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The Legal Construction of Whiteness and Citizenship in Maryland, 1780–1820

Patricia A. Reid
University of Dayton, preid1@udayton.edu

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Patricia A. Reid, Ph.D.

Assistant Professor

University of Dayton

300 College Park

Dayton, OH 45469

Office #: 937-229-2864

Fax #: 937-229-2816

Email 1: preid1@udayton.edu

Email 2: reid_p@yahoo.com

ABSTRACT: In years before the Missouri Compromise, petitioners who won their freedom suits based upon their ancestral links to white women, with land, could participate in the body politic. However, as Maryland legislators began to identify with the plantation south, they invented a legal understanding that would deny ambiguously freed blacks freedom and justices would re-invent proslavery jurisprudence, like the attachment clause, that would deny them freedom. Those who were freed and could claim citizenship in the years immediately after the American Revolution, by 1810, case law had changed and they lost many of their rights they once held. By using a slave state like Maryland as a microcosm, this research hopes to show the gradual way African Americans were not only denied claims to legal protections but, were deprived of their rightful place as agents in this new democratic experiment. **Keywords**: African American History, Maryland History, Whiteness, Slavery and Manumission, Citizenship, Early National Period

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> "This…was a time in which you clearly saw into the injustice of a state of slavery, and in which you had just apprehension of the horrors of its condition, it was now, sir, that your abhorrence thereof was so excited, that you publicly held forth this true and invaluable doctrine, which is worthy to be recorded and remembered in all succeeding ages. 'We hold these truths to be self-evident, that all men are created equal, and that they are endowed by their creator with certain inalienable rights, that among these are life, liberty and the pursuit of happiness.'"[1]

> "From the time that Garrison, Lovejoy, and others began to agitate for freedom, the slaves throughout the South kept in close touch with the progress of the movement…[as a mere child]…I now recall the many late-at-night whispered discussions that I heard my mother and the other slaves on the plantation indulge in. These discussions showed that they understood the situation, and that they kept themselves informed of events by what was termed the "grape-vine" telegraph."[2]

Benjamin Banneker, who was a descendent of a white mother and an African enslaved father, was easily the best-known person of African descent living in the eighteenth century next to Phillis Wheatley. Known for his scientific experiments, his completion of his Almanac, his assistance to Andrew Ellicott, who surveyed and designed the "Federal Territory," and his political participation as a citizen, Banneker was the living example of how despite great odds African Americans could make great achievements. Banneker also responded to Jefferson's hypocrisy in his Notes on the State of Virginia (1791). To Banneker, the Declaration of Independence and its expressions of natural rights doctrine and other Enlightenment principles applied to the entire nation, including African Americans.[3] Yet in his Notes Jefferson espoused a belief that blacks by their skin color and lack of intellectual prowess were naturally inferior and therefore were not capable of full inclusion in the body politic.[4] The sentiments of 1776 had changed drastically in Banneker's lifetime, these ideas of natural rights and excitement over winning the war against Britain heralded new opportunities for freedom and new pathways to citizenship. Banneker exercised many of these opportunities in this

new era, he owned real and personal property, he voted, and in many ways participated as a citizen in this new republic. However, by 1810 his siblings could not exercise the same state rights Banneker enjoyed. This was largely because the new state codes and judicial opinions began to clarify definitions of whiteness. Because these new case laws, and its corresponding judicial decisions clarified definitions of whiteness, freed and free people of African descent lost rights to citizenship that they once held.

The turn of the nineteenth century symbolized a transitory period in our nation's history when the doors began to close for African Americans and the possibilities of natural rights doctrine and the religious and political fervor of the American Revolutionary era began to wane. Banneker's home state of Maryland provides the perfect location to closely examine this transition. Marylanders were marked by their simultaneous and uneasy coexistence of slave and free labor systems, by their geographic middle ground location, and by their political ambiguity about slavery and freedom. This contested terrain, as evidence from freedom suits, is the perfect place to examine the devolution of black citizenship and enables us to see how the entrenchment of proslavery ideology and jurisprudence begins to grip the state, its legislators and its judicial system.

There is little doubt among historians and scholars that after the American Revolutionary period there was a moment where free and enslaved African Americans benefited from all the fervor about British oppression of its colonies. However, there is almost no scholarly discussion about how southern state legislators reconciled legal processes of freedom with the new state and federal constitution. Generally, for Maryland historians this period provided the kernel of what would become the long hard road toward expanding black freedom before the Civil War.[5] Maryland was unusual

among the slave states. Being a border state, by the 1860s it had the third largest free black population in the nation: free blacks were more numerous than slaves. Many counties in Maryland were demographically similar with two-thirds of the black population free and one-third enslaved.[6] Baltimore, Maryland's burgeoning economic capital would eventually have an even larger proportion of the free black population, at roughly five-sixth by 1860. This growing free black population in Baltimore, many have argued, sets Maryland apart from its southern neighbors characterizing it as a distinctly border state identity where the structure of enslavement was skewed toward freedom.[7]

In this article, I go beyond previous interpretations of Maryland by extrapolating from petitioners' cases of this period the socio-historical implications that began to erode the rights of the enslaved to petition the court for freedom based on white racial ancestry and immigration status. Justices reactions to the effectiveness of African Americans' "grape-vine telegraph" that brought freedom suits from across Maryland inadvertently compelled these justices and then legislators to retreat from American democracy. The legal understanding they used to retreat from democracy invented a proslavery legal discourse that would reconcile British Common Law precedents with the new legal code under the state and federal constitution. Thereafter, the rights of free and freed African Americans were increasingly marginalized with respect to constitutional protections. In doing so, these slaveholding legislators' refined a quasi-free status as the new legal code and this legal code would co-exist, albeit uneasily, with slavery.

Benjamin Banneker and his family relations provide a perfect foil to talk about this transition that made it more difficult for enslaved blacks to obtain freedom and the renewed quasi-free legal code that marginalized free blacks in this early national period.

Like him, the petitioners were of biracial ancestry, but unlike him, they were historically kept in slavery over successive generations. Those who won their cases did so because their maternal ancestor was deemed by the court to be of white racial ancestry. Even more encouraging, once free, these former slaves would immediately enter into that segment of the Maryland free population that David Skillen Bogen in "The Maryland Context of Dred Scott: The Decline in Legal Status of Maryland Free Blacks 1776-1810" calls "Historically Free Blacks." As a result, with property they could claim all the privileges of full citizenship and political belonging in Maryland, as Benjamin Banneker had done.[8] While they undoubtedly experienced social alienation and racial discrimination, once free they were entitled to the acquisition of property, could serve on juries, could testify against a white person in court, had freedom to travel, and most importantly their descendants had the right to political belongingness those in the colonial period and Revolutionary generation had customarily practiced.

As Bogen and other scholars point out, Maryland was a multi-tiered society and people of African descent occupied a range of slave and free statuses: they could be free independent farmers, or wage workers, or "serve" for a specified time either by law or by contract negotiation, or they could be held in life-time and perpetual bondage.[9] As early as 1783 Maryland legislators prohibited the newly manumitted from voting. By then, those that were newly freed accounted for the larger share of the free African American population.[10] What made petitioners different from this population of newly freed was that because a petitioner's slave or free status was a community socio-legal relation, really dependent upon slaveholders or masters accurate record keeping or scruples, dependent on the willingness of white parents to claim their African descendants, and by

the Revolutionary period, dependent on what white people could remember of their inherited slave or free status, once emancipated by court, petitioners entered the world of the historically free and had all the rights of citizenship.

People of African descent in this slave state of Maryland were engaged in the courts through their petitions and proactively sought ways to participate in the political and legal community to obtain freedom. Those who petitioned the court claiming white maternal ancestry and won, with the acquisition of land, had all the rights to citizenship. Between 1787 and approximately 1802, their appeals encouraged white Marylanders to look inward at their own history of tyranny over the oppressed and in turn compelled them to define what it meant to be a citizen in this New Republic.

In the 1790s and then again in 1802, a critical case came before the Maryland General Court in Anne Arundel and the Appeals Court in Annapolis, and that was Charles (and Patrick) Mahoney v. John Ashton (1797-1802).[11] Previous to this case, petitioners were successful in establishing their freedom based on descent from a free-born white maternal ancestor, making them white under law and thus citizens. As a result, there were increasingly more freed people in the population who were, with the accumulation of property, entitled to full state and federal citizenship rights. But, the Mahoney case changed all that. In looking closely at the case, I noticed that it revolved around additional judicial understandings: 1) whether Mahoney could make legal claims to whiteness – that is, whether or not his maternal ancestor fit the physical description of white racial identity; 2) whether the precedent setting imperial ruling of Somerset (1772) had juridical foundations in state and federal constitutional understanding as it did in northern courts; and 3) whether the national character and the era of the American

Revolution really meant to include these marginally white and freed people in its bodypolitic.

Because the Mahoneys lost the case in the Appeals Court, it meant that: 1) he and other people who the community deemed were phenotypically African could no longer use white racial claims as a means to obtain freedom and political belonging; and 2) Luther Martin (the lawyer for slaveholder John Ashton) successfully revived a legal understanding where slavery as it existed in colonial Maryland would be reconciled with the imperial ruling in Somerset, he argued that villeinage and slavery were the same in British Common Law, the Appeals Court agreed with Martin and sustained racial slavery in the state's legal legacy. It was only after this ruling that free African Americans with white racial ancestry were gradually alienated from the bodypolitic. Additional court cases defined the meaning of citizenship in Maryland based on white racial identity. Soon thereafter there was a heightening of police regulations through new legislation that monitored their movement and their economic participation – freed petitioners as well as other historically free blacks, were collapsed into a category with the newly freed blacks and were legally and racially treated as unequal.[12] This revised caste system invented a quasi-free legal identity where even Benjamin Banneker's family relations lost rights under this legal code. This was what was new in Maryland's New Republic. One's blackness, even though technically free, began to mean a quasi-free legal status and that included a loss of their constitutional rights.

