

FREEDOM IS NOT ENOUGH: AFRICAN AMERICANS IN ANTEBELLUM  
FAIRFAX COUNTY

by

Curtis L. Vaughn  
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Committee:

\_\_\_\_\_ Director  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Department Chairperson  
\_\_\_\_\_ Program Director  
\_\_\_\_\_ Dean, College of Humanities and Social  
Sciences

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Freedom Is Not Enough: African Americans in Antebellum Fairfax County

A thesis submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at George Mason University

by

Curtis L. Vaughn  
Master of Arts  
George Mason University, 2008

Director: Jane Turner Censer, Professor  
Department of History

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Fairfax, VA



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## **DEDICATION**

This is dedicated to all those people who study the past as a guide to understanding our condition in the present and our possibilities in the future.

## **ACKNOWLEDGEMENTS**

I would like to thank all those people who have made this happen. Katrina Krempasky of the Fairfax County Historic Records staff was invaluable in assisting me in my research. Dr. Censer and the other members of my committee provided insights that were essential to the clarity of this work. Also, special thanks go to fellow students and friends who encouraged me through the completion of this project.

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## **ABSTRACT**

### **FREEDOM IS NOT ENOUGH: AFRICAN AMERICANS IN ANTEBELLUM FAIRFAX COUNTY**

Curtis L. Vaughn, Ph.D.

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Dissertation Director: Dr. Jane Turner Censer

Prior to the Civil War, the lives of free African Americans in Fairfax County, Virginia were both ordinary and extraordinary. Using the land as the underpinning of their existence, they approached life using methods that were common to the general population around them. Fairfax was a place that was undergoing a major transition from a plantation society to a culture dominated by self-reliant people operating small farms. Free African Americans who were able to gain access to land were a part of this process allowing them to discard the mantle of dependency associated with slavery. Nevertheless, as much as ex-slaves and their progeny attempted to live in the mainstream of this rural society, they faced laws and stereotypes that the county's white population did not have to confront. African Americans' ability to overcome race-based obstacles was dependent upon using their labor for their own benefit rather than for the comfort and profit of a former master or white employer.

When free African Americans were able to have access to the labor of their entire family, they were more likely to become self-reliant, but the vestiges of the slave system often stymied independence particularly for free women. Antebellum Fairfax had many families who had both slave and free members and some families who had both white and African American members. These divisions in families more often adversely impacted free African American women who could not rely on the labor of an enslaved husband or the lasting attention of a white male. Moreover, families who remained intact were more likely to be able to care for children and dependent aging members, while free African American females who headed households often saw their progeny subjected to forced apprenticeships in order for the family to survive.

Although the land provided the economic basis for the survival of free African Americans, the county's location along the border with Maryland and the District of Columbia also played a role in the lives of the county's free African American population. Virginia and its neighbors remained slave jurisdictions until the Civil War, but each government wished to stop the expansion of slavery within its borders. Each jurisdiction legislated against movement of new slaves into their territory and attempted to limit the movement of freed slaves into their jurisdictions. Still, in a compact border region restricting such movement was difficult. African Americans used the differences of laws initially to petition for freedom. As they gained access to the court system, free African Americans expanded their use of the judiciary by bringing their grievances before the courts which sided with the African American plaintiffs with surprising regularity. Although freed slaves and their offspring had few citizenship rights, they were

able to use movement across borders and the ability to gain a hearing for their grievances to achieve increasing autonomy from their white neighbors.

No one story from the archives of the Fairfax County Courthouse completely defines the experience of free African Americans prior to the Civil War, but collectively they chronicle the lives of people who were an integral part of changing Fairfax County during the period. After freedom, many African Americans left Fairfax either voluntarily or through coercion. For those who stayed, their lives were so inter-connected both socially and economically with their white neighbors that any history of the county cannot ignore their role in the evolution of Fairfax.

## **INTRODUCTION—A LAND IN TRANSITION**

During the period between the American Revolution and the Civil War, Fairfax County, Virginia was a place in transition. The actual borders of the county changed, the drivers of the economy were shifting from plantations to family farms, and the pre-revolutionary elite families were scattering, while new land owners and immigrants settled the county looking to small farms for sustenance and economic self-reliance. The newly created population of free African Americans was part of all these changes. As the old plantation model of agriculture began to fail after the Revolution, masters initially reacted by freeing many of their bonds people. By the 1820's, the internal slave trade matured with the development of an active and profitable slave market in the District of Columbia that provided an alternative to freedom; however, the option of emancipation never disappeared. As a result, the District of Columbia, including Alexandria developed a large free African American population. Fairfax County, on the southern border of this massive shift away from slavery, was thrust into a changing environment with a legal system developed to support slavery but with a population that was adjusting to living with African Americans who were able both to move about the area more freely and to begin to reap some of the rewards of their own labor.

The story of African Americans in antebellum Fairfax County is one of failure and success in everyday life experiences. Family life and work routines intersected with

the white community who were often ambivalent towards African Americans. Whites who benefited from the slavery system found it difficult to forego the work done by slaves and to view African Americans in any way other than as dependent labor while other whites were less rigid in their views and more readily accepted the close relationships between the two communities. Many freed slaves capitalized on their positive associations with their former masters to move from bonded dependency by becoming farmers. These free African Americans were able to develop functioning families, accumulate wealth, and care for their dependent children and aging relatives. Even though the story of antebellum Fairfax needs to include this triumphal narrative, part of the story must also point out the somber realities of mixed status families having both slave and free members and interracial families which encountered far greater difficulties garnering the labor of all family members necessary to escape dependency on the former master. Often headed by women, these families often were faced with having their children bound out to whites while appeasing white males whose roles ranged from benevolent protectors to masters. Each family was unique but contained a common thread of struggle over who controlled the labor of free African Americans.

The unveiling of this history began with a basic question—why did newly freed African Americans remain in Fairfax County? Virginia’s lawmakers had made the state legally inhospitable with its most notable statute of 1806 that generally required any slave freed after that date to leave the state within one year or obtain explicit permission to remain. At the same time, the District of Columbia was less hostile to its burgeoning free African American population, and in addition, offered economic opportunities associated

with a growing urban area. In contrast to the economic growth occurring in the new capital city, Fairfax County had become economically stagnant. The soil in the county had been depleted by years of misuse by the aristocracy who had controlled much of county's land prior to the Revolutionary War. With plantation agriculture on the decline, Fairfax's economy remained sluggish until the 1850's when an influx of new land owners from the North introduced modern farming methods. Despite the ample reasons to leave Fairfax, a small group of African Americans remained. Their stories vary, but one central theme resonates—freedom from slavery was not enough; their goal was freedom from economic dependence. In the public records of Fairfax County, the lives of free African Americans show some persons who reached their target; others failed; but they all attempted to gain control of their lives even when the odds against them were insurmountable.

Free African Americans framed the ideal of independence in financial not political terms. Although neighboring Maryland had granted citizenship rights to some African Americans who were free prior to the Revolution, Virginia had limited the right to vote to propertied white persons since 1723. After the Revolution, Virginia restricted citizenship to resident whites. Free African Americans had no viable way of protesting these restrictions and had to live with laws that they had no voice in making. Given these political circumstances, independence to African Americans had a strong economic meaning. Having been brought to Virginia to supplement the labor needs of large land owners, African Americans found upon emancipation that discarding the role of dependent laborer was difficult. In slavery, the master was tasked with providing them

with modest shelter, clothes and food. Freedom shifted that responsibility to the freed person who generally only had his or her labor as a tool to survive. The public records of Fairfax contain an array of stories chronicling how free African Americans used their labor to make the county their lifelong home. Their modest accumulations of wealth coincided with the growth of American capitalism. In Fairfax where agriculture rather than industry was dominant, the post-revolutionary economic changes translated into new farming practices that relied on individual labor and small plots of land to support the basic needs of families. African Americans' skills in working the land yielded them opportunities to live within the restrictive political environment while breaking away from the economic control of the master.<sup>1</sup>

The ability of free African Americans to be masters of their own land only came as the historic advantages granted to elite whites slowly eroded. Along the Potomac River, colonial land ownership had been acquired through a concept called a proprietary. The monarch granted land to a proprietor who held all rights over the property. This legal concept was commonly known as “no land without a lord.” The Northern Neck Proprietary included all land from the Chesapeake Bay between the Potomac and Rappahannock Rivers westward to the mountains. The Culpepper family held the original proprietary, and then through marriage, passed it on to the Fairfax family. Agents for the families made grants of land and collected rents. One of the most famous agents was Robert “King” Carter who collected large holdings of land for himself including many tracts in Fairfax County. Land grants after being bounded and marked were recorded and

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<sup>1</sup> June Purcell Guild, *Black Laws of Virginia: A Summary of the Legislative Acts of Virginia Concerning Negroes from Earliest Times to the Present* (Lovettsville, Va: Willow Bend Books, 1996), 131–32, 135.

became the borders of individual fiefdoms. Within this system, land along the Potomac River became concentrated in the hands of a few persons who became very wealthy and tended to have authority over the general population.<sup>2</sup> With the overthrow of the king, the Northern Neck Proprietary disappeared and opened the opportunity for land distribution to greater numbers of persons. But Fairfax County did not change quickly. After the Revolution, the Fairfax, Mason, Washington, Lee, Custis, Fitzhugh, and Carter families still owned large land holdings. In each of these families, the patriarch had ultimate authority over his holdings including his slaves, but sustaining these possessions after the Revolution became difficult with the economic turmoil that accompanied the political upheaval.

A broad view of the people and forces that influenced the destiny of Fairfax County cannot ignore the enormous economic disparity that characterized the county from its colonial roots. The development of the planters' wealth depended on the work of laborers. As free African Americans began to acquire land, this transfer of property tore at the fabric of patriarchal ideals in which all authority and wealth rested with white males. This system had come under pressure during the eighteenth century when patriarchy began to mellow into paternalism and accelerated after the Revolution leading to the erosion of the connection between property ownership and authority.<sup>3</sup>

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<sup>2</sup> Kenton Kilmer, *The Fairfax Family in Fairfax County: A Brief History* (Fairfax, Va: Published by the Fairfax County Office of Comprehensive Planning under the direction of the County Board of Supervisors in cooperation with the County History Commission : available from Fairfax County Administrative Services, 1975), 5–11.

<sup>3</sup> Philip D. Morgan and Omohundro Institute of Early American History & Culture, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture, Williamsburg, Virginia, by the University of North Carolina Press, 1998), 257–261 Morgan asserts that during the eighteenth century, “Austere

Freed African Americans were a part of other societal changes ushering in a new era. Respect was gained through wealth creation rather than wealth ownership, and the pursuit of happiness was reflected in individual efforts.<sup>4</sup> As the pre-revolutionary aristocratic elite lost authority, common people challenged political systems, democratized religious institutions, and offered economic alternatives to the plantation. Historians have shown that African Americans were part of these transformations even though they were never politically empowered.<sup>5</sup>

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patriarchalism slowly gave way to mellow paternalism.”; Woody Holton, *Forced Founders: Indians, Debtors, Slaves, and the Making of the American Revolution in Virginia* (Chapel Hill: Published for the Omohundro Institute of Early American History and Culture by the University of North Carolina Press, 1999); Rhys Isaac, *The Transformation of Virginia, 1740-1790* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, VA., by University of North Carolina Press, 1982); Jan Lewis, *The Pursuit of Happiness: Family and Values in Jefferson's Virginia* (Cambridge [Cambridgeshire]; New York: Cambridge University Press, 1983); Gary B. Nash, *The Unknown American Revolution: The Unruly Birth of Democracy and the Struggle to Create America* (New York: Viking, 2005) Holton, Isaacs, Lewis, and Nash all discuss changes during the Revolutionary period that challenged the authority of the aristocracy.

<sup>4</sup> Gordon S. Wood, *The Radicalism of the American Revolution*, 1st ed (New York: A.A. Knopf, 1992), 277 Wood argued that “Now in the decades following the Revolution this leisure was labeled idleness.....At the same time this assault on gentry idleness was coupled with a heightened appreciation of the significance and dignity of labor.....Changes in the value of labor in turn affected the traditional aristocratic meaning of property. Property became associated less with proprietary wealth and the authority of the possessor and more with the labor that produced or improved it.”

<sup>5</sup> Eva Sheppard Wolf, *Race and Liberty in the New Nation: Emancipation in Virginia from the Revolution to Nat Turner's Rebellion* (Baton Rouge: Louisiana State University Press, 2006); Alison Goodyear Freehling, *Drift Toward Dissolution: The Virginia Slavery Debate of 1831-1832* (Baton Rouge: Louisiana State University Press, 1982); William G. Shade, *Democratizing the Old Dominion: Virginia and the Second Party System, 1824-1861* (Charlottesville: University Press of Virginia, 1996); William A Link, *Roots of Secession: Slavery and Politics in Antebellum Virginia*, Civil War America (Chapel Hill: University of North Carolina Press, 2003) Wolf, Freehling, Shade and Link discuss the changing political environment in Virginia prior to the Civil War. Slavery and African American freedom often played key roles in shaping the political debates. Donald G Mathews, *Religion in the Old South*, Chicago History of American Religion (Chicago: University of Chicago Press, 1977); Randolph Ferguson Scully, *Religion and the Making of Nat Turner's Virginia: Baptist Community and Conflict, 1740-1840*, The American South Series (Charlottesville: University of Virginia Press, 2008); Monica Najar, *Evangelizing the South: A Social History of Church and State in Early America*, Religion in America Series (New York: Oxford University Press, 2008); Nathan O. Hatch, *The Democratization of American Christianity* (New Haven: Yale University Press, 1989); Charles F Irons, *The Origins of Proslavery Christianity: White and Black Evangelicals in Colonial and Antebellum Virginia* (Chapel Hill: University of North Carolina Press, 2008) Mathews, Scully, Najar, and Hatch show the spread of evangelical religion after the Revolution. Irons discusses organized religion's move to a pro-slavery ideology and the reaction of African Americans to the changes. Tom Downey, *Planting a Capitalist South: Masters, Merchants, and Manufacturers in the*

Still, property ownership was used to demarcate a person who was responsible enough to participate in the government. Although other states discounted this concept in the early nineteenth century, property ownership was used as an important marker of readiness to participate in the government in Virginia until constitutional changes in 1851. In Fairfax County like the rest of the state, the heart of authority rested with property ownership. This concept was most evident in the ownership of human property where slave holders' dominion over their bondsmen remained absolute. Freed African Americans occupied an uncertain space between slavery and full citizenship which is shown through the lens of property ownership. Although they were not denied the right to own property, when free African Americans were able to acquire land full citizenship rights did not accrue with the purchase. In this middle ground, free African Americans were challenged to gain the same respect and dominion over their property as their white counterparts?

With the post-revolutionary wave of manumissions, property ownership was not the only matter that created questions of how the newly freed African Americans fit into this changing society. With liberty, ex-slaves could choose where to live and had the

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*Southern Interior, 1790-1860* (Baton Rouge: Louisiana State University Press, 2006); Sean P. Adams, *Old Dominion, Industrial Commonwealth: Coal, Politics, and Economy in Antebellum America*, Studies in Early American Economy and Society from the Library Company of Philadelphia (Baltimore: Johns Hopkins University Press, 2004); Charles B. Dew, *Bond of Iron: Master and Slave at Buffalo Forge*, 1st ed (New York: W.W. Norton, 1994) Downey, Adams, and Dew reflect on changes to the southern economy outside the plantation. Downey focuses on industry in the Edgefield District of South Carolina. Adams discusses how planter dominance in Virginia politics derailed transportation initiatives that would have promoted industry. Bond writes about the iron industry in Rockbridge County, Virginia and the key role of African Americans in the success of that industry. James Sidbury, *Ploughshares into Swords: Race, Rebellion, and Identity in Gabriel's Virginia, 1730-1810* (New York: Cambridge University Press, 1997); Jeff Forret, *Race Relations at the Margins: Slaves and Poor Whites in the Antebellum Southern Countryside* (Baton Rouge: Louisiana State University Press, 2006) Sidbury shows the diverging cultures of whites and African Americans in Richmond, Virginia. Forret discusses the relationship between poor whites and African Americans in the South.

freedom of movement. This mobility became an immediate challenge to white authority which had become bifurcated after the Revolution. A new decentralized government overlaid the authority of the master over his/her slaves. Realms of authority were defined by political boundaries replacing the pre-revolutionary spheres of power based on land holdings. White masters maintained order among the slave population and left political authorities to deal with the free African American population. Finding it difficult to limit the movement of ex-slaves, officials passed laws to exclude free African Americans from the population. Local customs and personal decisions made the enforcement of these laws sporadic and arbitrary in part because political boundaries held much less meaning for African Americans. Prior to emancipation, the authority of the master defined the slave's world as shown in Anthony Kaye's study of slavery in Mississippi.<sup>6</sup> Therefore, African American's sense of community did not necessarily coincide with political borders. Their challenges to white authority often happened where community lines extended beyond political boundaries. The changing boundaries between Fairfax County and the District of Columbia provide some insight into tensions between community and political borders. In this study, I will argue that as African Americans developed broader communities along the Potomac, they used political borders to their advantage. The realm of political authority of the governing elite was limited by borders, but the African American desire for freedom and personal dominion transcended these arbitrary boundaries.

As political borders changed and free African Americans expanded their horizons, the changes diminished the forces of economic constraint, making Fairfax more like

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<sup>6</sup> Anthony E Kaye, *Joining Places: Slave Neighborhoods in the Old South*, The John Hope Franklin Series in African American History and Culture (Chapel Hill: University of North Carolina Press, 2007).

Maryland and different from other parts of Virginia and the South.<sup>7</sup> John Zaborney maintained that slave rentals made the slavery system stronger in Virginia during the years just prior to the Civil War. The hiring out of bonded laborers restricted the jobs that may have been available to ex-slaves. Nevertheless, in Fairfax the total number of slaves in the county fell from 6,078 in 1800 to 3,116 in 1860 as agriculture transformed from plantations to family farms. Even though the remaining slave owners may have become more entrenched in their defense of slavery, opportunities opened for free African Americans when they gained access to land to work for themselves and lessened their need to compete with slaves for work. When working for themselves, African Americans were able to escape the trap of low wages that plagued the South. Gavin Wright argued that the South developed a regional labor market that depressed wages because of a variety of factors including poor education and transportation as well as remoteness from major cities. Free African Americans in Fairfax County suffered from lack of formal education, but by the 1850's new railroads and turnpikes were under construction and the District of Columbia was readily accessible. The postwar phenomenon of tenancy or sharecropping that became prevalent in the Cotton South also was less evident in Fairfax, as family farming did not rely on cash crops for economic survival. Thus, even prior to

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<sup>7</sup> Max L. Grivno, *Gleanings of Freedom: Free and Slave Labor Along the Mason-Dixon Line, 1790-1860*, *The Working Class in American History* (Urbana: University of Illinois Press, 2011); Seth Rockman, *Scraping by: Wage Labor, Slavery, and Survival in Early Baltimore*, *Studies in Early American Economy and Society from the Library Company of Philadelphia* (Baltimore: Johns Hopkins University Press, 2009) Gervino and Rockman both describe how free and slave labor interact in the border state of Maryland. Gervino studied agricultural labor and Rockman focused on the urban working environment.

the Civil War, free African Americans in Fairfax had more opportunity for economic independence than others living further south.<sup>8</sup>

In Fairfax, the transitions in the agricultural economy did not immediately end the mutual inter-dependence between European and African Americans. Whites had accumulated wealth and land through the plantation economy, but as this system faded the scattering of these assets followed. As migrants from the North revitalized the family farming economy, many Southerners, who had eschewed manual labor under the slave labor system, continued to rely upon African American labor and skills to make the household livable and the land profitable. During the first thirty to forty years of the nineteenth century, they sometimes rewarded great diligence with freedom. Using their labor to accumulate wealth, some free African American families broke the economic dependence upon whites well prior to the Civil War. Other members of the caste remained mired in poverty on the margins of society performing menial household tasks or labor at planting and harvest time. This unequal trade between labor and reward depended upon an abundance of African American labor and masked the transition occurring in the county in which families rather than servants provided farm labor. This change became more noticeable with a wave of legal transfers of property that occurred in the 1850's. Prior to that time many whites were either reluctant to transfer title to free African Americans or withheld title until these new purchasers completed payment for

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<sup>8</sup> *Historical Census Browser* (University of Virginia; Geospatial and Statistical Data Center, 2011), <http://fisher.lib.virginia.edu/collections/stats/histcensus/index.html>; John J. Zaborney, *Slaves for Hire: Renting Enslaved Laborers in Antebellum Virginia* (Baton Rouge: Louisiana State University Press, 2012); Gavin Wright, *Old South, New South: Revolutions in the Southern Economy Since the Civil War* (New York: Basic Books, 1986).

their land. How these transfers of land ownership evolved over time are vital to understanding the role of property and position in the community.

The economic changes had political ramifications. While whites maintained absolute political control in Virginia from the Revolution to the Civil War, the period was a time the new republic was making the transition from its people being defined as subjects of the king to being considered as citizens of a state/nation. Although today “citizen” is an inclusive term, the founders wished it to exclusively describe those who had a stake in society defined as property ownership. Persons outside the elite soon challenged this concept as they acquired wealth by purchasing a part of the new nation’s large supply of land. As free African Americans gained economic independence, they created a problem for those who wished to limit participation in society to white males. Many historians have grappled with these issues, but the ideas contained in three works provide context for the political exclusion of African Americans.

Rogers Smith explained the problem faced by freed slaves using the term “ascriptive Americanism.” He argued that after the Revolution, the egalitarian ideals of liberalism and republicanism were too broad so people were grouped according to “civic myths.” Among these new American ideals was the belief that individuals should be “industrious, rational, and self-reliant.” However, in depressed economic times, people found it difficult to meet these standards, and a state of perpetual inequality resulted. Free African Americans in Fairfax confirm Smith’s economic caste theories. When freed, most ex-slaves had no assets other than their labor for survival. Economic times were difficult in the county until the 1850’s when former slaves began to acquire land and

achieve economic stability. By that time, the illusion of free African American dependency had become a strong stereotype.<sup>9</sup>

Even as these myths developed, laws had to be enacted and interpreted in order to deny full status to those people of color who were born in the state and country. Tackling this knotty problem, James Kettner indicated that protections of African American citizenship rights under the Constitution were often discussed and were not denied until the Supreme Court's decision in 1857 in the case of Dred Scott. Differing state interpretations of the citizenship status of African Americans drove the national issues. Virginia never considered freed slaves to be citizens and did not allow them full access to judicial system. Nevertheless, slaves had the right to challenge their masters in court when they believed they had been wrongly held in bondage. These petitions were a regular part of court proceedings in Fairfax County. When masters promised emancipation, these cases were important because they established African Americans' right to freedom; moreover, those who were emancipated were a factor in the debate over birthright citizenship. Rather than consider this birthright, Virginia's laws demanded that many of these persons leave the state. Even with such draconian rules in place, free African Americans remained in the state leaving Virginians to rely on racial understandings to deny civic equality.<sup>10</sup>

Using the term "white supremacy" rather than racism, Daryl Michael Scott studied white political dominance in the post-emancipation South. He has asserted that

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<sup>9</sup> Rogers M. Smith, *Civic Ideals: Conflicting Visions of Citizenship in U.S. History*, The Yale ISPS Series (New Haven [Conn.]: Yale University Press, 1997) Quotation taken from Page 37.

<sup>10</sup> James H. Kettner, *The Development of American Citizenship, 1608-1870* (Chapel Hill: Published for the Institute of Early American History and Culture, Williamsburg, Va., by the University of North Carolina Press, 1978), 287–333.

although racism existed throughout the country, racists could share government with African Americans. In contrast, he has portrayed southerners as white supremacists who could not envision sharing power with former slaves. Because Fairfax County was among the places with a free African American population during the years of slavery, it also can be seen as a laboratory for Scott's theory prior to the Civil War. Whites in Fairfax never shared government with their ex-slaves prior to the war, and the idea of white supremacy drove that situation. Nevertheless, those who had political power lived among free African Americans. Even if they could not imagine sharing the reins of government, white society in Fairfax found African Americans claimed a part of the land and wealth of the county.<sup>11</sup>

With freedom, African Americans had the ability to leave the unwelcoming environment of Virginia politics. The general emancipation of slaves in northern states began with Pennsylvania in 1780 and ended gradually over the next several decades. In these areas, legislatures grappled with granting full citizenship rights to African Americans with mixed results. Still many ex-slaves felt a better life just required crossing the Mason-Dixon Line. Less than 100 miles away, this border was a powerful lure. Those who decided to stay in Virginia had to balance remaining with family in familiar surroundings versus the possibility of becoming a full citizen in the Northern states. The possibility of economic independence in Virginia mitigated such a stark choice.

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<sup>11</sup> Daryl Michael Scott, "White Supremacy and the Question of Black Citizenship in the Post-Emancipation South," in *Creating Citizenship in the Nineteenth-Century South* (Gainesville: University Press of Florida, 2013), 223–46.

This study focuses on the lives of freed slaves who stayed in Virginia, and how they coped in a legally unwelcoming environment. Although an oppressive government often victimized individuals, others were able to not only determine their own destiny but also influence the society around them. Whites and African Americans together developed local customs and tolerated individual decisions that clearly contrasted with the state law of Virginia. For instance, the enforcement of the deportation requirements was spotty at best. Family life also challenged mainstream ideals. Patriarchs often recognized both their white and African American families. The existence of inter-racial and mixed free and slave families often overrode the ideal of marriage and racial separation. In these situations, labor relations often relied on cooperation rather than traditional patriarch/dependent arrangements. In the face of this cultural change, how laws were enforced is of greater interest than how statutes were written.

Implementation of laws happened within the context of four major problems for Fairfax's slaveholding society. Statutes concerning slavery were in conflict across political boundaries; Virginia's laws recognized the desires of dying emancipators; Slavery's heritage of multi-racial families could not be hidden; and African Americans used their labor not only to keep their families intact but also to accumulate for themselves wealth including land. My study shows how mixed race families and free laborers used these slave holder quandaries to successfully challenge white political dominance in the court room and along borders giving us a different understanding of the history of Fairfax County in which African Americans played an active role in shaping the changes affecting the area.

Measuring the effect on society of these changes is part of a larger question of how we understand the contributions of subaltern people in general. Can we draw broad conclusions from specific examples contained in local histories? The study of free African Americans in the South has moved from broad-based works covering the entire South or an entire state to local studies. Early statewide studies included the work of John Hope Franklin in North Carolina and Luther Porter Jackson in Virginia. The seminal study of Ira Berlin looked at the entire South in examining the experiences of free African Americans.<sup>12</sup> More recently, local studies have proliferated. Regionally focused histories can be broadly categorized as focusing on a particular geographic area or portraying the experience of a particular family. Although a few collections of personal papers of free African American families have surfaced, much research has focused on information about the lives of freed slaves taken from sources written by whites. A recurring theme within these works suggests that the success of African Americans was dependent upon the goodwill of the white population.<sup>13</sup> By focusing on court house records, Melvin Ely found a much broader agency exercised by freed slaves in Prince Edward County, Virginia. Ely's work significantly changed the dialogue about the

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<sup>12</sup> Luther Porter Jackson, *Free Negro Labor and Property Holding in Virginia, 1830-1860*, Studies in American Negro Life (New York: Atheneum, 1942); Ira Berlin, *Slaves Without Masters; the Free Negro in the Antebellum South*, 1st ed. (New York: Pantheon Books, 1974); John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill, NC: The University of North Carolina Press, 1943).

<sup>13</sup> Jefferson Morley, *Snow-Storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835*, 1st ed (New York: Nan A. Talese/Doubleday, 2012); Brenda E Stevenson, *Life in Black and White: Family and Community in the Slave South* (New York: Oxford University Press, 1996); Victoria E Bynum, *The Free State of Jones: Mississippi's Longest Civil War*, The Fred W. Morrison Series in Southern Studies (Chapel Hill: University of North Carolina Press, 2001); Adele Logan Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789-1879* (Fayetteville: The University of Arkansas Press, 1991); Michael P Johnson, *Black Masters: A Free Family of Color in the Old South*, 1st ed (New York: Norton, 1984); John Hope Franklin, *In Search of the Promised Land: A Slave Family in the Old South*, New Narratives in American History (New York: Oxford University Press, 2006).

relationship between free African Americans and their white neighbors.<sup>14</sup> Public records are important tools in understanding the impact of groups who could not record their own histories. Court cases, land transfers, and wills show the interactions of members of the community that are often hidden in personal transcripts. Matters of importance to people are recorded in public documents including who would be rewarded at death, who was able to conduct their financial affairs in a businesslike fashion, and who had alienated their neighbors to the extent that the court system was needed to play mediator. Also, such records contain indications of multi-racial families that white relatives have hidden for generations. The history found in public records presents a more inclusive story of the persons who shaped the community.

With local records providing invaluable insights, why is Fairfax County an important area to study? The evolution of Fairfax often tracked nationwide changes. By 1850, two railroads crossed the county greatly improving how goods were moved to market. Also, manufacturing companies were organized at Great Falls to take advantage of the river traffic from the Chesapeake and Ohio Canal, and turnpikes were built to improve access within the county and to Washington and Alexandria. An influx of people from the North and from outside the country was a catalyst for the transformation. Historian Nan Netherton estimated that in 1850 approximately one third of Fairfax's adult white male population was born outside of Virginia. The demographic changes Fairfax experienced reflected the movement of people nationwide to places with cheap,

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<sup>14</sup> Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from 1790s Through the Civil War*, 1st ed (New York: A. Knopf : Distributed by Random House, 2004).

available land.<sup>15</sup> This transition from landed patriarchs to Yankee farmers not only revitalized the economy but also changed the political atmosphere. As the Civil War approached, Unionist feelings were strong, although these sentiments did not represent the majority opinion. The northern transplants did not have the same economic and ideological attachment to slavery and did not have extensive connections to the African American population, free or slave. Northerners coming to the area brought modern farming techniques, including crop rotation and fertilization, and focused on growing grains. These changes were more conducive to family farming and left slave owners with two possible answers—sell their slaves or free them. Many chose to sell their chattel, and a vibrant slave market evolved in Alexandria. For those who chose to free their slaves, the immediate need to feed and clothe these persons disappeared, but the general population had to grapple with how to deal with a growing population of the newly freed. Through these changes, Fairfax was in the middle of the free vs. slave labor debate, and its population reflected the growing political divide between native southerners invested in slavery and northerners who were increasingly wary of the slave system.

Just as the commercial prosperity of present day Fairfax masks its agricultural past, presenting the county's African American history without the context of the primary forces affecting the county as a whole diminishes the importance of African Americans in the mainstream experience. The life experiences of European Americans and African Americans were intertwined. "Ascriptive" Americanism as described by Rogers Smith provided a way of ignoring the extent of racial mixing. When examined on a family-by-

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<sup>15</sup> Nan Netherton, *Fairfax County, Virginia: A History* (Fairfax County Board of Supervisors, 1978), 261–270.

family basis, the concept of distinct races disappears. Politically and legally treated as a separate class of people, free African Americans lived in close proximity to both their white neighbors and the slave population. In many cases slaves were a part of their families and in some cases whites were also part of their households. Political borders and statutes were unable to separate free people from their communities. Factors other than race such as age and gender often determined their stories. Understanding how these people lived and worked gives us a far clearer picture of Fairfax County in the years before the Civil War. This study shows the inter-connections between whites and African Americans and provides a framework for examining a period of the county's history that transcends a fixation on elite white families.<sup>16</sup>

Writing the history of those with scanty skills at reading or writing requires focusing on their actions rather than their personal letters and papers. Wills reveal the private wishes of the deceased. In the antebellum period, free African Americans in Fairfax left few wills most likely because they had few assets that required probate and lacked the means to record their final wishes. This situation began to change after the Civil War as the first group of African American land owners died. These wills reveal few of the struggles to acquire wealth but reflect the testator's desire to distribute gains to as many family members as possible. For land owners who died intestate, the family relied on the courts for final settlement of the estate. These latter cases illustrate both families who agreed on division of the estate and those who had grievances about the

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<sup>16</sup> Smith, *Civic Ideals*.

distribution of assets. For either situation, these records contain important information about the lives of these families.

Indeed, this study relies on and illuminates the wills of many Fairfax residents. Historians have often used wills written by whites in the antebellum period. In particular, Eva Sheppard Wolf, in her enlightening study, examined wills of Virginians who freed their slaves, but none of her research focused on Fairfax County or on the later lives of the freed persons. Outlining the evolution of ideas about emancipation in Virginia in the early national period, Wolf ended with the political debates in the Virginia General Assembly after Nat Turner's rebellion.<sup>17</sup> In contrast, my study, while concentrating on the period after 1830, utilizes many wills from an earlier era to explain important changes for free African Americans. The wills of Fairfax residents who freed their slaves allow me to go beyond political debates. Such documents, through their emotional complexity, enrich our understanding of the lives of the freedmen and their descendants. Cherished inter-racial friendships and families appear as well as the vendettas and pettiness of the authors. Through such complex relationships, many free African Americans in Fairfax County not only obtained their freedom but also found their first opportunity for independence.

Reflecting their personal connections with their slaves as well as their own lingering unwillingness to part with their bonded labor, masters in antebellum Fairfax more often used wills than deeds of manumission to free their bondsmen. While reflecting on his/her life, the testator often provided insights about the importance of the

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<sup>17</sup> Wolf, *Race and Liberty in the New Nation*.

slave to the household. On the other hand, deeds of manumission tended to be brief and thus contained fewer insights into the relation of the slave and master. In writing their wills, masters often brought up the issues such as African colonization or the 1806 deportation law that concerned slave holders about granting freedom to their chattel. Even though, many of the slave owners were renowned gentlemen of Virginia, their views on manumission did not always reflect the positions enacted into law by the General Assembly. Although some masters used the promise of emancipation to control their slaves, other quietly challenged the law by reflecting in their wills on the importance of African Americans in their families and community. Slave owners in Fairfax could not utter such sentiments during their lifetimes while they also justified slavery based on the natural dependency of a race of people. Some masters in facing death were kinder in their assessments of those people who had served them well.

African Americans who moved from slavery to freedom had to traverse a new terrain. Favor from white persons had initially been earned because of their labor and willingness to serve their masters—attitudes that were associated with slavery. Emancipation was only the initial step in evolving from being considered only a laborer to becoming part of the free community. This study concentrates on only those persons who were fortunate enough to be manumitted. Respect within the white community did not accompany freedom, and some whites even associated African American freedom with profligacy and laziness. Countering these ideas required careful work by the newly freed persons. African Americans leaving slavery had to be careful to not be seen as vagrants by whites. For those who settled on land, the tolerance they gained from the

white community for their labor had to be translated into respect as wealth holders and contributors to the overall welfare of the community. By the 1850's, this transition was well underway in Fairfax.

This evolution began with movement across the political borders of the region. My first chapter not only shows how free African Americans used the boundaries to gain freedom and pursue their quest for independence but also traces the importance of the changing borders between Fairfax and the District of Columbia in the lives of newly freed slaves. Movement across borders was commonplace, but African Americans found that passage across political boundaries could also represent overcoming the control of the master. White lawmakers attempted to replace slave owners as the control over free African American movement, but the laws they created were not consistent across borders. When faced with disruption in their lives, African Americans used the differences among laws to challenge white authority. The attempts to use borders to remove free African Americans from their homes were met with resistance and disdain. Through their actions, people of African descent showed that their home was where they chose whether it was Fairfax, the District of Columbia, or the free states of the North.

The second chapter addresses the underexplored topic of African Americans use of the legal system. Relying on a wide spectrum of cases including those brought outside of Fairfax County, this examination shows how slaves gained access to the judicial system to advocate for their own freedom. Some slaves then relied on that system to minimize the disruption to their lives caused by the death of an owner or the threat of the slave market. The chapter then explores petitions to remain in the county after gaining

freedom. As free African Americans became more settled residents of the county, they resorted to the courts to resolve disputes particularly relating to land transactions.

Ultimately, the greatest challenge mounted by free African Americans came when they asked the courts to enforce bequests to them from former masters some of whom were relatives. Racial tensions in Fairfax often surfaced as these estates were settled. White heirs then tried to overturn the largess of the deceased master. In spite of white resistance, the African American plaintiff often prevailed.

In spite of the many obstacles facing emancipated slaves, some of these free persons were able to achieve economic self-sufficiency. In particular, households headed by males whose heritage of freedom dated prior to 1806 were able to turn their liberty into economic advantage. Exempt from removal laws, these freedmen often were able to translate skills acquired as slaves into a place in the community un-challenged by white authorities. Chapter Three emphasizes the importance of family by showing that the most successful members of this group were those able to keep their families intact. To work efficiently, the new model of family farm demanded the labor of men, women and children. In these cases, families were able later to purchase land and even sometimes the freedom of other family members. Although life on these farms was defined by hard labor, African Americans who worked for themselves were able to leave behind the mantle of dependency.

Analyzing the issues facing free African American families whose cohesiveness had been compromised by the slavery system, my fourth chapter explores the problems of families formed while one partner was enslaved as well as the difficulties of relationships

across racial lines. Historians have written extensively about women's roles in antebellum households. This chapter adds to the historiography by showing that rural African American women suffered the most from the mixed free/slave family since they cared for their children supported only by low-wage domestic employment. Because women's skills brought in so little money, their freedom was less likely to directly translate into advantages of property ownership. Other African American women attempted to navigate to their benefit the mixed feelings of white males towards them. Some had white protectors who cherished and treated them quite well while others dealt with men who considered such women only as a source of necessary labor. Even those women who had the support of a white male could be left in difficult circumstances upon the death of their patron. No matter the circumstances, African American women, whose family network was disrupted by slavery or racial stereotypes, often were left in a difficult economic situation.

Although gender and family status were important predictors of free African Americans success in shaking off the dependency of slavery, age too had an impact. Through paternalistic stereotypes, white males assumed the responsibility for dependents, and this cultural norm carried into family life as well as slave holding. Chapter 5 shows that free African Americans challenged these ideals by caring for their children and aging relatives; however, this responsibility for those persons unable to support themselves did not come easily. The emphasis on African Americans as a source of labor meant that when their families struggled financially, the overseers of the poor often stepped in and demanded that children be placed in apprenticeships or the care of a white male who

would teach them a trade or at least put them to work. African Americans caught in this web of forced labor beyond slavery found escape difficult leading to continued hard work into their old age. When African Americans became too old to work for their own support, family or friends often assumed their charge. The white community had little use for freed persons who could not labor, but the care of these elderly folks was in transition. As more African American families worked for their own benefit, the need for the white patriarch's protection diminished.

With an improving economic status, free African Americans were becoming an established part of Fairfax County outside of slavery. My study, "Freedom is not Enough," shows how these freed people were able to use their labor to implement modern farming methods and establish successful family farms. Fairfax was affected culturally as ex-slaves and their progeny began to escape from social and economic bondage. African Americans were competing in the marketplace and participating in business transactions.<sup>18</sup> Sexual relationships between whites and African Americans could no longer be hidden exclusively within the slave system, and bonds between slaves and free persons reflected a changing dynamic for African American families. The ideal of the white patriarch had long been under attack, and the growing independence of their former bonds people was an important part of the move away from this view.

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<sup>18</sup> Citizens of Fairfax County, "Petition to the General Assembly," December 30, 1836, Reel 50, Box 70, Folder 65, Library of Virginia, Richmond, Virginia This petition asked for an act to compel persons trading in carts and wagons to obtain a license from the County Courts and to prevent their trading with free Negroes or slaves without such license.

## **CHAPTER ONE--OPPORTUNITIES AND BOUNDARIES**

Realms of power are limited by borders, but boundaries are also a place where those who are excluded from power can challenge their status through both licit and illicit means. When the borders for the nation's capital were established, the ten-square mile reserve cut across both the political boundaries of Virginia and Maryland as well as the natural boundary created by the Potomac River. These new borders created spheres of power that white Americans attempted to use to regulate the movement of African Americans. Borders had different meanings depending on the individual's circumstances. Some slaves were able to navigate the ambiguities of the law using the boundaries between political jurisdictions to challenge for freedom. African Americans' work, social, and religious life, and family often extended across borders. How boundaries affected African Americans was also an evolving process over the period from the Revolution to the Civil War. As more African Americans acquired freedom, whites reacted by making Virginia more unwelcoming to the freed slaves. Still, for those whose work and services were important to the whites, exclusion from the community was not required. Others simply changed their identities and disappeared from the area. African Americans were often limited by political boundaries, but they also found openings along these lines to realize a greater range of economic and cultural opportunities.

## Changing Societies along the Border

Fairfax shared boundaries with the District of Columbia and Maryland, both of which allowed slavery. As the federal enclave, the District of Columbia underwent a rapid transition from an agricultural based economy into a thriving city and no longer had a compelling economic reason to continue the slave system. As new residents arrived from all parts of the new republic, transplanted northern activists fueled opposition to slavery and the slave trade. Nevertheless, this hostility did not break the power of the slave holders even though these masters were faced with an increasing financial burden of owning unneeded bonds people. As a result, Washington became a thriving slave market place, and African Americans faced a continuing threat of sale to the South. Some masters resorted to emancipation as an alternative to sale, leading to a rapid increase in the population of freed slaves. With this growth, African Americans found increased religious and educational opportunities in the federal enclave. Still, as the Civil War approached slavery persisted, and the city became a more restrictive place for free African Americans to live.<sup>1</sup>

Maryland also experienced an evolution away from slavery in Baltimore and areas to the north and west of the city. In areas that still had significant plantation interests, slaves remained as an important part of the labor force. Nevertheless, the move from tobacco to grains as a chief farm product changed the labor needs of agriculture

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<sup>1</sup> *First Freed: Washington, D.C. in the Emancipation Era* (Washington, D.C: Howard University Press, 2002), 21–37; Letitia Woods Brown, *Free Negroes in the District of Columbia, 1790-1846*, The Urban Life in America Series (New York: Oxford University Press, 1972); Morley, *Snow-Storm in August*; Josephine F Pacheco and Faculty Author Collection (George Mason University), *The Pearl: A Failed Slave Escape on the Potomac* (Chapel Hill: University of North Carolina Press, 2005); Philip Sheldon Foner, *Three Who Dared: Prudence Crandall, Margaret Douglass, Myrtila Miner: Champions of Antebellum Black Education*, Contributions in Women's Studies, no. 47 (Westport, Conn: Greenwood Press, 1984).

reducing the economic utility of maintaining full-time bonded labor. Jean Lee described the pressures on slaveholders after the Revolution in Charles County, Maryland. Markets for their products did not rebound after the Revolution, slaves were seeking freedom, and taxes were a burden leading many whites to move west for a better economic future. Therefore, even where slavery was most entrenched in Maryland, economic pressures brought change. Masters increasingly used term slave agreements that over time created a large free African American population. Baltimore absorbed many of these newly freed people while becoming an important port. As the city's commerce grew, the need for labor drew both white and free African American workers to the city, resulting in a new center of African American life. Like Charles County, Fairfax was undergoing an agricultural transition, but until the 1850's, its stagnant economy stood in stark contrast to the economic vibrancy of Washington and Baltimore.<sup>2</sup>

The economic changes in neighboring jurisdictions affected Fairfax County significantly during the slaveholding period. Virginia was the cradle of American slavery, and although Fairfax was an important part of that legacy, the economics of slavery did not match the county's changing land use pattern. During the pre-revolutionary era, the great planters of the county controlled much of the agricultural production, depleted the soil, and subsequently subdivided and sold large parts of their holdings. These changes

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<sup>2</sup> T. Stephen Whitman and Maryland Historical Society, *Challenging Slavery in the Chesapeake: Black and White Resistance to Human Bondage, 1775-1865* (Baltimore: Maryland Historical Society, 2007); Grivno, *Gleanings of Freedom*; Rockman, *Scraping by*; T. Stephen Whitman, *The Price of Freedom: Slavery and Manumission in Baltimore and Early National Maryland* (Lexington, Ky: University Press of Kentucky, 1997); Bayly E. Marks, "Skilled Blacks in Antebellum St. Mary's County, Maryland.," *Journal of Southern History* 53, no. 4 (November 1987): 537-64; Mary Carroll Johansen, "Intelligence, Though Overlooked": Education for Black Women in the Upper South, 1800-1840.," *Maryland Historical Magazine* 93, no. 4 (Winter 1998): 443-65; Jean Butenhoff Lee, *The Price of Nationhood: The American Revolution in Charles County*, 1st ed (New York: W.W. Norton, 1994), 189-262.

diminished the utility of enslaved labor, and free labor was a better model for small farming. Land values reflected the economic sluggishness leading to an increasing numbers of northerners purchasing farms in the county in the fifteen years prior to the Civil War. An active yeomanry developed reviving the agricultural economy at the same time that many slaves acquired their freedom. Just as in Maryland, these manumissions had resulted from many Fairfax slave owners replacing lifetime bondage with emancipation after a term of service. These newly freed persons then were able to join the free labor market. As the family farm model emphasizing self-reliance emerged in Fairfax, free African Americans used skills acquired during slavery to join this farming transformation.

Not all of the economic struggles of Fairfax were tied to agriculture. When the District of Columbia was formed in 1800, territory from Fairfax County formed the Virginia side of the new federal enclave, but all of the government buildings and spending to develop a new city occurred on the Maryland side of the Potomac. The nascent capital territory included the new town of Washington and the existing towns of Georgetown on the Maryland side and Alexandria on the Virginia side. Alexandria had been the economic and political center of Fairfax. The Virginia General Assembly compensated Fairfax for its loss of territory by ceding back to Fairfax a portion of Loudoun County which had been pared from Fairfax in 1757. A new courthouse was built in the center of the new county, but it could not replace the established port and commerce of Alexandria.

The economic trajectory of the region is mirrored in the demographic trends shown in Tables 1, 2, and 3. In 1801, the District of Columbia was formally brought under federal control and divided into two counties, Alexandria and Washington, divided by the Potomac River. In 1800, the new capital city had a relatively small population. As with the neighboring jurisdictions, the number of free African Americans was not very significant and slaves were an important segment of the population. Of the District’s total number of residents, nearly 6,000 had been formerly in Fairfax.<sup>3</sup>

**Table 1 1800 Population of the District of Columbia and Neighboring Jurisdictions**

	Whites	Free Blacks	Slaves	Total	% White	% Free Black	% Slave
District of Columbia	10,066	783	3,244	14,093	76.4	5.6	18.0
Fairfax County	7,035	204	6,078	13,317	52.8	1.6	45.6
Montgomery County	8,508	262	6,288	15,058	56.5	1.7	41.8
Prince George’s County	8,346	648	12,191	21,175	39.4	3.0	57.6

<sup>3</sup> Demographic information taken from Dorothy S Provine, *Alexandria County, Virginia: Free Negro Registers, 1797-1861* (Bowie, Md: Heritage Books, 1990); Dorothy S Provine, *District of Columbia Free Negro Registers, 1821-1861* (Bowie, Md: Heritage Books, 1996); *Historical Census Browser*.

**Table 2 1830 Population of the District of Columbia and Neighboring Jurisdictions**

	Whites	Free Blacks	Slaves	Total	% White	% Free Black	% Slave
District of Columbia	27,563	6,152	6,119	39,834	69.3	15.4	15.3
Fairfax County	4,892	311	4,001	9,204	53.1	3.4	43.5
Montgomery County	12,103	1,266	6,447	19,816	61.1	6.4	32.5
Prince George's County	11,585	1,202	7,687	20,474	37.5	5.9	56.6

**Table 3 1860 Population of the District of Columbia and Neighboring Jurisdictions**

	White	Free Black	Slaves	Total	% White	% Free Black	% Slave
District of Columbia	60,764	11,131	3,185	75,080	75.9	19.9	4.2
Alexandria County	9,851	1,415	1,386	12,652	77.9	11.2	11.0
Fairfax County	8,046	672	3,116	11,834	68.0	5.7	26.3
Montgomery County	11,349	1,552	5,421	18,322	61.9	8.5	29.6
Prince George's County	12,479	1,198	9,650	23,327	41.4	5.1	53.5

The demographic picture of the area quickly changed after the turn of the nineteenth century. By 1830, the population of Fairfax County declined from its 1800 level as did the portion of the population that was enslaved. Both of these trends reflected the decline of agriculture in the county. By contrast, the District of Columbia's populace had nearly tripled, and the number of free African American inhabitants had grown by over 5,000 people. The growing federal government presence can be seen in the fact that nearly 45 percent of the residents of the area now lived in the District. In 1846, the federal government ceded Alexandria County to Virginia. Even with the loss of territory,

by 1860 the District had gained over 35,000 persons since the 1830 census. Over the same period, Fairfax County inhabitants increased by only approximately 2,600 residents with a continuing decline in the number of slaves. Still, the small number of free African Americans continued to grow but represented only four percent of the region's free non-white populace. The District of Columbia had become the center for free African American life in the area.

The economic changes affecting Fairfax County were also echoed through the writings of William Fitzhugh who owned the largest parcel of land in the county, a 24,000-acre plantation in central Fairfax County called Ravensworth. He was also an active member and Vice President of the American Colonization Society. Upon his death in 1830, Fitzhugh's obituary referred to his essays under the pseudonym of Optimus that had been printed in the *Richmond Enquirer*. In these essays, he defended the motives of the colonization movement in part by framing the damage done by slavery.

Is there any citizen of Virginia, who will attribute the evil it presents, to any cause than the character of our laboring population? Let him look to our languishing agriculture, our deserted farms, our decayed fortunes, our decreasing population: let him cast up, in his own ledger, his profit and loss account for the last fifteen or twenty years, and let him say whether the labor of the slave is not a curse to the land on which it is expended? But I forbear; sentiments I have uttered, are the sentiments of a slave-holder; of one, too, whose interest are peculiarly those of the country in which he lives. He has examined this subject in all its bearings, and he unhesitatingly pronounces an early and a combined operation of the States and the General Government, essential to save the country from progressive debility and premature decay.<sup>4</sup>

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<sup>4</sup> "Obituary Memoir," *African Repository and Colonial Journal (1825-1849)*, American Periodicals, 6, no. 3 (May 1830): 91.

Fitzhugh's concerns reflected the financial travails of agriculture that had overwhelmed the county since the decline of the tobacco export market after the Revolution. More important, because he believed that the moribund economy was unlikely to rebound using slave labor, he made a plea for government action.

Rather than government intervention to end slavery, changes in farming practices in Fairfax County were stimulated by the immigration of yeoman farmers from the North. Samuel Janney, a Quaker, an anti-slavery activist, and a native Virginian, was excited by the movement of the new yeomanry into the county, many of whom were fellow Quakers from the Philadelphia area. Janney's enthusiasm was supported by new scientific farming methods that northern transplants used to resuscitate the worn out fields of Fairfax. Writing for the *Alexandria Gazette* under the alias of "A Virginian," Janney's observations of Fairfax County in 1845 provide a vivid picture of the challenges facing the county. In the eastern part of the county that had been the home of many of the pre-revolutionary planters including George Washington, he described a "sparsely settled and desolate looking country that surrounds Pohick Church. . . . Their mansions are in a state of dilapidation; many of the fields filled with briars or covered with pines. . . The population has become so sparse, that a few years ago the old church appeared to be abandoned to decay; the roof was rotten,--the doors unhinged, and birds began to build within its desolate walls."<sup>5</sup>

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<sup>5</sup> A. Glenn Crothers, *Quakers Living in the Lion's Mouth: The Society of Friends in Northern Virginia, 1730-1865*, Southern Dissent (Gainesville: University Press of Florida, 2012); A Virginian, "The Yankees in Fairfax, No. I," *Alexandria Gazette*, September 12, 1845.

