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Turbulence: Bound Workers and Labor Negotiations in Antebellum Maryland, 1789-1860

By

Griffin A. Brunk

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of the

University of California, Berkeley

Committee in Charge:

Professor Christopher Tomlins, Chair
Professor Dylan Penningroth
Professor Christine Philliou
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Abstract

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In antebellum America, "labor" was not a monolithic institution. Waged workers, enslaved hands, apprentices, and familial workers were each equipped with different tools for navigating life and work. While waged workers were free to move on when a better offer presented itself, slaves and apprentices were not. Using materials from Maryland and the Ottoman Empire, this dissertation uses comparative lenses to examine how bound workers negotiated with their employers (broadly construed) within the contours of that bondage.

Chapter I begins with an examination of turbulence petitions in Maryland's Orphans' Courts. Maryland's economy incentivized the liberal use of term slavery, in which an enslaved person was to be freed at a certain date. Slaveholders could file a turbulent slave petition in the Orphans' or county court, requesting an extension of that bondage. Facially, these petitions chart a constellation of term slaves' misbehavior and "recalcitrance," as filtered through slaveholders' irritation. However, they also offer a window into enslaved persons' self-advocacy, its tools, and available tactics. Chapter II narrows its focus to labor negotiations specifically. Turbulence petitions represented a particularly grave rupture in the slaveholder-enslaved relationship, one which apparently demanded external intervention from the courts. Since enslaved Marylanders did not have possess strong avenues for official redress of labor abuses or complaints, they turned to self-help, tailored to address their particular grievances.

Chapter III and Chapter IV shift focus to apprentices. Much like slaveholders, those who claimed the labor of apprentices could request an extension of service due to poor character and misbehavior. While turbulent apprentice petitions are largely identical to turbulent slave petitions, apprentices possessed a range of tools unavailable to term slaves. Many apprentices used breach of contract claims, definitional ineligibility for apprenticeship, and procedural flaws to contest the control of indenture holders. Chapter IV then turns to how indenture holders gained custody of children in the first place, and the abrupt way this putatively familial relationship terminated.

Finally, Chapter V examines how freedpersons protected their liberty through social connections. Whether leveraging community ties, ongoing relationships with ex-slaveholders, or something akin to a patron-client relationship, freedpersons utilized Southern society's expectations and biases to defend their liberty.

To my family, for their unflagging support, necessary grounding, and whole lot of sass.

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Introduction

The American Experiment has long exploited some form of bound labor. In the beginning, indentured servants were a majority of its earliest Anglophone settlers, while Iberian colonies enslaved Native Americans. As the colonies grew, they almost universally pivoted to some mixture of apprenticeships (indentured children) and chattel slavery. When abolition finally triumphed over slavery, America's bound labor regimes evolved to fit their new circumstances.[1] Share cropping, debt peonage, and penal servitude filled the void left by slavery, and the latter persists into the time of this writing.[2]

"Bound labor" necessarily denotes some measure of restriction on the laborers' life and working conditions. Sometimes that was a legal status (e.g. enslavement), an encumbrance or debt (e.g. debt peonage or share cropping), or a temporary state (e.g. apprenticeship or penal servitude). Whatever the type, the controller of that labor seeks to deploy and control the worker according to their own definitions of profit, benefit, and morality.[3]

However, this was not an uncontested effort: bound laborers have their own interests and deal breakers. From their perspective, the question is how to pursue their own lives and agendas without placing themselves in danger, either from direct violence or material hardship. Such calculus includes what means can be used to influence their employer; what leverage can be used to extract concessions; what risks are palatable; and whether it is better just to attempt an escape?

This dissertation examines how enslaved persons, apprentices, and freedpersons answered these questions in Antebellum Maryland. Using legal materials and comparisons with other slaveholding societies, each chapter examines how bound laborers made their voices heard *within* the confines of their bondage. This dissertation does not purport to be a Kolchin-esque 1:1 juxtaposition of American slavery with other iterations of the practice.[4] Rather, a more selective, targeted approach has been used in which specific American institutions and practices are juxtaposed with their counterparts (or opposites) in other polities. Observation of these parallels enhances our understanding of both jurisdictions, or at least creates the basis for further research and reexamination. Overall, the attempt here is to divine understanding of how bondspeople, whether enslaved or indentured, understood their position and negotiated its conditions.

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[1] Douglas A. Blackmon, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2008); David M. Oshinsky, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1996).; Michael Gibson-Light, ORANGE-COLLAR LABOR: WORK AND INEQUALITY IN PRISON (2023).

[2] *See e.g.* "Proposition 6: Eliminates Constitutional Provision Allowing Involuntary Servitude for Incarcerated Persons." Legislative Constitutional Amendment. Rejected by California voters on 5 Nov. 2024. This ballot measure would have amended the California state constitution to bar jails and prisons from imposing mandatory work duties on incarcerated persons.

[3] Profit and benefit are intentionally separated. While money is certainly a benefit, many types of bound labor are used for services (e.g. housework and childcare) rather than direct production. Other forms are mostly conspicuous consumption, i.e. the possession of many slaves was the point, not their profitable employment. Here, the benefit is social standing. *See* Thorstein Veblen, THE THEORY OF THE LEISURE CLASS: AN ECONOMIC STUDY IN THE EVOLUTION OF INSTITUTIONS, (1899) (discussing how the rich and would-be rich use "conspicuous consumption" (i.e. deliberate over-spending on luxuries and blatant wastefulness) to demonstrate their social standing).

[4] *See* Peter Kolchin, UNFREE LABOR: AMERICAN SLAVERY AND RUSSIAN SERFDOM (Cambridge: Harvard University Press, 2009).

These observations incite yet broader insights about the ways capitalism and its rivals shaped the topography of labor in the antebellum era. For purposes of this dissertation, I will be adopting the definition of capitalism recently offered by Caitlin Rosenthal:

> [c]apitalism exists where capital (and through capital, power) is consolidated in such a way that labor can be highly commoditized. More precisely, capitalism exists where owners of capital enjoy the ability to control labor and exercise their power through the mechanisms of the market. Their power reveals itself through their calculations: whether they count by the hour or by the lifetime, capitalists can buy and sell labor in the market without regard for individuals.[5]

Rosenthal calibrates this definition further by noting that the "power to commoditize" was the crucial attribute, as it offered capitalists the flexibility to tailor their rhetoric as necessary.[6]

Antebellum law was a creature of capitalism and a critical tool in its arsenal. J. Willard Hurst and Morton Horwitz were the first to write about law's critical role in enabling the bonanza of American economic development.[7] Many others have followed in their footsteps.

Without fully recounting their theses, American law was oriented towards fostering economic and infrastructural projects, bolstering profit-seeking, and generally exploiting the abundance of the North American continent.[8] More importantly, it did so on an individual level, picking winners and losers based on factors like timeliness, profitability, and relative levels of productivity.[9]

For example, under traditional Anglo-American common law, landowners possessed an absolute dominion over their land.[10] "Natural use" was the courts' watchword, a phrase often interpreted to encompass domestic and agrarian purposes.[11] This was buttressed by two supporting propositions: priority and do-no-harm.[12] The former is simply first-come-first-served. If someone had claimed a resource, diverted a stream, or some made some other development to their land, those who came after only held, at best, an inferior right to that resource. For its part, do-no-harm was a principle of non-interference, in which any meddling or hindering of another's property incurred damages on a strict liability standard.[13]

These general principles were often buttressed with subject-specific legal doctrines. For example, riparian rights pivoted from a broadly protective, anti-innovation doctrine into one where money permitted any number of injuries.[14] While priority and do-no-harm both applied to riverfront properties, several exclusive tenets also applied. "Natural course" protections made it unlawful to

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[5] Caitlin Rosenthal, "Capitalism Where Labor Was Capital: Slavery, Power and Price in Antebellum America," 1:2 CAPITALISM: A J. OF HIST. AND ECON. 296 (2020).
[6] *Id.* at 302 (emphasis removed).
[7] James Willard Hurst, LAW AND THE CONDITIONS OF FREEDOM IN THE NINETEENTH-CENTURY UNITED STATES (Madison: University of Wisconsin Press, 1956); Morton J. Horwitz, TRANSFORMATION OF AMERICAN LAW, 1780-1860, Studies in Legal History Ser (Cambridge: Harvard University Press, 2009).
[8] Hurst, LAW AND THE CONDITIONS OF FREEDOM AT 3-33; Horwitz, TRANSFORMATION OF AMERICAN LAW at 1-31.
[9] Horwitz, TRANSFORMATION OF AMERICAN LAW at 109-140.
[10] *Id.* at 31.
[11] *Id.* at 32.
[12] *Id.*
[13] *Id.*
[14] *Id.* at 36-7.

meddle with the organically occurring course and flow of waterways.[15] As a second protection, any use which "conflicted with the interests of any other [riverfront] proprietor. . . was an unlawful invasion of his property."[16] This collective right of action created a sort of private attorneys generally against any unilateral development along the waterway. However, these protections where undermined and eventually disposed of over the course of the late-eighteenth and mid-nineteenth century. These tenets combined into a generally anti-development legal culture in which newer innovators or would-be developers were stymied by their predecessors' rights.[17]

This changed starting in the late-eighteenth century, as courts began to more heavily consider productivity and efficiency as the foundations of sound legal principles.[18] In seeking to exploit the overwhelming abundance and possibility of the untapped American wilderness, American society began to champ at the bit of traditional legal principles. Little by little, law joined (and led) the change to a more dynamic, productivity-friendly legal culture. Priority and other protections were discarded for the Reasonable Use Test.[19] Here, judges were asked to weigh whether the supposed injury was a "little inconvenience," no legal remedy was necessary; the plaintiff had to simple weather the problem.[20] This in turn evolved into various formulations, each designed to grant judges discretion over where usage ended and injury began. Justice Story's formulation is perhaps most famous, stating "some diminution, or a retardation or acceleration of the [waterway's] natural current is permissible if it is not positively and sensibly injurious."[21] While reasonable on its face, there was a thumb on the scale of this balancing test: development and productivity were considered good for the public writ large. Plaintiffs' complaints became somewhat miserly and trifling in light of the supposed benefits to the American people.[22]

Other traditional protections also flagged under the weight of this new judicial ethos. Prescription was shackled by an extension of adverse possession. The former is an arcane principle in which a non-property holder can gain a right to some abstract element of someone else's property, simply by long-time use of that property without objection by the owner. For example, Riley could gain a right to walk along Hezekiah's land just by taking that route every day for many years. Under prescription, like priority, first-comer riparian property holders could bar development by later arrivals simply by claiming a prescription based on their long usage. Associated with monopolies, prescription was an easy target for this new developmentally oriented legal culture. By 1818, judges had begun to discard that prescription only applied if that usage was adverse to the new property holder's interests.[23] Since the new property holder had *no* interest in the riparian usage of his neighbors prior to arriving or making use of the river himself, no prescription had yet occurred.

Nor was the judiciary alone in pursuing a development-centric future. State legislatures were keen co-conspirators, passing statutes to complement the accruing body of pro-development legal decisions. Massachusetts' Mill Acts permitted mill owners to flood their neighbors' lands, so long as

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[15] *Id.* at 35.
[16] *Id.*
[17] *Id.* at 32-33.
[18] *Id.* at 39.
[19] *Id.* at 36-7.
[20] *Id.*
[21] *Id.* at 39 (quoting Justice Story's opinion in *Tyler v. Wilkinson*, 24 F.Cas. 472 (Circuit Ct. RI 1827) (internal quotes omitted).
[22] *Id.* at 40-1.
[23] *Id.* at 43-4 (citing Judge James Gould's dissent in Ingraham v. Hutchinson, 2 Conn. 584 (CT Supreme Court of Errors 1818) (Gould, J., dissenting) as a touchstone for the developing attack on prescription).

they paid compensatory damages for each instance.[24] While juries were empowered to set damages and prescribe the height of future flooding, a rich mill owner could essentially waterlog his neighbors whether they liked it or not. Despite this short-circuiting at least four common law property protections,[25] the Massachusetts Supreme Court endorsed the Mill Acts' constitutionality, and even extended them in several aspects.[26]

Unsurprisingly, the capitalist ethos of law extended into labor. Seth Rockman explicitly argues that law was a tool of capitalist labor exploitation, specifically a means to break labor's recalcitrance and coerce productivity.[27] Almshouses extracted labor from its residents or bound them out, criminal law re-enslaved free Black Marylanders, and wage labor hinged off the legal fiction that employer and worker met as equals at the bargaining table.[28] This ethos percolated throughout Maryland's labor sector, no matter its origins. Whatever the positive good rhetoric or "happy family" rhetoric claimed, American slavery and its permutations were predicated on the generation of wealth. Apprenticeship's ostensibly paternalist roots were quickly amended by a labor-hungry employer class, transforming the apprentice into an intermediate laborer between enslaved and waged workers.[29]

Yet, capitalism's very nature as a social construct provided the gaps and possibility for changes; what was built can be rebuilt. Capitalists' attempts to curate their labor force created gradations between the labor forms it sought to exploit, and opportunities for pushback against those in charge. Enslaved persons weaponized their bodies and labor to demand concessions, even at great risk to their health, lives, and community. Apprentices marshaled their rights as nascent free persons to hold indenture holders accountable. Freed persons jealously protected their liberty by leveraging their compliance with capitalist and antebellum sensibilities.

I. Methodologies: Critical Legality and Comparison

When one's objective is to conduct bottom-up history, legal archives are not the most intuitive choice. Produced by propertied classes and the "winners" of historical conflicts, legal materials offer a view into the past warped by pleading standards, internal biases, and what a bourgeois class of jurists considered within law's remit. However, while these characteristics compromise legal materials' direct salience, a strong dose of skepticism and creativity helps rehabilitate their utility.[30] Understanding law as an "encompassing legality," rather than a set of strict, delineated doctrines, helps restore the contingency and social construction of its practice.[31] Mandarins might have declared the law through pleading and ruling, but its actual implementation

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[24] *Id.* at 48.

[25] *Id.* Namely damages for simple trespass (a non-damaging intrusion onto another's property); punitive damages were barred by statute, making it impossible to harangue a mill owner into changing his ways; self-help, meaning neighbors could not tear down a mill owner's mill dam in order to prevent harms; and nuisance injunctions (court orders demanding an individual cease actions which prevent others from enjoying their own property).

[26] *Id.* at 48-53.

[27] Seth Rockman, SCRAPING BY: WAGE LABOR, SLAVERY AND SURVIVAL IN EARLY BALTIMORE, 4 (2009).

[28] *Id.* at 241.

[29] T. Stephen Whitman, THE PRICE OF FREEDOM: SLAVERY AND MANUMISSION IN BALTIMORE AND EARLY NATIONAL MARYLAND, 25-31 (2010); T. Stephen Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA (Ruth Wallis Herndon & John E. Murray eds. 2010); *see* Rockman, SCRAPING BY at 71.

[30] Alexandra T. Havrylyshyn, *Free for a Moment in France: How Enslaved Women and Girls Claimed Liberty in the Courts of New Orleans (1835-1857)*, 5, (2018) (Ph.D. Dissertation, University of California – Berkeley School of Law).

[31] Christopher Tomlins, "Introduction: Many Legalities of Colonization: A Manifesto of Destiny for Early American Legal History," in THE MANY LEGALITIES OF EARLY AMERICA, (Bruce Mann and Christopher Tomlins eds. 2001).

and popular understanding were often dramatically different.[32] The orderly construction of legal doctrines and social progress gives way to a messy, competing set of plural histories, amongst which preeminence depends on what inquiry is being pursued today.

A method for critically examining discordant legal materials is to borrow tools from other disciplines. This dissertation draws from Anglo-American and Latin American Studies, but the most important lever is comparative history.[33] As a methodology, Peter Kolchin credits the approach with three potential benefits to historical analysis:

1. Creating "awareness of alternatives, showing developments to be significant that without a comparative perspective might not appear so."[34]
2. Explaining "historical differences or peculiarities, weighing and eventually isolating variables responsible for particular conditions."[35]
3. Highlighting historical patterns and assemble generalizations.[36]

The second and third registers were popular in many flagship works of Slavery Studies. Gilberto Freyre's *The Master and the Slaves* and Stanley Elkins' *Slavery* both juxtapose Latin and North American slavery. These heavy handed comparisons sought to divine generalized lessons, but "treated Latin American and American slavery as undifferentiated monoliths to be contrasted with each other, instead of complex histories taking place over wide geographical areas and many centuries in time."[37] Orlando Patterson's *Slavery and Social Death* sits squarely in the third, using a vast array of societies and slaveries to argue that slavery's fundamental nature is a social relation (or lack thereof) rather than a labor form.[38] While certainly critiqued by subsequent work, Patterson's thesis remains influential and generative.[39] Frank Tannenbaum's famous *Slave and Citizen* takes the second tack, arguing that the Catholic Church's dogma and influence dramatically differentiated slaves' treatment in South American relative in the Anglophone colonies.[40]

Currently, the historiography seems to sit most often in the first register. For example, Dylan Penningroth credits comparative work with providing new perspectives for cross-grain reading, changing the available range of interpretations and undermining unsafe assumptions.[41] Peter Kolchin highlighted the supposed uniqueness of American slavery, with its self-reproducing population,

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[32] Robert Post & Reva Siegel, "*Roe* Rage: Democratic Constitutionalism and Backlash" 42 HARV. C.R.-C.L. L. REV. 373 (2007); James C. Scott, WEAPONS OF THE WEAK: EVERYDAY FORMS OF PEASANT RESISTANCE, (1987); Hendrik Hartog, "The Constitution of Aspiration and 'The Rights That Belong to Us All,'" 74:3 THE J. OF AM. HIST. 1013 (1987); William Forbath, Hendrik Hartog, and Martha Minow, "Introduction: Legal Histories from Below," 4 WISCONSIN L. R. 759-66 (1985).

[33] For more on Comparative History, *see* George Steinmetz, "Comparative History and its Critics: A Genealogy and Possible Solution" in A COMPANION TO GLOBAL HISTORICAL THOUGHT, 412-36 (Prasenjit Duara, Viren Murthy, & Andrew Sartori eds. 2014).

[34] Peter Kolchin, "Comparing American History," 10:4 R. IN AM. HIST. 64 (1982).

[35] *Id.* at 65.

[36] *Id.*

[37] Robert J. Cottrol, "Comparative Slave Studies: Urban Slavery as a Model, Travelers' Accounts as a Source," J. OF BLACK. STUDS. (1977) (bibliographic essay).

[38] Orlando Patterson, SLAVERY AND SOCIAL DEATH: A COMPARATIVE STUDY, (1982).

[39] *See e.g.* SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE (Stephan Conermann & Gül Şen eds. 2020) for a recent work pushing back on Social Death.

[40] Frank Tannenbaum, SLAVE AND CITIZEN: THE NEGRO IN THE AMERICAS, (Beacon Press ed. 1992).

[41] Dylan Penningroth, THE CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY IN THE NINETEENTH-CENTURY SOUTH, 8-9, 189-90. (2003)

racial basis, and system of agricultural degradation.[42] Kolchin's own comparative work, *Unfree Labor*, uses Russian serfdom as a counterpoint to American slavery.[43] In doing so, the book highlights where experts have too long cleaved to assumptions about bondspersons' material conditions,[44] social relations,[45] and subordination.[46]

This dissertation joins these projects, using comparison as a tool for prising apart entangled assumptions or finding a new vantage for analyzing bound labor in the United States. Previous comparative works have frequently placed American slavery in conversation with its Caribbean and South American counterparts,[47] some of whom appear here. In contrast, my main comparison is with the Ottoman Empire. Separated by dominant religion, historical context, and an entire ocean, the two polities do not immediately appear as natural companions. This, however, is a virtue of the pairing as it helps restore contrast that has been lost to the important developments in Atlantic Studies.

Atlantic Studies has become a key influence in the development of the study of bound labor. As a transnational discipline, or perhaps metadiscipline, Atlantic Studies broadly argues for historians to view the Atlantic world as a single interconnected whole, rather than granular jurisdictions in conversation. Under this heading, events such as the Tacky's Rebellion in Jamaica (1760-61) is transformed from a singular uprising against British colonialism into a continuation of West African politics and warfare.[48] Atlantic Studies pushes historians to see the connections between each traditional region of the Slave Atlantic, connections created as the steady flow of enslaved persons channeled Black memory, culture, and resistance throughout the region.[49]

As Atlantic Studies has gained traction since the early-2000s, it has offered splendid insights and sharpened many discussions. However, this comes at a cost. By emphasizing the simultaneous interconnectedness of these jurisdictions, the lines between them blur. What before was many is now one, and what once arose within a single jurisdiction is now the product of many influences, both internal and pan-Atlantic. The contrast between each Atlantic jurisdiction is lessened, making it more difficult to engage in meaningful comparison of the institutions and developments in each.

Comparison with the Ottoman Empire escapes this difficulty in Atlantic Studies, without diminishing its important historiographical contributions. A Mediterranean polity straddling Europe, Asia, and the Islamic world, the Ottomans were certainly beyond the Atlantic's shores. The Ottoman comparison offers a sharp contrast, relative to the usual candidates for comparison, such as Cuba, Haiti, and Brazil, all Atlantic world slave societies.[50]

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[42] Peter Kolchin, "Some Recent Works on Slavery Outside the United States: An American Perspective," 28:4 COMP. STUDS. IN SOC. & HIST. 767 (1986) (review article).
[43] *See generally*, Kolchin, UNFREE LABOR.
[44] *Id.* at 104-150 (discussing how bondspersons material conditions were inflected by employers' ideological scruples and financial fortunes).
[45] *Id.* at Part II for a broad discussion of bondspersons' community, cleavages, and relations.
[46] *Id.* at 103-157 (focusing on how landholders and planters exploited bondspersons).
[47] *See e.g.* Tannenbaum, SLAVE AND CITIZEN (comparing the United States and Latin America writ large to one another); Sydney Mintz, CARIBBEAN TRANSFORMATIONS (1989) (comparing institutions of bondage within the Caribbean islands and to the United States); Carl Degler, NEITHER BLACK NOR WHITE: SLAVERY AND RACE RELATIONS IN BRAZIL AND THE UNITED STATES (1971) (comparing the United States and Brazil); and others.
[48] *See* Vincent Brown, TACKY'S REVOLT: THE STORY OF AN ATLANTIC SLAVE WAR, (2020).
[49] *See* Ana Lucia Araujo, HUMANS IN SHACKLES: AN ATLANTIC HISTORY OF SLAVERY, (2024).
[50] *See e.g.* Tannenbaum, SLAVE AND CITIZEN (comparing the United States and Latin America writ large to one another); Mintz, CARIBBEAN TRANSFORMATIONS (comparing institutions of bondage within the Caribbean islands and to the

An additional benefit is that the Ottoman Empire helps undermine the preeminence of Anglophone jurisdictions in the study of slavery. In recent years, a broad pushback has worked to contest American slavery's status as the ostensible exemplar of the institution. Gwyn Campbell has pointed out how emphasis on America's chattel slavery occludes kinship or socially-predicated slaveries, relegating elite and non-agricultural slaves to curiosities, even though all were common in non-American jurisdictions.[51] Campbell has therefore coined the "Indian Ocean World paradigm" as a counterpart (and counterweight) to the intellectual preeminence of the Black Atlantic.[52] James Sidbury has offered similar critiques that American parochialism has stymied inquiries into the British Caribbean's influence on the mainland American South.[53] According to Sidbury, the mainland was broadly the junior partner of the Caribbean sugar masters, who set the stage and trajectory from which Southern slaveholding society developed.[54] Joseph Miller's *Problem of Slavery as History: A Global Approach* raises a more fundamental question about American slavery: what is missed by considering it an institution rather than an ongoing action?[55] Miller demands historians to escape the American myopathy by thinking about the history of *slaving,* rather than the history of *slavery*. This shift in perspective gives Miller the leeway to incite further questions regarding the construction of race in slavery writ large, and whether slavery was truly the tool of elites, or the means by which "marginals" attempted to wrest sovereignty away from established elites and governments.[56]

To be sure, this dissertation is primarily focused on slavery in the United States. However, introducing a "new" character to the ensemble joins these critiques to create new possibilities and perspectives while also contributing to a reduction in the literature's eurocentrism.

Finally, the dramatic differences between the American and Ottoman empires offers an important opportunity for testing fundamental assumptions about American slavery. For example, American slavery is sometimes characterized as unique among slave societies. Historians have gestured towards the United States' strict racial qualification for enslavement, self-reproducing slave population, focus on economic production (over service work), absence of widespread revolts, and

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United States); Carl Degler, NEITHER BLACK NOR WHITE: SLAVERY AND RACE RELATIONS IN BRAZIL AND THE UNITED STATES (1971) (comparing the United States and Brazil) For other jurisdictions, *see e.g.* Shearer Davis Bowman, MASTERS AND LORDS: MID-NINETEENTH CENTURY U.S. PLANTERS AND PRUSSIAN JUNKERS (1993); Richard S. Dunn, "A Tale of Two Plantations: Slave Life at Mesopotamia in Jamaica and Mount Airy in Virginia, 1799-1828," 39:3 WILLIAM AND MARY Q. 32 (1977); Laurence Mordekhai Thomas, *Vessels of Evil: American Slavery and the Holocaust* (1992); Peter Kolchin, UNFREE LABOR: AMERICAN SLAVERY AND RUSSIAN SERFDOM (1990); George Frederickson, WHITE SUPREMACY: A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY (1981); Marc Buggeln, "Were Concentration Camp Prisoners Slaves?: The Possibilities and Limits of Comparative History and Global Historical Perspectives," 53:1 INT'L R. OF SOC. HIST. 101 (2008).

[51] Gwyn Campbell, "Introduction: Slavery and Other Forms of Unfree Labour in the Indian Ocean World" in THE STRUCTURE OF SLAVERY IN INDIAN OCEAN AFRICA AND ASIA, viii, x-xi (Gwyn Campbell ed. 2004);

[52] Isabel Hofmeyr, "The Black Atlantic Meets the Indian Ocean: Forging New Paradigms of Transnationalism for the Global South – Literary and Cultural Perspectives," 33:2 SOC. DYNAMICS 3, 10-11 (2007); Campbell, "Introduction" in THE STRUCTURE OF SLAVERY at viii - xxiv; Ronald Segal, ISLAM'S BLACK SLAVES: A HISTORY OF AFRICA'S OTHER BLACK DIASPORA (2001).

[53] James Sidbury, *Globalization, Creolization, and the Not-So-Peculiar Institution*, 73:3 J. S. HIST. 617, 621-23 (2007).

[54] *Id.*

[55] Joseph C. Miller, THE PROBLEM OF SLAVERY AS HISTORY: A GLOBAL APPROACH, David Brion Davis Series (2012).

[56] *Id. But see* Paul Lovejoy, Review of *The Problem of Slavery as History: A Global Approach*, 118:1 AM. HIST. R. 148 (2013) (pointing out that for so-called marginals to exert control over others, they needed to possess some level of institutional support or backing, or were institutions themselves (e.g. the Catholic Church or Ottoman Porte)).

enslaved persons' disqualification from prominent or honored posts.[57] Others have contrasted American churches' complicity and ideological support for slavery,[58] in contrast to Latin American churches' purported counterbalance against slaveholders' fiat.[59] Juxtaposing Ottoman and American bondage helps reveal where America differed from its peer societies, and also where the supposed uniqueness was only illusory.

II. Bound by Cotton Threads: Maryland and the Ottoman Empire

Lasting 623 years (1299-1922), a substantial portion of Ottoman history ran alongside America's own. However, until the mid-nineteenth century, formal links between the two nations were few. The United States had no consular representation to the Empire until at least 1830, when the United States dispatched David Porter (a Marylander) as its first official envoy.[60] It was not until 1845 that the Empire consistently appointed consuls to the United States, who took up residence in Boston, New York, and Baltimore.[61]

In contrast to their governments' plodding relations, private parties were swift to make one another's acquaintance. By 1805, Baltimore merchants were regularly making port in Izmir.[62] Of the six American vessels to dock in Izmir, two were from Baltimore.[63] They brough "coffee, pepper, tea, sugar, rum, and Havana cigars" to trade, and departed with holds bursting with "opium (for China), as well as raisins, figs, and salt."[64] By 1827, multiple merchant houses set up offices in Smyrna, including Issaverdens, Styth & Co., of Baltimore.[65] While certainly engaged in the lucrative opium trade into China, American merchants also busied themselves with bringing "cotton goods, tobacco, gunpowder, and breadstuffs" into the Empire, along with "Boston Particular, good old New England Rum" which Turkish merchants transshipped into Russia and Persia.[66] For the return journey, Americans carried "fruits, nuts, silver, raw wool and hides."[67] Suffice to say, while the Ottoman and American empires were not speaking to one another directly, their nationals were certainly in contact.

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[57] Peter Kolchin, "Some Recent Works on Slavery Outside the United States: An American Perspective," 28:4 COMP. STUDS. IN SOC. & H.767 (1986); David Brion Davis, INHUMAN BONDAGE: THE RISE AND FALL OF SLAVERY IN THE NEW WORLD, (2006).

[58] Herbert S. Klein, *Anglicanism, Catholicism, and the Negro Slave*, 8:3 COMPARATIVE S. IN SOC. & H. 295-96, 326-27 (1966); Frank Tannenbaum, SLAVE AND CITIZEN, THE NEGRO IN THE AMERICAS, (1947).

[59] For a recent, well-balanced study of Latin American churches' relationship with enslaved persons, *see* Michelle McKinley, FRACTIONAL FREEDOMS: SLAVERY, INTIMACY AND LEGAL MOBILIZATION IN COLONIAL LIMA, 1600-1700 (2016).

[60] Sınan Kuneralp, "Ottoman Diplomatic and Consular Personnel in the United States of American, 1867-1917," in *American Turkish Encounters: Politics and Culture, 1830-1989*, 100 (Nur Bilge Criss et al. eds., 2011); Leland James Gordon, *American Relations with Turkey, 1830-1930: An Economic Interpretation*, 369 (1932) (noting David Porter as the first charge d'affairs and minister to the Ottoman state).

[61] Ömür Budak, "The Ottoman Consuls in Boston, 1845-1914: An Untold Story," 7:2 J. OF THE OTTOMAN AND TURKISH STUDS. ASS'N., 179, 179-80 (2020).

[62] Budak, "Ottoman Consults" at 185. *See also* David H. Finnie, PIONEERS EAST: THE EARLY AMERICAN EXPERIENCE IN THE MIDDLE EAST, 25 (1967).

[63] *Id.*

[64] Finnie, *Pioneers East* at 26.

[65] *Id.* at 30.

[66] *Id.* at 31.

[67] *Id.*

Between these mercantile ties and each empire's relevance to international affairs, Ottoman and American alike were watching developments abroad.[68] The two polities, the American slave society, Ottoman society with slaves, were in dialogue with one another, so it seems natural to bring them together for this study. To do so, I have chosen Maryland to stand for bound labor in the American case.

a. Maryland as a Jurisdiction

As a jurisdiction, Maryland's economy covered almost every sector. The southern counties and Eastern Shore were largely focused on slave-dependent agriculture cleaving to cash crops like tobacco and cotton. As one approached Baltimore, fruit and grain cultivation mixed with industry, mills, and crafts, until the bustle of Baltimore's urban economy drowned the senses. Across the state, slaves and apprentices populated every sector, working shoulder-to-shoulder with other workers, bound and waged.

This intermixing of labor offered Maryland elites' the opportunity to calibrate their workforces according to need.[69] Each labor form, enslaved, waged, and apprenticed offered its own benefits and liabilities. Slave labor was a stable investment, both for its labor power and potentially for resale. However, its barriers to entry were high as costs increased over the Nineteenth Century and Second Slave Trade sent people to the Deep South. Worse still, slaveholders were largely responsible for the care and maintenance of their slaves, whether workers, children, or the elderly. Conversely, waged laborers were responsible for themselves, were often cheaper, and could be fired as needed. Yet this latter virtue cut both was, as wage laborers could quit when a better offer presented itself. Apprenticed labor was a middle ground between waged and enslaved labor, offering guaranteed labor for a specific duration. But, comprised of children and teenagers, apprenticed labor took time to reach its productive potential and came with its own maintenance requirements.

Racial tensions were another factor in labor relations. Frederick Douglass offers a representative account. In his earliest days hired out to the shipyard of William Gardner,

> "white and black ship-carpenters worked side by side, and no one seemed to see any impropriety in it. All hands seemed to be very well satisfied. Many of the black carpenters were freemen. Things seemed to be going on very well. All at once, the white carpenters knocked off, and said they would not work with free colored workmen. Ther reason for this, as alleged, was, that if free colored carpenters were encouraged, they would soon take the trade into their own hands, and poor white men would be thrown out of employment. They therefore felt called upon at once to put a stop to it. And taking advantage of Mr. Gardner's necessities, they broke off, searing they would work no longer, unless he would discharge his black carpenters."[70]

As an enslaved man, this condemnation did not technically apply Douglass. However, his (presumably white) "fellow-apprentices" soon followed the carpenters' path, putting on "airs,"

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[68] For a smattering, s*ee e.g. Letter from Constantinople*, THE BALTIMORE SUN, (14 Mar. 1855) (dismissively describing the Ottoman Empire's economic, social, and martial reforms in light of the Crimean War); *Foreign News*, NILES' WEEKLY REGISTER (22 Nov. 1863) (apprising American readers of Ottoman efforts to stymie Greek nationalists' uprising); *National Character*, THE BALTIMORE SUN, (9 Oct. 1848) (worrying about the repercussions and American reputation in light of a recent, apparently sectarian, attack on an Ottoman vessel in the harbor).

[69] Rockman, SCRAPING BY at 38, 40.

[70] Frederick Douglass, NARRATIVE OF THE LIFE OF FREDERICK DOUGLASS, AN AMERICAN SLAVE, 128 (Belknap Press 1988).

insulting Douglass, and making his life hard.[71] Douglass fought back as well he could, winning more than he lost, until the other boys attacked him in concert, heating him so badly Douglass nearly lost an eye.[72] While Gardner's shipyard had original functioned quite comfortably with a blended workforce, the risk of material uncertainty shattered that ostensible peace. The racially informed interests of white workers had overpowered any labor solidarity between white and free Black workers, much less slaves like Douglass.

T. Stephen Whitman identifies a similar fault line amongst apprentices.[73] Slaves' presence in mixed-race shops did not threaten white feelings of superiority; their condition was obviously subordinate and therefore non-threatening.[74] However, Black apprentices drew complaints. As walking, breathing reminders that slavery "no longer typified the status" of Black Marylanders, Black apprentices were a seen as a threat to white apprentices' status and superiority.[75]

Management's response was simply to juggle their workforces until tensions were a non-issue. Indenture holders bound disproportionately fewer free Black boys, while many factory owners employed slaves and white apprentices or waged workers, but not free Black workers of any status.[76] Seth Rockman posits that employers did not care who was working for them, so long as the firm was turning a profit.[77] Whitman posits that employers did not inherently care about who did the work, so long as the work got done; this was a worker-derived tension and pattern.[78] Seth Rockman argues this capitalist egalitarianism was one aspect of the pervasive commoditization of workers, in which a laborer's productivity mattered far more than their race, age or gender.[79] Capitalists even bucked social pressures to excise the state's Black population, preferring to weather the occasional workplace spat or riot if it meant preserving a robust, diverse, exploitable labor pool.[80] For employers, racial tensions were therefore only important to the extent they disrupted production.

Even with such risks, Maryland's capitalists were unlikely to segregate their shops. Doing so would deny access to an enormous segment of Maryland's labor pool. With the largest free Black population in the United States, Black workers were a fixture in Maryland's workforce.[81] Many skilled trades were heavily populated Black workers, such as teamsters, fruit vendors, foragers, and ditch diggers.[82] For other Black families, industrial day labor, seasonal agricultural work, and domestic service put food on the table.[83] While the Maryland legislature might expound on the "danger" of the free Black population, or the "risk" it posed to slavery's stability, their centrality to

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[71] *Id.* at 129.
[72] *Id.* at 130.
[73] T. Stephen Whitman, "Manumission and Apprenticeship in Maryland, 1770-1870" MARYLAND HIST. MAG. 57, 60 (Spring 2006).
[74] *Id.* at 60.
[75] *Id.*
[76] *Id.*
[77] Rockman, SCRAPING BY at 40, 47, 56, 110
[78] *Id.*
[79] *Id.* at 38-41.
[80] *See id.* at 41-2.
[81] *See* Barbara Fields, SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY, 1-5 (1985).
[82] Melvin Patrick Ely, ISRAEL ON APPOMATTOX: A SOUTHERN EXPERIMENT IN BLACK FREEDOM FROM THE 1790S THROUGH THE CIVIL WAR, 128-29 (2004); Penningroth, CLAIMS OF KINFOLK at 62-64.
[83] Ely, ISRAEL ON APPOMATTOX at 107-144.

the state labor pool consistently stymied attempts either to eject or to re-enslave them.[84] Without Black labor, the state would shut down.

The resources derived from that work sponsored and supported the institutions of Black cultural life, notably churches and voluntary associations. The communities built within and around such institutions were an anchor, generating their own gravity to keep unfree members in the area, even after their indenture had lapsed or they had escaped from slavery. After all, these were friends and family. Furthermore, Black churches and voluntary associations were nexuses for both learning and advocacy.[85] Baltimore's Black churches were havens of mutual aid and hosted most of the city's Black schools.[86] They were also semi-formal tribunals, adjudicating their parishioners' disputes according to ritual and religious scruple.[87] Black churches also cultivated congregants' secular legal consciousness, as civil and criminal cases imposed themselves on the churches and their parishioners. This exposure equipped Black Marylanders to bring their own independent disputes to the law. Sometimes this was to demand law fulfill its promises (in commercial dealings, or property matters)[88] or to carve its lacunae into new customs.[89] Despite being barred from the ballot box and juror's seat, Black communities were able to influence Maryland's politics and law because of such carefully cultivated expertise and pooled community resources.

For their part, Maryland's white population was conflicted on their Black neighbors. While the state legislature continuously carved away at Black Marylanders' individual rights, it always balked at banning manumission outright or demanding the wholesale expulsion of free Black people.[90] Run-of-the-mill white Marylanders were similarly ambivalent. While they might have elected racists or written letters to the editor decrying Maryland's burgeoning Black population, how they actually interacted with Black neighbors was much more complex.[91] They bought Black goods, worshiped at (internally segregated) churches, and rubbed shoulders in the thousand different ways neighbors do. Like all people, white Marylanders were the sum of their own experiences.[92] In classic fashion, this meant their feelings about Black Marylanders as a class could (and did) contradict how they felt about their individual Black neighbors, coworkers, and friends. The color line created classes and hierarchy, but could not prevent lived realities from perforating its strictures.

b. An Ottoman Primer

To offer a concise history of the Ottoman Empire would require a book by itself. Emerging out of the Osmanlı *beylik* (tribe or clan) in the late medieval period, the Ottomans developed from a group of steppe nomads to a petty kingdom, partnered with the waning Byzantine Empire to become a regional power, then emerged as a vibrant, muscular empire in its own right that lasted

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[84] Fields, MIDDLE GROUND at 69-80. Maryland slaveholders periodically called conventions, with representatives from each county, to discuss matters of importance to the class; Jeffrey R. Bracket, THE NEGRO IN MARYLAND: A STUDY OF THE INSTITUTION OF SLAVERY, 234-46, 255-56 (1889).

[85] *See* Martha Jones, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA, 71-89 (2018); *See generally* Christopher Phillips, FREEDOM'S PORT: THE AFRICAN AMERICAN COMMUNITY OF BALTIMORE*, 1790-1860*, Part 2 (1997).

[86] Jones, BIRTHRIGHT CITIZENS at 73.

[87] *Id.*

[88] *Id.* at 18-22, 109-110, 120-21.

[89] Jones, BIRTHRIGHT CITIZENS at 45-6.

[90] *See infra* at 145-46. *See also* Bracket, THE NEGRO IN MARYLAND at 247-62; Fields, MIDDLE GROUND at 77-81.

[91] S*ee generally* Ely, ISRAEL ON THE APPOMATTOX (detailing the ways interpersonal connections and reputation often short-circuited the ideological racism of antebellum Virginia, as well as how Black Virginians commonly (but not universally) received due process and treatment akin to their white neighbors).

[92] Ely, ISRAEL ON THE APPOMATTOX at 75-7, 86-88, 111-113, 120-25; 186, 203, 225-84.

until the eve of World War I.[93] At the height of its power the Ottoman dynasty controlled land from Egypt, across the Balkans and Middle East, into modern Iran and the foothills of India. This range of territory meant the sultans ruled a multi-cultural dominion bursting with different religions, cultures, *mores*, and institutions.

So what specific elements and contrasts does this non-Atlantic jurisdiction offer? First, and perhaps most dramatically, the Ottoman Empire was not a capitalist jurisdiction. Capitalism would remain at arm's reach until quite late in the Empire's history.[94] Economically, Ottoman policy boiled down to communitarianism and stability. Keeping prices low and staples affordable was (correctly) viewed as a strong mechanism for keeping its diverse population calm and compliant.

This ethos lent itself to three guiding principles: provisionism, traditionalism, and fiscalism. The first was coined to discuss the Porte's dedication to keeping goods and services cheap and readily accessible to the masses, particularly in Istanbul.[95] Knowing that a hungry populace was a restive populace, the sultans kept a stern hand on the markets to make sure the price of bread and other staples stayed within acceptable limits, sometimes to the detriments of producers.[96] Indeed, provisionism is often identified as a key hindrance to the development of Ottoman industrial production.[97] So too with fiscalism, a never ending quest both to maximize treasury income and avoid any reduction in receipts.[98] However, increases in Ottoman productivity were slow to accrue, in part because provisionism disincentivized protecting nascent Ottoman industry from European competition; tariffs would have raised prices to unacceptable levels.[99] As such, *preserving* existing treasury income was the name of the game, often through reductions in expenses.[100] Finally traditionalism was the principle that everything old could be new again. When problems or difficulties arose, Ottoman wisdom was to look to the past for models and solutions, particularly from the *hadith*, *Sunnah*, and past sultans.[101] This invested Ottoman policy with the legitimacy of past generations, leveraging a mythologized religious past to smooth out objections. Together, these principles combined into a relatively conservative policy mindset, open to changes and modernization, but always on specific, usually skeptical, terms. Stability, not innovation or expansion, was the watchword, while profit-seeking was tolerated only so long as it did not threaten higher concerns.

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[93] For a more detailed history of the Ottomans, *see* Donald Quataert, THE OTTOMAN EMPIRE, 1700-1922 (2000); Virginia Aksan, THE OTTOMANS 1700-1923: AN EMPIRE BESIEGED (2nd ed. 2022) (focusing on military history); M. Şükrü Hanioğlu, A BRIEF HISTORY OF THE LATE OTTOMAN EMPIRE (2008) (focusing on the Empire's macro trends and fortunes in the long nineteenth century); Caroline Finkel, OSMAN'S DREAM: THE HISTORY OF THE OTTOMAN EMPIRE (2007); Douglas Howard, A HISTORY OF THE OTTOMAN EMPIRE (2017); Halil İnalcık & Donald Quataert, AN ECONOMIC AND SOCIAL HISTORY OF THE OTTOMAN EMPIRE: 1300-1914 (1994); Halil İnalcık, THE OTTOMAN EMPIRE: THE CLASSICAL AGE 1300-1600 (2002).

[94] Can Nacar, LABOR AND POWER IN THE LATE OTTOMAN EMPIRE: TOBACCO WORKERS, MANAGERS, AND THE STATE, 1872-1912 (2019); Şevket Pamuk, UNEVEN CENTURIES: ECONOMIC DEVELOPMENT OF TURKEY SINCE 1820 (2018).

[95] MANUFACTURING IN THE OTTOMAN EMPIRE AND TURKEY*, 1500-1950*, edited by Donald Quataert 59-61 (1994).

[96] *Id.* Suraiya Faroqhi, ARTISANS OF EMPIRE: CRAFTS AND CRAFTSPEOPLE UNDER THE OTTOMANS, xv-xix (2009).

[97] Mehmed Genç, "Ottoman Industry in the Eighteenth Century: General Framework, Characteristics, and Main Trends" in MANUFACTURING IN THE OTTOMAN EMPIRE AND TURKEY, 1500-1950, 59-61 (Donald Quataert ed. 1994); Donald Quataert, OTTOMAN MANUFACTURING IN THE AGE OF THE INDUSTRIAL REVOLUTION (1993); Mustafa Erdem Kabadayı, "Working in a Fez Factory in Istanbul in the Late Nineteenth Century: Division of Labour and Networks of Migration Formed along Ethno-Religious Lines," 54:17 INT'L R. OF SOC. HIST. (2009).

[98] Genç, "Ottoman Industry" at 59-61.

[99] *Id.*

[100] *Id.*

[101] *Id.*

With such a different economic ethos, it should be no surprise that Ottoman slavery and apprenticeship did not match that of the United States and Atlantic world. Most obviously, Ottoman slavery generally eschewed the mass, unskilled cash cropping agricultural model so familiar from American history.[102] Such instances as did exist were niche and short lived. In the Fifteenth and Sixteenth Centuries, the Porte[103] had used enslaved prisoners of war to repopulate empty lands.[104] Once villages and farmsteads had been reestablished, the Porte gradually manumitted the enslaved persons or simply ignored them into freedom.[105] In the Nineteenth Century, two other agricultural slaveries popped up. Muhammad Ali Paşa's Egypt massively expanded its cotton cultivation, using enslaved labor (particularly Sudanese) in the fields.[106] Egypt certainly profited from this trade, particularly during the American Civil War, but Egyptian slavery ultimately withered under British pressure and occupation.[107] Circassian refugees from the Balkans also practiced agricultural slavery, at least until chronic unrest and the Empire's need for manpower led to its abolition.[108]

If not agriculture, what were Ottoman run-of-the-mill enslaved persons doing? Mostly their sector was domestic labor, with the scholarly consensus agreeing that the majority of enslaved persons were servants, cooks, and other in-house laborers.[109] Enslaved persons also served in a variety of skilled and mercantile roles. Halil İnalcık has written extensively on enslaved persons' involvement in the Bursa silk and lace industries, in which most production was by enslaved apprentices/journeymen.[110] Meanwhile Yvonne Seng has shown that enslaved persons served as candymakers, foremen, cotton combers, "personal agents," and managers.[111]

Another dramatic difference was the presence and power of enslaved persons in the highest echelons of Ottoman governance. The Ottoman Empire staffed its military and political elite using both enslaved and freedpersons. Usually, this entailed acquiring enslaved boys via purchase or the collection of tribute and training them in specialized academies. From there, these budding dignitaries were sometimes manumitted before placement, others remained enslaved. For men, this was called kül slavery, often organized into corps (s. *ocak*, pl. *ocaklar*). The famous Janissaries were one example of kül slavery. Originally an elite military unit comprised of boys taken as tribute from Christian households, the Janissaries eventually slithered into a variety of civil and commercial roles before being comprehensively annihilated in 1826.[112]

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[102] *E.g.* the use of large numbers of agricultural workers to cultivate indigo, cotton, tobacco, and sugar without the widespread use of technological assistance.

[103] The shorthand for the Ottoman Sultanate. Think "10 Downing Street" or "The White House" but with more minarets.

[104] Nur Sobers-Khan, "Chapter 17: Slavery in the Early Modern Ottoman Empire," in THE CAMBRIDGE WORLD HISTORY OF SLAVERY, *Vol. IV*, edited by David Eltis, Stanley L. Engerman, Seymour Drescher, & David Richardson, 406, 412, 416 (2016).

[105] *Id.*

[106] A complicated figure, Paşa was by turns the Ottoman governor of Egypt, an independent ruler, and the autonomous ruler of an Ottoman possession. Paşa and his successors also expanded Egypt's military slave corps, again using Sudanese men.

[107] Ehud Toledano, THE OTTOMAN SLAVE TRADE AND ITS SUPPRESSION, 1840-1890, 248-78 (1982).

[108] *See infra* 64-65, 67.

[109] Cites: toledano, Cambridge, Erdem,

[110] Murat Çizakça, "A Short History of the Bursa Silk Industry (1500-1900)," 23:1/2 J. OF THE ECON. & SOC. HIST. OF THE ORIENT, 142, 143 (1980).

[111] Yvonne Seng, "Fugitives and Factotums: Slaves in Early Sixteenth Century Istanbul," 39:2 J. OF ECON. AND SOC. HIST. OF THE ORIENT, 137, 139 fn.8, 141 (1996).

[112] The Porte was so thrilled, they called the disbanding "The Auspicious Incident."

The sultan's palace eunuchs were another powerful faction of elite slaves. Organized into the Corps of the African Eunuchs and the Corps of Eunuchs, each with their own headman.[113] As their name suggests, the African Eunuch corps was staffed by boys and men from Africa, usually Sudan, the Nile Basin, or Ethiopia.[114] Meanwhile, the Eunuch Corps, was made up of enslaved men and boys from Circassia and the Caucuses. Well trained at the palaces' "school for eunuchs," both corps, served as functionaries, bureaucrats, and (their original purpose) guards and intermediaries between the sultanic harem and the outside world.[115] This made them extraordinarily influential characters, as they were necessary liaisons for the politicking between rival princes, concubines, wives, and court factions. Nor was their power only indirect: eunuchs managed treasury funds directly (via commissioning public celebrations, arts, or and gifts),[116] and were often installed as administrators for sultanic '*waqf* (Islamic charitable organizations/foundations).[117] Despite their legal status, kül slaves wielded great power and autonomy, ostensibly in the name of the sultan (or other elite proximate slaveholder).

The distaff counterpart to kül slavery was the harem and its inhabitants. Contrary to salacious imagination, the harem was much more than a damask filled sex dungeon. Its purpose was certainly to isolate the dynasty's women, but it was also designed to create a particular environment for training the next generation of princes to rule.[118] Leslie Peirce finds that sixteenth century Ottoman princes were accompanied by their mothers on their initial government postings, acting as advisors and powerbrokers amongst the fratricidal machinations of the dynasty.[119] After the sultans retired into a "sedentary" period, remaining in their palaces rather than campaigning against their enemies, the harem women acted as a "glue" to hold the dynasty together.[120] Nor was this unique to mothers of princes. In a manner not dissimilar to European princesses, non-dynastic harem women were manumitted and married off to cement relationships with powerful families and pasha clans.[121] A key element of Ottoman governance was to bind frontier and other elites to the center, co-opting

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[113] For the African Eunuch Corp., this was the Kizlar Ağası, (lit. Agha of the Girls), while the Eunuch Corp., was headed by the Kapi Agha (lit. Agha of the Gate).

[114] Ehud Toledano, "The Imperial Eunuchs of Istanbul: From Africa to the Heart of Islam," 20:3 MIDDLE EASTERN STUDS. 379, 386 (1984).

[115] *See id.* at 381.

[116] Jane Hathaway, "The Ottoman Chief Harem Eunuch (Darüssaade Ağası) As Commissioner of Illuminated Manuscripts: The Slave as Patron, Subject, and Artist?" in SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE, 167 (Stephan Conermann & Gül Şen eds. 2020); *see also* Jane Hathaway, *The Ottoman Chief Harem Eunuch in Ceremonies and Festivals*, 6:1 J. OF THE OTTOMAN AND TURKISH STUDS. ASS'N. 21 (2019) (discussing the chief eunuchs' prominence in state ceremonies and increased public visibility & importance); Betül İpşirli Argıt, *Debt and Credit Relationships of Male Members of the Ottoman Imperial Palace (1650-1700)*, 9:2 J. OF THE OTTOMAN AND TURKISH STUDS. ASS'N., 117, 119-21 (2022) (discussing the web of financial ties between various palace factions and positions, and asserting that the eunuchs were relatively central players in that give-and-take).

[117] Ron Shaham, *Masters, Their Freed Slaves, and the 'Waqf in Egypt (Eighteenth-Twentieth Centuries)*, 43:2 J. OF ECON. & SOC. HIST. OF THE ORIENT (2000) (noting that many enslaved persons were granted control of 'waqf as a testamentary provision).

