Of course this would exclude cases of incest.
hypodescent has also influenced scholars who did not directly experience Jim Crow segregation. For much of the twentieth century, both in custom and in law, people having at least one traceable relative of sub-Saharan African ancestry, no matter how far back, were thought of as being fully “black,” “colored,” or “Negro.” This definition has largely continued up to the present day.19

The one-drop rule has made it possible for historians writing about African Americans to ignore and largely gloss over the topic of racial mixture and speak about all those of African descent simply as “black.” This can be clearly seen in countless histories focusing on African Americans during slavery that write about everyone as “black” despite many of the people they talk about being clearly identified as “mulatto” in historical records. This common practice ignores the fact that innumerable people of mixed African, European, and sometimes Native American descent never identified as Negro, let alone “black.” For example, many of the “black masters” or “black slave owners” spoken about in historical scholarship were recognized during their time as “mulattoes,” or people of mixed African and European descent. The following scholarship pays close attention to the ancestral nuances commonly found within African American communities by exploring the diverse heritage of those identified as “mulatto.” This work analyzes the laws and practices that shape the history of mixed-heritage people in the United States, from colonial times up to 1830.

There has been notable historical work in this area, which provides both useful information and a foundation for my project. In 1918, historian Carter G. Woodson published an article on early intermixture between “whites and blacks.” He noted several colonial laws that applied to people of mixed-heritage and also provided several stories from their lives.20 In 1955, scholar Richard Bardolph wrote on the “Social Origins of Distinguished Negroes” and noted “the overwhelming majority of them were persons of mixed blood.” In biographical sections of African American leaders, he carefully parsed out people’s ancestry by describing the family origins of those having mixed ancestry, “mulatto parentage,” and “unmixed Negro blood.” Bardolph later published a more extensive work titled The Negro Vanguard in 1959 using material from his previous publication. It had been no secret that people of mixed ancestry predominated in leadership roles in the African American community, though it was not until this time that scholars began to give this topic serious treatment.

In 1962, historian Winthrop Jordan published the article “American Chiascuro: The Status and Definition of Mulattoes in the British Colonies,” where he noted the English colonial tendency “to lump ‘mulattoes’ with Negroes.” He continued, “the law was clear that mulattoes and Negroes were not to be distinguished for different treatment.” Jordan surmised that English colonists needed the word “mulatto” to deal with the issue of intermixture even though they considered people of mixed descent no different than Negroes. Jordan writes: “An extensive search in the appropriate sources—diaries, letters, travel accounts, newspapers, and so on—fails

19 There has been more accurate and helpful sociological work on the one-drop rule in recent decades. In Who Is Black?: One Nation’s Definition (1991), F. James Davis provides a broad historical overview of the one-drop rule and compares hypodescent in the United States with other approaches to ethnoracial mixture in other parts of the world. G. Reginald Daniel in More Than Black?: Multiracial Identity and the New Racial Order (2002), provides a historical synthesis of ethnoracial mixture in the United States, yet takes a more in-depth approach to investigating the sociological aspects of the one-drop rule, while bringing the discussion up to the late twentieth century. Of particular interest is his take on “first-generation” and “multigenerational” mixed-heritage peoples. F. James Davis, Who Is Black?: One Nation’s Definition (University Park, Pennsylvania: Pennsylvania State University Press, 1991); G. Reginald Daniel, More Than Black?: Multiracial Identity and the New Racial Order (Philadelphia: Temple University Press, 2002).
to reveal any pronounced tendency to distinguish mulattoes from Negroes, any feeling that their status was higher and demanded different treatment.” In many respects, Jordan is correct in that social and political elites sought to treat Mulattoes the same as Negroes, yet he missed the mulatto privilege that was not always readily apparent in historical texts. In the same way that masters wrote about treating their slaves well, while neglecting to recount the horrors of slavery, many of the sources do not openly reveal the privileges Mulattoes comparatively enjoyed over Negroes of full African descent. Much of the time, “whites” were unaware of their own favoritism towards lighter-skinned slaves and free people of color, thus they did not openly write about it.  

In 1968, Jordan included information from his previous article in the seminal White over Black: American Attitudes toward the Negro, 1550-1812. Few works are as well-documented as White over Black, and the book reiterates from his article that “whites” in the United States “lump together both socially and legally all persons with perceptible admixture of Negro ancestry… white blood only becomes socially advantageous in overwhelming proportion.” Again, while Jordan was accurate in terms of law, he missed de facto everyday practices that allowed certain people of African descent to enjoy light-skinned privilege since the colonial period. Jordan was correct that lawmakers most often grouped “negroes and mulattoes” over the period of slavery. However, he mistakenly notes that these views from “the continental colonies” carried over to his own time, in the 1960s, to create a pattern “so familiar to Americans that they rarely pause to think about it or to question its logic or inevitability.” It is true that many during the mid-twentieth no longer questioned the one-drop rule, yet it is incorrect to assume that people held this view since the earliest times of English colonial North America. Jordan even follows that the “peculiar bifurcation seems to have existed almost from the beginning of English contact with Negroes,” yet this ignores the process by which society came to think about people of mixed-heritage differently over time. Though it is true that there is polarization within the racial order of English colonial North America and the early United States, there always existed social and legal spaces between “black” and “white.”

My study provides compelling evidence that Mulattoes had a demonstrable advantage over Negroes, defined as those of full African descent, in the English colonies of North America and the states of the early U.S. republic. Nowhere was this advantage more pronounced and important than in terms of accessing freedom. Jordan admits: “There may well have been a relatively high proportion of mulattoes among manumitted slaves, but this was probably due to the not unnatural desire of some masters to liberate their own offspring.” While some masters did free children that they fathered with their slaves, a number of Mulattoes accessed liberty through the free status of mothers of European descent. Ira Berlin briefly notes this in Slaves without Masters: The Free Negro in the Antebellum South (1974), and Joel Williamson gives a more detailed account of this pathway to freedom in New People: Miscegenation and Mulattoes in the United States (1980). Berlin’s extensive study is concerned primarily with the many limitations free people of color faced in the antebellum period. He and other historians who have

written on free people of color have noted the predominance of mixed-heritage peoples within the free population of color, which itself reveals mulatto privilege. Williamson provides a broad and general overview of the origins of Mulattoes in colonial North America and the United States up through the mid-twentieth century. Much like my research, his study is largely concerned with showing that in terms of race, “black was never totally black, and white was never entirely white.”25 Along with Jordan, these works by Williamson and Berlin are the studies that have helped frame my own research.

Berlin’s Slaves without Masters provides an insightful analysis of legislation and social practice. He writes: “In actual practice Negro freemen had a good deal less liberty than the actual law allowed.” Both Chapters 5 and 6 of this project discuss how legislation helped close off mulatto privilege in the early national period. Berlin’s Slaves without Masters focuses on the antebellum period, and his argument cannot be read uncritically back into time. In earlier periods, people of mixed ancestry did not experience the same legislative and social pressure that made it difficult for all people of African descent to advance in the nineteenth century.26

Both Berlin and Williamson look at upper class people of color of Charleston and Louisiana, mostly those in New Orleans. Though Louisiana is outside the scope of my project, historical scholarship has firmly established that a middle racial group of mixed-heritage peoples largely operated out of New Orleans and surrounding areas.27 Berlin and others have identified this group of mixed ancestry as a middle racial caste in both New Orleans and Charleston. He speaks of this group directly as a “free Negro caste” and says the “ambiguity of their social position was often embodied in their mixed racial origins and tawny color.” I argue that free people of mixed descent were not a caste unto themselves in Charleston. Though Berlin’s definition of “caste” is not clearly defined, I suggest that a caste should delineate a nearly impermeable category ordered by those in power or those in control of that particular caste system. While Berlin’s use of caste is imprecise, he presents the idea that these free people of mixed descent were fully separate from both “whites” and “blacks.” He says that it is clear “they were barred from full acceptance in white society and often viewed with suspicion by blacks.”28 It seems here that for Berlin, “blacks” included all those of full African descent, yet this conflates finer distinctions in class amongst those of African descent. Surely many people of partial African ancestry, including the enslaved and poor free Mulattoes, also felt separated from the upper class group of mixed heritage.

Charleston’s free people of mixed ancestry personify the idea of mulatto privilege, yet I maintain that they were merely a socially and economically advantaged class of free people of color. Williamson also addresses the “free mulatto elite,” writing: “Free mulattoes of the more affluent sort in the lower South were treated by influential whites as a third class, an acceptable and sometimes valuable intermediate element between black and white, slave and free.”29 Concerning South Carolina, and more specifically Charleston, Berlin and Williamson are generally persuasive in their assessment of this “free mulatto elite” who formed a small group unto themselves.30 However, similar social distance between upper class Mulattoes and other free people of color can be seen in all other areas of the slave South, albeit in less concentrated numbers than Charleston. For these and other reasons, it is questionable whether people of

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25 Ibid, xiii.
27 See Jennifer M. Spear, Race, Sex, and Social Order in Early New Orleans (Baltimore: John Hopkins University Press, 2009).
29 Williamson, New People, xiv, 15.
30 Williamson, New People, xiv.
mixed ancestry were a separate caste unto themselves as Berlin suggests. Instead, Williamson’s language is preferable, for he speaks of this group as an economically privileged class and talks about all Mulattoes being placed within a “single Negro caste” – with Negro here designating all those of African descent.\footnote{Ibid, vii, 2.}

Fundamentally, the advantage that Charleston’s light-skinned free Mulattoes experienced over dark-skinned free Negroes was little different than the mulatto privilege experienced everywhere throughout the slave South. In all places, this privilege was based on wealth and “white” patronage connections, many times through familial connections to European ancestry. Scholars like Robert Harris, Jr. have noted that wealthy mulatto self-help organizations in Charleston, such as the Brown Fellowship Society and Humane Brotherhood, showcased the elitism of a certain group of free Mulattoes, yet this did not signify a “three-tiered model of race relations.” Harris asserts that this special treatment was based on class, not full “white” acceptance of a third racial caste.\footnote{Robert L. Harris, Jr., “Charleston’s Free Afro-American Elite: The Brown Fellowship Society and the Humane Brotherhood,” \textit{The South Carolina Historical Magazine} 82, no. 4 (October 1981), 290.} Berlin erred in suggesting this group of free Mulattoes was a separate caste, because they were governed by the same laws as all free people of African descent, continually met racial discrimination, and could fall from their elevated position if they were to lose their wealth. Certainly, free Mulattoes in Charleston have gained deserved attention from scholars because they made up a significant portion of the total free population of color in the city. However, this Charleston population made up a smaller portion of the total mulatto population in South Carolina. Also, they made up a relatively low percentage in all the states of the Lower South and a tiny percentage in the overall slave South. The majority of free Mulattoes remained in the Upper South, emanating from colonial Chesapeake origins. Berlin, Williamson, and others have focused on Charleston’s free Mulattoes because they were a highly visible and relatively large mixed-heritage population concentrated in one city. However, the free Negro and Mulatto populations in Charleston were proportionate to free populations of color in other cities in the Lower South, and much lower in overall numbers compared to the Upper South.\footnote{Ibid, vii, 2.}

Berlin and Williamson seem to overplay the elevated position of Charleston’s free Mulattoes, which has led to other issues with mischaracterizing people of mixed heritage in South Carolina and the Lower South. For example, Berlin wrote: “Whites in the Lower South displayed a remarkable ability to resist the Upper South tendency to jumble all Negroes together.”\footnote{Berlin, \textit{Slaves Without Masters}, 136-137; Williamson, \textit{New People}, 14-15, 24-25.} While there are regional differences in how societies treated Mulattoes, evidence shows that those in the Upper South were also able to resist strict racial subjugation, much along the same lines as certain people of mixed descent in the Lower South. Also, Williamson notes that “South Carolina was strikingly ‘soft’ on free mulattoes of the upper echelons throughout the 1840s.”\footnote{Berlin, \textit{Slaves Without Masters}, 198.} He also highlights a few stories of mixed-heritage people who were of remote African ancestry marrying into “white” society, but these were exceptions to the general rule and occurred in the Upper South as well. To be sure, there are tendencies that characterize differences between the Upper South and Lower South, yet these statements argue that “whites” in South Carolina and the Lower South accepted free Mulattoes while shunning Negroes of full African ancestry. This analysis applies evidence surrounding the relatively small group of “free mulatto elite” in Charleston over too large an area. Berlin and Williamson have made significant contributions to the study of African Americans and mixed-heritage peoples, and their general contributions to the study of African Americans and mixed-heritage peoples, and their general
assessment that Mulattoes had an advantage over those of full African descent is correct. Still, I suggest that this mulatto privilege was more widespread than previously thought, and that we need to be more precise and clear about its regional distinctions.

The other flaw that my work addresses is what Williamson in *New People* refers to as “the changeover,” or when “the dominant white society moved from semiacceptance of free mulattoes, especially in the Lower South, to outright rejection.” Williamson places the shift towards heavy restrictions against Mulattoes, and thus labels the turn to the one-drop rule from 1850-1915. During the tumultuous decade leading up to the Civil War, he argues that as Mulattoes “confronted an increasingly hostile white world implementing increasingly stringent rules against them in the form either of laws or of social pressures, they themselves moved from a position of basic sympathy with the white world to one of guarded antagonism.”36 I find these restrictions coming into play much earlier, notably in the early 1800s, though admittedly the one-drop rule according to a strict line of hypodescent did not solidify until later.

More recent academic work has enhanced our historical understanding of the racial binary. Research by Martha Hodes, Joshua D. Rothman, and others largely address perceptions of racial mixture in their scholarship. Hodes, in *White Women, Black Men: Illicit Sex in the 19th-Century South* (1997), and Rothman, in *Notorious in Neighborhood: Sex and Families across the Color Line in Virginia, 1787-1861* (2003), both primarily focus on the prevalence and lack of punishment that interracial relationships faced in the antebellum period. Rothman follows the stories of several mixed-heritage families, and devotes a chapter solely to people of mixed ancestry. In this section, he notes: “Whiteness did not always require the mythical ‘purity’ that it would later entail.”37 Rothman is keenly aware that the one-drop rule was not in play during this period and clearly shows this in *Notorious in the Neighborhood*. One of his first illustrations of Virginia intermixture is the relationship of Thomas Jefferson and Sally Hemings, which many historians have written on over the years. Without doubt, Annette Gordon-Reed’s work in this area is paramount and *The Hemingses of Monticello: An American Family* is the most extensive scholarship done on any one family of mixed ancestry. Though these are valuable contributions to the historiography, they focus primarily in the nineteenth century. One of the contributions of my work is its chronological sweep. It treats this history from the earliest days of English colonial settlement through 1830, when state legislation and common practice appear to have strengthened hypodescent ideology to the point of laying the foundation for the one-drop rule.

Works on the colonial period that touch on people of mixed ancestry, and have sustained essential parts of this project, include Kathleen M. Brown’s *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (1996) and Kirsten Fischer’s *Suspect Relations: Race, Class, and Resistance in Colonial North Carolina* (2001). Both Brown and Fischer provide compelling evidence of mulatto children born to European servant women in the colonial period, and provide a thorough analysis of the intricacies of how indentures helped maintain people of mixed descent in extended servitude outside of slavery. Colonial era scholarship is especially difficult, which is why I am indebted to this research along with foundational work done by Edmund S. Morgan in *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (1975) and in Ira Berlin’s *Many Thousands Gone: The First Two Centuries of Slavery in North America* (1998). Morgan’s classic work still provides crucial understandings of European and African labor and the emergence of seventeenth-century slavery.

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36 Ibid, 62.
in colonial Virginia. Though Berlin’s *Many Thousands Gone* is largely a work of synthesis, the information provided in this opus and the chronology of African settlement in North America were particularly useful in understanding the development of hypodescent ideology.

Additionally, *Fathers of Conscience: Mixed-Race Inheritance in the Antebellum South* (2009), by Bernie D. Jones, provides a solid view into the ways master-fathers of European descent found creative methods to free their children and leave them freedom and material inheritances. Jones’ work reveals flaws with Eva Saks claims of inheritance in the article “Representing Miscegenation Law” (1988). Saks argues that state officials passed laws preventing interracial mixture to hinder the exchange of property from fathers of European descent to their mixed-heritage offspring. However, my work shows that this was definitely not the main concern of legislators who enacted the first laws of this nature. Instead, authorities sought to prevent intermixture between people of European descent with those of African or Native American ancestry, especially from the colonial era through the early national period. Colonial officials who passed the original laws penalizing ethnoracial mixture did so largely to impede relationships between African men and European women. During slavery, children of these couples would be the only mixed-heritage descendants able to legally inherit property, and there was generally not much to inherit because their parents were predominantly African slaves and European servants. Saks looks at cases from the mid-nineteenth century into the twentieth century and most of her discussion focuses on anti-miscegenation laws established after the Civil War. Though Saks pays little attention to the earlier periods, there are differences between the kinds of laws that she analyzes and those that targeted racial mixing in the antebellum period and prohibited intermixture in the colonial era.  

Most of the cases where people of mixed ancestry go to court in attempts to be labeled “white” take place from the 1830s onward. This period is where Ariela J. Gross focuses in *What Blood Won’t Tell: A History of Race on Trial in America* (2008). Gross acknowledges a transition during this time “from race as documented ancestry to race as essential identity,” and places this shift squarely on the rise of U.S. cotton production, the strengthening of slavery, and the myriad of changes the nation goes through as a result. I pay particular attention to many of these same factors in discussing the “changeover” (to borrow Williamson’s term) of European Americans perceiving Mulattoes as essentially Negro, in terms of being consider fully “black.” Lastly, in some of his cliometrics work, economist Howard Bodenhorn discusses what he calls the “mulatto advantage” in looking at nineteenth-century free people of color registries in antebellum Virginia. His forthcoming book *The Complexion Gap: The Economic Consequences of Race and Mixed Race in the Nineteenth-Century South* seeks to prove the daily advantages people of partial African descent had over those of full African heritage in the antebellum era. This forthcoming study supports my arguments, which reach back into earlier periods. Certainly, what Bodenhorn calls the “mulatto advantage” and what I call “mulatto privilege” are comparable. 

While numerous authors covering ideas of racial mixture have favored the late antebellum period through the twentieth century, I start with the seventeenth century and follow the historical trajectory of these ideas until 1830, so we are better able to understand how these notions change over time.

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Where some scholarship has focused on a particular family of mixed heritage, such as the Hemingses of Monticello, or relies on a microcosm as a point of analysis, like Notorious in the Neighborhood, I cover a larger regional scope of the southeast Atlantic Coast, paying close attention to change over time and place, to expand on our understanding of how notions of hypodescent develop over time into a pervasive ideology. I argue that mulatto privilege was not experienced equally among all those of mixed ancestry, yet was experienced differentially depending on a number of factors. Delineating and analyzing these factors is the object of the following work. This study provides a thorough exploration of mixed-heritage peoples, including causes of the color (and racial) hierarchy in slavery, various concessions found among the enslaved, and varying degrees of freedom within free African American communities. This work also provides a thorough analysis of colonial and state legislation concerning people of mixed ancestry and slavery, from the mid-1600s through 1830, as a way to better understand how European Americans structured racial hierarchy and placed mixed-heritage peoples within that racial order.

A Note on Racial Terminology

My work seeks to use accurate and appropriate language to describe the lives of mixed-heritage peoples. Each and every time I use words associated with ideas of race and racial mixture, perceptions of racialized groups, and racialized experiences, they are meant to capture just that: ideas, perceptions, and experiences. Many historians use the terms “white” and “black” far too loosely without addressing what these terms actually meant during the times they write about, which helps to both legitimize and reify these racial categories. Those of European descent in colonial North America did not begin to refer to themselves as “white” until after around 1680. The word “black” as applied to those of African lineage did not come into wide use until the eighteenth century, and “negro” was used more widely over the whole course of slavery in colonial North America and in the early United States.40

Also, who was considered “black” and “white” change over time, making it extremely problematic when using these terms today to describe people in centuries past. For the greater part of the seventeenth century, people of European descent in colonial North America would not have been labeled “white.” From the colonial period into the nineteenth century, many people of mixed ethnорacial ancestry would not have been called “black” and would not have personally identified as such. By the era of Jim Crow segregation in the twentieth century, someone of mixed African and European ancestry whose outward appearance differed little from many European Americans could still be considered “black.” Today, in the twenty-first century, the colloquial use of these racial terms and notions surrounding them continue to change, as ideas of race are constantly in flux and are reconstituted through our everyday use of racial language.41

It is my hope that in addressing the idea of racial mixture and people of mixed heritage that I am not reifying racial terms. Therefore, I place the words “black” and “white” in quotation marks throughout my work to avoid confusing contemporary use of these terms with historical definitions. For similar reasons, “coloured” is typically encased within quotations as it appears almost exclusively from cited materials. Interestingly, the phrase “people of color” was often used in the past in much the same way it is used today: to describe anyone of visibly discernable non-European descent. As a result, I openly use people of color and persons of color outside of

40 Jordan, White Over Black, 95. Here,
quotations in later chapters when the terminology comes into wide use in the nineteenth century. I use these terms in later chapters that discuss the time period in which they were used, and have decided to apply these words to people who were generally understood to be “non-white” unless it appeared differently in the sources. At several points throughout, I discuss in detail where the meaning of racial terminology was conflated, contested, or debated in the historical record.

Finally, I make no attempt or claim to bring the word “mulatto” back into common nomenclature. This term is being used throughout only in its historical context, the same with Negro. I am also sensitive to the early-twentieth century struggle by African Americans who fought for the capitalization of Negro. However, to avoid extraneous use of quotation marks, I have left these two terms outside of quotes unless they are directly cited in historical documents. I will also capitalize both Negro and Mulatto throughout when used as proper nouns, though in the sources they appear variously in the capitalized and diminutive forms. Again, I use the noun Mulatto to describe those of mixed African, European, and sometimes Native American ancestry, though it has been noted in places that individuals from other ethnoracial groups could be labeled under the term. Many times, Mulattoes were referred to separately from Negroes, mostly in law. However, it is clear that people used the word Negro to encapsulate both those of full and partial African descent. During slavery, the word “mulatto” was often used as a descriptive term to designate a sub-category of Negro along the lines of hypodescent. For the sake of simplicity, I will use Mulatto to designate one of partial African descent and Negro to denote those of full African heredity.

My references to people of partial and full African or European descent is also based on social perceptions. Therefore, this phrasing will be used in regards to the belief that someone’s regional ancestry originated from either sub-Saharan Africa or Europe prior to their ancestors migrating to North America. Certainly, individual observers would have made these designations based on phenotype, rather than fact. Someone who is full European is meant to classify one who is viewed as being able to trace their ancestral origins only to Europe, while full African is meant to signify those who were perceived to have complete or predominant sub-Saharan African ancestry through the trans-Atlantic slave trade. These labels are subjective because they are being applied to how society viewed the phenotype or outside appearance of certain individuals. Though my labels are imperfect, my intentions are to more accurately describe people by using their regional ancestry versus relying on the social fiction of racial classifications. I recognize that science now holds that all of humanity – including “black,” “white,” and everything in-between – originate out of the African continent, technically making all of us of African descent.
Chapter 1
Seventeenth-Century Hypodescent Law in the Colonial Chesapeake Bay

Manuel is one of the first people of mixed African and European heritage to be recorded in English colonial North America. In October of 1666, Englishman William Whittacre petitioned Virginia’s governor William Berkeley and the colonial council for recompense for the “Mulata named Manuel.” Whittacre purchased Manuel “as a slave for Ever” from Thomas Bushrod and sought £25 sterling silver from the public levy – likely the amount Whittacre paid to Bushrod. This was not the first time Manuel had exchanged hands, as Bushrod had previously purchased him from the estate of William Smith, an early settler in the Chesapeake Bay colony of Virginia. The English planters who bought and sold Manuel intended to keep him in bondage for life, as his labor added to the success of their tobacco production. Though he had several masters, Manuel believed himself to be free, for in September 1664 he went before the Virginia court declaring himself to be a servant, not a slave. The General Assembly agreed. They judged him “to serve as other Christian Servants Do” and set him free the following year. In September 1665, Manuel gained his liberty and Whittacre lost a slave.¹

William Whittacre also lost his reimbursement suit. The General Assembly “Ejected the petition” of the English colonist because they could not think of “any Reason why the Publick should be answerable” to him for compensation. The justices found that Whittacre inadvertently bought Manuel as a slave, that the court had rightly declared Manuel a servant, and that the people were not responsible “for a Judgment Given when Justly grounded as that Order was.” Even though this young man of African and European descent moved among three masters in bondage, his adherence to the Christian faith earned him freedom.² In the mid-1660s, Virginia law stated that Christians who had not entered into formal contracts of indenture would be held as servants until they reached twenty-four years old.³ Early colonial Virginia legislation also mandated that servants go before the county court to be issued a “certificate of freedome” after completing their time. This certificate would allow former servants to seek legal employment by others in the future.⁴

Manuel seems to have either been privy to these laws or he was at least aware that Whittacre planned to hold him past his legal term of indenture. In either case, Manuel made his situation known before the court in 1664 so that he would be recognized as a servant by the end of his term of service. By the end of 1665 he had registered himself as a free laborer and began his new life as a free man. It appears that officials treated the “Mulata named Manuel” no differently than any other servant of full European ancestry. However, after the 1660s all people of blended African and European descent would not be as fortunate as Manuel, for legal statutes in the following decades began to strengthen around solidifying notions of race, and people of mixed ancestry were continually grouped with their African ancestors in bondage.⁵

⁴ Colonial authorities passed these measures to prevent planters from employing runaway servants. Hening, SALV I, 115-116.
⁵ Library of Congress, “The Bland Manuscript,” 232. An earlier colonial Virginia “mulatto” example appears rather cryptically as an annotation attached to the date March 1655, simply stating: “Mulatto held to be a slave and appeal taken.” However, it is not clear when this note was made, whom the case refers to, or how the case was decided. If anything, this shows that those of
In seventeenth-century North America, social interactions took place within a protoracial society, where racial ideology was in its earliest stages of development in the English colonies. Over the first several decades of English colonization, Africans, Europeans, and Native Americans in the Chesapeake did not view themselves by the strict racial terms that would later come to mark people in the following two centuries in colonial North America and the United States. Since both African slaves and European servants occupied the lowest tiers of society, they mingled freely and their peers did not judge them harshly for joining with others outside their regional ancestry groups. Over time, colonial elites labeled those who formed relationships or engaged in sexual intimacy across ethnoracial boundaries as participating in “abominable mixture.” The master class came to view children born to these couples in a negative light as well. People of mixed heritage complicated the emerging racial order in the latter seventeenth century, as the master class shifted to a preference for African slave labor. It is no coincidence that Chesapeake authorities passed the first prohibitions against interracial couplings, along with laws that punished mixed-heritage offspring, at the exact time that the planter elite sought to solidify the labor status of its workers based on racial background. By the late seventeenth century, characterizations of mixed-heritage peoples as universally illegitimate or a “spurious issue” were influenced by the legal context under which they were conceived—relationships that had been made criminal. The same laws that criminalized both intermixture and people of blended ancestry helped establish Chesapeake racial ideology. Indeed, Maryland legislation prohibiting ethnoracial mixture first used the term “white” to define those of European descent in 1681, and laws afterwards began to punish children of mixed ethnoracial ancestry. Thus, colonial officials in the late seventeenth-century Chesapeake promoted the creation of monoracial categories through laws to prevent ethnoracial mixture, and the illicit portrayals of these relationships, along with further legislative action, cast people of blended heritage in a negative light and forced them into a subjugated status.

The following chapter will explore how English elites first conceptualized people of mixed heritage through seventeenth-century colonial law in North America. Within the setting of the Chesapeake Bay, people came together from three general regions of the globe: Africa, Europe, and North America. Various group identities were more distinct than these three continents suggest, as people identified less with the broad categories of African, European, and Native American, and more with local tribal and ethnic regional affiliations (e.g., Powhatan, English, Igbo, etc.). Everyone who came to reside in North America in the seventeenth century had previously drawn distinctions between groups of people based on gender, class standing, and religious beliefs. Although these understandings continued to develop in various ways throughout the century, ethnoracial classifications gained the largest new traction as racial ideology took shape in the developing North American colonies. By the late 1600s, people were systematically categorized under the three main ethnoracial labels of “negro,” “white,” and “Indian.” When a person identified as belonging to one ethnoracial group became intimately

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mixed African and European descent were questionably held in slavery. The “Mulata named Manuel” represents the earliest case where the outcome is certain. H. R. McIlwaine, ed., *Minutes of the Council and General Court of Colonial Virginia, 1622-1632, 1670-1676* (Richmond: The Colonial Press, Everett Waddy Co., 1924), 504.


7 The term ethnoracial is used here instead of simply racial because a number of cultural assumptions were attached to a person’s regional ancestry or group origins, which were tied to race, thus making it difficult to distinguish between ethnicity and race.
connected with someone from a disparate group, both people were seen as associating with someone outside their own group. The mixed-heritage offspring who resulted from these intergroup relationships complicated ideas of distinct ethnoracial classifications, even as these children’s existence helped lawmakers further build and establish racial categories.

Compared to other emerging English colonies in New England and the Carolinian Lowcountry, the greatest amount of seventeenth-century ethnoracial mixture occurred in the Chesapeake Bay colonies of Virginia and Maryland.\(^8\) The two Chesapeake colonies resembled each other in economic production under tobacco and cultural background of its immigrants. The large intermixture in this region stemmed from an ethnically diverse labor market, which included preexisting Native Americans coupled with a steady flow of English and other European immigrant settlement, followed by sparse African importation into the Chesapeake Bay. As disease, war, and land encroachment largely pushed out Native Americans from the area, those of European and African ancestry built the burgeoning plantation economy. The English planter class used their wealth, influence, and backing by the English Crown to emerge as the elite group that subjugated both servants and slaves. The master class further used legislation to establish its authority at the top of the colonial hierarchy and subordinated poor Europeans, along with Africans and Native Americans, on the lower levels of the social order. African, and sometimes Indigenous, slaves as well as European indentured servants largely shared the same conditions among the lowest ranks of society during this early colonial period. These lower classes occupied similar public and private social spaces, worked together and lived together in the same quarters.\(^9\)

Sexual intermingling among these ethnoracial groups was commonplace and inevitable, especially in the seventeenth century. This type of mixture and the ethnically blended children who resulted from these relationships are the focus point for this chapter. What did mixture mean when colonial authorities legally applying the idea to certain interactions, and how did this help shape perceptions of mixed-heritage people in the seventeenth-century Chesapeake? These questions are naturally connected, for intermarriage and sex across group boundaries influenced what people thought about people of mixed ancestry, even before racial ideology became widely engrained in larger colonial society. It is clear that discussions around ethnoracial mixture were present as Chesapeake society moved from a protoracial society to a new racial order under slavery. In the latter seventeenth century, colonial authorities in Virginia and Maryland provided the language and concepts for interracial mixture, which drew lines of difference around monoracial groups, identified mixture between these groups, and provided a foundation for mixed-race ideology that other colonial followed into the next century. Indeed, ideas surrounding mixture between groups of people in the Chesapeake had a symbiotic relationship with the burgeoning racial order that developed more strongly under the institution of African slavery.

This development in racial thinking was a historical process that needs to be understood as a progression of converging notions that took place over an extended period of time. Tracing out the progression of mixed-race ideology throughout the seventeenth century is of critical importance because these ideas set the stage for future thinking in other colonies and eventually the United States. Arguably, these beliefs largely coalesced around the notion of hypodescent: whereby a person presumed to have more than one ethnoracial heritage is relegated to the

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position of their socially inferior parentage. Hypodescent was applied most heavily to those of African ancestry, who were eventually termed *mulatto*.\(^\text{10}\) However, while this became the predominant mixed-race ideology on the continent, sources reveal that not everyone readily accepted this belief in the seventeenth-century Chesapeake Bay.\(^\text{11}\)

In order to understand how people first thought about racial mixture in the colonial era, we must first take into consideration a few key points. First, while there was no single belief about mixture that permeated all of society, there were prevalent notions than ran through certain segments of the population. Second, there was change over time in regards to how people viewed ethnoracial difference and mixing. Colonists in the seventeenth-century thought about race and intermixture in different ways than those in following centuries. This evolution is often missed is discussions about U.S. racial mixture and will be dealt with at length here. Third, class structure weighed heavily in how mixing and people of mixed ancestry were thought about in society. In comparison with the master class, the lower classes were more likely to accept intimate relationships that spanned perceived racial divides. They were also more open to and more often chose partners with different ethnoracial ancestries. Conversely, elites were much more likely to reject perceived mixture and define it as a problem. They punished those who engaged in mixture, along with the offspring who resulted from such unions, to maintain the social order and their standing within society.

However, this did not mean that elite Europeans did not participate in mixing with Africans and Native Americans. Upper class participation in long-term mixed relationships took place less often than lower class ethnoracial mixture. While wealthy European men engaged in sexual intimacy with African and Indigenous women, these relationships were less likely to be consensual. Unions among the lower tiers of society resulted in a number of long-term mixed couples that established families headed largely by African men and European women. These relationships were commonly found in the Chesapeake and the laws enacted in both Virginia and Maryland show that elites increasingly viewed them as a threat. The children of mixed heritage resulting from these unions will be a major theme here and in subsequent chapters. English patriarchal society structured perceptions of mixed offspring through legislation. Male authority limited female autonomy by legally restricting European women’s control over their bodies and choice of marriage partner. These gendered power relationships were integral to the development of racial thought in the Chesapeake, which often hinged on ideas concerning intermixture. Legal restrictions against intermixture bolstered ideas of monoracial categories and these racial categories conversely dominated ideas of mixed-heritage people.\(^\text{12}\)

**Native American and English Intermixture**

Before the first Jamestown settlers stepped ashore the Chesapeake coastline in 1607 stories had made it across the Atlantic and circulated back to England about the first settlers who had explored North America during the late sixteenth century.\(^\text{13}\) In the 1605 play *Eastward Ho!*, one story is recounted about English men who had emigrated to the North American wilderness. It was rumored that Englishmen stranded in the late 1500s “have married with the Indians.”

\(^{10}\) *Mulatto* is a historically constructed racial term that will be used here throughout in the context of that history.


\(^{13}\) Though the first English settlement attempt was on Roanoke Island in the 1580s, permanent settlement in this area failed.
children born to Native American women were spoken of as being English.\textsuperscript{14} While most English in the early seventeenth century believed that Indigenous Americans differed in culture, they still considered Native Americans essentially the same in their natural makeup. After the colonial town of Jamestown was founded, relationships between Native Americans and Europeans took place within the first generation of contact in the burgeoning Virginian colony, though marriages occurred less often.\textsuperscript{15}

Though the English could intermarry with Native Americans and produce children that were viewed as being English, the settlers who first took part in these exogamous relationships did so cautiously. Englishman John Rolfe expressed that he had reservations prior to marrying the Powhatan woman Matoaka, known as Pocahontas in her youth and later by her Christian name Rebecca. Reflecting back on his feelings, Rolfe wrote that he was aware “of the heauie displeasure which almightie God conceived against the sonnes of Levie and Israel for marrying strange wives.” The fear of marrying into a foreign tribe forced him to contemplate the genuineness of his feelings, “to be in love with one whose education hath bin rude, her manners barbarous, her generation accursed, and so discrepant in all nurtriture from my selfe.” It was clear that Rolfe’s concerns about his marriage to Matoaka stemmed from the common English perception that the Powhatan and other Indigenous peoples were uncivilized, with the main cultural incompatibility being religion.\textsuperscript{16} Rolfe’s “private controversie” was resolved once he concluded that his feelings were caused by the “wicked instigations” of the devil. He was reassured that his decision was just after “fervent praiers” gave him peace that his union with Matoaka was acceptable before God.\textsuperscript{17}

Still, Rolfe was pleased that his teenage bride Matoaka seemed to be leaving her Powhatan culture behind for the Anglicized lifestyle of Rebecca – the name given to her after Christian conversion. After their marriage in 1614, she further acculturated to an English settler lifestyle. The couple lived on Rolfe’s plantation for the following two years and then traveled to England in 1616. Rebecca became sick and died just as she began the journey home to the Chesapeake. John and Rebecca Rolfe’s marriage shows that as long as Native American women were willing to convert to the English culture of their husbands, the Anglo-American community could accept them. This was often the case with their children as well. Prior to her death, Rebecca bore Rolfe a son named Thomas on January 30, 1615. The young boy survived his mother and was brought up largely under his father’s culture. Thomas Rolfe went on to live as an Englishman in North America and continued a line of posterity well into future generations of Virginian families. Though the English looked at Indigenous peoples as culturally inferior, Thomas was capable of fully assimilating and effectively became an Englishman. If mixed European-Native American children could be made to give up their traditional ways of life and convert to European mores and values, they could be accepted within English colonial society. It was not the same case for mixed African-European children.\textsuperscript{18}

Matoaka/Rebecca and John Rolfe’s relationship shows conditional acceptance of English intermixture with Indigenous peoples in the Virginian colony, which was further complicated after the first Africans were formally brought into Jamestown. In 1619, John Rolfe purchased

\begin{itemize}
\item \textsuperscript{15} Thomas F. Gossett, \textit{Race: The History of an Idea in America} (Dallas: Southern Methodist University Press, 1963), 18.
\item \textsuperscript{16} “Indigenous peoples” will be used throughout to refer to those first established groups of people of North America.
\item \textsuperscript{17} Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 63.
\end{itemize}
“twenty negars” from a Dutch ship as laborers who assisted with tobacco production in the growing colonial settlement. The presence of Africans in the colony brought another ethnic group, possibly Kimbundu speaking peoples from the Kingdom of Ndongo in Angola, West Africa. The introduction of this third ethnoracial group, who lost their ethnic labels in the colonies and simply became identified as “negro,” led to a shift in the discourse surrounding mixture. We know little of the first Africans brought into the Jamestown colony, though we can make some general comparisons between early English-Indigenous and English-African interactions to help shed light on how mixture was later viewed in colonial society. For example, the English initially encountered Native Americans on more equal footing in terms of power. While the English may have seen Indigenous groups as culturally inferior, they quickly realized the strength groups like the Powhatan had over others in the Chesapeake region. Africans, on the other hand, were almost always first seen in a vulnerable, relatively powerless position, as they largely came to the Americas in chains. Encountering certain groups in freedom and others in bondage played a key role in English perceptions. Generally, European settlers recognized Indigenous peoples as a free people compared to Africans who entered North America as slaves. Though some of the first Africans brought into the Chesapeake gained their freedom, were treated as free, and went on to build successful lives for themselves and their families within settler society, most were still likely viewed as a subjugated group reflecting how they were first introduced into the colony.

**Ethnoracial Mixture in a Protoracial Society**

In the first half of the seventeenth century, few laws actively addressed slavery or the lives of Africans and Native Americans. In the 1660s, as the shift to African slavery began, English colonial authorities gradually introduced legislation that constrained the rights of people held in terms of servitude and slavery. Over the rest of the century, further restrictions placed on African and Indigenous peoples, along with poor Europeans, began to legally erode their autonomy and made it increasingly difficult for them to maneuver freely in English society. Some of first laws in Virginia and Maryland outlining racial difference were passed in attempts to prohibit Africans and Native Americans from marriage and sexual relations with English and other European settlers. This legislation affected all groups involved, helped to establish monoracial categories, and moved the Chesapeake from a protoracial to a racial society. This shift corresponds with a time when racial identities are formed. “Negro” became synonymous with slave, and Europeans began to identify themselves as “white” in law. These legal statutes also reveal how different segments of society felt about intermixture between various ethnoracial groups as they worked to influence others on how to view mixture and mixed-heritage peoples.

The first evidence of sex between Africans and Europeans appears in legal documentation from 1630, where Virginian authorities sentenced Hugh Davis, presumably an English settler, to be whipped “before an assembly of Negroes and others for abusing himself to the dishonor of God and shame of Christians.” Davis received this punishment because he had

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been caught “defiling his body in lying with a negro.” It cannot definitively be stated that this penalty specifically targeted heterosexual intermixture. English laws in effect at the time were based on a strict code of Christian conduct and this was a common practice for those found guilty of fornication or homosexuality in the early colonies. Also, during the first several centuries of English settlement in North America there were no laws that specifically prohibited marriages among Africans, Europeans, and Native Americans. Though some point out that the word “defile” used in the Davis case may have been uncommonly strong for its time, it is not clear that Davis’ crime was any more grievous because his partner was African. If Davis had had sex with a free African woman whom he had married, their actions would not have been a crime under English law.22

While Hugh Davis was chastised for his actions, there did not appear to be any punishment for the person with whom he had sex. A decade later in 1640, a “negroe woman” in a similar situation was not as fortunate. The court sentenced her to be whipped after she became pregnant by Robert Sweet. The Englishman Sweet was forced “to do penance in church according to the laws of England.” Again, the crime of extramarital sex was religious in nature, but in this case the Virginia Assembly also punished the African woman for the crime of bastardy. We do not know if the woman was held in bondage and it is difficult to conclude whether or not her slave status would have influenced her punishment. While the court’s judgment may seem harsh, it was in line with other cases of fornication and bastardy at the time for English women. Therefore, it cannot be said with certainty that this example outwardly shows the act of interracial sex to be unlawful in terms of customary law at the time. Additionally, we see that the mixed-heritage child was not assigned any punishment, something that would change in the future.23

As settler living conditions became healthier in the Chesapeake, both African and European populations began to stabilize and increase their populations around the mid-seventeenth century. After this time, evidence shows that intimate relationships between Africans, Europeans, and Native Americans were a regular occurrence in the area. There are a number of cases where African men openly married women of European descent. In Northampton County, Virginia, five out of the ten African men who headed households between the 1664 and 1677 were married to English women. There are several documented cases of African women finding English husbands as well. Seventeenth-century marriages between Africans and Europeans reveal that these consensual relationships were not uncommon and that for the greater part of the century they went unrestricted. Looking through recorded marriages, a trend appears, where intermarriages seem to have occurred more often between African men and European women than other mixed couples. Considering the intersections of race, class, and gender may help explain why these pairings occurred with more regularity.24

Historian Kathleen Brown points out that men who married African women in colonial Virginia would have taken on an economic liability because the Commonwealth of Virginia attached an additional tithe or tax to “negro women at the age of sixteen years.” These women, their owners, or their husbands were assessed this tax beginning in 1643. African women, who were usually enslaved, engaged in the same economic productivity of men in the tobacco fields. Able-bodied men over sixteen years old had already been taxed in each household since the

22 Hening, SALV I, 146; Jordan, White Over Black, 78; Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 195.
23 Hening, SALV I, 552; Jordan, White Over Black, 79.
1620s. After Virginia attached this tax to African women, there would have been an economic deterrent for men to make them wives. This was exemplified in one of the first free African families to have accumulated wealth in the Chesapeake, headed by Anthony Johnson. After the 1630s, Johnson and his family accumulated several hundred acres of land on Virginia’s Eastern Shore. The family grew tobacco, and eventually owned both African slaves and employed European indentured servants as well. Johnson appears in court records requesting that the tithe be lifted from his wife and daughters, who were also of African descent. Though he won his request, for other couples of lower economic stature, the tithe placed on free African women became a tax liability and may have incentivized some African men to marry European women.25

The lower status of Africans as slaves also worked against African women when considering marriage partners. This would have increasingly been the case as laws further limited the rights of Africans. The restrictions placed on African women as marriage partners could affect a family’s finances, legal protection in court, and the chance that children might be deemed free. Perhaps for these reasons, we see the Johnson family intermarrying with Europeans in future generations. Anthony Johnson’s son, Richard, married a woman named Susan, who was of European descent. Susan gave birth to four children of mixed descent in the mid-seventeenth century. In the 1680s, one of their sons also married a woman identified as European. There are numerous cases of other mixed ethnoracial couples legally marrying during this time period. These relationships reflected specific intersections of race, gender and class, most often leaning towards free African men marrying women of European descent.26

In 1662, Virginia’s General Assembly declared that all “Women servants whose common employments is working in the ground” would be held as tithable. While this legislation put African women’s labor on equal footing with their European and Indigenous counterparts, another statute in the same series of legislation became one of the first set of slave laws in English colonial history. The title of Virginia’s 1662 Act XII captures the main thrust of the bill: “Negro women’s children to serve according to the condition of the mother.” The legislation followed: “WHEREAS some doubts have arisen whether children got by any Englishman upon a negro woman should be slave or free, Be it therefore enacted and declared by this present grand assembly, that all children borne in this country shalbe held bond or free only according to the condition of the mother.” This statute shaped the next two hundred years of slavery in North America and the United States by providing the rule that the status of the child would follow that of the mother.27

This law, and others that followed, formally enacted Roman slave law for Africans under the institution of slavery in North America, according to partus sequitur ventrem – that which is born follows the womb.28 This law bound future generations of female slave descendants regardless of their paternal ancestry. Though it is not clear how many Africans sought to gain their freedom prior to the statute being passed, it appears that the Virginian legislature simply followed what was already common practice in slavery throughout the Western Hemisphere. Prior to 1662, colonies throughout the wider Americas were assigning slave status to children of

26 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 126.
28 Martha Hodes defines partus sequitur ventrem as “progeny follows the womb.” Martha Hodes, White Women, Black Men: Illicit Sex in the Nineteenth-Century South (New Haven, Connecticut: Yale University Press, 1997), 30.
slave mothers independent of the father’s background. However, Virginia’s Act XII went a step further than custom by chastising European men and women who had sexual affairs with Africans, legislating “that if any christian shall commit fornication with a negro man or woman, hee or shee soe offending shall pay double the ffines imposed by the former act.” While this was not the first law criminalizing sex in the colonies, it was the first to openly draw a distinction between intragroup and intergroup sex by more severely punishing those who took part in the latter.29

Virginia’s Act XII of 1662 may appear to be strictly racial, yet Virginia’s assembly put limits on Europeans engaging in sexual acts with Africans in the latter part of the century for a few reasons that were not explicitly connected to race. First, all sex taking place outside the bounds of marriage was considered illicit. Second, colonial authorities did not consider sex and marriage between Christians and non-Christians permissible. The main variable was religion, not race, for the law stated that “any Christian” who committed “fornication with a negro man or woman” was made to pay double the fines, or a thousand pounds of tobacco. English law described those of African descent as “heathenish, idolatrous, [and] pagan” because many were Muslim or of “mahometan parentage.” Other Africans practiced non-Christian traditional beliefs. Therefore, the English elite did not view Africans as marriageable partners largely for religious reasons.30

The children who resulted from these relationships were another major area of anxiety, though early colonial lawmakers did not directly address the racial status of mixed offspring. Instead, they questioned the social position of those who came from liaisons between Africans and Europeans. Virginian authorities admitted that “doubts have arisen” concerning the status of children born to African women and English men. These “doubts” suggest that sex occurred regularly between the two groups by the mid-seventeenth century and that uncertainty surrounded the proper position of the mixed-heritage offspring. The colonial legislature sought to resolve these doubts by proclaiming that children of enslaved mothers would be held as slaves in perpetuity. As most African women were held in slavery at the time, this pronouncement would assign most subsequent mixed offspring to lifelong bondage, which would encourage the public to see mixed-heritage children generally as slaves.31 However, it is also evident that partus sequitur ventrem law only bound children born to enslaved African mothers, leaving room for mixed children of free African or European mothers to go free. As only certain segments of the mixed population would be held in slavery, the status of mixed-heritage peoples remained contested and was repeatedly addressed through law in following decades.

Virginia’s Act XII of 1662 was a formal policy capable of influencing perceptions of intermixture and people of mixed African and European ancestry. It also likely influenced the colonial legislatures in neighboring Maryland to pass similar laws that placed people of African descent within the confines of bondage. Only two years later, Maryland followed Virginia’s lead with its own “Act Concerning Negroes & other Slaves” in 1664. While Virginia’s Act XII punished the act of sex between Africans and Europeans, Maryland’s legislation only punished intermarriage. Together, these two colonial laws moved Chesapeake society down the road to a

29 Hening, SALV II, 170.
30 Hening, SALV II, 114-115, 490. At this time, the Spanish and Portuguese had baptized many Africans before they were sold into slavery in the Americas. Many Creole Africans had also adopted the Christian faith. Still, early English colonial law focused on Africans’ ancestral origins being outside “Christian nations.” Jordan, White Over Black, 93-94.
31 Hening, SALV II, 170. As it seems the custom at this time for children to follow the condition of their mothers, and most African women were enslaved, African men seeking freedom for their children may have sought free women of non-African descent as marriage partners to ensure their children’s freedom.
racialized slave system. Still, careful distinctions must be understood between who made these
laws and what their motives were, as well as who was expected to abide by these mandates and
whether or not they followed them. In the case of Maryland’s 1664 legislation, it is apparent that
the planter class wanted to tighten their grasp over African slave labor, as the high court declared, “That all negroes or other slaves to bee hereafter imported into the Province shall serve
Durante Vita” or during life. This statute also declared, “all Children born of any Negro or other
slave shall be Slaves as their ffathers were for the terme of their lives.” Here “Negro” and
“slave” are equated, and slave status was not inherited solely from the mother. Instead the status
of either an African mother or father could be a requisite for slavery. The reason Maryland
emphasized paternity in determining slavery was that lawmakers worried about African men
fathering children by English women. Governor and “Lord Proprietary” Cecilius Calvert
lamented in the bill that “freeborne English women forgetfull of their free Condicon and to the
disgrace of our Nation doe intermarry with Negro Slaves.” The elite were concerned about
intermixture among English women and African men within the legal bounds of Christian
marriage. In this case, Maryland officials legislated not solely against fornication or bastardy,
but against the notion that children of blended African and English ancestry would be held
legitimate under Christian marriage.32

Maryland’s legal statute of 1664 reveals that the lower classes were openly engaging in
sex and marriage across boundaries of “Nation.” Since many newly immigrated European
women were indentured servants, their daily interactions with African men led to sex, love, and
marriage. Prior to the 1660s, there were no laws to prevent these relationships from taking place
and perhaps little social stigma to dissuade people from marrying outside their ethnoracial group.
Though Maryland’s act of 1664 was instituted “for deterring such freeborne women from such
shamefull Matches,” this begs the question of how disgraceful these marriages were seen at the
time by the common people. It would appear that the upper class officials who created this
legislation took issue with these marriages because elites wanted to maintain tight control over
bound labor and guarantee broader English male access to English and other European women.
The average English man found it difficult to access available European women for marriage
since shortages of European immigrant women produced uneven sex ratios and a large number
of these newly arrived women were still held in servitude. English women had a wide choice of
marriage partners and seem to have formed unions with African men with enough consistency
for Maryland’s lawmakers to take direct action to prevent these marriages. On the ground,
among the lowest classes of servants and slaves, it was not unacceptable for Europeans and
Africans to choose each other as marriage partners. Therefore, there was no broad public shame
for European servant women who chose free or enslaved Africans as husbands. Perhaps
European women of lower economic stature believed that attaching themselves to African men,
who had already shown a strong work ethic in order to escape the bonds of slavery, could
provide them a path to improving their life and social status. For the most part, these
relationships appear to be consensual and loving, certainly another reason many of these couples
joined in matrimony. In these cases, people identified with their laboring group status more
strongly than developing notions of ethnoracial division, though social elites worked through the
law to swing these conceptions towards race.33

32 Maryland State Archives (MSA), William Hand Browne, ed., Proceedings and Acts of the General Assembley of Maryland,
inheritance laws at the time went through the paternal line.
33 MSA, Browne, PAGAM I, 533-534; John Gilbert McCurdy, Citizen Bachelors: Manhood and the Creation of the United States
Colonial authorities viewed the “issue” or children born to African and European couples as one of the main problems that stemmed from these relationships. Maryland’s act of 1664 noted that “divers suites may arise touching the Issue of such woemen” who married slaves and declared “all the Issue of such freeborne woemen soe married shall be Slaves as their fathers were.” This statute went further to ensure that mixed-heritage children born to a free European mothers would still be enslaved according to the condition of their African fathers. This legislation presents the first appearance of hypodescent ideology in colonial legal discourse, as it ignores partus sequiter ventrem and the notion that all children born to free European mothers would avoid slavery. This ordinance further declared that “whatsoever free borne woman shall inter marry with any slave from and after the Last day of this present Assembly shall Serve the master of such slave during the life of her husband.” This would effectively make women of European descent slaves. Notably, this would not be the case for European men who married African women, whether slave or free.

While it is not clear exactly how many European women fell into bondage under this legislation, it is certain that at least some of these women became slaves through their enslaved African husbands. Mostly likely, this law prevented these women from marrying African slave men, though women were more likely to marry free men who could provide for their family without restrictions on their labor regardless of ethnoracial background. Again, Maryland authorities passed this law in order to protect the availability of potential English brides, which seems to have been extended to other women of European heritage. It also meant that mixed people born to a free mother and slave father would become slaves, regardless of their parent’s ancestry. Though children of free women who had already married slave men would not be enslaved retroactively, mixed African-European couples who married before 1664 and had children after the law was passed would see their progeny sentenced to “serve the Masters of their Parents till they be Thirty yeares of age.” Here the law mandated that these mixed children would serve the “Masters of their Parents,” indicating that African slave fathers and European indentured mothers usually joined together under the same masters.34

The emerging colonial aristocracy in both Virginia and Maryland worried about the lower classes unifying fraternally and romantically. Early laws concerning sex, marriage, and mixture were means by which the ruling class attempted to regulate the lower classes, yet these laws also laid the groundwork for how people of mixed ancestry would be perceived more widely in later years. It is also particularly interesting that the first two slave statutes of the Chesapeake both worked to separate Africans and Europeans even as they directly highlighted their intermixture. Although early colonial legislation was not implemented regularly and systematically, these laws still began to shape perceptions of mixed-heritage people by forcing them into a world of servitude under their subjugated parentage. It is difficult to assess the exact influence legislation had at the time because there were problems with circulation and enforcement of statutes in the law books. It is also true that many people were generally unaware of laws in place at the time or simply chose to ignore them. There were further problems with enforcing existing colonial legislation. Even if some regional administrators knew about certain laws, sometimes there were few, if any, violators who were ever brought up on charges. Again, these early laws tell us more about the concerns of elite legislators and how they sought to regulate the lower tiers of society.

Sex and marriage between ethnoracial groups was deliberately stigmatized as way to regulate these relationships. In the 1660s, a pattern was thus being created that first helped create group boundaries and then attached social stigma to those who crossed them. The people who were the

34 MSA, Browne, PAGAM I, 533-534.
product of these relationships were similarly stigmatized in society; first as bastards and then as slaves, even when they were born within legitimate ethnically mixed marriages. As ethnoracial intermixture was marked as negative, the children born in these relationships were likewise stigmatized. People of mixed descent were increasingly ascribed a disgraceful position within colonial society, a position that they would largely hold for centuries to come.  

Up until 1672, no widespread legal terminology had been applied to people of mixed ancestry within colonial Chesapeake. Though fleeting references are found in other sources prior to this time, it was in 1670s that the word *mulatto* began to appear regularly in Virginia legislation, referring to those having both African and European ancestry, or sometimes to those of mixed European and Indigenous heritage. The term came to the English colonies via the Spanish and Portuguese around the beginning of the seventeenth century, just as the term *negro* had come during the mid-sixteenth century, and was probably used with increasing regularity in everyday English vernacular by around the mid-seventeenth century. While we see the word used sparingly, and spelled variously, throughout the colonial period in legal documentation from the mid-to-late 1600s, by the eighteenth century it appears uniformly across the English colonies of North America. In 1672, the first two laws in Virginia identifying “molattos” appeared. The first directed county officials to “take an account of all negro, molatto, and Indian children” in their districts and further required “masters and owners” to register these children within twelve months of their birth for tax purposes. Slaves were not taxable until they reached sixteen years of age, but this law made sure that officials recorded the ages of slaves so they knew when masters would have to begin regular tax payments.

The second law of 1672 fell under “An act for the apprehension and suppression of runaways, negroes, and slaves.” The act dictated that anyone could use violent force with “any negro, molatto, Indian slave, or servant for life” who resisted capture after having escaped. It also set the terms by which masters would be compensated in case a servant or slave of theirs was wounded or killed in the process of being apprehended. Though Mulattoes received their own title in these laws, it is not readily evident that they were actually thought about distinctly as a separate group next to Africans, Native Americans, or other people of European descent.

The question remains: How were Mulattoes viewed in relation to those of full African descent in the seventeenth-century Chesapeake? This central question requires a more complex answer than has been given in the previous historiography. Most historians have readily lumped Negroes and Mulattoes together, replicating how they are presented in most slave laws. Yet judging by legal statutes in Virginia at the time, every colonial authority did not automatically place all those of African descent under the same yoke of slavery. For example,

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38 Masters losing slaves or servants to injury or death would be compensated through public funds.
40 Joel Williamson lays out the general trajectory of Mulattoes in colonial North American and the early United States in *New People: Miscegenation and Mulattoes in the United States*, yet the focus of his book is largely after the mid-nineteenth century. In *White Over Black: American Attitudes Towards the Negro, 1550-1812*, Winthrop Jordan presents that there was not much difference in society’s treatment of Negroes and Mulattoes. Most other historians have followed this analysis.
41 *Mulatto* will be used throughout to denote someone of mixed African, European, or Native American ancestry. *Negro* will be used to identify some who is presumed to be on unmixed or full African descent. Neither term is completely accurate for a myriad of reasons, which is why they are being used within their historical context. These terms will be used inside quotations only when they are directly cited within primary sources.
Maryland authorities went back and forth on how to classify certain groups of Mulattoes. This can be seen in the 1664 act that enslaved European women who married African slaves. The law became problematic when it was actually applied and was subsequently overturned in 1681 with another “act concerning negroes and slaves.” This new legislation proclaimed that “any such free-born English, or white woman servant” that would “intermarry, or contract in matrimony with any slave… shall be, and is by this present act, absolutely discharged, manumitted and made free.” Lawmakers sought to prevent European women from entering perpetual bondage, and give them another chance to re-enter colonial society as suitable marriage partners, child-bearers, and mothers responsible for raising European children. Once these women took husbands of African or Indigenous heritage, they were no longer capable of fulfilling these roles in colonial society, yet what if their husbands died and they became widows? Surely, English legislatures in the colony struggled with condemning these women to slavery, especially if they might later remarried. This shows the shifting perceptions of labor and growing importance of race, as Europeans now defined themselves as “white.” It also indicates a positive turn for the legal status of mixed-heritage children, for it extended European mothers’ freedom to their children of blended ancestry.\(^\text{42}\)

Maryland’s act of 1681 was passed in direct response to the earlier law of 1664, which caused a peculiar problem. Masters had begun encouraging their indentured servant women of European descent to marry their African slaves as a way to keep the whole family in bondage for life. While it is not clear how widespread European women were enslaved based on marriage to enslaved African men, it at least took place to some extent, as the General Assembly noted the practice in revised legislation. Maryland’s assembly commented on a myriad of problems that arose when “free-born English, or white women, sometimes by the instigation, procurement or connivance of their masters, mistresses, or dames… do intermarr[y] with Negroes and slaves.” Indentured women were portrayed as particularly vulnerable to patriarchal power, being pressured by their masters into marrying African slaves in order to expand the owner’s wealth. This legislation was passed to protect women from lifelong bondage, as masters could no longer enslave their female servants. The perceived danger mixed ethnoracial marriages presented to society became less of a concern compared to enslaving “white woman.”\(^\text{43}\)

Colonial authorities not only worried about European women being taken advantage of by their masters, but they were also concerned about the mixed-heritage daughters and sons these women brought into the world. The 1681 legislation further described the legal difficulties that arose with these children, stating that “divers inconveniences, controversies, and suits may arise, touching the issue or children, of such free-born women aforesaid.” The servile status of these children was often in limbo, as the enslavement of “white women” stood in direct opposition to the social practice of *partus sequitur ventrem*, which would have normally made any offspring of European women free. The disconnection between social practice and official law is exposed here, as lawmakers admitted to the widespread confusion that surrounded mixed-heritage children born to European women. Similar to previous laws, the dilemma again concerned the legal status of the mixed offspring who resulted from these marriages. The assembly’s solution to prevent the uncertainty was to mandate that any “white woman servant… in matrimony with any slave” would no longer make the woman a slave, and in turn, “all children born of such free-born women… shall be free as the women so married as aforesaid.” European women could once again legally marry a slave without the fear that their children would be enslaved. This also

\(^\text{42}\) Harris and McHenry, *Maryland Reports*, 372-373.

\(^\text{43}\) Harris and McHenry, *Maryland Reports*, 372-373.
effectively made it possible for certain people of both African and European descent to have full legal rights under the English crown. The implications of this law were immense, especially for people of mixed heredity and their descendants who would now be guaranteed freedom. Additionally, Maryland’s act of 1681 presents an instance where hypodescent did not directly hold. Between 1664 and 1681, Maryland law held children of mixed descent to an extreme form of hypodescent, enslaving them based upon their fathers’ African ancestry. Before and after this period, those having enslaved African fathers and free European mothers were able to follow their maternal line to freedom and share the same rights as people of full European ancestry.44

Lastly, Maryland’s 1681 legislation presents the first use of the word “white” in colonial Chesapeake law, with the term correlating directly with “free-born English.” It is not surprising that notions of “whiteness” and national ancestry appear alongside fears of mixture, for these racial constructs were being created simultaneously. Authorities explicitly described mixed unions as a “disgrace not only of the English, but also of many other Christian nations.” Though words like “English” and “Christian” were not explicitly racial like “white,” we see them all being used side-by-side in this law. By adding “white” to these laws, colonial authorities were inscribing race upon certain groups of people who were already identifiable by national and religious terms. The significance of these labels was always contingent upon the time, place, and parties involved. This type of legislation allows us to view how the idea of race was legally constructed over time in colonial North America. Maryland’s 1681 statute reveals that terms such as “Christian,” “English,” “free-born,” and “white” were becoming synonymous in the late seventeenth-century Chesapeake colonies. The first three of these terms denote religion, nation, and social position respectively, all of which were beginning to coalesce under the final term “white” by the end of the century.45

**“Irish Nell” and “Negro Charles”**

Historian Martha Hodes points out that Maryland’s law of 1681 may have been written specifically in response to a marriage between an African slave named Charles and Irishwoman Eleanor Butler. Hodes writes that the Maryland couple was not so much looked down upon for the transgression of racial boundaries, but rather because the wedding of a servant to a slave complicated the social relationships between free and bound labor. When the couple married in 1681, the general public was not set against intimate relationships between Africans and Europeans, especially if they were sanctioned within the confines of a Christian marriage. Again, mixed marriages of this kind were more likely to occur at this time, when racial lines were not clearly drawn throughout all segments of society. Due to Maryland’s shifting laws on intermixture and slave status, Eleanor and her children’s freedom remained highly contested even a century after their wedding. In the eighteenth century, slaves claimed the Butlers as their ancestors and attempted to prove that they were descended from the couple in efforts to gain their freedom.46 Over the years, friends and family members repeated their love story in order to establish a link to the family’s freedom in court.47

Eleanor Butler was an Irish indentured servant contracted to serve the Catholic Englishman Charles Calvert, the Proprietary Governor of Maryland. Calvert’s official title under

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44 Colonial authorities were still upset by these marriages and found other ways to legislate against them. Masters of those involved in these marriages had to “forfeit the sum of ten thousand pounds of tobacco.” The same fine was imposed on any person who performed these marriage ceremonies. Harris and McHenry, _Maryland Reports_, 372-373.

45 Harris and McHenry, _Maryland Reports_, 372-373.

46 These court battles are showcased in Chapter 3.

47 Hodes, _White Women, Black Men_, 35.
the English Crown was Lord Baltimore and he was the 3rd Baron Baltimore behind his father and grandfather. Sometime before the summer of 1681, Eleanor, known as “Irish Nell,” met and became friends with Charles, an African slave. Not much is known about Charles, other than the fact that he was referred to as “Negro Charles” and was owned by Major William Boarman. Boarman set up arrangements with Calvert to rent out Eleanor for work, which included cooking, spinning, washing and ironing clothes, as well as providing midwife services.

While working for Boarman, Nell presumably began a relationship with Charles that moved beyond simple friendship. In the summer of 1681 she “fell in love with… and wanted to marry” Charles. Charles returned Eleanor’s sentiments equally and the two made plans to become “man and wife.” After Calvert became aware of the news he confronted Eleanor on the morning of her wedding day. “What a pity so likely a young girl as you are should fling herself away so as to marry a Negro,” said Calvert. He then explained to Eleanor, “you’ll make slaves of your children and their posterity.” The chastisement left Eleanor in tears, yet her master’s words did not dissuade her. She defiantly retorted that her love for Charles ran so deep that she would choose him as her husband even over Calvert himself. After a heated exchange between the two, Calvert ordered her to leave, resigning Eleanor to her fate. A Catholic priest later married the couple on Boarman’s plantation and members of the Boarman family, along with people from the neighborhood attended the ceremony as guests. It was said to be a splendid wedding and many of the attendees wished the newlyweds a happy life together.48

Whether or not Charles and Eleanor Butler lived happily ever after is open to debate. Under Maryland’s law of 1664, Eleanor’s marriage to the slave Charles prolonged her indenture to a lifetime of servitude. The Boarman’s appear to have legally held her and several of her children as slaves. Calvert warned Eleanor of the fate that awaited her and her progeny, yet her love for Charles, and his love for her, kept the couple together. Charles and Eleanor understood that they were devoting their lives to each other, as the Catholic Church would not have allowed either of them to later reconsider the marriage and break the union with divorce. For Eleanor, this was a lifelong decision in more ways than one, for she committed herself to slavery alongside her husband. Before the marriage, Eleanor supposedly understood that this decision would consign both her and her descendants to bondage, for her children would follow her condition as a slave. Perhaps she believed the family could find a way to achieve their freedom or that her relative autonomy as a servant would carry over to future generations. Although Maryland’s 1681 “act concerning negroes and other slaves” declared that any child born to a “white” mother and “negro” father would be made free, this act was passed in September and the couple’s marriage took place in August of that year. Unfortunately for Eleanor, Charles, and their posterity, this law declared that a child’s free or slave status would be decided a priori or based on the previous laws in place at the time of the parent’s marriage. This meant that children born to African slave fathers and European mothers between Maryland’s first restrictive act of 1664 and the second liberal act of 1681 would still be enslaved, thus making slaves of Charles and Eleanor Butler’s children and future generations.49

The events surrounding Charles and Eleanor Butler’s wedding exemplify the salience of class differences during this time. Eleanor’s rejection of her master’s warning not to marry Charles clearly shows the disparity between how the lower and upper classes viewed ethnoracial mixture. Even Lord Baltimore could not sway the Irish servant’s commitment to her African fiancée. Based on the responses expressed by Calvert and the Maryland court, this marriage was

49 Still, this was a legally complex case of enslavement, which the grandchildren and great-grandchildren later contested in court.
highly objectionable because it connected a free “white” woman to an enslaved “negro” man. However, for those close to the couple, the opposite seems to have been the case, as the surrounding community approved of Charles and Eleanor’s relationship. The Boarmans and the Catholic Church both sanctioned the couple’s wedding, a priest presided over the ceremony, and friends who mostly likely included a mixed African and European crowd attended the celebration. We can see here that even those from the middling to lower classes were not opposed to the union. This does not mean that everyone from these backgrounds approved of the relationship, though there is a clear disparity between what legislation attempted to dictate and actual social practice present in this case. Similar marriages in the early colonial Chesapeake prove that legal statutes differed widely from actions exhibited by the lay population. The common people’s words are rarely represented in colonial legislation, yet if legal documentation is read closely we are sometimes able to hear their voices via witness testimony and information presented in court cases.