Six subsequent essays followed in which Janney portrayed Fairfax County. Describing the middle part of the county just fifteen to twenty miles from the District of Columbia, he told of a journey of 12 miles in which he saw “but two or three cabins, and nothing that is entitled to the appellation of a comfortable dwelling for civilized man.”<sup>6</sup> Yet delineating the desolation of Fairfax was not the purpose of Janney’s essays which argued that the county could see significant advancement through scientific changes to agricultural practices such as soil enrichment through fertilization and crop rotation and social improvement from education and the use of free labor. His travels through the county recounted meetings with newly settled northerners who were changing Fairfax. He told of encountering an ex-congressman from New York who had settled in the county. Asked why he had left Congress and moved to Fairfax, the New Yorker replied that he was satisfied “that the land might be greatly improved, --that its proximity to the cities of the District of Columbia would ultimately render it valuable.” He further opined that “perseverance and skill will eventuate in success, and already the influx of population has within a few years doubled the value of land in this vicinity.”<sup>7</sup>

Janney found in his travels around Fairfax a county in transition. Two very important factors differentiated the county from much of the South—its proximity to the District of Columbia and the repopulation of the area with people from the North who rejected slave labor and believed in the salutary effects of free labor. Nevertheless, Janney also pointed out issues that continued from Fairfax’s heritage as a part of the Old South. He bemoaned the loss of many of the best free African American laborers to other

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<sup>6</sup> A Virginian, “The Yankees in Fairfax, No. IV,” *Alexandria Gazette*, October 3, 1845.

<sup>7</sup> A Virginian, “The Yankees in Fairfax, No. V,” *Alexandria Gazette*, October 10, 1845.

parts of the country, the lack of education of many workers, and the proper understanding of the industry of the county's women.<sup>8</sup>

By 1860, an improving national economy in conjunction with the changed agricultural practices in Fairfax County brought growth in the total free population and a decline in the number of slaves. Markets for agricultural products were still centered in Alexandria and Washington, D. C. The county's center was Fairfax Court House. A description of the town in 1858 portrayed it as "having a business like appearance....containing a few stores and a number of dwellings, some of which are quite handsome. A commodious hotel occupied the center of town along with the court house both of which attracted visitors to the town." Although the court house and its surroundings favorably impressed the correspondent, he described the area as a pastoral retreat.<sup>9</sup>

Lying on the boundary of the District of Columbia and Maryland, Fairfax was also being shaped by political forces outside its borders. Divergent laws governed slavery in Virginia and Maryland, and the differences became even more important upon the creation of the District of Columbia. On February 7, 1801, the federal government assumed control of the thirty-six square miles of Fairfax that had been ceded to the District. Alexandria, included in the cessation, operated under its Virginia charter until 1804, when it received a new charter from Congress. Even this seemingly mundane matter was part of a great debate over the governance of the District of Columbia. From

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<sup>8</sup> Ibid.; A Virginian, "The Yankees in Fairfax, No. 7," *Alexandria Gazette*, October 27, 1845; A Virginian, "The Yankees in Fairfax, No. 6," *Alexandria Gazette*, October 27, 1845.

<sup>9</sup> Correspondent of the Baltimore Sun, "Fairfax Court House, Virginia," *Alexandria Gazette*, December 21, 1857.

the conception of the federal enclave, many people had feared complete federal control over the territory. Thus local control in an existing community like Alexandria was expected. However, Congress initially delayed any decisions about official jurisdiction over the District until it became the actual seat of government in 1800. Until that time, Alexandria operated as when it was part of Virginia. To some extent that incongruity never changed as Congress decided that the laws of Maryland prevailed in the new Washington County and the laws of Virginia were in force in the new Alexandria County.<sup>10</sup> Congress codified that anomaly on February 27, 1801 creating a federal enclave governed by laws from both states.

The laws of the State of Virginia, as they now exist shall be and continue to be in force in that part of the District of Columbia, which was ceded by the said State to the United States, and by them accepted for the permanent seat of Government; and the laws of the State of Maryland, as they now exist, shall be and continue in force in that part of the said district, which was ceded by that State to the United States, and by them accepted as aforesaid.<sup>11</sup>

Although not specifically stated in the statute, the newly created court system in the District of Columbia accepted the precedent judicial decisions made before the new federal district was formed. The local African American population soon tested the new legal system and standards.

Among the most immediate issues was the movement of slaves among jurisdictions. Since both Maryland and Virginia had laws that restricted the importation of slaves from outside the state, the division of laws in the District of Columbia had the

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<sup>10</sup> William C. diGiacomantonio, “‘To Sell Their Birthright for a Mess of Potage’: The Origins of D.C. Governance and the Organic Act of 1801,” *Washington History* 12, no. 1 (April 1, 2000): 30–48.

<sup>11</sup> “Appendix to the History of the Sixth Congress,” 1801 1799, U. S. Congressional Documents, Data Base on-line. Available from Heinonline, <http://heinonline.org.mutex.gmu.edu/HOL/Page?handle=hein.congrec/aoc0010&id=752&div=&collection=congreg>.

effect of restricting a master's ability to move his slaves between Washington and Alexandria counties. Free movement of slaves was necessary in an urban area where many masters hired out their bondsmen in order to make a return on their investment. As the population of free African Americans increased, they competed with slave labor for work in the District. This competition and the restrictions on slave movement meant that owners could not always fully utilize their slave labor by hiring them out. The economic strain brought pressure on masters to free their slaves or sell them to the Deep South.<sup>12</sup>

The movement of slaves was not the only looming issue. Since African Americans' labor was vital to the functioning of the District of Columbia, freed slaves came to the new capital from throughout the region and brought social changes. As their numbers grew, the city became a center for African American society as well as providing a place where former slaves could express their views. Unlike Virginia, free people of color in the District could gather in churches and be educated. In 1831, they expressed their views on African colonization at a gathering at the African Methodist Episcopal Church of Washington. There they resolved that "the soil which gave them birth is their only true and veritable home."<sup>13</sup> The ability to establish African American churches in the District became increasingly important when, after Nat Turner's rebellion, Virginia forbade religious gatherings of African Americans that did not include whites. Former slaves continued to worship with whites in Fairfax County, but these

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<sup>12</sup> Brown, *Free Negroes in the District of Columbia, 1790-1846*; Stanley Harrold, *Subversives: Antislavery Community in Washington, D.C., 1828-1865*, *Antislavery, Abolition, and the Atlantic World* (Baton Rouge: Louisiana State University Press, 2003), 1-35; Pacheco and Faculty Author Collection (George Mason University), *The Pearl*, 1-47.

<sup>13</sup> Benjamin Lundy, "Meeting of Colored People in the City of Washington," *Genius of Universal Emancipation*, April 1831, Supplementary to Vol. XI edition, p. 186, Public Domain Reprints.

places of worship could not replace the freedom to provide education and express views that was found in the District.

The more robust African American communities available in the urban areas fueled another type of movement of African Americans—runaway slaves. Slave holders in Maryland used term agreements for manumission as one way to mitigate the problem of runaways to the neighboring free state of Pennsylvania. These term agreements were used to maintain discipline among their bondsmen until time for freedom. Fairfax slave owners found the same types of agreements to be useful as the District became a magnet for the region's African American population.<sup>14</sup>

The shifting borders around the Potomac River offered opportunity for some African Americans to escape slavery while others crossed the boundaries for economic and social enrichment. Political boundaries were a creation of the white governing elite. For African Americans, crossing borders was a way to improve their lives, and the result was increasing pressure on existing power structures. Fairfax did not experience a sudden upheaval from these forces, but the county could not be isolated from the changes that were occurring much more rapidly across the Potomac.

### **Applying the Law in the Borderland**

Even while whites worked to maintain slavery on both sides of the Potomac, they banned the import of new slaves. In 1785, the Virginia General Assembly passed a law that with one exception provided any slave imported into the state and kept one year

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<sup>14</sup> Whitman and Maryland Historical Society, *Challenging Slavery in the Chesapeake*; Damian Alan Pargas, *The Quarters and the Fields: Slave Families in the Non-Cotton South*, *New Perspectives on the History of the South* (Gainesville: University Press of Florida, 2010).

would be free. The immunity provided in the law applied to persons coming into the state who swore that their move was not intended to evade the prohibition against importation of slaves, and that the slaves they brought with them would not be sold. In 1796, the General Assembly revised its statute to allow a Virginia slaveholder who carried his slaves out of the state to bring them back to Virginia. This exclusion was void if the slaves were entitled to their freedom under the laws of the state of departure.<sup>15</sup> This exception was important in light of Maryland's ban on the importation of slaves which also was enacted in 1796 and provided that any slave brought into the state contrary to Maryland statutes would be immediately freed.<sup>16</sup> These laws had the effect of limiting the transportation of slaves between Maryland and Virginia as well as within the District of Columbia.

African Americans seeking to escape slavery used the boundaries separating Fairfax County from the District of Columbia and Maryland as a place to litigate for freedom. The results were not always favorable for slaves, but their access to the judicial system caused justices to struggle with matters of equity. In the immediate post-revolutionary period before the cotton boom in the Deep South, most trading of bonds people was local. Issues arising from the importation of slaves were primarily settled among local jurisdictions.

A slave's freedom was intertwined with his owner's compliance with the importation laws. Such was the case when a slave named London asked the newly

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<sup>15</sup> Guild, *Black Laws of Virginia*, 62, 68.

<sup>16</sup> Washington (D.C.) and United States, *The Black Code of the District of Columbia, in Force September 1st, 1848*, Paperback Book Edition, 2012 (New York: Published for the A. & F. Anti-Slavery Society, by William Harned, 1848), 22.

formed courts in the District of Columbia to grant him freedom after his owner's father moved him from Maryland to Alexandria County in 1802. In December of that year, the father died leaving London in Alexandria. London's owner moved from Maryland to Alexandria in June, 1803 and took the oath required under Virginia law in July of the same year. London asked for his freedom since he had been removed from Maryland for a year without the required oath having been signed, and the Circuit Court of the District of Columbia granted his request in 1805. In the case of *Scott v. Negro London*, the owner appealed the ruling to the United States Supreme Court in 1806. Justice John Marshall reversed the lower court order. His ruling focused on the slaveholder and rejected the argument that the right to freedom was attached to the length of stay of the slave. Instead he found that the move of the owner into the state began the period given to the slave owner to comply with Virginia requirements. Even though London lost his chance for freedom, courts would be further challenged by similar questions.<sup>17</sup>

Although *Scott v. Negro London* was a precedent setting case, the issue of movement between the borders had not been fully settled. A slave, Nancy Murray, sued for her freedom in Fairfax County leading to the 1811 case of *Murray v. M'Carty* which was decided in the Virginia Supreme Court. In this case, the question revolved around state citizenship rather than slave rights. Daniel M'Carty was a citizen of Virginia who married a woman from Charles County, Maryland. After their marriage, M'Carty went to Maryland to live with his wife's family. During his time in Maryland, he neither purchased real estate nor established a home other than with his in-laws. Meanwhile, he

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<sup>17</sup> Supreme Court of the United St, "Scott v. Negro London," February 19, 1806, 7 U.S. 324; 2 L. Ed. 455; 1806 U. S. Lexis 340; 3 Cranch 324, Data Base on-line. Available from Lexis Nexis Academic.

kept his property in Virginia and continued to vote in the commonwealth's elections. While in Maryland, he purchased Nancy Murray and at her request sent her to Virginia to live with his mother. After four years in Maryland, M'Carty and his wife moved to Virginia to continue their lives. After moving back, M'Carty took the oath required under Virginia law that he did not intend to sell any slaves that he brought into Virginia.<sup>18</sup>

Murray used M'Carty's failure to abide by the importation law to ask for her freedom based on the fact that she lived in Virginia for a year without her master having taken the required oath. The county court in Fairfax and a district court in Haymarket ruled in favor of the slave owner. The case was appealed to the Virginia Supreme Court, which overruled the lower courts and gave Murray her freedom. Justices William Cabell, William Fleming, and Spencer Roane each found, in spite of living in Maryland for four years, M'Carty had remained a citizen of Virginia, which reflected his property ownership and his voting record. Virginia's statutory exception for bringing slaves into the state was intended for citizens of other states who were moving into Virginia. The Court held that M'Carty had never left Virginia as a citizen and thus his actions were an evasion of the law. The earlier decision of the United States Supreme Court in *Scott v. Negro London* reflected the movement of a Maryland citizen into the District of Columbia and was not precedent in this case.<sup>19</sup>

Boundaries provided slaves with the opportunity to petition for their freedom when their masters either failed to uphold their responsibility to follow the law or

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<sup>18</sup> Supreme Court of Virginia, "Murray v. M'Carty," April 15, 1811, 43 U.S. 397; 11 L. Ed. 314; 1844 U.S. Lexis 338; 2 How 397, Data Base on-line. Available from Lexis Nexis Academic.

<sup>19</sup> Ibid.

attempted to evade the law. Although slaves may have gained their freedom in this manner, courts concentrated on the responsibilities of the slaveholder. Nancy Murray was able to win her freedom even though the justices were focused on punishing the slave owner for failing to comply with the law.

Although these early cases had involved slave challenges when the citizenship of the slave owner was in question, African Americans were also able to mount challenges for their freedom in cases in which slave holders did not fully understand or abide by the law of neighboring states. In 1828, the Virginia Supreme Court heard a case that did not involve either Fairfax County or its bordering jurisdictions; however, the principles of the case were soon felt locally. In 1786, James Robertson of Augusta County, Virginia traveled to Lancaster County, Pennsylvania to recover a slave named Hannah whom he claimed as his property under the provisions of his father-in-law's will. Six weeks before Robertson arrived in Pennsylvania to bring his slave to Virginia, Hannah gave birth to a child, Susanna, who under Pennsylvania's emancipation statute was born free. Nevertheless, Robertson brought both mother and daughter back to Virginia as slaves and subsequently sold Susanna to a Mr. Spotts. Susanna sued for her freedom, and the Virginia Supreme Court upheld a local court ruling giving Susanna her freedom based on her status as a free person in Pennsylvania.<sup>20</sup>

In 1829, a slave who had been born in Fairfax County sued for his freedom based on applicable Maryland law. George Hunter was a slave of Thomas Offutt while he lived in Fairfax County. At the marriage of Offutt's daughter, he gave Hunter to the newlyweds

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<sup>20</sup> Supreme Court of Virginia, "Spotts v. Gillaspie," November 17, 1828, 27 Va. 566; 1828 Va. Lexis 38; 6 Rand. 566, Data Base on-line. Available from Lexis Nexis Academic.

who then left Virginia to live in Montgomery County, Maryland. The couple stayed in Maryland with Hunter for twelve years, but he had been brought into the state as a slave contrary to Maryland statute. By law, Hunter became a free man, even though he continued to live with Offutt's daughter and son-in-law. The owners may have been ignorant of Maryland law, or they may have attempted to evade it when they eventually sold Hunter as a slave to an owner in Jefferson County, Virginia. Hunter was then transported to Richmond where he was sold to a Mr. Fulcher. At this point, Hunter petitioned for his freedom based on his status as a free person in Maryland. The Hustings Court of Richmond found in favor of the slave owner, and Hunter appealed to the Virginia Supreme Court, which reversed the decision and granted Hunter his freedom. The opinion of Justice John W. Green, speaking for the court, found that Hunter had gained his freedom in Maryland as a result of a voluntary action of his master in submitting himself as a citizen subject to the laws of that state. Using the principles established in *Spotts v. Gillaspie*, the Virginia Court enforced the rights of George Hunter acquired under Maryland law.<sup>21</sup>

For slaves who believed they had a right to freedom, documentation of their free status was important. Even a well-meaning master who granted informal freedom could not posthumously vouch for such intentions unless the future freedom had been documented under state law. Such was the situation in the case of *Prigg v. Pennsylvania* in which the United States Supreme Court ultimately declared unconstitutional a Pennsylvania law that allowed recapture of runaway slaves only after a due process

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<sup>21</sup> Supreme Court of Virginia, "Hunter v. Fulcher," March 1829, 28 Va. 172; 1829 Va. Lexis 17; 1 Leigh 172, Data Base on-line. Available from Lexis Nexis Academic.

designed to assure that slave owners had appropriate claim to the person captured. Edward Prigg, an agent for Maryland slave owner Margaret Ashmore, was found guilty under Pennsylvania law in the recapture of Margaret Morgan. The Supreme Court decision overturned Prigg's conviction. *Prigg v. Pennsylvania* was important because it established the rights of slave owners to their property and provided no protection of free African Americans from kidnapping by unscrupulous agents.<sup>22</sup>

The case was decided in favor of the slave owner because Margaret Morgan's freedom had never been documented, even though she was a slave in name only. Her parents had been owned by a Maryland farmer, John Ashmore, who died intestate in 1822. Prior to his death, he had allowed Margaret's parents to live in relative freedom on his farm in their old age. Margaret married Jerry Morgan, and they lived free in Harford County, Maryland before moving across the state line to York County, Pennsylvania. Margaret Morgan had two children, one of whom was born in Pennsylvania. The family lived undisturbed until 1837 when John Ashmore's widow, Margaret, sent Edward Prigg to Pennsylvania to bring Morgan and her children back to Maryland under the guise that they were runaway slaves. Although Margaret Morgan had lived as a free woman for many years, she had no evidence of that freedom under Maryland law. Maryland courts upheld Ashmore's claim to Morgan and her children.<sup>23</sup> In its determination to settle the fugitive slave issue, the United States Supreme Court did not address the issue of the child who had been born in Pennsylvania. Therefore, Margaret Morgan's child did not

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<sup>22</sup> Supreme Court of the United States, "Edward Prigg v. the Commonwealth of Pennsylvania," March 1, 1842, 41 U.S. 539; 10 L. Ed. 1060; 1842 U.S. Lexis 387, Database On-line. Available from Lexis Nexis Academic.

<sup>23</sup> H. Robert Baker, *Prigg V. Pennsylvania: Slavery, the Supreme Court, and the Ambivalent Constitution*, Landmark Law Cases & American Society (Lawrence, Kan: University Press of Kansas, 2012), 101–111.

gain freedom under the reasoning used by the Virginia Supreme Court in *Spotts v. Gillaspie*. Although the Prigg case did not involve Fairfax County or Virginia, the necessity of maintaining freedom credentials was also important in the county.

Even if a former master had provided for a slave's freedom, the preservation of the documentation and recording of its filing provided protection from unscrupulous persons. Such was the case for a free African American woman named Julia Roberts. Alexandria records list her as free in 1845 with a simple notation that she had gained her freedom in a court case in which she was the plaintiff in May 1842.<sup>24</sup> This explanation of her free status does not reflect the complex legal maneuvering that eventually led to a decision by the United States Supreme Court. Roberts's claim to freedom flowed directly from the manumission of her mother, Sarah, who had belonged to Simon Summers. The slave owner resided in Fairfax County, but the formation of the District of Columbia had bisected his property, leaving his residence and part of his real estate in the newly formed Alexandria County. On December 30, 1801, Summers executed a deed of manumission for 18-year old Sarah, who was to be freed on January 1, 1814. Sarah's children were also to be emancipated when they reached the age of 25. The deed of manumission was filed in Fairfax County even though Summers's residence was in Alexandria County.<sup>25</sup>

Although Summers freed Sarah, he had already given her services to his son-in-law, Wesley Adams, a Methodist minister. Adams lived in Fairfax County not far from his father-in-law. Shortly after her official manumission in 1814, Sarah gave birth to

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<sup>24</sup> Dorothy S Provine, *Alexandria County, Virginia: Free Negro Registers, 1797-1861* (Bowie, Md: Heritage Books, 1990), 118.

<sup>25</sup> Supreme Court of the United St, "Adams v. Roberts," March 15, 1844, para. 1, 43 U.S. 486; 11 L. Ed. 349; 1844 U.S. Lexis 343; 2 HOW 486, Data Base on-line. Available from Lexis Nexis Academic.

Julia. Adams treated Sarah as free, but he must have offered little if any support. In 1820, he took Sarah and her two small children to the county poor house and applied for aid from the Overseers of the Poor, who helped support Sarah for the next six years. Adams's action had repercussions for Simon Summers who was ordered to reimburse the Overseers of the Poor for the cost of Sarah's care since the court found her to be of "unsound mind and body."<sup>26</sup>

The Overseers of the Poor must have agreed to end support of Julia at age five when Wesley Adams sent the child to the public slave auction in Alexandria where George Crump purchased her for \$50. According to Summers's manumission of Julia, she would be free in 1839 when she became twenty-five years old. Wesley Adams believed that he had sold Julia for only a twenty-year term. Since the end of that term and Julia's birthday did not coincide, Adams, who had resettled in Jefferson County, Florida, conveyed his residual interest in Julia to his son, Austin Adams, who lived in Fairfax County. In 1839, Crump brought suit against Austin Adams complaining that he had purchased his slave for life. Because Wesley Adams then lived in Florida, much of the testimony was taken in depositions that have been preserved. Wesley contended that he had made it clear at the auction that Julia was a term slave, and Crump purchased her for only twenty years. One witness who confirmed Adams's deposition stated that Adams, a Methodist minister, would have been excommunicated from the church if he had sold a slave for life.<sup>27</sup>

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<sup>26</sup> Fairfax County (Va.) Circuit Court, "Overseers of the Poor v. Simon Summers," June 19, 1820, Minute Book 1819, 211, Fairfax County Circuit Court Historical Records Division.

<sup>27</sup> Fairfax County (Va.) Circuit Court, "George Crump v. Austin Adams," July 1839, Term Papers, 1818-1845, Fairfax County Circuit Court Historical Records Division.

In spite of his family's history of manumitting slaves, Austin Adams remained a slaveholder in 1840. That year, the census listed Austin Adams as a head of household of fourteen persons engaged in agricultural work.<sup>28</sup> Six of the household members were slaves. Both Adams's maternal grandfather, Simon Summers, and paternal grandfather, William Adams, had freed their slaves after fixed terms of servitude. Simon Summers died in 1836, but prior to that time, Austin Adams had become responsible to the Overseers of the Poor for Sarah's costs.<sup>29</sup> When Sarah died, Austin Adams paid the cost of her burial.<sup>30</sup> Moreover, Austin Adams may have also been responsible for slaves freed by Williams Adams, who had composed his will on March 7, 1806, just prior to the enactment of Virginia's law requiring freed slaves to leave the state. His desire was that all of his slaves be freed when each reached the age of thirty-five. The will was recorded in 1809 after his death.<sup>31</sup> The number of slaves manumitted under Adams's will is unknown, but records of registrations of free African Americans show the last of these slaves, James Honesty, was freed in 1844 at the age of thirty-five.<sup>32</sup> Given the family history of term emancipation of their slaves, it is possible that the youngest among his grandfather's slaves were still in Austin Adams' possession in 1840.

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<sup>28</sup> "1840 Census," n.d., Fairfax, Virginia, Roll: 558, Page: 157, Image: 323; Family History Library Film: 00229686, Ancestry.com. 1840 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2010.

<sup>29</sup> Guild, *Black Laws of Virginia*, 82 In 1824, the Virginia General Assembly passed a law that required the owners of old slaves, or slave of unsound mind who permit them to go at large without support, so that they are dependent on charity, trespass, or theft shall pay a fine of not exceeding \$50.00 for every offense, and it moreover shall be the duty of the overseers of the poor to provide for such slaves and charge the master.

<sup>30</sup> Supreme Court of the United St, "Adams v. Roberts," para. 5-7.

<sup>31</sup> William Adams, "Will," October 23, 1809, Will Book 1-5, Fairfax County Circuit Court Historical Records Division.

<sup>32</sup> Virginia, "*Registrations of Free Negroes Commencing September Court 1822, Book No. 2*", and "*Register of Free Blacks 1835, Book 3*": *Being the Full Text of the Two Extant Volumes, 1822-1861, of Registrations of Free Blacks Now in the County Courthouse, Fairfax, Virginia* (Fairfax: History Section, Office of Comprehensive Planning, Fairfax County, Virginia, 1977), 151.

Although Adams had won his suit against George Crump, his residual interest in Julia did not immediately translate into her freedom. Now known as Julia Roberts, she petitioned for her freedom in a case filed with the Circuit Court of the District of Columbia. Rather than freeing his slave, Austin Adams conducted a spirited defense of her enslavement, charging the deed of manumission of Roberts's mother was invalid since it had been filed in Fairfax County rather than Alexandria County. The applicable Virginia law allowed a master to free his slaves by an instrument in writing if the document had been witnessed by two persons and proved in court of the county where he or she resided. The Circuit Court refused to instruct the jury that the manumission document was invalid. Adams appealed the case to the United States Supreme Court which upheld the Circuit Court's ruling. Roberts became a free woman by having access to her mother's manumission deed. Because a former master's property was divided by the boundary separating the District and Virginia, Roberts had a choice of the venue in which her case was heard, and she used the courts of the District of Columbia rather than Virginia to uphold her right to freedom.<sup>33</sup>

Simon Summers manumission of Sarah provided a date that her children would be freed but did not settle the issue of freedom for future generations. Julia Roberts's sister, Charity, was manumitted at age twenty-one. In 1818, James Whaley of Loudoun County purchased Charity to serve her remaining term. Peter French and Fanny Douglas were among Charity's children. Upon Whaley's death, French and Douglass remained in bondage to William Whaley and James Palmer, who advertised them for sale. French and

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<sup>33</sup> Supreme Court of the United St, "Adams v. Roberts."

Douglass fought their potential sale by petitioning for freedom in 1849. Fanny Douglass included her son Charles in the suit contending that he had been born after the date that his mother should have become free. By the time the legal action was filed, Charity had died, and Wesley Adams died in Florida shortly after the case was filed. These deaths left only Summers's grandchildren to verify the lineage of French and Douglass. Although they knew Charity well through her visits to their Alexandria home, they did not know her children and would not verify their relationship to Charity. Counsel for the defendant argued that the United States Supreme Court's decision in *Adams v. Roberts* was erroneous, and the defendants also claimed that the Summers's manumission only applied to Sarah and her children and did not apply to grandchildren and great-grandchildren. In 1854, a Loudoun County jury could not reach a decision in the case, which was then moved to Fairfax County where in 1856 a court ruled for the slave owners.<sup>34</sup>

Summers' manumission plan had been contested for over fifty years both in local and appellate courts across two counties in Virginia and one in the District of Columbia. The will of William Adams was not contested, but the manumissions covered a forty year period and included free African Americans who lived in both Fairfax County and the District of Columbia. For the slaves of Simon Summers, borders provided an opportunity for freedom, but time distanced slaves from the masters who intended to set them free. By the 1850's, the climate of opinion was becoming more pro-slavery, even the well-documented wishes of emancipating masters became more controversial.

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<sup>34</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "French v. Whaley," 1856, 1856-010, Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia.

Slave holders were able to focus their authority within the household and limit the movement of their chattel, but masters who freed their slaves created a much larger world for African Americans. However, as generations passed, dimming the legacy of freedom, children and grandchildren of freed slaves found themselves required to assert their right to liberty. Younger generations of slave owners were faced with carrying out the wishes of their forbears in an environment that had become hostile to freedom for slaves. Nevertheless, African Americans continued to mount challenges for their freedom, and their confrontations in the court system had ramifications across political boundaries.

### **Moving across Borders**

During the first half of the nineteenth century, political borders in the United States were under constant revision. New states and counties were created on a regular basis, creating questions about the extension of slavery. Matthew Salafia's study of the changing dynamics of slavery among the states bordering the Ohio River shows that the use of bonded labor could not be contained by political borders along this major artery of commerce. The competition over slavery's borders in the West is a vital part of American history, but changing political boundaries within slave jurisdictions were also important. African Americans quickly learned the connection between borders and possible freedom. Runaway slaves' flight to freedom put a human face on the defiance that African Americans showed to the autocracy of the master within the household. Term slave agreements may have slowed slaves' desertion of their masters, but once a slaveholder emancipated his chattel, household boundaries no longer existed for the newly freed African Americans. Legislatures tried to substitute political boundaries as a

means of control of newly freed slaves. In 1793, Virginia's General Assembly first attempted to create boundaries for free African Americans when it passed a law requiring freed slaves to register. At the same session, free African Americans were forbidden from migrating into the state. Nevertheless, political boundaries did not always effectively deter the movement of free people.<sup>35</sup>

Virginia's efforts to prevent African Americans from moving into the state were only sporadically enforced in Fairfax County. In 1820, Ludwell Mortimore was presented to the grand jury for moving into the county and continuing to reside there contrary to law. In that same year, Fairfax officials jailed Betsey Hurndon for strolling from one county to another without any papers or evidence of freedom. In 1822, Peter was presented to the court for migrating into the Commonwealth. These cases were brought by authorities subsequent to the passage of a law in the General Assembly that required the Overseers of the Poor to examine the condition of all free African Americans. Unless the overseers deemed free people of color to be self-reliant, they would be considered vagrants. The brief record of these three cases does not connect any of these persons with vagrancy, but most likely played a part in the charges that were brought.<sup>36</sup>

During the 1830's, Fairfax officials showed concern over the possibility of harboring runaway slaves and the mental stability of vagrant free African Americans. In

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<sup>35</sup> Matthew Salafia, *Slavery's Borderland: Freedom and Bondage Along the Ohio River*, 1st ed, Early American Studies (Philadelphia: University of Pennsylvania Press, 2013).

<sup>36</sup> Fairfax County (Va) Circuit Superior Court, "Commonwealth v. Ludwell Mortimore," October 23, 1820, Minute Book 1819, 93, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va) Circuit Superior Court, "Commonwealth v. Betsey Hurndon," May 15, 1820, Minute Book 1819, 196, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va) Circuit Superior Court, "Commonwealth v. Peter," November 18, 1822, Minute Book 1822, 138, Fairfax County Circuit Court Historical Records Division; Guild, *Black Laws of Virginia*, 100.

1830, county authorities jailed James Dangerfield for being a runaway. Once his freedom was proved, officials returned him to Alexandria. In that same court session, authorities returned Susan Seal to the poor house in Alexandria because she was of unsound mind. In 1835, officials jailed Lucinda Parkinson from Prince William County for not having her free papers. She was hired out to pay her jail fees. Also in 1836, Fairfax sent William Payne back to the District of Columbia after he settled in the County. In 1838, authorities confined Sally Ann to the county jail as a lunatic and returned her to Bladensburg, Maryland with provisions for two days. The court also sent a letter to the administrator of the estate of her late master in Baltimore County expressing their concerns about her vagrancy. In 1839, officials confined Edward in jail as a runaway. Upon establishing his free status, authorities removed him out of the state.<sup>37</sup>

In twenty years, Fairfax courts heard only nine cases, and only one other similar charge was filed during the next two decades. It is unlikely that these were the only free African Americans who crossed the border into Fairfax contrary to state law. Authorities did not harass those who were known in the local community and drew no unnecessary attention to themselves.

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<sup>37</sup> Fairfax County (Va.) Circuit Court, "Commonwealth v. James Dangerfield," November 15, 1830, Minute Book 1829, 269, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Lucinda Parkinson," July 20, 1835, Minute Book 1835, 3, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Sally Ann," July 16, 1838, Minute Book 1835, 177, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Susan Seal," November 18, 1830, Minute Book 1829, 282, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. William Payne," March 21, 1836, Minute Book 1835, 41, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Edward," April 15, 1839, Minute Book 1835, 207, Fairfax County Circuit Court Historical Records Division.

Although it is difficult to document the movement of free African Americans across the border between Virginia and the District of Columbia, evidence suggests that political borders did not greatly deter travel. In 1832, Alexandria's African American Methodists organized Davis Chapel for worship. Although the church was located in the District of Columbia, the congregation sought to establish a cemetery for its members in Fairfax. In 1839, Charles Murray of Fairfax County lodged a complaint against Robert Taylor, a white Alexandria resident, and Phillip Hamilton and other members of the new congregation. Hamilton and his fellow parishioners had purchased from Taylor a two-acre lot in Fairfax County adjoining Murray's residence. Bordering Hunting Creek, the property also was near a bridge crossing the creek as well as a community well at the foot of the bridge. Murray had not contested the purchase until he discovered the African American congregants would use the property as a burial ground. He then objected arguing that the burial site would be a hazard to his water supply as well as the community well. Murray tried to negotiate with Hamilton by offering to buy another lot adjacent to a nearby burial ground for Christ Church of Alexandria. Hamilton rejected the offer, but the court issued an injunction against using the original site as a cemetery. The case file does not indicate whether another site was found for the cemetery, but this dispute does demonstrate the African Americans were willing to cross from Alexandria to Fairfax to bury their dead even though Murray had charged that it would have been "an illegal congregation of free Negroes and slaves."<sup>38</sup>

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<sup>38</sup> Fairfax County (Va.) Chancery, "Charles Murray v. Robert Taylor and Phillip Hamilton," November 25, 1839, 1845-032. Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

Worship also led Alice Derrick across the border between Fairfax and Alexandria on a regular basis. Emancipated by the will of George Washington, Derrick and her husband in 1833 purchased a lot in Fairfax on the border of the District of Columbia where they both lived until they died. Alice Derrick's death was commemorated in 1870 in the *Alexandria Gazette* where she was remembered as the "last colored communicant of Christ Church, Alexandria." Derrick's movement across jurisdictional boundaries drew no sanctions from white authorities demonstrating that enforcement of restrictions was arbitrary or sporadic at best.<sup>39</sup>

The laws concerning movement of free African Americans differed across political jurisdictions. Virginia's laws, while designed to keep free African Americans from moving into the state, did not attempt to prevent them from moving out of the state permanently. In 1838, the General Assembly specifically prohibited free African Americans who left Virginia to be educated from ever returning to the state. In the District of Columbia, Congress did not pass similar limitations, but the cities of Washington, Georgetown, and Alexandria could pass local ordinances preventing the movement of free African Americans. Alexandria had a registration procedure based on Virginia law, but Georgetown ordinances did not address the movement of free African Americans. In 1827, the city of Washington adopted its first comprehensive ordinance addressing the terms under which free African Americans could live in the city. All such persons were required to register with the city, and more important, every newly freed

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<sup>39</sup> William and Margaret Gooding, "Deed of Sale," December 10, 1833, Deed Book B-3, 119, Fairfax County Circuit Court Historical Records Division; Edith Moore Sprouse, *Fairfax County in 1860: A Collective Biography* (Unpublished, 1996), 536.

slave or newcomer had to provide bond with good sureties that he or she would not be disorderly or become a charge to the city.<sup>40</sup>

The Washington ordinance had a chilling effect on the movement into the city of free African Americans from Fairfax while migration to Alexandria continued. Thus in 1828, when Samuel Anderson, a free African American of Fairfax County, emancipated his daughter, Charity, she moved to Alexandria where her registration, along with that of her daughter, was enrolled in 1841 and 1847. The same pattern was true for Charles Henry who was freed by the will of George Minor. Although he first registered in Fairfax County in 1830, he later moved to Alexandria where he registered with his wife and daughter in 1847. Both Anderson and Henry were able to move to Alexandria but may not have been able to provide the bond and sureties required to move across the river to Washington.<sup>41</sup>

While Virginia was concerned with defining borders for its free African American population, the General Assembly also wanted to minimize the effects of the boundary between Alexandria County and Virginia for slaveholders. In 1804, the legislature enacted a law that allowed masters to carry slaves into Alexandria County and then remove them back to Virginia without penalty.<sup>42</sup> A few years later Congress followed by closing the loophole in the law governing the District of Columbia that allowed a slave to claim freedom who had been moved between Washington County which was under

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<sup>40</sup> Guild, *Black Laws of Virginia*, 112; Washington (D.C.) and United States, *The Black Code of the District of Columbia, in Force September 1st, 1848*, 38–39.

<sup>41</sup> Samuel Anderson, “Deed of Manumission,” July 21, 1828, Deed Book X-2, 395, Fairfax County Circuit Court Historical Records Division; George Minor, “Will,” July 18, 1803, Will Book I-1, 262, Fairfax County Circuit Court Historical Records Division.

<sup>42</sup> Guild, *Black Laws of Virginia*, 71.

Maryland law and Alexandria County which was under Virginia law. The 1812 statute provided that slave owners could exercise all rights of property over their bondsmen if they moved from one county to the other.<sup>43</sup> The act superseded existing laws in Maryland and Virginia that would have freed slaves or punished owners for changing the residence of the slaves between the two counties.

Even though the statute was intended to foreclose further questions about slave transportation within the District of Columbia and perhaps cut off an avenue to freedom, the issue still required judicial interpretation as was the case when Sam Lee and Barbara Lee challenged the 1812 law with a freedom petition that reached the United States Supreme Court in 1834. As slaves of Richard Bland Lee, Sam and Barbara lived in Fairfax County when their owner moved to Washington in 1816. The slaves stayed behind in Virginia until 1820 when they were moved to Alexandria County. Barbara was hired out for a period of one year, and Sam was hired out for approximately six months. After this hiring out period, Richard Lee moved both slaves to Washington County to work in his residence. After Richard Lee died in 1827, Sam and Barbara Lee petitioned for their freedom claiming that their hiring in Alexandria County had been for the purpose of evading the law. If Richard Lee had moved them directly from Virginia to Washington County, Sam and Barbara could have claimed freedom based on a 1796 Maryland law that restricted the importation of slaves and still was in effect in Washington County. The Circuit Court for the District of Columbia denied the slaves'

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<sup>43</sup> "Appendix to the History of the Twelfth Congress," 1813 1811, 2325, U. S. Congressional Documents, Data Base on-line. Available from Heinonline, <http://heinonline.org.mutex.gmu.edu/HOL/Page?handle=hein.congrec/aoc0010&id=752&div=&collection=congreg>.

claims; however, the judge did not instruct the jury that they should consider whether the move to Alexandria County was solely to evade the law. In 1834, the Supreme Court of the United States overturned the lower court ruling and sent the case back to the District of Columbia Circuit Court for retrial with the order that complete instructions be given the jury. In 1835, the matter was once again considered by the Circuit Court. The judge gave the complete instructions to the jury and reminded the jury that if the defendant had evaded the law, it was the responsibility of the petitioners to provide evidence of such evasion. In the new trial, the court ruled for the defendant and refused to give the slaves another trial. By placing the burden of proof of their owners' intent on Sam and Barbara Lee, the court erected a barrier to their freedom but did not foreclose further questions about slave movement within the District of Columbia.<sup>44</sup>

In 1842, Moses Bell's petition for freedom continued to challenge the judiciary on the matter of the border between Alexandria County and Washington County. An Alexandria slave owner sold Bell in 1837 to another master who took him to Washington County to reside until Bell was sold again about a year later. He was dealt twice in the District with the last sale being to James Rhodes. Bell petitioned for his freedom citing the Maryland law in force in Washington County that prohibited the importation of slaves for sale. The Circuit Court of the District of Columbia found in favor of Bell and granted him his freedom. Rhodes appealed the case to the United State Supreme Court where, in 1844, Justice John McLean wrote the opinion for the court affirming the Circuit Court decision.

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<sup>44</sup> Circuit Court, District of Columbia, "Lee v. Lee," November 1835, 15 F. Cas. 209; 1835 U.S. App. Lexis 285; 4 Cranch C.C. 643, Data Base on-line. Available from Lexis Nexis Academic.

The act of 1812 was designed to enable the owner of slaves in either of the two counties, within the district, to hire or employ them in the other. And this is the full purport of its provision on this subject. It clearly does not authorize a citizen of Washington to go to the county of Alexandria, purchase a slave and bring him to Washington County for any purpose, much less for the purpose of sale, as found by the jury in this case. If this could be done, it would subvert the whole policy of the Maryland law, which was to prevent except in specified cases, the importation of slaves into the state. And Congress, by adopting the Maryland law, sanctioned its policy.<sup>45</sup>

In 1857, Justice McLean wrote a strongly worded dissent in the *Dred Scott* case, but earlier through the action of Moses Bell, he considered the movement of slaves across jurisdictional boundaries and articulated the limits of slave holders' rights when crossing the border.

The decision in *Bell v. Rhodes* soon was moot as the political borders of the area changed once again as Congress approved in 1846 the retrocession of Alexandria County to Virginia. Citizens of Alexandria had been pressing for the change, arguing that they did not have representation in Congress and that the Virginia side of the District of Columbia had not received any funding from the federal government to keep Alexandria commercially competitive with Baltimore. Among their business concerns, a rail line from Baltimore into Virginia at Harper's Ferry had diverted products from Virginia into Maryland's port, and the chartering of Alexandria banks was difficult in Congress where the anti-bank forces had derailed the Second Bank of the United States. In spite of the arguments made by Alexandria's leaders, historian A. Glen Crothers has maintained that

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<sup>45</sup> Circuit Court, District of Columbia, County of Washington, "Moses Bell v. James Rhodes," August 20, 1842, 1 Hay. & Haz. 103; 1842 U. S. App. Lexis 617, Data Base on-line. Available from Lexis Nexis Academic.

issues relating to fugitive slaves and slave trading were at the heart of Alexandrians' desire to rejoin Virginia.<sup>46</sup>

These worries of Alexandria whites were different materially from the trepidation of the African American population. Even though slaveholding was on the decline in Alexandria, African Americans were uneasy about rejoining Virginia. Virginia's 1806 law requiring newly freed people of color to leave the state created alarm and the question of whether they would still be welcome in Alexandria. Registrations of free African Americans soared. In the first eight months of 1846, sixty persons completed their mandatory registration with the Alexandria government, a volume that was typical for the county. Between September 1, 1846, when Alexandria's citizens voted to return to Virginia, and March 12, 1847, another ninety persons registered to indicate their free status and their legal right to remain in Alexandria. On March 13, 1847, the Virginia General Assembly passed the final terms of Alexandria's return. In the week between this legislative action and the passing of official control on March 20, 1847, 178 people (approximately one-tenth of the total free African American population) registered, showing their distress about the possibility of being uprooted from their community. On the day of the return of Virginia government, the *Alexandria Gazette* blandly published the complete actions of the Virginia General Assembly authorizing the new government of Alexandria County. The legislative action included appointment of officials, the granting of representation in the General Assembly, creation of a court system, and

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<sup>46</sup> "Appendix to the Congressional Globe," *Congressional Globe* 29th Congress 1st Session Appendix (1846): 894, 1042; A. Glenn Crothers, "The 1846 Retrocession of Alexandria: Protecting Slavery and the Slave Trade in the District of Columbia," in *In the Shadow of Freedom: The Politics of Slavery in the National Capital*, Perspectives on the History of Congress, 1801-1877 (Athens: Ohio University Press, 2011), 142-144.

establishment of a militia for Alexandria County. The Virginia legislation did not mention the status of African Americans in any way, including their standing under the 1806 law that required those manumitted after that date to leave the state or their rights in regard to already established churches and schools in Alexandria.<sup>47</sup>

The fears of Alexandria's African Americans were soon realized. As a part of the Compromise of 1850, Congress banned the slave trade within the District of Columbia, leaving Alexandria as the primary slave market for the area. Slave owners' ability to realize wealth from selling their slaves depended upon the unfettered capacity to use the Alexandria market. The decision in the case of *Negro Jane and Child v. B. O. Shekels* showed that the Virginia judiciary would not block the operation of the slave market. Shekels was a slave trader who had purchased the slave Jane and her child in Georgetown and brought them to Alexandria for resale to Alabama. In the interim, another resident of Georgetown purchased the pair and kept them for a year before reselling them to Shekels. Before she could be sold out of the area, Jane petitioned for the freedom of both herself and her child and relied on the Maryland act prohibiting the importation of slaves. Her petition failed as the Alexandria court ruled that Virginia was not obliged to enforce the laws of Maryland and found in favor of Shekels.<sup>48</sup>

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<sup>47</sup> Provine, *Alexandria County, Virginia*, 1990, 119–154; “An Act to Extend the Jurisdiction of the Commonwealth of Virginia over the County of Alexandria. Passed March 13, 1847,” *Alexandria Gazette*, March 20, 1847, Virginia Room, Fairfax County Public Library; Guild, *Black Laws of Virginia* In 1832, the Virginia General Assembly had made it unlawful for African Americans to gather for religious purposes without a white person present. This followed an 1831 law that banned any meeting held for the purpose of teaching free African Americans to read or write. When rewriting its criminal codes in 1848, the General Assembly reiterated its ban on gatherings of free African Americans for religious purposes or for teaching reading and writing.

<sup>48</sup> Arlington County (Va.) Chancery Causes, 1790-1842, “Negro Jane v. Shekels,” November 25, 1852, Reel 19. Common Law Orders No. 1. 1847. Alexandria County Circuit Superior Court of Law and Chancery. 275, The Library of Virginia, Richmond, Virginia.

Virginia courts were establishing new precedents in dealing with the movement of African Americans. The decision apparently did not consider the 1829 Virginia Supreme Court case of *Hunter v. Fulcher* in which the Virginia Court granted George Hunter his freedom based on Maryland law. Additionally, since the status of Alexandria had changed, the 1844 United States Supreme Court decision in *Rhodes v. Bell* was not precedent for the Virginia court. *The National Era*, an abolitionist newspaper located in the District of Columbia, recognized the importance of the changing circumstances surrounding the case, but in order to appease all parties in the slavery debate, the newspaper simply entitled its story, “An Interesting Case.” The changing judicial standards may have been a matter of interest to white readers, but they reflected a diminished hope for freedom for African Americans. The Alexandria courts were now part of the Virginia judicial system, and the new boundary closed an avenue for freedom that had been used earlier.<sup>49</sup>

Like Fairfax, Alexandria after the retrocession became a place where free African Americans had to consider the risk of being detained as a runaway slave. Andrew Lewis of Washington, D. C. claimed to have been born to a free mother and had been living in the District as a free man for over twenty years when he was apprehended and imprisoned as the slave of Bridget McLaughlin of Alexandria in 1850. Lewis petitioned that he was being wrongfully held. According to McLaughlin, Lewis’s case had incited persons in both Washington and Alexandria, and she petitioned to have the case moved to

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<sup>49</sup> “An Interesting Case,” *The National Era*, June 2, 1853, Data Base on-line. Available from Accessible Archives.; Supreme Court of Virginia, “*Hunter v. Fulcher*”; Circuit Court, District of Columbia, County of Washington, “*Moses Bell v. James Rhodes*.”

Fairfax County for a fair trial. Washington and Alexandria newspapers did not mention the case, and thus no source for detailed information exists concerning the change of venue. In November 1852, a Fairfax court dismissed the case with the agreement of both parties. Although the exact fate of Lewis is unknown, in 1858 Andrew Lewis, age 27, registered as a free person in the District of Columbia after having been manumitted by George Gideon in consideration of twenty dollars. Lewis's purchase by a sympathetic white person is the most plausible explanation for the agreement to dismiss the case. Likewise, the ultimate fate of William Thompson, a free African American, is unknown. In 1849, he was held in Fairfax jail because he was not known in the county. The court later heard sworn testimony that Thompson was a free man who lived in Loudoun County. In spite of their detention, both Lewis and Thompson remained free, but only because of the aid of friendly white persons.<sup>50</sup>

As tensions over slavery escalated, the movement of African Americans across borders became more dangerous particularly if they were unknown. A free person of color who travelled outside the home community might be considered a runaway slave, and a claim to freedom from detention often required the good will of whites. As concerns about the growing population of freed slaves mounted, courts granted fewer favorable rulings to bonds people who used competing laws to claim their freedom.

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<sup>50</sup> Arlington County (Va.) Chancery Causes, "Andrew Lewis v. Bridget McLaughlin," November 1851, Reel 19. Common Law Orders No. 1. 1847. Alexandria County Circuit Superior Court of Law and Chancery. 173, 176, 192, and Loose Papers in Fairfax Court House, The Library of Virginia, Richmond, Virginia and Fairfax County Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, "Sheehy v. Lewis," October 28, 1852, Minute Book 1852, 16. Loose folder of free Negro cases., Fairfax County Circuit Court Historical Records Division; Provine, *District of Columbia Free Negro Registers, 1821-1861*, 553; Fairfax County (Va.) Circuit Court, "Commonwealth v. Thompson," March 1849, Fairfax County Term Papers 1849, Fairfax County Circuit Court Historical Records Division.

Although whites provided more barriers, they were unable to fully contain the movement of free African Americans.

### **Rejecting Africa**

As concerns about movement across borders mounted, some whites developed the idea of removing freed slaves to Africa. The General Assembly passed laws requiring registration of free African Americans, but some slaveholders who anticipated freeing their bonds people considered removal of African Americans from Virginia as the ultimate solution to the problem of these unwanted neighbors. As early as 1790 in Fairfax County, an open discussion took place about the problem of freed slaves. Ferdinando Fairfax, third son of Bryan, Eighth Lord Fairfax and godson of George and Martha Washington, addressed the issue of emancipating slaves. Arguing that manumission should be gradual and voluntary, he believed freed slaves should not be allowed all the privileges of citizenship and averred that free intercourse and intermarriage among Africans and Europeans was repugnant. Therefore, he reasoned that freed people should be removed to a distant colony overseen by the United States government until the colonists became competent to govern themselves. Fairfax outlined the conundrum facing Virginia and the new republic—placing borders around free African Americans who could not fully participate as citizens was impractical, but slave owners and Virginia’s political leaders found that freed people often did not willingly move from their homes even when they were offered monetary incentive to leave the state and country.<sup>51</sup>

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<sup>51</sup> Kilmer, *The Fairfax Family in Fairfax County*, 50; Ferdinando Fairfax, “Plan for Liberating the Negroes Within the United States,” *American Museum, Or, Universal Magazine*, December 1, 1790, 285–287.