[118] This argument most forcefully and comprehensively advanced by Leslie Peirce in THE IMPERIAL HAREM: WOMEN AND SOVEREIGNTY IN THE OTTOMAN EMPIRE (1993).

[119] *See id.* at 61, 280

[120] *Id.* at 101.

[121] Peirce, THE IMPERIAL HAREM at 284; Betül İpşirli Argıt, LIFE AFTER THE HAREM: FEMALE PALACE SLAVES, PATRONAGE, AND THE IMPERIAL OTTOMAN COURT, 78, 109-10, 112-13, 116-19, especially 122-27 (2020) (detailing the matching of non-dynastic harem women to suitable husbands to create the Ottoman elite and bind it to dynastic service, but also how these marriage matches shifted government recruitment patterns from internal recruitment through government or military service to external sources such as paşa or vizier households).

their strength and interests for the center's own purposes. Harem women were critical currency for these socio-political machinations, with prominent harem residents playing matchmaker.[122]

In a certain sense, manumission was the culminating stage of kül slavery. Freed kül officials were incorporated directly into the dynasty's patronage network as a new node in the constellation of loyal officials. Their origin and recruitment was through slavery, but they now stood as full members of a patronage network, paşa household, or vizier's cabal. For other kül slaves, such as the sultanate's eunuch corps., manumission occurred upon retirement, at which point these very well-connected pensioners administered various 'waqf' and endowments; they were free, but still useful. For harem women, manumission was often a prelude to a political marriage, organized to advance the proximate slaveholders' interests, cement loyalties, or woo a recalcitrant party.

While deeply important to the Empire's development, governance, and politics, I will not discuss elite slavery extensively. The range and power of elite slaves, male and female, meant they occupied a strange liminal status between enslaved and free. Eunuchs and harem residents were at the mercy of their owner, but he was the sultan, so everyone else in the Empire was at his mercy too. While the various *ocaklar* were legally slaves, they wielded the power, money, and influence both of the sultan's personal-cum-familial resources, and also of the Empire itself.[123] This hybridity has led Ottoman Slavery Studies to parcel elite slavery off as "servitude" or "slaveries" rather than a single institution.[124]

The arc of kül/harem slavery also gestures towards bound labor as a life-stage in the empire. Historians have (perhaps optimistically) estimated that white slaves served an average of 9 years while Black slaves served 7.[125] However, enslaved persons on the frontiers and in Arab lands faced longer terms of enslavement.[126] In turn, the prevalence of manumission led to an assimilationist ethos, likely bolstered by the Empire's already diverse and intermingled population. Toledano and others credit this assimilationist attitude for the absence of a large Afro-Turkish or Black-Turkish identity today,[127] though not without vigorous critique.[128]

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[122] Peirce, THE IMPERIAL HAREM at 284.

[123] *Id.*; *see also supra* at n. 121.

[124] *See e.g.* Suraiya Faroqhi, "Slave Agencies Compared: The Ottoman and Mughal Empires" in SLAVERY AND SLAVE AGENCY IN THE OTTOMAN EMPIRE, 62-5 (Stephan Conermann & Gül Şen eds. 2020) (discussing the various legal handicaps placed on elite slaves, and how it is ambiguous any had actual grip on the enslaved person, relative their de facto power); *see also* Ehud Toledano, "The Concept of Slavery in Ottoman and Other Muslim Societies: Dichotomy or Continuum?" in SLAVE ELITES IN THE MIDDLE EAST AND AFRICA: A COMPARATIVE STUDY, edited by Miura Toru & John Edward Philips, 159-76 (2000).

[125] Clarence-Smith & Eltis, "White Servitude," THE CAMBRIDGE WORLD HISTORY OF SLAVERY, VOL. IV, 146 (David Eltis, Stanley L. Engerman, Seymour Drescher, & David Richardson eds. 2016); *see also*, Nur Sobers-Khan, "Slavery in the Early Modern Ottoman Empire," THE CAMBRIDGE WORLD HISTORY OF SLAVERY, VOL. IV, 409-10 (David Eltis, Stanley L. Engerman, Seymour Drescher, & David Richardson eds. 2016).

[126] *Id.*

[127] Ehud Toledano, AS IF SILENT AND ABSENT: BONDS OF ENSLAVEMENT IN THE ISLAMIC MIDDLE EAST, 12 (2007); SLAVERY AND ABOLITION IN THE OTTOMAN MIDDLE EAST, 15 (1997); Michael Ferguson and Ehud R. Toledano, "Ottoman Slavery and Abolition in the Nineteenth Century," in THE CAMBRIDGE WORLD HISTORY OF SLAVERY, VOL. IV, 197, 202 (David Eltis, Stanley L. Engerman, Seymour Drescher, & David Richardson eds. 2016).

[128] Zavier Wingham, "*Arap Bacı'nın Ara Muhaveresi*: Under the Shadow of the Ottoman Empire and Its Study," 3 YILIK 177 (2021) (arguing that the Ottoman Empire's supposed multiculturalism is a result of historical whitewashing by Ottoman elites and inattention by Ottoman historians (178-80); Blackness was a load-bearing idea in the Empire, as evidenced by "Nubian"'s fitness for taboo, like dissection (182-3); and implying that some measure of Blackness' absence from Ottoman historiography is an attempt to exist beyond the American-centric paradigms of slavery (or a fig leaf pretending the same) (*see* 178-80); *see also* Alan Fisher, *Chattel Slavery in the Ottoman Empire*, 1:1 Slavery & Abolition 25,

Apprenticeship was another life-stage labor form in the empire. The Ottoman apprenticeship and guild system spanned a vast array of trades and professions. In addition to the usual smithing, tanning, and textiles of all sorts, other guilds included fruit sellers, confectioners, tanners, tobacconists, and dyers.[129] Many trades were subdivided into multiple guilds, with the most common split between artisans and vendors of their product. For example, Istanbul's shoe production was divided amongst at least seven guilds, each manufacturing a different type of footwear, whether that mean European-style footwear, slippers, boots, women's slippers, or light shoes of Morocco leather.[130] The sale of this footwear was similarly subdivided between shoe stores, street vendors, and second-hand dealers.[131]

Despite this wealth of organizations and accompanying documentation, Ottoman apprenticeship remains something of a black box.[132] We know that its duration was based on the craft in question. For instance, the apprenticeship of shaving-barbers was two years, while surgeon-barbers were apprenticed for at least five.[133] Stonemasons needed three years to learn the trade, but crepe silk makers required nine years to graduate.[134] Following their training, apprentices became craft masters, or by the nineteenth century, subordinate journeymen.[135] Like its American counterpart, Ottoman apprenticeship lasted into the industrial era, though not unchanged. Ottoman craft organizations hired waged and piece workers to boost production, becoming something akin to merchant-capitalists in their use of non-guild members to compete.[136] Apprenticeship remained the ticket to entry for the guilds' upper-echelons, but the guilds themselves had changed shape.

III. Roadmap

This dissertation is split into five overall chapters. Chapter I uses "turbulent slave" petitions to examine the broad topography of how Maryland slaveholders and enslaved persons tussled over living and working conditions. An outgrowth of Maryland's culture of "term slavery," turbulence petitions requested a court to extend a term slave's time in bondage. Such petitions were predicated on the enslaved person's supposed misbehavior and the resultant need to compensate the slaveholder for expenses and lost labor. As we shall see, what slaveholders interpreted as bad behavior, term slaves viewed as self-advocacy, using a variety of tactics to make their point. Chapter II builds on this analysis, using Stephanie Camp's notion of rival geographies to examine turbulence

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40 (1980) (offering one Ottoman's thorough manual on the moral, physical, and personal failings of different nationalities as enslaved persons, such as Cossacks as boozy hedonists, Georgians as dirty facsimiles of Circassians, Abyssinians as effeminate, and other racist chestnuts); Ferguson & Toledano, "Ottoman Slavery and Abolition," *supra* n. 127, at 217.

[129] *See* Nalan Turna, "Ottoman Apprentices and Their Experiences," 55:5 MIDDLE EASTERN STUDS., 683, 687-89 (2019).

[130] Nalan Turna, "The Shoe Guilds of Istanbul in the Early Nineteenth Century" in BREAD FROM THE LION'S MOUTH, ARTISANS STRUGGLING FOR A LIVELIHOOD IN OTTOMAN CITIES, 157, 158 (Edited by Suraiya Faroqhi 2015).

[131] *Id.*

[132] Nalan Turna, "Ottoman Apprentices and Their Experiences," at 686; Suraiya Faroqhi, "Introduction," BREAD FROM THE LION'S MOUTH at 30-1.

[133] *Id.*

[134] *Id.*

[135] Seven Ağır & Onur Yıldırım, "*Gedik*: What's in a Name?" in BREAD FROM THE LION'S MOUTH at 229-232; Engin Deniz Akarli, "*Gedik*: Implements, Mastership, Shop Usufruct, and Monopoly Among Istanbul Artisans, 1750-1850," WISSENSCHAFTSKOLLEG BERLIN JAHRBUCH, 223 (1986); Onur Yıldırım, "Transformation of the Craft Guilds in Istanbul (1650-1860)," 40:1 ISLAMIC STUDS. 49 (2001); Onur Yıldırım, "Ottoman Guilds in the Early Modern Era," 53 Supplement 16, INT'L R. OF SOC. HIST. 73, 91-2 (2008).

[136] Cengiz Kırlı, "A Profile of the Labor Force in Early Nineteenth-Century Istanbul," 60 INT'L LABOR AND WORKING-CLASS HIST. (2001); Donald Quataert, "Labor History and the Ottoman Empire, c. 1700-1922," 60 INT'L LABOR AND WORKING-CLASS HIST. 93 (2001).

petitions as a form of labor negotiation. Understanding ostensible misbehavior as labor advocacy gestures towards how external resolution of slaveholder-slave disputes constituted a particularly grave rupture in the relationship, one where enslaved Marylanders did not have strong official forms of redress.

Chapters III and IV turn to apprenticeship. Maryland's apprentices were also subject to turbulence petitions. Indeed, many turbulent apprentice petitions were almost indistinguishable from those of enslaved persons. However, the function of apprenticeship as a life stage in a worker's development permitted the use of a much wider range of tactics, other involved persons, and bodies of law. Chapter III discusses the main differences between enslaved persons' self-advocacy and that of apprentices. While individuals from both categories of bound labor could withhold their labor and abscond, apprentices as nascent free citizen-workers had access to more legalistic levers, such as countervailing contractual claims, definitional ineligibilities, and procedural flaws.

A common refrain amongst apprentices and their advocates was that indenture holders had seized control of a child through some illicit or unsavory means. Chapter IV begins by examining some of the mechanisms by which indenture holders managed to gain custody and control of children. However, the sometimes abrupt end of these indentures indicates how employers viewed apprentices as disposable, in contrast to the institution's ostensible paternalism.

Finally, Chapter V examines the restrictions and suspicions navigated by freedpersons. When their liberty was challenged, freedpersons called upon allies, community memory, and the self-interest of their former enslavers. Who was called upon, and when, reveals that something akin to a patron-client relationship existed between freedpersons and their former enslavers.

Throughout this dissertation, the case studies and primary sources are drawn from Maryland archives and sources. The subsequent analysis sits squarely within the borders of American History and Slavery Studies. However, my thoughts have been informed by Ottoman history and its literature. Where useful to illustrate that inflection, I have drawn on an Ottoman example. For example, Chapter IV discusses the ways slave societies restricted the autonomy of freedpersons, usually through some form of post-manumission dependence. In the Ottoman Empire, this was *'wala*, a heritable patron-client relationship, while the *obsequium* did that same work in Spanish-derived jurisdictions.[137] The existence of these successor dependencies highlights the American South's ostensible lack of an equivalent, leading to a re-examination of American freedpersons' lives and relationships. Other chapters will feature similar comparisons on other facets of the Empire as useful to the discussion at hand.

[137] *See infra* at 133, 136.

A Note on Terminology

This dissertation attempts to conform its terminology to current practices in History when discussing the historical actors on its pages. Following the trend within History and other disciplines, I have adopted the use of "enslaved person" instead of "slave." However, I have kept "slaveholder" (rather than "enslaver") on the simple logic that one "holds" another in captivity or bondage. The same animates my usage of "indenture holder" (not "master") when referring to those claiming the labor of apprentices. I am unaware of any similar discussions of terminology that focus on the words "apprentice" or "indentured person" so use the two interchangeably with no guide other than my own ear.

More broadly I have endeavored to follow the approach recently adopted by Tiya Miles and Dylan Penningroth in their respective works.[138] "Slave" and "slavery" can still be used when "referring to categories defined and imposed by . . . owners of people, to societal as well as legal dictates, and to racial systems of capture."[139] "Enslaved person" is reserved for "designating a person from their perspective, the perspective of their community, or our perspective as researchers and readers."[140]

I am aware that these "linguistic acrobatics" do not restore anyone's humanity.[141] Enslaved and indentured persons always reference fully formed people, regardless of what language is used in this text. My usage is simply an attempt to be respectful to those whose lives I am discussing.

When describing labor relations, I use the term "employer" to label those seeking and deploying workers, and "laborer" for those whose sweat is actually expended. While "employment" is typically used to refer to waged labor, the underlying allocator-allocated dynamic is the same for waged, bonded, and enslaved labor. I find "employer" is a sturdy handle for discussing these dynamics – the etymology of the term and its derivatives shows that it is founded on the notion of "use" (an employer is one who "uses" labor, an employee is one who is used), and trust my readers to recognize that bound laborers were not (formally) free to seek other opportunities.

Apprentices and enslaved persons had different motives for running away from their employers. If this was an aim to escape bondage entirely, I call the flight marronage or self-liberation. If the desire was a temporary absence, such as lying low for a spell, I use absconding or absenting.

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[138] Tiya Miles, ALL THAT SHE CARRIED: THE JOURNEY OF ASHLEY'S SACK, A BLACK FAMILY KEEPSAKE, 287-89 (2021); Dylan Penningroth, BEFORE THE MOVEMENT: THE HIDDEN HISTORY OF BLACK CIVIL RIGHTS, xvii (2023).
[139] *Id.*
[140] *Id.*
[141] *Id.*

A Note on Transliteration

I have cleaved to the modern orthography for all Turkish words. This includes preserving those letters not present in English.

Pronunciation of Modern Turkish Letters[142]

ç – ch, as in chattel

ş – sh, as in sheep

a – ah, as in taco

e – eh, as in elevator

ı – io, as in motion

i – ee, as in meek

ö – French eu, as in deux

o – oh, as in most

ü – French u, as in dureé

u – oo, as in moose

ğ – unvocalized, extends preceding vowel

[142] Some elements borrowed from Leslie Peirce, MORALITY TALES: LAW AND GENDER IN THE OTTOMAN COURT OF AINTAB, xv (2003).

Chapter I: An Aim to Misbehave: Self-Advocacy Within Enslavement

I. Introduction

Maryland was an unusual slave state. Nestled between free-soil Pennsylvania and slaveholder Virginia, its culture, economy, and politics were a blend of both along with a dash of maritime influences and flotsam slaveholders from Saint Domingue.[143] One of its most distinctive traits was the temporary bondage known as "term slavery." While an expiration date already set term slavery apart from "normal" slavery, term slaves also possessed slim protections against being sold out of state. These were, however, not immutable. Through "turbulence petitions," slaveholders could ask a court to extend the time of servitude and/or sell a term slave out of state.

This chapter uses turbulence petitions to examine enslaved persons' selves within the contours of their bondage. For many of these cases, there was no clear attempt to self-liberate. Rather, the "turbulent" slave was attempting to change some aspect of their living conditions.

II. Tobacco's Fall, Term Slavery's Rise

Maryland was unusual for its deep-rooted culture of "term slavery," a practice in which some enslaved persons' bondage only lasted for a certain period of time or until a certain age. According to T. Stephen Whitman, Chesapeake settlers' conflicts with the British frayed social control over enslaved persons; there were simply more pressing matters than a few runaways or their irascibility.[144] As the tensions boiled up into the Revolutionary War, control of enslaved persons continued to deteriorate. British blockades disrupted slaveholders' cashflow and therefore their ability to maintain their security apparatus. Meanwhile, British raids sowed chaos throughout the Chesapeake, while Lord Dunmore's 1775 proclamation promised freedom to any slave who escaped a Patriot slaveholder to serve in the British Army.[145] With the stick unavailable, Maryland slaveholders turned to the carrot, promising future manumissions for good behavior.[146] While enslaved persons could only enforce these agreements if a deed or will was filed (promises were unenforceable), this was still an opening Black Americans could use to free themselves or others.

After the Revolution ended, it is possible that Maryland slavery might have hardened back into hostility towards term slavery and manumission. After all, the bonhomie and liberatory atmosphere withered in every other state.[147] However, changes in Maryland's economy (namely the shift away from tobacco) actually boosted term slavery's utility and appeal.

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[143] Barbara Jeanne Fields, SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY, 1-39 (1985).

[144] T. Stephen Whitman, "Manumission and Apprenticeship in Maryland, 1770-1870," 57 MARYLAND HIST. MAG. 55, 56 (Spring 2006).

[145] John Murray, PROCLAMATION OF LORD DUNMORE (1775), published by The Gilder Lehrman Institute of American History [Accessed 14 May 2024] <https://www.gilderlehrman.org/history-resources/spotlight-primary-source/lord-dunmores-proclamation-1775>.

[146] Whitman, "Manumission and Apprenticeship" at 57.

[147] Andrew Fede, ROADBLOCKS TO FREEDOM: SLAVERY AND MANUMISSION IN THE UNITED STATES SOUTH, 88-105, 109-114 (2011) (discussing the shift from relatively pro-manumission legal regimes following the American Revolution, to locking down manumission in favor of re-enslavement and exile.

Originally, Maryland slaveholders' emphasis on tobacco required a large workforce throughout the year. Tobacco is a famously high-maintenance crop with sporadic bursts of extreme exertion. Enslaved persons' rhythm of labor was therefore one of chronic, high-attention bustle, interspersed with spikes of crisis level activity. While technological and agronomic innovations (such as flue-curing)[148] changed specific tasks or methods, tobacco cultivation kept to a fairly standard routine. Starting in mid-winter, special beds were prepared of "deep forest mold dressed with wood ashes."[149] Come late winter or early spring, tobacco seeds were planted in these special beds to germinate. However, time was now of the essence, as the tobacco fields had to be dug up and arranged into hillocks "three or four feet apart" before the seedlings had reached "a finger's length."[150] The enslaved persons waited for a spring rain to soften the hillocks sufficiently such that the tobacco sprouts could send out their roots. If the soil was too hard, the sprouts would become trapped, wither, and die.[151] If it rained too much, the sprouts would not send their roots deep enough to survive later climes. Furthermore, the rains might collapse the hillocks, allowing water to pool and drown the plants.[152] Transplanting the thousands of seedlings was the first "crisis" of tobacco cultivation. It was a race against the drying soil or additional rains.

Once the plants were transferred, their maintenance demanded attention to three separate tasks. First, crooked or dead plants were excised, their slots quickly filled by reserved seedlings. Second, flowering tobacco plants needed to be "topped" at certain height.[153] Snipping the flower boosted profitability, as the plant would now produce more side nodes (and therefore more leaves) rather than its reproductive organs.[154] The concentration of nutrients and sugars in the leaves also allegedly improved the flavor of the smoke.[155] Finally, the leaves needed regular examination for pest, disease, and removal of "suckers," i.e. smaller axillary leaves nestled beneath the larger primary leaf. Suckers emerge after the topping process redirects nutrients and sugars, but are undesirable because they divert those same resources from the bigger, more desirable, primary leaves.[156] Each of these tasks was done by hand, whether pruning suckers, picking off tobacco worms, or culling infected plants.[157]

All of this work continued until roughly August, when "the crop began to turn yellow."[158] At this point, field hands slit the base of the stalk and left it to wilt.[159] Once sufficiently droopy, the tobacco was cut at the base of the stalk and hung, carefully spaced, amongst tiered joists in a tobacco

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[148] Originally, tobacco curing was accomplished by hanging the cut stalks on long, tiered poles called oasts. Flue curing is a method developed in the 1830s, which uses externally heated chimneys to cycle heat through the tobacco barn, without exposing the tobacco to smoke. This leads to higher sugar and nicotine levels in the resultant product.
[149] Ulrich B. Phillips, AMERICAN NEGRO SLAVERY, 82 (Louisiana State University Press Edition 1966).
[150] *Id.*
[151] *See id.*
[152] Tobacco plants generally prefer well-draining soil.
[153] Topping flowering plants is widely used in horticulture, but for a tobacco specific cite, John van Willigen & Susan C. Eastwood, *Tobacco Culture: Farming Kentucky's Burley Belt*, 110 Kentucky Remembered: An Oral History Series (1998).
[154] *Id.*
[155] This bit of folk wisdom is common on online smoking forums, *see* Gary Korb, "What is the 'desflorado' method of tobacco growing?" CIGAR ADVISOR.
<https://www.famous-smoke.com/cigaradvisor/cigars-101/what-is-the-desflorado-method-of-tobacco-growing> [accessed 18 June 2024].
[156] Phillips, SLAVERY at 82; Willigen & Eastwood, TOBACCO CULTURE at 112.
[157] Willigen & Eastwood, TOBACCO CULTURE at 107-9.
[158] Phillips, SLAVERY at 82; Willigen & Eastwood, TOBACCO CULTURE at 26.
[159] *Id.*; Willigen & Eastwood, TOBACCO CULTURE at 116.

house.[160] Cutting required great care and attention, as the pace of work and razor sharp tobacco "tomahawk" risked a skewered hand or lost finger.[161] A slipped knife was not the only hazard: green/"wet" tobacco will pass doses of nicotine to anyone who touches it.[162] As the nicotine soaks into skin, it can cause "green tobacco sickness," with such symptoms as "nausea, vomiting, and dizziness."[163] While the duration of toxicity is brief, it can easily recur during the cutting.[164] Ironically, those who smoke or chew tobacco are reputedly less susceptible, likely due to their body's existing tolerance for nicotine.[165]

Hanging and curing required yet more attention, as humidity and air circulation were critical for achieving the desire color, flavor-profile, and oxidation.[166] Too much humidity caused "houseburn," in which the leaf cells die too quickly reducing the resultant leaves' weight (and therefore value).[167] Too dry, and the curing process slows, hindering processing and time-to-market.[168] As a result, tobacco farmers had workers constantly shuffle the stalks, burn coke on the floors to dry the air, or fan the barns to circulate cooler, drier air from outside.[169]

Once the tobacco cured to a planter's specifications, it was time for "stripping."[170] Stripping required humid weather to rehydrate the cured tobacco; dry tobacco is brittle and will crumble under handling.[171] This sometimes required patience, even to the point of overlapping new plantings with processing the previous year's crop.[172] The stalks would be lowered to a table and the leaves prised off by work gangs.[173] Some members of each group were responsible for (by hand) stripping out the waste leaves, others the prime leaves, and so on for each category of marketable tobacco.[174] This required great care and training, as improperly sorted leaves could cause problems at the market or tarnish relationships with merchants.[175] As the enslaved persons stripped leaves, they bound them into quarter pound packets, tossing them into a hogshead (barrel) as they went.[176] A barefoot enslaved man "heavily but carefully" stepped on the tobacco sheaves to tamp them down.[177] When this initial barrel filled, a second, bottomless barrel was fixed atop it, essentially extending its capacity. Once this second hogshead was filled, a third was again settled on top.[178] Once all three were filled to capacity, a set of blocks and levers was assembled to squeeze the entire apparatus, compressing the tobacco into the original, single hogshead, which was accordingly capped, sealed, and hauled to market.[179]

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[160] Phillips, SLAVERY at 82; Willigen & Eastwood, TOBACCO CULTURE at 115-8.
[161] Willigen & Eastwood, TOBACCO CULTURE at 123.
[162] *Id.* at 124.
[163] *Id.*
[164] *Id.*
[165] *See id.*
[166] *Id.* at 137.
[167] *Id.*
[168] *Id.* at 138.
[169] *Id.*
[170] Phillips, SLAVERY at 83; *see* Willigen & Eastwood, TOBACCO CULTURE at 141-3.
[171] Willigen & Eastwood, TOBACCO CULTURE at 143.
[172] *Id.*
[173] Phillips, SLAVERY at 83.
[174] *Id.*
[175] *See* Willigen & Eastwood, TOBACCO CULTURE at 148.
[176] *Id.*
[177] *Id.*
[178] *Id.*
[179] *Id.*

From top to bottom, tobacco cultivation required lots of labor at every step. Since crops frequently overlapped, there was never any real slack season, especially when coupled with the ancillary tasks around the farm (e.g. weeding, tending subsistence crops, fence mending, clearing acreage, and the like). Tobacco cultivators therefore tended to maintain a relatively large force of laborers and to drive them hard.

However, as the tobacco market crashed again and again, slaveholders pivoted to less fickle crops, such as cereals and fruit.[180] While more dependable, these crops also required less attention, leaving slaveholders with many "idle" hands. Maryland slaveholders took to "hiring out" enslaved persons during the slack season, or even year-round, as an alternative to maintaining unproductive hands. Yet this created new problems. Many slaveholders were particular about what constituted "proper management" of enslaved persons, and so worried that discipline would break down under someone else's supervision. Furthermore, the commute from home to the hirer's location was a prime opportunity for escape and absconding. Slaveholders therefore remained liberal with term slavery as a carrot to incentivize good behavior and consistent service.

Make no mistake, this was not benevolence on the part of slaveholders. While some bestowed term slavery as magnanimous bequest in their wills, that was only after a period of service already exacted, and heralded years more of the same. Slaveholders were still acting in their own self-interest to exploit enslaved persons, it just happened that this form could carry benefits for the enslaved as well. While term slavery carried only a single legal right (detailed below), it certainly changed the texture of slaveholder-enslaved relations. After all, that is what slaveholders were counting on.

As a matter of practice, term slavery took a variety of forms. A common form was an *in futuro* testamentary manumission, in which the enslaved person was freed once they reached age 21 or 30. Other times, the slaveholder worked out some sort of self-purchase arrangement with the enslaved person or a third party (such as a family member). While contracts with enslaved persons were not enforceable, third-party contracts and properly filed deeds had legal heft, protecting the promise of freedom. For example, suppose the enslaved man Daniel sought his freedom and knew his proximate slaveholder, Curry, was amenable to self-purchase. Knowing any contract would be unenforceable, he convinces a friend, Mrs. Riley, to contract in his stead. Mrs. Riley and Curry bargain that Curry would file a deed of manumission to take effect upon the payment of the agreed upon price, nominally by Mrs. Riley, but actually by Daniel. In such a bargain, Mrs. Riley could sue if Curry welched, thereby protecting Daniel's liberation. Finally, possession of a definite term of enslavement changed the relationship. Slavery's tenure no longer ended with death. This made term slavery a site of constant negotiation, as both parties pursued their own interests while the clock ticked down towards liberty.

III. The Legal Topography of Term Slavery

a. Vulnerability and Punishment in Maryland

Maryland term slaves did not possess any special protections or rights.[181] Theoretically the manumitting will or deed shielded term slaves from being sold as slaves for life. However, that bulwark depended on (1) continued possession of their freedom papers or (2) a would-be purchaser performing their due diligence at the relevant county courthouse. Recognizing that neither would be

[180] Fields, MIDDLE GROUND at 5, 18, 27-28.
[181] Jeffrey R. Bracket, THE NEGRO IN MARYLAND: A STUDY OF THE INSTITUTION OF SLAVERY, 60 (1889)

much help against shaky scruples and a fast buck, the Maryland legislature passed a battery of mild protections for term slaves. In its 1796 manumission law, the legislature declared that anyone who knowingly transported a term slave out of Maryland as a slave for life, would be fined $800 and/or work five years on the state roadworks.[182] Five years later, the House attempted to pass a law to prevent term slaves from being sold "South," but it never reached the Senate.[183] In 1810[184] and 1817,[185] laws were passed tightly limiting whether and how non-residents could purchase term slaves. If a purchaser "fraudulently" failed to comply with any of the requirements, the enslaved person was entitled to immediate freedom.[186] Whether this was human concern for term slaves or the state's appetite for the labor of term slaves and free Black persons, the legislature continued to tweak these protections right up until the 1860 Constitution banned manumission completely.

It is difficult to parse whether these protections were effective or not. It is entirely likely that many term slaves were whisked away without papers or respect for their futures. Indeed, the legislature's continuous tweaking indicates that the problem was at least serious enough to garner repeat attention. However, the robust number of "turbulent slave petitions" indicates that many slaveholders did comply. Under an 1833 statute, slaveholders could sell term slaves out of state only if a judge ruled them to be "notoriously vicious and turbulent."[187] Similarly, if a term slave "frequently absconded," the term slave's service could be extended to compensate the slaveholder for their losses.

Formally, the only requirement for these petitions was basic proof of misbehavior and/or escape, and that the slaveholder have previously "notif[ied]" the term slave of the 1833 law's existence and potential penalties. Any further viciousness or absconding would demonstrate the enslaved person's incorrigibility, and therefore fitness for an extension of term or transportation. However, slaveholders often took pains to note that the enslaved person was not provoked into

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[182] "An ACT relating to negroes, and to repeal the acts of assembly therein mentioned" in PROCEEDINGS AND ACTS OF THE GENERAL ASSEMBLY, 1796, Ch. LXVII, §XV, 251 (Archives of Maryland 2000). This law offered a similar penalty for anyone who brought a term slave *into* Maryland and sold them as a slave for life. Accessed via Archives of Maryland Online on Feb 16, 2024.
<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000105/html/am105--251.html>.

[183] Bracket, THE NEGRO IN MARYLAND at 61.

[184] "AN ACT relating to Servants and Slaves" in Clement Dorsey, THE GENERAL PUBLIC STATUTORY LAW AND PUBLIC LOCAL LAW OF THE STATE OF MARYLAND : FROM THE YEAR 1692 TO 1839 INCLUSIVE, WITH ANNOTATIONS THERETO, AND A COPIOUS INDEX, Laws of Maryland, 1809-10, ch. 15, §2, 697. Accessed via Archives of Maryland Online on Jan 3, 2023. <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--597.html>.

[185] "AN ACT relating to Servants and Slaves" in LAWS OF MARYLAND, 1817, Ch. 112, §1-6, 118-20 (Archives of Maryland 2003). Accessed via Archives of Maryland Online on Jan 3, 2023.
<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000636/html/am636--117.html>.

[186] Bracket, THE NEGRO IN MARYLAND at 61-2. These requirements were: the bill of sale must comply with all normal requirements of sales bills, be signed and sealed by both the purchaser and the seller (or their agent), include the enslaved persons term of service length, interest of seller, residence of purchaser, be acknowledged by a justice of the peace, and filed within twenty days of production.

[187] *"*AN ACT relating to Persons of Colour, who are to be Free after the expiration of a term of years*"* in Clement Dorsey, THE GENERAL PUBLIC STATUTORY LAW AND PUBLIC LOCAL LAW OF THE STATE OF MARYLAND : FROM THE YEAR 1692 TO 1839 INCLUSIVE, WITH ANNOTATIONS THERETO, AND A COPIOUS INDEX, Laws of Maryland, 1833, Ch. 324, 1121. Accessed via Archives of Maryland Online on Jan 3, 2023.
<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--1121.html>. Hereafter "the 1833 law."

flight and had been treated kindly.[188] This was intended to countermand to defang any allegations that the slaveholder was the root of the problem, not an enslaved persons' supposed turbulence.

The underlying principle was clearly preserving access to and control of a worker. The entire proceeding hinged on the loss of production and labor power engendered by the enslaved person's (in)actions. However, a turbulence petition's results were not simply punishment. If the goal was to force rehabilitation or deter future turbulence, the usual, corporal, punishments would have sufficed. Instead, term slaves received extensions and sale authorizations. The former is akin to, but never called, damages; the term slave was required to make the slaveholder whole through blood, sweat, and time. The latter was the ultimate power of an employer: the ability to eject excess labor. While couched in terms of public safety and keeping the peace, employers' use of two market mechanisms (law and sale) as disciplinary mechanisms underscore that turbulence petitions were thoroughly creatures of Maryland's capitalism.

b. Rights at a Cost – Ottoman Forms of Term Slavery

In contrast to the broad vulnerability of Maryland's term slaves, Ottoman law (both religious and dynastic) enshrined various protected types of term slavery, each with concomitant protections. Ümm-ü veled (lit. mother of the child)[189] was a status granted to enslaved women who bore their proximate slaveholder's child.[190] If (and only if) the slaveholder acknowledged the child, he was forbidden to sell or the ümm-ü veled, she was to be freed upon the slaveholder's death, and the child was born free.[191]The prevalence of harems among Islamic elites (Ottoman and otherwise) meant a not insubstantial number of Muslim rulers and elites were raised by ümm-ü veled, a phenomenon which likely influenced how the Muslim world understood slavery, gender, and manumission.[192]

In a similar vein, tedbir[193] were promises to manumit the enslaved person at the death of the owner.[194] Like ümm-ü veled, tedbir were protected against sale, though in a more limited manner. For example, Sharia allowed the sale of tedbir to settle debts, much how testamentary manumissions could not prejudice creditors in the United States.[195] In theory the tedbir was irrevocable, however the Shafi'i and Hanbali maddhab void the promise if the tedbir slave was sold.[196]

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[188] *See, e.g.*, *Petition of John & Matthew Fardy, 8 Dec. 1855*, Baltimore City Register of Wills, Petitions & Orders, MSA T621-183 ("that they have treated and raised the said boy well + kindly"); *Petition of Wakeman Brylerly, 01 June 1858*, Baltimore County Register of Wills, Petitions & Orders (1852-1865), MSA C399-13-51-1 ("although he has altogether treated kindly + humanely by your Petitioner"); *Petition of John Rice, 2 Sept. 1851*, Anne Arundel County Register of Wills, Petitions & Orders (1851-1860), 453-54, MSA C122-5 ("Your Petitioner has treated the Boy kindly, as he will show to your Honors").

[189] Umm al-walad in Arabic and Arabic-derived sources.

[190] Bernard K. Freamon, "Definitions and Conceptions of Slave Ownership in Islamic Law" in THE LEGAL UNDERSTANDING OF SLAVERY: FROM THE HISTORICAL TO THE CONTEMPORARY, 55-6 (2012)

[191] *Id.* Unfortunately, if the slaveholder denied being the father, then the enslaved woman might face charges of *zina* (unlawful sexual intercourse). A capital crime, *zina* was/is fortunately modulated by the impossibly high evidentiary requirements mandated by the Quran (though several modern states have amended through secular law or simply disregarded).

[192] *Id.* at 56.

[193] Mudabbar in Arabic and other sources.

[194] *Id.*

[195] Freamon, DEFINITIONS at 56; for an example of a slaveholder's debts thwarting a testamentary or in futuro manumission, *see, e.g. Allein v. Sharpe*, 7 G. & J. 96 (Maryland 1835);

[196] Brunschvig, *'Abd*, in THE ENCYCLOPEDIA OF ISLAM ONLINE (P.J. Bearman ed. 2012).

The final form is mükatebe, an enforceable, contractual term slavery.[197] At its basic form, this was a simple bargain: freedom was extended in exchange for some form of labor. Sometimes this was a simple period of enslavement, other times it was production of a certain quantity of work product.[198] Similar to Maryland, slaveholders often agreed to mükatebe contracts to extract productive, compliant labor. Oftentimes the contract included an explicit or implicit guarantee of the enslaved person's good behavior, meaning absconding or turbulence would nullify the bargain (often forfeiting any payments made). Recognized as semi-free, mükateb gained numerous changes in their treatment, including increased criminal liability, and (depending on maddhab) protections against sale.[199] Of the major maddhab, only the Hanbali permit the sale of a mükateb, though the purchaser inherits the contract's obligations and fulfillment status. Hanafi, Maliki, and Shafi'i categorically bar the sale of a mükateb.[200]

Taken together, the Ottoman varietals of term slavery operate in a more paternalistic register than their Maryland counterpart. To be sure, their labor could still be commodified. That was the basis of mükatebe, after all. Nor were Ottoman slaveholders powerless in the face of resistance or turbulence. Besides the broad latitude to physically punish recalcitrant slaves, Ottoman slaveholders could also petition local courts for an *itaat* (pl. *itaatlar*).[201] Similar in function to Maryland's turbulence petitions, an itaat was a judicial order commanding an enslaved person to obey their proximate slaveholder.[202] Continued absconding or turbulence could jeopardize the tedbir or mükatebe entirely, and the Ottoman state was ready and willing to assist in the recapture and repatriation of escaped slaves.[203]

However, the register of each Ottoman variety remained paternalist[204] in its primary connotation of magnanimity and generosity. For tedbir and ümm-ü veled the freedom is granted for something similar to meritorious service. Whether for serving the slaveholder for their lifetime or offering them the blessing of a child, the slaveholder was sufficiently moved by gratitude to offer in futuro manumission.

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[197] Also called mukatab in Arabic and other sources. Colloquially, mükatebe slaves were called mükateb or kitabetli (lit. "with inscription" or "with literature").

[198] For example, slaves in the Bursa silk industry were manumitted after weaving a certain length of cloth. Murat Çizakça, "A Short History of the Bursa Silk Industry," XXIII: 1/2 J. OF ECON. & SOC. H. OF THE ORIENT 142, 143. *See also* William G. Clarence-Smith & David Eltis, "White Servitude" in CAMBRIDGE WORLD HISTORY OF SLAVERY, Vol. IV at 148 (stating multiple forms of textile production used a similar arrangement).

[199] Brunschvig, *'Abd*.

[200] *Id.*

[201] *See* Ehud Toledano, THE OTTOMAN SLAVE TRADE AND ITS SUPPRESSION, 153 (1982).

[202] In a perfect world, my language skills and budget would have allowed me to explore *itaatlar* as I have Maryland turbulence petitions. However, since there are no English-language compendiums or collections of *itaat*, that dimension will be saved for future work.

[203] Thabit A.J. Abdullah, "Runaway Slaves in Ottoman Aleppo, 1549-1618," SLAVERY & ABOLITION 7-8 (Feb. 2025); Shawn Broyles, "Setting an Example: a model şurut case regarding an escaped slave in 18th c. Ottoman Bursa," ACADEMIA LETTERS, Article 759 (2021) (discussing the standard procedure in 18th century Bursa for handling the capture of an escaped slave by the authorities).

[204] The decision on whether or not the child is a slave seems almost part and parcel to Rosenthal's definition of capitalism. The slaveholder is deciding whether the child is a free subject or one who can be bought and sold at the market; he can commoditize his flesh and blood. The difference here is that he is not using the *mechanisms of the market to do so*. Rather, his means are religious in nature, dovetailed with state power. mechanisms of the market. Their power reveals itself through their calculations: whether they count by the hour or by the lifetime, capitalists can buy and sell labor in the market without regard for individuals. However, his means of doing so are not through the *mechanisms of the market*.[204] His means are religious in nature, dovetailed with state power.

Mükatebe occupies a trickier space. It seems motivated by the same extractive calculus as Maryland's term slavery, using the carrot of freedom to extract docile productivity. However, once again, the punishment for turbulence sheds light on the underlying motivations. Whereas turbulence in Maryland required making the slaveholder whole, Ottoman law simply withdrew the promised manumission. The mükateb (and any turbulent tedbir) were once again slaves for life. In theory, nothing except personal pique barred the slaveholder from later extending another mükatebe or tedbir agreement, once the two had read some détente. The loss of pending freedom therefore smacks of a scolding, "you cannot be trusted, so why should you go unsupervised?" With sufficient reconciliation and a demonstration the bondsperson had "learned their lesson," the pending liberty could be resurrected. The diminutive and condescending register keeps mükatebe and tedbir within the paternalist ambit of Ottoman slave-governance generally.

IV. Turbulence in Broad Strokes

The bulk of this chapter (and the one following) analyzes slaveholders' turbulent slave petitions from the Orphans' Courts[205] of Anne Arundel County, Baltimore County, and Baltimore City, from 1845-1866.[206] Turbulence petitions offer a rare glimpse into how pending liberty was understood by both parties, their negotiations within that decaying bondage, and the role of law as both a genuine means for dispute resolution and a rhetorical bludgeon.[207]

While almost every Maryland county would offer cases for examination, the choice of these three is intentional. These counties were heavily populated, including large Black populations, suggesting a proportionally large number of term slaves as well.[208] However, their differences are also important. Anne Arundel was heavily agricultural and was home to many of Maryland's planter gentry.[209] In contrast, Baltimore City was more urban, focused more on crafts, domestic work, and industrial production.[210] Furthermore, greater Baltimore had a larger free Black population than any other county in Maryland.[211] Baltimore County lay between the two, partially agricultural but also the frontier of urban expansion and support. The contrasts between "Old South-esque" Anne Arundel, urban Baltimore City, and intermediate Baltimore County means the petitioning slaveholders would come from a range of roles (slaveholder, agent, family member), role of enslaved person (field hand, domestic worker, industrial slave), and class backgrounds (ranging from the upper crust Linthicum family to middling farmers).

The choice to use Orphans' Court records is both deliberate and necessary. Orphans' Courts are Maryland's probate courts, handling matters such as estate inventories, appointment of

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[205] Even when referring to the institution in the abstract, Orphans' Courts are always capitalized (in contrast to a generic circuit court, appellate court, or supreme court).

[206] Baltimore City became an independent county in 1851. Until then, its materials were intermixed as part of Baltimore County's materials.

[207] Freedom suits offer similar insights, though with different grounds and disputes. *See e.g.* Michelle McKinley, "Financing Freedom: Self-Purchase and Re-enslavement in Seventeenth Century Andalucía," 81:4 WILLIAM & MARY Q. 651, 659-61 (2024).

[208] Fields, MIDDLE GROUND at 9-11 (Tables 1.3, 1.5, and 1.6 are particularly helpful, breaking down total population by race and legal status); T. Stephen Whitman, THE PRICE OF FREEDOM: SLAVERY AND MANUMISSION IN BALTIMORE AND EARLY NATIONAL MARYLAND, 10, 18-19 (1997).

[209] Robert Chidester, A HISTORIC CONTEXT FOR THE ARCHEOLOGY OF INDUSTRIAL LABOR IN THE STATE OF MARYLAND, MARYLAND HISTORICAL TRUST 32 (2003).

[210] Rockman, SCRAPING BY at 16-45; Whitman, PRICE OF FREEDOM at 8-33.

[211] Fields, MIDDLE GROUND at 11-13 (by 1850, Baltimore's free Black population was 29,000 souls and 13.8% of Baltimore's entire population. In contrast, most counties' free Black populations hovered around 1000-3000 souls).

administrators, and empowerment of executors.[212] However, Orphans' Court's duties expanded to include management of guardianships,[213] as well as complaints by slaveholders and indenture holders about turbulent slaves and apprentices. While the 1833 law gave jurisdiction to county courts, almost none of those records have survived.[214] Luckily, the 1845 legislature granted Orphans' Courts parallel jurisdiction over turbulence petitions. These records have survived and are largely complete. This allows a thorough survey of turbulent slave petitions in Maryland, in which I have (hopefully) collected every turbulent slave petition in these counties between 1833-1866.[215] This allows for a comprehensive inspection of turbulent slave petitions in the Orphans' Courts of these counties. However, this cannot be seen as representative of term slavery writ large, given the unknowable number of county court petitions filed during the same era.

a. Turbulence by the Numbers

A comprehensive review of Orphans' Court records for Anne Arundel, Baltimore County, and Baltimore City yielded 173 total turbulence petitions.[216] My best efforts indicate that this is the total number between 1833 (when the law passed) and 1861. While this latter date is somewhat arbitrary, it served as a solid end date for "business as usual" rather than the tumult of wartime. The data is, of course, unfortunately patchwork. Some petitioners included information such as how many times an enslaved person had run away, how long they had been at large, and how much it cost them to recover the bondsperson. Others included some or none of these details. My data was therefore cleaned prior to any analysis being run. However, this means that some analyses are operating off extremely small sample sizes, and therefore should not be considered reliable under the typical statistical rules. This is particularly true for Baltimore City, whose sample size is often single digit. The figures and plots therefore gesture towards historical possibilities, not facts. This population variance also means we[217] used Welch's T-test, as it is more robust in the face of unequal variances than other methods, such as Student's T-test.

Some of the data is interesting in that it confirms expectations and intuitions. For example, the more times an enslaved person was in court for turbulence or absconding, the longer the resultant extension. (See Fig. 1). In this box-and-whisker plot,[218] we see that as an Anne Arundel

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[212] If a person dies with a will in place (testate), the person specified in that will as responsible for distributing the deceased's property and assets is an executor. If a person dies without a will (intestate), the probate court must decide who should be responsible for distributing the deceased's assets, and declares that person the administrator.

[213] Living up their name, Orphans' Courts appointed guardians for orphaned children and supervised that guardian's administration of the child's assets and welfare.

[214] It was explained to me that county courts' business was simply too voluminous, and that storage would have been a burden. Therefore, many jurisdictions destroyed local court records after a certain span of years.

[215] Methodologically, I reviewed every page of each volume of the orphans' court proceedings (Anne Arundel) or every case folder (Baltimore County and City) from 1833-1866, looking for turbulent slave petitions. I then compared my list of petitions against two existing indexes of slavery-related petitions: The Digital Library on American Slavery's Race and Slavery Petitions database and the Schweninger Collection, an artificial archive created by Loren Schweninger as part of building the Slavery Petitions database.

[216] Their breakdown was: Anne Arundel: 77 petitions; Baltimore County: 57 petitions; Baltimore City: 39 petitions.

[217] I confess to being the most basic journeyman for statistical analysis. I am deeply indebted to Dr. Axel Masquelin for his assistance/expertise in the entirety of the quantitative process. I collected the data and asked the questions; he coded the plots.

[218] A box and whisker plot summarizes the distribution of data within a dataset, along with any outliers. Using the leftmost column in Fig. 1.1, as our example, the bottom line (whisker) indicates the minimum data value in the set, 0 months extension. The top line indicates the maximum value, here being 24 months. The titular box expresses data similarly. Its top side indicates the upper quartile value of the dataset (18 months), while the bottom side indicates the lower quartile (8 months). The middle line indicates the median value, here being 12 months. If there is no median line

enslaved person accrued more turbulence hearings, the inflicted extensions got longer, though not dramatically. Enslaved persons never accused of turbulence were looking at an extension between 0-24 months, depending on various factors such as violence, financial losses (see Fig. 1.2), and time at-large. In subsequent turbulence proceedings, an enslaved person's potential extension range shifted upwards, but not as much as might be expected. The maximum inflicted extension for a second turbulence petition was 36 months, roughly matching particularly dire cases for first-timers. At the bottom, the lowest inflicted extension was three months, while the bulk of second-timers' extensions ranged from 8-24 months, at least in Anne Arundel County.

What this indicates is that successive abscondings were not sufficient to generate enormously punitive results. To be sure, an extension of 1-2 years was undesirable and cruel. However, within the realm of slavery's cruelties, this one is fairly minor relative the disruption and rhetoric embodied in an absconding.

There are several possible explanations for this light-handedness. Optimistically, Maryland slaveholders and judges recognized that some level of frustration was inherent to slavery, and that absconding would occur in response. As such, while extensions were necessary to make a point, judges (slaveholders themselves) pulled the punch, not out of kindness, but to avoid the generation of new bouts of turbulence and disruption. Alternatively, and more likely, was viewed as working in tandem with the usual methods of punishment. Extensions did not need to be overly long as they were genuinely oriented compensating a slaveholder, while actual deterrence and retribution were pursued through other means (e.g. whipping, material deprivation, threat of sale).

present, as in the center plot of Fig. 1.1, it means the dataset's median is identical to either the upper or lower quartile value.

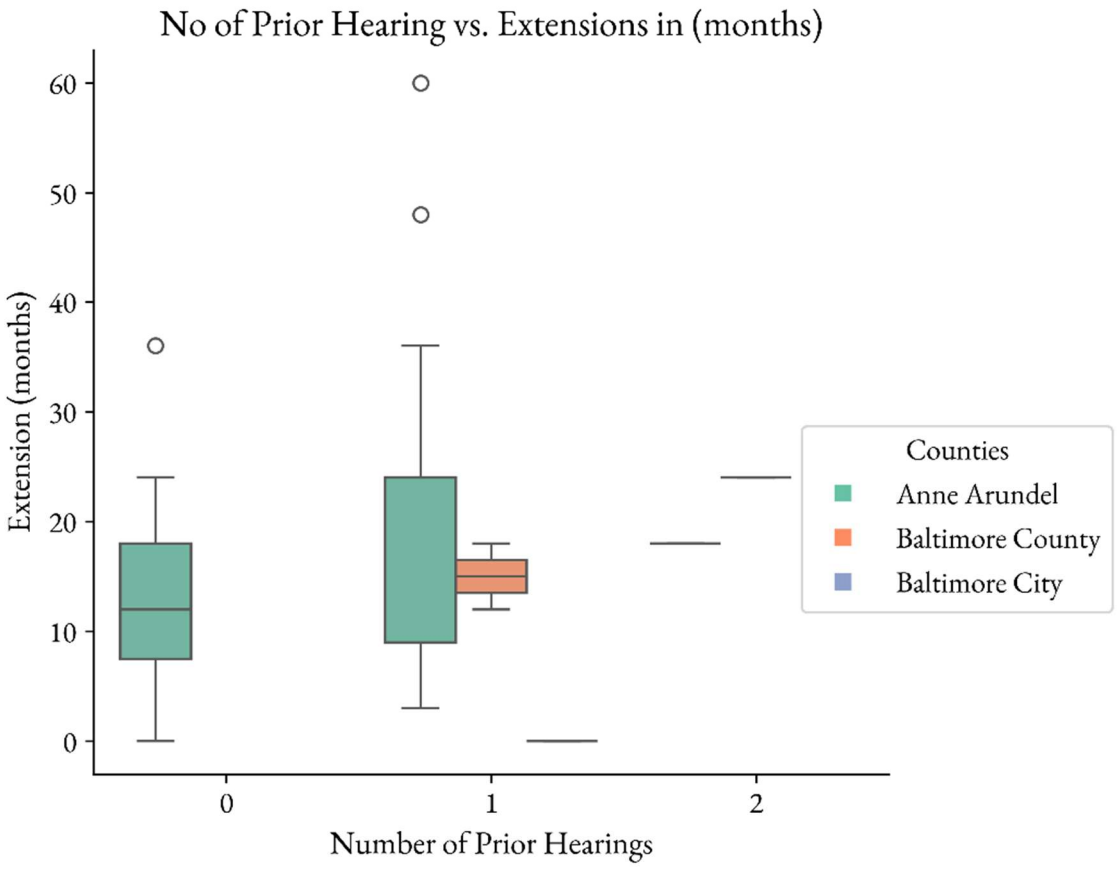

Figure 1.1: Number of Prior Hearings v. Extension in Months

This latter interpretation is supported by the relationship between costs to a slaveholder and length of extension. Generally, the more money a slaveholder spent recovering an enslaved person, the longer an extension to their term of servitude. (See Fig. 1.2).