While Banneker did not have any children of his own to carry on his legacy of freedom, he and his siblings were descendants of biracial parentage. History tell us that Banneker had all the liberties of a citizen, however, by 1810 his sister, Minta Black, was

excluded from exercising the legal rights Benjamin enjoyed. This foil, by using a historically well-known figure's family as a means to talk about the diminishing rights petitioners experienced once free personifies this unique socio-legal landscape people of African descent in Maryland navigated in the years before the Missouri Compromise. Banneker's sister, Minta, of course as a woman of African descent, could not vote and could not serve on juries, but it was eight years after the Mahoney case that the court found in Rusk v. Sowerwine (1810) that she and other people of African descent could not provide testimony in cases where both the plaintiff and the defendant were white. The civil liberties that were available to Banneker and other "Historically Free People" in years' prior were not by 1810 available to Minta or any other freed persons of African descent, including the petitioners. By stripping away access to full participation in the political community, by juxtaposing any trace of Africanness apart from white full entitlements to citizenship, and by reducing the legal status of free blacks to slave-like legal conditions, the white legal community defined Maryland apart from northern processes of emancipation, and instead sympathized with the Deep South in order to preserve its slave legacy.

The oligarchs of Maryland like Charles Carroll of Carrollton, Samuel Lloyd Chew, William Paca, Daniel Dulany and others were complicit in crafting the geopolitics of the state that marginalized free and freed African Americans. They were among those that invested in industrializing Baltimore, had rural estates, and smaller residences in towns like Annapolis. They simultaneously held important seats in the state and federal legislature. Some too were justices in the Annapolis Court of Appeals. Oligarchy reigned during this period and their decisions in Court of Appeals cases shows how they

interpreted and rewrote their arguments about where African Americans would fit within the new state and federal design. Many of the justices personally had a variety of free and enslaved black laborers and free and indentured white laborers available to them. Some of these justices, as defendants, lost cases where blacks won their freedom; others, as lawyers, had previously defended blacks in their petitions.[13] Thus, their opinions reflected their understanding of Maryland's historical and political tradition and they helped shape its social and economic history. In Gleanings of Freedom Max Grivno accurately points out that "slavery, [as invented in Maryland] proved adaptive, malleable, and able to flourish in a variety of industries."[14]

Their role as slaveholders, their landholdings on both shores utilizing a variety of laborers, and their decisions as justices, gives us a glimpse into how they fashioned Maryland's border state identity and the coexistence between slavery and freedom in the state before the Missouri Compromise. However, their expansive holdings in urban and rural settings on both the western and eastern shores of Maryland, provided for African American petitioners a network, in the words of Booker T. Washington, a "grape-vine telegraph" of familial connections across Maryland which enabled them to mobilize as freedom seekers who brought cases against their slaveholders to court. Their actions as petitioners revealed an understanding that with freedom and with property, they could exercise their rights as political beings.

* * *

Within a span of approximately twenty years, between Somerset and the new federal government under the Constitution of 1787, definitions of citizenship were suspended in Maryland. Legally, William Murray, Lord Mansfield, Chief Justice of

King's Bench, the highest court in England in the case of Somerset (1772) opined that: slavery was a violation of natural law, by stating that slavery could only exist by positive law; that only an act of Parliament could permit slavery; and that an enslaved person could obtain a writ of habeas corpus to prevent removal from England, it being a free country. Thus, American courts would have to reconcile their laws with this new legal understanding.[15] When the Lord Mansfield's opinion was read, the editors of the Maryland Gazette remarked that "…the principal [sic] on which the…[Somerset case] must be determined concerns the whole British nation."[16] This landmark case in England, although confusing to many of the time, reverberated throughout the Atlantic world, momentarily destabilizing Maryland legislators and forcing colonists in America to question the legitimacy of slavery. The fervor over the Somerset case opened the door for a reinterpretation of freedom suits in Maryland. Hundreds of petitioners across Maryland, linked by family ties, would be set free and those who managed to obtain property voted.[17] African Americans who voted were able to do so also because the Maryland state constitution of 1776 only required a property qualification, not a racial qualification, to vote.[18] In addition, by 26 March 1790, the new federal government set rules for national citizenship that limited naturalization "to aliens being free, white persons."[19] Once the federal government enacted this law it set the nation on a course to defining who could claim this white racial prerogative; it also set up national barriers and racial restrictions to American democracy.

Yet even before the federal law was passed, freedom seekers, harkening to colonial law and Somerset, filed suits claiming descent from a white maternal ancestor who immigrated from an English port or a free country to Maryland shores. Their

importation from an English port suggested their free white status. Their off-springs' enslavement was that much more egregious because they were held in servitude beyond the legal limit, they being grand children or great grand children of these white female progenitors. Those who filed freedom suits on this legal principle expected justices to define who qualified as white.

Between 1787 and 1802 enslaved petitioners filed suit to clarify if their female ancestor who had Irish, Scottish, Portuguese, or Spanish heritage, who had Native American heritage, or who possibly immigrated from as far away as India, having East Indian heritage, was "white," and therefore the family deserved freedom. Between 1787 and 1810 Maryland justices would further clarify definitions of whiteness in the state's legal code. Like Somerset, coercion and direct emigration to Maryland from an English port also suggested free status. Justices in these freedom suits would invent a new legal tradition that defined Maryland as a slave state while simultaneously defining who could and could not claim citizenship based on racial identity and phenotype.

The petitioners, unlike Banneker, instead of being free, the colonial Maryland law of 1663/1664[20] and 1681 enslaved their white progenitor. The law of 1664 was an expansive colonial slave code that had three interrelated parts. The first part enslaved all Africans then residing and imported into the colony for life. This enslavement was hereditary and perpetual. The second part dealt with freeborn white women who "disgraced themselves" by marrying an African slave and who, according to the legislators, were subordinate to free English women and had inferior religious principles. White women so married were required to serve their husband's master for the rest of their husband's life and their children were slaves like their fathers. The third part dealt

with the children from biracial unions before the passage of the law. They were to serve their parents' master for thirty years after which time they would be free. In 1681 sections two and three of the law was "utterly repealed and made void," this time however, if free born white women could prove that they were "by any instigation, procurement, knowledge, permission, or contrivance,…" or coerced into marrying African slave men by their master or mistress, they and their children would be released from all form of servitude.[21] The law further penalized the slaveholder or master and minister or priest for this act by fining them 10,000 pounds of tobacco, "half to the Lord Proprietary, and the other half to the informer, or person grieved."[22]

In the same year of the Constitutional Convention, Mary Butler, the daughter of William and Mary Butler, who had lost their freedom suit in the Court of Appeals one year before Somerset in 1771, petitioned the same court for her freedom from Adam Craig. Demonstrating her fervent hope for freedom, she acquired the notable lawyer Samuel Chase by the time the case reached the Annapolis Court of Appeals. Chase defended Mary Butler one year before he was appointed Chief Justice of the Criminal Court in Baltimore. He was successful in helping Butler achieve freedom. He did so by arguing that there was no record of Mary Butler's Irish great grandmother Eleanor's, conviction for marrying the enslaved man Charles, Mary's great grandfather. Chase emphatically stated that, "[t]he law of nature does not prohibit a white person marrying with a black person…[i]t is the act of assembly alone, which creates the offence and annexes the penalty."[23] Maryland legislators, in establishing the 1663/1664 slave law, had done a grave injustice to Irish Nell when they wrote a law that convicted a white woman for marrying an enslaved person without due process. And since the statute did

not assign a mode of conviction for Irish Nell, there was no record of a "trial according to the common law."[24] Eleanor was an English subject and as such, according to him, she was "entitled to all the privileges of an English subject in an equal degree with any other English subjects."[25] With no conviction or trial by jury, and hearsay evidence not admissible, "[i]f such evidence was illegal to convict Irish Nell, it cannot now be received against her issue."[26] Besides, he added, that the law was particularly unjust and cruel on the innocent children from these marriages since generation after generation had been kept illegally and prejudicially in perpetual and hereditary slavery. The Court of Appeals justices must have agreed with Chase because they reversed the opinion of the previous court and freed Mary Butler. In establishing precedent on this issue, Chase and the Court opened the floodgates for other creolized Africans with European ancestry to contest their slaveholders in court. In so doing, hundreds of slaves across Maryland, linked by family ties, obtained the freedom their family had long desired.[27] Not long thereafter in 1794 in Basil Short v. Henry Rozier and in Robert Thomas v. the Reverend Henry Pile, like the other plaintiffs won freedom because they were lineally descended from a white woman who had intermarried with an African slave.[28]

When the Butlers, Shorters and Thomas' were awarded freedom, the court reified their white racial identity as an antecedent for that freedom; yet the Court also simultaneously acknowledged the colonial exploitation of the petitioners' ancestors on the same basis – demonstrating the irony in these freedom suits. The Court of Appeals broadened, at least for a time, the discourse of freedom as articulated by Chase and applied it to a population of previously enslaved people with more African ancestry than European.[29] The Appeals Court of the early 1790s enabled generations who had suffered

under enslavement the opportunity to become free at a time when colonial black codes had not yet been fully redefined in the New Republic. Once they won their freedom suits these early national African American Marylanders were entitled to the rights "Historically Free People" like Banneker exercised. They could become successful independent farmers and with this property they could vote, sustain their rights by bringing a case (if need be) to court against another citizen, had freedom to travel and market their goods, and most importantly of all, they were free from the slaveholders' control of their reproductive lives – they could form families who would never experience enslavement and who belonged to the political community of Maryland.[30]

Freedom seekers had an ally in the early abolitionist organizations in Maryland. "The Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and Others Unlawfully Held in Bondage," although few in number, managed to get such luminaries as Samuel Chase[31] and Luther Martin[32] to serve as honorary counselors. This organization was short-lived, it lasted from 1789 to 1797 and advocated, as the name suggested, for the closing of the Atlantic Slave Trade and the abolition of slavery. In the year when Benjamin Banneker travelled to the Federal Territory with Andrew Ellicott, the Society's constitution determinedly stated that:

