

This article was downloaded by: [Jessica Millward]

On: 26 June 2012, At: 09:34

Publisher: Routledge

Informa Ltd Registered in England and Wales Registered Number: 1072954 Registered office: Mortimer House, 37-41 Mortimer Street, London W1T 3JH, UK



Women's History Review

Publication details, including instructions for authors and subscription information:

<http://www.tandfonline.com/loi/rwhr20>

'That All Her Increase Shall Be Free': enslaved women's bodies and the Maryland 1809 Law of Manumission

Jessica Millward

Available online: 26 Jun 2012

To cite this article: Jessica Millward (2012): 'That All Her Increase Shall Be Free': enslaved women's bodies and the Maryland 1809 Law of Manumission, *Women's History Review*, 21:3, 363-378

To link to this article: <http://dx.doi.org/10.1080/09612025.2012.661158>

PLEASE SCROLL DOWN FOR ARTICLE

Full terms and conditions of use: <http://www.tandfonline.com/page/terms-and-conditions>

This article may be used for research, teaching, and private study purposes. Any substantial or systematic reproduction, redistribution, reselling, loan, sub-licensing, systematic supply, or distribution in any form to anyone is expressly forbidden.

The publisher does not give any warranty express or implied or make any representation that the contents will be complete or accurate or up to date. The accuracy of any instructions, formulae, and drug doses should be independently verified with primary sources. The publisher shall not be liable for any loss, actions, claims, proceedings, demand, or costs or damages whatsoever or howsoever caused arising directly or indirectly in connection with or arising out of the use of this material.

'That All Her Increase Shall Be Free': enslaved women's bodies and the Maryland 1809 Law of Manumission

Jessica Millward

This article investigates the relationship between manumission laws and enslaved women's bodies in Maryland, USA. The point of departure is the 1809 'Act to Ascertain and Declare the Condition of Such Issue as may hereafter be born of Negro or Mulatto Female Slaves,' which minimized age requirements for freeing enslaved children. If the status of living or future children was not established at the time the manumission document for the mother was presented in court, then any such children were to remain in bondage. As this article argues, the 1809 law represented what lawmakers, slaveholders, and bondpeople already knew—that freedom, like enslavement, was tied to a bondwoman's womb. By investigating apprenticeship records, legal statutes, manumission documents, and African American petitions for freedom, this article argues that the deployment of black women's bodies within the law challenged, extended, and defined definitions of freedom in the decades leading up to the Civil War.

In the USA in November 1809 the Maryland state legislature introduced into law what they believed to be a solution to persistent petitions from bondpeople who cited their mothers' free or manumitted status as justification for their own release from bondage.¹ The 'Act to ascertain and declare the condition of such Issue as

Jessica Millward is an assistant professor of history at the University of California, Irvine. Her manuscript *Charity's Folk: enslaved women, families, and freedom in pre-civil war Maryland* is forthcoming in the *Race in the Atlantic World, 1700–1900* series from the University of Georgia Press. Professor Millward's work has appeared in *Frontiers: A Journal of Women's Studies*, *The Journal of Women's History*, as well as the *Chronicle of Higher Education*. Correspondence to: Professor Jessica Millward, Department of History, 200 Murray Krieger Hall, University of California, Irvine, Irvine, CA 92697-3275, USA. Email: millward@uci.edu

may hereafter be born of Negro or Mulatto Female Slaves' allowed planters to determine the status of any living or future child born to bondwomen to whom they promised freedom.² If declarations of the status of future children were not made at the time the document was presented in court, 'then the state and condition of such issue shall be that of a slave.'³ Presented a year after the United States Constitution outlawed participation in the international slave trade, the 1809 law reconciled two opposing yet interrelated facts. The first is that the existence and expansion of the Southern slave system depended upon the reproductive labor of bondwomen.⁴ The second is that the propensity of Maryland owners towards manumission tended in the direction of the dismantling of the slave state without actually doing so. By passing the 1809 law, legislators attempted to supersede the ability of manumitted women to produce 'free' people by closing avenues to freedom based on the mother's status. In doing so, legislators, many of whom also owned bondpeople, reaffirmed the power of slaveholders to assert dominion over their property. Moreover, the 1809 law represented what lawmakers, slaveholders, and bondpeople already knew—that freedom, like enslavement, was tied to a bondwoman's womb.

Discussions of enslaved women's interactions with the legal apparatus have received increased attention in recent years, as evidenced in the growing body of literature dedicated to the influence of enslaved persons on the construction of law, freedom petitions affecting manumission, and petitions filed with the Southern claims commission during Reconstruction.⁵ Emerging from these dialogues is awareness that the experiences of manumitted and emancipated women are equally important to understanding the enslaved experience. Read another way, understanding slavery also means understanding freedom. Camillia Cowling's work on Cuba, for example, shows that manumitted women were pivotal in the transition from a slave to a free society.⁶ Manumitted women in cities such as Baltimore, Charleston, and New Orleans hastened the US South's transition into quasi-free societies.⁷ As Loren Schweninger's research attests, women were manumitted in greater numbers than their male counterparts, they represented a larger portion of the free black population, and they controlled a significant percentage of the black wealth.⁸ The trend to manumit more women than men stemmed from planters attaching a higher value to the physical labor of bondmen when compared to that of bondwomen.⁹ Enslaved women acquired freedom by petitioning for it, by negotiating for it, and by buying it.¹⁰ Access to manumission allowed enslaved women to move the boundaries of freedom in terms of the law, their communities, their families, their work, and even their own bodies.¹¹