In 1816, the American Colonization Society was founded and drew as members a mixture of evangelicals and Quakers who opposed to slavery as well as Chesapeake slaveholders who believed that slavery was not sustainable in their region. The society's plan was to organize a colony in Africa for settlement by former slaves and to provide funding for those who wished to emigrate. The society's plan for a colony was confirmation of Ferdinando Fairfax's idea that free African Americans as second class citizens could not stay in the land of their birth.<sup>52</sup>

Among those embracing the ideals of the American Colonization Society was Elizabeth Lee Jones of Northumberland County, Virginia. At her death in 1823, her will was recorded in Fairfax County. She left her slaves in trust to Bushrod Washington, a Fairfax resident and President of the American Colonization Society, and its board of managers. Jones directed the society to hold her slaves for the purposes of colonization and emancipation or for such preparatory education and discipline needed to enter the colony. Until such time as the Society was prepared to handle the trust envisioned by Jones, she allowed family members to retain possession of her slaves and instructed that they should receive appropriate moral and religious education that would allow them to become emancipated colonists. If the society were unable to uphold its trust within ten years of Jones's death, her family members were directed to emancipate the slaves. Although public records do not indicate that the society ever acted on this bequest, several of Jones's slaves and their progeny eventually were freed. The Fairfax record of

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<sup>52</sup> Marie Tyler-McGraw, *An African Republic: Black & White Virginians in the Making of Liberia*, The John Hope Franklin Series in African American History and Culture (Chapel Hill: University of North Carolina Press, 2007) Tyler-McGraw provides a more complete discussion of Virginian's thoughts in the formation of the American Colonization Society.

free African Americans lists fourteen former slaves of Jones newly registered in 1848 and two others in 1849. No other public record has been discovered that verifies that these people were freed within the time constraints contained in Jones's will or that indicates that they became permanent residents of Fairfax. As in the cases of so many other free African Americans, changed names and locations make it difficult to ascertain their fate after freedom.<sup>53</sup>

Nevertheless, Kitty Rosier, one former slave of Jones, became a resident of Washington, D.C. In 1822, Rosier was sent to Washington to serve her ten-year term with Mrs. Elizabeth Orr, who later placed her with a family in Montgomery County, Maryland. Rosier returned to Washington in 1832 as a free woman, married Ignatius Rosier, and settled in the community. The settlement of Kitty Rosier in Washington drew the attention of District officials because of the requirement that bond be given by any newly freed slave relocating into Washington. Rosier successfully argued that since she had been a resident of the District before her removal to Maryland she was not subject to the law. Elizabeth Lee Jones wanted her freed slaves to be educated to become useful citizens in their homeland of Africa. Instead, the story of Kitty Rosier shows that free African Americans had to become knowledgeable about laws across borders and how to

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<sup>53</sup> Elizabeth Lee Jones, "Will," January 21, 1823, Will Book N-1, 49, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*: *Being the Full Text of the Two Extant Volumes, 1822-1861, of Registrations of Free Blacks Now in the County Courthouse, Fairfax, Virginia* (Fairfax: History Section, Office of Comprehensive Planning, Fairfax County, Virginia, 1977), 168–173; Virginia Center for Digital History, *Virginia Emigrants to Liberia*, n.d.

interpret them in order to establish a home, even with little hope of becoming full citizens.<sup>54</sup>

Some masters were able to have their wills executed far more efficiently than that of Elizabeth Lee Jones. Such was the case after the death of John Ashton. He requested that his slaves be hired out for a term of two years after his death which occurred in 1837. Ashton's will directed that his slaves then be freed, if they were willing to remove to Liberia or some other convenient settlement. Otherwise they should choose another master or mistress. In 1839 and 1840, nine of Ashton's former slaves appeared in the Fairfax register of free African Americans. None were recorded as having departed for Liberia. We do not know if Ashton's slaves received any money from their work during the two-year term after their master's death; however, if they were compensated, the newly freed slaves did not use the money to pay for emigration to Liberia.<sup>55</sup>

Just as Elizabeth Lee Jones struggled with preparing her slaves for freedom, William Fitzhugh also evaluated ways to prepare his slaves for freedom. His plan was different in that he chose to teach selected slaves how to farm. He decided to settle families of slaves on land attached to his plantation, Ravensworth. On these small farms, the tenants paid rent for the land and livestock that Fitzhugh furnished them. Fitzhugh kept all accounts, recorded all income, deducted expenses, and withheld the balance of earnings for their purchase of freedom or their expenses upon obtaining freedom. At the time an account of this experiment was published, two unnamed families were

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<sup>54</sup> Provine, *District of Columbia Free Negro Registers, 1821-1861*, 351.

<sup>55</sup> John Ashton, "Will," May 15, 1837, Will Book S-1, 212, Fairfax County Circuit Court Historical Records Division; Virginia Center for Digital History, *Virginia Emigrants to Liberia*; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and "Register of Free Blacks 1835, Book 3, 1977, 124, 136, 138.

participating.<sup>56</sup> Upon Fitzhugh's death in 1830, abolitionist editor, Benjamin Lundy, praised the project.

The untimely demise of this patriotic Virginian will, probably, arrest an experiment that he set on foot, relative to the advantages of a system of *mitigated slave labor*— emphatically one of the most important steps yet taken by the friends of emancipation, in our southern States. Would that we had a few more such men as him—whose prejudices were sufficiently subdued to let intelligent philanthropy and even-handed justice have a due influence upon their actions.<sup>57</sup>

Fitzhugh's will did not mention continuing his experiment, and it fell to his wife, Anna Maria Fitzhugh, to handle the details of his slaves' emancipation.

Very few details exist for a manumission of such importance, and Fitzhugh's will was very short for a man of such wealth. He named his wife as executrix of his estate and left all of his slaves to her until the year 1850, when they would unconditionally become free. His newly emancipated slaves could then select a new residence, and the estate would pay the expenses of moving. As an inducement to migrate to Liberia, he promised that the costs of emigration would be supplemented by a cash payment of \$50. Fitzhugh's holdings included a large farm called Arkindale in Stafford County where 125 of the slaves were located. The remaining 83 slaves were concentrated on the Ravensworth estate. Fitzhugh also owned a residence in Alexandria, but no slaves were listed at that home.<sup>58</sup> Nothing in the public accounting of the estate shows whether Mrs. Fitzhugh

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<sup>56</sup> "William H. Fitzhugh, Esq.," *African Repository and Colonial Journal (1825-1849)*, American Periodicals, 3, no. 6 (August 1827): 185.

<sup>57</sup> Benjamin Lundy, "The Late Wm. H. Fitzhugh," *Genius of Universal Emancipation*, December 1830, Vol. IX edition, P. 132, Public Domain Reprints.

<sup>58</sup> William Fitzhugh, "Accounting of Estate," August 22, 1832, Fairfax County Deed Book R1-16, Fairfax County Circuit Court Historical Records Division; William Fitzhugh, "Final Accounting of Estate," January 24, 1844, Will Book U1-147, Fairfax County Circuit Court Historical Records Division; William Fitzhugh, "Inventory of Estate," October 18, 1830, Will Book Q1-68, Fairfax County Circuit Court

continued the tenant slave experiment, or what the slaves did in the twenty years between their master's death and their promised emancipation. On January 21, 1850, the Fairfax County Circuit Court acknowledged the manumission of slaves by the will of W. H. Fitzhugh. Registrations in Fairfax County showed sixty adult slaves were freed, and two others were registered in Alexandria as free. None of the emancipated slaves was under the age of twenty. Since the inventory of Fitzhugh's estate contained only first names of slaves, we do not know how many of the persons enslaved by Fitzhugh were freed twenty years later. Moreover, the public records did not include the deaths or sale of slaves. Extant records give no reason for only the freeing of enslaved adults, but the 1850 census showed that Anna Maria Fitzhugh continued to hold ten slaves under the age of twenty.<sup>59</sup>

Like the slaves manumitted under the Jones and Ashton wills, the lists of persons boarding for Liberia do not indicate that any of the former Fitzhugh slaves opted to go to Africa. Indeed, most of the Fitzhugh slaves disappeared from the public record. However, the few newly freed slaves who remained in the area provide some insights into the effects of the Fitzhugh emancipation in Fairfax, Alexandria, and the District of Columbia. U. S. census records in 1860 counted Anna Fitzhugh as a resident of Alexandria, but the 1850 survey listed her as living alone in Fairfax. Listed immediately after Fitzhugh in 1850 census were five households of free African Americans. Some of these individuals

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Historical Records Division; William Fitzhugh, "Will," August 18, 1830, Will Book Q1-57, Fairfax County Circuit Court Historical Records Division.

<sup>59</sup> Fairfax County (Va.) Circuit Court, "Proceeding of the Circuit Court," January 21, 1850, Minute Book 1846, 234, Fairfax County Circuit Court Historical Records Division; "1850 Census--Slave Schedules," n.d., Fairfax, Virginia, Ancestry.com. 1850 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2004; Provine, *Alexandria County, Virginia*, 1990, 225, 228; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and "Register of Free Blacks 1835, Book 3, 1977, 179–195.

were registered with Fairfax County as having been emancipated by the William Fitzhugh will. Table 4 lists the persons in those neighboring households. For the most part, the newly freed slaves listed in the 1850 census who stayed in Fairfax were elderly. Of that group, the three who did not register with Fairfax County were the oldest. Had these people been allowed to remain in Fairfax because of their age? Fitzhugh’s will is no help here as it does not specify any special provision for his older slaves. Was the decision to allow these newly emancipated slaves to remain in Fairfax made solely by Anna Fitzhugh? Did Mrs. Fitzhugh employ these slaves as household servants, or is it likely that these families were part of William Fitzhugh’s experiment with slave tenants. The existing public records provide no answers for these questions.<sup>60</sup>

**Table 4 Free African American Neighbors of Anna Maria Fitzhugh**

<b>Household Number</b>	<b>Name</b>	<b>Age</b>	<b>Gender</b>	<b>Race</b>	<b>Occupation</b>	<b>Registered</b>
844	James Burke	53	Male	Mulatto	Labor	Yes
844	Violet Burke	53	Female	Mulatto		Yes
845	William Butcher	57	Male	Black	Labor	Yes
845	James Butcher	40	Male	Black	Labor	Yes
845	Louisa Butcher	38	Female	Mulatto		Yes
846	Gina Ross	60	Female	Black		No
846	Henry Ross	53	Male	Black	Labor	Yes
846	Cynthia Ross	53	Female	Mulatto		Yes
847	Alexander Smith	75	Male	Black	Labor	No
847	Sybil Smith	65	Female	Black		No
848	Bettie Hughes	75	Female	Black		No
848	Kitty Parker	55	Female	Black		Yes
848	Going Butler	65	Male	Black	Labor	Yes
848	Lucinda Parker	27	Female	Black		Yes

<sup>60</sup> “1850 Census,” n.d., Fairfax, Virginia, Ancestry.com. 1850 United States Federal Census [database online]. Provo, UT: Ancestry.com Operations, Inc., 2009; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 179–195.

According to the 1860 census, only one of these families, James and Violet Burke, still remained in Fairfax County. At that point, the 1860 slave schedule shows James Burke as the owner of an eleven-year-old female slave. Little is known of Burke except that he was a carpenter, and Anna Fitzhugh bequeathed \$150 to him. Although he did not die until 1872, James Burke prepared a will in 1860. He left his property to his wife Violet, and after her death the property was to go to several other heirs including two adopted daughters, one of whom was owned by Turner Dixon, Esq. It is possible that his other adopted daughter was the eleven-year-old girl held in slavery. In his will, Burke mentions his sister, Louisa Butler, and her three children, who lived in Washington, D.C., although records give no indication the Butler children ever registered as free in the District or in Fairfax. Since James and Louisa Butler had remained near Ravensworth after their emancipation, it is possible that their children were among the slaves still listed as belonging to Anna Fitzhugh in 1850. The Burke Will indicates that William Fitzhugh's wishes that all his slaves relocate outside the state did not occur. Moreover, it suggests that Anna Fitzhugh relied on her own discretion outside the parameters of her husband's will in the handling of the manumissions.<sup>61</sup>

Anna Fitzhugh's treatment of the emancipation of her underage slaves remains a mystery, although William H. Burke, one of the former slaves, provided more evidence. Manumitted by the Fitzhugh will in 1850, he registered in both Alexandria and Fairfax as

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<sup>61</sup> James Burke, "Will," February 1872, Will Book B-2, 147, Fairfax County Circuit Court Historical Records Division; "1860 Census--Slave Schedules," n.d., Fairfax, Virginia, Ancestry.com. 1860 United States Federal Census-Slave Schedules [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2010; "1860 Census," n.d., Fairfax, Virginia, Ancestry.com. 1860 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2009; Sprouse, *Fairfax County in 1860: A Collective Biography*, 237.

free. That same year, the federal census recorded Burke, age 65, as living in Alexandria with his wife Malinda, age 56, and seven other persons ranging from age 7 to 27. Of the seven, Dulaney, age 27, and Lorenzo, age 25, were registered as free in Fairfax. None of the seven were registered in Alexandria as free African Americans. In his testimony relating to Anna Fitzhugh's claim for Civil War damages, Burke asserted that he inhabited a house on Mrs. Fitzhugh's lot in Alexandria and had resided in Alexandria his entire life; his wife had only lived in Alexandria since 1848. William Burke waited on Mrs. Fitzhugh's table when she was in Alexandria. He stated, "I go back and forwards in the country during her absence, at her wishes." During the war, while Mrs. Fitzhugh stayed at Ravensworth, Burke did planting at the government cemetery in Alexandria and acted as its superintendent until 1866. Burke testified that he learned to read and write as an adult. Because of his importance to Mrs. Fitzhugh, the Burkes were not required to leave the state, and their family was able to remain intact. Even when it was the master's will that his freed slaves depart from Virginia, considerations of age and usefulness to surviving family members countermanded that desire to relocate all free African Americans.<sup>62</sup>

Political borders were designed to define an area of control for government, but these boundaries never effectively controlled the movement of African Americans. After

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<sup>62</sup> "1850 Census," n.d., Alexandria, Virginia, Ancestry.com. 1850 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2009; Provine, *Alexandria County, Virginia*, 1990, 224; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 179–195; Southern Claims Commission, "Claim of Anna M. Fitzhugh," January 3, 1873, Southern Claims Commission Binder, 304, Fairfax County Circuit Court Historical Records Division.

the Revolution, Virginia legislators attempted to limit African Americans from coming into the state and monitor those who were already there. These efforts were arbitrary and sporadic, and African Americans used differences in laws among jurisdictions to seek freedom. Because of the legal hurdles that made staying in Virginia difficult, many newly freed slaves crossed the border and never returned, but the evidence does not indicate that they considered leaving the country for Africa. Instead, they wanted a new start in America, and often they accomplished that goal by moving beyond the control of the master.

African Americans often demonstrated that desire to move on from a life in bondage by leaving behind old identifiers. According to Fairfax registration records, most ex-slaves began life as a free person by dispensing with that identity as a bondsman and choosing a name that showed no connection to the former master. These changed names provided a new family identity outside the former plantation life, and helped freed persons who left the area to have a fresh beginning away from slavery. It is difficult to gauge the extent of this practice particularly since the majority of free African Americans were never registered in Fairfax County. Even though Virginia's laws tried to limit the movement of free African Americans, many were able to migrate outside the borders of the master's domain and manipulate political borders to establish a life in freedom.<sup>63</sup>

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<sup>63</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 4–5 Fairfax records indicate that none of George Washington's ex-slaves was named Washington. Similarly, Robert Carter freed over thirty slaves in Fairfax, none of whom were named Carter. None of William Fitzhugh ex-slaves chose the name Fitzhugh. Registrations of free African Americans in Fairfax never totaled even one-half the number of freedmen in the county. In 1860, the census showed 672 free African Americans in Fairfax County, but only 251 of these persons were registered.

Other free African Americans were able to use their usefulness to the community not only to stay but also to move freely within the region. Once again, measuring the number of those who enjoyed these privileges is not possible. Immediately upon emancipation, status was often tied to the prestige of the former master, but this position was often lost in subsequent generations. Nevertheless, evidence suggests that if free African Americans maintained a low profile and did not pose a threat to slavery, white authorities did not question their movements.

Nonetheless, by the time of Alexandria's retrocession to Virginia, free African Americans were surrounded by suspicion. Crossing the border from Fairfax County into Alexandria County no longer provided a safe haven from Virginia's arbitrary enforcement of its laws. The District of Columbia was also becoming a more hostile place, and some politicians in Virginia attempted to demonize the free African American population. In his speech at the opening session of the General Assembly in 1846, Governor William Smith declared, "I regard our free Negro population as one of our greatest evils, and to get rid of it as one of our highest duties." Smith proposed a vote in each county over the question of removal of free African Americans. If the county voted for removal, all freed slaves in the county would have to leave the state within twelve months. Governor Smith suggested that Virginia would be willing to send its free African American population to those places in the North where they were considered American citizens and entitled to all the rights and privileges thereof.<sup>64</sup>

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<sup>64</sup> "Governor's Message to the General Assembly of Virginia," *Alexandria Gazette*, December 11, 1846.

Governor Smith's proposal ignited a debate in the United States House of Representatives and drew a strong response from Representative William Sawyer of Ohio. The congressman admitted that free African Americans were entitled to equal political rights in Ohio, but he asserted that Ohio whites chose "to be governed by white men, not by Negroes." He then referred to an uprising of whites in response to the migration to Ohio of the slaves freed by John Randolph of Virginia. In addition to Sawyer's assertions, Ohio laws required registration of free African Americans, a \$500 bond signed by two white men to guarantee good behavior, and exclusion of African Americans from the benefits of the poor laws of the state, demonstrating that leaving Virginia did not guarantee a life of opportunity for freed slaves.<sup>65</sup>

For free African Americans in Fairfax County, political borders had many different meanings. Some had been able to use the differences in laws among jurisdictions to gain their freedom. Others lived in circumstances in which moving across boundaries occurred on a regular basis. Many others found that borders were used to exclude them from their homes and familiar surroundings. To a surprising extent, free African Americans still were able to make choices concerning where they lived. Such was the story of an old slave in Fairfax County. During the Civil War, a Union soldier approached him and two of his grandchildren about becoming free. The two younger slaves agreed to follow the soldier to freedom, but "The old fellow told him no; that he was living near the line, and if he desired it, could have obtained his liberty any time

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<sup>65</sup> "Free Negroes in Virginia and Ohio," *African Repository and Colonial Journal (1825-1849)*, American Periodicals, 23, no. 2 (February 1847): 45; Jill E. Rowe, "Mixing It Up: Early African American Settlements in Northwestern Ohio," *Journal of Black Studies* 39, no. 6 (July 2009): 927.

within the last twenty years, simply by crossing over.” The old slave did not explain why he wanted to stay in Fairfax, but his age likely meant that he had established his life in a community and among family whom he did not wish to leave. His younger relatives’ desire to cross the border and obtain their freedom was evident. For them, the possibility of freedom outweighed any attachment to Fairfax. Boundaries offered African Americans the opportunity to make choices, but the meaning of the border for each person remained a very personal matter.<sup>66</sup>

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<sup>66</sup> Felix Gregory De Fontaine, *Marginalia; Or, Gleanings from an Army Note-Book* (Steam power-press of F.G. DeFontaine & Co., 1864), 16.

## CHAPTER TWO--AFRICAN AMERICANS AND LOCAL IMPLEMENTATION OF THE LAW

Even though not considered to be citizens of Virginia, free African Americans were expected to abide by its laws. Defining how this emerging caste of people would fit into society occurred within the state legislature, in the court system and through local practice. The Virginia General Assembly actively designed legislation to limit the rights of former slaves, but how these laws were applied was a local decision. The choices had disparate effects on how free African Americans were able to function as economic contributors, family members, and peaceful members of the community. By concentrating on the enforcement of statutes at the local level, we gain a better understanding of the impact of the law on the lives of free African American people and on the ways in which this segment of the population was able to influence the law through using the judicial system.<sup>1</sup>

By the time of the Civil War, African Americans' use of the judicial system was accepted in Fairfax County. Although not able to serve as jurors, both freed persons and slaves could petition the court and be represented by counsel. This access to the judicial system evolved over the years since the Revolution. In Fairfax, utilizing the courts to challenge white dominance was not an organized effort, but a series of individual

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<sup>1</sup> Ellen Eslinger, "Free Black Residency in Two Antebellum Counties: How the Laws Functioned," *Journal of Southern History* LXXIX, no. 2 (May 2013): 261–98 Eslinger argued that state law provided the parameters for local decisions in Rockbridge and Augusta Counties in Virginia. She contended that exceptions were few and did not represent a flawed legal culture but rather the system's normal operations.

decisions that slowly brought about the recognition that free African Americans had the right to be treated justly in economic transactions and that their family and community connections could not be ignored.

In the immediate post-revolutionary period, African Americans' growing use of the courts demonstrates the pressure that slaves were able to put on the judicial system. Freedom petitions by those enslaved provided a path out of bondage for some persons, and requests to remain in the county reflected the desire of freedmen to maintain their homes, even in an environment that discriminated against free African Americans. In later periods, as the General Assembly continued developing its separate black code and court system for the African American population, court decisions in criminal cases often reflected a more nuanced justice system whose verdicts reflected economic worth and community acceptance. Closer to mid century as free African American residents began to accumulate property they used the court system to settle disputes with their white neighbors. Even though the whites of the community always determined the verdicts, the justice system respected property rights of all persons. Thus, the complaints of the African American community were heard and often supported by court decisions. Local judgments, with their focus on the well-being of the community, often conflicted with racially-charged white rhetoric about free African Americans.

Moreover, an important factor in decisions was the prevailing political and economic environment. The euphoric support for liberty and equality after the Revolution gave way to the economic realities of a changing agricultural system in the early nineteenth century. The panic after Nat Turner's rebellion in 1831 began a period of more

repressive decisions. Even as the economy rebounded in the 1850's and African Americans were able to purchase land for farms and become more independent, Fairfax courts generally enforced the last wishes of emancipators but became more diligent in ensuring that the newly freed persons could not remain in the county. These factors often left free African Americans as hostages to fortune. Still to the extent possible, African Americans used the judicial system to fight injustice and establish their rights in the community.

### **Engaging the Judicial System**

When new avenues for freedom for slaves were opened, a concomitant growth in the free African American population brought fresh questions about the use of the judicial system. First, the courts and legislature considered the issue of how a slave who was unjustly held in bondage could argue for this freedom. They also deliberated what rights were held by free and enslaved African Americans to address their grievances in court. In developing the ideal of an impartial judicial system for all persons, these issues concerning citizenship rights confronted the new republic. Property owning white males had full access to the rights and responsibilities of citizenship including control of the courts. African Americans' push for rights in the new court system in Virginia is an area that demands further examination.

Soon after the Revolution, the General Assembly began to struggle with slavery and the place of African Americans in Virginia. In colonial times, Virginia was committed to the bonded labor system and allowed manumissions only by an act of the governing body. After American independence, some Virginians were less certain about

the necessity of such rules, and the General Assembly liberalized its laws concerning emancipation while establishing a firm definition of who was considered enslaved. In 1782, the General Assembly provided that any person could free his or her slaves by will or other legal document that was witnessed. In 1785, the Assembly defined slaves as those persons who were enslaved at the time of the enactment of the law and the descendants of female slaves. Bonded labor brought into the state and kept for an entire year would be freed, unless their owners took an oath that the importation of these slaves had not been to evade the state's prohibition against introducing new slaves into the commonwealth. Masters who brought in slaves under the exception were prohibited from selling them, even though the slaves could have been recently purchased. These laws did not mention a slave's ability to sue for and gain freedom. Legislators did not want a continued growth in the state's slave population but were also becoming concerned about the increased numbers of manumitted slaves. In 1792, the legislature amended the statutes regarding slave emancipations. Instruments manumitting slaves had to be attested and proved by two witnesses. Also, former masters were required to support freed people, who were not of sound mind and body, or who were under eighteen years old, if female, or twenty-one years old, if male, or who were over forty-five years old.<sup>2</sup>

In 1795, the Virginia legislature codified a very restrictive method for slaves to petition for their freedom. A slave who believed he or she was unjustly held in bondage

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<sup>2</sup> Guild, *Black Laws of Virginia*, 62, 65; Fredrika Teute Schmidt and Barbara Ripel Wilhelm, "Early Proslavery Petitions in Virginia," *The William and Mary Quarterly*, Third Series, 30, no. 1 (January 1, 1973): 133–46, doi:10.2307/1923706 Schmidt and Wilhelm have documented that 1785 was an important year in the debate on the future of slavery in Virginia. Religious groups petitioned the General Assembly for the emancipation of slaves. Their efforts were countered by slave owners in five Southside Virginia counties who espoused pro-slavery arguments.

could appeal to a magistrate who might require the master to post bond. The court would provide an attorney to represent the slave, but the counsel could receive no reward for his service. According to the preamble, the law was expressly drawn in order to discourage the “great and alarming mischiefs” of societies which were dedicated to freeing slaves. This opportunity to petition the court system reflected the emphasis in the early republic on freedom, and slaves quickly seized the opportunity to use the courts to argue the case when they believed their slavery illegal.<sup>3</sup>

The legislature did not address how a slave would be able to prove his/her right to freedom. Eventually the Supreme Court of Virginia addressed this issue by considering whether a slave could call witnesses in support of his/her freedom suit. The case of *Isaac v. Johnson* that arose in Campbell County in 1797 provided an opportunity to focus on the issue. In violation of the statute against importing slaves, Peter Corbell brought his slave, Isaac, to Virginia from South Carolina and held him in bondage for over twelve months, at which time Isaac should have become a free man. Isaac sued in the county court of Campbell for his freedom. The jury found in Corbell’s favor, ruling that Isaac as a slave did not have the right to bring suit. Another trial was held in 1799 in Campbell County, and the original verdict was upheld. Shortly thereafter, Corbell sold Isaac to Thomas Johnson. Isaac sought and was denied a hearing in the Hustings Court of Lynchburg and then appealed to the Superior Court of Chancery of the Richmond district. At this point Isaac asked that Johnson be restrained from sending him away from Virginia. The petition also requested that the case be heard in the Superior Court of

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<sup>3</sup> Guild, *Black Laws of Virginia*, 198; Robert McColley, *Slavery and Jeffersonian Virginia*, 2d ed (Urbana: University of Illinois Press, 1973), 159–160.

Chancery as a matter of equity and argued that Isaac was under restraint by those who held him in slavery and had been unable to call witnesses to verify his right to freedom.<sup>4</sup>

Once the court granted Isaac the right to call a white witness, the court decisions turned in his favor. In continuing his case against Peter Corbell in the chancery court, Isaac argued that Thomas Johnson should testify because he knew that Isaac had been brought into Virginia unlawfully. The chancery court awarded Isaac a new trial, and the county court heard evidence in the matter including depositions that supported the slave's contentions. In March 1815, the county court ruled in favor of Isaac and made him a free man. The slaveholder appealed to the Superior Court of Chancery in Lynchburg which reversed the decision. Isaac appealed to the Supreme Court of Virginia, which reversed the decision of the chancery court and affirmed the county court decision that Isaac was free. After nearly twenty years of litigation and clear differences of opinion among whites who administered the court system, Isaac's case had established that slaves in Virginia not only had access to the judicial system to hear their freedom petitions but also could require that testimony be heard that supported the arguments of the enslaved.<sup>5</sup>

After decisions such as *Isaac v. Johnson*, the General Assembly expressed its concern about outside influences in freedom cases and moved to stop outside parties from inciting these suits. Through legislation adopted in 1818, the General Assembly set a penalty for anyone aiding a case that was not already established. Furthermore, any person associated with an abolition society was forbidden to serve as a juror. Even

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<sup>4</sup> Supreme Court of Virginia, "Isaac v. Johnson," February 22, 1816, 19 Va. 95; 1816 Lexis 16; 5 Munf. 95, Database On-line. Available from Lexis Nexis Academic.

<sup>5</sup> Ibid.

though the law restricted who might help a slave bring a freedom suit, the statute continued the right of every poor person including slaves to have counsel assigned and added that those costs were to be remitted to the court. By providing costs for the counsel, the action by the legislature was a breakthrough for African American rights in Virginia, but not all questions had been settled.<sup>6</sup>

A subsequent Virginia Supreme Court case dealt with the issues of whether an African American mother could bring suit on behalf of her enslaved child. In *Talbert v. Jenny*, a case that originated in Wythe County, Virginia, Jenny, who had been freed by the will of her deceased master, sued for freedom for her three youngest children. The Chancery Court of Wythe had ruled in favor of Jenny; Talbert, a son of the deceased master, claimed title to the children and appealed to the Virginia Supreme Court challenging whether Jenny could bring suit for the infants. In 1828, the court found for Jenny, stating that Talbert, as a party with possible property interest in the minors, was prejudiced; the Supreme Court affirmed the lower court ruling that allowed African American women some protection for their children.<sup>7</sup>

Slaves petitioning for freedom found further protection offered by the Virginia Supreme Court in 1836 when the court ruled that a slave could provide evidence of his/her right to freedom. In a case that had begun in 1797 in Monroe County and subsequently moved to Botetourt County, the court was presented with the question

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<sup>6</sup> Guild, *Black Laws of Virginia*, 198.

<sup>7</sup> Supreme Court of Virginia, “*Talbert v. Jenny*,” February 27, 1828, 27 Va. 159; 1828 Va. Lexis 7; 6 Rand. 159, Data Base on-line. Available from Lexis Nexis Academic.

whether slaves could prove a deed of emancipation. The opinion of Judge Henry St. George Tucker, Sr. was clear.

The act of assembly, in giving them (slaves) capacity to receive their freedom, cannot have been designed to withhold from them the right of proving the deed, without which it must continue ineffectual. On whom are they to rely to do them justice? On the persons who have an interest in holding them in slavery, and who have successfully resisted their efforts to obtain their freedom for so many years? By no means. In giving them an interest in having the deed proved, the act of assembly gave them a right also to have it done: otherwise it would indeed “keep the promise to the ear, and break it to the hope.”<sup>8</sup>

Using Judge Tucker’s argument, the Virginia Supreme Court reversed the lower court ruling and allowed slaves to prove their right to emancipation.

Even though the Virginia Supreme Court had asserted its authority in these two cases, for the most part the legislature designed a court system in which local courts carried ultimate authority.<sup>9</sup> Cases involving African Americans considered by this court system provide a lens through which we can see not only their desire for freedom from slavery but also struggles of the judiciary to balance a race-based slave system with justice for African American grievances. By the 1850’s, local courts were more prone to suppress African-American’s aspirations for freedom. Still, both slaves and freed persons continued to challenge the legal system and demand justice for their lives. The Dred Scott decision has come to epitomize the demise of rights for African Americans in the

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<sup>8</sup> Supreme Court of Virginia, “Manns v. Givens,” July 1836, 34 Va. 689; 1836 Va. Lexis 65; 7 Leigh 689, Data Base on-line. Available from Lexis Nexis Academic.

<sup>9</sup> “The Virginia State Court System--Colonial and Present Day,” n.d., Fairfax County Circuit Court Historical Records Division In Virginia, Hustings Courts were the equivalent of county courts in incorporated towns such as Alexandria. Both Hustings and county courts met monthly. Chancery courts heard matters of equity in grievances between two parties. Circuit courts met twice yearly and were presided over by a judge who rode a circuit from county to county. Circuit courts had original jurisdiction concurrent with county courts and had an appellate jurisdiction in all civil cases involving more than \$50 thus keeping most decisions with local authorities.

antebellum period, but in Fairfax County, the legal battle provided a mixed result that kept pressure on whites to recognize African American desires for freedom.

The law in Virginia reflected not only slaveholding roots but also the changing social climate. Just as when by statute or legal precedent the courts upheld the right to petition for freedom from slavery, the judicial system also was open for the grievances of African Americans in a myriad of other matters. With this access, African Americans used the legal system to defend themselves, seek equitable treatment, and redress the effects of harsh laws directed at them. As the economic need for African American labor waned, more freed people were required to leave the state. Legal actions often arose over payment for labor that would help the freed persons defray the costs of moving to a new home. When tensions over slavery in the nation escalated prior to the Civil War, African Americans continued to battle in the courtroom for greater rights, especially in cases in which removal from their home was involved.

Winning judicial battles was never easy for African Americans. Local courts, state supreme courts, and the United States Supreme Court handed down decisions, sometimes conflicting, that affected African American's lives. In the period of the early republic, the concept of judicial precedent under American law was only beginning to develop, thus the conflicts among courts often were not resolved consistently. Given the power of the local courts, cases involving African Americans often reflected personal interactions, and as such, mirrored the relationships of neighbors in the community. By the time of the Civil War, the community relationships apparent in local court records provided some surprising results.

Many of the struggles of African Americans to win access to the court system occurred outside Fairfax County, but the results of these decisions were felt in Fairfax where slaves, who believed that they were wrongly held, petitioned for their freedom. Such was the case of a slave named Philip who was freed under the will of Jemima Lay. The slave owner had devised her last testament in 1807, and her will expressed concerns about Virginia's then recently passed laws requiring newly freed slaves to leave the state. Lay provided that her two slaves, Phil and Simon, were to be freed, if consistent with the laws of the state. If they were not freed, they were to be hired out and not moved out of the state. Within two years, Philip sued for his freedom against John Barker who held him in slavery. Court records documenting the details of the case have been lost, but in 1836, Philip registered as free in Alexandria under the name of Philip Smith. Even though Lay did not want her slaves as bondsmen to be moved out of state, Philip moved to Alexandria circumventing Virginia's laws concerning freed African Americans remaining in the state.<sup>10</sup>

As in the case of *Talbert v. Jenny*, Nelly Gaskins, a free African American woman who lived in Fairfax County, was concerned not about her own status but about the freedom of her children. In 1825, Gaskins filed suit against John Lewis to show why he detained her children, Hampton, Peter, and Betsey. Neither Gaskins nor her children ever registered as free in Fairfax County, and no details of the case have survived.

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<sup>10</sup> Jemima Lay, "Will," June 17, 1815, Will Book L-1, 95, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Philip v. John Barker," June 16, 1817, Minute Book 1816, 153-154, Fairfax County Circuit Court Historical Records Division; Provine, *Alexandria County, Virginia*, 1990, 77 Philip Smith's registration in Alexandria recorded that he had been freed by the will of Jemima Lay in Fairfax County.

Nevertheless, Gaskins was able to serve as a proxy to petition for the protection of her children.<sup>11</sup>

Petitions for freedom were filed against some of the wealthiest and most powerful slave owners in the county. Such was the case when John Bell sued Anna Fitzhugh for his freedom. Nace Henson and John Bell had been slaves of Alexander McDonald who died in 1797. In his will, McDonald freed all of his slaves with the manumissions to take effect only after all his sisters had either married or died. Only one sister married, and the last of the other sisters died in 1835. The McDonald sisters lived on a part of the Fairfax County plantation of the late William Fitzhugh and his wife Anna. Rent of the sisters' home was collected in tobacco, and the family fell in debt. In 1820, the McDonald slaves were sold at public auction to satisfy part of the obligation. William Fitzhugh purchased John Bell, and Robert Hale of Alexandria purchased Nace Henson. When William Fitzhugh died in 1830, he left most of his slaves, including John Bell, to his wife with the stipulation that they be freed on January 1, 1850. John Bell had the distinction of having been freed twice after a term of bondage but at fifty-three years of age he remained enslaved. The Fitzhugh estate was settled by 1832 with one exception, the executor continued to try to collect debts owed to William Fitzhugh. In 1844, the executor filed a final accounting of the Fitzhugh estate in Fairfax County that listed no further collection of debts. Whether the executors of the estate attempted to collect amounts owed by the McDonald sisters to Fitzhugh is unknown, but two years prior to the final accounting, Bell, then sixty-five years old, and Henson filed for freedom under the McDonald

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<sup>11</sup> Fairfax County (Va.) Circuit Court, "Nelly Gaskins v. John Lewis," June 21, 1825, Minute Book 1824, 73, Fairfax County Circuit Court Historical Records Division.

manumission document. Anna Fitzhugh fought the manumission even though Bell's worth was listed as zero in the accounting of Fitzhugh's estate. In contrast, Nace Henson's owner quickly conceded that Henson should be freed, and Fitzhugh then followed.<sup>12</sup>

Although John Bell had been eligible for freedom since 1835, he and Henson waited until 1842 to petition for freedom. One possible explanation is that they may have felt threatened by efforts of the Fitzhugh estate to collect old debts. Whatever the reason for the slaves' actions, their challenge against Fairfax County's largest landowner was successful. Virginia's decisions to allow slaves full access to the court system to petition for their freedom provided a powerful weapon for some African Americans to confront injustice in the face of prevailing economic concerns of slave holders.

Since African Americans who petitioned for freedom seldom left any written record of their motivations, it is difficult to know why slaves chose to sue for freedom at a particular time. Moreover, it is not clear in many cases how they learned of their future manumission under term slavery agreements. This is particularly true in situations in which the emancipating slave holder had died. The execution of the master's wishes depended upon the good will of another person whose economic interests may have lain in keeping the estate's slaves in bondage. Virginia laws allowing slaves to petition for their freedom were specific in assessing penalties for anyone who encouraged a freedom suit. An attorney was assigned to the slave only after the case had been brought to the

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<sup>12</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Nace Henson v. Anna M. Fitzhugh," 1847, 1847-002. Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia; Fitzhugh, "Will"; Fitzhugh, "Inventory of Estate"; Fitzhugh, "Final Accounting of Estate."

court's attention. These remedies were available only if a person unlawfully held in bondage knew he/she was to be freed at a particular date. Since most slaves could not read, the most likely source of information about future freedom would have come from the master or his family who intended the slave to go free. Slaves who overheard family conversations could have also gained knowledge of impending emancipations.

No matter the source of the information, obtaining freedom was often a long process. George and Ann Baily's quest for freedom lasted for over twelve years. In 1845, Absolam Jenkins sold George, Ann, and her youngest child to Lawson Money for a ten year period at which time Money had the option to emancipate the couple but not the young child who would revert to Jenkins's ownership. The deal was consummated for the paltry sum of \$200. Before their term of bondage was completed, Absolam Jenkins died; and in 1855, Money executed a deed of manumission for George and Ann Baily. However, in 1857 the Bails were still held in slavery by John Powell, the administrator of the estate of Absolam Jenkins. Although the Bails believed they had clearly earned their freedom, they speculated that their bondage was connected to satisfying a creditor of Jenkins's estate. After the couple petitioned for their freedom, the Circuit Court dismissed the case without costs. The fate of the plaintiffs is unclear; however, it is apparent that George and Ann Baily understood the terms of their manumission and were willing to use the court system to try to win their freedom.<sup>13</sup>

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<sup>13</sup> Absolam Jenkins and Lawson Money, "Agreement," March 7, 1845, Deed Book U-3, 40, Fairfax County Circuit Court Historical Records Division; Lawson Money, "Deed of Manumission," June 6, 1855, Deed Book W-3, 238, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Baily v. Jenkins," November 1857, Term Papers, 1857, Box 4, Fairfax County Circuit Court Historical Records Division.

As the Baily case shows, the death of a master, even a trusted one, triggered uneasiness among slaves because the settlement of the estate often included the sale or distribution of the enslaved. Resolution of debts was often more important than the well-being of slaves, even those who had been promised freedom. Sales of slaves involved disruption of family, community, and work routines; if the sale resulted in a move to the Deep South, the slave might face a loss of all continuity in life. When personal upheavals loomed, it is not surprising that African Americans used the justice system to disrupt such transactions. The results did not always turn out favorably for the enslaved petitioner, but the courts often protected those who could document promises of freedom by enforcing the will of deceased masters, blocking debtors' claims, or acting as a protector for slaves caught between term slavery and unscrupulous slave traders.<sup>14</sup>

Sometimes the protection of the court depended upon the descendants of the emancipating slaveholder supporting a petition for freedom. Such was the case with Sarah Jane Richards, whose mother had been freed under a term agreement in the will of William Adams of Fairfax County. By terms of that will, any children born while the mother was serving out her term would be freed at the age of thirty-five. Before reaching that age, Sarah Jane had been sold under a term slavery agreement to another master in Fairfax, who sold her to a master in the District of Columbia, who then sold her for life to a slave owner from South Carolina. Richards was able to contact the family of William Adams who advised her to seek the protection of the Fairfax Sheriff. In 1854, a Fairfax

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<sup>14</sup> Masters who wanted to free their slaves often delayed the date of emancipation. This practice is commonly known as "term slavery" since the persons bonded under such arrangements were to be freed at a pre-determined future date. As an example, see Fairfax County (Va.) Chancery Causes, 1803-1970, "Sarah Jane Richards v. J.M.E. Sharp," 1854, 1854-014. Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia.

court not only gave her that protection but also facilitated her sale for the remainder of her term to a grandchild of William Adams.<sup>15</sup>

Even if the support of the family of the emancipator was not evident, slaves who were illegally held still had a chance in court. The will of Patrick Reid, who died in 1851, arranged the emancipation of Joseph Blackstone, Henry Simms, and Mary Frances Simms who were to be freed and sent to Pennsylvania. John Reid, the heir to the estate, lived in Pittsburgh leaving a local man, Henry Thomas, as administrator. For reasons that are not made clear in the court documents, Thomas not only did not free the slaves but also threatened to sell them to the South. The slaves petitioned for their freedom, and in compliance with the will of the slaves' owner, the Chancery Court ordered Thomas to prepare deeds of manumission. The judgment also required that the former slaves be paid for the value of their work while they had been unlawfully held as slaves. Whether John Reid was complicit in the decision to sell the slaves is unknown, but the owner's request that the slaves move from Fairfax to Pennsylvania after emancipation likely influenced the court to rule for the petitioners. With money in hand, they would be able financially to leave the area. By the 1850's, officials in Fairfax County were becoming more anxious about free African Americans who remained in the area, and this decision coincided with that changing attitude.<sup>16</sup>

White authorities' trepidations about emancipation centered on control of the African American population. Thus, they expressed no objections to African Americans

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<sup>15</sup> Adams, "Will"; Fairfax County (Va.) Chancery Causes, 1803-1970, "Sarah Jane Richards v. J.M.E. Sharp."

<sup>16</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Joseph Blackstone v. Henry Thomas," 1859, 1859-025, Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia.

who were promised freedom under term slave agreements and still remained in the county. These slaves remained pawns after the death of the owner since term slaves, as property, could be used to pay off debts of the estate. The prolonged resolution of the affairs of Whiting Mills provides examples. Mills died in 1837 and provided that his slaves should be hired out until sufficient funds were raised to cover their expenses, if they wished to relocate to Liberia or a free state. Ruth Mills, Whiting's wife, was named executrix of the estate; but her duties became complicated when she remarried giving her new husband, James S. Scott, a voice in the settlement of the estate. Mills's will did not specify a particular term that each slave was required to serve before he or she would be eligible for freedom; however, at least one slave, Matilda, had been sold under a term agreement. Matilda turned 15 years old shortly after James S. Scott sold her in 1842 to James H. Scott for \$200. Matilda was to serve until she reached the age of 28. At the time of the transaction, Matilda had been hired out to another master to pay the debts of Ruth Mills and James S. Scott. James H. Scott brought suit to end Matilda's hiring to settle debts of the Mills estate. The public record does not contain any further documentation about the life of Matilda. Apparently, the sale of Matilda was an exception in dealing with the Mills slaves. An inventory of the Whiting Mills estate was not recorded until 1853, after the death of Ruth Scott. At this point, the estate consisted of only slaves. The slaves sued for freedom, but no details of their petition have survived. In 1855, these former slaves also sued Whiting Mills's heirs for money owed from their labor. These twelve slaves received an awarded of over \$1,000, but the court did not give the newly freed slaves permission to remain in Virginia. Their freedom and monetary rewards were

accompanied by their exile from the community. White control of their lives had been reduced to the demand that they leave Fairfax County.<sup>17</sup>

The tensions between maintaining control of African Americans and slave holders' desire to emancipate their favored slaves is demonstrated in the settlement of the estate of Warren Croson. Using manumission as a tool to encourage the behavior he desired from his slaves, Croson emancipated Malvina Fairfax and her daughter Ginny in 1848 for "good and sufficient causes" while continuing to enslave others leaving a message that freedom could come with good behavior. The public records do not show Croson freeing any other his bonds people until his death in 1857. In his will, Croson directed the executors of his estate to free all of his slaves, except one named Richard who the executors were instructed to sell with proceeds from his sale to be distributed evenly among the heirs of the estate. Richard must have never been able to give Croson a "good and sufficient cause" for his freedom. The freed slaves were to receive fifty dollars and be "put on a car" in order to be removed to Ohio.<sup>18</sup>

The will of the deceased master sometimes was subverted by the heirs. In this case, the executor chose to hire out the slaves in 1857 to help pay the debts of the estate. The slaves sued for their freedom, claiming that the estate contained ample real estate to

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<sup>17</sup> Whiting Mills, "Will," October 14, 1837, Will Book S-1, 266, Fairfax County Circuit Court Historical Records Division; Whiting Mills, "Inventory of Estate," February 1, 1853, Will Book W-1, 315, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery, "James H. Scott v. Ruth Mills," March 29, 1848, 1848-018, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Circuit Court, "Scott v. Mills," June 7, 1855, Minute Book 1847, 281, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 218–222.

<sup>18</sup> Warren Croson, "Will," July 20, 1857, Will Book Y-1, 351, Fairfax County Circuit Court Historical Records Division; Warren Croson, "Deed of Manumission," October 16, 1848, Deed Book N-3, 34, Fairfax County Circuit Court Historical Records Division.

cover its debts. Obviously, the three heirs to the estate were reluctant to sell real property to settle debts since they had inherited Croson's real estate. Hiring out Croson's slaves allowed the heirs to settle debts without losing any of the benefits of their inheritance. All of Croson's former slaves who were supposed to be freed were parties to the court action; however, before they filed the petition, Croson's heirs manumitted Fanny Dodson for one dollar and other good causes. It is possible that the heirs used Dodson's freedom to extract desired behavior from their slaves while exploiting the slaves' labor for their own gain. Even though the remaining Croson slaves won their freedom, the court did not grant permission for the newly freed persons to stay in Fairfax. Once the slaves were freed, the family could no longer control the behavior of their former bonds people; and they were required to leave their community.<sup>19</sup>

African Americans who sued in the Fairfax County court system benefited from rulings made in the early nineteenth century that recognized the right of bonds people to petition the court and to be represented by counsel when question existed about the legality of their enslavement. Because of the prevalence of term slavery in Fairfax, African Americans could be exploited by unprincipled persons who attempted to keep them enslaved in spite of the wishes of their deceased masters. Nevertheless, pressure by African Americans often led to their freedom taking precedence over financial considerations of an estate. Even in the 1850's as tensions over slavery dominated the political arena, courts in Fairfax County were forced to consider the extent of slaveholder

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<sup>19</sup> Fairfax County (Va.) Chancery, "Carlson Fairfax v. Warren Croson," 1858, 1858-019, Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia; Warren Croson, "Deed of Manumission," January 18, 1858, Deed Book Z-3, 400, Fairfax County Circuit Court Historical Records Division.

dominion. Yet as some African Americans won their freedom, its price was their forced relocation out of state.

The differences between political rhetoric and decisions made on a daily basis in localities such as Fairfax are difficult to reconcile. Historian Laura Edwards who studied the dynamics between local decisions and state law in selected counties in North and South Carolina provides a possible explanation. She avers that local courts were concerned with keeping the community peace—a task that often required decisions that conflicted with state law. She contends that state law was developed based on rights, and African Americans were among the groups of people unprotected by those rights. In the period from the Revolution until around 1840, Edwards found that “state laws did not necessarily control local practice, define the needs of the peace in local areas, or constitute a definitive body of law uniformly applicable throughout the state.” The decisions relating to freedom petitions in Fairfax even up to the time of the Civil War demonstrate the interplay between local control and state law described by Edwards. County courts were tasked with balancing the rights of slave holders to their chattel labor, the wishes of many whites to be rid of free African Americans, and the continued right of owners even after their deaths to free their slaves. In this mix, African Americans had acquired the right to petition for freedom, and the courts of Fairfax balanced the community’s interest by hearing these cases, granting freedom where required, and then sending many freed slaves out of the community.<sup>20</sup>

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<sup>20</sup> Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill: University of North Carolina Press, 2009), 3–16 Quote taken from page 13.

## Implementing State Laws

By the time of the Civil War, an extensive set of laws in Virginia were directed solely at its African American population. Virginia had always been at the center of the development of this so-called black code since English common law did not address issues related to lifetime slavery. Bondage for life was reserved only for African Americans, inducing the General Assembly to enact special laws to deal with the treatment of slaves. After the Revolution as the new class of free African Americans emerged, the state was forced to address the status of this new class of people who were responsible for obeying the law but were excluded from having a voice in government or the administration of justice.<sup>21</sup>

State legislation was important, but the extent to which these laws affected the population of Virginia depended on the functioning of the local judiciary. An example of this dynamic can be seen in taxation, an area in which the General Assembly developed special laws for former slaves. Free African Americans owning land, slaves, or other property were subject to the same taxation as white citizens. Still, many former slaves had almost no taxable property leading the General Assembly in 1814 to impose a poll tax of \$1.50 on each free African American over sixteen years of age except those bound out as apprentices. Those who could not or did not pay this tax could be hired out with those proceeds used to pay the levies. In 1850, the General Assembly appropriated

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<sup>21</sup> Guild, *Black Laws of Virginia*, 135 In 1779, the Virginia General Assembly provided that all white persons born within the commonwealth and all who have resided here two years, all who shall migrate into the state, other than alien enemies, and give proof that they intend to reside therein and give assurance of fidelity to the commonwealth, and infants whose father if living, otherwise their mother, migrate here, shall be deemed citizens.

money towards the transportation of persons wishing to move to Liberia. In addition, the lawmakers imposed a one dollar a year tax on all free African Americans between the ages of 21 and 55 to supplement the fund. In Fairfax County, the Circuit Court received an annual report from the Sheriff about those free African Americans who owed delinquent taxes. The court instructed the sheriff to hire out those persons unable to pay. In 1852, those delinquent taxes amounted to \$62, in 1853—\$65, and in 1854—\$129. No explanation exists for the increased amounts in 1854. After the assessment in 1852, a deputy sheriff reported to the court that no bids were received for the hire of the delinquent taxpayers without explanation of the failed auction of services. Subjecting free African Americans to special taxation and to the threat of being hired out like a slave were a part of state-mandated requirements that the local Circuit Court in Fairfax conscientiously tried to enforce. The success or failure of this law may have been related to the number of slaves available for hire. In spite of the delinquent tax obligations, free African Americans may have been reluctant to provide their labor without resistance, and whites may have found bonds people were more easily controlled. The enforcement of this penalty may not have always been a priority if it created disruption in the community.<sup>22</sup>

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<sup>22</sup> Ibid., 135, 139; Fairfax County (Va.) Circuit Court, “Sheriff’s Report of Delinquent Taxes,” June 20, 1853, Minute Book 1852, 120, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Sheriff’s Report of Delinquent Taxes,” June 19, 1854, Minute Book 1852, 256, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Sheriff’s Report of Hiring out of Free African Americans,” February 21, 1853, Minute Book 1853, 77, Fairfax County Circuit Court Historical Records Division; Zaborney, *Slaves for Hire* Zaborney’s work shows that slave hiring was an important part of the labor system in Virginia and contributed to the strengthening of slavery in the state until the time of the Civil War.

One of those unwilling workers may have been thirty-eight-year old George Cash, also known as George Williams, who lived in southern Fairfax County not far from the Potomac River. In 1856, he had been charged with failure to pay his taxes, and he was hired out to James Marders, a fisherman. Cash's debt to the county was paid at the rate of ten cents a day, and the sheriff duly recorded the receipt of the back taxes in 1857. Cash continued to work for Marders after the payment of back taxes; however, Cash claimed the going rate for fishermen was \$1.25 per day. Cash left the job in May, 1857 and sued Marders for his wages that he never received. A local Fairfax court ruled in favor of Cash, and Marders quickly counter-sued claiming that he owed Cash nothing since the latter was working to pay back taxes. Furthermore, Marders claimed to have an agreement with all his fishermen that they would not be paid until the season was finished, and Cash had left the job long before the fishing season ended. Marders provided a number of deponents who supported his story, but the outcome of the case is unclear. Nevertheless, the complaint of George Cash shows that hiring out of free African Americans for the payment of back taxes may have been troublesome to an employer who was unaccustomed to dealing with African Americans as free labor.<sup>23</sup>

For some white Virginians, even the presence of free African Americans was an intolerable curse on the local community. These whites believed that the very nature of ex-slaves was different and led them to be a nuisance to their neighbors. George Fitzhugh who spent his formative years in Alexandria and later moved to the Northern Neck where he practiced law gives an example of such rhetoric.