THE human Race, however varied in Colour or Intellects, are all juſtly entitled to Liberty; and it is the Duty and the Intereſt of Nations and Individuals, enjoying every Bleſſing of Freedom, to remove this Diſhonour of the Chriſtian Character from amongſt them—From the fulleſt Impreſſion of the Truth of theſe Principles; from an earneſt Wiſh to bear our Teſtimony againſt Slavery in all its Forms, to ſpread it abroad as far as the Sphere of our Influence may extend, and to afford our friendly Aſſiſtance to thoſe who may be engaged in the ſame Undertaking; and in the humbleſt Hope of Support from that Being, who takes as an Offering to himſelf what we do for each other.[33]

The advocacy of the Society reflected Maryland legislators' belief to eliminate the Slave Trade in 1783, well before the Constitution prohibited the federal government from outlawing slave importations until 1808.[34] Maryland legislators wrote another statute in 1792 that limited the amount of slaves, slaveholders who fled from Santo Domingo could bring into Maryland.[35] While the Society saw slavery as an abusive English system that had been sustained in the United States after the Revolution, the Society was also very careful about not impinging on slaveholders' property rights, particularly when bond people absconded.[36] Along with African Americans who asserted their freedom, the

Society used the Maryland court system to confront the inherited problem of slavery.[37] Following the antislavery defense of James Somerset's lead counsel, Granville Sharp, petitioners' lawyers with each successive freedom suit gradually strengthened who could be free and the terms of that freedom. For a moment, this set Maryland on a course consistent with northern justices' opinions that acknowledged Lord Mansfield's opinion in Somerset.[38] That is, in this new republic, the doctrinal interpretation of the Constitution was to extend freedom and citizenship following the Massachusetts model.

In a slave state like Maryland, since there was no legislation based on race that prohibited an African American from being a candidate for a legislative office, one ran for seat in the House of Delegates. In 1792 Thomas Brown, a revolutionary war hero, ran for election from Baltimore. He did not follow through with his candidacy, demonstrating that Maryland, nor any other free state, was ready for his bid. Brown was also not prepared nor financially capable to garner the kind of support he needed to win.[39] Yet his mere candidacy demonstrated a surprising degree of tolerance whites showed towards African Americans in the years after the Revolution. His candidacy in 1792 offered yet another example of the many ways African Americans exercised their rights as citizens and their proactive efforts to demonstrate their civil liberties. It also showed that Jefferson's belief about black inferiority was unfounded and offered evidence that free African Americans had the moral and intellectual savvy to actively participate in American democracy.

As word spread of the Butlers', Shorters' and Thomas' freedom, others petitioned the court based on the same principle, now however, the Court had to decide what "whiteness" meant; or rather which ancestors fit the community's physical and cultural

understanding of who classified as white and were therefore free. Anthony Boston's freedom hinged on whether his ancestor's Portuguese or Spanish heritage fit the court's description of white racial identity. The court probed witnesses who could testify to Boston's great grandmother Maria's (or Marea's), phenotype. And because Maria "was of yellow colour or complexion, with long black hair, the court [was] of the opinion that the said Maria, or Marea, was not a slave, but free."[40] This case was tied to other cases, Boston v. Sprigg and Boston v. Mercer, where the plaintiffs were also released from slavery because the court used phenotype as an indicator of white racial ancestry. Together these cases involved fifteen members of Maria Boston's offspring, many of whom had different slaveholders and lived throughout Maryland.[41] This familial patchwork of African Americans of different statuses some left behind in slavery and some free, would complicate slavery and freedom in Maryland. In canvassing communities for white allies and in spreading the word of their familial right to freedom among their relatives, these petitioners contributed to the increasing numbers of freed people living throughout Maryland. Their legitimate status as free people who had all the rights of citizenship heightened slaveholders' paranoia about the growing Africanization of white citizenship.

That people of largely African descent managed to maintain familial ties across Maryland despite their different locations and their different slaveholders became critical in their successful quests for freedom. When one family member petitioned the court for freedom, others did so as well – enabling those who could prove their ties to the same ancestor would follow their relatives into freedom and with property, full citizenship. Claiming free status based upon white descent required that judges and jurors specify

whose ancestors fit the physical description of freedom; that is, whether or not the ancestor of the petitioner could lay claim to white status or forced importation from England. When petitioners canvassed communities to identify willing candidates to testify to their ancestor's white status in court some were willing to pay witnesses money for their testimonies.[42] Ann Mason testified that a young mulatto man and two young mulatto women inquired about a woman, free Indian Moll, who had lived on Wye Island. Those who inquired about Indian Moll were willing to pay Mason money if "she would tell them what she knew about the free Indian girl on Wye Island."[43] In making this statement, Mason signaled to the court that the petitioners' would desperately use whatever extra legal means necessary to influence the courts' decision in their quests for freedom.

Richard Moody's grandmother, Margaret (also known in the petitions as Mary or Moll), was the subject of three interwoven cases that linked people together through consanguinity: Thomas Carver v. Samuel Lloyd Chew, Rachel Baker, et. al. v. John Paca, and Margaret Creek v. William Wilkins. Moody, Carver, Creek, Baker and her relatives claimed descent from a free Native American woman. Baker's petition included somewhere between thirteen and nineteen members of Margaret's offspring. The petitioners all lived in different counties on Maryland's western and eastern shore and they filed suit in these different jurisdictions, revealing the breadth and interconnectedness of these petitioners' lives. Moody and Baker petitioned the trial court in Queen Anne's. Carver did the same in Anne Arundel County and Creek did so as well in Baltimore County. Their slaveholders Samuel Lloyd Chew and John Paca had alternately owned Wye Island where Margaret had been held in servitude. The widow of

Samuel Lloyd Chew, Elizabeth Chew, recalled that when Margaret was displeased with someone in the Chew family, she would often say that "she would not be put upon by no body…[that] she was free as anybody if she had her right."[44] To the justices, this assertion provided an important clue that her descendants deserved freedom. Her physical characteristics and cultural heritage were also critical pieces of the puzzle that enabled the petitioners to win their court case. Margaret was a "yellow woman" and free because she was the daughter of an Indian woman, "a native of this country."[45] White witnesses' testimonies helped the court decide to award Moody and the other petitioners freedom. Ironically, the justices leaned entirely on Elizabeth Chew's testimony. As a result, several petitioners and their offspring, linked by family ties, won freedom.

As the population of freed blacks grew in the decade after the American Revolution, so did the population in Baltimore. Because of Baltimore's easy access for large ships to maneuver it became Maryland's economic capital and the conditions of blacks in this emergent urban area are often used as a means to explain how the state's border identity was formed.[46] For those who had farms and plantations in the countryside on the western or eastern shores, some of these masters switched from tobacco to wheat cultivation. Others maintained their tobacco farms and increasingly harvested and cultivated other crops like corn. And still others had a variety of farm animals, sheep, pigs and cattle, to supplement their diets and enhanced their farms' overall production.[47] Frederick Douglass' narrative tells us how slaveholders and masters used he and other black laborers as jacks-of-all-trades; that is, where African Americans could be agricultural workers in the countryside in one instance, be domestic servants in the towns in another instance, and be artisans in the city in yet a third instance, prevailed.[48] The

multifarious labor system enabled Maryland legislators and farmers to hire out enslaved workers or release freed workers when they were no longer needed. Masters could also readily depend on a set of laborers and their children, through hereditary and perpetual slavery, who would be needed for work year round. The existence of the racial hierarchy that included perpetual and lifetime slavery in Maryland was both ideological and had to do with slaveholders' desire for economic and labor flexibility. The economy and society it seems was moving toward freedom. Masters' use of people of African descent in various capacities and in both urban and rural settings also weaved these families together throughout the different shores of Maryland, as evidenced by the Boston and Moody cases.

But, when slaveholders voluntarily emancipated their workers they did so for a wide range of reasons. They might have been deeply influenced by the Enlightenment principles of the Revolution and the religious fervor of the period; they might have believed that freedom should take place sometime in the future, thereby agreeing with gradual emancipationists of the North; some might have let the enslaved pay monetarily for their freedom; some too may have anticipated that their enslaved had legal rights to freedom and citizenship; in rarer cases, a husband, wife or parent was so moved to emancipate their loved ones; and still others, might have granted freedom because there was "good causes and considerations" for it.[49] Whatever the reason, manumission deeds written during the dawn of the Early Republican period also led to an increasing number of freed people in the population by the Missouri Compromise. Because of these manumission deeds and the success of petitioners in their suits for freedom, African Americans were hopelessly entangled with enslavement. They served as slaves for a

term of years and with emancipation – whether by deed or by court - they entered the world of the free. These freed people had friends and family who were left behind in enslavement, vulnerable to the whims of their masters, and the economic instability of slaveholding.

A sampling from manumission deeds from Anne Arundel County Maryland is a good place to examine the processes of emancipation in this slave state: since Annapolis is the state's capital many of the legislators had business there - it is also located in Anne Arundel County; and, Anne Arundel County had similar demographics to other counties on the western and eastern shores of Maryland. By using manumission deeds there as an example, one can deduce how emancipators envisioned African American freedom. As indicated above, not all emancipators were whites. Some African Americans freed their wives, husbands and children. But, what was telling was that many of the manumission deeds written between 1783 and 1808 envisioned enfranchising the freed person, even when the law prohibited it in 1783 and again in 1796. Such attempts to enfranchise the freed person continued until approximately 1820, although the word did not appear as frequently. It is quite possible that between 1783 and 1820, the laws were changing rapidly and lay people who emancipated their enslaved charges were not aware of the many legal changes in restricting the franchise to white people.[50] Yet in inserting the words "free, manumit and enfranchise" in the manumission deed, emancipators asserted their view of a just society, granting the vote to the previously enslaved. Without a doubt, all of the emancipators who used these words were white men and women; the manumission deeds using the word "enfranchise" freed either an individual or several black men *and* women.[51]

In the manumission deeds for Anne Arundel County between 1783 and 1820, I noticed that no African American granted enfranchisement to the person freed. This was possibly because they were not enfranchised themselves and the laws of 1783 and 1796 had prohibited granting the vote to those awarded freedom, and they simply followed the law. Recognized names of legislators like Charles Carroll of Carrollton, or Daniel Dulany or John Ridout never used the phrase to "free, manumit and enfranchise," in their manumission deeds. At one point the phrase was presumably a document of the court and was used in certain cases, but after 1808, that document was no longer in use and emancipators inserted the phrase on their own accord intermittently until approximately 1820.[52] The gradual disappearance of the phrase to "free, manumit and enfranchise," from manumission deeds was consistent with the gradual loss of citizenship rights for blacks over this period; that even once liberal emancipators no longer saw people of African descent as capable of being active members in the political community.