This article addresses the intersection of the black woman's reproductive body and the judicial body of the courts to show how the deployment of black women's bodies within the law challenged, extended, and subsequently defined freedom in the decades leading up to the Civil War. This argument is buttressed by research on records of African American petitions for freedom; apprenticeship records; legal statutes; and manumission documents. To put the gendering of manumission into perspective, this study first provides an overview of manumission law in Maryland. Second, African American freedom petitions are discussed to illustrate

how bondwomen and their descendants used the courts to secure freedom during the first half of the nineteenth century. Third, the implications of the 1809 law for black women and their families are explored. As this article documents, the reproductive potential of bondwomen, i.e., their 'increase' was central to both enslavement and manumission alike. Moreover, scholars such as John Hope Franklin and Ira Berlin suggest that policies regarding the free black population in Baltimore during the first half of the nineteenth century foreshadowed how the federal government would deal with emancipated persons in the wake of the Civil War. Building upon this argument, this article reveals that the recorded experiences of manumitted women and their families as well as the legal debates about the manumission process converged with hysteria about a growing free black population, to lay the foundations for later dialogues about race, women, and social welfare.¹²

Laws of Manumission and Increase

The articulation of the relationship between manumission and the status of children born to enslaved women in the 1809 law was not a response to a new problem. Rather, the 1809 law encapsulated a nearly 150-year history of the expansion and contraction of freedom for persons of African descent.¹³ During the colonial period, manumission laws were responses to the gender imbalance between men and women of European descent. Read more concretely, manumission provided fathers—but not mothers—of biracial children the means to free their offspring.¹⁴ Owners were allowed to free bondpeople (many of whom may have been their own children) so long as the individual was under the age of forty-five, healthy, and able to work.¹⁵ The emphasis on freeing self-sustaining persons worked to assure the larger society that freed blacks would not be dependent upon county resources for support.

Before the American Revolution (1775–1783), Maryland was second only to Virginia in the size of its enslaved population. During the Revolutionary era, manumission laws fell in step with equalitarian rhetoric that slavery was not only 'contrary to the word of God,' but also contrary to the 'unalienable right of mankind.'¹⁶ Following the war, manumissions rose in Maryland for a range of reasons: (1) the influence of anti-slavery religious denominations; (2) the sincere appeal of equalitarian theology; (3) the decreasing profitability of slavery as a source of labor; (4) changing county laws; (5) individual slaves' personal (and at times sexual) relationships with planters; and (6) individuals' negotiations for their own freedom.¹⁷ Nowhere was the growth of the free black population more apparent than in the city of Baltimore. In the decades leading up to the Civil War, the free black population in the city multiplied nearly twentyfold.¹⁸

Manumitted persons benefited from a changing social, political, and economic milieu that contributed to the willingness of planters to free their human property. As T. Stephen Whitman notes, between 1770 and 1860 some 45,000 men, women, and children were manumitted from slavery in Maryland.¹⁹ The inclination of planters to manumit their slaves tended to be counterbalanced by the fear of legislators that a free black population would be a drain on state resources. In 1790 the

state of Maryland passed ‘An Act Related to Freeing Slaves by Will or Testament.’ The act stated:

Provided always, that no manumission hereafter to be made by last will and testament, shall be effectual to give freedom to any slave or slaves, if the same shall be in prejudice of creditors, nor unless the said slave or slaves shall be not exceeding the age of fifty years, and able to work and gain a sufficient maintenance and livelihood, at the time the freedom to be given by last will and testament shall be intended to commence.²⁰

Planters were rarely punished for freeing bondpeople who did not fit the criteria of age and self-sufficiency. Manumitted persons, however, faced potential re-enslavement if they could not provide for themselves. This provision was designed to prevent an impoverished black population from drawing too heavily on an already financially burdened county system.²¹

The 1790 law did not explicitly list women, nor did it speak of children. However, it held particular implications for gendered notions of responsibility. Planters often made provisions that enslaved women’s ‘increase shall be free.’²² It was assumed that mothers would be responsible for providing sufficient livelihood for their children. In some cases, freedom was awarded to mothers and their children on the condition that the children were placed in apprenticeships.

By the nineteenth century, manumission in the state of Maryland served as a response to the recurring cycles of economic instability resulting from the switch from tobacco—a soil-depleting crop—to wheat cultivation and the consequent decline in need for a year-round chattel labor force. Planters’ continued reliance on enslaved labor, albeit seasonal, meant that enslavement and manumission developed almost simultaneously in Maryland and continued on an uneasy course, each threatening to but never quite succeeding in eclipsing the other.

The 1809 law pushed into the public forum the well-known fact that the birth of a child to an enslaved mother was a public manifestation of an owner’s wealth in human property.²³ Slave owners were keenly aware that enslaved women might conceive children after they were promised freedom but before they were actually released from bondage. Freeing one’s enslaved woman also meant measuring the potential of future labor against the loss of the physical and reproductive labor of both mother and child. Indeed, T. Stephen Whitman suggests that the majority of young girls promised freedom lived as slaves well past the onset of their childbearing years.²⁴

The 1809 law’s emphasis on the ‘slave’ status of the children of manumitted women effectively prolonged enslavement for another generation of African Americans.²⁵ Gradual emancipation of children often meant that enslaved children remained under the control of their mothers’ masters until they reached adulthood.²⁶ In this system of ‘post-nati’ service, owners promised freedom to children but waited until a time when either they profited little from a child’s labor or until the child reached an age of self-sufficiency. A substantial proportion of antebellum Baltimore’s free black population were born as slaves and gained their freedom as young or middle-aged adults.²⁷ Thus, the goal of the 1809 law was not to expand freedom through the manumission of bondwomen; rather,

as T. Stephen Whitman argues, it was to constrict it by allowing planters to determine the post-nati status of slave children.²⁸

The 1809 law also served as an effective form of social control. Laws governing both slavery and manumission held particular consequences for African American women and their families. The side effects of manumission produced trauma and discord in the family lives of African Americans as some members were freed and others remained in bondage. Mothers were freed while their children remained in bondage. Husbands were freed while their wives never experienced a day outside of bondage. From a twenty-first-century perspective, it appears that the conditions of manumission reflected a fear of the influence of intact free black families in Maryland society. It is much more likely, however, that the laws of slavery upheld the notion that African Americans did not deserve, much less wanted, a stable nuclear family.²⁹ Nevertheless, many bonded couples and families struggled to maintain their marriages and sense of family and kin.