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<sup>23</sup> Fairfax County (Va) Chancery Causes, 1803-1970, "Marders v. Cash," 1858, 1858-050, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

The Free Negroes are no doubt an intolerable nuisance. They blight the prosperity of every village and of every country neighborhood where they settle. They are thieves from necessity, for nature has made them so improvident they cannot in health provide for sickness—in youth for old age—nor in summer for winter. Nature formed them for a climate where all their wants were supplied abundantly by her liberal hand at every season. We knew their natures when we set them free. Should we blame them or censure ourselves?<sup>24</sup>

Fitzhugh's writings were an important part of the defense of slavery in the South.

Nevertheless, in communities such as Fairfax, how the justice system dealt with its free African American neighbors reflected a more complex dynamic than the concepts espoused by Fitzhugh.<sup>25</sup>

Virginia's efforts to control the behavior of its African American population often reflected the ideas of people like George Fitzhugh and consumed the time of many sessions of the General Assembly. The legislators devised laws and penalties for breaking their rules, yet succeeding sessions of the legislature found additional laws necessary addressing issues as widely divergent as hog stealing and the ownership of dogs. After Nat Turner's rebellion, the General Assembly turned its attention to free African Americans as a source of trouble and decided that they should be tried and punished for felonies in the same manner as slaves. Even with this retrenchment of rights, county

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<sup>24</sup> George Fitzhugh, *What Shall Be Done with the Free Negroes; Essays Written for the Fredericksburg Recorder*, The Cornell University Library Digital Collections, 2011 (Fredericksburg [Va.]: Recorder's job office, 1851), 2.

<sup>25</sup> Eugene D. Genovese, *The World the Slaveholders Made: Two Essays in Interpretation* (Middletown, Conn. : Scranton, Pa: Wesleyan University Press ; Distributed by Harper & Row, 1988), 118–244 Genovese offers a more complete discussion of Fitzhugh's view of Southern society and his influence in defending slavery.

courts conducted the trials of free African Americans and assessed punishment in accordance with local understandings of appropriate penalties.<sup>26</sup>

In the period from Nat Turner's insurrection to the Civil War, court records in Fairfax County indicate crimes allegedly committed by the free African American population, but the sporadic nature of such offenses do not reflect an ongoing nuisance to the community. Stealing was an occasional charge, and the thief faced prison time when found guilty. Such was the case in 1841 when Easter Gantt was found guilty of stealing unspecified goods and sentenced to five years in the penitentiary. In 1842, Ben Sewell was found guilty of stealing a horse and also sentenced to five years in prison. Similarly in 1851, Henry Gibson was convicted for stealing a horse and sentenced to five years in the penitentiary. Not all free African Americans who were charged were found guilty. Such was the case of Spencer, (whose last name was not recorded), who was charged with stealing a colt. Found innocent of the charges, he was discharged by the court.<sup>27</sup>

Cases against free African Americans for rape were even rarer than charges for thievery. Jackson Henry was tried in 1837 for the rape of Cassandra Sherwood. Although Henry maintained his innocence, he was found guilty and sentenced to hang less than two months after the conclusion of the trial. The trial record tells us nothing about the victim and her status in the community, a factor that may have played a part in the harshness of

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<sup>26</sup> Guild, *Black Laws of Virginia*, 108.

<sup>27</sup> Fairfax County (Va.) Circuit Court, "Commonwealth v. Easter Gantt," November 17, 1841, Minute Book 1835, 348, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Ben Sewell," March 22, 1842, Minute Book 1835, 367, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Henry Gibson," August 18, 1851, Minute Book 1846, 351, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Spencer," December 16, 1839, Minute Book 1835, 240, Fairfax County Circuit Court Historical Records Division.

the penalty. Diane Sommerville has averred that the common fear of African American men preying on and raping white women in the late nineteenth century was an “invented tradition.” Moreover, prior to the Civil War in cases of rape that involved African American assailants, Southerners “submitted willingly to legal processes, abiding by the outcomes.” This case appears congruent with Sommerville’s antebellum observations, but the swift and brutal response may have reflected a fear of free African Americans that had been heightened in the white population since Nat Turner’s rebellion.<sup>28</sup>

In spite of such apprehensions, Fairfax County courts reacted to charges against free African Americans in widely varied ways. Verdicts that ranged from death by hanging to findings of innocence show that although whites sometimes handed down harsh penalties, those outcomes were not always the case. In 1839, a free African American woman, Mary Blackburn, appeared in the court record which did not specify the charges against her. Blackburn was required to post a twenty dollar bond and show two securities for keeping the peace. The charges could have ranged from any activity such as showing disrespect toward a white person, fighting, or illicit entertainment whether sexual or otherwise. What was important to the court was assuring that well-being of the community was not disturbed.<sup>29</sup>

Criminal activity forms part of the court record of free African Americans in Fairfax, but by far most of the entries into the minute books of the courts involve the

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<sup>28</sup> Fairfax County (Va.) Circuit Court, “Commonwealth v. Jackson Henry,” October 28, 1837, Minute Book 1831, 365, Fairfax County Circuit Court Historical Records Division; Diane Miller Sommerville, *Rape and Race in the Nineteenth-Century South* (Chapel Hill: University of North Carolina Press, 2004) Quote taken from Page 4.

<sup>29</sup> Fairfax County (Va.) Circuit Court, “Commonwealth v. Mary Blackburn,” September 16, 1839, Minute Book 1835, 228, Fairfax County Circuit Court Historical Records Division.

verification and proper registration of their free status. When such cases were routinely documented, the person's free status was affirmed by the courts. However, an affirmation of freedom did not always ensure permission to remain in the county or the state. The General Assembly had the power to grant exceptions to Virginia's law requiring slaves freed after 1806 to leave the state, but local courts made the decisions about pressing charges against those who violated the law. Thus in reality, whether free African Americans would remain in the community was always a local judgment. In 1837 after having been overwhelmed with petitions from free persons of color to remain in the commonwealth, the General Assembly delegated those decisions to local courts. Those cases provide us insight into the criteria used to grant the right for a free African American to remain. Since public records do not indicate those illegal residents who were never charged, it is difficult to discern whether a consistent standard determined those who were explicitly allowed to remain in the state through court decision. Nevertheless, the standards of the 1837 law, which included proof of good character, being peaceable, orderly and industrious, and not addicted to drunkenness, gaming or other vices, were the measures purportedly used to determine those who were deemed to be worthy of residing in the community.<sup>30</sup>

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<sup>30</sup> Guild, *Black Laws of Virginia*, 111.

**Table 5 Summary of Registrations of Free African Americans in Fairfax County, 1822-1861**

<b>Time Period</b>	<b>Number of Registrations</b>	<b>Notes</b>
<b>1822-1830</b>	107	In 1826, former slaves of Robert Carter and their children accounted for 23 of the registrations
<b>1831</b>	117	115 of the registrations occurred after Nat Turner's rebellion in August, 1831
<b>1832-1840</b>	153	In 1839, former slaves of William Gunnell and their children accounted for 28 of the registrations
<b>1840-1849</b>	196	In 1847, 40 of the registrations occurred immediately after the retrocession of Alexandria
<b>1850</b>	68	Former slaves of William Fitzhugh accounted for 55 of the registrations
<b>1851-1861</b>	199	Beginning in 1853, registrations noted whether the registrant had permission to remain in the county

As shown in Table 5,<sup>31</sup> Fairfax County's effort to control its free African American population through registration and permission to remain in the county was influenced by other factors than those specified under law. Sometimes events outside the county triggered increased diligence in Fairfax. After Nat Turner's rebellion, more registrations occurred in the following months of 1831 than had been recorded in the previous nine years. After the retrocession of Alexandria from the District of Columbia in 1847, registrations increased again. As national tensions over slavery and the return of fugitive slaves escalated in the 1850's, Fairfax Courts became more explicit about which

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<sup>31</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 7 The years covered in the table reflect the existing records of registrations in Fairfax County. The numbers reflect both new and re-registrations.

free African Americans had permission to remain in the county. Noteworthy emancipations by some of the county's leading citizens also led to an increase in registrations. Slaves who were freed as a part of these emancipations registered upon manumission with one major exception. Slaves freed by the Will of George Washington are scattered throughout the registration records. Only records since 1822 survive; thus, when these former slaves first registered cannot be determined.<sup>32</sup>

Not all white citizens were satisfied with the registration process that allowed appeals to remain in the county. Petitions to the General Assembly demanding the removal of free African Americans from the state formed a part of the hysteria following Nat Turner's rebellion. In Fairfax County, 90 white males signed two identical petitions in early 1832 that argued that removal was necessary because free African Americans were neither slave nor free, but "altogether a burden on the community." The number signing the request totaled over eight percent of the adult white male population in Fairfax County in 1830. In 1838, 94 white males of Fairfax again petitioned the General Assembly to remove the free African American population to Africa, citing the reluctance of neighboring states to allow entry to Virginia's freed slaves. The 1838 petition did not stir the same activity in Fairfax County registrations as had been evident following the 1832 appeals. The legislature did not act in response any of the petitions, and the judgment of local officials continued to determine the outcome of requests to remain in the county.<sup>33</sup>

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<sup>32</sup> Ibid.

<sup>33</sup> Citizens of Fairfax County, "Petition to the General Assembly," January 7, 1832, Reel 50, Box 70, Folder 37, Library of Virginia, Richmond, Virginia; Citizens of Fairfax County, "Petition to the General Assembly," January 13, 1832, Reel 50, Box 70, Folder 38, Library of Virginia, Richmond, Virginia;

Prior to 1831, county courts had the authority to allow freed slaves to remain in the county, but they could not confer the ability to allow movement elsewhere in the state. The application to remain in the county was posted on the court house door for five weeks to permit those who wished to object to have a voice. In the sporadic instances in which this procedure was used, the freed slaves were allowed to remain in the county. Although court records praised several of the applicants for their faithful service and good character, the moral fiber of others may have been more questionable. The court record noted that Elizabeth Dorsey had been convicted of receiving stolen goods and Delilah Clarke was later charged with retailing spirituous liquor without a license. Regardless of the community standing of these emancipated African Americans, whites, prior to Nat Turner's rebellion, publicly showed little displeasure at their remaining in the county.<sup>34</sup>

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Citizens of Fairfax County, "Petition to the General Assembly," January 30, 1838, Reel 50, Box 70, Folder 71, Library of Virginia, Richmond, Virginia.

<sup>34</sup> Fairfax County (Va.) Circuit Court, "Application of Nat and Milly Wilson to Remain in the County," March 17, 1817, Minute Book 1816, 91, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of Betty and Milly to Remain in the County," March 18, 1817, Minute Book 1816, 93, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of Rebecca to Remain in the County," September 16, 1817, Minute Book 1816, 251, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of Elizabeth Dorsey to Remain in the County," July 19, 1819, Minute Book 1819, 5, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of Delilah Clarke to Remain in the County," July 22, 1823, Minute Book 1822, 303, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of Philip and Simon to Remain in the County," July 19, 1819, Minute Book 1819, 8, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Indictment of Delia Clarke for Retailing Liquor without a License," August 19, 1829, Minute Book 1829, 106, Fairfax County Circuit Court Historical Records Division.

**Table 6 Free African Americans Allowed to Remain in Fairfax County Prior to 1831**

<b>Name</b>	<b>Emancipator</b>	<b>Date of Court Action</b>
<b>Betty and Milly</b>	Sarah Wrenn	March 18, 1817
<b>Nat and Milly Wilson</b>	Not listed	March 17, 1817
<b>Rebecca</b>	Thomas Fairfax	September 16, 1817
<b>Philip and Simon</b>	Jemima Lay	July 19, 1819
<b>Elizabeth Dorsey</b>	Sarah Wrenn	July 19, 1819
<b>Delilah Clarke</b>	T. Winn	July 22, 1823

Those freed people who wished to cross county borders found it necessary to gain the approval of the General Assembly to remain in the state. Such was the case of Dennis Comer who lived on the southern edge of Fairfax County bordering Prince William County where his wife was enslaved. Comer, a blacksmith, had been manumitted in 1821 after purchasing his freedom from John Washington. In 1822, Comer petitioned the General Assembly to remain in the state after having been approved by a local court to remain in the county. His request to the legislature was endorsed by 113 white males in Fairfax, but the General Assembly rejected it. In 1831, Comer and two other freed slaves were indicted for illegally remaining in the commonwealth. The cases continued over a period of years with no resolution recorded. In 1837, Comer once again petitioned the General Assembly, supported by 110 of Fairfax’s white males, to remain in the state. By this point, the General Assembly had grown weary of reviewing petitions to remain in the state and passed the law that allowed local courts to make not only the determination if freed slaves could remain in the county but also the decision as to whether they could remain in the state. A Fairfax court quickly awarded Comer permission to remain.<sup>35</sup>

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<sup>35</sup> Dennis Comer, “Petition to the General Assembly,” December 12, 1822, Reel 49, Box 70, Folder 14, Library of Virginia, Richmond, Virginia; Dennis Comer, “Petition to the General Assembly,” January 13, 1837, Reel 50, Box 70, Folder 68, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Circuit

Even though Dennis Comer won his appeal to remain in his home, the 1830's was a period of transition in white attitudes towards free African American in the county. Petitions to the General Assembly showed both animosity towards freed slaves as a group and sympathy with individuals like Comer. Although the reasons Comer's white neighbors strongly supported him cannot be discerned, most likely his neighborhood believed his trade vital to its economy. Still, communities do not operate solely by geography and economics, and historians have grappled with the changing meaning of community throughout the South prior to the Civil War. Melvin Ely found that whites in Prince Edward County, Virginia treated free African Americans with civility in daily dealings and respect under the law even as slavery continued to flourish. This expanded consideration of fair treatment towards ex-slaves was accompanied by a growing divide among whites such as found for the hinterlands around Augusta, Georgia, by historian William Harris who averred that slave owning whites struggled to maintain a sense of community with their non-slave holding neighbors. Additionally, slave owners worried about poor white's interactions with African Americans. As slavery's predominance in Fairfax waned, similar dynamics of common relationships, forged over time in a small geographic area, could explain the local support for Comer in the face of legislative inaction. No matter the reason, Comer's persistence and the support of his white allies

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Court, "Permission for Dennis Comer to Remain in the County," April 17, 1837, Minute Book 1835, 103, 112, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Indictment of Robert Dunmore, Dennis Comer, and Simon Bogges for Remaining in the State," October 26, 1831, Minute Book 1831, 24, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Indictment of Simon Bogges for Remaining in the County," October 23, 1833, Minute Book 1831, 158, Fairfax County Circuit Court Historical Records Division.

pressured the General Assembly into allowing local control of the issue of free African Americans' continued residence in Virginia.<sup>36</sup>

Although Dennis Comer's petition showed significant white support for his remaining in the state, other free African Americans received mixed reactions. An 1841 ruling allowed Henny Seals to remain in the state; however, when her children registered in 1859, they did not receive permission to stay in Virginia. Often court documents do not record the outcome of a prosecution. In a flurry of activity in 1849, eleven free African Americans were indicted for illegally remaining in the state. Each of these people disappeared from the public record leaving open the question of whether these persons actually left the state or simply vanished from the scrutiny of the law. By the 1850's as the court registered newly freed slaves, it often proactively informed them that they could not remain in the county. Nevertheless, exceptions were granted in limited cases. Four slaves manumitted by the will of William H. Foote were granted permission to remain in Virginia in 1853. Two years later, Jane Lee, also known as Jane Bell, was allowed to transfer her registration from Alexandria County to Fairfax County and remain in the county. In 1857, William Ford and C. L. Rogers were allowed to remove to Fairfax County from Alexandria to live on land inherited from West Ford located near Mount Vernon. In each of these cases, the exceptions involved free African American families who were already long known in Fairfax and lived near the border between Fairfax and Alexandria. Prosecutions for remaining in the county were sporadic. Although not

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<sup>36</sup> Ely, *Israel on the Appomattox*; J. William Harris, *Plain Folk and Gentry in a Slave Society: White Liberty and Black Slavery in Augusta's Hinterlands*, 1st ed (Middletown, Conn. : Scranton, Pa: Wesleyan University Press ; Distributed by Harper & Row, 1985).

flouting the law, officials granted exceptions for free African Americans who were established members of the community and did not press charges against those persons who did not upset the tranquility of their neighbors.<sup>37</sup>

The presence of free African Americans in Fairfax produced a long history of differing reactions among whites. In March of 1806, John West of Fairfax County wrote his last will and testament which provided for the manumission of his slaves. West clearly was concerned because he knew that Virginia law concerning freed slaves had changed in that January and that the more restrictive law would take effect May 1, 1806. He provided that if his newly freed slaves were forced to leave Virginia they should have the option to remain with his heirs in servitude until such time as the law changed. West's will also provided that some of his bonds people would serve under term agreements while one of his slaves, Jacob was to be freed in December 1806. Yet, West soon changed his mind and prepared a deed of manumission for Jacob Thomas dated April 28, 1806. These documents show that John West to be among those Virginians who opposed the change in law because of its effects on the lives of soon-to-be-freed slaves. Although the law changed, Virginia's white rulers never unanimously agreed on its enforcement.

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<sup>37</sup> Fairfax County (Va.) Circuit Court, "Application of Henny Seals to Remain in the," May 17, 1841, Minute Book 1835, 362, 326, 331, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 249; Fairfax County (Va.) Circuit Court, "Indictment of James Jefferson, Caroline Givens, Hannah Cooper, Cynthia, George Givens, Bill Smith, Jeff Armstrong, John Green, George Green, Levi Parker, and Malinda," December 1849, Term Papers 1849, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of William, Sarah, Charles, and Philip to Remain in the State," June 20, 1853, Minute Book 1852, 119, Fairfax County Deed Book G4-458; Fairfax County (Va.) Circuit Court, "Application of Jane Lee to Remain in the County," January 15, 1855, Minute Book 1852, 342, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Application of C. L. Rogers and William Ford to Remove to Fairfax County," December 1857, Term Papers 1857, Box 4, Fairfax County Circuit Court Historical Records Division.

The published rhetoric often reflects the thoughts of whites who signed petitions demanding the removal of all free African Americans, but the records of the court system show that local judgment often contradicted the fiery language used by George Fitzhugh and others. Hiring out of those who were delinquent with their taxes was not always possible. Moreover while convictions of free African Americans sometimes were accompanied by harsh penalties, other cases resulted in acquittals; and enforcement of removal requirements vacillated over time. State law never absolutely determined local action.<sup>38</sup>

### **Seeking Justice**

The wave of early nineteenth-century manumissions coupled with the opening of Virginia's courts to slave petitions for freedom eventually gave rise to issues about whether free African Americans would have access to the courts to pursue other matters of justice. The answer is not simple. Nothing in Virginia law prohibited newly freed persons from petitioning the courts on matters of equity; however, since most had limited resources, free African Americans had few reasons to bring financial affairs to the court. Nevertheless as they acquired real estate and when the conditions of work were in dispute, former bonds people and their descendants sought justice when they believed they had been treated unfairly.

The resolution of these cases was prolonged if whites wished to contest or conceal the ancestry of the free African American involved. While the community was aware of

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<sup>38</sup> John West, "Will," July 21, 1806, Will Book I-1, 540, Fairfax County Circuit Court Historical Records Division; John West, "Deed of Manumission," May 19, 1806, Deed Book G-2, 161, Fairfax County Circuit Court Historical Records Division.

mixed-race children, the public record seldom acknowledged them. Antebellum Fairfax County cannot be viewed in simple dichotomies of white versus black and slave versus free because such an uncomplicated view of society did not reflect the reality of the lives of the people of the county. A mixed-race population existed in the county, and in some cases, white owners made a particular effort to care for their mixed-race offspring. Mixed-race family members might be held in slavery to protect them from laws requiring their removal from the area if freed. Both race and freedom were murky concepts. The legal system was left to administer laws based on race and slavery with lives that challenged the meaning of these statutes.

Family connections with a white supporter may have benefited free African American males as they challenged white racial stereotypes. Moses Hepburn of Alexandria brought legal actions in both Fairfax and Alexandria that involved real estate, personal injury and the very complicated family situation of William Hepburn, a white merchant. Before he died, Hepburn conveyed four of his slaves, Esther, and her children, Moses, Juliana, and Letty Hepburn, to Hannah Jackson, a free woman of color. Esther and Hannah Jackson were sisters, and Jackson on February 12, 1816 freed Esther and her three children. Family lore claims that William Hepburn was the father of these children, and that Doll Bell, a former slave, also gave birth to Hepburn's children. These claims are certainly plausible since Hepburn not only bequeathed a house for Doll Bell but also provided houses for Moses Hepburn and his siblings. William Hepburn also had a white family whose tree is equally unclear, but included a wife named Agnes and a daughter by that same name. Hepburn, who accumulated great wealth during his lifetime, operated a

business with John Dundas, who according to Revolutionary War records, was married to Agnes Hepburn. This suggests that the mercantile business of Dundas and Hepburn was a family operation.<sup>39</sup>

The life and affairs of Moses Hepburn of Alexandria show the complications that were inherent in mixed-race ancestry. When Moses, designated as a very dark mulatto in the Alexandria register of free African Americans, became a plaintiff in Fairfax County courts in 1840, the case was unusual because it did not involve a petition for freedom. Through his attorney, Moses sued James Dundas in a dispute over eighty acres of very poor land in Fairfax known as the Turkey Cock tract which had been purchased jointly by John Dundas and William Hepburn. Dundas died in 1813 leaving his undivided half interest in Turkey Cock to his children including James Dundas. William Hepburn died in 1817 leaving his undivided interest to the sons of Doll Bell—Daniel Hepburn, John Hepburn, and Anderson Hepburn. Before he died, William Hepburn had built a house on the eastern half of the Turkey Cock tract for Doll Bell who was by that time a free African American woman. John Hepburn had also lived on that part of the land, but after he departed for Haiti, Bell was the sole occupant of the property. Bell's sons then sold their undivided interest to Moses Hepburn. After the sale, Dundas's workers cut timber from the entire tract for his benefit. Because the wood was an important part of the tract's worth, Hepburn's suit demanded that the removal of trees be stopped. The issue between

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<sup>39</sup> Edwiga John Dundas, "U. S. Sons of the American Revolution Membership Applications, 1889-1970," n.d., Volume 177, SAR Membership Number: 35222, Ancestry.com. U. S. Sons of the American Revolution Membership Applications, 1889-1970 [database on-line]. Provo, UT, USA: Ancestry.com Operations, Inc., 2011; Supreme Court of Virginia, "Hepburn v. Dundas," January 1856, para. 4-7, 54 Va. 219: 1856 Va. LEXIS 10. Gratt. 219, Data Base on-line. Available from Lexis Nexis Academic; Arlington County (Va.) Chancery Causes, "Hepburn v. Hepburn," December 1865, 1865-017, Local Government Records Collection, Arlington County Records, Box 26, Library of Virginia, Richmond, Virginia.

the two of the heirs of the Dundas and Hepburn fortunes was eventually resolved by the court when it ordered that the tract be divided into two 40-acre parcels.<sup>40</sup>

While William Hepburn bequeathed large tracts of land, warehouses and wharfs, and bank stock to his white family, he must have remained concerned about family resentments and greed. In his will, Hepburn stated that if any of his grandchildren contested their inheritance and “should refuse to acquiesce in such award, I then will and order that all the property herein devised to them be given equally to Moses, Letty and Juliana Eliza and their heirs.” This provision was never enforced as shown in the contention that arose over the Turkey Cock tract, and more disputes followed. Shortly after the retrocession of Alexandria, the disagreements between the white and African American legatees took a sharper tone when family members contended that Moses Hepburn and his family were still slaves who could not inherit any property.<sup>41</sup>

Still, William Hepburn’s will gave Moses Hepburn standing under the law. The controversy arose when Moses Hepburn gained guardianship of his children for the purpose of selling their reversionary interest in the family’s inherited property. Part of the land that Moses Hepburn wished to sell was located on the Potomac River at the end of the Alexandria Canal. It became a matter of importance to William Hepburn’s white heirs when the canal opened in 1843 and greatly enhanced the value of the property as a commercial tract. When James Dundas took control of the property, Moses Hepburn and his sister Juliana filed an action of ejectment (a common law remedy for recovering title

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<sup>40</sup> Provine, *Alexandria County, Virginia*, 1990, 206; Fairfax County (Va.) Chancery Causes, 1803-1970, “Neale v. Dundass,” August 31, 1840, 1840-022, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>41</sup> Arlington County (Va.) Chancery Causes, “Hepburn v. Hepburn” Quote from Page 7 of William Hepburn’s Will contained as part of the documentation of this case.

to land) against Dundas. William Hepburn had bequeathed the land with its house to his and Esther's daughter, Letty, who was Moses's sister. While owning the property, Letty married and had children who predeceased their mother. Letty died a few years after acquiring the property, and her mother, Esther, had also passed away, but Letty's husband occupied the property until his death in 1834. At that time, the only heirs of Letty were her siblings, Moses and Juliana, who inherited the property. Representing his family, Dundas claimed that Moses and Juliana were illegitimate children with no claim to the property; moreover, as slaves, they could not claim title to the property. Even though the courts had to consider both law and precedent in the District of Columbia and Virginia, in 1849 the Circuit Court in Alexandria upheld the free status of Moses Hepburn and his sister, their right to possession of the property, and the action of ejectment. The court could not affirm Juliana and Moses Hepburn as family members, but it did uphold their right to the inheritance from William Hepburn. The Dundas family appealed the decision to the Supreme Court of Virginia which did not hand down its final decision upholding the lower court until 1856. In the meantime, the Alexandria Circuit Court appointed a commissioner under the guardianship agreement for Moses Hepburn's children to protect their interests of the children by subdividing the property and selling lots at public auction.<sup>42</sup>

The white heirs of William Hepburn could challenge this sale only if they could continue to question whether Moses Hepburn was a legitimate heir to the property. The white heirs brought further action in the case of *Cooper v. Hepburn* that argued the same

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<sup>42</sup> Supreme Court of Virginia, "Hepburn v. Dundas."

question about the legitimacy of the African American heirs that the Supreme Court of Virginia had already decided. At the sale of the lots, Lewis Cooper of Philadelphia was the highest bidder at \$16,200 which would be paid in four annual installments. Cooper made half of his first payment and then asked the court to set aside the sale because of a defect in the title involving Moses Hepburn and his children. In 1827, Moses Hepburn married Amelia Braddock, and together they had four children. According to the William Hepburn's will, the real estate would pass to the children of Moses, Letty, or Juliana, if they had any. If not, the land would be inherited by William Hepburn's grandchildren and their heirs. Like the Dundas family, Cooper contended that Hepburn, as a slave had no right to the property and his children under law were illegitimate and could not inherit the property. Joining Cooper's claims, Thomas Dundas and the grandchildren of William Hepburn stated that, as heirs, they should have been notified of the sale. The Circuit Court upheld the sale, and upon appeal to the Supreme Court of Virginia, the judgment was affirmed in 1860. By that time Moses Hepburn and his family had moved to West Chester, Pennsylvania. Shortly after their move, Moses and his wife died. His children continued the case and received their final payment in 1865.<sup>43</sup>

Long before Moses Hepburn's decision to sell his assets and move from Virginia, he used the courts to defend himself against physical assault. In a suit brought in the Circuit Court of the District of Columbia in the town of Alexandria, Hepburn charged that Richard Lloyd on March 1, 1834 had assaulted and beaten him severely. In 1835, a

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<sup>43</sup> Supreme Court of Virginia, "Cooper v. Hepburn," April 1860, 56 Va. 551; 1860 Va. LEXIS 19; 15 Gratt. 551, Data Base on-line. Available from Lexis Nexis Academic; Arlington County (Va.) Chancery Causes, "Hepburn v. Hepburn."

jury found Lloyd guilty and fined him \$200, payable to Hepburn. Apparently Lloyd was a violent man because he was charged with an assault on his slave, Henry, on March 3, 1834 and was later found guilty and fined \$100. Lloyd must have also recognized the severity of the Hepburn's charges. In exchange for \$500, Lloyd transferred all his property for \$500 to his wife, Elizabeth, on October 7, 1834. Dennis Johnston of Fairfax served as security for payment of the fine owed to Hepburn which was never made. In reaction, Hepburn filed suit in Fairfax County court to collect the fine. Johnston had used as his security an order drawn on George Washington Parke Custis of Alexandria County. In January, Johnston returned the security to Elizabeth Lloyd and released himself from any obligation in the case. Hepburn's suit charged the financial transactions were fraudulent in order for Lloyd to evade payment of the fine. In 1836, Hepburn won his case, and in the process he established that free African Americans could challenge abuse by whites and contest financial transactions intended to defraud them of money owed. Whether Hepburn's family history encouraged him to challenge white society is unknown, but he clearly understood that free African Americans could use the court system to resolve grievances, even those involving some of the most powerful white leaders of the community.<sup>44</sup>

The persistent question involving the Hepburn family was whether they were legally free. Not uncommonly African American families consisted of both free and slave members. In 1858 the state of Virginia expressed concern about the influence of free African Americans over bonds people when the General Assembly enacted legislation

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<sup>44</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Moses Hepburn v. Richard Lloyd," 1836, 1836-013. Local Government Records Collection. Fairfax County Records., Library of Virginia, Richmond, Virginia.

that prohibited any free African American from acquiring a slave except a descendant. Nancy Hodge, a free African American woman living in Alexandria challenged this law in 1859. Through an agreement made in 1853, Hodge agreed to purchase her husband, Thomas, from John Brodus for \$600. After Brodus died, Hodge continued to make annual payments to his estate but could not take possession of her husband until payment was made in full. When the law changed in 1858, the question arose whether Hodge could complete the transaction to purchase her husband. Under a challenge from Hodge, the Chancery Court overturned the original Circuit Court ruling on June 20, 1860, and Hodge was allowed to finalize the transaction and gain control of her husband. Hodge's successful challenge permitted her to reunite her mixed status family, although through the state's action, such a reunion was becoming an uncommon occurrence.<sup>45</sup>

Multiple family groupings often existed among slaves of a particular owner. These groupings were particularly evident when some slaves were related to the master while others had no familial ties to the whites of the household. Such was the case of the slaves who were freed by the will of William Elzey Beckwith who lived near Centreville in western Fairfax County. The Beckwith family could trace their ancestry to the baronial Fairfax family of England. William Beckwith, one of nine children of Marmaduke and Sybil Beckwith, outlived all but one of his siblings and used his legacies to acquire a large estate of well over one thousand acres. He inherited slaves from his mother's estate including one woman named Sophie Elzey and her child John who was 15 years old at

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<sup>45</sup> Arlington County (Va.) Chancery Causes, 1790-1842, "Nancy Hodge v. Elizabeth Brodus," 1859, Reel 20. Chancery Orders A. 1847-1860. Alexandria County Circuit Court of Law and Chancery. 527, The Library of Virginia, Richmond, Virginia.

the time. Although Beckwith never legally married, he fathered four children by Elzey including John. Even though Beckwith did not oppose manumission, he never freed his son John. In 1838 William Beckwith freed Mary Pinn to be with her husband who lived in Prince William County, and in 1857, he freed Caroline Elzey, who he described in the deed of manumission as a twenty-three year old very bright mulatto. John Beckwith later testified that his father had freed two of his sisters, and they left for Ohio, but “he could not spare me. I had to attend to all of his business.” Only two deeds of manumission in the name of William Beckwith are recorded in Fairfax County, and it cannot be determined if Pinn and Elzey were his daughters. It is clear that Beckwith used slavery to keep some of his family nearby. Although legally slaves, John Beckwith and his mother probably did not feel as great a burden of bondage as slaves who were unrelated to the master.<sup>46</sup>

With his family and slaves as support when the Civil War began, William Beckwith was convinced that the Union forces would prevail and remained on his property. Managing the farm must have been a real challenge for John Beckwith as the first and second Battles of Bull Run were fought very close to the Beckwith property which was split by the Manassas Junction Railroad. After the Union soldiers lost control of Manassas, they built a turn-around for their trains on the Beckwith property and cut wood for use of the Union Army. At one point, Confederate raider John Mosby invaded the property and took the mules used to haul wood to the railroad. During this period

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<sup>46</sup> Southern Claims Commission, “Claim of Harrison G. Otis,” Undated, Southern Claims Commission Binder, 657, Fairfax County Circuit Court Historical Records Division; William Beckwith, “Deed of Manumission,” August 16, 1857, Deed Book Z-3, 89, Fairfax County Circuit Court Historical Records Division; William Beckwith, “Deed of Manumission,” November 9, 1838, Deed Book A-4, 238, Fairfax County Circuit Court Historical Records Division.

John Beckwith remained on the property. He left no record that he felt any personal danger, but since he had been born in 1810, the Confederates may have seen him as too old to be a useful laborer for them. He continued to manage the property during these turbulent times including taking full responsibility for the land as his father's health failed.<sup>47</sup>

William Beckwith died in 1863 after having written his will the previous year. Beckwith had been predeceased by Sophie Elzey, the mother of his four children. According to John Beckwith, he was entrusted with his father's will that would free him and all of the other fifteen slaves. Although William Beckwith never indicated his reasoning, it appears likely that John Beckwith had remained a slave until his father's death so that there would be no question about his ability to remain in Virginia. William Beckwith wanted to give his slaves a good start in their new life of freedom and thus set aside for them the two hundred acres of his land south of the railroad tracks. His bequest to his slaves was an undivided interest in the property which left the heirs to decide how to share the inheritance. The remainder of his land, north of the railroad, he left to his "heirs-at-law." Some of Beckwith's slaves lived on land bequeathed to his white family, and even with the turmoil created by the war, Beckwith directed that they should remain in their homes until the war's end. William Beckwith cared for his mixed-race family and understood that the only way they would be recognized under Virginia law was to leave his will with John Beckwith. Even though the John Beckwith managed his father's

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<sup>47</sup> Southern Claims Commission, "Claim of Harrison G. Otis."

affairs, he could not be the executor of the estate, and the sheriff was appointed to administer the Beckwith's last wishes.<sup>48</sup>

The war had left the Fairfax Court system in shambles so the division of the former slaves' new land did not occur until 1866. Nevertheless once the will was recorded, the Beckwith family did not endure the many years of confusion over the legitimacy of the African American heirs possibly because the "heirs-at-law" had received a much larger share of the property than was given to the freed slaves. Another possible explanation is that by the time of his death William Beckwith was relying on his African American family far more than his more distant white relatives. In 1866, the African American family brought the matter of dividing their real estate to a Fairfax County court. The manumitted slaves each received an equal share of the land. William and Harriet Harris and their children received one-half of the land, while other former slaves including descendants of William Beckwith received the other one-half. The land was divided giving adults and minors equal portions, and the partition made did not differentiate between those ex-slaves who were Beckwith's relatives and those who were not.<sup>49</sup>

The passing of the Beckwith property to new owners represented another transfer of land from the heirs of the pre-revolutionary patriarchs of Fairfax. Yet this real estate was subdivided for uses that had not been considered previously. Harrison Otis, a realtor from New York, purchased much of the Beckwith property north of the railroad. William

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<sup>48</sup> William Beckwith, "Will," June 1, 1863, Will Book Z-1, 291, Fairfax County Circuit Court Historical Records Division.

<sup>49</sup> Ibid.; Fairfax County (Va.) Chancery Causes, 1803-1970, "Beckwith v. Beckwith," 1867, 1867-046, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

Harris constructed a house on his family's property, but he also decided to take advantage of the property's location near a newly constructed train depot. He subdivided the family's parcel which provided the beginning of the new village of Clifton. William Beckwith's multi-racial family did not fit neatly into a legal system designed on racial differences. Beckwith relied on his mixed-race family to manage his affairs in his later years even though they were legally enslaved. By so doing, he also challenged Virginia's laws requiring removal of "free" African Americans. William Beckwith's avoidance of Virginia's onerous removal laws was risky, but his long life meant that his former slaves profited from their inheritance after his death. Rather than being removed from their homes, William Harris and his family were able to found a new community, and their stake not only included their labor but also their ownership.<sup>50</sup>

After the Revolution, the law in the new republic was far from a settled matter. Common law precedents taken from England did not aid Americans who attempted to build their legal system on race-based differences in the population. Because Virginia had the first and largest African American population in the country, its laws had served as a basis for slave codes for all states. Nevertheless, Virginia was not a leader in responding to the call for emancipation of slaves. While states to the north abolished slavery on a statewide basis, Virginia allowed each slaveholder to decide on the merits of freedom for his/her human property. As the population of freed slaves grew, the state responded with increasingly restrictive laws governing its free African American population and was

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<sup>50</sup> Debbie Robinson, "Formation of the Village of Clifton, Fairfax County Virginia," accessed March 17, 2013, <http://www.novahistory.org/CliftonFormation/CliftonFormation.html>.

slow to address the desire of local citizens to decide what course of action was appropriate for the community. If the lives of free African Americans are viewed merely from the perspective of state law, a picture of a victimized population quickly emerges. But, the law is only as strong as its enforcement, and in Fairfax County the desire to enforce the more draconian parts of Virginia's "black" code was sporadic at best. Whites viewed the African Americans among them as a source of labor. If their labor was important to the community, then consequences of violating state laws was often modified. In other cases, African Americans were more than mere labor, they were family. In these cases, whites sometimes used the law as best they could to protect their family members who were not recognized by law. In any case, local decisions could always trump state law when necessary.

Just as whites used the law to their benefit, African Americans soon learned to use the judicial system to protect their interests. Cases testing slaves' rights to petition for freedom arose around the state, and their successes fueled similar suits in Fairfax. Many freed African Americans left Fairfax County, but many others used family connections and the good will of their white neighbors to remain. When matters of inequitable treatment arose, free African Americans used the court system to plead their case, and they often won verdicts even over some of the most powerful whites in the area. Even as the Civil War approached and southern attitudes towards their African American neighbors hardened, Fairfax courts still offered verdicts in favor of free African Americans. Although Chief Justice Roger Taney in his opinion when the Dred Scott case was before the Supreme Court declared that African Americans were not citizens of the

United States, local courts, such as those in Fairfax, continued to struggle with how to provide for equitable treatment and an orderly community for their African American residents.

### **CHAPTER THREE--FARMS, GRIT, AND ECONOMIC REWARD**

By the 1850's, free African Americans were a part of the new agricultural economy of Fairfax County that focused on family farming. Using the labor of all members of a household, these free farmers relied on the skills acquired as field hands and brought in income that allowed purchase of implements and livestock necessary to a family farm. With access to land, former slaves and their heirs could raise crops for family needs using any excess to sell to provide income for other necessities. Life was not easy for the new yeomanry of Fairfax, but providing food and housing for their families gave rise to freedom that did not depend upon the largesse of whites. Free African Americans saw the menial labor associated with subsistence farming as one step from slavery when performed for others, but these families believed that such labor provided dignity and community acceptance when they worked for themselves.

Access to land formed the key to this independence. Free African Americans faced the burden of showing that they were not dependents and refashioned their identity as producers in the economy. Nothing in Virginia law prohibited the sale of land to African Americans. Yet as they were released from bondage, few freed people possessed any assets other than their own skills. Most ex-slaves were unable to purchase real estate immediately, even though the events that led to the break-up of the eighteenth-century estates made land available in smaller tracts. Even more, the declining agricultural

economy made land cheap until modern farming methods invigorated the family farm. Free African American males, who had marketable skills such as blacksmithing or carpentry, had an advantage in earning and thus saving enough money to purchase land eventually. Nevertheless, the transfer of real estate from white to African American ownership did not come quickly or easily.

In Fairfax County, only a few free African Americans were able to purchase land prior to the 1850's. The poor agricultural economy of the area during the earlier period and low agricultural wages meant it took time for the free worker to accumulate enough money to purchase property. This problem was compounded when a slave's manumission under a term agreement required continued work for the master either through his/her prime labor years or to pay for freedom. As the agricultural economy improved in the decade prior to the Civil War, a larger number of free African Americans became landowners. For some, this meant a newly found sense of independence. Others found that the path leading away from dependence was not necessarily open to former slaves particularly those involved in mixed-race or mixed status families. Nevertheless, court cases show that African Americans were willing to resort to the judicial system to enforce their rights to property and assure the dignity that was associated with ownership.

Historians have addressed the importance of property ownership to African Americans, both free and slave. Loren Schweninger has asserted that newly enslaved people in North America came to understand that property was equated with freedom. Ellen D. Katz similarly has concluded that free African Americans in Cumberland County, Virginia used the legal system to establish their right to own and acquire

property. Studying the ownership of slaves by free African Americans, Philip J. Schwarz has discovered that black bondage was often used to protect family members. These studies benefited from the work of earlier historians who provided context around the move to family oriented farms. Paul Gates in his study of American agriculture prior to the Civil War found that prior to 1820, clearing fresh fields was more important to planters in Virginia's tobacco growing region than preserving already cleared land. Nevertheless by 1852 in Fairfax County, John Washington of Mount Vernon estimated that between 500 and 1,000 tons of guano were used annually to enrich well worn farm land. For owners of small tracts, these methods of soil revitalization led to the growth of family farms. Gavin Wright argued that the move to self-sufficient farms was a rational economic decision. Farmers had difficulty hiring non-family farm labor because agricultural workers preferred land ownership rather than hiring themselves out to others. In order to stay out of debt, farms had to provide the basic needs of the family. Thus, owners of small farms eschewed the risks associated with marketing crops and opted for providing the basic foodstuffs for their household. African Americans were a part of this movement to self-reliance, and once they came to own property, their dependence on others diminished.<sup>1</sup>

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<sup>1</sup> Loren Schweninger, *Black Property Owners in the South, 1790-1915*, Blacks in the New World (Urbana: University of Illinois Press, 1990), 26–27, 236–237; Ellen D. Katz, “Freedom: Personal Liberty and Private Law: African-American Freedom in Antebellum Cumberland County, Virginia,” *Chicago-Kent Law Review* 70 (1995): pt. 1; Philip J. Schwarz, “Emancipators, Protectors, and Anomalies: Free Black Slaveowners in Virginia,” *Virginia Magazine of History & Biography* 95, no. 3 (June 1987): 337–338; Paul Wallace Gates, *The Farmer's Age: Agriculture, 1815-1860*, The Economic History of the United States, v. 3 (New York: Holt, Rinehart and Winston, 1960), 4, 108; Gavin Wright, *The Political Economy of the Cotton South: Households, Markets, and Wealth in the Nineteenth Century*, 1st ed (New York: Norton, 1978), 43–88.

When African Americans were able to keep their family intact, the transition away from dependence to autonomous economic success was eased. Michael Johnson and James Roak's portrayal of the financial success of William Ellison in Stateburg, South Carolina also describes the roles played by his wife, Matilda, and their children. Keeping the family together was important even when some members remained enslaved. Samuel Johnson of Warrenton, Virginia was an economically successful free African American. His wife, Patty, and the couple's children were slaves who had been purchased by Samuel Johnson so that they could live as a family. Patty and her children remained in slavery because of Virginia's law that might have required the family to leave the state if they were freed. In spite of her slave status, Patty Johnson contributed to her family's economic success, was a productive member of her community and lived a respectable life among her neighbors in Warrenton.<sup>2</sup>

Death of a family member challenged the surviving persons to take on new roles. William Johnson, a free African American in Natchez, Mississippi, became economically successful operating his barbershops; however, his death shifted the duties of his family. His surviving spouse, Ann was responsible for the continued financial success of the household, and the letters she wrote detail her family's journey after William's death. Ann Johnson transcended the purely domestic role that was inherent in antebellum marriages and demonstrated the breadth of her abilities. Nevertheless in agricultural

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<sup>2</sup> Johnson, *Black Masters*; Eva Sheppard Wolf, *Almost Free: A Story About Family and Race in Antebellum Virginia*, *Race in the Atlantic World, 1700-1900* (Athens: University of Georgia Press, 2012).

areas, such success without the aid of all family members was much more difficult to attain.<sup>3</sup>

The stories from the lower South reflect an anomaly in which the relatively few African Americans who gained their freedom in the cotton belt often achieved economic success. Loren Schweninger has argued that by the 1850's, land ownership and wealth creation of ex-slaves in the Upper South was growing rapidly and getting closer to the levels enjoyed by their counterparts in the Lower South. As the large plantations of earlier times were divided, agriculture struggled for many years in Fairfax County. Damien Pargas has documented the effects of the poor economy on slaves in Fairfax who experienced family separation as small farms did not require large numbers of bonded laborers. In contrast, the same economic conditions worked to the advantage of some free African Americans who were able to use the labor of their entire family to work the land and accumulate enough money to purchase a farm.<sup>4</sup>

These farms operated most successfully when families remained intact, but land owners whose families were racially mixed or contained both free and slave members faced greater hurdles in finding economic independence. Emily West has maintained that petitions both to remain in the state and to volunteer for re-enslavement indicate that family was central to African Americans. This emphasis on maintaining intact families was also true in Fairfax, but males who owned land were able to overcome barriers to preserving their families more easily than other African Americans. In Fairfax, some

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<sup>3</sup> *Chained to the Rock of Adversity: To Be Free, Black & Female in the Old South*, Southern Voices from the Past (Athens: University of Georgia Press, 1998).

<sup>4</sup> Schweninger, *Black Property Owners in the South, 1790-1915*, 71-79; Pargas, *The Quarters and the Fields*.

African American men were able to successfully defend their mixed race or free/slave families while attaining economic independence further challenging social beliefs about the meaning of core family.<sup>5</sup>

### **Preserving a Legacy**

As African American farm ownership became more widespread in Fairfax, new communities began to develop, but the ability of free African American families to join this trend was tied closely to the support of a former master. The manumissions of slaves by George Washington and his family offer examples of the importance of this support. Washington viewed himself as a just man. As such, “he could not be fair to himself if he were unjust to others.”<sup>6</sup> His beliefs evolved from his personal understanding of honor rather than religion. Washington’s final wishes demonstrate his sense of fairness concerning the emancipation of his slaves whose freedom was delayed until the death of his wife in 1802. Washington explained that because his slaves were intermarried with his wife’s bonds people, it would be unfair to free some members of a family while others remained in bondage. Making special provision for the care of the old and infirm, he also requested that any infants who could not be cared for by their families be bound until age twenty-five and “be taught to read and write and be brought up to some useful occupation.” Washington commanded that none of his slaves should be sold or

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<sup>5</sup> Emily West, *Family or Freedom: People of Color in the Antebellum South*, New Directions in Southern History (Lexington: University Press of Kentucky, 2012).

<sup>6</sup> First quote from Peter R. Henriques, *The Death of George Washington: He Died as He Lived* (Alexandria, Va: Mount Vernon Ladies Association, 2001), 25; The second quote from Andrew Levy, *The First Emancipator: The Forgotten Story of Robert Carter, the Founding Father Who Freed His Slaves*, 1st ed (New York: Random House, 2005), 144.

transported outside of Virginia. Through these wishes, Washington emphasized family, care for those in need, and self-sufficiency, principles that loomed large in the free African American culture in eastern Fairfax County.<sup>7</sup>

In spite of Washington's desires for newly freed slaves, African American bondage in America had always been strongly connected to dependence. Although some of the early emancipators had considered how to train their former slaves for lives of self-sufficiency, few masters provided their freed bonds people with the economic means to become self-reliant. The few ex-slaves who were subjects of favored treatment still had to learn to become pioneers of independent living. These people were thrust into the same positions of economic responsibility as their white neighbors. These free African Americans found maintaining cordial relationships with the white community while establishing independence from these same people to be a difficult balancing act. The ex-slave's connection to his/her former master was often the key to maintaining the needed equilibrium.

Most prominent among these early pioneers was West Ford, who had been born in slavery in Westmoreland County, Virginia, where his master was John Augustine Washington, George Washington's brother. John Augustine Washington died in 1787 leaving Ford a slave of his widow, Hannah Bushrod Washington who died in 1801. In her will, Washington directed that Ford be freed at age 21. After the death of George Washington in 1799, Hannah's son Bushrod Washington moved to Mount Vernon. He brought the then enslaved West Ford with him. Along the way, Ford had learned to be a

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<sup>7</sup> "The Will of George Washington (Transcription)," *The Papers of George Washington*, July 9, 1799, <http://www.gwpapers.virginia.edu/documents/will/text.html>.

carpenter and wheelwright as well as to read and write. Ford's own genealogy is obscure. His free registration described him as a yellow man, indicating his white ancestry. His mother had been a slave in the Washington family, but his father's identity is unknown. Family and news media have speculated that Ford's father may have been a part of the Washington family, but no proof of parentage has been presented.<sup>8</sup>



Figure 1 Lossing sketch of West Ford in 1859.<sup>9</sup>

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<sup>8</sup> John Terry Chase, *Gum Springs: The Triumph of a Black Community* (Fairfax, Va: The Heritage Resources Program of the Fairfax County Office of Comprehensive Planning in cooperation with the Fairfax County History Commission, 1990), 9–15; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 59.

<sup>9</sup> Benson J. Lossing, "Mount Vernon As It Is," *Harper's New Monthly Magazine*, March 1859.

Regardless of his father's identity, Ford clearly was singled out for special treatment in the will of Bushrod Washington, a founder and President of the American Colonization Society. In spite of his activities to aid the relocation of former slaves to Africa, Washington did not mention relocation for Ford. Instead he bequeathed to Ford a tract of land south of Hunting Creek occupied by D. Peake and adjoining the lands of George Mason. Washington had bought the land from the Peake family after its conveyance by Francis Adams. The will also directed that Ford should remain in his current situation and employment during the life of Washington's wife. Contradicting Bushrod Washington's public stance about free persons of color, this legacy is also at odds with Washington's treatment of his other slaves, none of whom he freed. Instead, the will directed that Ford was to continue as foreman of the house slaves at Mount Vernon.<sup>10</sup>

It is not clear that West Ford ever took possession of the land that Washington bequeathed him. Ford did eventually purchase 214 acres of land, but it was not the land described in the will. The story of the land in this neighborhood pivots on the financial difficulties of Francis Adams who had signed a deed of trust in 1819 using his land, acquired from the Peake family in 1818, to secure debt owed to the United States Treasury. By 1830, one year after the death of Bushrod Washington, Adams was imprisoned in Alexandria because of the debt he owed the Treasury; subsequently,

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<sup>10</sup> Bushrod Washington, "Will," December 21, 1829, Will Book P-1, 350, Fairfax County Circuit Court Historical Records Division.