Influenced by the planter elite, the legal apparatus of slavery was re-enacted with the 1796 law. It was a sweeping code that targeted the enslaved population, their importation into the state, their petitions, and their rights once freed. The law says little about creolized historically free blacks like Benjamin Banneker or the petitioners. The law also strengthens the rights of "citizens" from within the state of Maryland and citizens of neighboring states who had property in Maryland, to bring slaves into the state for work. It also granted masters the right to free the enslaved, but it limited their rights to export freed blacks. The 1796 law illustrated how the geopolitics of the state caused legislators to try and manage this muddled, ambiguous and often confusing terrain of slavery and freedom less than a decade after the Constitutional Convention.[53]

Free and freed creolized Africans were an indelible part of Maryland; their presence is visible across the legislative and judicial record. They were tenant farmers, some owned their own farms, businesses, and their labor and still others served as apprentices and indentured servants. Inevitably they would end up in court for a host of reasons. Petitions for freedom for example, could also include indentured servants or apprentices and could be found in the Baltimore Court of Oyer and Terminer and Gaol as well as emanate from another county court. In renting land, free African Americans might have a dispute with the owner and their case land in court. Or, they might have been accused of committing some felony or be a witness to a theft and the case end up in court. Thus, legislators over the course of this early national period tried to monitor, separate and define the legal framework of who could be sued by who based on racial identity and servitude status. Petitions usurped masters' and slaveholders' authority in granting freedom. Instead of individual masters and slaveholders deciding for themselves who was deserving of freedom, petitioners overtly defied their authority by initiating freedom suits and in doing so, they invoked democratic ideals and applied it to their condition.

Perhaps the most crucial turning point for creolized African petitioners in Maryland was the protracted case spanning five years between Charles (and Patrick) Mahoney and John Ashton that reached the General Court in 1797 and came to its completion in the Court of Appeals in 1802.[54] This was a salient case that pushed the boundaries of black claims to freedom based on white ancestry and like northern courts, further tested the limits, interpretation and applicability of Lord Mansfield's opinion in the Somerset case. Eminent legislators and justices like Gabriel DuVall,[55] Jeremiah

Townley Chase[56] and Luther Martin were involved in the case. The Mahoneys claimed freedom based on the maternal descent of Anne Joice (sometimes also listed as Joyce) because of non-African phenotype and ancestry as well as because, like Somerset, she unwillingly emigrated aboard an English vessel out of an English port. Since Somerset had established that there was no positive law for slavery in English Common Law and that a slave could obtain a writ of habeas corpus to prevent removal from England, the ruling helped to strengthen freedom in the North but left interpretations in the South to the justices' discretion.[57] In invoking Somerset and heritage, Mahoney tested the courts to define what constituted the boundaries of who could claim white racial identity and therefore freedom and citizenship. Judges based their arguments on racial categorization and immigration status.

Sometime between 1678 and 1681, at the age of thirteen, Anne Joice (sometimes also referred to as Mary Joyce) came to Maryland from England on the ship John and Christian of Bristol with Charles Calvert, Lord Baltimore and Proprietor of Maryland.[58] She served Lord Baltimore for four years in return for her passage to Upper Marlborough, Maryland, suggesting that she was an indentured servant and free born.[59] Her term of service was then sold to Henry Darnall, deputy governor to Lord Baltimore[60]and owner of Woodyard, a plantation in Prince George's County. Like Charles Carroll of Annapolis, Henry Darnall owned property in Anne Arundel County as well. Anne Joice worked as a cook and when her term of service expired, Darnall burned her indentures, and further abusing his authority, Darnall sent her to Benjamin Hall who imprisoned Joice in a kitchen cellar for five or six months.[61]

Some witnesses described Anne Joice as a "jet black" woman who was born in Barbados,[62] while others described her as an old mulatto woman[63] and still others described her as a pretty woman from East India.[64] A white witness named Anne Hurdle testified that "she never saw one that came from [East India] and does not know whether they are white or black nor did she ever hear her mother in law [sic] say whether Joice was white or black."[65] Ann Joice's status was nebulous, and her offspring's enslavement or freedom depended on what others in the community could remember about her physicality. There were many contradictions in the testimonies of the white witnesses. Mary Craufurd said that Ann Joice and her children "would be free if they made a stir to obtain their freedom."[66] Henry Davis said that his father, Henry Davis, never heard whether Ann Joice was slave or free, but Joice and her children were held as slaves. Her occupation as a cook did not give the witnesses any clues about her status either.

While in service to Darnall, Joice bore four boys, David Jones, Thomas Crane, John Wood and Francis Harbard, and two girls, Suzan Harbard and Polly (or Molly) Harbard. Unlike the Butlers and the Bostons, Joice's children had different last names, suggesting that she had children out of wedlock and following bastardly laws of the period, was penalized by having to serve extra time.[67] All of Joice's sons were listed as mulattos. Some of Joice's children were free while others were enslaved. Two of her sons, Thomas Crane and John Wood, as freed people served on Stephen West's estate. Other than being free, records did not clarify in what capacity they worked. Joice's son John Wood lived comfortably in a house about a half-mile from Woodyard.[68] One day, while they were working at Stephen West's, there was a dispute with West's overseer and both Wood and Crane were accused of killing the overseer.[69] They were convicted and

later hanged. No doubt Anne Joice lived under much distress over loosing her two children and her own continued servitude. She lived out the rest of her life at Henry Darnall's Woodyard plantation.[70]

The judges' task was to determine if the Lord Baltimore had wrongfully enslaved Anne Joice, and if her descendants, Charles and Patrick Mahoney, were legally entitled to their freedom. The earlier court cases in October 1797 and 1798 terms, heard testimony from various members of the community that Anne Joice was entitled to her freedom and that Charles Calvert, Lord Baltimore, brought her into Maryland. It was not until the May 1799 term that there was any lengthy lawyerly discussion and verdict by the justices in the General Court. The Mahoneys' lawyers, Richard (or Charles) Ridgely and Thomas Jenings, argued several points, some of which resonated with the judge, Jeremiah Townley Chase, himself a slaveholder.[71] They merged the decision in Somerset with Revolutionary rhetoric: first, that when Anne Joice set foot on English soil, she became free, "no matter where she was born or whence she came;"[72] second, that because there was no common law tradition of slavery in England, villeinage not applying to this case, the petitioners were free because servitude was not inheritable; third, that Anne Joice had not been directly imported from Africa; and fourth, that their arguments were inspired by the revolutionary events of the period. Ridgely confidently asserted, following Lord Mansfield's precedent, that slavery was incompatible with religion and morality, that it was contrary to natural law. To better emphasize this point, he recited the maxim from the Declaration of Independence, declaring that "'we hold these truths to be self evident, that all men are created equal;' and that liberty is an 'unalienable right.'"[73] His

arguments strengthened citizenship rights won during the revolutionary period and applied it to the petitioners in this case.

Justice Jeremiah Townley Chase determined that the Mahoneys were descendants of a free woman, and in doing so, he agreed with Mansfield's opinion in Somerset that slavery was incompatible with natural law. When Joice was brought to England "her condition was changed from that of slavery into servitude for life; and when she was brought into Maryland by Lord Baltimore, she was only a servant, and the laws concerning slaves did not attach on her, and slavery was not resumed by her coming here, and consequently her issue are free."[emphasis in original][74] With this verdict, the Mahoneys, with the acquisition of property, were entitled to full participation as citizens. In setting precedent, the Somerset ruling had established that a slave could obtain a writ of habeas corpus to prevent removal from England. Since Ann Joice had come to Maryland involuntarily from England, it was reasoned that her unfree status did not attach in perpetuity. If the case ended here, at least thirty of the Mahoneys' relatives, some owned by Charles Carroll of Carrollton, would have followed the petitioners into freedom.[75] Justice Chase awarded the Mahoneys reparations; they won freedom and 159 dollars or the quantity of 8,929 pounds of tobacco. In this case, Ashton[76] would have to serve the Mahoneys' until this debt was repaid.[77] Ashton's lawyers immediately appealed this ruling and they filed many bills of exceptions. Several of these resonated with the justices in the Appeals Court.

At the Court of Appeals, among Ashton's lawyers was Luther Martin, the Attorney General of Maryland who adamantly denounced the large numbers "of negroes [who] have been let loose upon the community by the hearsay testimony of an obscure

illiterate individual" testifying to their descent from a free white woman.[78] In "Recompense to Revolution" Eric Papenfuse rightly argued that by the time the case reached the Appeals Court, investigators had conveniently found evidence that Anne Joice immigrated to Maryland aboard a ship from Guinea, off the west coast of Africa. Since she immigrated to Maryland on ship out of West Africa it was inferred that she was of African descent and enslaved. Martin, in his capacity as Attorney General and lawyer for Ashton, wanted to resolve the issue of Somerset in Maryland jurisprudence. And he used this case to do it.