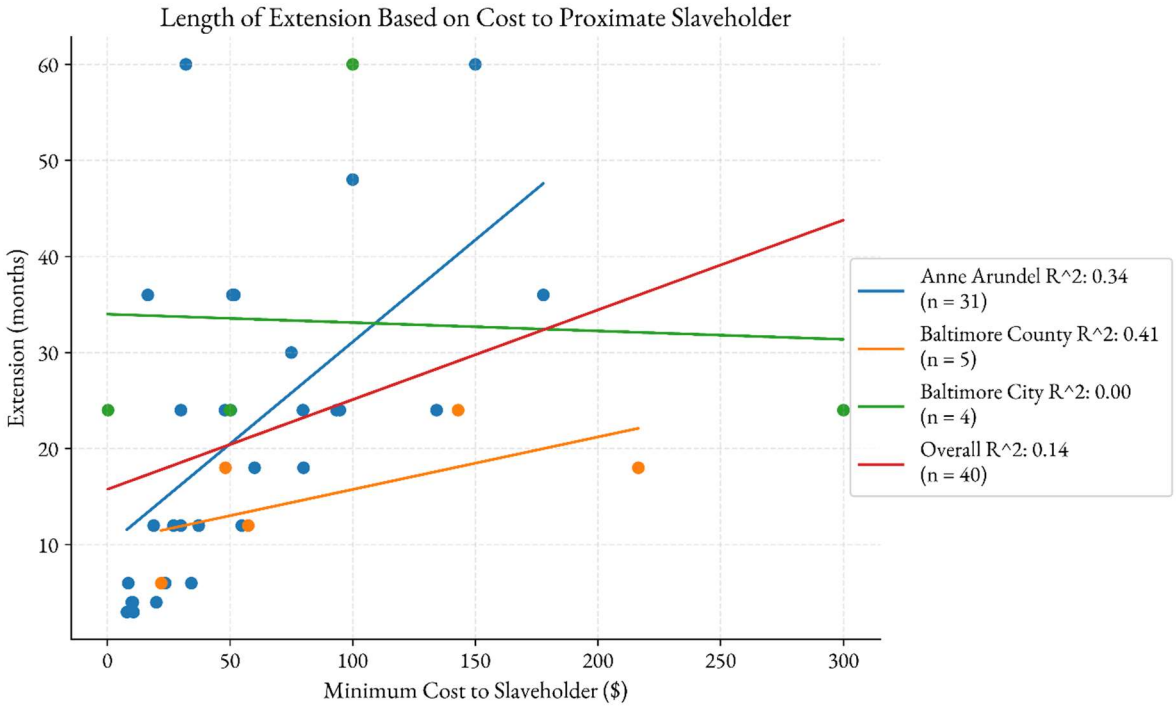

Figure 1.2: Length of Extension Based on Cost to Proximate Slaveholder

However, this was not universally true, as Baltimore City shows a negative relationship between the two, albeit based on a paltry four cases. A similar tale is told when examining the length of a turbulence extension relative to an enslaved person's time at-liberty (see Fig 1.3).

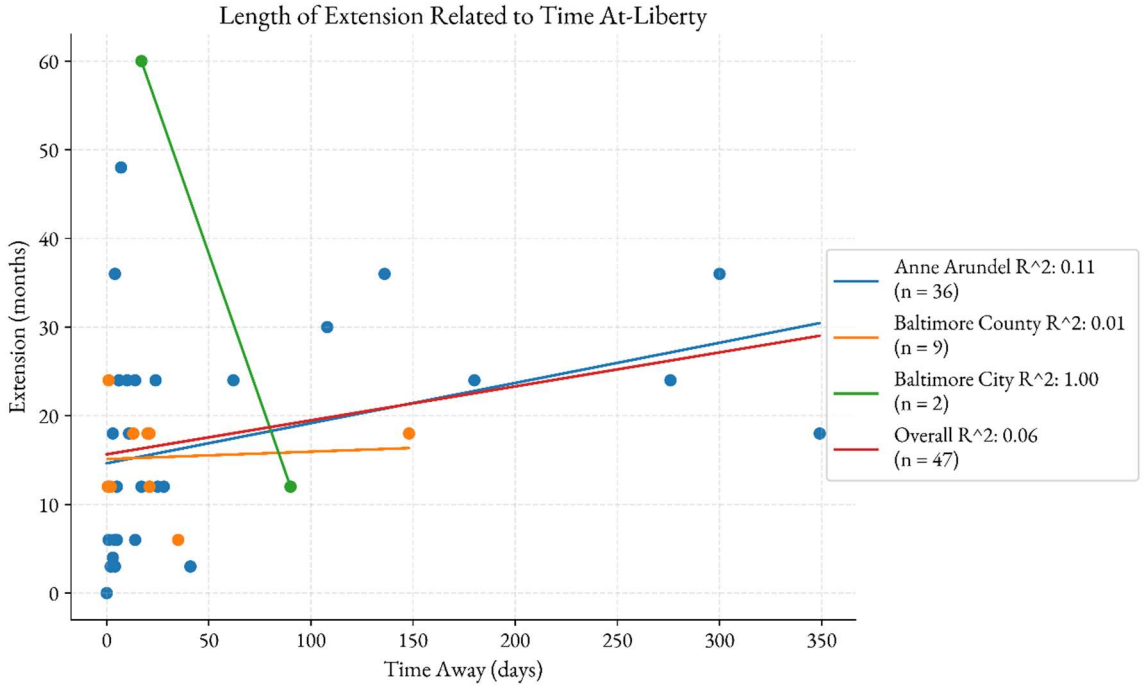

Figure 1.3: Length of Extension Related to Time-At-Liberty

Anne Arundel and Baltimore County show extensions increased when enslaved persons managed to elude capture for long periods of time.[219] Taken together Orphans' Courts were tying extension length to the slaveholders' claimed damages. This did not necessarily mean monetary damages, but seems to have included the lost income, time and inconvenience of dealing with an absconding slave, and attending court. This close relationship between slaveholders' financial losses and duration of extension indicate that punishment was distinctly secondary in judges' reasoning, or was already baked into the terms inflicted.

Intriguingly, the data indicates that all three Orphans' Courts inflicted shorter extensions as the Civil War inched closer. (See Fig. 1.4).

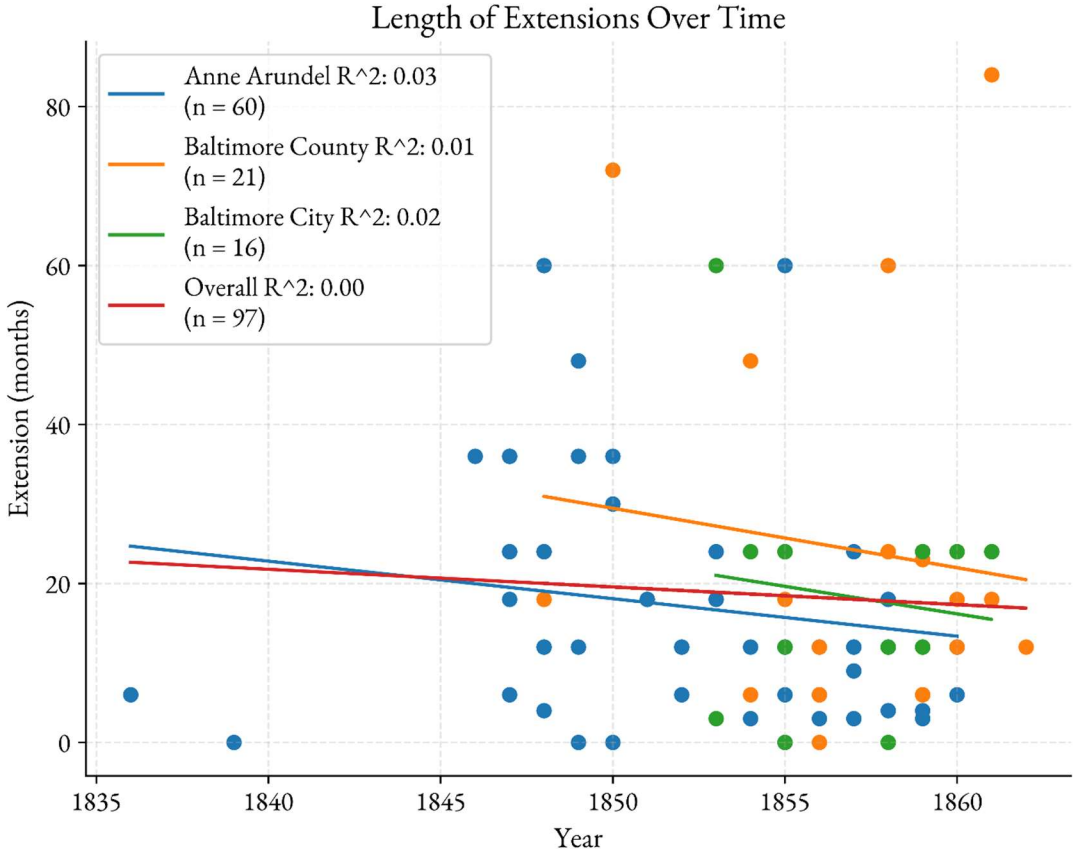

Figure 1.4: Length of Term Extensions Over Time

Whether this indicated the withering of slavery in Maryland or slaveholders' complacency is unclear. Speculatively, this could have been the result of the increased immigration into Maryland. As free labor grew more plentiful, it was less financially dire to lose a term slave's labor. The glut of labor meant term slaves' hire was not as lucrative for a rent-seeking slaveholder while the lost labor was simply not as valuable since there were others to work that job. Alternatively, extension was seen as less important than sale authorization. The Deep South's hunger for slave labor made sale an attractive proposition. Term slaves categorically drew lower prices than slaves-for-life, so a longer

[219] Baltimore City only had two cases, so the negative trendline is essentially worthless.

extension would only marginally boost a term slaves' potential profitability. Since extension was less important than simple sale, there was less need to pursue or inflict it.

Conversely, judges might have become more sanguine about the supposed irascibility of absconding slaves. Positive good theory considered Black Americans little better than children, in need of a firm (white) hand to keep them on task and surviving. This could engender a level of paternalist tolerance for "misbehavior." Not enough to waive an extension entirely, but sufficient to lower a judge's ire a few degrees and shave some months off the resulting extension.

The number of petitions and the percentage approved by the Orphans' Courts did not follow a similar pattern, fluctuating from 1840 (when Orphans' Courts gained jurisdiction) through the Civil War (see Fig 1.5, below). Anne Arundel County's petitions and grants fell precipitously after the Panic of 1857. This is surprising, as selling truculent enslaved persons would have been an easy source of ready cash, and longer terms fetched somewhat better prices. It is possible that simply holding on to enslaved labor was a better investment, as even truculent or sporadic productivity was more profitable than trying to find someone with cash to spend.

In contrast, both Baltimore counties generally increased their number of petitions granted as the Civil War drew closer, perhaps indicating slaveholders worried that the Southern market would be cut off and they would have no opportunity to be rid of unruly enslaved persons.[220] Alternatively, the population of both Baltimore counties increased over the nineteenth century. Baltimore's population skyrocketed from a population of 26,514 in 1800, to 70,620 in 1830, to a whopping 212,418 souls in 1860.[221] While enslaved *residents* of the city decreased over that same span (7,132 in 1790 to 6,718 in 1860, a 5.8% decrease), the number of slaves (both term and for-life) hired out to the city from the countryside went up.[222] A major portion of this growth was immigrants, primarily German and Irish.[223] While European immigrants are usually understood as hostile to slavery as an institution, that does not mean they relished the potential threat to their livelihoods. Slave labor was an alternative to the waged labor of immigrants, a fact Baltimore's employers exploited ruthlessly.[224] Informed by this bubbling frustration, white social attitudes might have hardened overtime against term slaves, thereby fostering an increased willingness to grant turbulence petitions.

[220] Which would indeed be the case, *see* the discussion of John Timanus' case, *infra* pp. 45-6.
[221] Fields, MIDDLE GROUND at 9 (Fig. 1.3), 13 (Fig. 1.7)
[222] *Id.* at 12 (Fig. 1.7), 17.
[223] *Id.* at 42.
[224] Rockman, SCRAPING BY at 38-44.

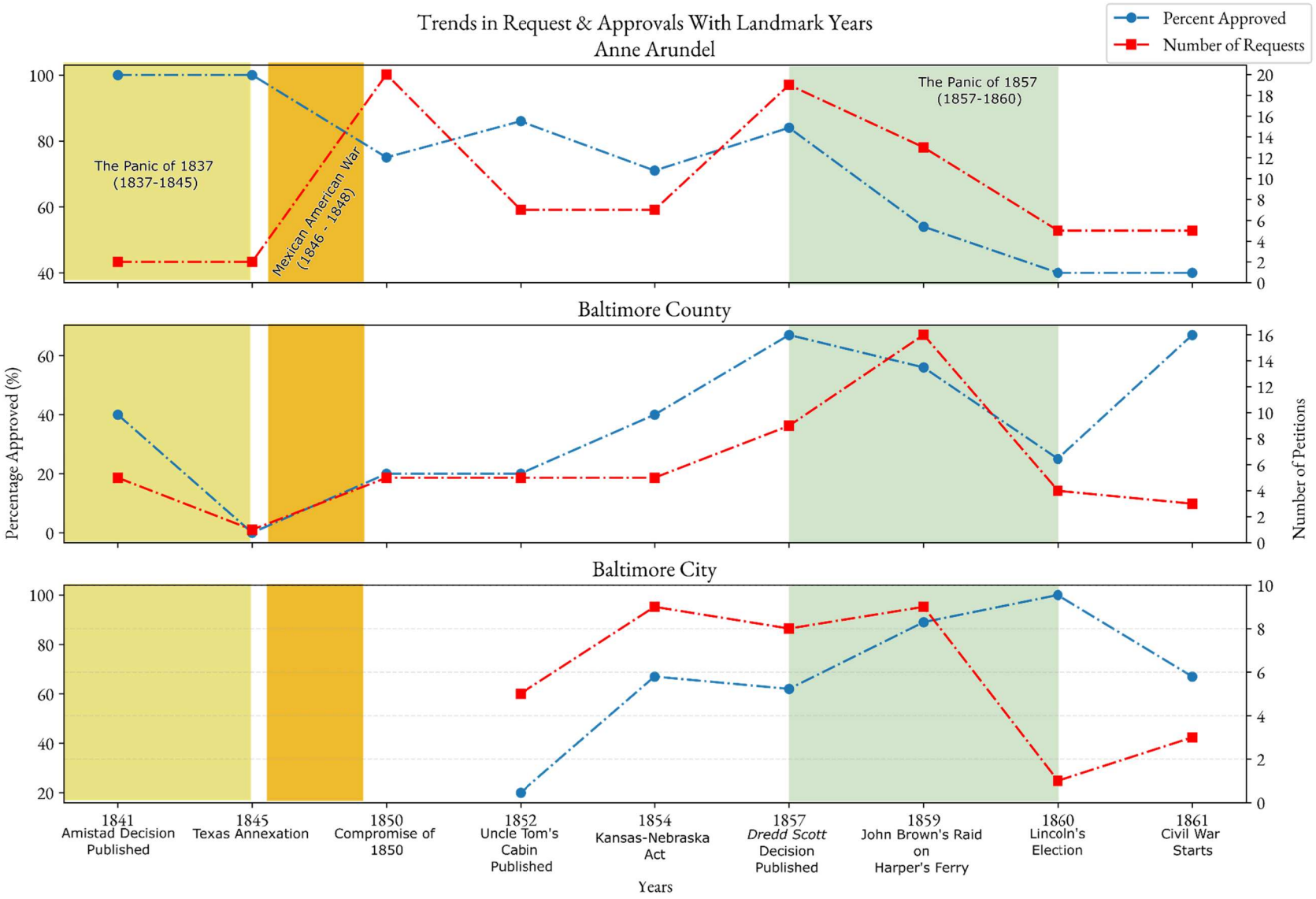

Figure 1.5: Trends in Requests & Approvals with Landmark Years

V. Petitions in their Own Words

The petitions themselves followed a basic formula. The petitioner opened with their own name, how they had acquired the subject enslaved person, and how long that enslaved person was still bound to serve. Then, the petitioner began their complaint, usually starting with how the enslaved person was "vicious"; "of ill-temperament"; "refractory"; or other similar adjectives. From there, the slaveholder listed their specific grievances, usually that the enslaved person had run away "on or about" such and such date. Sometimes the slaveholder would plead that there was no root cause of this absconding, as the enslaved person had been treated with "kindness" and "humanity." Small details of the enslaved persons' recapture would be provided, usually just who caught them and what jail held them. Any subsequent escapes or aggravating factors (such as violence or theft) would follow, sometimes with the total costs to the slaveholder across all escapes. With the enslaved persons' character thoroughly assassinated, the petition would close with a request to extend the enslaved persons' time in bondage "to compensate your petitioner" for expenses accrued, and possibly a request to sell the term slave out of Maryland.

Beyond these basics, the inclusions and omissions of each petition betray different legal cultures from county to county. As a rule, Anne Arundel County's petitioners included more detail in their filings. Petitioners took pains to note that they had warned the enslaved person of the 1833 law's strictures (as required by law); itemized costs to recover the term slave; how long the escape had lasted; their "kind" or "humane" treatment of the bondsperson; and offered more information about the enslaved person's habits and actions. Most notably, only petitions from Anne Arundel make any mention of violence in the course of the enslaved person's escape or recapture. Sometimes this was violence to escape an imminent whipping,[225] other times it was associated with their recapture or against another bondsperson.[226] It is highly unlikely that Baltimore's enslaved population never threw a punch or that no slaveholder ever mentioned it in court, yet none appeared those petitions.[227]

Violence was not the only detail glaringly absent from Baltimore petitions. Generally, the Baltimore counties' petitions were generic, boilerplate pleadings, frequently offering only basic information, while Anne Arundel's contain more detail and legally extraneous information. This is likely symptomatic of legal access. The detail in Anne Arundel pleadings could be due to how difficult it was to access the county seat in Annapolis. Nestled on a peninsula, it would have taken a great deal of time, money, and effort to travel from Anne Arundel's hinterlands to the county

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[225] *See e.g. Petition of Owen Cecil, 27 Dec. 1859*, Anne Arundel County Register of Wills, Petitions & Orders (1851-1860), 526-27, MSA C122-5; *Petition of Richard O. Crisp, 24 April 1860*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), 607-09, MSA C122-5; *Petition of James Watkins, 16 Feb. 1848*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1840-1851), 226-28, MSA C122-4; *Petition of Henry Aisquith, 31 July 1849*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), 309-10, MSA C122-4; *Petition of James Williams, 29 July 1851*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), 443-44, MSA C122-4; *Petition of John Rice, 2 Sept. 1851*, 453-54, MSA C122-5 at 453-55; *Petition of Mary Crisp on Behalf of Robert Crisp, 2 Mar. 1858*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), 349-50, MSA C122-5.

[226] *See e.g. Petition of Lemuel Taylor, 1 Nov. 1839*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1823-39), MSA C127-1; *Petition of Richard Weems, 28 April 1857*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), 343-45, MSA C122-5.

[227] It is possible that Baltimore's county courts heard the bulk of the counties' turbulence petitions. Unfortunately, no salient county court records have survived, so this is currently impossible to verify.

court.[228] In contrast, Baltimore County and City had ready access to their own county seat. Baltimore City was the county seat for itself and the county until the two were split in 1851. Baltimore County's administration moved to the centrally located Towsontown (now Towson). Residents of both Baltimores likely had better proximity and access to legal services and courts relative to Anne Arundel's citizens.

Differences in access therefore meant differences in practice. Petitioners in Anne Arundel (or their counsel) wanted to make sure their petitions landed with maximum impact and took pains to put their best foot forward through inclusion of details and scrupulous compliance with statutory provisions.[229] Alternatively, since it was a travail to get to court, cases in Anne Arundel relied more on the papers than their Baltimore counterparts. Since petitioners and witnesses were closer at hand in Baltimore, a broader culture of oral testimony emerged in which the papers got someone's case in the door, but the real work began on the stand.

Such differences have implications for the legal system's reach and legitimacy. A papers-forward legal culture is relatively insulated from external scrutiny. In the ages before LexisNexis and WestLaw, it would have taken great effort and treasure to acquire the pleadings in every case. This in turn means there are fewer eyes on claims and proffers. In a legal system where reputation, "neighborhood reports," and dueling witnesses were critical inputs, this semi-sequestration insulated claims and petitions from scrutiny and contestation.[230] This would have been especially true if the party opponent possessed fewer resources, was less known in the community, or labored under statutory handicaps (e.g. Black Marylanders could not directly testify against whites).[231]

While the petitions are formulaic, their respective deviations offer insight into what was going on beyond the record. For instance, sometimes there were ongoing negotiations, such as the fencing between William Brooks and the enslaved woman Hester.[232] Brooks filed a petition on November 1st, 1855, demanding an extension to Hester's term and authorization to sell her out of state. He argued that her "habit" of running away and general turbulence entitled him to such.[233] However, the very next day, he withdrew his petition with no explanation,[234] only to refile it three weeks later.[235] Evidently something was afoot behind the scenes. While there are myriad possibilities, it is perfectly likely that Hester managed to convince Brooks that she had reformed and would offer no further trouble; Hester's capitulation meant Brooks won that round of negotiations. However, a few weeks later, Brooks must have overstepped once again, prompting Hester to escape his control, and in turn led to the refiling of his petition.

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[228] Even today, Annapolis is notoriously difficult to without a car. It is not served by any public transit, and even biking there requires taking backroads or a risky jaunt along the highway.

[229] Or at least claiming such diligence.

[230] Laura Edwards, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH, 118-29 (2009).

[231] Indirect testimony is discussed in Chapter V, *infra* at 148-53.

[232] *Petition of William Brooks, 1 Nov. 1855*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS AND ORDERS, MSA T621-183. (*Brooks I*). N.B.: This box had not been fully incorporated into the MSA's filing system at the time of writing. When it is, its label will likely shift to C399-##.

[233] *Id.*

[234] *Id.*

[235] *Petition of William Brooks, 26 Nov. 1855*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS AND ORDERS, MSA T621-183. (*Brooks II*).

a. A Strike by Any Other Name – Denial of Labor

Other petitions showed enslaved persons steadfastly refusing to work for a particular slaveholder or hirer. In 1859, James Wilson of Anne Arundel County filed his first petition to extend the term of enslavement of William Gale and asked for authorization to sell Gale out of Maryland.[236] According to Wilson, Gale was recalcitrant from the start, stating at the time of purchase that "he [Gale] would not stay with him [Wilson]." Shortly thereafter, Gale ran away "without provocation." Wilson does not state how long Gale was at-large, but did claim $48 of expenses in recapturing Gale. For this, the court extended Gale's enslavement by two years, although it did not authorize out-of-state sale. One week later, Gale "shaved off his whiskers and mustache" and again escaped, this time for eleven days. When Wilson filed a second turbulence petition, the court extended Gale's term an additional two years and authorized sale.

While scant on deeper details, the sketch is clearly of an enslaved person unwilling to live and labor under this specific slaveholder. An early declaration of unwillingness to be Wilson's property escalated into two successful escapes, and fears of a third. Gale's motivation could have been anything: desired reunion with family and community; personal conflicts with Wilson; rejection of Wilson's labor regime and tasks; or some combination. These interpretations are all equally valid, based on the petition's representations. Gale's escapes were dramatic declaration that his living-cum-working conditions were unsatisfactory, and demanded some manner of adjustment. However, the short period between Gale's two escapes (about a week) indicates Gale had little hope of any successful negotiation with Wilson. Instead, he turned to escape to improve his laboring conditions and life.

Enslaved persons did not limit this advocacy to proximate slaveholders. Hirers also faced this form of negotiation. The enslaved woman Eliza evidently possessed a strong idea of what constituted an acceptable job. Her proximate slaveholder, Asa Hart, apparently sought to use her as a low-maintenance source of income by hiring her out as a domestic servant.[237] The renting household was responsible for her maintenance, while Hart collected her wages. However, despite placing her in "excellent and desirable" places, Eliza continuously departed to pursue her own ends.[238] According to one hirer's deposition, Eliza was "in the habit of going out at night. . . and said she would not stay in [the house] for her mistress and would not stay in for the Deponent." Eliza apparently resisted all forms of control, declared she "would do the work of this Deponent, no longer", and departed on her own terms. After an indeterminate amount of time at large, Eliza was recaptured. Her term of enslavement was extended only three months, and Hart was authorized to sell her out of Maryland.

While the precise reasons for Gale and Eliza's dissatisfaction remain unstated, their refusal to labor under current conditions is explicit. Gale simply ran away, and refused to stay in Wilson's service. In contrast, Eliza repeatedly sabotaged her placement with various hirers. Her efforts do not necessarily betray a drive towards self-liberation. Usually they just landed her back at Hart's home, ready to be hired out again. The broader pattern is instead that Eliza sought a rhythm of work and life which satisfied her personal needs, as opposed to being at the hirer's beck and call, no matter

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[236] *Petition of James Wilson, 13 Sept 1859*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851 – 1860), 514 ½-15 , MSA C122-5.

[237] *See Petition of Asa Hart, 22 Aug 1853*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS AND ORDERS, MSA T621-183. N.B.: This file is a series of loose papers in a folder. As such, citations will be to the relevant papers, not to a page number.

[238] *Id.*, at Petition.

how late the hour or how petty the whim. After all, it seems Eliza came back every day after her nocturnal socializing. While apparently recalcitrant and strong-willed, no complaints were levelled about Eliza's work, only her demeanor.[239] This paints her ultimate departure as the final act in a long-running chain of dissatisfactions. She only ran away after months or years of unsatisfactory working-cum-living conditions that she had returned to tolerate each morning. For whatever specific reason, Eliza snapped and was unable to continue working in her final hirer's home. She would labor and live on her own terms.

b. "Jailed herself": Self-Punishment as Resistance

Even at their most restive, enslaved persons recognized that slaveholders had a stake in the relationship. Slaveholders' attempts to retain control meant enslaved persons had either to forfeit their wager by acquiescing or somehow up the ante. At their most dire, enslaved persons wagered the ultimate chip against the slaveholders: themselves. In a notable minority of cases, term slaves made their point by actively seeking some of the most severe abuses deployed by slaveholders. Some demanded to be sold to another slaveholder, hopefully one of their own choosing.[240] For example, in 1854, Edward Kearney was shopping for a slave when he was approached by William Stewart, a term slave to be free on 4 May 1859.[241] At Stewart's "special request," Kearney bought Stewart's remaining term; evidently the original slaveholder was willing to sell.[242] However, by 1858, this cordial beginning had grown tense. According to Kearney's petition, Stewart "frequently absconded without cause or just provocation. . . each time of his absconding. . . absent more than a month."[243] Stewart "obstinately refuses to return to the service of your petitioner."[244] Kearney was awarded a two year extension to Stewart's term and permission to sell him out of state.[245]

Stewart had gambled on a new owner. The petition itself does not reveal whether Stewart and Kearney knew each other prior to the sale, or if Kearney was a local whose reputation would have reached Stewart. Evidently, Stewart was keen to escape his current proximate slaveholder and saw Kearney as a better option. When this new arrangement failed to meet Stewart's internal criteria, he began the search again, wagering his body and community on finding a better state of bondage.

Stewart was lucky to stay in Maryland, possibly the same county he had always lived in. Other term slaves sought a more dramatic departure. Charles Stewart thought he found a bargain in Eliza,[246] a term slave until 9 March, 1874.[247] However, as soon as he brought her to his home, Eliza immediately escaped. Upon recapturing her "on the road to Baltimore," Stewart "warned her of the

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[239] *See id.* at Petition; *see also id.* at Deposition of Louisa Naninger.

[240] Attempting to machinate sale to a preferred slaveholder was not novel to this context. *See e.g. Sally Allen, Administrator of Richard Allen, 11 May 1832*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1825 - 1833), MSA C399-43, Folder 36.

[241] *Petition of Edward Kearney, 2 Feb. 1858*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS AND ORDERS, MSA T621-183.

[242] *Id.*

[243] *Id.*

[244] *Id.*

[245] *Id.*

[246] Likely a different Eliza from Asa Hart's petition, though not impossibly the same. Stewart bought this Eliza from "Nicholas Owens." I cannot find records for this man to definitively tie the three slaveholders, but Owens could have been a small-time slave dealer or opportunistic matchmaker.

[247] *Petition of Charles Stewart, 9 Nov. 1854*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), 122-23, MSA C122-5.

consequences and told her if she ran again he would apply to the Court get her time extended and sell her out of state."[248] Eliza replied "she had as leave go to Georgia as any where else."[249] Despite a promise not to run away again, Eliza escaped again by the following afternoon.

Receiving a tip that she was in Annapolis, Stewart visited a "Mr. Randall's" office to inquire where Eliza's mother lived.[250] However, as he was chatting with Randall, Eliza herself walked into the office![251] When Stewart rose, exclaiming how glad he was to see her, he was met the bruising retort of "I want nothing to do with you, I want to see Mr. Randall."[252] Stewart eventually convinced Eliza to leave with him, but she flatly declared that while he might take her home, she would not stay.[253] Upon Stewart's petition, the Orphans' Court extended Eliza's term for a year, and authorized her sale out of state.

Eliza's gumption and palpable scorn for Stewart indicate how far she was willing to go in finding another proximate slaveholder. Not only had Eliza twice escaped from Stewart in a three-day span, she had visited a third-party to air her grievances and seek a new owner. Her declared indifference as to *where* she was sold emphasizes just how little Eliza cared for Stewart or his custody. She did not bat an eye at being sold to Georgia, away from her entire life. She was done with the man, and viewed anyone, anywhere, as an upgrade.

Why she went to "Mr. Randall" is unclear, as are Stewart's reasons for believing Randall would know Eliza's mother. It is possible that Mr. Randall was in fact Alexander Randall, a prominent lawyer and politician in Maryland, and later an associate justice for the Supreme Court of the District of Columbia. If so, Eliza was taking her frustrations to one of Annapolis most prominent citizens. Her previous owner, Nicholas Owens, was himself propertied and prominent. As propertied men, Owens and Randall might have run in the same social circles. Even if Eliza had not directly met Randall before, the social osmosis of gossip and overhearing might have convinced him he was a good option to find a new owner. He likely owned slaves himself, or was familiar with the market to potentially facilitate a sale. Like William Stewart, Eliza was willing to gamble that wherever she landed would be better than staying with Charles Stewart.

While Eliza strove to move on, some enslaved persons locked themselves down. The enslaved man Lewis escaped from Richard O. Crisp while the latter was celebrating the Easter holiday.[254] Managing to elude pursuit for four days, Lewis was eventually captured and confined in the Baltimore Jail. Crisp left him there while petitioning for an extension, but his petition was rejected because Lewis was not present for the proceedings.[255] Rather than re-file with Lewis present, Crisp had the sheriff whip Lewis before the two returned home.[256] Lewis remained for about ten days before slipping away and jailing himself in Baltimore.[257] A dank cell and starvation rations were better than Crisp's service. A palpably despondent Crisp could not locate Lewis until he

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[248] *Id.*
[249] *Id.*
[250] *Id.*
[251] *Id.*
[252] *Id.*
[253] *Id.*
[254] *Petition of Richard O. Crisp, 24 April 1860*, MSA C122-5 at 607-09.
[255] It's not clear whether the enslaved persons' presence was required or not. Some petitions note in the petition that the enslaved person is still jailed. It's possible that between filing and hearing, the enslaved person was brought to the court, but there was no statutory requirement.
[256] *Id.* at 608.
[257] *Id.*

received a tip that Lewis was holed up in jail of all places.[258] Crisp again petitioned the Orphans' Court. Evidently he brought Lewis this time, as the Court granted a six-month extension and permission to sell out of state.

Other enslaved persons combined the two approaches, jailing themselves specifically to withhold their labor.[259] Abraham apparently did not truck with George Harryman's commands, as Abraham had escaped "several times" in the seven years since he was purchased.[260] Most recently, Abraham had slipped away, jailed himself in Baltimore, and demanded to be sold.[261] When Harryman threatened him with out-of-state sale, Abraham "paid no attention to such admonition."[262] Like Eliza, he did not care where he ended up, so long as it was away from Harryman. Joining this consensus, the Orphans' Court extended Abraham's term by six months and authorized his sale out of state.[263]

For his part, the enslaved man Isaiah consistently refused to *leave* jail after recapture and demanded to be sold. Sometime around 3 February, 1852, Isaiah "absconded" from Marius Duvall "with a view of depriving him of his services."[264] While Isaiah was swiftly recaptured and jailed in Baltimore, it cost an irate Duvall $18.91.[265] Eager for his pound of flesh, Duvall brought Isaiah to Annapolis for the hearing.[266] However, he was forced to keep Isaiah confined as the bondsman "insists that he will not remain with your petitioner, but prefers to be sold."[267] Something was afoot, as the Court only granted a one year extension to Isaiah's term and no sale authorization. Evidently Duvall did not sell Isaiah within Maryland: Duvall returned in May 1854, Isaiah still in tow.[268] Apparently Isaiah had run off twice since previously in court, causing Duvall some "considerable expense."[269] Again, when Duvall attempted to present Isaiah to the Court, the bondsman simply refused to leave the Baltimore Jail.[270]

In each of these cases, enslaved persons courted serious abuses in order to make their point. Jailing oneself was no picnic, creating a new set of hells for enslaved persons. Each of the Baltimore County Jail's thirty-four cells measured 5'6" x 7'6".[271] Incarcerating both enslaved and free prisoners, these cells would have been crowded, even while the building's stone construction rendered it dank and dark. Private jails were incentivized to crowd as many enslaved persons into these cells as

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[258] Crisp's petition claims he advertised for Lewis' whereabouts, but I have not been able to locate the advert itself.
[259] *Petition of George Harryman, 12 July 1859*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1852 – 1865), MSA C399-13-61.
[260] *See id.*
[261] *Id.*
[262] *Id.*
[263] *Id.*
[264] *Petition of Marius Duvall, 3 February 1852*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1840 - 1851), 419-20, MSA C122-4.
[265] *Id.*
[266] *Id.*
[267] *Id.*
[268] *Petition of Marius Duvall, 16 May 1864*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851 - 1860), 98-9, MSA C122-5. Confusingly, Isaiah is called Jacob in this second petition. It is most likely they are the same person, as the 1854 petition makes direct reference to the 1852 proceeding as evidence of Isaiah/Jacob's turbulence. No one else is mentioned as escaping with Isaiah/Jacob either.
[269] *Id.* Duvall apparently attached an itemized list as Exhibit B, but it has been lost to time.
[270] *Id.*
[271] *Baltimore County Jail*, MARYLAND'S NATIONAL REGISTER PROPERTIES, Maryland Historical Trust, <https://apps.mht.maryland.gov/nr/NRDetail.aspx?NRID=1565> [accessed 17 June 2024].

possible, as the lodging fees were the lifeblood of their business model.[272] Public jails' incarceration of both free and enslaved defendants, runaways, and prisoners meant that there was at least some floor on brutality of treatment; it was possible someone was innocent or connected to powerful people. In contrast, private slave jails' singular population meant a much deeper slide into barbarity. Robert Lumpkin's infamous jail (and alleged "slave breeding business") was nicknamed "the Devil's half-acre."[273] Appropriate to this infernal moniker, it actually incarcerated most of its enslaved prisoners *below* ground.[274] If enslaved persons were not hauled off to the auction block or purpose-built whipping room, they were shackled to the walls and floor of this dungeon, or the windowless rooms on the jail's top floor.[275] Provisions and supplies were neglectful, with only a "single coarse blanket" for comfort, meals of cornbread and "a small amount of meat" (eaten without utensils), and the only source of water a single pail "refreshed once or twice a week."[276] Enslaved prisoners were forced to endure these conditions until their proximate slaveholder found a buyer, the coffle departed, or they were taken back to their slaveholder's home. Jailing oneself was not undertaken lightly.

While jailing oneself temporarily severed enslaved persons' personal lives, being sold out of state was a form of social death that ripped them away from their entire community and family. It could also be literal death as well: coffles were not gentle travelers and slave traders were far from attentive in their maintenance.[277] Enslaved persons were marched vast distances while chained.[278] Since the major trading season was the summer, this meant a beating Southern sun on bare metal and skin. Nor did the cruelty cease at the nightly stops. If not boarding at a jail or depot, the coffle was left chained for the night, sleeping in their shackles after a dinner from common vessels without the aid of utensils.[279] Enslaved women faced sexual violence from slave traders, or new physical abuses for refusing.[280] The Deep South's labor regime was also notoriously brutal, particularly if one landed in the cotton or sugar fields.[281]

Yet for many enslaved persons, gambling with their lives was worth it. A potential future of cotton or an infection from a dank slave jail cell was only a possibility. The unbearable control of the

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[272] *See* Richard F. Messick, "Site of Slatter/Campbell Slave Jail," *Explore Baltimore Heritage* (5 Aug 2022) <https://explore.baltimoreheritage.org/items/show/753> [accessed June 17, 2024].

[273]William Spivey, "America's Breeding Farms: What History Books Never Told You," MEDIUM (20 Mar 2019) <https://williamspivey.medium.com/americas-breeding-farms-what-history-books-never-told-you-6704e8b152a4> [accessed 17 June 2024].

[274] Abigail Tucker, "Digging Up the Past at a Richmond Jail," SMITHSONIAN MAG. (Mar. 2009). <https://www.smithsonianmag.com/history/digging-up-the-past-at-a-richmond-jail-50642859/?no-ist> [accessed 17 June 2024].

[275] *Id.*

[276] Matthew Laird, "Lumpkin's Jail," ENCYCLOPEDIA VIRGINIA <https://encyclopediavirginia.org/entries/lumpkins-jail/> [accessed 17 June 2024] (noting that the quoted enslaved person, Anthony Burns, might have been singled out for especially harsh treatment due to being a well-known escapee who had been recaptured and tried under the 1850 Fugitive Slave Act).

[277] Walter Johnson, SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET, 49, 50-1, 53-3, 55, (1999).

[278] Johnson, SOUL BY SOUL at 60.

[279] *Id.* at 70.

[280] *Id.*

[281] Richard Follett, THE SUGAR MASTERS: PLANTERS AND SLAVES IN LOUISIANA'S CANE WORLD, 1820-1860, 118-151 (2007); Edward E. Baptist, "Toward a Political Economy of Slave Labor: Hands, Whipping-Machines, and Modern Power" in SLAVERY'S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT, 31-62 (Sven Beckerts & Seth Rockman eds. 2016); Caitlin Rosenthal, "Slavery's Scientific Management: Masters and Managers" in SLAVERY'S CAPITALISM at 62-87..

current slaveholder was reality. For some, courting these dark futures was understood as the best, perhaps only, way to gain the slaveholder's serious attention and to make their point.

c. Same Parties, Same Case: Law as a Backdrop to Negotiation

While dramatic, actions such as self-incarceration were not the only moves in the enslaved person's repertoire. Isaiah's continued presence in Duvall's household shows that term slaves' absconding was sometimes simply the next gambit in ongoing negotiations. Enslaved persons pressured slaveholders with the loss of their labor cum capital, while slaveholders used the courts and their legal-rhetorical bludgeon against enslaved persons. Viewed in this light, slaveholders' petitions did not actually want the courts' ruling, only their presence and threat.

For example, Matilda Carroll filed two petitions against the enslaved man Jim, an enslaved man claimed by her husband's estate.[282] The first petition, in 1857, opens with the usual blandishments that Jim was "insubordinate" and "unmanageable," and requests leave to sell Jim at private sale.[283] Simultaneously, however, Carroll explains that she is in dire financial straits, unable to give bond as guardian to her son until she had repaired the estate's rental properties which comprised her family's main income. Without such repairs, Carroll worried that the homes would become "untenantable," and so begged leave to delay payment of her guardian bond while she effected repairs on the estate-owned houses. She also asked that auditors assess the estate's other lands for potential renting. The court duly granted each of these requests, including permission to sell Jim.

Jim was still around two years later in 1859.[284] Here, Carroll complained that Jim had run off "several times. . . without the consent and knowledge of your petitioner and without any just cause or reasonable excuse. . ."[285] Carroll had hired Jim out, a not-uncommon way for widows to maintain themselves. However, Jim consistently disagreed with her choices, running away and hiring himself out to employers of his choosing.[286] Tellingly, Carroll does not complain of lost time, income, or wages; it seems Jim was still sending the proper amount of money home. Instead, Carroll objected to the "demeaning" example he was setting, and her subsequent difficulties in hiring him into a "profitable situation." Carroll therefore requested (again) to sell Jim, which was granted (again).[287]

As an executor, Carroll could not request an extension of Jim's term (only owners and guardians of owners could do so). Therefore, her only formal recourse was to sell Jim. Yet Jim is still around two years later. Carroll had received permission to sell him. If he was so troublesome, why would she fail to do so? True, Carroll was strapped for cash and it appears Jim was offering a steady trickle of cash. Yet selling him would have offered a large infusion, perhaps enough to afford

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[282] *Estate of John Carroll, 14 July 1857*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1852-1865), MSA C399-13-44. (*Jim I*); *Estate of John Carroll, 13 Sept. 1859*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1852-1865), MSA C399-13-64 (*Jim II*).

[283] *Jim I* at Petition. Technically, these petitions were not turbulence petitions. Matilda Carroll was acting as the executor of her husband's estate, and therefore had to petition the court for any actions not authorized by the will itself. Sale of any property, including enslaved persons, would fit under this umbrella. However, the clear similarities in argument, situation, and outcome mean that there is very little daylight between this executor petition and a turbulence petition. Nothing could have changed if Matilda Carroll claimed Jim herself, instead of as estate property. I am therefore comfortable including *Jim I* and *Jim II* as turbulence petitions.

[284] *See generally*, *Jim II*.

[285] *Id.*

[286] *Id.*

[287] *See id.* at Order 13 Sept. 1859.

someone more tractable. In any case, the sale authorization had not expired; the permission granted in 1857 was good in perpetuity. Carroll therefore did not need to make a second request in 1859.

So why bother? Why spend the time and money to submit a second sale request? The most likely story is that Carroll was attempting to browbeat Jim into compliance by threatening displacement. Her intention was not *actually* to sell him, but rather use the Orphans' Court to scare him into good behavior. Obviously, sale was a perpetual concern for enslaved persons, but as a term slave, Jim was originally protected from the dreaded out-of-state sale. However, the threat of sale took on new teeth once Carroll was permitted to sell him beyond Maryland. After the first petition, Carroll had a new threat to level whenever she and Jim fenced over his labor conditions. Once that grew stale after two years of no-sale, she honed its teeth by filing a new petition.

Intriguingly, we see similar behavior from slaveholders who could request both extension and sale. In the 1850s, the slaveholding Tydings family filed a flurry of petitions against members of the enslaved Watts family. The first landed in 1853, when Richard Tydings filed a petition against Hanson Watts.[288] The petition itself is not terribly noteworthy, being scant in detail and sticking to tropes of the genre: Hanson[289] ran away "without cause;" Richard was forced into "great expense" in recovering him; and requesting an extension (no sale) to Hanson's term of enslavement.[290] The Orphans' Court dutifully granted an eighteen-month extension.

The case becomes more interesting when, three years later, Henry Tydings filed a new petition against John Watts.[291] In January 1856, Henry hauled John Watts before the Anne Arundel Orphans' Court to be "admonished" and warned of the 1833 law's provisions.[292] Four months later, John apparently took three days away from the Tydings home, returning home voluntarily on a Wednesday evening. When Henry attempted to "whip him [John] resisted. . . seized [Henry] and [Henry] had to call his brother to his assistance."[293] The Tydings brothers apparently triumphed and John was whipped. However, John immediately left again and proceeded to jail himself in Annapolis (a sign of his desperation, see *supra* at 40-41).[294] A frustrated Henry requested (and received) an extension to John's term of servitude and permission to sell him within or without the state of Maryland.

Despite beating up Henry Tydings, John Watts was still around when Henry filed another petition in 1858.[295] Apparently John had "run off three times" in the intervening two years, most

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[288] *Petition of Richard Tydings, 27 Sept. 1853*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), MSA C122-5.

[289] Since many people in these cases have the same surnames, I will use first names to clarify which Tyding/Watts I am referring to.

[290] Of minor note is that the Chief Judge dissented, noting that the Orphans' Court warned Hanson about the repercussions if he ran off again. This implies Hanson had never been warned, as required by the 1833 statute, but apparently the majority was unbothered.

[291] *Petition of Henry Tydings, on Behalf of Elijah Tydings*, *1 April 1856*, ANNE ARUNDEL REGISTER OF WILLS, PETITIONS AND ORDERS (1851 - 1860), MSA C122-5, 292-3. (*Watts I*).

[292] *Id.* at 292. Unfortunately, I am unable to find any record of this hearing in the Orphans' Court records. Given the pre-emptive nature of this warning, it is likely this was more a favor to Tydings than an actual hearing, and therefore generated no paper trail.

[293] *Id.*

[294] *Id.*

[295] *Petition of Henry Tydings, 2 Nov. 1858*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), MSA C122-5, 444-45.

recently to Baltimore.[296] To compensate Henry for the time and $10.48 of expenses, John's term was again extended and sale re-authorized.

The Tydings family's tussle with the Watts family again illustrates how family members pursued the same legal mechanism for disciplining recalcitrant term slaves, without obviously wanting to employ it. Richard Tydings only requested an extension against Hanson Watts, despite being empowered to request sale as well. Even his sparse statement of facts would have earned him a sale authorization, as Hanson Watts' flight was *prima facie* legal turbulence. A few years later, Henry Tydings requested both extension and sale, without utilizing the latter. Like Matilda Carroll, the Tydings men sat on their legal remedy, despite being fully entitled under law.

Due to the whimsies of historical preservation, we will never know how the Watts convinced the Tydings not to sell them. Nor will we discover what combination of inducements and threats kept the Watts from pursuing greater self-liberatory efforts. However, the Watts continued presence on the Tydings farms does show that some negotiation was ongoing, with periods of quiescence punctuated by another escape.

If we approach the Tydings' actions through a lens of control and subordination, their actions superficially resemble those of Matilda Carroll. Out-of-state sale was a powerful threat, heralding severance from one's family, friends, life, and home. In this register, uninvoked sale authorizations existed to browbeat term slaves into quiescence, not for a genuine intention to sell.

However, the Tydings petitions differed in their invocation of term extensions to enhance existing leverage, or as self-standing secondary threats. The former is simple enough: John Watts was under the power of Henry Tydings for a longer time. Unless he successfully escaped, Watts was stuck. That meant Henry Tydings could hold the sale authorization over John Watts' head for a greater period. Watts would theoretically be incentivized to walk on eggshells, as Tydings could at any time decide to make good on his authorization, even well after Watts had ceased attempting to escape. While the efficacy of that threat would (and evidently did) ebb and flow, these long duration tenterhooks still offered strong leverage to slaveholders working to tamp down on term slaves' labor complaints.

Extension's utility was not limited to enhancing threats of sale, it was also a threat in its own right. This is not particularly revelatory, as the 1833 statute required slaveholders give notice that terms of enslavement could be extended for viciousness and turbulence. Extension was a threat from the beginning. However, there is a difference between an abstract threat and one which is mobilize. For the Watts, the warnings of the 1833 law obviously did not dissuade them from running. Yet the court's extensions meant now they were at the mercy of frustrated slaveholders for even longer. This changed the calculus for self-advocacy. With freedom on a farther horizon, all negotiations must to be tempered by the knowledge that the slaveholder has more time to strike back. Furthermore, there are more opportunities for a slaveholder to visit their displeasure on friends and family, such as through sale, physical or sexual abuse, or placement in dangerous or distant work. For John and Hanson Watts, their new, more distant, release dates required them to tread carefully with any further self-advocacy.

It is also possible that the Tydings sought extension simply to boost the Watts' sale price. From the start, both Tydings men were empowered to sell Hanson and John Watts within Maryland. However, the Watts were now known runaways, which lowered their price and desirability. A longer

[296] *Id.* at 292.

term was inherently more valuable to a purchaser, and served to counteract the discount imposed by a bad reputation. It is possible the Tydings assumed they would sell the Watts within Maryland, with Henry laying the groundwork for any out-of-state opportunities which presented themselves. Extensions in hand, the Watts men were worth more than before the petitions.[297]

There is at least some evidence that many slaveholders thought this way. In May 1861, Cosmore Robinson escaped from John Timanus' possession.[298] After several advertisements, and even more footwork, Timanus managed to catch and jail Robinson. Fed up, Timanus took the unusual step of only asking for an out-of-state sale authorization, not any extension.[299] While the Baltimore County Orphans' Court granted his petition, Timanus was back five months later, in November 1861. He had been unable to sell Robinson out-of-state having been "prevented by the Rebellion from making such a sale."[300] In the interim, Robinson had also escaped several more times. Timanus therefore requested an extension to Robinson's term, and was granted both eighteen more months and an additional out-of-state authorization.

While it is possible the extension was to compensate Timanus for the additional escapes, the tone of the petition indicates extension was requested as a substitute for out-of-state sale. Timanus' *mea culpa* for not already selling Robinson sets a tenor that Timanus was looking for a different pound of flesh. The Deep South had a voracious appetite for enslaved persons, with the higher prices to match. Since the out-of-state market was shuttered by the Civil War, Timanus was confronted with Maryland's relatively lower domestic prices. Viewed instrumentally, extension was a sweetener for in-state sale. To make the "right" amount of money, Robinson's price needed a boost, and a sizeable extension was just the ticket.

Between the withholding of labor and the courting of punishments, turbulence petitions evidence serious breaches in slaveholder-enslaved relations. If things had reached such a boiling point in the Ottoman Empire, if Jim, the Watts, or Robinson had been Ottoman slaves, it is unlikely they would have ever gone free. Even presuming a slaveholder of good temper and patience, one itaat meant the slaveholders patience had been reached, so religious-legal authorities were being asked to discipline the absconding slave. A second spelled the end of a tedbir or mükateb's pending liberation. There is a perverse sort of mercy in the American system's preservation of future liberty, one which contrasts with Ottoman law's relative respect for enslaved persons.

This is ironic, given the American legal system's broad unwillingness to grant slaves' personhood any meaningful acknowledgement. Simply put, Maryland law (and Southern law more generally) was not well-practiced in thinking about slaves as *people*. In most cases, slaves were treated as objects of property: goods to be conveyed, bequests to be disbursed, or the abstract, commodified labor of a hire contract. Their actual personhood was usually only legally relevant in criminal proceedings and police regulations, where their agency and decisions were quite literally on trial.[301] Criminal penalties were harsh and swift for enslaved defendants, as they were suddenly now

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[297] An intriguing, if impossible, question is whether the extension and sale permissions compensated for broadcasting a slave as a runaway.

[298] *Petitions of John Timanus, 1 June 1861 & 12 Nov. 1861*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1852 – 1865), MSA C399-13, Folder 79.

[299] As a rule, sale-only cases usually involved some violence by the enslaved person, or some nebulous claims of "viciousness." When escape or other expenses were involved, slaveholders asked for extensions.

[300] *Id.*

[301] *See* Thomas Morris, SOUTHERN SLAVERY AND THE LAW, 1619-1860, 10 (1996) (summarizing the work of Mark Tushnet and A.E. Keir Nash discussing the legal tension inherent to slaves-as-property v. slaves-as-people). Facially, freedom suits would be another instance where enslaved persons' individuality was important for ruling on the merits.

considered in full control of their faculties and agency.[302] When crimes were committed against them, enslaved persons were property as often as they were victims, as many slaveholders chose to forego indictment in favor of civil remedies and damages.[303] American slaves were treated as legal property or defendants, neither of which were liable to be for their benefit.

In contrast, Ottoman slaves possessed a startling range of rights and privileges under both dynastic and Sharia law. While enslaved persons were not "full" people under Islamic law (e.g. they faced different criminal penalties for various offenses and were not required to pay *zakat* (a foundational type of alms)), they still held most rights.[304] With their proximate slaveholders' consent they could own legally-protected property;[305] marry and divorce; hold temporal power as officials (and many Islamic states staffed their governments with enslaved persons); serve as guardians to unmarried women; and execute wills, among other personal and property rights.[306] In terms of status-specific legal powers, Ottoman slaves could file freedom suits to contest putatively unlawful bondage, and file suits against their owners for abusive treatment or neglect.[307] For many types of disputes, enslaved persons could get their day in court and enter as legally legible beings. Yet for all this supposed respect and recognition, *in futuro* manumission hung delicately, liable for revocation at a slaveholder's pique.