Consider the case of Betsey and John, an enslaved couple in Frederick County, Maryland. They were granted freedom by their owner's will and testament in 1828. Additionally, 'any issue of her body' was to be freed as well—provided that the family 'leaves the United States.'³⁰ The decision to free the couple only under the condition they emigrate was undoubtedly directed in part by the fact that many of the Maryland elite were also active in campaigns to resettle blacks in Liberia.³¹ Not every manumission was as drastic as this, but the example of this family underscored how even the promise of freedom had the potential to break up families.

The history of manumission laws reveals the critical interplay among reproduction, family, and power. Though the 1809 law restricted access to freedom for future generations, it did not diminish the efforts of African American women and their descendants to use legal and extralegal measures to access freedom. As will be discussed in the following section, African American women and their descendants capitalized on legal loopholes and their relationships with their owners to shape their own legal destinies—and those of their progeny.

The Routes to Freedom: petition, negotiation, and purchase

Manumission from slavery stemmed from a range of courses. Planters initiated some acts of manumission while others were motivated by the proactive measures of Africans and African Americans. More so than any other factor, the egalitarian sentiment of the American Revolution facilitated the ability of enslaved Africans and African Americans to legally petition for their freedom. Ira Berlin suggests that following the American Revolution, state legislatures were 'flooded' with petitions for freedom from African Americans.³² African American petitions in Maryland support this point. In the ten years leading up to and during the American Revolution one petition was filed.³³ In the twenty years following the American Revolution twenty petitions for freedom were filed in Maryland courts.³⁴ The majority of these were brought after 1786, when African Americans were allowed to bring freedom suits based on their descent from a white woman. As

much as the American Revolution represented an expansion of freedom, there were also moments when opportunities narrowed, such as in 1796, when black testimony was ruled inadmissible in freedom suits.³⁵

Establishing the mother's 'free' status was but the first step in a successful suit. The second step required the court to determine if the person filing the petition should be freed. Enslaved African Americans who petitioned for freedom based on their mother's status often had a more compelling case if they could prove that their mother resided in a free state or a free country prior to their birth. The more celebrated cases in Maryland also reveal that manumission was more likely to be granted if one could cite a white, Indian, or non-American black woman as one's mother.³⁶ Descendants of Eleanor Butler, an Irish immigrant, and 'Negro Charles,' an enslaved man, petitioned for their freedom in Maryland courts on the basis that they were descended from a white woman.³⁷

Wherever the right to petition was legal, it stood as a challenge to laws meant to uphold slavery.³⁸ However, one of Maryland's most famous cases also reveals just how challenging it was to bring a petition. Presented in 1797 and decided in 1802, Charles Mahoney petitioned for his freedom on the grounds that he was descended from Ann Joice. Joice was brought from Barbados to Maryland as an indentured servant in the late seventeenth century. Lawyers argued that Joice may have been taken to England during her period of service, and thus neither she nor her descendants could have been slaves. There was good precedent for this assumption. In 1772, in the case *James Somerset v. Charles Stewart*, it was determined that it was unlawful to forcibly bring a slave into England. The implications of this case contributed to the abolition of slavery in England, and the emancipation of bondpeople in all the larger British Empire as the nineteenth century progressed.³⁹ Hoping to benefit from the *Somerset* precedent, the defense maintained that traveling to England effectively rendered Joice 'free.'⁴⁰ The court did not grant Mahoney his freedom, but as Edward Papenfuse notes, Mahoney's case drew Maryland into a larger transatlantic debate about lineage, liberty, and the abolition of the slave trade.⁴¹ Following this case, many other bondpeople belonging to the largest slave-holding families in Maryland petitioned for manumission on the grounds that they had been born to free women.⁴²

By the time the 1809 law was passed, planters were aware that the only legal way they could obtain new slaves was through the reproduction labors of their enslaved female population; the decision to manumit a bondwoman thus had even more economic significance than it had had before 1808. Passage of the 1809 law did not mean that petitions ceased. In fact, there was a 67% increase in petitions filed in the ten years leading up to and following the passage of the law. For example, Helen Catterall's evidence produced in the early twentieth century suggests that in the ten years prior to the 1809 law, six African Americans in Maryland filed freedom petitions.⁴³ During the years 1810–20, ten did so. Loren Schwenger's research reveals a similar trend. From 1799 to 1809, roughly twelve freedom petitions were presented in Maryland county courts. Schwenger's database reveals that the numbers of those seeking freedom rose slightly in the ten years after the passage of the law. From 1810 to 1820, seventeen petitions were filed.⁴⁴

The small absolute number of petitions should not minimize the importance of these petitions. They represent an important part of the history of the interactions of African Americans with the power structure in antebellum America—and the fact that some petitions were successful gave hope and encouragement to bondpeople who had not yet made their bid for freedom.

The 1809 law did make it more difficult to petition for freedom, however. Petitioners had to prove that their status as living children (or 'increase') was delineated prior to their mother's manumission. Such was the case of bondswoman Lurena and her daughter Ellen. In 1810, Lurena was promised freedom at age thirty in the last will and testament of her owner, Rezin Hammond.⁴⁵ Additionally, any children born to her were to be freed at age twenty-nine. Hammond's heirs failed to honor the wishes of the deceased and not only kept the mother and child in bondage but sold them as well. In 1812, two years after the sale, Lurena petitioned for and gained her freedom on the grounds that she was thirty years old at the time of Rezin Hammond's death. Ellen was awarded freedom as she was born after the date of her mother's promised emancipation.⁴⁶ This case represents the complicated nature of manumission. Manumissions of women and their children took various forms and often stretched across generations, underscoring that manumission was not easily negotiated, not easily won, and sometimes, even when legally won, not honored.⁴⁷