Martin, as a former member of the Constitutional Convention and Anti-Slavery Society, argued against the transatlantic slave trade, yet he forcefully asserted the importance of domestic slavery, even though he admitted that "no person can properly advocate slavery" and that he was not an "advocate for slavery."[79] He argued that villeinage and slavery were the same with slight variations, principally that a villein could sue another. He then ran through a litany of cases where the British recognized the slave trade and argued that slavery was not an aberration under British law. Therefore, people of African descent were categorized as property and exchanged as such in England. The Somerset case, according to Martin, did divest "the master's right; yet…the moment the master and slave left England, the master's right revived."[80] Here too, Martin reinaugurated the idea of the attachment clause by suggesting that in Maryland, when people of African descent were made slaves as a result of positive law created in the colonial period, it was clear that the relation between master and slave existed and any forced importations resulted in their enslavement. By asserting the significance of the attachment clause in this case, he likened the petitioners as property, and as property

slaveholding was boundless - a slaveholder could take their enslaved property anywhere and upon returning slavery attached. Besides, he asserted, Somerset was decided more recently and should not have a retrospective operation.[81]

The justices of the Appeals Court agreed with the General Court's instructions to the jury that Anne Joice was in England and that her status previous to her migration was ambiguous. The justices said "…it might be that she was a white woman, or native of England…" the justices continued, and the "presumption, when admitted, being in favour of freedom."[82] Thus the case should proceed on that basis. The Appeals Court also agreed with Martin's interpretations of the case and reversed the opinion in the General Court. The Court consistently held that Ann Joice was a "Negroe," thus Charles and Patrick Mahoney were made slaves by the laws of Maryland then in existence. Somerset did not apply, because it was reasoned, that it would be difficult to tell, based on the records, what a British court would have ruled at an earlier time. The ruling affected Anne Joice's other descendants who could not claim freedom by arguing descent from a free or white woman or based on emigration status; they too were denied the possibilities of freedom and with it citizenship.[83]

The petitions for freedom based on white maternal ancestry were largely successful because they invoked revolutionary ideals that equated freedom with white racial identity. Claimants' ability to trace that lone white woman in their family tree generations ago enabled them to establish themselves among the native-born Marylanders whose heritage reached back to a European village. Their claims to this white racial privilege protected them from being commodified – with freedom they were no longer inherited, bought and sold, transferred, mortgaged and used as collateral – they were

citizens. The petitioners inadvertently reified that whiteness was equivalent to freedom.[84] Charles Mahoney's petition distinguished between those who could claim white racial heritage and those who could not. His petition came at a critical turning point in Maryland where lawyers and legislators began to conveniently interpret the meaning of the state and federal constitution as excluding people with phenotypically African heritage from exercising white privileges. In reconciling Maryland legal understanding with the imperial ruling from Somerset, Maryland justices would agree with Luther Martin that the institution of slavery with all its problematics of equating enslavement with blackness was a British colonial necessity. The preservation of slavery in Maryland resulted in stripping away the rights petitioners had to freedom. They would also enact legislation that would further define and separate free whites from free blacks – this quasi-free status would mean a loss of legal protections that free white citizens would enjoy. Maryland justices and legislators would begin to creatively manufacture a discourse in which African Americans would lose constitutional protections through arguments that would support the founding belief that the enslaved could not gain access to legal freedom and those that were freed were not meant to be included as citizens in the new nation.

Eighteen years before the Missouri Compromise a person's Africanness was increasingly seen as peripheral to state constitutional claims, in the process legislators and justices began to refine proslavery arguments. Soon thereafter, incremental laws would strip blacks of freedoms: they could no longer vote,[85] they could no longer testify against whites, and they needed a pass to verify and confirm their freedom - they lost de facto citizenship rights. The spirit of liberty symbolized by the Declaration of

Independence, were increasingly defined as belonging only to people with European characteristics, including although marginally, to white women through Republican motherhood.[86] With Luther Martin's proslavery assertions in Mahoney what emerges was an inauguration of a proslavery constitutionalism that saw Africanness as standing outside of constitutional protections – and that the framers never intended to include people of African descent in their designs of the new nation.

Between 1796 and 1810 in particular, the planter elite continued to influence legislation that restricted the customary citizenship rights the historically free black population enjoyed under Somerset. Laws increasingly limited the amount of freedom of movement the enslaved and free exercised during these years. So while the free black population might have increased during this period due to successful court cases resulting in freedom,[87] like many northern states, legal restrictions evolved simultaneously with their freed status.[88] Taken together, examination of the intersection of legal claims to white racial identity that blacks invoked in their freedom suits which in some initial cases allowed the petitioner to become free, would unfortunately later reinscribe and equate European phenotype with freedom and citizenship. Simultaneously these same legal mechanisms would define African phenotype as the opposite, people of African descent if slaves were seen as nonpersons before the law, and if free they would lack political belongingness: this was the quasi-free legal status.

The Mahoney case defined who could claim freedom and citizenship based on white racial identity and who could not. In the same year Court of Appeals handed down the opinion in Mahoney, the state legislature passed a law restricting the franchise to people who were phenotypically white. Benjamin Banneker's nephew, Greenbury

Morten, could not vote in the Baltimore elections.[89] Two years after that, legislators required free and freed African Americans to obtain a certificate of freedom.[90] In 1805 free blacks needed a license to compete against whites in selling staple crops like corn, wheat and tobacco; a year later legislators limited the immigration of free blacks into the state. Fearing slave revolts like the successful one in Haiti, in that same year, free blacks were prohibited from having a gun or a dog.[91] Because of this law, free blacks could not defend themselves from assault, nor could they use firearms to hunt for food. More importantly, the law signaled to the white community that creolized people of African descent were not entitled to Constitutional protections as stated in the Bill of Rights, particularly the right to bear arms.

This multicultural array of people from sub-Saharan Africans to Northern Europeans and their descendants along with their concomitant labor statuses ranging from slave to free, still intermingled throughout Maryland on the various farms, in industry, on the docks, and in towns. But, inevitably people who had physical characteristics associated with Africans would see things and could testify to the wrongdoings of the state's phenotypically white residents. Sometime before 1805 James Fisher was accused of breaking in William Dugas' cellar door with an intention to commit robbery.[92] Rebecca Syntha, "a mulatto woman, born free of a manumitted negro mother," was a witness for the state against James Fisher. At trial Fisher's lawyers argued that Syntha was "incompetent to testify against him, he being a free born white christian man."[93] The Court admitted Syntha's testimony, but decided that "if the prisoner should be convicted, they would postpone judgment until the opinion of the judges of the general court could be taken whether the witness was competent to give

evidence against the prisoner…"[94] The Court found Fisher guilty of the crime but left the decision about Syntha's testimony unresolved. As evidence they cited two colonial laws, the law of 1717 which indicated that "no negro or mulatto slave, free negro, or mulatto born of a white woman, during the time of servitude by law" [emphasis in court record] could serve as a witness in any court of law against a Christian white person; and another colonial law of 1715 that held white women in servitude for seven years if she bore a child by a "slave or free Negro" - the same law subjected their children to enslavement for thirty-one years.[95] Both laws failed to clarify the objections of Fisher's lawyer because Syntha's father was possibly white and she was free born. However, in 1808 the legislature passed additional legislation that blacks could testify against other blacks in criminal cases, this demonstrated a nod to English villeinage that Martin asserted as part of Maryland's legal heritage, and showed that the legislators were increasingly setting people of African descent apart.[96]

As a person of biracial parentage in colonial and revolutionary Maryland, Benjamin Banneker "exercised the rights of a free man in holding real property, in voting at elections, and being allowed and permitted to give evidence in courts of justice in cases in which free white citizens were concerned…"[97] However, the legislature of 1810 strengthened voting rights for white males, reaffirming a racial and gender qualifier. In that same year, Benjamin Banneker's sister, Minta, was deemed incompetent to provide testimony because both the plaintiff and the defendant in Rusk v. Sowerwine were white.[98]

Rusk v. Sowerwine is a deceptive case because it clouds the issue of a slave's descendants' long tough struggle for freedom. This case of replevin originated in

Baltimore's lower court and exposes the amalgamation of blacks and whites, free and enslaved, locked in slavery's grip. Hannah, a slave, and other personal property was given to Daniel Dulany on 12 April 1769 as mortgage for John Bailey's indebtedness to Dulany. In 1797 Daniel Dulany died. His wife Rebecca was the executor of his will.[99] Like slaveholders in Virginia, Marylanders "who wrote wills bequeathed their widows more than their statutory thirds."[100] Yet Rebecca gave William Cooke power of attorney and "authori[zed] him to act for her in all things relating to the said estate, as well in collecting the debts due to the testator."[101] The power of attorney was written at Dulany's home in Annapolis. When Cooke moved to Baltimore, he mislaid the power of attorney and could not find it before the case went to trial. Minta was asked to serve as witness for Rusk because she could prove that the "slave in controversy was a descendant from Hannah."[102] Minta's testimony was critical to Rusk's case. Without Minta's testimony, Rusk lost Hannah's descendant to Sowerwine and in turn, Hannah's descendant would be lost in slavery. The court opined that because Minta was black, she was deemed incompetent to testify and "unless the original power of attorney was produced, or proved to be lost…no evidence could be given of it."[103] Rusk v. Sowerwine in addition to the above Maryland statutes established that free black people over this period would lose rights that their ancestors had previously exercised as citizens, they were effectively politically alienated. White Marylanders' historical memory of the Revolutionary era would be shaped to fit the belief that to attain citizenship or exercise the rights of a citizen, one had to be culturally and historically of "pure" white racial ancestry and phenotype.

* * *

From the Somerset case in 1772 until the Mahoney case in 1802 Maryland legislators and justices had to figure out the murky and often confusing assertions of who could be defined as white, and therefore with the acquisition of property, entitled to all the rights of citizenship. Because whiteness was linked to free status and free status linked to location of importation, reconciliation to the imperial ruling in Somerset was necessary. If Marylanders, like other British colonial governments followed English Common Law, and Lord Mansfield had established that there was no positive law for slavery in English law, then the implied question was on what legal basis did slavery exist in Maryland? It was during the early national period that Marylanders recreated the judicial foundations for slavery in the state and under the new federal Constitution. Luther Martin's boldly stated argument in the Mahoney case rejected Lord Mansfield's less understood ruling in Somerset by asserting that villeinage and slavery were the same with only minor variations, by linking villeinage with slavery Martin clouded the issue of Mahoney's legal claims to whiteness and instead adamantly argued the permanence of slavery in Maryland by positive law. From there, legislators' strengthened laws that supported the subordinate position of blacks based on their slave heritage: that even as free, people of African descent could not make legal claims to citizenship rights. While the Revolution may have left Marylanders uncertain about which way to go, to fall back into the colonial era's degenerative ideas about deference and hierarchy or move the state into a new era where all people could exercise the realities of freedom, the decision in the Mahoney case assured them that those Revolutionary ideals did not apply to creolized people of African descent.