In placing these two systems in relation, we see that the question is not "which system was more cruel?" but actually "in which ways was each system cruel, and in which was it less so?" This reversal feels strange, particularly given the historical tendency to treat Islamic slavery as "milder" or more benign than its American counterpart.[308] The root, ironically enough, likely lies with the very capitalism which animated Maryland term slavery, along with a hefty dose of economic angst. Term slavery was a staple in the playbook of Maryland's bourgeois class. It was a critical tool for extracting the maximum labor from an enslaved workforce, often at arm's length.[309] If removal of the promise of freedom became an inflexible sanction as in the Ottoman case, the power of that mechanism became more tenuous. The appeal of ad hoc measures, such as self-liberation, would grow as the "legitimate" options became more tenuous. This would place Maryland's slaveholders in a bind. They could keep idle or unproductive slaves at home, well supervised but relatively unproductive. They could hire out these hands, earning money from wages but now risking flight without the protections of *in futuro* manumission. Or they could sell their bondspeople entirely, becoming dependent on wage labor and apprentices to fill their needs. That would solve the immediate problem but limited their flexibility when it came to balancing their labor force. Extension, not revocation, offered a way to keep the flow of labor predictable and stable, creating a cheque book mercy at odds with Maryland law's usual callousness.

However, freedom suits were predicated on an unlawful enslavement, meaning the petitioner was never a slave to begin with; their personhood was always relevant, simply illegally limited.

[302] *See generally*, Jeannine Marie DeLombard, IN THE SHADOW OF THE GALLOWS: RACE, CRIME, AND AMERICAN CIVIC IDENTITY (2012).

[303] *Id.* at 198-9, 203.

[304] Footnote some of the differences, especially across *maddhab*.

[305] R. Brunschvig, "'Abd" Anything that was not explicitly granted to the enslaved person did default to the slaveholders' ownership, as was typical for *peculia* across slave societies.

[306] Only certain maddhab accepted the latter, with the Hanafi notably barring enslaved executors.

[307] Ehud Toledano, AS IF SILENT AND ABSENT: BONDS OF ENSLAVEMENT IN THE ISLAMIC MIDDLE EAST, 61-82, (2007).

[308] *See* Ehud Toledano, SLAVERY AND ABOLITION IN THE OTTOMAN MIDDLE EAST, 15-19 (1998) (discussing various proponents of this milder treatment theory).

[309] For more on this discussion, *see supra* at 20-2.

d. Seatbelts Not Required: The Normalcy of Turbulence

Altogether, turbulence petitions offer several lessons about slavery in Maryland. Legally speaking, self-advocacy and turbulence went hand-in-hand. What slaveholders interpreted as restiveness or recalcitrance was simultaneously/actually enslaved persons making their displeasure known in the only language likely to extract a response. While the next chapter digs deeper into this idea as a form of labor advocacy, these negotiations evidence that enslaved persons did not blithely accept the contours of their bondage. Rejecting slaveholders' wishes always carried risks, especially since term slaves held a precious ember of liberty; every instance of truculence could delay manumission. Intriguingly, enslaved persons recognized when simply running away was not enough. Breaking out the heavy artillery, some enslaved persons intentionally courted out-state-sale and incarceration in order to make their point, using their bodies as a wager. In turn, slaveholders responded with whip and pen, demanding the law make their mastery whole once again. While the lost time and labor could never be truly recovered, slaveholders contented themselves that their control was reestablished, whether for a few more months or the brevity of a sale.

Chapter II – Labor Negotiations Within Turbulence

I. Introduction

Chapter 1 has shown us that turbulence held different meaning for enslaved persons and those who claimed them. While slaveholders seethed at the irascibility of their slaves, enslaved persons gritted their teeth in hopes of improved circumstances. We can now sharpen this analysis. How did enslaved persons contest their labor conditions?

With the assistance of Stephanie Camp's rival geographies, this chapter examines the ways in which enslaved persons advocated for changes in their laboring conditions and the concessions they were able to extract. Using this dual-perspective lens, we see that labor grievances could, and did, incentivize a variety of self-help methods from enslaved persons. While most turbulence petitions ended with some combination of extension and sale authorization, enslaved persons could still win great victories through such advocacy.

When labor negotiations did not work out as hoped, enslaved persons did not possess many options. In contrast to the institutional pluralism in the Ottoman Empire, American enslaved persons were relatively bereft of counterweights against their proximate slaveholders, though social opprobrium offers one possibility. This ultimately shaped how enslaved and Black Marylanders understood the law, invoked its power, and pursued litigation.

II. Rival Geographies for Labor Negotiations

The very human variety of when's, how's, and why's makes turbulent slave petitions a splendid place to examine enslaved persons' labor agitations and self-advocacy. Whenever an enslaved person was coded as turbulent or vicious, it is appropriate to consider whether the claimed misbehavior was in fact something more. Stephanie Camp (and others) have noted the "rival geographies" which permeated the South.[310] Adapted from Edward Said's formulation (which focuses on resistance to colonial oppression), Camp's rival geographies recognizes that slaveholders and enslaved persons could see the same place and understand it completely differently.

For example, suppose a slaveholder orders the building of a picturesque, idealized slave quarter, one with tidy, whitewashed houses arranged in neat rows around a central open area. To a slaveholder, these would all evidence a modern, rationally managed plantation. The panoptic organization of the houses would allow for constant surveillance by the slaveholder or other white Southerners, while the attached garden plot would reduce enslaved persons' needs or reason to leave the area for foraging, trade, or other provisioning activities. In contrast, enslaved persons might view these houses as places of refuge, as semi-private places to enjoy the company of loved ones. The garden plot would not be a trap to keep enslaved persons at home but a place to grow something to sell in the market, and thereby purchase capital like livestock or fishhooks or luxuries like sugar or nice clothing.[311] The plot would also be a source of independence, allowing enslaved persons some

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[310] Stephanie M.H. Camp, CLOSER TO FREEDOM: ENSLAVED WOMEN & EVERYDAY RESISTANCE IN THE PLANTATION SOUTH, 7 (2004); Vanessa M. Holden, SURVIVING SOUTHAMPTON: AFRICAN AMERICAN WOMEN AND RESISTANCE IN NAT TURNER'S COMMUNITY, 22-3 (2021); Kathryn Benjamin Golden, "'Very Fond of Spirituous Liquors': Alcohol and Fugitive Black Life in the Slaveholding South," 45:2 SLAVERY & ABOLITION 1, 1-2 (2023); J. T. Roane, "Plotting the Black Commons," 20:3 SOULS 239, 242, 246 (2019).

[311] *See* Dylan Penningroth, CLAIMS OF KINFOLK: AFRICAN AMERICAN PROPERTY AND COMMUNITY INT THE NINETEENTH-CENTURY SOUTH, 51, 60-68, 100 (2003).

choice and flexibility in their own diets, beyond whatever the slaveholder's allowance offered. Even though they might look upon the same houses and land, rival geographies recognizes that slaveholders and enslaved attached very different significances to them.

Rival geographies are not limited to objects and land.[312] So too with actions. Slavery Studies as a discipline has long recognized that enslaved persons "misbehavior" could be a form of protest. For example, suppose an enslaved woman named Lavinia ran away for a few days. Her voluntary return indicates she was not trying to self-emancipate, so her action was rooted in some other motive or frustration. Splicing in rival geographies builds on this understanding to offer a means to discuss the differing interpretations of a single event or action.

Lavinia's marronage therefore takes on more concrete facets, depending on the circumstances. The slaveholder probably grumbled that this was simply a tantrum, a petty rebellion by someone who didn't know her own best interests. Lavinia was being "turbulent" (and vicious if she fought her way out). For her part, Lavinia ran away as a form of protest, but against what? Maybe she was ordered to work well into the night, while sick, or without proper tools; her escape becomes a labor negotiation. Or perhaps the overseer or slaveholder took an unwelcome interest in her body; her running away becomes self-defense and a rebuke to objectification and sexual exploitation. Upon her return, Lavinia would see if her gambit had paid off.

Turbulent slave petitions offer a window into this back-and-forth. While the cases suffer the usual distortions common to legal archives (for example, framing the narrative to fit the pleadings; the presence of certain voices, the absence of others; molding of language to fit legal elements and style), the cases still grant a glimpse into when, how, and why enslaved persons contested the boundaries of their enslavement. The petitions also offer slaveholders' responses, one of which was the petition itself and its labelling of the enslaved person as turbulent, vicious, or incorrigible.

III. Introduction to the Petitions and Content:

As we saw in the previous chapter, slaveholders' factual proffers and timelines offer insights into how enslaved persons tried to demand concessions from slaveholders. Throughout the petitions, the thickest, most distinct thread is enslaved persons' tactical use of absconding to change the contours of their laboring conditions. Here, running away was not about obtaining liberty, but rather putting the proximate slaveholder on notice that the contours of the work they had imposed needed change.

a. Seasonal Rhythms

Seasonal changes to work regimens were always liable to stir up enslaved persons' discontent. Planting and harvesting seasons were the busiest times on a farm or plantation. The quest to maximize crop yields meant slaveholders demanded extreme efforts from enslaved persons. Forcing bondspersons to work at night by torchlight, and on Sundays, and at a faster clip than usual were all tactics used to extract every last scrap of labor-intensive agricultural product.

It is no surprise that such conditions could lead enslaved persons to escape, if only for a short break from the unrelenting toil. For example, Owen Cecil's 1859 petition complained that William Hayden had fled "at harvest and at the busiest time of the year."[313] The Anne Arundel

[312] While I have not seen any other scholars extend rival geographies in this way, that does not mean someone else has not beaten me to the punch.

[313] *Petition of Owen Cecil, 27 Dec. 1859*, ANNE ARUNDEL COUNTY REGISTER OF WILLS (1851-1860), MSA C122-5, 527-7.

Orphans' Court inflicted a three-month extension to Hayden's term.[314] The brevity of this extension was a small miracle. When Tom Graves fled during the 1855 harvest season, the same court extended his term by a year.[315] Obviously there is more to life than what exists in court records,[316] and unrecorded oral testimony might explain this disparity, such as irresponsibility, mismanagement, or bad-faith action by the slaveholders rankling the judges' sensibilities.

Charles Brown's rather dramatic mid-escape visit to his plantation illustrates just how much didn't make it into the legal record. An eighteen-year-old and with twelve more years of enslavement, Brown escaped from his proximate slaveholder, John Sillman, in April 1856. About fourteen days later, Brown was captured by ferrymen and locked up in the Anne Arundel County Jail.[317] There, Brown cut a deal with Sillman: Brown would serve "willingly and obediently" if Sillman transferred him to a Richard Weems.[318] However, Brown again escaped on 2 April 1857, this time for twenty-five days. This time at-large was not uninterrupted. Brown apparently took the time to visit Weems's farm, brandishing a butcher's knife and pistol, and threatening "one of the other servants."[319] Brown eventually returned, voluntarily, to the farm. Regardless, Weems petitioned the court to extend (and only extend) Brown's enslavement, stating that Brown was "unwilling to remain." The court granted a twelve-month extension, but did not authorize (the unrequested) sale out of state.[320] Brown's final (recorded) escape was April the next year. After eleven days at-large, Brown was recaptured and Weems filed another turbulence petition. The court granted Weems an eighteen-month extension to Brown's term of enslavement and authorization to sell Brown out of state.[321]

Weems petitions are interesting both because they demonstrate several flavors of term slaves' labor agitation but also what they reveal about the back-and-forth between Weems and Brown. Brown was clearly protesting some specific labor scheme. His voluntary return indicates he was not aiming for self-liberation. Something more is at play and the timing of his absconding offers

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[314] The rather short extension is notable since Hayden had run away at least twice, totaling forty days or more. Other enslaved persons had received 6-12 month extensions for fewer escapes. It is likely that the Orphans Court was skeptical of Cecil's timing: Hayden was to be free four days after the petition's filing, and Cecil declined to bring Hayden to the hearing. This chicanery actually earned a dissent out of one Judge Hunter, who suggested Cecil should have filed his petition at the time of the marronage (September or October) rather than months later.

[315] *Petition of James Stockett, 24 July 1855*, ANNE ARUNDEL REGISTER OF WILLS, PETITIONS & ORDERS (1851-1861), MSA C122-5, 238-9. Graves and Hayden had both absconded twice, incurred some indeterminate (but apparently heavy) expenses on their proximate slaveholders, and withheld their labor during harvest time. However, Graves (who had two years left of enslavement) got another year, while Hayden (who had four days) got three months.

[316] Indeed, apparently Graves promised Stockett that Graves would serve Stockett for *two* additional years if he was spared a whipping for absconding. Stockett later petitioned the court to update its order to reflect this bizarre extra legal pseudo-contract. *Petition of James Stockett, 27 Oct. 1857*, ANNE ARUNDEL REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5, 384.

[317] *Petition of Richard Weems, 28 April 1857*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1861), 421-22, MSA C122-5 (*Brown I*). I have been unable to locate the original order for this petition. However, in Weems' second petition contained a complete copy of the first petition. *See Petition of Richard Weems, 30 April 1858*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDER (1851-1860),, 343-45, MSA C122-5 (*Brown II*).

[318] *Id.* at 421. It is not clear whether this was a sale, a loan, or simply Sillman giving away a troublesome bondsperson. The petition and casefiles do not contain a bill of sale or anything else to document the swap.

[319] *Id.* at 420.

[320] *Brown II* at 344. This is not surprising, since Weems did not ask for authorization to sell. However, in other cases, Orphans' courts *sua sponte* granted permission to sell, without petitioners asking. *See, e.g. Petition of Carville Stansbury, 14 July 1858*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-52-1.

[321] *Id.* at 345.

a clue. His escapes were universally in April, usually in the latter half of the month.[322] April is a busy month in agriculture, as cotton, wheat, fruit trees, most greens, and root vegetables are planted, as well as a time for fertilizing and mulching existing crops (e.g. fruit bushes and established orchards). While Weems doesn't complain about absconding during harvest season, as Hayden and Graves' proximate slaveholders did,[323] the consistent timing of Brown's flight indicates there was a relationship with that time of year. If Brown was a field hand, his flight indicates he had no truck with Sillman or Weems respective planting regimes. Given the absence of any harvest season escapes, the rigor of the labor probably wasn't what frustrated Brown. Perhaps it was the spring damp, particular hours demanded, or certain varieties of tasks (digging, handling of compost/mulch). Regardless of why, the consistency of Brown's timing makes it clear planting season rankled more than others.

Even if Brown was not a field hand, seasonal spikes in labor would cause friction. Enslaved coopers might be pressured to increase production of barrels in the harvest, while an enslaved smith would need to work overtime repairing plows and hoes during planting. Enslaved domestic workers would bear the brunt of stressed slaveholders or long hours cooking for everyone involved. Non-agricultural roles simply soften the relationship between Brown's grievance and timing of his absconding. Brown's flight was clearly linked to *something* about the planting seasons labor rhythms, and he was making his displeasure known.

For action taken to be read as a negotiation, the other side needs to respond. Weems petitions are certainly one response, but so is Brown's continued presence at Weems' home. It is true that Weems did not receive permission to sell Brown until 1858, after Brown's third run. However, that was only permission to sell Brown *out of state*. In-state sales were always permitted. There is a nominal possibility that Weems retained Brown until he could be replaced, but that seems unlikely given the proximity of major players in the slave trade in Baltimore.[324] Weems would have found a buyer, albeit at a reduced price given Brown's status as a runaway. Instead, Weems kept Brown for at least two more years and two more escapes.[325]

This indicates the two reached some sort of détente. Perhaps Brown promised to stick around, repeating the gambit which got him into Weem's possession in the first place. Alternatively, maybe Brown was a sterling and effective worker, a "No. 1" or "prime" hand in the parlance of rationalized slave management.[326] For his part, Weems might have promised to amend Brown's planting season workload or to keep Brown separate from the unnamed subject of Brown's threats.

Graves and Brown were not the only ones to run away during particular times of the year. Using the date of filing as the temporal marker, a distinct seasonal rhythm to enslaved persons' escapes emerges. Fall appears to be the busiest time of year, both agriculturally and for escapes. (See Fig. 2.1) In all three counties, Fall showed the highest number of abscondings, followed by Spring, Winter, then Summer. This trend is emphasized by sub-dividing the year into Harvest (August

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[322] *See Brown II* at 344, 345.
[323] *See supra* at 48-9, 50.
[324] Austin Woolfolk's notorious firm is a prime example of Baltimore's prominence in the slave trade, though the man himself died in 1847, nine years before Brown's first escape.
[325] Brown drops from the record after this case. Given that he would have been manumitted in 1872 (after the Civil War), it is unlikely that a manumission deed would have been filed for him.
[326] Walter Johnson, SOUL BY SOUL: LIFE INSIDE THE ANTEBELLUM SLAVE MARKET, 58-9, 118 (1999); Caitlin Rosenthal, "Slavery's Scientific Management: Masters and Managers," in SLAVERY'S CAPITALISM: A NEW HISTORY OF AMERICAN ECONOMIC DEVELOPMENT, 75-79 (Sven Beckert & Seth Rockman eds. 2016).

through November) and Planting (April through June) seasons. Harvest was an overwhelmingly popular time for escapes, while Planting generally was not.

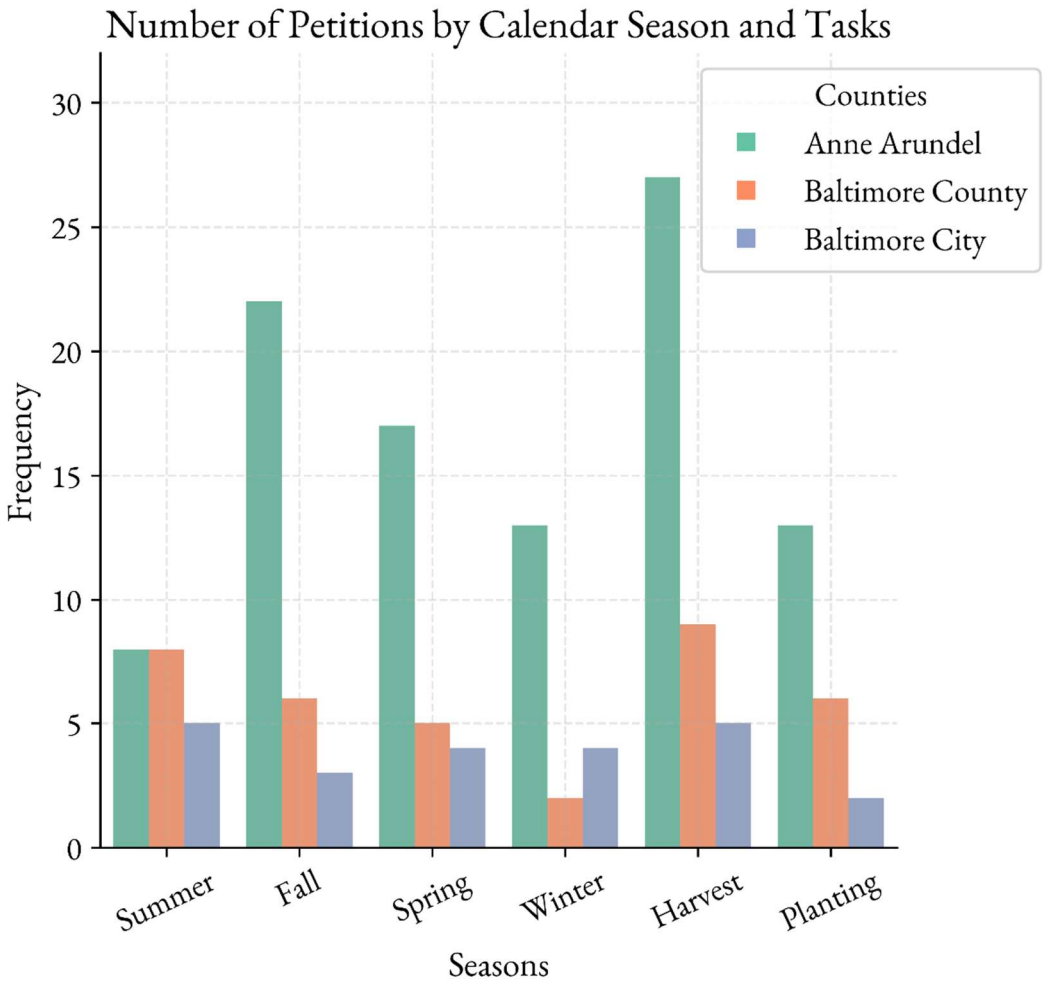

Figure 2.1: Number of Turbulence Petitions by Calendar Season and Tasks

Intriguingly, it appears that Harvest time escapes actually received the smallest extensions, while escapes during Planting and Spring could earn the largest in each county. (See Fig 2.2). Baltimore County's range was certainly highest, with the fourth quartile spanning 50-80 additional months of servitude. While Baltimore City followed a similar trend (at least for Planting), Anne Arundel County was at its most punitive in the Winter. **Do a better job explaining the BW plot.**

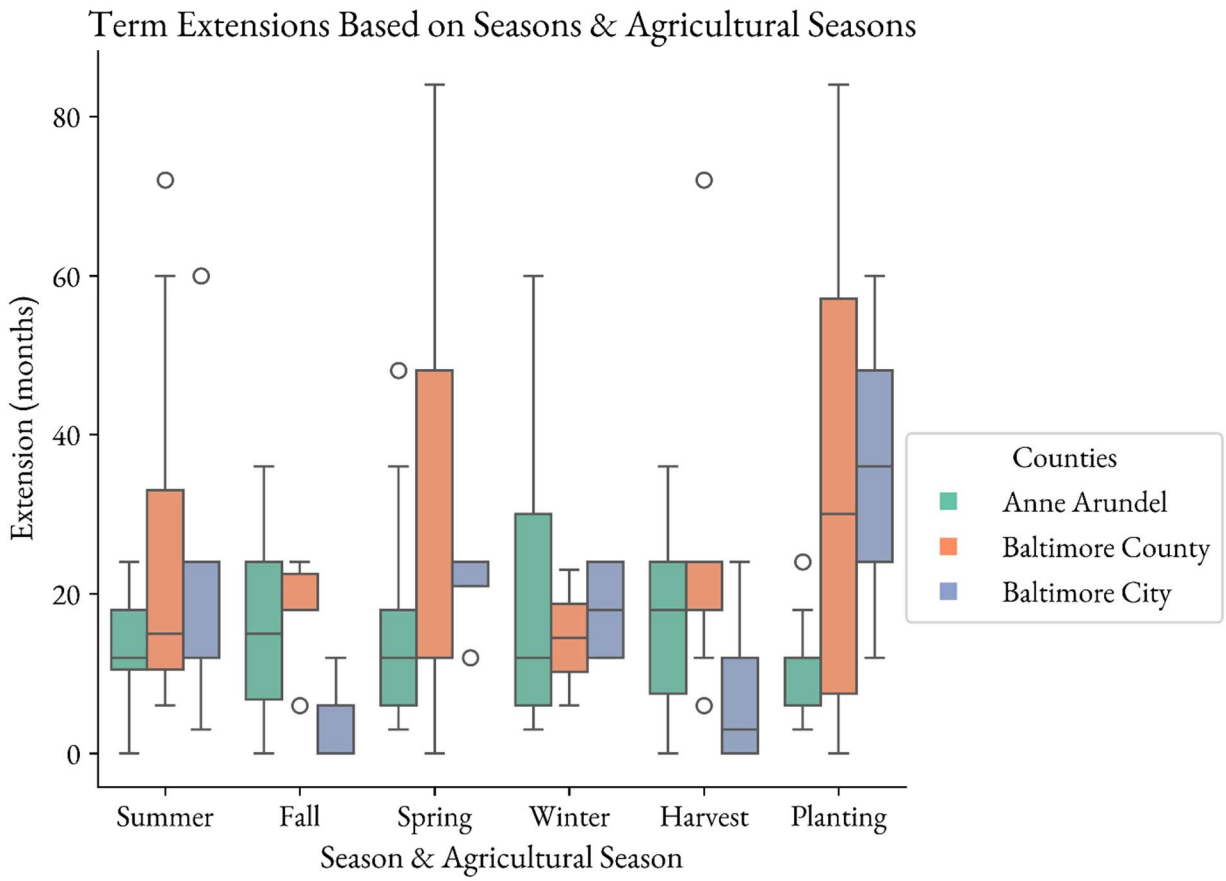

Figure 2.2: Term Extensions Based on Season & Agricultural Season

While these differences defy precise explanations, they are useful for identifying regional variations and potential root causes. Planting and harvesting created plenty of cover for a would-be escapee. People were out and about making deliveries, hauling produce, and fetching supplies. Some enslaved persons likely exploited that chaos to slip away. Alternatively, enslaved persons might have fled as a result of slaveholders' new demands. Upon recapture, regional sensibilities and economics led slaveholders and their courts to imbue these seasons with different levels of importance, and therefore different spirits of punishment.

Looking first at Anne Arundel County, the Orphans' Court apparently did not deviate too far from its usual extension range, even though the number of escapes spiked during Harvest and Planting. Perhaps this was in recognition that the tensions of busy seasons might lead to mistakes. Alternatively, slaveholders did not want to be stuck in court while there was work to be done. As such, they made smaller requests of the courts in order to time spent justifying a dramatic extension.

Baltimore County is harder to interpret, showing large spikes in Spring and Planting, and generally top-heavy extension ranges. This likely related to the county's intermediate position between urban and agricultural. Spring was a busy period, both logistically as materials were hauled from Baltimore's ports and factories to their rural destinations, and in terms of human traffic, as hirelings traveled to and from worksites. Harsher extensions were likely an attempt to deter abscondings during this seasonal chaos. Alternatively, the prevalence of mills, tanneries, and other refiners of agricultural products meant there were a larger number of skilled and crafts slaves in the

county. Since their labor cost more on the market, slaveholders' absconding-related losses were relatively greater, thereby drawing larger extensions. However, not every (or even a majority) of enslaved persons worked in crafts or artisanal production. This heavy handedness would therefore require that Baltimore County's legal culture drift into a more punitive mode across all abscondings, rather than just those of skilled workers.

Finally, Baltimore City showed the least variation in number of escapes by season, likely due to the city's more stable labor market. While some industries shut down based on season (e.g. port and construction in the winter), many urban slaveholders used their bondspeople as domestic workers, a yearlong role. The seasonal stability led to a tighter range of extensions, as no season predominated over the rest.

IV. Close to Freedom: Self-Hire as a Concession

So far, the picture painted by turbulence petitions indicates labor agitation rarely paid off, and more often simply increased one's time in bondage. The petitioners generally got at least an extension, even if they requested sale as well. However, this is more likely a symptom of my archive than reality. Legal archives only consider a subset of all labor agitations and abscondings. Highly motivated slaveholders, those who believed in courts as an institution, or those with a preference for formal proceedings and documentation went to court. Others might have arranged a sale within Maryland (which did not require judicial authorization), or simply sold the enslaved person South, trusting that distance and racism would prevent discovery of their crime. Suffice to say, while pessimism about enslaved labor advocacy might seem warranted from the turbulent slave petitions, this is simply a snapshot of broader antebellum life.

By that same token, sometimes enslaved persons won out in a real way, we just do not see it in the court records. As we saw with the repeat player cases,[327] it is difficult to tell how many slaveholders followed through on their sale authorizations versus how many contented themselves with the legal win. Others might never have gone to court at all, simply whipped the re-captured enslaved person before making some adjustments to the plantation labor regime; a conditional victory for the enslaved person.

There are, of course, even happier results. Sometimes term slaves managed to find a new proximate slaveholder with better working conditions.[328] Other times, enslaved persons got within a hair's breadth of freedom. For example, Catharine Brown was determined to make her own way in the world, no matter what her proximate slaveholder, John Walton, had to say about the matter.[329] Walton's first warning should have been that he bought Brown while she was incarcerated in the Anne Arundel County Jail.[330] For Walton, it was all downhill from there. Brown apparently escaped to Baltimore while Walton was visiting Cape May, taking with her a "young negro man valuable to your petitioner as a cook in his house."[331] When the two were caught, Walton was "compelled to dispose of his young negro man at a price which he could not replace so valuable a servant for the

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[327] *Supra* pp. 42-7.
[328] *See e.g. Petition of Charles Stewart, 9 Nov. 1854*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5, 122-3*, supra* at 38.
[329] *Petition of John Walton, 6 Mar. 1849*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), MSA C122-4, 281-4.
[330] *Id.* at 281.
[331] *Id.*

amount obtained for him."[332] He tried to sell Brown, but "her character was so well known in Baltimore he could find no one who would purchase her at any price."[333]

Fed up but unable to sell her, Brown decided to make her someone else's problem. If Brown found a home "which he approves of," Walton promised to hire her out to the residents.[334] Even better, if Brown did not cause any more trouble, Walton promised her one dollar out of every month's wages.[335] This was not terribly generous, as most domestic roles paid between $8-10 per month, along with room and board.[336] As a final condition, if Brown ran away again, he would sell her out of state. Brown apparently took the deal and chose to hire herself out to one Mrs. Cole, a resident of Baltimore.

Walton returned home and apparently contented himself that no news was good news. However, he eventually received "intelligence" that Brown had run away again.[337] Traveling once again up to Baltimore, Brown learned that Brown had actually been gone for over a week, had been "worthless" since the second week of her hire, and had frequently gone out at night without Mrs. Cole's permission.[338] At the time of his petition, Walton had been unable to locate or recapture Brown, whom he believed was somewhere in Baltimore.[339]

For Walton, these were the actions of a petulant and recalcitrant slave. In contrast, Brown would characterize her escapes and nightly outings as demands to return home, for more autonomy, and for amended labor conditions. According to this view, Brown's original caper had established that she meant business and that Walton should take her complaints seriously. First, she had escaped to Baltimore, a place she evidently knew many people and where she had originally lived before successive sales brought her to Anne Arundel County.[340] Walton knew he was lucky to find Brown in Baltimore's crowds, much less recapture her.

Second, Brown had "ruined" a valuable (though unnamed) cook. It is not clear what the cook's relation to Brown was, whether a family member, romantic partner, or just someone she roped into the plan. It is similarly unclear why Walton felt the need to sell the cook after a single departure. Poison and paranoia are possible culprits.

Slaveholders had a fascination with poisoning, and deeply feared that an enslaved person would slip a dose into their meals.[341] Newspaper articles gleefully reported every rumored poisoning,

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[332] *Id.*
[333] *Id.*
[334] *Id.* at 282.
[335] *Id.*
[336] Rockman, SCRAPING BY: WAGE LABOR, SLAVERY, AND SURVIVAL IN EARLY BALTIMORE, 140 (2009). Rockman also notes that conditions as a domestic worker were onerous enough that the being a piecework seamstress at $4-5 per month, without room and board, was often not always viewed as a rawer deal.
[337] *Petition of John Walton*, MSA C122-4 at 282.
[338] *Id.*
[339] *Id.*
[340] *Id.* Walton bought Brown from a George Weems while she was locked up at the Anne Arundel County Jail. Weems had purchased Brown from a Thomas Dent of Baltimore City. If George Weems was related to Richard Weems (*supra* at 50-1), then he was also based on Anne Arundel County.
[341] Erin Austin Dwyer, "The Poison Pen: Slavery, Poison, and Fear in the Antebellum Press," 45:1 SLAVERY & ABOLITION 10, 13 (2024); nor was it just American slaveholders, *see*, Diana Paton, "Witchcraft, Poison, Law, and Atlantic Slavery," 69:2 WILLIAM & MARY QUARTERLY 235, 259, 261 (2012) (discussing French Caribbean slaveholders fear of poisonings due to several prominent poisonings, while their British counterparts feared *obeah* and other Afro-Caribbean faiths for their use as a unifying force, including the use of poisons in symbolism and oath binding).

creating a popular sub-genre of articles.[342] Due to its ubiquity, arsenic was a particular fixture in the slaveholder imagination. In the highly agricultural slave states, "white" arsenic[343] would have been a common solution to rats and other pests, stocked in almost every home. Its lack of taste or odor made it a hidden menace, especially since its effects were also (initially) quite subtle.

Acute arsenic poisoning is essentially the result of a famine amongst one's cells.[344] Chemically speaking, arsenic behaves a lot like its neighbor on the periodic table, phosphorous. While phosphorous is critical for production of ATP (the petrol for the cellular car),[345] arsenic is useless. Unfortunately, due to their chemical similarity, arsenic is able to bind to many of the same spots as phosphate, crowding out the useful with the useless. As the cell attempts to generate ATP, it instead creates useless compounds, thus starving the cell. Recognizing that something is wrong, the cell self-destructs (apoptosis). This process generates arsenic toxicity's main symptoms: nausea, vomiting, and abdominal pain. The death of so many cells at once releases an enormous quantity of fluid into the body, causing diarrhea and potentially fatal dehydration. In an era without refrigeration, looser sanitation standards, and higher rates of spoliation, the initial stages of arsenic poisoning would have been indistinguishable from run-of-the-mill food poisoning, or any of the common gastric infections and fevers that crowd slaveholder diaries.

While the gastrointestinal symptoms are unpleasant and *can* be dangerous, arsenic's neurological sabotage is the real danger. In addition to sabotaging ATP production, arsenic also blockades cells, locking down certain pathways necessary for cells to communicate with each other.[346] As the affected cells judder and twitch, neurological function is deeply compromised. At its most mild, this is a tingling sensation in the extremities, as peripheral neuropathy (nerve damage) sets in, accompanied by powerful muscle cramps. In more serious cases, the arsenic disrupts the heart's own beat, leading to tachycardia (in which the heart beats too fast, leading to fainting or heart failure) and QT interval prolongation (where the heart takes too long to reset after each beat, meaning the flow of blood is too slow). This sluggish circulation can lead to fainting, seizures, drowning in one's own blood, or sudden death. With a fatal dose sizing no larger than an average pea, easily dissolved in coffee or the water pitcher, arsenic could inflict fatal damage to an unsuspecting victim well before they knew it was poison and not some spoiled bacon.

To a slaveholder's eye, Brown's unnamed culinary companion represented a dire threat. His duties required access to the home's stores and pantry, and likely included some level of anti-pest duties; he had access to poisons. His work by definition afforded unparalleled access to Walton's food, and therefore opportunity to add some off-the-books ingredients. Finally, the chef's escape meant he was no longer trustworthy. Even though his escape was not violent, nor evidence some specific hostile intent, Walton likely viewed the chef's escape as a harbinger of radically escalating problems. If the chef was willing to run away, what else was he capable of doing? How fervent was

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[342]Dwyer, "The Poison Pen," at 13.

[343] Also known as trivalent arsenic.

[344] The following toxicological discussion is a combination of the following sources: PERSONAL CONSULTATION WITH DR. YIRAN JIANG, MD, 29 June 2024; Jin Zhou et al., "Effects of arsenic trioxide on voltage-dependent potassium channels and on cell proliferation of human multiple myeloma cells," 120:14 CHINESE MED. J. 1266-1269 (2007); Charles Choi, *How does arsenic kill?*, LIVE SCI. (22 July 2022) <https://www.livescience.com/how-does-arsenic-kill> [accessed 24 June 2024]; Andy Brunning, "The Chemistry of Poisons – White Arsenic," COMPOUND INTEREST (15 Jan 2015) <https://www.compoundchem.com/2015/01/15/arsenic/> [accessed 28 June 2024].

[345] Adenosine triphosphate.

[346] Arsenic specifically inhibits the function of K+ channels, thereby disrupting repolarization of cells.

his desire to escape slavery and to what lengths was he willing to go? Even if he harbored no grudge of his own, how willing might he be to act at Brown's behest

All told, it seems Walton decided that it was wiser and safer to get rid of the chef and compromise with Brown. Walton was willing to forgo some of her profitability, as well as reduce his personal control and surveillance, in exchange for her good behavior and an end to her corruptions of his other bondspeople.

Brown's second escape, from Cole, was a different negotiation with a different exploiter. She had managed to make her way back to Baltimore and was evidently visiting with her friends and family. It also does not appear that Brown originally intended to self-liberate. She came back to Mrs. Cole's each day, and while Cole described her work as "worthless," she hadn't seen fit to write Walton about Brown's conduct or demand a refund. Brown must have still been an asset to the household, if not as deferentially or productively as Cole would have preferred. As relations broke down and tempers frayed, it became clear that Brown's standards for acceptable labor conditions clashed with Cole's expectations. Brown in turn escalated her agitation by leaving entirely.

In all, Brown worked out a very good deal for herself. She successfully convinced Walton to send her home to Baltimore, to a house of her choosing, and from there successfully escaped into the city's depths. While de facto free, this self-liberation placed Brown at greater risk for the future. Baltimore was not complete security. If she did not make it to Canada, there was always a risk of being recaptured.

In contrast, a term slave named James Edwards managed to carve out an arrangement with broad freedom and less risk, but which required further exploitation.[347] Edwards was apparently very good at escaping from his proximate slaveholder, William Pomphrey. More worrying for the latter, Edwards was also good at staying on the lam. In his first escape, he was gone for approximately a month.[348] A few months later, Edwards escaped again, this time for nine months.[349] After warning James about the 1833 law's provisions, Pomphrey hoped (in vain) that was the end of it. However, Edwards escaped once again a month later, and evaded capture for another month.[350] A palpably irate Pomphrey therefore petitioned for the usual extension and sale authorization.[351]

The twist lands when Pomphrey withdrew his petition and instead asked for the Orphans' Court's approval of a compromise. Edwards was to hire himself out, turning over $6 per month to Pomphrey, the rest his to keep.[352] This was to last until Edwards' established date of freedom, 1 June 1863, or Edwards had paid Pomphrey a separate $175 as self-purchase.[353] Here, the record closes, with no details whether or not the court endorsed the arrangement.

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[347] *Petition of William Pumphrey, 10 April 1860*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1851-1860), 638-40, MSA C122-5.

[348] The exact time is unstated, only that James escaped "sometime in the month of February 1859" and was recaptured "in March of the same year." *Id.* at 638.

[349] Again, an estimate based on "sometime in the month of May in said year 1859 the said [James] as aforesaid ran away and absconded from your Petitioner. . . and remained a long time away. . . until sometime in the month of February in the year 1860."

[350] Again, approximately. Pomphrey's petition notes James escaped in March 1860. In his petition filed 10 April 1860, Pomphrey speaks as if James is back in custody. Therefore, it looks like James evaded capture for a month.

[351] *Id.* at 639.

[352] *Id.* at 639.

[353] *Id.* at 639-40.

Edwards' path to near freedom is an intriguing one. At its core, this is an episode where an enslaved person's labor advocacy can pay real dividends. Edwards had Pomphrey on the ropes. Edwards had successfully escaped for eleven months total, almost a year of lost productivity, along with jail fees and travel costs.[354] Pomphrey must have realized he was dealing with a clever, iron-willed enslaved person, one likely to continue gobbling up his funds unless something changed. The final self-hire arrangement reflects a slaveholder who has given up on the illusion of perfect control over his bondsperson and was now resigned to a smaller benefit.

Due to the nature of court records and American slavery, it is difficult to tell how many negotiations ended this way. Slaveholders did not need courts' permission to capitulate to enslaved persons' advocacy, meaning records of self-hire arrangements are sprinkled, unread, across myriad diaries, account books, newspaper classifieds, and personal correspondence. From where it does emerge, it is clear self-hire was not unknown in Maryland, despite laws prohibiting the practice.[355] During slack seasons, rural slaveholders would send their enslaved persons to Baltimore to hire themselves out. Within the city itself, it was not uncommon for industrial slaveholders in Baltimore to lodge their slaves off-site and pay them wages. This allowed the enslaved persons far more autonomy than a life of close supervision on the factory grounds.[356] The Maryland Chemical Works even allowed at least one enslaved person, Scipio Freeman, to find his own room and board, so long as he showed up to work.[357]

This milieu actually emphasizes an interesting quirk of Pomphrey's petition: he asked the Orphans' Court to endorse the self-hire arrangement. This was not necessary since Maryland law put very few guardrails on slaveholders' management of slaves. Those that did exist broadly aimed to keep enslaved person under the surveillance of the slaveholder, such as limiting who could trade with enslaved persons and provisioning requirements. Pomphrey's request is therefore notable for its superfluity. It is most likely that Pomphrey wanted to avoid laws against allowing enslaved persons to live-as-free or manage their own time (a topic discussed further in Chapter V). He therefore likely asked the court to endorse the compromise as a shield against possible prosecution or penalties.

Regardless, the court did not issue an order one way or the other, likely because it would put them in a strange spot legally. Unlike their counterparts in Islamic jurisdictions and Latin America, American enslaved persons had no contractual rights, especially not to self-purchase.[358] Any such bargain was at the whim of the proximate slaveholder. However, courts did enforce freedom-related contracts between white people, such as manumission deeds, testamentary manumissions, and term slaves' bills of sale. If the Orphans' Court had endorsed the self-hire/self-purchase arrangement, any violations (e.g. treating Edwards as a slave-for-life, not freeing him after payment of the $175) would have breached a court order.

If the deal was approved, the question then becomes, "who could sue?" Facially, Edwards, a slave, would have possessed standing, perhaps even against Pomphrey himself. After all, he was no

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[354] After removing 30% of outliers, the average time of escape was slightly less than twenty-five days. This means Edwards was able to maintain his freedom almost thirteen times longer than other absconders.
[355] *See infra* 158-9.
[356] T. Stephen Whitman, THE PRICE OF FREEDOM: SLAVERY AND MANUMISSION IN BALTIMORE AND EARLY NATIONAL MARYLAND, 90 (1997) (discussing the rise and use of "living out" to reduce problems and expenses for maintaining enslaved workers).
[357] *Id* at 51-2.
[358] For Islamic contractual rights, *see supra* at 46. For Latin America, *see infra*, at 65.

longer simply filing a dead letter against his proximate slaveholder for a contractual violation. He was simply requesting enforcement of a court order. It is entirely possible that Edwards demanded Pomphrey make the request, realizing that he would have an anomalous enforcement power against his current and future slaveholders. Unfortunately for Edwards, the Orphans' Court recognized such an endorsement as both unnecessary and delicate, never issuing a ruling on Pomphrey's petition.

Brown and Edwards had managed to de facto establish themselves as two more wage workers in Baltimore's labor market, even if their legal status disagreed. Brown had succeeded in securing her complete autonomy, albeit with one eye over her shoulder at all times. Edwards' freedom was safer, but less his own. When a day laborer earned $1 per day, Edwards' monthly $6 remittances represented a sizeable portion of his income. While different in form, both had succeeded in wresting control of their lives away from those who claimed their bodies and labor.

V. Law as an Intermediary – Social Counterweights in American and Ottoman Society

As we close our discussion of turbulent slave petitions, it is worth considering methods of redress within their strictures. Nothing in either the original 1833 law nor the 1845 supplement indicate enslaved persons had any right to appeal an extension or sale authorization.[359] The Orphans' Court's decision was final.

In theory a freedom suit could serve as an improvised appeal. An enslaved petitioner would need to show that their continued bondage was unlawful and that they were entitled to their freedom. Freedom suits were a broad equitable action, allowing a wide range of arguments and evidence. Some petitioners alleged they were free persons kidnapped into slavery,[360] others argued unscrupulous executors were delaying testamentary manumissions.[361] For term extensions, a plaintiff would have needed to show that the grounds for extension were untenable, or even false.

This requires historical imagination. Many of Maryland's freedom suits are relegated to terse docket entries in the court's calendar; witnesses, allegations, even the plaintiff's name did not always survive. Starting most simply, perhaps the slaveholder lied or was mistaken about a critical detail of the case. Mrs. Cole ordered Catharine Brown to stay home at night.[362] When Brown did not, Cole assumed Brown was out for frivolous or nefarious reasons. However, suppose instead Brown was repeatedly dispatched on errands by another member of the Cole household or engaged in some

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[359] *See* Clement Dorsey, ed., "AN ACT Relating to Persons of Colour, Who Are to Be Free after the Expiration of a Term of Years," in *The General Public Statutory Law and Public Local Law of the State of Maryland : From the Year 1692 to 1839 Inclusive, with Annotations Thereto, and a Copious Index*, Laws of Maryland, 1833, Ch. 324, 1121, accessed January 3, 2023, https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--1121.html.; "A supplement to the act of eighteen hundred thirty-three, chapter two hundred and twenty-four" LAWS OF THE MARYLAND GENERAL ASSEMBLY, DECEMBER 29, 1845 – MARCH 10, 1846, Chapter 105, §1-2. <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000610/html/am610--100.html> [Accessed 8 May 2025].

[360] Solomon Northrup as one of the more famous examples. In his autobiography, 12 YEARS A SLAVE, the free Northrup details how he was kidnapped and sold as a slave-for-life. Two circus promoters offered Northrup a high-paying job as a musician before drugging him and sending him south into Washington D.C. Northrup would only escape over a decade later through luck and sustained agitation by various Northern advocates. *See also* the discussion of Alexina Morrison's case in Louisiana, *infra* at 150.

[361] *See e.g. Matilda v. Autrey*, 10 LA.ANN. 555 (1855).

[362] *Petition of John Walton, 6 Mar. 1849*, MSA C122-4, 281-4.

nighttime labor in preparation for the day's tasks (e.g. foraging, digging for clams at low tide). The former would place Brown in the difficult position of disobeying one or another white authority in her life. Either choice would render her turbulent. The latter would not technically defeat turbulence allegations as Brown was still repeatedly disobeying a direct order, though in a manner not easily defined as turbulent. Brown's conduct instead smacked of the selfless, constant devotion slaveholders fantasized about. This change in connotation to Brown's actions could be enough to undermine a court's confidence in the term extension, rendering Brown free at the original date of expiration.

Should the freedom petition fail or prove nonviable, a term slave's next, perhaps only, recourse was the community. Absconding again is the obvious ad hoc solution, perhaps this time for good. However, that created tradeoffs. Departing entirely, for Pennsylvania, Canada, or just a remote corner of Maryland, meant abandoning family, community, and familiar rhythms. That is a difficult sacrifice to make, even before considering the logistics and luck needed to make a long-distance escape successfully. One could preserve their links to family and community by staying close, but that risked being recognized and recaptured. In a bustling place like Baltimore, with a constant churn of new souls, that risk might be quite remote. But in the hinterland towns of rural Maryland, that risk was far greater. A rural escapee would need to choose between eking out a marginal existence in the wastelands and forests of the area or take the risk of living near others.

A third option is to muster the community itself to one's cause. In both Maryland and the Ottoman Empire, social pressure and castigation often preceded actual legal proceedings.[363] Laura Edwards argues that informal problem solving predated any visit to a Southern courthouse.[364] Disputes usually started with appeals to neighbors or kin for help, whether as mediators or extra muscle.[365] Thus John Clary was "treated to a pointed visit from the extended family of the young woman whom he had impregnated."[366]

If still at loggerheads, parties turned to local magistrates.[367] This office was not composed of trained jurists or legal experts, they were local worthies, appointed by the legislature for their community ties and standing.[368] Edwards finds that magistrates often served as a mediator, talking the parties down, brokering settlements, and sending them home to work things out.[369] To keep the peace during negotiations, magistrates often issued peace warrants, a type of bond predicated on the bonded party's good behavior.[370] Violating its terms (usually by perpetrating whatever offence at the heart of the dispute) forfeited the bond's value.[371] Peace warrants required at least two guarantors, thereby creating an economic incentive for friends, family, and neighbors to keep the bonded party in line, lest the surety be forfeited. If all these measures failed, then Southerners turned to writ and courthouse.

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363 Laura Edwards, THE PEOPLE AND THEIR PEACE: LEGAL CULTUREAND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH (2009); Leslie Peirce, MORALITY TALES: LAW AND GENDER IN THE OTTOMAN COURT OF AINTAB (2003).
364 *See* Edwards, THE PEOPLE AND THEIR PEACE at 72-4.
365 *Id.* at 73.
366 *Id.* at 74.
367 *Id.*
368 *Id.* at 68.
369 *Id.* at 73-4.
370 *Id.*
371 *Id.*

Edwards' analysis places this extra-legal negotiation prior to legal proceedings but this social counterweight was also available afterwards. Consider a hypothetical case in which a slaveholder utterly brutalizes a young term slave. When that child finally fled in terror to a neighbor's home, the slaveholder filed a turbulence petition, receiving both an extension and sale authorization. The neighbor and her household discussed the events of that night, and the grapevine soon ensured that the entire community knew about the slaveholder's cruelty, excessive even by Southern standards. The slaveholder was thereafter shunned, with his church consistently badgering him to come and expiate his sins before the congregation.

Whether from this censure or some pointed comments by various notables, the slaveholder decided to quietly re-recognize the original terms of enslavement. This might mean he simply cut the term slave loose at the original expiration date. Alternatively, he might have allowed them to hire out their own time with no supervision, or choose a buyer who would pursue a laissez faire management style. Regardless, community censure had operated as a social counterweight to vindicated legal rights.

This hypothetical is perhaps naïve and overly optimistic, but it was not unheard of for third parties to intervene in the face of pending cruelty against a bondperson. In 1859, Arthur Rich filed a petition in the Baltimore City Orphans' Court, asking the judges to stop the sale of Benjamin Hinson's indenture.[372] Rich was not a party to the sale, which was between James Peters and his brother, George Peters. Nor was he Hinson's parent or relative.[373] He was simply a neighbor with whom Hinson "at a very early age was placed in the custody of," and with whom had resided ever since.[374] While vested with no legal right or claim to Hinson person, Rich had placed Hinson with James Allen to learn a trade, which he "deeply regrets."[375]

Apparently, Rich had previously litigated to protect Hinson from Peters. Having "proved in before this Court" that James Peters was "violent and cruel" and had machinated to "send the said apprentice into Harford County beyond the jurisdiction of this court," Rich secured a court order that James was to transfer Hinson to some other indenture holder.[376] However, "at the last hour which he has to comply with the order of this court," James had chosen his brother, George, as Hinson's new master.[377] Rich alleged this sale was a fiction, a "change of name but in reality not a change of master."[378] He therefore urged the court to block the transfer as a tacit nullification of its order and thwarting of its intentions. The sale went through anyway.

While Benjamin Hinson was not a term slave, his case gestures towards the possibility of third-party, post-legal interventions. Rich stuck his neck out for a child somewhere between family and neighbor, putting personal business and allegations on public display through a court filing. He had no rights in this case, either as a fictive-parent or as an intervenor to the transaction, meaning his petition is purely persuasive. While it failed to convince the Orphans' Court judges, Rich's petition might have put other neighbors and community members on notice regarding the Allen's perfidy.

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372 *Petition of Arthur Rich, 6 Sept. 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-10-3.
373 *Id.*
374 *Id.*
375 *Id.*
376 *Id.*
377 *Id.*
378 *Id.*

Mary George's petition to prevent the sale of Cornelia Murry's indenture hits similar notes.[379] In this case, Mary's petition was against her husband, William George, not an unrelated employer. According to the petition, William had purchased the indenture of Cornelia Murry in August 1858, intending for the girl to learn the "art and mystery of housework" as well as an extra set of hands to aid Mary in her own work caring for a household of ten persons.[380] From the outset, William was "not been able to cloth, feed, + support" Murry.[381] In fact, at the time of purchase, William was unemployed, and remained so for several months.[382] Rather, Mary and two of her daughters had stepped up. Through their own labors teaching music & piano; piecework sewing; and other endeavors, the George women had provided "most of the support. . . if not the whole of it."[383]

Once William found work, he resolved to sell Murry's indenture, claiming he was unable to support her at his current wages.[384] While he embarked on finding a buy, his wife and daughters began their own campaign, spiritedly arguing against Murry's sale.[385] While the women were ultimate successful in scuttling a pending sale to George Shipley, William instead "removed and sent away said girl from his house and family, and still keeps and retains her at some place unknown to your petitioner and the rest of his family."[386] Mary divined that his intention was to sell her to whomever would give him a good price, and to retain the money for his "own separate use."[387] Indignant that Murry had been taken from the family and denied the education due to her by the indenture, Mary requested the court annul the indenture entirely before rebinding Murry "to some suitable person."[388]

Since no order exists, it is unclear whether Mary George's petition was granted or not. Regardless, it is abundantly clear that she was willing to take great risks by embarrassing her husband in a public forum in order to contest the treatment of an unrelated apprentice. Some measure of this was self-interest. Murry's labor was a necessary bulwark against the never-ending demands of the 10-11 souls living under the George roof. However, we still see the usual Edwards arc in the case. When William George failed to provide for Murry, Mary and her daughters picked up the slack and provided for the girl. This likely entailed some arguments with William about bringing in another mouth to feed while he was jobless. As William began his search for a buyer, Mary and the older daughters pursued extra legal negotiations, eventually convincing him to abandon a planned sale. Finally, having failed to convince William to bring Murry home, Mary had turned to the courts as a lever against his pigheadedness. Whatever the actual legal result, it is almost certain that Mary did not cease advocating for Murry's return to the household, now likely with neighbors peering in to watch the drama. Taken together, there existed a possibility that community censure could nullify or ameliorate the punishments for absconding.