Those petitioners whose status was not outlined in their mothers' manumission documents sometimes used the argument that their mother's status as a slave was illegal in the first place. Consider the case of the Ogleton family. In 1811, eighteen descendants of Maria Ogleton submitted a petition to the Prince George's County court, claiming to be unlawfully detained in bondage by their owners.⁴⁸ The courts agreed with the petitioners. The Ogletons' success could have been in part due to the suggestion that Maria ventured first to England, and under the provisions of British law would have technically been free. This case also suggests that some petitions were more successful when blackness and the enslaved condition were disjunct. Ogleton reportedly did not look 'black'; with her flowing black hair and red skin, she was noted by the court to resemble indigenous persons, notably the Arawaks from the eastern Caribbean.⁴⁹ That she was 'non-black' or not specifically 'African' may have aided the case considerably. Read another way, if Cheryl Harris's assessment is correct, that 'whiteness is property,' and the proximity to whiteness aided a freedom suit, then it is also equally fair to assume that a distancing from 'blackness,' and perhaps more concretely a distancing from African Americanness, aided those seeking freedom as well.⁵⁰ In such cases, freedom petitions underscored that the legalities of manumission were tied not only to enslaved bodies but also to notions of inclusion and exclusion.

The 1831 rebellion of Nat Turner in Southampton, Virginia, produced tighter restrictions on the lives of manumitted women and their kin. Laws quickly developed across the South calling for African Americans to relocate outside of the state once freed. Maryland was no exception. Law dictated that manumitted persons should possess a freedom certificate—and leave the state. These laws proved particularly painful for manumitted women whose children were enslaved. In 1833,

recently manumitted Sophia Tydings petitioned the judges of the Anne Arundel Orphans' Court to be allowed to stay in the state of Maryland. She desired to be close to her husband, who was free, and her ten children, who were still enslaved.⁵¹ Pleading that she 'still had an infant at her breast,' Tydings successfully evoked the image of a dutiful mother. Tydings was permitted to stay in the state another twelve months.⁵² This case reveals that proximity to one's family was ever-present in the minds of manumitted women. As mothers, manumitted women reminded planters and lawmakers that their familial responsibilities did not cease when their own freedom commenced.

Although some cases equated access to freedom with a lineage that privileged whiteness, non-blackness, or non-African-Americanness, there were other cases in which black women tested their claims to the output of their corporeal bodies against the corporal body of the law.⁵³ Indeed, the claims-making process involved a range of legal and extralegal interventions into the public space. These interventions challenged the intent of the 1809 law to guarantee the future of slavery through natural reproduction. The presence of African American women as both reproductive bodies and as litigants pressed against this legal measure by demanding access to life beyond the lash of the owner's whip.

Petitions to the courts represent but one way that enslaved women and their kin gained their freedom. Much more murky and hidden are the petitions of enslaved women directly to their owners, who had the power to free them simply by writing a letter of manumission. Many women also petitioned the heirs of their owners upon the death of the owner. They often petitioned for their husbands' and children's freedom, as well.⁵⁴ Such manumissions were often represented as 'purchases' of freedom, with a fee paid by the slave to the owner or his heirs. Manumission documents do not reveal the totality of the owner–slave relationship but they do serve as a testament to the shrewd calculations of enslaved women to negotiate freedom for themselves and their children.

Though paths to manumission varied, access to freedom in Maryland reaffirmed the central role of women's reproductive labor. The ability to petition, negotiate, or purchase one's freedom based on the mother's status reveals the centrality of black women's bodies within the law. The varied paths to manumission continued to be linked to women's reproductive capacities. For these reasons, manumission in the wake of the 1809 law held particular importance for African American women and their families.

Implications of the Maryland 1809 Law of Manumission

The 1809 law held three significant consequences for understanding how the black woman's body was deployed within the law. First, since the Act of 1809 is framed entirely in terms of 'women and their issue,' the families of manumitted women were not understood to include the fathers of the children. Thus, this framing altered the definitions of household and family for manumitted women. Second, the terms of the Act of 1809 often staggered the dates of manumission for women and their children. Thus the responsibility for the children's

upbringing was often extended through the mother's extended kinship networks. Third, this shift in legal responsibility laid the foundation for future dialogues about gender, race, and poverty. African American women responded to all three consequences by drawing from the same support systems that aided them in slavery, such as their extended kin networks, spiritual traditions, and cultural survivals.⁵⁵

There are only sparse examples of bondmen being freed with slave children; enslaved women, by contrast, were often freed with at least one of their children.⁵⁶ The legal emphasis on the enslaved woman's womb reveals the ways in which African American men were obscured from the family narrative by rendering manumitted women as isolated from the men in their lives.⁵⁷ In reality, some free black men bought their wives' freedom or were bought by their wives.⁵⁸ Additionally, bondpeople remembered their fathers as crucial figures in their lives.⁵⁹ But planter emphasis on enslaved women's 'increase' produced a raced and gendered milieu that rendered African American women's parental responsibilities as distinct and separate from those of the men who fathered their children. This singular notion of parenthood followed African American women from slavery, through manumission, and into narratives about freedom.

The centralized role of biological reproduction also meant that black women were designated as responsible, both *de facto* and *de jure*, for the support of their freed children.⁶⁰ Manumitted women were often freed on the condition that they 'should feed, clothe, support and maintain her said children and to keep and retain them in her said possession.'⁶¹ That African American women were freed and held responsible for their children is significant. This stipulation reveals that freedom from hereditary racial slavery and notions of social responsibility in the early part of the nineteenth century were implicitly intertwined. The interlocking of these concepts was manifested in the development of local laws and notions of dependence and independence, which underscored that, as with enslavement, manumission rested upon the biological and social responsibilities of manumitted women.

The economies of slavery and manumission benefited from the extended kinship relationships of African American women. This is particularly true for guardianship arrangements for freed black children. When children were manumitted and their parents remained in bondage, the children sometimes went to live with extended family members who could provide for their daily maintenance. In September 1807, for example, Samuel Ridout made a provision to free James Ross, then the two-year-old son of his slave Hannah Ross, when he reached the age of fifteen. Although James would not be legally free until 1820, Ridout gave permission for Phoebe Richardson, James's grandmother and a free woman, to assume custody of the child.⁶² Richardson then assumed the slaveholder's economic responsibility to provide for her quasi-free grandchild. Hannah Ross probably did not welcome being separated from her son. However, as a mother, she must have understood the advantage to her son in living a nominally free life with kin over staying with her in the enslaved community. As a manumitted woman, Phoebe Richardson was acutely aware that with freedom came the responsibility to provide for any of her kin if and when they were freed.