Samuel Collard purchased the 214 acres at public auction in 1830 for \$1620. West Ford purchased this property from Collard in 1833 for \$500.<sup>11</sup>

The relationship between Collard and West Ford cannot be determined, but Collard's name appears in the will of Bushrod Washington as a property appraiser. Washington had advanced money under a deed of trust to his namesake nephew which the younger Bushrod Washington was unable to repay. The elder Bushrod requested Collard to appraise collateral held in the form of slaves to determine the shortfall that would eventually be forgiven by the estate. Therefore as a confidant of the elder Bushrod Washington, it is likely that Collard was acting as an agent for Ford in purchase of the land.<sup>12</sup>

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<sup>11</sup> Francis Adams, "Deed of Trust," April 28, 1819, Deed Book U-2, 268, Fairfax County Circuit Court Historical Records Division; Robert Ratcliffe, "Survey," October 1815, Deed Book U-2, 266, Fairfax County Circuit Court Historical Records Division; Walter Jones, "Deed of Sale," September 15, 1830, Deed Book Z-2, 169, Fairfax County Circuit Court Historical Records Division; Samuel Collard, "Deed of Sale," January 29, 1833, Deed Book A-3, 331, Fairfax County Circuit Court Historical Records Division.

<sup>12</sup> Washington, "Will."

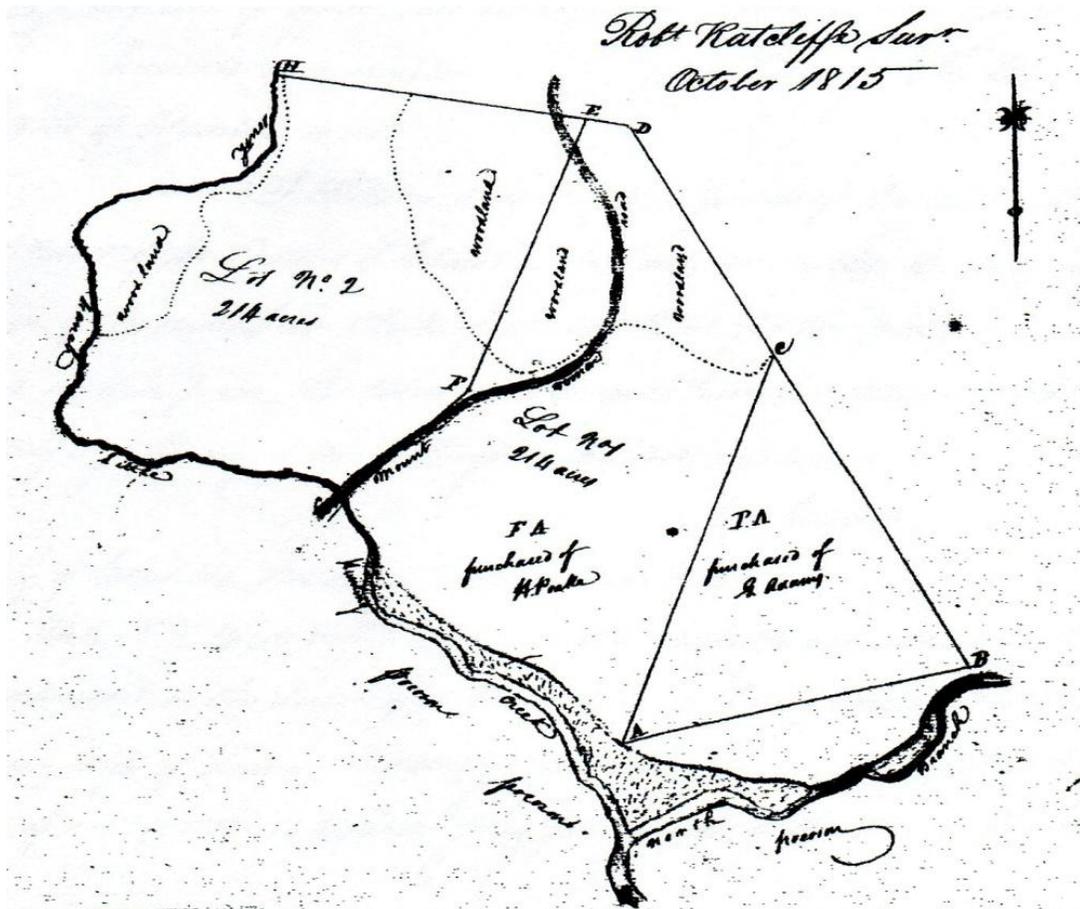


Figure 2 1815 Survey of Gum Springs Tract shown as Lot No. 1 in the plat.

Figure 2 shows a survey of the property carried out in 1815 before Adams purchased the property from the Peake family. The tract in the middle of the survey is the land eventually purchased by West Ford. The adjoining triangular shaped parcel, owned by Francis Adams in 1815, is the land that Washington's will bequeathed to Ford. After selling this land in 1830 for \$350, Ford may have used the money to offset some of the \$500 cost of the larger parcel he purchased in 1833. Regardless of how Ford eventually paid for the Gum Springs tract, it was his relationships with the Washington family that

allowed him to purchase land when few other free African Americans in Fairfax County held title to real estate.<sup>13</sup>

Ford, his wife Priscilla, and their four children lived on and farmed the Gum Springs tract. In 1857, when Ford was approaching seventy years old, he drew up a deed that divided the Gum Springs parcel equally among his children. In return, each child was to pay Ford twenty dollars annually providing him with an ample income for his declining years. Not all of Ford's children wished to continue farming the land; subdivided after the Civil War, the land became a vibrant African American enclave on the former property of George Washington. Because of its proximity to Alexandria, Gum Springs never developed into a town like Clifton, but the churches and schools indicated a distinct community that evolved well beyond the families of the original owners of the land.<sup>14</sup>

Freed slaves benefited from harmonious relationships with their former owners and other members of the white community. West Ford's story is exceptional in that it reflects the close connection to the Bushrod Washington family. The benefits afforded him were available to few other free African Americans. Balancing associations with white allies while maintaining personal autonomy was sometimes more difficult for the offspring of freed slaves. Such was the case of Elijah Blackburn, who was the son of Polly Harrison who was freed under the will of George Washington.<sup>15</sup>

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<sup>13</sup> West Ford, "Deed of Sale," May 10, 1830, Deed Book E-3, 249, Fairfax County Circuit Court Historical Records Division.

<sup>14</sup> West Ford, "Deed of Sale," April 18, 1857, Deed Book Y-3, 400, Fairfax County Circuit Court Historical Records Division; Chase, *Gum Springs: The Triumph of a Black Community*, 27–49.

<sup>15</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 117, 165.

In order to create these new boundaries of independence, Blackburn was a free African American who had to fight to progress from merely holding property to perfecting ownership of land. Gaining title to real estate was both an economic and a legal transaction. Free African Americans understood the costs of property, but gaining title by completing the documentation necessary at the county court house could elude them. Cases in which title to real estate was contested began to proliferate after 1850. In many of these cases, it is unclear whether whites were attempting to take advantage of ex-slaves and their progeny or whether free African Americans simply did not understand the process of how to gain clear title to land they occupied and believed that they owned. These cases sometimes involved persons who were well known and admired in the community who had to resort to the court system to settle disputes over land ownership.

Blackburn did not foresee that he would have to use the courts to acquire title to his property when in 1844 he acquired a twenty-one acre farm in eastern Fairfax County from John Reardon for \$109. Although Reardon already received payment, only when Blackburn filed suit against the Reardon family was he able to gain title to the land. According to the complaint filed by Blackburn, Reardon gave him a receipt for the purchase money, but found it inconvenient to draw up a deed transferring title at the time of purchase in 1844. After Reardon died in 1852, Blackburn hired an attorney to formalize the title transfer, and Blackburn's widow signed the deed in 1854. Reardon had died intestate which left not only his widow but also his children as heirs. All of the children lived out of state and were unavailable to sign the deed. After Blackburn filed suit and provided evidence of ownership, the court ordered that the transfer of title be

made in 1858 fourteen years after the purchase. Justice was served for Elijah Blackburn, but only after he showed determination to demand his property rights.<sup>16</sup>

Elijah Blackburn was a well-respected free African American who was born free and appeared as “a very bright mulatto” in the county register, but his white ancestors are unknown. How Blackburn accumulated the money to purchase his farm is not documented, but he was employed as a caulker in Alexandria which likely helped fund his payment. While working in Alexandria, in 1860 he lived on his farm with a woman named Hannah who likely helped him keep cattle, a horse, and eight hogs on the farm as well produce rye, corn and potatoes.<sup>17</sup>

Blackburn died on September 28, 1878, and his obituary was published in the *Alexandria Gazette*.

Elijah Blackburn, an old and highly respected colored citizen of this city, departed this life this morning from the effects of a stroke of paralysis with which he was prostrated last Wednesday. The deceased was 63 years of age; was born near Pohick Church in Fairfax County, but removed to this city while yet a young man. He was respected by all who knew him as an honest, industrious and Christian gentleman, a kind and loving father and husband. He was a caulker by trade, and worked at the Alexandria Marine Railway Company’s Shipyard. He was a member of the First Baptist Church.<sup>18</sup>

Because his mother had been manumitted by George Washington, Blackburn may have had more opportunities than others among Fairfax’s free African Americans. If so, he took advantage of this fortune of birth. He was well-respected in the community, meriting

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<sup>16</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, “Blackburn v. Reardon,” n.d., 1858-046, Local Government Records Collection, Fairfax County Records, Library of Virginia; John Reardon, “Deed of Sale,” December 23, 1858, Deed Book A-4, 292, Fairfax County Circuit Court Historical Records Division.

<sup>17</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 165; Sprouse, *Fairfax County in 1860: A Collective Biography*, 160–161.

<sup>18</sup> Obituary reprinted from Sprouse, *Fairfax County in 1860: A Collective Biography*, 160–161.

an obituary in the newspaper, an honor rarely given free persons of color. As the obituary shows, Blackburn surely worked hard as he moved between his job in Alexandria and his farm in Fairfax. This movement also shows that his community crossed borders between Fairfax County and Alexandria, even prior to the retrocession.

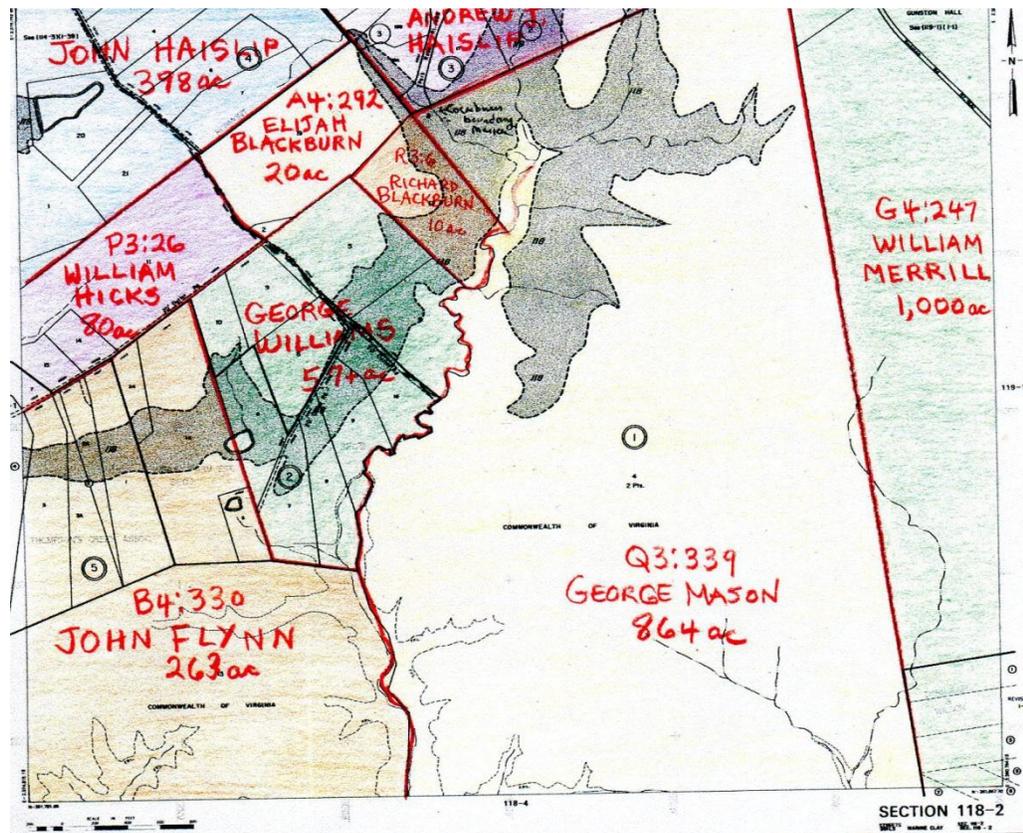


Figure 3 1860 Property Map of a portion of Mason's Neck in Southeastern Fairfax County showing land holdings of Elijah Blackburn, Richard Blackburn, and George Williams. Map overlays 1960 property boundaries of the area.<sup>19</sup>

<sup>19</sup> Beth Mitchell, "1860 Tax Maps," *Land Ownership in Fairfax County in 1860*, n.d., 118.2, accessed December 26, 2012.

Eventually a more localized African American community that likely included extended family members developed around Blackburn's farm. In 1851, Richard Blackburn bought ten acres of land from William R. Selecman, but unlike Elijah's purchase, Richard's transaction was immediately recorded with Fairfax County. Richard Blackburn's property was adjacent to Elijah Blackburn's farm. Other Blackburns lived in close proximity to Elijah Blackburn. Richard, David, and Wilson Blackburn were listed immediately prior to Elijah Blackburn in the 1847 register of free blacks. Because the register indicated their mother was Polly Blackburn rather than Polly Harrison, the exact relationship with Elijah remains unknown. In 1860, Elijah lived next to David, his wife and five young children. The family owned a horse and two hogs, but no land. Wilson lived next to Richard's land with his wife and two children and owned a horse, eight hogs, and a farm growing wheat, corn, oats, and sweet potatoes. In spite of owning land, Richard may have been the only Blackburn in the neighborhood who did not farm. The 1850 census listed both Richard and Wilson as boatmen. Richard was shown as the only person in his household. In 1859, Richard sold his 10 acres of land for \$80 to A. J. Haislip and left the state. Haislip did not gain title to the land before Richard's departure and petitioned that the land to be deeded to the new owner in 1860. In spite of Richard's departure from the area, the neighborhood also seemed to have a connection to the water as was tragically reported in 1871. Wilson Blackburn's oldest son, Joseph, was killed when a mail boat ran into his sloop running fish from John Haislip's shore. The captain of the sloop was Joseph's uncle, James Blackburn. Like an extended family, all these

people lived in close proximity, used the land to grow grains and house livestock and hogs, and availed themselves of their access to water to supplement their incomes.<sup>20</sup>

This free African American community included at least one neighbor outside the Blackburn family. Figure 3 shows land owned by George Williams, also known as George Cash, who purchased land from William R. Selecman in 1851. Like Richard and Wilson Blackburn, Williams was involved in the fishing business, but his farm supported an extended family with Williams's sister and her husband living in the household. The family grew wheat, oats, and corn and owned a horse, a milk cow, and four hogs. The extended families settled on the contiguous Blackburn and Williams farms developed a sense of community about their surroundings. After the Civil War when educational and religious meetings had become legal for freed slaves, Williams sold one acre of his land to the trustees of new meeting house and school for the neighborhood. Even before the construction of this symbol of community, Elijah Blackburn's assertion of his right to land ownership had laid the basis for this African American enclave.<sup>21</sup>

Like West Ford, these second generation freed persons found ways to provide for their families; as their descendants grew, communities of free African Americans evolved around their access to land. Farming skills, personal ties with white allies, and use of the courts to defend property rights translated into a way for succeeding generations to

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<sup>20</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*; and *Register of Free Blacks 1835, Book 3*, 1977, 159–161; William R. Selecman, “Deed of Sale,” June 22, 1852, Deed Book R-3, 6, Fairfax County Circuit Court Historical Records Division; “1850 Census,” n.d.; Fairfax County (Va.) Chancery Causes, 1803-1970, “Haislip v. Blackburn,” 1860, 1860-024, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>21</sup> Mitchell, “1860 Tax Maps,” 118–2; William R. Selecman, “Deed of Sale,” June 21, 1852, Deed Book R-3, 8, Fairfax County Circuit Court Historical Records Division; George Williams, “Deed of Sale,” August 13, 1874, Deed Book S-4, 15, Fairfax County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 291; Fairfax County (Va) Chancery Causes, 1803-1970, “Marders v. Cash.”

acquire land and move away from dependence on the white community. The people of these neighborhoods often struggled, but ownership of land allowed them to provide for life's basic necessities.

### **Laboring for Ownership**

Sometimes free persons did not have a close relationship with the person who was responsible for their forebear's emancipation leaving these future generations to rely even more heavily on their labor in order to take advantage of their freedom. Gaining freedom from slavery brought an abrupt end to the master's provision of the basic needs of life for African Americans. With few possessions, freed people found their ability to provide for life's necessities was often limited by agricultural and domestic labor skills that were not consistently needed and offered little remuneration in a changing agricultural community. Even though they enjoyed the benefits of freedom, these African Americans struggled and often had to work for years to purchase a small farm. The ability to overcome this adversity required the work of all family members to meet the challenge of acquiring land while still providing food, shelter and clothing for themselves and often for extended family. Such was the case for the descendants of the former slaves of Robert Carter, III.

Carter did not wait until his death to free his slaves. A deed recorded in Northumberland County in 1791, initiated the manumission process. Carter's ownership of both land and slaves was so widespread that it is unlikely he had developed any personal relationships with his bonds people in Fairfax. Nevertheless, religion had greatly influenced Carter. Searching for his spiritual mooring, Carter moved from the Anglican

Church, to the Baptist movement, and then to the Swedenborg movement. Carter came to believe that “slavery is contrary to the true principles of religion and justice.” Thus, his largess benefited his slaves in Fairfax.<sup>22</sup>

Still, Carter’s manumission plan provided for gradual emancipation because he was concerned about the effect of his actions on his white neighbors. As the son of one of Virginia’s wealthiest men, Carter held land throughout the former Northern Neck Proprietary including Fairfax County. As his solicitude for his white neighbors waned, Carter allowed his freed slaves to settle on his land and occupy dwellings previously built for whites. According to historian Andrew Levy, Carter “was absolutely dismissive in response to the conviction of his white neighbors that he was ruining their communities by creating whole villages of liberated black men and women in their midst.” One of those communities was located in the Centreville area of Fairfax County. Whether this community evolved with the consent of Carter’s heirs is unclear, but ownership of neighboring lands by Carter family members suggests acquiescence to their forebear’s vision.<sup>23</sup>

The neighborhood that developed along the tributaries of Bull Run evolved from the decisions of a man of wealth who then lost the respect of his peers. Like the descendants of the former Washington slaves, free African Americans in this new community near Centreville found themselves with the heavy burden of establishing their independence on terms acceptable to their white neighbors. The former slaves and their extended families freed by Carter used their labor not only to gain tolerance of the white

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<sup>22</sup> Levy, *The First Emancipator*, 144–152.

<sup>23</sup> *Ibid.*

community but also to be a part of the evolution in the county's agriculture from plantations to self-reliant farms.

For African Americans, extended family might include persons who were not blood relations, and this held true for the emancipated Carter slaves. Because birth and marriage records in Fairfax County are sketchy prior to 1853, family connections are often difficult to determine. Death records are of limited utility because they often omitted parentage of the deceased, particularly in the case of mixed-race persons. Nevertheless, local registration books did indicate some family connections, and court cases often contain information about family ties. These records frequently confirm that free African Americans who lived in close proximity were part of an extended family network. Moreover, these common living arrangements often evolved into a larger network of African Americans.

Although public records do not clearly describe the social structure of these new neighborhoods, the numbers of people living on relatively small parcels of land suggests that the role of free African American land owners may have been less that of masters of their domain and more that of keepers of the community's living space. Within these neighborhoods, the roles of the residents changed with the new freedom. Men became farmers rather than laborers, and women evolved into housekeepers and mistresses of chicken coops and dairies rather than domestic servants. Documenting this change in post-war North Carolina, Sharon Holt asserted that free African Americans developed an economic system based on households that allowed them to both earn and save. White

Virginia society had equated African Americans with slavery; their acceptance of these new roles was a first step in dismissing these notions.<sup>24</sup>

The neighborhood that evolved from the descendants of slaves freed by Robert Carter III reflected these new roles as well as the importance of both blood relatives and extended family. Among the free African Americans, the family name of Harris dominated, but the names Allen, Burke, Gaskins, and Robinson also appeared. All were related to the original group of slaves manumitted by Robert Carter III. Whether these families intermarried is not always obvious, but they lived in close proximity and certainly became extended family.

The Fairfax register of freed slaves, which first listed the Carter manumissions in 1826, provides some indication of family history. The register records all those freed persons as “black” except those with the surname of Burke who are called “mulatto.” Baptist Billy Burke was the progenitor of the members of Burke family freed in Fairfax. He may have had a closer connection to his emancipator than other slaves freed in Fairfax. His family’s identity as “mulatto” lends some credence to the assertion that Baptist Billy Burke was a half-brother of Robert Carter III. Andrew Levy, a historian of Robert Carter III, argues that Baptist Billy was Carter’s “most trusted emissary,” but he does not mention any possible family connections.<sup>25</sup>

After emancipation, the freed Carter slaves remained on land familiar to the family. In the 1860 census, the male descendants of these ex-slaves listed their

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<sup>24</sup> Sharon Ann Holt, *Making Freedom Pay: North Carolina Freedpeople Working for Themselves, 1865-1900* (Athens: University of Georgia Press, 2000), 1–24.

<sup>25</sup> Donald Sweig, *Free Negroes in Northern Virginia: An Investigation of the Growth and Status of Free Negroes in the Counties of Alexandria, Fairfax and Loudoun, 1770-1860*, 1975, 25–34; Levy, *The First Emancipator*, 116.

occupations as farmer and laborer, and the females listed no occupation. Even though their sources of income were not the more lucrative occupations such as blacksmith and carpenter, they as a group became the largest free African American landowners in Fairfax County and formed a free African American community that stretched across an area from Bull Run to Centreville. Figure 4 shows the lands belonging to John Robinson, George Harris, Obed Harris, Henry Harris, Jesse Harris, and Anthony Harris, all descendants of slaves freed by Robert Carter. The 1850 census and 1860 census indicate that other Harris families as well as households with the surnames of Burke, Allen and Gaskins lived in the neighborhood but did not own landed property.<sup>26</sup>

Robert Carter III at his death bequeathed much of the land included in Figure 4 to two of his seventeen children: Sarah Fairfax Carter, who married John Chinn, and Betty Landon Carter, who married Spencer Ball. In 1860 the Chinns' son, Benjamin Tasker Chinn owned the family property known as Ben Lomond. The Balls' son, Alfred Ball inherited his parent's land and lived in a dwelling known as Portici near Manassas. Although the Balls' property primarily lay in neighboring Prince William County, Alfred Ball also owned land in Fairfax. He died intestate in 1853 leaving heirs Sarah C. Ball, Elizabeth L. Carter, William J. and Louisa Weir, Hezekiah and Adeline Best, and John and Fanny Lewis. Figure 4 indicates the property of three of those heirs with Ben Lomond forms the western boundary of the lands belonging to the descendants of the former Carter slaves.

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<sup>26</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 864–879; “1850 Census,” n.d.



Figure 4 1860 Property Map showing the land holdings of the descendants of slaves freed by Robert Carter, III. Map overlays 1960 property boundaries of the area.<sup>27</sup>

Most of the real estate purchases of the Harris family show interactions with the white heirs of Robert Carter III, but Jesse Harris's first purchase in 1841 was unrelated to real estate owned by the Chinn and Ball families. Harris purchased 211 acres for \$700 from Nancy Coward, Albert and Mary Wren, and Alice Street. Thirteen years later, Harris bought an adjoining 50 acres of land from the heirs of Alfred Ball for \$208 of which \$99 was a down payment with the remaining amount advanced under bond by the Ball heirs.<sup>28</sup>

<sup>27</sup> Mitchell, "1860 Tax Maps," sec. 64-1 to 64-4.

<sup>28</sup> Alfred Wren and others, "Deed of Sale," October 11, 1841, Deed Book I-3, 71, Fairfax County Circuit Court Historical Records Division; Sarah Ball and others, "Deed of Sale," August 31, 1854, Deed Book Z-3, 334, Fairfax County Circuit Court Historical Records Division.

After the Civil War, Jesse Harris in his petition to the Southern Claims Commission for reimbursement of losses that he suffered during the conflict provided some of his family history. Claiming to be 91 years old in 1872, he had been born and lived in the immediate vicinity his entire life. Because his mother had been freed by Robert Carter III, Jesse was born free. At marriage his wife, Jemima, already had nine children, then they had eleven children together. With such a large family, the Harrises needed a successful farm to provide for everyone. In 1860, the farm housed horses, five milk cows, four hogs, and three sheep, and the Harrises grew hay, grain, peas, beans, and potatoes. The family also had produced 250 pounds of butter. As Fairfax's largest free African American landholder, the Harris family's existence is remarkable for their seeming harmony with the community and left no record of protracted court disputes or even any legal difficulty. This is all the more remarkable in that Jesse openly refused to cooperate with Confederate troops during the Civil War, even after the Union army looted his farm after the Second Battle of Bull Run. His unionism and the army's actions made Harris eligible for compensation for these losses. A white neighbor drew up Harris's petition for presentation to the Southern Claims Commission. This act reflected the respect that Jesse Harris still commanded in his neighborhood thirty years after he became one of Fairfax's pioneering free African American land owners.<sup>29</sup>

Keeping members of his immediate family in the area must have been one of Jesse Harris's desires as shown through the help he offered one of his sons, Obed, with

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<sup>29</sup> Southern Claims Commission, "Claim of Jesse Harris," February 6, 1872, Southern Claims Commission Binder, 456, Fairfax County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 871–872.

the purchase of his farm. Obed Harris similarly suffered losses during the war and testified before the Southern Claims Commission about his property that was destroyed during the fighting at Manassas. In his affidavit, Obed stated that he had worked for his father until age twenty-one when Jesse helped his son purchase property from Albert Ball. The exact timing of the purchase is unclear. Because Obed Harris was 41 years old in 1860, it is possible that he may have contracted with Ball as early as 1840. The deed finalizing the sale occurred after Ball's death in 1853 and indicated that Obed Harris had paid Ball before his death \$182 of the \$248 purchase price. Thus, both Jesse and Obed Harris may have been farming their property years before the land officially belonged to them. Obed Harris also purchased another 31 acre parcel in 1853, but in 1860 he listed no farm crops or animals. Obed and his wife may have shared work with Jesse's family. When Obed died in 1895, he left his estate to his wife Betsey with \$123 in debt and only \$100 in farm assets excluding the value of the real estate. Obed Harris in his will directed that his widow should receive "all the effects that may arise from the unsettled estate of my father" who had died in 1874. Even if the economic distress of the late nineteenth century had drained the Harris's farm of much of its economic value, the land was valuable in providing for and keeping the family intact.<sup>30</sup>

Like the Jesse Harris family, George and Judy Harris and their three children were able to make several land purchases and conduct a prosperous farming operation. George,

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<sup>30</sup> Sarah Ball and others, "Deed of Sale," August 31, 1854, Deed Book V-3, 356, Fairfax County Circuit Court Historical Records Division; Daniel Roberts and others, "Deed of Sale," February 11, 1853, Deed Book S-3, 390, Fairfax County Circuit Court Historical Records Division; Obed Harris, "Will," August 1895, Will Book G-2, 332, Fairfax County Circuit Court Historical Records Division; Obed Harris, "Accounting of Estate," August 1, 1903, Will Book I-2, 264, Fairfax County Circuit Court Historical Records Division; Southern Claims Commission, "Claim of Obed Harris," Undated, Southern Claims Commission Binder, 465, Fairfax County Circuit Court Historical Records Division.

whose mother was Jemima Harris, appears to have been another relation of Jesse Harris. Although not listed as one of Jesse Harris's sons, George may have been one of the nine children Jemima Harris brought to her marriage with Jesse. Like others in the Harris family, George Harris came to own property that had once been a part of the Robert Carter III holdings. In 1847, Harris purchased 50 acres of land for \$250 from Lovell and Eliza Marders, relatives of the Chinns, who had acquired the land from the latter. Like Jesse and Obed Harris, George Harris bought 31 acres of land from the heirs of Alfred Ball in 1855 after making an unspecified final payment for the property to the estate. Several months later, he sold 13 acres of the land to John Robinson whose relation to Harris is not known. Then in 1859, Harris purchased 20 acres of land from the heirs of Anthony Harris. With these land acquisitions, in 1860 the Harris family was able to pasture five horses, six milk cows, eight other head of cattle, six sheep, and eighteen hogs. The farm produced wheat, corn, oats, and hay as well as peas, beans, potatoes, and 200 pounds of butter to support the family. After Harris's death in 1878, the final accounting of his estate, not including his land, left his heirs \$318. The family's farming skills had left them in a comfortable situation. Although many persons in the extended Harris family left Virginia for other states including Ohio and Pennsylvania, the land continued to be owned by relatives throughout the nineteenth century symbolizing its importance to the family and the community.<sup>31</sup>

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<sup>31</sup> Lovell Marders, "Deed of Sale," June 1, 1847, Deed Book L-3, 219, Fairfax County Circuit Court Historical Records Division; Sarah Ball and others, "Deed of Sale," January 15, 1855, Deed Book V-3, 276, Fairfax County Circuit Court Historical Records Division; George Harris, "Deed of Sale," June 8, 1855, Deed Book W-3, 242, Fairfax County Circuit Court Historical Records Division; Harris heirs, "Deed of Sale," November 29, 1859, Deed Book B-4, 361, Fairfax County Circuit Court Historical Records Division; George Harris, "Accounting of Estate," July 16, 1879, Will Book D-2, 148, 167, 210, Fairfax

Family farming was central to economic independence of free African Americans, but the number of persons the land could support was limited. Financial difficulty ensued when the farm was expected to provide food for large families as well as grow crops for sale to provide income for other needs. Such was the case for the nine children of Anthony Harris who in 1853 completed their father's purchase of 62 acres of land from the Roberts family. Even though many of the heirs had young families, in 1859 they sold 20 acres of the land to George Harris for \$75, suggesting that the family was strapped for cash.<sup>32</sup> White county officials must have had some interest in this sale since two of the heirs, Fenton Harris and Charles Harris, registered for the first time as free persons. The 1860 census shows eight households and 40 members of the extended family of Anthony Harris living in adjoining dwellings probably all on the family property. They used the land to pasture milk cows and hogs and to grow hay, corn, oats, and potatoes. They also produced 100 pounds of butter. The products of the land could support the families with food and other necessities but probably provided little financial cushion for so many dependents.<sup>33</sup>

These tracts of land supported many people. The desire of Robert Carter III that his freed slaves have farms to work their way into independence played out in Centreville through second and third generation freed persons. None of the descendants of the freed

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County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 869–870; Fairfax County (Va.) Chancery Causes, 1803-1970, "Harris v. Harris," January 1903, 1907-039, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>32</sup> Southern Claims Commission, "Claim of Obed Harris," 466 One of Anthony Harris's children was also named Anthony. In testimony before the Southern Claims Commission, the younger Anthony stated that he was a first cousin of Obed Harris meaning that the elder Anthony may have been a brother of Jesse Harris.

<sup>33</sup> Roberts and others, "Deed of Sale"; Harris heirs, "Deed of Sale"; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and "Register of Free Blacks 1835, Book 3, 1977, 250–251; Sprouse, *Fairfax County in 1860: A Collective Biography*, 865–879; "1860 Census."

slaves were given land, but they were allowed to purchase the property over time and received formal title when the final payment was received. Some of the freed African Americans were more successful economically than others, but those who remained and worked the land were part of an extended family and community who used their farms to move away from dependency.

Certainly the changing economy in Fairfax County played a role in free African Americans' new role as landowners. Except for the Fitzhugh estate, most of the pre-revolutionary plantations were divided, leaving more land available for purchase. The migration of farmers from the North exposed county residents to new crops and modern farming methods for smaller parcels of land. The ideas of these migrants benefited many of Fairfax's smaller land holders including free African Americans. Still, most free persons of color made their land purchases from persons born in Virginia with one important exception that was crucial in understanding the living patterns that evolved outside of slavery.

Quakers were among the groups who settled in Fairfax from the North, and they differed from many other northern migrants in that many were successful merchants as well as farmers in their former homes. Building on their economic success, they came to Fairfax looking for larger tracts of land, which they found in eastern Fairfax County. These new settlers came at a time when many of their fellow Friends were leaving for non-slaveholding areas of the old Northwest. With their religious opposition to slavery well established, they were willing to deal with free African Americans in building the new Quaker businesses and farms in Fairfax. The economic impact of the Quaker

migration was felt in 1848 when Chalkley Gillingham, and Jacob Troth from New Jersey and Lucas Gillingham and Hillman Troth, who were already living in Fairfax, purchased Woodlawn, the nearly 2,000 acre tract that had once been part of George Washington's estate for the substantial price of \$16,630. Although the purchasers intended the land to provide timber for a new saw-mill operation, they soon subdivided the property and began selling land to other local persons.<sup>34</sup>

Even though Quakers long had maintained an anti-slavery stance, by 1846 many Virginia Friends had decided to abandon political pressure to try to persuade their southern neighbors of the advantages of free labor. Nevertheless, Quakers continued to openly support free African Americans in their business dealings. For example, in 1856 William Holland purchased 20 acres of land from Chalkley Gillingham for \$450. Holland apparently was unable to pay the full purchase price, and on the date of the purchase, he executed a deed of trust with Hillman Troth that required three payments of \$86.72. The 1860 census did not count Holland, but he and his wife and two children still lived on the land. After the Civil War, Holland filed a claim for reimbursement for 40 cords of wood seized by the Union army. In support of Holland's claim, Hillman Troth described him as "a smart, intelligent black man." And added, "His mother belonged to General Washington." Although Holland's land was surrounded by that owned by whites, Troth's statements and the trust he had shown in Holland's ability to repay a loan indicates that white neighbors accepted the Holland family as a part of the larger community. Although the white neighborhood included both Quakers and non-Quakers, it had been the actions

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<sup>34</sup> Crothers, *Quakers Living in the Lion's Mouth*, 5, 107; Esther Maria Lewis, "Deed of Sale," November 21, 1848, Deed Book N-3, 102, Fairfax County Circuit Court Historical Records Division.

of Society of Friends that enabled Holland's family to support themselves on this small farm.<sup>35</sup>

When the sellers of land were native Virginians, free African Americans often encountered greater difficulties. For example, Robert Carter lived near the town of Vienna with his large family on a ten-acre farm that was surrounded by white neighbors among whom he lived in peace. Nonetheless, after Carter had purchased his farm, the change in its title was not recorded. Although Carter and the seller's family had slightly different dates for when ownership passed, both agreed that Carter had bought the farm before the Civil War, long before he received title. In a 1873 deposition to the Southern Claims Commission for losses he suffered during the Civil War, Carter testified that he had purchased his farm through a deed from Peter Hendricks two or three years before the war. In 1873, William Hendricks, one of the heirs to the then deceased Peter Hendricks, attested that Carter had bought the farm 15 to 18 years earlier, roughly between 1855 and 1858, and had paid some of the purchase price by farm work for his father. Only in 1869 had Carter finally received a recorded deed for a total purchase price of \$250.<sup>36</sup>

Although the purchase of land from the Hendricks estate left Carter's family living independently among their white neighbors, such success eluded the African

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<sup>35</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 949; Southern Claims Commission, "Claim of William Holland," April 5, 1877, Southern Claims Commission Binder, 471, Fairfax County Circuit Court Historical Records Division; Chalkley Gillingham, "Deed of Sale," December 6, 1856, Deed Book Y-3, 206, Fairfax County Circuit Court Historical Records Division; William Holland, "Deed of Trust," December 6, 1856, Deed Book Y-3, 264, Fairfax County Circuit Court Historical Records Division; Mitchell, "1860 Tax Maps," sec. 109-1; Crothers, *Quakers Living in the Lion's Mouth*, 214.

<sup>36</sup> William Hendricks, "Deed of Sale," July 19, 1869, Deed Book J-4, 456, Fairfax County Circuit Court Historical Records Division; Southern Claims Commission, "Claim of Robert Carter," November 1873, Southern Claims Commission Binder, 149, Fairfax County Circuit Court Historical Records Division.

American purchasers of three small tracts from the estate of James Potter, even though this land gave rise to a small African American community in eastern Fairfax County. Potter died intestate in 1853 leaving nine heirs and his wife. Among the heirs, John and Susan Potter gained title to 108 acres of land in 1854, and in 1856 sold small tracts in three separate transactions to free African Americans, Samuel Williams, Philip Quander, and George Holland. Two years later, Osman Quander purchased the four acres earlier purchased by Samuel Williams in a transaction in which the buyer and seller most likely were acquainted, if not actually related. By 1860, Samuel Williams was living with another free African American, Joseph Carter, who was the father of Osman's wife, Letty. In 1860, the household of Letty and Osman Quander contained five children and a 91 year old woman named Cecelia Quander. The Quanders produced only hogs and livestock on this small farm. Joseph Carter joined the Quanders as a land owner when he acquired another of the original four acre parcels from Verlinda Quander after the death of her husband, Philip. In 1860, the sixty-one-year-old Carter and his wife did not report the ownership of any livestock or farm products. Although George Holland had purchased six acres of land for \$120 from the Potters, in 1859 he sold the tract for \$87 to a white neighbor, Richard Lacey. The reason for the turnover of these properties cannot be found in public records; however the small acreage probably made it difficult to both buy the land and support a family. Even in the development of a new neighborhood, the extent of its independence from surrounding whites is uncertain.<sup>37</sup>

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<sup>37</sup> John and Susan Potter, "Deed of Sale," 1856, Deed Book Y-3, 69, Fairfax County Circuit Court Historical Records Division; John and Susan Potter, "Deed of Sale," June 12, 1856, Deed Book Y-3, 106, Fairfax County Circuit Court Historical Records Division; John and Susan Potter, "Deed of Sale," July 31, 1856, Deed Book Y-3, 104, Fairfax County Circuit Court Historical Records Division; Samuel Williams,

Prior to the Civil War, free African Americans were building independent communities. When intact families were able to purchase enough land in order that their labor was used to feed and house themselves, economic success often followed. Still, land purchases placed a financial burden on the acquiring party, but with willing sellers, arrangements to buy land in installments or to finance the purchase through a deed of trust were available. This gave free African Americans time to accumulate the cash needed to gain clear title. The willingness of whites to accept the risks of financing African American purchase of farms was crucial, particularly since it eased the possible conflicts from those who wished to contest the developing sense of independence. In order for the new neighborhoods to grow, flexibility on the part of its residents was necessary. Households with differing needs had to be accommodated including those in which free persons and slaves were family partners.

### **Keeping Families Intact in the Face of Slavery**

When part of a family was enslaved while other members were free, African Americans found it challenging to become economically independent. When these household were headed by a male, the family still had a chance to become financially successful if the man could earn enough to purchase land and possibly even family members. Even so, wives and children sometimes remained enslaved to the free family member to avoid the possibility of deportation from Virginia. The extent of these

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“Deed of Sale,” November 1, 1858, Deed Book B-4, 94, Fairfax County Circuit Court Historical Records Division; George Holland, “Deed of Sale,” October 4, 1859, Deed Book C-4, 97, Fairfax County Circuit Court Historical Records Division; Verlinda Quander, “Deed of Sale,” September 20, 1860, Deed Book C-4, 404, Fairfax County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 281, 1601, 2152.

arrangements is unknown, in part because the way the U. S. Census counted households did little to explain these family situations. Nevertheless, court cases and petitions to remain in the state have offered some insight into this phenomenon. From these sources, the free African American struggle to maintain intact families and to become financially successful can be seen.

The difficulties facing mixed status families were exacerbated after the death of a white supporter, particularly when title to land was contested. Nevertheless just as former slaves had used the legal system when possible to gain their freedom, they and their descendants also relied on the court system to secure their interest in real property when their title was in question. Battles over title to land could last for years. Such was the case for Dennis Comer who died in 1853 before he ever gained clear title to his primary farm.<sup>38</sup>

Comer was able to acquire the farm because he had been a favorite of his master, John Washington, who trained him to become a blacksmith. Washington paid Comer a salary for his services and allowed him keep any money earned in addition to his salary. With that income, Comer was able in 1821 to purchase his freedom. In 1829, after Washington's death, his son, Edward, sold 222 acres of land to Comer for \$350, but the title was never officially transferred. The land was located along the Ox Road between Colchester and Fairfax Court House. With its prominent location, the community had no question about Comer's ownership. In an 1837 petition to Virginia's General Assembly, friends of Comer wrote, "Since he acquired his freedom, he has retained his good

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<sup>38</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Washington v. Washington," n.d., 1866-037, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

character and he acquired a farm of two hundred acres of land.” But this farm was not the only property to which Comer had difficulty obtaining clear title. In 1838, he purchased 56 acres of land for \$50 from Henry Selecman, but the deed was not recorded at the court house until 1843 slightly over a year before Comer re-sold the land to William Suddath for \$50. Although the formal recording of Comer’s purchase of the 56 acres had taken five years, his re-sale was recorded without undue delay. It is possible that Comer’s purchase of this land was only recorded after he began negotiations to sell the property. Even though some of the leading citizens of Fairfax County respected Comer, these persons did not find it worth their time to record their dealings with Comer with the county until it affected their clear title to the property.<sup>39</sup>

The same lack of interest among the white community in protecting or enabling the property rights of freed persons can be further seen in the probating of Comer’s will. His final wishes were complicated by his family structure. When freed, Comer had taken his mother’s name rather than using his enslaved surname of Washington. Although his family’s history is murky, at some point Comer married an enslaved woman named Ellinder. Comer must have purchased Ellinder, but the transaction does not appear in Fairfax County records. The only evidence of this relationship is a deed of manumission recorded in 1850 that freed Ellinder and her child, Mercia. In his will, Comer did not mention Ellinder and Mercia and left his assets to five offspring, only two of whom were

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<sup>39</sup> Comer, “Petition to the General Assembly,” December 12, 1822; Quotation from Comer, “Petition to the General Assembly,” January 13, 1837; John Washington, “Deed of Manumission,” February 19, 1821, Fairfax County Deed Book S-2, 189, Fairfax County Circuit Court Historical Records Division; Henry Selecman, “Deed of Sale,” February 20, 1843, Deed Book H-3, 114, Fairfax County Circuit Court Historical Records Division; Dennis Comer, “Deed of Sale,” April 23, 1844, Deed Book I-3, 195, Fairfax County Circuit Court Historical Records Division.

free. He bequeathed to his children who were enslaved the proceeds from the sale of his personal property since they did not have the legal standing to own real property. He divided his farm equally between his son, William Washington, and his daughter, Martha Washington, both of whom were free. By this time, Edward Washington, who was still the land's nominal owner, balked at deeding over the land in favor of the heirs, then living in Washington, D.C. Edward claimed that Comer owed him additional payments for the purchase of the land. Prior to the Civil War, the two free Washington children filed suit. The court eventually ruled in favor of the heirs, but only in 1866, thirty-seven years after their father had purchased the land, was their claim settled. The respect Comer had gained with his former master, John Washington, did not continue with his son, Edward. Nevertheless, Dennis Comer had become financially independent and a major economic contributor to the community through his blacksmith shop while struggling to keep his mixed free and enslaved family intact.<sup>40</sup>

The failure of whites to record a real estate transaction was complicated even more when the freedom papers for African Americans also were not registered, leading to years of court proceedings to sort through claims. In 1868, Samuel Sharper was still waging a legal fight to obtain real estate purchased by his grandparents, Daniel and Molly Sharper, in 1825. In that year, Samuel and Eliza Smith in return for \$300 deeded 33 acres of land to Daniel and Molly Sharper. The land was held in trust by Thomas Jones and Eli Offutt for the benefit of the Sharpers who were slaves, Molly belonging to the Smiths and

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<sup>40</sup> Dennis Comer, "Will," March 7, 1853, Will Book W1-319, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, "Washington v. Washington"; Dennis Comer, "Deed of Manumission," April 19, 1850, Fairfax County Deed Book S3, 58, Fairfax County Circuit Court Historical Records Division.

Daniel, a carpenter, belonging to Robert Lindsay of Fluvanna County, Virginia. William Swink of Fairfax had been hired by Lindsay to act as an agent to collect the proceeds of Daniel Sharper's hiring out. The reason Swink was asked to serve in that capacity is unknown, but Lindsay must have trusted his judgment. Around 1846, Lindsay gave his agent a deed of emancipation for Sharper but asked that it not be executed in order that Sharper be allowed to stay in the state of Virginia. At that time, Lindsay relinquished all claims to Sharper's labor. The free status of Molly Sharper was even murkier. Swink testified that she had been born free, and all of her children were free. This differs from the understanding of their family after the death of Molly. The children believed that their mother had always been treated as free, and they possessed documents suggesting that freedom had been created but never properly registered. Their understanding was that Samuel Smith sold Molly to Philip Carper for the sole purpose of manumitting Molly. It is unclear why Daniel and Molly Sharper received this special treatment. Because of their ambiguous status, they were never registered or appeared in the federal census. Later in 1860, their grandson, Samuel was listed as a mulatto. Possibly one or both of his grandparents had been a relative of the owner and had received special consideration as a family member.<sup>41</sup>

Certainly the 1825 deed indicated that Samuel and Eliza Smith wished to care for not only Daniel and Molly Sharper but also for their four children. The deed specifically

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<sup>41</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Sharper v. Smith," 1868, 1868-003, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, "Offutt v. Griffith," 1857, 1857-001, Local Governments Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Samuel Smith, "Deed of Sale," March 26, 1826, Deed Book W2, 269, Fairfax County Circuit Court Historical Records Division; "1860 Census"; "1850 Census," n.d.

stated that the 33 acres of land be sold as soon as practical after the deaths of the Sharpers. Each child was to receive a 1/4 share. When Molly died in 1856, Daniel was already deceased. The four heirs had differing parentage. Forrest was the son of Molly; Maria was the daughter of Daniel; and Samuel and Sanford were the sons of Daniel and Molly. In a suit brought in 1857, Forrest Griffith requested the court to grant him the proceeds from his one-fourth share of the estate. Stating that he had been born in slavery, Forrest indicated that he had since purchased his freedom. By 1857 Sanford was dead leaving four heirs, Samuel, Daniel, Georgeana, and Sanford. Of these four, Daniel had purchased his freedom, but public records do not indicate whether his brothers and sister remained enslaved. Samuel, Molly's son, remained enslaved but had fled his master and settled in Canada, while Maria was dead but had left descendants, John, Sanford, Mary and Emily, who were living in slavery. An 1839 inventory of the estate of Samuel Smith, had listed each of these children as a slave belonging to the estate. Because the heirs of Samuel and Eliza Smith contended that the heirs of Daniel and Molly Sharper remained slaves, the petition by Forrest Griffith did not receive favorable consideration by the court.<sup>42</sup>

In contrast, the 1859 complaint by the heirs of Samuel and Eliza Smith received quick and favorable ruling. If the heirs of Daniel and Molly Sharper were all slaves, they could not own land. Therefore, the conveyance of the 33 acres of land to them was void. The Sharper family had to depend upon the appointed trustees to defend their interests,

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<sup>42</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Offutt v. Griffith"; Fairfax County (Va.) Chancery Causes, 1803-1970, "Sharper v. Smith"; Smith, "Deed of Sale"; Samuel Smith, "Inventory of Estate," May 20, 1839, Will Book T-1, 50, Fairfax County Circuit Court Historical Records Division.

but Thomas Jones had died, and Eli Offutt had moved to Missouri. The court's ruling in favor of the Smith heirs transferred the property to them in 1860, even though members of the Sharper family still lived on the land. Samuel Sharper was one of those persons remaining on the farm; during the Civil War, he paid rent to the Smith family.<sup>43</sup>

The Civil War disrupted the Fairfax County Court system and further stymied Samuel Sharper's fight to hold his grandfather's land. In 1868, he filed suit to regain title of the land. By this time all the Sharper heirs were free, and the clearly recorded intent of Samuel and Eliza Smith could be carried out. On April 25, 1868, the court ruled in favor of Samuel Sharper and his fellow plaintiffs, and they gained title to the land over forty years after the original conveyance that transferred the property to his grandparents. Within six years, Sharper was successful enough to be able to purchase an additional 19 acres of land for \$500 from the grandchildren of Samuel and Eliza Smith.<sup>44</sup>

In the request that Samuel Sharper filed with the Southern Claims Commission for reimbursement of losses that he suffered during the war, he recalled the threats he endured from Wethers Smith, son of Samuel and Eliza Smith. When Sharper claimed the North would win the war, Smith "got very mad and said if I did not mind how I talked it would not be well for me." Obviously, the younger generations had not continued the close connections between the Sharper family and the Smith family that originally had led to the land transfer and the manumissions. The subterfuge and delay prevented

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<sup>43</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Smith v. Offutt," 1860, 1860-001, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>44</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Sharper v. Smith"; Lewis Oliver, "Deed of Sale," October 12, 1874, Deed Book R-4. 337, Fairfax County Circuit Court Historical Records Division.

Samuel Sharper and his family from achieving economic independence until after the war.<sup>45</sup>

The instability experienced by the Sharper family resulted from the often unclear line between slavery and freedom when the law and the actions of Fairfax County's white citizens did not mesh. In contrast to their neighbors, the Albert Henderson family, avoided such turmoil over land purchases, but Albert's presence in the county was a seeming contradiction of the law. Having been freed by Richard Farr in 1837, he did not register with the county until 1853 when the court determined that he did not have permission to remain in the county. In spite of the court's ruling, Albert did not leave, and in 1857 he purchased one acre of land from Frances Young for one dollar. Although Henderson's connection to Young is unknown, she showed generosity to him. In her will written in 1860, Young gave another two acres of land to Henderson as an expression of her gratitude for his faithfulness and good service. Unlike her neighbors, the Smiths, Frances Young did not feel compelled to hide her transactions with Henderson. After the Civil War, Henderson must have enjoyed some financial success as he acquired other small plots of land which he then divided among his children at his death. Among his children, two of Henderson's daughters married sons of Samuel Sharper, showing the close neighborhood connection among African Americans in the area. The Hendersons and the Shapers were linked through family, proximity, and a concern about deportation, but Albert Henderson's freedom allowed him to openly purchase land.<sup>46</sup>

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<sup>45</sup> Southern Claims Commission, "Claim of Samuel Sharper," March 3, 1877, Southern Claims Commission Binder, 789, Fairfax County Circuit Court Historical Records Division.

<sup>46</sup> Frances Young, "Deed of Sale," July 6, 1857, Deed Book A-4, 300, Fairfax County Circuit Court Historical Records Division; Frances Young, "Will," August 20, 1865, Will Book Z-1, 387, Fairfax County

It is ironic that these stories concerning the experiences of African Americans who were favored by white supporters occurred on land that had originally been owned by the Fairfax family. Ferdinando Fairfax, who advocated the removal of freed slaves, had once lived on the property at Towlston Grange, the manor house of the Fairfaxes in the area. In 1806 Virginia's legislature had promulgated the plan that most African Americans freed after that time should be removed from the state, but some among future generations of whites who owned parts of the previous Fairfax estate not only had learned to accept living near free African Americans but even in some cases wished to reward them with plots of land. Samuel and Eliza Smith tried to work within the slavery system and the confines of the law to allow Daniel and Molly Sharper to have a farm while remaining in the state. Frances Young accepted Albert Henderson's freedom, openly sold him land, and seemingly ignored the deportation law without repercussion. White tolerance was important, but when African American families had to balance their lives between slavery and freedom, the legal complications could be much greater.