Ottoman communities offered similar possibilities.. Discussing sixteenth century Aintab, Leslie Peirce points to local notables filling a similar role to Southern magistrates.[389] Imams might

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[379] *Petition of Mary George, 31 July 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSA C3360-6-5-10.
[380] *Id.*
[381] *Id.*
[382] *Id.*
[383] *Id.*
[384] *Id.*
[385] *Id.*
[386] *Id.*
[387] *Id.*
[388] *Id.*
[389] Peirce, MORALITY TALES at 123.

serve as arbiters in their villages or neighborhoods while tribal elders handled the first pass at disputes within their membership.[390] Cases landed in their remit from community surveillance and self-regulation.[391] Because many dynastic laws held whole neighborhoods or villages liable for the crimes of a few residents, communities had a real stake in preventing any mischief before it reached formal proceedings.[392]

However, Ottoman slaves could also forum shop for a better result. Ottoman slaves possessed broad legal rights and access. While enslaved persons were not "full" people under Islamic law (e.g. they faced different criminal penalties for various offenses and were not required to pay *zakat* (an foundational type of alms)), they still held most rights. With their proximate slaveholders' consent they could own legally-protected property,[393] legally marry and divorce; hold temporal power as officials (and many Islamic states staffed their governments with enslaved persons); serves as guardians to unmarried women and executors of wills, among other personal and property rights.[394] In terms of status-specific legal powers, Ottoman slaves could file freedom suits to contest putatively unlawful bondage, and file suits against their owners for abusive treatment or neglect.[395]

When they did turn to courts, Ottoman slaves had a decision to make: where to file? Due to its diversity and breadth, the Ottoman Empire hosted a multitude of parallel tribunals. While the Hanafi *maddhab* was the Empire's official creed and therefore legal basis, Hanbali, Shafi'i and Maliki courts abounded in areas with sufficient population.[396] So too with Jewish and Christian religious courts.[397] Different religious principles meant certain tribunals were seen as advantageous in specific types of disputes. For example, Maliki and Shafi'i principles permitted women to seek annulments of their marriage based on spousal abuse, desertion, non-support, or if the husband had gone missing long enough that remarriage was reasonable.[398] Their tribunals were therefore preferred by women seeking to end their marriages over Hanafi courts, which barred annulment on all these grounds.[399] If a husband failed to maintain his wife, Maliki judges calculated the unpaid upkeep as a debt accruing from the date provide for her.[400] In contrast, Hanafi jurists agreed that a debt was owed, but that it did not start accruing until the rate had been formally set.[401] Reminiscent of modern

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[390] *Id.* at 123-24.
[391] *Id.* at 89-91.
[392] *Id.*
[393] R. Brunschvig, "'Abd" in *Encyclopedia of Islam, New Edition Online*, <https://referenceworks.brill.com/display/db/eieo?alpha=A%20-%20Ag&start=41&contents=mrw-browse-a-z> [Accessed 29 April 2024]. Anything that was not explicitly granted to the enslaved person did default to the slaveholders' ownership, as was typical for *peculia* across slave societies.
[394] Only certain *maddhab* accepted the latter, with the Hanafi notably barring enslaved executors.
[395] Ehud Toledano, AS IF SILENT AND ABSENT: BONDS OF ENSLAVEMENT IN THE ISLAMIC MIDDLE EAST, 61-82, (2007).
[396] *See* Kenneth M. Cuno, "Reorganization of the Sharia Courts of Egypt: How Legal Modernization Set Back Women's Rights in the 19th Century," 2:1 J. OF OTTOMAN AND TURKISH STUDS. ASS'N. 85, 90 (2015); *see also* Nora Barakat, "Regulating Land Rights in Late Nineteenth-Century Salt: The Limits of Legal Pluralism in Ottoman Property Law," 2:1 J. OF THE OTTOMAN AND TURKISH STUDS. ASS'N., 101 (2015).
[397] Despite their availability to litigants, caution should be taken with understanding the Empire as free of sectarian tension or conflict. *See generally* DISLIKING OTHERS: LOATHING, HOSTILITY, AND DISTRUST IN PREMODERN OTTOMAN LANDS, (Hakan Karateke, H. Erdem Çıpa & Helga Anetshofer eds. 2018).
[398] Cuno, "Reorganization of the Sharia Courts" at 90.
[399] *Id.*
[400] *Id.*
[401] *Id.*

forum shopping in America, Ottoman litigants therefore chose the tribunal with the most favorable law for their case, even if its claim to the case was not as strong.

When litigation failed to achieve the desired end, enslaved persons could (and did) petition government ministers for help, either as a form of pseudo-appeal or to circumvent the legal system entirely. The Porte was keen to ensure its version of justice held sway throughout the Empire, so was quite willing to overrule lower authorities and courts. Absconding and "humanitarian concerns" most frequently drew officials' attention, with the latter including abuse and neglect of enslaved persons.[402] Under Islamic law, enslaved persons could charge their proximate slaveholders with abusive conduct. While a finding of abuse resulted in the enslaved persons' immediate manumission, the high burden of proof and deference to slaveholders meant enslaved persons rarely triumphed.[403] Toledano finds that most abuse cases left the actual violence unstated, pointing towards commonly understood ceilings of violence and definitions of "disciplining" a slave.[404] More serious violence, amounting to "minor" wounds (i.e. no scarring or disfigurement) was the turning point into abuse. More serious injuries cementing the violence's unacceptability and status as abuse. Maiming enslaved persons (e.g. cutting off ears), forcing kitchen workers to move hot pans without gloves, and severe neglect all clearly constituted abuse. In instance of mistreatment, the Porte sometimes chose to intervene, buying the enslaved persons' freedom.[405]Ottoman slaves knew they could at least petition for imperial relief, even if it was a longshot.

Such requests for succor were not necessarily formal or polite, as evidenced by the "Circassian Question." As Russia expanded into the Caucasus, it collided with numerous established, often Muslim, polities. While the Ottoman Empire and Qajari Iran were able to broadly resist Russian conquest, smaller states were not. Lumped into the fictive meta-ethnicity of the "Circassians"[406] these polities were displaced and driven into the Ottoman Empire., and the land resettled by the ethnic Russians and Cossacks.[407]

What followed was a humanitarian disaster. Somewhere between 400,000 - 1,000,000 Circassians crossed the border.[408] The Ottomans, expecting far fewer souls, were completely unprepared for the multitude and their pleas to halt the expulsion received only lip service.[409] As a result, resettlement was chaotic. Insufficient supplies and sanitation led to stubborn, deadly

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[402] Toledano, AS IF SILENT AND ABSENT at 112.
[403] *Id.* at 61, 71-2.
[404] *Id.* at 79.
[405] *Id.* at 81-2. It's not entirely clear why the Porte stepped in, rather than leave it to the kadi. It's possible that the Porte wanted the matter finished quickly, or did not trust the (sometimes) conservative ulama to reach the preferred result. Either way, viziers would find money in the treasury to buy out the freedom of abused slaves.
[406][406] Circassians were not alone in this imperial re-designation. Vincent Brown has shown that Anglophone enslavers invested one segment of the broader Akan ethnic group, the Coromantee, with myriad virtues. TACKY'S REVOLT: THE STORY OF AN ATLANTIC SLAVE WAR, 90-1, 234-35 (2020). Spread across multiple "Countries or Nations" the Coromantee were not a unified group, but a people spread across West Africa's various polities. *Id.* at 87-8. However, like the Circassian meta-ethnicity's flattening of myriad peoples, slave traders and holders reduced the Coromantee of all nations into their purported genetic virtues: "physical strength, mental acuity, and disciplined manners." *Id.* at 87.
[407] Toledano, AS IF SILENT AND ABSENT at 81-84. *See generally*, Vladimir Hamed-Troyansky, EMPIRE OF REFUGEES: NORTH CAUCASIAN MUSLIMS AND THE LATE OTTOMAN STATE, pp. 23-89, (2024).
[408] Toledano, THE OTTOMAN SLAVE TRADE AND ITS SUPPRESSION, 1840-1890, 151 (1982). Ottoman estimates ran roughly 595,000 – 1,008,000 souls, while Russian figures place the total at about 300,000. Halil İnalcık credits the 595,000 figure. *See* David Ayalon, Halil İnalcık, Chantal Quelquejay. "Čerkes," ENCYCLOPEDIA OF ISLAM NEW EDITION ONLINE (EI-2 English) (P. Bearman ed., 2012)
<https://ccat.sas.upenn.edu/~haroldfs/540/handouts/ussr/circass.htm> [Retrieved 06 May 2024].
[409] Toledano, OTTOMAN SLAVE TRADE at 151.

outbreaks of typhus, smallpox, and dysentery.[410] The Porte was unable to acquire sufficient boats and wagons to transport the refugees and their belongings, leading to massive overcrowding as too many people were crammed into too few lodgings.[411] All the while, bad actors swindled, abused, and robbed the refugees at every turn, leading to bubbling discontent and frustration for all parties.

One key issue was the Circassian practice of agricultural slavery. Circassian bondspersons were more akin to serfs than slaves. They lived in their own households on the landlord's estates, marched to war as his levies, and cultivated his lands in times of peace.[412] However, upon entering the Empire, they were recategorized as slaves (*köle*, pl. *köleler*) under Ottoman law.[413] This heralded a chaotic series of debacles where certain officials treated the bondspersons as free, others considered them slaves, and yet others engaged in unilateral manumission of Circassian children.[414] In order to force the issue and their freedom, the Circassian bondspeople essentially started a small-scale insurgency, including riots, threats to Circassian slaveholders, and general unrest.[415] The Porte was forced to deploy the imperial army on at least two occasions to quell the unrest, eventually ordering a mandatory mükatebe for all Circassian men. The bondspeople's violence had extracted a gradual emancipation from the state.

Clearly then ministerial appeal was a viable means for overcoming legal reverses. Obviously Ottoman ministers were not going to accede automatically to a slave's requests. Still, ministerial petitions, whether civil or violent, were a viable means to get official attention and potentially relief.

Taken together, there is a sense that the Ottoman Empire's institutions served as a counterweight to its slaveholders, even as the government was a prolific enslaver in its own right. So long as a slave had the time, patience, and treasure to sustain their case, they could keep cycling through local authorities, courts, and imperial ministers. While by no means uniformly pro-slave in its decisions and policies the Porte and its minions certainly intervened in cases it found distasteful. This places Ottoman slavery in proximity to Frank Tannenbaum's famous (but not uncontested) interpretation of Latin American slavery more broadly. According to Tannenbaum, the Catholic Church and its courts' ecclesiastical universalism eroded the social barriers between free and enslaved.[416] This inculcated a gentler slave system in which enslaved persons possessed substantive rights, an expectation of freedom, and an effective institutional safeguard against slaveholders' discretionary powers.[417] Michelle McKinley has offered a soft permutation of this thesis by analyzing Catholic ecclesiastical courts as avenues for enslaved persons to outmaneuver their captors through invoking formal legal rights under Catholic doctrine and procedural rules. She has called the results "fractional freedoms."[418]

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[410] *Id.* at 150.
[411] *Id.*
[412] Ehud Toledano, "Enslavement in the Ottoman Empire in the Early Modern Period" in THE CAMBRIDGE WORLD HISTORY OF SLAVERY, 25, 36-7 (David Eltis et al. eds. 2017); Michael Ferguson & Ehud Toledano, "Ottoman Slavery and Abolition in the Nineteenth Century" in THE CAMBRIDGE WORLD HISTORY OF SLAVERY, 203 (David Eltis et al. eds. 2017).
[413] Ferguson & Toledano, "Ottoman Slavery and Abolition" at 203.
[414] Toledano, THE OTTOMAN SLAVE TRADE at 161-64.
[415] *Id.* at 162-64, 172-77.
[416] Frank Tannenbaum, SLAVE AND CITIZEN: THE NEGRO IN THE AMERICAS (Beacon Press ed. 1992) at 90-104. *See also* Michelle McKinely, FRACTIONAL FREEDOMS: SLAVERY, INTIMACY, AND LEGAL MOBILIZATION IN COLONIAL LIMA, 1600-1700, 9-12 (2016).
[417] Tannenbaum, SLAVE AND CITIZEN at 45-63.
[418] Michelle McKinely, FRACTIONAL FREEDOMS: SLAVERY, INTIMACY, AND LEGAL MOBILIZATION IN COLONIAL LIMA, 1600-1700, 13-14, 243-48 (2016); Michelle McKinley, "Financing Freedom: Self-Purchase and Re-enslavement in

There is something similar within Ottoman governance. While not as explicitly religious a phenomenon as in Tannenbaum's framework, Ottoman governance structures gave slaves the opportunity to pick and choose who ruled on their claims, and who to petition next if the result was unfavorable. Ottoman governance was a series of counterweights, both relative each other and the slaveholder-defendants trying to assert their own power over the bondsperson.

Critiques of Tannenbaum have generally revolved around his perhaps naïve understanding of post-emancipation Brazilian society; treatment of law-as-written as representative of law-as-lived; and assumption that the slaves-of-elites represented in ecclesiastical and legal records were representative of Latin-American slavery more broadly.[419] Facially, these latter two critiques also apply to Toledano and other commentators' treatment of Ottoman slavery. For all the top-down pronouncements about Ottoman slavery's relative gentleness and permeable barrier between free and enslaved, there is still a great deal of work to be done examining cases on the ground. Similarly, the Porte ruled over vast swathes of territory, so treating slavery in the Arabian peninsula as the same as in Egypt, and as in Anatolia risks occluding major differences.

The literature on Ottoman slavery has largely dodged these pitfalls by (1) carefully flagging the limitations of their archive and (2) keeping their claims closely tied to the sources examined/avoiding broad, societal pronouncements. For example, Ehud Toledano and Michelle McKinley have taken a similar approach to examining slavery in their respective jurisdictions (the Ottoman Empire and baroque Lima). In both, recognition as a legal person by the state offered different forms of redress, while law, religion, and cultural norms created rights for enslaved persons. However, neither was sufficient to guarantee a happy ending for enslaved persons, as the same system which extended these rights was also deeply invested in the smooth functioning of slavery. This restraint is laudable and responsible history but there is an opportunity for more daring theorizing. The structure of Ottoman governance creates a more concrete counterweight relationship than in Tannenbaum's cultural schema. Bringing Tannenbaum, his disciples, and his critiques to bear on Ottoman slavery might yield further insights into who was viewed as the actual arbiter of a dispute, how inter-agency tensions were navigated, and how Ottoman subjects understood the law.

Seventeenth Century Andalucía," 81:4 WILLIAM & MARY Q. 651, 653-56 (2024) (discussing how self-purchasing enslaved persons (*cortados*) were of a hybrid class, possessing contingent liberty, property rights, and legal legibility).

[419] Alejandro de la Fuente, *From Slaves to Citizens? Tannenbaum and the Debates on Slavery, Emancipation, and Race Relations*, 77 Latin America, Int'l. Lab. and Working-Class H. 154, 159-61, 162 (2010) (critiquing Tannenbaum's reliance on a mythologized conception of Brazilian history as a controlling case study and that there were differences between law-as-written and law-as-lived in the Iberio-American jurisdictions); Marcelo Rosanova Ferraro, *Studies on Slavery*, in *The Routledge Handbook of Afro-Latin American Studies*, edited by Bernd Reiter, John Antón Sánchez 137 (2022); Donald Gray Eder, *Time Under the Southern Cross: The Tannenbaum Thesis Reconsidered*, 50:4 Agric. H. 600, 602-04, 606-8 (1976) (criticizing (1) Tannenbaum's sources and case studies as slaves-of-elites, and therefore not representative of Iberio-American slavery; (2) the textualist approach of Tannenbaum's approach to Iberio-American law; (3) failure to recognize the spectrums of color politics in Iberio-American jurisdictions, namely the gradations of Blackness which shaped social recognition and acceptance; (4) the numerous competing interpretations of Tannenbaum's primary sources, none of which are considered or eliminated from contention); D.R. Murray, "Slavery and the Slave Trade: New Comparative Approaches," 28:1 LAT. AM. RSCH. R. 150, 151-52 (1993) (specifically the review of Alan Watson's *Slave Law in the Americas*, which broadly agrees with Tannenbaum, but is skeptical that on-the-books Spanish law was representative of lived realities); Peter Kolchin, "Comparing American History," 10:4 R. IN AM. H. 64, 70, 72-3 (1982) (summarizing critiques of Tannenbaum as revolving around (1) distorted by choice of time frame; and (2) law and lived reality are rarely the same before concluding that the scholarly consensus is that economic and demographic factors better explain differences between Latin American and North American slavery forms).

This latter question is of particular interest given the branching options of Ottoman law. Different institutions held different priorities and remits, which shaped the results of their rulings. Ottoman conceptions of law become even more nuanced around issues of (1) local conceptions of justice vs. the Porte's own ideas and priorities and (2) who amongst the administration was the final arbitrator of a dispute: sheikh, court, mufti, or minister? Different groups, factions, and social classes would naturally approach the various tribunals and authorities with their own, likely mismatched, understandings of the institution. Legal doctrine's deference to slaveholders meant enslaved people might view ministerial intervention as the true forum for justice, and the initial tribunal as a procedural steppingstone; slaveholders might understand it in reverse. Neither is wrong, per se, but this legal pluralism indicates that "Ottoman legal culture" is best understood as especially fluid, shifting based on claim, forum, and time, rather than stable understandings of institutions or practice.

With the Porte and Circassians firmly in mind, American slaves' paucity of options is readily apparent. Slaveholders controlled every level of Southern governance. As the elite of Southern society, slaveholders occupied city hall, state houses, and the judicial bench. Forum shopping was off the table as there were no alternative forums to be had. Petitioning elites for ad hoc relief might work for egregious cases, but slaveholders were also loath to interfere in another's affairs. This absence of countervailing, or even powerful non-slaveholding, shaped what options were available to American enslaved persons. Without institutional counterweights, American enslaved persons more often turned to self-help and social pressures.

VI. Conclusions:

The clearest conclusion one can draw from turbulence petitions is that negotiations existed between American enslaved persons and their captors and were ongoing. While this itself is not a novel insight, these petitions do offer better glimpses of how enslaved persons understood the roles of institutions, and their utility for solving problems; where enslaved persons looked for aid or to make a point; and how the role of a given enslaved person changed the legal and emotional valences of their labor negotiation

Enslaved persons' choice to use ad hoc, personal remedies (e.g. marronage, work stoppage, faking illness, etc.) indicate a skepticism that any institution would actually back their claims or cause. Setting aside enslaved persons' lack of formal rights and statutory bar on any legal filing except freedom suits, even the friendliest antebellum Southern court was an agent of a hostile, racist, social order. Antebellum courts were self-conscious implementors of a racially bifurcated social policy. Judges recognized and protected white freedoms, rights, and privileges (with the usual gradations based on gender and class).[420] For (propertied) whites, courts were a bulwark of liberty, committed to preserving the social order, serving up the uneven justice of the South, and repudiating humanity's various vices.

It is unlikely that Black Americans experienced the law as "friendly" per se. After all, it was frequently formulated specifically against their interests, and social networks kept Black communities apprised of new developments.[421] However, that does not mean Black Southerners abandoned it as a

[420] Obviously antebellum white women did not possess the same complement of rights as white men. However, that does not mean they were entirely bereft. Stephanie Jones-Rogers has written extensively on white women slaveholders exercising their rights as mistresses in THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVEOWNERS IN THE AMERICAN SOUTH (2019).

[421] Jones, BIRTHRIGHT CITIZENS at 65.

lost cause. Rather, it reshaped how Black Southerners approached the law and what disputes it was seen as capable for resolving. Martha Jones argues that Black Southerners experienced law in the "silences between positive law" and reality.[422] What was not explicitly forbidden by positive law was still fair game, or at an opportunity to create new custom. This was possible, in part, because the judiciary remained more flexible, grounded, and pragmatic than the legislature.[423] Judges wanted to keep their dockets moving, so the more something was understood as routine or banal, the fewer holdups disrupted their courtrooms.[424] This provided Black Americans the space to enter the courtroom, visibly, blatantly *comply* with the law, and in doing so plant a flag declaring "I am a citizen, I am within the law, I am asserting my legal rights and personhood."[425] In doing so, Black Southerners carved out hard won spaces for their claims and interests to be adjudicated, even as social pressure and rhetoric supposedly excluded them from law's benefits.

Enslaved persons' legal access was even more truncated. If enslaved people wanted their voices to be heard, they had to take a more direct approach. Catharine Brown's repeated escapes forced John Walton to pay attention. The expenses in recapturing and jailing her were a powerful magnet for his attention, as was the scorn of his peers for being unable to control his bondspeople. While Brown risked being sold or spending more years in chains, such direct action was one of the few accessible means of forcing Walton to pay attention and respond. Enslaved persons could not turn to an institution to coerce an abuser-employer into negotiating, they had to use their feet, their fists, and their voices.

In contrast, an Ottoman enslaved person's view of courts was likely more similar to that of free subjects than American slaves. Certainly, like their American counterparts, sharia and dynastic courts were generally deferential to slaveholders. Established jurisprudential principles protected slaveholders' broad latitude and control. However, Ottoman enslaved persons probably did not view the courts with skepticism. They lived in a society with slaves. Significant checks on slaveholders' power existed, such as protections for term slaves and standards of treatment, and enslaved persons were entitled to file their own petitions and suits on a number of issues. Ottoman slaves sought redress from the courts in ways either unavailable or unattractive to their American counterparts.

To some extent, the socioeconomics of slavery informed how slaveholders received and reacted to these claims. American slaveholders' liberties and lifestyle required the output and profits from enslaved labor.[426] Theirs was a slave society. Slaves used in a productive or profit generating capacity were most critical to this lifestyle, as they funded the entire enterprise. Slaves used in service roles enhanced the slaveholder's liberties through taking on non-profit-oriented labor, freeing up other dependents, or by boosting the efficiency of profit generating bondspeople (for example, a central kitchen or childcare). When threats to that access arose, whether bubbling abolitionism or bondspeople beating feet, the asymmetric dependency of this relationship was at its most stark. American slaveholders responded in kind, retrenching control through term extensions or simple exiling the enslaved person beyond Maryland's borders; these escalations supplemented the means already at slaveholders' disposal, such as physical and sexual abuse or the abuse and sale of hostage family members.

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[422] *Id.* at 45-6; 63-4; 70.
[423] *Id.* at 26.
[424] *See id.* at 97-103.
[425] *See id.* at 106-07.
[426] Other dependents were also exploited. However, slave labor was the sine qua non for one to be a slaveholder.

These past two chapters have dealt exclusively with enslaved persons and their negotiations with employers. In the next chapter, turbulent slave petitions will provide a backdrop to another form of bound labor: apprenticeship. Subject to similar turbulence proceeding, Chapters III and IV will examine how Maryland's apprentices navigated identical accusations. While doing so, apprentices possessed several tools, arguments, and strategies unavailable to their enslaved counterparts.

Chapter III: Turbulent Apprentices' Use of Capitalist Law

I. Introduction

On 3 February 1851, Joshua Gent marched into the Baltimore County Orphans' Court in high temper. As the "master of a negro held to service for a term of years, to wit. . . Benjamin Cook, who is held to the services of your petitioner until the sixth day of January [1854]" he felt entitled to a certain level of service and benefit from Cook.[427] However, as Cook had "absconded from the service of his former owner" and "since your petitioner purchased him, has also [illegible] from his service."[428] Gent swore that he had committed no sins against Cook, and was bereft that his "authority was at complete deficience [sic] and the value of the service of the said servant completely lost to your petitioner." Having already spent $25 in recapturing Cook, with jail fees accruing at $2.19 each day, Gent was keen to reclaim *some* of his losses. He therefore petitioned the Orphans' Court to extend Cook's term of service for the "time lost by said servant and the trouble and expense to which your Petitioner has been put in reclaiming him" as well as permission to sell Cook "in or out of this state."[429]

From its language, Gent's petition looks like any number of turbulent slave petitions. Gent was a "master" who bought Cook from his previous "owner." Cook had absconded, despite any improper conduct by Gent, so now he sought an extension and sale authorization, the same as any other owner of a turbulent "servant."

However, Benjamin Cook was not a slave. He was a free Black boy bound to Gent in order to learn a trade.[430] Despite his legal, albeit conditional, freedom, Cook's status as an apprentice is only noted in two places. First, in the court's ruling, ordering Cook to "to serve the said Joshua Gent, as an apprentice" for two additional years.[431] The second, ten days later when the court assented to Gent's sale of Cook's indenture to one Samuel Redgrave.[432]

Gent's turbulent apprentice petition is not alone in being largely indistinguishable from slaveholders' equivalents. The similarity in form, legal mechanism, pleading style, and remedy gesture towards how the Maryland's legislature and jurists understood slavery and apprenticeship to be closely related. Apprenticeship had a long history in the state, developing alongside the advent of racial slavery, stretching from colonization's indentured workers into a range of professions by the nineteenth century.[433] The economic milieu of labor in Maryland extended two hundred years from the crude commodity capitalism of the seventeenth century, driven by the indentured servitude of a

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[427] *Petition of Joshua Gent, 5 Feb. 1851*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1834-1851), MSA C399-44-67.

[428] *Id.*

[429] *Id.*

[430] An indenture was a legal contract binding a child (the apprentice) to a someone in order to learn a trade. The employer-tutor was referred to as an indenture holder, and they held a right to the child's labor and any benefits thereof. This could include productive work, such as carpenters', farmers', and smiths' apprentices, or non-pecuniary benefits from those apprenticed towards service roles (e.g. domestic workers). Boys were usually bound until age 21, while girls were usually bound until age 18.

[431] *Id.*

[432] *Id.*

[433] For a discussion of early-colonial indenture in the Chesapeake, see Edmund Morgan, AMERICAN SLAVERY, AMERICAN FREEDOM: THE ORDEAL OF COLONIAL VIRGINIA (1975).

remarkably young imported labor force, to the wide range of bound labor statuses (slave, term slave, apprentice, free labor) evident in the more sophisticated commodity capitalism of the nineteenth century.[434] It comes as no surprise that bound labor forms in the antebellum era sometimes blended, with law, employers, and bystanders collapsing different relationships together, particularly when those labor forms had become predominantly racialized.

However, lawmakers and jurists are not the only ones to determine what socio-legal institutions mean. Apprentices, employers, and their loved ones all made claims as to what was required by law, morality, and simple pragmatism. This chapter uses Orphans' Court records from Anne Arundel County, Baltimore County, and Baltimore City to explore apprentices' "turbulence," labor advocacy, and legal strategies during the nineteenth century.

Facially, turbulent apprentice petitions greatly resembled those of enslaved persons, both in strategies pursued and victories won. However, the labor of slaves and apprentices was not commoditized in the same way: slaves were property while apprentices were proto-workers under contract. While this differentiation offered employers various benefits, it also created opportunities for apprentices to lever the master's tools against him. As free persons and nascent waged laborers, apprentices and their advocates invoked well-established legal doctrines to contest their working conditions and subordination. Breach of contract, definitional ineligibility, and procedural flaws all became means to attack indenture holders' mastery, even as law was a major mechanism for employers' to exert their will over labor.

II. The Building Blocks of Apprenticeship

European-style indenture arrived in Maryland with its first colonists.[435] A venerable institution in the Old World, by the Nineteenth Century, apprenticeship had lived many lives and served many purposes. Craft apprenticeship had long existed in Europe, with accompanying guild structures regulating when and how apprentices could practice their trade.[436] Upon arrival to the New World, craft apprenticeship was reshaped to fit with local and regional sensibilities.[437] Overtime and in response to broader labor pressures, apprenticeship expanded to encompass the control of working children "at large."[438] When English colonists arrived in America, they imported their sensibilities and expectations, but not all of their labor laws.[439] Local needs and priorities endowed law with local flavor, which meant labor law was incorporated in a piecemeal fashion.[440]

By the nineteenth nentury, apprenticeship had solidified to encompass both crafts training and so-called pauper apprenticeship.[441] In both formulations, an indenture contract was drawn up between the binding authority and the would-be indenture holder, specifying the duties of both master and child.[442] While not parties to the agreement itself, apprentices were bound to faithfully

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[434] Christopher Tomlins, FREEDOM BOUND: LAW, LABOR, AND CIVIC IDENTITY IN COLONIZING ENGLISH AMERICA, 1580-1865, 231-296, 342-43, 401-509 (2010).
[435] Morgan, AMERICAN SLAVERY, AMERICAN FREEDOM at 66, 98, 115-16; Tomlins, FREEDOM BOUND at 231-96;
[436] Tomlins, FREEDOM BOUND at 241-42.
[437] *Id.* at 231-96 (describing how Anglophone colonists reshaped English labor law to fit their new circumstances. New England developed a feisty, atomistic village sensibility, the Chesapeake created a manorial-gentry labor regime, and Delware split the difference.)
[438] *Id.* at 80-81.
[439] *Id.* at 233.
[440] *Id.*
[441] "Overview" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA, (edited by Ruth Wallis Herndon & John E. Murray, 1-2 (2009).
[442] *Id.*

serve their proximate indenture holder, obey their commands, and generally behave well according to the era's *mores*. Indenture holders were to train the apprentice in some skillset or profession. This encompassed craftwork (smithing, tanning, carpentry, brewing) or so-called "unskilled" trades (domestic service, farming, servant). Indenture holders were also bound to give the apprentice a general education in reading and writing; Christian morals; and sometimes mathematics. Finally, indenture holders were to support and maintain the child with adequate food, shelter, and clothing, and to generally treat them well.

In support of these commandments, indenture holders were vested with great power over their apprentices. This also extended to a variety of corporal punishments; within certain boundaries, physical violence was viewed as a natural part of disciplining children.[443] Furthermore, apprentices had no formal influence over where and how their labor was exploited.[444] Indenture holders were able to hire their apprentices out to third parties, even if that hirer was in a different field. While parents could (and did) raise objections to employers' treatment, as we shall see, their efficacy was uneven.

a. Fundamental Laws of Maryland Apprenticeships

Following the American Revolution, Maryland passed its primary apprenticeship law in 1793. This statute aimed to systematize support for "poor children, orphans, and illegitimate children. . . left destitute of support and have become useless or depraved members of society."[445] If an orphan's "estate" was insufficient to cover their living or educational expenses, the county Orphans' Court could bind them as an apprentice to any willing "manufacturer, mechanic, mariner or handicraftsman or other person.[446] Boys were to serve until age 21,[447] while girls to age 16 (later extended to 18).[448] Judges were "where they can" to ensure that the indenture contract included reasonable education in reading and writing, with arithmetic being an optional inclusion.[449]

Children with parents could be bound out if their parents lived in "extreme indigence or poverty."[450] This facially egalitarian provision would be modified to make it far easier to bind Black children. In 1839, the Maryland legislature supplemented the Law of 1793 with one allowing the binding of any Black child if it would be "better for the habits and comfort of such child or children."[451] From 1839 onwards, white children could be bound for want of resources or care,

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[443] *See* Ruth Wallis Herndon & John E. Murray, "A Proper and Instructive Education": Raising Children in Pauper Apprenticeship" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA, 11-12 (Ruth Wallis Herndon & John E. Murray eds. 2009).
[444] *Id.* at 14.
[445] "An act for the better regulation of Apprentices" in ACTS OF THE GENERAL ASSEMBLY RELATING TO THE POOR OF BALTIMORE CITY AND COUNTY TOGETHER WITH THE BY-LAWS OF THE TRUSTEES FOR THE POOR OF BALTIMORE CITY AND COUNTY, 14, printed by John D. Toy (1830), MCHC Rare MHV 4030.B3. Hereafter "Act of 1793."
[446] *Id.*
[447] "An act to provide for the better regulation of the Free Negro and Mulatto Children within this State" IN SESSION LAWS, DECEMBER 30, 1839 – MARCH 21, 1840, Ch. 35, p. 33, MdHR 820921-1, 2/2/6/15 (hereafter Act of 1839).
[448] *Id.* For the age increase on Black (and only Black) girls, "An act relative to Female Minors" ACTS OF THE GENERAL ASSEMBLY RELATING TO THE POOR OF BALTIMORE CITY AND COUNTY TOGETHER WITH THE BY-LAWS OF THE TRUSTEES FOR THE POOR OF BALTIMORE CITY AND COUNTY, 33 (John D. Toy, Printer 1830), MCHC Rare MHV 4030.B3.
[449] *See* "Act of 1793," in ACTS OF THE GENERAL ASSEMBLY RELATING TO THE POOR at 15.
[450] *Id.*
[451] Act of 1839, §1.

while Black children were eligible for apprenticeship if a magistrate or two justices of the peace believed binding was a better than their current situation.

This is not to say that bindings were always unilateral or parents excluded from the process. The Law of 1793's parental notice requirement remained in force for all indentures and there is abundant evidence that children's guardians were involved in finding advantageous apprenticeships. Nottley Campbell bound his son, Thomas, to John Levin of Baltimore City.[452] When the latter sought to sell Thomas' indenture, he first asked for and obtained Nottley's consent.[453] William D. Moore's father also reviewed and approved his transfer to a new indenture holder.[454] In an unusual case, Caroline Blaschke petitioned to bind her infant half-brother Louis.[455] An orphan, Louis was entrusted to a guardian, but was not "properly provided for, nor kindly treated."[456] Caroline had therefore lined up a cabinet maker to raise Louis and train him in the trade.[457] The apprentices themselves also got in on the action. While Mary Brown was enslaved, she lived with Ann Pfelty, likely during a hire placement.[458] Now that Brown had obtained her freedom, she wished to be bound to Pfelty to do "house work."[459]

In an intriguing case, several Black teenagers (Henry, Bill, Lewis, Maria, and Gill), were bound to pay their legal fees.[460] The children had prevailed on Oliver Miller and James Franklin to represent them in a freedom suit in the county court against an unknown defendant.[461] Had the "petition been decided against the petitioners, [Miller and Franklin] expected to receive no compensation for their services."[462] However, having won, the teenagers "agreed to work for a reasonable time for [Miller and Franklin] to compensate them for their. . . legal services."[463]

This is not to say that Black and white children were treated similarly in apprenticeship and indenture law. White boys were more frequently (but not exclusively) bound to learn a craft.[464] In contrast, Until 1830, most voluntarily indentured Black boys learned a craft or trade.[465] However, by the 1860s. Black boys were largely shunted into agricultural, service, and domestic roles.[466] Even where Black craft apprenticeships did exist, they were limited to a narrower range of fields than in earlier eras.[467] A combination of economic attrition and competition for scarce craft apprenticeships

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[452] *Petition of John A Levin, 27 Jan. 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1858-1859), MSA C3360-4-38-9.
[453] *Id.*
[454] *Petition of Jefferson P. Allbright, 21 Aug 1852*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS, MSA T621-183.
[455] *Petition of Caroline Blaschke, 28 Jan. 1861*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSAC3360-6-21-14.
[456] *Id.*
[457] *Id.*
[458] *Petition of Mary Brown, 21 Sept. 1852*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-7-1.
[459] *Id.*
[460] *Petition of Oliver Miller & James Franklin, 13 Dec. 1859*, ANNE ARUNDEL REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5 at 522-23.
[461] *Id.*
[462] *Id.*
[463] *Id.* at 523.
[464] *Id.*
[465] T. Stephen Whitman, "Manumission and Apprenticeship in Maryland, 1770-1870," 57 MARYLAND HIST. MAG. 55, 56 (Spring 2006).
[466] *Id.* at 65.
[467] *Id.*

had endowed certain trades, such as barbering and calking, as "Black."[468] This racial dichotomy in trajectories grew wider over the course of the nineteenth century, as apprenticeship "shed its emphasis on craft training and resume[d] its earliest American role, akin to indentured servitude, as a mode of controlling the labor and providing step-families to children."[469] For pauper apprentices in particular, apprenticeship had shifted from job training to an exchange of unskilled labor for material maintenance of youths.[470]

Girls of both races were usually bound as servants, maids, or domestic workers. This latter category was quite capacious, encompassing such varied roles as laundresses, seamstresses, hand/chamber/nurse maids, cooks, and bakers.[471] While not crafts according to traditional definitions, some of these were skilled roles eligible for earning good money. Other skilled apprenticeships included midwifery, millinery, mantua-making,[472] and tailoring, though these were a slim minority of all bound girls.[473]

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[468] *Id.*

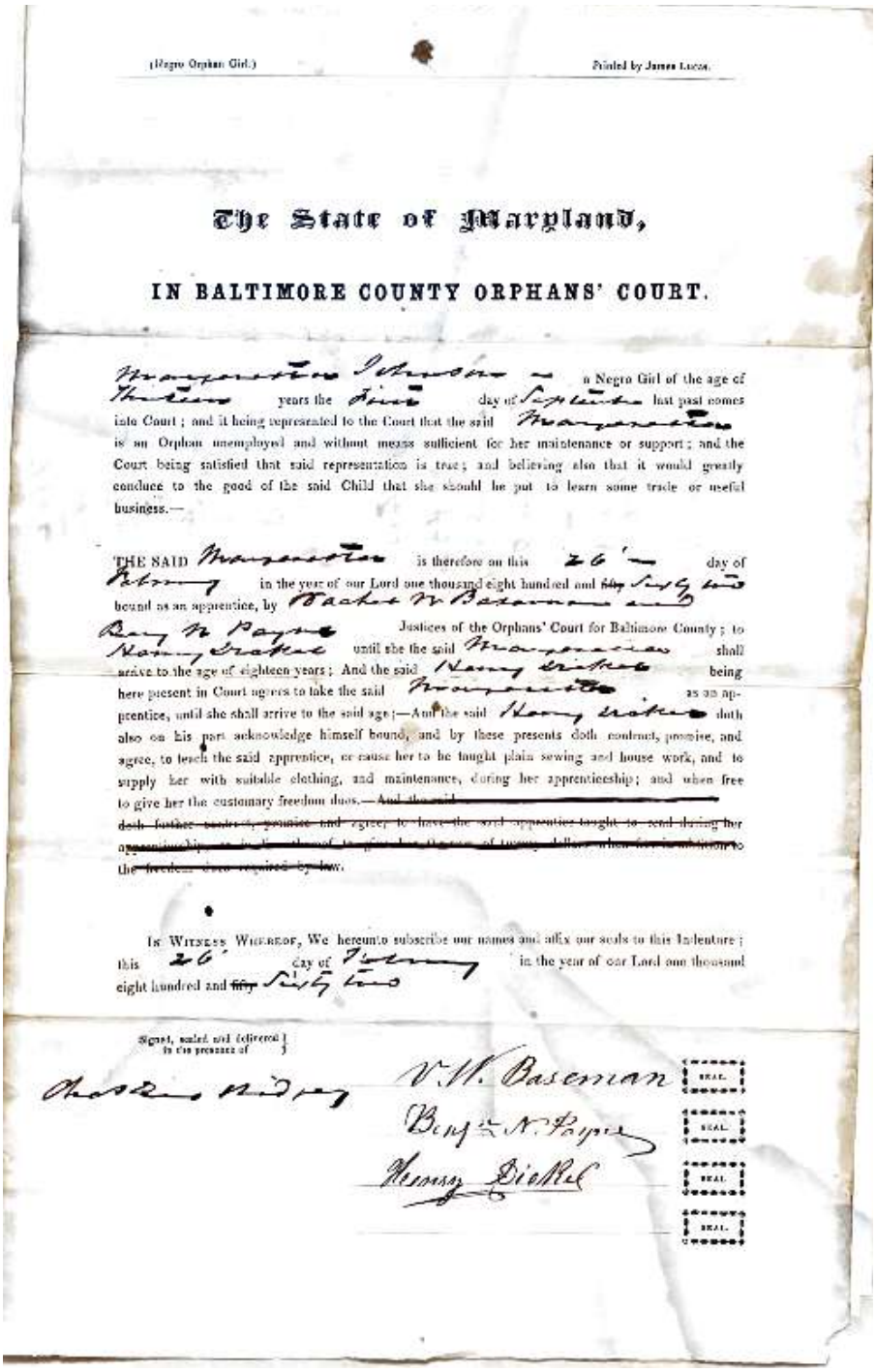
[469] *Id.* at 61.

[470] THE PRICE OF FREEDOM: SLAVERY AND MANUMISSION IN BALTIMORE AND EARLY NATIONAL MARYLAND, 25-31 (2010); T. Stephen Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA, 52, 63-4 (Ruth Wallis Herndon & John E. Murray eds. 2010).

[471] Melvin Patrick Ely, *Israel on the Appomattox: A Southern Experiment in Black Freedom from the 1790s Through the Civil War*, 2004.

[472] A mantua was an outer garment worn by women. Similar to an overgown or robe, it was typically worn over other undergarments, such as petticoats and stays.

[473] Whitman, "Orphans in City and Countryside" at 58.



(Negro Orphan Girl.) Printed by James Lucas.

The State of Maryland,

IN BALTIMORE COUNTY ORPHANS' COURT.

Margaretta Johnson a Negro Girl of the age of thirteen years the first day of September last past comes into Court; and it being represented to the Court that the said Margaretta is an Orphan unemployed and without means sufficient for her maintenance or support; and the Court being satisfied that said representation is true; and believing also that it would greatly conduce to the good of the said Child that she should be put to learn some trade or useful business.—

THE SAID Margaretta is therefore on this 26th day of February in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty two bound as an apprentice, by Rachel M. Baseman and Benj. N. Payne Justices of the Orphans' Court for Baltimore County; to Henry Drake until she the said Margaretta shall arrive to the age of eighteen years; And the said Henry Drake being here present in Court agrees to take the said Margaretta as an apprentice, until she shall arrive to the said age;—And the said Henry Drake doth also on his part acknowledge himself bound, and by these presents doth contract, promise, and agree, to teach the said apprentice, or cause her to be taught plain sewing and house work, and to supply her with suitable clothing, and maintenance, during her apprenticeship; and when free to give her the customary freedom duos.— ~~And the said doth further contract, promise and agree to have the said apprentice taught to read during her apprenticeship, or to pay her the sum of twenty dollars when she arrives to the freedom dues required by law.~~

In Witness Whereof, We hereunto subscribe our names and affix our seals to this Indenture; this 26th day of February in the year of our Lord one thousand eight hundred and ~~fifty~~ sixty two

Signed, sealed and delivered in the presence of

Charles M. Dey

R. N. Baseman SEAL.

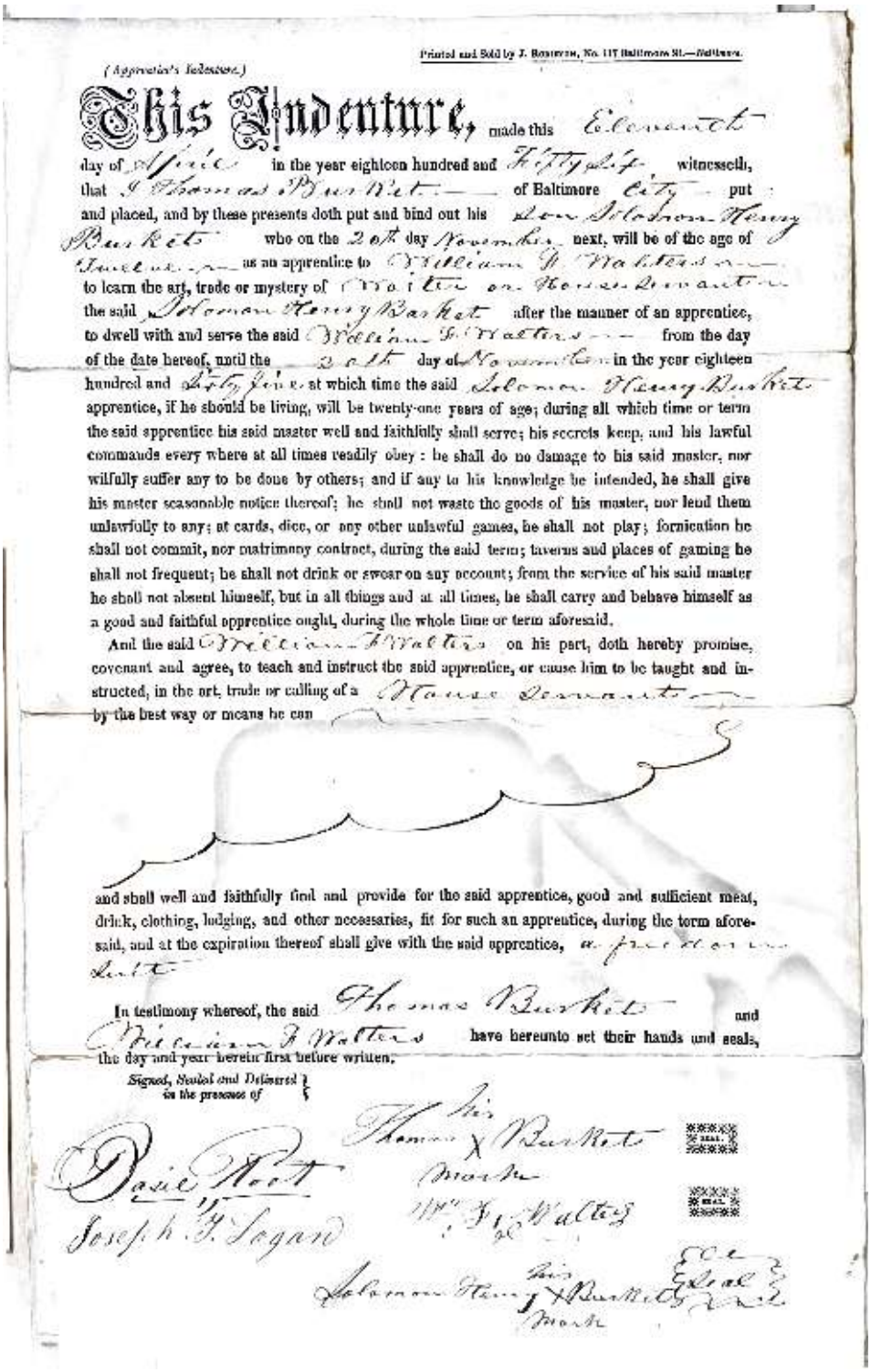
Benj. N. Payne SEAL.

Henry DieRel SEAL.

SEAL.

Figure 3.1: Indenture of Margaret Johnson to Joseph P. Hackett, 26 February 1862[474]

[474] BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-35-8.



Printed and Sold by J. Robinson, No. 117 Baltimore St.—Baltimore.

(Apprentice's Indenture.)

This Indenture, made this Eleventh day of April in the year eighteen hundred and Sixty five witnesseth, that Thomas Burkett of Baltimore City put and placed, and by these presents doth put and bind out his Son Solomon Henry Burkett who on the 20th day November next, will be of the age of twelve years as an apprentice to William F. Walters to learn the art, trade or mystery of Waiter or House Servant the said Solomon Henry Burkett after the manner of an apprentice, to dwell with and serve the said William F. Walters from the day of the date hereof, until the 20th day of November in the year eighteen hundred and Sixty five at which time the said Solomon Henry Burkett apprentice, if he should be living, will be twenty-one years of age; during all which time or term the said apprentice his said master well and faithfully shall serve; his secrets keep, and his lawful commands every where at all times readily obey: he shall do no damage to his said master, nor wilfully suffer any to be done by others; and if any to his knowledge be intended, he shall give his master seasonable notice thereof; he shall not waste the goods of his master, nor lend them unlawfully to any; at cards, dice, or any other unlawful games, he shall not play; fornication he shall not commit, nor matrimony contract, during the said term; taverns and places of gaming he shall not frequent; he shall not drink or swear on any account; from the service of his said master he shall not absent himself, but in all things and at all times, he shall carry and behave himself as a good and faithful apprentice ought, during the whole time or term aforesaid.

And the said William F. Walters on his part, doth hereby promise, covenant and agree, to teach and instruct the said apprentice, or cause him to be taught and instructed, in the art, trade or calling of a House Servant by the best way or means he can

and shall well and faithfully find and provide for the said apprentice, good and sufficient meat, drink, clothing, lodging, and other necessaries, fit for such an apprentice, during the term aforesaid, and at the expiration thereof shall give with the said apprentice, a full new Suit

In testimony whereof, the said Thomas Burkett and William F. Walters have hereunto set their hands and seals, the day and year herein first before written.

Signed, Sealed and Delivered in the presence of

David Root

Joseph F. Logan

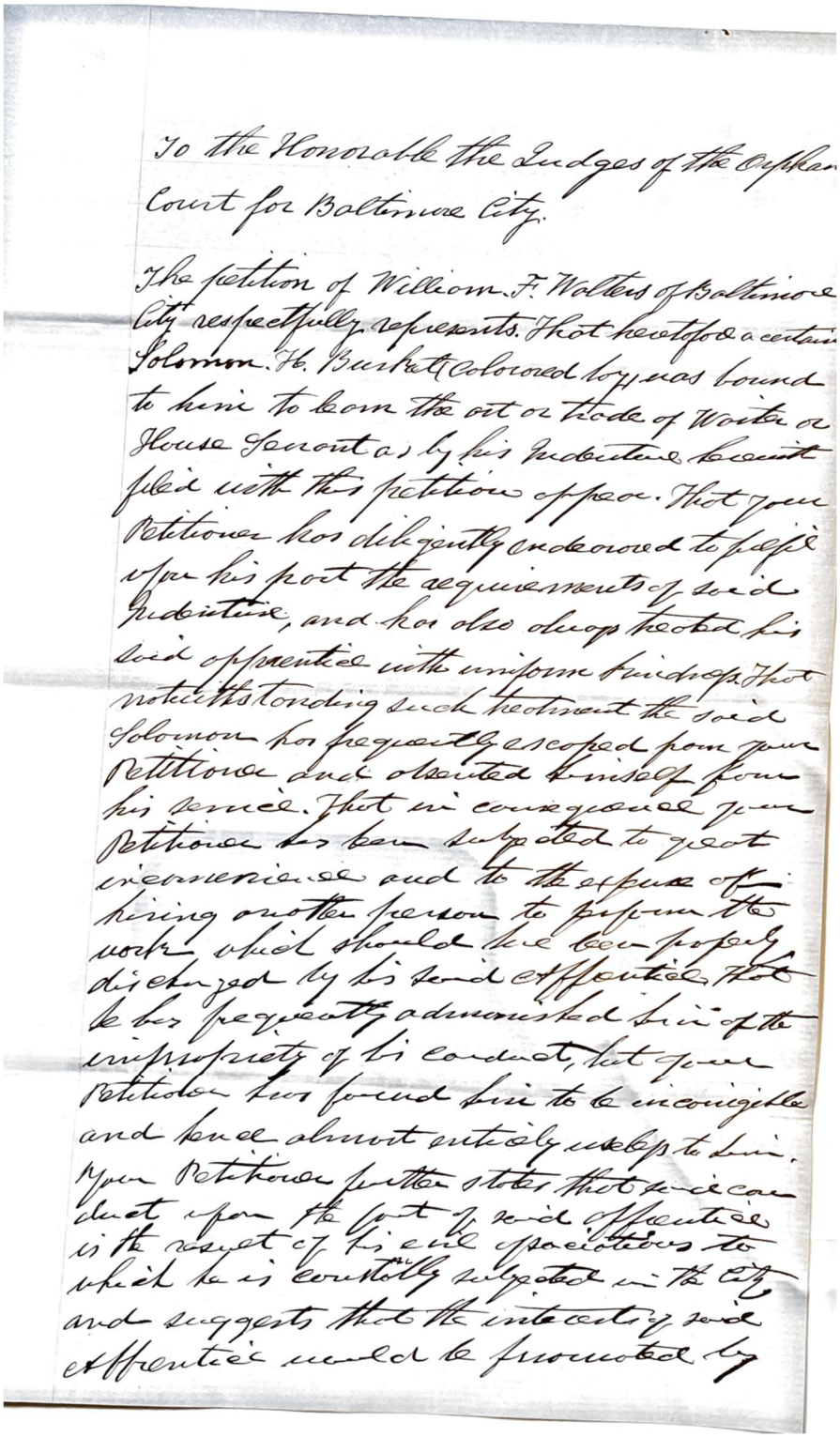
Thomas his X Burkett mark [SEAL]

Wm. F. Walters [SEAL]

Solomon Henry his X Burkett mark [SEAL]

Figure 3.2: Indenture of Solomon Burkett to William Walters, 20 November 1865[475]

[475] BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSA 3360-6-34-1.