In the case of Charles and Eleanor Butler, we have a solid example that suggests everyday folk were more accepting of ethnoracial mixture than the elite. Colonial statutes were instituted by the upper classes in attempts to maintain control and order over the lower classes. Through this type of legislation, colonial aristocrats attempted to impose their will onto those on the bottom rungs of society. Sometimes non-elite European women chose not to abide by these regulations, even when the penalty meant that they might face being enslaved. Though the penalty was high, these mixed-heritage couples contested power through their decisions to love and marry across the ethnoracial lines that were beginning to be drawn at the time. We can see this type of resistance with Charles and Eleanor Butler’s marriage in August of 1681; for just the next month, the law that bound their family for life was changed by Eleanor’s former master Calvert, presiding as head of Maryland’s assembly as governor. The Lord Proprietary and 3rd Baron Baltimore, Charles Calvert, helped overturn his father, 2nd Baron Baltimore, Cecilius Calvert’s earlier law of 1664. European women and their children born to African men could no longer be legally enslaved. Charles and Eleanor might not have been able to save their descendants from the grips of slavery, but their actions saved others from a similar fate.

“Abominable Mixture and Spurious Issue”

As Charles and Eleanor Butler’s story reveals, though laws may have prohibited interracial intimacies, ordinary folk regularly crossed these boundaries. Colonial legislation did not always reflect the feelings, customs, and common practices of those in society. By analyzing legal records and deciphering the events surrounding them, we can better locate the thoughts of various groups in society. Deconstructing this type of evidence can be tricky, since customary understandings of statutory law were not always exact and people did not always follow formal regulations even when they were aware of official legislation. Still, dissecting this legislation helps reveal the intentions of the lawmakers and the actions of the people they governed. Authorities enacted colonial regulations to police intermixture and regulate colonial society in response to the ethnoracial mixture of lower class peoples. In this sense, these laws were reactionary. However, legal statutes also caused change, especially as they helped to shape the way people at various levels of society began to think about mixture and people of mixed descent. Indeed, these laws present a window through which we can view the emergence of racial beliefs in North America.

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The ideological underpinnings of racial thought developed in English North America throughout the first century of settlement, yet the major shift from a protoracial to a racial society took place in the closing decades of the seventeenth century and into the next century. Though relevant early sources from the Chesapeake are scarce, much can be learned from the language used in colonial documents. While the English borrowed the word “negro” from the Spanish in the sixteenth century (literally translated from Spanish as “black”), it arguably did not attain full racial significance until its opposite “white” came into common usage in the latter part of the following century. Similarly, terms such as “mulatto” and “mustee” – applied to persons of mixed European and Native American ancestry – give other indications of distinct racially marking language that appear in the second half of the seventeenth century. By the beginning of the eighteenth century, solidification of these terms across colonial regions in North America demonstrated a solid ideological shift in English thought. These changes are partially substantiated by Chesapeake legal statutes, which need to be considered in relation to the historical development of race by the last decade of the seventeenth century.52

Titled “An act for suppressing outlying Slaves,” Virginia’s Act XVI of 1691 not only covered runaway slaves, but also addressed both what should be done with freed slaves and laid out what actions should be taken regarding those who intermarried or had illegitimate mixed-heritage children.53 In all areas addressed in this bill (runaways, freed slaves, ethnoracial mixing, and mixed offspring), the law groups “negroes and mulattoes” together a total of seventeen times, linking them to their African ancestry. Similar to previous Virginia legislation in 1672, officials authorized the use of lethal force against runaway slaves and stated that owners of “any negroe or mulattoe slave or slaves” killed while escaping would be compensated by public funds. The second section addressed mixture on two levels: marriage and bastardy. The main reason for taking up these matters was “for prevention of that abominable mixture and spurious issue which hereafter may encrease in this dominion as well by negroes, mulattoes, and Indians intermarrying with English, or other white women, as by their unlawfull accompanying with one another.” Just as Maryland law noted a decade earlier, the ostensible concern here was to protect “English, or other white women.” Being English was now equated with being “white” in both colonial Virginia and Maryland law.54

The next year, in 1692, Maryland also reenacted and strengthened its legislation against “any freeborn English and white woman that shall… intermarry with or permit herself to be begotten with child by any Negro or other Slave.” The law copied much of the 1681 statute and again called these unions a “disgrace.” However, the updated legislation carried a heavier tone, adding words like “evill” to describe these relationships. Officials also made a few key adjustments, such as extending seven years of servitude to any woman of European descent who either married or had a child by “a free Negro or Slave.” Also, the free African husband would “forfeit his freedome and become a Servant… during his natural life.”55 It is clear by the 1690s those writing the laws in the Chesapeake perceived mixture in negative terms. The offspring of such unions were “abominable” and the word “spurious” was equated with illegitimacy, though

53 Like many of the laws examined thus far, there were often times several clauses inserted into a single act that the title did not ostensibly address. It was not until 1705 that Virginia had a uniform slave code, or set of laws designed specifically to govern slavery as an institution.
54 Hening, SALV III, 86-88.
this law drew little distinction between mixed children born in or out of wedlock. Instead, the focus of the law remains on Europeans marrying those of African or Indigenous descent, which was henceforth made illegal. Ruling authorities declared “whatsoever English or other white man or woman being free shall intermarry with a negro, mulatto, or Indian man or woman bond or free shall within three months after such marriage be banished and removed from this dominion forever.” Colonial elites punished both men and women equally for marrying others outside their prescribed race. They also prohibited interracial couples from taking up permanent residency in the colony. Those who chose to wed across intensifying racial boundaries would be banished from the colony.

The intent of these laws was clear: Virginia and Maryland would no longer permit any English or other Europeans to easily marry those of African or Native American ancestry. Along with Maryland’s act of 1681, early-1690s Chesapeake legislation became some of the earliest formal proclamations against interracial marriage and stigmatized the families of mixed-heritage people. These statutes further worked to polarize people along racial boundaries by encouraging them to think of themselves in terms of race. Colonial authorities identified Europeans as “white” and placed them in a superior position compared to those labeled “negroe, mulatto, and Indian,” who officials placed in an inferior position. These colonial laws helped support the idea that exogamous or interracial marriage was deviant, and supported notions that endogamous marriage according to one’s racial background was acceptable and normal.56

The next clause in Virginia’s Act XVI of 1691 addressed intermixture out of wedlock concerning English women who “shall have a bastard child by any negro or mulatto.” Noticeably, European men, “Indians,” and non-English “white women” – three groups who appeared in the preceding marriage clause – went missing throughout the section on bastardy. Legislators felt that extramarital sex between all groups would be sufficiently punished under preexisting fornication laws, but why did this bastardy law only target English women who had children by men of African descent? First, English men would not be more heavily punished for fathering children by African, Indigenous, English, or other European women. Virginia’s General Assembly was largely, if not wholly, made up of elite English men who were now statutorily identifying themselves as “white.” These men were also shielding themselves and others like them from the extra punishments they meted out to English women for having illegitimate children with Africans. They were exerting control over women’s bodies, which reinforced the “white” patriarchal power structure of Chesapeake planter society. A “white man” could not legally marry an African or Native American woman without having to leave the colony, yet he could father a child by these women without heavy legal consequence.57

Second, it appears that the Virginia legislature left “Indians” out of extra restrictions on illegitimate children to allow people of both European and Native American ancestry to go unmarked and retain access to “white” identity. Fully condemning mixed children of English and Indigenous descent would have hit close to home for some colonial families that had intermixed in earlier generations with Native Americans. Some people living in the colony claimed rights under the English crown had Indigenous ancestry themselves. Matoaka/Rebecca and John Rolfe’s descendants do not appear to have been considered as anything other than English even though they could tie their ancestry to both the English and Powhatan. This was contingent upon future generations following English cultural traditions that steered clear of the “savagery” of their Indigenous forebears. That Native Americans were left out of this bastardy

56 Hening, SALV III, 86.
57 Hening, SALV III, 86.
law also reveals that English authorities held them to be somewhat above the African.\textsuperscript{58}

Lastly, it is somewhat puzzling why only “English women being free” were subject to additional bastardy stipulations while other European or “white” women were not equally identified. It might have been an oversight that officials only mention English women specifically in the bastardy clause when all European or “white” women were considered the same under the previous racially prohibitive marriage law. Perhaps the lack of identifying other European women here shows that the boundaries of “white” were still in the process of being constructed. This may point to various levels or shades of “whiteness” where the English conceived of themselves as being over other Europeans.\textsuperscript{59}

The ethnoracial hierarchy being created in the Chesapeake at the end of the seventeenth century moved from English on top, past other Europeans, down to Native Americans, and ended at the bottom with Mulattoes and Negroes. Even though Virginia and Maryland laws identified various groups outside of “whiteness,” the English colonial elite who designed this order did not consider everyone equally subordinate. Though the English and other Europeans largely viewed Native Americans as inferior, those of African ancestry were seen as even more debased, indeed the lowest group. This was due to their association with African slavery and non-Christian religious beliefs. In 1680, English Reverend Morgan Godwyn noted the “two words, “Negro and Slave,” had “by custom grown Homogeneous and Convertible.” Godwyn further noted that by custom and prejudice the words “Negro and Christian, Englishman and Heathen” were also “made Opposites.” This implied that Africans “could not be Christians.” By the late seventeenth century, the English predominantly enslaved Africans coming into North America, which shaped the social perception of the “Negro” as an innately degraded racial group.\textsuperscript{60}

But where did this racially place Mulattoes? Returning to Virginia’s Act XVI of 1691, we find that English women who had an illegitimate child by “any negro or mulatto” man would be fined fifteen pounds of silver, payable within one month of the child’s birth. The Churchwardens would auction the woman off for a five-year indenture if she could not pay within the allotted amount of time. The court decided that if the woman was already an indentured servant then “she shall be sold by the said church wardens… after her time is expired that she ought by law to serve her master.” Though assigning additional years of servitude was a strict penalty, Virginia legislators did not make “white women” slaves for life. Whether a mother was bound or free did not matter for her baby, as it was ordered that the “bastard child be bound out as a servant by the said Church wardens untill he or she shall attaine the age of thirty yeares.” It is logical to assume that the Virginia court was aware of Maryland’s law of 1664 when assigning additional years of servitude to English women and their children of mixed ancestry, for it was Maryland law which first extended servitude for certain mixed children to thirty years. Interestingly, in 1692 Maryland officials lowered the penalty to twenty-one years of servitude for children born to married African and European couples, which was similar to the length of time assigned to other children born out of wedlock. However, Maryland authorities mandated that illegitimate children of mixed heritage would have to serve an extra ten years until thirty-one years of age. Initially, these extra years of service in Maryland punished both the

\textsuperscript{58} Gary B. Nash, “The Hidden History of Mestizo America,” \textit{The Journal of American History} 82, no. 3 (1995): 941–964. Some of the children born to English women by Indigenous men may have physically appeared too light-skinned to implicate a Native American father, making it difficult to press bastardy charges against the mother.


\textsuperscript{60} Godwyn, \textit{The Negro’s & Indians Advocate}, 36; Berlin, \textit{Many Thousands Gone}, 97.
specifically regarding mixed-heritage children, these thirty to thirty-one year sentences of servitude might be read a number of different ways. Recalling that Virginia law in 1662 previously assigned children a service position “according to the condition of the mother,” these statutes were seen similarly in terms of assigning an indenture. Still, courts only made free European women servants as a consequence of having a mulatto child, and additional years placed on existing indentured women rarely extended their service past thirty years old. Simply put, few European servants anywhere were indentured for a total of three decades. Though designating mulatto children of English mothers as indentured was in line with giving them the condition of the mother, it placed an exceptionally high sanction on the children. The time these Mulattoes had to serve far exceeded the typical term of service by around ten years, which reveals that colonial aristocrats were delivering these sentences as punishments for what they believed to be the crime of interracial sex. Maryland authorities said as much in 1692, writing that those entering into mixed marriages “shall undergo the pains and penalties by this Law.” Though mixed children were made to pay for the supposed crime of their parents, the punishment was not the same lifetime bondage their African fathers often served. In terms of labor status, mulatto servants fell somewhere between their free or indentured “white” mothers and enslaved African fathers.

People of mixed African and European descent occupied a subordinate position in the minds of Chesapeake legislators, and while these authorities most often sought to group Negroes and Mulattoes together in law, it is clear that there were varying degrees of hypodescent. All Mulattoes could not be strictly assigned the slave status of their African fathers, just as they were denied the free condition of their European mothers. For some in colonial assemblies, there may have been a feeling that Mulattoes with European maternity should not have to serve the same lifetime in bondage as their African fathers. In this respect, legislation allowed the “white” privilege of European mothers to pass down to children of mixed ancestry. Virginia and Maryland legislators came to a compromise on the status of these mixed-heritage children by placing them in a position between freedom and slavery. This group of Mulattoes might be made to relinquish some of their best years for the alleged crime of being born of mixed parentage, though they were at least promised freedom at a certain point. This categorically differentiated them from those having two parents of full African descent. In a sense, legislators placed Mulattoes in a kind of purgatory rather than the all-out hell of perpetual bondage.

Virginia’s Act XVI of 1691 repeatedly references “negroes and mulattoes” in tandem, and also references “other slaves” who were presumably of Indigenous heritage. Together, these three groups were outlined as both runaways and undesirable marriage partners, yet only “negroes and mulattoes” are mentioned when the court describes the “great inconveniences” caused by freeing slaves. Much like mixed couples who illegally married, “negroes and mulattoes” freed by their masters were made to leave Virginia within six months of being emancipated. This statute was aimed at masters, who were held responsible for funding “the transportation of such negro or negroes out of the countrey... upon penalty of paying of ten pounds sterling to the Church wardens of the parish.” Here, the revealing phrasing of “negro or

61 Hening, SALV III, 86-88; Browne, PAGAM I, 533-534; Browne, PAGAM XIII, 546-548.
62 Hening, SALV II, 170; Hening, SALV III, 86-88; Browne, PAGAM XIII, 547. Unwed European mothers were often forced to apprentice or indenture their children. Illegitimate children of free African women would sometimes apprentice their children as well.
63 Williamson, New People, 9.
64 This is not to say all avoided ruthless masters who kept them enslaved against the law, which will be explored later.
“negroes” suggests that there were different types of Negroes, which included Mulattoes. According to a stricter hypodescent ideology, people of mixed African and European lineage were simply a different type of “negro.” Hence, this is why “negroes and mulattos” were so often included together, and in this ordinance they were blamed for “entertaining negro slaves from their masters service, or receiveing stolen goods, or being grown old bringing a charge upon the country.” Not only were Mulattoes positioned beside Negroes in this legislation, but they were also shown to be taking part in the same offenses. Indeed, people of mixed heritage were likely to associate with African slaves, even when they were themselves free.\footnote{Even if colonial authorities were correct here, this did not mean that all Mulattoes saw themselves as being wholly African. Conversely, these people of mixed descent would not have considered themselves to be fully European either. Hening, \textit{SALV III}, 87-88.}

While we generally find English elites dictating laws that regulated mixture and mixed peoples, it is unfair to assume that all those in the upper echelons of society saw these mixed relationships and blended peoples in the same negative light. Some English colonists dissented against laws that restricted the right of Africans and Europeans to intermarry. In 1696, George Ivie, who came from a leading family in Norfolk, Virginia, petitioned the colonial government to repeal the bill. Ivie was not alone, as a number of other community members denounced legislation that prohibited “English people’s marrying with Negroes, Indians and Mulattoes.” This protest, coming at the end of the seventeenth century, shows there were still multiple views in regards to the idea of mixture between those of English, African, and Native American descent, even among the upper classes. There were multiple views regarding mixture and mixed peoples across the class spectrum. Still, around this time public opinion was changing in terms of how people thought about slavery, race, and people of mixed heritage. While various mixed-race ideologies have always remained in existence contrary to the popular narrative, we can see that the elite planter class came to establish the predominant view that took hold during this time and remained in place into later centuries.\footnote{Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 202, n.33.}

Some may wonder why it took Ivie and others five years to express disapproval of a law that restricted intermixure. Apparently, not everyone was aware of new legislation being passed, which also brings into question the extent to which ordinary people even understood colonial mandates and the efficacy of these laws. It seems that by the 1680s and 1690s county courts were established in places to adequately disseminate legal statutes in more remote areas outside major towns. Again, just because ideas were being expressed in colonial legislation does not mean that they immediately influenced a broad range of society. However, over time and much effort by colonial authorities, these laws impeded the accessibility of love and marriage across perceived racial lines. Just as instituting a racial society took time for the planter class to develop, statutorily regulating interracial relationships was also a historical process that took place over many years. Although is difficult to determine the frequency with which European women in Virginia and Maryland were brought up on charges of having mulatto children in the years after 1691, there are are several instances of people being tried under the law across individual counties.\footnote{Brown, \textit{Good Wives, Nasty Wenches, and Anxious Patriarchs}, 198-200.}

In 1702, it seems that local officials had misplaced or lost the 1691 Virginia ordinance when Catherine Cassity, a woman of European heritage, came before the Lancaster County court for having an illegitimate child of African descent. Officials released Cassity as “the act relating thereto” her crime could not be located, but they told her that she would have to later return to court. The county clerk said he had to “serch for the said Act soe that the said Cathrine
may be condemned accordingly.” Even though officials did not have the statute readily available, they were at least aware that existing law should have punished Cassity’s crime of bearing a child out of wedlock more severely because the father was a man of African descent. This shows the interplay between racial ideologies and legislation at various colonial administrative levels. Clearly Cassity and her child’s father had little problem with interracial sex. County officials may have customarily found these unions problematic, yet they required colonial legislation to support punishment. When authorities brought to people to court for legally violating laws of mixture, they helped instill in people minds that they were involved in a criminal act. The child of mixed ancestry provided the proof of the offense, and the mulatto child effectively became the physical form of the transgression. In this manner, Chesapeake legislation regulated boundaries of servitude and marriage, as well as helped to shape the social views on racial mixture and mixed-heritage peoples.68

**Mulattoes in the Late Seventeenth-Century Chesapeake**

We have seen how Virginia’s Act XVI in 1691 followed Maryland’s mandate against intermixture a decade earlier in 1681. The next year, authorities in Maryland again encountered questions surrounding mixture after hearing a special case concerning a defiant young “Malatto Girl.” In May of 1692, Thomas Courtney from St. Mary’s County, Maryland, stepped into the council chamber and stood before his Majesty’s high Court of Chancery, made up of several colonial judges, clerk John Lewellin, and the newly appointed Royal Governor of Maryland, “his Excellency” Sir Lionel Copley. Courtney had been accused of committing “Barbarous and Inhume” acts against one of his servants. It was this servant, “a Malatto Girl,” who turned him into the authorities. The high court had summoned Courtney to St. Mary’s so he could be questioned and judged for carrying out “so barbarous a Cruelty.” Courtney confessed that he and his wife were guilty of the actions he faced before the General Assembly. The following is the story of “Courtney’s Malotta Girl.”69

Standing in front of Maryland’s justices in 1692, Thomas Courtney explained how his “Malotta Girl” had repeatedly run away, probably believing that she ought to have the same freedom as her “Master and mistress.” In Courtney’s eyes, this girl was also a thief who had routinely taken his belongings. Perhaps she felt entitled to these material things, reasoning that her labor as an indentured servant had helped produce them for the Courtney household. So it was “without any hopes” of altering this behavior that Courtney “was forced at last to use that Severity towards her in order to reclaim her.” One day, Courtney and his wife restrained “the Malotta Girl” against and brought a blade next to her head. Did she not deserve to be disciplined? Had she not earned punishment through her repeated acts of disobedience? Courtney had frequently chastised her for “Villanous Actions,” but this was all to no avail. The servant girl continued to exert her rebellious behavior, contesting the authority of her owners. If she did not know how to keep her place in the Courtney’s house, she would be forced into submission.70

When Mr. and Mrs. Courtney subdued the girl, she quickly realized this type of discipline would be more severe than any other punishment she had previously received. She struggled to get away, but the two adults overpowered her. There was nothing she could do as the metal sliced through her skin. After the blade traveled easily past the surface of her skin, it was more

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difficult for her owners to cut through the cartilage, as they now cropped “close to her head.” One ear was gone and the blood ran profusely. Shiny droplets fell and sprinkled the ground around her. This was not a simple slashing of an earlobe; the whole appendage had been severed. She heard a horribly loud sound when the large piece of flesh was “Cropt close to her head by the hands of her Tyrannicall Master and Mistress.” The girl’s screams reached no one who could help. She squirmed to get loose, which made it more difficult for them to finish the job. Her resistance at this point was of no use, her frame simply too small to ward off her attackers. The second ear was lopped off just as the first and the blood poured forth. Streaming down her neck, it ran quickly until it reached her clothing where it soaked into the fabric. The hands of her assailants were quite literally stained with blood, which they could simply go off and wash away. After awhile the crimson red liquid flowing from the girl’s wounds began to diminish and clot. She watched as the stains in her clothing turned from bright red to dark maroon. The pain from her wounds may have seemed as nothing compared to the shame and despair she felt inside.\textsuperscript{71}

What made the Courtney’s believe that it was legally permissible for them to remove the ears of this mulatto servant girl? Would they have done the same had she been English, Irish, or perhaps anything other than Native American or African descent? Maryland court documentation provides further insight into the case, pointing to a growing connection between race and labor status. First, Thomas Courtney carried out this act against his servant girl because he believed that as “his Slave, he might do with her as he pleased.”\textsuperscript{72} He thought this because the “Malatto Girl” had a father of African descent. However, legally she was not a slave, because she was “born of an English Woman, and a Christian.” Therefore, the Maryland assembly declared that she was “a Servant according to a Law of this Province for one and thirty years.”\textsuperscript{73} Courtney alleged that he was unaware of laws that made this servant girl free after a term of service, but he may have believed her to be a slave by Maryland’s act of 1664. Mulattoes born to “white” mothers who married enslaved African men from 1664-1681 would have legally been enslaved.\textsuperscript{74} It would be fair to assume that this servant girl was born prior to 1681, which would have made her at least somewhere over the age of eleven. Since she was the one who brought “Information and Complaint” to the court, yet still under indenture, she was probably in her teens to late twenties. If we assume the court judged the girl’s legal suit appropriately, it would appear that the authorities were referencing the 1664 legislation. Her European mother and African father were most likely married prior to 1664, which sentenced their offspring to thirty years of servitude. It is impossible to know if Courtney was actually aware whether or not his “Malatto Girl” was a servant or slave when the relevant statutes were in flux over these years. This shows how confusing it was to determine the slave, indentured, or free status of mulattoes during this time. Though masters were confused about the status of their mixed-heritage servants, it was in their economic interest to hold them longer as slaves, which Courtney may have been attempting to do in this case.\textsuperscript{75}

In the end, the Governor of Maryland, Sir Lionel Copley, suggested that it was “Just and reasonable that the Malotta Girl of Thomas Courtneys...be forthwith Manumitted and Set free, the least Recompence can be bestowed upon her for so barbarous a Cruelty.”\textsuperscript{76} The girl’s case

\textsuperscript{71} MSA, Browne, \textit{PAGAM XIII}, 292-295.
\textsuperscript{72} MSA, Browne, \textit{PAGAM XIII}, 293.
\textsuperscript{73} Terms of indenture of mulatto children varied between thirty and thirty-one years of age.
\textsuperscript{74} There is a chance she was already free and then indentured by an impoverished mother, but the records do not say.
\textsuperscript{75} MSA, Browne, \textit{PAGAM XIII}, 292.
\textsuperscript{76} MSA, Browne, \textit{PAGAM XIII}, 302.
also struck a nerve with other sympathetic members of the assembly, for they subsequently worked to pass an additional “Law in favour of Negroe & Slaves to prevent the Barbarous Tyrrannical and Inhumane usage of them as is too much Practiced by some People here… in this Province.”\footnote{MSA, Browne, \textit{PAGAM XIII}, 294.} They passed the act, referencing “a certain Mollattoe girl” serving under Thomas Courtney, stating that any slave master who would “dismember or Cauterize any such Slave” could be freed by “the Justices of the County Court upon proof thereof.”\footnote{MSA, Browne, \textit{PAGAM XIII}, 457.} Though these colonial lawmakers were prompted to take action due to the mistreatment of a “Mollattoe girl” whose mother was of European descent, they were not giving special treatment to slaves of mixed descent. This law would cover all slaves of African lineage. Even though this girl of mixed ancestry was a servant, her case was still used as an example that caused a legal change for all slaves of African heritage.

Maryland’s General Assembly considered other legislation that addressed intermixture for a revised “Act concerning Negroes and Slaves” in 1692. One section would lay a “more Severe Penalty on all Priests, Ministers, Magistrates or others whatsoever who shall presume to Marry any Such” slaves with “any white Man or Woman.” Authorities also discussed the possibility that “any white Man or Woman that shall Begett or have Begotten a Bastard Child by a Negroe shall be Compelled to Serve Seven years only, and not during Life.”\footnote{MSA, Browne, \textit{PAGAM XIII}, 304.} Representatives William Dent of Charles County and Daniel Clark of Dorchester County came before the governor and his committee to better explain some of the finer points of these suggested changes to Maryland law, for they felt “the Sense of their house in the said Act” was misunderstood by the assembly.\footnote{MSA, Browne, \textit{PAGAM XIII}, 165, 306, 351, 566.} They proceeded to explain to the board that they wanted to place a fine of 10,000 pounds of tobacco on those found guilty of conducting mixed marriages between those of African and European descent. Masters who allowed one of their slaves to marry a person of European descent would be fined 10,000 pounds of tobacco and in addition the slave in question would be freed. This was seen as a sufficient penalty for deterring such unions and had some precedent in Maryland 1681 law punishing those who performed such marriage ceremonies.\footnote{Harris and McHenry, \textit{Maryland Reports}, 373.}

Colonial authorities forthrightly explained why they created such an act: it was made with “the design of preventing such Mungrell Marriages.” Dent and Clark also wanted to require “all white Women that shall Marry to Negroe Men to be Servants during the Life of the Man whom they Marry.” This would have greatly extended the seven years of servitude previously suggested by the upper house and return Maryland to the strict act of 1664, which enslaved European women.\footnote{They further noted that “although it may haply Amount to Slavery in Effect, yet is it not the same in Terminis, and may possibly prove otherwise, so that the Law of England is not Repugned.” MSA, Browne, \textit{PAGAM XIII}, 306-307.} To avoid the harsh wording of Maryland’s previous mandate while keeping the same penalty, Dent and Clark suggested not using “the word Slavery… in the Act… although it may haply Amount to Slavery in Effect.” Also, Dent and Clark sought to institute servitude until thirty-one years of age for the “Bastard Children born of white or English Women whose parents are not Able to Maintain them.” Under this proposed legislation, children coming from these types of mixed backgrounds could only achieve full freedom if their parents were already free and had the financial means to avoid apprenticing them out under formal indenture. An interesting point here is that European women would have been more severely punished than their mulatto children in this case. With this proposed law, Dent and Clark supported the
creation of a legal impetus for European woman to consider European men as marriageable partners, for if these women chose to marry African men they faced a prolonged state of servitude that equaled “Slavery in Effect.”

Finally, Dent and Clark revealed how colonial legislators saw these mulatto offspring, writing that their assembly “conceive it but reasonable to make a Distinction between them [Mulattoes] and Negroes, and not to Equalize them in point of Servitude.” This statement shows that a sufficient number of council members wanted to make a distinction between the status of Mulattoes and Negroes, as least in some respects. This is significant because it shows that during a time when racial slavery was solidifying around Africans, even some of the social elite did not conceive of enslaving all those of African descent. On May 26, 1692, Maryland’s assembly endorsed Dent and Clark’s recommendations in a new bill. Women of European ancestry marrying “Negroes and Slaves” would be made “Slaves during the Husbands Life” and they decided that the children born to these partnerships would “serve to the Age of 31 years.”

This loophole allowed certain Mulattoes the opportunity to gain freedom and rights based on the European heritage of their mothers. Again, going against the tide that was turning towards hypodescent, this legislation left a small door open for those of mixed heritage to legally occupy a middle ground between slavery and freedom. Those who were viewed as having strictly African ancestry were at a comparative disadvantage, as their social position was forced beneath yet another racial subgroup, the Mulatto.

Turning back to court records in Virginia in the last decade of the seventeenth century, numerous cases appear where people of mixed descent petitioned for their freedom based on ties to European heritage. In 1694, a Mulatto named Sarah claimed she was “the daughter of an English woman,” though the York County court seemed to doubt that she had served her full term of indenture. The very next year, under similar circumstances, William Catillah appeared in the same county courtroom and gained freedom even when it was clear he had not served his indenture to term. By his own admission, he had served “honestly and truly” for twenty-four years, which was less than the thirty years the law required of mulatto servants born to European mothers. Catillah, the son of an African father and European mother, was awarded his “corne and clothes” along with his freedom in 1695. Regardless of whether he was old enough to gain his freedom, a point that seems to have worked in Catillah’s favor was that “he was the son of a free woman and was baptized into the Christian faith.” Even in the 1690s, establishing oneself as a Christian seems to have given weight to one’s appeal for manumission. Both Catillah and “Courtney’s Malotta Girl” referenced their Christian faith, though undoubtedly the key to emancipation was having a mother of European heritage. Again, we see here the converging issues of religion and race, as certain people of mixed lineage drew connections to their religious faith, European maternal ancestry, and freedom before the courts.

In other cases, enslaved Mulattoes found other ways to petition the court without having to rely upon the status of a parent. One such instance was that of Catherine Scott, a slave of mixed descent who was held in bondage with her son Daniel in Lancaster County, Virginia. In 1698, she sued her owner Elizabeth Spencer for her freedom, but did not base her claim on having European maternal ancestry. Rather, Scott testified that a John Beaching had set up an arrangement with Spencer, where he agreed to tan one thousand animal hides as compensation

85 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 223.
86 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 212.
for Scott and her son’s liberty. Beaching appears to have been a laborer of European descent and may have fathered Scott’s son Daniel or was otherwise intimately involved with her. By one account, Beaching became sick and died before he paid off the purchase price for Scott and her son. Therefore, Spencer never formally manumitted the two slaves. Scott claimed that Beaching had already met the agreement over the past year, but unfortunately the contract had been consumed in a fire. Scott expressed hopes that if Beaching had lived, they would have been married and both her and her son would be baptized as Christians.

Though we do not know which side was telling the truth, Catherine Scott’s strategy was somewhat different from previous cases where mixed people attempted to gain their freedom. Those with European or “white” mothers normally relied on that connection to be released from servitude. While Scott did not seek emancipation based on having a European mother, she did seek to gain freedom through the support of European or “white” patronage. Her plan failed when Beaching prematurely died, so she adjusted her strategy by presenting herself as an upright woman to the judges, one who sought to be married and yearned for the Christian faith. These references to virtuous femininity and religious fervor were subtle attempts to separate her from negative stereotypes that were routinely attached to unwed African slave mothers. People of mixed ancestry were routinely associated with illicit sex and illegitimacy, especially if they were enslaved. Scott presumably took this position because she had a mother of African descent. If her mother had been “white,” she would have most likely chosen to draw that link in order to defend her freedom. Since she mentions nothing of having a European mother, she was almost certainly born to an African slave mother and European father.87

Unfortunately, for Mulattoes in Catherine Scott’s position, having an enslaved mother assigned them to a lifetime of bondage. In these cases, we see how gender, race, and the labor status of one’s parents could result in stricter terms of hypodescent being applied to those of mixed ancestry. The law considered certain Mulattoes exactly the same as Negroes. Still, Scott and others like her resisted their slave status. The court recorded that Scott “conceives herselfe to be a freewoman.” By declaring herself free, Scott was combating negative associations attached to people of mixed ancestry that elites had developed by this period. She perceived herself as something more than just a slave and would have passed this status down to her son if she were made free. Scott’s story shows how challenging it had become for people of mixed African and European descent to achieve freedom by the late 1690s. In the next century, those of blended heritage would find it even more difficult to find pathways to liberty.88

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87 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 238.
88 Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 238.
Chapter 2
Mulattoes in the Eighteenth-Century English Colonies of North America

In the summer of 1703, twenty-three year old Jonathan Glover brought a legal suit “about his freedom” against his master Samuel Luckett of Charles County, Maryland. Although his father was presumably of African descent, Glover was not a slave. Sometime after his birth in February of 1680, Glover had been indentured to Luckett and had since been held under this contract as a servant. Sarah Smith, Glover’s English mother, gave testimony about the birth of her son, who was listed in the court records as a “Mollatto.” With the help of his mother’s testimony, Glover’s freedom was “Confirmed” on August 10, 1703. For individuals of mixed heritage with ties to European maternity, a “white” mother able to legally speak in the courts on their behalf was a vital asset. If Sarah Smith had been a woman of African or Native American descent, her right to speak in court might have been limited. If she had been a slave, her son’s legal status would have followed her condition and Glover would almost certainly have been enslaved for life.\(^89\)

The intersecting vectors of race and class largely determined social mobility for people of mixed ancestry in English colonial North America. In particular, the labor status held by one’s parents helped guide the lives of those recognized as mulatto.\(^90\) Not all Mulattoes were considered the same, as the lives of those with a European father often differed greatly from those having a European mother. Depending on the mother’s labor position at the time of birth, Mulattoes might be deemed fully free, bound as a servant for a period of time, or tied to slavery for life. As in Jonathan Glover’s case, a maternal tie to “whiteness” literally meant the difference between bondage and freedom. In early eighteenth-century colonial North America, English authorities allowed certain Mulattoes to benefit from European ties to freedom, even as those of mixed-heritage were pushed towards the more common slave status of their African parentage.

The following chapter investigates how those of mixed ancestry navigated the legal system from the Chesapeake Bay down to the emerging colonies in the Carolinian Lowcountry. The Chesapeake and surrounding colonies remained a place of relatively high ethnорacial mixture, fueled by increased voluntary European immigration and forced importation of African slaves. Colonies further south emerged as a region with less overall mixture due to disproportionately high African slave importation. The unique demographics of the Lowcountry resulted in fewer overall numbers of people of mixed African and European descent. However, the culture that emerged in this area meant that fathers of European ancestry were more likely to offer a path to freedom for their mixed children and their mothers of African descent.

While noted historians have made convincing arguments for their being an Upper South and Lower South, this general frame can miss slight variances between how individual colonies considered people of mixed heritage. This chapter parses out variations in legislation across Virginia, Maryland, North Carolina, South Carolina, and Georgia, in regards to Mulattoes. Even as racial notions concerning those of mixed ancestry remained somewhat fluid and varied in the early to mid-eighteenth century, the framework of hypodescent can generally be applied to how most English colonists viewed mixed-heritage peoples in all colonies of North America.\(^91\) In the

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\(^89\) Maryland State Archives (MSA), Charles County Court Record, vol. A, no. 2, 1701-1704, 251.

\(^90\) Hereafter, I will use *Mulatto* within its historical context, meaning someone who is identified as having mixed African, European, and sometimes Native American ancestry.

\(^91\) Marvin Harris, *Patterns of Race in the Americas* (New York: Walker and Company, 1964), 56. Hypodescent ideology operated differently between various European colonial powers (ie. France, Portugal, Spain, etc.). The idea of racial mixture or
first half of the century notions surrounding people of mixed ethnoracial heritage evolved along the lines of basic hypodescent ideology. Most people of mixed African, European, and sometimes Native American ancestry, were held in either slavery or prolonged indentured servitude. While it is difficult to make a blanket generalization that accurately covers all people of mixed heritage in all regions, it is clear that the fight for freedom, for both themselves and their families, remained a central struggle in many of their lives.  

**The Upper South: Colonial Virginia, Maryland, and North Carolina**

In the early eighteenth century, the English elite who ruled the Upper South colonies of Virginia, Maryland, and North Carolina held negative perceptions of interracial mixture and began to more heavily shape the lives of mixed-heritage peoples through labor laws. Consequently, many people of mixed African and European ancestry in these areas found their life choices dictated by their legal status as free, servant, or slave. Social views concerning ethnorigal mixture were connected to labor systems of the previous century, specifically African slavery and European indentured servitude. In the last decades of the seventeenth century, Africans enslaved for life became the preferred labor choice over European servants, who served a limited number of years before earning complete freedom. Shipments of African slaves became readily available during this time period and brought tobacco planters handsome profits. In part, as a result of this labor shift, racial slavery became solidified in the next century within an economy centered on the labor-intensive system of tobacco plantation production. Eighteenth-century colonial laws reified racial hierarchy by depicting those of African heredity as a dishonorable group under chattel slavery. This legislation included both fully African Negroes and those of partial African descent or the mulatto offspring who resulted from relationships between Africans, Europeans, and sometimes Native Americans. Laws in the Upper South identified Mulattoes as a racially blended group and relegated those of mixed heritage to the lower tiers of society.

From the latter part of the seventeenth century into the early eighteenth century, people of mixed African and European ancestry became even more closely associated with their African lineage in and surrounding the Upper South. In these areas, the notion of hypodescent strengthened with the turn to African slavery. As the colonial racial system evolved over several colonies, hypodescent developed into a more widespread ideology. Still, a strict adherence to hypodescent through the one-drop rule did not apply to people of mixed ancestry having traceable African descent. Hypodescent ideology was established in the colonial Upper South by government authorities that sought to solidify a racial order by passing legislation that closely regulated the labor of mixed-heritage peoples under servitude and slavery. Legal statutes specifically targeted those of mixed ancestry by limiting them to subordinate labor positions,  


94 The “one-drop rule” is the practice of defining those with any known African ancestry, or “one-drop” of African blood, as fully “black” or “negro.” Even into the ante bellum period, there was a lack of strict adherence to “whiteness” in Virginia. This ideology appears to be carried over from the colonial period. Joshua D. Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003), 204-207.
which further confined them to the lowest classes of society. While these laws influenced social perceptions of Mulattoes, colonial mandates did not accurately reflect all social views of mixed-heritage peoples. The prevalence of lower class Europeans intermixing with free and enslaved Africans, and sometimes Native Americans, shows that all people did not stigmatize interracial mixture to the same degree.  

In the colonial Upper South, the social and economic elite generally looked down upon mixture between Europeans and those of African or Native American heritage, yet there is extensive evidence showing that sex and marriage continued to take place regularly across these groups into the eighteenth century. Destitute European immigrants, many of whom were indentured servants, along with “negroes, mulattoes, and Indians,” often considered themselves to share the same relative lot in English colonial life. Both servants and slaves had masters. And these masters held all those underneath them accountable to labor on their plantations, in their shops, and at their homes without pay. The upper echelon of colonial society largely held the servile classes in low regard and felt those underneath them lacked sophistication, were uncivilized, and were overall socially inferior. These negative views justified laws that subordinated the lower classes. In everyday practice, lowly Europeans, Africans, and Native Americans found ways to resist legislation that regulated their lives. All of these people lived side-by-side, sometimes quarreling amongst themselves or uniting in resistance against their masters. They worked, socialized, rebelled, and loved together. Despite official regulations, Europeans continued to mix with Africans, Native Americans, and those of blended heritage.

The institutional structures surrounding servitude and slavery in the Commonwealth of Virginia helped lay the foundation for broader ideologies concerning peoples of mixed heredity in other areas. While many colonies had previously addressed ideas of racial mixture and mulatto children, Virginia became the progenitor of legislation that regulated the lives of mixed-heritage peoples and greatly extended these laws in October of 1705. Virginia’s 1705 “act concerning Servants and Slaves” contained over sixty sections of ordinances that established the most comprehensive slave code of any North American colony to date. It also laid a solid foundation for racial slavery at the beginning of the eighteenth century. Most of these statutes would predominate through the rest of the colonial period in Virginia and were adopted in similar forms throughout the slave colonies of English North America.

Virginia’s substantial slave and servant code of 1705 is exceptional for both its depth and the example it set for how other colonies when they came to write laws concerning people of mixed ancestry. The nineteenth clause sought “a further prevention of that abominable mixture and spurious issue, which hereafter may increase in this her majesty’s colony and dominion.” This language shows how the General Assembly pulled directly from language in the 1691 Virginia statute and how officials condensed individual statutes passed at the end of the seventeenth century under an all-inclusive doctrine early on in the next century. This also makes clear that lawmakers continued to portray mixture between Africans and Europeans, along with the offspring resulting from such relationships, in a negative light.

95 These laws should therefore be understood as rules created by colonial elites who feared social and racial disorder among the general colonial population. 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), 187-188.
97 Morgan, American Slavery, American Freedom, 319; Williamson, New People, 6-7.
While Virginia’s 1705 legislation was not the first to address the issue of ethnroracial mixture, it set a legal standard at the beginning of the century that other English colonies later followed. In 1715, Maryland and North Carolina also instituted more comprehensive bills regarding “Servants and Slaves” that reflected many Virginian ordinances from 1705. These colonies also assigned thirty-one years of servitude to illegitimate mulatto children or what Maryland called “the Issues or Children of such unnatural and inordinate Copulations.” In the early eighteenth century, these three colonies attempted to enforce racial boundaries by preventing mixture, and limited those of partial African descent in other ways, such as choice of marriage partner, free movement, and voting rights. Colonial officials not only restricted the freedoms of mixed-heritage peoples, but the laws also reflected and helped shape how the public viewed those of mixed ancestry in colonial Virginia, Maryland, and North Carolina.99

Early eighteenth-century slave codes also reaffirmed the region’s commitment to partus sequitur ventrem, with Virginia legislation mandating that “all children shall be bond or free, according to the condition of their mothers” and Maryland followed the same.100 While these laws were not new, they assured slaveholders that any child born to one of their female slaves would only increase their wealth and further tie mothers to the plantation. Though the statute is matriarchal on the surface, it actuality supported the patriarchal power of the male slave owner. First, slave children were an addition to the master’s wealth; and second, it released European men from having to accept parental responsibility for children they sired by female slaves. It is clear that European men regularly violated African and Native American women, which often times included masters raping or coercing sex from their female slaves. These incidents were endemic throughout slavery and constitutive of the master-slave relationship in North America. At times, European fathers of mixed-heritage slaves showed their children affection and gave them tokens of favoritism.101 In fewer cases, slave owners manumitted their children and sometimes left them inheritances, although this type of benevolent practice was more common in the Carolinian Lowcountry. Most of the time, European master-fathers in the Upper South left their slave children in bondage, even when power and wealth afforded a master the opportunity to free his offspring.102

While it is widely known that female African slaves had children by their European masters, it must also be recognized that not every person of mixed heritage born during this time was the product of a slave mother and a master-father. In the colonial Upper South, Mulattoes were likely to have parentage from any number of racial combinations. Many people of mixed-heritage had enslaved African fathers and indentured European mothers who were in servitude when they were born. Although comparatively few in number, those Native Americans held in slavery often intermixed with those of African descent also held in bondage. Africans and Europeans who escaped colonial settlements sometimes established maroon villages or moved in with Indigenous groups. Ethnoracial mixture in these circumstances was also common. By the eighteenth century, mixture stemming from any of these combinations produced a larger number of people generally identified as being Mulatto. People of blended heritage produced successive

100 Hening, SALVA III, 460; MSA, Bacon, Laws of Maryland at Large LXXV, 262, 267.
generations of those who could trace their ancestors to multiple origins in Africa, Europe, or the Americas. As the numbers of people of mixed descent expanded, so too did colonial laws concerning them and their families.103

Servant and slave codes in Virginia, Maryland, and North Carolina made sure that if people of mixed ancestry were not bound in slavery that the “spurious issue” born to poor European mothers might instead be tied to a master for a lengthy term. While government officials sought to punish all indentured women for bastardy, the punishment was especially harsh when the father was of African descent. Virginia’s 1705 legislation mandated that “if a free christian white woman shall have a bastard child, by a negro, or mulatto” the child would be made a servant until “thirty one years of age.” Maryland law from the previous decade had established this age stipulation.104 Local officials usually sentenced illegitimate children of European parents to twenty-one years of service.105

So while all bastard children could be indentured, mixed-heritage girls and boys were given much longer terms. Being bound for a little over three decades meant that these Mulattoes served most, if not all, of their lives in servitude and essentially occupied a space between freedom and slavery. These prolonged indentures thus consigned mixed-heritage people to a servile and degraded class. People of blended heritage found it difficult to rise in social status, for the better years of their productive labor went directly to their masters during the time of their indenture.106

Mulattoes who could secure freedom through a free European mother maintained an advantage over those whose mothers were of African or Native American descent. While having a European mother regularly left the door open to freedom, the chance of becoming free was slim for Mulattoes of enslaved mothers. Still, colonial legislatures were aware of this path to freedom and attempted to use legal channels to limit the rights of those who fell in-between “black” and “white” racial categories.107

In the colonial Upper South, masters routinely kept children of mixed ancestry in bondage past the expiration of their legal indentures.108 This was a common practice because of the financial incentive to hold laborers into adulthood. Mulattoes bound until thirty-one years old had already typically worked through the bulk of their most productive years, and holding them longer than the agreed upon term of indenture produced even more wealth for the master. It was especially difficult for mixed-heritage peoples to furnish indenture records when their terms ended because the papers had been drawn up during their infancy and were usually held by their

103 Williamson, New People, 9-10, 13.
105 This could be variously applied depending on the age of a person at the time of indenture. In 1765 authorities set the age for “such bastard children already born” at eighteen years for girls and at twenty-one years for boys. This may have been the custom for some time previously since Virginia authorities also lowered illegitimate mulatto children to this age at the same time. William Walter Hening, ed., The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619, Vol. VIII (Richmond: J. & G. Cochran, 1821), 134-135; Kenneth Morgan, Slavery and Servitude in Colonial North America: A Short History (New York: New York University Press, 2001), 8.
106 The life expectancy in colonial North Carolina around this time is thought to have been around fifty years for European males, and probably much lower for servants and slaves. James M. Gillman, “Mortality Among White Males, Colonial North Carolina,” Social Science History 4, no. 3 (1980): 295-316; Kirsten Fischer, Suspect Relations: Sex, Race, and Resistance in Colonial North Carolina (Ithaca, New York: Cornell University Press, 2002), 230 n.47.107 Part of the argument presented here is that there indeed was a “mulatto escape hatch” for mixed-heritage people who had European mothers. Carl N. Degler, Neither Black nor White: Race Relations in Brazil and the United States (London: Macmillan Publishing Co., 1971), 222.
108 Fischer, Suspect Relations, 122-126.
masters or the churchwardens. On August 11th, 1713, Lewis Mingo of Charles County, Maryland, claimed that Henry Wharton was holding him past his assigned indenture. Mingo, whose court records refer to him both as both a “negro” and “a mulatto,” argued that his “mother was a white woman” and that he had served Wharton past the assigned thirty-one years of age required of Mulattoes indentured under Maryland law. His lawyers convinced the justices of the same and Mingo won his freedom.\(^{109}\)

However, Henry Wharton appealed the case against Mingo, basing his claim on a legal technicality stemming back to the previous century. Over the next year, Wharton and his attorney, Richard Llewellyn, came before the justices of Charles County and argued that Mingo was “a slave by virtue of an Act of Assembly in force when he was borne.” This was in reference to Maryland’s 1664 law that enslaved children of slave fathers, regardless of their mothers being free born. Since Mingo’s parents were “lawfully married according to the rights and ceremonies of the Church of England,” Wharton asked that the previous decision emancipating Mingo be overturned. Mingo was prepared to fight for his freedom and had two lawyers, Thomas Bordley and Daniel Dullany, to stand before the court on his behalf. Mingo’s attorneys asked “that the same Judgment may in all things be affirmed,” but their defense appeared weak and they were not able to mount strong counter-evidence. After deliberations, on the 13th day of April, 1714, the judgment made the year before was “Reversed, annulled, and altogether held for none.” The court justices overturned Mingo’s first victory and ordered that he be returned to Wharton. Mingo went from serving over three decades of his life, to becoming free, and ended up being returned back to bondage for life.\(^{110}\)

The following year, Henry Wharton appeared again in a strikingly similar Maryland case concerning “a Mulatto” woman named Rose. Rose was born in 1684 to an English woman originally from London, Mary Davis, and Domingo, a “Negro.” Rose’s parents were married at Hunting Creek in Calvert County. Mary and Domingo had a son named Thomas in 1677 and seven years later Rose was born on August 11, 1684. Mary gave birth to Rose “on a plantation called Topp of the Hill” in St. Mary’s County, where her mother may have worked. The family’s labor status is unclear; Mary described Domingo as a “servant to Joseph Tilley” and did not specify her own labor position. There is no further information concerning Thomas, but Rose was definitely indentured and thirty-one years after her birth she sought her freedom in Ann Arundel County. In 1715 she brought a suit against her master, Henry Damall, who attempted to hold her indefinitely. Mary Davis traveled from outside Maryland to give testimony on her daughter’s behalf. She and her husband Domingo were now residing outside the colony, perhaps in order to avoid the harsh restrictions against the family. Rose was left behind, tied by the bonds of indenture. Still, her mother returned to Maryland in order to vouch for her daughter’s right to freedom.\(^{111}\)

Mary Davis twice noted specifically that each of her children were baptized and had godparents. This is where Henry Wharton comes into the picture: he was Rose’s godfather. The same man who sought to keep Lewis Mingo enslaved for life had also committed himself to being the spiritual overseer of Rose’s Christian faith. Interestingly, Mary went into amazing detail about both of her children’s baptism, godparents, and connection to Christianity. She addressed her audience by stating: “Let all Christian people Know...” and then continued her testimony with the story of her life and family connections to those in “old England.” After

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\(^{110}\) MSA, Provincial Court Judgements, Vol. V.D., no. 1, 1713-1716, 150-152.
\(^{111}\) MSA, Anne Arundel County Court Judgements, Vol. V.D., no. 1, 1714-1716, 93, 178, 244-246.
describing the baptism and godparents of her son Thomas, she stated that “this is here Inserted to satisfy any whom it may Concern that my said son Thomas came from a Christian Race by his Mother.” After naming Rose as her daughter along with similar facts, Mary again stated: “This is alsoe Inserted that you may Know she, my said Daughter, Came of Christian Race by her Mother.” Mary attempted to connect race to religion, gender, national origin in her attempt to free her daughter.\footnote{MSA, Anne Arundel County Court Judgements, Vol. V.D., no. 1, 1714-1716, 93, 178, 244-246.}

Unfortunately for Rose, the justices of Ann Arundel did not accept this argument, which had previously been used by baptized slaves suing for their freedom in the seventeenth century.\footnote{MSA, Anne Arundel County Court Judgements, Vol. V.D., no. 1, 1714-1716, 93, 178, 244-246.} Racial thought in the Chesapeake Bay by 1715 showed that Mulattoes were grouped closer with their African lineage, not their “Christian Race.” This shows a clear shift from the previous decade and presents evolving ideas of hypodescent along lines of race. The court emphasized the African heritage of Rose’s father Domingo and downplayed her mother Mary’s ancestry and testimony. Officials would not accept Mary’s appeal for her children to be identified by her national origin, as she traced their lineage to “white” English heritage. On the 13th day of March, 1715, after “mature Deliberation” the justices decided that “Rose the Molato” would “serve During Life as a slave.” “Her Master, Mr. Henry Damall,” was made only to pay the fees for the court proceedings.\footnote{MSA, Anne Arundel County Court Judgements, Vol. V.D., no. 1, 1714-1716, 93, 178, 244-246.}

It was certainly difficult for Rose and her family to receive this heartbreaking verdict. The court had ruled according to the laws of the previous century, but they were stretching the limits of that legislation. Mary and Domingo were presumably married sometime between 1664 and 1677, when Maryland law would have made Mary a slave according to her husband’s status. Even though Rose was born after 1681, Mary was presumably still considered a slave afterwards. Hence, according to \textit{partus sequitur ventrem} law, Rose was a “Molato” slave born to a “white” slave mother. It is still somewhat unclear how Mary lived out this legal status, for it appears that she may have already gained her freedom. However, the court did not consider her daughter Rose to be free and her slave status tied back to her “Negro” father Domingo. The court’s decision reflects strengthening notions of hypodescent in the region, which would spread to other colonies as well.

\textbf{Mulatto Indentures in North Carolina}

Into the eighteenth century, fresh immigrants from both Africa and Europe poured into the Chesapeake and surrounding colonies. Sexual relationships continued between these two groups and to a lesser extent Native Americans, which added to a number of mixed-heritage people.\footnote{Williamson, \textit{New People}, 11-13.} In order to uphold the racial labor system of slavery, ruling elites frequently punished European women for giving birth to children of partial African ancestry. There are numerous cases of people intentionally abusing indenture laws for personal gain. Children of mixed descent were particularly susceptible to being wrongfully indentured and enslaved because society now associated those of African descent with bondage.\footnote{Fischer, \textit{Suspect Relations}, 122-126.} In 1713, authorities in North Carolina ordered Captain Jenkins to “deliver to the provost Marshall a Mellatto Boy which he pretend was bound to him by his parents in order that he may be Sent to his said parents againe.”\footnote{Robert J. Cain, ed., \textit{The Colonial Records of North Carolina, Vol. VII: Records of the Executive Council, 1664-1734} (Raleigh: 33}
Though it is uncertain if this “Mellato Boy” ever got to see his parents again, there are comparable cases that reveal more of the final outcome. In 1716, a case involving Sarah Williamson and her child came before the General Assembly of North Carolina, where authorities accused Williamson of violating a law for “Women having Mulatto Children.” In 1715 North Carolina created its own “Act Concerning Servants & Slaves,” much of which mirrored Virginia’s legislation from 1705. It stated that servant women who delivered a bastard child would have to “serve Two Years to her Master or Owner for her Offence” in addition to a fornication fine of fifty shillings. If she could not pay this fee the woman might be “publicly whipped” with up to twenty-one lashes. Punishments were even more harsh “where any White woman whether Bond or Free shall have a Bastard child by a Negro, Mulatto or Indyan.” These women would be subject to an extra £6 fine or be “sold for two years” as servants “over & above the Two years service to her Master or Owner,” and all this was in addition to the regular fornication penalties.118

In Sarah Williamson’s case, one of the local churchwardens, Thomas Taylor, assigned her to serve William Parker and his wife Joanah for “the full Space and Term of Five Years.” Taylor also assigned Williamson’s mulatto child to the Parkers for “the full Term and Space of thirty One Years,” a hefty sentence of servitude for being born a person of mixed ancestry to a free mother of European ancestry. Thomas Swan represented Sarah Williamson in court, arguing that both indentures should be put down because of procedural errors with how Taylor issued the contracts. First, the court was unaware that these contracts had ever been made, for it did “not appear that the said Sarah was Lawfully in Court” before she and her son received their sentences. The churchwardens had acted on their own accord by indenturing Williamson and her child to the Parkers without prior approval from the colonial magistrates. Additionally, “there was no Law or Act of Assembly in force” in North Carolina “at the time of passing the said Order Warranting the Sale of the said Sarah and her Child.” Therefore, no one knew “how and after what manner the said Sale was made.” The length of time Williamson’s child had to serve could not be determined because it did “not Appear of what Age the Child was at the time of the said Sale.” Williamson asked “That the said Order may be Sett aside and held Invalid,” and requested that she and her child be “restored to the liberty they had before the passing” of the unjust indentures. The court granted her plea.119

Sarah Williamson’s case reiterates the privilege certain Mulattoes had when their mother was of European ancestry. While colonial elites subjugated women in various ways, “white” women were at least allowed to testify in court on behalf of their mixed children. English colonial courts regularly prohibited those of African or Native American heritage from testifying on behalf of their children. Williamson’s suit also demonstrates that even before laws were formalized, some people were already acting on customary understandings as well as preexisting laws set forth in other colonies. This legal dispute was brought to court in Currituck County, North Carolina, a coastal region just southeast of the Virginian border. Even though North Carolina had not officially adopted formal legislation against “abominable Mixture” when Williamson and her child were indentured, the churchwardens in this area were operating by customary law. The churchwardens who governed over the Williamson family thought they were acting accordingly in extending contracts of servitude or believed they could get away with

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setting these indentures customarily.\textsuperscript{120}

Though there is evidence that numerous children of mixed descent were illegally indentured during the colonial period, not all officials supported the rogue practice. In 1733, North Carolina’s House Committee of Propositions and Grievances reported to the Senate that they “had several complaints laid before them” about various “free People, Negroes & Molattoes” being illegally indentured “contrary to the consent of the Parties bound out.” The House further reported “that these practices are well known” and committee members feared “that divers Persons will desert the settlement of those parts fearing to be used in like manner so unlawfully.” Numerous people had taken part in these illegal actions, and the report identified eight Justices of the Peace by name from “Bertie Precinct… and Bath Country.” The Senate recommended that the accused be called to stand before the General Assembly for “the practice of binding out Free Negroes and Molattoes till they come to 31 years of age contrary to the Assent of the Parties and to Law.” There appears to have been legitimate concern to put a stop to “such an illegal practice,” as North Carolina’s General Assembly moved to take action “so that speedy Justice may be done and that the Parties injured may have relief.” Colonial legislatures passed laws that prohibited the practice of selling free people as slaves, though relatively few people appear to have been brought up on charges. While this is an example of colonial elites seeking justice on behalf of “Free Negroes and Molattoes,” the court still considered thirty-one years of servitude to be fair for people of African ancestry as long as they were legally indentured.\textsuperscript{121}

In 1738, North Carolina authorities similarly ordered Abraham Blackall and Henry Baker to return “a mulatter boy” who was “pretended to be bound” to servitude. This time the demand came at the behest of the Church at St. Paul’s Parish in North Carolina. It is interesting here that Blackall and Baker were the former churchwardens of the parish and the Church commanded that they either bring the “mulatter boy” back into the current churchwardens or pay £40 to the parish. Clearly, some type of impropriety had taken place on the part of Blackall and Baker, for as churchwardens they were entrusted with the responsibility of arranging the indentures of illegitimate children. Still, they had wrongly sold a boy into bondage and the Church decided that a monetary fine could serve as a substitute for the boy’s safe return. At the time, the Church of England was less interested in punishing fornication or bastardy and more concerned that the community would not have to bear the financially responsibility of raising illegitimate children. Indeed, from this example they seemed little troubled about children of mixed heritage being committed to illegal servitude or slavery. Keeping European mothers and their children of mixed descent under these prolonged indentures also added to the wealth and social status of the planter class and helped substantiate a racial order.\textsuperscript{122}

Mulatto children who should have been legally free or held in servitude for a term could more easily be taken as a slave for life because they had African heredity. Due to their young age and lower class status, these children were less likely to bring unjust indenture cases before the court in a timely manner. In 1747, Joseph Williamson, quite possibly the son of Sarah Williamson, sought his freedom from indenture in Pasquotank County, North Carolina. If he had been indentured under regular bastardy laws, Joseph should have been free after twenty-one


years of service, like most apprentices of full European descent. However, assuming Sarah was indeed Joseph’s mother, it seems that he served an extra ten years despite his mother winning his freedom suit years before when he was a baby. If Sarah died early on in Joseph’s life, her son would have been even more vulnerable within the colonial system of servitude. This is because authorities often apprenticed out illegitimate, indigent, and orphaned children. These apprenticeships, which were another form of indenture, reveal discriminatory treatment towards those of African ancestry. In 1736, North Carolina authorities bound out “the mulatto” Delaney Bright, who became an orphan at two years old after her mother died. Bright’s contract stated that her master had to provide “Meat Drink Lodging and Apperelle fitting for Mallatoo’s,” implying that her master may not have been obligated to provide for the young girl’s basic needs the same as other apprentices. Officials often times released masters from the responsibility of having to teach their Negro and Mulatto servants how to read and write, which was customary for apprenticing European children during the colonial period. Under some indenture contracts for people of mixed descent, officials even went so far as to replace the term “apprentice” with “servant.” While both indentures were similar in form, apprentices customarily served until twenty-one years old, while Mulattoes were held in servitude until thirty-one. These mixed youth became an economic asset to their masters in a way that reflected slavery more than apprenticed servants. Master were less contractually obligated to advance mulatto servant children and many appear not to have had much concern for these children’s overall well-being.  

Colonial authorities systematically contracted mixed youth out to planter families when interracial couples were unable to provide for their children of mixed descent. Most often, the parents of mixed-heritage children came from the lower classes of society and were not economically self-sufficient. Penalties placed on interracial couples for engaging in legitimate relationships prevented many of these families from marrying and establishing themselves financially. Also, officials further prevented these families from becoming autonomous when they assigned additional years of bondage to terms of servitude for interracial sex and marriage. More often than not, these parents simply could not provide for their mixed children independently.

Legal restrictions and servitude dissuaded many Africans and European from intermarrying and kept others from living with their partners, which resulted in a number of illegitimate children being born to single mothers. In Carteret County, North Carolina, a woman of European descent named Christian Finny had “been Lawfully Convicted of Bringing forth Two Mulatto Children” and in June of 1743 she was to be “Immediately sold… by the Church Wardens” for two years service. Whoever paid “the Sum of £100” had to make sure that Finny did “not Cohabet with a Negroe Belonging… to Capt. Cary Godby.” Finny’s new master also had to prevent Finny from traveling to “Godbys House” to visit her lover and the father of her two children. This decision kept “Two Mulatto Children” from having access to their father and thus denied them from having a relationship with him. The restrictions placed on African and European couples and their mixed-heritage offspring prevented most Mulattoes from being raised under a stable family structure within their parents’ households.

123 Fischer, Suspect Relations, 123, 125, 230 n.45, 231 n.49.

Mulatto Marriages & “Who Shall Be Counted a Mulatto”

Despite the fact that many of their families were fragmented due to laws separating their parents, children of mixed ancestry grew into adulthood seeking to build committed relationships of their own. In the summer of 1705, John Bunch and Sarah Slayden asked the minister at Blissland Parish in Virginia to assist them in getting married. The reverend, however, “refused on pretence of the said Bunch’s being a Mulatto” and wanted to avoid violating the “Law to prevent Negroes & White Persons intermarrying.” In August, Bunch and Slayden petitioned the court with a plea that they should be allowed to marry, arguing that Bunch should not be considered a “Negro.” Attorney General S. Thomson, responded on September 4, 1705 that he believed the act prohibiting “Negroes & White Persons intermarrying” should be “restrictive no further then the very letter thereof” and stood in favor of the marriage.125

This response by someone from the ruling class gives us insight into the loose boundaries of race at the beginning of the early eighteenth century. Thomson admitted he was not well versed in all the names “given to ye issue of such mixtures” but went on further to state that he believed the term “Mulatto” could only be “appropriated to the Child of a Negro man begotten upon a white woman.” Writing further in reference to the future progeny of John Bunch and Sarah Slayden, he stated that he could not “resolve whether the issue begotten upon a white woman by a Mulatto man can properly be called a Mulatto.” Thomson continued, “I am told the issue of a Mulatto by or upon a white Person has another name…that of Mustee.”126 He concluded that the petitioning couple were “wholly out of the Letter… of the said act” and “not to be construed beyond ye letter thereof.” Though Thompson acknowledged that the law might have been intended to prevent mixture, his final determination was that John Bunch could not legally be designated a “Negro” and any children he would have with Sarah Slayden would not even be “Mulatto.” This shows an extremely permissive application of hypodescent, an early view that would change over the course of the century as it solidified into more of a strict ideology.127

John Bunch’s case came before the court only months before Virginia defined who would legally be considered “a mulatto” in its October 1705 slave and servant codes. In “An act declaring who shall not bear office in this country,” Virginia declared that no criminals and no “negro, mulatto, or Indian” could “bear any office, ecclesiasticall, civill, or military, or be in any place of public trust or power.” And to clear up “all manner of doubts” as to “who shall be accounted a mulatto” the General Assembly stated that any “child of an Indian” or “child, grand child, or great grand child of a negro” would be “deemed, accounted, held and taken to be a mulatto.”128 Indigenous blood was portrayed here as being more soluble, capable of losing its racial taint after one generation of mixture with European blood; whereas 1/8th African lineage would still overshadow someone of 7/8ths European ancestry. This law speaks to how African blood was stigmatized and placed all those of African descent at the bottom of the racial

126 Attorney General Thompson used the term mustee here to denote a person of ¼ African ancestry, yet the term usually applied to those of mixed European and Native American descent during the colonial period. Jack Forbes shows how the term mustee changes over time. At first it was used in the Lower South to denote someone of mixed European and Native American descent, and by the nineteenth century it is applied more to people of mixed African and Native American descent. Forbes, “Mustees, Half-Breeds and Zambos in Anglo North America: Aspects of Black-Indian Relations.” Due to the scope of this project, Native American mixture with both Africans and Europeans has largely been left out of this discussion. For more, see Forbes, Africans and Native Americans: The Language of Race and the Evolution of Red-Black Peoples.
128 Hening, SALVA III, 252.
hierarchy.\textsuperscript{129}

While Europeans considered themselves the more prolific race, they believed that mixture with African blood would dominate. On the other hand, in the early eighteenth century, someone of remote African heritage could be deemed “white” after several generations of racial mixture. This type of thinking reveals the fluidity of hypodescent during the colonial period and shows that a person of remote African descent could be accepted as racially “white.” Europeans viewed blood running through the veins of Africans as potent yet soluble; it could eventually be washed out through intermixture with Europeans. From this perspective, Mulattoes were merely light-skinned Negroes who could come closer to physical “whiteness” through further mixture with Europeans. In the fourth generation of mixture with Europeans, someone having an African ancestor could essentially be made “white.”\textsuperscript{130}

Definitions of who counted as being a Mulatto shifted over time and place, as did the laws surrounding them. This helped add to the “diverse Inconveniences, Controversies, and suits” surrounding mixed children – as Virginia’s sister colony Maryland exclaimed in 1692.\textsuperscript{131} It is perhaps telling that racial lines were somewhat permeable when considering that most eighteenth-century colonies in North America never establish a legal definition for Mulattoes, including Maryland. Under special circumstances this allowed some people of blended ancestry to move across supposed racial boundaries. Although colonial authorities most often grouped Mulattoes along with Negroes in law, as previously discussed, the Chesapeake colonies had special laws of indenture for children of mixed African, European, and Native American ancestry born to “white women.” There are a few glaring exceptions in Maryland, especially in 1715, when legislators stipulated the following: “That all Ministers, Pastors and Magistrates, or other persons whatsoever, who according to the Laws of this Province, do usually join People in Marriage, shall not, upon any Pretence, join in Marriage, any Negro whatsoever, or Mulatto Slave, with any White Person.” The fine was set at five thousand pounds of tobacco, a hefty sum to be sure, but only half of the ten thousand-pond tobacco fine in Virginia for the same offense. A critical omission in this law is free Mulattoes. While “any Negro whatsoever” includes both enslaved and free negroes, only “Mulattoes Slave[s]” are included. Did this mean that authorities took a more liberal approach to handling free Mulattoes marrying with “whites” in Maryland?\textsuperscript{132}

Maryland authorities sought to prevent intermixture of Mulattoes with people of full European descent, yet they did not legislate the same for all Mulattoes. First, all Maryland laws, and most other colonies were careful to stipulate against both Negroes and Mulattoes. However, distinctions were sometimes made between those who were free and those who were enslaved. Second, Maryland legislators appear to have recognized the 1715 loophole two years later when describing several groups more specifically in “A Supplementary Act” to the servant and slave code. “Indian Slave,” “Free Indian Natives,” “Free Negro,” “Negro or Mulatto Slave,” and “Mulatto born of a White Woman” were all identified as separate categories. “Punishment and Penalties laid upon… Mulattoes intermarrying with any White Person” also differed exclusively for people of mixed descent who had European mothers. Under this act, any “Negro or Mulatto” marrying a “White Woman” or “White Man” would “become a Slave during Life.” This was “excepting Mulattoes born of White Women,” who instead were given seven-years of servitude

\textsuperscript{129} Hening, \textit{SALVA III}, 250-251.