Since land sales were most often recorded as transactions between males, a free African American man, who was the head of a mixed status family, might make these transactions without contest. Henry Harris, whose relation to the other Harrises discussed above has not been determined, also purchased land from the heirs of Alfred Ball. The deed conveying the land to Harris reveals extended terms under which he was able to purchase 15 acres of land for \$60. In 1849, Harris made a payment to Ball to reduce the

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Circuit Court Historical Records Division; Albert Henderson, "Will," March 19, 1900, Will Book H-2, 211, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 214; Sprouse, *Fairfax County in 1860: A Collective Biography*, 920–922, 1744–1746.

balance owed to \$15. Only in 1854 did the purchaser extinguish the debt, and the deed was recorded. One possible reason for the prolonged final payment may have been that Harris during this period was also purchasing his wife and three children. Although county records do not document such a transaction, Harris in the 1860 census appears a laborer who owned four slaves. At age sixty-six, Harris headed a household containing five other free persons, the oldest of whom was Nancy Harris, mother of Charles and Fenton Harris. As discussed earlier, Charles and Fenton Harris were two of the nine children and heirs of Anthony Harris, who likely fathered children with more than one woman. The reason Nancy Harris lived with Henry cannot be determined, but her residence was close to two of her children. This blended family did not report that they produced any agricultural products or owned any farm animals. Even though their financial support is unclear, Henry owned land until his death in 1860 when his property was put up for public auction. Moses Harris purchased the land for \$165, but the matter was not settled because the paperwork was lost or destroyed during the Civil War. After the war Moses Harris attempted to gain clear title but only in 1879 after Moses's death was the case settled. Those court proceedings recognized as Henry Harris's heirs his wife and children whom he had owned as slaves. Their emancipation by the war allowed Henry Harris's family to receive the proceeds from the sale of the land. Henry Harris was able to keep his family intact, but the cost of acquiring his wife and children from slavery hindered his ability to become economically independent.<sup>47</sup>

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<sup>47</sup> Ball and others, "Deed of Sale," January 15, 1855; Fairfax County (Va.) Chancery Causes, 1803-1970, "Lewis v. Harris," 1879, 1879-006, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Sprouse, *Fairfax County in 1860: A Collective Biography*, 870;

Yet another free African American who operated on the edges of slavery was Robert Gunnell, who did not appear to have the advantages of living near a large community of free persons of color. When Gunnell was around fifty years old in 1856, Benjamin Mackall granted Gunnell his freedom by recording a manumission deed at the Fairfax County Courthouse. The manumission document is exceptional in that it appears to have been dated originally in 1851. The delay in recognizing Gunnell's free status could have resulted from Mackall's desire that Gunnell not be forced to leave the state. The timing of the manumission is also peculiar in that Gunnell in 1855 had purchased four slaves for \$500 from Richard B. Lee, II of Washington, D. C. The slaves were identified as Sarah, age nineteen, Billy, age ten months, Florida, age ten years, and Ann, age seven years. Through a deed of trust of the same date, Gunnell became indebted to Edwin Morgan of the District in the amount of \$200. The document stated that payment was due on demand with ten days notice, and if the amount was not paid, Morgan could seize the slaves and sell them at public auction. The deed does not indicate any relationship between the slaves and Gunnell.<sup>48</sup>

The make-up of Robert Gunnell's family was clarified after the Civil War. The 1870 census listed Gunnell in a household with a wife ten years his junior and a nineteen-year-old woman named Anna and her husband. The family lived on a small farm they

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Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 25–34, 534–535.

<sup>48</sup> Benjamin Mackall, "Deed of Manumission," June 3, 1856, Deed Book X3, 339, Fairfax County Circuit Court Historical Records Division; Richard Lee, "Deed of Sale," May 18, 1855, Deed Book W-3, 202, Fairfax County Circuit Court Historical Records Division; Edwin Morgan, "Deed of Trust," May 18, 1855, Deed Book W-3, 250, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 229.

acquired in 1864 when A. M. Washington, daughter of Richard Bland Lee and Elizabeth Lee, ordered a plat drawn in favor of Robert Gunnell outlining a parcel of land in Fairfax County containing 6 1/2 acres. Washington stated that the plat was recorded at the request of Benjamin Mackall, and all the heirs of Elizabeth Lee concurred in the land transfer. Washington also testified that to her knowledge the land had been the home of Robert Gunnell for the last 15 years. The plat does not show that Gunnell had purchased the land at the time of the transfer, or that he had made payments for the land over time. The public record is silent about why Robert Gunnell received this land, and why he had been willing to become indebted to acquire slaves. What is clear is that Gunnell's living arrangements operated on the border of slavery, and he was able to maneuver his life around its restrictions and provide for himself and those in his household.<sup>49</sup>

Extant records sometimes cannot fully explain either family connections or real estate transactions. In 1858, Warren Cartwright, age thirty-eight, purchased four acres of land from Thomas Carper, age forty-one, for \$100. The property sold was a small part of Carper's land holdings. Warren Cartwright was not registered as a free African American in Fairfax County records, and the origin of his freedom is unknown. Three years earlier in 1855, Thomas Carper had freed two slaves named William and Daniel. In his manumission deed, Carper explained that they were the children of a slave named Mary whom he acquired in 1844 along with another woman named Anna Maria. In 1860, Carper still owned ten slaves, nine of whom were listed as mulattoes. Carper's reason for

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<sup>49</sup> "1860 Census"; "1860 Census--Slave Schedules"; "1870 Census," n.d., Fairfax, Virginia, Ancestry.com. 1870 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2009; A. M. Washington, "Plat," July 26, 1864, Deed Book E-4, 164, Fairfax County Circuit Court Historical Records Division.

the manumission of William and Daniel and their ancestry is unclear, although they may have been related to Warren Cartwright. In 1860 Cartwright gave a deed of trust in the amount of \$110 in favor of Carper, even though he and 11 year old Daniel Cartwright are listed in that year's census as living in the Carper's household. Unlike most of Carper's slaves, the census describes the two Cartwrights as "black" indicating that they were not related to Carper. The whereabouts of William is unclear. One possible explanation is that William and Daniel were Warren Cartwright's children by the slave named Mary. If the freedom of Cartwright's mother dated prior to 1806, he would not have been threatened with deportation from Virginia; however if Mary had been manumitted, she may not have gained permission to remain in the state. If still living in 1860, William would have been around fourteen, an age at which he may have felt compelled to leave the area, but eleven-year-old Daniel might not have felt the same pressure to leave. Warren Cartwright may have been able to feed a family with the products from his small farm but his co-residence with Carper suggests that Cartwright's four acres of land did not allow him full independence.<sup>50</sup>

Gaining an economic foothold was arduous but not impossible for free African Americans. With the informality of land transfers, they often were able to work to purchase land, but the system had a major flaw. Upon the death of the white creditor, the heirs were under no legal obligation to continue the largesse of the deceased, and in those cases, the assistance of the court system was needed to formalize the transaction. Even

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<sup>50</sup> Thomas Carper, "Deed of Manumission," April 16, 1855, Deed Book W-3, 169, Fairfax County Circuit Court Historical Records Division; Thomas Carper, "Deed of Sale," April 17, 1858, Deed Book A-4, 73, Fairfax County Circuit Court Historical Records Division; Warren Cartwright, "Deed of Trust," March 27, 1861, Deed Book D-4, 133, Fairfax County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 287; "1860 Census"; "1860 Census--Slave Schedules."

when legally entitled to land, families that were part free and part slave often had a hard time utilizing the land for their financial benefit when income from the farm was needed to purchase family members. Still with the aid of benevolent whites, some mixed families were able to survive until all members were emancipated after the war, and they could realize the economic benefits of the land.

In Fairfax with its agriculturally based economy, many equated land holding with having a home and a place for family. The lengths to which free African Americans went to obtain land indicates that they thought having their own landholdings was crucial even when some family members were not free. Because of the disruptions to family life that slavery caused, the homes of free African Americans often varied from cultural norms. Families contained both enslaved and free members necessitated living arrangements that could not be described merely by the term “household” and could not be accurately depicted by the census taker. Communities developed that could incorporate both African Americans who were free as well as the enslaved, but the economic success of these arrangements was limited.

### **Challenging Racial Boundaries**

Marriages between enslaved and free African Americans were not legally recognized but were socially accepted; marriages between whites and African Americans were neither legal nor openly acknowledged in white society. Nevertheless, many free African Americans had close relatives who were white, but these relationships were often concealed from the public record. No matter their legality, African Americans recognized

these relationships as a part of life; however, cross racial families generally could not remain intact.<sup>51</sup>

Maintenance of a separate white identity was a particular concern of the Virginia legislature. In 1785, the Virginia General Assembly defined a mulatto as anyone who had at least one grandparent classified as a “Negro.” This definition was re-codified in 1792 and served as the standard for the state until 1833. This arbitrary standard was subject to community interpretation as Thomas Buckley found in his portrayal of the Robert Wright family of Campbell County, Virginia. Buckley argued that Wright gained entry into the local white society with an identity “constructed by economic class rather than race.”<sup>52</sup>

Laws enacted after Nat Turner’s rebellion providing that free African Americans for the most part would be treated the same as slaves in criminal proceedings upset this local social order and presented problems for the General Assembly. Virginia’s population contained persons who did not fit the definition of African American under the society standards or state law but who had African American ancestors. In 1833 in response to a petition from a Stafford County family which was remotely descended from an African American, the General Assembly passed a law that provided that persons who were “not a Negro” or fully white could apply for a certificate that proved their status. No record exists that such certificates were ever issued in Fairfax County, but the make-up of

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<sup>51</sup> Guild, *Black Laws of Virginia*, 30; Joshua D Rothman, *Notorious in the Neighborhood: Sex and Families Across the Color Line in Virginia, 1787-1861* (Chapel Hill: University of North Carolina Press, 2003), 57–87 Rothman detailed the inter-racial relationship between David Isaacs and Nancy West in Charlottesville, Virginia prior to the Civil War and found that whites generally accepted their “marriage” until they started living together.

<sup>52</sup> Thomas E. Buckley, “Unfixing Race: Class, Power, and Identity in an Interracial Family,” *The Virginia Magazine of History and Biography* 102, no. 3 (July 1, 1994): Quote taken from P. 357.; Guild, *Black Laws of Virginia*, 29–32.

the county's free African American communities challenged the legally conceived world in which people's lives could be defined by racial markers or even the ideals of enslaved rather than free persons. The 1833 Act recognized that persons of mixed ancestry complicated the state's race-based legal system. Nevertheless, the continued interactions among people classified as white, mulatto, or black free made such laws as the 1833 Act almost unenforceable. Community acceptance as white was the more powerful tool in shaping the lives of people whose parentage included non-whites. Unfortunately for free African Americans, white social acceptance of people was a matter of individual choice and was never supported by law.<sup>53</sup>

Being a part of a multi-racial family created unique living arrangements for African Americans. As an example, William Herring provided for his intimates without being publicly recognized as part of a family. For over thirty years, he lived with Mildred Bayliss, a white woman. Bayliss died in 1842 leaving a note payable to Herring in the amount of \$75. The lives of Herring and Bayliss may have gone unrecorded, were it not for a lawsuit brought by the Bayliss's heirs protesting the payment of that note. Bayliss did not appear in the census, or did she appear to own real estate, and she died intestate. Herring likewise did not appear in the census and was not registered as a free African American. During the contest over the legitimacy of the note, many facts about the lives of Herring and Bayliss were contested, but some agreement existed. Herring had cared for the household, and his only pay was food and his clothes. During the time of their

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<sup>53</sup> Guild, *Black Laws of Virginia*, 29–32; Rothman, *Notorious in the Neighborhood*, 204–234 Rothman provides a more complete discussion of race mixing in Virginia and more details concerning the 1833 “Not a Negro” legislation.

joint occupancy, two grandchildren had lived with them. At the end of their lives, both Herring and Bayliss had become somewhat disabled. According to the testimony of family and neighbors, Bayliss and Herring depended on each other.<sup>54</sup>

Nonetheless, family and neighbors provided differing accounts of the relationship which became the basis for a lawsuit brought by Bayliss's family in 1844. Since Bayliss died without leaving a will, no one could know her exact intentions. The plaintiffs contended that the note was a donation to Herring that should be paid only after all other debts had been satisfied. They also contended that "Herring was altogether unworthy of the benevolence of said intestate and that there was no adequate motive for a donation on her part—that said Negro has been a cripple for the last six years and instead of rendering any service to his intestate that he occasioned a great expense to her." The defense countered that Bayliss accumulated property only through the labor of William Herring. Even though he had suffered from a handicap, he had carried on the work of the household and maintained not only Bayliss but also her grandchildren for much of the time. No evidence indicated that the note represented anything other than Mildred Bayliss's desire to compensate Herring for his work. Several deponents testified that Herring controlled the affairs of the household, and one person testified that Herring and Bayliss had a son. Ultimately, the court dismissed the plaintiffs' case leaving intact the payment to William Herring, and thus at least indirectly affirming his role in the household. Whether his position in the home was that of family member or worker,

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<sup>54</sup> Fairfax County (Va.) Circuit Court, "Denty v. Beach," 1844, 1844-016, Local Government Records Collections, Fairfax County Records, Library of Virginia, Richmond, Virginia; "1840 Census"; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and "Register of Free Blacks 1835, Book 3, 1977; "Historic Records Finding Aids," accessed July 9, 2013, [www.fairfaxcounty.gov/courts/circuit/historical-records-finding-aids.htm](http://www.fairfaxcounty.gov/courts/circuit/historical-records-finding-aids.htm).

Herring was indispensable to the welfare of a white family. In spite of the denials by Bayliss's heirs, this mixed race household functioned well, though outside the social norms of Virginia.<sup>55</sup>

Unlike William Herring, William Hough had a publicly identified white family. Hough was born to a white woman and an African American man. He had a half-brother and a half-sister both of whom had a white father. Dying intestate in 1854, Hough had been pre-deceased by his brother and sister; his only heirs were his sister's three children. When he died, Hough had assets of value; and the court appointed William Wrenn as the administrator of the estate. Wrenn died shortly after his appointment leaving his wife, Leah Wrenn, to settle his affairs. After her husband's death, Wrenn did not focus on settlement of the Hough estate. The Hough heirs took the matter to court, and in November, 1860, the court instructed Wrenn to settle the Hough estate. The Civil War intervened, and the case was brought back to court in 1867. At that time, Wrenn defended her inaction by saying that she had no way of determining the heirs of William Hough. The white niece and nephews of Hough had admitted their relationship with their African American uncle in order to receive their share of the estate valued at \$272. Possibly because of greed, Leah Wrenn had difficulty attesting to the reality of this mixed race family. White families often struggled to admit that they had African American relatives, but in the case of the Hough family, the survivors seemed to think an inheritance justified the public admission of their link to a mixed-race uncle.<sup>56</sup>

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<sup>55</sup> Fairfax County (Va.) Circuit Court, "Denty v. Beach."

<sup>56</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Hough v. Wrenn," 1867, 1867-018, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

It is difficult to know the extent in which mixed race families were a result of relationships between white women and African American males. William Hough never registered with Fairfax County, and over the nearly forty years that the register was maintained only four free African Americans were listed as having white mothers. The public recognition of this phenomenon was inconsistent, and the white family's public recognition of these relationships was rare. Still, the structure of the free African American household often challenged the expected norms of white Fairfax County society.<sup>57</sup>

### **Working the Land without Ownership**

Intact families and access to land were the keys to the growing economic independence of free African Americans in rural areas such as Fairfax County. The unrestricted use of land could be just as important as outright ownership of the farm. Having use of real estate allowed ex-slaves and their progeny to grow crops, own livestock, and begin the process of wealth accumulation. In some cases, title was hard to determine, and in other situations, free African Americans leased land. In either case, rights to the land and its products often came well before the possession of a recorded title.

Nevertheless, property disputes sometimes erupted even among intact families. As an example, a Fairfax County Chancery Court enjoined Frederick Jones from selling twenty acres of land to William Shreve in 1870. Jones had numerous brothers and sisters,

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<sup>57</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 33, 54, 82, 196.

and at the death of their father, Wiley Jones, the siblings brought suit against Frederick Jones to settle actual ownership of the land. Documentation of title to the land showed some discrepancies. The 1844 deed that transferred the land named Frederick Jones as the owner, but in 1855, when the railroad came through a corner of the property, that plat named Wiley Jones. The elder Jones was not registered as a free African American, but his wife Milly registered as having been born free, and at least six of her children registered as free based on their mother's status. Both the 1840 and 1850 census of Fairfax County counted Wiley Jones and his family and listed him both as the head of the household and owner of real estate. Frederick Jones was not enumerated in those years or in the 1860 census. Nonetheless in 1876, when Frederick Jones was sixty-one years old, he sought reimbursement from the Southern Claims Commission for losses suffered during the war. Jones testified that in 1841 he purchased the land in question from John Robertson and paid the necessary price in installments before the war began. Frederick, a carpenter, also testified that he built an eight-room log cabin on the property. The court case never explained whether Wiley Jones had an ownership interest in the real estate. He may have gained his freedom and was recognized in the community as being free, but if such emancipating documents existed, they were never recorded. Because Frederick Jones had a clear claim to freedom, he could have been a proxy for his father to purchase the land. The public record does not clarify the situation. The confusion over actual ownership became important only after the death of Wiley Jones. The land had supported Wiley Jones's large family even though no indication exists that he ever had actual title to the property. Moreover, this case shows that when a family member rather than a white

owner held title to the land, settling the title after death was less difficult. Although his siblings may have felt unrewarded, Frederick Jones's legal ownership allowed the land to be used by his father for the benefit of the entire family.<sup>58</sup>

Probably many more free African Americans rented rather than owned land, but before the Civil War, records do not enumerate renters. Furthermore, there is little evidence to indicate if those persons leased in anticipation of later ownership. Such was the case for Gabriel Jones who had rented land from Daniel Dulaney where he planted oats and corn. Gabriel, the younger brother of Frederick Jones, also filed a claim for losses suffered during the war. Dulaney testified that "He is an extraordinary man, thrifty, well-to-do, and much respected." Gabriel, although not possessing his brother's skill as a carpenter, was a successful farmer who depended upon family members living with Frederick Jones to help with his farm work, but his achievement came without owning the land he worked.<sup>59</sup>

Sometimes renters were able to maintain a favorable relationship with their former masters. Henry Escridge lived on and grew corn and hay on land rented from the family of his former owner. For his efforts, Escridge retained one third of his crop. His other income came from chopping wood and working at odd jobs for neighbors. The

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<sup>58</sup> Alexandria, Loudoun and Hampshire Railroad, "Plat," February 19, 1855, Deed Book W-3, 45, Fairfax County Circuit Court Historical Records Division; John Robertson, "Deed of Sale," August 17, 1844, Deed Book D-3, 375, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, "Honesty v. Jones," 1869, 1869-014, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Southern Claims Commission, "Claim of Frederick Jones," March 3, 1877, Southern Claims Commission Binder, 514, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 287; "1840 Census"; "1850 Census," n.d.; "1860 Census."

<sup>59</sup> Southern Claims Commission, "Claim of Gabriel Jones," March 5, 1873, Southern Claims Commission Binder, 515, Fairfax County Circuit Court Historical Records Division.

extent of sharecropping arrangements in Fairfax prior to the Civil War is unknown, but Escridge's other sources of income indicate that farming on shares offered a meager existence.<sup>60</sup>

Sometimes rental land supplemented the income of the lessee. Benjamin Lewis had been free for only a couple of years before the Civil War. After his manumission, he found work that paid \$25 a month and also rented thirty acres of land where he grew fruit and garden crops. He acquired cows and a wagon which the Union Army commandeered during the war. Some of his income came from huckstering in Washington, D. C., although the types of products he sold cannot be determined. In his claim for the reimbursement of his war losses, Lewis depended on the testimony of other African Americans, none of whom mentioned his former master. How Lewis gained access to renting land is unknown, but like others in his situation, he was able to support his family and to accumulate some possessions during a short period of freedom.<sup>61</sup>

Little is known about the persons who lived on leased land. The 1860 census does not enumerate Gabriel Jones, Henry Escridge or Benjamin Lewis as heads of households, and the agricultural census records do not reveal the extent of the success of farming ventures. Only through their claims for losses during the Civil War are we able to know about these people. In an agricultural community such as Fairfax County, the income of free African Americans often came from the land. Leasing land provided a way to gain access to a farm even if the terms were not favorable to the lessee.

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<sup>60</sup> Southern Claims Commission, "Claim of Henry Escridge," September 24, 1874, Southern Claims Commission Binder, 250, Fairfax County Circuit Court Historical Records Division.

<sup>61</sup> Southern Claims Commission, "Claim of Benjamin Lewis," May 31, 1877, Southern Claims Commission Binder, 557, Fairfax County Circuit Court Historical Records Division.

Ownership of land for former slaves was not common prior to the 1850's. Free African American families may have lived and farmed land while they were accumulating cash to pay for it as had been the case with the Harris family. Unlike the accepted practice today, the purchaser did not acquire title until final payment was made. In other situations, such as Dennis Comer's, title did not pass until the purchaser's family demanded in court evidence of clear ownership. The informality of the land transfer system between free African Americans and white sellers may reflect the personal relationships that often existed between buyer and seller in which the purchaser trusted that after paying for the land, title would be vested. Undoubtedly, sellers or their heirs sometimes acted in bad faith, as indicated by the number of court cases involving Daniel and Molly Sharper before their family gained clear title to property that they inherited. No matter the motives involved, by the 1850's Fairfax County's free African American families were demanding clear title to property as they took advantage of the availability of land, a stronger economy, and modernized farming techniques to join in the area's agricultural revival.

Fairfax's free African Americans could only dream of political autonomy prior to the Civil War, but some found that they could achieve a measure of economic independence. Free African American families' access to land gave them the opportunity to live a comfortable existence and become accepted within the community. Very few of this group had the economic means to purchase large tracts of farmland, but many paid for their real estate over time with the income from their labor. Others, especially those

who lived in an uncertain state between slavery and freedom, had to wait for ownership. The county government had the power to assure clear title to property, but whites for a variety of motives failed to initiate the necessary paperwork for free African Americans to exhibit clear ownership. The death of a white supporter often gave heirs an opening to deny the legitimacy of claims of their free African American neighbors. In spite of these roadblocks, families were able to use their agricultural skills to work the land for themselves and to gain a measure of success within their domain.

## **CHAPTER FOUR--A PERILOUS PATH TO INDEPENDENCE FOR WOMEN**

Free African Americans found keeping their families intact was not easy. Mixed status families were often separated; relationships with white males could create shadow families; and the work available did not always provide income to support a family. The division of labor in nineteenth-century farm families found men most often responsible for maintaining the farm and crops while women took care of the animals, performed domestic chores, and cared for the young children. When families were divided, the problems were particularly acute for women who found it difficult to handle domestic obligations and yet maintain fields and crops. The failure to have the full time labor of all members made economic success on the farm difficult.<sup>1</sup>

Whether on the farm or not, women who attained their freedom from slavery typically found their daily work did not greatly change. Fairfax County offered few ways for women to support themselves. The development of the contiguous urban centers of Alexandria and Washington, D. C. made these locales more likely areas in which free African American women could market their skills for more lucrative work. In 1860, the census listing the employment of adults in Fairfax County enumerated no free African

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<sup>1</sup> For the purposes of this paper, the term “intact family” is used to reflect those families who did not have the ability to draw on the labor of all family members. Often this reflected white appropriation of the family’s labor through slavery or apprenticeship.

American woman as having a job outside the domestic sphere.<sup>2</sup> These freed slaves and their daughters toiled in the daily struggle to produce food, care for children, make clothes, and tend to the numerous other household duties. With the limitations placed on their autonomy, the disparate impact of divided families on women is evident.<sup>3</sup>

The nature of the bond between white males and free African American women is often difficult to determine. No matter how overt the relationship may have been at time, succeeding generations of white families have often denied anything other than purely platonic or mundane acquaintances. The connection between Sally Hemings and Thomas Jefferson has been a matter of controversy, and even Annette Gordon-Reed in her thoroughly researched book often has to speculate about what sort of emotional bond existed between Sally Hemings and her famous master and close acquaintance. Historian Joshua Rothman narrated another Charlottesville relationship between a white man, David Isaacs, and a free African American woman, Nancy West. Even though their bond was well known in the community, Rothman points out that after Isaacs's death, West was very vulnerable to lawsuits over property because her marriage had not been legally recognized in Virginia. Historian Adele Logan Alexander also pointed out the risks associated with free African American women in a relationship with a white man. Susan Hunt lived undercover with her partner Nathaniel Sayre in a small town in Georgia and had three children by him; however, after Sayre's death, Hunt, despite the children, had no legal right to any of his assets. In each of these cases, free African American women

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<sup>2</sup> "1860 Census" Many women had no occupation listed. Employment shown was often listed as housekeeper or domestic servant.

<sup>3</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*.

had found class mobility, but their move upward depended upon the good will of a white man and did not guarantee stability for their children. In Fairfax, similar situations occurred, even though they represented only a small cross section of freed women in the county.<sup>4</sup>

The chance for women to overcome the breakup of an intact family was rare. Nevertheless, while many women of color found other ways to establish their lives free from dependence, outcomes differed depending on time and place. T. O. Madden, Jr. told the story of his ancestor, Sarah Madden of Culpepper County, Virginia, who used her household skills in working for white patrons in the early nineteenth century to support her family. She became prosperous in the wake of the American Revolution at a time before whites became more stridently resentful of African American independence. Conversely, Brenda Stevenson's study of free African American women in rural Loudon County, Virginia in the decades prior to the Civil War found females had to rely on personal ties with patrons to succeed.<sup>5</sup>

Unlike women in these rural settings, women in urban areas had more resources to overcome their adverse circumstances. Suzanne Lebsack found that free women in Petersburg, Virginia used their meager wages to purchase a disproportionately high share of the real estate owned by African Americans in that city. She has speculated that many of these women did not wish to marry because that status would cause them to lose control over their property. Lebsack's story of urban women struggling to succeed with

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<sup>4</sup> Annette Gordon-Reed, *The Hemingses of Monticello: An American Family*, 1st ed (New York, NY: W.W. Norton & Co, 2008); Rothman, *Notorious in the Neighborhood*, 57–87; Alexander, *Ambiguous Lives: Free Women of Color in Rural Georgia, 1789-1879*.

<sup>5</sup> T. O. Madden, *We Were Always Free: The Maddens of Culpeper County, Virginia: A 200-Year Family History*, 1st ed (New York: Norton, 1992); Stevenson, *Life in Black and White*.

little help has been countered by Amrita Chakrabarti Myers's study of free African American women in Charleston, South Carolina. Myers asserted that these women exploited their relationships with their patrons not only to maintain their freedom but also to distinguish themselves from other women of color in the city. The experience of urban and rural free African American women clearly differed as greater economic opportunity existed in cities. This difference makes the study of these women in Fairfax County of interest. With the urban areas of Alexandria and Washington, D. C. close by, this urban/rural dichotomy was sometimes blurred. Still, the challenges facing free African American women who headed families were magnified.<sup>6</sup>

The difference between urban and farm life is only one of the important factors in understanding the lives of free African Americans. While this study argues that the disparate impact of fragmentation of core families is central, other historians have emphasized the importance of class in the lives of women. Studying the women in three diverse counties in North Carolina, Victoria Bynum found that both free African American women and poor white women confounded the patriarchal social system of the plantation. Bynum concludes while wives of the patriarchs produced heirs for their husbands and slave women produced more workers, neither poor white women nor free African American women fit into this social ideal. Their lives and particularly their sexual activity challenged the gender assumptions of the society. In summarizing the lives of antebellum Virginia women, Cynthia Kierner indicated that free African

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<sup>6</sup> Suzanne Lebsock, *The Free Women of Petersburg: Status and Culture in a Southern Town, 1784-1860*, 1st ed (New York: Norton, 1984), 87-111; Amrita Chakrabarti Myers, *Forging Freedom: Black Women and the Pursuit of Liberty in Antebellum Charleston*, Gender and American Culture (Chapel Hill: University of North Carolina Press, 2011).

American women were more likely than white women to be heads of households, but neither they nor white farm women could achieve the ideal of the leisured southern lady dependent on her husband. As the great estates of Fairfax were dismantled after the Revolution and the new class of yeoman farmers took over the land, farm work came to define the lives of the majority of women across racial lines. Under the best of circumstances, patriarchal assumptions muted women's individualism. Still, farm work provided security and the satisfaction of not being beholden to a white patron. Being a part of an intact family who worked the farm together often determined whether women found a modicum of independence or spent their lives laboring for others.<sup>7</sup>

By focusing on women whose families were separated by race or slavery, the plight of free African American females in a rural society is revealed. Hard work was a part of their daily lives, but without an intact family, this labor did not offer economic security. Moreover, these women were vulnerable to physical attacks and were susceptible to the whims of the men in their lives. The adverse impact of family separation on the lives of free African American women heads of household is an area that deserves further study.

### **Struggling to Find Protection**

Family life in rural Fairfax County required not only much hard work from each member but also diligence in protecting the most vulnerable members. Rural isolation

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<sup>7</sup> Victoria E Bynum, *Unruly Women: The Politics of Social and Sexual Control in the Old South*, Gender & American Culture (Chapel Hill: University of North Carolina Press, 1992), 10; Cynthia A. Kierner, *Changing History: Virginia Women Through Four Centuries* (Richmond: Library of Virginia, 2013), 91–140.

magnified the dangers when the family was threatened with bodily harm. Economic perils accompanied the physical risks. Becoming a land owner and producer, without either the education or background to handle such tasks, also carried its own pitfalls. While understanding the planting, harvesting, and cultivating of crops, many free African Americans were illiterate making them vulnerable to unscrupulous transactions in the marketplace. Lack of education and experience also meant that freed persons did not understand the intricacies of acquiring and recording title to land purchased or settlement of an estate. For free African American women who had relied on a white protector, death of that patron left them at risk. Legal entanglements and debt could weigh heavily on the survivor even if the deceased had bequeathed substantial assets for support. The well-being of women left without physical, economic and legal protection could be easily endangered.

When death brought about the final separation for families divided by race, African American women who had enjoyed the comforts of living with a white patron often struggled economically when left on their own. In their lifetime, white advocates did little to prepare these women to live independently. Instead using their wills to free these special slaves, these men left a bequest for the newly freed woman without providing any assistance for them in how to take advantage of this windfall. For instance, in 1858 David Betzhold directed his daughter in his will “not to sell my slave girl Sarah Grey on any account, and if she has no use for her services, either to manumit her or procure for her employment with such person as will treat her humanely and kindly.” Betzhold reconsidered his will and in a codicil directed that Sarah be freed, relocated

outside Virginia, and receive \$20. In his 1861 will, Francis Coffey directed that his slave Phillis and her four sons be freed, and he left the family all his stock, his farming and household goods, and the proceeds from the sale of his land. Unfortunately for Phillis and her family, the Civil War intervened, and the will was not recorded until 1865. In both cases, the masters were unwilling to live without the services of their female slaves. Even though these masters made some provision for a later freedom, they were unwilling in life to assure that these women would not only be free but also capable of living independently.<sup>8</sup>

Even when a free African American woman and a white male apparently lived as a family, the death of the devotee left the family vulnerable. Such was the case of Mary Harris who according to the 1860 census, lived in the household of Thompson Javins, a white slaveholder from the eastern part of Fairfax County. The relationship between Harris and Javins cannot be ascertained from the public record, but upon his death in 1876, she became the heir to his estate including all his real and personal property which was valued in the 1870 census at \$2,600 for the real estate and \$1060 for the personal property. Furthermore, Javins declared that upon Harris's death, the remainder of the estate should pass to her seven children, Norman, Samuel, Jack, Thompson, Mary Elizabeth, George, and John. The reason Javins chose to leave his estate to Harris and her family is unclear, but he very carefully described the children as belonging to Mary

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<sup>8</sup> David Betzhold, "Will," January 18, 1858, Will Book Y-1, 434, Fairfax County Circuit Court Historical Records Division; Francis Coffey, "Will," July 17, 1865, Will Book Z-1, 339, Fairfax County Circuit Court Historical Records Division.

leaving their paternity open to question. Whether the legatees were family, Javins' gift to the Harrises was extraordinary in its generosity.<sup>9</sup>

Javin's relationship with African Americans was complex. Even though he was a slaveholder, he conducted financial transactions with free African Americans. In November 1860, Javins sold thirteen acres of land to William Jasper for \$200. This transaction was followed closely by the sale of nearly five acres to Laurinda Jasper for \$200. Javins acknowledged this transaction in 1860, but the deed was not finally recorded until 1864. In early 1861, Javins completed a transaction with Verlinda Quander whose husband, Philip, had died several years previous to this sale and had already paid the full price of \$150 for the land. No indication exists why Javins decided to complete these transactions just as sectional tensions leading to the Civil War had heightened. The reasons for the delay in completing the transactions with the two women also cannot be determined. None of these three sales took place on particularly favorable terms leaving the generosity shown towards Mary Harris still ambiguous.<sup>10</sup>

Javins's death made it clear that Mary Harris had special meaning in his life. Along with the seeming good fortune of inheriting Javins's estate, Mary Harris was named executrix of the will, a responsibility for which she struggled. Because Javins left debts, creditors a couple of years after his death were demanding an accounting of the estate. All of Harris's children were still under the age of twenty-one and could be of

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<sup>9</sup> "1870 Census"; Thompson Javins, "Will," September 1876, Will Book C-2, 377, Fairfax County Circuit Court Historical Records Division.

<sup>10</sup> Thompson Javins, "Deed of Sale," November 18, 1860, Deed Book D-4, 17, Fairfax County Circuit Court Historical Records Division; Thompson Javins, "Deed of Sale," April 19, 1864, Deed Book E-4, 81, Fairfax County Circuit Court Historical Records Division; Thompson Javins, "Deed of Sale," February 18, 1861, Deed Book D-4, 59, Fairfax County Circuit Court Historical Records Division.

little help to her in matters of finance. In 1876 after having sold all of the personal property, Harris declared to the court that she knew nothing of the creditors' claims, and the interests of the children were turned over to the care of the court. The sale of the personal property did not cover the obligations of the estate, and in 1883, real estate consisting of forty-eight acres of land was put up for public auction.<sup>11</sup>

Once Harris lost the protection of her white patron, her economic status deteriorated quickly. Because of Javins's debts and Harris's inability to generate income from the farm to pay creditors, she had lost everything within a few years of his death. While alive, Javins had managed his finances through a network of acquaintances who had not demanded satisfaction of the debts as long as he operated his farm. Mary Harris had no personal leverage with the creditors who demanded payment immediately. Harris was seemingly set on a path to independence; however, in the end she was left with a large family and no ability to earn other than through her domestic skills. Without an advisor to help with the estate settlement, Mary Harris was vulnerable to unknown claims and unable to defend her interests.<sup>12</sup>

While Mary Harris's well-being was compromised by the death of a man who was likely an undocumented family member, Nancy Simms found her independence undercut by the actions of her blood family members. She was the daughter of Levi Simms, a mixed-race man, and Betsey Tanner Simms, a white woman. As one of four children, two of whom died early in life, Nancy and her brother George were the only

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<sup>11</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Huntt v. Harris," 1883, 1883-034, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>12</sup> Ibid.

heirs to her father's small accumulation of wealth. In spite of her position as an heir to her father's estate, Nancy Simms had not acquired the skills that would allow her to defend her legacy against her brother.<sup>13</sup>

Simms's future was seemingly taken care of by her father, Levi Simms, who was one of the early free African American landowners in Fairfax County. In 1825, he purchased eighty-seven acres of land for \$532 at public auction. The property was called "Barnaby" and had been previously owned by Edward Washington. Simms's purchase was accomplished through a note due to James Sangster in equal installments over three years after the date of purchase. By 1833, that note had been satisfied, and in 1838, Simms was able to purchase another twenty-five acres from Eli Offutt for \$120. While Simms never declared his source of income in public records, he apparently owned a tavern.<sup>14</sup>

A free African American conducting business was not easy, and Simms's connection with the business was controversial. In 1836, he petitioned the Virginia General Assembly asking to be relieved of fines levied against him for selling spirituous liquors without a license. In the petition, Simms stated that he rented a house to William Reardon where the two men operated a tavern. Reardon had obtained a license, apparently paid for by Simms, to operate the tavern. In Reardon's absence, he had granted Simms written authority to operate the business, an act that Reardon later denied.

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<sup>13</sup> Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 82, 86–87.

<sup>14</sup> James Sangster, "Deed of Sale," February 22, 1825, Deed Book V-2, 365, Fairfax County Circuit Court Historical Records Division; Levi Simms, "Deed of Trust," February 22, 1825, Deed Book V-2, 367; Charles Ratliffe, "Release," March 18, 1833, Deed Book A-3, 349, Fairfax County Circuit Court Historical Records Division; Eli Offutt, "Deed of Sale," September 29, 1838, Deed Book E-3, 329, Fairfax County Circuit Court Historical Records Division.

The legislature referred the matter to committee who later found that Simms's request was reasonable. The legislative decision emerged after long years of contention over the sale of liquor by Simms who had produced documentation of Reardon's permission, dated in 1827, to operate the tavern in his absence. Still, the matter was not closed until the county's conviction of Simms for unauthorized sale of liquor resulted in a pardon from Governor John Floyd in 1832. When the charges once again were leveled against Simms after the pardon, the legislative committee considered as a factor an affidavit from a white community member stating that Simms had always had authority to operate the tavern. Regardless of the controversy between Simms and Reardon, it is clear that Fairfax County authorities did not want free African Americans operating taverns, even though Simms was able to keep the operation going only with the permission and support from the white community. Despite Levi Simms's legal entanglements, he managed to provide income that should have made his family financially secure. The case, however, gives no indication that Nancy Simms was ever involved in the business nor can it be ascertained from other sources.<sup>15</sup>

How long Nancy Simms remained part of her father's household cannot be determined. The public record does not indicate what happened to Betsey Tanner Simms but likely she died. In 1837, Levi Simms remarried, and his partner, Fanny Edmunds Simms, again was white. By this time the Simms children, including Nancy, were grown, and Levi's re-marriage to Fanny Edmunds provided a wife to care for him as he grew older. When Simms died intestate in 1847, the courts did not recognize his second

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<sup>15</sup> Levi Simms, "Petition to the General Assembly," February 10, 1836, Reel 50, Box 70, Folder 62, Library of Virginia, Richmond, Virginia.

marriage, leaving George and Nancy Simms as heirs to their father's property. Named as administrator of the estate, George Simms was soon sued by Fanny Edmunds Simms who claimed that she had cared for Levi Simms for ten years and should be compensated. She requested \$1,000, which was \$100 a year for each year of her care. The suit was settled for \$100.<sup>16</sup>

Even when dealing with siblings, free African American women were vulnerable. As George Simms settled one case, another controversy arose involving Nancy Simms. After George Simms gained control of his father's property in 1849, his sister alleged that he drove her from the property. She brought suit in 1853, and after a very deliberate process in which neighbors testified that Nancy was indeed the daughter of Levi Simms and Betsey Simms, George Simms eventually agreed in 1860 to give his sister an undivided interest in the property. This settlement did not end the family animosity towards George Simms. After the Civil War, brothers and sisters of Levi Simms and their descendants staked their claim to part of the property. Even though their claim was rejected, leaving Nancy with her undivided interest, she appears to have never profited from her inheritance. When she died in 1879 unmarried, her death was reported by the Superintendent of the Poor. Although no evidence indicates that her father sought to exclude her from inheriting his property, laws that amplified male power over property left Nancy Simms dependent upon the goodwill of her brother. George Simms profited

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<sup>16</sup> Fairfax County (Va.) Circuit Court, "Simms v. Simms," 1853, Term Papers, 1853, Box 1, Fairfax County Circuit Court Historical Records Division.

from his father's estate, but there is no evidence that he willingly shared his gains with either of the women who had been a part of his father's life.<sup>17</sup>

Not only did unmarried women live with erratic economic and legal support from males, they also received inconsistent physical protection. African American women had endured rape as a part of their existence in slavery. After emancipation, they gained some legal defense from sexual assault; however, white males continued as the arbiters of the seriousness of the transgression. Historian Diane Sommerville has argued that courts sometimes ignored charges of rape lodged by lower class women, believed by white males to be of low moral standing. With these realities, Permelia Cole charged in 1847 that Buck Lacy, then in Fairfax although he was a resident of Georgetown in the District of Columbia, had raped her. Both parties in this complaint were free persons of color. The court heard Cole's complaint, found Buck Lacy guilty of disturbing the peace, and sentenced him to thirty nine lashes. Although the reduction of the charge minimized Coles's accusation, still the court in its punishment of the assailant recognized that a crime had been committed. Laura Edwards's assertion that often local courts were most concerned with keeping the peace may explain the reduction of the charge. Nonetheless, free African American women had uncertain legal recourse for this type of assault.<sup>18</sup>

Other forms of violence also menaced free African American women living on their own. A stark example occurred at the home of Cynthia Runnells, a free African

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<sup>17</sup> Fairfax County (Va.) Circuit Court, "Simms, N. v. Simms, G.," 1860, Term Papers, 1860, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, "Evans v. Simms," 1867, 1867-033, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Sprouse, *Fairfax County in 1860: A Collective Biography*, 1773.

<sup>18</sup> Fairfax County (Va.) Circuit Court, "Commonwealth v. Lacy," 1847, Term Papers, August 1847, Fairfax County Circuit Court Historical Records Division; Sommerville, *Rape and Race in the Nineteenth-Century South*; Edwards, *The People and Their Peace*.

American woman in her prime working years who lived in a cabin near the home of William Nevitt, an elderly white farmer and slave owner. On the morning of May 6, 1850, John Cogswell entered the cabin and bludgeoned to death Cynthia's son Edward and her mother Rachel, who was enslaved to William Nevitt. A passerby heard the dying screams of the victims and went to the cabin to check on the commotion. A search for the assailant was quickly organized, which resulted in Hanson Runnells, another slave of Nevitt's whose relation to the victims is unknown, finding Cogswell with blood on his clothes and some personal articles taken from the cabin. Cogswell was detained and charged with the murder. Most likely, the grandmother was watching her grandson while Cynthia Runnells was working elsewhere. The case consists mainly of testimony from neighbors who knew the victims and took part in apprehending the perpetrator. While the motivation of Cogswell was unclear, the Nevitt family indicated that he had visited them shortly before the murder and complained of having never been paid for his work for the fishing company of Calhoun and Arnold. Whether revenge or simply lashing out during a period of emotional instability, Cogswell was aware that an African American woman and a child at home while others were at work formed an easy target. Convicted of the crime, Cogswell was sentenced to sixteen years in prison, a punishment that does not seem harsh considering the brutality of the murders. The life of an elderly slave woman held little value in antebellum Fairfax. For Cynthia Runnells, her cabin not only marked the place of the murder of her mother but also symbolized the potential danger to African American women of physical violence from males in her community.<sup>19</sup>

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<sup>19</sup> Fairfax County (Va.) Circuit Court, "Commonwealth v. Cogswell," 1850, Term Papers 1850, November

Free African American women lived in a society in which they were vulnerable both because of their race and their gender. In a rural county, violence surrounded them, ranging from masters' punishment of slaves to the slaughter of animals for food. Free African American women existed with these realities. As these criminal cases have shown, they also had to endure the threat of physical harm from male aggression. From both the standpoint of economic stability and physical comfort, male protection made life easier for Fairfax's free African American women. Single women living alone or as the head of the household could not be assured of finding male protection. Nevertheless, many freed women battled to maintain their independence in spite of the odds.

### **Grappling with Land Ownership**

Separated families often found it more difficult to own or maintain ownership of land. Again, the impact was much greater on women. Real estate owned by free African Americans most often was titled to a male. Sometimes the reason appears obvious as when free men married enslaved women. In other cases, protracted disputes over property ownership may have precluded including wives on the title to real property. In other cases, the reasons that only the man appeared on the deed are not apparent. Nevertheless, a woman's interest in real property was recognized when property was sold as the names of both husband and wife appeared on the deed as sellers. Examples of this practice include George and Judy Harris's sale of some of their property and George and Rebecca Holland's disposal of a small landholding. These transactions most likely reflect the

wife's dower interest in the property, but it is difficult to place these transactions in context since free African Americans were fighting to purchase property rather than selling their holdings. Nevertheless, even in intact families, a woman's interest in real property was not the same as that of her husband.<sup>20</sup>

Free women who headed separated families were at a disadvantage since they were less likely to have land to support their households. The extent of female headed households without access to land is difficult to quantify. Even though few women could afford to buy land, some may have lived on and worked farms for others, but little evidence of these arrangements can be found. Even identifying female headed households is problematic. Evidence of marriage is scant, and census data does not show spousal relations. Some marriages between free African Americans may have been informal and never recorded by county officials. Even in the case of recognized marriages, Fairfax County records only date back only to 1853. Prior to that time, a person's marital status is difficult to ascertain. Because of the paucity of records, the nature of family relationships is often only recorded in court cases, and much of the evidence used for this chapter comes from this source.

These cases show that while hampered in their ability to purchase property, some free African American women did own real estate. Unlike their male counterparts who often bought land and repaid the owner over time before the title was transferred, evidence suggests these terms were not generally offered to females. Lending to women

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<sup>20</sup> Harris, "Deed of Sale"; Holland, "Deed of Sale"; G. K. E., "The Relinquishment of Dower and Curtesy Between Husband and Wife in Virginia," *Virginia Law Review* 13, no. 5 (March 1, 1927): 418–25, doi:10.2307/1065218.

may have been viewed as more risky due to patriarchal customs that limited not only their engagement in business matters but also their incomes. To mitigate that risk, their land was held in trust for the benefit of the lender, and court cases show that women were threatened with losing their property for non-payment. Free African American women's purchase of real estate often resulted from their relationship with a white male. How these acquisitions occurred illustrates the difficulty of acquiring wealth and maintaining an intact family in these circumstances.

How antebellum free African American women gained ownership of real estate is important because they, like white women, found owning real estate easier when they were supported by a benevolent male. In rural areas where economic activity was centered on agriculture, African American women's role as laborer was important; however in intact families, their work was only a part of the contribution needed from all members to own and maintain a farm. Although their relationships with males often defined women's lives, the story would not be complete without the accounts of those free women who fought for independence for themselves and their families. Like free African American men, these women wanted not only freedom but also the ability to live on their own terms.

The story of Sarah Ambrose covers over forty years and exemplifies the difficulty that family instability presented for free African American women in a rural community. In that time, she owned two hundred acres of land but was unable to use this asset to claim the economic benefits that were enjoyed by other free African American families. Whether Ambrose ever tried to work the land is undocumented, but her financial

struggles coincided with forays into illicit businesses suggest that farming did not provide for her well-being. When her protector died early in her life, she faced the hostility of his family without the wherewithal to fend for herself. Ambrose never stopped fighting for her independence, but eventually when she was forced to sell her land, she once again sank into a life of dependency.

The record of Sarah Ambrose's life began with her relationship with William Gunnell, a member of a prominent white Fairfax County family. For Ambrose, Gunnell offered the lure of having a better life but the disapproval of white family members unraveled those ambitions. William Gunnell, who is distinguished in Gunnell family lore from those others bearing the same name by the designation "William of Thomas," developed a special relationship with Ambrose. The disapproval of the Gunnell family makes it difficult to ascertain the kind of the association between Ambrose and Gunnell. Possibly, though unlikely, the relationship may have been platonic. While there is no indication that the couple produced children together, Ambrose had children.

The harshness of the Gunnell family's feelings showed through in the 1817 will of Robert Gunnell, who was both William's step-father and uncle. Gunnell used his will to free his slaves. Their emancipation would be accomplished after they had been hired out for some years to earn money to pay for their travel to "where they can enjoy their freedom unmolested and there be free." From this manumission of his slaves, we can see that Robert Gunnell did not oppose freedom for African Americans, but apparently such tolerance did not extend to their relationships with his family members. After making

provision for dividing his property, Gunnell had a special last request regarding William of Thomas.

And in the case William Gunnell of Thomas should live till his property should be unproductive or wasted as not to afford him the ordinary comforts of life, I mean victuals, clothing and board or either of them, my desire is in such case or cases that his brother may assist him in all and every of these cases only as far as he may stand in need but not while he resides or lives with Sarah Ambrose (even for the space of four hours of the year) or with any of her children or any of her relations or kindred or while any of them lives or resides with him or lives by his assistance or by any of the most distant means under his protection.

Robert Gunnell's will leaves us with no explicit indication why Sarah Ambrose was singled out for such singular mention and why association with her would be so severely punished. Whether the issue entailed race alone, possibly was caused by animosity between family members, or involved disapproval of an extramarital commitment can never be known, but Robert Gunnell's will set the tone for her relationship with the Gunnells for the rest of her life.<sup>21</sup>

In spite of family animosity, the strength of the bond between this white patron and his African American mistress can be seen. William of Thomas continued his relationship with Sarah Ambrose; and when he died in 1822, he left her all his possessions with the exception of one slave, Teddy, who was to be sold to satisfy the just debts of the estate. In one last defiant act towards his family, William of Thomas declared that "all that part of my mother's dower that is coming to me, at her death, I also will and bequeath to Sarah Ambrose to her and her heirs forever." That request later would give rise to contention within the Gunnell family, but in the immediate aftermath of the death

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<sup>21</sup> Robert Gunnell, "Will," November 19, 1817, Will Book L-1, 176, Fairfax County Circuit Court Historical Records Division.

of William of Thomas, Ambrose was able to probate the will and the Sheriff was appointed to administer the estate.<sup>22</sup>

After the death of William of Thomas, it appears that the family's disdain for Sarah Ambrose became a financial matter. Elizabeth Gunnell, the mother of William of Thomas, outlived her son. Her first husband and William's father, Thomas, had died intestate in 1801 and left her a dower interest in slaves. Her second husband was Robert Gunnell, a brother to the deceased Thomas Gunnell. Robert's will of 1817 not only freed his slaves but also expressed his wish that the dower slaves of Elizabeth Gunnell should also be freed. Elizabeth Gunnell died in 1827 in Frederick County, Virginia. In her will, she left everything to her two surviving children, Henry Gunnell and Ann Stanhope. Her bequests did not mention any heirs of her deceased children including Sarah Ambrose.<sup>23</sup>

The financial considerations bequeathed to Ambrose continued to trouble family members, even though at this point one would not expect Sarah Ambrose to be part of the Gunnell family affairs. Thomas and Elizabeth Gunnell had five children, Thomas, Jr., James, William, Henry, and Ann. Thomas, Jr. died at an early age and left no heirs. When James tragically died at sea in 1810, he also left no heirs. William of Thomas was named administrator of his estate. After William's death, his mother quietly purchased his rights in his father's estate for \$800 and paid the sum to the administrator of William's estate. Her actions did not sit well with her daughter, Ann Stanhope, whose family became

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<sup>22</sup> William of Thomas Gunnell, "Will," August 20, 1822, Will Book M-1, 423, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Motion of Sarah Ambrose," June 17, 1822, Minute Book 1822, 9, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Motion of Sarah Ambrose," September 22, 1822, Minute Book 1822, 100, Fairfax County Circuit Court Historical Records Division.