Shifting the responsibility of the maintenance of children from the slaveholder while in bondage to the free black household also reduced the state's responsibility to provide for these children, many of whom would otherwise be dependent on local resources for support. As can be seen, responsibility for manumitted black youth fell disproportionately to black women. In a sense, being independent of a slave owner's care meant that African American women had to prove that they were able to care for themselves and their *dependants*, demonstrating that even freedom came with considerations about whether or not to consign one's labor or that of one's children to someone else. If the women themselves could not provide for their children, they often apprenticed their children to master artisans so that they could learn a trade and avoid becoming wards of the almshouse.⁶³ Codified notions of independence and dependence, thus, developed in an extremely racialized and gendered manner and became part of developing discourses on social responsibility.⁶⁴

Conclusion

The history of slavery and manumission in Maryland was inevitably tied to the reproductive labor of bondwomen. The 1809 law of manumission revealed concerns about the status of bondwomen, their living children, and their unborn children. Thus, manumission legislation dictating 'that all her increase shall be free' was a dual-edged sword. It allowed planters to relieve themselves of the expenses associated with maintaining individual slaves when the economy was lean. But it also provided a mechanism for the planters to keep the children of manumitted women as insurance, in case the economy called for enslaved labor in the future. For African American women and their children, the law could provide an opportunity to escape the system of slavery. However, it was often a sword in the heart when the children were in fact not freed, or when it meant separation from an enslaved husband.

The productive labor of the black woman's body upheld the slave system, and her reproductive labor provided for the continuance of the system. But bondwomen and their descendants took advantage of the language of the 1809 law in ways that involved a range of legal and extralegal interventions into the public space. These interventions challenged the intent of the 1809 law to guarantee the future of slavery through natural reproduction. As the individuals who were most responsible for their children's welfare, manumitted women accepted the challenges of freedom. Thus, in the decades leading up to the Civil War, it was the women who labored for familial survival, legal personhood, and freedom and who led the way in the development of a free black society in Maryland. They worked to ensure that they, their children, and their future generations would enjoy a life outside of bondage.

Acknowledgements

The author wishes to thank the anonymous reviewers of the journal as well as the following individuals who provided insightful suggestions at various stages: Daina

Ramey Berry, Sharon Block, Brandi C. Brimmer, Antoinette Burton, Carrie Compton, Camillia Cowling, Johanna Fernandez, Karen C. Flynn, Leslie Harris, Suzanne Lebsack, Nancy McLoughlin, Jennifer L. Morgan, Rosalyn Terborg-Penn, Rachel O'Toole, Dana Rabin, David Roediger, Brenda Stevenson, T. Stephen Whitman, and John Thabiti Willis. Portions of this research were presented at the Department of Women's Studies Faculty Research Colloquia at the University of California, Irvine, the 2010 Annual Meeting of the Organization of American Historians in Washington, DC, as well as the 2010 'Causes and Consequences: Global Perspectives on Gender and Slavery' conference hosted by Oberman Center for Advanced Studies at the University of Iowa.

The Council on Research Computing and Libraries at the University of California, Irvine, generously provided research support.

Notes

- [1] 1809 Law of Maryland, William Kilty (Ed.) (1800) *Index to the Laws of Maryland* Vol. 192 (Annapolis: Jeremiah Hughes Printing), p. 171.
- [2] Ibid.
- [3] Ibid.
- [4] For the state of the field on bondwomen and reproduction see Daina Ramey Berry (2007) *Swing the Sickle for the Harvest is Ripe: gender and slavery in antebellum Georgia* (Urbana: University of Illinois Press), pp. 77–84; Joseph C. Dorsey (1994) Women without History: slavery and the international politics of *partus sequitur ventrem* in the Spanish Caribbean, *Journal of Caribbean History*, 28(2), pp. 165–207; and Jennifer L. Morgan (2004) *Laboring Women: gender and reproduction in New World slavery* (Philadelphia: University of Pennsylvania Press); for more classic studies see Deborah Gray White (1985) *Ar'n't I a Woman?: female slaves in the plantation South* (New York: W. W. Norton); and Barbara Bush (1990) *Slave Women in Caribbean Society, 1650–1838* (Bloomington: Indiana University Press).
- [5] Dorothy Roberts (1996) Welfare and the Problem of Black Citizenship, *Yale Law Journal*, 105(6), pp. 1563–1602; Peter Laslett (Ed.) (1965) *Locke: Two Treatises of Government* (New York: Cambridge University Press), p. 1690; Andrew T. Fede (1996–97) Gender in the Law of Slavery in the Antebellum United States, *Cardozo Law Review*, 18, pp. 411–432; and Cheryl I. Harris (1996–1997) Finding Sojourner's Truth: Race, gender and the institution of property, *Cardozo Law Review*, 18, pp. 318–359. See also Laura F. Edwards (2005) Enslaved Women and the Law: paradoxes of subordination in the post-revolutionary Carolinas, *Slavery and Abolition*, 26(2): pp. 305–323; Diana Paton (2004) *No Bond but the Law: punishment, race and gender in Jamaican state formation, 1780–1870* (Raleigh: Duke University Press); and Pamela Scully & Diana Paton, (Eds) (2005) *Gender and Slave Emancipation in the Atlantic World* (Raleigh: Duke University Press). For discussions of manumitted women, in particular see Wilma King (2006) *The Essence of Liberty: free black women during the slave era* (Columbia: University of Missouri Press); Jessica Millward (forthcoming), *Charity's Folk: enslaved women, families and freedom in pre-Civil War Maryland* (Race in the Atlantic World, 1700–1900 series; Athens: University of Georgia Press); and Amrita Chakrabarti Myers (2011) *Negotiating Women: Race, gender, and freedom in the nineteenth-century South* (Gender and American Culture Series; Chapel Hill: University of North Carolina). For discussions of emancipated women in the North, see Erica Armstrong Dunbar (2008) *A Fragile Freedom: African American women and emancipation in the antebellum city* (New Haven: Yale University Press).