\textsuperscript{131} MSA, Browne, \textit{PAGAM XIII}, 547

by Maryland’s General Assembly. County court justices also penalized “any White Man or White Woman” in violation of the law, making them “Servants during the Term of Seven Years.” In terms of legality, Maryland’s “Interruption” statute of 1717 is an obvious exception in colonial history, where officials not only assigned Mulattoes of European mothers a different status than those having European fathers, but they also received the same punishment as their European counterparts. Of course, it should be noted that officials still sought to prevent “Negroes or Mulattoes intermarrying with any White Person.”

Though colonial authorities never outright banned mixed marriages, throughout the first half of the eighteenth century they continued to strengthen sanctions that would prevent mixing between those of European ancestry and those of African or Native American descent. Mixed-heritage populations continued to grow in the Chesapeake and the ruling class continued to label them a problem. North Carolina’s general assembly wrote in 1723: “Complaints have been made by divers Freeholders and Inhabitants of this Government, of great Numbers of Free Negroes, Mulattoes, and other Persons of mixt Blood, that have lately removed themselves into this Government, and that several of them have intermarried with the white Inhabitants of this Province.” Many of these people were migrating south from Virginia and possibly other colonies as they sought to settle on lands outside established English colonial society. To prevent this immigration into the colony and to punish these mixed families, North Carolina authorities passed laws that increased taxes on “all free Negroes, Mulattoes, and other Persons of that kind, being mixed Blood.” They were now held tithable and taxed at twelve years of age and up, similar to all men over sixteen years of age and all slaves, male and female, over twelve years old. Lawmakers also extended this act to “any White Peron or Person whatsoever, Male or Female” who would marry “with any Negro, Mulatto, Mustee, or other Persons of mixed blood.” Presumably, minsters would be able to spot someone of mixed ancestry, though this 1723 legislation also clarified that those of “mixed blood” included anyone to “the Third Generation.” This meant that those of one-eighth or more African lineage would legally be considered Mulatto in North Carolina, similar to Virginia’s legal criteria passed in 1705. Virginia and North Carolina were the only two regions in North America that appear to have used the idea of blood quantum to legally define Mulattoes by a fraction of their African lineage in the colonial period.

Despite attempts by lawmakers to denigrate people of blended heritage and restrict mixed marriages, Mulatto and “white” couples found clergymen to join them in matrimony. These Christian men presumably found nothing wrong with uniting these couples and performed marriage rites even when the law could punish them for authorizing these unions. On March 2, 1726, Reverend John Blacknall of Edenton, in Chowan County, North Carolina, “did joyn together in the holy estate of Matrimony according to the form of the Church of England… Thomas Spencer a White man and a Molatto Woman named Martha [P]aul.” In the fall of that year, court justices fined Blacknall £50 for his role in the marriage ceremony and summoned Thomas Spencer to appear before of the court. Over several court sessions in 1727, Spencer refused to come address the court in person and did not send any message concerning his case. Most likely, Spencer and his “Molatto” wife just wanted to be left in peace and thus avoided colonial authorities. In many cases the court seemed to look past the so-called transgressions of

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these mixed couples and instead prosecuted the clergymen who performed the marriage.\textsuperscript{135}

A year before the Spencer case, the Reverend John Cotton was indicted “for marrying a Molatto Man to a White Woman” in North Carolina. Attorney General William Little dropped the charges after Cotton appeared before the court and dismissed the reverend for unknown reasons.\textsuperscript{136} How Reverend Cotton evaded prosecution remains unclear. However, we know that Christian ministers were willing to perform marriage ceremonies despite extremely high fines because they believed all groups of people should be granted access to Christian sacraments. Comparatively, the planter class in the Chesapeake was less concerned with extending religion to people of African descent in the eighteenth century. On the other hand, ministers celebrated the baptisms of mulatto youth and other people of African and Indigenous descent in reports on their progress. Certainly, their similar interest in preventing fornication by solidifying mixed couples in marriage frustrated attempts by social elites to police unions between Europeans and people of mixed heritage.\textsuperscript{137}

When Chesapeake laws emerged that restricted Mulattoes from intermarrying with “whites,” people of mixed ancestry either found marriagable partners within other marginalized groups or they ignored these laws and continued to marry people of full European descent. In November 1742, Elizabeth Grava was brought up on charges of “intermarrying with a Mulatto Daniel Pearl” in Prince George’s County, Maryland. During the same court term, the Grand Jury also indicted William Marshall on the same offense of “Intermarrying with a Mulatto Woman,” who went unnamed.\textsuperscript{138} Seven years earlier, in Queen Anne County, Maryland, “Joseph Guy, a mulatto Man and Bridget, his wife, a white Woman,” were brought up on similar charges. However, in this June 1735 case, the court found the couple guilty and they were both indentured out as servants for an undisclosed amount of time. Their labor was “sold to Mr. Thomas Hynson Wright for the Sum of eighteen pounds ten Shillings.”

These examples show that mixed-heritage people of both sexes risked legal punishment in order to marry those of full European ancestry. Europeans risked their freedoms and the free status of their children by partnering with Mulattoes. Although these couples may have found acceptance within their local communities, colonial law did not extend the same courtesy to these people or their partners. The courts still found these marriages legally valid, since it would have been difficult to circumvent the religious authority of the Church. However, government authorities sought to punish couples for transgressing the racial system – an order that was still flexible, yet increasingly hardening.\textsuperscript{139}

Political elites sought a more rigid racial caste system to maintain bound labor and censuring European marriages with Mulattoes became a part of the process that solidified racial boundaries. Again, even though no colony completely outlawed marriages between Africans and Europeans, they increasingly punished the couples and their children over the years. By 1741 North Carolina legislators made their actions apparent with their own statute to prevent “abominable Mixture and spurious issue,” issuing a £50 penalty to “any white Man or Woman” who would “intermarry with an Indian, Negro, Mustee, or Mulatto Man or Woman, or any person of mixed blood, to the Third Generation, bond or free.” Minsters who knowingly married


\textsuperscript{138} MSA, Prince George’s County Court Record, Vol. AA, 1742-1743, 191.

\textsuperscript{139} MSA, Queen Anne County Court Judgement Record, 1732-1735, 526.
such couples in North Carolina would also be fined the same amount.\textsuperscript{140} This language copied from Virginia’s 1705 law almost verbatim, except that it added “Mustee,” referring to those of mixed European and Indigenous heritage, coming from the Spanish term “Mestizo.”\textsuperscript{141} Colonial lawmakers repeatedly encouraged individuals and communities to consider people of blended ancestry in the same subjugated class as enslaved Negroes of full African descent. Due to mulatto women and their children being systematically indentured over multiple generations, this process almost effectively became slavery by a different name.\textsuperscript{142}

**Mulatto Self-Identification**

We know that colonial elites paired Mulattoes with Negroes in law, and that some European mothers identified their mixed-heritage children by their “Christian Race,” yet how did Mulattoes self-identify? This is a difficult question to answer, though there are moments where adequate responses can be found. As we have seen, even with the assistance of a free European mother to vouch for them, many Mulattoes fell into indenture. However, some voluntarily chose to indenture themselves or their children for economic reasons. One such story appears in Northampton County, Virginia, in the story of Jane Webb, “a muletto Girle” born in 1682 to “the daughter of a white woman” Ann Williams and an African man named Daniel Webb. Jane Webb agreed to a seven-year indenture to Thomas Savage on the condition that he would allow her to marry his slave named Left and that her husband would eventually be emancipated. Perhaps she saw much of her father in Left and was therefore willing to make the sacrifice for her fiancé. Jane’s mother, Ann Williams, may have risked the same for her husband Daniel Webb in the late seventeenth century. Early in the next century, Jane put her freedom on the line for her African husband Left.\textsuperscript{143}

Through her marriage to Left, Jane Webb committed herself to her African heritage and at the same time she tried to secure a free identity for her family. As a result of her agreement with Thomas Savage, officials indentured seven of Jane’s children – Diana/Dinah, Daniel, Frances, Ann, Elizabeth, Elishe, and Ambimeleck – to Savage in the early 1700s. By her agreement with Savage, only the first three children born during Webb’s seven-year indenture were to be bound. Somehow Savage gained the right to hold Webb’s children born even after she finished serving her original indenture. All of them were supposed to eventually gain their freedom after their terms of service had expired. Around 1725, Savage claimed that since Webb had “no visible means of support” he had the right to indenture her two youngest children, Lisha (Elishe) and Abimeleck. By 1726, Savage seems to have conveniently lost Webb’s indenture contract and further stated he had never promised to free her husband Left in their original agreement. Neighbors of Savage claimed they had seen the document prior to its disappearance and stated the contract gave Savage the right to indenture Webb’s children during Left’s lifetime. Webb sought to have the testimony of others entered on her behalf, yet her witnesses were of African


\textsuperscript{141} Clark, *The State Records of North Carolina, Vol. XXIII*, 160. People of blended African and Native American heritage could also be termed mustee, though this terminology is used more often in the early U.S. republic, after Native American slaves had largely mixed in with slaves of African descent. Forbes, “Mustees, Half-Breeds and Zambos in Anglo North America,” 64-65.

\textsuperscript{142} By 1728, Maryland lawmakers declared, “that all such Free Mulatto Women, having Bastard Children, either within, or after the Time of their Service, and their Issue, shall be subject to the same Penalties that White Women and their Issue are, for having Mulatto Bastards.” Bacon, *Laws of Maryland at Large LXXV*, 371.

descent. In the end, the Virginia court decided it could not legally accept evidence given by “Free Negroes” and Webb’s case was thrown out of court on July 11, 1727. In the end, the testimony given by European witnesses carried more weight in court than those of partial European and African descent.\footnote{Heinegg, Free African Americans, 1221-1223; Carr, et al., Colonial Chesapeake Society, 300-301.}

Over the 1720s and 1730s, Webb’s children move in and out of the Savage household records as tithable persons, meaning that Savage paid taxes on their bound labor. The Webb family continued to fight their indenture cases in court. For example, Webb’s oldest child Dinah petitioned the court for her freedom in March 1724, which she gained the following year. Even though their attempts were not immediately successful, the Webb children remained outside formal slavery and eventually gained their freedom through persistent struggle over the years. Although Mulattoes occupied some of the lowest ranks in society, some were still able to rise within the colonial social hierarchy and challenged those in power.\footnote{Heinegg, Free African Americans, 1221-1223; Carr, et al., Colonial Chesapeake Society, 302-303.}

Occasionally, the voices of mixed-heritage people come through loud and clear, even through their scant appearances in colonial records. During a case for her children’s freedom in court, witnesses testified that they heard Jane Webb say: “if all Virginia Negros had as good a heart as she had they would all be free.” The court disapproved of such inflammatory language and for her “dangerous words tending to the breach of the peace,” the court gave Webb ten lashes. In 1750, her son Abimeleck revealed the same defiant spirit when the court found him guilty of “combining with sundry Negros in a conspiracy against the white People of this county.” This charge appears to have been stronger than his actions. Abimeleck made a reference that with “godalmightys assistance or blessing” certain Negroes held wrongly in bondage could take over the county “in one nights time.” He received thirty-nine lashes for his insolent speech and had to post £100 bond that ensured his proper behavior in the future. Even though Abimeleck and his family were subject to masters who kept them in prolonged indentures and judges who issued them corporal punishment, they still spoke what was on their minds and bore the consequences for their candid language.\footnote{Heinegg, Free African Americans, 1221-1223.}

A key reason colonial powers subjugated people of mixed heritage becomes clear in these stories of resistance. Colonial elites feared Mulattoes like Abimeleck and Jane Webb would align themselves with “Virginia Negros.” It is evident that the Webbs affiliated with those of African ancestry and those held in bondage, and this threatened the existing power structure. These voices represent many people of mixed heritage who fought colonial legal systems in order to keep themselves and their families out of bondage. The story of this blended family, and those of many others in the colonial Chesapeake, speak to how some mixed-heritage families coupled with Africans, thereby affirming their identities as part African. It also illustrates the difficulties in keeping successive generations out of servitude. If the Webb family had not fought, they almost certainly would have sunk deeper into servitude and slavery in subsequent generations.\footnote{Brown, Good Wives, Nasty Wenches, and Anxious Patriarchs, 232.}

Though in many cases people of mixed descent aligned with spouses of full African descent, others found mulatto partners and also attempted to protect them from the clutches of servitude or slavery. Jane Webb’s daughter, Dinah, married a man of mixed ancestry named Gabriel Manly in the mid-1720s. Decades later in Virginia, “a free Mulatto” Elizabeth Young purchased her husband Abram Newton, who was also described as “a Mulatto.” Evidence
showed that “Elizabeth, by a writing under her Hand gave” Abram his freedom. In November of 1745, Elizabeth died before her husband was officially manumitted. It appears that shortly thereafter an unknown party attempted to claim Abram Newton as property. On December 11, 1745, Newton quickly petitioned the court to complete his wife’s unfinished business. After several tense months, the widower’s nerves were put at ease. On June 13, 1746, the colonial assembly “Ordered That the said Abram be manumitted and set free according to the Will of the said Elizabeth and the Prayer of the Petitioner.”

Colonial courts had little problem with people of mixed ancestry marrying each other, and many, like Abram Newton, found a legal channel through a spouse to attain their freedom. Newton’s case also highlights his wife Elizabeth Young as “a free Mulatto Woman” who was literate and had the power to purchase and manumit her husband, suggesting that she had some type of upward social mobility. To be sure, freedom suits brought by people of mixed heritage were not uncommon and represent hundreds, if not thousands, of similar colonial court cases.

**“May Be Mistaken For a White Man”**

As additional slaves of mixed descent gained their liberty in the Upper South, they established the first free communities of color. Mulattoes grew in population into the eighteenth century, as numbers of Africans and Europeans exploded through forced and voluntary migration respectively. In comparison, numbers of Mulattoes in the Lower South were smaller and grew more slowly due to the predominant African population. Many Africans in this region also intermixed with Native Americans. People of mixed ancestry who could not claim European maternal lineage largely remained in bondage and comparably had few avenues to gain freedom for themselves and their families as slave laws prohibited emancipation. Despite the growing restrictions on their lives in racial slavery, these people of blended ancestry found other ways out of bondage, and the primary road was through escape.

All throughout the North American colonies, servants and slaves of blended heritage ran away in order to enjoy autonomous lives and effectively became their own masters. In 1722, a “Mulatto Slave” named Lawrence, escaped from his master Benjamin Cottman in Somerset County, Maryland. Lawrence was probably well traveled before reaching the Chesapeake, for he spoke both English and Dutch. The following year in Bath County, North Carolina, “a Runaway Mollatto man slave named Michael, otherwise called Jack,” escaped from his master Robert Pitts. For twenty-two days during the winter of 1723-1724, Michael hid out with James Welch before he was “apprehended and taken” back by Pitts. Pitts later sued Welch for the “unlawfull entertaining, harbouring, and concealing” of the slave and sought £30 in recompense for services lost and the expense of capturing Michael. The court also fined Welch another £11 for his role in aiding Michael’s escape, which put him in violation of North Carolina’s 1715 “Act concerning Servants and Slaves.” While the extent to which Welch assisted Michael in his escape is unknown, it is clear that the systematic policing of African slaves covered people of mixed descent as well. Colonial courts reaffirmed treating all those of African heritage within

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152 The American Weekly Mercury (Philadelphia), #138, August 2, 1722.
the bounds of slavery and held the community liable for helping to police that racial order. In 153

When all other avenues to freedom were closed, those of mixed heritage ran away from their masters in order to enjoy the fruits of liberty. With the growth of print technology in the eighteenth century, colonial newspapers record countless runaway slaves and servants in English North America. These sources reveal that those of partial European ancestry had a comparative advantage in successfully running away compared to slaves of full African descent that did the same. Most chose to escape alone, perhaps to better conceal their African or Indigenous heredity. Just as European servants had a greater chance of absconding and passing into free society, those of mixed ancestry who could more easily pass as racially “white” often attempted to slip away into free colonial society as free persons.

It is clear that some of the first instances of racial passing took place in the early eighteenth century, when contact between Africans and Europeans over successive generations had produced multigenerational mixture and phenotypically lighter slaves of mixed descent. In 1733, “a Mulatto Fellow, of a whitish Complexion” ran away from the Virginian plantation of William Byrd and may have easily identified himself only by his European ancestry.155 The following year, Godfrey Smithers was described by his Virginian master as possessing “a much fairer Complexion than usual among Mulattoes, and may be mistaken for a white Man.”156 On June 25, 1736, a slave named Daniel also ran away in Virginia and probably relied upon his European ancestry as a means of escape. Daniel was said to be “whiter than Mulattoes commonly are” and may have recognized himself as a man of European descent.157

It is difficult to tell how slaves of mixed heritage in the colonial period identified in terms of ethnoracial background. Did they envision themselves to be European, African, Native American, or a combination of the parts that comprised their familial lines? Runaway slave advertisements present a window into viewing some of these self-perceptions. Though slave masters and overseers authored these ads, they described how mulatto slaves portrayed themselves. From these descriptions, we can see that many slaves of mixed ancestry passed themselves in society as fully European, and may have fashioned their personal identity after their predominant European ancestry.

European masters viewed light-complexioned runaways who identified as European as a misrepresentation of a truly mixed or African identity. In many ways, the authors of these ads of these runaway slaves portrayed Mulattoes as racial imposters who were claiming to pass as “white.” In fact, these particular racial depictions were not far from the truth, for certain mulatto slaves often had a higher proportion of European than African ancestry. Some surely believed themselves to be racially “white” by their predominant European lineage and might have chosen to personally identify as such. Racial passing in these cases contrasted socially accepted racial categories, for their claims to European heredity were indeed real. In terms of obtaining safe passage into freedom, it made sense for people of mixed heritage to align themselves with their European ancestry and thus put on the cloak of “whiteness.” People of mixed descent struggled to circumvent slave codes by asserting their claim to European ancestors and freedom, while the master class denied Mulattoes this identity through upholding the notion of hypodescent. While colonial runaway advertisements depicting light-skinned Mulattoes were proportionately fewer

154 Werner Sollors, Neither Black Nor White Yet Both: Thematic Explorations of Interracial Literature (New York: Oxford University Press, 1997), 255.
155 The American Weekly Mercury (Philadelphia), #706, July 12, 1733.
156 The American Weekly Mercury (Philadelphia), #769, Sept. 26, 1734.
157 The American Weekly Mercury (Philadelphia), #869, August 26, 1736.
than notices describing those with darker complexions, it is apparent that lighter skin presented a comparative advantage when one attempted to escape the confines of slavery.\textsuperscript{158}

Runaway advertisements show another way that people of blended heritage were socially positioned as a subjugated class among the lowest ranks of society. These ads reveal “white” privileges that people of mixed descent inherited. Newspapers reflected how the master class viewed the mixed-race body and how slaves of blended ancestry used their physical characteristics to manipulate racial perceptions when attempting to secure freedom. Through these racial descriptions, newspaper ads figuratively confirmed the existence of mixed bodies and supported the idea of racial mixture in the public consciousness. Along with legal statutes, these ads were a reflection of how social elites viewed mixed-heritage peoples and served to inform the wider public that the proper place for Mulattoes was in bondage. While most colonists native to the Upper South region would have grown up apparently knowing the difference between Mulattoes and Negroes, these advertisements helped reiterate for newcomers to the colonies what a Mulatto physically looked like. Thus, colonial runaway advertisements both expressed elite views of mixed-heritage peoples and helped reaffirm that image in the minds of readers. This became part of the process by which Mulattoes were imagined, reimagined, and understood as people of mixed descent who occupied the lower ranks of society. In this manner, Mulattoes were linked to servitude and slavery along with other Negroes, which further promulgated notions of hypodescent.

**The Lowcountry: South Carolina and Georgia**

During the colonial period, people of mixed-heritage were able to more regularly benefit from their European ancestry in one region, the Lowcountry. By the early eighteenth century, a plantation economy had emerged in the low-lying coastal areas and river regions surrounding Charleston, South Carolina. By the end of the colonial period, this region would extend from the south of North Carolina down through Georgia, touching East Florida. This plantation system developed separately from the Chesapeake Bay colonies by entering primarily into indigo and rice cultivation. In the colonial Lowcountry, the amount of intermixture between Europeans and Africans was nowhere near that of colonies in the Upper South. Therefore, the numbers of Mulattoes were significantly lower in South Carolina and Georgia by the end of the colonial period.\textsuperscript{159}

Compared to those in the Upper South, generally both free and enslaved people of mixed heritage in the Lowcountry had a greater amount of mulatto privilege in connection to their European ancestry. This was due to the unique social milieu of Charleston and surrounding areas, described by visitor Samuel Dyssli in 1737 as place that looked “more like a negro country than like a country settled by white people.” By the early eighteenth century, racial demographics in South Carolina, with its “black majority,” were more like those in the Caribbean. This African majority and Caribbean planter culture heavily influenced society in the Lowcountry, which shaped prevalent notions concerning people of mixed heritage. “The whites mix with the blacks and the blacks with the whites, and if a white man has a child by a black woman, nothing is done to him on account of it,” wrote Dyssli from Charleston. Dyssli further commented: “It also occurs that the English marry… black women, often also Indian women.”


In the English colonies of North America, nowhere else was intimate mixture more socially accepted than in South Carolina. This general acceptance, though definitely not supported by all English colonists in the Lowcountry, helped guide ideas about and the treatment of mixed-heritage peoples in the region.\textsuperscript{160}

The loose interplay between law and social practice made the Lowcountry exceptional during the colonial period. By the early eighteenth century, many English in South Carolina took a socially liberal stance towards intermixture with Africans and Native Americans. In contrast to colonies of the Upper South, the colony never legislated directly against intermarriage between Africans, Europeans, and Native Americans. In 1717 South Carolina bastardy statutes also mirrored several stipulations of the Upper South, yet conspicuously left out harsh punishments for intermixture with those of African descent, especially concerning people of mixed heritage. This legislation punished “any white woman, whether free or a servant” who would have a “child by a negro or other slave or free negro.” Extra time would also be added to any current indenture for work missed during the pregnancy and an additional seven-year term would be added onto her time. The court issued the same seven-year indenture to free women caught in violation of the act. The law further stated, “any white man that shall beget any negro woman with child, whether free or servant, shall undergo the same penalties as white women.” This is where punishments concerning intermixture end.\textsuperscript{161}

South Carolina had much less ethnoracial mixture compared to the Upper South because they entered into the plantation system largely as a slave colony without comparable amounts of European servants. Officials legislated lightly against intermixture across ethnoracial boundaries. Bastardy statutes were much heavier than other fornication laws in South Carolina, yet authorities irregularly enforced these laws. Concerning those of European descent, the law only penalized men who impregnated women out of wedlock with light terms of service. The women and their children seemingly went unscathed.\textsuperscript{162} However, contrary to its colonial neighbors farther north, the elite planter class in the Lowcountry gently touched intermixture in law. Again, South Carolina’s first comprehensive servant legislation of 1717 only legislated against bastardy between “white” men and women having children “by a negro or other slave or free negro.” This left out Native Americans, and perhaps intentionally overlooked free Mulattoes and other mixed groups commonly targeted along with Negros in other colonies. Interestingly, people of mixed ancestry are nowhere named in this legislation, nor are they later added to any update of the law during the colonial period. Surely legislators were aware of naming these groups, for “negroe, mustee, mulatto and Indian slaves” all appear listed in tax codes by 1719. South Carolina’s colonial government may have been less eager to legislate against those of mixed heritage since at this time Mulattoes were relatively few in number and a portion of them had a somewhat middling social status connected to their European fathers.\textsuperscript{163}

Further evidence suggests that South Carolina authorities applied the notion of hypodescent to Mulattoes as well, and although this was a lenient application in comparison to

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\textsuperscript{161} Though it might be thought that colonial authorities passed sparse legislation targeting servants because of smaller numbers in the Lowcountry, the laws concerning servants are still extensive. Thomas Cooper, ed., \textit{The Statutes at Large of South Carolina, Vol. III: Containing the Acts from 1716, Exclusive, to 1752, Inclusive} (Columbia: A. S. Johnston, 1838), 14-21.
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\textsuperscript{162} Bastardy laws directed European men to pay a £10 fine and provide for the child of free European women, and if the woman was a servant, the man also had to serve the woman’s master, or find a replacement, for time she missed during pregnancy. Cooper, \textit{SALSC III}, 14, 19.
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\textsuperscript{163} Cooper, \textit{SALSC III}, 14, 19-20, 72; Williamson, \textit{New People}, 14-17.
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the Upper South, a prevalent ideology took shape over the first half of the eighteenth century. In 1717 colonial officials specify penalties placed upon “any white woman... to be got with child by a negro” and “the issues or children of such unnatural and inordinate copulation.” South Carolina lifted these lines word for word from the 1715 law that issued thirty-one year indentures to these mixed children in Maryland, yet in the Lowcountry these indentures were significantly reduced for these children. Instead, the offspring of these relationships would only serve “from the time of their birth” until eighteen years for girls and twenty-one years for boys. Children of mixed ancestry in South Carolina avoided the drastic thirty-one year sentences given in the colonies of Virginia, Maryland, and North Carolina. While South Carolina clearly mandated less severely against people of mixed heritage, these laws show that authorities still stigmatized intermixture between Africans and Europeans across all these colonies. This widespread uniform set of beliefs concerning people of mixed descent can accurately be labeled hypodescent ideology around this point in time.164

Strikingly, South Carolina indentures for illegitimate mulatto children were the same terms of service given to illegitimate children of full European descent in the Upper South. Since laws did not stipulate terms of indenture for European children in the Lowcountry, the courts still assigned mixed children a status in-between slavery and freedom. When compared to the Chesapeake, demographics in the Lowcountry resulted in fewer Mulattoes born to European mothers. The numbers of Multattoes did not reach a critical mass in South Carolina and therefore colonial officials did not feel this group presented the same type of threat to upsetting the racial order. Also, the difference between law and common practice further shows that mixed children in South Carolina were not punished as severely as those children of similar ancestry in other colonies. It is obvious that the courts did not carry out these laws in the Lowcountry, for masters who impregnated their slave women escaped legal punishment for fornication.165

In South Carolina, people of mixed heritage were more likely to have freedom through a benevolent slave owning father than through a European mother. Though most planters who sired children by their female slaves kept their sons and daughters in bondage, cases of masters freeing their offspring appear with regularity in South Carolina, with some even making these children heirs to their estate. Planter and colonial assemblyman James Gilbertson lived in early colonial South Carolina for more than thirty years. In 1720, Gilbertson set up notable provisions for a female slave of his and her children in Charleston County, writing: “My will is that my mulatto woman Ruth shall be free immediately after my Decease & also my will is that her three female children, Betty, Molly, and Keatty shall be free at the age of one and Twenty years, my will is also that Ruth have the feather bed.” He also made provisions for Ruth to house herself "upon my plantation during her natural life.” First, this example shows a master-father freeing his children by his slave and acknowledging the children they had together. Secondly, his mistress Ruth was of mixed ancestry herself, being a “mulatto woman.” If we assume that Ruth was native born in South Carolina and that by 1720 she had given birth to three children, we can with some assurance place her birth back into the late seventeenth century. There is no way to tell which parent of Ruth’s was European and which was African, but we do know that these two groups engaged in sexual relationships early on in Carolina’s history.166

164 Cooper, SALSC III, 20; MSA, Bacon, Laws of Maryland at Large LXXV, 267.
165 Certain colonies would later change these laws in the Chesapeake to reflect South Carolina’s liberal approach to indenturing “white” children. Cooper, SALSC III, 14, 19-20.
Due to the relative lack of European servitude and the preponderance of African slavery in the Lowcountry, Mulattoes were more likely to have been fathered by European men. These demographics led to comparatively more Mulattoes gaining emancipation through ties to European paternity. Some English masters had polygamous relationships with their slaves. In 1754, Englishman John Williams emancipated his daughters Sabrina and Molly, both of mixed ancestry. Twenty years later, and after his death, the executors of William’s will freed three more slaves, Maria, Amy, and Jack, as there was “reason to believe that they are his Issue.” Here, the administrators of Williams’ estate reasoned he fathered children by more than one enslaved woman of African descent. By some estimates, mulatto children counted for approximately a third of all colonial manumissions in South Carolina. While this percentage is significant, it does not reflect overall numbers of mixed-heritage slaves freed. Only some of the children born to African slave mothers and European fathers gained manumission. South Carolina, which also operated by partus sequiter ventrem, assigned the majority of these children a lifetime of servitude through their African mothers. Still, when compared to those of full African lineage, slaves of mixed heritage in the Lowcountry had a higher chance to gain manumission because they had European fathers who were able to provide for their emancipation.\(^{167}\)

European fathers often waited to free posthumously the mixed children they sired with their slaves, and often free the mother of their children as well. Rightful inheritances often hung in jeopardy when these men left instructions in their wills to issue money and property to their mulatto children. Trustees and family members regularly attempted to put a stop to these emancipations or moved to expropriate endowments. In his 1735 will, Joseph Pendarvis left his Ashley River estate to his children by an African woman named Parthena. However, one of his trustees, Childermas Croft, appropriated the land for himself. Here, Croft used his own social capital to subvert the legal power of Pendarvis’ will. Even when European fathers recognized their mixed children in their wills, some executors simply refused to administer the estate properly. European men of economic means held power over formerly enslaved persons of African and Native American descent, whether or not they had European ancestry. Even though South Carolina acted with greater leniency when allowing slaves and their offspring to inherit freedom and resources, these transactions were still tied to European patronage. English men possessed the highest form of “white” privilege, which put them at the top of colonial society, which allowed them to wield great authority over those of partial European descent. Even when the planter class had the power to free favored slaves of mixed ancestry, not everyone adhered to the letter of the law.\(^{168}\)

### Mulattoes in Colonial Georgia

South Carolina was central to the Lowcountry in much the same way that Virginia heavily informed Maryland and North Carolina. South Carolina, and more specifically its capital at Charleston, also served as a model for Georgia. The last British colony established in North America, Georgia followed South Carolina into slavery cautiously. It avoided slavery for around fifteen years after the English Crown established it as a colony in the mid-1730s. The founding Trustees of the colony wanted to avoid the problems associated with a slave society, namely the possibility of job competition and potential insurrection. South Carolinians also thought of


colonial Georgia as a partial buffer zone between them and Spanish controlled Florida farther south. Early colonial Georgians could keep a closer watch on their Spanish adversary and settle territory that would make it difficult for runaway slaves to reach the Spanish outpost at St. Augustine.  

Mixture with Europeans was also a consideration in keeping Africans out of the royal colony. In 1745, John Martin Bolzius in Savannah, Georgia had regular correspondence with the famous Reverend George Whitefield, one of the most popular itinerant preachers and religious advocates during the First Great Awakening. In one letter, Bolzius engages Whitefield on the issue of slavery and weighed in against the introduction of slaves into Georgia. “I am sure,” wrote Bolzius, “if the Trustees allow’d to one thousand White Settlers so many Negroes, in a few Years you would meet in the Streets, So as in Carolina, with many Malattoes, & many Negro children, which in process of time will fill the Colony.” Bolzius made clear that he saw this mixture as problematic while repeatedly warning that if authorities allowed slavery in Georgia, it would need look no further than its neighbor to the north for problems that would soon arise. He continued: “The Assembly in Carolina have made good Laws & Restrictions in favour of the White people, but how many are [there] who pay regard & Obedience to them? not better would fare the Restrictions & Good Laws of the Trustees.” Here, Bolzius distinguishes between law and social practice in defense of Georgia’s prohibition against slavery. Despite South Carolina having restrictions against racial mixture on the law books, he pointed out that few people actually paid attention to them, or that they ignored the legislation concerning mixture. Bolzius notes that colonial authorities would fare better if they simply abided by their own laws. He and others feared “many Malattoes, & many Negro children” populating the colony because elites looked down upon these groups of people and they threatened to upset the racial order.

Despite such pleas, the lucrative possibilities that slavery offered eventually won out and Georgia embraced slavery. With the legal “Introduction of Black Slaves or Negroes” on August 8, 1750 came an act that outlawed “Interrmarriages between the white People and the Negroes or Blacks.” The further step, which other colonies had not taken, was to make these “unlawful Marriages… absolutely null and void.” This drew a strict distinction between races and prevented people of mixed heritage from being legitimate. Authorities also made European fornication with a “Negroe or Black” illegal for both sexes and set the fine at £10. The other unique point is that officials never assigned additional servitude for parties involved or for the children produced from such relationships. This owed largely to the fact that colonial indentured servitude had dwindled by this time and never had established itself in Georgia to the extent it had in the Upper South. Certainly, mixed children were still being indentured under early eighteenth-century laws in other areas. Though it had regulations on the books against intermarriage, Georgia became a slave colony that did not readily regulate the freedom of mixed-heritage peoples outside of slavery.

Georgia may have been even more lenient than South Carolina regarding its mixed population. In 1765 it went one step further than any other colony regarding free people of

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171 It has been noted that Georgia already had slaves working within its borders prior to legislative approval. Wood, Slavery in Colonial Georgia, 1730-1775, 76.
172 This mirrored New England law more than it did the Chesapeake.
mixed-heritage by extending them almost full rights as legal citizens. In some of its legislation, colonial authorities commented that there was “no Provision, Priviledge, and Encouragement” and neither any special “Trial and Punishment of Persons born of free Parents being Mulattoes or Mestizos” compared to “Slaves and their Issue.” They noted that a lack of these restrictions would not discourage these mixed people “to come into this Province.” The Georgia assembly then went a step further by enacting legislation declaring that everyone from this “Nation of Colour soever, being born of free parents,” would be able to enter the province of Georgia and become naturalized citizens. The law specified that “each of them, whereby they, their Wives, and Children may have, Use and enjoy, all the Rights, Priviledges, Powers and Immunities whatsoever which any Person born of British parents within this Province may, can, might, could or of Right ought to have, Use or enjoy.” The sole restriction of these rights limited their ability to vote for officials of the General Assembly. Aside from this, mixed-heritage people were to be “adjudged, reputed and taken to be in every Condition, Respect and Degree as free to all Intents, Purposes and Constructions as if they had been and were born of British Parents.” This legislation was most exceptional, showing that initially Georgia lawmakers took into consideration the European ancestry of mixed-heritage people having African and Indigenous lineage. At first, Georgia elites did not legislate against “Mulattoes and Mestizoes” like their northern neighbors because they needed to populate the colony and considered these groups as a buffer between themselves and their enemies.  

Though there is little evidence that people of mixed heritage actually applied the incentive offered to “Mulattoes and Mestizos” to become Georgia citizens, this legal idiosyncrasy shows that colonial elites at least envisioned people of blended heritage in a position above slaves and even “free Negroes,” both of whom were named in surrounding legislation. Georgia’s special legislation was also short-lived, for new slave codes enacted in 1770 omitted the section that addressed people of the “Nation of Color.” Still, there was a relative lack of prohibitions against people of blended heritage in early colonial Georgia. Regardless of the actual implementation of the law offering mixed-heritage people citizenship, the statute reveals the extent to which some officials were willing to go in order to build up a pro-English settlement in such a heavily contested region and ensure its survival. Legislators encouraged migration into the colony to establish a population large enough to protect against the Spanish to the south and Native Americans to the west. They understood that people of mixed ancestry needed some incentive to side with the English over these other groups. Also, there were certainly people of mixed ancestry already residing in the territory of Georgia when the colonial assembly passed its first laws. People of mixed African, European, or Native American descent were already living and working in Georgia had been experiencing relative privilege in the young colony.

For decades, certain people of mixed lineage enjoyed a semi-servitude or freedom through exercising certain degrees of autonomy in the less settled areas of the Lowcountry. In 1729, a woman recorded as “a Mulatto Servant (or Slave)” conducted most of the business of Captain Davis, a well-known merchant and trader in the colonial Lowcountry. During that time, Davis was one of the most successful traders in Savannah and shipped goods to St. Augustine, the West Indies, and various other locations. Davis had previously been struck with an illness that left him an invalid without “the Use of both his Legs and Arms.” His servant helped dress...
him, generally took care of him, and over time learned how to carry out his business ventures. Eventually, “he suffered almost every Thing to pass through her Hands, having such Confidence in her, that she had the Custody of all his Cash.” In time, she ran his accounts and it was said that Davis “found her very faithful, and of great Service to him.” In addition, this woman of mixed descent “was of an exceeding fine Shape” and people of Savannah knew that Davis’ confidant “in Reality was his Mistress.” The mulatta mistress, usually prized for her beauty and sexual qualities, was found throughout slave societies. In this story, we see that Davis’ slave was valued not only as an intimate companion, but also for her mind, for she had a “good Knowledge of his Business.”

People knew that Davis lived with his enslaved mulatta and had given her a fair amount of responsibility over his personal and business affairs. It was written that “it may easily be supposed the Lie of such Slavery was not a heavy Burden upon her” and that she was given respect from “all Persons who had any Business with Captain Davis.” Though she enjoyed a quasi-freedom, this woman was still a slave, and her position as such became clear when a Mr. Pope personally insulted her during business negotiations. Pope had used “some Words she did not like” and when she raised her voice in response “he gave her a Stripe across the Face with her own Fan.” This affront would begin a string of confrontations between Davis and Pope. While we do not know whether Pope would have refrained from striking this woman had she been “white,” it is clear that she did not carry the same amount of esteem a women of full European descent would have had under similar circumstances. This story shows that even though Davis treated his mulatta confidante with a certain amount of respect, others did not regard her with the same honor. Even when granted a certain amount of privilege by others, those of mixed descent could always be subjugated based on notions of hypodescent.

If South Carolina was a colony of Barbados, Georgia was a further offshoot of South Carolina in many ways. When wealthy South Carolinian planter Henry Laurens expanded his enterprise south down the coastline, he sent slaves down to the area of Broughton Island to run a newly established Georgia plantation. In the fall of 1767, he sent “Mulatto Sam” there along with “a Negro nam’d Prince, Carpenter Jack, Abraham, Mercutio, & little Jack.” Though listed along with other slaves, “Mulatto Sam” seems to have been favored among the Laurens workers. Sam was not a field hand, but a skilled carpenter who did various jobs on several of Laurens’ plantations. Laurens described Sam as “a good hand” and sent him instructions to help with manufacturing the collars for the plough animals in a letter dated October 26th, 1767. “Let Sam have every thing that he shall stand in need of,” wrote Laurens. In the same letter, Laurens described Sam as “sickly” and perhaps allotted him “Rum & Sugar” to ease his pains. Sam carried on. More than two years later, he was at the Broughton Island plantation, where Laurens instructed a captain to “Give the Mulatto Sam upon Broughton Island about 6 bottles of Rum and as many pounds of Sugar.” Some years later, Sam’s wife was given £25. Laurens added that “if he has behaved well I would wish to add Some indulgencies to bare necessaries for himSelf.” Sam may have been prone to acting on his own accord, a trait typical of workers laboring under absentee planters. Still, we see that Sam was not only valuable, but he had the confidence of Laurens as well.

177 Candler, Colonial Records of the State of Georgia, Vol. IV, 343-345.
In September of 1776, Laurens worried over a decision to “leave a frontier Plantation without a White Man upon it” and instead he left Sam in charge. Though one slave defected under Sam’s command, Laurens never doubted Sam’s commitment to the temporary position as overseer. If anything, Laurens wondered if Sam had come down too hard on the slaves, but never questioned his loyalty.\(^{179}\)

**The Gibson Family**

Though most often, people of mixed ancestry could not rise out of their subjugated racial position in the colonial era, there are cases that prove some were able to escape the period’s strengthening racial hierarchy. Again, these cases are more often found in the lower colonies, where certain people of mixed descent might live peaceably despite ties to African ancestry. One pointed example of this comes in the story of Gideon Gibson and his family, a group whose African ancestral ties became widely known even as they eventually identified as “white.” Nevertheless, they were still able to align themselves with their predominant European lineage.

In 1731, it was reported to South Carolina’s assembly that some “free colored men with their white wives” had settled in the colony. One of these men was Gideon Gibson, whom Governor Robert Johnson met with to inquire about him and his family settling in the colony. Though Johnson said “that they are not Negroes nor Slaves but Free people,” he never said that they were without African lineage. Instead, he defended their position in the colony, saying that before coming from Virginia, Gibson was “in good Repute” and “his transactions there have been very regular.” Gibson had previously bought, sold, and paid taxes on lands. Johnson felt assured that Gibson would not fall accountable to the state. It was clear that Gibson had made a good living for himself, for he also “had seven Negroes of his own,” which established him as a planter committed to the system of slavery. It is unlikely that these slaves were purchased family members, for the Gibson’s seem to have regularly married European women, which helped them move up the racial ladder towards “whiteness.” By keeping African slaves, Gibson displayed that he agreed with the slave system supported by the racial hierarchy that his family had steadily climbed.\(^{180}\)

Gibson also explained his purpose for relocating in South Carolina, saying that he was a carpenter and had settled in the colony “for the support of his Family.” However, it seemed that the Gibson family had already purchased a few hundred acres in Virginia and North Carolina. If they were already prosperous, then why would they move further South? It is likely that the Gibson’s were migrating as a way to leave ties to “blackness” behind. Governor Johnson said he had “been informed by a person who has lived in Virginia that this Gibson has lived there Several Years,” and surely this person also relayed the information about his African forebears, as this was the central question of the inquiry. The issue was seemingly put to rest, as Johnson gave the African descended Gibsons a racial pass into “white” society. Johnson took into consideration Gibson’s “good behavior,” his wife “being a white woman” and that “several White women Capable of working and being Serviceable in the County” were among the Gibson party. These women appear to have been the wives of Gibson’s sons and show that succeeding generations would have greater European lineage. These “whitening” factors allowed Gibson


and his family to remain in the colony.\textsuperscript{181}

Gibson's family went on to marry into aristocratic planter society and later became involved in local politics, including the Regulator movement of the 1760s. It was during this movement that the family name was again connected to its African origins. A militia leader, George Gabriel Powell, verbally attacked Gideon Gibson, Jr. Though exactly what was stated is not recorded, Powell seems to have taken a verbal shot at Gibson on the South Carolina Commons floor. Coincidentally, Henry Laurens again showed favor to another mixed family, stating that "colour carries no conviction." Laurens wrote: "Gideon Gibson escaped the penalties of the negro law by producing upon comparison more red and white in his face than could be discovered in the faces of half the descendants of the French refugees in our House of Assembly." Laurens then challenged all of them to make the comparison. He went on, saying that Gibson's children, "having passed through another stage of whitewash were of fairer complexion than their prosecutor George Gabriel." After this, Laurens makes a somewhat confusing remark that the Gibsons "may and ought to continue a separate people, may be subjected by special laws, kept harmless, made useful and freed from the tyranny and arbitrary power of individuals." Did Laurens believe the Gibsons should occupy a third class in-between "white" and "black," yet that they were still deserving of fair treatment? Laurens then stated that the difficulty in ascertaining what status the Gibsons should possess "cannot be removed by arguments on this side of the water," as he wrote from England. Clearly, the adherence to the notion of hypodescent was widespread in colonial North America. Laurens reveals that most English colonists held the general belief that people of mixed-descent occupied a subjugated position comparable to those of full African descent. Though some applied strict or loose applications of these beliefs, by the mid-eighteenth-century hypodescent ideology became the theoretical frame for how people of mixed ancestry were viewed in English North America.\textsuperscript{182}


Chapter 3
Multigenerational Indentures: Mulatto Families in the Eighteenth-Century Chesapeake

Sometime around 1723, a “white woman servant” named Mary Ashby gave birth to a son in York County, Virginia. She named her baby Matthew, but because Mary was a poor European servant and the father was of African descent, Virginia courts sentenced Matthew to serve the first thirty-one years of his life as an indentured servant. Matthew Ashby’s term of service was ten years longer than the law mandated for boys of full European descent born in a similar situation. During his years in bondage, the young Ashby performed a number of tasks for his master and managed well for himself. Though he was technically a free person, Ashby married a slave named Ann. In the late 1750s, Ashby and his wife family began to expand, first with the birth of a son, Harry, and then with two more children, John and Mary. Though Matthew Ashby lived free after his indenture, he worried that his children would forever be bound under the condition of their mother as slave.  

Over the years, Ashby labored at several jobs with the goal of one day releasing his wife and children from the bonds of slavery. By 1769, he had saved up £150, which Ashby gave to Samuel Spurr in exchange for legal ownership of his wife and two of their children, John and Mary. The same year, Ashby petitioned to free his newly purchased loved ones, and on November 27th, 1769, the Virginia court was convinced that “Ann, John and Mary were deserving of their freedom, and it was order’d that the said Matthew Ashby have leave to Manumit and set them free.” Ashby’s life exemplifies one success story of a Chesapeake man of mixed heritage who was able to carve out a comfortable existence for himself and his family in freedom.  

Throughout the colonial period, people of mixed heritage experienced advantages over their fully African counterparts, especially in the area of gaining and maintaining freedom. However, compared to those of full European descent they were particularly vulnerable to masters who kept them in multigenerational servitude, which resulted in a type of pseudo-slavery or permanent slave status. Though individual cases vary, a general trend of restriction followed by an expansion of freedoms can be traced over the eighteenth century. After the seventeenth century, the chances for both Mulattoes and Negroes to free themselves from the clutches of servitude grew slim. In the Chesapeake Bay, this development resulted from a hard shift to racial slavery coupled with increased importation of African slaves in the eighteenth century.  

Compared to the previous century, colonial officials made obtaining legal freedom steadily more difficult in the first decades of the eighteenth century, often binding mixed children to lengthy terms of indenture. Another shift takes place in the late colonial period and Revolutionary Era, when the social climate in the Chesapeake moved towards shorter terms of servitude for mulatto children and an increased period of legal manumission for slaves. This allowed additional room for certain mixed-heritage families to access paths out of multigenerational indentures and slavery. In the eighteenth century, families descended from European mothers and African fathers made repeated efforts over several generations to gain freedom, and after previous failed attempts, courts in the post-revolutionary era finally awarded

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many their freedom.\textsuperscript{185}

This chapter discusses these multigenerational indentures in great detail for several families and focuses solely on the colonies of Virginia and Maryland, where the largest amount of mixture took place between Africans and Europeans in English North America. The Chesapeake Bay colonies are an ideal location to examine several case studies in detail, for here servants and slaves of mixed African and European descent most often contested their bound labor status. The roles played by colonial legislators, legal officials, masters, along with bondsmen and bondswomen in legal freedom suits tell us much about how ties to “whiteness” could aid people of mixed ancestry during the late colonial period and Revolutionary Era. This period lasts roughly over the few decades from the end of the Seven Years’ War in the mid-1760s to the early-1790s, when the Bill of Rights are added to the U.S. Constitution. The coming of the U.S. Revolution and changing ideas surrounding the birth of the U.S. Republic had a liberalizing effect on these legal systems, not only in the northern regions of New England and the mid-Atlantic colonies, but also in the Chesapeake Bay. The material effects of this shift are reflected in the lives of people of mixed descent who gained expanded manumission and freedom due to their European ancestry. After the mid-eighteenth century, mulatto children in the Chesapeake gained more egalitarian treatment in courts and mixed-heritage families won freedom cases with increased regularity. These events show that hypodescent ideology weakened as “white” lineage facilitated access to freedom for certain mixed-heritage families.\textsuperscript{186}

\textbf{The Ashby Family}

During the colonial period in English North America, Mulattoes had a comparative advantage over Negroes in terms of gaining access to freedom. This mulatto privilege was always connected to “white” privilege, even if remotely. Without a connection to European maternity, the road for those labeled “mulatto” in colonial society could be particularly bumpy. Many times people of mixed heritage who sought to prove these maternal ties had a difficult task before them, especially when the lines between servant and slave were particularly blurred for those of mixed ancestry. Though society never considered free Mulattoes to be racially “white,” some still experienced a residual advantage through their mother’s “whiteness.” In this manner, they took advantage of mulatto privilege in their day-to-day lives, and used the law to climb out of servitude into freedom.

Returning to the example of Matthew Ashby, we see that by around the mid-1750s he gained his freedom after more than three decades of servitude. Though Virginia law condemned him to thirty-one years of bondage due to his paternal African heritage, his maternal European ancestry qualified him to claim his freedom after his term of servitude had expired. In mid-eighteenth-century Virginia, society recognized that Mulattoes, being of partial African ancestry, were racially different from Negroes, who were of full African descent. Even as authorities grouped the two together in law, colonial legislation explicitly used both racial terms because the community also understood that free Mulattoes had European ancestry and a connection to “whiteness.” Though officials curtailed the extension of “white” privilege under terms of extended servitude, they allowed Ashby and other mixed-heritage people like him to eventually

\textsuperscript{185} Again, the word \textit{Negro} was commonly used during slavery as an umbrella term for all those of African descent. I am using \textit{Negro} here to describe those of full African descent as differentiated from \textit{Mulattoes} who were identified as being of partial African ancestry. This distinction was also sometimes made during the time as well. Please see the end of the Introduction for a more thorough discussion on the use of racial language. Ira Berlin, \textit{Many Thousands Gone: The First Two Centuries of Slavery in North America} (Cambridge, Mass.: Belknap Press of Harvard University Press, 1998), 109-110, 113-114.

have their freedom. The advantages enjoyed by Ashby stemming from mulatto privilege did not end there.\(^\text{187}\)

Matthew Ashby’s life also illustrates how those of mixed heritage had greater social mobility within their local communities and could use these connections to assist others, especially family members. Ashby formed relationships with others in colonial Williamsburg, creating a network of connections that allowed him to work as a carter, messenger, and carpenter. He began cultivating these relationships during his years in servitude and continued them as a free man. Though Ashby rose in social standing, he still identified himself among the lower tiers of society, as seen in his marriage to the slave Ann. Ashby was well aware that his children would inherit the slave status of his wife. Providing for his family motivated his entrepreneurial efforts, as he saved up money to obtain the liberty of family members who did not benefit from a mother’s free European ancestry. Planters still enslaved most mulatto children born to women of African and Indigenous descent. Like the Ashby children, masters held children of mixed heritage in perpetual bondage. Through hard work Ashby was able to move up the social ladder and elevate his whole family through purchasing his wife along with their children. He may have also paid for the services of a lawyer and court fees to secure their freedom.\(^\text{188}\)

Piecing together archival records, it appears that the Ashbys were a literate family. The children received at least some formal education, as Harry, John, and Mary were all enrolled in a “Negro School,” where they received Christian instruction in the 1760s. Looking through the “Inventory of the Estate of Matt Ashby” it is clear that they kept books in the household. It also appears that the family lived relatively well in colonial Williamsburg. They owned a plethora of kitchen supplies and their list of furniture included a cupboard, a chest, two trunks, mirrors, tables, chairs, and other common household items. Each person also had his or her own bed and linens. It appears from their supplies that Ann may have been employed as a laundress. Once the children were old enough, they would have helped their mother with her work. They would have likewise assisted their father in caring for the livestock. At the time of Ashby’s death, his estate included several cows and horses, which he used as a carter. His inventory also included cart harnesses, saddles, and carpenter’s tools that Ashby regularly used for transportation and additional work. One of the more expensive personal items Ashby owned was a silver watch, valued at £3. All of these things reveal the life of a middling family that labored hard to provide for themselves in colonial Virginia.\(^\text{189}\)

Though Ashby gained his liberty and obtained the freedom of his family through proper legal channels, he did not always adhere to the set rules. In 1759, he was brought up on charges of assault and battery, and although the circumstances surrounding the altercation are unclear, he pled guilty and was charged thirty shillings for the offense. In the fall of 1770, he also took in a nineteen year old slave named Sam, “a very likely young negro” who had run away from his master Matthew Mayer in Amelia County, Virginia. Mayer put out a runaway slave ad on October 25, 1770 in the *Virginia Gazette*, saying he had been informed that Sam was claiming his freedom “and is now harbored at one Matthew Ashby’s, a mulatto in Williamsburg.” We can


see that Ashby was willing to put his own security on the line to help out a “young negro” slave. In addition to his marriage to Ann, this shows that he connected himself to the African American community and identified with his African lineage. Ashby had gained moderate success as a free man, which allowed him to share those gains despite the consequences that might come with harboring slaves. As an elder in the African American community, he was willing to risk what he had in order to help others achieve their own piece of freedom.190

Matthew Ashby would not live past the next year after harboring the runaway Sam. The documents are silent on how he died, though we know he left his wife and three children behind in freedom. In June of 1771, officials appraised his estate at a little over £80, but the real value came in the legacy he left to his family, as all three of his children were listed as free into the nineteenth century. The Ashby family exemplifies the upward mobility of a mixed-heritage family that was able to break the cycle of indenture and slavery. Extending the scope back to Matthew’s European mother, Mary Ashby, records show that all three of her children – Matthew along with his siblings John and Roseanna – were servants who went on to gain their freedom in the 1750s and 1760s. All ten of their children, and Mary’s grandchildren, appear in Virginian records as either being born free or later being awarded independence after serving out their indentures. Again, this legacy of freedom can be tied back to Mary Ashby, a “white woman servant.” Thousands of free people of color in the eighteenth and nineteenth centuries could likewise trace their ancestry back and connect it to a maternal European source. Though on the surface Matthew Ashby’s rise in colonial Williamsburg seems extraordinary, there were certainly other people of both mixed heritage and full African descent in the Chesapeake who carved out successful lives for themselves and their families across English colonial North America.191

Though the Ashby family’s story is not an uncommon one, their story is exceptional compared to most people recognized as “mulatto” in the colonial Chesapeake. Matthew Ashby’s life surfaces through a paper trail left behind from much of his own personal records. However, the story of most people of mixed ancestry in the colonial period can only lightly be pieced together from the tax records, bills of sale, and wills of wealthy planters. At the end of the colonial period it was more likely for people of mixed heritage to be found held firmly as property by their masters.192 A slave bill of sale from Baltimore, Maryland, dated July 19, 1772, shows Cassanares and Elizabeth Bond sold “one Molatto girl named Cate” to Nicholas Hutchins Jr. for £65.193 Two years later, the will of John Prentis, a wealthy Virginian tobacco planter read: “I give, Bequeth, and Devise to my Brother Joseph Prentis & his Heirs… my Mullatto Boy Pompey and my Mullatto girls Effy, Rachael & Nancy with their future increase.”194 As chattel, these slaves were listed along with Prentis’ cattle and other household items. In an extract from Henrietta Maria Dulaney’s will, it is clear that “a Mulatto fellow named Isaac” made his way from bondage in colonial Maryland to slavery in the early U.S. republic.195 Most of those listed as

190 The consequences for harboring runaway slaves were not clear at this time in Virginia law would have come from 1705 against people harboring slaves fined them 150 pounds of tobacco who allowed slaves to “remain upon his or her plantation” for more than four hours without permission. However, people did not always follow these laws and law enforcement was sometimes lax. Hening, SALV III, 458-459; Enslaving Virginia: Becoming Americans, 271, 360, 603-605; Virginia Gazette (Purdie and Dixon), October 25, 1770.
192 In 1705, Virginia law declared that “all negro, mulatto, and Indian slaves, in all courts of judicature, and other places, within this dominion, shall be held, taken, and adjudged, to be real estate (and not chattels).” Hening, SALV III, 333-335.
193 MSA, SC 5170-B2-F9, Baltimore County, July 19, 1772.
195 MSA, S 1004-45-14196, Office of Confiscated Property to Gen. William Smallwood, April 24, 1782.
mulatto in Chesapeake slave records had European fathers and their lives differed little from those deemed fully African. Unless their fathers freed them, and most did not, it might make little difference that they were considered “mulatto” and shared the same European ancestry of those who held them in bondage.196

Understanding the intersections of race, gender, and parentage in relation to freedom and slavery reveal how the free community of color developed in the colonial Chesapeake. The majority of that population was of mixed ethnoracial descent. The free mixed-heritage population increased both from the growth of free families stemming back to multigenerational mixed African, European, and Native American relationships in the seventeenth century and first generation mixed relationships between enslaved African men and free European women in the eighteenth century. Colonies placed heavier legal restrictions on emancipating African slaves during this time, which left a free population of color that was predominantly mixed with African and European ancestry. By 1755, Maryland’s free population of African descent was recognized in one census to be around 80% “mulatto” and a similar percentage was likely reflected throughout the Chesapeake. Mulattoes gained freedom at higher rates and were widely legally restricted from marrying people of full European descent. This meant that free people of mixed heritage often times partnered with each other and their procreation in freedom continued mixture in the free population of color. Free mulattoes had an elevated status over their slave counterparts, and also enjoyed advantages over free people of full African descent. Therefore, both men and women of mixed heritage became preferred marriage partners in free communities of color – a racial preference based on both socio-economic mobility and a connection to “whiteness.” Encoded in both class and race, it is here in colonial North America that light-skinned or mulatto privilege both took root and grew the African American community. 197

“Mulatto Bastards” in Late Colonial Virginia

During the mid-eighteenth century, the Chesapeake colonies continued to import thousands of African slaves into the region and greatly limited manumission as the planter class firmly attached the slave system to racial slavery.198 Still, by the end of the colonial period some people of mixed heritage appear to have made tangible gains. Turning back to the contingent status of those labeled “mulatto” who were born to European mothers, their stories are most often recorded in colonial indentures. Again, the Virginia servant and slave code of 1705 mandated extended thirty-one year indentures to children of mixed African, European, and sometimes Indigenous descent having free mothers. While most Mulattoes born to slave mothers were similarly enslaved, colonial officials forced even those descended from free mothers into a middle position between slavery and freedom. Through an examination of a sample of “mulatto bastard” indentures from Dettingen Parish in Virginia, we can glimpse the lived experience of mixed-heritage people from the mid-century through the end of the colonial period.199

During the fall of 1744, the English Church established Dettingen Parish in the northeast Virginia County of Prince William. The following year, parishioners elected churchwardens,

198 Berlin, Many Thousands Gone, 109-110.
who would oversee those within the parish. These churchwardens had a number of responsibilities that included take care of the poor and assigning apprenticeships to poor, orphaned, and bastard children. In this way, churchwardens acted as both guardians of these children and carried out the laws of the Commonwealth of Virginia. From 1747-1782, the churchwardens recorded close to one hundred of these indentures in a Dettingen Parish Vestry Book. Thirteen of these contracts bound out children of mixed descent who were termed “mulatto.” These records clearly reveal how colonial authorities considered children of blended ancestry under law and how they treated these illegitimate children in comparison to others in similar positions. Through these indentures we can also see how the treatment of mixed children born to European mothers improved in some ways, such as shortening terms of service, and stagnated in other areas, for example, removing the obligation that masters must educate mulatto apprentices. These changes took place over an extended period of time, spanning from the late colonial period into the early U.S. republic.200

On January 22, 1750, the churchwardens of Dettingen Parish apprenticed a “Bastard Malatto Boy” named Alexander Fullam out to Richard Blackburn for the next thirty years of his life. The churchwardens also bound Alexander’s twin brother Baker to Mr. Blackburn for the same amount of time. The Fullam twins’ contract exceeded that of other freeborn boys by a full decade because their father was presumably of African descent. Their European mother, Martha Fullam, had given birth the year before to the twins out of wedlock, making the children susceptible to apprenticeship under colonial Virginia law. While this process was customary for bastard children, because the Fullam boys had African heritage, Virginia law stipulated that the churchwardens of Dettingen Parish assign them to longer terms of service until thirty-one years of age. The Church essentially punished the Fullam twins for the alleged misdeed of their mother, who engaged in sex and became pregnant by a man of African descent outside wedlock.201

Virginia law obligated officials to apprentice out the Fullam twins as babies, and though this was not slavery, it was another form of racial oppression. Racially, the law situated the mixed-heritage twins below “white” boys, who would serve until twenty-one years old, yet at the same time they found themselves placed above other Mulattoes and Negroes who were enslaved for life. Still, masters effectively owned their servants for the first three decades of their lives, and these years were the most productive in terms of labor. Though the master did not own these children as property, they still controlled the bodies of their servants in terms of movement and actions the servant could take. During a servant’s term, restrictions were placed on marriage and childbearing. The law viewed indentured children under the power of whoever held the indenture and considered them a part of the master’s household. While the legalities between slaves and servants differed, the power relationship was the same in that the master had similar authority over both groups. The legal structure of this relationship subjugated Mulattoes wrapped up in these contracts and took away the prime years of their lives.202

Dettingen churchwardens bound mixed-heritage children from an early age, which made it difficult for Mulattoes to break free from these agreements. Richard Blackburn became official caretaker of Alexander and Baker Fullam when they were only twenty-two months old. If Blackburn were to die anytime over the next three decades, the twins would have been passed down to “his heirs & Assigns” and the brothers would continue to serve out their term of

200 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802.
201 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 3-4.
202 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 3-4.
servitude. The contracts of indenture also stipulated that Blackburn commit to some responsibilities on his part. He was obligated to provide the Fullam boys with “Sufficient Meat, Drink, Apparell & Lodging” along with all other necessities during the time of their service. This was the same with girls of mixed ancestry. On the 21st day of January 1754, the church bound three year old Sarah Seul to Richard Jarvis, who was responsible for feeding, clothing, and housing the young girl until she turned thirty-one years old. In comparison to the Fullam twins, this “melatto girl” had to serve an even longer amount of time, since the normal age for European female indentures was only eighteen years old. In these cases, the sex of mixed children did not matter, the laws treated both male and female the same.203

The year before Suels indenture, in 1753, the Virginia General Assembly slightly modified “an Act for the better government of servants and slaves.” This legislation dictated that if “any female Mullatto, or Indian” mother currently serving a thirty-one year indenture had an illegitimate son or daughter, that child would similarly find themselves bound to “serve the Master or Mistress of such Mullatto or Indian until… the same age the mother of such Child was by law obliged to serve unto.” Maryland passed a comparable law twenty-five years earlier in 1728, which specified that children of indentured Mulattoes had to serve until thirty-one years of age and mothers would be punished with additional terms of servitude. Surprisingly, legislators only applied this to “Free Mulatto Women, having Bastard Children by Negroes and other Slaves,” saying that “such Copulations are as unnatural and inordinate as between White Women and Negro Men, or other Slaves.” This implies that lawmakers viewed mulatto women as being acceptable marriage partners for other European men, though it is not clear that this played out in everyday practice. The phrasing used in this interesting act opposes the notion of hypodescent, and instead leans towards hyperdescent by aligning mulatto women closer to their European heritage. However, Maryland’s ordinance of 1728 is an anomaly that resulted in the same outcome for mixed-heritage children compared to Virginia’s act of 1753 a quarter century later. The objective of both Chesapeake laws demanded that any child born to an indentured mulatto woman would similarly have to serve until thirty-one years of age, the same as the mother.204

This was the case for Hester Lucas, “a Mulatto woman” who became pregnant while she was serving out a thirty-one year indenture under Honsen Hose in Dettingen Parish, Virginia. On October 24, 1758, Hester was “delivered of a bastard Child” named Phillip. A month after his first birthday, the churchwardens also indentured Philip to Hose, but instead of setting a term that would extend until the end of his mother’s term, they gave Phillip a full thirty-one years of service. In this way, churchwardens who were either unaware of the new law or unwilling to enforce it, kept mixed families in bound service over several decades and multiple generations. Phillip’s contract promised him “such freedom dues as the law directs in the Like cases,” so here it seems officials considered him like other poor and orphan children of European descent. Still, while their indentures were recorded similarly to all children and their freedom dues were outlined the same as children of full European ancestry, the added years of service for mixed children was a heavy burden for these children and their families.205

After Phillip’s birth, Hester Lucas repeated the violation of having an illegitimate child by an unidentified man while under indenture to Honsen Hose. It is impossible to determine the

203 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 16.
205 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 24.
background of the father(s), since Lucas herself was of mixed descent, which would make her children “mulatto” by Virginia’s definition of having at least one-eighth African ancestry. In 1761 Lucas gave birth to a daughter named Francis and just three years later she had another son named James: giving her three children out of wedlock. Churchwardens gave all three Lucas children the regular terms of thirty-one years service and contracted them to their mother’s master Honsen Hose. Though it is not clear who fathered these children, it is clear how Virginia legislation kept mixed-heritage families in servitude even through the maternal line. Typical to cases of bastardy, the contracts of indenture did not attach any father to the Lucas children, or for any of the mixed children in the Dettingen registry. Phillip, Francis, and James Lucas may not have even had the same fathers, but if one man did father all three children, he probably had some contact with them. The repeated bastardy violations show that even though colonial elites attempted to keep mixed families apart, they rebelled against these restrictions. Though we will never know the depth of many of these relationships, we can see that Hester Lucas was able to keep her children together. Laws that fragmented mixed-heritage families by restricting the right for parents to marry potentially kept the Lucas children from their father. At the same time, these bastardy statutes at least kept children of blended ancestry close to their mothers and their siblings.  