<sup>23</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Gunnell v. Stanhope," 1836, 1836-009, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

litigious after Elizabeth Gunnell's death. Ann's husband, John Stanhope was deeply in debt before his death in 1831. Among the security for his debts was his wife's interest in her father's slaves. Although Robert Gunnell had called for their manumission, most of these bondpeople were in Frederick County, Virginia under the control of Henry Gunnell, who hired them out as directed by his step-father's will. Stanhope's family initially brought suit against Henry Gunnell claiming their right to their portion of their deceased brothers' rights in the slaves and including the rights of William of Thomas. Henry Gunnell's reply disclosed that his mother had already purchased William's rights. Presumably while trying to free themselves from John Stanhope's legacy of debt, the Stanhope heirs continued their crusade to obtain additional money in the Gunnell estate. They charged that William of Thomas had never made an official accounting of the estate of James Gunnell; moreover, they alleged that they were owed money from the estate of William of Thomas. These cases brought no relief to the Stanhope family but exhibited the extent of their animosity toward Sarah Ambrose, possibly for her profiting from her relationship with William. It is also worthy of note that George Hunter sometimes represented the Gunnell family interests. He later became involved in suits involving Sarah Ambrose.<sup>24</sup>

Although animosity existed between the Gunnell family and Sarah Ambrose, the family emancipated other African Americans. Like his uncle Robert, William Gunnell, also freed his slaves and directed them to go to Liberia or elsewhere outside of Virginia.

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<sup>24</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Stanhope v. Gunnell," 1838, 1838-021, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, "Gunnell v. Stanhope"; Fairfax County (Va.) Chancery Causes, 1803-1970, "Williams v. Stanhope," 1841, 1841-022, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

Also like his uncle, he provided that his slaves should be hired out for two years to provide money for their travel. The inventory of his estate in 1837 showed a total of twenty-six slaves. In 1839, thirty-one former slaves were registered as free in Fairfax County from the will of William Gunnell. The manumission shows the fluid nature of slave ownership even when freedom was promised. Some of the names on the inventory and the register appear to match; others do not. For instance, only three of the thirty-one newly freed slaves registered were adult males, while the inventory listed eight adult males. More care seems to have been taken to assure the freedom of at least one female slave and her family. Betsey Bell, a black woman, was registered with four children, one black and three mulattoes. If there any connection existed between William Gunnell and the mixed-race children of Betsey Bell, he did not mention it in his will. William, an unmarried doctor, left his remaining property to his brothers and a nephew. The newly freed people did not choose to go to Liberia, none were registered in the District of Columbia, and they quickly disappeared from the public records of Fairfax County. If any family relationship existed between William Gunnell and his slaves, he certainly handled it far differently than did his cousin bearing the same name.<sup>25</sup>

Unlike the newly freed Gunnell slaves, Sarah Ambrose did not disappear from the public record. No indication of how Sarah Ambrose supported her family has been discovered, but she must have experienced some financial difficulty. In 1825, George

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<sup>25</sup> William Gunnell, "Will," October 30, 1834, Will Book R-1, 201, Fairfax County Circuit Court Historical Records Division; William Gunnell, "Inventory of Estate," October 11, 1837, Will Book S-1, 246, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and "Register of Free Blacks 1835, Book 3, 1977, 124–132; Virginia Center for Digital History, *Virginia Emigrants to Liberia*; Karen Washburn, "The Gunnell Family of Fairfax County," *Fairfax County Historical Society Yearbook* 20 (1985 1984): 64–65.

Hunter sought confirmation of a judgment against her, and in 1829, an entry in the Circuit Court Minute Book showed that Ambrose agreed to pay Hunter a note plus interest. No other details are provided. In 1838, she again appeared before the Circuit Court for recognizance, a legal term indicating a debt owed to the government, unless certain terms or conditions were met. A month after the initial proceeding, the county dismissed the case against Ambrose, and she was awarded costs. The record gives no indication of why recognizance was needed or who represented her in these cases.

Finding the need to continually defend her actions, Ambrose had an ongoing education about Fairfax courts.<sup>26</sup>

In spite of these earlier court appearances, Ambrose continued to be indebted. In 1845, Ambrose appeared in Circuit Court; the records indicate only that she agreed to pay Alfred Leigh according to a bond. Two months later, she offered her two hundred acres of land in trust for the benefit of George Hunter. Three months later the deed of trust was released indicating that Ambrose had been able to pay her debt. Even if her land was not providing a source of income for Ambrose, it could be used to secure debt until she could satisfy her creditors. The source of Ambrose's debt payment is not known, but she soon began to sell her land. For \$65, she sold twenty-five acres of land to another free African American woman, Bethia Fairfax. Two years later, she deeded four acres of land to

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<sup>26</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Hunter v. Ambrose," August 1825, Minute Book 1824, p. 108, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Hunter v. Ambrose," March 19, 1829, Minute Book 1829, p. 31, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Ambrose," April 16, 1838, Minute Book 1835, 160, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Ambrose," May 21, 1838, Minute Book 1835, 163, Fairfax County Circuit Court Historical Records Division.

William Butler, a free man of color, for \$60. Whether these sales were triggered by the need to satisfy debt or by family considerations cannot be ascertained.<sup>27</sup>

Ambrose continued to have economic struggles even though she now lived with a man named Benjamin Bowler. Ambrose turned to a strategy of selling her land to a white neighbor which proved problematic as a fight erupted between Bowler and the purchaser. In 1847, Ambrose agreed to sell James Wells fifty-three acres of land for \$159. The deed was not finally recorded until 1850, and in the interim the violence occurred. On November 9, 1848, Wells visited Bowler and Ambrose. Wells asked for a dram which the hosts did not have on hand but they substituted a pint of whiskey and some food. After supper, he agreed to a game of cards with Bowler that ended in a disagreement over Wells's claim that Bowler owed him money. Bowler attacked the retreating Wells with a knife and seriously injured him. Bowler was apprehended, tried, found guilty, and sentenced to one year in the penitentiary for the crime. Implicit in the circumstances of Wells's visit is that Ambrose and Bowler likely were operating a tavern. If so, this would indicate how Ambrose was making a living. That Bowler's race was not mentioned in the case suggests that he was white (since public records generally only recorded race for African Americans). In any case in 1851, after Bowler returned from prison, he was indicted for "publicly associating and living with Sarah Ambrose." No other information about the indictment is available. The charges apparently did not lead to further

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<sup>27</sup> Fairfax County (Va.) Circuit Court, "Leigh v. Ambrose," March 17, 1845, Minute Book 1842, 199, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Deed of Trust," May 19, 1845, Minute Book 1842, 206, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Release," August 18, 1845, Minute Book 1842, 226, Fairfax County Circuit Court Historical Records Division; Sarah Ambrose, "Deed of Sale," November 1847, Deed Book M-3, 23, Fairfax County Circuit Court Historical Records Division; Sarah Ambrose, "Deed of Sale," September 23, 1848, Deed Book N-3, 107, Fairfax County Circuit Court Historical Records Division.

punishment for Bowler, but they may have resulted from public officials' disapproval of Bowler's relationship with an African American woman. Conversely, the relationship with Bowler strained Ambrose's relationship with neighbors, did not solve her financial problems, and brought violence into her home. If Ambrose was looking for protection as she had found with William of Thomas, Benjamin Bowler did not provide it.<sup>28</sup>

The physical violence did nothing to settle the financial issues between Wells and Ambrose. In 1850, Ambrose brought suit to compel payment for land purchased by Wells, who according to court records was wholly insolvent. Even though Wells owed money to his free African American neighbor, his inability to pay left Ambrose in a financial bind. In 1849, she issued a deed of trust in favor of George Hunter to whom she owed \$233. The trust stated that if Ambrose were unable to pay her debt, the land she earlier sold to Wells would again be sold at public auction. No record indicates that the threatened sale of the Wells land occurred and Ambrose's financial situation at that time cannot be determined. Late in 1850, she once again agreed under order of the court to pay a debt owed to John Adams according to the terms of the bond. Also, the debts owed to George Hunter apparently were never satisfied. In 1854, Ambrose agreed to sell to Hunter the remaining one hundred fifty-three acres of land that had been given to

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<sup>28</sup> Sarah Ambrose, "Deed of Sale," September 2, 1850, Deed Book P-3, 227, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Bowler," December 1848, Term Papers 1848, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Commonwealth v. Bowler, Indictment," March 17, 1851, Minute Book 1846, 313, Fairfax County Circuit Court Historical Records Division.

Ambrose by William of Thomas. The sale price was \$1,896, and the financial troubles of Ambrose appeared settled.<sup>29</sup>

Nevertheless, the disagreements between Ambrose and Hunter continued and left Ambrose destitute. According to a lawsuit brought by Ambrose in 1857, Hunter and Ambrose had agreed that Ambrose would receive eight dollars an acre for her land, and Hunter would build a house for the seller on five acres of land. The value of the house and land were to be withheld from the proceeds that she would receive. Hunter responded to Ambrose's charges by purporting that she had operated a house of ill fame so notorious as to devalue the property to three dollars acre. He also alleged that Ambrose had lived unimpeded in a cabin with a penitentiary convict, Benjamin Bowler. Hunter also accused Ambrose of trafficking with enslaved people and associating with them improperly. According to Hunter, Ambrose's debts and the cost of the house's construction and land exceeded her proceeds from the sale of the land. Ambrose withdrew her charges and agreed to an unspecified settlement with Hunter. The 1860 census lists Ambrose, age eighty-four, as living with a white neighbor, Sarah Jones. In 1866 and 1867, Ambrose received \$25 from the Overseers of the Poor, and the date of her death was not recorded.<sup>30</sup>

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<sup>29</sup> Sarah Ambrose, "Deed of Trust," March 6, 1848, Deed Book N-3, 255, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, "Ambrose v. Wells," 1850, 1850-018, Local Government Records Collection, Fairfax County Court Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Circuit Court, "Adams v. Ambrose," December 16, 1850, Minute Book 1846, 300, Fairfax County Circuit Court Historical Records Division; Sarah Ambrose and George Hunter, "Deed of Sale," July 17, 1854, Deed Book U-3, 304, Fairfax County Circuit Court Historical Records Division.

<sup>30</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Ambrose v. Hunter," 1857, 1857-021, Local Government Records Collection, Fairfax County Court Records, Library of Virginia, Richmond, Virginia; Sprouse, *Fairfax County in 1860: A Collective Biography*, 21, 1103.

The economic struggles faced by divided families did not mean that they were unable to leave a legacy. Some families were able to overcome the adversity and devise assets to their heirs. Sarah Ambrose's apparent legacy was her lifelong struggle to maintain her independence but her sale of land to Bethia Fairfax and William Butler opens questions about possible family connections. Any family relationship between Ambrose and the purchasers is unknown. Like Sarah Ambrose, Bethia Fairfax had not registered with the county, and thus that source can give no information about a possible relationship of the two women. Nevertheless, Fairfax in 1846 was one of few other free women of color in Fairfax able to buy land. The description of the property purchased by Fairfax indicated that it was bounded by land owned by William Butler who appears in the free register as a person who had been freed by Samuel Adams, a white man who lived near Sarah Ambrose. Yet, the circumstances of his manumission do not indicate any family relationship with Ambrose. In 1853, although Butler was registered with Fairfax County, he did not receive permission to remain in the county, an action which could have triggered his decision to sell his land in 1854. Even though Butler was described as a land owner in 1846, the deed to his property was not recorded until 1848. His tenuous status as a county resident may also have been the reason that the recording of his purchase was delayed, or he may have been working to pay for the land over time. One other possible explanation is that if he were a part of Ambrose's family, he would not have had as compelling reasons to formalize the transaction. Whether these transactions were family matters cannot be determined, but given the relatively low purchase prices, it

is clear that Ambrose profited little from the transactions and one other free African American woman was a land owner.<sup>31</sup>

Because the records do not identify Ambrose's children, it is unclear whether they received any of her property. On the other hand, Bethia Fairfax was able to maintain her property and pass it on to her heirs after her death. Fairfax died intestate in 1865 shortly after the end of the Civil War. Her family of nine children amicably had their mother's twenty-five acre parcel surveyed and divided equally, and they even agreed to share water rights where necessary. In this case, at least part of the Ambrose property ended up supporting a community of African Americans.<sup>32</sup>

Still it was easier for free African American families headed by women to keep the property they acquired if they had the support of their children. Like Sarah Ambrose, Keziah Carter was a free African American female head of household and a land owner. In 1843, she purchased fifty acres of land for \$300 from John Adams on a deferred payment schedule with payments due in 1846 and 1849. Like Ambrose, Carter must have had some problems meeting her obligations since she was in court in 1849 and 1851 for failure to pay her debts. Nevertheless, other than her financial struggles, few other parallels existed between Ambrose and Carter. One important difference is that Carter, apparently aided by her large family, used her land for farming. By 1860, her farm supported livestock and produced corn, oats, hay, potatoes and butter. The income from

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<sup>31</sup> Ambrose, "Deed of Sale," November 1847; Ambrose, "Deed of Sale," September 23, 1848; William Butler, "Deed of Sale," 1854, Deed Book V-3, 42, Fairfax County Circuit Court Historical Records Division; William Butler, "Deed of Sale," 1859, Deed Book B-4, 109, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*; and *Register of Free Blacks 1835, Book 3*, 1977, 210.

<sup>32</sup> Bethia Fairfax, "Survey," December 1879, Deed Book Y-4, 201, Fairfax County Circuit Court Historical Records Division.

this farm and the assistance of her family allowed her to keep her creditors at bay. In 1852, she owed \$133 with her son Robert as trustee securing her debt. In 1857, when she was sued in court for debts owed, two other sons were named in the suit. That year, she repaid Charles Carter by selling land to Robert Carter who subsequently transferred the land to a grandson, Augustus Dodson. The 1860 census listed Keziah Carter as black, but indicated some of her children were mulatto. Nothing in the public record indicates the identity of the father of her children, and it cannot be determined if a white supporter helped Carter to become a landowner. Carter died in 1866, survived by ten children. Even though she died in debt, her obligations were satisfied by her heirs who then divided the land. With the support of her children, Keziah Carter was able to use her land to maintain her independence and still provide a small legacy for her very large family.<sup>33</sup>

When free African American women often had to lead their families without reliance on a male head of household, they encountered similar legal and cultural biases facing white women; however, the former's troubles were complicated by race. The story of Keziah Carter shows that in a rural area, farming allowed free African American

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<sup>33</sup> John Adams, "Deed of Sale," October 2, 1843, Deed Book I-3, 33, Fairfax County Circuit Court Historical Records Division; Keziah Carter, "Deed of Trust," October 2, 1843, Deed Book I-3, 334, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Adams v. Carter," 1849, Term Papers 1849, Box 2, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Williams v. Carter," 1851, Term Papers 1851, Box 2, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Williams v. Carter," 1851, Term Papers 1851, Box 1, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Taylor v. Carter," 1857, Term Papers 1857, Box 4, Fairfax County Circuit Court Historical Records Division; Keziah Carter, "Deed of Trust," January 19, 1852, Deed Book Q-3, 359, Fairfax County Circuit Court Historical Records Division; Keziah Carter, "Deed of Trust," January 2, 1857, Deed Book Y-3, 184, Fairfax County Circuit Court Historical Records Division; Robert Carter, "Deed of Sale," March 6, 1858, Deed Book D-3, 416, Fairfax County Circuit Court Historical Records Division; Sprouse, *Fairfax County in 1860: A Collective Biography*, 282; Fairfax County (Va.) Chancery Causes, 1803-1970, "Carter v. Carter," 1872, 1872-008, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

families led by females to gain a measure of independence just like their male counterparts. Carter's success was aided by having a family that was not enslaved. When the families of free African American women were still enslaved, their struggles became even greater.

### **Bearing the Burden**

The system of slavery caused incredible hardships for African American families. The freeing of one member of the family created disruptions for others. The family members who were enslaved were subject to being sold at any time, while those freed might be required to leave the state. Even while some free women struggled to earn enough money to support the family, the enslaved husband's labor could contribute little to the family's support. On the other hand, some free men were able to purchase land and enjoy some economic stability but were powerless to have their families live with them. Given that marriages between enslaved and free African Americans were common in Fairfax County, the burdens of these unions were never shared equally, and the sources of disruption to the family often came from unexpected places.

Even when economic stability appeared imminent for such mixed families, death often created disorder. Lewis Quander of eastern Fairfax County was able to purchase land and become economically successful, even though his family was enslaved. In 1842, Quander married Susan Pierson, a slave owned by a neighbor, Levi Burke, and had five children who remained in slavery. In 1853, Quander purchased 28 acres from one of eastern Fairfax's Quakers, Charles Gillingham for \$560. Two years later, he purchased a

part of the Woodlawn tract containing 163 acres from Chalkley Gillingham for \$4,227.71, and in 1858, he purchased an adjoining tract of an unknown size from Gillingham for \$75. Lewis Quander quickly became a successful farmer and in 1860 reported owning six horses, four milk cows, three other head of cattle, and eighteen hogs while growing hay, wheat corn, oats, potatoes, and other garden produce, and producing 300 pounds of butter. With his immediate family enslaved, the extent of Quander's farm production is somewhat a mystery since the 1860 census listed only Quander and a fifty-year old mulatto male in the household. Quander died in 1864, and the protracted settlement of his estate revealed some of his financial dealings as well as the perils that menaced a mixed free/slave family.

Quander was an anomaly among free African American land owners in that he was a creditor as well as a debtor. When Quander's estate was appraised in 1866, among his possessions were one thousand dollars in notes owed to him.<sup>34</sup> Two debts of \$375 each resulted from the subdividing into equal parts and sale of the 28 acres of land. He sold one parcel to Felix Quander and the other to George Smith. No record suggests that either man was related to Lewis Quander, who never transmitted title to the land because neither Quander nor Smith was able to make any payment as had been agreed at the time of the sale.<sup>35</sup> Both Smith and Quander accumulated some livestock and grew crops even

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<sup>34</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 1600; Chalkley Gillingham, "Deed of Sale," January 27, 1855, Deed Book V-3, 322, Fairfax County Circuit Court Historical Records Division; Chalkley Gillingham, "Deed of Sale," July 13, 1858, Deed Book A4, 124, Fairfax County Circuit Court Historical Records Division; Charles Gillingham, "Deed of Sale," September 30, 1853, Deed Book T-3, 121, Fairfax County Circuit Court Historical Records Division; Lewis Quander, "Accounting of Estate," April 16, 1866, Will Book Z-1, 460, Fairfax County Circuit Court Historical Records Division.

<sup>35</sup> Felix Quander and George Smith had some difficulties as neighbors. In 1860. Felix Quander was charged with assaulting Smith by biting off part of his lip. Fairfax County (Va.) Circuit Court, "Commonwealth v.

though they did not pay for their land. They continued to occupy their 14-acre farms for over thirty years after their purchases until the settlement of Lewis Quander's estate eventually forced the sale of the property.<sup>36</sup>

Being a creditor left the Quander estate with the responsibility for collection of debts, but the final settlement of the Quander estate involved the much larger question surrounding the identity of Quander's legal heirs and the rights of former slaves. When he died intestate, Lewis Quander's wife and children were still enslaved under Virginia law. Quander also had a half-brother, John H. Colston, of Alexandria who shared the same mother. Colston claimed to be the lawful heir to the estate even though Virginia law changed after the Civil War to recognize that the members of enslaved families were capable of inheriting estates.<sup>37</sup> Colston argued that Lewis Quander had died before the date of the change in law, and therefore, he had never indicated Susan and his children to be legitimate relatives. The Circuit Court in Alexandria disagreed with Colston and

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Felix Quander," November 1860, Term Papers 1860, November 1860, Fairfax County Circuit Court Historical Records Division.

<sup>36</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "James Quander v. Felix Quander," 1885, 1885-021, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, "James Quander v. George Smith," 1896, 1896-006, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, "Felix Quander v. Jack Quander," 1889, 1889-021, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Sprouse, *Fairfax County in 1860: A Collective Biography*, 1598-99, 1802-03.

<sup>37</sup> Guild, *Black Laws of Virginia*, 34 In 1869, the General Assembly provided "That where colored persons before the passage of this act shall have undertaken and agreed to occupy the relation to each other of husband and wife, and shall be cohabiting together as such at the time of its passage, whether the rites of marriage shall have been celebrated between them or not, they shall be deemed husband and wife, and be entitled to the rights and privileges, and subject to the duties and obligations of that relation in like manner as if they had been married by law, and all their children shall be deemed legitimate, whether born before or after the passage of this act. And when the parties have ceased to cohabit before the passage of this act, in consequence of the death of the woman, or from any other cause, all the children of the woman recognized by the man to be his, shall be deemed legitimate."

declared the ex-slaves to be Quander's legitimate heirs. Colston appealed the ruling, but the Virginia Supreme Court of Appeals upheld the lower court decision in 1872.<sup>38</sup>

After the settlement of Colston's claim, Susan Quander and her children faced the task of settling the affairs of the estate. Since Lewis Quander not only had been a lender but also a debtor, his failure to complete payment for the 163 acre farm he named Brookdale had to be settled by the heirs. After sale of Quander's personal property, the heirs then agreed to sell 63 acres of Brookdale to settle a \$500 debt which had been accumulating interest over the years. The property was sold in 1874, but final settlement of the lawsuit did not occur for another 27 years after the parties settled issues over the payment of court costs. Once the 63 acres had been sold, Susan Quander and her children divided the remaining 100 acres.<sup>39</sup>

The history of the Quander family provides an interesting perspective on the importance of an intact family for free African Americans. The testimony about the marriage of Lewis and Susan indicates that they were able to live together even though Lewis was free and Susan was enslaved. All of their children were born during the time period, when Lewis built a successful farm operation. Whether his family was able to help cannot be determined, but it would have been unusual situation if their master had not controlled their labor for his own purposes. Nevertheless, no indication exists that Lewis Quander ever attempted purchase his family out of slavery. It appears likely that

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<sup>38</sup> John H. Colston, Virginia. Circuit Court (4th Circuit), and Susan Quander, *Colston vs. Quander* ([Alexandria, Va.? : s.n., 1869), <http://archive.org/details/colstonvsquander00cols>.

<sup>39</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Deborah Stabler v. Lewis Quander," 1901, 1901-003, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, "John Quander v. Susan Quander," 1881, 1881-028, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

his resources were directed towards purchasing and maintaining his farming operation, but it is also possible that Levi Burke only kept Susan and her children enslaved to avoid their forced removal from Virginia if they became free. Ironically, Lewis Quander died before his family was freed by the general emancipation, and his legacy became a matter of continuing lawsuits. After the death of her husband, Susan Quander could not keep the farm intact although she was able to remain in her house surrounded by 18 acres of land.

Like the Quanders, many free African Americans were determined to successfully rear their families, but often white patronage was necessary to overcome legal barriers. When Sarah Dixon, who had been freed from slavery in 1850 by the will of William Fitzhugh, was ordered to leave the state, several prominent white persons supported her case. On March 13, 1850, Dixon and her husband, John Edward Dixon, who was a slave of Sally Griffith of Alexandria, petitioned the Virginia General Assembly to allow Sarah to remain in the state. The Dixons' petition stated that prior to Sarah's emancipation they had been married with the consent of their owners. Later, they had a child, who was born free. As a slave, John Dixon could not leave the state with his wife and child. Because Sarah Dixon had built a reputation as a good laborer, whites in her community endorsed her bid. As a part of the Dixons' petition, Anna Maria Fitzhugh wrote a recommendation that Sarah was "quite a good cook and would no doubt be a useful servant in almost any family." A friend of Anna Maria Fitzhugh, George Burke, also extolled Sarah's abilities as a cook and also as a washer and ironer. He stated that "any business she may undertake she will give entire satisfaction." The petition was referred to committee in the House of Delegates where its final action is not recorded. Sarah originally registered as free in

Fairfax County but later registered in Alexandria on July 9, 1859, indicating authorities had accepted her presence in the community. Public records do not indicate how Sarah Dixon supported herself while her husband was enslaved, but the assistance of Anna Fitzhugh and friends of the Fitzhughs allowed her family to remain in the same locality.<sup>40</sup>

The benefits of white patronage enjoyed by free African Americans did not always pass to their children. Judy Johnson petitioned the General Assembly in 1835 for permission to remain in the state. The will of Thomas Sinclair, who died in 1818, directed that his slave Judy be freed at the death of his wife, Jane. Sinclair also declared that all of Judy's children should be freed at age twenty-five. Judy Johnson gained her freedom when Jane Sinclair died in 1835, but Jane had bequeathed Judy's children to her son, Robert Blackburn, to serve until they reached age twenty-five. When Johnson petitioned the legislature, she was forty-five years old and her youngest child was nine. Judy asked to remain since her husband and children were slaves, and Thomas Sinclair's will required the children to serve their remaining time in bondage in Fairfax County. On behalf of Johnson, Robert Blackburn indicated that his mother, afflicted by disease for fifteen to twenty years of her life, had often been bedridden and was dutifully cared for by Johnson. Twenty-seven neighbors endorsed Blackburn's letter, and Johnson's petition was found to be reasonable. Johnson's petition kept her family intact while her children remained enslaved, but she could not protect them after they had been freed. Two of her children registered with the county well after having reached the age of twenty-five. In

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<sup>40</sup> John Edward and Sarah Dixon, "Petition to the General Assembly," March 13, 1850, Reel 209, Box 262, Folder 44, Library of Virginia, Richmond, Virginia; Provine, *Alexandria County, Virginia*, 1990, 290; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 181.

both cases, Judy's offspring were warned they did not have permission to remain in the county. The goodwill that their mother had received from her master and mistress to remain in the county did not extend to next generation, but Johnson's efforts had resulted in her family remaining unbroken while her children were young.<sup>41</sup>

Free African American females were an enigma in Fairfax County society. Even the county's Quaker population held conflicted views about African American females. Such appears the case with Aaron Leggett who was not only a Quaker but also a successful New York City merchant. Although he never officially moved to Virginia, he decided to purchase land in eastern Fairfax County near other Quakers in the area. His opportunity came after the financial turmoil surrounding Bushrod Washington, Jr. resulted in the marketing of a part of the Mount Vernon estate called Mount Zephyr. When Leggett purchased this land in 1849, he acquired a slave named Daphney Kelly in the process. In 1856, Leggett wrote his will dividing his considerable holdings among his extended family. The following year he added a codicil that addressed the status of Daphney Kelly. He directed his heirs to manumit Kelly and to consider purchasing her second husband, Robinson Kelly of Prince William County, as well as Martha, a daughter

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<sup>41</sup> Jane Sinclair, "Will," April 1, 1835, Will Book P-1, 322, Fairfax County Circuit Court Historical Records Division; Thomas Sinclair, "Will," April 20, 1818, Will Book L-1, 209, Fairfax County Circuit Court Historical Records Division; Judy Johnson, "Petition to the General Assembly," December 11, 1835, Reel 50, Box 70, Folder 58, Library of Virginia, Richmond, Virginia; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 165, 215.

by her first marriage, and Martha's children, all of whom Leggett considered worthy of emancipation.<sup>42</sup>

A major question remains about why Leggett did not proceed with these manumissions while he was still alive, but the issue became moot in 1860 when he died. Leggett's heirs worked quickly to settle his Virginia estate and freed Daphne Kelly in early 1861. In addition to emancipating Kelly, the deed of emancipation freed her daughter and four grandchildren but did not mention Kelly's husband. The newly freed slaves were the last entries in Fairfax's free register made on April 15, 1861, two days before Virginia voted to secede from the Union. Aaron Leggett's actions in relation to Daphne show the conflicts that African American women created for white males, even those who opposed slavery. It is possible that Leggett kept Kelly enslaved in order that she could remain with or near her family, but clearly his resources were sufficient to purchase all of her family and set them free. The relationship between Kelly and Leggett is unknown, but most likely her labor on his Virginia farm allowed him to live comfortably when he came to Virginia. He may have been unable to wean himself from the convenience of her services. The relationship between African American women and white males shows the tension that developed in serving a white supporter and maintaining intact family relations.<sup>43</sup>

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<sup>42</sup> Samuel Whittall, "Deed of Sale," 1849, Deed Book O-3, 180, Fairfax County Circuit Court Historical Records Division; Aaron Leggett, "Will," March 13, 1856, Will Book Z-1. 276, Fairfax County Circuit Court Historical Records Division.

<sup>43</sup> Leggett, "Will"; Aaron Leggett, "Deed of Manumission," January 20, 1861, Deed Book D-4, 31, Fairfax County Circuit Court Historical Records Division; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 256–257.

The legal support of a white family was not crucial for those persons who did not need to petition for the right to remain in the state; however, without a free husband or a white patron, free women struggled to maintain a family. Few documents illuminate the lives of free African American females who headed households in Fairfax, but the records of the Southern Claims Commission provide insight into the lives of two such women, Louisa Ferguson and Betsey Johnson. In a petition to the Commission for reimbursement for the loss of her horse, Ferguson explained that her father, unnamed in the statement, had been freed by the will of George Washington. Her father purchased her mother, and Ferguson was born after her mother had been freed. Louisa had married William Ferguson, who was a slave of a prominent eastern Fairfax citizen, Dennis Johnston. With a family of sixteen children, Louisa Ferguson did not indicate how she provided for such a large family. During and after the war, she claimed to have rented a 100 acre farm near Mount Vernon. Her husband testified that only during the second year of the war did he leave his master to remain at his wife's farm. Louisa Ferguson knew farming. Her claim was eventually denied when evidence indicated that she had sold corn and hay to the Confederates during the war. Given the evidence presented about her war time activities, most likely Louisa Ferguson managed to raise her large family by working the land, even when her enslaved husband was unable to help.<sup>44</sup>

Similarly, Betsey Johnson filed a claim that she had lost \$150 in gold and silver that was taken during the war. Born free, Johnson had eight children, lived in the southwestern part of the county, and was related to the Harrises, a prominent free African

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<sup>44</sup> Southern Claims Commission, "Claim of Louisa Ferguson," 1873, Southern Claims Commission Binder, 296, Fairfax County Circuit Court Historical Records Division.

American family in the area. Her husband for over fifty years was Benjamin Johnson who was a slave in nearby Prince William County and left his master after the Confederates lost control of the area. Even though she allegedly owned the gold and silver, Betsey Johnson somewhat improbably testified that she had been unable to pay for a small farm she had bargained to buy. She ended up living on the nearby poor house farm where she lost her valuables. During the war, she and her husband worked doing laundry for the Union Army. Obviously, Betsey Johnson had struggled to support herself while her husband was enslaved, but if her claim about the gold and silver was correct, the couple had managed to save some money, even though their sources of income were limited.<sup>45</sup>

Slavery continued to complicate the lives of free African Americans. If they did not have a heritage of freedom prior to 1806, free family members faced the threat of being separated from enslaved partners and children. Even when free persons were able to establish a residence and a means to support themselves near their enslaved family, they lived with the possibility that those family members could be sold or relocated at anytime. The support of a white male could be helpful in legal and political matters, but those persons who lacked land and farming skills found it difficult to thrive in a rural environment. With their mobility limited by the enslavement of their families, free persons could not keep their families intact and move to a more prosperous urban environment. In the cases described above, these free African Americans chose to remain

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<sup>45</sup> Southern Claims Commission, "Claim of Betsey Johnson," 1876, Southern Claims Commission Binder, 488, Fairfax County Circuit Court Historical Records Division.

close to family while staking their economic prospects on working the land and performing domestic chores.

Attaining autonomy was difficult for free African American families who were separated. Two of the most common factors that tore apart these families were death and enslavement of part of the family unit. Women felt the burden of these separations most acutely. The death of a husband or a white patron meant an estate settlement often was protracted and economically devastating. A woman with an enslaved husband had to run the household, bear children, and provide income for the family. In rural areas, often the most rigorous and best remunerated farm labor was performed by men. Nineteenth century society expected males to dominate relationships but that dominion carried with it the obligation to care for their family including their partners. In marriages in which the husband was enslaved, the free female partner likely depended upon a white supporter to keep her family together. In other instances, a white man was the primary male in the life of an African American woman. These relationships often grew from a master/slave bond in which the master was unwilling to forego the labor or company of the woman during his lifetime. These associations were a particularly insidious way of rending families into white and African American clusters.

The unique position of free African American women in rural society of Fairfax County also affected their family life. Often they had to cater to a white supporter, usually male, in order to obtain their freedom and the possibility of independence. Unless a romantic relationship existed with her master, an African American woman also had

family responsibilities that often included an African American male. A woman's family duties differed significantly from those of freed African American men because freedom of children followed the status of the mother. A man who had an enslaved wife could neither protect his family nor directly provide for them. For women, the opposite was true. Part of the safety they needed to provide was assuring that their children had the opportunity to remain in the state where they could be reared near both their parents.

Bestowing a sense of well-being on their families was particularly a challenge in providing for the basic necessities of life. Because only rarely did African American women leave personal accounts, little evidence exists about how these women could provide some security for their families. A rare insight into these issues comes from the experiences of free women of color in other places such as Ann Johnson in Mississippi, who was able to obtain some luxuries by trading with her family in New Orleans and by bartering on the market in Natchez. Such records do not exist for the free African American women of antebellum Fairfax County. Therefore, the extent that women may have been able to trade in the markets of Washington and Alexandria to acquire goods unavailable in rural Fairfax is unknown. The division of labor on farms also remains unclear. Slave women had been forced into work in the fields, but did that labor continue after freedom? If so, were some free African American women able to farm without the aid of male labor? Public records cannot answer these important questions about the lives of free African American women. Nevertheless, these records clearly indicate that these women's connections with males greatly affected their lives, and these relationships had

a direct bearing on the ability of free women of color to provide security for their families.<sup>46</sup>

Under threat from the law, violence, and economic insecurity, free African American women had to be creative in finding ways to survive and leave a legacy for their families in rural Fairfax County. As these women often held primary responsibility for their children's support, evidence suggests that they felt pressure to remain in the county to keep their families intact. Nevertheless, Fairfax's position as a border community also influenced the lives of these free women. In contrast to the laws of the District of Columbia which did not threaten removal of its established free African American population, free women in Fairfax such as Sarah Dixon had to maintain their family life while coping with the hostile, sometimes arbitrary Virginia legal system. Alexandria and neighboring Washington, D. C. provided better opportunities for enterprising African American women, while Fairfax continued as an agricultural-based economy increasingly dominated by yeoman farmers. Free African American males aided in family protection in the cases in which the family was able to establish itself as a part of the emerging yeomanry. Other free women with slave husbands had to depend upon tenancy and/or the goodwill of a patron, most of whom were white. Some African American women were able to become an important part of the life of their white male patron, but the protection offered by these relationships sometimes ended immediately at the death of the supporter. As the life of Nancy Simms demonstrates, even a successful African American father did not necessarily guarantee security after his death. Because

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<sup>46</sup> *Chained to the Rock of Adversity*.

the marketplace did not highly value women's work, often the best strategy for finding security lay with successful relationships with males. Still Sarah Ambrose's associations with men of questionable character brought increased scrutiny from the community and little economic reward.

The irony of the lives of free African American women in Fairfax County lay in their striving for independence. Antebellum social norms of a patriarchal society continually hampered them. Even as African American women became heads of household, their ability to attain independence was linked to their dependence on the males in their lives. If these men attained security, African American women were able to thrive also. Conversely, without the goodwill of a successful male, free African American women and their families faced freedom with the uncertainty of obtaining even the basic necessities of life. Far too often, they were unable to link their freedom from slavery with freedom from dependence.

## CHAPTER FIVE--OUTSIDE THE PRIME WORKING YEARS

While freedom from slavery led to a yearning for independence from white oppression, not all African Americans were able to achieve that desire. Two groups that faced special obstacles were the aged and children. Thus, a consideration of age is important in understanding the free African American experience in Fairfax. Both children and the elderly were outside the prime years for labor. Whites imagined the value of African Americans in terms of their ability to work, therefore, both the young and old challenged the societal concepts of their worth. From the beginning of Virginia's liberalized manumission laws, emancipators had to consider the problems of old and young African Americans. Virginia's 1782 law specifically provided that freed African Americans over forty-five years old or males under the age of twenty-one and females under eighteen years old must be supported by the person who manumitted them. While these parameters are used in this chapter to define who is young or old, African Americans were not constrained by such definitions and instead used the labor of all members of their community to challenge white assumptions about continued dependency of freed bonds people.<sup>1</sup>

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<sup>1</sup> Walter Johnson, *Soul by Soul: Life Inside the Antebellum Slave Market* (Cambridge, Mass: Harvard University Press, 1999); Daina Ramey Berry, "'Ter Show Yo' de Value of Slaves,' The Pricing of Human Property," in *Creating Citizenship in the Nineteenth-Century South* (University Press of Florida, 2013), 21–40 Johnson shows how slaves manipulated their value in the New Orleans slave market. Berry argues that African Americans equated their value as property to their value to southern society. ; Guild, *Black Laws of Virginia*, 61.

While historians have not concentrated on aging African Americans as a separate demographic group, they have focused on white treatment of children particularly relating to apprenticeship. In recent study of this system, Karin Zipf examined the nineteenth-century apprenticeship system in North Carolina focusing on state law and judicial decisions. In Virginia, local authorities had more leeway in administering the apprenticeship system than Zipf described in North Carolina, but the underlying effects on free African American families was much the same. Zipf argued, “In preindustrial economies, children contributed labor that was essential for the maintenance of an independent household. Any man or woman with a house full of able-bodied children had a much greater chance of achieving independence. But without the protection of their parental rights, women and African American men suffered the loss of their children’s labor and consequently lacked the opportunities of independence enjoyed by white men.” Zipf’s conclusions held true in rural Fairfax where the removal of children was particularly difficult for farm families. With the transition to self-reliant farms, the labor of all members of African American families including children and the aging was necessary in order to have the same prospects for success as whites.<sup>2</sup>

The extremely young and old who were unable to contribute to family labor reflected a paradox for free African Americans. Newly freed slaves, as a part of independence, had to struggle with the dependence of family members. Like the white community, African Americans looked to family to care for young and old. Nevertheless in cases where family and/or community failed to provide the needed support, local

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<sup>2</sup> Karin L. Zipf, *Labor of Innocents: Forced Apprenticeship in North Carolina, 1715-1919* (Baton Rouge: Louisiana State University Press, 2005), Quote taken from P. 7.

government was charged with providing care for the destitute. In these situations, apprenticeships were used to train children for adult labor, and the Overseers of the Poor supported adults who were unable to maintain themselves. These systems worked only to a limited extent for free African Americans, and white paternalism tied to the ideals of dependency inherent in slavery often replaced them. African Americans succumbed to this paternalism particularly when families that were a mix of enslaved and free persons found that those still in bondage were unable to be providers or caregivers. Conversely, family members in need of care but still enslaved lay outside of the support system provided by relatives. An additional frustration for African American families came when they could not break their dependency upon their former masters for their meager economic resources. In spite of all of the obstacles facing them, many free African Americans found ways to care for dependent relatives, and in doing so, more firmly established themselves as independent members of the community.

Many whites were ambivalent about independence for free African Americans because whites often depended upon African American labor for their own independence. As Edmund Morgan has illustrated in his well-known paradox about enslavement of Africans in Virginia, elite whites were leery of working class independence which could lead to social upheaval. Virginians found a solution by enslaving African Americans making the poorest members of society dependent on the master and eliminating them as possible competition for scarce resources. Thus, cohesion of the white republic was built on the enslavement of Virginia's poorest citizens. Morgan's theory about colonial life in

Virginia can be applied in the post-revolutionary period. Even ardent emancipators were torn about the best ways to free their slaves.<sup>3</sup>

Younger slaves often presented a dilemma for emancipating masters who were responsible for the care even if they were freed. As a result, slave children were often required to remain in service until they reached adulthood as was the case with Sarah Wren. About a year prior to her death in 1816, she penned her will. As its beginning, the document states her desire to free four of her female slaves at her death. She then directed her attention to her younger slaves who were to be freed upon reaching the age of twenty-one. Wren directed her heirs to sell most of these younger slaves to pay for her final expenses with the proviso that they should not be taken out of the State of Virginia and should be freed at the end of their enslavement term.<sup>4</sup>

Still, slave owners often demonstrated an anxiety about living without the services of their slaves by extending the number of years that their youngest bonds people had to serve before being freed. Therefore, less than a year after writing her will and just a couple of months prior to her death, Wren had a change of heart about the importance of her slaves' labor. Although she did not alter her will, Wren authored a new deed of emancipation for her slaves. In this deed, she specified terms of service for the four female slaves who were originally to be freed at her death. These new terms resulted in each of these women remaining enslaved beyond the death of Wren. Although some of the younger slaves would be freed at age twenty-one, other females were not freed until

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<sup>3</sup> Edmund Sears Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia*, Francis Parkman Prize ed (New York: History Book Club, 2005), 363–387.

<sup>4</sup> Sarah Wren, "Will," May 20, 1816, Will Book L-1, 53, Fairfax County Circuit Court Historical Records Division.

age twenty-five and some males were not manumitted until age twenty-eight. Both her will and the deed of emancipation were recorded in May 1816 after Wren's death.

Neither document records Wren's reasoning for extending the terms of slavery for those persons she intended to free. It seems most likely that Wren believed the continued well-being of her heirs was contingent upon the extended slavery terms. Moreover, the younger slaves' extended bondage helped defray their cost to their mistress when they were young children and unable to contribute a full day's labor. Sarah Wren's struggle with how quickly to grant freedom reflects a reality that whites seldom acknowledged: that they relied on the labor of others for their own comfort and well-being.<sup>5</sup>

Having their terms of service extended reduced the number of prime working years that African Americans had to labor for themselves. As was commonplace among emancipators, Wren's will made no bequests to her newly manumitted slaves who would be left at emancipation to find their own means of support. Among the younger slaves to be freed was Lewis Ellzey born in 1807, and Wren delayed his freedom until 1835 depriving Ellzey of the fruits of his youthful working years. Although he often began his life in dependence that was defined both in terms of age and enslavement, upon freedom Ellzey was faced with securing economic independence while assuming the responsibility for the care of the children and aging persons in his own family. Only tidbits of information about Ellzey can be found after his slavery term ended. In freedom, he became known as Lewis Wayne and remained in western Fairfax County, farming near the estate of William Beckwith. The Federal census information records that his wife died

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<sup>5</sup> Sarah Wren, "Deed of Manumission," May 20, 1816, Deed Book O-2, 190, Fairfax County Circuit Court Historical Records Division.

between 1850 and 1860; he had accumulated personal property worth \$300; and four dependent children, presumably his grandchildren, lived in his household in 1860. At age fifty-three, he must have assumed much of the labor of the farm even though he owned one sixty-five-year-old male slave. Thus as he aged, Wayne still coped with the responsibility of both old and young in his household.<sup>6</sup>

The life of Lewis Wayne reflects the subtle but important changes that occurred in Fairfax County by the 1850's. In spite of growing rhetoric by whites about the positive good of slavery in disciplining African Americans for work, free persons of color were quietly assuming the responsibilities for their lives and for those who depended upon them. These changes did not stem from altered laws or rhetoric. Although the culture of Fairfax often reflected independence based on wealth, African Americans used their labor to challenge notions of their incapacity.

Whites often used terms such as "idle" and "improvident" to describe free African Americans. For example in Lancaster County in Tidewater Virginia, James Watkinson found that whites of the county tried to differentiate between the "deserving" and "undeserving" poor and wished to aid only the former. Those offering aid believed that recipients should not be seen as idle. Watkinson does not discuss how these standards were applied to needy free persons of color, and he does not indicate that free African Americans were among those offering aid. Nevertheless, as free persons of color accumulated resources, they found other ways to show munificence. Philip Schwarz has found that free African American slave owners in Virginia were not inclined to purchase

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<sup>6</sup> "1850 Census," n.d.; "1860 Census"; "1860 Census--Slave Schedules"; Wren, "Deed of Manumission."

and hold slaves for commercial gain. Their slave ownership often reflected benevolence, most often towards family members. Both of these studies are important in understanding the experience of free African Americans in Fairfax County. Freed slaves wished to overcome the unflattering labels even in advanced age as their ability to labor diminished. They also had to confront the stereotype that only white members of the community provided aid. The clash over white stereotypes of African Americans and the growing independence of freed persons is reflected in the lives of the young and old.<sup>7</sup>

From an early age, whites typecast African Americans as only being suited for labor. In the first half of the nineteenth century, children of elite and middle class whites were being educated in their formative years. Nevertheless, Virginia did not mandate and often resisted education for poorer children. For instance after the retrocession, the Alexandria Orphan Asylum and Female Free School Society had to petition the General Assembly to continue funding the education of 308 indigent girls who had previously been supported by the District of Columbia. The request relied on the rationale that Alexandria had no factories for the employment of the poor leaving many females destitute. Poor white girls were to be educated only if factory work was unavailable. In contrast, the Virginia legislature did not consider African American children, even those who were free, to be worthy of formal education under any circumstances. In 1848, the Society of Friends in Northern Virginia petitioned the General Assembly to reconsider its ban on the education of these children. The Quaker request was limited to those children

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<sup>7</sup> James D. Watkinson, “‘Fit Objects of Charity’: Community, Race, Faith and Welfare in Antebellum Lancaster County....,” *Journal of the Early Republic* 21, no. 1 (Spring2001): 41; Schwarz, “Emancipators, Protectors, and Anomalies”; George Fitzhugh, “What Shall Be Done with the Free Negroes; Essays Written for the Fredericksburg Recorder” (Fredericksburg: Recorder Job Office, 1851) George Fitzhugh’s views provide an example of the types of stereotypes used by whites to describe African Americans.

“residing in their families and those properly within their reach.” The request of the Society of Friends directly challenged the belief that all African American children, including those born free, should become laborers very early in life, but the Quaker petition did not receive consideration from the General Assembly.<sup>8</sup>

The stereotype of African Americans as only laborers created some tensions for whites as these workers grew old. Superannuated servants represented a real cost for their masters. The care of the old was also an issue for those who wished to emancipate their slaves. When Joshua Hutchison wrote his will in 1839, he provided that his slaves should be set free with the exception of four of them. Those slaves “being old shall remain on the farm whereon I reside subject to the control and management of them who may own the estate.” Hutchison further provided that these older slaves “be treated with that care that becomes their age, and remain in the same house they now occupy.” Hutchison’s directives show that he believed that these older African Americans needed care--such as a white master would provide--as their ability to work diminished. In contrast, John Gunnell emancipated his mixed-race slave, Thomas Poston, in 1841. In freeing Poston who was 68 years old, Gunnell recognized his “general good character and his faithful services to my father and others of the family he belonged to.” Regarding manumission of older slaves, state law required masters to provide for them in order that these freed

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<sup>8</sup> Society of Friends, “Petition to the General Assembly,” February 25, 1848, Reel 209, Box 262, Folder 22, Library of Virginia, Richmond, Virginia; Alexandria Orphan Asylum and Female Free School Society, “Petition to the General Assembly,” February 13, 1847, Reel 209, Box 262, Folders 28 and 29, Library of Virginia, Richmond, Virginia; Guild, *Black Laws of Virginia*, 167 In 1848, the General Assembly reiterated its stance against the education of any African Americans, slave or free. Foner, *Three Who Dared*, 55–95 Some women such as Margaret Douglass of Norfolk ignored the ban on education of African Americans. Josephine Pacheco has told the story of the success of her endeavors and her eventual arrest in 1852 for these activities.

persons not become a charge to the county. Nonetheless, Gunnell's emancipation document did not specify any financial reward or other means of care for this aging man. No further records exist of the life of Thomas Poston so his means of survival until his death is unknown. Nevertheless, we can discern that the white community at most posited benign neglect toward the aging African American community around them.<sup>9</sup>

Families and neighbors of infirm workers often filled the void created by the callousness and neglect of the white community towards aging African American laborers. The care shown by free African Americans for both aging dependents and children became a hallmark of their growing independence. They may have continued to labor in occupations in which they had been typecast by whites, but the fruits of their work now could be used to build both personal wealth, albeit on a modest scale, and communities which could care for their own.

### **Placing a Value on the Young**

In Virginia, white paternalism rather than African American desire for independence prevailed in legislating for the care of children. Slavery had embedded the concept that African American children were commodities. The idea of placing a value on these children did not disappear when they were free. Antebellum Fairfax County considered children who were not under the supervision of an adult male to be indigent and vagrants. Even prior to the Revolution, illegitimate children were ordered bound out until they became adults. In 1792, the state expanded the scope of apprenticeship to

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<sup>9</sup> Joshua Hutchison, "Will," September 14, 1842, Will Book U-1, 38, Fairfax County Circuit Court Historical Records Division; John Gunnell, "Deed of Manumission," March 15, 1841, Deed Book F-3, 359, Fairfax County Circuit Court Historical Records Division; Guild, *Black Laws of Virginia*, 65, 82.

include the poor, lame, blind, and others unable to maintain themselves. In 1839, state lawmakers instructed local courts to calculate the value of these apprentices and directed that their worth be paid to their parents on an annual basis until the last year of apprenticeship when the money would be paid to the laborer. If the child had no parents, the overseers of the poor received his or her earnings. In 1848, the legislature reconsidered the issue of orphan payment and directed all payments be made to the orphan at the end of his or her term. Reflecting the understandings of the bonded labor system, the court determined the value of the child's labor with the child and his family having no ability to negotiate those wages or living conditions. Apprenticeship as opposed to slavery was servitude that lasted for a period of years rather than a lifetime.<sup>10</sup>

The worth of children as laborers varied depending upon their white master's view of their abilities. Court records in Fairfax illustrate that judges did not endorse the concept of remuneration for apprentices until 1848. As the table 7 shows, even after the courts ordered payments to apprentices, the amounts varied widely. Age clearly played a role in the valuation of free African American children. Whites were willing to pay more for the services of older children and were unwilling to compensate children under the age of ten for their service. The brief notations in the court order book otherwise suggest little about the quality of the relationship between the apprentice and his/her master.

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<sup>10</sup> Guild, *Black Laws of Virginia*, 27, 29, 112, 116.