To the Honorable the Judges of the Orphans Court for Baltimore City.

The petition of William F. Walters of Baltimore City respectfully represents. That heretofore a certain Solomon H. Burkett Colored boy was bound to him to learn the art or trade of Waiter or House Servant as by his Indenture hereunto filed with this petition appear. That your Petitioner has diligently endeavored to perform upon his part the requirements of said Indenture, and has also always treated his said Apprentice with uniform kindness. That notwithstanding such treatment the said Solomon has frequently escaped from your Petitioner and absented himself from his service. That in consequence your Petitioner has been subjected to great inconvenience and to the expense of hiring another person to perform the work which should have been properly discharged by his said Apprentice. That he has frequently admonished him of the impropriety of his conduct, but your Petitioner has found him to be incorrigible and has been almost entirely unable to govern. Your Petitioner further states that said Servant upon the part of said Apprentice is the object of his chief speculations to which he is constantly subjected in the City and suggests that the interest of said Apprentice would be promoted by

Figure 3.3: Petition of William F. Walters, 20 May 1861 – Page 1[476]

[476] BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSA C3360-6-35-7.

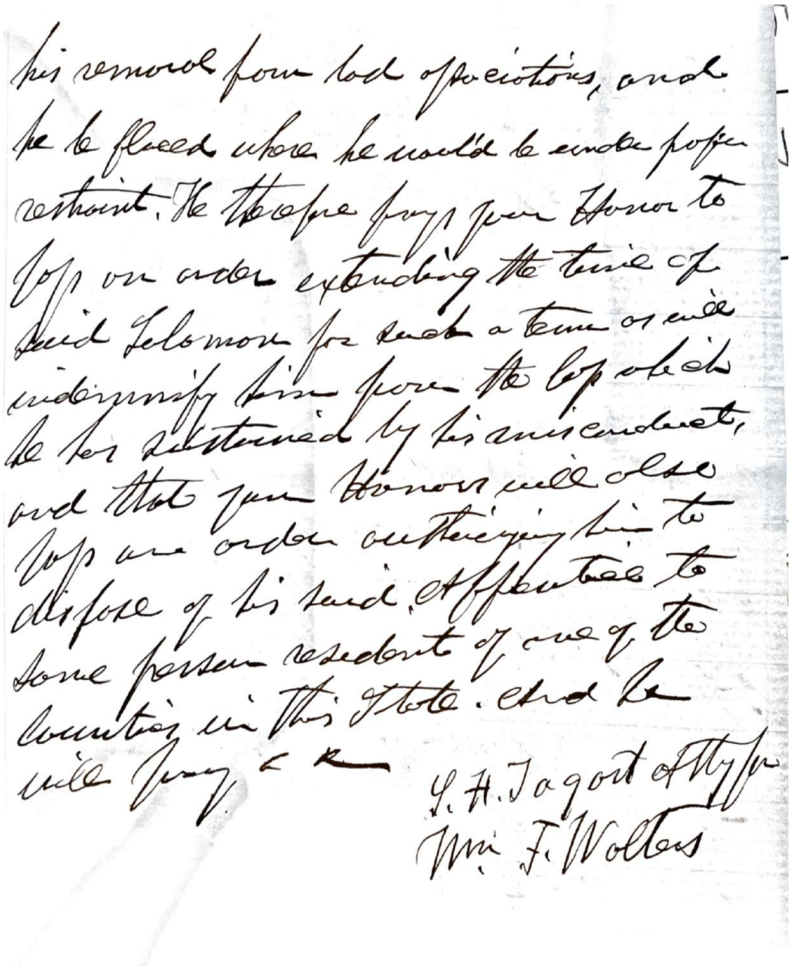
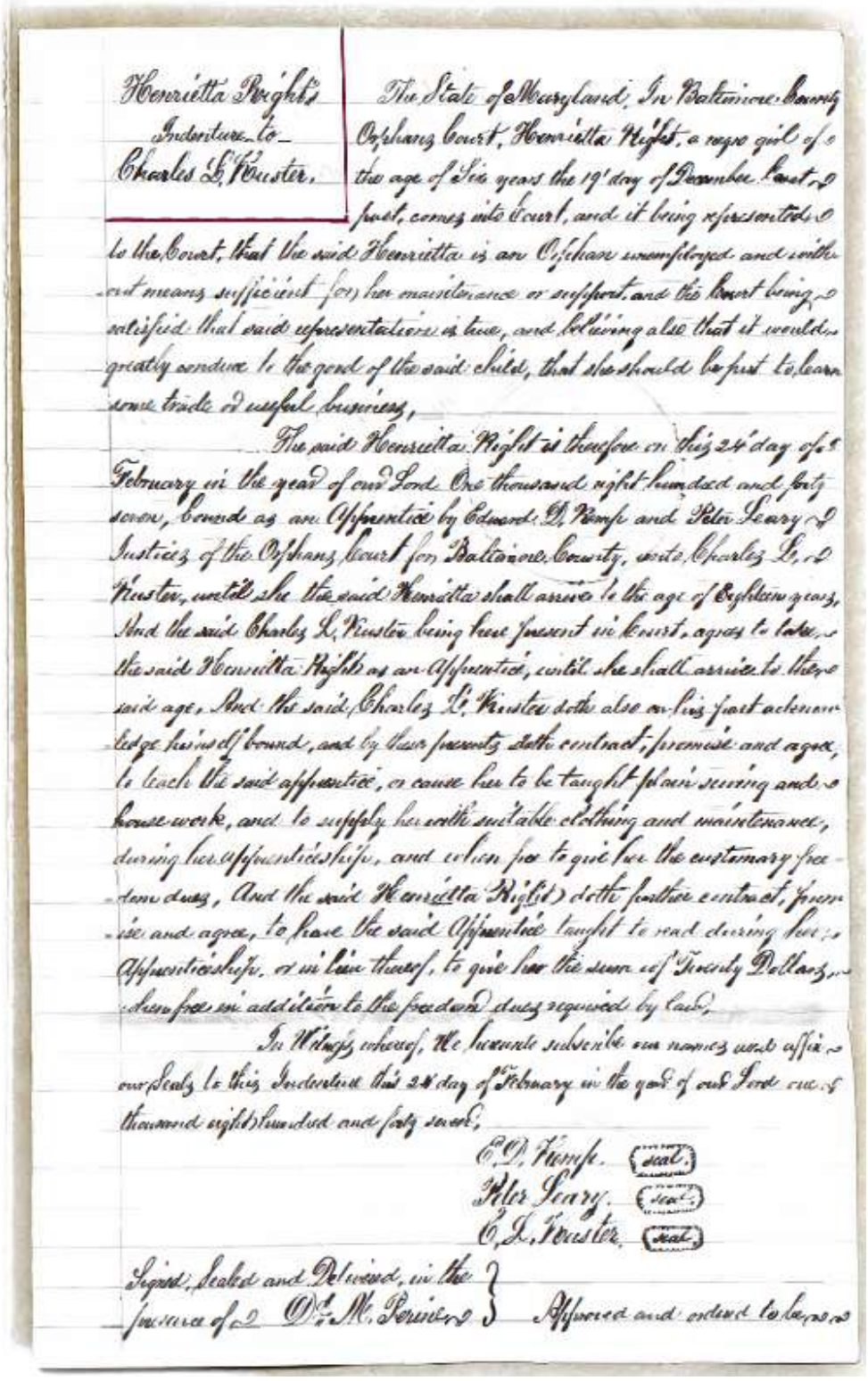

his removal from bed of prostitution, and
he be placed where he would be under proper
restraint. He therefore prays your Honor to
issue an order extending the time of
said Solomon for such a term as will
indemnify him from the loss which
he has sustained by his misconduct,
and that your Honor will also
issue an order authorizing him to
dispose of his said effects to
some person resident of one of the
counties in this State. and he
will pray &c
L. H. Jagou Atty for
Wm F. Walters

Figure 3.4: : Petition of William F. Walters, 20 May 1861 – Page 2[477]

[477] *Id.*



Henrietta Right's
Indenture to
Charles L. Kuster.

The State of Maryland, In Baltimore County
Orphans Court, Henrietta Right, a negro girl of
the age of five years the 19th day of December last,
past, comes into Court, and it being represented
to the Court, that the said Henrietta is an Orphan unemployed and with-
out means sufficient for her maintenance or support, and the Court being
satisfied that said representations is true, and believing also that it would
greatly conduce to the good of the said child, that she should be put to learn
some trade or useful business,

The said Henrietta Right is therefore on this 24th day of
February in the year of our Lord One thousand eight hundred and forty
seven, bound as an Apprentice by Edward D. Kemp and Peter Leary
Justices of the Orphans Court for Baltimore County, unto Charles L.
Kuster, until she the said Henrietta shall arrive to the age of Eighteen years,
And the said Charles L. Kuster being here present in Court, agrees to take
the said Henrietta Right as an Apprentice, until she shall arrive to the
said age, And the said Charles L. Kuster doth also on his part acknow-
ledge himself bound, and by these presents doth contract, promise and agree,
to teach the said apprentice, or cause her to be taught plain sewing and
house work, and to supply her with suitable clothing and maintenance,
during her Apprenticeship, and when free to give her the customary free-
dom dues, And the said Henrietta Right doth further contract, prom-
ise and agree, to have the said Apprentice taught to read during her
Apprenticeship, or in lieu thereof, to give her the sum of Twenty Dollars,
when free in addition to the freedom dues required by Law;

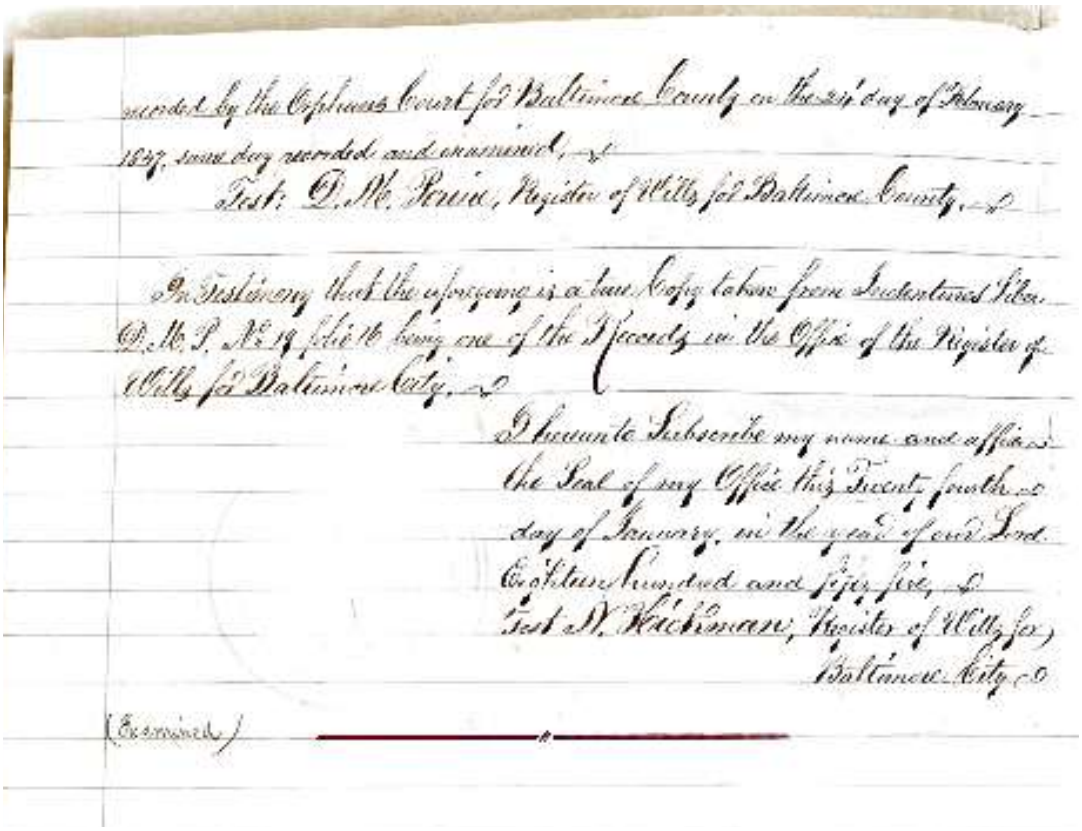
In Witness whereof, We herewith subscribe our names and affix
our Seals to this Indenture this 24th day of February in the year of our Lord one
thousand eight hundred and forty seven;

E. D. Kemp. (seal)
Peter Leary. (seal)
C. L. Kuster. (seal)

Signed, Sealed and Delivered, in the
presence of D. M. Perine } Affirmed and ordered to be recorded

Figure 3.5: Indenture of Henrietta Right to Charles Kuster, 24 January 1855 – Page 1[478]

[478] BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS, MSA T621-183. Note that it is represented that Right is an orphan.



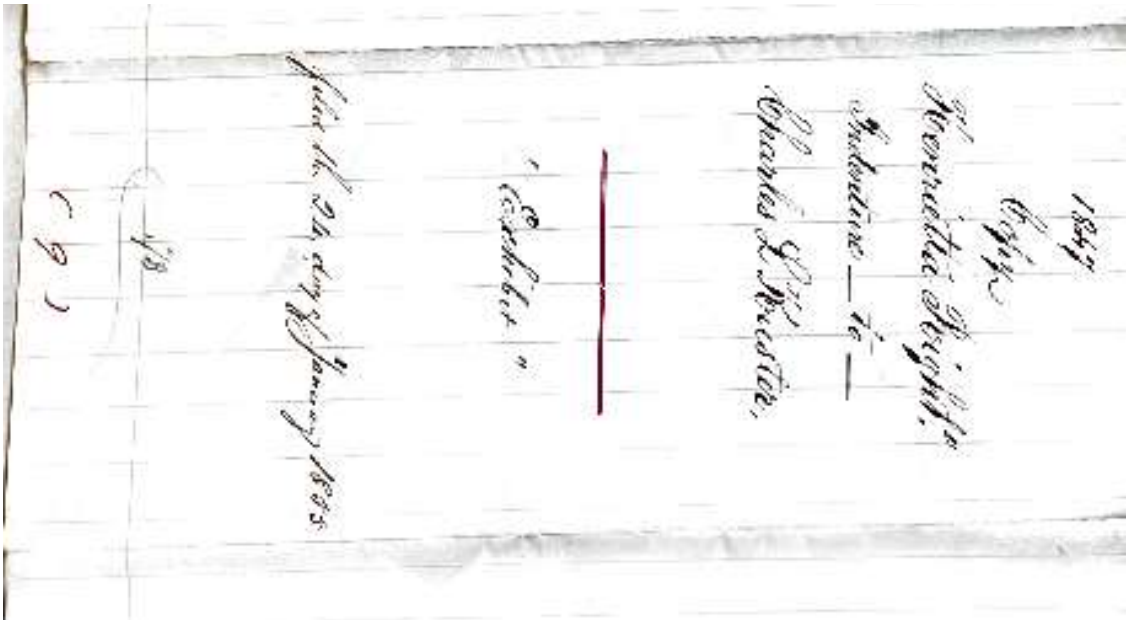
recorded by the Orphans Court for Baltimore County on the 24th day of February 1827, same day recorded and examined, &c
Test: D. M. Perrie, Register of Wills for Baltimore County. &c

In Testimony that the aforegoing is a true Copy taken from Indentures Liber D. M. P. No 19 folio 16 being one of the Records in the Office of the Register of Wills for Baltimore City. &c

In Testimony whereof I hereunto Subscribe my name and affix the Seal of my Office this Twenty fourth day of January, in the year of our Lord Eighteen Hundred and fifty five, &c
Test N. Richman, Register of Wills for Baltimore City &c

(Examined)

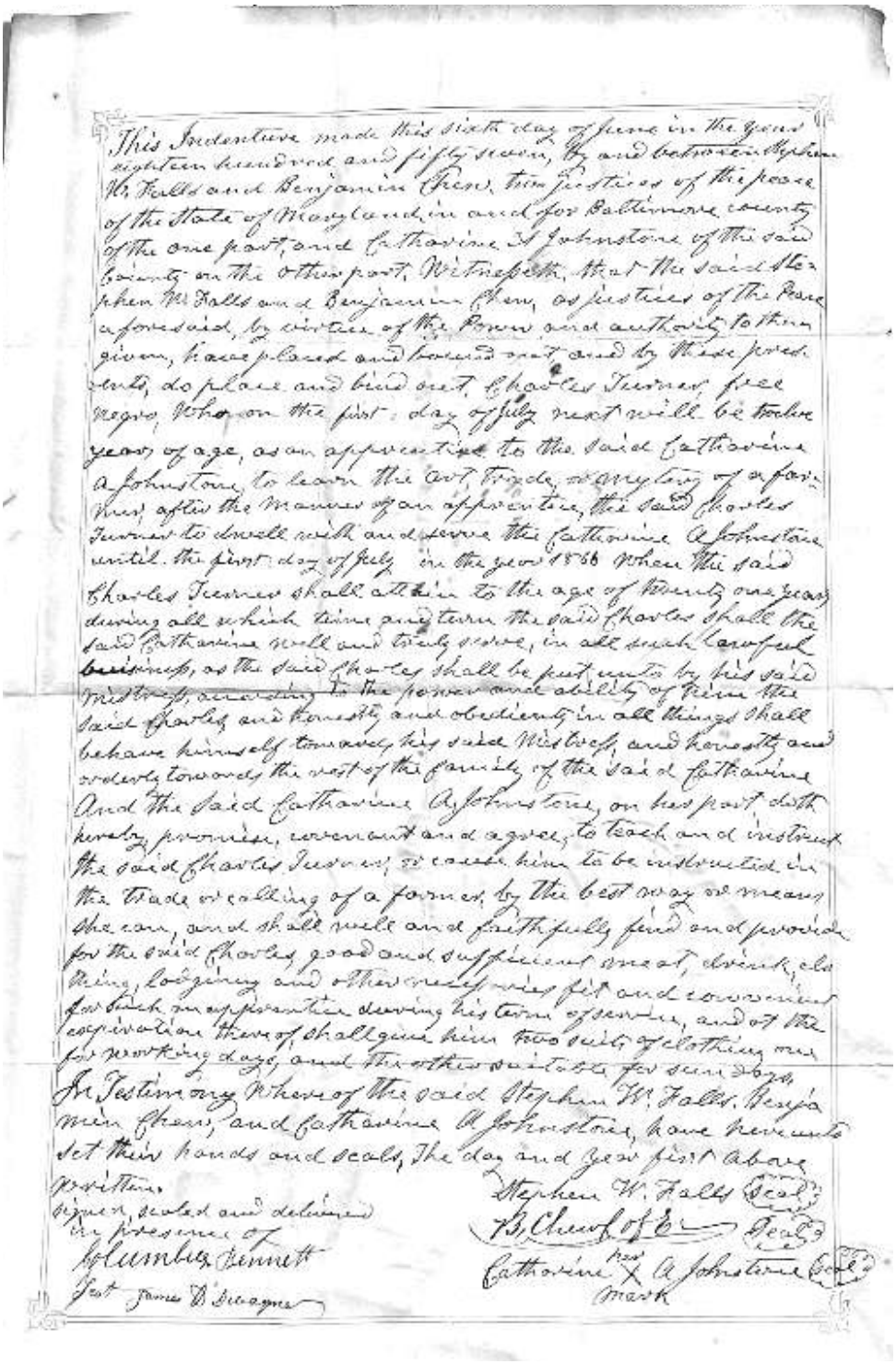
Figure 3.6: Indenture of Henrietta Right to Charles Kuster, 24 January 1855 – Page 2[479]



1854
Copy
Henrietta Right &c
Indenture
To
Charles L. Kuster.
Filed the 24th day of January 1855
Liber
Folio

Figure 3.7: Indenture of Henrietta Right to Charles Kuster, 24 January 1855 – Cover[480]

[479] *Id.*
[480] *Id.*



This Indenture made this sixth day of June in the year eighteen hundred and fifty seven, By and between Stephen W. Falls and Benjamin Shew, two Justices of the Peace of the State of Maryland, in and for Baltimore county of the one part, and Catharine A. Johnstone of the said County on the other part, Witnesseth, That the said Stephen W. Falls and Benjamin Shew, as Justices of the Peace aforesaid, by virtue of the Power and authority to them given, have placed and bound out and by these presents, do place and bind out, Charles Turner, free negro, who on the first day of July next will be twelve years of age, as an apprentice to the said Catharine A. Johnstone, to learn the Art, Trade, or Mystery of a spinner after the manner of an apprentice, the said Charles Turner to dwell with and serve the said Catharine A. Johnstone until the first day of July in the year 1866 when the said Charles Turner shall attain to the age of twenty one years during all which time and term the said Charles shall the said Catharine well and truly serve, in all such lawful ~~business~~, as the said Charles shall be put unto by his said Mistress, according to the power and ability of him the said Charles and honestly and obediently in all things shall behave himself towards his said Mistress, and honestly and orderly towards the rest of the family of the said Catharine And the said Catharine A. Johnstone, on her part doth hereby promise, covenant and agree, to teach and instruct the said Charles Turner, or cause him to be instructed in the Trade or calling of a spinner, by the best way or means she can, and shall well and faithfully find and provide for the said Charles good and sufficient meat, drink, clothing, lodging and other ~~ne~~ necessaries fit and convenient for such an apprentice deserving his term of service, and at the expiration thereof shall give him two suits of clothing one for working days, and the other suitable for Sundays. In Testimony Whereof the said Stephen W. Falls, Benjamin Shew, and Catharine A. Johnstone, have hereunto set their hands and seals, The day and year first above written.

Signed, sealed and delivered
in presence of
Columbus Bennett
Test James D. Swagger

Stephen W. Falls (Seal)
B. Shew (Seal)
Catharine Johnstone (Seal)
her X mark

Figure 3.8: Indenture of Charles Turner to Catharine Johnston, 6 June 1857 – Page 1[481]

[481] BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-72-1.

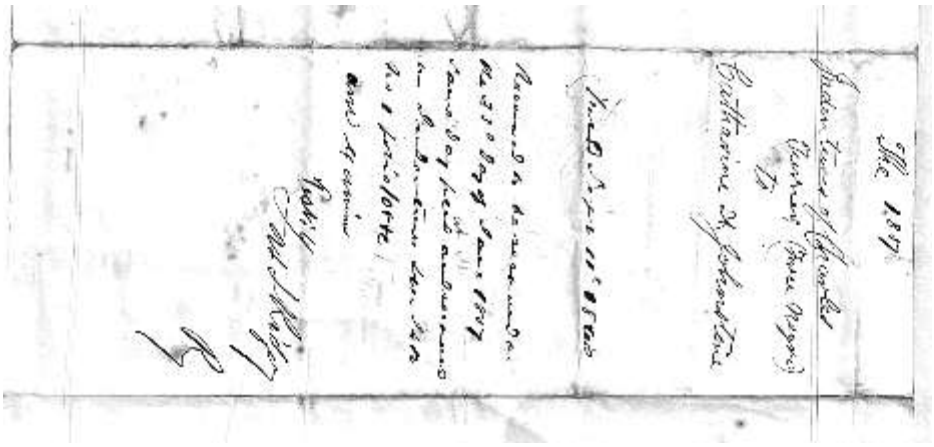


Figure 3.9: Indenture of Charles Turner to Catharine Johnston, 6 June 1857 – Cover[482]

III. Keeping Control: Regulating Apprentices' "Turbulence"

Commensurate with this fictive parental control, indenture holders were empowered with their own equivalent to turbulent slave petitions. Under the Law of 1839, apprentices' indentures could be extended for absconding.[483] This gave rise to a body of "turbulent apprentice" petitions in county and Orphans' Courts. Turbulent apprentice petitioners hit many of the same beats as slaveholders' filings. They declared when the apprentice was bound, lauded their own virtuous treatment of the apprentice, explained when the apprentice had "left their service" or "absconded," and detailed what costs and nuisances had accrued in recapturing them. They inevitably closed with a request to extend the term of indenture, sell the apprentice, or both.

For example, Richard Dunbar appeared in Anne Arundel County's Orphans' Court "with the apprentice boy Richard Young, to serve him until the twenty fifth day of December 1850 agreeably to his Indenture of Apprenticeship recorded in this office. . . "[484] According to Dunbar's petition,

> "altho [sic] [Richard Young] had always been treated kindly and properly, had on several occasions left the service of the said Henry H. Dunbar, thereby causing him considerable expenses and also subjecting him to great lo[ss][485] and inconvenience and trouble in apprehending and bringing him back again."[486]

Apparently the entire endeavor cost $42.42 in "jail and officers fees and other incidental expenses."[487] Dunbar therefore requested the judges "extend the term of service of said apprentice in order that he might be indemnified to some extent in the loss sustained by him."[488] Citing to the

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[482] *Id.*
[483] Act of 1839, § 4.
[484] *Petition of Henry Dunbar, 7 Sept. 1847*, Anne Arundel County Register of Wills, Petitions & Orders (1840-1851), 202-03, MSA C122-4.
[485] The petition's text follows the common practice of replacing double s's with a lowercase f.
[486] *Id.*
[487] *Id.*
[488] *Id.*

1842 statute, the court ordered that Young's indenture be extended three years, from 25 Dec. 1850 to Christmas Day 1853.[489]

Converting Dunbar's filing to a turbulent slave petition would only require replacing the word "apprentice" with "slave." Despite their origin in different statutes (the 1831 Act for turbulent slave petitions, and the Law of 1839 for apprentices), the two species of filing were virtually identical. In turn, this hints that turbulent apprenticeship petitions offer some of the same insights as turbulent slave proceedings.

Mining turbulent apprentice petitions for self- and labor advocacy certainly yields similar tactics and results, though with an unfortunate similarity in formulaic language and sparse details. What can be gleaned is that running away was a favored means of demanding distance from an indenture holder or getting a break from work.[490] While this is at least partially symptomatic of the archive and absconding's status as turbulence par excellence, not every petition focused on an apprentice's flight.

For example, Ignatius Gore's petition against William Johns practically drips with frantic, shrill outrage.[491] In four pages of handwritten text, Gore only devoted four lines to Johns' most recent absconding.[492] The ten days Johns was gone apparently bothered Gore far less than his behavior in preceding months. According to Gore, Johns had been supplied "with every necessary want – and treated with leniency and kindness and never asked to perform "unreasonable tasks."[493] Despite this apparently idyllic setting, Johns had "guilty of the greatest outrages," such as being "drunk [on] Sabbath after Sabbath" and of "petty [**] – the circumstances coupled with which your petitioner deems it unnecessary to set forth."[494] Johns' "outrageous conduct" also included an occasion when Gore attempted to "remonstrate" with Johns on the latter's "neglect of duty."[495] Whatever Gore's chosen words or method of discipline, it apparently enraged Johns, who seized Gore and "applied to your petitioner, in the presence of his family, most blasphemous epithets."[496] Gore claims that he only broke Johns' grip "with difficulty." Approximately two months later, Johns absconded, leading to the present petition. The Orphans Court obligingly extended Johns' indenture, but only for six months.[497]

The details presented are obviously one-sided and incomplete, yet they offer tantalizing glimpses of how Johns lived under Gore's control. Johns' inebriation on the Sabbath could be a symptom of self-medication (whether for physical or mental ailments), or simply because it was the

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[489] *Id.*

[490] *See e.g. Petition of John Prentice, 31 May 1859*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-58-1 (petitioning to extend and sell the indenture of George Woods for absconding; granted a one year extension and permission to sell Woods' indenture); *Petition of William Thompson, 9 Sept. 1857*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS AND ORDERS (1840-1851), MSA C122-4, at 456-8 (petitioning to extend and sell the indenture of Charles Stewart for absconding on a steamboat and costing Thompson $19 in expenses; granted a six month extension).

[491] *Petition of Ignatius Gore, 22 Nov. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS AND ORDERS (1860-1861), MSA C3360-6-15-12.

[492] *Id.* At the beginning of the petition, Gore notes that Johns had previously had his term extended for turbulence. However, this is offered as part of procedural history for Johns' indenture, rather than a pillar of Gore's instant petition.

[493] *Id.*

[494] *Id.* This word is legible but unclear.

[495] *Id.*

[496] *Id.* The word "applied" is a best guess based on the condition of the petition and its text.

[497] *Order of Court in relation to Colored apprentice William H. Johns*, BALTIMORE CITY REGISTER OF WILLIS, PETITIONS AND ORDERS (1859-1860), MSA C3360-5-15-9.

only day he was allowed free time to relax. The actual altercation between the two reveals a long simmering tension that finally exploded into harsh language and a near-fist fight. The fact the episode was triggered by Gore's "remonstrations" on work ethic suggest the two had differing opinions about the workplace expectations. The reactive nature of Johns' strong language sets this slightly apart from deliberate labor advocacy (i.e. he was viscerally responding to Gore's haranguing, not making a calculated statement), but his words might have spurred Gore to reconsider how he managed the time of this particular apprentice.

Robert Mills made his case more directly.[498] Filing on his own behalf, Mills alleged that he had received "such ill treatment from. . . Francis Barrenger or his certain servants or employees" that Mills' remaining under Barrenger's control was untenable.[499] Similar to the labor advocacy of Eliza and William Stewart, Mills' demanded that his indenture to Barrenger be annulled, and a new master found for him.[500]

Other apprentices, like enslaved persons, used both words and disruption to demand changes to life and labor. Charlotte Niven was bound to Daniel H. Ledley in June 1859.[501] From almost the start, Hedley was dissatisfied with Niven's behavior, claiming she

> "has not. . . conducted herself in a proper orderly and submissive manner as she is bound and as a servant ought to do but on the contrary has repeatedly misbehaved, and when sent out upon errands habitually absents herself for the residue of that day or night or both as the case may be."[502]

After Niven's fifth "absconding," Ledley finally asked what he could do to stop the cycle of flight and recovery.[503] Niven's demand was simple: allow her to spend her nights how she pleased. While Niven might spend the next day slightly worse for wear, she was more likely to *be there* the next morning, not hiding from Ledley or his paid agents. Ledley's turbulence petition (and resulting six-month extension) were not wins for Niven.[504] However, she had given Ledley a clear blueprint for fostering motivated, quality labor for the duration of her service.

These strategies were certainly risky – in the cases cited the apprentices all received term extensions for their trouble. In fact, most turbulence petitions yielded indenture extensions between 4 and 36 months, with an average extension of 14 and a most common extension of 24 months. However, these extensions were not unambiguous defeats for restive apprentices. As with turbulent slaves, there were definitely negotiations behind the scenes, bargains struck in the shadow of ongoing litigation. Apprentice Mary Elizabth Johnson absconded "several times" from Max

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498 *Petition of Robert Mills, 15 Nov. 1860*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-74-01.
499 *Id.*
500 *Id.*
501 *Petition of Daniel Ledley, 17 Feb. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-22-3
502 *Id.*
503 *Id.* While the actual petition is more opaque ("your petition is informed and believes that [Niven will] [] abscond again unless your petitioner shall suffer her to absent herself form his service at and during the night when as often as she may [indecipherable] may herself see fit."), it seems most likely Ledley just asked her why she kept absconding and what could be done to stop her.
504 The petition and order are split between two collections at the MSA. For the order, look to *Petition of Daniel Ledley, 20 Feb 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-55-3.

Marshall, her proximate indenture holder.[505] Each time, Johnson "begg[ed] to be excused and [promised] she would be a good and faithful girl."[506] Evidently this worked, as Marshall reports that he "allowed her to escape with a mere admonition on two occasions" but "on the last occasion of her capture he caused her to be committed to the common jail."[507] While Johnson's luck had run out in the short term, it appears that she was able to tug Marshall's heartstrings once again: he withdrew his turbulence petition the day after filing.[508]

Such negotiations were not limited to escaping immediate trouble. Apprentices also used behind the scenes negotiations to reshape their life with a given indenture holder or guide the trajectory of their future masters. For example, Isaac Cunningham absconded from Edwin Duvall's control around 7 September 1856.[509] Duvall received a term extension and the court's blessing to sell Cunningham. However, the two were still together when Duvall filed a new turbulence petition September 1859.[510] Cunningham's continued presence in Duvall's life indicates they had reached some level of rapprochement for three years before things broke down again.

Augusta Sprigg pulled a similar feat across multiple indenture holders.[511] In 1849, the Trustees for the Poor of Baltimore City and County bound out Sprigg as a house servant to Joseph Merryman.[512] In a sparsely detailed turbulence petition, Merryman alleges Sprigg ran away, receiving a twelve month extension and sale authorization for his trouble.[513] Sprigg's negotiating abilities became apparent when she was sold to David White one week later.[514] Over the course of the next three years, White would file three turbulence petitions against Sprigg: one in March 1854,[515] another

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505 *Petition of Max Marshall, 24 Aug. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSA C3360-06-07-10.
506 *Id.*
507 *Id.*
508 *Id.*
509 *Petition of Edwin Duvall, 16 Sept. 1856*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5, 323-24.
510 *Petition of Edwin Duvall, 6 Sept. 1859*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5, 573-74.
511 For a similar pattern, apprentice John Bacon managed to ward of sale for three years after indenture holder William Stewart received permission to sell his labor. Bacon was persuasive enough that Stewart allowed him to travel from Baltimore to visit his family three days after filing a turbulence petition for absconding. *See Petition of William Stewart, 20 May 1853*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-12-1 (the original petition and order); *Petition of William Stewart, 23 May 1853*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-13-1 (requesting the release of Bacon, who was mistakenly jailed as runaway when in fact he was abroad with Stewart's permission); *Petition of William Steward 11 Mar. 1856*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-63-1 (another turbulence petition). For Bacon's subsequent history, *see Petition of William Glenn*, *17 June 1857*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-43-1 (transferring Bacon from Stewart to Glenn); and *Petition of William Glenn, 7 Aug. 1860*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-70-1 (petitioning a turbulence extension).
512 *Petition of Joseph Merryman, 25 Aug. 1852*. BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-6-1.
513 *Id.*
514 *See Petition of David White, 26 Mar. 1854*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-24-1. (*White I)*
515 *Id.*

in December of that year,[516] and the final in March 1856.[517] White received permission to sell Sprigg in December 1854, but did not do so until April 1856, to one James Wilson.[518]

White and Wilson certainly knew what they were getting into. Sprigg was a known runaway, a detail impossible to miss given the court orders updating her term of service and licensing sale in the first place. While the selling indenture holder worked to find a buyer, it is very likely that Sprigg was doing her own marketing in hopes of shaping her own future. Similar to William Stewart asking Edward Kearney to buy him,[519] Sprigg might have promised better behavior to White and Wilson, inveigling them to purchase her indenture. Her time with White indicates the two were negotiating their relationship, as White claimed Sprigg's labor for two years after he was licensed to sell her.[520] Despite the various extensions and sale authorizations, some indenture holders never sold their apprentices or delayed filing new turbulence petitions, at least until a new breaking point was reached.

Whether through absconding, foul language, or promises of future cooperation, these negotiations did bear fruit. Sprigg and Cunningham both avoided sale to persons unknown, or delayed it long enough to have a hand in their future indenture holder. Others extracted greater concessions. It is unlikely that anyone received a self-hire arrangement like Catharine Brown and James Edwards did.[521] Even though apprenticeship was viewed capaciously over the nineteenth century, its fundamental core of close supervision and tutelage denied the possibility of self-administered labor. Instead, the biggest winners were those whose advocacy incited their masters to cancel the indenture entirely.

John Wiseman was bound out to John Jones in order to learn "the trade of a mathematical and philosophical instruments maker."[522] Jones alleged that Wiseman had "given to your petitioner a large amount of trouble and unnecessary expense" including being "imprisoned on criminal charges."[523] Frustrated at the trouble, Jones asked the court to summon Wiseman's parents and hold a hearing on whether or not to cancel the indenture entirely.[524] Knowing that the court would not release an indenture if the parents were unfit or in poverty, Jones took pains to clarify that "while Henry Wiseman, the father of the said John [] Wiseman is a man of intemperate habits. . . the mother. . . has the principal management of her children."[525] While not a glowing endorsement of the Wisemans' parenting, it was sufficient to convince the Orphans' Court to annul the indenture.[526]

Thomas Burrows' self-advocacy won not only his freedom but financial compensation.[527] Burrows was bound to a Henry Treadway to learn the "carpenter's trade."[528] Despite a promising

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[516] *Id.* (archived with the March 1854 petition) (*White II*)
[517] *Petition of David White, 26 Mar. 1856*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-63-4. (*White III*).
[518] *Petition of James Wilson, 2 Dec. 1856*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS, MSA T621-183.
[519] *Supra* at 38.
[520] *See id.*
[521] *See supra* at 54-9.
[522] *Petition of John Jones, 23 Feb. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-22-10.
[523] *Id.*
[524] *Id.*
[525] *Id.*
[526] *Id.*
[527] *Petition of Henry Treadway, 3 Apr. 1860*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 611-13, MSA C122-5.
[528] *Id.*

start and "five or six months" of laudable work, relations between the two eventually soured.[529] Treadway claims Burrows worked only under direct supervision or "when it suited him." Despairing, Burrows and Treadway jointly asked Burrows' father, to come retrieve the boy and take him home.[530] However, his father and Treadway decided to try one more time to make it work, on condition that if Burrows continued to shirk, the indenture would be cancelled.[531] According to Treadway, Burrows was utterly ungovernable from that point onwards. He refused to work, declared his preference to be a farmer over a carpenter, and threatened violence against Treadway if he failed to leave Burrows alone.[532] Treadway eventually reached his own breaking point, filing his cancellation petition well before the end of the negotiated trial period had ended.[533]

Usually this would be a contested proceeding, likely with Treadway and Burrows Sr. arguing over whether one or both parties had violated the terms of the indenture. However, the two managed to reach an agreement ahead of any hearing. Burrows Sr. would consent to the indenture cancellation if Treadway paid Burrows back wages for all the work done during the apprenticeship.[534] Though irritated at the idea of paying an unprofitable, troublesome worker, Treadway was still keen to be rid of Burrows. He therefore asked the court to set a fair severance package. The two were ultimately separated in exchange for "a suit of working clothes and [Burrows'] bench planes."[535]

Margaret Winchester took Burrows' self-advocacy even further, promising all species of violence against what she perceived as an overly harsh indenture holder. Winchester was bound to Mary Jane Mason, likely to learn the art of domestic servant.[536] Unfortunately, Mason found her to be a "girl of high temper and malicious disposition, that she has on many occasions totally disregarded your petitioner's position, commands."[537] Physical discipline was apparently a key source of contention, as when Mason "corrected the said Margaret, the said Margaret has resisted her, and on two occasions she has actually struck your petitioner, and once so violently that your petitioner's arm was very much bruised."[538] On another occasion, Mason promised Winchester that when one of Mason's older sons returned home, Mason would "cause him to chastise [Winchester], and the said Margaret said that if he laid a hand on her 'she would cut his damned heart out.'"[539]

Mason's blatant efforts to curry sympathy and victimhood necessitate careful handling. Taken at face value, she ably portrayed herself as an innocent victim of a blackhearted, restive apprentice. Mason took pains to portray herself as a kindly and virtuous mistress, only using "moderate" correction and acting "in all respects in a kind and indulgent manner towards" Winchester.[540] She complained that Winchester had the nerve to abscond such mild dominion,

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[529] *Id.*
[530] *Id.* Burrows' father remains unnamed in the petition, so will be referred to as Burrows Sr.
[531] *Id.*
[532] *Id.*
[533] *Id.*
[534] *Id.*
[535] *Id.*
[536] *Petition of Mary Jane Mason, 15 Jun. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-36-7. No trade is specified in Mason's petition, but the case facts indicate Mason and Winchester worked in close proximity and domestic worker was the most common trade for female apprentices.
[537] *Id.*
[538] *Id.*
[539] *Id.* Quotation marks are correct from original document.
[540] *Id.*

quickly glossing over the fact that Mason locked her out of the house to begin with.[541] Yet, imagined from Winchester's perspective, Mason was a bloody handed tyrant. Mason's emphasis on physical discipline might have been acceptable for the time, but it was not for Winchester. It is likely that Winchester made her displeasure known through softer means before threatening Mason, but the latter either did not perceive or chose not to report those messages. All told, this fractious relationship shows a strong-willed apprentice bucking against the demands of her indenture holder. Ultimately, Mason gave up on breaking Winchester, petitioning for (and receiving) a cancellation of the indenture.

Turbulent apprentice petitions clearly resembled those against slaves. Complaints of absconding predominated, interspersed with allegations of turbulence, ungovernability, viciousness, and the like. Apprentices knew they risked extension or sale when they pursued this advocacy, but some felt it was their best course of action, whether as a direct salvo at the indenture holder's control, or as part of an ongoing, extra-legal negotiation. While indenture holders usually got what they wanted, a handful decided enough was enough, choosing to end the indenture prematurely rather than try to negotiate with their current apprentice.

IV. "A Failure to Comply with the Terms of Said Indenture" – Apprentices' Means of Labor Advocacy

From this surface level view, there is little to differentiate turbulent slave petitions from those against apprentices. However, broadening our perspective to include other apprentice-related litigation shows the legal distance between these gradations of bondage. Christine Daniels has noted a tendency for legal historians to conceptualize slavery as an outgrowth of indenture, one which "has exaggerated the powerlessness of servants and their duties to their masters."[542] Daniels notes that while slavery studies has self-corrected, emphasizing the ability of enslaved persons to maneuver around their enslavers' control, studies of apprenticeship have been slower to change.[543] Daniels places some of the blame on legal historians' emphasis on statutory law.[544] While easy to locate and formally binding, statutory law is simply letters on a page not the actual practice of law.[545] Law is practiced by people, and that means material realities, moral scruples, and current anxieties mold the shape of law's final, practical form. Echoing Law & Society's exhortations, Daniels' critique calls for increased attention to case law and customary practice to understand how these statutory provisions actually impacted the community.[546]

Using colonial Maryland as her case study, Daniels places particular emphasis on how custom shaped the practice of colonial labor law.[547] For example, Daniels acknowledges the formal power indenture holders possessed over their apprentices.[548] The basic social and legal structure supported economically and politically legible "independents" (usually propertied white males)

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[541] *Id.*
[542] Christine Daniels, "'Liberty to Complaine': Servant Petitions in Maryland, 1652-1797" in THE MANY LEGALITIES OF EARLY AMERICA, 220 (Christopher Tomlins and Bruce Mann, eds. 2001).
[543] *Id.* at 221.
[544] *Id.* at 220-21.
[545] *Id.*
[546] *Id.* In the intervening years, this call has been answered, *see e.g.* Laura Edwards, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH (2009); Kimberly Welch, BLACK LITIGANTS IN THE ANTEBELLUM AMERICAN SOUTH (2018).
[547] Daniels refers to these indentured laborers as servants, though notes that servant and apprentice are essentially interchangeable. For consistency within this chapter, I will keep using "apprentice" for this type of bound laborer.
[548] Daniels, "Liberty to Complaine" in MANY LEGALITIES at 224-25.

exercising dominion over their "dependents" (including apprentices, women, children, and enslaved persons).[549] However, the latter were not bereft of all rights and agency. Daniels finds that apprentices used customary legal rights and public opinion to contest indenture holders' control and misconduct.[550]

These legal claims primarily orbited four types. First, and most frequently, apprentices claimed they had been detained longer than their indenture permitted.[551] Judges were generally sympathetic to this claim, though with some modulation as civil unrest bubbled throughout colonial Maryland.[552] The other claims were requests for "legal redress when their master had not acted responsibly enough as a family governor."[553] This included failure to pay freedom dues or wages;[554] abusive treatment (spanning physical harm, neglect, and sexual abuse);[555] and failure to instruct the servant (whether their general education, in religion, or in a trade.[556] Courts and grand juries generally ruled in favor of servants with a majority of cases ruling in favor of the laborer between 1652-1797, at least on the county and provincial court levels.[557] Despite their absence in the formal statutes, these contractual claims demonstrate that courts saw apprentices as "laboring under contract law, not as chattel."[558] Colonial-era apprentices possessed rights and social cachet sufficient to thwart their proximate indenture holders' aims as declared by positive law.

The same principle holds true in the nineteenth century. While turbulence proceedings and their associated statutes indicate that apprentices and enslaved persons were similarly situated, custom and case law demonstrates the daylight between the two labor forms. The root of this is capitalists' control of differing mechanisms for commoditizing apprentices' labor versus that of waged and enslaved workers. Enslaved persons commodified, both directly as pieces of property-cum-capital and through the value of their labor.[559] Their legal rights and claims were therefore constrained vis-à-vis the slaveholder-employer because property cannot have rights relative its owner. [560] In contrast, apprentices were temporarily-bound free persons, nascent workers transitioning from childhood to productive life. As free persons, they possessed rights by default and could not be relegated to property. Employers instead used a different organ of capitalism to exercise their power: contract.

Contract granted employers broad leeway to curate their labor forces. They could recruit apprentices for specific purposes or roles, for an explicit span of time, with the broadly predictable costs of maintaining the child and some general education. This meant they could avoid the

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[549] *Id.* at 222-25.
[550] *Id.* at 230.
[551] *Id.* at 232.
[552] *Id.* at 233.
[553] *Id.* at 237.
[554] *Id.* at 237-9.
[555] *Id.* at 237-40.
[556] *Id.* at 241-43.
[557] *Id.* at 229.
[558] *Id.* at 245.
[559] Caitlin Rosenthal, "Capitalism Where Labor was Capital: Slavery, Power and Price in Antebellum America" 1:2 Capitalism: A J. of Hist. & Econ 296, 304-325 (2020).
[560] Generally enslaved persons only had standing to sue their proximate slaveholder for their own freedom or wrongful enslavement. The logic here was that they were not *really* slaves and therefore had standing. However, enslaved persons had greater legal power against third parties, including self-defense and debt collection. *See e.g.* Thomas Morris, SOUTHERN SLAVERY AND THE LAW, 1619-1860, 289-303 (1996) (discussing enslaved persons' right to defend themselves against non-owner white Southerners); Welch, BLACK LITIGANTS at 131 (noting cases in Mississippi where enslaved persons sued to collect on debts owed by white neighbors).

fickleness of waged workers, who left when a better offer appeared, as well as the expense required to acquire and retain enslaved workers.

However, this form of commoditization and control also opened the door for apprentices and their advocates to contest the contours and existence of their subordination. Generally, these occupied three broad categories. First, contractual claims regarding an apprentice's treatment or education. Second, definitional ineligibility. Similar to freedom suits of enslaved persons, these claims argued that a given apprentice should never have been bound in the first place. Finally, claims of procedural flaws orbited the indenture holders' noncompliance with statutory requirements. Petitions often raised multiple types of claims in a single document, as apprentices and their advocates sought every legal advantage possible.

a. Contractual Claims

The first and most robust type of claim was simple breach of contract. Indentures were contracts between the would-be indenture holder and the binding party (generally the Orphans' Court). While apprentices and their next friends were certainly had an interest in the agreement, they were not full parties to the agreement.

i. Breach of the Duty to Care and Nourish

Abusive conditions or "ill treatment" were frequent claims, often leveled by indignant parents. For example, in 1850, Henry Dunker filed a petition on behalf of his sister, Elizabeth, alleging Richard Knighton was violating the terms and conditions of her indenture. Knighton was bound to teach Elizabeth the "art and mystery of Housekeeping [sic] and . . . to read + write and to cypher."[561] However, Knighton was overworking Elizabeth, thereby hamstringing her education. According to Henry, Elizabeth was forced to "do all the work about the house which was more than one of her tender years could endure."[562] Knighton had also required Elizabeth to work in the garden.[563] While theoretically within the purview of housekeeping, gardening apprenticeships were not unheard of, implying a division of labor between the two roles.[564] Apparently Elizabeth had objected to these conditions, as "upon [her complaining] that she had to do so, [Knighton] has treated her with unkindness and even cruelty."[565] In light of this ambiguous maltreatment, Henry requested Elizabeth be transferred from Knighton to someone more magnanimous.[566] For his part, Knighton did not defend himself, consenting to annulment of the indenture.[567] Without a case to adjudicate, the Orphans' Court canceled the contract and Elizabeth was free to find a new indenture holder.[568]

Three years later Daniel Boston, a free man of color, filed a petition on behalf of his daughter, Betty Boston.[569] In 1846, the then "seven or eight" year old Betty was bound to Henry

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[561] *Petition of Elizabeth Dunker, 11 June 1850*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), MSA C122-4 at 357 (The petition is in Elizabeth's name, as Henry filed as her next friend/proxy).
[562] *Id.* at 358.
[563] *Id.*
[564] *See e.g. Petition of August Schotta*, *13 Aug. 1856*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-65-4; *Petition of Andrew Bass, 29 Sept. 1857,* BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-70-5.
[565] *Id.*
[566] *Id.*
[567] *Id.*
[568] *See id.*
[569] *Petition of Daniel Boston, 23 Aug. 1853*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 35, MSA C122-5. Betty is also called Kitty. *See id.* at 36.

Owens.[570] Daniel complains that he was "induced to bind her" to Owens because "he might confidently expect she would receive from [Owens] the treatment and bringing up which a person in her situation should in need of."[571] Furthermore, Daniel had "an understanding" with Owens that Betty was not to be hired out or loaned out to other parties without Daniel's explicit approval.[572]

Unfortunately, Owens lied. Soon after the binding, Owens hired Betty out to a Robert Gale as a house servant.[573] Unfortunately, Gale had a mean streak, subjecting Betty to "the most cruel treatment." Most recently (three weeks prior to the petition), Gale had given her "twenty-five lashes. . . the marks of which, will go with her to her grave."[574] Such a severe beating left Betty "very sick. . . and he fears that if she is not immediately removed from said Gales' charge the effects upon her health or even life may be serious."[575]

Owens was sanguine in the face of these allegations. When Daniel first confronted Owens, demanding his daughter return to Owens' custody and tutelage, the latter "declined doing so." Daniel apparently made a habit of visiting Owens, each time trying to secure his daughter's remand to some other, friendlier household, but to no effect.[576] Even a joint entreaty alongside a "respectable gentleman of the neighborhood" was unsuccessful. This is somewhat surprising, as invoking prominent neighbors meant Owens' actions were now public. If Betty was being abused, it would reflect poorly on Owens, even if he had never raised his own hand against her. And yet, Owens dug his heels in, seemingly confident that Daniel would ultimately resign himself to the situation. Daniel did eventually give up, but only on Owens, and so petitioned the Orphans' Court to annul Betty's indenture to Owens and bind her to "some person who will take proper care of her."[577]

Unusually, the court took about two weeks to rule on the case, annulling the indenture on 6 September 1853.[578] Decisions were usually handed down the same day or within the week. Even more strangely, the case did not end here. On 13 September Owens filed a strange combination of a *mea culpa*, appeal, and turbulence petition. According to Owens, he had simply sent Betty to live with his daughter (possibly Gale's wife), and did not know it was unlawful to transfer apprentices this way.[579] However, he went on to state that he had only done so after he "was induced by the father of the said [Betty]."[580] He requested Betty be re-bound to him and reimbursement for "the trouble and expense the girl has been since she was bound."[581] Owens' appeal-cum-turbulence petition convinced the court and Betty was rebound for the remaining two years of her indenture.[582]

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[570] *Id.* at 25.
[571] *Id.* at 26. Grammar is as written.
[572] *Id.*
[573] *Id.*
[574] *Id.*
[575] *Id.* Daniel also alleges that Betty's alleged crimes were not even her doing. Apparently, Gale had another Black woman serving in his home. This unnamed woman was allegedly "of very bad character. . . daily corrupting [Betty's] mind." Daniel laws all blame at her feet, not Betty's doings.
[576] *Id.*
[577] *Id.* at 27.
[578] *Petition of Henry Owens, 12 Sept. 1853,* ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 41, MSA C122-5. The originally petition was filed on 23 Aug.
[579] *Id.*
[580] *Id.*
[581] *Id.*
[582] *Id.*

This case highlights some of the ambiguities and paradoxes inherent to apprenticeships. Two patriarchs were claiming dominion over Betty Boston. On the one hand, her biological father was acting to secure Betty a future. Daniel had personally secured an apprenticeship with a man he trusted, and hashed out an agreement where Betty would only be hired out if Daniel approved of the third party. His objective was clearly to set Betty up with job skills and an education such that she would have a bright future.