Other women in Dettingen Parish gave birth to more than one child of blended ancestry during this period. Isbal Forbess and Christian Gregory each gave birth to two mixed children. The indentures describe both Forbess and Gregory as “Christian white” women and officially attached their children to their respective masters. Interestingly, churchwarden Honsen Hose, the master in the previous case, oversaw all four of the Forbess and Gregory children’s indentures. Churchwarden Reno Lewis signed off on the indentures of three out of four of these mulatto children: Mary and James Forbess along with Presly Gregory. Thomas Gregory was the fourth child, listed as “A mulatto Basterd Child in the said John Hose Family.” John Hose was likely related to Honsen Hose, and less than three years later he had become a churchwarden himself and orchestrated over a dozen children’s indentures, including other Mulattoes and Negroes. Looking closely over the Dettingen indentures, it becomes clear that the Hose family held high social status within the community and maintained those positions in part by securing these indentures for one other. Men of European descent in the role of churchwarden wielded great power over lowly indentured women and their children. The wealth generated by indenturing these women and their children was also effectively transferred to men of high standing within the community and helped them maintain their wealth and status.

Paradoxically, being a person of mixed descent could be considered both a benefit and disadvantage at the same time. Compared to those of full European descent, the extra term of ten years for boys and thirteen years for girls was a huge detriment. However, compared to those of full African descent who inherited the enslaved status of their mothers, being sentenced to a little over three decades of servitude exemplified mulatto privilege. Elites saw ethnorracial mixture as threatening because it blurred the lines of race, servitude, and status within colonial society. When looking at legislation and legal documentation, there seem to be clear standards set as to what was deemed socially permissible and what was forbidden. However, the fact that European women were repeatedly having children by African men proves that women of lower social status had few qualms about having sexual relations with them and continued these relationships despite them being prohibited by law. Social notions varied at different levels within the

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206 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 24, 36-37; Hening, SALV VI, 357.
207 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 35, 45-47.
community and treatment of “Mulatto Bastards” appears to be more amicable on local levels when compared to the negative state legislation that painted all mixed children a “spurious issue.”

While these trends continued from the 1750s into the mid-1760s, something interesting takes place with mulatto indentures in 1765. Similar to what had taken place in North Carolina years earlier, people in Virginia complained to the General Assembly that “ill disposed persons have of late years been guilty of selling and disposing of mulattoes and others as slaves, who by the laws of this colony are subject to a service only of thirty one years.” Officials had no doubt been receiving this complaints for years, yet in 1765 they passed “An Act to prevent the practice of selling persons as slaves that are not so.” If anyone sold “any such mulatto, or other servant” past thirty-one as the law stated, that person would be fined £50 or ordered to serve out the rest of the servant’s indenture if they could not pay the fine. The General Assembly also declared that in cases where any “woman shall have such bastard child by a negro or mulatto,” that the child would be given the regular indenture term of eighteen years for girls and twenty-one years for boys. Their reason for changing previous law for these children was that the thirty-one year terms showed “an unreasonable severity towards such children.” Illegitimate children of mixed heritage were thereafter only made to serve the same terms as their European counterparts.

After 1765, Virginia legislation no longer legally applied notions of hypodescent to “mulatto bastards” in this area. In the Dettingen Parish records, on August 2nd, 1773, five-year-old Hannah Boyd was indentured to Charles Chaddock until she reached eighteen years old. This was the standard term for girls to be bound until they reached the age of womanhood and could be married. What separates Hannah’s indenture from those in the previous decades is that while she is described as “a Female Mollatto Bastard Child” she did not receive the previous thirty-one year term assigned to those in the previous decade. In addition to taking care of Hannah’s material needs, Chaddock also agreed that she would “be brought up in a Christian Like manner.” This additional clause is another variance from the other “Mollatto Bastard Child” indentures. This may have been because Hannah’s mother, Elisabeth Boyd, was “Formerly a servant” to Chaddock. This implies that Boyd had fulfilled her indenture and may have played a larger role in negotiating the contract with her former master.

Further evidence suggests that standards could have been changing in Dettingen Parish and across Virginia as the English colonies of North America proclaimed independence from the British Empire and sought their own freedom. While churchwardens continued to assign indentures, the terms. In September of 1777, the church bound “a Mulatto bastard” named Milly Thomas to Fanny Molton. No mother is mentioned in the indenture, and this could have hurt the contract negotiations, for Milly received a twenty-one year term of servitude. She received the normal term for boys when she should have been given the term for girls of eighteen years service. The indenture notes that upon fulfilling this time, her master Fanny Molton was to “pay unto her, the said Milly, the same freedom dues as is by Law Directed for imported

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210 It is not readily apparent how heavily authorities brought people up on charges of selling mulatto servants as slaves. While cases do arise, the practice was more prevalent than the prosecution of offenders. William Walter Hening, ed., *The Statutes at Large: Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619, Vol. VIII* (Richmond: J. & G. Cochran, 1821), 133-135.

211 UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 70.
indentured servants.” Though most Dettingen Parish indentures had similar requirements, these provisions varied and changed over time, especially after the U.S. declared independence from Britain.\textsuperscript{212}

In Milly Thomas’ case, acting churchwardens John Hose and Jesse Ewell should have been well aware of the laws surrounding legal indentures. In 1777, when John Hose authorized Milly’s twenty-one year indenture as acting churchwarden of Dettingen Parish, he still held the indentures of brothers Thomas and Presly Gregory, who had both been contracted to him until thirty-one years of age. Hose set Milly’s indenture a decade shorter than the two mixed-heritage boys in his own household, though by law her indenture should have been three years shorter. A third indenture of another child of mixed ancestry in 1779 continues the pattern of contracts meeting the equalized legal regulations. In February of that year, the churchwardens legally bound Ann Wyatt unto John McMillian until she reached eighteen years of age. In exchange for Ann’s service, McMillian had to provide her the usual food, clothing, and lodging until she reached adulthood. However, the contract further dictates that “John McMillian shall and will cause the said Ann Wyatt to be taught to read & write and also teach her some suitable Trade or employment.” This was the only indenture in the Dettingen Parish registry book that outlined such benefits for a child of mixed descent. Previously, only children of full European ancestry had such clauses attached to their contracts. By the 1770s, the service of mixed children had drawn closer to the regular standards for all children indentured, regardless of their ethnoracial background.\textsuperscript{213}

The Dettingen Parish records point to larger changes taking place during the late colonial period. During this time, the colonies banded together and declared themselves free and independent as the United States of America. As ideologies surrounding natural rights became more widespread during this period, the idea “that all Men are created equal” led individuals and newly minted states to reevaluate their role in holding others as slaves. The egalitarian and liberationist ideology that encouraged the freeing of slaves in New England may have also encouraged those in Virginia to treat certain children of mixed ancestry similar to others of full European descent when contracting their labor. Changes in the indentures of mulatto children can be tied to larger events taking place throughout the colonies and reflect shifting ideas about how colonists viewed people of mixed ancestry.

**The Fisher-Toogood Family**

At the end of the colonial period Virginia officials carried out indentures more liberally for those of mixed descent compared to previous decades, and similar evidence in Maryland shows the same trend taking place in the early U.S. republic. In Virginia’s sister colony of Maryland there are numerous examples showing that elite sentiment was turning in favor of increased rights for some mixed-heritage people in the late colonial period and Revolutionary Era. Concerning people of mixed ancestry, the first large gain for Mulattoes came in the 1765 Virginia act that ended indentures of thirty-one years of servitude and equalized colonial indentures to the same requirements placed on people of full European descent. Other examples of this liberalizing effect can be found in Maryland court cases concerning multigenerational indentures, servitude, slavery, and access to freedom.\textsuperscript{214}

One of these examples appears in the early 1780s, when a Maryland woman named

\begin{itemize}
\item \textsuperscript{212} UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 78.
\item \textsuperscript{213} UVA, Special Collections #294, Dettingen Parish Vestry Book, 1744-1802, 78, 82.
\item \textsuperscript{214} Hening, *Salv VIII*, 133-135.
\end{itemize}
Eleanor Toogood took her master, Doctor Upton Scott to court, suing for her release from bondage. In Toogood’s original petition she claimed “her freedom by reason of her being a descendent from a free white woman.”

This freedom suit spanned back several generations and was based on the free status of one of her maternal ancestors. Toogood’s great-grandmother was said to be “a white woman, who served her time” as an indentured servant back in seventeenth-century Maryland. It was through this European ancestry that Toogood’s lawyer, Jeremiah Townley Chase, argued that she should be free by Maryland law. The lynchpin of Toogood’s case was establishing that her family had indeed come from free lineage. This was no easy task for Chase, for the legal status of so many of Toogood’s ancestors were unknown. In court, Chase presented a number of depositions that pieced together the story of Toogood’s family tree, which revealed a web of ethnoracial backgrounds and varying degrees of freedom.

Back in the seventeenth century, Eleanor Toogood’s great-grandmother gave birth to a daughter of mixed heritage, named Mary Fisher. Fisher’s mother was of European descent, her father’s heritage was unknown, and she was described as “a Whiteish Mulatto Woman” who worked as a servant for Major Thomas Beale in Saint Mary’s County, Maryland. While still young, she started a relationship with a “Mulatto Man” named Dick, a slave belonging to Beale who worked on his plantation. Dick “had long black hair that hung down below his Shirt Collar,” suggesting he may have had some Native American ancestry. Sometime in the latter 1600s, Dick and Mary Fisher were “lawfully married” by Robert Brooke, a Catholic priest, and the couple later had several children: Robin, Jack, Jenny, Dick Jr., Charles, Ned, and Ann. For a time, they all lived together outside of Annapolis on Thomas Beale’s plantation. However, their status as slave or free seems to have been questionable. Even though Dick was a slave, Mary “lived as a free woman” and worked in a variety of areas, as did most women in her day. Some of these jobs required that she travel away from the Beale plantation and work in the capital city Annapolis, where she did laundry and “other kinds of labour.” Though slaves hired-out at this time were often privileged with similar types of movement, one of Beale’s overseers claimed that he had no responsibility over Mary and reportedly said “she could go where she pleased and come when she pleased for she was a free woman.”

Though others later questioned Mary Fisher’s free status in court records, witnesses confirmed that Thomas Beale held her in servitude, not slavery. Several people testified that she “served her Time as a Servant and was treated as such by old Mr. Beale.” Mary appears to have outlived her slave husband Dick, and later on in life moved onto the plantations of Thomas John Hammond, where she “lived as a free woman.” Here on the Hammond plantation, she “cohabited with James Flemming, a White Man.” Mary’s first husband Dick shared her African or mixed heritage and her second relationship with Flemming reflected ties to her European ancestry. Maryland law during this time prohibited Mulattoes from engaging in relationships with people of full European descent. However, if society perceived the “Whiteish Mulatto Woman” Mary Fisher had less African lineage than first generation Mulattoes (those with one African and one European antecedent), then it would have been socially permissible, if not legally permissible for her to engage in an open relationship with Flemming, especially in the


217 MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
early colonial period. It appears the community was well aware of the liaison between Fisher and Flemming, as more than one person in Ann Arundel County testified that they knew the couple lived together. Perhaps somewhat taboo among the upper classes, those who attempted to legislate against interracial unions had a hard time forcing people to follow these laws. Again, amongst the lower ranks of society intermixture did not present as much of a problem, especially when one partner was already mixed and they had predominant European ancestry like their partner.  

These mixed partnerships were commonplace during the early colonial period and apparently little would have been done about the relationship unless someone turned in the offending couple. Perhaps Fisher and Fleming attempted to keep their relationship hidden. If they married under prevailing Maryland law after 1717, they both could be punished with seven years of servitude. Maryland’s legislature noted that up until that point there was “no Punishment or Penalties laid upon Negroes or Mulattoes intermarrying with any White Person.” This led colonial officials to mandate that “if any Free Negro, or Mulatto, intermarry with any White Woman, or if any White Man shall intermarry with any Negro, or Mulatto Woman, such Negro or Mulatto shall become a Slave during Life.” Interestingly, this law went into effect “excepting Mulattoes born of White Women” and only assigned them to become “Servants for Seven Years,” the same penalty for the offending “White Man or White Woman.” Colonial Maryland’s legal system was unique in that it consistently left loopholes open for mixed people who were able to tie their freedom to “White Women.” The laws favored Mulattoes in some significant ways compared to those of full African ancestry, yet the courts also punished these people more severely compared to their fully European counterparts. In this manner, some people of mixed heritage were able to locate a legal space in-between “black” and “white.”

Though local authorities did not always enforce prohibitory statutes against interracial couples, these laws might still carry out their intended effect of preventing people of African descent marrying those of full European ancestry. If Mary Fisher had married James Flemming, Maryland courts could have more easily punished their relationship. Still, someone from the community would have had to turn them in to be prosecuted. Plus, the court would then have to instruct the sheriff to issue a violation notice, and the couple would have to decide to come before the court on the threat of further action being taken against them. Although neighbors surrounding the Hammond plantation in Anne Arundel County were aware that the mulatto Mary “kept company with a White Man of the name of Fleming,” nothing appears in witness testimony that anyone took issue with their relationship. Nothing appears showing that they were condemned for simply consorting or cohabiting with one another. On local community levels, the laws instituted by the elite to prevent interracial liaisons did not always gain much traction. Also, Mary’s status as free and her physical appearance as “a Whiteish Mulatto Woman” may have given her somewhat of a racial pass to take Flemming as a lover.

While Mary Fisher lived free into her later years, her children would not share the same status. After she married the “Mulatto Man” slave Dick, Mary gave birth to several children

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218 For example, if Mary Fischer had greater European lineage, then some may have been more likely to view her partnership with James Flemming, a man of European descent, as permissible. MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
219 Hodes, White Women, Black Men, 22-24.
220 MSA, Archives of Maryland Vol. LXXV, Thomas Bacon, ed., Laws of Maryland at Large, with Proper Indexes (Annapolis: Jonas Green, 1765), 267.
221 MSA, Archives of Maryland Vol. LXXV, Bacon, Laws of Maryland at Large, 300.
222 MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
223 MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
seemingly before her indenture formally ended. Therefore the law also sentenced her young ones to thirty-one years of service, just as she had been assigned to serve. One of Dick and Mary Fisher’s daughters, Ann, was born around 1702. While Ann should have had been contracted to Thomas Beale for the customary time of thirty-one years, Beale held her in servitude past her thirty-first birthday and considered her a slave for life. Around 1733, when Ann should have been freed, she instead had to sue for her freedom. Ann considered her mother a free woman and knew that they were able to trace their maternal line to free “white” ancestry. Like her European grandmother, and her mulatto mother Mary, Ann likewise considered herself a temporarily bound woman entitled to her freedom.\textsuperscript{224}

Unfortunately for Ann Fisher, the Beale family began to consider Dick and Mary Fisher’s children as their property sometime in the early eighteenth century. After her master Thomas Beale died, his will certified on May 25, 1713 that he owned two slaves by the name of Ann and Robin, presumably the children of Mary Fisher. Beale bequeathed Ann to Richard Goldsmith when she would have been around eleven years old. At this age, Ann would have been little aware of the legal actions taking place surrounding her bondage. Around twenty years later, Ann seems to have returned to the Beale family in Anne Arundel County, where she took John Beale to court for her freedom. The court found that Ann’s status should be based on her mother Mary, who they found to be a slave in 1734. The justices somehow reasoned that the 1664 Maryland marriage statute – which enslaved English women who married “Negro Slaves” – applied to the Fisher family descendants. Though Mary Fisher seems to have lived as a free woman, the court decided that she was actually a slave by the 1664 statute, and concluded that Ann would also be “a slave during life.” In the colonial period, Maryland courts favored the planter class, protecting the master’s right to property over the right to freedom by servants and slaves.\textsuperscript{225}

For some reason Ann does not appear in an inventory of John Beale’s property taken on August 30, 1734. This record does show that he likely held two of her brothers. Beale’s inventory listed a “Mullatto Slave called Jack” and a “Negroe Man called Robin” in the inventory, respectively valued at £30 and £36.\textsuperscript{226} These men appear to be two of the aforementioned children of Dick and Mary Fisher. Interestingly, one brother is listed as “Negroe” and the other “Mulatto.” Since the Fishers were both of mixed heritage, it is possible that they could have produced a son darker than themselves and therefore Robin is classified as “Negroe” next to his lighter-skinned “Mullatooe” brother Jack. Beale’s inventory also listed several other “Negroe” and “Mullatooe” slaves, who may have been children of Jack and Robin, the only men counted in the inventory. Still, because Ann does not seem to be present on this record, the owner or owners who claimed her around this time are unknown. It is apparent that at this point in her life, Ann was aware that she had to fight to remove herself from bondage, for “she petitioned more than once for her freedom.”\textsuperscript{227}

Evidence suggests that Ann Fisher’s masters – John Beale, Richard Goldsmith, and perhaps others – intentionally sold her when they found her legal status as a slave in question. Beale could have sold Ann shortly after winning the 1734 court decision in order to avoid losing Ann’s case on appeal. Ann had more than simply her own freedom when suing her masters.

\textsuperscript{224} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II., 27; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.

\textsuperscript{225} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II., 27; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.

\textsuperscript{226} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II., 27; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.

\textsuperscript{227} Jack’s price was probably lower because he was “subject to fits,” which may describe seizures. MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
Before taking her case to court, Ann had given birth to a daughter named Eleanor while living in bondage under Richard Goldsmith. On January 22, 1732, Goldsmith later sold “one Mollatoo Girl called Nel [Eleanor]” to John Ross. Eleanor was sold about a year before her mother Ann turned thirty-one and should have been freed from servitude. Technically, a servant’s time could be transferred to another master, yet Eleanor’s bill of sale was not made out in the form of a servant, but rather a slave. The language used is clear: for “the sum of Eighteen Pounds Current Money” Goldsmith authorized “to have and to hold the said Mollatto Girl to the said John Ross, his Exc’rs, Admr’s, and Assigns forever.” Goldsmith sold Ann’s daughter Eleanor purposely as a slave before the mother could make a legal bid for her own freedom. Masters commonly sold mulatto servants illegally as slaves to make money before the formal indenture expired. This appears to be the case for the Fisher family and their children.228

Sometime in the early eighteenth century, Thomas Beale also owned the service of an “East-India Indian” who appears to have had an intimate relationship with Ann Fisher and fathered Eleanor. Thomas Beale considered this man an indentured servant, for records show that “after serving some time to Major Beale in Saint Mary’s County” he gained his liberty and “became a free mulatto.” There is evidence that during the colonial period, men from India were brought as indentured servants to the Chesapeake Bay via London and others may have come as slaves through Madagascar. It is difficult to locate and place these men through the records, for their descriptions as “Indian” are easily confused with American Indians. However, we see here that they colonial officials sometimes racially classified them as Mulatto.229

Eleanor Toogood’s “East-India Indian” father being described as “a free mulatto” shows the complexity of ethnorracial mixture in the colonial Chesapeake and larger world. Mulatto was a category that could encompass others who did not easily fit into the “black-white” racial binary of colonial society. We cannot assume that everyone listed as “mulatto” was simply of African and European descent. Mulatto was an in-between racial category that encompassed numerous ethnorracial groups as well as mixed individuals who could not easily be characterized as “negro,” “white,” or (American) “Indian.”230

The Fisher-Toogood family history presents one scenario for how people of mixed heritage perceived themselves and conducted their relationships over multiple generations. Perhaps as a person of mixed heritage, Ann Fisher saw an East Indian man as a viable partner because he also occupied the in-between racial space. While it is clear that servants and slaves openly mingled and married across ethnorracial lines during the colonial period, it is beneficial to take a further look at partner selection among those of mixed ancestry. As slavery became more entrenched along racial lines at the end of the seventeenth century, people grew increasingly aware of how the racial and bound status of a partner could affect the lives of themselves and their children. By the early eighteenth century, when racial boundaries had tightened and most colonies prohibited openly mixed relationships, women like Ann Fisher may have been more likely to align themselves with free men of color. Compared to enslaved men, free men of color had greater social mobility because they could earn their own money, which they could use to provide for their families. For this reason, women of African descent, either free or enslaved, may have seen it advantageous to commit to these free men, many of whom were of mixed

228 Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 34-37; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783. Fischer, Suspect Relations, 122-126.

229 Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 26; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783; Meyers and Perreault, Colonial Chesapeake: New Perspectives, 95.

230 Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 26; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
descent. Free men of color were able to operate outside the legal restraints placed on enslaved men of African heritage.\textsuperscript{231}

Being of mixed heritage could also get certain slaves everyday privileges within the slave community, and easily the most sought after gain a slave could acquire was freedom. Unfortunately for Ann Fisher, her struggle to achieve this goal through the courts failed and for some eighty years she “lived and died in a State of Slavery.”\textsuperscript{232} However, Eleanor carried on her mother’s pursuit of freedom. Shortly after Ann’s death in the summer of 1782, Eleanor Toogood followed her mother’s pursuit of freedom and sued for her own free status. Toogood’s case reached Maryland’s General Court on October 8, 1782, where her current owner, Dr. Upton Scott, fought hard to keep her enslaved (at some point Toogood had moved from her former master John Ross to Upton Scott). Thomas Jenings represented Scott as defense attorney and simply argued that Toogood was a slave because the Ann Arundel County court found her mother Ann Fisher to legally be a slave in 1734. Jeremiah Townley Chase served as Toogood’s lawyer and he first sought to strike down the presumption that Too
good must be a slave solely because the previous court declared that her mother was a slave almost fifty years earlier.\textsuperscript{233}

Chase relentlessly attacked the court’s 1734 Ann Fisher decision. He agreed that “Mary Fisher was married to a negro slave [Dick],” but said it could not be proven that their marriage took place between the years 1664 and 1681, when the law would have made Mary and her children slaves. Chase brought up the fact that Ann Fisher had been born around 22 years after Maryland’s 1681 act repealed the earlier 1664 law that would have made her mother, Mary Fisher, a slave via her marriage to slave husband Dick. Chase further parsed the original language used in the act of 1664, showing that the statute only bound the wives of African men “during the life of her husband.” According to this line of reasoning, after Dick passed away, his wife Mary Fisher and their daughter Ann should have been free. Chase proposed that Ann Fisher was “not the child of a bondswoman or a slave,” so Fisher could not have legally been a slave, and therefore her daughter Eleanor Toogood must also be free.\textsuperscript{234} Legally, this was a somewhat tenuous argument, which had been put down by the courts all throughout the colonial period in other freedom suits.\textsuperscript{235}

Jening’s defense took a much simpler approach: Ann Fisher had been proven a slave “by the judgement of the Court, and her issue must be slaves, unless you can show something posterior by which they were emancipated.” Chase then referenced a Maryland case of the previous decade, a 1770 freedom suit where William and Mary “Moll” Butler originally won their freedom citing similar circumstances – where the Maryland law of 1681 repealed an enslavement that took place as a result of the act of 1664. “The determination in the case of Butler v. Boarman (September term, 1770.),(a) is to govern,” argued Chase, “if not, much confusion and inconvenience will be introduced.” There was already much confusion over Eleanor Toogood’s state as a slave and perhaps some slight of hand being playing on Chase’s part, for the court overturned William and Moll Butler’s freedom in 1770 on appeal the next year. Essentially, Chase brought back the same argument in favor of freedom used in the

\textsuperscript{231} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 26; MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783, Bodenhorn, “The Mulatto Advantage: The Biological Consequences of Complexion in Rural Antebellum Virginia.”

\textsuperscript{232} MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.

\textsuperscript{233} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 27-37

\textsuperscript{234} Harris and McHenry, Maryland Reports, 1780-1790 Vol. II, 33, 35.

\textsuperscript{235} See Butler cases. Also, most likely, it was not Dick and Mary Fisher’s marriage that had made the family slaves, but rather Mary’s parents, who would have more likely been married as a free English woman and an enslaved African man between 1664 and 1681, when the Maryland law was in effect.
previous decade in the Butler’s failed freedom suit. In the late colonial period, Chase applied the same legal argument for freedom, which passed the general court at first and then lost on appeal in 1771. This judicial ambivalence reveals that elite notions differed on the issues of freedom and slavery in Maryland, yet these notions were shifting towards more liberal views, which carried over to enhance the rights of some mixed-heritage peoples.236

In the Toogood case, Chase took a chance that the current Maryland court justices had changed their ideas towards favoring freedom for people of mixed descent who could trace a maternal ancestor back to European heredity. Chase’s reasoning worked, for on October 8, 1782, Maryland’s General Court at the state capital in Annapolis declared Eleanor Toogood free “from any further servitude to the said Upton Scott.” The court also insisted that Dr. Scott pay Toogood 1,324 lbs. of tobacco for court costs and damages.237 Jenings quickly appealed the court’s decision on behalf of Scott, but Maryland’s Court of Appeals again sided with Toogood and upheld her freedom in May of 1783. Maryland’s current court justices declared the previous 1734 court decision that held Ann Fisher a slave should not dictate that her daughter Eleanor Toogood must also be the same. Furthermore, the court found that Eleanor’s grandmother, Mary Fisher, “appeared, by the proof, to have been a free mulatto woman.” Though her mixed grandmother had married an enslaved “Mulatto Man,” the Justices decided that the said “Mary Fisher was free during the life of Dick.” Setting the record straight, Eleanor Toogood would now also be a free woman.238

The Butler Family

The Fisher-Toogood and Butler family histories both showcase how colonial Chesapeake legislators and planters moved into the eighteenth century strengthening laws that upheld racial slavery. Manumission rates dropped as masters kept Africans bound for life and converted multigenerational indentures of mixed-heritage peoples into full-blown slavery. These laws and practices changed over time, as elite views concerning manumission in the Upper South softened into the late colonial period and Revolutionary Era. During this time, the political climate among the elite turned in favor of Lockean views of the “rights of man” and “natural rights.” Though many states passed laws that explicitly excluded slaves from citizenship rights, these revolutionary ideals influenced judicial and legislative decisions concerning certain slaves and people of blended ancestry.239

In 1763, William and Mary “Moll” Butler brought a legal suit for freedom against Richard Boarman, based on claims that they both could tie their maternal ancestry back to the Irish woman Eleanor Butler. In 1681 “Irish Nell” married an African man named Charles in colonial Maryland.240 Afterwards, the couple had several children together, all who seem to have fallen into the category of “mulatto.” Perhaps no African-European union is better documented than the marriage between Eleanor “Irish Nell” Butler and “Negro Charles.” Eleanor’s love was so great for her suitor Charles that the teenage girl willingly committed herself to a life in slavery by a Maryland law that punished European women with a lifetime in bondage for joining in

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237 MSA, S381-257, Court of Appeals, Judgements no. 15, May 1783.
240 See Chapter 1.
matrimony with enslaved African men. Historian Martha Hodes has told Charles and Eleanor’s story in great detail, yet this account focuses on the couple and not their children. The following will continue that story, focusing on the Butler children and their descendants. By looking at several generations of the Butler family, we can see how another family of mixed African and European ancestry struggled to achieve their freedom. This history, along with others like the Fisher-Toogood family, sheds light on how revolutionary era ideologies affected the individual rights of those deemed “mulatto.”

Around the year 1700, Ann Whitehom was a childhood playmate of Abigail Butler, one of the daughters of Charles and Eleanor Butler. Whitehom was presumably of full European descent and lived within a couple miles of Abigail, who was known to be of mixed African and European ancestry. Whitehom was near the same age as Abigail and regularly stopped by the family’s house to visit the Butler children. She would sometimes “stay with them for a month and longer at a time, as other free people.” Though the law may have held them in separate racial categories, these young girls were childhood friends who enjoyed spending time together in colonial Charles County, Maryland. Years later, Whitehom said that “she never knew or heard that the said Eleanor Butler was in a state of slavery” and probably assumed the same of Abigail and the other Butler siblings. Charles and Eleanor Butler’s children seemed to be able to exercise a fair amount of freedom, even though the mixed African-Irish family was legally held in slavery throughout the colonial period. Their friendship with other European children in the neighborhood exemplifies how law and individual treatment on more local and individual levels could differ greatly from the separation that elite colonial legislation attempted to create between the races.

Abigail Butler’s relationship with her peers presents how people of mixed ancestry were treated in their local communities. Ann Whitehom treated the mulatto Abigail as an equal and Ann’s parents appear not to have had a problem with their daughter associating with other children of African descent. This was typical in the early colonial Chesapeake, as slaves, servants, and those in the lower ranks of society occupied similar social spaces. The egalitarian treatment those in community showed the Butlers led to confusion surrounding their actual labor status. Were they slave or free? Decades later in the 1760s, neighbors recalled that the family lived everyday the same as other free people. Though several witnesses described their lived experience as free people, the “saltwater negro” Charles, his Irish wife Eleanor, and their ethnoracially mixed children were all held as slaves by law.

After they were married in August of 1681, Eleanor and Charles had at least six children: John (Jack), Sarah, Catharine (Kate), Elizabeth (Abigail/Abby), Moll, and Nan. While little is known about Sarah, Moll, and Nan, those in the community remembered the other three children well. Into the eighteenth century, Charles’ original master, Major William Boarman and the Boarman descendants, held all of these children in slavery. The extent to which the Butlers experienced the horrors of slavery is unknown, but it seems their masters treated them similarly to other poor servants. Most of the evidence shows that the early Butlers worked hard like other colonists and received equitable treatment in the community. This relatively good treatment may have been why it took the Butlers so long to bring an actual legal suit for freedom against their

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242 Abigail was also known by the name Elizabeth. MSA, S551-85, Provincial Court Judgements, vol. D.D., no. 17, vol. 61, pt. 1, 1770-1771, p. 236-237.
masters, especially when their lineage could easily be traced to “a white woman” from Ireland. Perhaps the Boarmans hid knowledge of enslavement from future Butler generations, or maybe the Butlers concealed their children’s slave status from them until later years.  

Whether Eleanor considered herself a slave beside her husband Charles may never be known – though she does appear as a slave next to Charles in William Boarman’s will.  

Eleanor continued her whole life on William Boarman’s plantations, living with several different Boorman heirs. Though this implies that the Boarmans owned her, others in the Charles County community later noted that Eleanor was not “confined to any particular place.” If Charles and Eleanor agreed to their servile condition, their children most certainly did not accept for themselves the slave status of their parents. Following generations found bondage difficult to accept. In eighteenth-century Maryland, everyone knew that the labor status of one’s mother made them a slave, and the descendants of “Irish Nell” understood that they should not be considered slaves due to their European ancestry. The existing laws of their day should have made them free. William Boarman appears to have treated the first generations of Butlers as free persons, though this quasi-freedom did not last. Over the years, each succeeding generation of Butlers moved more narrowly within the confines of perpetual servitude, as racial slavery became more rigid over the eighteenth century. The question each successive Butler generation faced became: how can we best escape bondage?

While the Butlers may have envisioned their servitude differently from one generation to the next, the desire for freedom was apparent in every generation following that of Charles and Eleanor. Within a couple years of their marriage, Eleanor gave birth to her only son Jack. Around his early twenties, this “Mulatto man called Jack was put to work” on the plantation of his father’s master, William Boarman. On the Boarman plantation, Jack worked with an European laborer around his same age named John Branson. While the two men did similar work, Branson exercised freedoms that Jack would never have as a slave. One of the greatest liberties Branson had over Jack was physical mobility. If he desired, Branson could leave the plantation, yet the slave of mixed African and European ancestry could not do the same. Jack realized these differences and became well aware of how his slave status impeded his personal autonomy.

Jack Butler decided that he too would have the same freedoms enjoyed by his work partner, so he made the decision to run away from the Boarmans sometime in the early 1700s. Jack chose to move west and then south, first crossing the Maryland border over into Virginia and then further into southern Virginia. Jack’s mixed ancestry may have aided his escape, for he may have been able to pass himself off as a free man. Also, many free people of African descent and even slaves who were allowed to hire out their time had mobility in the early eighteenth century. While it is unclear why Jack reasoned Virginia as his best route of escape, it seems that he was at least partially successful. One of William Boarman’s sons pursued Jack “to the Lower parts of Virginia,” but came up short and eventually returned without him.

Another account recalled that Jack Butler purchased his freedom from the Boarmans, which could have been plausible in conjunction with his escape to Virginia. After Jack ran away

245 MSA, SR 4406-2, Will of William Boarman, 1708 Register of Wills, Prerogative Court Will Liber 12, part 2, p. 108.
248 It was not unusual that Jack would travel south into Virginia to seek sanctuary, as all of the colonies during this time had legal slavery. Escaping north of Maryland would not have been any more beneficial to a runaway slave at the time. MSA, S551-85, Provincial Court Judgements, vol. D.D., no. 17, vol. 61, pt. 1, 1770-1771, p. 244; Berlin, Many Thousands Gone, 136.
from the Boarman plantation, he became a fugitive slave with his owners pursuing him. In order to achieve full legal freedom, he would need documentation certifying his free status. Jack may have found a place to work, saved money, and then sent it back to the Boarmans in order to attain legal freedom. With either route of escaping bondage, he would have needed help from others in these efforts, as he would need a secure place to live and work without being caught and sent back to Maryland. Jack also would have had to find some safe means of sending the self-purchase money back to his former master. The Boarmans may have been more willing to accept a smaller payment from afar since they had already effectively lost his labor. Though Jack exercised his independence with his first steps off the Boarman plantation, having his free papers would give him the security to move as he pleased and allow him to settle down without having to worry about capture and re-enslavement.249

Jack’s younger sister Kate Butler likewise sought her freedom sometime in the early eighteenth century. Kate was born around 1690 and in 1709 William Butler willed her to his son, John Baptist Boarman. While under the younger Boarman, she had at least four children: Jack, Jenny, Ned, and Pegg. Having four children meant that escape would not be a viable path to freedom for Kate. The physical dependence and emotional connection between mother and child made it more difficult for slave women to run away. She may have also had a partner on the Boarman plantation and her attachment to him kept her attached to the area. Still, Kate became the second of Charles and Eleanor’s children to achieve freedom. While Jack never returned to Charles County, Maryland, Kate eventually purchased her freedom and remained in the area where she could be close to family.250 Though neither path was an easy, Kate made a different type of sacrifice than her brother Jack in order to attain liberty.251

Kate and Jack were the only two Butler children known to have removed themselves from the grip of bondage. The remainder of the Butler children appear to have remained in bondage, and fell under the ownership and service of William Boarman’s heirs. William Boarman’s son, John Baptist Boarman, inherited Kate Butler (until she purchased her freedom) and Boarman’s daughter Mary inherited Sarah Butler. Abigail Butler seems to have gone to William Boarman’s daughter Ann, who was married to Leonard Brooke of St. Mary’s County. Another Boarman daughter, Clare, who married Richard Brooke (nephew of Leonard Brooke), may have also owned some of the Butler children, perhaps one of the younger daughters, Moll or Nan Butler. Just as Thomas Beale passed down the Fisher family members to John Beale, William Boarman bequeathed the Butler family members as property to his descendants.252

While Charles and Eleanor’s only son Jack remained distant after his escape, all of their daughters remained on the Boarman and Brooke plantations. Over the years, these women dealt with the pain of seeing their family members separated through inheritance, trade, and purchase. While Kate gained freedom, she still had to experience the heartache of seeing her children and grandchildren being passed along as property to new masters. Still, at least she was able to maintain personal relationships with loved ones who lived nearby and would have been able to provide support to enslaved family members. Unfortunately, her freedom seems to have come after the birth of her children, meaning that her descendants remained in bondage even after she became free. Though not all of the Butlers removed themselves from slavery, the struggle towards freedom continued into following generations. It was no coincidence that Kate named

251 Will of William Boarman, 1708 Register of Wills, Prerogative Court Will Liber 12, part 2, p. 108 (SR 4406-2).
one of her son’s after her absconded brother, Jack. However, another one of Kate’s sons sought a route to freedom that differed from the path taken by his mother and uncle.

Kate Butler’s son Ned was the grandson of Charles and Eleanor Butler, and part of the third generation of Butlers. He was born sometime around the 1710s, and worked on a number of plantations throughout his life. Though he was born a slave of mixed descent, Ned was accepted as a playmate amongst his European peers. William Simpson, who would have been identified racially as “white” at the time, explained that Ned and he “were Children and played together.” This friendship carried over into the workplace when they were older, as Ned’s “master put him out to work” with Simpson.253 Again, it was common for European and African workers to share the same spaces in the Chesapeake Bay. Many of the Butlers and their descendants occupied the same social spaces as Maryland residents of full European descent in St. Mary’s and Charles Counties. Still, the Butlers’ enslavement became more restrictive over the years, as new masters eroded the family’s freedoms and replaced servitude with formal slavery. Over time, those who remembered their Irish ancestor Eleanor attempted to raise her ancestry as a point for contesting their bondage.254

Ned seems to be the first Butler to have taken his family’s battle to the Maryland courts, where he “sued for his freedom” around 1750. Speaking on this court case, Nathaniel Soot, Sr. said that Ned “was a foolish dog [who] wou’d never get free nor none of Irish Nell’s Children.” Soot’s reasoning was that “she was married to a negro Fellow of Major Boarman’s named Charles, and that enslaved them all.”255 Eleanor’s daughter Kate, who purchased her freedom, was unable to pass her free status onto her son Ned. Though it is unclear when he was born, it had to be when Kate was of childbearing age, sometime in the first few decades of the 1700s. Unfortunately for Ned, Kate was still a slave at the time of his birth and his mother passed this status onto her son. Kate seems to have been unable to save up enough money to purchase her freedom until later on life, after her children had been born. Though in the late 1600s there appears to have been confusion surrounding whether or not the Butlers were actually slaves, by the mid-1700s their legal status in bondage was apparent. Nathaniel Soot, Sr. ended up being right; the Maryland courts denied Ned’s petition for freedom, just as they had denied Ann Fisher’s freedom suit in 1734.256

Kate also had a daughter named Pegg, held by William Boarman’s son Ignatius. While at his plantation, Pegg had several children, one of them named Mary, who also went by Moll.257 Ignatius Boarman gave Moll to his son Francis and she eventually ended up with another relative, Richard Boarman. Moll Butler followed her uncle Ned’s example and demanded her freedom in 1763. Moll was the daughter of Pegg, who was the daughter of Kate, who was the daughter of Eleanor Butler, and it was through this great-grandmother “Irish Nell” that she petitioned for her freedom. The fourth generation Butler joined her lawsuit with the third generation William Butler in Charles County, Maryland. William was a grandson of Eleanor Butler, and the son of Abigail. This made William Butler a first cousin of Pegg and second cousin to Moll. William and Moll Butler were also married, despite their familial relation to one another.258 As husband and wife, Moll and William Butler sued their master Richard Boarman

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257 possibly nicknamed after Pegg’s aunt Moll, who was one of Charles and Nell’s younger daughters.
258 Marrying a second cousin was common during the colonial period.
in a case that would span nearly a decade through the 1760s.

William and Moll’s case first appeared in the Charles County court records on September 27, 1763. They petitioned the court by stating they were “detained in a State of Perpetual Slavery by Richard Boarman of Saint Mary’s County” and desired the justices would “set them at Liberty.” It took several years alone just to gather the witnesses to give proper testimony on the lineage of their family. They answered questions about whether or not Eleanor Butler was a slave of the Boarmans and gave their views on topics such as how the community perceived the legal status of the Butler’s. From 1765-1767 testimony was collected from fifteen people and though there was contradictory evidence given in several places, most stated that they had considered “Irish Nell” to be a free woman who had married the enslaved “Negro Charles.” On Tuesday, September 11, 1770, the court justices declared the Butlers were “discharged and freed… from any further servitude to the said Richard Boarman.” Authorities decided William and Moll could not legally be held as slaves because their European maternal ancestry through Eleanor Butler entitled them to freedom. After almost ninety years after the Catholic priest wed Charles and Nell, their descendants established their freedom in a court of law.

However, this freedom was short-lived. Richard Boarman hired a new attorney after he lost the first case. This lawyer, Thomas Jenings, quickly appealed the 1770 judgment and officials moved the case to Maryland’s High Court of Appeals. Even though Maryland’s law of 1681 would have overturned Eleanor’s slavery dictated by the act of 1664, Maryland lawmakers issued the subsequent legislation a month after Charles and Eleanor married, in September of 1681. Jenings argued on appeal that Eleanor should have been considered a slave even after the 1681 legislation overturned the 1664 statute that originally enslaved her. Jenings stated on Richard Boarman’s behalf that laws “ought not to have an *ex post facto* exposition given to them.” He continued: “*Ex post facto* acts are to be construed as much as possible in favour of precedent rights.” Jenings’ line of reasoning was that even though Eleanor gave birth to all the Butler children after the act of 1681, they and their descendants would still be legally considered slaves according to the status of their enslaved Irish mother. Maryland’s Court of Appeals agreed. In 1771, the appeals court reversed the previous decision, and ordered that William and Moll Butler be “remanded back to Slavery.” After an eight year legal battle, the Maryland court dashed the Butlers’ hopes of freedom.

Losing this case was not only disastrous for William and Moll Butler, but it also meant that their descendants would be held in bondage for life. In 1771, when the court overturned their freedom suit, the couple had at least two children: Mary, a girl named after her mother, and William Lazarus, named after his father. The two siblings were said to resemble their mother and father, “as much as most Children do their Parents.” In 1768, Richard Boarman separated the children from their parents when he sold them to Leonard Watkin, a neighbor living four miles away in St. Mary’s County. This sale meant further fragmentation for the Butlers, and sometime afterward the two siblings were further split up. William Lazarus returned to Richard Boarman and then fell into the hands of William Knott of Montgomery County. James Kerrick

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262 Thomas Harris, Jr. and John McHenry, eds., *Maryland Reports Being a Series of the Most Important Law Cases, Argued and Determined in the Provincial Court and Court of Appeals of the Then Province of Maryland, from the Year 1700 to the American Revolution, Vol. I* (New York: I. Riley, 1809), 374-375.
264 MSA, S381-52, Court of Appeals (1787-1791), Judgements no. 3, June 1791.
of Charles County purchased Mary and she later ended up under the ownership of Adam Craig, who worked as a tailor in Prince Georges County. These sales indicate that these masters did not seriously entertain the notion that the Butler family could be free. These men handled later generations of the Butler family strictly as slaves.\footnote{MSA, S381-52, Court of Appeals (1787-1791), Judgements no. 3, June 1791.}

These succeeding generations learned from the example of Moll and William Butler’s efforts to gain their freedom. For just as her parents had done, Mary pursued a legal suit against her master, Adam Craig in the 1780s, “claiming her freedom as a descendent from a free white woman.” Once again, the Maryland court was forced to return to the legality of the Butler family’s enslavement. This time, it was not argued whether or not Eleanor Butler had actually been a slave. Most evidence pointed to the fact that she had been held as such by her husband’s master, William Boarman. The question that Mary Butler’s lawyer brought before the assembly concerned the legality of Eleanor’s slavery. Had she ever been convicted in a court law and sentenced to a lifetime in bondage for marrying the African slave Charles?\footnote{Harris, Jr. and McHenry, Maryland Reports Being a Series of the Most Important Law Cases Argued and Determined in the General Court and Court of Appeals of the State of Maryland, from May, 1780, to May, 1790, Vol. II, 214.}

Mary Butler’s lawyer was none other than Jeremiah Townley Chase, who had successfully represented Eleanor Toogood in the early 1780s. In 1787, Chase argued that it must be shown that Maryland courts legally made Eleanor a slave and “that without such conviction, neither the said Irish Nell, nor any of her descendants, could legally be slaves.”\footnote{Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 215.} Since the defendants could produce no proof of Eleanor being formally enslaved in a court of law by a jury, her enslavement and that of her descendants was de facto. Court Justices Alexander Hanson and Robert Goldsborough, Jr. agreed with the plaintiff’s simple, yet profound argument. They found the penalty of slavery inflicted upon Eleanor to be illegal because “without a conviction in a Court of Record of Irish Nell having intermarried with a slave, she could not become a slave, nor could her issue become slaves by virtue of intermarriage.” The Butler’s had found their avenue to independence.\footnote{Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 215, 235-236.}

However, Thomas Jenings returned on the side of the defense, as Adam Craig’s legal counsel. He went head-to-head with Chase again, just as they had done five years earlier in the case of Toogood v. Scott (1782). Jenings disagreed with Chase’s overall argument on a number of counts. He said “that presumption may be admitted in other cases, yet not in that of negroes” concerning one’s slave status. “On this principle, most people must lose their slaves,” said Jenings, “for the only title they can show in general, is length of possession.” The defense claimed it was impossible for slave masters to show every “first ancestor was a slave.” Undoubtedly, those of mixed ancestry muddied the waters even further because they presumably had European ancestors who were generally considered free in the English colonies. Recognizing this fact, Jenings posed that “every person holding mulattoes must unavoidably lose them.” He continued:

Now a mulatto may come from a negro and a white woman, as well as from a white man and a black woman; and it might be argued, that in favour of liberty, the first ought to be presumed, unless there is positive proof to the contrary. The master, we will suppose, has no positive evidence to prove this, but proves, that for a great number of years the mulattoes and their ancestors have been held in slavery; but this is only presumptive proof they originally came from a black woman, and if no presumption is to have effect in these cases, they must of course be set
Jenings posited that if the Butlers were to win their case then all mulatto slaves could potentially seek their freedom by claiming ancestry of a “white woman.” This argument may have worked when he won on appeal in the Butler case of 1771, yet some fifteen years later Jenings raised a point about liberty at a precarious moment. The United States had since declared itself free from British rule and formed a nation founded on natural rights based in “life, liberty, and the pursuit of happiness.” Maryland officials had already passed a state constitution in 1776 ensuring additional rights to its citizens, and the nation as a whole was currently in the process of doing the same. In October of 1787, when Maryland’s state authorities decided Mary Butler’s case, federal representatives had already written the U.S. Constitution and the individual states were mobilizing for the ratification process. During this time, people were regularly involved in debates concerning the balance of power at different levels of government, people’s representation in government, and the legitimacy of slavery. Jenings words concerning “mulattoes” had undone him. The Maryland justices overseeing the Butlers case indeed decided “in favour of liberty” to ensure the rights of a family who could tie their ancestry back to a “white woman.”

Chase was the first lawyer in the Butler cases to take up the rhetoric of individual rights as an argument in favor of freedom. He first pointed out the initial 1664 law that enslaved Eleanor was “highly penal on the free-born women… and is most penal and cruel on their innocent children, in making them and all their posterity slaves.” Chase uniquely set apart this argument from previous claims made by the Butlers, for he stated that it was not just illegal to hold the Butlers in slavery, but that it was also unfair and wrong to punish mixed-heritage children to a life of slavery for a crime they did not commit. Chase also took a race-neutral stance by contending that Africans and Europeans had the natural right to marry one another. “The law of nature does not prohibit a white person marrying with a black person,” claimed Chase. He further explained: “It is the act of the assembly alone, which creates the offence and annexes the penalty, which is unjust and cruel.” Again, Chase took the idea of natural rights and extended them to those of African descent, arguing that the legislature and courts had produced both the crime and the punishment for the supposed offense of marrying a person of European descent. To Chase, this was “unjust to the mother, because she is guilty of no crime, and most unjust and cruel to the offspring, who are wholly innocent.” For him, mixed-heritage children born of “a white person” were guiltless before the law and their connection to “whiteness” through the maternal line made them free. People of African descent were under the condition of slavery, yet Mary Butler’s lawyer insisted that if one could claim a way out of that bondage then they should also be equally free.

Finally, Chase argued that as an Irishwoman, Eleanor was “entitled to all the privileges of an English subject in an equal degree with any other English subject, however possessed with wealth, and exalted in station or rank.” Chose specifically highlighted Eleanor’s nationality as an English citizen and claimed that regardless of her subjugated class as a lowly indentured servant, colonial law still entitled her to those rights. This included trial by jury, a right stemming back to the English Magna Carta. “If she committed the crime of marrying a negro

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slave," said Chase, “she would by law be subject to no punishment before conviction, in some mode, and she was entitled to the common law mode of trial by Jury, as no other mode was prescribed by law.”\textsuperscript{273} The timeliness of Chase making this argument in the wake of the U.S. Revolution is also important. Maryland court justices represented the “exalted in station or rank,” yet they accepted and upheld the language of natural rights espoused in these arguments. This was not only an opinion held by the Butler’s legal council, but even Judges Hanson and Goldsborough “were of the opinion, that the said record, proceedings and judgment, were no bar to prevent the petitioner from claiming and having her freedom.”\textsuperscript{274} This is an example where the elite accepted the equality of people of mixed ancestry and officially recognized it in a court of law. Those in the general rank and file already accepted people largely on levels of general equality in everyday life, but here Charles and Eleanor’s mixed progeny had their rights to citizenship equally acknowledged and protected by social elites. Freedom, slavery, and punishment could not be abrogated without due process of law, especially during these years.\textsuperscript{275}

This Maryland court decision revealed views of mixed-heritage peoples in a number of other ways as well. Most importantly, the court’s decision conclusively shows that maternal European ancestry benefited slaves recognized as “mulatto.” This successful freedom petition also revealed that society recognized the Butlers as a “family of mulattoes” and that they maintained this status through intermarriage over several generations. This could have been maintained through a number of endogamous mixed marriages, such as the union between William and Moll Butler. The Butlers may have also joined together with others in their extended family. Certainly, exogamous relationships existed within other ethnoracial groups as well, for if the family had simply married people of one monoracial group they would have faded into that racial category. As with most multigenerational mixed families, they most likely chose partners from a variety of backgrounds. This can be seen as Mary Butler, four generations removed from Charles and Eleanor, was directly described as “a mulatto” in her case.\textsuperscript{276}

While Mary Butler’s master, Adam Craig, appealed the 1787 court decision, the final judgment by Maryland’s Court of Appeals in June of 1791 upheld the original ruling. Mary would be “discharged and freed” from any further service to her former owner. After Mary Butler’s right to freedom was confirmed, the court ordered Adam Craig to pay her 5,525 pounds in tobacco for court fees and damages. Coincidentally, the U.S. Congress ratified the U.S. Bill of Rights in the same year. It is fitting that Maryland officials’ ultimate decision in the Butler case finally upheld the rights of the individual. The Revolutionary Era was a comparative high point for many who occupied subjugated positions under servitude and slavery throughout the colonial period. This is not to say all authorities endorsed egalitarian treatment of Mulattoes and Negroes throughout the nation. The 1790 U.S. Naturalization Act stated that only “a free white person” could be admitted as a citizen of the United States. Still, on more local levels, some states extended individual rights to those of African descent. This included legal manumission in several states along with citizenship rights in the first decades of the burgeoning U.S. republic. In Maryland, some free people of African descent were allowed to vote in state elections.\textsuperscript{277}

Additionally, the court’s decision in Mary Butler’s freedom suit affected other Butler kin

\textsuperscript{273} Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 234-235.
\textsuperscript{274} Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 216.
\textsuperscript{275} Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 217.
\textsuperscript{276} Harris and McHenry, Maryland Reports, 1780 to 1790, Vol. II, 236; MSA, S381-52, Court of Appeals (1787-1791), Judgements no. 3, June 1791; Richard Peters, ed., The Public Statutes at Large of the United States of America from, the Organization of the Government in 1789, to March 3, 1845, Vol. I (Boston: Charles C. Little and James Brown, 1845), 103-104.
as well. Of course, any children Mary might have would also be free. Also, around the same
time the courts tried Mary’s case, her brother William Lazarus Butler also filed a “Petition for
Liberty.” William Lazarus was not alone in his attempts to align himself with his sister Mary’s
petition. Several other Butler relatives also filed suits for their freedom around the mid-1780s.
Once it looked as if Mary might win her case, word spread to other Butler family members who
now saw their chance to finally be delivered from bondage as well. In the Spring of 1786, Tracy
Butler sued her master, Henry Bradford of Prince Georges County, claiming that her master
“holds your Petitioner in Slavery and will not suffer her to go free.” She based the grounds for
her plea similarly to the other Butlers, claiming that she was “descended from a free white
Woman and is entitled to her Liberty.”

Numerous other petitioners from several Maryland counties sought the same relief. Along
with William Lazarus, Ally Butler also sued William Knott of Montgomery County. In St.
Mary’s County, Nate Butler claimed his freedom against his master Cornelius Wilaman.
Matthew and Agnes Butler took Edward Eagling to court in Charles County. Nasy Butler did the
same with his owner, Nathaniel Ewing, and the court’s judgment here revealed the importance of
Mary Butler’s original case. First, the court ruled that Nasy would be “discharged from the
Service of the said Nath’l Ewing and that Defendant pay all Costs.” Second, the judges also
acknowledged Nathaniel Ewing’s appeal and further stated that “the Judgment of the Court of
Appeals on the Petition of Mary Butler against Adam Craig shall be the Judgment in this Case
and as effectual and binding on said Party in every Respect as if the Judgment was given in this
Case.” Essentially, all of these other Butler cases rested on Mary’s test case. The final decision
by Maryland’s court of appeals in 1791 gave all the Butlers their freedom. The arguments put
forth by Mary’s lawyer, Jeremiah Townley Chase, not only benefitted her, but they held the day
for her bother William Lazarus and a number of other family members. In this way, mulatto
privilege clearly aided the Butler family.278

The Shorter and Allen Families

Maryland’s court ruling in Mary Butler’s case also had implications outside of the Butler
family. In 1794, Basil Shorter of St. Mary’s County, Maryland, “claimed his freedom as being
lineally descended in the female line from Elizabeth Shorter, a free white woman.” Similar to
the Butler lineage, Basil Shorter’s great-grandmother Elizabeth married “a negro man” called
Little Robin sometime in 1681. The couple “had three mulatto girl children, named Mary, Jane
and Martha.” Mary later gave birth to Linda, Basil’s mother. Records referred to all of Basil’s
maternal ancestors following Elizabeth as “mulatto” and these women were held in servitude
over the years. By the 1790s, Jeremiah Townley Chase had risen to become judge on
Maryland’s general court, and his cousin Samuel Chase served as Chief Justice. Both judges
Jeremiah and Samuel Chase oversaw the Basil case and allowed evidence to be read before the
jury, who decided the case in favor of Shorter’s freedom. This case differed in that a jury
decided the case, yet if the Chase justices had not allowed testimony regarding the Shorter
family’s lineage, then Basil Shorter and his descendants may have been enslaved for life.
Maryland courts increasingly granted emancipation during this period, breaking
multigenerational indentures that had enslaved families of mixed heritage.279

278 MSA, S381-52, Court of Appeals (1787-1791), Judgements no. 3, June 1791; Hodes, White Women, Black Men, 35-36.
279 Thomas Harris, Jr. and John McHenry, eds., Maryland Reports, Being a Series of the Most Important Law Cases Argued and
Determined in the General Court and Court of Appeals of the State of Maryland, from October, 1790, to May, 1797, Vol. III
(New York: I. Riley, 1813), 238-240; MSA, S381-1, Court of Appeals, Judgement no. 28, June 1798.
In early 1796, President George Washington appointed Samuel Chase to serve as an associate justice on the U.S. Supreme Court. It is not clear that his departure from the Maryland General Court had any great effect for people of mixed descent on the national level, but one case after he left the Maryland court shows a slight divergence from previous cases. In 1793, Nathaniel Allen had reached the age of twenty-one and sought freedom from his thirty-one year indenture to Richard Higgins. His mother, Jane Allen, gave birth to Nathaniel in 1772 and had admitted to being “guilty of Molatto Bastardy.” Maryland law had likewise indentured Jane, the same as her mother Hannah Allen. Hannah was Nathaniel’s grandmother, and she was said to be the product of a marriage between a “White Scotch Woman” and an African man. Again, by a colonial act passed in 1728, “certain free mulatto women, having children by negroes” were subject “to the same penalties as white women.” This mulatto bastardy law consigned the Allens to multigenerational servitude. However, African men identified by the court as “negro” had fathered all of the Allen children. Interestingly, Thomas Jenings represented Nathaniel Allen’s case, who this time took the side of the servant seeking his freedom. Jenings questioned applying the “mulatto bastard” title to Nathaniel or “to future descendants by a negro father.” He stated that this went against the letter of the law, for “the complexion will hardly afford any (if at all) discrimination between a negro and these descendants; and every person would think it more unnatural for such women to have a connection with a white than a black man.” Jenings argued that it did not make sense to punish women of predominantly African descent more harshly for having a child by an African man. For him, after successive generations of mixture with African men, the Allen’s had moved from being considered “mulatto” to “negro.” At what point would the Allen’s stop being subject to the 1728 mulatto bastardy law that punished these women of mixed heritage and their children born to African men?280

Jenings attempted to show that only Nathaniel Allen’s grandmother Hannah was a Mulatto by definition, born “of a white woman having a child by a negro.” He presented that Nathaniel’s “mother [Jane] was the daughter of a mulatto, but was not a Mulatto, according to any known definition of the term.” Unlike Virginia or North Carolina, Maryland had no legal definition for “mulatto,” so Jenings used Johnson’s Dictionary, which described a “mulatto” as the offspring of “a black and a white.” Jenings showed that his client was “in the fourth descent from a white woman” and rested his case on the fact that Nathaniel “not being the son of a mulatto, is not within the law” of 1728, and should therefore only be indentured to twenty-one years of age as any other illegitimate child. The Anne Arundel county court agreed, so they “discharged and freed” Nathaniel Allen from “any future Servitude” to Richard Higgins. The court also ordered that Higgins pay Allen “the sum of Three hundred and sixty one pounds of Tobacco.” Here we see ties to “whiteness” or free “white” parentage benefitting those who the courts recognized as “negro.” Mulatto privilege here extended even beyond those legally defined as such. One’s chances at gaining freedom increased when a person of even distant mixed ancestry could prove maternal European lineage in court.281

It did not take long for Richard Higgins to appeal the verdict. Over the next two years the case moved up through the Maryland court system and in 1796 Maryland’s general court reversed the decision of the county court. State officials determined that Nathaniel Allen must return Higgins to finish out his thirty-one year term of servitude. Though Allen appealed the

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280 Harris and McHenry, Maryland Reports, 1790 to 1797, Vol. III, 504-510; MSA, S381-1, Court of Appeals, Judgement no. 28, June 1798.
281 Harris and McHenry, Maryland Reports, 1790 to 1797, Vol. III, 504-510; MSA, S381-1, Court of Appeals, Judgement no. 28, June 1798.
upper court’s decision, Maryland’s court of appeals affirmed the decision in June of 1798. In the end, the upper courts seemed less willing to accept that the Allen had become “negro.” Perhaps this was because some of the Allen family still revealed themselves to be somewhat mixed in appearance. Other members of the Allen family are on record described as “mulatto” into the early 1800s. The higher courts may have been less willing to accept such a narrow definition of the term. The reasoning of the courts may never be known, yet Nathaniel Allen would need to serve out the rest of his indenture until the spring of 1803. After many years of struggle he earned his freedom, for on September 11, 1810 he appears registered in Price George’s County as “a black man about 39 years old… raised by Richard Higgins of Anne Arundel County… born free according to the records of that County Court.” Though Allen was not necessarily “born free,” he always believed himself to be deserving of liberty.282

For families of mixed heritage, multigenerational indentures acted as another means to enslave rather than offer them eventual freedom. Even if colonial laws did not condemn mixed children of European mothers outright to perpetual bondage, these indentures often shifted into becoming outright slavery. As illustrated in the stories of the Butler, Fisher, and Shorter descendants, trying to prove one’s free status through the courts proved to be a long route to freedom. Laws through most of the colonial period favored maintaining social hierarchy and people of African descent in a subjugated position. As a result, some like Jack Butler expedited their path to freedom by opposing the law and running away. Kate Butler removed herself from the binds of slavery through hard work, which included saving and eventual self-purchase. Ned Butler and Ann Fisher attempted to go through the courts, which denied their freedom during the colonial era. At the tail end of this period, William and Moll Butler likewise followed a legal avenue to freedom and, though successful at first, they were subsequently kept enslaved on appeal of their case. However, in the last quarter of the eighteenth century, courts awarded Eleanor Toogood, Mary Butler, Basil Shorter, and others their rights. Previously these legal systems had denied freedom to earlier family members. Like Nathaniel Allen and countless others, hypodescent ideology still connected all Mulattoes to their African ancestry and subjugated them as a class of people along with Africans and Indigenous peoples. Most people of blended heritage remained in bondage throughout their lives because they could never bring a freedom suit to court and did not have any other opportunity to gain manumission. However, as the United States grew as a nation and made efforts to establish the individual rights of all its citizens, there were opens for an increased number of mixed-heritage people to enjoy their freedom.283

In the first three chapters we have seen how authorities applied notions of hypodescent to people of mixed ancestry in the colonial Upper South and Lowcountry, both in bondage and in freedom. Bodies of laws, scattered at first, and then codified in colonial Virginia and Maryland, attempted to maintain social hierarchy by preventing further intermixture through legislation that punished mixed children and their parents. This model spread to several other colonies that

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282 Harris and McHenry, Maryland Reports, 1790 to 1797, Vol. III, 504-510; MSA, S381-1, Court of Appeals, Judgement no. 28, June 1798; Dorothy S. Provine, Registrations of Free Negroes, 1806-1863: Prince George’s County, Maryland (Washington, D. C.: Columbian History Society, 1990), 7; Paul Heinegg, Free African Americans of Maryland and Delaware: From the Colonial Period to 1810 (Baltimore: Clearfield, 2000), 15.

followed this example in later decades, especially North Carolina. The legal status of one’s parents, particularly the mother, helped to determine freedom, temporary servitude, or lifelong bondage. Generally, people of blended ancestry having maternal European lineage could elevate their position above those of full African descent. The increased chance at freedom and its potential rewards illustrate how society applied hypodescent more liberally and in many cases favored those of partial European heritage, even as society generally relegated all Mulattoes to their socially inferior African parentage.

When juxtaposing the Upper and Lower South, some stark contrasts appear when considering those of mixed ancestry. In the Lowcountry, an African slave majority and increased emancipation by European fathers gave Mulattoes a comparative advantage over those of blended ancestry over those seen as fully African. Colonial South Carolina and Georgia lacked the stringent legislation against people of mixed offspring that appeared in Virginia, Maryland, and North Carolina during the same time. In the Upper South, colonial assemblies enacted stronger legislation against Mulattoes, and those of mixed heritage became extremely vulnerable to losing their rights under the colonial labor systems of servitude and slavery. However, certain segments of society, and mixed-heritage people themselves, pushed back against what they saw as unjust treatment. In the Chesapeake, legislative and judicial authorities began to increasingly reflect these sentiments by the end of the colonial period and into the revolutionary era.

While legal statutes dictated the servile status for all people of mixed African, European, and sometimes Native American descent, the ability to access freedom was ultimately determined on an individual basis for all people of blended ancestry. Factors such as one’s regional location, labor status, class, sex, and the perceived racial affiliation of one’s parents intersected in complicated ways. Still, Mulattoes maintained a general advantage. The next section turns to this question of mulatto privilege in the formative years of the United States. While most people of mixed heredity in the colonial period were marked by their African heredity, there were further possibilities for social advancement in the early U.S. republic. Those who were able to make use of these opportunities were able to amass social affluence and material wealth, allowing them to effectively occupy a space in-between “black” and “white.”
Chapter 4
Mulattoes in the Revolutionary Era

On December 5, 1791, Willie Jones applied to the state of North Carolina to free Austin Curtis, “a Mulatto Slave of his.” Curtis had “demonstrated that he deserves to be free,” argued Jones, “by his Attachment to his Country during the War, by his Fidelity to his Master, … and by his Honesty & good Behaviour on all Occasions.” The state General Assembly granted Curtis his freedom several days later. The bill drawn up by the state legislature repeated the same language used in the original petition, stating that Curtis deserved his liberty for “his steady Attachment to his Country during the late War.” The government also renamed the slave Austin Curtis Jones after his master, and declared that he would afterward “be subject to, and enjoy the protection of the Laws, and Benefits of the Constitution of the State of North Carolina, in the same Manner as if he had been born a free Man.” Austin Curtis Jones was one of dozens, if not hundreds, of slaves of mixed heritage whose service to the United States during its fight for national independence earned them individual emancipation and the extension of rights under new state constitutions.284

For those in bondage, the United States Revolution provided additional avenues to freedom. The “Founding Fathers” left slavery untouched in the U.S. Constitution, though by the time the document came into effect several states had already banned slavery and emancipation rose even in states that kept slavery. Still, lingering questions remained about the full inclusion of those of African descent in the burgeoning U.S. nation. The revolutionary era, roughly from the 1770s to early 1790s, moved the British colonies of North America into a more egalitarian period under independent, yet united, states. The U.S. espoused individual liberties for its citizens and guaranteed the protection of natural rights under state, and later federal, constitutions. From the outset of the founding of the United States, the great paradox rested uneasily in the extension of freedom for the nation’s European American citizens while simultaneously maintaining a huge segment of the African American population in slavery. While most states retained legal slavery, those in New England adopted measures of immediate abolition in the 1770s and early 1780s, while Mid-Atlantic States began steps towards gradual manumission in the following decades.285 Ideologies surrounding personal liberty that permeated the U.S. Revolution moved authorities in more northern states to take a stand against slavery. State officials in northern regions, that lacked wide-scale plantation slavery, also legislated universal emancipation because they had less economically invested in holding people of African descent in bondage. Though many people in more southern states likewise felt the same way about the contradiction between slavery and liberty, their societies could not tear themselves away from an institution that they viewed as an economic necessity. Thus people of African ancestry in the southern United States continued to be born into a lifetime of bondage.286

Still, states that held onto slavery after national independence established more liberal laws regarding manumission during the revolutionary era, which resulted in regular manumission through the 1790s. Those held in bondage that assisted the American colonists during the U.S. Revolution could more easily locate a path to freedom, as the ruling classes respected their

284 North Carolina Office of Archives and History (NCOAH), General Assembly, Session Records, December 1791 - January 1792, Box 1, Folder - House Bills (December 7).
efforts and sometimes willingly granted them their freedom. As a direct result, emancipation increased along the southeast Atlantic Coast in the years during and after the war, which added to free communities of African descent in these areas. Slaves and servants of mixed African, European, and Native American descent also enjoyed this opportunity to gain their liberty. Indeed, those recognized as Mulatto in the late eighteenth century often had a greater chance to be rewarded for their patriotic contributions to the young nation, as mulatto privilege continued from the colonial period into the revolutionary era. Still, both law and custom adhered to hypodescent ideology established in the colonial era: people of mixed ancestry remained associated with their racially subordinate parentage. Although society continued to regard Mulattoes as being racially closer to Negros, or fully African, this rule of hypodescent weakened both informally and legally during the revolutionary era.287 For example, Virginia – the state with the largest mixed African and European population – eased its requirement for those defined as Mulatto. While it is difficult to make sweeping generalizations concerning all individuals identified as Mulatto or Negro during this time, it is clear that U.S. elites more easily accepted those of African ancestry with identifiable European lineage as participants in the nation. However, while many people of mixed heritage enjoyed certain freedoms within the emerging nation, they were still unable to obtain full social equality.