- For discussions of emancipated women and the Southern Claims committee see Brandi C. Brimmer (2006) *All Her Rights and Privileges: African American women and the politics of civil war widows' pensions* (Ph.D. diss., University of California, Los Angeles). For a general overview of African American women and the Constitutional right to vote, see Rosalyn Terborg-Penn (1998) *African American Women in the Struggle for the Vote: 1850–1920* (Bloomington: Indiana University Press).
- [6] Camillia Cowling (2005) *Negotiating Freedom: women of colour and the transition to free labour in Cuba, 1870–1886*, *Slavery and Abolition*, 26(3), pp. 377–391; Wilma King (2004) *Out of Bounds: emancipated and enslaved women in antebellum America*, in David Barry Gaspar & Darlene Clark Hine (Eds) *Beyond Bondage: Free women of color in the Americas* (Urbana: University of Illinois Press), pp. 127–145; and Loren Schweninger (2004) *The Fragile Nature of Freedom: free women of color in the U.S. South*, in Gaspar & Hine (Eds), *Beyond Bondage*, pp. 106–126.
- [7] Schweninger, 'The Fragile Nature of Freedom,' p. 107.
- [8] *Ibid.*
- [9] This argument is based on manumission records from Anne Arundel County and Baltimore County, Maryland, between the years 1770 and 1860. For Baltimore and Anne Arundel manumission records, see the following collections at the Maryland State Archives: Annapolis, MD: CR 47, 242; CR 79, 179–2; CR 79, 178; CR 79, 192; CR 79, 177–2; and CR 12, 262. For an overview of slave prices and gender, see Daina Ramey Berry (2005) *We'm A First Rate Bargain: value, labor, and price in a Georgia slave community*, in Walter Johnson (Ed.) *The Chattel Principal: international slave trades in the Americas* (New Haven: Yale University Press), pp. 55–71.
- [10] Kimberly S. Hanger (1997) *Bounded Lives, Bounded Places: free black society in colonial New Orleans, 1769–1803* (Durham, NC: Duke University Press); and Wilma King (2006) *The Essence of Liberty: free black women during the slave era* (Columbia: University of Missouri Press).
- [11] Jessica Millward, *Charity's Folk*.
- [12] John Hope Franklin (1943) *The Free Negro in North Carolina, 1790–1860* (Chapel Hill: University of North Carolina Press); and Ira Berlin (1974) *Slaves without Masters: the free Negro in the antebellum South* (New York: The New Press).
- [13] Barbara Jeanne Fields (1985) *Slavery and Freedom on the Middle Ground: Maryland during the nineteenth century* (New Haven: Yale University). See Franklin, *The Free Negro in North Carolina*; and Berlin, *Slaves without Masters*.
- [14] *Ibid.*, p. 6.
- [15] This argument is based upon review of manumission records from Anne Arundel County and Baltimore County, Maryland between the years 1770 and 1860. See Anne Arundel County Indentures and Freedom Certificates, 1770–1830, Maryland State Archives, Annapolis, MD (hereafter referred to as MSA); Baltimore County Court, Certificates of Freedom, 1806–1816, MSA. See also the work of Christine Daniels, Jean B. Russo and Lois Green Carr. Christine Daniels (1990) *Alternative Workers in a Slave Economy: Kent County, Maryland, 1675–1810* (Ph.D. diss., Johns Hopkins University); Christine Daniels (1993) *WANTED: A Blacksmith who understands Plantation Work: artisans in Maryland, 1770–1810*, *The William and Mary Quarterly*, pp. 743–767; Jean B. Russo (1995) *Chesapeake Artisans in the Aftermath of the American Revolution*, in Ronald Hoffman & Peter J. Albert (Eds) *The Transforming Hand of the American Revolution: reconsidering the American Revolution as a social movement* (Charlottesville: University Press of Virginia), pp. 118–154; and Lois Green Carr (1997) *The Development of the Maryland Orphan's Court, 1654–1715*, in Aubrey C. Land, Lois Green Carr & Edward C. Papenfuse (Eds) *Law, Society and Politics in Early Maryland* (Baltimore: Johns Hopkins University Press), pp. 41–62.