Simultaneously in this period, the paranoia and fears of black laborers, slave and free, toppling the slave regime in Maryland incited by Revolutionary events in the Atlantic world spread to its shores influencing legislators in that they began to conflate the status of the free black population with those that were enslaved. Their anxieties also stemmed from efforts to contain and define who could participate in this new democratic experiment. As news spread in Maryland of the brutality with which the Haitian rebels in particular, free and enslaved, united in fighting off the French to gain independence, restless legislators wrote laws and made decisions fearing the dismantling of slavery's tradition.[104] So because of the initiation of creolized people of African descent with white maternal ancestry claiming freedom, their success in these legal cases increased the numbers of potential citizens of largely African descent actively participating in Maryland's political community. Soon thereafter, what emerges in Maryland case law was a belief that free blacks needed to be controlled through measures that would deny them political and legal agency. Gone were the ideas that slavery would die out in the new nation and citizenship would extend to creolized Africans, instead the precedent setting case of Mahoney launched a renewed legal understanding of where and how slavery could be reconciled with English Common Law and Somerset. Luther Martin's departure from abolitionism in the case and his inauguration of the attachment clause would effectively strengthen slaveholders' rights and provide a new legal interpretation that sustained racial slavery. It would redefine what Jefferson meant when he stated "all men were created equal" – that the phrase only meant to apply to white men with property (and blacks were that property).

Increasingly in Maryland, statutes restricted free and freed blacks from legal protections and from exercising the rights of a free person; true freedom and citizenship became predicated upon whiteness. The notion of a separate freedom, a "black freedom," a freedom without constitutional protections and an acceptance of their legal marginality was invented. In the colonial period, the elites based black enslavement on the need for labor in a tobacco economy and the availability of African workers by way of the Trans Atlantic Slave Trade. However, in the Early National period slavery and freedom would be reestablished as part of Maryland's legal tradition, a racial ideology that structured society to enable the planter class to maintain order, deference, and its concomitant racial etiquette for the economic benefit of the elites. These elites could release workers when no longer needed or sell chattel to pay one's debts – free blacks were barred from citizenship claims. The historical memory and tradition of slaveholding would revive in Maryland, disrupting African American full political participation in the New Republic. At least for Maryland's historically free blacks, the New Republic began to look frighteningly worse than before the Revolution.

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[1] John H.B. Latrobe, Memoir of Benjamin Banneker, Read Before the Maryland Historical Society, at the Monthly Meeting, May 1, 1845 (Baltimore, MD: John D. Toy, 1845)

[2] Booker T. Washington, "Up From Slavery" in Three Negro Classics: Up From Slavery; The Souls of Black Folk; The Autobiography of an Ex-Colored Man, ed. John Hope Franklin (New York: Avon Books, 1965), 32.

[3] Latrobe, Memoir of Benjamin Banneker (1845)

[4] David Waldstreicher (eds), Notes on the State of Virginia: With Related Documents (New York: Bedford/St. Martin's Press, 2002)

[5] Barbara Jeanne Fields, Slavery and Freedom on the Middle Ground: Maryland During the Nineteenth Century (New Haven, CT: Yale University Press, 1985); Christopher Phillips, Freedom's Port: The African American Community of Baltimore, 1790-1860 (Urbana, IL: University of Illinois Press, 1997); T. Stephen Whitman, The Price of Freedom: Slavery and Manumission in Baltimore and Early National Maryland (Lexington, KY: University Press of Kentucky, 1997); T. Stephen Whitman, Challenging Slavery in the Chesapeake: Black and White Resistance to Human Bondage 1775-1865 (Baltimore, MD: Maryland Historical Society, 2007); Seth Rockman, Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore (Baltimore, MD: Johns Hopkins University Press, 2009); Jessica Millward, Finding Charity's Folks: Enslaved and Free Black Women in Maryland (Athens, GA: University of Georgia Press, 2015)

[6] Fields, Slavery and Freedom on the Middle Ground, chapter one.

[7] Ibid; Whitman, Price of Freedom; Phillips, Freedom's Port; Berlin, Many Thousands Gone; Whitman, Challenging Slavery in the Chesapeake.

[8] David Skillen Bogen, "The Maryland Context of Dred Scott: The Decline in the Legal Status of Maryland Free Blacks, 1776-1810", The American Journal of Legal History vol. 34, no. 4 (October, 1990): 381-411.

[9] Bogen, "The Maryland Context of Dred Scott": 381-411; In the period closest to the Revolution, "Historically Free Blacks" or free born creolized blacks like Benjamin Banneker were justifiably part of the political community, but "Newly Freed Blacks" according to white Maryland legislators, could not exercise these same rights in accordance with the succession of laws that were enacted over the course of the colonial period that prohibited people of more African ancestry from exercising legal rights people with more white ancestry had.

[10] Bogen, "The Maryland Context of Dred Scott," 58; In addition, while Bogen follows the ever increasing legislative restrictions on people of African descent, enslaved and free, as a social historian I merely focus on those black and slave codes that signaled a gradual tightening of legal restrictions over this period.

[11] See also, Eric Robert Papenfuse, "From Recompense to Revolution: Mahoney v. Ashton and the Transfiguration of Maryland Culture, 1791-1802," Slavery and Abolition, 15, No.3, (December 1994): 38-62. Papenfuse examines this case more closely and posits the heightened anxiety about the Revolution in Haiti as influencing the verdict against the petitioners. He also deftly researches John Ashton's questionable reputation among and within the religious and community relations.

[12] Papenfuse had done exhaustive research on this case and initiated its recovery from the archives; however, my intent here is to show that the Mahoney case was an important benchmark in state judicial understanding which would culminate, in the years before the

Civil War, into a proslavery legal defense that even abolitionists adopted, an invented tradition if you will, about state and federal constitutional understanding with regard to the marginalization of blacks within it.

[13] Max Grivno, Gleanings of Freedom: Free and Slave Labor Along the Mason Dixon Line, 1790-1860, (Urbana: IL, University of Illinois Press, 2011), 8.

[14] Need citation from Max Grivno.

[15] William M. Wiecek, The Sources of Antislavery Constitutionalism in America, 1760-1848 (Ithaca, NY: Cornell University Press, 1977), 20; James O. Horton and Lois E. Horton, Hard Road to Freedom: The Story of African America (New Jersey: Rutgers University Press, 2001, 68; Stephen M. Wise, Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Bondage (Cambridge, MA: Da Capo Press, 2005).

[16] Maryland Gazette, 6 August 1772

[17] David Bogen, "The Annapolis Poll Books of 1800 and 1804: African American Voting in the Early Republic," Maryland Historical Magazine, vol. 86 #1 (Spring, 1991): 57-65. In this short piece, Bogen shows that African Americans exercised the franchise in the years after the creation of the new nation, but soon thereafter measures were instituted that disenfranchised them.

[18] Edward C. Papenfuse and Gregory A. Stiverson, The Decisive Blow is Struck: A Facsimile Edition of the Proceedings of the Constitutional Convention of 1776 and the First Maryland Constitution (Annapolis, MD: Hall of Records Commission); Patricia

Reid, "Between Slavery and Freedom" (Ph.D. Dissertation, University of Iowa, 2006), chapter one.

[19] Derrick Bell, Race, Racism, and the American Law (5th Ed) (New York: Aspen Publishers, 2004), 30; Mary Frances Berry, Black Resistence, White Law: A Constitutional History of Racism in America (New York: Penguin Press, 1994); John Hope Franklin, "Race and the Constitution in the Nineteenth Century" in John Hope Franklin and Genna Rae McNeil (eds) African Americans and the Living Constitution (Washington, D.C.: Smithsonian Institution Press, 1995), 23; Ian Haney López, White By Law: The Legal Construction of Race (New York University Press, 1996), 1; David R. Roediger, Wages of Whiteness: Race and the Making of the American Working Class (New York: Verso, 1991); Robert J. Cottrol, The Long, Lingering Shadow: Slavery, Race, and Law in the American Hemisphere (Athens, GA: University of Georgia Press, 2013)

[20] The date for this statute is unclear in the legislative and court records, some indicate 1663 and others say 1664. I will refer to this law as one that was enacted in 1664.

[21] Thomas Harris, Jr. and John McHenry, Maryland Reports Being A Series of the Most Important Law Cases, Argued and Determined in the Provincial Court and Court of Appeals of the then Province of Maryland: From the Year 1700 Down to the American Revolution (volume 1), (New York: I. Riley Publisher, 1809) William and Mary Butler v. Richard Boarman (September 1770): 371-374; Martha Hodes, White Women, Black Men: Illicit Sex in the Nineteenth-Century South (New Haven, CT: Yale University Press)

[22] Thomas Harris, Jr. and John McHenry, Maryland Reports Being A Series of the Most Important Law Cases, Argued and Determined in the Provincial Court and Court of Appeals of the then Province of Maryland: From the Year 1700 Down to the American Revolution (volume 1), (New York: I. Riley Publisher, 1809) William and Mary Butler v. Richard Boarman (September 1770): 371-384; Reid, "Between Slavery and Freedom," Appendix, A-B.

[23] Thomas Harris, Jr. and John McHenry, Maryland Reports Being A Series of the Most Important Law Cases, Argued and Determined in the Provincial Court and Court of Appeals of the then Province of Maryland (volume 2), (New York: I. Riley Publisher, yr) Mary Butler v. Adam Craig, (October, 1787), 232.