**Revolutionary Mulattoes**

Much of the foreground of the United States Revolution is set in the New England colony of Massachusetts in the years following the Seven Years’ War (1756-1763). One of the main events fueling discontent between the American colonists and the British Empire occurred in Boston on the night of March 5, 1770. That evening, an altercation took place between a local youth and a British soldier, which caused an angry crowd to gather outside the Old State House, where the British Regulars were stationed. John Adams later described the group as a mob containing “a motley rabble of saucy boys, negroes, and molattoes, Irish teagues and outlandish jack tars.” The reference to “molattoes” may have been in regards to Crispus Attucks, a man of African and Wampanoag ancestry who was at the scene of what would became known as the Boston Massacre. One witness, James Bailey, claimed that he saw Attucks, “a stout Molatto fellow” leading twenty to thirty sailors down to the scene. Attucks carried “a large cord-wood stick” in his hand. This testimony made Attucks out “to be the hero of the night,” describing him as commanding the crowd as if he were leading the group into battle. Those who later joined the colonists were “coming down under the command” of Attucks, who supposedly yelled to the crowd to stand firm against the British Regulars: “do not be afraid of them, they dare not fire, kill them! knock them over!” The mob grew to above fifty, and began to hurl insults, sticks, and balls of ice as large as a first at the nine troops who stood outside the Old State House. John Adams later argued that the British soldiers feared for their lives, in part due to the ominous stature of Attucks, “whose very looks was enough to terrify any person.” The Regulars fired into the crowd, instantly killing Attucks along with Samuel Gray and James Caldwell. Samuel Maverick died a few hours later, and the fifth fatality was Patrick Carr, an Irish man who succumbed to his wounds in the weeks that followed.288

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287 Again, the word Negro was commonly used during slavery as an umbrella term for all those of African descent. I am using Negro here to describe those of full African descent as differentiated from Mulattoes who were identified as being of partial African ancestry. This distinction was also sometimes made during the time as well. Please see the end of the Introduction for a more thorough discussion on the use of racial language.

In the fall of 1770, the British Regulars stood trial for the murders in Boston. John Adams defended the British soldiers in court by embellishing testimony given against Cripus Attucks. He claimed Attucks had instigated the shooting by grabbing the bayonet of Private Montgomery with one hand and knocking the soldier to the ground with the other. Adams said that Attucks’ “mad behavior” led to “the dreadful carnage of that night.” Did Attucks physically accost the British Regulars and attempt “to knock their brains out,” or was this simply a colonial case of police brutality on the part of the British Regulars? Other eyewitness testimony pointed to the latter. John Danbrook, who was standing directly next to Attucks before Montgomery fired, said, “The Molatto was leaning over a long stick he had, resting his breast upon it.” Danbrook also noted that Attucks said nothing immediately before the first shots were fired. It appears that Attucks was nonchalantly resting in the moments leading up to the gunfire.

Montgomery appears to have been startled by or struck by a projectile, which caused him to drop his bayonet. After regaining his composure, he fired into the mob, and his fellow soldiers joined in. As the British Regulars discharged multiple shots into the crowd, bullets struck several people. Attucks and Samuel Gray were the first to fall and die.\footnote{Hodgson, The Trial of William Wemms, James Hartegan, William M’Cauley, Hugh White, Matthew Kilroy, William Warren, John Carrol, and Hugh Montgomery, 30-31, 176.}

The extent Attucks was invested in the politics of revolution might forever be unknown. While his commitment to U.S. independence from Britain is often overstated in history books, Attucks’ personal love of freedom can perhaps be more clearly seen in a Boston Gazette runaway slave advertisement two decades prior. On September 30th, 1750, “a Molatto Fellow” named Crispus ran away from his master, William Brown of Framingham, Massachusetts. If this was the same Crispus that appeared in front of the British custom’s house in 1770, then Attucks had already established himself as someone willing to risk everything for his liberty.\footnote{Chandler Robbins, ed., Proceedings of the Massachusetts Historical Society, 1862-1863 (Boston: John Wilson and Son, 1863), 173-175.} Bostonians buried Attucks in the same grave as Samuel Gray, James Caldwell, and Samuel Maverick. The stone load upon their graves was inscribed with the following:

\begin{quote}
Long as in Freedom’s cause the wise contend
Dear to your country shall your fame extend
While to the world the lettered stone shall tell
Where Caldwell, Attucks, Gray, and Maverick fell.
\end{quote}

The story of Crispus Attucks is one illustration of a “molatto” rabble-rouser who helped incite one of the more famous events in North American history. His peers of rebels, runaways, immigrants, and seamen saw Attucks as one of them in the port-town of Boston, while the elite painted Attucks as a menace to New England society. His life shows that people of mixed heritage actively participated in their communities and were aware of the larger issues that faced the thirteen colonies of English North America, as American colonists struggled to find a way to become independent. Attucks also exemplifies a larger general trend of weakening hypodescent in the late colonial period and early U.S. republic, as certain people of mixed descent were able to use their patriotism to access greater acceptance, rights, and privileges in their communities.\footnote{Boston Gazette, October 2, 1750; E. H. Sears and Rufus Ellis, eds., The Monthly Religious Magazine, Vol. XXIX (Boston: Leonard C. Bowles, 1863), 54.}

Several years after the Boston Massacre, in the midst of the Revolutionary War, states...
officials questioned the role people of African descent would play in securing U.S. independence. In February of 1778, the Rhode Island state legislature passed an act that mandated “every able-bodied negro, mulatto, or Indian man-slave in this State may enlist” in the Continental Army. These men would be discharged from serving their masters and mistresses after the enlisting officer presented a certificate to the “master or mistress of said negro, mulatto or Indian slave.” Though military officials had already been using slaves of African and sometimes Native American descent during the Revolutionary War, Rhode Island sought to enlarge their battalions by officially allowing these men to serve in the war. In order to strengthen a dwindling and incapacitated Continental Army, General George Washington even encouraged and approved a plan for using slaves as soldiers against the British. Though other states fell short of formally enlisting slaves to fight, it was clear that they still served and assisted the American colonists throughout the war. Rolls of those fighting with the Continental Army only infrequently made racial distinctions, but free men of African descent certainly enlisted. Surnames such as “Freeman,” “Freedom,” and “Liberty” reveal the past of military men once held in bondage. Those of African descent fought in the war for their own natural rights in much the same way European American patriots dedicated their lives to establishing U.S. sovereignty.

During the Revolution, people of both mixed and full African descent helped defend the cause of liberty for the North American colonies, hoping they might earn their individual freedom through their dedicated service. James Phillips, a “free Mulato” served on a Maryland ship engaged in naval defense under the command of Soloman Frazier. The state of Maryland later awarded Phillips £9 for his service. In lieu of pecuniary reward, many enslaved Mulattoes received their liberty in part due to their service during the war. In Virginia, “Mullato slave” William Beck served Colonel Charles Lewis in several campaigns early on in the Revolution and “during his servitude behaved in a most exemplary manner.” Beck saved up £70 and purchased his freedom from his master Thomas Walker, Jr. of Albermarle County. The Virginia House of Representatives and Senate promptly processed his freedom petition and passed his request on October 30, 1779, a week after Beck submitted his plea. Beck’s service to the young nation at war helped expedite his case.

The revolutionary era increased slaves’ access to legal emancipation in several ways. Several northern states established constitutions that provided for either immediate or gradual emancipation for all slaves within their boundaries. Additionally, southern states that retained racial slavery established more flexible manumission laws. These statutes greatly diverged from earlier colonial legislation, which had limited the freeing of slaves to the authority of colonial assemblies. Even though these states would not pass wide-scale emancipation and still sought to regulate masters freeing large numbers of slaves, they allowed for easier individual

293 Williams, History of the Negro Race in American from 1619 to 1880, 344-345.
294 See Lord Dunmore’s Proclamation in November 1775 offered freedom to slaves who would join in fighting for Britain. “Yellow Peter,” a slave of mixed descent, was one of thousands who joined the British. By 1776 he had changed his name to “Captain Peter.” Woody Holton, Forced Founders: Indians, Debtors, Slaves, & the Making of the American Revolution in Virginia (Chapel Hill: University of North Carolina Press, 1999), 156-158.
295 MSA, S997-5-1462, Certification of service, Aug. 24, 1786.
296 Beck had also formerly served Major Thomas Meriwether and may have been involved in other military campaigns previous to the U.S. Revolution. LVA, Albermarle County, Legislative Petitions, 1779 Oct. 23.
manumission. For example, North Carolina’s 1777 bill “to prevent domestic insurrections” stated: “That no Negro or Mulatto Slave shall hereafter be set free, except for meritorious Services, to be adjudged of an allowed by the County Court.”297 While legislators sought to restrict further emancipation, mainly by The Society of Friends (“Quakers”), this legislation actually expanded emancipation in North Carolina by allowing masters to free their slaves through the county courts. Over the next few decades other states retaining legal slavery passed similar laws that led to increased slave manumission. In many cases, masters could more easily free their slaves by presenting to the local court that a bondsperson had displayed “meritorious service,” which courts liberally applied in several areas during the 1700s into the early 1800s. Since times of war led to increased opportunities for slaves to perform acts of valor, this may have increased the number of slave petitions sighting war service to support a freedom petition. Those who could show a slave took actions to protect the homeland during the war increased the chance that officials would approve an emancipation request. Simply put, serving the nation faithfully during the Revolution became a viable option for slaves to gain liberty. 298

Those in bondage who fought for the patriot’s cause during the Revolution hoped their efforts on behalf of national independence would open up a path to individual freedom. Others used the social upheaval created by the Revolution as an opportunity for escape and securing freedom through aiding the British. Many slaves ran away directly to join the British ranks after the royal governor of Virginia, Lord Dunmore, promised freedom to slaves and servants in 1775. Slaves and servants took up the call of Lord Dunmore throughout the war, which caused problems for the colonists in several ways. Runaways removed needed labor from the wartime colonial workforce and at the same time offered military support for Britain. During the war, George Washington recognized that “many negroes and mulattoes” had attempted to run away from their masters by absconding aboard British ships. Some took up the philosophy of the Revolution to fight against the patriots and fought with the British to take their own freedom. 299

In May of 1781, colonial authorities put “a Mulatto Slave” named Billy on trial in Prince William County, Virginia. Billy’s arrest came after officials boarded a British war vessel and captured the slave. The court did not take this offense lightly and on May 8th Billy “was condemned to die for Treason.” Billy claimed he had been forced to join the British, yet most of the judges saw this as a simple case of insubordination and condemned the slave to execution. Billy’s former master, John Tayloe, had died in 1779 and the executor of Tayloe’s estate, Mann Page, sought to keep the valuable slave alive. In the weeks that followed Billy’s sentencing, Page and two of the dissenting judges involved in the original verdict, sought to overturn the court’s original decision. They argued that Billy could not commit treason because he was a slave and without citizenship he was incapable of turning against his country. Officials stated that, as a non-citizen, Billy “owes the State No Allegiance.” Thomas Jefferson, then Virginia’s governor, agreed with this argument and issued a stay on the execution until the end of June. In the meantime, Page petitioned the state legislature for Billy’s full pardon, which the government granted by mid-June. In this way, Billy’s life was spared, though he still remained in bondage. It is probable that his master acted more out of self-interest and less out of benevolence, for Page

297 Any person freed outside of these circumstances could be captured, jailed, and sold by the state and the law was amended in 1788 to strengthen the detention of former slaves who were “now going at large to the terror of the people.” Walter Clark, ed., The State Records of North Carolina, Vol. XXIV (Goldsboro, North Carolina: Nash Brothers, 1905), 14-15, 964.

298 Davis, The Problem of Slavery in the Age of Revolution, 1770-1823, 198.

would have certainly benefitted monetarily from keeping Billy alive in slavery.  

Most likely, Billy had run away and voluntarily joined British forces. This was perhaps not his first attempt at securing his freedom, for several years earlier a runaway slave ad had been posted in the Virginia Gazette for “a light coloured Mulatto Man named BILLY or WILL, the Property of the Honourable John Tayloe.” It is hard to say for certain that this is the same Billy tried for treason in 1781, yet some of the clues in the 1774 runaway ad bear striking similarities to what we know about this clever slave. Thomas Lawson, an ironworker employed by Tayloe at the Neabsco furnace, gave a detailed account of Billy in the ad. As a young boy, Billy worked under Lawson as a personal servant and accompanied him for many years. Those in the surrounding community knew the slave Billy by “his pertness, or rather impudence” and at the time of his disappearance on March 16, 1774, he was “about 20 years old, 5 feet 9 inches high, stout and strong made.” Billy was also good looking and confidant, having “a remarkable swing in his walk.” Lawson also revealed the skills the young “Mulatto Man” may have used in assisting the escape, writing that Billy had “a surprising knack… of gaining the good graces of almost every body who will listen to his bewitching and deceitful tongue, which seldom or ever speaks the truth.” If this same Billy had been caught on board a British vessel during the Revolution, he almost certainly would have denied voluntarily assisting the enemy. The Billy presented in this ad is an insightful portrait of a young man with swagger, who felt himself to be fully deserving of his freedom from an early age.

Women in bondage also took advantage of the instability created throughout the war. Family obligations to those on the plantation might have caused some slave mothers to postpone or indefinitely suspend a runaway attempt, yet it did not stop others. In September of 1776, a mixed-heritage slave named Jenny ran away with her small daughter Winney, a toddler described in a runaway ad as “a yellower complexion” than her mother. Jenny’s master expected her “to pass as a free woman” outside of Mecklenburg County, Virginia, where the slave had run away from on Monk’s Neck plantation, about thirteen miles north of Petersburg. Twenty-five year old Jenny most likely would not have been able to pass as “white” since she was of “a yellow complexion,” but she knew how to play the part of someone from the middling classes, which aided her escape. Her master stated that “she generally goes well dressed” and that she took several pieces of clothing with her and her child. This was a daring escape, not only because it took place during wartime, but also because Jenny was several months pregnant when she made her flight to freedom with her young daughter in tow. Pregnant women, or those with small children, might normally be deterred from trying to escape, but Jenny may have been motivated by the opportunity to give freedom to her daughter and unborn child. In Jenny and her children’s case, the benefits of successful escape were worth the enormous risks of possible capture, punishment, and a lifetime of bondage. Ultimately, slaves seeking personal liberty had to weigh what path to freedom might best suit them given their personal circumstances.

Several gendered dynamics aided men seeking to attain their freedom during the Revolution. Female slaves might earn their freedom through escaping their masters and claiming themselves to be free in another location, while male slaves could obtain liberty through running away into military service. Some slaves ran away from their masters to take up arms alongside British forces. Other male slaves passed themselves off as freemen in order to join French and

300 LVA, Legislative Petitions, Prince William Co., N.D. (Received June 7, 1781); John T. Kneebone et al., eds., Dictionary of Virginia Biography, Volume 1: Aaroe-Blanchfield (Richmond: Library of Virginia, 1998), 490-491.
301 Virginia Gazette (Rind), April 14, 1774. Virginia Gazette (Purdie & Dixon), April 21, 1774.
302 Virginia Gazette (Purdie), April 11, 1777.
U.S. armies. On October 25, 1781, shortly following the Battle of Yorktown, General Washington ordered that these slaves be returned to their masters, yet at the same time he recognized that some of these people were at liberty to go as they pleased. Washington commanded: “Any negroes or mulattoes who are free, upon proving the same, will be left to their own disposal.” Though Washington named both “negroes and mulattoes” in his orders, there appears to be little differentiation between the two racial terms. The difference came in the type of servitude legally assigned to Negros and Mulattoes.” Slaves included all people of African descent, while certain Mulattoes born to women of European descent were held under thirty-one-year indentures. Both slaves and servants served the patriot’s cause out of fidelity to their masters and many secretly hoped that their devotion would pay off with eventual manumission. Others would not leave their fate to chance and seized opportunities at freedom, which were provided by the volatile times of the war. Other enslaved men clandestinely enlisted as free men with U.S. forces, even if formal laws prohibited slaves from open service. Colonial military authorities permitted their enlistment out of necessity, as the Continental Army was poorly outfitted and fought with dwindling numbers as the conflict with Britain wore on.

Certain people of mixed ancestry, like Anthony Ferriah of Virginia, received a bounty for enlisting as a freeman and deserted shortly thereafter. Ferriah would have used this money to help further his flight to freedom. Other Mulattoes used the Revolution to escape their contracts of servitude. These people of mixed heritage usually had European maternal lineage and were bound as children to lengthy indentures under colonial bastardy laws. George Cook, “a very dark servant mulatto man,” ran away from William Knox in Culpepper County, Virginia “to enlist as a soldier, expecting the country would free him from his master.” At twenty-six years old, Cook only had five years left to serve out on his indenture and risked punishment by absconding early. Military recruiters offered indentured Mulattoes a faster route to gain full autonomy. Again, those of blended ancestry, originally born to free women, ran the risk of being taken from servitude into slavery. Instead of facing the possibility of being held longer in servitude, many would run the risk of losing their life in battle when offered the chance to fight in the war. Jesse Kelly, was “a Mulatto Man” who found himself in this situation. The law legally bound him to thirty-one years of service under Lewis Lee of Prince William County, Virginia. Kelly left his master early and enlisted in Virginia’s 15th Regiment of the Continental Army. Lewis Lee later sued the recruiting officers to be compensated for the labor he lost when they refused to discharge Kelly. Most likely, the servant Kelly used the situation to get away from being under the watchful eye of his master and saw fighting in the Revolution as a pathway to end his indenture early. Many Mulattoes caught up in multigenerational servitude, along with those who were fully enslaved, had little guarantee that their masters would free them after the war. Fighting appeared to be their best option.

303 Though men could enlist with the British, perhaps half of those that escaped to the British lines were women and children. Holton, Forced Founders: Indians, Debtors, Slaves, & the Making of the American Revolution in Virginia, 156; Douglas R. Egerton, Death or Liberty: African Americans and Revolutionary America (New York: Oxford University Press, 2009).
305 Holton, Forced Founders, xiii-siv; Egerton, Death or Liberty: African Americans and Revolutionary America.
307 Virginia Gazette (Purdie), April 11, 1777.
308 LVA, Prince William County, Legislative Petitions, Oct. 4, 1792.
Sometimes joining in the Continental Army was not voluntary, as certain Virginian planters “had caused their slaves to enlist in certain regiments or corps” as substitutes for their required service. Since most states officially prevented slaves from enlisting as servicemen, masters sometimes lied to recruiting officers by claiming, “that the slaves so enlisted by their direction or concurrence were freemen.” After the war ended, these masters took their slaves back into service, even after they had promised some men their liberty. In 1783, the Virginia state assembly lambasted these corrupt slave owners, noting that these masters acted “contrary to the principles of justice, and to their own solemn promise.” At the end of the war, Virginia’s General Assembly issued an act that “fully and completely emancipated” these slaves, stating: “it appears just and reasonable that all persons enlisted as aforesaid [as freedmen by their masters], who have faithfully served agreeable to the terms of their enlistment, and have thereby of course contributed towards the establishment of American liberty and independence, should enjoy the blessings of freedom as a reward for their toils and labours.” The Virginia legislature understood that those held in bondage desired the same liberty enjoyed by others and in this case recognized the contributions enlisted slaves made to U.S. independence.

Masters passed off slaves as freeman to serve in their place in other states as well. This can be seen in the case of Ned Griffin of Edgecombe County, North Carolina. William Kitchen actually purchased Griffin, “a Man of mixed Blood,” for the specified “purpose of Serving in His place” during the Revolutionary War. Griffin “Consented to enter in to the Continental Service” for a twelve-month term on Kitchen’s behalf, under the “Promise and Assurance” that he would be granted his freedom after the term of service ended. However, the master and slave only made a verbal agreement, and Kitchen falsely entered Griffin into the army as a free man under Colonel James Armstrong at Martinborough (present-day Greenville). By taking his master’s place in the war, Kitchen received a bargain price for the service Griffin rendered. Griffin recognized as much, stating that “no Person could have been hired to have served in the said Kitchen’s behalf for so small a sum as what I was purchased for.” When Griffin returned from the front lines after serving the agreed upon year term, devastating news awaited him. Kitchen went back on his promise and sold Griffin again. Instead of receiving his freedom, Griffin remained in bondage under a new master.

Angered by this betrayal, Griffin petitioned the North Carolina General Assembly for his rightful freedom. After explaining his situation, Griffin’s appeal read: “Your petitioner therefore thinks that by Contract and merit he is Intitled to his Freedom.” The court agreed. They little doubted that Griffin “was promised the full enjoyments of his liberty, on condition that he… should faithfully serve as a soldier in the continental line.” By April 1784, both houses of North Carolina’s congress passed an act that “the said Ned Griffin should receive the reward promised for the services which he performed.” Ned Griffin was “enfranchised and forever delivered and discharged from the yoke of slavery.” The language the court uses here is extremely revealing, for officials wrote that Griffin was “in every respect declared to be a freeman.” This may have included the right to vote, which was enjoyed by certain free people of color in North Carolina during this time. Again, not all free persons of African descent were of mixed heritage, but Mulattoes made up the majority in North Carolina. Even if laws did not explicitly extend additional rights to people of blended ancestry, a large proportion in freedom enjoyed certain rights over slaves of full African ancestry in these areas.

309 Hening, **SALV Vol. XI**, 308-309.
310 **NCOAH, General Assembly Session Records, April - June 1784**, Box 3, Senate Bills, House Bills (April 24 - May 6).
311 **NCOAH, General Assembly Session Records, April - June 1784**, Box 3, Senate Bills, House Bills (April 24 - May 6); Clark,
Colonial military officials perhaps reluctantly allowed those of African descent to fight in the Revolution. This acquiescence came largely out of necessity, as colonial forces were often ill-equipped and ill-prepared to take on British forces. Soldiers in the Continental Army were often near open rebellion and authorities relied on corporeal punishment on numerous occasions to quell resistance. On February 8, 1782, Joseph Hawkins faced a court martial for stealing military supplies under Colonial Christian Febiger. This theft had come during a winter where Febiger’s troops had gone without meat for almost two weeks. When meat finally arrived at the camp, it was rotten, but still dispersed among the soldiers. By stealing rations, Hawkins, a person of mixed heritage, may have simply been trying to survive by evading starvation. Nonetheless, he was found guilty and hung on February 10. “I cannot blame you for the prompt execution of Hawkins,” General Washington wrote to Colonel Febiger. Though Washington supported the hasty court martial, he recognized that it was “an irregular mode of proceeding.” The commander-in-chief did so out of military necessity, and justified the act to keep larger segments of the military from rebelling.\(^{312}\) Washington both authorized and oversaw a number of military executions throughout the war, and Hawkins’ case does not appear to have been carried out any differently than others. If anything, it might be said that authorities executed Hawkins equitably, just as any other soldier. Siding with the patriots during the war did not automatically bring liberty. Though many people of African descent chose to flee during the tumultuous years of the Revolutionary War, this path was fraught with danger and uncertainty.\(^{313}\)

**William “Billy” Lee**

Other slaves of mixed heritage played an even greater supporting role within the Continental Army during the Revolution. Two slaves in particular were intimately connected to General Washington, attending him and his family over several decades from the late eighteenth into the early nineteenth century. William “Billy” Lee, along with his brother Francis “Frank” Lee, faithfully served the famous commander-in-chief and first U.S. President throughout the revolutionary era. “Mulatto Will” rose to become Washington’s most favored personal attendant, while Frank rose to become the head steward of Washington’s Mount Vernon estate in Virginia. Though Washington and others often referred to the William and Frank Lee as servants, the Lee brothers were undoubtedly slaves. On May 3, 1768, Washington bought William for £61 and 15 shillings, while he paid an even £50 for Frank. Washington purchased both slaves from Mary Smith Ball Lee of Westmoreland County, Virginia.\(^{314}\) Eventually, Frank served as butler in the Washington household and was described by Washington’s adopted grandson, George Washington Parke Custis, as “the most polite and accomplished of all butlers.” He was married to Lucy, a cook in the house who gave birth to no less than three children: Mike, Phil, and Patty. The family lived in a couple of rooms above the kitchen and Washington afforded their family other special privileges, which was customary for certain household slaves at the time. For example, upon Washington’s orders, Frank and Lucy’s children were the only


young slaves allowed in the master’s house.\textsuperscript{315} The couple also had the right to grow their own crops and raise chickens, which they sometimes sold to the Washingtons. This allowed the family to have some personal discretionary funds of their own. While the family was not fully autonomous, it is clear that their position in the Washington household benefitted them in ways beyond the average field hand or even other house slaves.\textsuperscript{316}

As Washington’s butler, Frank oversaw the cooks and preparation of meals in the house, as well as the maids and house cleaning. Slaves cleaned the Washington manor at least once a week and took part in larger seasonal cleanings as well. Here, Frank personally took on larger jobs himself, which included insulating the house during colder months, painting, gardening, and collecting one of Washington’s favorite snacks, black walnuts. Frank also appears to have helped his brother William in breeding and caring for Washington’s hunting dogs.\textsuperscript{317} William “Billy” Lee became the head huntsman at Mount Vernon, and therefore took charge of the dogs on the estate. William also accompanied Washington on horseback while fox hunting, a regular pastime that kept his master busy up to three times per week. As a rider, Thomas Jefferson described Billy as “the best horseman of his age.”\textsuperscript{318} George Washington Parke Custis attested to the fact in the following description of William’s skill as a horseman during the fox hunt:

\begin{quote}
Will, the huntsman, better known in Revolutionary lore as Billy, rode a horse called Chinkling, a surprising leaper, and made very much like its rider, low, but sturdy, and of great bone and muscle. Will had but one order, which was to keep with the hounds; and, mounted on Chinkling, a French horn at his back, throwing himself almost at length on the animal, with his spur in flank, this fearless horseman would rush, at full speed, through brake or tangled wood, in a style at which modern huntsmen would stand aghast.\textsuperscript{319}
\end{quote}

This detailed account portrays William’s riding and hunting expertise, as Custis alludes to the slave and horse being prized for their physical prowess. Though Washington owned both Chinkling and William as property, he valued William as more than simply a horseman or foxhunter. Over the span of four decades, William oversaw work on the Mount Vernon plantation, accompanied his master on surveying expeditions into the Backcountry of the Ohio Valley, and handled other business for Washington as well. “Mulatto Will,” as Washington called him, was also present with his master at some of the most important events in early U.S. history.\textsuperscript{320} He was at the first Continental Congress in 1774 and served diligently by Washington’s side throughout all eight years of the Revolutionary War, including both the difficult winter at Valley Forge and the siege of Yorktown. His was in charge of carrying and protecting Washington’s papers, which included both personal correspondence and government documents. William Lee was truly Washington’s right hand man.\textsuperscript{321}

Around this time, William married a free woman “of his own colour” named Margaret

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\textsuperscript{316} Stephen A. McLeod, ed., \textit{Dining With the Washingtons: Historic Recipes, Entertainment, and Hospitality from Mount Vernon} (Chapel Hill: Mount Vernon Ladies Association, Distributed by the University of North Carolina Press, 2011), 75-76.
\textsuperscript{317} McLeod, \textit{Dining With the Washingtons}, 75-76.
\end{flushright}
Thomas, who took the name Margaret Lee. Margaret had been employed in the Washington household during the war, and at some point traveled to Philadelphia, where she may have sought further employment. Sometime around the early 1780s, she took ill and became unable to work. Sickness and a lack of funds left her unable to pay for travel back to Virginia to see her husband. Billy had returned to Mount Vernon with Washington in 1783 after the end of the war and longed to be close to his infirm partner Margaret. Since William was almost constantly at his master’s side, he could not simply travel to Philadelphia on his own and retrieve his wife. For this reason, William appealed directly to Washington for her safe return to Mount Vernon. Washington wrote that “I cannot refuse his request (if it can be complied with on reasonable terms) as he has lived with me so long & followed my fortunes through the War with fidelity.” For years, Billy had been dedicated to serving the needs of his master and in return for this service Washington felt obligated to grant the slave’s wish. Though Washington did not care to be involved in William’s personal life, and was often times little aware of these matters, he still promised to help reunite the faithful slave with his wife.322

On July 28th, 1784, Washington personally wrote a friend, seeking to procure Margaret’s safe passage to Alexandria, so she could rejoin her husband. Though it is unknown whether or not Margaret made the trip, this effort is significant because it shows that Washington cared enough about William to extend himself on the slave’s behalf.323 Though Washington indulged William with kind treatment and small favors, he still denied the slave his personal freedom of movement. Though William had traveled widely during the war as an aid, he could not go freely to Philadelphia to attend his ailing wife. A visitor to Mount Vernon noted that William was always at the side of Washington, “Smiling, content, animated, and beamed on every countenance in his [Washington’s] presence.” William’s existence ran according to Washington’s life. The power relationship between slave and master dictated that William’s wishes must conform to those of his master.324

On April 22, 1785, two years after the Treaty of Paris officially ended the Revolution, William fell and injured his knee while out on another surveying expedition with Washington. The pain was so unbearable that William “could neither Walk, stand, or ride” his horse and had to be carried out of the rugged terrain by sled.325 Three years later, in the months prior to the U.S. Constitution being ratified, Washington sent William to the post office in Alexandria, where the slave fell again, this time severely injuring his other knee. William effectively became crippled from this fall.326 Still, Washington sent for his personal attendant William to attend the first presidential inauguration in New York City in 1789. Even though the slave could no longer ride like he used to and could no longer serve his master to the same degree, William was still valuable, for he knew how to micromanage all of Washington’s daily needs. Unfortunately, William’s knees were in such bad condition that he only made it to Philadelphia before having to stop and seek medical attention. Doctors suggested that he remain in the city “at least a week or

322 Washington wrote “I had conceived that the connection between them [Billy and Margaret] had ceased” and that he “never wished to see” Margaret again. It was only due to William’s application that he acted. W. W. Abbot and Dorothy Twohig, eds., The Papers of George Washington: The Confederation Series, Vol. II (Charlottesville: University Press of Virginia, 1992); Hirschfeld, George Washington and Slavery, 106.
324 Winslow C. Watson, ed., Men and Times of the Revolution; or Memoirs of Elkanah Watson, Including Journals of Travels in Europe and America, from 1777 to 1842 (New York: Dana and Company, 1856), 244.
two.” William took the doctor’s advice and missed seeing Washington sworn into office. Since
the trip to New York seemed too arduous for Billy, the newly inaugurated President suggested
that the slave be sent back to Mount Vernon. Still, Washington said that William could continue
on to New York City “if he is still anxious to come on here.” A message sent to Philadelphia
concerning Billy stated: “He has been an old & faithful Servt. This is enough for the Presidt to
gratify him in every reasonable wish.” Indeed, William wanted to join his master and newly
minted President of the United States, perhaps feeling that this honor would in some meager way
be passed down and likewise experienced by the humble servant.327

Though William was self-sufficient and dressed his wounded body, doctors aided him by
crafting a special steel leg brace, which eventually allowed him to join Washington in New York
City in June of 1789.328 However, Billy’s physical disabilities prevented him from continuing
his normal duties. He retired to the Mount Vernon estate and ended his career as a shoemaker
back at the plantation. Even though the personal attendant’s tasks had diminished over the years,
Washington still had a difficult time finding a suitable replacement.329 In the final years of
Washington’s days at Mount Vernon, “old Billy” often met with visiting military heads from the
Revolution to reminisce about past battles. “The new-time people don’t know what we old
soldiers did and suffered for the country in the old war,” commented William. Of his own life,
the old slave told visitors: “I am a poor cripple; can’t ride now, so I makes shoes and think of old
times.” Throughout the 1790s, Washington kept up with William, often stopping by to see the
slave and asking if his needs were being met. William would respond to his master, “I want for
nothing, thank God, but the use of my limbs.”330 Though physically broken, Billy felt he had
achieved a place of honor on par with famed generals and political elites, whom he shared stories
with when they visited Mount Vernon. Still, as a slave of mixed ancestry, his status prevented
him from sitting down at the same table with these men to dine.331

When Washington passed away in 1799, his last will and testament immediately freed only
one slave, William “Billy” Lee. Out of the over two hundred slaves that Washington and his
wife Martha owned, Lee was the only one to gain immediate emancipation. Washington also
gave Lee a pension of thirty dollars per year, which Washington gave “as a testimony of my
sense of his attachment to me, and for his faithful services during the Revolutionary War.”
There is no doubt that Washington valued the service of this privileged slave and felt compelled
to take care of the increasingly feeble man in old age. While Virginia law required masters to
free certain slaves who had served during the Revolution, this only applied to slaves who were
passed off as freemen so they could substitute for the service of their masters.332 Washington
was not obligated to free any of his slaves, yet he recognized the sacrifices Lee had made, and
his will added that additional concessions be made for the slave “on account of the accidents
which have befallen him.” By law, masters had to guarantee that freed slaves could support
themselves or provide financially for those who could not maintain their own upkeep.333
Washington seems to have gone beyond what the law required, for he also gave Lee the choice to
remain at Mount Vernon as a free man.

At this point in Billy’s life, there seemed little incentive for him to explore outside his

327 Hirschfeld, George Washington and Slavery, 104-105.
328 Hirschfeld, George Washington and Slavery, 105.
332 Hening, SALV Vol. XI, 308-309.
former master’s estate. His physical ailments made travel difficult, his wife Margaret had either passed away or left him, and he most likely knew of few family members outside of the area. Though Billy had finally earned his freedom, he decided to remain on Mount Vernon the remainder of his days, staying in a house that Washington had given him. He continued to share stories of his former master with visitors. However, by this point in his life, Lee struggled with alcohol abuse, using it to ease his physical infirmities and perhaps emotional pains as well. He suffered from tremors, either induced or exacerbated by heavy drinking. By 1828, Billy was dead and subsequently laid to rest in the burial ground for slaves on the Mount Vernon plantation. Although he had technically died a free man of mixed descent, even in death he was still associated with slavery and his African ancestry.334

William “Billy” Lee was a slave of mixed heritage with particularly high standing in society, being as the personal servant of George Washington. Like all slave masters, Washington figuratively transferred honor from Lee to himself and enlarged his own prowess through the power he held over others. Washington returned Lee’s service with small favors, yet these courtesies were always at the master’s discretion. While Lee occupied a space above the average colonist, both “white” and “black,” at the same time he was never able to achieve the full freedoms he had helped the young nation procure.335 Lee experienced a quasi-freedom, for he could never be fully autonomous away from Washington and Mount Vernon. At the end of his life, Lee lacked the true liberty he had worked to uphold for his master and the nation.

Historian Fritz Hirschfeld perhaps sums up Lee’s legacy best, writing: “If Billy Lee had been a white man, he would have had an honored place in American history because of his close proximity to George Washington during the most exciting periods of his career. But because he was a black servant, a humble slave, he has been virtually ignored by both black and white historians and biographers.”336 Though racism played a large role in his life, Lee became one of the few slaves in his position to taste the fruits of freedom. Though he gained legal freedom in 1799, his life was still tied to Master Washington and the Mount Vernon estate for the remainder of his life. The most productive years of his life were spent in service and freedom had become almost useless to Lee in his old age. He took pride in retelling the stories of his master, the Revolution, and days of old. Unfortunately, Lee was unable to move beyond the past and live in the present. Alcohol took a further toll on his body and psyche, closing the book on a life stunted by bondage. Even though he had been a free man, it bears reiterating that Lee was buried among the slaves at Mount Vernon.

Mulatto Slave Privilege & “What Persons shall be deemed Mulattoes”

Mulatto slaves like William and Frank Lee actually had a favorable position in the Washington household. Certainly, the material needs of the Lee family were provided for above and beyond those of most slaves. Masters often favored their domestic slaves of blended heritage in terms of meeting their material needs. Generally, the clothes, food, and shelter of slaves who labored in the master’s household exceeded that of other slaves. In some cases, these slaves had more than the average free person in society, which was in part due to living in close

334 Parke Custis, Recollections and Private Recollections of Washington, 157. Frank Lee would not gain his freedom until his wife Lucy was freed through Martha’s death (Lucy was a dower slave of Washington’s). Martha freed her husband’s slaves effective January 1, 1801, for “she did not feel as tho her Life was safe in their Hands.” Abigail Adams to Mary Cranch, December 21, 1800. Martha Custis Washington’s slaves returned to the Custis estate upon her death in 1802. Hirschfeld, George Washington and Slavery, 108-109, 214.
335 Orlando Patterson, Slavery and Social Death: A Comparative Study (Cambridge, Mass.: Harvard University Press, 1982).
336 Hirschfeld, George Washington and Slavery, 111.
proximity to the master and his family. Certain slaves of mixed descent were sometimes chosen for this domestic work because they were related to the master’s family. Though mulatto privilege allowed for greater access to these favored positions, it would be incorrect to assume that most house slaves were Mulatto or that most slaves of mixed ancestry worked in domestic roles or as artisans.\footnote{Previous research has shown that mulatto slaves were not any more likely to be employed in domestic labor, though they did have a greater statistical chance of working in the “Big House.” Eugene D. Genovese, \textit{Roll, Jordan, Roll: The World The Slaves Made} (New York: Pantheon Books, 1974), 327-328; Jean Bradley Anderson, \textit{Piedmont Plantation: The Bennehan-Cameron Family and Lands in North Carolina} (Durham, North Carolina: Historic Preservation Society of Durham, 1985).} A higher proportion of house slaves were of mixed descent in terms of their overall numbers, yet the majority of slaves identified as Mulatto were employed outside the master’s house. From field hand to house servant, slaves of mixed heritage can be found involved in every aspect of labor across the plantation, yet slaves recognized as being of full African ancestry, still made up most of the workforce in every position. It must also be remembered that being a house slave cut both ways, for the closer a slave’s proximity to the master and mistress, the more prevalent physical, emotional, and sexual abuse could be for the slave.\footnote{Genovese, \textit{Roll, Jordan, Roll: The World The Slaves Made}, 327-328; Herbert G. Gutman, \textit{The Black Family in Slavery and Freedom, 1750-1925} (New York: Pantheon Books, 1976), 83.}

Mulatto privilege occurred with regularity for those working in the slave owner’s home. Masters knew many of their house slaves on a more personal level, and personal slaves experienced abuse as well as benevolence from these masters. For example, in Charleston, South Carolina, John Champney “purchased a Mulatto woman” at public auction in October of 1785. The unnamed slave had already been living with the family and was employed in nursing Champney’s “dangerously ill” wife. However, Mrs. Champney’s brother, Alexander Harvey, actually owned the slave woman. Harvey was a loyalist during the Revolution and as a result, the state of South Carolina sold his property according to a Confiscation Act that allowed loyalist property to be divided by the state. This law included slaves as property under the estate, which forced the Champneys into a battle over the female slave with their “greatest Enemy,” who sought to purchase her at auction. It became apparent that the “Mulatto woman” was “threatened to be extremely ill used” by the Champney’s rival. In other words, she would have been subject to physical abuse and quite possibly repeated sexual violation by her new owner if he were to win the auction. This woman of mixed ancestry was well aware of her precarious situation and “being in tears,” she pleaded with others to purchase her. Her friendly connection with the Champneys ended up saving her, for they entered into a bidding war with their adversary and won the auction at an extremely large sum of £420. The Champneys had clearly overextended themselves financially and petitioned the state assembly in late 1789 asking that they be able to work off the debt or that their “House Servant” be exempted from the Confiscation Law.\footnote{South Carolina Department of Archives and History (SCDAH), Legislative Petition of John Champney, S165015 Item 00020 & 00038.}

Though a variety of motives moved the Champneys to take action, one thing remains clear: this mulatto slave woman used her personal connections to sway the Champneys to act on her behalf. The woman’s position as Mrs. Champney’s nurse brought her into intimate contact with her mistress and that relationship enabled her to move beyond the clutches of a tyrannical man who sought to do her harm. These kinds of mulatto slaves were more likely to have interpersonal relationships with their masters and mistresses. Such masters and mistresses often assisted slaves who found themselves in harm’s way, regardless of any consanguineous familial relationship – which commonly resulted from masters fathering children by their slaves. Quasi-
filial kin networks gave slaves an advantage when seeking patrons to act on their behalf. This patronage could be financial, legal, or manifest itself in a number of other ways. During the revolutionary era, quasi-filial kinship between masters and slaves led a number of slaveholders to emancipate their favored slaves, many of who were of mixed descent. 340

Both mass and individual manumission across the newly formed states reached a high point during the early national period, as legal action at various levels of government resulted in slaves gaining freedom. Even states that refused to relinquish slavery allowed individual manumissions. In several states, this could be done through local courts, sometimes with the approval of several free landholders in the same county. In 1782, Virginia made it possible for any slave owner to emancipate a slave “by his or her last will and testament, or by any other instrument in writing, under his or her hand and seal.” 341 This was a noticeable change from colonial legislation dating back almost sixty years to 1723, which only allowed manumission through the General Assembly. The increase in formal emancipation can be understood in large measure as growing out of the spirit of freedom that accompanied the Revolution and the creation of the new U.S. Republic.

Changes in emancipation laws across most of the United States disproportionately benefitted mixed-heritage peoples, not because they specifically freed Mulattoes, but because mulatto privilege resulted in higher rates of emancipation. Both Mulattoes and es benefitted from liberal manumission during this period, and a greater overall number of slaves recognized as being of full African descent actually gained emancipation. This may be a reason why mixed-heritage slaves did not always note their European heredity in freedom petitions. The advantage for Mulattoes did not come at the legislative level, but rather with masters and mistresses favoring slaves of mixed ancestry for freedom on a personal basis. Identifying oneself as mixed in a petition did not universally guarantee one their freedom. Though a disproportionate amount of freedom petitions were submitted for slaves of mixed descent. For these reasons, being a person of “mix’d blood” might increase one’s overall chances of gaining emancipation, but this was a latent benefit that individual people of blended ancestry experienced irregularly. 342

There are other signs that the U.S. elite favored both slave and free mixed-heritage peoples through a more moderate approach to hypodescent ideology in the revolutionary era, especially when Virginia surprisingly changed its legal definition for Mulattoes a few years after relaxing manumission laws. By the 1780s, elite feelings towards the longevity of slavery in the Chesapeake had changed from earlier views of slavery when tobacco production resulted in healthy profits for planters, and these views influenced those concerning people of mixed heritage as well. In 1785, the General Assembly passed “An act declaring what persons shall be deemed mulattoes,” which redefined the criteria based on ancestry, stating:

That every person of whose grandfathers or grandmothers any one is, or shall have been a negro, although all his other progenitors, except that descending from the negro, shall have been white persons, shall be deemed a mulatto; and so every person who shall have one-fourth part or more of negro blood, shall, in like manner, be deemed a mulatto. 343

340 Orlandao Patterson cites Meyer Fortes on “quasi-filial kinship,” defining these ties as “essentially expressive: they use the language of kinship as a means of expressing an authority relation between master and slave, and a state of loyalty to the kinsmen of the master.” Patterson, Slavery and Social Death, 63-65.


342 Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America, 277-280; NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1798, Box 3, Folder - Petitions (Emancipation).

343 William Waller Hening, ed., The Statutes at Large: Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619, Vol. XII (Richmond: George Cochran, 1823), 184.
This shows weakening notions of hypodescent in Virginia, as the General Assembly enacted a remarkable change from previous legislation concerning Mulattoes. In 1705, the colony held that “a mulatto” could be “the child of an Indian and the child, grand child, or great grand child, of a negro,” which drew the line at one-half Native American ancestry (one parent of full Indigenous lineage) and one-eighth African ancestry (at least one great-grandparent of full African heritage). Eighty years later, Virginia officials essentially lowered the bar on “whiteness” by allowing those with less than one-fourth African ancestry to avoid being labeled “a mulatto.” The question remains, why?  

Historian Joshua Rothman calls the revised 1785 law “utterly baffling.” He points out that this legislation passed at a time when large numbers of people of African descent were gaining their freedom under the more flexible manumission law of 1782. As a result of this legislation, more slaves were being freed in Virginia than ever before and many of these slaves had high proportions of European ancestry. Perhaps, legislators realized these people would be left without full legal protections under the law and moved to redraw racial categories by encouraging those already mixed to continue mixing with Europeans. Could this have been an invitation by elites to extend “whiteness” to people of blended ancestry and the privileges that came along with it? The evidence remains unclear on exactly why state legislatures would expand the definition of “whiteness” or contract the definition of “mulatto” during this time. Rothman proposes that this may have been a countermeasure meant to divide the free population of African descent. Virginia had the nation’s largest free population of mixed heritage and driving a wedge between those in slavery may have been a contributing factor to this decision. While elite attempts to divide these populations may account for some of this reasoning, these legislators perhaps supposed too much if they assumed that people defined themselves racially according to law. Were people of three-fourths European descent likely to consider themselves as fully African? Most often they did not. Did those in their community treat them as other Africans? This depended on the community and the position people of blended ancestry held amongst their neighbors. 

Rothman also points out that “Virginia’s lawmakers generally addressed the problem of racial liminality by avoiding it. Instead of clarifying the law, they left much of the power to determine the whiteness or blackness of racially ambiguous persons in the hands of local white communities.” Hence the General Assembly seems to have been little concerned with people of mixed heritage passing for “white” and wanted to ensure that people already living as “white” could avoid harassment for having African ancestry more than a few generations back on their family tree. Local communities often accepted people of mixed descent as contributing members of society and extended them honorary “whiteness.” However, these people’s partial African lineage could always be brought up in legal cases to dispute a person’s rights. Taking into consideration the social milieu of the early national period and the expansion of rights during this time, it makes sense that the Virginia legislature stepped in and decided that those having more than three-fourths European ancestry should have the same legal protections as those of full

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345 One section of this law that remains confusing is that it was not scheduled to go into effect for over a year, beginning on January 1, 1787.  
European descent.footnote{347}

“Whiteness” had both material and social value. Though people of mixed heritage had a connection to “whiteness” and could take advance of mulatto privilege, they were held effectively outside the bounds of “whiteness” and were considered racial others. Being perceived as a Mulatto generally subjugated one’s position in the community, as can be seen in a number of defamation cases across the states. In May of 1791, a South Carolina judge determined calling someone “a mulatto” to be slander and awarded damages for the plaintiff in Eden v. Legare. Justice John Rutledge—who later went on to become the second Chief Justice of the U.S. Supreme Court—ruled it illegal to call someone “a mulatto” if the label were incorrectly applied, “because, if true, the party would be deprived of all civil rights, and moreover, would be liable to be tried in all cases, under the negro act, without the privilege of a trial by jury.” “Any words,” said Rutledge, “which tended to subject a citizen to such disabilities, were actionable” by the court. The meaning behind this decision was evident: being labeled “a mulatto” not only damaged one’s reputation, but the state also considered it a disability that prevented one from obtaining the full rights of citizenship. Granted, this was in comparison to those considered “white.” On the other hand, being considered a person of mixed ancestry granted one a certain social advantage over those viewed as fully “black.”footnote{348}

Mulatto Patriots and Privilege

In the Lowcountry, “a mulatto man” named Austin Dabney fought under Colonel Elijah Clarke, who led the Continental Army in several southern battles against the British during the Revolution. It may have been easier for people of African descent to serve in the Continental Army in the most southern regions due to the large number Africans. Dabney was probably serving in place of his master, Richard Aycock, for it was later said that he voluntarily enrolled “in some of the corps, under the command of Col. Elijah Clarke.” On August 25, 1782, Dabney “was wounded in the thigh” in Augusta, Georgia. State officials noted that the slave “in several actions and engagements, behaved against the common enemy with a bravery and fortitude which would have honored a freeman.” Though Dabney may have been living as a free person since the time of his military service, his distinguished duty and sacrifice earned him his freedom on August 14, 1786. Georgia’s state assembly noted that during the war Dabney had remained loyal to the patriot cause “instead of advantaging himself of the times to withdraw himself from the American lines and enter with the majority of his color and fellow slaves,” who had joined British forces. The state court passed an act to pay Richard Aycock for the manumission of the patriotic slave, citing that “policy as well as gratitude demand[s] a return for such service and behavior.” Although Dabney’s emancipation entitled him to “all the liberties, privileges, and immunities of a free citizen” within the state of Georgia, his African ancestry tempered his freedom. The state extended his rights only “so far as free negroes and mulattoes are allowed.”footnote{349}

Still, Dabney received better treatment than most people of African descent due to his military service. In addition to his freedom, authorities awarded him a military pension “on account of wounds and disabilities received” during the Revolutionary War. This was less due to

footnote{347} Rothman, Notorious in the Neighborhood, 208-209.


his racial background and more due to being “disabled by the British.” Still, not many people of African descent received such a reward for their participation during the Revolution and Dabney’s mixed ancestry may have allowed him to be more readily accepted by those within his community. After the war, Dabney settled in Wilkes County, Georgia, and by the late 1780s he started collecting veterans pay. Years later, Dabney petitioned the state for further assistance and the Georgia state legislature found that he was “entitled to the attention and gratitude of the State he has defended, and in whose service he has been disabled.” As a result of that service, the state of Georgia awarded Dabney 112 acres of land in Walton County. He continued to receive regular disabled veterans pay for more than forty years, with the last recorded payment in 1830.350

It is difficult to draw a direct connection between Dabney being labelled “a mulatto man” and the benefits he received from the state throughout his life. Outside the state emancipation act that freed him, Dabney is rarely referred to in racial terms and seems to have been treated like any other veteran of the Revolution. However, no other person of African descent in this particular time and place seems to have received treatment anywhere near that of Dabney. In comparison with people of color in other southern states, Dabney received far better treatment than most former slaves. This may have been partially due to the place people of mixed descent had in Georgia over the years. Historically, the Georgia colony had provided a safeguard of geographical distance between the English colonies and Spanish Florida. At times, the elite appear to have viewed people of mixed descent in this most southern region as providing a social buffer between large African slave populations and free European Americans. In the Lowcountry, Mulattoes routinely served as overseers on plantations in rural communities, in cities they might position themselves in the middling social classes, and in coastal regions they had contact with sea-goers who were more closely connected with the weak notions of hypodescent found in the Caribbean and Atlantic World. If they could maintain their freedom and accumulate wealth through a skilled trade or obtaining land, people of mixed ancestry were able to earn respect and status within their local communities. Even if Dabney did not elevate his position through great wealth, there is little doubt that he gained an honored position through his military service.351

Austin Dabney’s case further shows that state legislatures were more likely to grant concessions to former slaves who served in the Continental Army. A signature from a military leader who expressed gratitude for war service greatly aided men of African descent who served the nation during its time of greatest need. When Dabney collected his pension in September of 1786, he had with him a certificate signed by Colonel Elijah Clarke acknowledging his war service. This type of exceptional patronage assisted Dabney in freedom. In the early years of the U.S. Republic, the courts granted freedom to the overwhelming majority of slaves who cited service during the Revolution. This included those of both partial and full African descent who fought for the nation’s independence. All war veterans could rely on military generals to vouch for them, yet for those like Dabney, the advantage of being considered a Mulatto over a Negro was coupled with war service.352

350 Georgia State Archives, Records of Austin Dabney, Headright and Bounty Documents, Headright Land Grant Records, Surveyor General, RG 3-4-5; Georgia State Archives, Records of Austin Dabney, Vol. D, Enrolled Acts and Resolutions, House and Senate, Legislature, RG 37-1-15;
352 Georgia State Archives, Records of Austin Dabney, Pension of Austin Dabney, Pike County, Sept. 26, 1786
People of mixed African and European ancestry were more likely to have “white” patronage connections they could rely on to substantiate their freedom claims, though chances at success were not as strong without a connection to the war. For example, in the 1760s the Reverend James Fowles had fathered two slave children named Molly and John in Halifax County, Virginia. In early 1767, Fowles left his estate in the hands of Thomas Finny, but Finny, “being aged and infirm,” died and left the slaves in the hands of Stephan Dickson and James McGraw. All of these men were of European descent and held power over Molly and John. As the years passed, these men also held power over Molly’s five children, Abba, Fleming, Liza, Allan, and Mary. It was not until 1792, that Fowles’ will came to light with instructions that his children were “to have their liberty, as far as the Constitution, usage & Laws permit.” It was finally James McGraw who presented a petition before the Virginia state assembly on behalf of John, Molly, and her children. McGraw asked the state to “pass an act to deliver them from that abominable state of slavery in which they have so long unjustly been keeped, and Enable them to breathe the pure air of Freedom and liberty.” He further requested that the slaves be given their freedom on Christmas day, December 25, 1793. Clearly, people of blended ancestry with direct ties to European lineage had increased access to “white” patronage and were therefore more likely to have their freedom petitions heard. This did not always mean that their request would be granted. The Virginian legislature rejected McGraw’s plea, and Reverend Fowles’ children and grandchildren appear to have remained in legal bondage. Although the petition invoked the rhetoric of the Revolution, these slaves had not directly contributed to its cause. State officials also may have rejected the petition because Fowles broke the legal code by fathering children by a slave woman and transgressed customary law by acknowledging his slave children Molly and John – even though it was McGraw who disclosed that Fowles “was confessedly both their Master and natural Father.” This case illustrates that the patronage of friends and family members of European descent did not guarantee freedom to people of mixed heritage.

People of mixed ancestry could find a ready way out of servitude or slavery for participation in the Revolution. Even into the 1790s, slaves and people of mixed heritage attempted to capitalize on their good character and war service to earn rights for themselves and their families. Lemuel Overton was a person of blended heritage born free at the end of the colonial period. He lived in Pasquotank County, North Carolina, where his character was well known by his neighbors “to be peasable, Industrus & honest.” Overton fell in love with “a slave Girl or Woman” named Rose, who was owned by John Mullen. Despite her enslaved position, Overton married Rose and their union produced a son, who they named John. Unfortunately, John would follow the condition of his mother and Mullen also held the boy as property. Overton’s hard work and savings paid off on September 20th, 1795, when he was financially able to purchase the “Negro Woman Slave Named Rose” along with their son John for “the Sum of Eighty Pounds.” Overton still had a problem: Rose and John were still legally enslaved and if he were to die, his wife and child could fall back into bondage under the state and be sold back into slavery. To worsen this predicament, Rose bore Overton another son named Burdock, also legally enslaved at birth.

In November of 1798, Overton petitioned the state assembly in order to free his family. He presented himself as a person “of Mix’d Blood but free Born” in the opening lines of his

353 LVA, Legislative Petitions, Halifax County, Nov. 4, 1793.
petition. Before presenting his specific request, he also identified himself as a veteran, stating that he “did faithfully serve in the Last American Warr with Great Britain.” He then explained the details of his family’s situation and also noted his well-known character. Lemuel further asked the court that Rose, John, and Burdock could be called “after his own name (viz) Overton.” He also had several subscribers on his petition, or people who vouched for the verity of his story. Seven “men of Character” signed their names next to Overton’s mark, made with an X. Among these signatures were several Justices of the Peace, along with Rose’s former master, John Mullen. It was a combination of these patronage networks, along with Overton’s character and war service that helped this family successfully gain their freedom. Although southern states maintained the legality of slavery, authorities continued to show favoritism in cases towards those who had proved their service during the Revolutionary War.355

1790s Liberal Manumission

Liberal manumission also continued into the 1790s for people of blended ancestry who had the legal advantage of having a maternal European ancestor. State courts during the revolutionary era continued to take even scant evidence of maternal “whiteness,” which allowed people to remove themselves from slavery or servitude. For example, in 1790 Anthony Boston brought a freedom suit before the Anne Arundel county court of Maryland, alleging that he was of Latino heritage. Boston “claimed his freedom as being a descendant from a yellow woman, being a Portuguese, named Catharine Boston.” Catharine was said to be the daughter of Violet; Violet the daughter of Linah; and Linah the daughter of Maria. The Latino descent gets somewhat confused here, as Maria was said to be “a Spanish woman… of a yellow colour or complexion, with long black hair.” Though the evidence is not overly convincing, the court decided that Maria “was not a slave, but free” and extended her great-great-grandson Anthony Boston the same liberty. As of September 1790, he was “discharged from all further servitude.” Maryland’s court of appeals upheld the verdict three years later in May 1793, just as many other Maryland cases were decided similarly during the 1780s and 1790s. Even when a female antecedent was far removed by several generations, later descendants could gain their freedom based upon free maternal ancestry. Here, people of mixed descent continued to have a clear advantage over those of full African ancestry. In these cases, mixed-heritage peoples successfully argued that their remote European ancestry should guarantee their liberty. Certainly, one of the ironies of Anthony Boston’s supposed lineage is that his forebears could have both been of Latin American or Iberian descent and still had African or Indigenous ancestry, any combination of which would have made him eligible for slavery.356

Increased emancipation occurred at the county level throughout the 1790s for slaves who could show free maternal ancestry, prove war service during the Revolution, or had a patron present “meritorious service” before the court. During this time, manumission by a benevolent master became a viable option for mixed-heritage slaves to gain their freedom. In the summer of 1795, John Cunningham sought to free his “Mulatto Male Slave” James in the court of Chowan County, North Carolina, noting “the great profit which he has derived from the said Slave.” Cunningham’s father had died when he was young and it was James’ work as a barber that “greatly, if not principally, contributed to the maintenance & Support” of the estate that provided

355 NCOAH, General Assembly Session Records, November - December 1798, Box 3, Petitions (Emancipation).
356 See previous chapter, and also Boston v. Sprigg (1797). Thomas Harris, Jr. and John McHenry, eds., Maryland Reports, Being a Series of the Most Important Law Cases Argued and Determined in the General Court and Court of Appeals of the State of Maryland, from October, 1790, to May, 1797, Vol. III (New York: I. Riley, 1813), 139-140.
for John and his widowed mother. The proceeds from James’ work also contributed to “an expensive course of Education” for the young Cunningham. Additionally, in 1794, Cunningham went through “a very dangerous and lingering Sickness” and James nursed him back to health. Cunningham wrote that “the attention of the said James was such as cannot fail to inspire the highest gratitude in him.” This benevolent master acted to free James, “conceiving that no less a reward will be commiserate to the Services rendered.” Cunningham noted James’ character of “Industry, sobriety, and honesty,” yet also asked the county court to take the “faithful and meritorious Services of the said James into consideration to order & Decree that he may be Manumitted & Set free.” In this way, local courts allowed benevolent masters to free their slaves without a formal connection to the Revolution. 357

Liberal emancipation laws made it possible for certain slaves to gain their freedom through direct negotiation as well. On January 3rd, 1798, Elizabeth Young wrote out freedom papers for “a Molatto Man Named Moses.” Young wrote to the court of Craven County, North Carolina, that Moses had provided “many faithful services for a Number of Years” and that after the slave had paid her £90 he would be free. Just a few short months later, on the ninth of March, Moses completed the agreement with a payment of £18, six shillings, and six pence to his master. 358 That same year, Euphamia Tinker freed “her Mulatto Man Sylvestor” in the spring of 1798 by only referencing the slave’s “industry,” “fidelity,” and “meritorious services.” The Craven County courts granted the request. 359 B. H. Martin also sought to free his mulatto slave Adam in Duplin County, North Carolina. The slave had “conducted himself as a faithful, honest, and well deserving Servant” for a number of years. Martin wrote that due to Adam’s “meritorious Services & good conduct” the slave was “justly entitled to the privileges of a free Citizen.” The Duplin County court “Concurred” and issued Adam his freedom in April 1798. These petitions simply repeated the phrasing of North Carolina’s slave laws, but at the local level the strength of the petition did not matter. Instead it appears to be the known character of the slave and petitioners who vouched for the slave’s character. When state officials set legislation to prevent slaves from gaining freedom, those on the local level used the “meritorious service” loophole to make the phrase applicable to their own situation. In this way, slaves could gain freedom outside the parameters of what the state legally prescribed. 360

It is important to note the significance of clientelism at work in the systematic operation of freeing slaves at either county or state level. To be sure, legal manumission through the courts was a complicated and sometimes long process, especially when masters were unwilling to free a slave. Most slaves seeking manumission were illiterate or lacked a source of income that would allow them to secure legal representation in court. Since state laws in slave regions denied people of African descent the full rights of citizenship, most could not testify in court and therefore needed a “white” patron or client to take up their freedom suits for them. Outside of attempts to run away or taking the chance that a master’s will might release them from legal bondage, slaves had to secure a “white” patron who could petition the county or state

357 NCOAH, Chowan County, County Records, Miscellaneous Slave Records 1730-1861, Box CR 024.928.33, Petition for Emancipation 1795.
358 NCOAH, Craven County, County Records, Miscellaneous, Records of the County Court, Slaves and Free Negroes, 1775-1861, Box CR 028.928.10, Folder - Petitions to emancipate slaves, petitions for freedom and bonds for emancipated slaves, 1795-1799.
359 Sylvester’s description on the cover of Tinker’s petition was changed from “Negro” to “Mulatto,” though it is not clear this had bearing in the decision of the court. NCOAH, Craven County, County Records, Miscellaneous, Records of the County Court, Slaves and Free Negroes, 1775-1861, Box CR 028.928.10, Folder - Tinker, Euphamia, Petition to emancipate slave 1798.
360 NCOAH, Duplin County, County Records, Miscellaneous Records, 1754-1947, Box CR 035.928.6, Folder - Slave Record for Right of Free Citizenship for Slave Adam 1798.
government on their behalf in order to earn their freedom. Indeed, all of these routes out of bondage benefitted Mulattoes or mixed slaves with some European ancestry, since these people had greater access to “white” patronage through family members or informal kinship networks. While not all Mulattoes were privileged in the same ways, they definitely had advantages that spanned all paths to freedom during this time.

The Limits of Revolution

Mulatto privilege still extended the farthest during the revolutionary era, which can be seen in the lives of those slaves who lacked European maternal ancestry. Slaves of mixed heritage who assisted their patriot masters were more likely to achieve freedom and gain economic stability. One such “mulatto man” was Christopher McPherson of Virginia, who earned his freedom in the early years of the U.S. republic. McPherson was born sometime around 1763 in Louisa County, Virginia. As a slave, he attended school in Goochland County in the early 1770s and from around 1772-1775 he worked “behind the counter” at Elk Horn Store in Petersburg. McPherson was not only book literate, but he also taught school children in the years of the Revolution. As the war progressed he was “employed as Clerk for the Commercial Agent for the State of Virginia” and in a similar capacity he served the Commissary General during the siege of Yorktown in 1781. Afterwards he worked as a clerk for Virginia’s state congress and superior court, as well as numerous attorneys and customs houses in Richmond. John Adams and Thomas Jefferson both personally knew McPherson, and he obtained several recommendations from men of the highest order in Virginia. By the mid-1780s he not only kept accounts for the elite, but he also ran a store in Richmond for his master David Ross. While heading Ross’ store from 1784-1787, he directed “8-10 white Gentlemen” who worked underneath him. Though not officially free, McPherson enjoyed a type of pseudo-freedom.