- [16] Anne Howard to Sundry Slaves, January 1802, Anne Arundel County Manumission Records, 1797–1844, MSA; John and Henry Ridgley to Harry, November 1791, Anne Arundel County Manumission Records, 1785–1808, MSA; Nathan Rigbie to Sundry Negroes, 1773, Baltimore County Chattel Records (MS 2865), Maryland Historical Society: Baltimore, MD (hereafter referred to as MHS); and John Smith to Slaves, December 1788, Anne Arundel County Manumission Records, 1785–1808, MSA.
- [17] Sean Jean Condon (2009) *The Slave Owner's Family and Manumission in the Post-Revolutionary Chesapeake Tidewater: evidence from Anne Arundel County Wills, 1790–1820*, in Rosemary Brana-Shute & Randy J. Sparks (Eds) *Paths to Freedom: manumission in the Atlantic world* (Columbia: University of South Carolina Press), pp. 339–362; Fields, *Slavery and Freedom*; Christopher Phillips (1997) *Freedom's Port: the African American community of Baltimore, 1790–1860* (Urbana: University of Illinois Press); Seth Rockman (2009) *Scraping By: wage labor, slavery and survival in early Baltimore* (Baltimore: Johns Hopkins University Press); T. Stephen Whitman (1997) *The Price of Freedom: slavery and manumission in Baltimore and early national Maryland* (New York: Routledge).
- [18] Baltimore County, which included Baltimore City, experienced a decreasing dependence on slave labor and the concurrent emergence of a free black wage-earning population from the American Revolution to the Civil War. In 1790, there were 7132 slaves in Baltimore County. By 1830, 10,653 people were enslaved. In 1860, the number enslaved was 3182. Even though the number of slaves increased, the increase is nowhere near as dramatic as the increase in the free black population. According to the 1790 census, 927 free blacks lived in the county. By 1830, 17,888 free blacks resided in the county. On the eve of the Civil War, 4321 free blacks lived in Baltimore County and nearly 26,000 free blacks lived in the city. These population figures are based on the 1790, 1830 and 1860 US Census, and Fields, *Slavery and Freedom*, p. 13.
- [19] T. Stephen Whitman (2006) *Manumission and Apprenticeship in Maryland, 1770–1870*, *Maryland Historical Magazine*, 101, p. 56, n. 5.
- [20] An Act Related to Freeing Slaves by Will or Testament, 1790, Archives of Maryland Online, *Archives of Maryland*, MHS, <http://aomol.net/html/index.html>.
- [21] Carr, 'Development of the Maryland Orphan's Court,' pp. 41–62.
- [22] Henry C. Drury of Charles, February 1822, Anne Arundel County Manumission Records, 1816–1844, MSA. There is indication that planters were determining the status of 'increase' before the law was passed. See, for example, William Bull to Negroes, 1774, Baltimore County Chattel Records (MS 2865), MHS; John Brenitt to Negro Nell, August 1800, Baltimore County Chattel Records, vol. BG, MSA; John Gibson to Milly, January 1802, Anne Arundel County Manumission Records, 1797–1844, MSA; Gideon White to Eleanor, March 1804, Anne Arundel County Manumission Records, 1797–1844, MSA.
- [23] Morgan, *Laboring Women*, p. 89. See also Joseph C. Dorsey, 'Women without History,' pp. 165–207.
- [24] Whitman, *The Price of Freedom*, p. 123.
- [25] *Ibid.*, p. 123.
- [26] Ruth Wallis Herndon (2001) *Unwelcome Americans: living on the margin in early New England* (Philadelphia: University of Pennsylvania Press).
- [27] Whitman, *The Price of Freedom*, p. 27.
- [28] *Ibid.*, p. 123.
- [29] See, in particular, Brenda E. Stevenson (1995) *Black Family Structure in Colonial and Antebellum Virginia: amending the revisionist perspective*, in M. Belinda Tucker & Claudia Mitchell-Kernan (Eds) *The Decline in Marriage among African Americans* (New York: Russell Sage Foundation), pp. 27–56.

- [30] Chester Coleman to John and Betsey, 1828, Frederick County Court Petitions, 1783–1847, MSA.
- [31] Eric Burin (2005) *The Peculiar Solution: a history of the American colonization society* (Gainesville: University Press of Florida); Claude Clegg (2004) *The Price of Liberty: African Americans and the making of Liberia* (Chapel Hill: University of North Carolina Press); R. J. M. Blackett (1986) *Beating against the Barriers: biographical essays in nineteenth century Afro-American history* (Baton Rouge: Louisiana State University Press); Michele Mitchell (2004) *Righteous Propagation: African Americans and the politics of racial destiny after reconstruction* (Chapel Hill: University of North Carolina Press); and Penelope Campbell (1971) *Maryland in Africa: the Maryland State Colonization Society, 1831–1857* (Urbana: University of Illinois Press).
- [32] Berlin, *Slaves without Masters*, p. 33.
- [33] See Helen Catterall (1936) *Judicial Cases Concerning American Slavery and the Negro*, vol. IV. (Washington, DC: The Carnegie Institute), p. 49.
- [34] Catterall, *Judicial Cases*, pp. 50–58.
- [35] Berlin, *Slaves without Masters*, p. 94, note 27.
- [36] See, for example, Eric Robert Papenfuse (1994) From Recompense to Revolution: *Mahoney v. Ashton* and the transfiguration of Maryland culture, 1791–1802, *Slavery and Abolition*, 15(3), pp. 38–62; and Martha Hodes (1999) *White Women, Black Men: illicit sex in the nineteenth century South* (New Haven: Yale University Press).
- [37] See Martha Hodes's discussion of the descendants of Irish Nell. Hodes, *White Women, Black Men*, pp. 19–38. See also T. Stephen Whitman's discussion in *The Price of Freedom*, pp. 62–65.
- [38] Berlin, *Slaves without Masters*, p. 83.
- [39] For overview of the Somerset case see T. K. Hunter (2003) Publishing Freedom, Winning Arguments: Somerset, natural rights and Massachusetts freedom cases, 1772–1836, (Ph.D. dissertation: Columbia University); See also Dana Rabin, 'Foregone Empire: abduction, execution, and naturalization in 1753,' unpublished paper shared by the author.
- [40] Papenfuse, 'From Recompense to Revolution,' pp. 38–62.
- [41] Ibid.
- [42] Ibid., p. 46; and Catterall, *Judicial Cases*, p. 53.
- [43] In Maryland, African American petitioners represented the smallest portion of those filing claims related to slavery in county and state courts. Much more common were cases involving slave ownership or loss of revenue for slaves. Helen Catterall's evidence produced in the early twentieth century suggests that in the ten years prior to the 1809 law, six out of twenty-six petitions filed in Maryland were from African Americans. During the years 1810–20, ten out of twenty-seven petitions presented were from African Americans. Loren Schweningen's research reveals a similar trend. From 1799–1809 roughly twelve of sixty-six petitions regarding slavery in some form came from African Americans seeking freedom. Schweningen's database reveals that from 1810 to 1820, seventeen of the 160 suits brought were from African Americans. See Catterall, *Judicial Cases*; Loren Schweningen's database, Digital Library on American Slavery, http://library.uncg.edu/slavery_petitions; and Jennifer Hull Dorsey (2009) Documentary History of African-American Freedom: an introduction to the *Race, Slavery and Free Blacks* Microfilm Collection, *Slavery and Abolition*, 30(4), pp. 545–563.
- [44] Digital Library on American Slavery. http://library.uncg.edu/slavery_petitions.
- [45] Digital Library on American Slavery. http://library.uncg.edu/slavery_petitions/details.aspx?pid=16035.
- [46] Ibid.
- [47] Millward, *Charity's Folk*.