Whether the child learned useful skills cannot be discerned from the amounts of court-ordered compensation.<sup>11</sup>

Court records provide evidence that some of the apprenticeships were open to challenge. In 1840, a case on behalf of John Williams, a free African American child, asked Kitty Lamb to show why he should not be discharged from her custody. A couple of months later, the Court rescinded its order making Tom Williams an apprentice of Lamb. In 1842, a June Order given by the Court to bind out Robert Carter to John Jackson was quashed a month later. Similarly, an Order to bind out Amanda Mathers in June 1854 was set aside in July of the same year. Little is known about the motives of the parties involved in these court actions. The existing records of the Court do not reflect whether mistreatment was an issue in any of the cases. Furthermore, the identity of the representatives of the minors before the Court is unknown; neither can it be determined

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<sup>11</sup> Fairfax County (Va.) Circuit Court, "Apprenticeship of Alfred Gray," December 18, 1848, Minute Book 1846, 157, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Amanda Mathers," June 19, 1854, Minute Book 1852, 255, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Caroline Brown," April 19, 1858, Minute Book 1858, 41, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Ellen Butler," June 16, 1851, Minute Book 1846, 333, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of George Brown," April 19, 1858, Minute Book 1858, 41, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of George Winkfield," February 21, 1853, Minute Book 1852, 75, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Isaiah," March 19, 1849, Minute Book 1846, 171, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Jane Ann Gray," October 18, 1852, Minute Book 1852, 39, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of John Winkfield," February 21, 1853, Minute Book 1852, 75, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Joseph Harriss," August 18, 1851, Minute Book 1846, 351, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Lorenzo," September 18, 1848, Minute Book 1846, 143, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Mahlan Harriss," August 18, 1851, Minute Book 1846, 351, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of Maria Gaskins," May 15, 1854, Minute Book 1852, 245, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Apprenticeship of William," January 19, 1846, Minute Book 1842, 259, Fairfax County Circuit Court Historical Records Division.

what drew their attention to these cases. The reasons the apprentices challenged their status cannot be discerned from existing records, but it is important to note that even in the face of established law, free African Americans contested their dependent status and some received relief.<sup>12</sup>

**Table 7 Court Ordered Compensation to Apprentices, 1845-1860**

<b>Apprentice</b>	<b>Master</b>	<b>Date</b>	<b>Compensation</b>
<b>William</b>	Rezin P. Davis	January 19, 1846	None
<b>Lorenzo</b>	Henry Padgett	September 18, 1848	None
<b>Alfred Gray</b>	Carlton Atkinson	December 18, 1848	\$40 annually
<b>Isaiah</b>	James Donaldson	March 19, 1849	\$20 annually
<b>Ellen Butler – Age 11</b>	James Payne	June 16, 1851	\$25 annually for last two years of service
<b>Mahlan Harriss – Age 3</b>	Joseph Brown	August 18, 1851	None
<b>Joseph E. Harriss – Age 5</b>	John Kinchloe	August 18, 1851	None
<b>Jane Ann Gray – Age 13</b>	John H. Zimmerman	October 18, 1852	\$20 for last year of service
<b>George Winkfield – Age 8</b>	Thompson Javins	February 21, 1853	\$6 for first year of service and after turning age 10 to increase \$1 per year
<b>John Winkfield – Age 11</b>	Thompson Javins	February 21, 1853	\$6 for first year of service and increasing \$1 per year afterward
<b>Maria Gaskins – Age 15</b>	Edward S. Plummer	May 15, 1854	\$10 for the first year and \$20 per year afterward
<b>Amanda Mathers</b>	John P. Jenkins	June 19, 1854	\$100 at end of service when she turns age 18
<b>George Brown</b>	Arthur Broadwater	April 19, 1858	\$40 at end of service when he turns 21
<b>Caroline Brown</b>	Arthur Broadwater	April 19, 1858	\$30 at end of service when she turns 18

<sup>12</sup> Fairfax County (Va.) Circuit Court, “Motion to Set Aside the Apprenticeship of John Williams,” March 16, 1840, Minute Book 1835, 252, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Motion to Set Aside the Apprenticeship of Tom Williams,” May 18, 1840, Minute Book 1835, 261, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Motion to Set Aside the Apprenticeship of Robert Carter,” July 18, 1842, Minute Book 1835, 394, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Motion to Set Aside the Apprenticeship of Amanda Mathers,” July 17, 1854, Minute Book 1852, 277, Fairfax County Circuit Court Historical Records Division.

The apprenticeship system could have provided work skills for children who would otherwise grow up without the ability to maintain themselves as adults, but in some cases, the practice failed both the apprentice and the master. Mary Frances Gibson, a ten-year-old free African American girl, was charged with setting fire to the barn of her employer, William Garges on June 8, 1853. The blaze consumed the building and all of its contents and caused damages estimated at \$500. According to the testimony of the Justice of the Peace who incarcerated the girl, one of Gibson's duties was to start the fire in the kitchen in the morning. After completing that task, she took four matches to the barn, set the building on fire, and then informed Garges's daughter, Ann, who was planting her garden that the barn was burning. Because of her confession to the Justice of the Peace and Garges's son, John, Mary Frances was jailed, put on trial that month, and sentenced to three years in the penitentiary. Available records indicate that the court had not formalized the work relationship between Garges and Gibson as an apprenticeship. Given the small number of court-ordered apprenticeships, such informal work agreements were likely the most common method of employing free African American children. Mary Frances Gibson did not have the protection of the court if she was displeased with her work arrangements. The record of Gibson's trial does not indicate her motive for setting fire to her employer's barn, but her penitentiary sentence certainly

ended her employment with Garges. Even in childhood, free African Americans used the tools at their disposal to determine how their labor was used.<sup>13</sup>

The legal system reflected the desires of the white community to use young African Americans for labor while maintaining social control, but the concerns of parents of these children extended beyond daily work. Free African American women such as Eliza Brown found that the apprenticeship system engulfed the whole family. At age fifty-five, Brown lived in the household with Arthur Broadwater where she took in washing as a source of income. Living with her were George Brown, age fourteen, who was bound to Broadwater to age twenty-one to learn the business of farming, and Caroline Brown, age twelve, who was to learn the business of being a house servant under Broadwater. Under Court directive, both children were to be compensated for their labor at the end of their terms of apprenticeship, but the intervention of the Civil War makes it impossible to know if either child served a full term. In the 1870 census, Eliza Brown is listed as a head of household living with George Brown, a farm hand. The realities of the daily lives of the Brown family are unknown, but the public records suggest that Eliza Brown's ability to live with George and Caroline depended upon their contributions to the labor of the Broadwater household. Furthermore, their apprenticeship likely reflected the value of the labor of the entire family rather than being designed to prepare the minors for independence in adult life.<sup>14</sup>

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<sup>13</sup> Philip J. Schwarz, *Twice Condemned: Slaves and the Criminal Laws of Virginia, 1705-1865* (Baton Rouge: Louisiana State University Press, 1988), 211–212 Schwarz asserted that arson was common among slaves seeking revenge. He argued that slaves in Northern Virginia set fire to barns containing hay and grain which would be quick burning and do the damage sufficient to satisfy the desire for revenge. .

<sup>14</sup> “1870 Census”; Sprouse, *Fairfax County in 1860: A Collective Biography*, 210.

Whites often did not formalize their labor arrangements with children leaving both the children and their families without any legal recourse concerning these understandings. Lucy Anderson, age forty-five, appeared in the 1860 census with no occupation but with six children, ages five to thirteen. Two of the children listed in her household were also listed as living elsewhere. Benjamin, age eight, was shown living with Richard Kidwell, a twenty-four year old married white laborer with one child, while Harriet, age eleven, lived with Joseph Kidwell, a twenty-eight year old married white laborer with one child. Benjamin and Harriet were the only African Americans living in their respective households. Lucy Anderson lived in close proximity to George Kidwell, a forty-seven year old married white farmer with eight children under the age of twenty. Since no formal apprenticeship agreements were drawn up, the labor arrangements for Benjamin and Harriet Anderson are unknown. Nevertheless, the census records indicate a need to work during their childhood even if such children divided their time between two different households. Similarly, Clarissa Lockett, age thirty-five, headed a household containing two children. No occupation is listed for Lockett, and two of her other children are listed in other households. Esli Lockett, age thirteen, lived with Sarah Jones, a seamstress who also included the aging Sarah Ambrose in her household. Lizzy Lockett, age twelve, lived with James Green, a blacksmith. No information on the children's work can be found, but their living arrangements indicate that Clarissa Lockett's family had splintered when the children were very young. Free African American women often had no marketable skills. Faced with raising a family, these women had to consent to the removal of their children from their households. In these

situations, the labor of the child seemed more important to survival than the solidarity of the family.<sup>15</sup>

Because many free African Americans struggled to make a living, the children in their midst shared that difficult existence and could even become the pawns in adults' lives. Court records, such as a case involving Willis Long, show the underside of life of Fairfax's free African American population. A free man of color, Long was charged in 1854 with stealing money and goods from James Whaley at his store house near Centreville. Arrested along with Long were an adult slave named Clara and a child named Ben, also a slave. Whaley testified that on the night of the robbery he was asleep on the floor of his store and had placed his pants beside him on a side board. When he awakened, his pants lay outside the store's door, his pocket book was missing, and the door to his store house was open. Immediately attracting attention was Long whom Whaley described as a gambler with bad character and who worked little. Ben gave rise to suspicion when he spent, through the help of another slave, Phil, an unusually large amount of money at a store in Centreville. Phil testified that Ben had asked for his help in buying a pair of shoes that cost \$1.50. To emphasize how unusual it was for an African American child to have any money, the evening before Ben had tried to buy the shoes, he had, according to Phil's testimony, asked Phil to lend him five cents to buy some buttons. After giving Ben the money for the buttons, Phil retired to the kitchen next to Willis Long's blacksmith shop where he slept. Long usually slept in his shop, but on the night of

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<sup>15</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 25, 1241; "1860 Census."

the robbery, Phil indicated that he heard Willis Long, Ben, and a woman talking outside at a late hour.<sup>16</sup>

The court then turned to Ben for his testimony which revealed how Long had involved the youth in a criminal enterprise. Asking the youngster to accompany them, Long and Clara went to James Whaley's store where Long told the small boy to quietly enter the room where Whaley was sleeping and procure the keys to his storehouse from Whaley's pants. After Ben succeeded in his mission, Long took Whaley's pocket book and keys, and he and Clara then robbed the storeroom with Ben as look out. After the robbery, Long gave Ben some money. Ben left the adults and went to bed before asking Phil the next day to go to Centreville to buy him the shoes. Although Ben claimed not to know how much money he had received, after buying the shoes he spent the rest for lemonade and cakes for his friends. While the trial proceedings do not refer to any family relationships among the parties involved, Ben called the older adults Uncle Phil, Uncle Willis, and Aunt Clara, indicating possible kin ties although the titles of uncle and aunt may have been used only as a matter of respect. Clara received thirty lashes on her bare back, but the record does not indicate any punishment for Ben. His purchases show a desire for both necessities (shoes) and luxuries that he lacked. Despite Ben's damaging testimony, Willis Long was found not guilty and dismissed from jail a month after the trial. The court record does not indicate the reason for Long's extended incarceration after the acquittal. In spite of the mixed verdicts, the story indicates how African

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<sup>16</sup> Fairfax County (Va.) Circuit Court, "Commonwealth v. Willis Long," August 1854, Term Papers, 1854, Box 4, Fairfax County Circuit Court Historical Records Division.

American adults sometimes used children in ways that took advantage of their youthful desire for a better existence.<sup>17</sup>

African American children who dreamed of living on their own terms as adults found their path to achieving such aspirations difficult even if possible. The experience of the Harris family in Centreville indicated ownership of land was important in passing small accumulations of wealth on to the next generation. Another way that African American children secured a legacy was learning a skill from a family member. Such was the case in the family of Porter Smith of the Mount Vernon area of Fairfax County. Porter Smith, a successful blacksmith, married Jane Ford, daughter of West Ford, and thus acquired a farm when Ford divided his property among his children. When Confederate soldiers captured Smith during the Civil War, one white neighbor commented, “I presume they wanted a good blacksmith.” Smith taught his skill to his oldest son, William Dandridge Smith. Even though the Smith family held land and marketable skill, Porter and Dandridge were illiterate. Virginia’s laws forbidding the formal education of African Americans successfully limited the learning opportunities of these children to artisanal skills. After the war, African Americans took advantage of formal educational opportunities, and the Smith family was in the forefront of changing the dynamic. Dandridge Smith’s wife, Annie, became the first African American teacher in the Gum Springs School that had been established by the Quakers shortly after the war. The story of the Porter Smith family exemplifies that free African American children could aspire

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<sup>17</sup> Ibid.; Fairfax County (Va.) Circuit Court, “Commonwealth v. Willis Long,” August 22, 1854, Minute Book 1852, 293, Fairfax County Circuit Court Historical Records Division.

to independence and even success, yet for many of their peers the hurdles to acquiring the skills necessary to achieve their goals loomed overwhelmingly large.<sup>18</sup>

Dependency on the adults in their lives characterized children. Whether this dependency endured over a lifetime often was related to expectations imposed by the white community. Even though the antebellum period was a time of expanding educational opportunities for white children, few African American children were literate. The belief that African Americans were suited only for manual labor was evident in the training offered their children. The apprenticeship system provides evidence that by age ten these children were expected to contribute labor of some value. Whites viewed African Americans through an economic prism basing their worth on the value of their labor. Even though African Americans were unable to contest their lot as laborers, they were able to contest who received the benefits of their work.

### **Living on the Fringes of White Paternalism**

The idea of African American dependency not only had an economic aspect but also cultural consequences. Slavery as a system postulated bonds people as dependent on the master; however, white paternalism did not necessarily extend to African Americans who had attained freedom. Some masters attempted to help their former slaves to make the transition into their new life while others offered no help. The ideal of the white male overseeing dependent African Americans carried into the public arena. Laws, which required the overseers of the poor to respond to the plight of the indigent, codified

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<sup>18</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 1809–1810; “1870 Census”; Chase, *Gum Springs: The Triumph of a Black Community*, 40–45.

paternalism. These white males determined deserved aid and the kind and amount of help offered. The overseers' response to the needs around them reflected the same range of judgments that were made by manumitting masters.

In a system built around localism, Fairfax County was divided in districts with an overseer in each area empowered to respond to those persons in need of aid. Free African Americans were not completely shut out of the system, but neither were they major beneficiaries of poor relief. Help for the poor in Fairfax County came in two forms. Persons who could not physically care for themselves received shelter at the county poorhouse, known as "indoor aid." Other indigent persons who continued to live on their own received "outdoor aid." Many records of the overseers of the poor prior to 1840 have been lost or destroyed, and the existing records do not specify the standards, if any, used to determine need.

The most recognizable symbol of the county's help for its indigent population was the poorhouse. In 1841, the Court permitted the overseers to dispose of the former poorhouse and make more suitable arrangements. The public record tells us little else about this early facility. In 1842, George and Mary Chichester sold the overseers 150 acres of land for \$1,500 to be used for the establishment of a poor farm and house for the county's neediest residents. In 1844, the Court ordered that "the poor be moved to the new poorhouse when it is finished." The Superintendent of the Poor handled the financial matters and managed both the facility and the outside work of planting and harvesting to provide food for the residents. The work of maintaining the house and nursing the residents usually fell to the wife of the superintendent. As recorded in the 1860 census,

Zephaniah and Kitty Buckley assumed these roles and cared for nine residents who ranged in age from forty to ninety. The three African American occupants were Sarah Frinet, ninety, Abraham Conner eighty-five, and Tom Holmes, forty. Age was surely a factor in why Frinet and Conner were at the poor house, but records do not indicate why Holmes resided there. The conditions inside the Fairfax Poor House are unknown, but at least the county attempted to keep a viable facility available for its needy residents.<sup>19</sup>

**Table 8 Expenditures on the Poor in Fairfax County during the 1850's**

Year	Amount
1850	2,012.37
1851	1,992.25
1852	2,379.22
1853	1,736.84
1854	1,757.18
1855	2,397.05
1856	2,583.46
1857	1,770.60
1858	Not Available
1859	1800.52

Although the poor farm was designed to provide food for its residents, the county provided funding for other needs. The Overseers of the Poor were responsible for keeping detailed records of how the county's funds were spent. According to a surviving 1854 agreement, the head of the county's poor house received a stipend per resident and was under contract with the Overseers to maintain the property and provide appropriate food,

<sup>19</sup> "1860 Census"; George and Mary Chichester, "Deed of Sale," November 18, 1842, Deed Book H-3, 27, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Order to Dispose of Old Poorhouse," August 16, 1841, Minute Book 1835, 330, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Order to Move Poor into New Poor House," September 16, 1844, Minute Book 1842, 166, Fairfax County Circuit Court Historical Records Division.

bedding and medical services for those in his care. Table 8 shows that the county's expenditures on its poor population varied by year. The records are not consistent making it difficult to explain why the money spent on the poor varied, but the few Reports of the Overseers that have survived indicate that expenditures were seldom made to support African Americans. In 1850, twenty-two whites and three African Americans lived at the county's poor house. The county gave the Superintendent of the Poor \$400 to cover the expenses of those in his care. By comparison, outside relief to 49 persons cost the county \$658.50. Only one of those persons was an African American, and he received a \$10 payment. The remaining relief paid doctors for their medical treatment of the poor, or went to a miscellaneous account often used to satisfy debts to local merchants.<sup>20</sup>

The few extant records of the Overseers of the Poor show that this group flexibly responded to need, including help with burial expenses. In 1854, the overseers paid \$3.50 for a coffin for an African American male named Titus. It is possible that he was the same Titus who received his freedom under the provisions of the 1799 will of Lawrence Washington which required him to serve to age twenty-five and who registered in 1826

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<sup>20</sup> Fairfax County (Va.) Circuit Court, "Report of 1851 Payments for the Poor," July 24, 1851, Minute Book 1846, 348, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Report of 1852 Payments for the Poor," September 20, 1852, Minute Book 1852, 38, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Report of 1854 Payments for the Poor," July 17, 1854, Minute Book 1852, 282, Fairfax County Circuit Court Historical Records Division; Fairfax County Court of Quarterly Sessions, "Report of 1855 Payments for the Poor," July 16, 1855, Minute Book 1855, 32, Fairfax County Circuit Court Historical Records Division; Fairfax County Court of Quarterly Sessions, "Report of 1856 Payments to the Poor," July 21, 1856, Minute Book 1855, 157, Fairfax County Circuit Court Historical Records Division; Fairfax County Court of Quarterly Sessions, "Report of 1857 Payments for the Poor," June 16, 1857, Minute Book 1855, 270, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, "Report of 1859 Payments for the Poor," May 21, 1859, Minute Book 1858, 321, Fairfax County Circuit Court Historical Records Division; Overseers of the Poor, "Agreement between John Caton and the Overseers of the Poor," October 1853, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division; Overseers of the Poor, "1850 Superintendent of the Poor Annual Report," 1850, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division.

as a free person. If the same person, the overseers may have singled out Titus to be the recipient of a proper burial because of his connection to the Washington family. Records of the same year show that five persons received direct aid of \$25 for the year exceeding the usual \$10 to \$15 paid recipients. Nace Henson, who had petitioned for his freedom from Anna Fitzhugh, was among the beneficiaries receiving increased aid. A year earlier, Betsy Payne, a free woman of color about whom little else is known, not only received the direct aid but also had medical expenses of \$90.50 paid. Although these free African Americans received aid, the amounts represent only a small part of the expenditures of the county each year. The detailed records that survive list amounts of aid given by the overseer in each district to individual recipients. The discretion of each overseer determined whether recipients received “outdoor” aid; the overseers judged few free African Americans qualified for aid.<sup>21</sup>

The Overseers may also have been involved with the poor in more informal ways. George Hunter, one of the county’s overseers of the poor, was an attorney and owned real estate with an estimated value of \$3,000. In 1860, his household included 19 persons including two slaves, a sixty-year-old mixed-race male and a twenty-year-old mixed-race female. Also resident in the household were five free African American children, Henry Bennett, a four-year-old black male, Polly Newcomb, a six-year-old mixed-race female, James Williams, a fourteen-year-old mixed-race male, John Williams, a ten-year-old

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<sup>21</sup> Overseers of the Poor, “Report of Annual Payments to the Poor,” December 1854, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division; Overseers of the Poor, “Report of Payments for Benefit of Poor,” 1853 1852, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division; “1850 Census,” n.d.; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*“, and *Register of Free Blacks 1835, Book 3*, 1977, 35; Overseers of the Poor, “1852 Superintendent of the Poor Annual Report,” September 17, 1852, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division.

mixed-race male, and Frank Honesty, a twelve-year-old mixed-race male. Court records do not list any of these children as having been formally bound to the Hunter household. James and John Williams were the children of Benjamin Williams who lived in the vicinity of the Hunter farm, but the parentage of the other African American children cannot be determined. The two youngest children were not old enough to earn their keep in the household. Most likely, the other boys provided labor for the Hunter farm, although little is known about the household arrangements. Evidence, including his earlier dealings with Sarah Ambrose, shows that George Hunter clearly fell into the mold of white paternalist who operated upon his own judgment of how to help his free African American neighbors.<sup>22</sup>

Whatever the motivation of George Hunter, white males disapproved of their peers who did not fulfill their perceived responsibility to care for their African American charges. William Maynadier had been a slaveholder in Fairfax County but moved out of state. In connection with his move, he abandoned a slave named Rachael leaving her as a slave without a master. In her new ambiguous status, Rachel became a charge to the Overseers of the Poor for reasons that were unspecified. The only asset that Maynadier left in Fairfax was a debt receivable from another Fairfax County resident. In 1846, the overseers went to court to request payment of that debt be made to the Overseers of the Poor to help cover the costs of maintaining Rachael. The case was satisfied and dismissed, although the nature of the settlement cannot be determined. Whether a former master had formally or informally freed his slaves, white authorities did not expect that

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<sup>22</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 976–977, 2139; “1860 Census”; “1860 Census--Slave Schedules.”

these persons should become an economic burden to the community, and the suit shows that the Overseers of the Poor were unwilling to take responsibility for Rachel, no matter her status, if they could find other forms of support for her.<sup>23</sup>

Maynadier's apparent abandonment of his slave ran counter to the more common practice of humane masters who assured that their older servants did not become dependent on others. Joshua Hutchison freed all his slaves except the four oldest. He directed the persons who were to manage his estate that these persons "shall at all times be treated with that care that becomes their age." In his will, Richard Marshall Scott also freed two of his slaves. He bequeathed money to John Allen to leave the area, but directed that his old friend and humble servant, Moses Johnston, be paid \$10 every three months and be allowed to continue to live on the farm. The actions of Hutchison and Marshall showed a lack of consensus among whites about the best way to care for aging African Americans. Granting freedom was costly as demonstrated by the regular payments granted to Moses Johnston. Thus, some manumitting slave holders declined to grant their older servants legal freedom, but instead directed that they be cared for in their old age. In either case, some older African Americans continued to depend upon white caretakers for survival.<sup>24</sup>

The paternalism shown by Joshua Hutchison and Richard Marshall Scott did not offer opportunity for the African Americans they aided to begin the process of wealth

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<sup>23</sup> "1850 Census," n.d., District of Columbia, Ancestry.com. 1850 United States Federal Census [database on-line]. Provo, UT: Ancestry.com Operations, Inc., 2009; Fairfax County (Va.) Chancery Causes, 1803-1970, "Board of Overseers of the Poor v. Maynadier," 1846, 1846-039, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

<sup>24</sup> Joshua Hutchison, "Will," October 17, 1842, Will Book U-1, 38, Fairfax County Circuit Court Historical Records Division; Richard Marshall Scott, "Will," January 26, 1859, Will Book Z-1, 119, Fairfax County Circuit Court Historical Records Division.

accumulation, and other whites were willing to allow African American freedom only if the former master did not suffer any loss in the emancipation. Such was the case with William Selecman who sold his fifty-year-old slave, James Washington, to Joseph Janney, a Quaker. In turn, Janney granted Washington freedom only after Washington's labor paid his purchase price which was not specified in the emancipation document. This requirement of self-purchase diminished the likelihood that the aging former slave could ever become financially independent. Washington's situation reflects the contradictions of freedom for many African Americans; their freedom had been won on terms that left them in a continued state of dependency.<sup>25</sup>

### **Laboring into their Final Years**

Although the law still envisioned white male control over dependents, in increasing numbers free African Americans began the process of wealth accumulation that allowed them to care for both children and aging family members outside the sphere of white control. Those with limited income often found that it took years to gather resources; thus, older African Americans were the most likely to have accumulated assets. This wealth accumulation by the older generation came at a time when their ability to labor was diminishing. Nevertheless, they combined the labor of the members of their household, marketed their products, saved the proceeds, and became agricultural entrepreneurs.

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<sup>25</sup> Joseph Janney, "Deed of Manumission," October 21, 1856, Deed Book Y-3, 83, Fairfax County Circuit Court Historical Records Division.

An example of this process can be found in the testimony of Benjamin Lewis before the Southern Claims Commission. Lewis and his wife had gained their freedom a couple of years before the Civil War. When Lewis filed his claim, members of the commission asked him how he could have accumulated \$149 worth of property since he had been enslaved almost up to the time of the war. Lewis replied, "I worked, and I had cows and a wagon...I worked for a man and gardened for him, marketed for him and did what he wanted, and he paid me \$25 a month, and I boarded myself." Lewis also indicated that he rented 30 acres of land, raised fruit and garden crops, and with the aid of a daughter and a hired boy, then sold the products in the District of Columbia. With the help of younger persons, Lewis turned his work into a profitable huckstering operation. He began wealth accumulation by working for others, renting land, and effectively utilizing the labor of those around him.<sup>26</sup>

Yet another successful African American from Fairfax was Thornton Gray whose background differed greatly from that of Benjamin Lewis. Born free, Gray was the son of Tomson Gray who had been emancipated by the will of George Washington. While still in his prime working years, Gray purchased five acres of land for \$25 from Thompson Javins. The labor performed by Gray was much like that of Benjamin Lewis. On his small farm, Gray was able to keep some livestock including milk cows. Although Gray had children from at least two relationships, he appeared in the 1870 census which listed him as fifty-five-years old with his twenty-nine-year-old wife Mary and three children. Since the women of the family usually tended to the domestic animals, Gray, as he aged,

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<sup>26</sup> Southern Claims Commission, "Claim of Benjamin Lewis," May 31, 1877, Southern Claims Commission Binder, Fairfax County Circuit Court Historical Records Division.

may have been able to give his younger wife a large share of the work that produced food for the family. The census designation of Gray as a farm hand suggests that he continued to labor but most likely for other persons in the area. Free African Americans continued to work into their last years, but their labors became less vital to survival if younger family members were available to help produce the necessities of life.<sup>27</sup>



**Figure 5 Caricature of Thorton Gray as an old man. He is depicted with a hoe in his hand showing his labor even at an advanced age.**<sup>28</sup>

In contrast, when younger African Americans were attempting to accumulate some wealth, the work of older members of the household was crucial. Alfred Gray, a

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<sup>27</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 779–780; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*, and *Register of Free Blacks 1835, Book 3*, 1977, 70; “1870 Census”; Thompson Javins, “Deed of Sale,” March 31, 1853, Deed Book S-3, 64, Fairfax County Circuit Court Historical Records Division.

<sup>28</sup> William H. Snowden, *Some Old Historic Landmarks of Virginia and Maryland, Described in a Handbook for the Tourist Over the Washington, Alexandria and Mount Vernon Electric Railway*, 3d ed (Alexandria, Va: Printed by G. H. Ramey & son, 1902), 70.

twenty-five-year-old laborer, and his wife Marian, a twenty-three-year-old laundress, provided a home for their three children as well as Ellen Weeks, age sixty.<sup>29</sup> Bound to Carlton Atkinson until age twenty-one, Gray then received an annual compensation of \$40. Whether Gray retained his position with Atkinson after attaining adulthood or whether his earning potential had increased cannot be ascertained. Still the family earnings depended on both parents working for wages. Weeks likely provided care for the children ranging in age from one to five and performed other domestic chores. Such contributions were vital to give the young couple an opportunity to earn funds for household needs.<sup>30</sup>

The ability to maintain extended family residence in close proximity often sprang from land ownership. William Jasper was fifty-two years old when, in 1860, he purchased thirteen acres of land for \$200 from Thompson Javins. On this small plot of land Jasper kept three milk cows and one hog, and grew corn. It cannot be ascertained how Jasper was able to accumulate the money to purchase the land. Jasper and his wife Sarah had been freed by the 1846 will of William H. Foote, which originally granted to each of his freed male slaves \$20 per annum and each of his manumitted female slaves \$10 per annum. In a codicil written just before his death, Foote directed that the amounts only be paid once rather than annually. The Foote estate was settled by division of real estate among his heirs in 1860, the same year that William and Sarah Jasper acquired their small farm. It is possible that the Jaspers only received their small inheritance from

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<sup>29</sup> Public records do not indicate if Alfred Gray was related to Thornton Gray; however, he lived in a neighborhood among several mulatto families with the surname of Gray. One of those households was headed by Hannah Gray, who was a sister to Thornton Gray. "1860 Census."

<sup>30</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 777.

the Foote estate in 1860 when it may have served as part of the payment for the land. It is also probable the Jaspers, as favored former slaves, continued to work for the Foote family. The Circuit Court had confirmed the status of William and Sarah Jasper as special workers in 1853 when they were granted permission to remain in the county.<sup>31</sup>

Other members of the extended Jasper family lived in close proximity to the William Jasper farm, but traced their freedom to other sources. Richard and Dorcas Jasper, ages seventy and sixty respectively, never registered as free in Fairfax County. By 1860 their four offspring had grown to adulthood, and their households included juveniles. One daughter, Lauranda Jasper, purchased four acres of land from Thompson Javins adjoining the land of William and Sarah Jasper. The census listed Richard Jasper and his two neighboring sons, Alfred and Henry, as laborers, and Richard owned two horses and a hog. The relationship between this multi-generational family and their neighbors, William and Sarah Jasper, is unclear. Nevertheless, the propinquity of the Jaspers' living arrangements seemingly sprang from the ability of senior members of the family to purchase and hold assets. The intact family cared for elders without outside help, and young children remained in the homes of their parents. Their labor allowed these families to survive without separations. After the Civil War, education became possible and more important as reflected by William Jasper's gift of one-half acre of land for a school for the education of African American children. This overt gesture happened

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<sup>31</sup> Ibid., 1048–1052; “1860 Census”; William H. Foote, “Will,” December 21, 1846, Will Book V-1, 5, Fairfax County Circuit Court Historical Records Division; William H. Foote, “Plat,” 1860, Deed Book C-4, 26, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Circuit Court, “Permission for William and Sarah Jasper to Remain in the County,” June 20, 1853, Minute Book 1852, 119, Fairfax County Circuit Court Historical Records Division.

at the end of slavery, but the ideals of African American independence had started well before the Civil War.<sup>32</sup>

The farm experience of John Jackson illustrates another example of family working together with neighbors. Testifying before the Southern Claims Commission, Jackson stated that he was born in 1812, but at the time of the Civil War he was still renting farm land. With his three children including two adult daughters, the family “plowed and tended 50 acres of corn, 20 acres of oats, and two acres of buckwheat.” At least two unrelated women testified that they worked for Jackson and lived near him. Jackson was also a cooper and employed another two persons who lived with him to help make barrels. Since he did not own land, much of Jackson’s wealth consisted of equipment and supplies for his cooper business. Although the Commission determined his claim that most of his assets were destroyed during the war to be unsupported, the testimony reveals how even modest assets of older African Americans provided support and employment to both family and neighbors.<sup>33</sup>

Having access to land allowed multi-generational families to support themselves. Sixty-year-old Glasgow Gaskins, and his fifty-five-year-old wife, Annie, lived on a farm valued at \$300 in 1860. County records do not show that Gaskins ever obtained title to the property, suggesting that he most likely was never able to fully pay for the land. Together with his son, daughter-in-law and grandson, Gaskins operated a farm that had

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<sup>32</sup> Laurel Grove School Association, “History of Laurel Grove School,” accessed November 13, 2013, <http://www.laurelgroveschool.com/HistoryOfLaurel.htm>; Virginia, *Registrations of Free Negroes Commencing September Court 1822, Book No. 2*“, and “*Register of Free Blacks 1835, Book 3*, 1977, 163–164.

<sup>33</sup> Southern Claims Commission, “Claim of John Jackson,” February 25, 1873, Southern Claims Commission Binder, 485, Fairfax County Circuit Court Historical Records Division.

four milk cows, three horses, and six hogs and produced corn and buckwheat. Glasgow Gaskins was the son of Cate Gaskins who had been freed under the will of Robert Carter. Many of the descendants of slaves freed by Carter became successful farmers and landowners in the Southwestern part of Fairfax County. The reason Gaskins was unable to follow this pattern cannot be determined. It is possible that Gaskins had never been able to purchase his farm because when he was in his early twenties, he had been incarcerated in the penitentiary. Although pardoned, Gaskins may not have been able to regain the trust of the community or make up for the wages lost. Still his access to a farm in his older years allowed three generations of this family to live somewhat independently of his white neighbors.<sup>34</sup>

Even though living on someone else's land apparently worked for the Gaskins family, those arrangements could lead to difficulties. Such was the case of John Anderson who had been a slave of Gordon Allison. Anderson and his wife, Eva, a free woman of color, had two children, John William Anderson and Abraham Jefferson Anderson. Because of their mother's free status, the two children were free, but they also served Allison as indentured servants with their term expiring when they reached twenty-one years of age. In 1823, when the two boys were approximately eight and ten years old, Allison sold John to his sons for \$100 and an assignment of tobacco. At the time, John Anderson was approximately fifty years old and lived on the Allison property. After Gordon Allison's death (the date of his death cannot be determined), his property passed to James Allison. Anderson had built a cabin on the property and paid the taxes that were

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<sup>34</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 733–734.

due on his rented property. Anderson's sons had moved from the property between 1834 and 1836 to begin a life on their own while John Anderson stayed behind at his home on the Allison property. Matters became complicated for Anderson after James Allison became indebted and could not pay his debts to Edward Simpson. The indebtedness allowed Simpson to seize Allison's property which according to Simpson included seventy-year-old John Anderson. In 1842, Anderson's sons filed suit in Fairfax County Circuit Court asking for their father's release from Simpson's custody. After two years, the court ruled in favor of John Anderson who regained his status in the community. The younger Andersons had never freed their father but also had never required his service. Instead, he remained on the Allison property and appeared to the community to be enslaved. Had John Anderson been freed, he would have been required to petition to remain in Virginia. As the property of his sons, who were absentee owners, and with the concurrence of a white property owner, Anderson was able to maintain his "freedom" within the system of bondage and keep his cabin well into his old age. His ability to stay in his home depended on his ability to labor enough to pay the taxes on his cabin and to provide for his necessities; and he continued such work at least through seven decades of his life.<sup>35</sup>

When no land or family was available to bolster the ability of free African Americans to live independently, they sometimes depended on the goodwill of their white neighbors. Although the judgments of white patrons could be harsh, Lewis and

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<sup>35</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "John William Anderson v. Edward Simpson," 1844, 1844-014. Local Government Records Collection, Fairfax County Records, The Library of Virginia, Richmond, Virginia.

Mary Deskins were able to maintain their home in Fairfax with the help of white supporters. The will of Thomas Lindsay freed the Deskins in 1831 when they were in their fifties. In 1836, they petitioned the General Assembly to remain in the state. Childless, Lewis and Mary were nearing the end of their lives, according to the petition. Citing the Deskins's character as industrious, honest and orderly, thirty-seven white supporters endorsed their petition to remain in the neighborhood. Little else can be discerned about the end of the lives of Lewis and Mary Deskins. Their labor had benefited their white owners, and their freedom came too late in life for them to accumulate assets of their own. Therefore in the end, they still depended on the whites whom they had spent their life serving.<sup>36</sup>

Free African Americans' attainment of independence was tied directly to their ability to turn their labor into wealth. In Fairfax, the most direct route to accomplishing this goal was to utilize the labor of the entire family to work the land. Gardens, milk cows, hogs, and chickens provided the food for the family and some extra income. Moreover, the sale of corn and grains provided money to purchase land and equipment. This process could take years, but many aging free African American became productive farmers rather than dependents in their declining years. Children learned the household skills within their families and became respected members of society without the formal and informal apprenticeship systems of white paternalism. Without direct confrontation with the white overlords surrounding them, these families were changing Fairfax society.

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<sup>36</sup> Thomas Lindsay, "Will," June 20, 1831, Will Book Q-1, 125, Fairfax County Circuit Court Historical Records Division; Lewis and Mary Deskins, "Petition to the General Assembly," December 17, 1836, Reel 50, Box 70, Folder 63, Library of Virginia, Richmond, Virginia.

The lives of young and old free African Americans show how families challenged the heritage of dependency associated with slavery. Their nascent struggle to gain control of their lives from birth to death was not fought in courtrooms and legislative bodies but through their labor. African Americans were changing the culture of Fairfax County, but the transition did not come easily for either whites or African Americans. Whites equated African American enslavement with cheap labor and economic self-interest. Some free African Americans were able to move beyond dependence by converting labor into their own wealth. This difficult but rewarding process utilized all available human resources including the oldest and youngest members of the community.

Freedom alone could never be the ultimate goal for those who were emancipated before the Civil War. For African Americans, life after emancipation was always hard. If their labor went unrewarded, negative consequences could easily follow as the lives of Philip Smith and those surrounding him showed. In 1860, Smith was ninety years old and the head of a household that included two families: Thomas and Mary Williams and their four children, and Thomas and Cordelia Garner and their two infants. The census listed Smith as a pauper, Thomas Williams as a laborer, and Thomas Garner as a blacksmith. Years earlier, the will of Jemima Lay provided for Smith's emancipation, but he eventually had to sue for his freedom in Fairfax Circuit Court. Detailed records of this case have been lost, so the exact cause of his grievance is unknown. Smith eventually won his freedom and registered in Alexandria in 1836 at age fifty-nine. How the aging Smith earned a living is unknown, but detailed records from the Overseers of the Poor in

1852 and 1853 show \$10 annually paid to “Old Phil.” Possibly this person was Philip Smith, who was classified as a pauper in the 1860 census. Smith’s relationship with the Williams and Garner families is unknown, but his impoverished status indicates that the household arrangements did not benefit Smith.<sup>37</sup>

Indeed the household offers a graphic illustration of the economic challenges facing free African Americans in Fairfax. Shortly after the Civil War, Samuel Matthews in collusion with Cordelia Garner murdered her husband Thomas. Garner lived for four days after being shot by Matthews. Garner related that he and Matthews rented a farm together, where the rent had just come due. Dissatisfied with the partnership, Matthews appealed to Cordelia Garner that they could be more successful without Thomas Garner. A witness heard Matthews tell Cordelia Garner, “He could make as much peddling as a blacksmith could.” After Garner died, his wife and partner were tried and convicted of murder. The crime reflected the financial strains faced by free African American households. Blacksmithing was one of the skills African Americans had learned during slavery, but possibly Thomas Garner could not use this skill profitably. Farming became riskier when land had to be rented. Samuel Matthews had convinced Cordelia Garner that he could accomplish the financial goals that he eluded Thomas Garner. Without achieving those goals, older African Americans such as Philip Smith continued to depend on others, and the younger members of the household sometimes became increasingly desperate. Philip Smith was able to use the courts to gain his freedom from slavery, but

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<sup>37</sup> Sprouse, *Fairfax County in 1860: A Collective Biography*, 1809; Lay, “Will”; Fairfax County (Va.) Circuit Court, “Philip v. John Barker”; Overseers of the Poor, “1852 Superintendent of the Poor Annual Report”; Overseers of the Poor, “1853 Superintendent of the Poor Annual Report,” August 1853, Overseers of the Poor File, Fairfax County Circuit Court Historical Records Division.

beyond that, he was unable to convert his labor and the work of those around him into independence.<sup>38</sup>

The yoke of manual labor was an encumbrance that followed free African Americans from slavery to freedom. Children were educated to perform menial tasks until they could do the work of an adult laborer. White respect for aging African Americans most often sprang from how beneficial their labor had been for their white neighbors. Although African Americans could not openly dispute these stereotypes, those who had gained freedom found another path. When families remained intact, their labor began to turn into the modest beginnings of wealth. As success followed these families, society in Fairfax County began to change. Free African Americans found a place in the community that transcended dependency and contributed to the well-being of young and old alike.

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<sup>38</sup> Fairfax County (Va.) Circuit Court, “Commonwealth v. Matthews and Garner,” June 1868, Term Papers 1868, Box 2, Fairfax County Circuit Court Historical Records Division.

## **CONCLUSION--BOTH AFRICAN AND AMERICAN**

Persons of African descent in antebellum Fairfax County lived surrounded by race-based notions that they were dependent and not fully American. Former slaves and their descendants found taking responsibility for their lives difficult in a place where racial difference was taken for granted. This demarcation is evident in the public documents that provide the basis for this study's conclusions. In formal records, nineteenth-century white Virginians usually referred to free African Americans as free Negroes, free blacks, mulatto or colored. Although there is no indication that white officials used these terms deliberately to indicate that those of African heritage were not American, a disconnection was there. Those who recorded the documents in antebellum Fairfax County consistently noted the race of African Americans. This conscious effort to inscribe difference leaves little question that free African Americans formed a separate caste in Fairfax County society. Nevertheless without any evidence of a public debate, free African Americans were changing that society. They always had contributed to the community through their labor, but with freedom, their work began to give them a modest wealth accumulation. Those who became successful tradesmen and farmers challenged the ideals of those whites who clung to notions of racial difference and slavery as a positive good. Even as people of African descent lived without most rights of citizenship, the culture of assumed dependency was changing. Still, this transition was

slow to be recognized in law where freedom was possible but the roadblocks to self-reliance remained in place.

This gradual change makes the answer to why free African Americans remained in Fairfax complex. By the 1850's, the rhetoric of racial inferiority still won elections but did not always prevail in the daily life of Fairfax. Public documents reflect innumerable cases in which white neighbors praised the work ethic, thriftiness and general good demeanor of African Americans. With each of these individual victories, African Americans were establishing their place in society. The process occurred not only in legal proceedings but also in daily life when African Americans used their work ethic to reflect social responsibility. As freed people became self-reliant, their values reflected those of white citizens, and it became more natural to see them as neighbors and as Americans.

The Civil War tested the relationships between the white community and African Americans. As indicated by the stories told to the Southern Claims Commission, most African Americans supported the Union cause, but their support had to be muted. A few freed slaves sold products to the Confederates in an attempt to survive the mayhem created by the war, but for the most part, their loyalties were to personal freedom. African Americans testified that they worked for the Union army stationed in Fairfax during the war, and they had concerns about being captured by Confederate forces and sent south into slavery. Freed persons showed their independence during the war which was another step in being ready for full citizenship for Fairfax's African males that came after the Civil War.<sup>1</sup>

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<sup>1</sup> "Southern Claims Commission Binder," n.d., Fairfax County Circuit Court Historical Records Division.

Since free African Americans in Fairfax County had used the judicial system to win their freedom and air their grievances in the antebellum period, taking matters to court for settlement was not new for them. The passage in 1868 of the Fourteenth Amendment guaranteeing citizenship for African Americans broadened the range of petitions they could bring to court as shown by two cases brought after the constitutional change. Reflecting a desire for equity with other in the settlement of the estate of Stephen Daniels who died in 1854, Joseph Harris of Centreville sued for his unpaid legacy of \$100. Through his will, Daniels manumitted Harris prior to the war, but the former slave did not assert his right to payment until 1870. The estate settlement had been protracted because numerous debts had to be paid. An 1857 suit brought by white creditors had mentioned the money bequeathed to Harris, but the administrator did not act before the war. In the meantime, Harris and his sons had become successful farmers in spite of significant property losses during the war. After he died, his heirs filed a request with the Southern Claims Commission for remuneration for the damages. In support of that claim, one of Stephen Daniels' grandsons, Charles Ratcliffe, testified for Harris. When asked why his grandfather set Harris free, Ratcliffe replied, "Because he was a son and his father had been a faithful foreman." Regardless of how that ambiguous statement is interpreted, Joseph Harris undoubtedly had been a favorite slave. Nonetheless, after the war ended, he did not hesitate to demand through the court system a small portion of the wealth that he helped to create and had been given. In a similar case, Cassandra Hall, upon her death in 1854, bequeathed to Charles Lucas his freedom. The executor of the estate, Isaac Hall, did not immediately free Lucas choosing to require his service until

debts of the estate were paid. In 1873, Lucas brought suit and alleged that he was owed money from the estate for labor performed after he should have been freed. Cassandra Hall had praised Lucas in her will “for his past service and fidelity.” Even if Lucas had been loyal as a slave, he sought relief from the heirs who used his service for their profit. No longer needing to use the justice system to acquire their freedom, African Americans after the Civil War used the courts to try to correct issues relating to financial equity.<sup>2</sup>

Free African Americans had also challenged social norms during the antebellum period. Whites had augmented legal borders with social boundaries such as denying bondsmen basic rights such as marriage, control over their children, and the ability to protect and provide for their families, but free African Americans demonstrated that their family units could thrive outside of the control of white paternalism. When these social controls ended after the Civil War, African American families worked more independently, although some found failure as well as success on their own terms. For example, shortly after the war Edmund Harris married Jane Bird. They eventually had four children together, two of whom survived childhood. Harris struggled to adequately support his family. In 1874, when he took work in Maryland, he left his family in Virginia in order to improve the family’s financial situation. During his absence, Jane Harris became pregnant from an affair with Edward Brooke. When Edmund Harris

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<sup>2</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, “Foote v. Daniel,” 1857, 1857-013, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Fairfax County (Va.) Chancery Causes, 1803-1970, “Harris v. Allison,” 1870, 1870-040, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia; Southern Claims Commission, “Claim of Joseph Harris,” 1877, Southern Claims Commission Binder, 460, Fairfax County Circuit Court Historical Records Division; Cassandra Hall, “Will,” November 9, 1854, Will Book 1, 155, Fairfax County Circuit Court Historical Records Division; Fairfax County (Va.) Chancery Causes, 1803-1970, “Lucas v. Hall,” October 1873, 1873-017, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

returned to his home, his wife left him and took his two children with her. The local Baptist church charged Jane Harris and Edmund Brooke with adultery and dismissed them from the congregation. When Edmund Harris later filed for divorce, three of the deacons of the church testified to confirm Jane Harris's infidelity.<sup>3</sup>

The breakup of the Harris family illustrated how life for free African Americans in antebellum Fairfax had served as a pathway for transition to postwar life. Although enslaved people could not formalize their marriages, the institution long had been a part of free African American life. In spite of the desirability of a stable core family, the tenuous economic existence of African American families in rural Fairfax often destabilized relationships, and children became hostages to these fortunes. The search for economic gain compelled African Americans into continued movement seeking employment, and these separations strained family relations. David Silkenat's study of divorce in North Carolina after the Civil War found that African American church leaders often disciplined their congregants for marital infidelity. Since these ministers believed divorce was a moral rather than a legal matter, their opposition to divorce did not peak until the late nineteenth century. The break-up of the Harris marriage reflects the dynamics found by Silkenat. Economic pressures shortly after the Civil War resulted in the divorce of Edmund and Jane Harris and their disassociation from the church. However, Edmund Harris was able to gain custody of his children through the judicial

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<sup>3</sup> Fairfax County (Va.) Chancery Causes, 1803-1970, "Harris v. Harris," 1878, 1878-040, Local Government Records Collection, Fairfax County Records, Library of Virginia, Richmond, Virginia.

system following the lead of earlier African Americans who used the courts to stay close to their children.<sup>4</sup>

The separation of the Harrises was a very personal matter, but as the local church trial shows, these affairs were matters of concern for the community. Although free African American neighborhoods were part of the antebellum Fairfax landscape, these communities struggled to have a public center since Virginia law prohibited both the education of African Americans and their gathering for worship without whites present. The lack of these public centers stifled the collective voice of free African Americans. This situation changed rapidly after the war. In 1866, trustees purchased land from the Gillingham family for the Woodlawn Colored Meeting and School Association. In 1867, trustees of Methodist Church (Colored of Falls Church) purchased land to form a new church, and the following year, the trustees of the First Colored Baptist Church of Fairfax County purchased land and formed a church on the Georgetown and Leesburg Turnpike. In 1870 in Fairfax village, trustees of the Colored Baptist Church of Fairfax County purchased land to construct a meeting place for their congregation.<sup>5</sup> We cannot know what the collective voice of the antebellum African American community may have said if they had been allowed to gather and express their views, but in neighboring Maryland, collective African American voices had been heard. In a gathering in December, 1826 at

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<sup>4</sup> David Silkenat, *Moments of Despair: Suicide, Divorce, & Debt in Civil War Era North Carolina* (Chapel Hill: University of North Carolina Press, 2011), 121–122.

<sup>5</sup> George and Elizabeth Gillingham, “Deed of Sale,” August 4, 1866, Deed Book G-4, 338, Fairfax County Circuit Court Historical Records Division; John and Henrietta Crocker, “Deed of Sale,” July 1, 1867, Deed Book I-4, 555, Fairfax County Circuit Court Historical Records Division; James and Charlotte Crocker, “Deed of Sale,” December 1, 1868, Deed Book I-4, 494, Fairfax County Circuit Court Historical Records Division; Blecker and Harriet Canfield, “Deed of Sale,” May 20, 1870, Deed Book L-4, 198, Fairfax County Circuit Court Historical Records Division.

Bethel Church in Baltimore, free African Americans published a Memorial to the Citizens of Baltimore concerning the removal of freed persons to Liberia. This Memorial stated in part:

We reside among you, and yet are strangers; natives, and yet not citizens; surrounded by the freest people and most republican institutions in the world, and yet enjoying none of the immunities of freedom. This singularity in our condition has not failed to strike us as well as you; but we know it is irremediable here. Our difference of color, the servitude of many and most of our brethren, and the prejudices which those circumstances have naturally occasioned, will not allow us to hope, even if we could desire to mingle with you one day, in the benefits of citizenship. As long as we remain among you, we must (and shall) be content to be a distinct caste, exposed to the indignities and dangers, physical and moral, to which our situation makes us liable. All that we may expect is to merit by our peaceable and orderly behavior, your consideration and the protection of your laws.<sup>6</sup>

The lives of free African Americans of Fairfax County reflect many of these same sentiments. The ambivalence about remaining in the county is shown by the numbers of persons who left shortly after being freed from slavery. Nevertheless, many others stayed. Those who chose not to leave relied not only on the protection of law but also protection from the law. In legal matters, all African Americans depended on the good will of whites since their rights as citizens were limited. However, the ability of African Americans to petition the court for freedom and once free to purchase property became keys to their lives in Fairfax.

After emancipation, free African Americans countered the legal and social prejudices against them with their labor and some land to work. Some were able to make their work result in a growing separation from dependence on white supporters; but

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<sup>6</sup> William Cornish et al., "Memorial of the Free People of Colour," *African Repository and Colonial Journal* (1825-1849), American Periodicals, 2, no. 10 (December 1826): 293.

others, especially women, remained beholden to their former masters. In Fairfax, life on the land for the poor depended on the labor of all members of the household, and families who were able to remain intact had the best chance of success. Economic dependence was the enemy of stability. Those who remained in Fairfax and fought insecurity with their toil began changing the culture of dependence well before the results of the Civil War granted them the full benefits of American citizenship.

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## **CURRICULUM VITAE**

Curtis L. Vaughn received his Bachelor of Arts in Economics from The College of William and Mary in 1971. He was employed by the Federal Deposit Insurance Corporation where he worked in bank supervision for over thirty-three years. After retirement from that organization in 2004, he received his Master of Arts in History from George Mason University in 2008.