McPherson most enjoyed working with his mind and perhaps even came to look down on forms of work associated with servile labor and separated himself from those laborers. Though he served in the state militia, he commented that he disliked the duty. By all accounts, McPherson was most comfortable behind the clerics desk and seemed to have associated more with those of European ancestry. He clearly did not consider himself to have much in common with the common African slave. McPherson even helped put down a riot “of a Number of slaves” who were “passing in the road by my door near Columbia” in Fluvanna County around 1798. He came out of his house armed with a sword “in order to suppress” what appeared to be an uprising, yet may have only been a group of slaves fighting. Still, McPherson claimed he took such action “without expecting any help” from anyone else. John Quarles certified that McPherson’s assistance prevented this uprising from occurring, and later detailed the story of how he could not put down the riot of “about 30 or 40 Negroes” who were “on the point of engaging in battle with sticks, clubs,” and other weapons. Most of them “appeared to be drunk and all violently enraged.” When Quarles first saw the “Mulatto” approaching he was unsure of McPherson’s “general good and peaceable behavior.” As he had his sword drawn, Quarles thought “he might be concerned in the riot.” Quarles rode towards the McPherson and “heard him declare that he would cut off the arm of the first negro who should strike a blow.” Together, the men quickly suppressed the riot. McPherson “acted in a most exemplary & courageous manner, exposing his own person to imminent danger to preserve peace and order,”

361 Christopher McPherson’s surname is variously spelled, sometimes as MacPherson. He appears to have signed his surname as McPherson.
362 LVA, Legislative Petitions, Richmond City, Dec. 12, 1810.
said Quarles. Surely, McPherson saw himself more akin to the European “Founding Fathers” than African slaves.\footnote{LVA, Legislative Petitions, Richmond City, Dec. 12, 1810.}

For the United States, the revolutionary era became an exploration in how to balance a more liberal stance on emancipation with rising numbers of both slaves and free people of color. States that maintained slavery could only hope that their slaves would not pick up “the contagion of liberty” and continue the Revolution.\footnote{Bernard Bailyn, The Ideological Origins of the American Revolution (Cambridge, Mass.: Belknap Press of Harvard University Press, 1992), 230-236.} This may have been taking place in McPherson’s neighborhood before he came out of his home to suppress a group of unruly slaves.\footnote{In some respects, those on the lowest rungs of society continued the specter of revolution after the war with Britain. In the early years of the U.S. republic, this could be seen in the Daniel Shay’s Rebellion and the Whiskey Rebellion among disgruntled European American farmers in more northern states.} Since the Revolution, the nation attempted to balance freedom with bondage. States that maintained slavery had an even more difficult time negotiating these opposing ideals, as some people in these regions saw slavery as inconsistent with the nation’s principles of liberty or used religious and moral arguments to combat slavery. When some masters put their antislavery beliefs into practice by releasing their slaves, others maintained that free people of African descent presented a dangerous internal population that could rise in revolt. In 1788, North Carolina’s General Assembly complained that some slave owners were not following legal protocol for manumission, noting that “people from religious motives, in violation of the said law, continue to liberate their slaves.” Officials continued to say that these slaves “are now going at large to the terror of the people of this State.” In response, they passed an act that strengthened the right of authorities to pick up slaves that had been “illegally liberated” outside methods established by the courts. A large proportion of these freed slaves were of mixed descent, and the planter class of the Upper South often viewed them in alliance with the enslaved.\footnote{Clark, The State Records of North Carolina, Vol. XXIV: Laws 1777-1788, 964.}

Many during this time noted that amongst the free population of color, people of mixed ancestry made up the largest segment, especially in the Chesapeake. In 1789, one local authority in King William County, Virginia, similarly attempted to squash efforts by Methodists, Baptists, and others who were spreading notions of equality. This official sought to step up slave patrols to thwart any wrongdoing conducted under the guise of religious gatherings made by those who gathered. These people of faith held integrated meetings two to three times a week at an old school house with “all the Negroes they can gather & a few whites & free mulattoes.” The official further complained that these meetings took slaves away from their labor, stating that “our Negroes are not to be found when we are in want of them.” The elite viewed people of mixed heritage as interfering with those still held in bondage because some free Mulattoes spread the view that all should be free. The “few whites” who supported these views of equality in slave states exacerbated the assault on slavery.\footnote{LVA, Executive Papers, Sept. 5, 1789 (Similar petition in LVA, Executive Papers, June 5, 1792); James Hugo Johnston, “The Participation of White Men in Virginia Negro Insurrections,” Journal of Negro History 16, no. 2 (April 1931): 158–167.}

McPherson saw himself the equal of any man and, though a slave, society regularly treated him as a free man. In some respects, the more he proved himself separate from a negro slave identity, the more he benefitted from the “whiteness” within mulatto privilege. McPherson made the most of his autonomy, for even as a slave he maintained a certain amount of independent decision-making, and even authority over others. Though it was not unusual for certain slaves to read and write during this time, it is telling that McPherson served as clerk for some of the most esteemed men of his day. Even while enslaved, McPherson was well respected
amongst some of the most elite men in the Richmond area. Eventually, David Ross freed McPherson in the city of Richmond, “as a reward for the fidelity and integrity.” Though the formal “Deed of Emancipation” had been drawn up on June 2, 1792, Ross had long considered McPherson free. After McPherson made a somewhat low customary payment of five shillings to Ross, he was “henceforth entitled to all the privileges of a free born person.” McPherson went on to establish himself as a free man with steady employment and wages. By 1799 he was serving as a clerk for the Virginia state congress, which brought him to the attention of Thomas Jefferson, who later wrote him a letter of recommendation. McPherson benefitted from the patronage of the Virginia planter class because he assisted the elite class and took a stand to preserve the system of slavery. To reiterate, these actions showed he was willing to uphold the ideals of U.S. independence for those currently in power, yet prevent the Revolution from being carried on by African slaves. In both slavery and freedom, McPherson maintained a lifestyle that allowed him to maneuver among the gentleman of Richmond, though much like William Lee, his African ancestry kept him out of the upper-most echelons of society.\footnote{LVA, Legislative Petitions, Richmond City, Dec. 12, 1810.}

In the early 1790s, when Christopher McPherson gained his liberty, authorities in the United States became frightfully aware of another revolution taking place on the Caribbean island of Saint-Domingue. The French Revolution sparked what became known as the Haitian Revolution, and the largest slave rebellion during the period of chattel slavery in the Western Hemisphere. In many ways, the greatest fears of U.S. leaders came to fruition in this revolt and those of mixed-descent played a central role. On January 24, 1792,\footnote{Though the terms mulatto and people of color (gens-de-coluer) were not synonymous, many during the time recognized that there was a large amount of overlap.} The Maryland Journal and Baltimore Advisor published a news report under the heading: “Further particulars relative to the destruction of Port-au-Prince, and the contest between the Whites and Mulattoes.” The title alone was menacing, especially for those in the U.S. still committed to slavery. The article related information about the current state of affairs in Saint-Domingue, describing a peace treaty signed “between the white people and Mulattoes” in early November of 1791. However, these efforts to maintain peace did not last long. Some 1,250 armed “Mulattoes,” who were originally armed “for the defence of themselves and the white people, against the Negroes,” now took up arms against the elite Frenchmen of the island. After a “Mulatto criminal” was executed in November, the gens-de-coluer (people of color) attacked a Frenchman in the city, which broke the peace treaty.\footnote{MSA, SC 1779-8-9, The Maryland Journal and Baltimore Advertiser, Jan. 24, 1792, No. 7, Vol. XIX, No. 1422, 2.} This reignited war between “White and Mulattoes,” which the Maryland paper described in great detail. The article also gave numbers of casualties on both sides. “The Mulattoes fought bravely,” said the account, using arms and arson to attack their French counterparts. After Port-au-Prince had been destroyed by fire, “the Whites (on the idea that the Blacks were accessories to the destruction) formed the horrid design of putting to death all Negro and Mulatto women and children who remained in town.” This “indiscriminate slaughter took place… either by a bullet through the head, or a bayonet into the bowels.” Those in the U.S. reading these drastic accounts of race war in the Caribbean might have imagined a similar type of revolution coming to their own country.\footnote{A key difference between the United States and the French Caribbean racial regimes was the way European elites treated people of mixed heritage. Officials in the Caribbean generally applied hypodescent ideology much less rigidly than those in the colonies of English North American and later the United States. European planters in the Caribbean assumed that a...}
mulatto class would provide a buffer between the majority enslaved African population and the minority European plantation owners. Authorities divided groups along racial lines in North America as well. In addition, these colonies had a larger poor European population and officials became acutely aware of them mixing with enslaved Africans, especially in the Chesapeake. The prohibition of ethnoracial intermixture and punishment of mixed-heritage peoples in North America led to comparatively strong hypodescent in the region. Though places like Charleston, New Orleans, and other southern coastal cities had a middle racial class of Mulattoes, for the most part, “white” elites kept them out of the upper tiers of society. In terms of racial caste, laws most often grouped Mulattoes along with Negroes, even in areas where society operated along lighter lines of hypodescent.371

Even in areas where people of mixed-descent were populous enough to have a semi-autonomous community, social elites always placed Mulattoes in a subordinate racial caste. This position may have been above that of African slaves, but it was never considered on par with wealthy European American society. Also, unlike the Caribbean, when the U.S. eased emancipation legislation and the free population of African descent rose, this did not lead to a widespread middle mulatto caste. The numbers of the free Mulattoes in the U.S. were nowhere near the percentages found in Saint Domingue. Still, the question remained: Where did mulatto loyalties lie in the United States; with “blacks” or “whites”? Surely amongst the enslaved, their loyalties largely remained with others of African descent. Free people of color who held a sizable portion of European ancestry might take various positions. Those like Christopher McPherson, obviously sided with the U.S. elite when he single-handedly helped put down a slave revolt. Others, like Lemuel Overton, married a “Negro Woman Slave,” and had at least two children by her, which tied him to his African heredity. Still, these actions did not necessarily mean that each person chose one part of their ancestry over the other. Various actions might reveal a certain type of loyalty, yet it is difficult to base one’s identity on one or even a handful of actions taken throughout their life.372

This uncertainty led to elite fears concerning what increased freedom would mean for people of color, and these concerns led to a backlash in legislation against both free people of color and slaves. Since the U.S. Revolution, several states had taken legal steps to abolish slavery and further prohibit the importation of slaves within their borders. For these reasons, Maryland and other states restricted importation of “any negro, mulatto, or other slave” and other states moved to restrict importation in the 1780s, even before the Haitian Revolution. The Haitian Revolution showed U.S. planters the reality of what a growing slave population might carry out if not properly held in check. When slaves and free people of color rose up against the French in Saint-Domingue, the worst fears of U.S. planters and government officials were unleashed. During the 1790s, several states responded by specifically prohibiting immigration and importation of slaves from Haiti or the Caribbean. Throughout the 1790s, South Carolina put a stop to the importation of any “Slaves, or Negroes, Mulattoes, Indians, Moors, or Mestizoes.” South Carolina renewed this act every two years through the rest of the decade and into the early 1800s. Though these years were in the midst of the Haitian Revolution, the initial act seems to have only sought a stop to the slave trade. Legislation made clear that “no negro, mulatto, mestizo, or other person of colour, whether bond or free, shall be imported or brought into this State,” and listed points of origin in Africa, South America, and islands of the

372 NCOAH, General Assembly Session Records, November - December 1798, Box 3, Petitions (Emancipation).
Caribbean. If there was any doubt that the Caribbean was an especially dangerous place from which to import slaves, 1803 legislation excluded those coming from “the French West India islands.” The law specified that no “negro or person of colour” who had ever lived or had even been to the Saint-Domingue was allowed to step foot in South Carolina. Several state legislatures prevented slaves from moving in from other states during this time as well, showing elite planter concerns about the increasing slave population and the spread of revolutionary ideas among their slaves.\textsuperscript{373}

Laws in several states also targeted free people of color, who were inextricably connected to the enslaved population due to racial affinity. Authorities viewed liberal manumission during the revolutionary era as a problem because it increased the free population of color, yet fear of slave rebellion is also reflected in these laws. In 1794, North Carolina masters were prevented from hiring out their slaves’ time and could no longer host “any meeting or meetings of the negroes of others, or people of colour.” This was clearly meant to curtail parties “for the purpose of drinking and dancing,” but also would prevent the opportunity for plans of insurrection. Still, this was during the high point for slave emancipation.\textsuperscript{374} In the earliest years of the U.S. republic, legislators attempted to extend liberty to those who had fought for the freedom of the country and protect those who were illegally held in bondage. At the same time, they sought to safeguard the rights of owners in human property and protect the public order from the possibility of slave revolt. There could never be a fair balance between the liberties of those who held slaves as property and those who were held in bondage. Law and practice ultimately protected the rights of the master and extended his power over his enslaved property.

Still, in the last decade of the eighteenth century, several states recognized that some masters illegally held others in bondage and passed certain protections for slaves. Perhaps the largest concession that state legislatures gave to those in bondage was the freedom of petition. In 1795, Virginia passed a bill to provide certain slaves “a plain and easy mode… for the recovery of freedom where it is unjustly and illegally denied.”\textsuperscript{375} Other states gave slaves the same right to petition county or states governments. This legal protection allowed hundreds, if not thousands, of freedom petitions over the years. By the end of the eighteenth century, most states had granted slaves and their masters the right to pursue manumission in county courts. However, as time went on, it became progressively difficult to win freedom cases in local courts. As the nation moved further into the antebellum period, the climate changed under the growth of cotton production, and the path to legal emancipation became increasingly fraught with difficulties.


\textsuperscript{375} Samuel Pleasants, Jr., ed., \textit{A Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force} (Richmond: Samuel Pleasants, Jr. and Henry Pace, 1803), 385-347.
Chapter 5
The Erosion of Mulatto Privilege in the Early National Period

On August 3rd, 1810, the “mulatto man” Christopher McPherson wrote to city officials of Richmond, Virginia to protest a recently passed law “prohibiting every person of Color from using a Carriage,” with the exception of slaves under the employ of a “white” person. In “great astonishment,” this treatment moved McPherson “to reflect on the whole tenor of [his] life.” Though he had been raised a slave, McPherson did not mention his bondage, yet instead listed the services he paid his “Native County” during the Revolutionary War and numerous clerk positions he diligently worked at afterwards. Many of Virginia’s leading men held McPherson in high esteem, and wrote him several personal recommendations throughout the years.

However, those of the same elite class viewed Virginia’s people of color largely in a negative light and increasingly passed laws that chipped away at their rights. McPherson spoke frankly to Richmond officials concerning their actions:

With due deference Gentlemen I beg leave to suggest, whether this is in conformity with the Fundamental Laws of the Land, which protect the rights and liberties of every Citizen, or is it compatible with the genius of our Constitution which breathes clemency, generosity and justice. If any of the color’d have offended, let them be punished, but it were a great pity to punish the many who are innocent, for the fault of a few thoughtless, ignorant, persons.

McPherson poignantly reminded authorities of the ideals the country had been founded upon and asked if discriminatory laws protected the rights of citizens of color. Though McPherson had faith that these laws could easily be changed “as to punish none but the guilty,” his hopeful thinking did not change the political and racial views of the elite. After several months, Richmond city officials gave McPherson no response, so he moved his claim to the state in December 1810. He pleaded with the General Assembly, “to pass a special Law granting me the rights & privileges which may appear to them that I merit.” This appears to have been to no avail, as the state legislature does not appear to have passed a special act for McPherson.

At the end of McPherson’s petition, he asks the General Assembly to decide if they overlooked his rights, lamenting that perhaps they “never knew of the service I have rendered my Country.” He pleads for “an act of Justice” in the form of “a special Law granting [him] the rights & privileges” that he merits. Unfortunately, by the early nineteenth-century arguments that may have worked during the Revolutionary Era had come to an end and it became more difficult for people of mixed ancestry like McPherson to maintain liberties owing to their positive contributions to their state or nation. At this point in time, it became increasingly difficult for people of color, and the large percentage of Mulattoes who made up this group, to enjoy their freedom for several reasons. Many benefitted from their wartime service or gained manumission based on ideologies of natural rights during the Revolutionary Era. For a time, people of African descent, and especially those of mixed descent, experienced increasing freedoms and might have moved closer towards the promise of equality. Over the course of the Revolutionary Era the free population of color multiplied many times over and by the 1790s it became clear that the domestic slave population was also increasing. The growth of the U.S. slave population coupled with pro-freedom ideologies during the Revolutionary Era led to increased risk of revolt, which made many European Americans uneasy, and influenced policies

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376 LVA, Richmond City, Legislative Petitions, December 12, 1810, Reel 221, Box 277, Folder 4.
that strengthened racial hierarchy into the early-1800s.\textsuperscript{377}

During the years of rebellion in Saint-Domingue, state officials paid growing attention to the increasing populations of both enslaved and free people of African descent. As news of the Haitian Revolution spread, U.S. planters particularly and “whites” generally feared a similar type of slave revolt could take place on the mainland of North America. It became clear that slaves were willing to continue the ideals of the U.S. Revolution when Virginian authorities suppressed Gabriel’s conspiracy in 1800 and located several other plots through 1802. Elite fears of insurrection further undermined moves to liberate slaves and closed off rights for free people of color, especially in Virginia. After 1800, Virginia legislators moved quickly to legally restrict slaves and free people of color. This deterioration of rights for free people of color continued throughout the decade, culminating in laws that more closely reinforced the monitoring of free people of color and gave newly freed slaves a year to leave the state. Although individual states took various positions on these issues, in the first decades of the nineteenth century, a number of the southern states moved towards larger restrictions against both slave and free people of African descent. This legislation changed variously from state to state, yet a general trend can be seen that limited mulatto privilege around the turn of the century.\textsuperscript{378}

Additionally, this coincided with the nineteenth-century cotton boom and the rejuvenation of slavery under this expanding plantation regime. By the early nineteenth century, the expansion of short staple cotton production in the Lower South reinvigorated the “peculiar institution.” This rejuvenation and expansion of the slave system led to changes in the Upper South as well, as domestic slave traders transported perhaps a million slaves south and west to the cotton producing regions between 1800 and 1860. These economic changes coupled with the growing slave population and increasing anxieties of slave rebellion, led southern “whites” to strengthen their subjugation of people of African descent by further restricting slave manumission and the rights of free people of color.

The growing importance placed on maintaining slavery and preventing slave insurrection directly related to the increasingly negative treatment of Mulattoes. As the development of slavery in the Lower South began to outpace the growth of slavery in the Upper South, legislators began to limit access to legal manumission, especially in Virginia, Georgia, and South Carolina. This affected both Mulattoes and Negroes seeking freedom, although advantages previously enjoyed by slaves of mixed heritage quickly diminished.\textsuperscript{379} From the 1790s through the 1810s, state legislation progressively denied free people of mixed descent the full promises of liberty, natural rights, and equality before the law. However, free people of color might still experience a fair amount of social mobility at more local levels, even though European Americans considered them below those of full European ancestry. Compared to those of full African descent, many mixed-heritage peoples maintained an advantage due to their connection to “white” patronage, yet the door to their mulatto privilege was beginning to close.\textsuperscript{380}

\textsuperscript{377} LVA, Richmond City, Legislative Petitions, December 12, 1810, Reel 221, Box 277, Folder 4.
\textsuperscript{379} Again, the word \textit{Negro} was commonly used during slavery as an umbrella term for all those of African descent. I am using \textit{Negro} here to describe those of full African descent as differentiated from \textit{Mulattoes} who were identified as being of partial African ancestry. This distinction was also sometimes made during the time as well. Please see the end of the Introduction for a more thorough discussion on the use of racial language.
Registering Free People of Color

Paradoxically, the Revolutionary Era presented African Americans with increased opportunities even as it led to a nation that clearly prohibited their equality. Southern legislatures that upheld slavery exacerbated this conflict when they allowed increased slave manumission. While broad slave emancipation in northern states freed Mulatto and Negro slaves alike, the rise of manumissions in slave states disproportionately benefitted those of mixed heritage because their masters freed them at higher rates. On more local levels, “white” neighbors accepted Mulattoes who positively contributed to the community and often times extended them everyday courtesies that allowed certain people of mixed descent to operate more freely. Still, racial prejudice circumscribed the daily lives of these mixed-heritage peoples. While certain people of blended ancestry may have gained legal freedom, most did not treat them equally as “white” citizens.381

Shortly after the revolution came complaints in Virginia that people were commonly “hiring negroes and mulattoes, who pretend to freedom, but are in fact slaves.” Virginia’s General Assembly moved to regulate slavery by coming down harder on free people of color. This began in 1793, through a law that made it unlawful “for any free negro or mulatto to migrate into” the state. No other state would take such an extreme action for another twenty-five years, though when they did, they followed Virginia’s lead. In the same year authorities passed further discriminatory ordinances that required all free people of color to be formally “registered and numbered” within their respective counties. This legislation required that “every free negro or mulatto” in Virginia would have “his or her age, name, colour and stature” taken down within the county records every three years. The registries would also record how every “negro or mulatto was emancipated” or if they were “born free.” It cost twenty-five cents to register and the county clerk issued all those who registered a certificate verifying their freedom. Those caught without their “freedom papers,” as they were commonly called, would be fined five dollars and could be confined to jail until they paid their fine and jailor’s fees. Free people of color could also not gain lawful employment without these papers and employers who hired those without papers could be fined five dollars for each offense. This law took effect on January 1, 1794. Most slave states took up similar laws afterwards in order to maintain control and order over their free populations of color, which largely affected free Mulattoes.382

Though this was not the first time the law required free people of African descent to carry identification proving their freedom, Virginia set in motion one of the largest systematic endeavors to monitor, police, and secure the institution of slavery. At the same time, these regulations limited the rights of the largest group of free Mulattoes of any state in the nation. By the 1790s, Virginia’s free population of color surpassed that of all other states and officials viewed this growth as detrimental to the health of the state.383 In less than a decade, the free

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381 Berlin, Slaves Without Masters, 89-90.
383 By 1790, Virginia had the largest free population of color at 12,866 according to the U.S. Census. This number nearly doubled every other state, except for Maryland whose census numbers stood at 8,043. By 1800, Virginia and Maryland’s free population of color were almost equal, at 20,124 and 19, 587 respectively. If the two Chesapeake colonies had relatively similar proportions of free Mulattoes, then Maryland’s mulatto population could have surpassed Virginia’s mulatto population around...
population of African descent in Virginia had quadrupled from perhaps around 3,000 in 1782 to 12,866 by 1790. This exploding free population of color also presented slaves with a hope that they too could one day achieve freedom. News of the revolutionary events unfolding in Saint-Domingue also influenced Virginia’s 1793 immigration laws, as word of the revolt spread through Virginia that year. With Saint-Domingue in mind, Virginia’s General Assembly decided that “every free negro or mulatto who shall come or be brought into this commonwealth by water from any country, state or island, may and shall be exported to the place from whence he or she came, or was brought.” Still, this did not necessarily prevent refugee masters or their slaves from leaving the island and gaining entry into Virginia and other states. Virginia officials took all these factors into account and felt required to take action to protect against the growing free population of color and possible insurrection.

Arguably, Virginia’s planter class also took legislative action against growing numbers of free people of color to keep their caste system from unraveling. Unlike the Lower South, Virginia’s free population of mixed heritage was much higher and authorities perceived them as much more dangerous because it was thought they were likely to conspire with the enslaved. By 1798, free persons who conspired with slaves to rebel could face death. It became a felony for free people of color to give their freedom papers to slaves. Laws also prohibited free people of color from harboring runaway slaves or even entertaining them in their homes without proper approval. The punishment could be up to thirty-nine lashes with the whip. In order to prevent further manumission, courts also prevented “whites” in favor of slave emancipation from sitting on juries in cases regarding the freedom of a slave. Though these laws targeted both free people of African or European descent, they largely affected free Mulattoes as well. As the registration of free people of color took effect, county authorities began accelerating the practice by the late eighteenth century and into the next. At the same time, the ongoing rebellion in Saint-Domingue continued to fuel European American fears of dangerous alliances between slaves and free people of color. Virginian authorities realized that in the Chesapeake Mulattoes and Negroes were less divided and shared a sense of racial oppression. This relative sense of racial commonality in the Upper South somewhat contrasted with the Lower South and the Caribbean. In these places a significant portion of Mulattoes experienced class privilege that allowed them to occupy a middle position between those of full European descent at the top and those of full African ancestry at the bottom of the social hierarchy. Generally in all regions, but especially in Virginia, officials feared that bridges of solidarity might be built between the enslaved and free people of color, the former predominantly Negro and the latter largely Mulatto. At the start of the nineteenth century a large domestic slave conspiracy catalyzed European American fears of solidarity among those of African descent.

Gabriel’s Conspiracy

In places where slavery remained legal and popular, the master class had always been aware of the threat of slave insurrection. By the 1790s, they understood that the growing U.S. slave population increased the potential threat of revolt. Then in 1800 came a Richmond slave
named Gabriel, along with dozens of others, who planned a rebellion that purportedly sought to overthrow the institution of slavery in Virginia. The plot was one of the first wide-scale slave conspiracies in the early United States. It involved a number of slaves residing in at least several counties surrounding Richmond and other areas. Gabriel was a blacksmith by trade and owned by Thomas Prosser, though he operated semi-autonomously as his master allowed him to hire out his time for work.  

Though Virginia authorities found out about the actual revolt before it occurred and crushed Gabriel and his co-conspirators before they could implement “the business” of revolution, Gabriel’s plot led to a number of further restrictions on slaves and free people of color in Virginia. Within months, the Virginia legislature responded to the planned insurrection by passing a bill that prevented masters from hiring out their slaves. By January 1801, Virginia officials moved away from the death penalty towards a policy of sale and transport of rebellious slaves out of the region. The state could always execute slaves found guilty of involvement in rebellion – and hung some two dozen co-conspirators along with Gabriel – yet the law also required the state to compensate masters for the loss of their slaves. Within weeks of the new legislation being passed, Governor James Monroe had nine slaves connected to Gabriel’s plot sold, which saved the state $2,917.34 in what would have been paid to masters.

Despite the changes in Virginia law, insurrectionary elements continued to stem from Gabriel’s original revolutionary plan. While masters watched their slaves closely for signs of rebellion, a bondsman by the name of Sancho and others quietly began to organize in late 1801 into early 1802 for a plot that would take place around Easter. Arthur, one of the slave commanders of the planned insurrection spoke these words to those he recruited: “Black men, if you have a mind to join me, now is your time for freedom. All clever men that will keep secret these words I give to you… life. I have taken it on myself to set the Country at liberty. This lies on my mind for a long time.” He further revealed a vision of solidarity that would cut across racial and class lines, saying, “I have joined with me both black and white, which is the common men of poor white people. Mulattoes will join with me to free the country, although they are free already.” This speech clearly revealed the subordination of Virginians along lines of class and race, yet Arthur also steps outside the racial binary to include Mulattoes, a group he considered “free already.” This illustrates the existence of racial unity among Mulattoes and Negroes.

Additionally, Arthur’s words back the claim that most free people of color during this time were of mixed heritage, as he referenced spreading the plot through this group as well. “I will send them that I think will do as well as I myself,” said Arthur, before naming two groups who would support the cause: “mulattoes” and “poor white people.” He understood that even lower class European Americans had an interest in overthrowing the planter aristocracy, and that the elite also held people of mixed ancestry back due to race. For Arthur, these groups endured different forms of discrimination, yet shared a common feeling of subordination owing to their class or socio-economic oppression. For these reasons, Arthur felt these groups should be recruited to join the revolt and could be trusted with the insurrectionary plan.

Arthur also noted that people of mixed ancestry were key to aiding the rebellion because

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388 Egerton, Gabriel’s Rebellion: The Virginia Slave Conspiracies of 1800 & 1802; Aptheker, American Negro Slave Revolts.
389 Egerton, Gabriel’s Rebellion, 55.
390 Guild, Black Laws of Virginia, 70-71.
“mulattoes have their own time,” meaning that as free people they controlled how they used their time. After Gabriel’s planned insurrection, legislators made it illegal for slaves to be hired out by their masters. This law largely limited the free movement of slaves, which had allowed Gabriel and others to spread word of the conspiracy he was chosen to lead in 1800. After this statute took effect, Arthur understood that free Mulattoes were the only people of African descent left able to go where they pleased. He also assumed they would side with the revolt, showing that he believed free Mulattoes would join the enslaved who were largely Negro. For Arthur, free people of color would be instrumental to the rebellion because they had the time and the freedom of movement unavailable to most slaves. Without them spreading plans of the rebellion it would have been much more difficult for the revolt to succeed. Again, racial solidarity and a shared sense of oppression would have motivated free people of African descent, and a large number of free Mulattoes, to contribute to this type of insurrection.\footnote{LVA, Executive Papers, May 6, 1802; Guild, \textit{Black Laws of Virginia}, 70-71; Aptheker, \textit{American Negro Slave Revolts}, 219.}

Slaves of mixed ancestry in other areas planned to rise up against those that kept them in bondage as well. Though a class free Mulattoes in Charleston often protected their middling position by allying themselves with the planter elite, most mixed-heritage slaves did not ally themselves with the master class in the Lower South. In the Chester District of South Carolina, Samuel Lacey encountered a rebellious slave in his own home on July 20\textsuperscript{th}, 1800. He admitted that he “shot and killed… one Mullatto man slave, of [his] own property,” and claimed that it “appeared to be the only alternative for the Preservation of myself & family.” Though all the circumstances surrounding this incident are not clear, the story portrays the unnamed “Mulattoe man” as the antagonist. He threatened his master and the Lacey family in some way, or at least this is what Lacey claimed after shooting him. In other cases, slaves of mixed descent kept watch over their owners and took efforts to thwart possible slave uprisings.\footnote{Joel Williamson, \textit{New People: Miscegenation and Mulattoes in the United States} (New York: Free Press, 1980), 15-18.}

In the midst of the slave conspiracies that abounded from 1800 to 1802 in Virginia, a “Molatto Woman” warned W. Claiborne in Richmond of an impending attack. In early to mid-February 1801, she heard a man named Tom say “that the insurrection was not done with, [and] that More would be heard of it in a few days.” These slaves most likely were referring to Gabriel’s failed rebellion in 1800. On Saturday night, February 14, the woman overhead slaves in conversation saying “that the Negroes were about to do Mischief to the Whites.” The woman apparently heard “that One or two proposed putting the thing off till Next Saturday Night,” yet she could not hear what they decided “as they Spoke Low” in whispered conversation. The next morning, the “Molatto Servant Girl” took Claiborne into his dining room and warned him “that the Negroes were about to do Mischief to the Whites.” The woman also told Claiborne “that all the Negroes about [his] house… had Weapons in their hands, which She thought were Swords.” Claiborne’s family further confirmed the story by telling him that the night before they “were alarmed by a Number of Negroe Men going around & about the House a great part of the Night.” Obviously, Claiborne was frightened and immediately wrote Major Samuel Coleman about the impending rebellion. This information was passed on to Governor James Monroe, but it is unclear what actions authorities took to put down this conspiracy.\footnote{SCDAH, Legislative Petition, Chester District, S165015 Item 01813, 1801.}

These two cases bring up some of the main differences between Mulattoes in the Upper and Lower South, and how social elites viewed free and enslaved people of mixed descent. In the Lower South, specifically in urban areas like Charleston, a privileged class of mixed-heritage
peoples typically did not associate with African slaves. The ruling class realized this, along with the obvious class differences between enslaved and free Mulattoes. Therefore, when Samuel Lacey shot one rebellious enslaved “Mulattoe man” in his home, this shooting did not conflict with elite views in South Carolina concerning free Mulatto loyalties to “whites.” However, in the Upper South, officials viewed both slave and free people of mixed descent as a threat right along with those of full African descent. Though Claiborne’s “Molatto Woman” helped thwart a possible rebellion in Richmond, authorities in Virginia felt all Mulattoes would side with Negroes during a possible insurrection. Both of these cases were isolated incidents that featured people of mixed ancestry as protagonists in stories of resistance, but neither appears to have changed broader views in society at the time, as did Gabriel’s conspiracy in the early nineteenth century.396

Laws to Prevent “Conspiracy, Insurgency, Treason, and Rebellion”

After Gabriel’s Rebellion, Virginia’s General Assembly, Governor James Monroe, and U.S. President Thomas Jefferson began working on a plan to locate and secure lands where they could “transport free negroes or Mulattoes or such Slaves as may be guilty of insurrection or conspiracy against the State.” According to the House of Delegates in Virginia, people of African descent were considered “dangerous to the peace of society” and a solution to “Conspiracy, Insurgency, Treason, and Rebellion among those particular persons” might be solved by relocating them outside of U.S. territory. Lands under consideration included Spanish and Portuguese colonies in Latin America and the Caribbean, though the present state of rebellion in Saint-Domingue made for an unstable situation in this region. Officials next turned their attention to removing those of African descent to the continent of their ancestors, Africa. President Jefferson considered the British-controlled “Sierra Leone Establishment... to be made for the desired accommodation” of colonizing African Americans on the African mainland. In January of 1802, both the state House and Senate of Virginia passed a resolution for Governor Madison and President Jefferson to work towards establishing a place outside the limits of the United States where “free negroes or mulattoes and such negroes or mulattoes as may be emancipated may be sent or choose to remove as a place of asylum.” The Virginia Legislature saw this plan of colonization as a solution to the perceived problem of a growing dangerous and unassailable population of African descent. The legislature also saw the colonization of free people of color outside the United States as a compromise with slaves who sought their freedom. Under various colonization proposals, people of African descent that Virginia expelled from the commonwealth would be emancipated, and as free people, they would maintain their sovereignty as well as their liberty.397

This early colonization effort would not be realized under Jefferson’s presidency, but these attempts show that legislators sought to take action to remedy a volatile situation in response to the growing African American population. They had already prohibited masters from hiring out their slaves after Gabriel’s Rebellion, and before this time they had passed laws to prohibit slaves and free people of color from entering their boundaries. Maryland, North Carolina, South Carolina, and Georgia all accompanied Virginia with similar legislation around the turn of the century and into the nineteenth century. State legislatures wanted nothing to do

396 Williamson, New People, 14-15, 23. LVA, Executive Papers, February 18, 1801; SCDAH, Legislative Petition, Chester District, S165015 Item 01813, 1801.
397 Colonization efforts in Liberia would pick up in later decades. Berlin, Slaves Without Masters, 103-107, 168-171. LVA, Executive Papers, Dec. 9, 1802; Jan. 29, 1803.
with the French West Indies and responded by further restricting slave importations from there and elsewhere. Authorities attempted to close their borders to possible émigrés from Saint-Domingue out of the widespread fear that similar emancipationist ideologies might spread to slaves in the United States. Each state sought to stem growing slave populations and attempted to prevent rebellious slaves from being brought into their respective states. State legislatures also sought to ensure that they had proper measures in place to secure both enslaved and free populations of African descent within their borders. These internal restrictions largely affected free populations of color, and further pushed Mulattoes into the lower racial caste. Though some elites felt that certain upwardly mobile free Mulattoes benefitted their local communities, others painted any free person of color as a menace to society. Free people of African ancestry provided slaves with an example of liberty, giving those in bondage hope that they could also attain freedom.398

Elite planters’ concerns influenced legislation, yet these outcomes were always coupled with the transformative effects cotton had on the slave system. From the mid to late 1790s, the invention of the cotton gin instigated an enormous shift in plantation slavery, which had far-reaching effects for slaves, free people of color, and people of mixed heritage in each group. From 1790 to 1800, U.S. cotton production jumped exponentially from 1.5 million pounds to 35 million pounds. Though these numbers fluctuated somewhat over the years, by 1810 cotton production had increased to 85 million pounds and over the course of the next several decades this explosive growth continued. Planters gained tremendous profits, and the economic incentive behind the expansion of cotton throughout the deep south fueled the expansion of slavery. Georgia and South Carolina stood at the epicenter of the early U.S. cotton boom, for they produced the overwhelming majority of the nation’s cotton at the turn of the century and continued to lead output over the next three decades. The ramifications of “King Cotton” for enslaved Africans are evident, yet the effects also reached free people of color.399

The wealth garnered from “King Cotton” pushed lawmakers to limit emancipation and restrict the rights of free people of color, actions that were thought to ensure a securely enslaved labor source into the early nineteenth-century. On December 20, 1800, South Carolina passed several acts concerning people of African descent. First, officials extended the current ban on slave importations again until 1803. Second, state authorities extended discriminatory laws to prohibit “any free negro, mulatto or mestizo” from entering the state, which followed Virginia law from seven years earlier. This is significant because the two largest slave states now made it clear that they sought to stem the growth of their free populations of African descent by banning new entries into their state. They also targeted free people of color right along with slaves, which further distinguished free Negroes and Mulattoes as a racially alienated people despite their status as free citizens. Legislators drew the line here based on connection to African ancestry, for they did not include American “Indians.” The term “mestizo” therefore appears to define one of African and Native American ancestry, not one of mixed European-Indigenous descent, as in the Spanish colonies.400 This law denotes a state sponsored racial caste system

398 Berlin, Slaves Without Masters, 82, 89, 95-96.
based on African heredity. Third, laws prevented meetings of “slaves, free negroes, mulattoes, and mestizoes” from taking place clandestinely. Gatherings among these groups needed to have a certain number of “white persons” present and meetings in places that were “barred, bolted or locked” would be considered unlawful. In following years, officials set additional penalties on those conducting business with slaves and free people of color. South Carolina’s state assembly clearly identified the purpose behind such legislation in December 1800: “the laws heretofore enacted for the government of slaves, free negroes, mulattoes and mestizos, have been found insufficient for keeping them in due subordination.”\textsuperscript{401}

The same year, South Carolina also began to more heavily regulate slave emancipation, noting that for years people had commonly freed slaves “of bad or depraved character” or those “incapable of gaining their livelihood by honest means.” Legislators stipulated that a local magistrate plus five free landholders “living in the neighborhood” had to meet with any master wanting to free their slave and certify the slave’s character and capability of earning a living post-emancipation. The next year, Georgia officials went another step further to prohibit slave manumission. On December 5, 1801, authorities moved to restrict slave manumission, making it unlawful for anyone “to manumit or set free any negro slave or slaves, any mulatto, mustizo, or any other person or persons of colour, who may be deemed slaves.” Several other states would pass similar legislation over the next decades, though Georgia’s law here reveals one of the earlier and stricter forms of legal prohibition of slave emancipation, especially as it also went the extra step to punish local manumissions as well. Anyone public official caught entering “in any book of record by them kept, any deed of manumission, or other paper which shall have for object the manumitting and setting free any slave or slaves” would be fined $100 for every such offense. Apparently state authorities realized that those at the county level were more willing to free slaves for masters who had local connections. This statute attacked the patronage system that aided many mulatto slaves. Throughout the slave states, the elite planter class responded to fears of growing slave populations and possible insurrection by mandating stricter law against manumission and free people of color.\textsuperscript{402}

The increased demand for slaves in these states led to expanding fortification of the system everywhere, as it encouraged slave owners in the Upper South to sell their slaves to cotton producing regions in the Lower South. Though slave emancipation continued to take place with relative ease at the local levels in Maryland and North Carolina, masters in both of these states, and especially Virginia, did not miss out on the economic opportunity to sell their slaves or ignore the threat of their expanding population of African descent. A series of insurrectionary slave conspiracies in Virginia from 1800-1802 served to exacerbate fears of the growing slave and free populations of color, and resulted in legislative acts that placed further limits on slave manumission and pushed free people into neighboring states.\textsuperscript{403}

Legislation targeting Virginia’s free people of African descent had damaging effects for people of mixed heritage in the years following Gabriel’s Rebellion. In 1801, the state moved to strengthen previous 1793 laws for preventing “the migration of free negroes and mulattoes” into

\textsuperscript{401} McCord, \textit{The Statutes at Large of South Carolina, Vol. VII}, 440-444.

\textsuperscript{402} Augustin Smith Clayton, ed., \textit{A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1800, to the Year 1810, Inclusive.} (Augusta: Adams & Duyckinck, 1812), 27. Interestingly, the state legislature had to overturn this section of the act in 1815, because the laws prevented court clerks from recording wills and testaments that contained deeds of manumission within them. This shows that people continued to free their slaves, even if the law sought to prohibit it. Lucius Q. C. Lamar, ed., \textit{A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1810, to the Year 1819, Inclusive.} (Augusta: T. S. Hannon, 1821), 801.

\textsuperscript{403} Kolchin, \textit{American Slavery, 1719-1877}, 96-98; Berlin, \textit{Slaves Without Masters}, 83-87.
the commonwealth and the proper registration of native Virginians of color. Those found without proper freedom papers could be taken up and held as vagrants. Also, every county commissioner had to create “a complete list of all free negroes or mulattoes within his district, together with names, sex, places of abode, and particular trades, occupation or calling.” The clerk had to make a copy of the list, make it public by attaching the copy to “the courthouse door, and the original be deposited for safe keeping in his office.” Any county clerk failing to do so would by fined $20. State authorities admitted that these amendments were needed because previous measures where found to be “defective.” In other words, county officials simply were not properly registering and reporting their “free negroes and mulattoes” as previously mandated. Without proper records of free people of color, Virginia would be unable to monitor and maintain control over the population. 404

From 1805 to 1806, Virginia’s General Assembly passed further legislation that constricted the rights of free people of color and increasingly viewed people of blended ancestry within a stricter view of hypodescent. In January 1805, authorities further prohibited “overseers of the poor” who “bind out any black and mulatto orphan, to require the master or mistress to teach such orphan readings, writing or arithmetic.” Both “black and mulatto” are distinguished here together, which displays a continuation of efforts by Virginia’s elite planter class to group the two together. This law differed from those of the latter eighteenth century, for now state authorities sought to reduce the rights of Mulattoes along with those of Negroes. The next year, state officials passed a bill saying that “no free negro or mulatto” would be able to carry firearms or “any other military weapon, or any powder or lead” unless they acquired a license from the county court. Punishment for those caught in violation of the said act could be given up to thirty-nine lashes with the whip. This law shows that authorities sought to monitor those whom they feared might use arms to aid insurrection. This further oppressed free people of color, especially considering that most free people in rural Virginia carried guns for hunting food, protection, and sport. 405

While these laws definitely took away rights previously enjoyed by free people of color, the most devastating legislation passed by Virginia’s General Assembly concerned newly freed slaves. In 1806, Virginia legislators gave free people of color twelve months after their emancipation to leave the state. If the former slave remained in Virginia after the year was up, he or she would forfeit their freedom and could be sold by officials back into slavery. This extremely oppressive law would disrupt free communities of color over the next several decades and impact other states as well. The statute restricted the slave population, for it sometimes prevented further slave manumission. State officials also punitively directed this law at free people of color, for it placed a legal wedge in-between families already part slave and part free. Any slave who sought to manumit a family member after this point would have to leave the state in order to be with them. Again, elites passed statutes such as these in response to growing concerns over rebellious slaves and an increasing free population of color. At the same time, these efforts strengthened hypodescent ideology, as the rights of freed people effectively declined, moving their subjugation closer to that of slaves. However, in spite of such oppressive legislation, mulatto privilege still operated on the ground in local communities. 406

405 Samuel Shepard, ed., The Statutes at Large of Virginia, from October Session 1792, to December Session 1806, Inclusive (Richmond: Samuel Shepard, 1836), 124, 274-275.
406 Shepard, SALVA, 1792-1806, 251-253; Berlin, Slaves Without Masters, 92-93.
Early-1800s Mulatto Manumission

State laws restricting the enslaved tightened on into the nineteenth century, even as mulatto privilege continued at the same time. Though people of mixed heritage everywhere could rely upon the status of free maternal ancestors, and slaves descended from European mothers often brought their cases to court in the Colonial Period and Revolutionary Era, most of the freedom suits in the nineteenth century came via “white” male patronage connections. European American men brought the overwhelming majority of freedom suits to court and this system of clientelism reinforced “white” male patriarchal dominance in the slave states. People of mixed ancestry continued to benefit from connections to both European lineage and patronage. In many places these factors continued to assist liberal manumission of Mulattoes at local levels, especially in the Upper South. In 1801, Henry Eelbeck of Chowan County, North Carolina, sought the freedom of “a Mulattoe Slave” named Major, who had for years served under Henry’s brother, Joseph Eelbeck. Major had served Joseph Eelbeck for years and attended his master in the final days of Eelbeck’s life. For Major’s service, Henry Eelbeck was “desirous to reward him with his liberty and fifty pounds.” He assured the county court that the slave was “highly meritorious & that no ill consequence will result from his emancipation.” Stories such as these were commonplace during this period.407

Not far away in Craven County, North Carolina, “a certain mulattoe female slave” Hannah sought her freedom in the spring of 1800. She was around 26 years old and “raised up from infancy under the eye and strict care” of Ann and Wilson Blount. Her master and mistress had raised Hannah “in the family” and they vouched for her “sobriety, industry, and honesty.” The Blounts said “the character of the said Hannah has ever been, and to this day, remains truly exemplary.” They guaranteed that her freedom would never be “inimical to society” and “she would be a worthy and an useful member.” Mimicking the rhetoric of state law, the Blounts claimed “the whole life of the said Hannah has been one uniform display of meritorious service of affection for thus persons, zeal for their service, and attachment to their interests.” Ann and Wilson Blount went even further than Eelbeck’s petition for Major in their language. The Blounts wanted to leave no room for doubt in the minds of the court that Hannah would be an asset to the community. The County Court of Craven responded to the couple’s pleas by granting “a licence to set free and liberate” Hannah from slavery in March of 1800.408

Whether Hannah was biologically related to the Blouts or Major was directly related to the Henry Eelbeck may have been of little concern when determining the success of these freedom petitions. The key to Hannah’s case was that she had gained the patronage of her owners. The average slave could not secure a free “white” patron to go before the court on their behalf in order to fight for their emancipation. Hannah’s position as a domestic servant who had close daily contact with Ann and Wilson Blount allowed her to win their friendship. The couple returned that service by hiring lawyer Edward Graham to seek the right to manumit Hannah. This legal pathway to freedom required money and an impeccable recommendation from the Blounts. Slaves of full African descent, who made up the majority of domestic servants in the antebellum period, made use of these “white” patronage connections as well. However, slaves of mixed ancestry were disproportionately employed in house work and were overrepresented in terms of freedom petitions brought before southern courts. In this manner, mixed-heritage slaves

407 NCOAH, Chowan County, Records of the County Court, Miscellaneous Slave Records 1730-1866.
408 NCOAH, Craven County Records, Miscellaneous, Records of the County Court, Slaves and Free Negroes, 1775-1861, Petitions to emancipate slaves, petitions for freedom and bonds for emancipated slaves, 1800-1809.
experienced a tangible mulatto privilege.\textsuperscript{409}

Certain benevolent masters emancipated slaves they felt deserved freedom. James L. Shannonhouse of Pasquotank County, North Carolina, freed “a Mulatto or Boy of Colour” named Abner in March of 1800. At the time, Abner was a toddler around two years of age. After the county court granted the boy his freedom, he was given the name Abner Relfe. This process of slave emancipation was relatively easy, for Shannonhouse did not have to establish a strong argument for why he wanted the boy freed. A year later, he did the same in petitioning for “the liberation of a Molatto Girl” named Pleasant. This time, Shannonhouse provided more information regarding the character of this enslaved girl he sought to free, saying that she had “conducted herself as an Honest and faithful slave.” Similar to Abner, the court granted Pleasant her freedom and she took the surname Relfe, as it was noted that the female slave was formerly the property of the recently deceased Enoch Relfe. The two slaves were possibly related, and could have been the children of Enoch Relfe or someone in the Relfe family. This shows that even while a master may have not directly freed his own slave children born to one of his female slaves, they sometimes left these instructions to be carried out by the executor of their will. These arrangements might be formally outlined, informally agreed upon, or may have been carried out for other reasons. Perhaps Shannonhouse had no instructions to free any slaves at all, yet the executors of his estate felt obligated to do so after inheriting the two slave children of mixed African and European descent.\textsuperscript{410}

For enslaved Mulattoes, having a father of European American descent provided a possible path to freedom. Though most master-fathers did not free their children, Mulattoes with the highest chance to attain freedom lived in states with liberal manumission laws. Up until 1800, most slave states allowed masters to free their slaves at the county level. The laws allowed “white” fathers to pass on their racial and perhaps economic privilege to their children. However, these men did not always own the women they engaged in sexual relationships with, and therefore could not legally free their mixed-heritage offspring. In Charleston, South Carolina, John O’Kennedy did not own the female slave whom he impregnated sometime in 1799. The woman gave birth to his son, Joseph O’Kennedy, and the church baptized the “Mulatto boy” even though the child was legally a slave. O’Kennedy did not own Joseph, yet sought to free his son from the boy’s master, Susanna McDonnald. On June 28\textsuperscript{th}, 1802, he paid McDonnald $100 to purchase his two-year old son. They drew up the bill of sale in the city of Charleston and O’Kennedy later went through the state to have South Carolina officials “liberate and set free for ever” the young child. The state named John O’Kennedy the “Guardian and Trustee” of his son’s freedom, and the father promised “to take care of and protect hereafter the said Joseph O’Kennedy.” Though we do not know what happened to Joseph’s mother or the circumstances surrounding her relationship with O’Kennedy, it is clear that he felt affection for his son and took responsibility for the boy’s well being. It is obvious from countless documentation of mulatto children being bought and sold in records throughout the slave states that O’Kennedy was an exceptional father. Most European American men either felt little obligation for their children of mixed descent, were not moved enough to extend themselves to free these children, or may have been unable to legally complete the process.\textsuperscript{411}

Sometimes European American fathers would purchase their children as well as their


\textsuperscript{410} NCOA, Pasquotank County Records, Miscellaneous Records, Slaves and Free Persons of Color 1733-1866, Bonds and petitions to free slaves, 1778, 1792, 1793-1800.

mothers. On September 12th, 1807, Philippe Noisette purchased two of his children by “one negro wench named Celestine” in Charleston, South Carolina. He paid R. C. D. Menude $650 for Celestine, Philippe Jr., and Alexander. Noisette partnered with Celestine, who gave birth to at least four more children: Pierre Louis, Melanie, Josephine, and Louise. However, Noisette did not go through the legal measures to free Celestine after her purchase and so all six of their children became slaves even after he owned them. If he had acted more promptly, as John O’Kennedy had done with his son, Noisette could have avoided what became a more difficult process of manumission in following years. Still, Noisette paid a large sum for his enslaved African partner and children of mixed heritage. This sacrifice undoubtedly stemmed from his love for Celestine and the family they built together. These and other stories point to the prevalence of manumission of women and children in South Carolina by men of European descent who often had familial connections to their loved ones.412

Though Georgia is included in the Lower South, its laws diverged significantly from those of South Carolina in terms of manumission and free people of color. Again, through legislative order in 1801, manumission in Georgia could only be granted by a special act of the state legislature. This was extremely restrictive compared to other major slave states at the time. Still, mulatto privilege aided slaves of mixed descent, for similar South Carolina, Georgia masters freed women and children, who were largely of blended ancestry. On December 1, 1801, during the same session in which the General Assembly mandated that slaves could only be granted freedom through the state, the legislature also passed an act that emancipated Lucy Barrot, Betty Barrot, Jim Lary, and a “mulatto girl named Nancy”. These slaves were all listed as “persons of colour” whom the state “manumitted and set free.” The connection between Georgia and South Carolina can also be seen in the regular migration of owners across state boundaries. In the early 1800s, John C. Livingston of South Carolina emancipated “a certain negro woman called Mag, and her five mulatto children called Mary-Ann, Lydia, Rose, Paul and Selina” by his will. In addition to securing their liberty, he left the family “a considerable amount” in personal property and real estate. Livingston named Charles Oddingsells and Francis Hopkins as “trustees and guardians” of the former slaves, who may have been his family. For unknown reasons, Oddingsells and Hopkins successfully carried out Livingston’s request in Georgia instead of South Carolina. This is unusual, since it would have normally been easier to free them in South Carolina, but the Georgia state legislature “manumitted and set free” Mag along with “her five mulatto children” on December 12, 1804. Though the Georgia legislature rarely freed slaves after 1800, good portions of those freed were of mixed heritage.413

**Early-1800s State Variation in Freedom**

Due to increasing legal restrictions, people of mixed ancestry went through a wide range of experiences. Though some Mulattoes definitely had certain advantages over those of full African ancestry in the communities they resided, “white” society never fully accepted them,

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412 Noisette later petitioned the state assembly after an 1820 act of South Carolina prohibited individual manumission except by legislative decree. He eventually freed all of his family through his last will and testament in 1835. SCDAH, Miscellaneous Records, XXX, Bills of Sale, 1805-1808, 464 (Recorded September 23, 1807); SCDAH, Legislative Petition, S165015 Item 01880 (ND). The manumission of women and children had been high since the colonial period in South Carolina. Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 Through the Stono Rebellion* (New York: W. W. Norton & Company, Inc., 1975), 100.

413 From 1800-1810, Georgia’s state legislature only freed 33 slaves. A dozen are described explicitly as “negro” and six as “mulatto.” The majority are described as “persons of colour,” which is somewhat ambiguous regarding their actual ancestry. Six of the that are explicitly listed as “mulatto.” Clayton, *A Compilation of the Laws of the State of Georgia, 1800-1810*, 15, 118-119, 137, 218-219.
especially among elite social circles. In 1805, the citizens of Petersburg, Virginia, supported the petition of a mixed-heritage man named Graham Bell, who had long resided in the town and fell under a debt due to another family member. Over fifty citizens added their own petition to Bell’s plea, saying they “can with truth, declare that he is an Industrious, Honest, Quiet, and Reputable Citizen.” They went further to describe Bell’s positive contributions to Petersburg and explained his social position: “His complexion, for he is a Mulatto man, prevents his mixing in the more polished circles of Society; but Humble as is his station, he reflects credit upon it, by the Integrity of his Conduct.” Though Bell and his family achieved economic success by the standards of their day, which exceeded most of African descent, he could only climb so high in the overall social hierarchy. “White” citizens included this “Mulatto man” as a member of their community, as long as he remained subordinate by humbling himself to the social elite of Petersburg.414

A gap all too often existed between the implementation of laws and actual social practice. Sometimes that social practice could even complicate the law. In the Chesapeake, for example, while mixed slaves experienced a disproportionately high level of emancipation, courts still kept them from testifying against “whites” in court.415 Still, in 1805 Maryland courts allowed Rebecca Syntha, “a mulatto woman” born to “a manumitted negro mother,” to serve as a witness in a case involving “a free born white christian man.” Her testimony helped result in a guilty felony verdict, yet because of Syntha’s ancestry the defense appealed the case. Since the early eighteenth-century, Maryland law stated “that no negro or mulatto slave, free negro, or mulatto born of a free white woman, during his time of servitude” could give evidence where “any christian white person is concerned.” The court defined Syntha as “a mulatto” even though her maternal African ancestry should have disqualified her court appearance. The justices on Maryland’s court of appeals divided over allowing her testimony. Unable to reach a final decision on that particular point, the court looked past Syntha’s status as a witness and let the guilty verdict stand in 1806.416

Even into the nineteenth century, mulatto privilege might operate variously depending upon the makeup of one’s maternal and paternal lineage. In terms of freedom, European ancestry on the maternal line made all the difference, yet Syntha had been free through her African mother. In her day-to-day life, if Rebecca Syntha’s mother had been of European ancestry instead of her father, neither the courts nor society would have treated her much differently. For people of mixed descent, the ethnocracial heritage of their parents mattered little in other areas. Even if one visibly appeared to be of mixed ancestry, it was impossible to distinguish a person’s specific ethnocracial parentage. It also became difficult to visibly identify free people of color when so many mulatto runaway slaves attempted to pass themselves off as free. A slave might be assumed to be free if she could act the part by doing things like obtaining proper clothing or carrying themselves in a sophisticated manner that would mark them as having a higher status above slaves. However, in the antebellum period, one could not simply pass as free in slave states without proper documentation. Getting these papers became increasingly difficult through legal means over the years, forcing slaves to runaway from the slave states. Even then, one could be recaptured and taken back into slavery. For these reasons,

414 LVA, Legislative Petitions, Albemarle County, Dec. 4, 1805.
415 In 1792 Virginia declared: “NO negro, mulatto, or Indian, shall be admitted to give evidence, but against or between negros, mulattos or Indians.” Pleasants, A Collection of All Such Acts of the General Assembly of Virginia, 278.
416 Thomas Harris and Reverdy Johnson, eds., Reports of Cases Argued and Determined in the General Court and Court of Appeals of the State of Maryland, Vol. I (Annapolis: Jonas Green, 1821), 750-751.
gaining legal manumission through the courts remained the most secure way to freedom.\footnote{417} Into the early nineteenth century, Maryland continued to allow liberal emancipation and moderate rights to free people of color. These trends moved Maryland closer to mirroring North Carolina during the antebellum period. In November of 1807, Eli and William Copeland of Hertford County, North Carolina sought to free their “Mulatto man Ben.” The Copelands also asked that he be given their surname, so that as a free man he would be known as Ben Copeland. There is no proof that Ben was directly related to either Eli or William Copeland, yet as a slave of mixed African and European descent, it would not have been unlikely for the slave to be related to the Copelands. Though the record does not specify, Ben could have very easily been a half-brother, nephew, or cousin of his owners. In their petition to the State Assembly the Copelands also stated that “they have considered for a length of time past that it is incompatible with the tenets of Christianity, which they profess, to hold any of the human race in servile Bondage.” They further claimed that as Christians, “they deem it to be conscientiously their bounden duty” to free Ben. They attempted to circumvent state law by claiming that slavery contradicted God’s law.\footnote{418}

Like other antislavery religious groups at the time, the Copelands may have been trying to get the legislature to pass a judgment on slavery itself, not simply Ben’s individual case. The Society of Friends or Quakers, along with factions of Methodists, Baptists, and other groups had begun to more outwardly oppose slavery as being inconsistent with biblical doctrine. These antislavery factions had already opposed slavery for decades, and were perhaps targeting upper level administrators with Ben’s case. The Copeland’s petition differed from most others, as they viewed holding another human in bondage as contradictory to their Christian faith. They cite the faithful or “meritorious service” of their servant in the body of their petition. In lieu of specifying Ben’s great deeds, the Copelands also included the signatures of fifty community members of Hertford County. These signatories claimed that they wanted Ben to “be a free man among us as he is under a good Carrecter in our County and in other places whear he is known.” Along with the Copeland’s words about human equality, this additional support suggested that the local community would accept the mulatto Ben in a measured way. These additional signatures also added extra weight of the community behind those who sought freedom for their slaves, a practice that became increasingly popular within legislative petitions into the 1800s.\footnote{419}

On November 23\textsuperscript{rd}, the state Senate read the Copeland’s petition asking for “an act to emancipate said Mulatto man Ben” and they referred it to the “Committee on Propositions and Grievances.” The next day, North Carolina’s House of Commons did the same. Several weeks later, by mid-December the special committee found the petition “insufficient.” The committee rejected his petition, deciding that Ben was not “entitled to the relief prayed for.” At first, it may seem that the Copelands lost their suit because their plea made a political and religious case. However, the Copelands lost their case because a contradictory petition with just as many signatures came to the state assembly in December 1807, attesting to the “evil disposition” of the “Negro Man by the Name of Ben.” Thomas Copeland claimed that Ben had been at the center of disputes and controversy between Neighbors and Brothers.” They continued to defame the slave’s character, saying that for a while he had “been at liberty to Run at Large” and warned

\footnote{418} NCOAH, Legislation Petitions, General Assembly, Session Records, November - December 1807, Box 2, Folder - Joint Committee Reports (Propositions and Grievances).
\footnote{419} NCOAH, Legislation Petitions, General Assembly, Session Records, November - December 1807, Box 2, Folder - Joint Committee Reports (Propositions and Grievances).
that if the court freed him, “then the said Ben would be placed In a Situation so as to Injure a Number of our Fellow Citizens by disputes, Law Suits & Controverseys.” What may have been a family dispute among the Copelands shows the difference in how slaves of mixed heritage could be portrayed, as either Mulatto or Negro. The second petition concerning Ben portrayed him in a darker light in more ways than one, for it described him as a “Negro Man” compared to Eli and William Copeland’s petition that described him as “Mulatto.” The Copeland’s chances of freeing Ben would have been improved if it had not been for the interference of the second petition.

At the county level, most freedom petitions for Mulattoes easily passed in North Carolina through the first decade of the nineteenth century. On June 17, 1808, August Cabarrus freed her “Negroe woman Rose” through the Chowan County court at Edenton, North Carolina. This was the first step to true liberty for Rose, for she might have never felt totally free until the courts also manumitted her two children, Charlotte and Leon. Three months after Chowan County officials emancipated Rose, August Cabarrus signed a similar document on September 15. These papers stated that “in consideration of meritorious Services and for other divers good causes and considerations” Cabarrus would give Rose legal custody of two slave children: “A small Mulatto Girl called Charlotte of the age of eight years and a Mulatto Boy called Leon of the age of six years.” The Chowan County court confirmed the exchange, but this was not the end of the family’s journey. In early December 1808, after yet another three months, a new petition came before the state assembly. This time Rose petitioned herself for the freedom of her children. She told her story, first of being “emancipated and set free” for her “meritorious services.” Then she presented her certificate of freedom and spoke of “her late master” August Cabarrus, saying that Mrs. Cabarrus “had the goodness to make her a gift of her two children.” She presented this document for the court as well. Rose then explained “that if she should die her said children… might be taken up and sold.” Charlotte and Leon would “thereby not only [be] reduced to slavery but [would be] separated from each other.” For Rose, this was “a calamity upon which a mother cannot reflect without terror.” For these reasons, Rose decided to appeal to the highest court of the state, stating that she was “encouraged to hope from its humanity a relief from the distressing anxiety” she experienced from her family’s situation. Rose left no last name on her petition and penned a small “X” behind her name.

In this example, Rose, Charlotte, and Leon most likely had legal representation secured in part with the help of the Cabarrus family. This humble slave had earned their trust, and she may have had an intimate relationship with someone in the family, though Charlotte and Leon’s father is never mentioned. The Cabarrus family used their economic means to help free Rose, release her children, and perhaps continued to help her further. The family may have employed Rose after helping her earn her freedom. She could have saved up the money required to take this case to court or the Cabarrus family could have paid for the petition to free her children. Rose was described as “negro” and her children as “mulatto,” meaning that a “white” father may have funded the children’s petition. Without a surname attached to her or the children, there are few clues as to who may have sired Charlotte and Leon. Slaves of all degrees of African ancestry took advantage of patronage networks, yet those most closely connected to benevolent

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420 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1807, Box 2, Folder - Joint Committee Reports (Propositions and Grievances); NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1807, Box 3, Folder - Petitions (Emancipation).

421 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1808, Box 3, Folder - Petitions (Emancipation).
“white” clients had the greatest access to freedom.422

The same year, a “Mulattoe boy by the Name of George” had his freedom case brought before the North Carolina legislature around the time he turned twenty-one years old. Some years previously, Richard Sayrs of Rowan County gave instructions through his last will to free his slave George, probably when the boy turned the customary adult age of twenty-one. Until that time, the executor of that will, William Bell, took in the boy after Sayrs’ death. George clearly benefitted from these patronage connections. As a boy, he was raised along with Bell’s family in Randolph County, where he was “taught to read & wright.” Though the young slave may have served the Bells in a domestic role, the family also instructed him in “the BlackSmith trade.” This type of apprenticing of slaves commonly occurred during this time. It allowed George to become a skilled artisan in his adolescent years, and would later enable him to seek and maintain his own employment. It also helped prove to the state justices that George would not simply become an economic burden upon the state or his local community after gaining freedom. His petition also read that he was “a boy of good Moral Character and honaust Principles.” Bell and his neighbors further felt that George’s “conduct & attention to business” entitled the slave to emancipation. Though it is nowhere explicitly stated, evidence points to Richard Sayrs being George’s father. When William Bell petitioned for the slave to be emancipated, he also asked that George be given the surname of Sayrs, even though the young man had lived with Bell “for a Number of Years.” Though Bell had brought the freedom suit to the state legislature, it was at the behest of Richard Sayrs that the mulatto George Sayrs received instruction, tutelage, and legal assistance in his freedom case. Mulatto privilege via “white” patronage allowed George Sayrs to access freedom.423

The case of another “mulatto boy” named George presents an example of the complexities surrounding the intersection of race, patronage relationships, and the law during the early nineteenth century. Though a complex story, facts about this “man of colour” can be pieced together from a petition submitted to the Virginia General Assembly in December of 1809, asking that “his right to liberty may be declared by law.” Back around 1798 or 1799, “an old infirm white man” named William Simmons of Stafford County paid Travers Daniel “to purchase a Boy by the name of George Simmons.” The elder Simmons was single, had never married, and had fathered George by a female slave belonging to Enoch Mason. This was a common formula for “white” slave masters who left their mixed offspring freedom along with an inheritance. William Simmons had “expressed a particular desire” to Daniel that his son should be freed upon reaching the age of twenty-one. At first, Mason did not want to sell the young slave, but “he agreed to part with” him after he learned that George would be liberated. This was a complex web of patronage that traversed race and class boundaries, but in addition illustrated mulatto privilege.424

William Simmons seems not to have had the full amount needed to purchase his son outright, yet he realized in his old and infirm age that he had a limited amount of time to act. Travers Daniel carried out Simmons’ request as a friend who had the full purchase money to secure the “mulatto boy” George. After Daniel made the transaction with Enoch Mason, he delivered George to the boy’s father. George and William Simmons lived together for several

422 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1808, Box 3, Folder - Petitions (Emancipation).
423 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1809, Folder - Petitions (Emancipation).
years, during which time the elder Simmons raised his son. However, William Simmons’ health diminished further, prompting him to complete a will where he emancipated George and then bequeathed all of his property to his son. He made his last will and testament on January 30, 1807 and afterwards died. George went back to live with Travers Daniel, where he stayed for almost three years. George worked off the remaining debt still owed to Daniel from his original purchase. By December of 1809, Daniel had been “remunerated for the money advanced or so nearly so” that he willingly set George free.425

Unfortunately for George, one thing stood in the way of his freedom: his father Williams Simmons never signed the will, leaving it legally void. Apparently, the elder Simmons had not been informed that he had to sign the document. The second problem for George was that even if the court granted his freedom, he would be forced to leave the state due to the act of 1806. If he wanted to remain in the state, he would have to do so as a slave. If he wanted to gain his freedom and continue his residency within Virginia, he had to petition the General Assembly for “his right to liberty… and that he may be permitted to remain within his native State.” George took the second option, and in order to establish “the verity of the facts” of his story, he added several documents to state petition. In these papers, George Simmons had the backing of Travers Daniel and his former master, Enoch Mason. He gathered additional testimony from J. T. Ford, who wrote the will of William Simmons, and William Primm, a justice of the peace who had also helped prepare the will. With the backing of these four men, Virginia authorities granted his freedom. George was fortunate to have “white” patronage, which came through his paternal ties to European ancestry. George Simmons experienced a special case of mulatto privilege. He did not appear to have suffered physical abuse under slavery, for he had a benevolent master in Enoch Mason, a supportive guardian in Travers Daniel, and a loving father in William Simmons. At several points in his story, George could have been left in bondage. Mason could have easily refused to sell the young slave. Daniel could have kept George enslaved so as to labor for him after the death of William Simmons, or he could have easily sold the boy for a handsome profit once he gained full ownership. Perhaps most importantly, the elder Simmons never had to acknowledge his son born to a slave woman and never had to pursue creating a way to establish George’s liberty. Instead, William Simmons provided a pathway to freedom for his son and several other “white” men carried out those wishes.426

The lives of George Simmons in Virginia and George Sayrs in North Carolina mirror each other in several important ways. While growing up, both boys had European American master-fathers and “white” patrons who pushed for their freedom. Though neither child received a large estate from their father, each received an inheritance of freedom. This advantage set them ahead of enslaved Mulattoes and Negroes, even if George Simmons had to leave the state after his manumission. Compared to North Carolina, emancipation in Virginia had become much more complicated for slaves in the state, as laws restricting permanent residency of newly freed slaves stymied mulatto privilege. These new laws, plus the growth of cotton, incentivized keeping one enslaved or selling them to the cotton plantations of the Lower South. For some slaves who had been promised their freedom before 1806, it could be difficult for them to not only attain manumission, but also to retain their right to remain in the state.