Betty's fictive father, Robert Gale, was arguably doing so as well, though in a manner perverse to modern (and some antebellum) eyes. Gale's use of corporal punishment would not have been unusual for the day. Enslaved persons most obviously faced physical abuse from slaveholders, but beatings and deprivation were also used against apprentices, free children, and spouses. This type of "discipline" was a mundane approach to building morals, dissuading misconduct, and generally instilling good character in the unfortunate recipient. As a Black girl, it is also possible that Betty was seen as more in need of such punishment, depending on how much Gale bought into the racist pseudoscience of his day.[583] Gale likely felt he was *also* doing what was best for Betty's future.

The question then becomes "whose understanding of Betty's best interests should win out?" Daniel called upon the Orphans' Court to decide, but in doing so opened his claims up to new scrutiny. Owens' petition claims that Daniel *requested* Betty be dispatched to Gale's home and that Betty had in fact given Owens' enough trouble to create expenses. It is perfectly plausible that Daniel apprenticed Betty to Owens but at some point, Betty got into trouble. Whether this was self-advocacy, labor negotiation, or just Betty being a child/teenager, is unclear, but it was serious enough that Daniel worried about Owens' reaction. If we take Owens' petition at face value, Daniel must have convinced Owens to send Betty to Gale's home, rather than pursue a turbulence petition or other form of punishment. Now that Gale's care had proven unacceptable, Daniel was hoping to reestablish the original arrangement, using the Orphans' Court to overcome Owens' intransigence. Whatever the true facts, they were enough to convince the court that Owens' was the best patriarch to raise Betty for the last two years of her indenture. Conditions at Gale's might have been intolerable and abusive, but that did not mean they justified annulment of the indenture.

The case of August Schotta offers a final look at how claims of abuse were leveled against indenture holders.[584] In 1856, Benjamin Barroll filed a petition on Schotta's behalf, alleging cruel treatment and abuse by John Aberle, the indenture holder.[585] Despite Schotta "serv[ing] his master faithfully," Schotta had been subjected to "acts in the most harsh and brutal manner, beating [Schotta] with his fists, horse whipping him, choking and otherwise maltreating him."[586] The abuse was not limited to physical violence – Aberle apparently had "neglected to provide. . . suitable clothing but on the contrary has forced [Schotta] to go through the past most severe winter in rags."[587] Aberle had also failed to provide Schotta with "suitable schooling. . . [and] utterly failed to

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583 For a broad discussion of the biological pseudoscience, *see generally* William Stanton, THE LEOPARD'S SPOTS: SCIENTIFIC ATTITUDES TOWARD RACE IN AMERICAN, 1815-1859 (Midway Reprint 1982) (offering a retrospective examination of scientific racism in the antebellum period). In keeping with the time's approach to scholarship, other titles authors used a combination of history, sociology/anthropology, and biology in their diatribes, *see generally* George Fitzhugh, CANNIBALS ALL! OR SLAVES WITHOUT MASTERS (Harvard Belknap Ed. 1960); Thomas R. R. Cobb, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA: TO WHICH IS PREFIXED AN HISTORICAL SKETCH OF SLAVERY (T. & J.W. Johnson : Philadelphia 1858).

584 *Petition of August Schotta, 13 Aug. 1856*, MSA C399-12-65-4.

585 *Id.*

586 *Id.*

587 *Id.*

perform towards him the part of a humane and proper master."[588] Barroll therefore asked the indenture be cancelled.[589]

Aberle's response was fairly standard. After denying any cruel treatment, Aberle argued that he had clothed Schotta "comfortably and as well as boys on a farm are usually clothed."[590] He also denied he had neglected Schotta's education, offering as much as the boy "was capable of learning."[591] According to Aberle, Schotta had learned to read, write, and had made "some progress" in mathematics after being bound.[592] Whether or not Aberle was telling the truth, his response failed to convince the judges. No order has survived in the case file, but notation on the document cover states the indenture was cancelled on 13 August 1856.[593]

Overall, these contractual claims offer several insights into the limits of indenture holders' power over apprentices. Schotta and Betty Boston's cases indicate there was a ceiling on acceptable brutality in managing the children and exceeding that limit was grounds for dissolution of the relationship. Nor was this limited to simple physical abuse. Elizabeth Dunker was freed based in part on overwork and the neglect of her general education.

ii. Breach of the Duty to Educate

Dunker's case gestures towards another common form of breach: neglecting an apprentice's learning, whether general education or professional skills. In 1857, Joseph Bass petitioned as the next friend of his brother, Andrew Bass, alleging that David Longnecker had neglected the education required under Andrew's indenture.[594] According to the contract, Longnecker was to instruct Andrew in farming, as well as "educate your petitioner in. . . the art of reading, writing and ciphering."[595] However, Andrew was now at the cusp of age twenty-one, and his freedom, with "no education whatsoever."[596] Apparently Longnecker had been hiring Andrew out "for the past four or five years," thwarting his attendance at school or other lessons.[597] Joseph therefore asked for the indenture to be annulled.[598]

Longnecker's response categorically rejected the idea that he had failed to provide Andrew with a general education, having "sent him to school not less than three quarters if not four."[599] Longnecker went on to deny hiring Andrew out for gain. Instead, he admitted to having quit farming two years earlier, and so had simply handed the lad off to another farmer, J.A. Hamilton, "with your petitioners [sic] consent."[600] Finally, Longnecker offered what he claims is a sustained plea by Andrew Bass. "Andrew" states that Joseph's petition was written without his knowledge or consent and begged to "be allowed to remain where he is for the full term of which he was bound."[601]

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588 *Id.*
589 *Id.*
590 *Id.*
591 *Id.*
592 *Id.*
593 *See id.*
594 *Petition of Andrew Bass,* MSA C399-12-70-5.
595 *Id.*
596 *Id.*
597 *See id.*
598 *Id.*
599 *Id.*
600 *Id.*
601 *Id.*

While no order survives in the original case file, a subsequent petition by Joseph Bass reveals that the indenture was nullified and Andrew left in the care of "Augustus Hamilton" for three months or until a new indenture holder was found.[602] With that period expiring, Joseph requested that the Orphans' Court bind Andrew to a new indenture holder of its choice.[603]

Without an order or legal opinion, the Orphans' Court's reasoning remains ambiguous. It is possible that the Orphans' Court objected to Longnecker ceding dominion of Andrew to Hamilton without judicial approval. The appropriate approach would have been to apply for an apprenticeship transfer in the Orphans' Court; these were generally approved without problem and even retroactively. However, this seems unlikely given Hamilton's continued custody of Andrew after the indenture was nullified. Hiring out apprentices was perfectly legal and there is no indication that Hamilton's custody was deleterious to Andrew's learning. It seems more likely that the paucity of general education was the critical flaw in Longnecker's mastery. "Three quarters" of schooling likely meant about nine months, during which Andrew was probably still working farmer's hours. Full time education was the domain of rich and comfortably middle-class people. Everyone else made due with part-time, Sunday school, or ad hoc lessons. However, even by the standards of the era, Andrews' education was almost certainly insufficient to cultivate literacy and familiarity with mathematics. This places Andrew in similar company to Elizabeth Dunker, whose general education suffered at the hands of constant professional demands. While the primary purpose of apprenticeship was to teach job skills, law and judges still saw general education as important.

Indeed, they possibly saw it as more important than actual education in a trade. Orphans' Courts were less incensed when job and professional skills were neglected. Rosanna Davis filed a particularly intriguing petition in this regard on 19 November 1859.[604] Davis claimed that she was "an illegitimate free born mulatto," daughter of a "poor, degraded, ignorant and shiftless woman" who "hath never since the recollection of your petitioner done or been able, or competent to do. . . any of the duties or kindnesses of a mother."[605] Her father, a "white man of intelligence and [illegible] died" soon after Davis was born.[606] As a Black child of a dead man and a unemployed mother, Davis was well within the scrutiny of the Law of 1839 and Maryland's racial order.

Perhaps aware of this, or simply unable to care for her daughter, Davis' mother "placed" her in the care and service of Anna Wells of Baltimore.[607] Wells was a candymaker, baking cakes, spinning candy and other general "trifliry."[608] One month prior to her petition, Davis agreed to enter the service of Wells, perhaps hoping to learn the confectioner's trade.[609] There was no indenture between the two, only an informal arrangement.[610] However, rather than train Davis in candy making or baking, Wells chose to dispatch the girl "down toward the wharves and factories. . .

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602 *Petition of Andrew Bass, 5 May 1858*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1857-1866), MSA C399-14-2-5.
603 *Id.*
604 *Petition of Rosanna Davis, 19 Nov. 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-15-11. Davis' petition states she is almost ten years old at the time of filing, making it unlikely she is filing in her own right. The petition mentions that Davis eventually fled to the home of an "unnamed gentleman," who is likely the ghostwriter of the petition or at least connected her with counsel.
605 *Id.*
606 *Id.* The racialized, almost dog whistle, descriptions of Davis' parents further indicate there was some party composing the petition, not a nine-year-old.
607 *Id.*
608 *Id.*
609 *Id.*
610 *See id.*

collecting coke and cole [sic] in bags to be used by [Wells] as fuel."[611] Hardly the makings of a successful future.

Nor did Wells' misconduct end there. Davis "seldom" received enough food, rarely "more than two meals a day."[612] Davis was also deprived of necessary clothing and forced to sleep in a "contracted, uncomfortable and unhealthy coloset [sic]."[613] Finally, Wells' had "inhumanely flogged [her] with a cowhide and in so doing bruised and cut the flesh of your petitioner's arms so as to produce ghastly and painful scars."[614]

These conditions were so bad, Davis absconded to the home of an unnamed "gentlemen who proffered to her his protection and kindness."[615] From there, she twice petitioned the Orphans' Court for relief. The first petition has been lost to time, existing only as references within the second, detailed here. In the first, Davis alleged all of the "matters above complained." The Orphans' Court saw no problems and actually bound Davis to Wells.[616]

Rather than accept defeat, Davis used the obligations created by the indenture to attack Wells' treatment. Davis was no longer a Black, ten-year old daughter of a "shiftless woman" and a dead man. She was an *apprentice* and that changed the contours of her vulnerability. The indenture created duties on both parties, duties which could perhaps be leveraged against Wells' abuse and neglect. Echoing other petitions, Davis therefore argued that her indenture should be annulled on account of Wells' cruelty and noncompliance.[617]

No order survives in this case, so the final result is uncertain. It is possible, but unlikely, that Wells stepped up and began training Davis in candymaking. However, sending a dependent to scrounge for fuel indicates Wells' confectionary was not profitable enough to secure a comfortable living situation. The additional mouth to feed likely engendered more bitterness than advantage in production, at least until Davis came into her working prime. More charitably, Wells might have been assigning Davis the tasks she was capable of performing. Candymaking and baking are temperamental, often dangerous, arts. Hot ovens and molten sugar can cause horrific injuries, so Wells might have been easing Davis into the trade while alleviating some of her fuel costs. However, chafing at the pace of her training, Davis instead bucked at this labor regime and her living conditions.

In the alternative, Wells might have passed custody on to the unnamed "gentleman" who originally offered her refuge. Offering temporary refuge to less fortunate souls was a common occurrence in antebellum America, with many children being passed from household to household as resources permitted.[618] However, the gentleman might have also seen an opportunity. A near working-age girl with an apparently resentful indenture holder would be a prime candidate for appropriation. Buying the indenture off Wells would have been simple, but simply hiring Davis out in some other part of Maryland was both viable and precedented. It would also explain how Davis

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[611] *Id.*
[612] *Id.*
[613] *Id.*
[614] *Id.*
[615] *Id.*
[616] *See. id.*
[617] *Id.*
[618] Whitman, *"*Orphans in City and Countryside*"* in CHILDREN BOUND TO LABOR at 56-7 (discussing mutual aid supporting orphaned or under resourced children); Seth Rockman, SCRAPING BY: WAGE LABOR, SLAVERY, AND SURVIVAL IN EARLY BALTIMORE, 168-69, (2009)

gained access and funds to file her petition – the "gentleman" either ghost wrote or funded her filing, with an eye on to recoup his costs through her labor. Regardless of the actual outcome, Davis' case indicates that material hardships and a lack of professional training did not guarantee the nullification of an indenture.

The case of William Reilly emphasizes that a failure actually to instruct in the indentured profession was within an indenture holder's purview. In 1859, John H. Herbert filed a turbulence petition against his apprentice, William H. Reilly.[619] The petition itself does not offer any interesting deviations from the usual formulae, simply arguing that Reilly had breached the indenture by running away.[620] Reilly's answer, however, is a stark departure from the norm. Reilly essentially raises a countersuit, arguing that Herbert himself had breached the indenture by failing to instruct Reilly in the "trade of a waiter."[621] In fact, Herbert had hired Reilly out "into employment entirely different from that provided for by the contract. . . and having been whipped and threatened to compel service not required by the indenture."[622] Finally, Reilly alleged further breach by Herbert, as the latter had agreed to pay Reilly's mother $12.50 for Reilly's labor, but had only paid half that amount.[623] Reilly concluded by requesting the indenture be cancelled on account of Herbert's clear delinquency as an indenture holder. The Orphans' Court was unsympathetic, extending Reilly's service for an additional two years and authorizing sale of his indenture.

Reilly, and to a lesser extent Davis, both show that there was a plasticity to indentured labor which permitted a child to be shuffled between jobs and roles at the indenture holder's discretion. They certainly were not alone in this regard. Washington Boston was indentured as a waiter but four years later he was sold and bound to a butcher.[624] Isaac Smuthers was indentured as a chimney sweep in 1851, but by 1857 he was learning to farm.[625] Thomas Burrows faced a similar trajectory, transferred from a carpenter to a farmer after 14 months of training.[626] In a more heartwarming tale, Basil Brown's indenture holder, a farmer, felt Brown would be wasted learning that trade.[627] He therefore requested the indenture be dissolved so Brown could be rebound to a carpenter.[628] In each case, the relevant Orphans' Court endorsed the transfer.

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[619] *Petition of John H. Herbert, 27 Aug. 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-9-5.
[620] *See id.*
[621] *Id.*
[622] *Id.*
[623] *Id.* The passage reads "[R]espondent further states that the petitioned is informed and believes that petitioner has never paid the respondent's mother the compensation provided by the contract of binding, but only [illegible] half of the amount to wit six dollars and twenty five cents every six months up to February 1858." The phrasing leaves it unclear as to whether Herbert owed $6.25 more, or was supposed to pay $6.25 every six months. Regardless, Reilly believes Herbert is in arrears on the binding fee.
[624] *Petition of John H. Toffling, 18 April 1860*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-69-1.
[625] *See Petition of Joseph Cauley, 15 Jan. 1856*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-30-1; *Petition of Joshua Zimmerman, 8 Dec. 1857*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-46-1 (*Zimmerman v. Smuthers I*); *Petition of James Wilson, 30 Oct. 1861*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-80-1 (*Wilson v. Smuthers*).
[626] *Petition of Henry Treadway, 2 Apr. 1860*, MSA C122-5 at 611-13.
[627] *Petition of Basil Brown, 11 Mar. 1857*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), 411, MSA C122-4.
[628] *Id.*

Hiram Thompson faced a particularly bizarre career change. Originally, Thompson was indentured to a tanner, Henry Groder.[629] However, he was soon hired out to a storekeeper, presumably stocking shelves and managing inventory, not mixing tannins or skiving hides.[630] Thompson's mother, Mary Ann Robinson, later filed a supplemental petition, updating the court that Hiram was in the custody of "Charlotte Groder. . . who claims to be the widow of the said Jordan."[631] Charlotte Groder had apparently taken Hiram from the storekeeper and placed him with a farmer, another career change for Hiram.[632] Robinson alleged that Groder died unmarried and asked the court to summon the supposed widow to explain why her son was not learning the correct trade.[633]

Robinson's update drew two responses, an indignant denial from Charlotte Groder and a surprising appearance by Henry Groder himself. Charlotte Groder offers a blanket, sparsely detailed denial, claiming she is entitled to Hiram's labor as Henry Groder's heir. For his part, Henry proclaimed his "concession to the commands and requirements of the articles of indenture. . . can be clearly proved. . . and his faithful performance of every duty to [Hiram] can be set forth to the satisfaction of [the court]."[634] This is not an actual denial of Robinson's allegations, as indenture holders obviously possessed great leeway in managing their apprentices.[635] There must have been testimony explaining Hiram's actual employment (and Henry's apparent resurrection), as the Orphans' Court ultimately dismissed the petition with costs.[636] Forcing a child to change careers three times apparently did not constitute a breach of indenture.

Each of these apprentices were transferred after a significant portion of their indenture. Four or five years does not sound like much over a lifetime, but when apprentices only served until age 21 (for boys) or 18 (for girls), those years represent a dire loss of training and experience. Yet a loss of professional training did not bring the same censure as failures to provide a general education to apprentices.[637]

This dichotomy is most likely explained by how apprenticeship's underlying purposes interacted. At its core, the institution sought to (1) instill job skills in young persons in order to (2) protect public coffers by minimizing those in need of charity, (3) supervise and control young people, and (4) stabilize the labor supply by guaranteeing at least some workers were available to employers. While these priorities all existed in tandem, that does not mean they were always equally weighted. Employers could, and did, use their clout to reshape the law in their favor. The impression from these petitions is that employers' priorities were emphasized, at the cost of apprentices' specific interests.

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[629] *Petition of Mary Ann Robinson, 22 May 1854*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-53-1.

[630] *Id.* Leathers for high-impact or wear purposes (such as saddles, smith's aprons, and cordage) remained quite thick. Shoemakers and bookbinding require thinner, more pliable leathers. Skiving is the art of shaving hides down to a uniform thickness based on their intended purpose.

[631] *Id.*

[632] *Id.*

[633] *Id.*

[634] *Id.*

[635] *See id.*

[636] *Id.*

[637] *Compare* the results of Andrew Bass and Elizbeth Dunker, *supra* 90, 93-4, to that of Rosanna Davis, William Reilly, and others, *supra* 94-6.

In practice, this means general education was more important than trade-specific training, despite the mandate of the indenture contract, when education mattered at all. According to T. Stephen Whitman, education requirements broadly dropped from indentures across the nineteenth century.[638] From 1800 onwards, indenture holders became increasingly specific about the trade education to which apprentices were entitled. What was once an apprenticeship in shoemaking might be "making soles and heels for ladies' shoes" alone.[639] Conversely, general education requirements were winnowed down from literacy and cyphering to a set amount of time in school, the option of attending night or Sunday schools, or only in the indenture's final year.[640] Many, though not all, indenture holders wanted to minimize their commitments to apprentices, thereby dodging unwanted expenses. For involuntary indentures, the courts continued to consistently require three R's, though with some modulation as requiring too much education made it difficult to place orphans and destitute children.[641]

Where education was promised, reading and writing were the only consistent inclusions for indentures' education requirements. Cyphering was often, but not universally, added on. While broadly portable and universally useful, these skills do not build a broad knowledge base for apprentices to enter the world.

In the Ottoman Empire, schools for general education of apprentices developed sporadically before receiving consistent state support in the latter half of the nineteenth century.[642] One school in Aydın Valeti (the province around modern İzmir), required apprentices to attend for three years, during which they had daily one-hour lessons.[643] The coursework was diverse, covering reading, writing, maths, Quranic and Islamic principles, Ottoman history, geography, and the decimal system.[644] In İzmir itself, another apprentice school followed a similar curriculum, with the addition of calligraphy and the history of Islam.[645] At Jewish apprenticeship schools across Anatolia, children were taught their crafts at a basic level before placement with a craft master for the actual apprenticeship.[646] During this time, they received training in Jewish history, mathematics, accounting, geometry, and painting.[647]

The differences evident in these curricula gesture towards their purposes. The Ottoman and Jewish apprentice schools wanted a well-rounded education, with a dash of history to help engender the salient identity and nationalism of the era.[648] Islamic doctrine was a key component of the Porte's effort to maintain social stability and consistency within the empire. This was especially helpful given the artisan class's involvement in various urban disturbances and uprisings (most famously the Patrona Halıl rebellion in 1730).[649]

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638 Whitman, "Orphans in City and Countryside" in CHILDREN BOUND TO LABOR at 56-7.
639 *Id.* at 59.
640 *Id.* at 62.
641 *Id.* at 60-62, 64-66
642 Nalan Turna, "Ottoman Apprentices and Their Experiences." 55:5 Middle Eastern Studs., 683, 692-93 (2019).
643 *Id.* at 693.
644 *Id.*
645 *Id.*
646 *Id.* Turna identifies schools in Edirne, Istanbul, and İzmir.
647 *Id.*
648 *Id.* The Jewish schools were specifically set up to help "regenerate Jewish society."
649 Robert Olson, "Jews, Janissaries, Esnaf and the Revolt of 1740 in Istanbul: Social Upheaval and Political Realignment in the Ottoman Empire," 20:2 J. of the Econ. and Soc. Hist of the Orient 329 (1977); Robert Olson, "The Esnaf (Artisan) and the Patrona Halil Rebellion of 1730: A Realignment in Ottoman Politics?," 17:3 J. of the Econ. And Soc. Hist of the Orient 185 (1974).

The American equivalent does not evidence any greater aim than equipping apprentices to be good workers, broadly construed. Employers wanted apprenticeship to serve as a capitalist alternative to schooling, preparing future workers with the minimum skills to be useful. The bifurcation between hyper-specialized and general education is striking. Reading, writing, and arithmetic were portable skills, useful for any number of roles and duties, permitting capitalists to slot them in where needed.

Theoretically, this would disincentivize fostering job specific training, as it curtailed employers' ability to allocate labor as they pleased. A trained carpenter would likely resist orders to shovel coal, tend sheep, or walk rope. However, training apprentices in piecework likely offered considerable benefits in production. Dividing each segment of a product among a handful of apprentices quickened the rate at which apprentices became profitable; it is easier to train someone to make heels and toes than the entire shoe. Employers could therefore make a return on their investment more quickly, thereby boosting overall profits from each individual worker. This was unlikely to set up an apprentice for success, as piecework was notoriously underpaid relative "full" artisanal skills, much less the extra effort required to find an employer who needed this specific skillset.

All told, contractual claims offered viable, if uneven, chances of contesting indenture holders' decisions. Abusive conditions could nullify the indenture, but only if they reached a certain level of excess or neglect. Educational deficiencies were more of a mixed bag. While facially any failure to provide the contracted education was grounds for a claim, employers' priorities had shaped the law such that only general education claims gained traction. To protect the free flow and allocation of workers by employers, indenture holders were free to transfer apprentices between masters and professions, regardless of how that compromised a child's learning. In contrast, general education requirements were followed more assiduously, protected for their broad utility in the workplace.

b. Definitional Ineligibility

Sometimes apprentices argued that they were categorically ineligible for apprenticeship and therefore should never have been bound in the first place. Washington Bowser's case bridges the gap between breach of contract and plain ineligibility for apprenticeship. Filing in 1833, Bowser alleged that one Gerard Hopkins had failed to release Bowser at the appropriate time.[650] According to Bowser, he had been bound in 1823 at age twelve.[651] Having served a decade, Bowser was now twenty-two or twenty-three years old, at least a year beyond the usual release date of age twenty-one.

The central point of Bowser's suit was that Gerard Hopkins knew the truth of his age, and from several sources. Benjamin Linthicum testified that he saw a letter from Samuel Hopkins to Gerard Hopkins stating that Bowser was twenty-one, and therefore free.[652] Next came Caleb White, who had apparently visited this Samuel Hopkins at Bowser's express request.[653] When White first asked about Bowser's age, Samuel simply claimed he had bought Bowser from an Elisha Tyson as a nine-year-old.[654] However, when White pressed Samuel by asking for an affidavit of this understanding, Samuel deflected, saying that it was "not worth while, as [Samuel] would be in the

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[650] *Petition of Washington Bowser*, *14 May 1833*, Anne Arundel County Register of Wills, Petitions & Orders (1851-1860), 411-12, MSA C122-5.
[651] *Id.*
[652] *Id.*
[653] *Id.*
[654] *Id.*

Orphans' Court the next week and attend to it and have it settled."[655] Evidently Samuel knew he was holding Bowers beyond the expiration of the indenture.

Finally, Samuel himself testified that he had bought Bowser's indenture believing him to be nine years old.[656] However, he hedged this statement by admitting Bowser was a stranger to the neighborhood, so Samuel did not know his precise age.[657] With the testimony at worst ambivalent about Bowser's age, the Orphans' Court ruled Bowser was too old to serve as an apprentice and therefore immediately free.[658]

Elizabeth Hayden's case offers a more ambiguous lesson. In February 1859, Hayden was bound by justices of the peace to one "___ Bond" until she arrived at age eighteen.[659] She demanded this bondage be annulled on two grounds. First, Hayden claimed she was *already* eighteen and had been for the entire duration of her indenture (February 1859 – March 1860).[660] She therefore argued the Orphans' Court had no jurisdiction to bind her and demanded liberation from her indenture holder, Samuel Blitzen.[661]

Hayden's second grounds was a novel ineligibility argument. Her logic was simple: the statute allowed for the binding of children whose parents were "poor, and destitute and unable to provide for them."[662] However, she was able to work and provide for herself (and likely had been until she was seized and bound by the justices of the peace).[663] As a working woman, Hayden argued she was ineligible for apprenticeship and "the original indenture is illegal and void and that she is not bound by said contract."[664]

Unfortunately, Hayden had received a one-year extension to her term of service for absconding from a prior indenture holder.[665] While Hayden might have been too old for apprenticeship from the start, the Orphans' Court could use the extension to justify her continued bondage. Under a formalist logic, Hayden's indenture was valid until it had been nullified by a court. Since she had misbehaved (by absconding) under a facially valid indenture, she must reap the consequences.

The judges dismissed both Hayden's petition and a 13 February petition by Blitzen before these arguments could be resolved.[666] Hayden posted notice of her intent to appeal to the Superior Court, at which point the record ends.[667]

While they are just two cases, Bowser and Hayden indicate that apprentices were aware of the formal requirements for indenture. It is not surprising that both raised their age of freedom;

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[655] *Id.* at 412.
[656] *Id.*
[657] *Id.*
[658] *Id.*
[659] Thomas Bond, as revealed in a prior proceeding. *See Petition of Samuel Blitzer, 16 Jan. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-17-11. (*Hayden I*).
[660] *Petition of Elizabeth Hayden, 1 Mar. 1860*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-24-4. (*Hayden II*)
[661] *Id.* Thomas Bond apparently sold Hayden's indenture to Blitzen soon after winning his turbulence petition.
[662] *Id. See also*, Law of 1793, Law 1839.
[663] *Hayden II*, MSA C3360-5-24-4.
[664] *Id.*
[665] *See Hayden I*, MSA C2250-5-17-11.
[666] This latter petition has not survived in the records. It is only mentioned in the court's order.
[667] *Id.*

many apprentices likely counted down the day until they were their own masters. Hayden's self-sufficiency claim is more interested, particularly because it seems to have failed. The Orphans' Court's failure to explain its decision is frustrating, but several explanations present themselves. First, the court might have hoped the two would work things out on their own. The Orphans' Court records do not include Blitzen's petition or make any mention of its grounds.[668] Given the clear friction between the two, a second turbulence petition seems most likely, but it could also have been a request to sell Hayden's indenture. Whatever its arguments, both were dismissed simultaneously. This could mean Hayden or Blitzen were each offering frivolous arguments to stymie the other, a tit-for-tat of legal maneuvering. Alternatively, the court found that neither party had sufficient evidence to back their claims before disposing of the matter accordingly.

Alternatively, in a formalist sense, it did not matter whether Hayden was able to support herself or not. The statute dealt with *parents'* ability to support children. Hayden's self-sufficiency was therefore either irrelevant or becomes a point against her, as she is acting as her own parent and caregiver. For an enterprising employer, an independent working teenager would be ideal, as her labor could be acquired through adherence to the letter of the law, not its spirit.

Regardless of reasoning, neither Hayden nor Bowser's petition was dismissed summarily. Their claims of unfitness for apprenticeship, whether based on age, self-sufficiency, or socioeconomic class were robust enough to survive at least initial scrutiny by judges. While not as common as contractual[669] or procedural claims (and arguably overlapping with both), these definitional claims show that apprentices knew the law surrounding their bondage and sought to exploit its requirements, even as employers used the law's letter to exploit them.

c. Procedural Flaws

Procedural flaws offered a final lever for contesting the existence or conditions of an apprenticeship. In a reversal from definitional cases, apprentices invoked indenture holders' lapses in compliance with the law's letter, even if they facially adhered to its spirit.

Gassa Matthews petitioned to release his son, John Randolph Brown, from an indenture to Nathaniel Pape.[670] Matthews did not allege that Pape was a poor indenture holder or somehow abusing Brown.[671] Rather, he alleged that he had not been summoned or notified that such a binding was taking place, as required by law.[672] Matthews further argues that he is "of good character and fully able to provide proper support for said child," tacitly raising that he was denied a hearing to argue that Brown was ineligible for a pauper apprenticeship.[673] The Orphans' Court issued a summons for Pape and ordered him to bring Brown to court, at which point the record ends.[674]

The petition of Emmanuel and Caroline Jackson followed a similar path.[675] The Jacksons alleged that justices of the peace had bound their daughter Dianna to John Brady without their

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668 *See id.*
669 *See supra* at 90.
670 *Petition of Gassa Matthews, 2 Aug. 1859*, Anne Arundel County Register of Wills, Petitions & Orders (1851-1860), 570-71, MSA C122-5.
671 *Id.*
672 *Id.*
673 *Id.*
674 *Id.* at 571.
675 *Petition of Emmanuel and Caroline Jackson, 17 May 1859*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 481, MSA C122-5.

consent or knowledge.[676] Unlike Matthews, the Jacksons affirmatively raised their denial of an eligibility hearing before asking that the petition be annulled.[677] The Orphans' Court calendared a hearing for 29 October (ten days after the filing) and issued summons for both Dianna Jackson and Brady.[678]

Matthew's and Jacksons' respective petitions indicate that procedural claims were facially viable; judges are jealous of their time and would have dismissed frivolous petitions. However, a brace of petitions show that procedural claims were sharp enough to puncture indenture holders' claims.

i. Henry Davis

In 1848, Nancy Davis petitioned the Baltimore County Orphans' Court to annul the indenture of her son, Henry, to Thomas Knighton.[679] According to Davis, she was never informed of any potential binding of Henry, much less given a chance to object.[680] Moreover, she fit none of the criteria for having her son bound: she was not "a pauper vagrant, lazy or indolent and worthless," nor was her son.[681] In fact, Henry Davis was "regularly and industriously employed" at the time of binding, "earning a comfortable and sufficient livelihood" for himself.[682] Davis closes by alleging Knighton has conducted fraud in two ways. First, the indenture records Henry's age as fourteen years, when he was in fact eighteen.[683] This misrepresentation would force Henry to serve until age twenty-four, when the statute only permitted service until age twenty-one.[684] The second fraud was that Knighton had "sold or transferred [Henry]. . . to a certain Bird of Anne Arundel county [sic]" in order to hide his misconduct.[685] As a stranger to Anne Arundel, it was less likely anyone would know that Henry was eighteen or ineligible for binding.

While the court issued summons for Knighton, Henry Davis, and other witnesses, no further filings or proceedings are recorded. The case picks up two months later, when Davis filed a largely identical petition in the Anne Arundel County Orphans' Court.[686] Davis does add several new details, including that Henry was employed and self-sufficient at the time of his binding and that no one knew anything about the binding until Knighton had "forcibly and fraudulently seized taken and carried [Henry] away."[687]

Knighton finally responded. While categorically denying the allegations presented, Knighton caved to Davis' demands, being "willing that the said Henry Davis may be discharged from all

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[676] *Id.*
[677] *Id.*
[678] *Id.*
[679] *Petition of Henry Davis, 13 Mar. 1848*, Baltimore County Register of Wills, Petitions & Orders (1834-1851), MSA C399-44-55. Henry Davis is the named petitioner as Nancy Davis filed as his next friend.
[680] *Id.*
[681] *Id.*
[682] *Id.*
[683] *Id.*
[684] *See* An act to provide for the better regulation of the Free Negro and Mulatto Children within this State, Session Laws, December 30, 1839 – March 21, 1840, https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000600/html/am600--33.html (last visited May 5, 2025).
[685] *Id.*
[686] *Petition of Henry Davis, 26 Jun. 1848*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1840-1851), 256, MSA C122-4. This was likely based on personal jurisdiction (to use the modern parlance). Henry Davis was the subject of the petition, and he was in Anne Arundel County, so that was the court with authority over the dispute.
[687] *Id.*

obligations under the said indenture.[688] Ambiguously, Knighton also says he is satisfied that Henry only has "to serve. . . three years" under the indenture.[689] With Knighton's capitulation, the Orphans' Court annulled the indenture and released Henry from any servitude.[690]

The Davis case highlights the vulnerability of working-age children and the broad deference granted to those who craved their labor. Henry Davis was clearly not a typical candidate for pauper apprenticeship. He was regularly employed at the time of binding, which indicates that he was both well-enough known to secure consistent work and to avoid being misidentified as a runaway. Yet Knighton still managed to breeze through the formal requirements of binding Davis as an apprentice. The parental notification requirement and opportunity to object existed to prevent these sorts of situations, yet Knighton had control of Davis for approximately seven months.[691] Either the justices of the peace were particularly credulous or they simply did not care to ensure Davis was receiving the full protections of the law. And so, he languished in illegal bondage until his mother managed to find him.

It is not clear why Nancy Davis took seven months to file, but it is entirely possible that she did not know her son had been seized. If Henry was working for himself away from home, she might not hear about his plight until the situation worked its way down the grapevine. Coupled with Knighton hiring Henry out somewhere in Anne Arundel County, the fraud probably went undetected until someone happened upon Henry in Anne Arundel or Baltimore-area neighbors started asking where the Davis boy had gone.

ii. Elizabeth Smith

Knighton apparently learned some lessons from the Davis litigation, as he was careful to invoke statutory language and priorities in his next attempt to kidnap an apprentice.[692] Five years after the Davis case, Knighton somehow gained control over five-year-old Elizabeth Smith and convinced two justices of the peace to bind her out as his apprentice in an unspecified trade.[693]

However, "some months" after this binding, Elizabeth's mother, Susan Smith, petitioned to annul the indenture based on the (1) procedural flaws in the binding and (2) illegitimacy of the indenture itself. As a "free colored woman. . . at that time and ever since. . . abundantly able to support and clothe and maintain the said child," Susan argued the indenture was illegal. According to Smith, neither the magistrates nor Knighton offered her any notice of their intention to bind Elizabeth.[694] Had they done so, Smith would have attended the hearing and objected to the placement with Knighton.[695] For unstated reasons, Smith "would have preferred [Elizabeth] should have been bound to another master."[696] Regardless, Smith pressed her demands by noting that the "said indenture has not yet been returned to the Orphans' Court, as they should have been up to the

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[688] *Id.*
[689] *Id.* at 252.
[690] *Id.*
[691] The indenture was dated 20 Aug. 1847 and Nancy Davis filed her first petition on 13 Mar. 1848.
[692] For a similar episode, *see Petition of Isaac and Lucy Williams*, *29 May 1855*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 214-17, MSA C122-5.
[693] *Petition of Susan Smith, 27 Nov. 1852*, Anne Arundel County Register of Wills, Petitions & Orders (1840-1851), 532-34, MSA C122-4.
[694] *Id.* at 532.
[695] *Id.*
[696] *Id.*

present time."[697] Without filing with the Court and Register of Wills, the indenture (and Knighton's custody) was without legal force.

Predictably, Knighton's answer offers a drumbeat of his compliance with law and morality.[698] However, perhaps learning from the Davis case, he worked to demonstrate Elizabeth's eligibility for indenture by framing her as an abandoned helpless waif. He starts by explaining that Elizabeth was actually neglected by Smith, who "left the said child in the most forlorn condition to be provided for by the charity of a person, a stranger to it in blood."[699] He goes on to trumpet that despite "the tender age of the said child[,] the petitioner has been known to leave it in a house alone with no other means of subsistence than those of self exertion [sic] or beggary."[700] Eventually, "this resident" chose to take Elizabeth and have her bound, rather than leave her in such circumstances.

Knighton closes his answer by insulting Smith's motives and fitness as a parent, statutorily relevant inquiries for Elizabeth's eligibility for indenture. First, Knighton "does not believe that [Smith]. . . is moved by any maternal feeling or by motives respecting the future welfare of the child."[701] Rather, he gestures to unknown "interested feelings or the interested feelings of others" as driving the petition.[702] Knighton closes by echoing the statutory language, calling Smith "lazy, idle, and dissolute without visible means of support[,] well calculated to rear the child in like habits which would be seriously detrimental to the policy of the State."[703] Notwithstanding Knighton's representations, the Orphans' Court released Elizabeth from the indenture and ordered her delivered to Smith.[704]

Smith's victory itself is certainly notable for showing that procedural arguments could successfully slay indentures. However, the Smiths' race and Knighton's innuendos illustrate the slippage between law-as-written, law-as-practiced, and lived realities. First, Knighton's claims that Elizabeth was left at home alone, only cared for by "a stranger to it in blood" require scrutiny. Whether genuine or motivated by self-interest, Knighton's proffered interpretation is one of neglect, in which Smith has abrogated the care of Elizabeth onto the child herself or anyone willing to offer a crust. Knighton was likely mindful of the Davis case, where Henry Davis' employment was a critical factor undermining Knighton's indenture. He might even have targeted the young Elizabeth with an eye for avoiding such complications.

However, innuendos and insults against Smith could not overcome the clear gaps in his story of how he gained custody of Elizabeth. Knighton never claimed that he was the charitable "stranger. . . in blood," but he also never offered a name, race, or gender, of this caregiver (or caregivers). Peering into the lacunae of Knighton's omissions, it is entirely possible, even likely, that more than one person was keeping an eye on Elizabeth. Perhaps the entire neighborhood shared in one another's childcare, forming an ad hoc creche according to the needs and availability of local adults. It was not uncommon for working parents to deposit children with trusted friends, so it is entirely possible that Elizabeth was perfectly safe and provisioned.

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[697] *Id.*
[698] *Id.* at 533.
[699] *Id.*
[700] *Id.*
[701] *Id.*
[702] *Id.*
[703] *Id.* at 534.
[704] *Id.*

This possibility makes sense in conjunction with Smith's apparent absence from home. Knighton calls Smith dissolute and lazy but never offers the usual commentary about drunkenness, immorality, or dependence on charity of others. Evidence of each would have damaged Smith's character and parenting in the eyes of the court, thereby strengthening Knighton's claim to Elizabeth. Instead, he offers a fairly rote recitation of the statute's provisions. If Smith's absence was not due to some vice, where was she? Probably at work, providing for her daughter. Smith does not state her occupation in her petition and tracking her in records has proven unavailing.[705] However, given the rural economy of Anne Arundel County, she likely worked in agriculture or as a domestic for a wealthy family.[706] The former requires long hours, and while it theoretically offers opportunities to keep children nearby, that is not guaranteed. Domestic work requires similarly long hours and likely even fewer opportunities for on-site childcare. Smith was probably at work when Knighton (or his mysterious concerned citizen) wandered by the house.

Knighton's claim that Smith's petition was motivated by "interested feelings or the interested feelings of others" calls for further scrutiny. Generally, this claim was floated against petitioners seeking to regain custody of working-age and/or fully trained apprentices.[707] Indenture holders accused parents of desiring the income from the now-profitable apprentice, rather than whatever the stated reason might have been. There is irony here, as Knighton was clearly hoping to exploit Smith's labor for his own gain. However, Elizabeth Smith was approximately five-years-old at the time of the petition, hardly a prime worker. Even if she was working, it was unlikely to be a meaningful amount, much less defray the costs of raising her. For example, in 1846, a similarly aged child was paid .50$ per week while an adult day laborer usually earned $1 per day.[708] More likely Knighton hoped to hire her out to some other household for a pittance, before earning more as she aged, or to transfer her to some other household and earn a finder's fee. Either way, his accusations hung more comfortably on his own shoulders, not Smith's.

Ironically, an offhand comment by Smith offers a possible explanation. When introducing the plight of Elizabeth, Smith states that she "would have preferred [Elizabeth] should have been bound to another master."[709] This indicates that (1) Smith is not entirely opposed to binding out her daughter and (2) she has some knowledge of local employers, if only by reputation and community report. At five years of age, Elizabeth was certainly of-age for apprenticeship, if Smith decided that was the best course of action. This in turn raises the question of what Knighton knew about Elizabeth Smith and her mother's plans.

If Elizabeth was indeed currently or shortly to be on the labor market, what does that reveal about Knighton's motives and actions? Perhaps he heard that Elizabeth was eligible for apprenticeship (by age), and assumed that meant she was eligible (by poverty). Seeing an

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[705] Between Smith's common surname, the tendency to silently include women under a man's household, and the rural character of Anne Arundel County, there have been many candidates for Susan and Elizabeth Smith, but no clear matches.

[706] During this period, Anne Arundel's industrial development was limited to mills, a handful of furnaces, the railroads around Odenton and Washington, D.C., a tannery, and an alum works. Robert Chidester, A HISTORIC CONTEXT FOR THE ARCHEOLOGY OF INDUSTRIAL LABOR IN THE STATE OF MARYLAND, 36-7 (2003). Generally speaking, these concerns did not greatly change the tenor of Anne Arundel's economics, and would not do so until roughly 1870 during the era of "Industrial/Urban Dominance." *See id.* at 39.

[707] *See e.g. Petition of Michael Bruder, 20 Nov. 1855*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-62-3 (discussed *infra* at 118).

[708] *Petition of Thomas Winston, 4 Aug. 1846*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1834-1851), MSA C399-44-48.

[709] *Petition of Susan Smith*, *27 Nov. 1852* in MSA C122-4 at 532.

opportunity, he leapt to secure an accessible proto-laborer. A more sinister interpretation is that Knighton was on the lookout for vulnerable or "abandoned" children he could snatch up, bind, and hire out for some easy cash. The mundanity of binding out orphans or destitute children allowed Knighton to skate through the supposed safeguards and acquire a new laborer, all technically compliant with the law.

V. Conclusion

From these episodes, we see how the capitalist spirit of nineteenth-century apprenticeship animated means to contest its strictures. Because employers used contract law to commodify the labor of apprentices, they had bound themselves to operate according to certain prescriptions. This in turn created the space used by apprentices and their advocates to raise claims against the administration of bondage. The capitalist ethos of nineteenth-century law certainly put a thumb on the scale in favor of employers and their priorities, the cases above show that this was not a guarantee of victory. Breach of contract, definitional ineligibility, and procedural flaws could lead even a friendly Orphans' Court to annul an indenture.

Chapter IV: Bookending and Commoditization

I. Introduction

The range of flawed bindings and legal chicanery indicate that indenture holders were hungry for labor and not too picky about how they acquired it. This raises the question as to how would-be indenture holders actually gained possession of the children in the first place. Simply seizing a hired child was one tactic, as was exploiting social ties with a child's family or guardians. When parents lodged their children with neighbors or third-parties, these benefactors sought to recoup the costs of caring for an unrelated child. Their expenses were used to justify both economic claims to the child's labor but also actual parental rights to the children themselves. In both instances, apprenticeship was the lever sought to formalize these relationships.

Yet, as the nineteenth century progressed, apprenticeship was increasingly steeped in the burgeoning capitalism of the era. Upon the expiration of an indenture, the employer usually paid the apprentice freedom dues, and provided two sets of clothes, and possibly some tools.[710] From there, the absence of guilds meant the two existed without a formal bond between them, free to contract (or not) with whomever made the best offer. It appears this same severance also could occur *during* the apprenticeship itself. In a string of cases, indenture holders summarily ended the contract, unceremoniously dropping the youths back into the labor market.

These bookends to apprenticeship underscore how capitalism had reshaped the institution since its paternalist advent. Rather than produce artisans and crafts people, apprenticeship was oriented towards producing generic workers who could serve where employers' desired.

II. Forced Recruitment of Apprentices

a. Clocking Off in 5-10 Years: Cooptation of Hired Children[711]

As seen in Chapter III, many apprenticeships were voluntary, negotiated by the child's parents, guardian, or a state institution. However, when no willing laborer was available, would-be indenture holders turned to more nefarious and disingenuous tactics. For example, Henry Davis' case shows hiring a working child was an easy way to gain access to a child before illicitly binding them.[712]

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[710] T. Stephen Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA, 52, 59 (Ruth Wallis Herndon & John E. Murray eds. 2010).

[711] In addition to the cases below, *see e.g. Petition of Jacob and Charlotte Jonas, 1 Mar. 1854*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-50-1; *Petition of Miley Bryan, 9 June 1854*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-53-4 (in which Martin Bryan left his son, Miley, in the care of Gideon Cornish while Martin left Maryland seeking work. Cornish was entitled to Miley's labor in exchange for food and clothing. Once Martin was established in Pennsylvania, he asked for Cornish to send his son. Instead, Cornish bound Bryan to himself, aiming to recoup losses incurred caring for the boy).

[712] *Supra* at 102.

Thomas Knighton was certainly not alone in using this tactic. In 1856, Henry and Sally Hensly petitioned the Orphans' Court to annul the indenture of their son, Perry Hensly, to James Andrews.[713] The Hensly's petition combines several of the strategies discussed in Chapter III. They started by stating the binding occurred without their notice, knowledge, or consent.[714] They next pivoted to Perry's class-based ineligibility for apprenticeship: while Perry was a Black boy, the Henslys were not "idle, vagrants, vagabonds. . . but have always supported and clothed their children respectably."[715] In fact, Perry played a role in the family's financial stability, as he "was hired to Mr. Andrews by your Petitioners for wages of 30$ [sic] per year – but that such hiring had terminated before said binding."[716]

In his response, Andrews tersely admitted to binding Perry, before denying that he ever hired the boy, or that the Henslys could support him.[717] However, he spent more time and ink deftly avoiding any legal responsibility, even as he acknowledged the possibility he acted unlawfully. First, Andrews notes that Perry had been bound two years before, so the Henslys' claim had lapsed from "time, laches,[718] and acquiescence of the Petitioners as a full and complete bar to the relief now asked for."[719] It is not clear what harm Andrews would suffer by having to defend two years later. Theoretically, memories had clouded and documents been lost, but that is true of any suit pursued after the fact. This was also a fairly simple case of whether or not the Henslys had been notified or summoned to court (easily checked in the court records), and what their finances were at the time (verifiable through testimony from the Henslys', their neighbors, and employers). It is more likely that Andrews was simply hoping to thwart the petition before it had really begun.

In a surprising gambit, Andrews' second defense was to blame the Orphans' Court. Andrews admitted that he did not know if the Henslys had been informed of the intended binding or summoned to appear. Facially, this appears to be an admission of negligence. However, Andrews' was tacitly arguing that the court was responsible for any procedural flaws and that he should not therefore be prejudiced by its mistakes. He was likely correct, legally speaking. Under Maryland law, "when any child is about to be bound out, the parent or parents of said child, if living in the county, shall be summoned to appear before the said justices."[720] Summoning was a judicial power, and therefore beyond Andrews' knowledge or ability. While Andrews stopped short of explicitly blaming the court, he was clearly drawing attention to the fact it was not his responsibility to care whether the Hensly's were notified or not.

Andrews then doubled-down by "deny[ing] that jurisdiction of this Court to set aside the judgment of the [justices of the peace] and in granting the said Indenture + the judgment of the

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[713] *Petition of Henry and Sally Hensly, 20 May 1856,* ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 305, MSA C122-5.
[714] *Id.*
[715] *Id.*
[716] *Id.*
[717] *Id.* at 306.
[718] A legal doctrine in which an otherwise meritorious claim for relief is denied based on an unreasonable delay in asserting that claim. The idea here is that a plaintiff has unreasonably waited so long to file their valid claim that the defendant is handicapped in defending themselves. However, this is a rebuttable presumption, so if the delay can be satisfactorily explained (e.g. by showing the relevant information was newly discovered), the delay may be excused and the suit proceeds.
[719] *Id.*
[720] *Id.* "An act for the better regulation of Apprentices" in ACTS OF THE GENERAL ASSEMBLY RELATING TO THE POOR OF BALTIMORE CITY AND COUNTY TOGETHER WITH THE BY-LAWS OF THE TRUSTEES FOR THE POOR OF BALTIMORE CITY AND COUNTY, 14, printed by John D. Toy (1830), MCHC Rare MHV 4030.B3. Hereafter "Act of 1793."

Orphans' Court in directing them to be recorded [in the Register of Wills]."[721] The key to this argument was that Andrews' recategorized the Hensly's filing from a petition to an appeal. Under an 1843 law, if:

> either party feeling himself or herself aggrieved by the decision or judgment of any orphans court, may carry his or her complaint up to the county court, under an appeal for a re-hearing; provided, such appeal be made within thirty days after the decision or judgment of such orphans court.[722]

According to Andrews' logic, the Hensly's filing was a dead letter. Not only were they in the wrong venue (Orphans' versus circuit court), the window for appealing had long since passed. With no claim to pursue, Andrews therefore prayed the "[p]etition may be dismissed with costs."[723] On the day Andrews filed this answer, the Orphans' Court ruled against him and demanded he return Perry to his parents.

This ruling is easy to understand. Andrews pursued a slick, legally savvy sleight of hand over actually addressing the petition's claims. Perry's indenture was clearly unlawful. He was a working, financially contributing member of a non-pauper family, whose indenture occurred behind his parents' backs. This much would have been obvious to Andrews, as he had previously hired Perry Hensly. Even if it was the court's job, not Andrews,' to ensure the Henslys were present to give input on the binding, Andrews knew or should have known the indenture would be fatally flawed if they did not so appear. And yet he put Perry to work anyway.

It is a trite but plausible explanation that Andrews relied on legal arguments because he knew his factual grounds were shaky. Under this reading, Andrews hoped to avoid the factual questions entirely by simply making sure no one could adjudicate the case. It is an interesting and legally sophisticated approach, one which no other indenture holder copied in the petitions reviewed.[724] Usually indenture holders attempted to demonstrate how they had complied with an indenture's provisions, statutory law, or community *mores*.[725] Perhaps Andrews had more legal experience than other indenture holders or got lucky when hiring counsel. While Andrews' gambit did not pay off for him, it is conceivable that others managed to salvage doomed indentures through procedural arguments and statutory bars.