- [48] John Law for Anthony, September 1811, *Amy Ogletton et. al v. Collimore Pope, Eliza Ogletton v. Samuel Marshall, Letty Ogletton, et al. v. Phillip Soper, Daniel Ogletton et al. v. Collimore Pope*, all Prince George's County, Black Papers, MSA; and American Digital Library on Slavery: http://library.uncg.edu/slavery_petitions/pSearch.aspx?s=2.
- [49] John Law for Anthony, September 1811, Prince George's County, Black Papers, MSA.
- [50] Cheryl Harris (1993) Whiteness as Property, *Harvard Law Review*, 106(8), pp. 1709–1791.
- [51] Loren Schweningen (2008) *The Southern Debate over Slavery: petitions to southern County Courts, 1775–1867*, vol. 2 (Urbana: University of Illinois Press), p. 165.
- [52] *Ibid.*, p. 165.
- [53] Camillia Cowling (2010) Debating Womanhood, Defining Freedom: the abolition of slavery in 1880s Rio de Janeiro, *Gender and History*, 22, pp. 284–301.
- [54] J. Louis Pasay to Betty and her two children, 1822, Anne Arundel County Manumission Records, 1816–1844, MSA; Nicholas Toogood, 1796 Deed, Anne Arundel County Court Manumission Record and Certificates of Freedom, 1785–1808, MSA, 55; Isaac Paul to Phillip and Mary Howard, 1818, Anne Arundel County Manumission Records, 1816–1844, MSA; and Phillip Howard to George and Ruth, June 1818, Anne Arundel County Manumission Records, 1816–1844, MSA. See also, Phillips, *Freedom's Port*, p. 40.
- [55] African American networks were nuclear, matrifocal, matrilocal, fictive, extended, and broad in scope. See Stevenson, 'Black Family Structure,' as well as Dylan Pennin-groth (2003) *The Claims of Kinfolk: African American property and community in the nineteenth-century South* (Chapel Hill: University of North Carolina Press). For the relationship between African cultural survivals and Christianity see the work of Walter Rucker (2005) *The River Flows On: black resistance, culture, and identity formation in early America* (Baton Rouge: Louisiana State University Press); and Sylvia Frey & Betty Wood (1998) *Come Shouting to Zion: African American Protestantism in the Americas* (Chapel Hill: University of North Carolina Press).
- [56] Manumission database compiled by author. Database based on Anne Arundel County Manumission Records, 1807–1850, MSA.
- [57] Jessica Millward (2010) The Relics of Slavery: inter-racial sex and manumission in the American South, *Frontiers*, 31(3), pp. 22–30.
- [58] William Reynolds to Elizabeth, 1804, Anne Arundel County Manumission Records, 1785–1808, MSA; and Alfred Green to Sarah Green, 1802, Anne Arundel County Manumission Records, 1797–1844, MSA.
- [59] Charles Ball (1970) *Slavery in the United States: a narrative of the life and adventures of Charles Ball, a black man* (Detroit: Negro History Press); William Green (1853) *Narrative of Events in the Life of William Green* (Springfield: Guernsey, Book, Job and Card Printer); Sarah Levering (Ed.) (1897) *Memoirs of Margaret Jane Blake of Baltimore, MD, and Selections in Prose and Verse* (Philadelphia: Innes & Sons); James W. C. Pennington (1971) *The Fugitive Blacksmith* (Westport: Negro University Press); John Thompson (1856) *The Life of John Thompson, a Fugitive Slave; Contain-ing His History of 25 Years in Bondage and His Providential Escape* (Worcester: John Thompson); and Samuel Ringgold Ward (1855) *Autobiography of a Fugitive Slave: Containing His Anti-Slavery Labours in the United States, Canada and England* (London: John Snow Publisher).
- [60] Linda Kerber (1997) *Towards an Intellectual History of Women* (Chapel Hill: Univer-sity of North Carolina Press), pp. 17–35; Whitman, *Price of Freedom*, pp. 93–118.
- [61] Mary Ridout Deed, August 1807, Anne Arundel County Court Manumission Records, 1807–1816, MSA.

- [62] Samuel Ridout to Negroes, September 1807, Anne Arundel County Manumission Records, 1807–1816, MSA.
- [63] John Galloway to Maria Boston *et al.*, October 1821, Anne Arundel County Manumission Records, 1816–1844, MSA; Edward Norris to Solomon Johnson, Indenture 1814, Baltimore County, Orphan's Court Proceedings, 1790–1890, MSA; John Farwood to Bennett, 1773, Baltimore County Chattel Records (MS 2865), MHS; John Tilghman to Richard Murray, December 1807, Anne Arundel County Court Manumission Records, 1785–1808, MSA.
- [64] For similar discussions regarding African Americans and emancipation, see Laura F. Edwards (1997) *Gendered Strife and Confusion: the political culture of reconstruction* (Urbana: University of Illinois Press); Noralie Frankel (1999) *Freedom's Women: black women and families in Civil War era Mississippi* (Bloomington: Indiana University Press); Thavolia Glymph (2008) *Out of the House of Bondage: the transformation of the plantation household* (Cambridge: Cambridge University Press); Tera Hunter (1997) *To 'Joy My Freedom: southern black women's lives and labors after the Civil War* (Cambridge, MA: Harvard University Press); Julie Saville (1994) *The Work of Reconstruction: from slaves to wage laborer in South Carolina, 1860–1870* (Cambridge: Cambridge University Press); Leslie Schwalm (1997) *A Hard Fight for We: women's transition from slavery to freedom in South Carolina* (Urbana: University of Illinois Press).