There is a noticeable shift in Virginia’s emancipation practices in the wake of its policy mandating that freed slaves had to leave the state a year after being manumitted. In the neighboring states of Maryland and North Carolina, local authorities still allowed emancipation

425 LVA, Legislative Petitions, Stafford County, December 15, 1809.
426 LVA, Legislative Petitions, Stafford County, Dec. 15, 1809; Guild, Black Laws of Virginia, 73.
with relative ease. In the Lower South, South Carolina nominally restricted slave emancipation within county courts in 1800, and the next year, Georgia only allowed manumission through legislative petition. These statutes varied not only from state to state, but also repeatedly changed over time. Also, considering the laws on the books only gives a partial picture of how legislation actually operated in society. Lawmakers variously disseminated legal statutes, and even if the common people understood these laws, they often acted independently of them. As in the colonial period, legislation tells us a great deal about elite beliefs and customary understandings. European Americans from middling to upper classes often petitioned their state legislatures concerning people of mixed ancestry. Sometimes this resulted in attempts by their congressmen to enact new state legislation.\(^{427}\)

Even in the Lower South, where intermixture and people of mixed ancestry had been accepted to some degree, citizens pointed out the need to restrict the rights of mixed-heritage people of color. Georgia became the hardline state in the region, forcefully punishing free people of African descent in a legislative act in 1807. Elite citizens in Savannah, Augusta, and other towns complained of the “great injury and inconveniences from the number of free negroes, mulattoes and mustezoes” who settled in their cities. They further lamented the “vicious and loose habits” of these groups and their steadily growing populations. State officials responded with a bill on December 7, 1807, that made “all free negroes, mulattoes or mustezoes” residing in Savannah, Augusta, Washington, Lexington, and Milledgeville “subject to the same police regulations, and restrictions as slaves” under Georgia law. Landlords also had to receive “permission from the city council” before they could “hire or let out any house or tenement to any free negro, mulattoe, or mustezoe within the limits of said cities.” These racially discriminatory city ordinances disproportionately affected people of blended ancestry who made up perhaps three-fourths of the free population.\(^{428}\)

The population of free people of African descent in the Lower South was so high that the term “persons of color” became a regional phrase that could some generally applied to people of mixed ancestry in the more southern slave states. For example, in late 1808, Georgia passed a law that allowed binding out “male free negroes and persons of color… above the age of eights years, to artizans and farmers.” Justices of the peace could only indenture boys who had no legal guardian, and the term would last until twenty-one years of age.\(^{429}\) Authorities complained that “the permitting of free negroes and persons of color to rove about the country in idleness and dissipation, has a dangerous tendency.” Apparently, Georgia officials viewed youth of African descent between the age of eight and twenty-one, at least those left on their own without proper guidance, as a social threat. Here Georgia’s legislature specified that this included both “negroes” and “persons of color,” with the second category referencing people of mixed descent.\(^{430}\)

At other times “persons of color” seems to be used more generally to apply to all people of African or Native American ancestry. This appears irregularly throughout Georgia law, but in 1810 officials mandated that “all free persons of color (native Indians excepted)” moving into the state had to pay $1 to register with the county clerk and an additional $20 tax. Also, “any free negro or person of color” had the option of applying for a guardian to look after their affairs.

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\(^{429}\) Twenty-one was the standard age for most male apprentices.

Guardians had to be “a white person resident of the county in which such application may be made, and in which such free person of color shall reside.” These legislative acts show how the Georgia elite took measures to limit the rights of free people of African descent, mainly by restricting their free movement. These laws also reveal how authorities applied terminology variously for people of African and Native American descent, sometimes using the phrase “person of color” to specify those of mixed heritage and at other times implying a more inclusive definition of all people of African or Indigenous descent.\footnote{Though not all free people of color had to be registered in Georgia at this time, an 1809 act of the state legislature mandated that each county take a census the following year to include “all free white persons and people of color residing therein.” Clayton, A Compilation of the Laws of the State of Georgia, 1800-1810, 530, 655-656.}

Regardless of the various terminology used for people of mixed heritage, it is clear that they largely made up the group known as “free persons of color” in the Lower South. This group became increasingly attacked in the course of the nineteenth century, even in places where they enjoyed a substantial amount of freedom. One case in point comes from South Carolina, when officials proposed legislation in December 1810 aimed at “prohibiting and restricting the admitting of the testimony of persons of Colour.” This proposed bill specifically targeted those defined as “mulattoes, mestizoes or persons of Colour.” The term “negro” went intentionally missing, as legislators crossed it out in the same line. The omission and direct nature of a law that targeted people of mixed descent shows that elites were well aware of variations in ancestry among those of African descent. They also crossed “negro” out a second time in the same document, when establishing that this law would “except such negro mulatto, mestizo, or person of Colour [who] shall be or are the immediate descendant from a free White woman.”\footnote{SCDAH, Legislative Bill, S390008 Item 00003, Dec. 10, 1810.} This exception made clear that courts would distinguish between people of mixed heritage and favor those born directly of “free white” mothers.\footnote{This aligns with partus sequitur ventrem and the inheritance of free or slave status through the womb of the mother.}

This proposed legislation would have largely affected Charleston’s free population of color, for the majority of this population inherited their European ancestry through their forefathers. This regulation failed to pass both houses of South Carolina’s congress, probably because elite authorities sought to protect the largely mixed class of people whose court testimony would have been reduced by the legal measure. Even into the early nineteenth century, South Carolina courts placed relatively few restrictions on free people of color, though petitions by European American citizens regularly attempted to restrict their rights. This lack of legal restriction in South Carolina contrasts how officials treated free persons of mixed descent in other areas during the early 1800s. Most other states limited both slaves and free people of color from testifying in court against those of full European descent, and other restrictions grew in response to fears of their growing populations. Still, free people of color faced others restrictions in South Carolina, and even the wealthier free Mulattoes in Charleston customarily met discrimination despite their middling position between “whites” and free “blacks.”\footnote{Williamson, New People, 17-19; Berlin, Slaves Without Masters, 65-66.}

**1810s Tightening State Manumission**

The greatest tightening of slavery in the first two decades of the nineteenth century occurred in emancipation rights. In places like Virginia, there is a noticeable decrease in freedom and residency granted to those seeking to remain within the state by around 1810. There are several cases where this becomes apparent for mulatto slaves. Sometime around 1809, Wilson Miles Cary and his wife were riding in a carriage in Williamsburg, Virginia, when
something frightened their horses. The couple found themselves in a most dangerous situation when their “mulatto house servant” London risked his own life to rescue and secure the lives of his masters. For these heroic actions, Cary petitioned the state legislature “to emancipate the said slave by an act of [the] assembly.” Though some in the state legislature found Cary’s request reasonable, it does not appear that the bill passed through all the necessary steps to become a law. Somewhere, authorities denied London’s freedom in a case where his master felt “desirous of countenancing rewarding such active exertions.” Unlike neighboring North Carolina, a master who noted a slave’s “meritorious service” in Virginia might only nominally increase the chance of gaining manumission.\[435\]

This was not the first time Virginia courts struck down a slave’s hopes of legal emancipation. In addition, the second problem would have been London’s residence within the state. Cary’s petition gave no mention that his slave would have been required to leave Williamsburg and the state of Virginia after being manumitted. Many slaves who had been recently freed, or whose masters promised them their freedom, but emancipated them after 1806, fell into a legal and social limbo. Their whole lives had been spent in their local communities, where all of their friends, family, and livelihoods had been established. It would have been extremely difficult for them to simply get up and move from the state. For this reason, many free people of color petitioned the General Assembly for permission to remain.

The law had placed Adam Barber of Frederick County, Virginia in such a quandary. He was born a slave under John S. Woodcock and Barber’s master promised him freedom on January 1st, 1811. However, he was told that “he must, within a limited time, Leave Virginia or return to Slavery.” By this time he had a wife and several children residing in the county and lamented that this forced removal “would Deprive Freedom of its greatest pleasure.” Barber’s petition explained: “To Tear asunder the finest & most useful of the social feelings never could be the wish of the Legislature of his Country, [and] to that Country he feels every attachment.” Barber felt Virginia to be his home and he considered himself the equal of any man in feeling connection to his homeland. He questioned why authorities would put him through such emotional distress when he had been such a productive asset to his local community. Therefore, Barber humbly asked the court “that he may be permitted to continue in his native Land as a freeman” and promised that he would “set an example of Honesty, Sobriety, and peaceable deportment” to those around him. Not only did Barber provide his former master’s will that attested to his freedom, but he attached seventy-two signatures to his petition of “respectable citizens of Frederic County,” who attested to his character and asked that he be allowed to remain in the state.\[436\]

That same year, “Mulatto Starke” of Harrison County sent in a petition to the state legislature with a similar request. Formerly the slave of Rachel Belt, Starke had “obtained the respect of his said Mistress” through years of service to his owner. In her last will, Belt freed Starke “by his industry & faithfulness as her slave.” Though Starke’s freedom seems to have already been established, the main goal of his petition was to gain residency within the state. Starke also had a wife named Mille and together they had a son named Henry. Mille was a free woman of color and therefore Henry seems to have been born free. If Mille had been formerly held in bondage, it would not have been unlikely for the enslaved family to first attempt to secure her freedom. Families that teetered on the brink of freedom and slavery understood that any children they had would be slave or free according to the condition of the mother. Mille and

\[435\] LVA, Legislative Petitions, Williamsburg City, Dec. 18, 1809.
\[436\] LVA, Legislative Petitions, Frederick County, Jan. 10, 1811.
Henry “were free prior to the passage of the Law prohibiting certain persons thereafter emancipated from residing within the State.” So while Starke’s wife and son were free, he was not. Arguably, Starke had not gained absolute liberty even after being formally emancipated, for the law mandated that he must leave the state or become enslaved again. Virginia officials still limited his autonomy, which is why he petitioned for his full freedom to remain in the state.\(^{437}\)

As many slaves did in their petitions, Starke tried to establish himself as an asset to the community. He noted his trade as a chair maker, which “renders himself useful to society instead of being obnoxious to the Law or policy of Virginia.” This shows Starke was aware of why authorities passed laws against him and his people. Thirty-eight neighbors signed at the bottom of his petition, saying they were “well acquainted with Mulatto Starke, the above petitioner, & with the facts he sets forth, and being well convinced that he is a honest good man, & useful to society, they beg leave to solicit that his petition may be granted.” Though a slave on the lowest rung of the social hierarchy, Starke’s community still respected him. The “Mulatto” modifier, which serves partly as his name and as an adjective to describe Starke, distinguishes him racially as an outsider. However, people of mixed descent who could access this type of privilege were both insiders and outsiders within their local communities. They had a connection to “whiteness” and sometimes claimed this inheritance, sometimes figuratively and at other times literally. Mulattoes might directly gain material goods after a “white” relative bequeathed them money, goods, or land. Indirectly, they utilized their access to patronage networks to gain work, freedom, or other benefits. Though his “white” neighbors considered Starke “useful to society” because he made and sold furniture in his local community, it was unlikely that they would invite him as an equal to sit down at their tables. Herein lies the racial caste system, for Mulattoes could not be held on the same level as “whites.” In the Upper South, people of mixed heritage could only fully attain “white” privilege through denying their African ancestry and racially passing as “white.”\(^{438}\)

When the state legislature had to decide whether or not to allow “Mulatto Starke” to remain in the state, those in the state assembly appear to have held various beliefs on how to proceed. Starke’s petition made some headway in the General Assembly, as they found the request reasonable in December of 1811. A bill was drawn up shortly thereafter, but at some point authorities halted the process. In order to avoid being re-enslaved for remaining more than a year in the state after being emancipated, Starke moved with Mille and Henry to Pennsylvania in February of 1812. Though they were able to secure a home, this move ended up bringing much hardship. The move created stress within the family and Mille became ill shortly after the move. Being away from family and friends back in Virginia made it even more difficult for the family to establish a new life. It was not easy for an artisan like Starke to simply settle in a new area and establish new connections that would help support his trade. Though he did his best to restore his loving wife to health, his efforts were to no avail. Shortly after arriving in Pennsylvania, Mille’s sickness overwhelmed her and she lost her life. Starke lamented that he was “deprived of her by misfortune in a land of strangers.” At this point, Starke and his son Henry felt alone and even more distanced from their family and friends back in Harrison County. By the fall of 1812, they renewed their efforts to find a way back to Virginia.\(^{439}\)

In his second petition to the state assembly of Virginia, Starke used much stronger language to make his case for state residency, saying he was “strongly solicitous to be permitted

\(^{437}\) LVA, Legislative Petitions, Frederick County, Jan. 10, 1811; LVA, Legislative Petitions, Harrison County, Dec. 4, 1811.

\(^{438}\) LVA, Legislative Petitions, Harrison County, Dec. 4, 1811.

\(^{439}\) LVA, Legislative Petitions, Harrison County, Dec. 4, 1811; LVA, Legislative Petitions, Harrison County, Dec. 2, 1812.
to live among his former acquaintances.” He retold the story from this first petition and spoke of the loss of his dear wife Mille, claiming that he would not have sought to return “if misfortune had not rendered it peculiarly desirable to him to be permitted to reside in the State of Virginia once more.” Starke also more than doubled his backing from the local community in Harrison County. This time he gathered more than a hundred signatures attesting that he was “a sober, decent man & a useful mechanic.” Again, he positioned himself before the court as an asset to the community. This time around, Starke further tried to separate himself from the stereotypes of troublesome Mulattoes whom “whites” often found a nuisance in their communities. First, he was “willing to accept” future banishment if the county of state courts ever found cause for his admonishment. Secondly, at the end of his petition, Starke made a clear distinction between himself as a freeman and slaves. On this point, his petition read: “In the neighborhood where he lived he did not associate with slaves, indeed there were but few near him, & although his color in some degree prevented him from associating much with the farmers around, his conduct greatly diminished the distinction made by nature.” This closing line from Mulatto Starke’s second petition is extremely telling. He positions himself above slaves yet acknowledges that his African ancestry separated him from keeping personal company with those of full European descent. Having both African and European lineage, Starke straddled racial categories. Being a privileged mulatto slave turned freeman, he also found himself caught between social categories. Either Starke or the lawyer preparing his petition understood that the state legislature feared ties connecting free people of mixed heritage to those of African descent still held in slavery. For this reason, Starke attempted to figuratively distance himself from slaves and “blackness.”

Social norms still separated Starke from “whiteness,” even as he benefitted from both mulatto privilege and ties to “white” patronage. These communal ties stemmed back to the earliest stages of his life. Four men signed an additional character petition for Starke, claiming they had known him since “infancy and have had dealings with him to some amount.” These men “always found him to be honest, an industrious, Sober & faithful citizen and a man of the strictest integrity.” Unfortunately, none of these words or signatures mattered. Though Starke remained steadfast and hopeful in his second pleas, this petition did not even make it as far as the first. On December 2, 1812, the Virginia state assembly rejected it outright. Interestingly, numerous slaves were allowed to remain in the state by individual acts of the state legislature in the same year. Though it is not always evident how officials came to decide these types of cases, it appears that over time, slaves and their owners realized that manumission in Virginia came with the additional price of exile. Though emancipation could be granted on the county level, former slaves caught remaining in the state after a twelve-month interim could be arrested and returned to slavery.

It took several years for free people of color, slaves, and their masters to widely realize the change in Virginia’s residency system. Numerous slaves had been promised their freedom prior to the passing of the law in 1806, and several years afterwards there were numerous residency petitions turning up at the state capitol in Richmond. Along with Mulatto Starke’s 1812 petition came pleas on the behalf of other slaves of mixed ancestry to remain in the state after emancipation. Though their individual stories varied, they all shared a request for full freedom, which included the right to live out their days in their native homeland. In December, the 58 year old freeman Daniel Webster of Prince William’s County submitted his petition. Though he was free, during his earlier years as a slave he had “connected himself with a Mulatto

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440 LVA, Legislative Petitions, Harrison County, Dec. 2, 1812.
441 LVA, Legislative Petitions, Harrison County, Dec. 2, 1812.
Woman” named Lucy, with whom he had several children. Webster “fearing the consequences of dying,” knew that the wife he owned would remain a slave for life if he did not make proper legal arrangements to ensure her safety. Certainly, Lucy and her husband were trying to appeal to the court’s moral sensibilities, yet their petition had to present a logical argument in order to be effective. Webster’s petition reveals solid reasoning for wanting to remain in the state and is worth examining at some length. Part of the petition reads:

That where they [Lucy and Daniel Webster] are known and have made some patrons they are able to live in comfort, but to be turned out into another and strange State, where they are unknown, at their time of life, would be to cloud their last days with misery and want and perhaps to throw them in their old age upon the charity of the world.

Here, Webster and his wife clearly identify that over a lifetime they had built up strong patronage networks that they found invaluable. They had reached a middling class, being able to life comfortably on their own with the help of their “white” patrons. These patrons attested to the couple’s good character and the fact that they would not become a burden or nuisance to the local community. For all free people of color seeking to remain in the state after emancipation, it was absolutely critical to have “white” allies. For any elderly person of color, it would have been extremely hard at that point in their lives to move to a different area and create new patronage ties. It took years to establish and build up the trust required to cement these friendships. As the Websters attempted to show the state legislatures, it would have been nearly impossible to replicate these types of relationships.442

While the Websters alluded to their economic needs being taken care of, their old age would have raised concerns among state legislators. State officials were commonly concerned with indigent slaves being freed, who might become involved in crime or otherwise become an economic burden to the state. Basically, they wanted to prevent slaves being manumitted who could not provide for themselves and might become a nuisance within their communities. In Webster’s petition, the couple positioned themselves as being able to remain independent if allowed to remain in Prince William’s County. They explained that it would be more difficult for them to remove from the state and set themselves up somewhere else in their old age. Under this scenario they would be more likely to become dependent “upon the charity of the world.” Daniel Webster asked the assembly to consider “the peculiar circumstances of the case” so that they could “relax the rigor of the law and permit his wife after her liberation to remain in her native country.” This convincing argument appears to have worked, as a bill was drawn for them to remain in the state.443

A similar petition during the same session of Virginia’s state assembly came from a free woman of color named Elly, who petitioned on behalf of her husband of many years Nelson. William B. Giles, described in the petition as “a white person,” was both Nelson’s master and father. Though Giles attempted to finance his son’s manumission, Nelson surprisingly refused “to accept his freedom.” Nelson rejected his emancipation because he and his family were well aware that upon receiving his liberty he would legally be forced into exile. His affection for his wife and children would not allow him to leave the state without them, which meant that if he left the state he would have to take them with him. This is the same situation that Mulatto Starke faced. Instead of leaving the state with his family, Nelson rejected either option and chose to remain in bondage over risking separation from his loved ones or choosing exile. Giles decided

442 LVA, Legislative Petitions, Prince William County, Dec. 11, 1812.
443 LVA, Legislative Petitions, Prince William County, Dec. 11, 1812.
to turn legal ownership of his son Nelson over to Elly. This prompted the loving wife to turn to the state assembly for assistance. Elly explained her actions, saying that she was “under influence of the feelings natural to a wife” and that she had “the utmost unwillingness to hold her husband in servitude.” She fully understood that upon her death, her husband “would be liable to… be again sold” to repay debts or be owned by his own children. Elly was “willing and anxious” to prevent this from taking place, which is why she sought to have Virginia’s General Assembly allow her to free her husband and then permit him “to reside as a free person in the commonwealth.” Elly maintained that Nelson’s “honesty and orderly department affords security that no injurious consequence” would result from granting this request. Dozens of signatures from townspeople also accompanied her petition, attesting to Nelson’s exceptionable character. Like several other requests during these years, authorities found Elly’s request reasonable and a bill was drawn for Nelson both to be freed and allowed to remain in the state.444

It is perhaps no coincidence that in late 1812 Virginia’s General Assembly found several petitions by people of mixed heritage to be reasonable and granted them permission to remain in the state.445 Officials could have been trying to appease disgruntled people of color who might aid foreign enemies, as the U.S. War of 1812 recently began that summer. The second war with Britain heightened slaveholders’ concerns of slave defections, similar to what took place during the Revolutionary War. Residents in South Carolina also understood their massive populations of African descent posed a threat during war times. In the opening months of the war, state officials sent militia from the interior of the state to Charleston, not simply for defense against British attack, but in order to ward off possible slave rebellion. Some residents feared the British might again impel slaves to fight against their U.S. masters in exchange for their liberty, which took place informally throughout the conflict.446 Meanwhile farther south, Spaniards, Africans, and Native Americans, along with people of mixed heritage from these groups, staged attacks on Georgia out of East Florida. These attacks further encouraged slaves to runaway into the Spanish territory.447

During the War of 1812, several thousand U.S. slaves absconded from their masters, largely in the Upper South. In the Chesapeake, European Americans feared having to mobilize for military duty away from home because it left a dearth of armed men to protect against the possible threat of slave rebellion.448 These anxieties seem to have aided Mulattoes seeking the benefit of residency during this period, as Virginia’s General Assembly appears to have approved a higher number of residency requests among “free people of color” from 1812 to 1814. During this time of war, Virginia authorities may have wanted to placate free people of color to ensure their loyalty during the war, as Louisiana officials had done when they mustered two battalions of “Chosen Free Men of Color.” The men went on to fight with distinction in the Battle of New Orleans under Andrew Jackson. While the elite never extended mulatto privilege this far in the Upper South, even Virginia gave a reprieve on its residency statute to several deserving “persons of color.”449

444 LVA, Legislative Petitions, Miscellaneous, Dec. 14, 1812.
449 Guild, Black Laws of Virginia, 97-99.
While mulatto privilege gave those of mixed African and European ancestry greater access to the courts after the War of 1812, state legislators did not necessarily give much preference to petitions from slaves of mixed ancestry solely based on them having European ancestry. People of mixed descent had little chance of having their petitions granted without “white” patronage connections, and even then government authorities rejected many of these legal requests, especially in states like Virginia. In December of 1815, Frederick Harris of Louisa County, Virginia, petitioned the General Assembly to remain in the state after he had drawn up a deed of emancipation for the “Mulatto Man” slave Billy Eve. Billy was known by his mother’s first name, Eve, or called “Billy’s Eve,” and Robert Harris had owned the two slaves. In the late eighteenth-century, Robert Harris planned to free Billy, but died suddenly in the late 1790s before being able to complete the legal manumission. At this point, Billy’s ownership fell to Robert Harris’ widow, whom he served diligently as a slave for more than ten years. Like her husband, Mrs. Harris never came through on the promise of freedom and Billy remained enslaved after her death. In January of 1812, Frederick or Fred Harris purchased Billy at the estate sale of Mrs. Harris. This slave of mixed ancestry fully realized that he had missed gaining his liberty under his previous owners and intended to soon be a free man. At this point Billy had already saved up around $200 to purchase his emancipation papers, which he gave to his new owner Fred Harris as a down payment on his freedom. After this transaction, both master and slave agreed that Billy would only need to pay off a remaining $190 balance and he would then be manumitted for the price of $390. Still, the problem remained that he would not be able to remain in the state according to Virginia’s residency laws for freed slaves.450

Over the next few years, Billy Eve served Fred Harris “as a superintendent or overseer for a small farm.” It was not unusual for certain chosen slaves, many of whom were of mixed descent, to be put in charge of running their master’s plantations. Billy skillfully oversaw “the management of one of the plantations of Fred Harris” with particular care and to Harris’ satisfaction. Billy excelled at his work and became independently successful as well. He made his own money and put away at least $50 a year to pay off the amount he owed Harris. The slave also formed relationships with those around him, earning “the esteem and respect” of his neighbors. The citizens of Louisa County believed Billy was “a very honest, orderly, & well disposed man.” David Bullock attested that Billy was “a Very respectable Man for one of his colour.” Though he was a slave of mixed descent who also shared the heritage of his European American neighbors, they perceived him racially as being of the “coloured” race. A common stereotype of the day was that both Negroes and Mulattoes were untrustworthy. From his neighbor’s viewpoint, Billy was an exceptional Mulatto, and they felt “his character ought to entitle him to residence in the state, if emancipated.” However, these character endorsements were still not enough to convince the state legislature to look past legal statutes. On December 21451, 1815, Virginia’s General Assembly tabled his petitioned. Though he had worked hard over the previous three years to pay off his master to gain his liberty, the state refused Billy residence upon emancipation.451

Even though Billy paid for his freedom, it is not clear if he went on to take the name of his mother as his surname. The identity of his father also remains a mystery, though it may have been Robert Harris. Even if Billy’s father had claimed his son and petitioned the state on his behalf, it would have been difficult for the former slave to gain residency in Virginia. Master-fathers who claimed their slave children, usually did so in a will and sometimes left property to

450 LVA, Legislative Petitions, Louisa County, Dec. 21, 1815.
451 LVA, Legislative Petitions, Louisa County, Dec. 21, 1815.
the child as well. Though these European American men were most often single and had no other legal heirs, this did not mean that the land and property easily transferred to children of mixed descent. In 1813, William Kendall of King George County admitted to the Virginia state assembly that he had had a sexual relationship with one of his slaves. The result of the affair left him “the owner of a mulatto boy” who was also his son. “Like other frail men,” Kendall admitted, “he has fallen into a vice, that humanity and nature, added to moral principles, dictates the only alternative now left [is] this zealous and devout application.” Kendall appeared to be going through a moral crisis, though this supplication could have been for show to encourage mercy from state officials.452

Kendall further explained that he was “impelled with blushes and confusion, to own and acknowledge the cause” of his petition. Unlike other cases of master-fathers, Kendall openly “acknowledges himself to be the father” of the mulatto child and requested Virginia’s General Assembly “to pass a law emancipating said boy by the name of William Thornton Alexander.” Again, Kendall could have freed his son more locally in King George County, yet he sought more than manumission. He also asked for a law permitting the “mulatto boy” to remain in the state after his freedom. William Thornton Alexander had been born March 18, 1805, a year before Virginia elites put the exile law into place. One thing becomes clear after the passage of this act: most slave emancipation now had to pass through the state legislature by de jure. Any slave freed at the county level would have to leave the state. In this way Virginia did not need to pass additional legislation prohibiting slave emancipation. Virginian slave owners with an excess of slaves might be economically encouraged to liquidate their enslaved population by selling them in the Lower South, yet even slaves freed by benevolent masters legally had to migrate out of the state.453

Surely, the vast number of slave owners who fathered children by their female slaves cared little about what came of their children. Many maintained an emotional distance that might have pushed them to take responsibility for their mixed offspring. Others sold their children to put them out of sight and reduce drama that might be caused within their legitimate families. William Kendall could not ease the tension in his heart and mind. Like many master-fathers, he had shown favoritism towards his son, but he also took the extra step to seek manumission for him as well. Kendall explained that he felt a great concern for his son’s “future welfare and liberty,” stating that “it is with great uneasiness and concern that he looks forward to the possibility of his [son] being a slave to any person.” He was also “in bad health” and sought to act quickly to obtain his son’s freedom in case he died. Kendall knew that it was a risky venture to seek his enslaved son’s freedom post-mortem through the use of a will or other legal decree. This would have almost certainly reduced the young boy’s chance to secure freedom. Kendall was an exceptional master-father, asking the state that he be made legal guardian until his son reached twenty-one years old. If the court denied Alexander the freedom to remain in the state, Kendall at least wanted emancipation to be granted. Even though the young Alexander had mulatto privilege through his father, the court still decided against the case.454

Virginia’s state legislature may have decided against the case for a number of reasons. Certainly, William Kendall had acted outside accepted social mores. Even if his behavior was normal for slave masters, it was not always acceptable to openly speak of one’s sexual indiscretions, especially in the Upper South. Secondly, a “white” master who openly accepted a

452 Jones, Fathers of Conscience, xii, 7, 10; LVA, Legislative Petitions, King George County, Dec. 15, 1813.
453 LVA, Legislative Petitions, King George County, Dec. 15, 1813.
454 LVA, Legislative Petitions, King George County, Dec. 15, 1813.
mulatto child as his own both opposed the slave system and weakened the racial order. A similar freedom petition in North Carolina’s General Assembly also failed to pass in the same year. In November of 1813, Thomas Johnson asked the assembly to emancipate Clara, “a Mulatto slave” who was about two years old at the time. Thomas sought to give Clara his surname, possibly pointing to some familial connection. The state senate read and referred the petition to the house “Committee of Emancipation.” The house committee read and rejected the request on December 2, 1813. Perhaps if Johnson had sought Clara’s manumission a decade prior or had done so at the county level his request may have been accepted. Also, the state of North Carolina favored freedom petitions when “meritorious service” could be shown, a more difficult task to prove for a child when seeking freedom.455

People were at a disadvantage when they petitioned the state assembly without understanding the law or the best method to attain a slave’s freedom. This becomes clear through Thomas Johnson’s second petition to free Clara through the state assembly of North Carolina a few years later. In 1816, Johnson also attached Clara’s younger six-month old brother William to the petition, along with the children’s mother Mace, “a certain Mulatto girl… aged about twenty years.” Johnson explained “that he most sincerely thinks & judges it his indisputable duty to EMANCIPATE” the slave family, and added that he wanted all of them to be granted the surname Johnson. This could suggest that Mace, Clara, and William were somehow related to his own. He may have fathered Mace’s children, though no direct evidence supports this speculation, for Johnson gives no detail as to why he so adamantly felt obligated to free the mother and her children. He does go on to say in this petition that he was informed that the only way he could emancipate these slaves was through the “Honorable Body” of the state General Assembly. Johnson and his advisors misunderstood or were ignorant of North Carolina law, for masters regularly freed slaves in neighboring counties during this time. Furthermore, it was far easier to obtain manumission approval at the county level. Johnson’s second petition was “postponed indefinitely” by the state legislature. Though mulatto privilege helped this family bring their case to court via “white” patronage, it did not help secure their freedom.456

Those who knew how to work around the laws still found ways to emancipate their slaves despite tightening legal codes. Though South Carolina restricted owners who sought to legally emancipate their slaves by individual deed in the early part of the century, masters were still able to free their slaves at the county level with the assistance of their peers. They might also go through the state legislature. In 1816, Serenus Mayer petitioned the state assembly to allow him to free several slaves of mixed ancestry through his last will and testament. On December 19, South Carolina’s General Assembly agreed that he had shown “good reasons why he should be permitted to emancipate from slavery… a mulatto wench slave named Beck, and her children, named Molsy, Maryan, Abram and Sylvia.” Though it is not apparent that he had a familial connection to these slaves, it was likely. Again, in South Carolina, legislation never made these practices explicitly illegal for European American men, though elite society looked down upon the practice, especially further into the antebellum period. Most emancipation occurred locally, but if Mayer’s community looked down upon a possible intimate relationship with his mulatto slave Beck, they might have been unwilling to aid their neighbor in his efforts to free the woman and her children. Mayer most likely went to the state legislature as a last resort, as it was more difficult at this time to manumit slaves at the state level.457

455 NCOAH, General Assembly, Session Records, November - December 1813, Box 3, Folder - Petitions (Emancipation).
456 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1816, Petitions (Emancipation).
457 David J. McCord, ed., The Statutes at Large of South Carolina, Vol. VI: Containing the Acts from 1814, Exclusive, to 1838,
1810s Liberal Local Manumission

Slave manumission continued with regularity in county courts in North Carolina through the first two decades of the nineteenth century. While a number of slaves accessed freedom, those of mixed heritage gained emancipation at a disproportionately higher rate. In March of 1817, the Craven County court granted freedom to “a mulatto girl slave named Alice.” Her owner, David Moore, simply states in his petition that in return for Alice’s “meritorious services he desires to reward [her] by emancipation.” Though Moore noted that Alice was “honest & industrious,” no further details of her case and no extra signatories affirming her character were given. The following year, the same court granted freedom to “a mulatto man slave named John Green.” His owner, Richard D. Spaight, claimed that Green had “both conducted himself morally and with sobriety.” Spaight further stated that “John has conducted himself generally and towards your petitioner meritoriously.” This “meritorious conduct” gave Spaight the desire to emancipate Green. In August of 1818, John Hogg of Wilmington, North Carolina, sought to free “a mulatto man Slave” named Frank for similar reasons. Frank was primarily employed as a carpenter, a common occupation among skilled slaves. Hogg described Frank as “an honest, industrious, sober and well disposed man… [who] had performed for him sundry highly meritorious services.” Freedom petitions such as these were commonplace on the local county level in North Carolina and other areas, and courts continued to pass them at relatively high rates.\(^{458}\)

In the early nineteenth-century Upper South, North Carolina and Maryland had some of the most liberal slave laws. The slave population of both North Carolina and Maryland combined never reached the enormous numbers in Virginia. So while fears of slave rebellion abounded everywhere, Virginia planters may have experienced the worst anxieties of slave revolt in the Upper South. These fears were fueled by the Haitian Revolution from 1791 to 1804, Gabriel’s planned rebellion in 1800, and numerous slave conspiracies that followed in the early 1800s. Many Mulattoes in the Upper South might be assumed to be free, but in Virginia they were also presumed to be a threat to society. Due to these factors, mulatto privilege remained strongest in places like North Carolina and Maryland.\(^{459}\)

The legislature and courts in Maryland routinely decided in favor of slave emancipation, as confirmed by U.S. census data. Especially revealing are cases like that of Henny Hemsley, a woman of mixed ancestry held in bondage along with her children: Susan, Julian, and Priscilla. Henny Hemsley began her freedom suit sometime around the spring of 1815 and the case came before the court at Centre Ville, in Queen Ann’s County, Maryland on May 6, 1816. Hemsley presented to the court that she and her children were “entitled to their Freedom” from their current master George Walls, a resident of Kentucky. While officials collected testimony and processed the case, the court ordered Walls not to remove Hemsley or her children outside the state, and also instructed Walls not to “obstruct them from attending Court from time to time in Support of their Petition for freedom.” The court protected the slaves even further by mandating that Walls was “in the mean time to feed, cloath, and r[a]ise the said Petitioners well.” Furthermore, Walls had to post a $2,000 bond for the slaves, which would be forfeited if he took

\(^{458}\) Inclusive (Columbia, 1839), 40-41. 
\(^{459}\) Berlin, Slaves Without Masters, 83, 396-397.
the slaves outside the state. Walls denied Hemsley’s claim, that she and her children were “descended in the female line from a free woman named Susan,” who also went by Suck. In May of 1816, the court assembled a jury to hear the Hemsley case. Gremberry Griffin testified on behalf of the prosecution and stated that sometime before the battle of Yorktown during the Revolutionary War, he had gone up the James River in a boat captained by James Sweat. He served in “the Baltimore Gally” during the war and Griffin again road with Sweat down the York River after the British surrender at Yorktown. They stayed in Yorktown for two weeks and then left for Gosport, near Norfolk, Virginia. This is where Griffin encountered “Negro Suck,” the mother of Henny Hemsley. Suck was “selling cakes and beer” and travelled freely to other ports, where Griffin had seen her again engaged in business as a free woman “without controul” or without a master.\textsuperscript{460}

While docked at Yorktown, Griffin witnessed Suck being attacked by five men who grabbed the woman around “9 O’clock at night.” These men brought her aboard Sweat’s ship and sold the woman. Another “black woman was brought on board Captain Sweat’s vessel” as well, but she was released due to “her Cries and screams.” The ship left the next day with Suck on board, but it is not clear whether she remained on the ship of her own accord. During his court testimony, Griffin said that “Sweat had informed the said Negro Suck that he would make her his Wife.” It seems that Suck confided in Griffin while traveling from Virginia to Maryland. Suck explained “that she was Sorry she had come away, as she was free in Virginia and had a White Husband there.” Another witness, John Denny, also testified that he heard a conversation between “Negro Suck” and his mother, where the supposed slave “stated herself to have been free in Virginia.” Denny affirmed that it was reputed in the neighborhood, “Suck was a free woman.”\textsuperscript{461}

Captain Sweat later sold Suck to John Gibson. The record never states who fathered Henny, though it could have been Sweat or Gibson. It is also unclear whether George Walls purchased or inherited Henny. What is apparent is that after hearing the evidence, the jury decided that the Hemsleys “were free and of free condition.” Walls’ attorney appealed the case because the verdict went against the direction of the judge. The defendant simply did not feel there was not enough evidence “to prove that Negro Suck… was a free woman in Virginia.” The court disagreed, upheld the verdict, and ordered that “Henny Hemsley, Susan, Hemsley, Julian Hemsley, and Priscilla Hemsley… recover their freedom of and against the said George Walls and that they be free and discharged.” They were also awarded $24.51 twenty-four “and two thirds of a cent” for court fees. Though George Walls appealed the case, the court upheld it in June 1817, and the Hemsley’s succeeded in securing and maintaining their liberty. This was a hard fought case that extended over many years and three generations of slaves. Mulatto privilege may have operated in getting Henny Hemsley patrons who would take her case to court on her behalf, but in this case her European American father proved to be of no use to her. Instead, her free African maternal ancestry sustained her family’s freedom case. With a relative lack of dependence on slave labor, Maryland would be exceptional in increasing manumission over the antebellum period. Most other slave states would move even further to prohibit emancipation, as they were more heavily connected to cotton production and the domestic slave trade. By the 1820s, several other slave states moved increasingly to reject freedom petitions as

\textsuperscript{460} MSA, U.S. Federal Census 1790-1860; Court of Appeals (Judgment, Eastern Shore), No. 21, George Walls vs. Henny Hemsley and children, June 1817, SC 4239-1-7, 01/63/09/18.
\textsuperscript{461} MSA, Court of Appeals (Judgment, Eastern Shore), No. 21, George Walls vs. Henny Hemsley and children, June 1817, SC 4239-1-7, 01/63/09/18.
they equally restricted the rights of free people of African descent. This would have dramatic effects on people of mixed heritage, both enslaved and free.\footnote{NCOAH, Craven County Records, Miscellaneous Records, Slaves and Free Negroes, 177-1861, Folder - Criminal Actions concerning slaves and free persons of color, 1820-1822.}
In December of 1818, Samuel Keiningham of New Kent County, Virginia, sought to set free “a certain female Slave, named Laury” and further asked the General Assembly to “pass a Law authorizing the said Laury to enjoy her freedom within the limits of this state.” Before his death, Thomas Moody had appointed Keiningham as executor of his last will and testament, and gave these orders under his signature on January 4, 1812. At the time, Moody knew Virginia’s laws mandated that newly emancipated slaves had to leave the state within a year. This is why he left instructions for Keiningham to free the fifteen year old Laury only when she turned twenty-one. Until then, a guardian could protect his young slave and look out for her well-being. Laury’s guardians could also teach her “to weave and sew,” a trade that would prove valuable for this young woman of mixed African and European lineage. Moody hoped that when Laury became of age the General Assembly would “be so good as to set her free.” He admitted that he had “purchased her for that purpose.” Moody continued in his will that if “Laury cannot be free, that she may be hired, and her posterity, to whom they shall choose.” He wanted Laury and her heirs to be able to select their future masters to “their own benefit.” These instructions were foremost on Moody’s mind, for they came at the beginning of his will. After these instructions, he directed that his estate be left to his wife, Elizabeth. Though Moody’s will does not openly acknowledge his concern for the slave, Keiningham disclosed the answer in his petition, writing that “the strongest of all human ties” urged Moody to first purchase and then set up arrangements to free Laury. Keiningham attempted to carry out these wishes, and finished his plea to Virginia’s General Assembly saying that to leave Laury enslaved “would in his humble judgement produce a greater evil to society” than allowing her to go free and remain in the state. The “Courts of Justice” in state congress agreed and drew up a bill approving the petition. However, on January 8th, 1819 the state senate rejected the petition and refused to pass the act. By law, Laury could be free, but she would have to leave the state.463

Laury occupied a precarious space between slavery and freedom that mirrored her racial status in-between “black” and “white.” Had she been a legitimate child of full European descent she would have been free. If she had been of full African lineage, she would have been enslaved for life. Laury’s story exemplifies how mulatto privilege operated variously on an individual basis, yet also reflects institutional changes taking pace in the antebellum South at the time. In the late eighteenth century into the first decades of the nineteenth century, the southern planter elite worked hard to reorganize slavery into a system that maintained a growing slave population. The rapid expansion of “King Cotton” and the domestic slave trade from the Upper South to the Lower South strongly limited possibilities for emancipation in four out of the five largest slave states on the Atlantic coast: Virginia, North Carolina, South Carolina, and Georgia. Legislation that limited the emancipation of slaves increasingly coincided with restricting the rights of free people of color. In order to maintain the southern racial order, southern states pushed all free people of African descent towards a type of pseudo-slavery.464 Though these changes varied in intensity in different states over time, by the 1820s it became clear that law passed by southern elites to tighten the southern slave system also constricted the liberties of free people of color, which increasingly pressed free Mulattoes towards being considered more like fully “black”

463 LVA, Legislative Petitions, New Kent County, Dec. 18, 1818.
slaves.\textsuperscript{465}

The loss of mulatto privilege is most clear-cut and revealing in the official policies of the southeast Atlantic coastal region regarding slave manumission, residency for newly freed slaves, and prohibition of free people of color from migrating into certain states. While these states shared commonalities in terms of maintaining the plantation system into the nineteenth century, authorities in each state created a complex set of laws surrounding the slave system that shifted over time. Social practices varied significantly throughout the South, showing that it was not a homogenous region. Still, legal practices towards people of African descent in Virginia, North Carolina, South Carolina, Georgia, as well as most of the other emerging slave states became more uniform over time. One large exception is Maryland, where a steady flow of liberal emancipation followed the revolutionary era through the antebellum period. Still, Maryland, along with all the other southeastern coastal states, continued to move towards greater restriction of the rights and mobility of their free people of color, though each created policies unevenly and policed manumission to various degrees. For these reasons, there is no specific point at which slave emancipation became more difficult across all states.\textsuperscript{466}

Most slave states increasingly denied manumission over time, first at the state level, then at the local level. To be sure, there were ebbs and flows over time in the measure of slave emancipation and the depth of the persecution of free people of color. For instance, slave emancipation generally escalated during wartime, while officials expanded restrictions on slaves and free people of color in the wake of slave conspiracies. By 1820, officials in Virginia, South Carolina, and Georgia had all moved heavily to limit freedoms for those of African descent, while local courts in Maryland and North Carolina still allowed the liberal emancipation of slaves and greater privileges to free people of color. In the 1820s, even North Carolina followed with types of restrictions, which limited the legal privileges of many free Mulattoes who made up a large percentage of free people of color. By 1830, all Atlantic slave states outside of Maryland had constrained slave emancipation policies and outlawed the migration of free people of color into their respective states.

As in the colonial period, Virginia set the trend in many of these policies, and although its emancipation laws remained relatively lax, after 1793 it prohibited free people of color from other states from entering the state, and in 1806 it became the first state to mandate that freed slaves must leave the state.\textsuperscript{467} In the first few decades of the nineteenth century, other slave states reacted to the residency laws passed by Virginia. Slaves freed in Virginia began to move to other states as Virginia attempted to pass its perceived problem of a growing population of African descent onto other states. By the late 1810s and into the 1820s, Georgia, South Carolina, and North Carolina all directly responded to these Virginia laws and moved to further restrict people of African ancestry from entering their respective states. Notably, these restrictions affected people of blended heritage who had been able to maintain a modicum of freedom within many southern states. Thus, as authorities increasingly put in place legislation that frustrated all people of color, free Mulattoes were also largely affected, as they made up a disproportionately

\textsuperscript{465} Though census records are unavailable, people of mixed heritage comprised a significant portion of southern free people of color in the early nineteenth century.

\textsuperscript{466} Berlin, \textit{Slaves without Masters}, 92-95.

\textsuperscript{467} Samuel Pleasants, Jr., ed., \textit{A Collection of All Such Acts of the General Assembly of Virginia, of a Public and Permanent Nature, as Are Now in Force} (Richmond: Samuel Pleasants, Jr. and Henry Pace, 1803), 315-316; Samuel Shepard, ed., \textit{The Statutes at Large of Virginia, from October Session 1792, to December Session 1806, Inclusive} (Richmond: Samuel Shepard, 1836), 251-253.
high percentage of this group. These laws essentially became an attack on mulatto privilege.\textsuperscript{468}

Perceptions of Mulattoes still varied in the upper echelons of society and on the ground in everyday interactions on local levels. As previously shown, there was often a gap between legal statutes and common social practice, as not everyone upheld laws concerning slaves and free people of color. That gap shrank at various points as the century progressed, but it especially decreased from the late 1810s through the 1820s, as elite southerners became more attached to their “peculiar institution.” Though mulatto privilege continued through the antebellum period, even powerful “white” patrons often had trouble subverting laws that cut off paths to freedom and residency for people of African descent. Social practice, while extremely varied, also began to consider free Mulattoes more as fully African Negro slaves.\textsuperscript{469} This shift reflects strengthening hypodescent ideology, as society increasingly associated people of mixed heritage with their African ancestry, which had been made subordinate within the existing racial order. While not universal, at least some influential “whites” articulate early forms of the one-drop rule in the 1820s. Throughout the decade, mulatto privilege continued to dwindle, and by 1830 southern legislation effectively cut much of the legal advantages previously enjoyed by free people of mixed descent.

**Legally Steeling the Cotton Regime in the Lower South**

Though cotton had already become integral to the U.S. economy by the early 1800s, trade embargos and the War of 1812 stunted U.S. exports through 1814. Once authorities reopened trade with Europe and made peace with Britain, cotton exports again soared, making the crop the most valuable U.S. export from 1815 to 1860.\textsuperscript{470} The growing plantation economy influenced both state and national legislation concerning slavery in the late 1810s and early 1820s. These laws affected not only slaves, but also free people of color, and to a large extent, free Mulattoes. While mulatto privilege still operated on local levels in places like Georgia, by the late 1810s free people of mixed heritage had increasingly restricted legal rights. Georgia had already outlawed local manumissions since 1801, and additional laws constrained free people of African descent residing in major cities to living by codes similar to if they had been slaves. In 1818, Georgia officials cited the need to protect other “free citizens of this state, and the exercise of humanity towards the slave population within the same.” The state legislature claimed that “the principles of sound policy… imperiously require that the number of free persons of colour within this state should not be increased by manumission, or by the admission of such persons from other states to reside therein.” Behind Virginia, Georgia became the second state on the Atlantic Coast to ban free people of color from moving into their state. Violators could be fined $100 and could be sold into slavery if they failed to pay the fine. Another section of the act prohibited any “free person of colour” from being able “to purchase or acquire any real estate or any slave or slaves.” Though the General Assembly eased the real estate and re-enslavement clauses the next year, these laws clearly sought to place free people of African on a level below the average citizen of European descent. These laws also targeted free Mulattoes who made up the majority of free people of color in Georgia. Legislators understood that these laws would largely affect

\textsuperscript{468} Berlin, *Slaves without Masters*, 92-93.

\textsuperscript{469} Again, the word Negro was commonly used during slavery as an umbrella term for all those of African descent. I am using Negro here to describe those of full African descent as differentiated from Mulattoes who were identified as being of partial African ancestry. This distinction was also sometimes made during the time as well. Please see the end of the Introduction for a more thorough discussion on the use of racial language.

\textsuperscript{470} U.S. production of cotton stood at around 1.5 million pounds in 1790, 35 million pounds in 1800, 85 million pounds in 1810, 160 million pounds in 1820, and over 331 million pound in 1830.
those of mixed heritage and their actions show they did not consider Mulattoes much differently from Negroes, defined as those of full African ancestry.\footnote{Lucius Q. C. Lamar, ed., \textit{A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1810, to the Year 1819, Inclusive.} (Augusta: T. S. Hannon, 1821), 811-812, 820-821.}

Even after Georgia’s General Assembly limited slave manumission to a special act of the state legislature, masters still attempted to manumit their slaves by other methods. Master-fathers sought to emancipate slave women and their mixed-heritage children in their wills at the local level. State officials curbed this practice by prohibiting any official from recording written wills or deeds that included the emancipation of slaves. The planter elite were aware of the practice of freeing slaves locally, even aware of the practice in other slave states, and instituted the ban in order to prevent fellow planters from circumventing state emancipation law. This caused problems for county clerks who could not record wills of planters who attempted to free their slaves. Wills left unrecorded caused legal turmoil, as county officials could not properly settle the estates of those who sought to free their slaves. Eventually, this problem forced the Georgia assembly to overturn part of the legislation that fined clerks who documented these records. Master-fathers might still attempt to free their children, and the county would file their wills, though the state would still not legitimate these manumissions outside approval from the state legislature. In this manner, the state government cut off paths to freedom for the enslaved and significantly limited mulatto privilege, for people of mixed ancestry were freed at higher rates than slaves of full African descent.\footnote{This was officially overturned in 1815, but restated in 1818. Lucius Q. C. Lamar, ed., \textit{A Compilation of the Laws of the State of Georgia, 1810-1819}, 800.}

Georgia authorities complained about masters who allowed some “who are slaves by the laws of this state” to go about freely with “the full exercise and enjoyment of all the rights and privileges of free persons of colour.” Therefore, Georgia’s 1818 statutes strengthened previous prohibitions against manumission by issuing a $1,000 fine punishing those who tried to aid manumitting slaves or attempted to illegally free their slaves. This penalty applied to those who might let a slave go at large as a free person, or masters who allowed their slaves a type of pseudo-freedom by granting their slaves the right to hire out his or her own time. This statute discloses how masters and their slaves subverted strict manumission laws. These practices took place not only in Georgia, but in other slave states as well. When masters attempted to free their slaves legally and the law denied them this right, they found other ways to informally let their slaves enjoy freedom. According to state officials in Georgia, these slaves were “a class of people, equally dangerous to the safety of free citizens of this state, and destructive of the comfort and happiness of the slave population, which it is the duty of this legislature, by all just and lawful means, to suppress.”\footnote{Lamar, \textit{A Compilation of the Laws of the State of Georgia, 1810-1819}, 811-816.}

Free people of color threatened the system of slavery by providing slaves with an example of what it might mean for them to be free. In free people of color, the slave saw the dream of liberty made a reality. This helps explain why the planter class fought so hard to erase this image and these people from their communities. Free people of color threatened the absolute power of the master.\footnote{North Carolina Justice Thomas Ruffin stated in an 1829 case: “The power of the master must be made absolute to render the submission of the slave perfect.” J. G. de Roulhac Hamilton, ed., \textit{The Papers of Thomas Ruffin, Vol. IV} (Raleigh: Edwards & Broughton Printing Co., 1920); Eugene D. Genovese, \textit{Roll, Jordan, Roll: The World The Slaves Made} (New York: Pantheon Books, 1974), 35.} Restrictive manumission laws attempted to prevent masters who might extend freedom to those they held in bondage and add to the free population of color. Mulatto slave children in particular threatened the institution of slavery because master-fathers
were more likely to free their enslaved children of mixed heritage. The individual act of emancipating a child could put a crack in maintaining the slave system that could break open into a larger fissure if others joined in the similar action of emancipation mulatto slaves. Southern lawmakers essentially sought to close a “mulatto escape hatch” to prevent mixed-heritage slaves from climbing out of slavery into freedom.475

In 1818, Georgia authorities pushed county clerks to record another document carefully: a list or registry with “all and every free person or persons of colour residing or being within the state.” Following Virginia law, county clerks had to record the name, age, occupation, birthplace, current residence, and how the person entered the state.476 Those who registered paid a small fifty-cent fee and received a certificate that they had been entered into the county registry. Those found without a certificate would “be deemed, held and taken to be slaves.” They would be publicly sold with half the proceeds going to the county and the other half going to the informer of the violation. Counties began recording free people of color in their local registry the following year in 1819. In Camden County, one registry contains hundreds of names from a period of just over twenty years. More than half of those listed are described as “mulatto” and many came from other states and the Caribbean, but most came from East Florida, which bordered Camden to the South.477 Most of the residents lived in the town of St. Mary’s, a port city on the Atlantic coast; thus it makes sense that people came from many other states or overseas. However, in later years some migration into the state shows Mulattoes and other people of color moving into the county after 1819, which was a direct violation of the law. Though elites attempted to restrict free people of color from coming into the state, just as with slave manumission, people skirted the law.478

Georgia’s state legislature intended that these acts would lead to a roundup of stray slaves without masters and free people of color who had entered illegally from other states, for now authorities could catch everyone without registration and commit them to jail. From there, these people would be committed back into bondage. This turned out to be logistically impossible and the following year Georgia’s General Assembly had to amend some of the more problematic sections of the original bill. The laws prohibiting ownership of real estate and selling people without certificates into slavery appeared to be unfeasible, or at least brought enough criticism to force the legislature to overturn these sections of the bill. While some of what Georgia politicians planned in 1818 turned out to be a failure, these laws moved the state towards the stricter hypodescent that other slave states in the Lower South would follow throughout the antebellum period and beyond.479

As Georgia’s new laws went into effect, the debate over whether slavery should be

475 Though Carl Degler was focusing on Brazil when Carl N. Degler, Neither Black nor White: Race Relations in Brazil and the United States (London: Macmillan Publishing Co., 1971), 222.
476 The state legislature expanded this from an 1810 law, which mandated registration only for “free persons of color (native Indins excepted)” who moved into the state. Augustin Smith Clayton, ed., A Compilation of the Laws of the State of Georgia, Passed by the Legislature Since the Political Year 1800, to the Year 1810, Inclusive. (Augusta: Adams & Duyckinck, 1812), 369.
479 Clayton, A Compilation of the Laws of the State of Georgia, 1800-1810, 811-816, 820-821; Over the 1820s, their population jumped by roughly 5,000 in North Carolina, more than 11,000 in Virginia, and more than 13,000 in Maryland. The Lower South lagged in comparison, with South Carolina moving up by only 1,100 and Georgia increasingly its population by around 700. To be sure, these started off with much lower numbers, but this reflects that most free Mulattoes were in the Upper South. Berlin, Slaves Without Masters, 136. Joel Williamson, New People: Miscegenation and Mulattoes in the United States (New York: Free Press, 1980), 14-15, 24-26.
allowed to spread into new territories in the West came to a head at the national level on the floor of Congress when Missouri applied for entry into the nation in early 1819. Politicians divided along geographical lines of northern states opposing the extension of slavery into Missouri and states from “the South” who fought to uphold slavery’s expansion into the new state and further into the Louisiana territory. From 1819 to 1820, Congressmen openly and violently clashed over the future of the United States, notably a free nation that maintained slavery. Indeed, this paradox increasingly threatened the nation’s unity. The Congress had not addressed slavery so directly since eighteenth century discussions concerning slavery in the early republic and ending the trans-Atlantic slave trade in 1808, yet the debates surrounding Missouri paled in comparison to previous disagreements over slavery. The issue over the expansion of slavery was much more hotly contested as the boom in cotton production had raised the economic stakes of the debate. A new cadre of political elites, many of whom were also planters, had strong ideological attachments to slavery, which split the nation even more rigidly along regional lines. The question over Missouri led to further national debates that shaped views on slavery and the place of African Americans within the country.\(^480\) Southern officials also strengthened their resolve to protect slavery within their respective states and passed laws throughout the 1820s that bolstered the system. This included fortifying laws against slave emancipation and stripping free people of color of their rights. Southern legislators effectively chipped away at legal access of the enslaved to freedom, where Mulattoes slaves had enjoyed their greatest advantage over Negro slaves, and deprived all free people of color privileges they had previously enjoyed.\(^481\)

In 1820, members of the Charleston elite petitioned the state legislature with several complaints about “free negroes and coloured people” in their city. The first and largest complaint that brought “anxious concern” to these citizens was “the number of Free Negroes and coloured people, who have emigrated into this State from various quarters.” These quarters represented the surrounding states, and “white” South Carolinians were acutely aware that free people of color moved into their boundaries because other states pushed them out. The citizens of Charleston noted that “the late Legislative Acts of Virginia and Georgia” had pushed out newly freed slaves, and that many of these people moved to South Carolina. They felt their state could not withstand the “daily increase of this alarming evil.” These citizens asked that their state legislature take action by passing “the most energetick Laws” to prevent free people of color from migrating into South Carolina. They also asked that those who “have already migrated into this State from any neighbouring State whatever, or elsewhere, within the last five years, may be Banished.” Mirroring the language of Virginia, they asked for their law to include a twelve-month timeline for emancipated slaves to leave the state. Adding a new twist to this kind of legislation, they proposed that “all free Negroes and coloured persons, seamen, and servants… who shall hereafter leave this State shall be prohibited by Law, from ever returning.” This statement specifically targeted citizens of color who had the means to travel to northern states where they were ordained as ministers and received financial assistance from antislavery societies to build African American churches in Charleston. Over 100 signatures are attached to this petition denouncing free people of color, and the state assembly took notice.\(^482\)

It is clear that many of Charleston’s elite helped push some of the strongest discriminatory legislation through the state congress. Men like Joseph Manigault, James

\(^{480}\)This included debates over African American citizenship, which national officials discussed into 1821 after Missouri banned free people of color from migrating into the state. Robert Pierce Forbes, *The Missouri Compromise and Its Aftermath: Slavery and the Meaning of America* (Chapel Hill: University of North Carolina Press, 2007), 2-8.

\(^{481}\) Berlin, *Slaves Without Masters*, 90-97, 101-103

\(^{482}\) SCDAH, Legislative Petitions, Oct. 16, 1820, S165015.
Lowndes, Philip G. Prioleau, and Benjamin Seabrook, are just a few of the scores of businessmen, commissioners, physicians, planters, and others who signed the petition.483 South Carolina’s legislators responded to the concerns of their peers and moved a bill through the state legislature to limit the rights of free people of color and the right of masters to free their slaves. By the end of 1820, the state assembly officially recognized “the great and rapid increase of free negroes and mulattoes in this State, by migration and emancipation.” They also stated the increase in free communities of color made “it expedient and necessary for the Legislature to restrain the emancipation of slaves, and to prevent free persons of color from entering into this State.” In response, the state prevented masters from freeing their slaves unless they had permission from the General Assembly to pass a special act of individual emancipation. Second, they made it unlawful “for any free negro or mulatto to migrate into this State.” This language only slightly diverged from the citizens’ petition, and allowed native South Carolinians two years to return to the state. This mandate heavily restricted the rights of both “free negroes and mulattoes,” and is also significant for the fact that twenty years prior, in 1800, the state had already banned free people of African descent from migrating into the state. These new laws reveal that these statutes were not being enforced and required renewal and institutional strengthening.484

Thus South Carolina’s extremely prohibitive measures against “migration and emancipation” linked the two issues of slavery and freedom together, closing the gap between the two. In law, the divide became so narrow that any free person of color who violated this act could be sold as a slave. Officials included some protections for persons of color, such as a fine of $1,000 against those who sold free persons of color into slavery. Still, this clause provided little actual protection for free of African descent, for the practice continued and slave catchers even sometimes kidnapped free people of color in free states and sold them into slavery elsewhere.485

South Carolina also mandated that free people of color traveling outside the state during the passage of the act had two years in which they could legally return home. They would no longer be allowed to return after this grace period expired. Officials feared that free people of color traveling outside the state might return with antislavery notions, and set the fine for anyone distributing antislavery literature at $1,000. For those of African descent, the penalty for a second offense included a whipping of up to fifty lashes and banishment from the state with a penalty of death for returning.486

Authorities in South Carolina made it clear that they did not want free people of color in their state, and they tied these restrictions to the institutional strengthening of slavery. The relatively liberal racial atmosphere of Charleston could not prevent the door being closed on mulatto privilege. Again, neighboring Georgia had already put these same legal restrictions in


484 The state congress replaced “free negroes and coloured people” on the Charleston citizen’s petition with “free negroes and mulattoes” in the legislation. The substitution is difficult to interpret, and may simply be negligible, but it is certain that both “negroes and mulattoes” would meet increased discrimination from the state through this act. David J. McCord, ed., The Statutes at Large of South Carolina, Vol. VII: Containing the Acts Relating to Charleston, Courts, Slaves, and Rivers (Columbia: A. S. Johnston, 1840), 459-460.


486 McCord, SALSC VII, 459-460.
place. There is little wonder why these two states followed this legislative route; Georgia and South Carolina were the two largest cotton-producing states in the nation through 1820. These two states alone supplied over half of the roughly 160 million pounds of cotton grown in the United States that year. As cotton plantations largely expanded west into newly emerging states, officials in the Lower South created harsh laws to keep people enslaved and to maintain free people of color subordinated within a bifurcated racial caste system.\(^{487}\)

The cotton regime left free people of color in a precarious social space in the Lower South. Legislative prohibitions and restrictions tied in with the importance of the cotton economy, which connected with the associated concerns of a rising African population and the threat of growing antislavery sentiment in the North. This had devastating effects for how European Americans perceived and treated people of mixed heritage. It is apparent that by the 1820s a new generation of elite South Carolinian planters thwarted the “white” guardians and patrons who argued that certain free Mulattoes were an asset to the Charleston community. Overall, those in power viewed all free people of color, including free Mulattoes, as more of a nuisance.

During the same time, European American public sentiment towards both free Mulattoes and free Negroes was similarly negative in the Upper South, where the free population of color had grown substantially since the revolutionary era. Private manumissions of free Negroes had risen substantially in the region and overtook the previous majority of mixed ancestry within the free population of color. While the largest numbers of mixed-heritage peoples remained in the Upper South, free Negroes most likely surpassed overall numbers of free Mulattoes within the growing free population of color sometime in the first half of the nineteenth century.\(^{488}\) During this time, each state in the area took a different route to handling their expanding free population of African ancestry. Virginia moved to rid themselves of their free population of color, while Maryland eventually settled into a society that allowed liberal emancipation and reluctantly tolerated a large free population of African descent until the end of slavery. North Carolina legislators took longer than other states to heavily restrict their free citizens of color in the same way as Virginia and the Lower South. Like Maryland and Virginia, North Carolina was not as heavily tied to cotton production and their free population of color remained largely of mixed ancestry. Also liberal slave manumission still existed at the county levels with regularity into the 1810s and more sparingly into the 1820s. Compared to surrounding states, free people of color in North Carolina remained predominantly of blended heritage and traditionally enjoyed greater rights, as some mixed communities of African, European, and Native American descent enjoyed a fair amount of autonomy through the antebellum period.\(^{489}\)

Legislation itself does not tell the whole story of the decline of mulatto privilege. Outside of legal restrictions, general citizen petitions are telling indicators of the social atmosphere and how “whites” perceived Negroes and Mulattoes. Generally, there are two factions represented in these petitions, European Americans who stood against granting rights to people of mixed heritage and those from all different backgrounds who supported the extension


\(^{489}\) These groups have come to be referred to as “tri-racial isolates” by anthropologists. They have been shown to originate in Virginia and North Carolina, and later migrated to other regions. Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Mass.: Belknap Press of Harvard University Press, 1998), 406 n.36; Virginia Easley DeMarc, “‘Very Slitly Mixt’: Tri-Racial Isolate Families of the Upper South–A Genealogical Study,” *National Genealogical Society Quarterly* 80 (March 1992): 5–35.
of these liberties.