[24] Court of Appeals, Butler v. Craig, 1787, 233.

[25] Ibid, 233.

[26] Ibid, 234.

[27] Court of Appeals, Butler v. Craig, 1787; Walsh, From Calabar to Carter's Grove, 51. In the primary document from the court case, Butler v. Craig and in the secondary text, From Calabar to Carter's Grove, both mention the large numbers of slaves who gained freedom by claiming descent from Irish Nell. The lawyer for Adam Craig, Jenings, said that more than 300 people claimed descent from Irish Nell in 1760, while Walsh suggests that by 1789 that number was closer to 750. And as Lorena Walsh points out, this demonstrates that African Americans transmitted familial knowledge from one generation to the next; See also, Martha E. Hodes, White Women, Black Men: Illicit Sex in the Nineteenth Century South (New Haven, CT: Yale University Press, 1997)

[28] MSA, General Court of Maryland, Basil Shorter v. Henry Rozier, October term, 1794; Helen Catterall, Judicial Cases Concerning American Slavery and the Negro, vol. IV (New York: Negro Universities Press, 1926 (1968). It is difficult to track precisely how many freedom suits there were because they are indicated throughout the state's records.

[29] Many of the petitioners had more African ancestry than European.

[30] Bogen, "The Annapolis Poll Books of 1800 and 1804," 57-65. Within Bogen's findings, many of the African Americans who voted in Annapolis had names consistent with those who had petitioned the court and won their freedom.

[31] Samuel Chase was born May 17, 1741 in Somerset County, Maryland. He studied law in Annapolis and was admitted to the bar at twenty years of age. He was one of the signers of the Declaration of Independence and a delegate to Canada during the Revolutionary war. He was made judge of the newly established criminal court in Baltimore and "was a member of the state convention that adopted the federal constitution." He was chief justice of the general court of Maryland before president George Washington made him associate justice of the United States Supreme Court. In 1804 his political opponents tried to impeach him, but the required two-thirds was not secured in the senate for his conviction. See Conway W. Sams and Elihu S. Riley, The Bench and Bar of Maryland: A History, 1634 to 1901 (Chicago, IL: The Lewis Publishing Company, 1901); Jane Shaffer Elsmere, Justice Samuel Chase (Muncie, IN: Janevar Publishing Company, 1980)

[32] Luther Martin was described as perhaps the greatest trial lawyer of his day. He defended Aaron Burr in his treason trial and Samuel Chase in his impeachment trial.

[33] Maryland Society for Promoting the Abolition of Slavery and the Relief of Free Negroes and Others Unlawfully Held In Bondage (Baltimore, MD: Goddard and Angell, 1789); Richard S. Newman, The Transformation of American Abolitionism: Fighting Slavery in the Early Republic (Chapel Hill, NC: University of North Carolina Press, 2002)

[34] Bogen, "The Annapolis Poll Books of 1800 and 1804," 57-65. Bogen argues that the 1783 law was a preventive measure of sorts because the majority of the freed African Americans had obtained their freedom after 1783. Using 1783 as a marker to divide civil liberties among the voting African American population would ensure that the franchise would never be open to newly freed slaves, but the Historically Free Black population sustained their voting privileges.

[35] Maryland State Archives, Archives of Maryland On-line, General Assembly Session Law, 1783, chapter 23. http://aomol.net/000001/000203/html/am203--350.html. MSA full citation: Alexander Contee Hanson, ed. *Laws of Maryland: Made Since M,DCC,LXIII, [1763] Consisting of Acts of Assembly Under the Proprietary Government, Resolves of Convention, the Declaration of Rights, the Constitution and Form of Government, the Articles of Confederation, and, Acts of Assembly Since the Revolution.* (Annapolis: Frederick Green, 1787), Session Law 1783, chapter 23; MSA, Archives of Maryland On-line, General Assembly Session Law, 1792, chapter 14. http://aomol.net/megafile/msa/speccol/sc2900/sc2908/000001/000644/html/am644--17.html.

[36] Granville Sharp, Letter From Granville Sharp (Baltimore, MD: Yundt and Patton, 1793)

[37] Whitman, Challenging Slavery in the Chesapeake.

[38] William M. Wiecek, The Sources of Antislavery Constitutionalism in America, 1760-1848 (Ithaca, NY: Cornell University Press, 1977); Don E. Fehrenbacher, Slavery, Law, and Politics: The Dred Scott Case in Historical Perspective (New York: Oxford University Press, 1981); Ariela Gross, "Slavery, Antislavery and the Coming of the Civil War," in Michael Grossberg and Christopher Tomlins (eds) The Cambridge History of Law in America, Volume Two, The Long Nineteenth Century, 1789-1920 (New York: Cambridge University Press, 2008)

[39] Phillips, Freedom's Port and in Ira Berlin, Many Thousands Gone: The First Two Centuries of Slavery in North America, (Cambridge, MA: Harvard University Press, 1998), 288.

[40] Thomas Harris and John McHenry, Maryland Reports: Being a Series of the Most Important Law Cases Argued and Determined in the General Court and Court of Appeals of the State of Maryland, From October 1790 to May 1797 (New York: I. Riley Publishers, 1813), Gassaway Rawlings v. Anthony Boston, General Court, May term, 1793.

[41] Thomas Harris and John McHenry, Maryland Reports: Being a Series of the Most Important Law Cases Argued and Determined in the General Court and Court of Appeals of the State of Maryland, From October 1790 to May 1797 (New York: I. Riley

Publishers, 1813), 139; MSA, SC 4239-2-16, Special Collections, Court of Appeals, John F. Mercer v. John Boston, (November 1797) see testimony of Anne Brown.

[42] MSA, Special Collections, Schweninger Collection, Court of Appeals, June 1813, Richard Jones v. Robert Moody, Testimony of Ann Mason.

[43] Ibid.

[44] MSA, Special Collections, Schweninger Collection, Court of Appeals, June 1813, Richard Jones v. Robert Moody, Testimonies of Elizabeth Chew (widow of Samuel Chew), Samuel Hepburn and Ann Lecke.

[45] Ibid.

[46] Fields, Slavery and Freedom on the Middle Ground, T. Stephen Whitman, The Price of Freedom, Christopher Phillips, Freedom's Port, Seth Rockman, Scraping By.

[47] Fields, Slavery and Freedom on the Middle Ground.

[48] Narrative in the Life of Frederick Douglass, An American Slave: Written By Himself (NY: Signet, 1968). Douglass moved from a large-scale plantation set on the Eastern shore as a child, to the city of Baltimore as a domestic worker where he encountered abolitionists and hostile white workers, before being moved again to a farm in the countryside to labor in the fields. Before he absconds, he was hired-out in Baltimore, and worked as an artisan. In each of these environments he knew of and encountered family members.

[49] MSA, Anne Arundel County Court, Manumissions: CM 1357-1, 1783-1808, 1807-1820.

[50] Bogen, "The Maryland Context of Dred Scott," 388-396.

[51] MSA, Anne Arundel County Court, Manumissions: CM 1357-1, 1783-1808, 1807-1820.

[52] MSA, Anne Arundel County Court, Manumissions: CM 1357-1, 1783-1808, 1807-1820.

[53] MSA, Archives of Maryland On-line: http://aomol.net/000001/000105/html/am105--249.html, Laws of the General Assembly, 1796, chapter 67.

[54] Papenfuse, "From Recompense to Revolution," 38-62. Papenfuse looks at the origins of this case beginning in 1791, but says the case was suspended for four years.

[55] Gabriel DuVall, born in 1752 in Prince George's County. He was a clerk to the Maryland conventions in 1775 and 1776. He was elected to fill a vacancy in Congress and served from 1794 to 1796; he resigned in March of 1796 to take a seat on the bench of the Court of Appeals in Maryland. In 1811 he was appointed to United States Supreme Court as Associate Justice. See, Bench and Bar of Maryland, 214-215. DuVall was Mahoney's lawyer in the General Court case against John Ashton.

[56] Jeremiah Townley Chase was born in Baltimore in 1748, he moved to Annapolis in 1779. He served in the American Revolutionary war. He was also a member of the convention "that framed the first constitution of Maryland, formed its government and declared the independence of the state of Maryland" (172). In 1783 he was mayor of Annapolis and in 1788 he voted not to ratify the constitution of the United States. In 1780 he was appointed judge of the General Court of Maryland and when that court was abolished, he was appointed Chief Justice of the Court of Appeals until 1824, four years before his death.

[57] Steven Wise, Though the Heavens May Fall: The Landmark Trial That Led to the End of Human Slavery (Cambridge, MA: DaCapo Press, 2005).

[58] MSA, Special Collections, Schweninger Collection, Court of Appeals, Mahoney v. Ashton, 1799, Testimony of Ann Hurdle.

[59] MSA, Special Collections, Court of Appeals, Mahoney v. Ashton Testimony of Ann Hurdle, Peter Harbard.

[60] Sean Condon, "The Peculiar Circumstances of Their Unhappy Birth and Colour": Bennett Darnall's Children in the Early National Chesapeake," Maryland Historical Magazine, vol. 96, no. 3 (Fall 2001), 349.

[61] MSA, Special Collections, Court of Appeals, Mahoney v. Ashton, 1799, Testimony of Peter Harbard; MSA, Administrative Accounts, Frederick County, Benjamin Hall (1812-1815). The Benjamin Hall listed in the Administrative Accounts might be a descendant of the Benjamin Hall that forced Anne Joice into the cellar. In any case, the Benjamin Hall of 1812 hired out six of his male slaves.

[62] Mahoney v. Ashton, 1799, Testimony Henry Davis, Henry Hill.

[63] Mahoney v. Ashton, 1799, Testimony Ann Cooke.

[64] Mahoney v. Ashton, 1799, Testimony Ann Hurdle.

[65] Ibid.

[66] MSA, Special Collections, Court of Appeals, Mahoney v. Ashton, 1799, See testimony of Peter Harbard. It was also suggested that Ann Joyce "was compelled to serve for a term of years for having bastard children," see testimony of Richard Darnall, Mahoney v. Ashton, 1799.

[67] Kathleen Brown, Good Wives, Bad Witches and Anxious Patriarchs: Gender, Race and Power in Colonial Virginia (Chapel Hill, NC: University of North Carolina Press, 1996); Martha Hodes, Black Men, White Women: Illicit Sex in the Nineteenth Century South (Newhaven, CT: Yale University Press, 1999); Reid, "Between Slavery and Freedom," chapter one.

[68] Eleanor Carroll, Henry Darnall's daughter, said Davey, Frank and Tom died in the possession of Henry Darnall and Tom died in the possession of Captain Williams, Mrs. Gordon, or Stephen West, Mahoney v. Ashton, 1799.

[69] MSA, Special Collections, Court of Appeals, Mahoney v. Ashton, 1799, See testimony of Peter Knight and John Clagett.

[70] The petition of Charles Mahoney and Patrick Mahoney against John Ashton (1799, 1802) deals with the status or wrongful enslavement of their great-grandmother, Anne Joice. Their mother, Eleanor, was a mulatto woman who obtained her freedom and lived on the head of the Severn as a servant to Colonel Rezin Hammond. Robert Mahoney, Eleanor's husband, purchased her freedom (see testimony of Howard DuVall). Their grandmother, Sue, was enslaved to Charles Carroll of Carrollton, and their great grandmother, Sue, was held in bondage to William Diggs. The Mahoney's immediate parents were not the issue of the petition. MSA, Special Collections, Court of Appeals, Mahoney v. Ashton, 1799; Papenfuse, "Recompense to Revolution," 38-62.

[71] After checking several records from The Bench and Bar of Maryland to various archival sources in the Maryland Hall of Records, I could not locate the first names of the lawyers who represented the Mahoneys. However, in the 1804 Baltimore City

Directories there were the names of lawyers who likely represented them, Thomas Jennings, who was the only lawyer mentioned with that last name; however, there were two lawyers indicated with the last name of Ridgely in the Baltimore directory, Richard and Charles. Delving deeper into the records, I noticed that the 1800 United States census listed a Richard Ridgely also possibly owning a home in Anne Arundel County. He had thirty-two people in the household including twenty-one slaves. There were two Charles Ridgelys on the 1800 U.S. census in Anne Arundel County, one with one free person and one slave in the household, while the other had three whites and eleven slaves in the household.

[72] Helen T. Catterall (eds), Judicial Cases Concerning American Slavery and the Negro, (vol. 4), (New York: Negro Universities Press, 1926, 1968), "Mahoney v. Ashton," 295; Also see, Anne Arundel General Court of Maryland, Charles Mahoney v. John Ashton, 1799, Ridgely's argument in defense of the petitioners.

[73] Ibid., 295.

[74] 4 H. & McH. 295, 1799 WL 397 (Maryland General Court, Mahoney v. Ashton)

[75] Papenfuse, "Recompense to Revolution," 38-62.

[76] MSA, Charles County, Register of Wills, Wills, 1816. The will of John Ashton indicated that he bequeathed a slave man named Butler and the male children of his slave woman, Linny, to a man named Charles and the slave woman, Linny, to Elizabeth, Charles' sister. Thus, separating Linny from her children, yet they resided in the same community.

[77] MSA, Special Collections, Schweninger Collection, Mahoney v. Ashton, court ruling.

[78] Catterall, (eds) Judicial Cases Concerning American Slavery and the Negro, "Mahoney v. Ashton," 314; Also in WestLaw, 4 Harris and McHenry, 63, 1797 WL 583 (Md.Gen).

[79] 4 Harris and McHenry, 295, 1799 WL 397 (Md. Gen), Mahoney v. Ashton

[80] Catterall, (eds) Judicial Cases Concerning American Slavery and the Negro, "Mahoney v. Ashton," 320.

[81] 4 Harris and McHenry. 295, 1799, WL 397 (Md. Gen), Mahoney v. Ashton

[82] Ibid.

[83] See also, Eric Robert Papenfuse, "From Recompense to Revolution: Mahoney v. Ashton and the Transfiguration of Maryland Culture, 1791-1802" Slavery and Abolition, 15, No.3, (December 1994): 38-62; Bogen, "The Annapolis Poll Books of 1800 and 1804," 57-65. Bogen reveals that a Ralph Joice, who was listed as black, was denied voting privileges in 1800. I mention it here because the last name is spelled similar to the Mahoney's ancestor and that because of his African phenotype he, unlike the other petitioners who had won their cases and had subsequently voted, was denied voting privileges because of his color. By 1808 however, Charles Mahoney purchased his daughter, Anne's freedom. This suggests that between 1802 and 1808 Charles obtained his own freedom, married and had children. Daniel Lee v. John Wright, of Prince George's County is another petition of freedom that likely involves relatives of the petitioners' in this case. Also a petition of John Hickman v. Dr. Richard Smith is in someway related to this case. See MSA, Special Collections, Court of Appeals, Schweninger Collection.

[84] Julie Winch, The Clamorgan's: One Family's History of Race in America (NY: Hill and Wang, 2011). The author shows how multiracial people in Early America were savvy in their sometimes successful way they navigated the courts and society through using whiteness as a means to sustain and maintain property rights and economic standing.

[85] Bogen, "The Annapolis Poll Books of 1800 to 1804," 63.

[86] David Skillen Bogen, "The Maryland Context of Dred Scott: The Decline in the Legal Status of Maryland Free Blacks, 1776-1810", The American Journal of Legal History vol. 34, no. 4 (October, 1990): 381-411; Donald G. Nieman, Promises to Keep: African-Americans and the Constitutional Order, 1776 to the Present, (New York: Oxford University Press, 1991); Linda K. Kerber, No Constitutional Right to be Ladies: Women and the Obligations of Citizenship (New York: Hill and Wang, 1998); Sean Wilentz, The Rise of American Democracy: Jefferson to Lincoln (New York: W.W. Norton & Company, 2005); Bruce Chadwick, I Am Murdered: George Wythe, Thomas Jefferson, and the Killing That Shocked a New Nation (Hoboken, NJ: John Wiley & Sons, 2009); Gordon S. Wood, Empire of Liberty: A History of the Early Republic, 1789-1815 (New York: Oxford University Press, 2009).

[87] MSA, Special Collections, Schweninger Collection, Court of Appeals, Butler v. Craig, 1789; Also mentioned in Lorena Walsh, From Calabar to Carter's Grove: The History of Virginia's Slave Community (Williamsburg, VA: The University Press of Virginia, 1997), 51. In the primary document from the court case Butler v. Craig and in the secondary text From Calabar to Carter's Grove, both mention the large numbers of slaves who gained freedom by claiming descent from Irish Nell. As stated above, the lawyer for

Adam Craig, Jenings, said that more than 300 people claimed descent from Irish Nell in 1760, while Walsh suggests that by 1789 that number was closer to 750. While such accurate statistics were not available for the other cases I mention in this article, we can approximate that under similar circumstances there were large numbers (at least 2, 500) African Americans who claimed descent from a free European woman in Maryland.

[88] Joanne Pope Melish, Disowning Slavery: Gradual Emancipation and "Race" in New England, 1780-1860 (Ithaca, NY: Cornell University Press, 2000)

[89] Bogen, "The Annapolis Poll Books of 1800 and 1804," 63.

[90] MSA, Archives of Maryland On-line: http://aomol.net/000001/000607/html/am607--46.html, Laws of the General Assembly, 1805, chapter 66.

[91] MSA, Archives of Maryland On-line: http://aomol.net/000001/000607/html/am607--60.html, Laws of the General Assembly, 1805, chapter 80; MSA, Archives of Maryland On-line: http://aomol.net/000001/000608/html/am608--46.html, Laws of the General Assembly, 1806, chapter 81; Bogen, "The Maryland Context of Dred Scott," 381-411.

[92] MSA, Baltimore County Court of Oyer and Terminer and Gaol Delivery, 1807-1808, MSA: C183-3: 1-3; I attempted to track this case through the court records at the Maryland State Archives, however, there was no resolution to the case in the lower courts and it was sent to the Appeals Court in Annapolis.

[93] MSA, Maryland Court of Appeals, State v. Fisher, July, 1805; WestLaw citation: 1 H. & J. 750, 1805 WL 497 (Md.O. & T.); See also, Catterall, Judicial Cases Concerning American Slavery and the Negro, vol. 4., State v. Fisher, 59-60; also cited in Bogen, "The Maryland Context of Dred Scott", The American Journal of Legal History (October, 1990): 381-411.

[94] State v. Fisher, 1805.

[95] State v. Fisher, 1805.

[96] MSA, Archives of Maryland On-line: http://aomol.net/000001/000597/html/am597--40.html, Session Laws of the General Assembly, 1808, chapter 81.

[97] MSA, Court of Appeals of Maryland, Rusk v. Sowerwine, June, 1810; See also WestLaw citation: 3 H. & J. 97, 1810 WL 176 (Md); See also, Catterall, Judicial Cases Concerning American Slavery and the Negro, vol. 4., Rusk v. Sowerwine, 62; also cited in Bogen, "The Maryland Context of Dred Scott", The American Journal of Legal History (October, 1990): 381-411.

[98] MSA, Court of Appeals of Maryland, Rusk v. Sowerwine, June, 1810

[99] MSA (CM 122-3), Baltimore County Register of Wills, Daniel Dulany, 1797.

[100] Kirsten E. Wood, Masterful Women: Slaveholding Widows from the American Revolution through the Civil War (Chapel Hill, NC: University of North Carolina Press, 2004), 17.

[101] MSA, Maryland Court of Appeals, Rusk v. Sowerwine, 1810

[102] MSA, Court of Appeals, Rusk v. Sowerwine, 1810

[103] Rusk v. Sowerwine, 1810

[104] Papenfuse, "From Recompense to Revolution," 38-62.