“White” citizens commonly petitioned their state legislatures concerning the negative effects of freedom for people of African ancestry, including both Negroes and Mulattoes. This can be seen in North Carolina, where in 1818, the citizens of Nash County cited the “alarming progress of vice and immorality” committed by slaves they identified engaging in “theft and Roberies.” These “white” citizens claimed this was due “to the growing numbers and influence of the negroes and Molatoes.” The petitioners stood for the rights of “white men” and believed the alliance between slaves and all free people of color led to the theft of their property. They claimed free “negroes and Molatoes” encouraged slaves to steal from their masters and gave stolen goods to their families in freedom. These citizens of Nash County therefore asked that the assembly pass a law “forbiding female free negroes or molatos from intermarrying with Slaves,” unless the owner of the enslaved would give bond to cover possible stolen property. Though the state congress read the petition and referred it to committee, a bill enacting such a law never passed the state legislature. It would have been logistically impossible to solve the issue in this manner, because the state did not legally recognize slave marriage. Also, many planters encouraged their slaves to marry, for these unions attached the enslaved to the land of their spouse, thus undermining runaways. Though masters might have issues with their slaves marrying free people of color, the arrangement became a negotiated right. Slaves and free people of color drew strength from their spouses to combat their daily struggles. Masters could use the privilege of visiting a partner as an incentive, which eased the threat of rebellion. Still, many “whites” criticized the practice of allowing these partnerships, and while the above complaint from Nash County mentions both “negroes and Molatoes,” they grouped both together and sought to create a greater division between slaves and all free people of color.490

“White” citizens in the slave South submitted similar types of petitions to state legislatures concerning free Negroes and Mulattoes throughout the antebellum period. Class always played an important role with the parties involved in these petitions. Most of these petitions came from middle to upper class tradesmen, merchants, and planters who had economic motives for trying to strip both free Negroes and Mulattoes of their rights. “Whites” commonly perceived Mulattoes along with Negroes as a depraved segment of society. To be sure, all free people of color who were not financially secure might resort to crime as a means of eking out a living, often by fencing goods carried away by slaves. This upset both the planter elite who lost goods to slave theft and well-to-do people of color who worked hard to avoid being stereotyped along with those involved in unlawful actions. While the Nash County petition complained that free people of color instigated theft among their slaves, they also lamented “the expiring lamp of pure and disinterested patriotism” and asked the state for reinforced slave patrols.491 In other words, they were upset that lower income “whites” who were not sufficiently committed to the job of protecting elite property and wealth. Many poor people of European descent were jealous of free people of color who achieved even a moderate level of prosperity, but they also did not care too much for the wealthy planters who kept them impoverished. The aristocratic slave system left the majority of southerners economically depressed and politically disenfranchised, including poor “whites” as well as slaves and free people of color.492

491 NCOAH, Legislative Petitions, General Assembly, Session Records, November - December 1818, Box 3, Folder - Petitions (Miscellaneous), Nov. 21, 1818.
In the Lower South, the economic demands of “King Cotton” caused legislators to strip Mulattoes of their advantages at a faster rate, since three-fourths or more free people of color remained of mixed heritage through the antebellum era.\textsuperscript{493} Maryland left paths to privilege open, which benefitted both Mulatto and Negro slaves, while Virginia took more stringent measures against its population of African descent. Overall, North Carolina being on the boarder of the Upper and Lower South did not have the same economic incentive to keep people enslaved or free people of African descent oppressed, because it never developed into a major cotton producing state.\textsuperscript{494} This meant that up until the 1820s, free mulatto privilege still operated within a space of relatively light hypodescent ideology. For example, North Carolina courts had not allowed slaves to testify against free people of color from the latter eighteenth century until 1821. In that year, the state assembly decided that slaves could also give evidence against defendants who “may be a negro, Indian or mulatto, or person of mixed blood, descended from negro or Indian ancestors, to the fourth generation inclusive, (though one ancestor of each generation may have been a white person).” Since the free popular of color was predominantly of mixed heritage, this decree cut into their privilege. Further into the 1820s, North Carolina instituted further legal changes, based on legislation passed in Georgia and South Carolina, which eventually led to more restrictive measures affecting free people of mixed heritage.\textsuperscript{495}

**Paternal and Maternal Figures**

Though cotton grew best in the Lower South, the effects of the thriving industry transformed slavery and drastically changed the lives of free people of color throughout the slave states in the antebellum era. Cotton plantation slavery enlarged the power of the master, yet it also led most states to limit the slave owner’s right to free their own human property. The master and the state were mutually obligated to uphold the institution, while the slave owed obedience to the master. Slavery in the U.S. South had always been a paternalistic system that kept slaves subordinate to their masters, though there still existed a mutual dependency between the two as well. Slaves often looked for opportunities to break away from reliance upon their masters. Slave owners forcibly held others in bondage in order to aggrandize themselves through the wealth their slaves created, both in goods produced and in the value of human bodies made chattel. Also, slave women literally reproduced a master’s wealth with each new babe she brought into the world, regardless of who fathered the child.\textsuperscript{496}

Cotton production spurred a rebirth of the plantation system that enhanced the patriarchal figure in the South, and masters who fathered slave children became the epitome of the paternalistic figure within this system. However, these master-fathers had a choice of whether or not they would acknowledge their offspring, for they were not legally beholden to their children. If a father did recognize his child, he had to locate ways to circumvent state laws prohibiting mixed-heritage children from being emancipated. If he intended his child or children to inherit property, these men had to find creative legal methods to pass on their estates. Social stigma against these fathers prevented most of them from publicly acknowledging their mulatto

\textsuperscript{493} Berlin, Slaves Without Masters, 178-180.
children, and the minority who did recognize these children often did so in their last will. Since the patriarch had already passed and could no longer attest to the validity of his heirs, he had to leave a trusted person to execute his will. Even then, legally allowing the inheritance from a benevolent father to his mixed-heritage offspring often created a myriad of legal problems for those mulatto children who sought to maintain not only their freedom, but also the estates of their master-fathers. 497

By the 1820s, South Carolina officials increasingly limited the rights of master-fathers to emancipate their children, which translated to a stark drop in the rights of their mixed-heritage children. In the 1821 session of the state assembly, James Patterson, a person of mixed descent, sought to inherit his father George Patterson’s remaining estate. George Patterson appears to have been a man of European descent who owned two plots of land in the town of Columbia and over 350 acres outside the city. The elder Patterson personally acknowledged his son James, whom he fathered by a woman of African descent. He allowed his son to build a home on the smaller plot of land on Richardson Street in Columbia, though they never exchanged any titles for the lot. After George Patterson’s death in December of 1817, creditors resolved all debts of the estate, repossessed the property, and left James with nothing. The remainder of the estate, which the younger Patterson valued between $2,000 to $3,000, and the property would return to the state, for George Patterson never officially signed anything over to his mulatto son. When James petitioned the state for recompense, he retold his story and explained that he “Lost the benefit of the Gifts which was made to him by his said Father,” which included being forced out of the house he had built upon his father’s land in Columbia. 498

James Patterson realized all too late that the legalities behind his situation might leave him without a home. When George Patterson was on his deathbed, James “sent for a Friend to make his Will, but… the person who was thus sent for was absent from Town.” By the time this person returned, the elder Patterson passed away without a will. It did not matter that he previously made statements acknowledging “that he intended to give the whole of his property to” his son James and made similar declarations “to the persons who were about him in his last illness.” Even when petitioning the state, James Patterson realized that it would be difficult to succeed in his legal efforts. Instead of asking for his home, he instead pleaded that the state allow him to have “the whole of the balance” left over from his father’s estate after all creditors had been satisfied. Patterson’s petition also included the signatures of over thirty respectable citizens of Columbia supporting his request. Many had known the “Mulatto Man” since his youth and attested to the fact that he had “always sustained the Character of an Honest, Industrious, Sober, peaceable, & well disposed Member of [the] Community.” Even though his peers held “him to be a worthy member of society,” the state Judiciary Committee refused to grant Patterson’s petition. Their reasoning could not have been made any clearer: “the facts of the petitioner’s illegitimacy and coloured blood are sufficient in the opinion of your Committee to authorize them to recommend that the prayer of the petitioner ought not to be granted.” The state could not pass down property to Patterson because he had not been proven a legitimate heir, but authorities also cited his “coloured blood” as a reason to turn down the request. State officials regularly denied mixed-heritage children from inheriting the wealth of their European American fathers. When Patterson attempted to free his wife and child several years later, the

498 SCDAH, Legislative Petition, Columbia, Richland District S165015 Item 01810 (ND); SCDAH, Legislative Petition, Columbia, Richland District S165015 Item 01811 (ND).
state legislature denied this plea as well. This did not stop him from petitioning, as he repeated his efforts in the 1830s, yet the state similarly denied these pleas to free his family as well. Even with “white” patronage on his side, Patterson was denied any advantage on account of his mixed heritage; and in this case, it proved to be a disadvantage.499

Even when a master-father petitioned to free his children of mixed heritage, it had become all but impossible to achieve state authorization to do so after 1820 in South Carolina. In Charleston, Rene Peter David fathered three young children, Lelia, Rosine, and Aimee, “all of the class called Mulattoes.” He admitted that the three girls were all “the offspring of a female” who belonged to him. David made his request “anxiously hoping” that the state assembly would “adopt such measures as may confer on them [his children] the blessings of emancipation.” David pointed out to South Carolina’s assembly that there would be no reason to worry about his mixed daughters falling into crime or vice, for he had “sufficient property to secure the comfort, and Independence of his said children” so that they would not become burdensome to the state. His property would “maintain them decently” and allow his mixed offspring to be “useful members of Society.” This master-father hoped to allay any apprehension the legislature may have had in this freedom case. This was not an easy task to accomplish, since there was a prevalent view that free people of color and those of mixed ancestry were degenerate, especially when it came to work and providing for themselves independently. His request acknowledged “that one of the most glaring evils consequent on the existence of a free population of this class amongst us [was] their poverty & inability to maintain themselves by honest employment.” One can see within this petition how officials in Charleston felt about slaves who might become free people of color and about the free population of mixed heritage. David apparently tried to cover all the grievances citizens in the state were worried about. If he could ease the fears of the state legislature, they might grant his plea to manumit his family.500

Along with race, socio-economic status is central in David’s story. Only seven signatories signed his petition, so he may not have had strong enough patronage connections for the state legislature to approve his request. Though David claimed he had the means to provide for himself and his family, he had not been formally educated, as evidenced by him signing his petition with “his mark” of an X. It appears David was not from the wealthy merchant or planter class, and perhaps only had a handful of slaves. Perhaps he purchased his children’s mother in order to start a relationship with her. Regardless of how the courtship began, the state assembly would not legitimize this union or the offspring who resulted. Free people of color presented a problem for the elite “white” community when they could not secure employment and fell on hard financial times, but many authorities wanted to force both free Mulattoes and Negroes out of the city even if they were economically stable because they feared negative coalitions might be made with slaves. Racial discrimination and the hardening laws set against free people of color worked against mulatto privilege. The difficulties these mulatto children encountered in the legal system also show how strong hypodescent ideology had become by the 1820s.501

Like James Patterson, Rene Peter David was aware that his request would be difficult and

499 SCDAH, Legislative Petition, Columbia, Richland District, S165015 Item 01810 & 1811 (ND); SCDAH, Legislative Report, Columbia, Richland District, S165015 Item 00203, Dec. 8, 1821; SCDAH, Legislative Petition, Columbia, Richland District S165015 Item 00073, Nov. 11, 1828; SCDAH, Legislative Report, Columbia, Richland District, S165005 Item 000132, Dec. 3, 1828; SCDAH, Legislative Report, Columbia, Richland District S165015 Item 02923 (ND); SCDAH, Legislative Petition, Columbia, Richland District S165015 Item 00091, Dec. 11, 1828.

500 SCDAH, Legislative Petition, Charleston, S165015, Item 01875.

501 SCDAH, Legislative Petition, Charleston, S165015, Item 01875 (ND); Blassingame, The Slave Community: Plantation Life in the Antebellum South, 154-155.
that the state assembly would likely deny his plea. David’s lawyer asked for the assembly to take its time to weigh the family’s special circumstances before it made any hasty decision that would “deprive him of the happiness of beholding his children in the possession of that qualifying freedom.” David expressed that he was under the assumption that “our institutions afford to persons of that Class” this opportunity, yet this understanding came from the more tolerant culture of previous generations. Those avenues had all but closed by the 1820s in South Carolina. The state assembly denied freedom and residency to David’s young daughters: Lelia, age six; Rosine, age four; and five-month old Aimee. South Carolinian laws had already tightened around slavery, but several factors closed off this master-father’s privilege before the legislature. The laws had turned against individual manumission and free Mulattoes were no longer seen as a large asset to “white” society. David also appears to have lacked strong patronage connections, plus he openly acknowledged his mulatto children, which may have been looked down upon by those in the state assembly.502

The southern elite knew European American men fathered children by their slaves, but attempting to legitimate mulatto offspring was an entirely different offense. Master-father’s like David cared for their mixed-heritage children, and went to great lengths to secure the freedom of these loved ones. The impetus behind this petition was apparent, as David wrote: “That being possessed of the tender feelings of a Parent towards these, his helpless children, he is induced to make this application to your honorable [justices].” It had long been his intention to make use of preexisting manumission laws, “which existed prior to the act of the Legislature passed in the Session 1820.” Clearly, David understood the law and was caught off guard by the 1820 statute that limited the freeing of slaves to a special act of the state assembly. If this law had not been passed, he would have been allowed to easily free his children and let them enjoy their liberty within the state.503

While there are numerous stories of European American fathers attempting to free their mulatto slave children, there are countless others who never took responsibility for their children, refused to recognize them, and even sold them for profit. This meant that women of African descent most often looked after their children of mixed descent. These women supported the overwhelming majority of mulatto slaves and free children of blended heritage, even when the father might have acknowledged them. In terms of race and gender, these mothers met dual discrimination and faced some of the greatest struggles in the slave South.504 These women fought for the freedom of their children despite the legal and social obstacles placed in their way. In Richmond, Virginia, two women of African descent worked to keep their children out of bondage in 1821. While they faced slavery themselves, “Lucy Wright, a Black woman, and Lucy Claiborne, a molato woman” were joined together in a petition to secure the freedom of their children. Wright had a seven year old and 18-month-old child, while Claiborne had a three-year-old toddler and a young 10-month-old baby. In 1813, Elizabeth Wright’s will emancipated the two women, yet they did not have the financial means to leave the state within twelve months, and thus violated Virginia’s residency law for freed slaves.505

502 SCDAH, Legislative Petition, Charleston, S165015, Item 01875 (ND).
503 SCDAH, Legislative Petition, Charleston, S165015, Item 01875 (ND).
505 Perhaps it is not coincidental that Richmond officials took up Lucy Claiborne and Lucy Wright’s violation of residency case in 1821, as other states also attempted to round up their wandering free people of color during this time. LVA, Legislative Petitions, Richmond City, December 20, 1821; *Journal of the House of Delegates of the Commonwealth of Virginia, Begun and Held at the Capitol, in the City of Richmond, on Monday the Third Day of December, One Thousand and Twenty-One.* (Richmond: Thomas Ritchie, 1821), 65.
It took a while for city authorities to take action against these free women of color. This shows that some emancipated slaves simply evaded the requirement that they leave the state within a year of their emancipation. Still, officials might decide to bring them up on charges at any time. In November of 1821, after several years of living as free, the Richmond court found that Wright and Claiborne “forfeited their right to freedom” because they “remained more than 12 months within the State after their emancipation.” Richmond officials then directed that the two women “should be sold as slaves.” Around the same time the city court directed that the children be registered as “free born blacks.” So while the courts declared the four children “to be free and entitled to all the rights and privileges of free Born Blacks,” they also decided that their mothers “were to be Converted into Slaves and Separated from their… Children.” Wright and Claiborne’s petition pointed out that two of these children were nursing infants, and still “dependent upon them for that Sustenance which nature has provided the mother Should for a time afford her ofspring.” Authorities were moved by this situation, which “induced them with a humanity” to take action against the impending sale of the two mothers. Virginia officials may have been willing to allow the women to move elsewhere with their young ones and start a new life in freedom, yet the mothers possessed “no means to Transport their Children” out of the state. Wright and Claiborne wanted to keep their children out of the grips of slavery, but they also did not want to break up their families. They asked to remain in the Virginia so that they could live freely with their children, yet the women were willing to make an extraordinary sacrifice if authorities rejected their request and sought to remove their children. Wright and Claiborne told officials “they would prefer for themselves Even a state of Slavery to such a separation.” These women would relinquish their freedom in order to raise their own children so they could make sure their young ones would not fall into slavery.

Attorney Robert G. Scott signed a supplement to Wright and Claiborne’s petition, assuring the state legislature that they “could obtain the almost unanimous signature of the Citizens of Richmond.” The Lower House agreed and the state Senate found the request “reasonable.” On February 21, 1822, the Senate ordered the committee for the Courts of Justice to draw up the bill for the two “free persons of colour” to remain in the state. However, the Senate tabled the prepared bill the next day and after the state assembly read it a third time the following week, they rejected the proposed act. Though it is not clear what prevented the bill from passing, there are a few conclusions that can be drawn from this case. First, the women of African descent were particularly vulnerable within the legal system. Second, Lucy Claiborne did not receive any discernable privilege connected to her European ancestry. The courts treated both Claiborne and Wright, a “Black Woman,” exactly the same. Lastly, Virginia’s system appeared to police free people of color, or those living as free, more harshly in the 1820s. Authorities may have been rounding up people of color without residency papers, as did states in the Lower South who had violated residency codes around this time. As the lawyer Scott attested to in his statement, many residents in Richmond knew Wright and Claiborne, so this was not a case of someone picking up unfamiliar people of color thought to be slaves. Those in the city knew these women were free, yet had looked past them living outside the law for some years. Wright and Claiborne had neighbors that looked out for them and probably did not want to leave Richmond.

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506 LVA, Legislative Petitions, Richmond City, December 20, 1821.
507 LVA, Legislative Petitions, Richmond City, December 20, 1821.
508 LVA, Legislative Petitions, Richmond City, December 20, 1821; Journal of the House of Delegates of the Commonwealth of Virginia, 188, 196-197, 204, 207.
Even when born free, women and children were particularly susceptible to being captured and sold. They were also extremely vulnerable to sexual assault. In 1821, John Bryan was charged with “feloniously taking and carrying away… a certain Molatto Girl, Dice Moore” out of the port city of New Bern, North Carolina. The young Moore was “Free Born” and apprenticed to Katherine Frey of Craven County. The state of North Carolina brought suit against Bryan, and forced him to pay $500 bond before being released by the court. Bryan captured the young Moore and perhaps sold her. Moore was particularly impressionable as a child, and since she apprenticed out to another family she did not have her parents close by who could look out for her. In instances such as these, there was little to prevent unscrupulous men from taking up free people of mixed descent and selling them as slaves. While North Carolina may have generally been more sympathetic to the plight of free people of color in some of these cases, this did not prevent the treacherous practice of kidnapping legally free people to sell as slaves – a practice that would continue throughout the antebellum period. Though we do not know Moore’s age at the time of her kidnapping, it can be surmised that as an apprentice she was younger than twenty-one years of age. It can surely be stated that she would be at risk for sexual abuse as well.\footnote{509}{MSA, Court of Appeals (Judgment, Eastern Shore), No. 21, George Walls vs. Henny Hemsley and children, June 1817, SC 4239-1-7, 01/63/09/18.}

Rape, sexual coercion, and other forms of sexual abuse of female slaves were endemic in slavery. Though the planter class often hid these practices, the fact that European American men often violated female slaves was an open secret. The issue is often addressed in many slave narratives, notably that of Harriet Jacobs, and can be seen in freedom petitions of mulatto slaves.\footnote{510}{Blassingame, The Slave Community, 154-155; Harriet Jacobs, Incidents in the Life of a Slave Girl (Boston: Published for the Author, 1861).} In October of 1821, a year after South Carolina officials limited slave manumission by legislative petition, Charleston widow Rebecca Drayton wrote the state assembly saying she was “desirous of emancipating three of her family Slaves.” She stated that slaves Abigail, Mahala, and Rebecca were “connected in one family” and had been in “her family” to note personal ownership, yet there may have been a lineal connection to her family as well. Abigail was “an old family nurse” between 80-90 years old. Mahalia was “a young Mulatto woman,” around 25 years old, who served the Drayton family as a seamstress and may have been Abigail’s granddaughter. Rebecca, was “a coloured child” around two years old, and could have been Mahala’s daughter. Drayton was “prompted both by the orderly conduct and faithful services” of the adult slaves, but it was also “her wish to save them from falling into unknown hands.” Knowing the dangers female slaves faced, Drayton alludes to masters who might abuse these women. Some of that abuse may have already befallen these slaves.

Drayton’s attempt to free the slave family and keep them together would be a difficult one, but she tried to address the South Carolinian planter’s concerns in her request. She targeted possible vagrancy and poverty of free elderly slaves, saying she was “willing to support [Abigail] during the remainder of her life.” Though Mahala “was capable of obtaining her own livelihood by honest industry,” Drayton would still help provide for the young Rebecca until the girl reached the age of fourteen and would be “old enough to be put out to a trade.” Drayton assured the General Assembly that she and her estate would provide for the elderly Abigail and the young Rebecca, “so as to remove the probability of their becoming a burthen to the public.” She also added a document signed by several people in the community certifying that “the mulatto woman… called Mahala” was known “to be of good orderly character, and well
disposed, and that she is perfectly able to obtain a livelihood by honest industry.” Like many
other masters, Drayton attempted to prove to the state that these slave women were of good
character and would be self-reliant.511

Slave mistresses perhaps felt a certain affinity with their female slaves, for on some level
they understood the patriarchal oppression that all women faced in the slave South. Slaves of
mixed heritage in particular could create an ethnoracial bond with their masters and mistresses.
In the same 1821 session of the South Carolina state legislature, Ann Ferguson of Charleston
sought to emancipate her slave Annette and the woman’s two children, fourteen-year-old Joseph
Bampfield and five-year-old Mary Bampfield.512 On November 22nd, 1821 Ferguson noted that
Annette “has always lived under the eye of your petitioner,” and further declared that the thirty-
five-year-old slave woman had “uniformly maintained an excellent character, exhibiting on
every occasion the utmost fidelity and affection toward her mistress.” Ferguson also pointed out
that Annette was born “of a mulatto woman and is herself a Quadroon” and that “both her
children are so white as to render it almost impossible for them to be distinguished from white
Persons.” It is clear that this “white” racial affinity helped motivate Ferguson’s petition, for she
“was anxious to emancipate and set free from Slavery and Bondage the above described family
as well on account of their fidelity and affection to her, as of their complexion.” The shared
European heritage between mistress and slave, made apparent in the light skin of Annette and her
children, allowed Ferguson to more readily empathize with them.513

Like Drayton and other petitioners, Ferguson highlighted the positive character of her
nearly “white” slave. She noted that “Annette, both from her capability and industrious habits, is
quite competent to the maintenance of herself and children by honest means; and is not likely to
become a burthen upon the State.” She therefore asked the state “for the emancipation of the
said Annette and her Children.” Both Ferguson and Drayton noted the timing of their petitions
coming after the strict emancipation act of 1820. Ferguson said that she had “been deterred from
the course she was pursuing” by the law, and Drayton noted “she was only prevented by the
prohibiting Act” from manumitting her slaves. These benevolent slave masters would have had
a much easier time freeing their slaves only a few years prior. South Carolina’s General
Assembly refused to pass a special act allowing the emancipating of either Drayton or
Ferguson’s slaves.514

**Mulatto Betrayal of Denmark Vesey’s Rebellion**

In the early summer of 1822, a group of both free and enslaved Mulattoes revealed
Denmark Vesey’s planned rebellion to the Charleston elite. On July 2, officials executed the
former slave who had previously purchased his freedom from lottery winnings. This conspiracy
sent reverberations through Charleston, the state of South Carolina, and the slave South. Mayor
James Hamilton, Jr. and the City Council of Charleston “being cognizant of the events of the late
conspiracy to raise an insurrection among a portion of the black population,” asked the state
assembly to pass several regulatory acts to prevent future uprisings. These citizens asked the
legislative body to “adapt to the Crisis” by requesting that “measures which are required for the
public safety and future tranquility and prosperity” be enacted in order to protect the citizens of
Charleston. First, they petitioned that “all free persons of Color who are not natives of the State”

511 SCDAH, Legislative Petition, Charleston, S165015 Item 01876 (ND).
512 James Ferguson signed this petition, as Annette Ferguson appears to have been a femme sole.
513 SCDAH, Legislative Petition, Charleston, S165015 Item 00096 (ND).
514 SCDAH, Legislative Petition, Charleston, S165015 Item 00096 (ND).
should be ordered to leave if they had migrated within the past ten years. Second, they wanted both slaves and free persons of color who had visited non-slave holding states to be prevented from returning to South Carolina. Third, they sought a reduction in “the number of male slaves” used in domestic roles and in skilled trades, and asked that slaves no longer be allowed to be hired out.\footnote{Virginia’s General Assembly passed similar legislation preventing the hiring out of slaves two decades earlier after Gabriel’s conspiracy. Douglas R. Egerton, \textit{He Shall Go Out Free: The Lives of Denmark Vesey} (Lanham, Maryland: Rowman & Littlefield Publishers, Inc., 2004), 73-74, 160, 188-190; SCDAH, Legislative Petition, City Council of Charleston, S165015 Item 02059 (ND).}

In the wake of Vesey’s rebellion, Hamilton and Charleston’s city council requested that the state strengthen local militia and create a fortified armory within the city. They also wanted “white persons” who advised or aided slaves or free people of color in acts of insurrection to be charged with a capital offense. Charleston’s elite understood that poor “whites” might ally with those of African descent, for both groups had plenty to gain by overthrowing the planter elite’s hold on power. Like Gabriel’s planned revolt, Vesey’s conspiracy touched on issues not simply of race, but also of class. South Carolina authorities knew that not every person of color antagonized the elite powers of the city. This is why Charleston’s mayor and city council laid down a final recommendation “that those slaves and free persons of Color, who by their fidelity and attachment to the best interests of the State… should be liberally remunerated” for their role in alerting authorities of the planned revolt.\footnote{SCDAH, Legislative Petition, City Council of Charleston, S165015 Item 02059 (ND).}

Mulatto informants had ingratiated themselves among the Charleston elite, proving their loyalty by telling authorities of the slave insurrection plot. While state officials rewarded the individuals who betrayed the rebellion, they soon severely circumscribed the rights of free people of color and further tightened the reins of slavery. These actions built upon the trend that had already been established in the laws of 1820 and prior legislation. In December 1822, the South Carolina General Assembly gave a special act of emancipation and granted monetary payments to Peter and George, the mulatto slaves of John C. Prioleau and Major John Wilson respectively. The legislature also gave monetary awards to William Pencil and a Mr. Scott, both free men of color who were of mixed ancestry. The City Council’s petition states that these men were “warmly recommended as fit subjects for [the legislature’s] wise munificence.” Charleston’s mayor Hamilton and the City Council spent a great deal of time in their petition lauding the courageous acts of Peter, Pencil, and Scott for their instrumental roles in outing the insurrection. The “heavily built dark mulatto” George Wilson would be added later to this group, and received his freedom and annual payments of $50, the same as Peter. The state issued Pencil and Scott rewards of $1,000 and $500 respectively for their roles in helping unearth evidence against those involved in the planned revolt. The special act of the assembly also passed a provision stating that Peter, Pencil, and Scott would be “free and discharged from all taxes, during their natural lives.”\footnote{McCord, \textit{SALSC VI}, 194-195; SCDAH, Legislative Petition, City Council of Charleston, S165015 Item 02059 (ND); Egerton, \textit{He Shall Go Out Free}, 160.}

The fact that all four men who gave information that condemned Denmark Vesey and his co-conspirators were of mixed ancestry has been used to denigrate mixed-heritage people generally. These kinds of actions have contributed to the popular idea that light-skinned slaves of mixed African and European descent – usually involved in domestic labor – were more likely to betray or “sell out” planned slave insurrections. Some have pushed this stereotype as a way to condemn all mixed-heritage folk as racial “sell-outs” who identify more with their European
ancestry than their African heritage. This charge is unwarranted, for Mulattoes revolted against slavery, were recruited during slave rebellions, and helped lead in some of the largest U.S. slave conspiracies.  

Still, taking a critical look at this mulatto betrayer theory can tell us something about antebellum racial and social structure in the United States. To begin, most domestic and skilled slaves were not of mixed heritage and the majority would have been recognized as being of full African descent. Still, a greater proportion of Mulattoes held favored positions than their overall numbers were reflected in the slave population. In other words, while Negroes made up the majority of domestic servants and skilled artisans, Mulattoes served in these positions at disproportionately higher rates. This stemmed from “white” patronage and parental connections to “whiteness.” Also, a slave’s ancestral closeness and spatial proximity to the planter family should not be confused with their general willingness to pass on information to the master. Field hands passed along information to their overseers and owners to gain favor. House servants often passed information on to their masters because they were the most physically accessible to the planter’s family in the Big House. Surely fully African domestic servants gave information concerning slave resistance to their masters as well, and house slaves of mixed African and European ancestry withheld details of possible resistance from their masters. Finally, as has been previously seen, Mulattoes spanned the gamut of slave occupations and were both protagonists and antagonists in planned slave rebellions. There were certain animosities and jealousies among slaves on account of skin color or light-skinned privilege, yet it is also apparent that Mulatto and Negro domestics, trained artisans, and field laborers often worked together in solidarity to challenge planter authority. For these reasons, it is almost impossible to draw a line within the African American community to definitively say that mulatto house servants were any more likely to inform the elite classes of an impending revolt.

In the case of Vesey’s planned rebellion, people of mixed-heritage both conspired along with the rebellion and betrayed its existence. Indeed, enslaved and free Mulattoes helped warn their masters and city officials of the impending danger of insurrection, which led to the capture and execution of its leaders. People of color who had lineal ties to European Americans sometimes considered themselves to be racially and socially superior to those of full African descent. Some sought to protect the master class either out of a sense of common identity or a sense that they needed to protect their “white” patrons from harm. Some of full African descent shared these associations even if they could not claim European heredity. Those of mixed descent who protected wealthy “whites” based on ties of ancestry claimed a similar privilege to what poor European Americans claimed when they discriminated against or disassociated themselves from lower caste people of color. The advantage gained from “whiteness” might stem from actual European lineage or patronage. Therefore, some Mulattoes attempted to elevate themselves and their families the same as poor “whites” used racial difference to maintain a social position above people of color. All people having some European ancestry could claim “white privilege,” albeit to various degrees.

518 See Chapter 5.
This fits with what historians have said about Charleston being a “three-caste system,” yet this label of the racial order is a misnomer. Mulatto privilege existed in all chattel slave societies of the Western Hemisphere, which allowed for a thin layer of relatively well off free people of mixed heritage to move above slaves and other free people of color.\textsuperscript{521} Granted, a three-tier order may have operated in Charleston to a higher degree than other areas, due largely to a substantial population of free wealthy Mulattoes who were able to congregate and form a larger community. While this was unique, wealthy people of mixed ancestry in both urban and rural areas rose in status in a similar manner throughout the South. Economic standing, dominant European ancestry, and “white” patronage were the main factors that accounted for access to this upper class mulatto status everywhere. However, no matter how wealthy these people became, they could not break through to the upper tier maintained by the “white” elite and the same laws applied to all free people of color, including those of mixed heritage. Also, the supposed line that divided free Mulattoes from those below was always permeable. Individuals would fall in class status if they lost their wealth, married darker-skinned free people of color, or associated too closely with slaves or free Negroes. In terms of caste, there were only two, “white” and “people of color.” To be sure, there were always variations in the racial order, but while free Mulattoes could always be considered under the umbrella term “Negro,” free “whites” could never be considered Mulatto.\textsuperscript{522}

The two mulatto slaves Peter and George elevated their class status to free persons of color by disclosing information concerning Vesey’s rebellion. After gaining freedom, Peter took the surname of his former master, Thomas Prioleau. The “dark mulatto” George Wilson had already taken the name of his former master, John Wilson. Though these slaves exposed one of the largest planned insurrections in U.S. history, they made the decision after weighing their options. If they had joined the revolt, they knew they faced death, either during actual fighting or if the rebellion turned out to be unsuccessful. George was already hiring out his own time as a blacksmith, so he was living a type of pseudo-freedom at the time he caught word of the impending plan. Therefore he had little incentive to join in the revolt. George and Peter may have really wanted their masters kept from harm. Of course, these were individual considerations.\textsuperscript{523}

Vesey and his followers knew there was much to gain from overthrowing slavery. At this time, there was possibly no better place for a successful rebellion than South Carolina, and there was a clear slave majority in Charleston District. However, the city of Charleston might not have been the ideal place to foment such a revolution, since many free Mulattoes were invested in maintaining their own privilege and other people of African descent were interested in elevating their status. Not all people of color considered themselves to be in solidarity, for both class and skin color divided this group. These distinctions can be seen in Denmark Vesey life and conspiracy. Though Vesey never forgot his dark-skinned brethren in bonds, and included some Mulattoes in planning to revolt against slavery, he specifically chose not to disclose word of the uprising to all free people of color. He understood not all people of African ancestry considered themselves the same. In Charleston, and other cities, many free Mulattoes of

\textsuperscript{521} Jordan, “American Chiaroscuro: The Status and Definition of Mulattoes in the British Colonies.”

\textsuperscript{522} Historian Robert L. Harris, Jr. recognizes the relative financial achievements of upper-lass Mulattoes, though notes “they suffered such significant disabilities in education, mobility, occupation, and legal matters to contradict the idea that Charleston approximated the three-tiered model of race relations.” Robert L. Harris, Jr., “Charleston’s Free Afro-American Elite: The Brown Fellowship Society and the Humane Brotherhood,” The South Carolina Historical Magazine 82, no. 4 (October 1981): 289–310; Berlin, Slaves Without Masters, 56-58, 215-216.

economic means clearly allied with the European America elite, even while most of these “whites” would not allow them to rise above their subjugated racial position. Over time, “white” authorities used the law, along with customary practice, to push both free Mulattoes and Negroes of all classes down closer with slaves.  

The Difference between “Free Blacks” and “Free Mulattoes” in Charleston

In the wake of Vesey’s rebellion, certain “white” Charlestonians clarified how they felt about the free people of color within the city. Proslavery advocate and newspaper editor Edward Clifton Holland expressed these views in an 86 page tract published in the months after the 1822 Charleston conspiracy titled A Refutation of the Calumnies Circulated Against the Southern & Western States, Respecting the Institution and Existence of Slavery Among Them. Holland authored the piece anonymously as “A South-Carolinian” and dedicated the document to both houses of South Carolina’s state congress and the City Council of Charleston as “their fellow citizen, the author.” Holland included overviews of the “actual state and condition” of Charleston’s population of African descent, a history of slavery in North America under rule by the English and United States, and an overview of slave insurrections in South Carolina that had taken place up through 1822. By the 1820s, southerners like Holland defended slavery as a positive force in the country, though they also knew that the enslaved population brought possible negative consequences in terms of an African population growing to dangerously large numbers within their midst. He then went into a thorough depiction of differences between “Free Blacks” and “Free Mulattoes” in terms of the roles they played in the Vesey Rebellion.  

“The Crisis” that had recently passed in summer 1822, “had long been anticipated by those who were minute observers of the passing events of the times,” noted Holland. According to him, these astute citizens had witnessed the “general spirit of insubordination among our slaves and free negroes—springing from the relaxation of discipline on the part of the whites.” Instead of lumping together all free people of color together, Holland instead groups “slaves and free negroes.” Holland then writes:

We look upon the existence of our FREE BLACKS among us, as the greatest and most deplorable evil with which we are unhappily afflicted. There are, generally speaking, an idle, lazy, insolent set of vagabonds, who live by theft or gambling, or other means equally vicious and demoralising. And who, from their general carriage and insolent behavior in the community, are a perpetual source of irritation to ourselves, and a fruitful cause of dissatisfaction to our slaves.

From Holland’s perspective, the insolent behavior of slaves came from emulating “Free Blacks,” whom he portrays as the epitome of vice and corruption. Holland continued that when slaves “look around them and see persons of their own color enjoying a comparative degree of freedom, and assuming privileges beyond their own condition, [they] naturally become dissatisfied with their lot.” The slaves would then become restless, and this discountenance “foments itself into insurrection.” The solution for Holland was to “recommend to the Legislature… the expediency

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525 A South-Carolinian, A Refutation of the Calumnies Circulated Against the Southern & Western States, Respecting the Institution and Existence of Slavery Among Them (Charleston: A. E. Miller, 1822), ii-iii; Bernard E. Powers, Jr., Black Charlestonians: A Social History, 1822-1885 (Fayetteville: University of Arkansas Press, 1994), 295 n.57.
of removing this evil, and of rooting it out of the land.” In essence, this pamphlet was Holland’s petition to the South Carolina state assembly to enact more restrictive laws targeting “FREE BLACKS.” Holland recommended two solutions; either a law “banishing them, male and female, from the State, under the penalty of death, or of perpetual servitude, upon their return;” or placing a tax on them so severe that it “would render it impracticable for them to remain” in the state. He believed that either plan would clear “the country of this detestable caste.” Though Holland puts emphasis on “caste” here, which is a persuasive assessment, for those of full African descent found it nearly impossible to be accepted by Charleston’s upper class of mixed descent.526

The next group Holland describes is “Free Mulattoes,” whom he believed should be distinguished from “Free Blacks.” Again, it should be pointed out that only some of the social elite believed in separating out this group, for in legal operation, South Carolina’s state assembly had already ruled against all those of African descent in previous years. Still, Holland exclaimed that there were “many enlightened and intelligent men” who felt the same way about “FREE MULATTOES – and that they are as serious an affliction, both to the morals and security of the State, as are the Free Blacks themselves.” However, Holland and others were “of an opinion, directly the reverse, and are decidedly opposed to any system of legislation that would end in banishing them.” He continued:

They are, in our estimation, (but perhaps we have viewed the subject in an improper light), a barrier between our own color and that of the black – and, in cases of insurrection, are more likely to enlist themselves under the banners of the whites. Most of them are industrious, sober, hardworking mechanics, who have large families and considerable property: and as far as we are acquainted with their temper, and disposition of their feelings, abhor the idea of an association with the blacks in any enterprise that may have for its object the revolution of their condition.

Holland believed that this group of mixed-heritage people could be an asset to maintaining the current power structure in Charleston, elevated above “the black” yet still “under the banners of the whites.”527

Charleston’s “Free Mulattoes” were qualified for this position between “black” and “white” because they held upper-class sensibilities and maintained a social distance from slaves and even “Free Blacks.” These Mulattoes did not consider themselves to be “black.” Various people of mixed ancestry held this view throughout the southern states, both in cities and in rural areas. Economic wealth, landholding, and “white” patronage were the main factors that allowed these Mulattoes to set themselves apart from those of full African ancestry. Throughout the slave South, a cadre of free people of mixed ancestry kept slaves. In Charleston, some estimate that 85% of free people of color who owned slaves were Mulattoes. Holland reminded South Carolina’s state assembly, “that the greater part of them own slaves themselves.” This is why he believed that “Free Mulattoes” would not aid in slave rebellion. Holland wrote that their ties to the planter elite would “keep them on the watch, and induce them to disclose any plans that may be injurious to our peace. – Experience justifies this conclusion.” He cited “the immediate instrumentality and advice of this class” in Vesey’s revolt and felt they would inform officials “in most cases of insurrection.” For these reasons, Holland questioned whether it would be wise to “exile them from our shores, when we at the same time acknowledge the value of the services they have performed?” Still, Holland left the decision up to the “wiser and better heads” of the

526 A South-Carolinian, A Refutation of the Calumnies Circulated Against the Southern & Western States, 83-84.
527 A South-Carolinian, A Refutation of the Calumnies Circulated Against the Southern & Western States, 84-85.
General Assembly. 528

Though Holland viewed “Free Mulattoes” as a middling racial and socio-economic group, he reminded the legislature of the need to maintain racial order, saying it was “politic and proper at the same time, however, to preserve a system of discipline in relation to them as will effectually mark their distinctive condition in society, and regulate their degree, when placed in opposition to our own.” He wanted the state to still keep free people of blended heritage in a subjugated position, which would mark them by their race through hypodescent ideology that illustrates the one-drop rule. For Holland further cautioned: “If this principle of prudent Legislation be once lost sight of, the barriers between us must necessarily become nothing more than a rope of sand.” Holland almost recognizes that legislation is the only thing that would separate upper class free Mulattoes from melding in with elites of full European descent. The law was needed to construct the one-drop rule and extreme hypodescent. In actuality, those who broke the perceived racial barrier helped to create this “Free Mulatto” class, and after further mixture with Europeans these racial distinctions were in jeopardy of erasure. These people of mixed heredity upset the racial order, which is why measures had to be taken to “mark their distinctive condition in society” so they and their children could never become “whites.” That division was always artificial and required government intervention to police the racial system. By Holland’s determination, “Free Mulattoes” could provide a “barrier” in terms of protecting “whites” against slave insurrection, yet their racial existence proved to be a burden for elites who sought to maintain racial hierarchy. 529

Elite European Americans feared losing the one thing that separated them from the free Mulatto upper class: “whiteness.” This is why after Denmark Vesey’s rebellion the majority of legislators in South Carolina rejected the idea that certain free people of mixed descent were a separate caste. In December of 1822, state authorities passed several laws “for the better regulation and government of Free Negroes and Persons of Color,” which instituted harsher penalties against all those of African descent, regardless of intermixture or socio-economic status. 530 Even though slaves and free people of mixed heritage betrayed the Vesey conspiracy and some elites recognized the usefulness of maintaining a privileged mulatto class, these laws eroded the rights of all people of color. The state legislature declared that county officials could extend corporeal punishment just short of “life or limb” to “any free negro, mulatto or mestizo” convicted of harboring or concealing runaway slaves. Officials further dictated that “every free male negro mulatto or mestizo in this state above the age of fifteen years, shall be compelled to have a guardian.” This guardian had to be a “white” landholder who could vouch for the free person of color. A certificate would be issued to those who registered and anyone caught without these papers could be fined $20 or be sold for up to five years service to pay the fee. Legislators returned to the law set in motion two years earlier, and again made sure that no free person of color could enter the state, but now made sure the no free person of color native to the South Carolina could leave and return now that the two-year grace period had ended. Additionally, authorities placed a $50 annual tax on “every free male negro or person of color, between the ages of fifteen to fifty years” who had entered the state in the past five years. State officials passed heavier taxes and fines on free people of African ancestry to encourage newly settled free people of color to relocate outside of South Carolina. Only the landed upper class

528 A South-Carolinian, A Refutation of the Calumnies Circulated Against the Southern & Western States, 84-85; Egerton, He Shall Go Out Free: The Lives of Denmark Vesey, 93.
529 A South-Carolinian, A Refutation of the Calumnies Circulated Against the Southern & Western States, 85.
530 Here the word “Negroes” is being used to designate people of full African descent, while “Persons of Color” is meant to refer to those of mixed ancestry. McCord, SALSC VII, 461.
free people of color would be able to afford to legally remain – predominantly wealthy free Mulattoes.  

In Charleston, free Mulattoes of economic means surely thought of themselves as a separate caste. Some of their “white” patrons even agreed with them. However, state officials actively took measures to subordinate these people of mixed ancestry and link them with “Free Negroes” and even slaves. This is reflected in the racially discriminatory laws that politicians passed in the first decades of the nineteenth century, which grew in strength by the 1820s. Further restrictions came in following decades, even as this class of mixed-heritage people attempted to remain separate and hold onto the advantages they previously enjoyed over slaves and other free people of color. To refer to this group as its own caste ignores the legislative and social discrimination that obviously regulated these people’s lives in the same manner as other free people of color. In Charleston, weaker hypodescent had once allowed for a broader range of several classes along a spectrum undergirded by race and socio-economic status, but by the 1820s the legal system divided a racial line between two castes: “white” and “non-white.”

Individual state legislatures increasingly strengthened laws in response to neighboring states. For example, newly freed slaves from Virginia sought residency in surrounding states after being prohibited from remaining in 1806. Certainly, not everyone acted according to this law, yet higher numbers of free people of color in the northern counties of North Carolina show that this movement took place in the following decades. Virginia’s laws set off a chain reaction of migration, for it had already prevented free people of color from coming into the commonwealth in 1793. Seven years later in 1800, South Carolina passed the same statute, and by 1820 they prevented manumission except by legislative act. Georgia instituted the same restrictive emancipation measure in 1801, and banned migration into the state from all other territories in 1818. To be sure, free people of color moved both west and north, but on the Atlantic Coast, harsh residency laws for free people of color in both Virginia and South Carolina forced them into North Carolina. These states were aware of the residency laws passed by others. In 1826, North Carolina’s Governor Hutchings G. Burton asked the state assembly “whether the policy of our sister States, prohibiting the migration of free persons of color within their boundaries, should not be met by countervailing enactments.” The General Assembly responded during the same session with an act stating that “it shall not be lawful for any free negro or mulatto to migrate into this State.” By 1830, North Carolina restricted emancipation laws to “superiors courts” and mandated that any newly freed slave had to leave the state after ninety days. Again, state officials aimed these laws at limiting manumission and preventing the growth of a free population of color. Across the states, a good portion of these people were of mixed ancestry, which meant that mulatto privilege diminished everywhere and gave way to an increasingly bifurcated racial order as the distance between freedom and enslavement shrank.

The dozens of restrictive laws passed by southern state legislatures during the 1820s through 1830 effectively stripped liberties from free people of color and created a fine line between slave and free. Indeed, when states limited free people of African ancestry in their

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531 McCord, SALSC VII, 461-462.
532 The term “non-white” is modern racial terminology. Harris, Jr., “Charleston’s Free Afro-American Elite,” 289-310.
533 Governor Burton also commented that other states meddling in the affairs of slavery required North Carolina to keep a “sleepless vigilance,” in reference to northern antislavery states. Franklin, The Free Negro in North Carolina, 1790-1860, 42-43, 62-63; Iredell and Battle, The Revised Statutes of the State of North Carolina, 585-587. Maryland was the only major slave state to hold off on these residency and manumission restrictions, led to a higher ratio of free people of color compared to slaves when compared with other slave states. Still, like the other states, Maryland passed a fair deal of restrictions against free people of color. Berlin, Slaves Without Masters, 91-92.
physical movement and required them to have a legal guardian, by definition they appeared more like slaves than free people. Free people of color already could not travel freely without freedom papers, and sometimes had to be systematically registered in ways that reflected slave registers. By 1830, the most highly populated slave states of the Atlantic coast could legally pick up free people of color who had committed crimes and sold them into servitude or directly back into slavery to pay off fines. Others could be picked up for vagrancy and be dealt with similarly, or might be banished from the state. Additional legislation limited a multitude of everyday rights, including the right to pilot boats and own firearms. This process continued throughout the antebellum period and increased in severity over time. These legal changes reflected “white” views of both free Negroes and Mulattoes alike, which increasingly grouped the two together in social practice as well as in legislation. Therefore, it appeared that all free people of African descent were considered similarly to the enslaved population, which was predominantly of full African descent. In this manner, hypodescent ideology became stronger and eventually led to the extreme of the one-drop rule.

“Descendants of Negroes to the Thousandth Generation”

In 1823, an anonymous writer, under the penname of Caroliniensis published an article in the Charleston Mercury newspaper, seemingly responding to laws made in 1820 and 1822 that prohibited “persons of color” from coming into the state, especially by sea through the port of Charleston. By these acts, authorities at the port of Charleston had to report “all free negroes or free persons of color” who arrived by ship from other states or foreign nations. These people could be taken to jail, fined $1,000, and could be sold into slavery if they could not pay the fee. Though it is not clear how often authorities enforced this law, Caroliniensis sought to set the record straight on who counted as “persons of color.” He felt the law should not apply to, “A free North American Indian, a Lascar [South Asian], an East Indian, a Hindoo, or a Moor.” The anonymous writer was trained in law, and wrote “that since Carolina was first settled, it never was heard of or supposed that any person could be subject to our laws but the descendants of negroes.” He continued: “There is not a student at law, there is scarcely a citizen who is ignorant that the only persons not black, who come under the operation of our negro acts as they are called, are Mulatto and Mestizoes, and their descendants.” Therefore, the phrase “persons of color” could only refer to those of African or Native American descent, both legally and socially. As Caroliniensis noted: “The term ‘persons of color,’ is a term of as settled signification and import as any to be found in our laws, or in common parlance.” In other words, people in South Carolina knew what the term meant when they heard it.

Interestingly, Caroliniensis compared the phrase “persons of color” in South Carolinian law to common usage the Caribbean. There, he noted, the term was “never applied to any persons but those of mixed blood and who are descended from negroes.” After discussing some of the different terminology applied by the British, Spanish, and French, he revealed a more complete definition of who counted as “people or persons of color”:

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535 Caroliniensis referenced inheritance of slave status through the mother, noting “partus sequitur ventrem… forms the foundation of the distinction in all cases” which is why he included “Mestizoes” or enslaved people of Native American matern ancestry. He noted: “Even Mestizoes are exempted occasionally, on proof of the mother being a free Indian.”

536 The Charleston Mercury, and Morning Adverister, August 16, 1823; McCord, SALS C VII, 459-462.
It is a term the most comprehensive that can be used, because it includes the descendants of negroes to the thousandth generation. Our Legislature used it of late familiarly, no doubt for the very reason, that as it is the most comprehensive, embracing all the varieties of the Mulatto tribes, so it must be the most appropriate.\textsuperscript{537}

This is one of the first and clearest depictions of the one-drop rule. Caroliniensis could not believe that any native South Carolinian could decide a case any other way than to apply “persons of color” to mean “descendants of negroes to the thousandth generation.” A few months later, in December 1823, the South Carolina assembly rewrote parts of its act “to prohibit Free Negros and Persons of Colour from entering this State.” They amended sections that limited those entering into the state on ships, excluding “free American Indians, free Moors, or Lascars [South Asians], or other colored subjects of countries beyond the cape of Good Hope.” Still, the legislature would not inscribe Caroliniensis’ definition of “person of color” into legal doctrine at this time. It would take another century for the one-drop rule to be inscribed in law.\textsuperscript{538}

\textbf{Post-Vesey: The Ebbs and Flows of Mulatto Privilege}

Although law reflected and in some ways contributed to the loss of rights for people of mixed heritage, mulatto privilege still continued throughout the southern states. These everyday advantages varied among individuals and between states. Still, the greatest advantage that people of blended heritage could attain was their freedom. Though Virginia, North Carolina, South Carolina, and Georgia systematically followed the same path of restricting the emancipation by 1830, Maryland stands out as the clear exception where manumission continued throughout the antebellum period. In many ways, Maryland had reached a middle ground in terms of creating a society that maintained legal slavery while allowing mass emancipation. By 1810 it had more free people of color than Virginia or any other state, up to the Civil War. By 1820, free people of color accounted for 27% of all people of African descent in the state and that percentage rose until the free population of color nearly equaled those enslaved in 1860. By some estimates, masters free around 50,000 slaves during Maryland’s statehood. Still, some state legislators sought heavier restrictions on manumission and looked for ways to push free people of color out of the state, yet Maryland came nowhere near implementing the prohibitions of its southern neighbors.\textsuperscript{539}

During the 1820s, two major slave states on the Atlantic coast still allowed local manumission, which benefitted mulatto slaves in greater proportions, as their cases reached courts at higher rates than slaves of full African descent. Over this decade Maryland’s free population of color increased by more than 13,000, more than any other state, while North Carolina’s free population of color rose by almost 5,000 in the same decade. Though some of this growth was due to natural increase and migration from other states, legal manumission definitely made up a good portion of this number as well. In August of 1822, Samuel C. Patrick freed “a certain mulatto man named Jacob” in the city of Baltimore. Maryland had few legislative barriers to manumitting slaves, which can be seen in Patrick’s deed of emancipation, where he simply cites “divers good causes and considerations” for liberating the forty-one year

\textsuperscript{537} These “Mulatto” tribes included: “Samboes, Mulattoes, Quadroons and Mestizoes… Tercerones, Quarterons, Quinterones, &c.” \textit{Charleston Mercury}, August 16, 1823.

\textsuperscript{538} \textit{Charleston Mercury}, August 16, 1823.

\textsuperscript{539} Barbara J. Fields, \textit{Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century} (New Haven: Yale University Press, 1985), 1-3, 10, 15-16.
old Jacob. These simple deeds of legal emancipation opened up new worlds of possibilities for thousands of slaves in Maryland. With a copy of this document in hand, Jacob took advantage of the rewards autonomy had to offer.\(^{540}\)

In October of the same year, James Boyd freed the “Mulatto man York” in Lincoln County, North Carolina, noting that he “has always conducted himself as a trusty faithful servant, that he is of good character, and by his good conduct and meritorious services had obtained the confidence of… all the family.” Indeed, James Boyd’s father John Boyd said in his last will: “I feel myself conscientiously bound to provide for [York’s] liberation agreeably to my promises made to him.” This is why the elder Boyd ordered his son to fulfill the promise after his death. James Boyd promptly carried out the instructions at the next session of the county court, asking “that he may have liberty to emancipate the said mulatto man York, and that henceforth he [York] may be free from bondage and enjoy all the privileges of a free man.” In freeing the slave, the master freed himself in a sense. Masters might die at peace when leaving manumission in a last will, though they often had already reaped the best working years out of their slaves. Slave owners often delayed emancipation The economic incentive to keep one enslaved.\(^{541}\)

Still, Boyd’s request that the court give him the “liberty to emancipate” York showed that both master and slave gained different types of freedom. Lincoln County officials granted Boyd’s request, but not before he and David Sullivan put up a £200 bond for York’s “good behavior.” York experienced mulatto privilege through ties to his masters and their friends that allowed him to achieve personal liberty, and he had experienced this patronage while still a slave as well. On April 25\(^{542}\), 1821, a year before the elder Boyd’s death, the father and son put up a £100 bond together “for a Certain Negro fellow named York to Carry a Gun” on the Boyd’s plantation or anywhere on their land. York would use the gun “to take Care of his masters Stock or Crop or even hunt or kill game.” It is obvious that the Boyds trusted York with their lives and that they shared a close relationship over many years. This slave of mixed heritage gained his freedom due to many years of faithful service.\(^{543}\)

Outside of North Carolina and Maryland, other southern states prevented masters from easily manumitting their slaves, meaning that both Negroes and Mulattoes were similarly disadvantaged and less mulatto privilege. For instance, after Vesey’s conspiracy in the summer of 1822, it became virtually impossible for masters to free their slaves under any circumstances. However, this did not stop them from trying. In the fall of 1822, planter John Irvin of Fairfield District, South Carolina, inherited the estate of Thomas Brown, which was valued at around $10,000 and included land, slaves, and other property. The generous gift was made “on the express[ed] condition” that Irvin was to “emancipate a certain Mulatoe boy named William.” If Irvin did not meet this condition, he would forfeit his right to the estate. William had been born around 1809, and perhaps Thomas Brown had fathered the boy by one of his slaves. Not anticipating state restriction on emancipation in 1820, Brown delayed freeing by will. Many mulatto children remained trapped in bondage when their master-fathers delayed manumission in order to hide the shame associated with fathering a child by their slaves. The thirteen-year-old William was most likely Thomas Brown’s own flesh and blood.\(^{543}\)

\(^{540}\) MSA, Scharf Collection, 1762-1860, S1005-131, 01/08/05/079, Box 113, Folder Items 21-30.


\(^{542}\) NCOAH, Lincoln County, County Records, Miscellaneous Records, Slave Records, CR 060.928.7, Emancipation of Slaves 1801-1830.

\(^{543}\) SCDAH, Legislative Petition, S165015 Item 00124, Dec. 2, 1817; SCDAH, Legislative Petition, S165015 Item 01746, 01747,
Brown stated in his last will that Irvin had two years to follow through with executing William’s emancipation. Brown likely knew that William’s chances of being set free would diminish over time. If the young teenage boy fell under the ownership of another master, he might never gain his liberty. For these reasons, Irvin attempted to emancipate the mulatto William through legislative petition. Gaining William’s emancipation through an act of South Carolina’s state assembly would be both difficult and unlikely. Irvin understood the challenges associated with freeing slaves in South Carolina after 1820, which is why he first sought to have the “mulattoe boy emancipated… in the adjacent states.” There are numerous cases of owners or guardians who attempted to circumvent restrictive manumission laws in one state freeing slaves in another state with lax emancipation laws. It is not clear exactly how widespread the practice was, but by this point in time many other southern states had likewise made slave manumission equally difficult, which is why John Irvin returned to South Carolinian courts. Irvin’s request first came before the South Carolina state legislature in December of 1822. A special committee read the petition and recommended that the state reject the plea, as it was “contrary to the essential policy of this state.” The committee also noted that “the law of 1820 preventing the emancipation of Slaves except by Act of the Legislature…proved to be necessary,” especially after Denmark Vesey’s foiled insurrection several months prior. For these reasons, the legislature found that Irvin’s reasoning behind granting William his freedom was “not sufficient to induce a departure from that line of policy.” Both houses of South Carolina’s congress agreed with the special committee report. The mulatto boy William would remain a slave.

Irvin would not accept this decision, most likely met with other officials, and resubmitted his request the following year. By late 1823, time was running out on Irvin’s two years to act on the will of Thomas Brown. Irvin had only until September of 1824 to secure William’s freedom and gain Brown’s $10,000 estate. Since South Carolina’s legislature would not meet again until after September, this would be the last chance to gain legal manumission in the state. The petition again went before the same special committee, and this time they recommended “that under the special circumstances of the case, that he [Irvin] be permitted to emancipate the said slave William.” The committee noted that the “special circumstances” were the conditional inheritance based on William’s emancipation and that the time for Irvin to act had “nearly expired.” Otherwise, nothing appears to have changed in the case from the year before. South Carolina accepted this emancipation reluctantly, but not without a special condition. The one catch attached to William’s freedom mandated that Irvin remove the boy outside the state. The legislature mandated that this timeframe would be much faster, a mere two months.

Whether by persistence or by political finagling, Irvin gained William’s liberty on December 20, 1823. It was extremely rare for South Carolina’s General Assembly to grant slave emancipation in South Carolina after 1820. In fact, the state never formally manumitted the “mulatto slave named William.” Instead, the assembly merely authorized John Irvin to seek a deed of emancipation from the district clerk of Fairfield. The state still maintained power over the districts, and allowing Irvin to seek William’s freedom at the local level also informed them of the legislature’s decision and gave them the responsibility to “carry the said slave beyond the

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limits of [the] state.” While the economic incentive drove Irvin to free the “mulatto boy” William from bondage, it appears to have been a father’s ingenuity that orchestrated the plan. The likely father’s final request set in motion actions that eventually set the mixed-heritage boy at liberty. In the end, “white” patronage aided William’s mulatto privilege in multiple areas; this included the wishes of the deceased to the executor of a will, a wealthy planter to elite politicians, and eventually a father to son.  

Sometimes, fathers were forthcoming about their lineal connection to the slaves they sought to emancipate, though this did not assist them any in their plea before the state assembly. On November 10th, 1827, David Martin of Barnwell District, South Carolina petitioned the state legislature for a special act of emancipation for two slave children he owned. Martin began his plea quite openly, stating “that from causes unnecessary to detail, he is the Father of two colored female children, to whom he wishes to give his property both Real and Personal.” The “causes unnecessary to detail” alluded to a sexual relationship he engaged in with his “Negro Woman Lucy,” named in his will along with “her two children Eliza and Martha.” Lucy gave birth to Elisa and Martha respectively in 1812 and 1817. South Carolina’s legislature outright rejected the father’s 1827 petition to free his children, but the following year Martin found another way to accomplish his goal. On October 23, 1828, he signed a will stating his desire that Lucy and their children Elisa and Martha remain on his property until they could be emancipated or sent “to someone of the United States where they can enjoy freedom.” He also asked the executors of his will to hold onto enough of his estate “for the comfortable maintenance and support of... Lucy and her two children Elisa and Martha.” He gave further instructors that his estate should support the three slaves and their heirs, even before his “Brothers and Sisters.” If Lucy, Elisa, and Martha did leave the state “to enjoy their freedom,” he declared that his property should be rented out and that any of the revenue and interest would be sent to them “and their issue forever.” In this manner, Martin bypassed the laws of South Carolina and found a legal route to maintain his family and future descendants of mixed descent. Though this is a rare case, it is just one way that mulatto privilege continued after laws attempted to prohibit this kind of transfer of wealth from master-fathers to their slave children.  

While having a European American father might gain one liberty and connections, it could also prevent other descendants of mixed heritage from establishing their own families in the place of their birth. In Essex County, Virginia, a slave of mixed descent named Floreal Floretta married Dillard Gordon, “a free man of colour,” in 1822. This presented a problem for the young Floretta, who was only seventeen years old at the time she married. For when she turned twenty-one she would have to leave the state. Her master and father, Philip Henshaw of Carolina County, Virginia, freed Floretta in his last will. Henshaw admitted that he had sired Floretta by “a yellow woman” he had purchased. He did not stay around Virginia to raise Floretta, and penned a will on November 14, 1814 before he travelled to the West Indies. In this will, Henshaw freed his daughter Floretta and gave her and his heirs half of his estate. The other half went to his sister, Sally Gatewood. Henshaw was particularly aware of the laws and social policies of the day, for he left instructions that Gatewood “together with the aid of some of my friends in Port Royal shall use every execution by petitioning the Virginia Legislature (Philip Henshaw) to obtain permission for the said Floreal Floretta to remain a free person in the state of

545 SCDAH, Legislative Petition, S165015 Item 01746, 01747, 01748 (ND); SCDAH, Legislative Report, S165005, Item 00218, Dec. 5, 1823.  

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Virginia.” He attempted to set up patrons for Floretta to watch over her and hopefully push for her to legally remain in the state. Henshaw also called for his sister to “board [Floretta] at some decent white woman’s house and have her educated.” Still, he knew that Gatewood may not want to follow these requests and might seek to prevent his illegitimate child of mixed heritage from inheriting half of his estate. As a result, he cut his sister out of the will if she did not comply with his requests, which would meant that the whole inheritance would go to Floretta.547

Henshaw’s instructions would ensure that Floretta would be taken care of financially, but they could not guarantee that she would be allowed to remain in the state. Henshaw never returned from his trip to the West Indies and at some point his will went into effect. Gatewood actually took in her niece and brought her up as Henshaw instructed. Floretta and Gordon eventually married and petitioned the General Assembly in late 1825 for state residency post-emancipation. Floretta would have turned the legal age of twenty-one sometime in 1826, so the couple was looking ahead to their eventual life together in freedom. Like other free people of color, they collected character references from those in their local community, dating back to November 1823. The Gordons understood patronage networks and gained signatures from over thirty people, including individual recommendations from Gatewood, who said that Floretta (now Floreal Gatewood) had lived with her for eight years and “Conducted herself well. She is an Honest, Sober, peaceable, orderly & Industrious woman.” Others in the Gatewood family attested to the same, and over fifty citizens signed a similar referral for Dillard Gordon.548 They added these documents to their petition to Virginia’s General Assembly. On January 3, 1826, the Virginia state legislature denied Floretta’s request to remain in the state after receiving her freedom. She would have twelve months to leave, like everyone else, or she might find herself once again placed in bondage.549

The state denied requests by freed individuals and couples of African descent to remain in the state once emancipated because they could reproduce and add to the already growing free population of color. This is exactly what the elite sought to prevent from happening, especially for those of mixed descent. If freed mulatto children were allowed to grow up occupying an equal status with their “white” parentage, they might continue to mix in with those of European descent and might erase the distinction made between the races. In this manner, mulatto children presented a threat to “white” identity.

In 1828, “a free Mulatto woman” named Rachel in Alleghany County, Virginia, petitioned the General Assembly with the familiar request to remain in the state. Jane Mann bequeathed Rachel, plus another “Mulatto” slave named George, along with other “Negros,” to her son John Mann (George may have been Rachel’s brother, though it is not apparent what become of him). Jane Mann left instructions for her son John to free the “two Mulatto Slaves,” yet the “negro” slaves were to remain in bondage. Like Floretta, Rachel and George had to wait until they turned twenty-one to obtain their freedom. When 1823 arrived, another lawsuit contested Jane Mann’s will, which prevented Rachel from gaining her freedom and put her at risk of being held as a slave for life. It is possible George simply left the area to seek his liberty at this point, for it took another five years for the courts to uphold Jane Mann’s will. At twenty-

547 LVA, Legislative Petitions, Essex County, Dec. 15, 1825.
548 Dillard Gordon’s character reference from his neighbors read: “We do hereby certify that the said Gordon has lived in our neighborhood from infancy without reproach - that he is as far as we know & believe honest, sober and industrious - that he is useful in the neighborhood as a mechanic (being a pretty good cooper & carpenter) and in being vigilant & prompt in detecting thefts &c. in slaves - that he has by his labor for the last six or eights years supported the family (a white family) in which he was raised, who but for that support would have been a charge upon this county. Given under our hands the date above.”
549 LVA, Legislative Petitions, Essex County, Dec. 15, 1825.
six years old, Rachel finally gained legal emancipation, but was now bound by the law to leave the state within a year. Rachel had “formed connections” that bound her to Alleghany County, namely she had married a slave and it was “her most ardent desire, to spend her Days with him, in the Neighborhood.” She pleaded with the state legislature to pass a special act that would allow her to remain in the state as a free woman. Fourteen of her neighbors, included John Mann, signed a certificate vouching for “the Character of Rachel, a free Mulatto Woman… saying that she is a woman of decent, modest deportment, and upright Integrity & Honesty.” This recommendation mattered little, for on December 4 the Courts of Justice considered Rachel’s petition and officials rejected the request a few short days later on December 7, 1828. Though Virginia continued to take individual cases into consideration and occasionally granted residency or other liberties to free people of color, only heavier prohibitions and restrictions came down the legislative pipeline into the 1830s.\textsuperscript{550}

In terms of slavery, the year 1830 lay on the cusp of several major events. David Walker’s issued his famous “Appeal” calling for the abolition of slavery in the fall of 1829. Into the next year, the pamphlet and its message travelled along the Atlantic seaboard and caused a fury among alarmed southern European Americans who learned of it. Southern states responded with various laws attempting to prohibit slaves and free people of color from reading and distributing incendiary literature in southern ports. In 1831, William Lloyd Garrison’s newspaper \textit{The Liberator} began printing radical abolitionist editorials. While abolitionist materials alarmed the planter class, these developments paled in comparison to the events that took place in Southampton, Virginia in August of the same year.

Nat Turner’s Rebellion not only sent fear into the hearts of the planter elite, but legislators enacted a new wave of restrictive legislation in the wake of the insurrection. These developments convinced the planter elite that the system of slavery was under assault and required added fortification to ward off outside attack and domestic revolt. The laws that followed in the 1830s to the eve of the Civil War continued the trend of previous decades to bolster slavery and strip the few remaining rights that free people of color had left.\textsuperscript{551}

\textsuperscript{550} LVA Legislative Petitions, Dec. 4, 1828; Guild, \textit{Black Laws of Virginia}, 100-106.

Conclusion

This study has shown state assemblies in the southeast had already reinforced the slave system prior to 1831. The southern planter believed they had to tighten the reins of slavery and further limit the rights of free persons of African descent in order to maintain racial order and “white” patriarchal structures of power. “White” elites began creating the institution of slavery in the latter part of the seventeenth century, and after a time of fortification in the colonial period, the revolutionary era opened up avenues to freedom and additional benefits for the enslaved, in particular people of mixed heritage. Although planter society maintained the racial binary between “white” and “black” throughout the early republic, Mulattoes had greater comparative social mobility over Negroes, defined as those of full African descent. This allowed some people of blended heritage to rise in society over their darker peers, even though they always remained subjugated to those of full European descent. Mulatto privilege stemmed from several factors, but the main key to their greater social mobility was access to “white” patrons, who could operate freely in society to assist their clients when they might need it the most, and especially in cases of attaining freedom. Ideas surrounding liberty and natural rights allowed for a period of increased emancipation during the revolutionary era. During this period, states that did not depend on plantation labor, or envision the decline of slavery, extended greater freedoms to people of African descent. Certain masters freed their slaves even in places where the slave system remained strong. This mulatto privilege contributed to noteworthy increases in slave manumissions. Even when both Mulatto and Negro slaves gained emancipation, those of mixed heritage were represented at a higher rate compared to their fully African slave counterparts.

Still, racial prejudice and hierarchy remained strong in the burgeoning nation. “White” founders established the United States with a clear-cut “white supremacist” racial order. People of “mixed blood” continued to threaten that racial order and the system of slavery because they might demand full rights of citizenship and an equal position with “whites” based on their ties to European ancestry. “White” elites had to keep Mulattoes associated with Negroes in order to maintain monoracial categories and protect their position on top of the racial and social hierarchies. When cotton production reignited slavery around the turn of the century, the economic stakes became increasingly high as “King Cotton” began its expanding hegemony. As the nation moved into the next century, state officials expanded their commitment to slave labor by restricting slave manumission and circumscribing the remaining rights of free people of color. These free people of African descent became a threat to the maintenance of that the cotton regime because they might join with slaves in opposing the system and they gave slaves hope that they too could one day achieve freedom. State legislatures attempted to solve what they saw as the problem of African freedom by subjugating the free population of color in pseudo-slavery.

Since the seventeenth century, penalties had been in place to prevent African and European intermixture and punished mixed-heritage children by placing them in either slavery or extended servitude. By the nineteenth-century authorities targeted the largely mixed free population of color who posed a threat to both the slave system and the racial order, owing to their free status and possible threat to “white” identity. The elite solution to this perceived problem was not to merely attack intermixture, but to end the practice of slave emancipation and force any emancipated slaves to leave the state. By the 1820s, general assemblies in most slave

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552 Again, Mulattoes were predominantly a sub-category of Negro during slavery in the English colonial North American and through the U.S. antebellum period.
states limited or altogether prohibited masters from emancipating their slaves. State
governments also furthered the legal repression of all free people of color, both Mulattoes and
Negroes. This legislation progressively closed the legal door on mulatto privilege by 1830.

In the early antebellum period, state officials in the five largest slave states – Virginia,
Maryland, North Carolina, South Carolina, and Georgia – responded to legislation concerning
slaves and free people of color in neighboring states. These states passed increasingly restrictive
laws against Negroes and Mulattoes due to the rising number of slaves, growing free populations
of African descent, and the threat of slave insurrection. In particular, the Haitian Revolution,
Gabriel and Denmark Vesey’s conspiracies, and Nat Turner’s rebellion exacerbated “white”
anxieties surrounding slave rebellion, which helped fuel the trend of intensified repression of the
enslaved and free people of color. Both slaves and free people of color, especially people of
mixed ancestry, played various roles in supporting and opposing these slave rebellions. To
reiterate, these attempts to overthrow slavery and the racial hierarchy failed and contributed to
the intensification of racial oppression.

The deepening repression of both slaves and free people of color further pushed people of
mixed ancestry towards being identified only by their African heritage – thus strengthening
hypodescent ideology to the point of the one-drop rule. While this discrimination did not always
fully translate into the complete dominance of the one-drop rule, by the 1830s free people of
color had their rights prohibited to the point where they were in many ways “slaves without
masters,” as strikingly expressed by Ira Berlin. In this respect, the antebellum planter class
pushed U.S. society closer to a totally bifurcated racial system. In the seventeenth through
eighteenth centuries certain people of blended ancestry often enjoyed a space in-between slavery
and freedom, and found spaces between the racial categories of “black” and “white.” After the
first few decades of the nineteenth century, the nation was well on the road to the one-drop rule
and a more solidified racial binary, where there was only “black” and “white,” and nothing much
in-between.
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