The case of Charles Bruckson hints at another strategy of would-be indenture holders, this time seizing a hired child, then using formalist and bad faith compliance with statutory provisions to insulate against later contestation. Richard and Isabella Jackson petitioned to annul the indenture of their son, Charles, to G.W. Lawrence.[726] The Jackson's petition starts with a strong assault on the legitimacy of the indenture entirely. Having raised all their children in "habits of industry and good morals and. . . in a respectable manner" the two dispatched Charles into the world "many years since" to work and learn a trade.[727] "Now between 13 + 14 [sic] years of age," Charles was "fully

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[721] *Petition of Henry and Sally Hensly,* MSA C122-5 at 306.
[722] "A further supplement to the act entitled, An act for the better regulation of Apprentices," GENERAL ASSEMBLY (LAWS), 1843, 20, MdHR 820924-1, 2/2/6/16.
[723] *Petition of Henry and Sally Hensly,* MSA C122-5 at 307.
[724] A non-exhaustive sample of 234 mostly drawn from Baltimore City, Baltimore County, and Anne Arundel County, with a smattering from St. Mary's County.
[725] As reflected in the other petitions discussed in this and the following chapter.
[726] *Petition of Richard and Isabella Jackson, 2 Sept. 1854*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-25-1. Richard Jackson was Isabella's husband and Charles' stepfather.
[727] *Id.*

able at present to maintain himself and should illness or other misfortune overtake him, your petitioners, who are well to do in life, have abundant means of giving him support without the possibility of his ever becoming a burden to the county."[728] No vagrant or child of "lazy, indolent, [or] worthless free negros,"[729] Charles and the Jacksons claimed to be the solid, dependable souls, ineligible for involuntary apprenticeship.[730]

Charles's service record demonstrates the truth of these claims. The boy readily found work as a waiter and house servant for "several highly respectable persons, always giving entire satisfaction by his industry, his integrity and good conduct, not only maintaining himself during such period but also contributing *to the support of his connections*."[731] Apparently this was not simply parental bluster, as Charles worked for the Honorable John Weathered[732] and "several keepers of the Franklin House Hotel" as a waiter. Eventually, Charles was hired for "monthly wages to a certain G.W. Lawrence."[733]

Lawrence was apparently well pleased with Charles' skills and service. On several occasions, he dispatched friends to visit Charles' grandmother, Judith Brackson, "to induce her to influence the parents of said boy to have him bound out as an apprentice to said G.W. Lawrence."[734] These requests were "steadily and firmly refused."[735] According to the Jacksons, Lawrence never contacted them directly to bind out Charles, only pestering Judith Brackson.

Not to be deterred, Lawrence secretly had Charles bound out by two justices of the peace.[736] The Jacksons claimed they had no knowledge of this binding, with Charles residing in their home until "a certain Joseph Plisces, said to be a constable of the courts, came to the residence of your petitioners and demanded said boy. . . and used abusive and threatening means to carry him away, against their earnest and firm remonstrations."[737]

The Jacksons closed their petition with a plea for the return of their son. Having "reared said lad with great care and circumspection, and having inculcated in him habits of honesty, integrity, and industry, claim his service up to manhood, as a reasonable return for their labors.[738] They prayed the court to summon Lawrence to answer their petition and "render relief and justice to your petitioners."[739]

In his response, Lawrence tacked heavily into the paternalist ethos of indenture. Upon reviewing the case, Lawrence "believes [the indenture] will not be revoked. . . in view of the comfort

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[728] *Id.*
[729] "An Act, Entitled a Further Supplement to An Act for the Better Regulation of Apprentices," in Clement Dorsey, *The General Public Statutory Law and Public Local Law of the State of Maryland: From the Year of 1692 to 1839 Inclusive, with Annotations thereto, and a Copious Index*, Ch. 45, p. 294 (1808).
[730] *Id.*
[731] *Id.* Emphasis added.
[732] A prominent industrialist in the Baltimore area, Wethered made a fortune in woolen goods, founded the town of Wetheredville (later incorporated into Baltimore), was elected as a Whig to the United States House of Representatives, and served as a Baltimore County delegate to Maryland's 1867 Constitutional Convention (which framed the state's current constitution).
[733] *Id.*
[734] *Id.* Possibly Bruckson like Charles, but the script is ambiguous, more resembling an a.
[735] *Id.*
[736] *Id.*
[737] *Id.*
[738] *Id.*
[739] *Id.*

and conditions of the boy + of the circumstances of abandonment under which said boy was first taken into his house."[740] Lawrence went on to state that "the mother and stepfather of said Boy have in no wise extended the duties of protection + support to said boy, but so treated him that he was a fit subject for the exercise of the apprentice power of the magistrates."[741]

No order survives in this case, only a request by the Jacksons for the court to take custody of Charles pending resolution of the case.[742] Speculatively, Lawrence's bad faith claims of compliance with the law; clear machinations to seize an ineligible youth; and slippery extension of apprenticeship's paternalism each make it unlikely that Lawrence retained control of Charles.

Lawrence's claim that Charles was abandoned beggars belief. First, all parties lived and worked in Baltimore County.[743] It is unlikely that Charles was ever far from home, even if he was working independent of parental supervision. Furthermore, Charles was seized from his parents' house. If Charles had actually been abandoned by the Jacksons, more comment and attention would have been paid to the circumstances of this unexpected reconciliation. Andrews would have emphasized his abandonment argument by crowing about how unusual it was for Charles to be home or the circumstances of such reconciliation. A more telling clue is that Charles was also providing financial assistance to his unspecified "connections."[744] Given the Jacksons' language about receiving a return on their parental investment, it is most likely that Charles was a working teenager, contributing to his family's coffers. He might have indeed lived at the Hotel or in a hirer's home but he was still part of the family.

These facts put Lawrence in a tricky position. If Lawrence genuinely believed Charles was abandoned, he was asking to indenture a self-sufficient, gainfully employed working teenager. While facially eligible for indenture as something akin to an orphan or foundling, Charles was clearly not the usual target for binding. Conversely (and more likely), Lawrence was using abandonment as a fig leaf. However, the case facts render his credibility nil. Charles' income, remittances, and ongoing parental contact would have been obvious to anyone doing their due diligence. Lawrence's abandonment claim was therefore at-best, suspect, at worst, clearly self-interested and in bad faith.

Lawrence's efforts to gain control of Charles further undermine his purported belief that Charles was abandoned. Sending friends to badger Charles' grandmother indicates he knew *someone* was supervising the teenager, even if they were not his guardian by law. That Lawrence's agents' mission was to recruit Judith Brackson in order to woo the Jacksons into binding Charles further demonstrates the man never believed Charles was abandoned. Lawrence might have sought to convince the Jacksons to apprentice their son, but he only succeeded in creating evidence that he knew Charles was ineligible from the beginning.

A final quirk of the case is Lawrence's efforts to broaden the scope of eligibility for apprenticeship. Andrews' argument essentially hinged on Charles being better off under his control, a viable argument under Maryland law.[745] However, Lawrence offered no details or actual criticisms of Charles' living conditions, simply asserting that his own household would be an upgrade. This is entirely possible: if Lawrence was frequenting the home of John Weathered or the Franklin House Hotel, he must have been of means. However, legerdemain occurred when he shifted who was

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[740] *Id.*
[741] *Id.*
[742] *Id.*
[743] *See id.*
[744] *Id.*
[745] *See* Law of 1839, *infra* at 113, n. 761; Law of 1808, *supra* at 110, n. 729

eligible for indenture. The core of apprenticeship was that a lower-class or poverty-stricken family lost a child, who in turn received a better life through labor and the mentorship of a successful Marylander. It was saving "idle, desultory, and worthless free negros" from their circumstances. Andrews' version broadened the class of eligible persons to include even those of modest and reasonable means, like the Jacksons. It was not enough for them to be successful for the time, they had to be more successful than (white) others to reach ineligibility.

This evolution of apprenticeship's reach could have been a natural outgrowth of garden variety racism. By 1854, Positive Good Theory had reached its zenith in popularity and reach.[746] As the name suggests, Positive Good argued that Black Americans were congenitally and cultural incapable of living, working, and surviving under their own auspices.[747] As such, the supposedly merciful and Christian thing to do was maintain and expand slavery. Farcical as it was, especially given Maryland's bustling, flourishing free Black population, the ideology had traction across the slave South. Viewed through this lens, even the Jacksons' successes were at-best tenuous or anomalous. In turn, Charles' future would be ostensibly better served if he was led by the firm hand of a white benefactor. However, a popular racial ideology does not equate to strong legal principles. The Orphans' Courts did not possess carte blanche to apprentice anyone a would-be indenture holder hauled before a magistrate. The statute itself, while affording enormous discretion upon judges to decide who was "idle" or "dissolute," still bracketed off the remainder of Maryland's Black population.

This was at least in part predicated on the state's voracious hunger for labor, and the desire to keep it flowing. Maryland's employer-elites wanted the flexibility to obtain and dispense with labor as their needs shifted. Free Black labor was a critical component of satisfying this demand. Cheaper and less powerful than white workers, free Black labor could be represented as a useful underclass. Preserving access to this labor pool was one of the reasons the Maryland legislature never succeeded in re-enslaving free Black Marylanders or exiling them from the state.[748] It was political suicide actually to pass a law destroying the labor pool undergirding the state's economy. Restricting Black Marylanders' liberties was fine, so long as the flow of working bodies remained largely unimpeded.

Black children and teenagers were part of this same labor market. As these petitions show, young children were already being sized up as workers. However, to bind out *all* Black children risked impeding the labor market. As agents of social policy and propertied men to boot, Orphans' Court judges were well aware of these pressures. Even though it would not have set an authoritative precedent, they would have been unlikely to validate a scheme like Lawrence's.[749] All told, Lawrence's defenses likely fell flat, freeing Charles to return to his family and career.

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[746] *See* Larry E. Tice, PROSLAVERY: A HISTORY OF THE DEFENSE OF SLAVERY IN AMERICA, 1701-1840, 97-123 (1987); Eugene Genovese, THE WORLD SLAVEHOLDERS MADE: TWO ESSAYS IN INTERPRETATION, 131, 134-35 (1988).
[747] *Id.*
[748] Barbara Fields, SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY, 69-80 (1985), Jeffrey R. Bracket, THE NEGRO IN MARYLAND: A STUDY OF THE INSTITUTION OF SLAVERY, 234-46, 255-56 (1889).
[749] As a trial court whose appeals went directly to another trial court (the circuit court), Orphans' Court decisions had no binding precedential value. However, once a ruling is out in the world, there is nothing stopping other litigants from citing it or seeking to replicate it.

The case of Georgiana Brown features a similar claim that a Black girl would be better off with a white indenture holder.[750] However, much like Perry Hensly's case, the would-be indenture holder attempted to use a legal maneuver to avoid the issue entirely. In 1859, Frances Wright petitioned on behalf of her niece, Georgiana Brown.[751] According to Wright, Brown was a hard worker, most recently employed by a "Mrs. Wilson," who had hired Brown in an unspecified capacity for "certain wages."[752] When Wilson failed to pay in full, Wright sent Brown to collect the missing money.[753] After Brown did not "return in a reasonable lapse of time," Wright started looking for her niece. A natural starting point was Wilson, who "denied any knowledge of [Brown] whatever."[754]

Wright continued her search in vain, only discovering Brown's whereabouts a few days before filing her petition. It turns out, Wilson had kidnapped Brown and hidden her away before hauling the girl before some magistrates to be bound in secret.[755] Citing this clear violation of familial notice, her own good character, and her ability to support Brown, Wright requested the nullification of the indenture.

Wilson's response was brief, focused mainly on a legal attack against Wright's custody over legitimating her claim to Brown. Wilson first admitted to hiring Brown from Wright, "believing at the time she was the proper person to confer with."[756] However, Wilson further declared that while Brown "was under the control of your petitioner, it was a usurpation of power and not of right."[757] Finally, Wilson argued that kidnapping Brown was "for the wellfare [sic] and comfort" of the child.[758]

Wilson was obviously attacking Wright's custody in order to make Brown eligible for binding. However, the precise angle of attack is rather subtle. The terms of Maryland's apprenticeship statute only required notice to *parents* of potential apprentices.[759] While there might have been judicial interpretation to include extended family or de facto guardians, there is no record of it in the legislative statute books. If Wilson were successful in arguing that Wright had no legal claim to Brown or her upbringing, then Wilson was in a much more secure position. As a non-parent, Wright would have no right to notice of the intended binding, making the indenture procedurally sound. With no parents involved, Brown herself would be somewhere between an orphan, vagrant, or foundling, and therefore a prime candidate for apprenticeship. With these facts, the entire dispute became "which of these two legal strangers is most deserving of custody?" Wilson's argument that the entire ordeal was for Brown's "wellfare [sic] and comfort" would gain

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[750] *Petition of Frances Wright, 26 Nov. 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860) MSA C3360-5-15-3.
[751] *Id.*
[752] *Id.*
[753] *Id.*
[754] *Id.*
[755] *Id.*
[756] *Id.*
[757] *Id.*
[758] *Id.*
[759] "An act for the better regulation of Apprentices" in ACTS OF THE GENERAL ASSEMBLY RELATING TO THE POOR OF BALTIMORE CITY AND COUNTY TOGETHER WITH THE BY-LAWS OF THE TRUSTEES FOR THE POOR OF BALTIMORE CITY AND COUNTY, 14, printed by John D. Toy (1830), MCHC Rare MHV 4030.B3. Hereafter "Act of 1793."; *see also* "An act to provide for the better regulation of the Free Negro and Mulatto Children within this State" IN SESSION LAWS, DECEMBER 30, 1839 – MARCH 21, 1840, Ch. 35, p. 33, MdHR 820921-1, 2/2/6/15 (hereafter Act of 1839). (providing that an apprentice automatically passed to the widow of a deceased indenture holder, unless their parents were able and willing to provide for the apprentice's employment and moral education).

traction if she was of a higher income, white,[760] or more established than Wright. If the Orphans' Court were to buy this line of argument, Wright's petition would have been in serious trouble.

Unfortunately, there are no surviving orders or other records for this case. However, Wilson's arguments do offer insight into how canny indenture holders leveraged case facts into legal arguments. While Andrews (of the Hensly case) focused on procedural arguments and jurisdiction, Wilson homed in on standing. Certainly this would not have been available to many indenture holders. More often than not, petitioners were parents of apprentices or the apprentices themselves. However, it was not unheard of for other, unrelated parties to file on behalf of apprentices.[761] Such non-familial relationships could become key in both protecting apprentices, but also gaining control of them in the first place.

b. From Charity to Laborer: Acquiring Apprentices Through Social Relationships

Escalating an existing labor relationship was not the only way employers seized apprentices. Sometimes they leveraged their personal relationships. For example, in 1833, Moses Taylor, a free Black man, petitioned the Anne Arundel Orphans' Court to annul the indenture of his daughter, Elsie Taylor.[762] Apparently Elsie had been bound to James H. Hyde in October 1832 (approximately eight months earlier). Moses Taylor leveled several procedural flaws against the indenture, namely that it was not "in proper form, was never approved and endorsed as required by law, and is not properly recorded [in the Register of Wills]."[763] Presumably Moses was alleging that the indenture did not contain the proper provisions, no notice had been provided to himself or his wife, and had not been duly filed with the relevant county clerk.

However, the meat of Moses' petition was that Elsie should never have been bound at all. At some point, Moses' unnamed wife had "placed" Elsie with Hyde "for her victuals and clothes."[764] Hyde then "secretly and fraudulently" bound Elsie as an apprentice "without the knowledge of either of [Elsie's] parents."[765] Moses denied that Elsie is an orphan, a vagrant, or ever "destitute."[766] The Orphans' Court duly nullified the petition.

George Norris, a free Black boy, experienced a similar chain of events.[767] George was indentured to James Ramply on Valentines Day 1865 (three weeks prior to the petition). Two weeks later, George's father, John Norris, wrote to the court alleging that the binding was invalid on both eligibility and procedural grounds.[768] First, John Norris flatly stated that he has always "been able and always willing to support the said child," attempting to disqualify George from being bound as a pauper or orphan.[769] However, John admitted he "permitted [George] to remain at said Ramply's

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[760] Recall that the Law of 1839 expressly declared that Black children could be bound to white persons if it was "better for the habits and comfort" of the child.
[761] *See e.g. Petition of Elizabeth Dunker*, MSA C122-4 at 357-58, *supra* at 90; *Petition of Marietta Gardner, 21 Oct. 1856*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS, (1851-1860), 323-24, MSA C122-5 (in which Marietta Gardner's brother petitioned on her behalf against their parents).
[762] *Petition of Elise Taylor, 25 Jun. 1833*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1820-1840), MSA C122-3 at 416-17.
[763] *Id.* at 416.
[764] *Id.*
[765] *Id.*
[766] *Id.*
[767] *Petition of George Norris*, *7 Mar. 1865*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-91-01.
[768] *Id.*
[769] *See id.*

during the winter months of 1865 upon the express understanding and contract between your petitioner and said Ramply in consideration that said Ramply furnish the said George with victuals and clothes." John closed his petition by stating he had never been informed of Ramply's application for an indenture, and would have preferred to choose George's indenture holder himself.[770] While no order survives for the case, the Norrises applied to file an appeal, indicating the indenture was sustained.[771]

It is not clear why the Norrises lost where Elsie Taylor was victorious. The two cases evidence similar characteristics (namely placing a child with another household and a lack of notice to parents) and yet arrived to different results. The most obvious prospect is that John Norris' agreement with Ramply was explicitly an exchange of support for labor. While clearly not consent for a formal apprenticeship, it still ticked many of the same boxes. It was therefore easier for the court to interpret the bargain as a *de facto* apprenticeship, leading to the ultimate result. Thinking more broadly, geography could also be at play. Norris was in Baltimore County while Taylor was in Anne Arundel, and the two did not share the same socio-economic culture.[772] As a bastion of agriculture, Anne Arundel economy operated on a seasonal rhythm. During slack seasons, there might simply be no work available. It would therefore be normal for desperate parents to lodge their children with better-off families while they found employment. In contrast, Baltimore County's own mixed-economy and proximity to the city created an illusion of bottomless job prospects. Judges there might have understood lodging one's children as an admission of failure, not a temporary stopgap. When each of the judges heard testimony about the parents' fitness for care of their children, these material realities informed their analysis. Moses Taylor passed muster, and so regained custody of Elsie, while John Norris fell short, losing George for the duration of the apprenticeship.

Further complicating matters, courts were *also* inconsistent in cases where parents had clearly abdicated their role. For example, John and Susannah Heart petitioned to bind Henny Stepney, a 9-year-old white girl.[773] Henny's mother, Eliza Stepney, had requested the Hearts "take her child + raise it for her before the child could work."[774] The Hearts did so, but now sought to bind Henny to themselves or a Horace Radout.[775] The Hearts were "attached to the child" and would "prefer to keeping it" in their care.[776] The court dismissed the petition and ordered Henny returned to her mother.[777]

There is no clear reason why Henny Stepney should be returned to her mother. Eliza Stepney had explicitly placed Henny with the Hearts until "the child could work."[778] It is possible that Eliza intended to return and take custody of Henny when the latter could contribute to the family's finances (as opposed to being a simple burden). Henny was 9 years old at the time of the petition. On average, Maryland indentures began sometime between ages 9-14, depending on several

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[770] *Id.*
[771] *Id.*
[772] *See supra* at 27.
[773] *Petition of John and Susannah Heart, 4 Aug. 1857*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), MSA C122-5. The petition notes that Henny Stepney's father "was a slave" but the petition and order do not attach any of the usual racial qualifiers (e.g. negro or mulatto) to her.
[774] *Id.*
[775] *Id.*
[776] *Id.*
[777] *Id.*
[778] *Id.*

factors (see Table 4.1).[779] Henny was therefore on the cusp of productive labor but perhaps not quite there. It therefore seems likely that Eliza would not return for her daughter until a few more years had passed. Furthermore, the court's immediate dismissal of the petition (rather than summon Eliza Stepney to offer input), indicates something else was at play. Speculatively, the Hearts might have been lower-class or economically tenuous, and therefore unfit to (continue) raising Henny. However, the court does not bind Henny to anyone else nor remand her to the Trustees of the Poor. Like so many impoverished parents in America, it seems likely that Eliza Stepney, while poor, had too little to adequately care for her child, but too much to "earn" public assistance.

	Baltimore	Prince George's	Talbot	Washington
Percentage of Black Apprentices Under 10	33.9	47.5	52.0	45.1
Percentage of White Apprentices Under 10	15.8	32.7	44.8	18.7

Table 4.1: Age at Binding in Court Initiated Indentures by County, 1794-1850

In each of these cases, parents placed their children with other families for "victuals and clothing."[780] This signaled that the parents needed some level of material assistance in raising their children. Many jobs were seasonal, so parents might have been out of work, or perhaps traveling to jobs outside their immediate areas of residence. Finding alternate lodgings was seen as a better option than carting the kids along. This was certainly the case for the Taylors and Norrises, and possibly for Elizabeth Smith as well. Smith might have been left at home with a neighbor checking in or perhaps had previously been lodged with someone else. Meanwhile Eliza Stepney had essentially washed her hands of Henny, at least for her childhood, only for the court to thwart her intentions.

However, this arrangement obviously left the children vulnerable to being bound out. Read most charitably for the would-be indenture holders, they were seeking some form of official recognition of their relationship. Because there was no legal or familial relationship, one had to be created via indenture in order for the carers to have substantive custody over the children. A more pessimistic interpretation is that the carers wanted to defray the costs of raising someone else's child. Apprenticeship allowed them to hire out their wards or even pass them along entirely to some other indenture holder.[781]

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[779] Stephen Whitman, "Manumission and Apprenticeship in Maryland, 1770-1860" in MARYLAND HIST. MAG. 62-4 (Spring 2006). Whitman notes that age of indenture was closely linked to whether a county was rural or urban. Generally, children in urban counties were bound out later than those in rural counties. For example, in Baltimore, 33.9% of Black apprentices and 15.8% of white apprentices were bound out before age 10. In rural, agricultural Prince George's county, 47.5% of Black, and 32.7% of white apprentices were bound out before age 10. Craft versus non-artisan indenture also mattered for age of binding. Whitman finds that non-artisan Black apprentices were generally bound out between ages 9-11, with 82% bound before their fourteenth birthday. Rural, non-artisan white apprentices were also bound out at young ages, with 40-50% indentured before age 10. Craft apprentices were usually older, between 12-14 for Black apprentices and 14-16 for white ones. However, Whitman does not specify whether his data includes both boys and girls, or only boys.

[780] Explicitly in Taylor and Norris' respective cases, implicitly for Stepney.

[781] For a case in this vein, *see Petition of Eliza Cullison, 5 Aug. 1856*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-40-1. In this case, Eliza Cullison petitioned to bind her daughter, Frances, to Maria Sanders as a domestic worker. However, Frances was currently in the custody of a "Ms. Harding" of Baltimore, so Cullison requested the court dispatch a sheriff to bring her daughter to court. Read alongside the cases in this section, it

III. An "effort to wrest the said boy from him at the time when he is beginning to be advantageous": Victuals, Charity, and Entitlement to Children[782]

The cost of raising a child was certainly enough that many petitioners sought indentures simply to make their costs. However, rather than frame this as a debt to be repaid, claimants more often argued they were entitled to the life and labor of the child. In 1859, Clarissa Olive petitioned the Baltimore City Orphans' Court to bind Margaret Biddle as her apprentice.[783] According to Olive, in April 1858, Malvina Biddle "placed her infant child [Margaret], then about four years age, with your Petitioner and agreed to bind her said child to Petitioner to serve until said child shall attain the age of 18 years."[784] The bargain so struck, an indenture was drawn up, and Melvinia began her time with Olive.[785] However, as a result of "accident and casual misfortune," the indentures were never signed or filed, and therefore had no validity.[786] Now, a "few days past" Malvina Biddle had "taken the said child away from your Petitioner by violence and now holds + detains said child from your Petitioner."[787] Olive asked the Court to summon the Biddles to court and recognize the admittedly flawed indentures.[788]

Malvina's response was almost entirely a demurrer. She admitted to retaking custody of her daughter, despite the original agreement and indenture.[789] However Malvina quickly shifted into justifying her conduct, claiming that while the "house + home of said Olive was in all respects fitted for the said child. . . the character of said Mrs. Olive and reputation of her house" was intolerable.[790] Apparently, "a mother's love and a mother's instinct prompted and commanded [Malvina] to save her child from the quicksand of vice and dissoluteness on which her happiness + hope [would be] wrecked" for "Mrs. Clarissa Olive is not a proper person to have the care and custody of [Margaret] as the personal habits + character of said Mrs. Olive are repulsive + offensive to sobriety, virtue, + morality and the house is the resort of the vicious, the profligate and abandoned."[791] Unfortunately none of these claims are fleshed out in the papers, likely because gossip and "neighborhood reports" would already have informed contemporaries.[792] Regardless, Malvina was using moral instruction, a keystone of apprenticeship's claimed importance, to justify her conduct.

No order is present in the case file, but the Biddles were likely victorious. Failing to sign and file an indenture was fatal to the contract. While the Law of 1839 preserved flawed indentures of

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is plausible that Cullison had placed Frances in Harding's care. However, worried that Harding was about to bind her, Cullison moved to apprentice Frances to someone of her choosing.

782 *Petition of Michael Bruder, 20 Nov. 1855*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-62-3.

783 *Petition of Clarissa Olive, 8 July 1859*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1859-1860), MSA C3360-5-6-10.

784 *Id.*

785 *Id.*

786 *Id.*

787 *Id.*

788 *See id.*

789 *Id.*

790 *Id.*

791 *Id.*

792 Laura Edwards, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH, 118-29 (2009).

Black apprentices, there is no indication that the Biddles were persons of color.[793] The question becomes why Olive was so upset. It had been approximately fifteen months since the 4-year-old Margaret was "bound" (April 1858 – 14 July 1859). The now 5-6-year-old Margaret was probably not yet a net-productive member of the Olive household. It is possible that Olive had grown attached to Margaret and resented the kidnapping of "her" apprentice. However, Olive's petition contains none of the usual protestations of affection, maternal feeling, or familial goodwill. It is strictly focused on the acquisition of Margaret and the procedural flaws which threatened her possession of the girl. It is more likely that, having supplied time, home, and money, Olive felt entitled to a return on her investment but worried she would lose it before it (literally) matured into profitability.

Charles Benson's petition echoes a similar anxiety.[794] In 1835, Elizabeth Roberts, "a colored woman placed to service, her niece called Mary, to remain with and serve your petitioner as long as he should desire on condition that he should provide for and supply her. . . suitable food and clothing."[795] Benson apparently did so "through this past winter and up to this 9th day of June 1836" at which point Roberts "forcibly carried [Mary] away."[796] Claiming Mary was an orphan and Roberts "incompetent to maintain and provide for her," Benson requested the court to compel the return of Mary and bind her to Benson.

A short case lacking response or order, Benson's petition initially feels like a breach of contract case. Roberts had promised Mary as a servant for as long as Benson should desire her service, in exchange for room, board, and clothing. However, Benson was not asking for damages for loss of service, the usual remedy for a breach. He was demanding Mary and her labor. Read most sympathetically to Benson himself, he had been played for a rube by Roberts, taking care of her daughter during winter and into spring. Now deprived of Mary's labor, he felt entitled to an indenture because he had not yet received services sufficient to balance his expenses.

The case of Valentine Bruder most explicitly lays out the desire for a return on investment over any other consideration. Michael Bruder filed two petitions against Daniel Melcher on behalf of his apprenticed son, fifteen-year-old Valentine.[797] Melcher was supposed to teach Valentine the trade of gunsmithing, but "notwithstanding the good behavior of said boy, the said Daniel Melcher has treated the boy in the most cruel and inhuman,[798] by short allowance and no bed to sleep on and on the most trifling offences, he whips, beat, and otherwise – ill treat the said Valentine."[799] Nothing happened for about five months, at which point Michael Bruder filed a second petition.[800] Starting from scratch, Michael repeated many of his earlier claims regarding abuse. However, he added additional claims about Melcher's neglect of Valentine, including his receiving "no schooling whatever, being unable to read, write or cipher, except what little he was have [sic] learnt in Germany before arriving in this country."[801] Valentine was also "kept in a most filthy condition of body. . . is frequently overworked, not allowed to go to church, but compelled frequently to work

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[793] *See id.*; *see also* Law of 1839, at 113 n. 761. The Biddles are never referred to as "free negros," "colored" or any of the other usual appellations.
[794] *Petition of Charles Benson, June 1836*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1834-1851), MSA C399-44-18.
[795] *Id.*
[796] *Id.*
[797] *Petition of Michael Bruder*, MSA C399-12-62-3.
[798] There is no word missing from this quote.
[799] *Id.* All spelling and grammar preserved.
[800] *Id.*
[801] *Id.*

for his master on Sundays whereby his morals have been greatly neglected."[802] Michael therefore prayed summons be issued for Valentine and Melcher, along with any other appropriate relief.

In his response, Melcher offered an exasperated rejoinder that maybe Valentine was just a teenager. Melcher denied neglecting Valentine's training or material conditions. Rather "he has been clothed comfortably. . . at all times. . . [and] he was capable of keeping himself clean if he had so washed."[803] Evidently, Valentine might have been a little slovenly. Melcher further stated that he had "never prevented the said apprentice from going to church but on the contract when the weather would admit of it without damage to the health of the said boy has always directed him to go to divine worship and school."[804]

Melcher then pivoted to what he believed was really going on: Michael wanted to put Valentine to work himself. Melcher explicitly "charg[ed] by way of answer that the parents + apprentice" were engaged in an "effort to wrest the said boy from [Melcher] at a time when he is beginning to be advantageous to your respondent and maybe serviceable to the petitioner."[805] Melcher had apparently been "advised [the petition] is the result of the illegal enticement of a party who is desirous to take the said boy in to Pennsylvania where he can obtain good wages at his trade."[806] Melcher therefore prayed the court to dismiss the petition and allow him to retain both Valentine and his income.

While both Michael Bruder and Melcher raised Valentine's living conditions and workload, the core of this petition is a tussle over who was entitled to the value of that labor. Melcher was irate that he had trained Valentine in a technical and precise craft, maintained the boy for several years, and (allegedly) ensured he received a proper education, only for someone else to swoop in right before the lad was helpful. He felt entitled, not by contract but by simple equity, actually to benefit from his expenses, time, and the frustrations inherent to raising a child. A waged worked might be free to take those better terms in Pennsylvania, but Melcher demanded three more years of work before Valentine was free to take that offer.

In each of these cases, indenture holders' economic motivations are on their most naked display. Apprentices were an investment, one which the indenture holder feared would be snatched away before it could mature into profitability. Labor is at the heart of each transaction, and the petitions represent an attempt to vindicate a perceived *economic* right to the apprentice based on expenses incurred.

However, time and costs were also invoked when third-parties claimed a *parental* right to apprentices. In 1852, Henry Stokely alleged that Isaac Morris had "fraudulently. . . and deceitfully obtain the services of a negro boy," George Cuff.[807] Stokely represented that Cuff was an orphan, taken in and "raised by your petitioner, who has cared for him all things as if he were a son and has been in the habit of taking him, the boy, with him to work at the establishment of Mr. Starr, the tobacconist."[808] In one sentence, Stokely was representing himself as the pseudo-parent of Cuff and showing that he has been providing Cuff an education in a lucrative trade.[809] Apparently, Morris had

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[802] *Id.*
[803] *Id.*
[804] *Id.*
[805] *Id.*
[806] *Id.*
[807] *Petition of Henry Stokely, 31 July 1852*, BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS, MSA T621-183.
[808] *Id.*
[809] *See id.*

"procured the boy" ostensibly "to run errands for him" while in reality machinating to bind Cuff as his apprentice.[810] Stokely asked Morris to annul the indenture, but his pleas failed to move Morris. Stokely therefore requested the Orphans' Court to annul the indenture, though no order indicates whether he succeeded or not.[811]

Stokely and Cuff were not related by blood, but clearly a familial bond had developed between them. Neighbors would have known this, especially if Stokely was taking Cuff to with him to his job every day. Morris certainly knew of their relationship: in the indenture, Morris apparently recorded Cuff's name as "George Stokely" indicating he knew that there was an adult in Cuff's life. Stokely had grounded his petition on that relationship. He had no formal claim to the orphaned Cuff, at least no more than Morris did. Yet he still felt empowered and entitled to custody of his "son" based on the moral valence of raising the boy.

Isabella Jolly also sought to preserve her found family from a predatory indenture holder. Petitioning in 1855, Jolly sought to bind a foundling to herself.[812] Sometime in 1843, Jolly encountered a Black girl wandering the streets of Baltimore in a "helpless and destitute condition."[813] Taking her in, Jolly named her Mary Ann Jolly, "discharge[ing] toward said child the duty of a parent and in health and sickness provided. . . whatever was necessary for its comfort."[814]

Whether through a hire or some other means, a man named Michael Moan gained possession of Mary Ann.[815] To regain custody, Jolly first sued in Baltimore City Circuit Court, the general tribunal for the county.[816] Jolly requested a citation be issued on Moan to bring Mary Ann to court, so that her custody and welfare could be argued.[817] Pleading that Mary Ann had absconded, Moan asked for and received, a continuance.[818] When the parties returned to court, Moan produced an indenture and claimed that Mary Ann's biological mother had actually bound the girl to him.[819] This immediately removed the matter from the Circuit Court's jurisdiction, requiring Jolly to refile in the Orphans' Court.[820] She did so on 6 July 1855, but neither court records nor newspapers reveal any outcome.[821]

Michael Moan was not an unknown player in Baltimore's courthouse.[822] An Irish immigrant, Moan began his tumultuous relationship with Baltimore law on the voyage over. Somehow, Moan was asked to watch over Sarah McKenna, a fellow immigrant and unaccompanied young woman.[823] Upon arrival, McKenna reported to authorities that Moan had "take[n] charge of her goods and rifle[d] through them."[824] Clippings and adverts of the daily *Sun* newspaper evidence that Moan was

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[810] *Id.*
[811] *See id.*
[812] *Petition of Isabella Jolly, 6 July 1855*, Baltimore City Register of Wills, Petitions & Orders, MSA T621-183.
[813] *Id.*
[814] *Id.*
[815] Proceedings of the Courts, *The Baltimore Sun*, 17 Feb. 1855 (Baltimore, Maryland); *see also* Martha Jones, BIRTHRIGHT CITIZENS: A HISTORY OF RACE AND RIGHTS IN ANTEBELLUM AMERICA, 124-25 (2018).
[816] *Id.*
[817] *Id.*
[818] *Id.* at 125-26.
[819] *Id.* at 126.
[820] *Id.*
[821] *See Petition of Isabella Jolly*, MSA T621-183.
[822] *Id.* at 121.
[823] *Id.*
[824] *Id.* (internal quotes omitted).

at the center of a diverse array of cases: malicious prosecution, the ejection of a church's lay leader, and various commercial disputes.[825]

While Moan worked such varied jobs as nightman (privy cleaner) and urban cow herd (he kept them in his backyard), he was also an inveterate wheeler and dealer. While some traded in wheat or crockery, bonded laborers were Moan's stock in trade.[826] Moan often bought and sold slave-convicts. Under Maryland law, Black persons convicted of certain enumerated felonies were sold as slaves for the duration of their sentence.[827] When Moan was arrested for assault alongside a Black accomplice, he managed to gain a stake in the latter's later larceny conviction, then sold him, earning a pretty penny off his erstwhile cellmate.[828]

He also had a bustling trade in apprentices. Under Maryland law, indenture holders were permitted to sell the contracts, provided they receive the Orphans' Court's assent. Moan became expert in gaining custody of vulnerable apprentices in order to sell their indentures. Moan bought supposedly-troublesome apprentices, filed turbulence petitions, and sold them once an extension had been received.[829] William Jones was a Black 12-year-old manumitted by his proximate slaveholder.[830] Jones was immediately apprenticed by his ex-slaveholder, who sold the contract to Moan, who in turn claimed Jones was turbulent.[831] Once an extension was secured, Moan sold Jones to a J.A. Lynch.[832]

In a case echoing Mary Ann Jolly's, Moan somehow gained custody of Henrietta Wright.[833] Apprenticed to learn house work and "plain sewing" from Charles Kuster, Wright was transferred to a William Hackett when Kuster unexpectedly died.[834] However, Hackett also died soon thereafter, with Moan gaining control of her through unknown means.[835] Unfortunately, Moan seemed to have regularly beaten Wright, such that Maria Johnson filed a petition with the Baltimore City Circuit Court to intervene.[836] Johnson's relationship to Wright is unclear, as she only briefly appears in the record.[837] She managed to drag Moan into court, but there her luck ended. Moan denied all the allegations, forcing the court to weigh the testimony of a propertied white man against that of a young Black apprentice.[838] Before any result could be reached, Moan again performed an end run around the judges, somehow convincing a magistrate to bind Wright to him, thereby removing jurisdiction to the Orphans' Court.[839]

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[825] *Id.* at 122.
[826] *Id.* at 123.
[827] "AN ACT to modify the punishment of free negroes, convicted of Larceny and other crimes in this State," *General Assembly (Laws), 1858*, Ch. 324, 491 MdHR 820935-1, 2/2/6/18 at 491.
[828] Jones, BIRTHRIGHT CITIZENS at 123.
[829] *Id.* at 124 (discussing the cases of William Jones and Michael Dorsey); *see also Petition of Michael Dorsey, 22 Jan. 1856,* Baltimore City Register of Wills, Petitions & Orders, MSA T621-183.
[830] *Id.*
[831] *Id.*
[832] *Id.*
[833] *Id.* at 124.
[834] *Id.*
[835] *Id.*
[836] *Id.* at 124-25.
[837] *Id.*
[838] *See id.*
[839] *Id.*

Moan might have hoped this would end the matter, but Johnson proved a tenacious opponent.[840] Johnson had already filed a new petition in the Orphans' Court by the time the *Baltimore Sun* got around to reporting on the case.[841] Johnson's allegations are roughly the same, but without a procedural escape hatch Moan was forced to respond.[842] Despite summons being issued on 6 February, Wright's counsel ultimately moved to dismiss the petition, leaving her fate unknown.[843]

Clearly people did just snatch children when they were available. Market for apprentices meant this form of trafficking was sufficiently lucrative enough to justify the expenses when disputes arose, but not illicit enough to cause actual legal problems. In both Stokely and Jolly's cases, predatory indenture holders sought to appropriate *de facto* adoptees from their found families. Clearly enterprising souls like Michael Moan were always on the lookout for a child they could convert into a saleable apprentice. While legal expenses inevitably arose, whether from irate parents or turbulent apprentices, Maryland's sheer appetite for labor must have allowed them to recoup their losses. Further, there is no indication that Morris, Moan, or any of their compatriots ever faced legal censure for their actions. Prowling the streets for orphans and waifs was fairly safe money.

This is likely because these would-be indenture holders had a viable claim to the apprentices. They were, broadly speaking, complying with law's demand to find and bind needy children. The friction arose when other souls, like Isabella Jolly and Henry Stokely, laid claim to those same children. Both parties, formally speaking, had equal claim to the children. As non-parents (legally speaking), their right to the child was nonexistent. Hence the dueling narratives of abandonment and education seen in these petitions. However, Jolly, Stokely, and others[844] levelled *moral* claims to their adopted children. Here was the worthy parent figure, one who had raised and cared for a needy child, whose ward was now snatched up by an opportunist only interested in the price of their contract or labor. That is not to say that economic interest was absent. Children were workers and their wages were important components of familial income.[845] Even so, these moral petitions did not emphasize income in the same way as Benson and Biddle's respective cases.[846] Frustratingly, the lack of orders or subsequent reporting makes it difficult to parse the success rate of these moral claims.

Taken together, there seem to have been (at least) two forms of third-party claims to apprenticed children. On the Benson/Biddle side, there was an economic entitlement. Having raised children on behalf of absent parents, the would-be indenture holders demanded an indenture in order to make good on the time and money invested. Conversely, moral claimants like Jolly and Stokely also cited the attention and treasure spent on raising adopted children. However, that evidence is mustered to establish a familial relationship, not anchor a claim for repayment.

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[840] *Petition of Henrietta Wright, 24 Jan. 1855*, Baltimore City Register of Wills, Petitions & Orders, MSA T621-183.
[841] *Compare* Proceedings of the Courts, *The Baltimore Sun*, 17 Feb. 1855 at 1 (Baltimore, Maryland) *with Petition of Henrietta Wright*, MSA T621-183 (filed 24 Jan. 1855).
[842] *Id.*
[843] *Id.*
[844] *See e.g. Petition of Michael Bruder, 20 Nov. 1855*, MSA C399-12-62-3.
[845] Sarah Huston, "Innocence Bound: The Lives of Enslaved and Free Black Children in Baltimore Under the Apprenticeship System, 1793-1823" (Master's Thesis, University of Maryland - Baltimore County, 2017). Ruth Wallis Herndon & John E. Murray, "A Proper and Instructive Education": Raising Children in Pauper Apprenticeship" in CHILDREN BOUND TO LABOR: THE PAUPER APPRENTICE SYSTEM IN EARLY AMERICA, 3-5 (Ruth Wallis Herndon & John E. Murray eds. 2009)
[846] *See supra* at 118.

IV. Abandoned and Discarded: Indenture Holders' Severing of Indentures

The differing approaches to indenture, as both a way to claim labor and preserve family, underscore a split within apprenticeship, one where its capitalist understanding of children-as-labor fit jaggedly against the residual, paternalist conception of children-as-family. These two facets are not mutually exclusive of course; family was a laboring unit in the antebellum period, and laboring units could also constitute family.[847] Even slaveholders participated in this dynamic delighting in the conceit that their plantation was "one big happy family."[848] Would-be indenture holders wanted to expand their fictive family in order to recoup their financial losses, and felt entitled to do so even when biological family did not agree.

Yet this paternalist conceit falls apart as soon as the indenture ended, whether through scheduled expiration or a more ad hoc severance. The gradual withering of freedom dues and the absence of any abiding links between indenture holders and the newly minted free workers evidence the capitalist logics inherent to the institution. Whatever its origins and heritage, apprenticeship had become another form of capitalist labor exploitation by the nineteenth century.

Throughout most of their history, indenture contracts required the payment of freedom dues to apprentices.[849] This was usually a small lump sum to get the apprentice started as a free waged worker, some clothing (usually work clothes and a set of formal wear), and sometimes the tools requisite for their trade (e.g. bench planes to a carpenter; needles, pins, and thread for a seamstress).[850] Like so many other conditions of indenture, these grants were chiseled away over the course of the nineteenth century. First the tools were sawed away, then clothes became optional inclusions. The sums of money also became smaller, whether through the terms of the contract or the ambiguous "customary freedom dues."[851]

This withering reflected more than just an increasing stinginess from indenture holders. It was an erosion of apprenticeship as a trade school into a purer labor exchange. Clothing, room, and board were considered adequate compensation for the apprentice's labor,[852] with freedom dues reconceptualized as an end of contract bonus instead of an entitlement.

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[847] Dylan Penningroth, *The Claims of Kinfolk: African American Property and Community in the Nineteenth-Century South*, 2003; Dylan Penningroth, "Slavery, Freedom, and Social Claims to Property among African Americans in Liberty County, Georgia, 1850-1880," *The Journal of American History* 84, no. 2 (September 1997): 405, https://doi.org/10.2307/2952565.
[848] Eugene Genovese, ROLL, JORDAN, ROLL: THE WORLD SLAVES MADE, 73-75 (1974) (discussing the paternalist self-identity of slaveholding men); *see generally* Deborah Gray White, AR'N'T I A WOMAN?: FEMALE SLAVES IN THE PLANTATION SOUTH (1985) (discussing the myriad familial/intimate roles expected of enslaved women, including mammy, Jezebel/"fancy," and fieldhand or other primary occupation); Sadiya Hartman, Scenes of Subjection: Terror, Slavery, and Self-Making in Nineteenth-Century America, 155-56 (2022) (discussing proslavery polemicist George Fitzhugh's belief that enslaved persons weakened the power of slaveholding "fathers" through preying upon his affection and benevolence).
[849] Herndon & Murray, "A Proper and Instructive Education" in CHILDREN BOUND TO LABOR at 16-17; Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR at 59-60, 65.
[850] Whitman, "Orphans in City and Countryside" in CHILDREN BOUND TO LABOR at 59; Helena Sorrell Hicks, THE BLACK APPRENTICE IN MARYLAND COURT RECORDS FROM 1661-1865, University of Maryland – College Park (Dissertation 1988).
[851] Herndon & Murray, "A Proper and Instructive Education" in CHILDREN BOUND TO LABOR at 16-17; Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR at 59-60, 65.
[852] Whitman, "Orphans in City and Countryside in Nineteenth-Century Maryland" in CHILDREN BOUND TO LABOR at 64.

Nor was this the only contract term to be chiseled away over the course of the nineteenth century. Indenture holders unilaterally divested themselves of unwanted apprentices, no matter how much time was left on the apprenticeship's clock. At its most illicit, indenture holders simply abandoned apprentices. Nicholas Matthews petitioned in 1853 requesting his son Charles be released from his indenture to W. Samuel Duvall.[853] Apparently Duvall left Maryland, along with his family, leaving Charles to fend for himself.[854] Unfortunately, "the neighbors fear to hire [Charles] or allow him to work for them because he still stands upon the record as the property of the said Duvall."[855] Charles would also never receive his freedom dues, despite complying with his portion of the indenture. Due to Duvall's noncompliance with the indenture, the contract was annulled, with no rebinding on record.[856]

Jacob Gribbeh's case was even more dramatic. Gribbeh was originally bound to Isaiah Penny.[857] However, Penny had casually, and without judicial imprimatur, sold Gribbeh's indenture to John Washington, then promptly left the state for Missouri.[858] Gribbeh argued that since that time, Washington had unlawfully possessed his person and labor, despite having "no right to your petitioner."[859] He therefore prayed the court to release him from the indenture, again, without a new binding on record.

Such tactics were not unique to unlawful self-help. Other indenture holders invoked the Orphans' Court's aid in firing their apprentices. John Kebler was apprenticed to John Heiner.[860] Unfortunately, Heiner died before the end of Kebler's apprenticeship, and his widow decided she had no need or desire for Kebler's labor.[861] As such, she petitioned the Orphans' Court to annul the indenture, which was granted without any subsequent rebinding of Kebler.[862] In a similar vein, James Douglass's indenture holder, John Gardner, "ceased the trade for which the said boy was bound to him to learn."[863] Rather than find a new indenture holder, Gardner simply requested the apprenticeship be annulled, leaving Douglass "hereby released from his said apprenticeship."[864]

Combining many of the threads discussed here and in Chapter III, the end of Isaac Cork's apprenticeship features an indenture holder washing his hands of a frustrating laborer.[865] The case begins as a typical turbulence petition. Cork having "repeatedly absconded from his service and. . .

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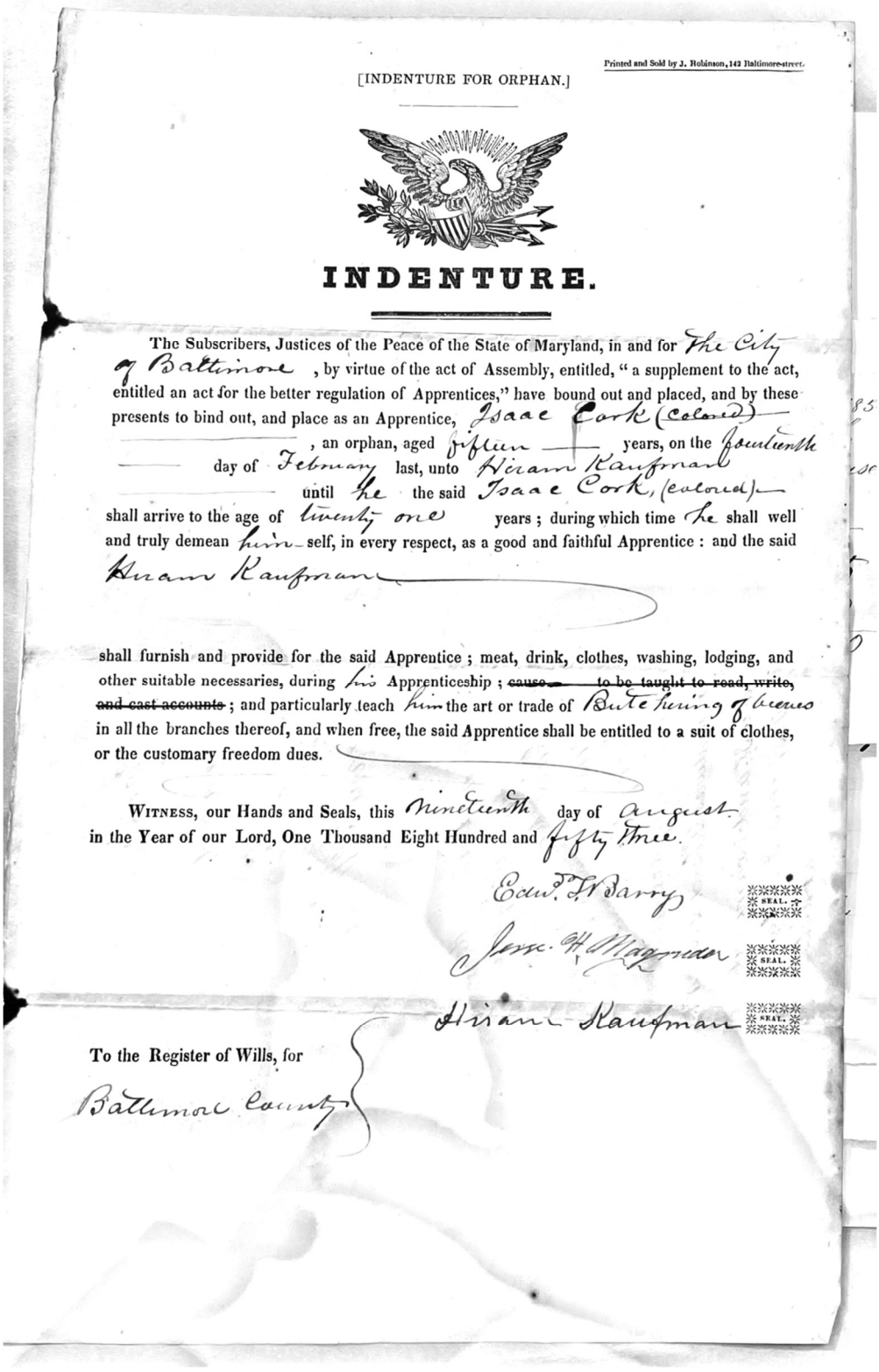
[853] *Petition of Nicholas Matthews, 28 Mar. 1853*, ANNE ARUNDEL COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1851-1860), 12-13, MSA C122-5.
[854] *Id.*
[855] *Id.* at 12.
[856] *See also Petition of Salley McBride, 18 May 1853*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1849-1861), MSA C399-12-5-2. In this case, Marcus McBride's proximate indenture holder, Jacob Jones, abandoned McBride and left the state for parts unknown. Marcus' mother, Salley McBride, petitioned for Marcus' release from the indenture which was granted.
[857] *Petition of Jacob Gribbeh, 10 Nov. 1846*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1845-1847), MSA C399-53-50-1.
[858] *Id.*
[859] *Id.*
[860] *Petition of Elizabeth Heiner, 8 Oct. 1860,* BALTIMORE CITY REGISTER OF WILLS, PETITIONS & ORDERS (1860-1861), MSA C3360-6-12-5.
[861] *Id.*
[862] *Id.*
[863] *Petition of John B. Gardner, 10 Mar. 1847*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1845-1847), MSA C399-53-60-3.
[864] *Id.*
[865] *Petition of Hiram Kaufman, 20 Feb. 1855*, BALTIMORE COUNTY REGISTER OF WILLS, PETITIONS & ORDERS (1852-1865), MSA C399-13-31-1.

on several occasions been absent for more than two months at a time," Kaufman requested an extension to his indenture and sale authorization.[866] The court granted a six month extension and permission to sell on 21 Feb. 1855.[867] However, less than a week later, Kaufman was back before the court.[868] Apparently, though "having made every reasonable effort to find a purchaser for negro Boy [sic] Cork" had failed to find an actual taker.[869] He therefore asked the court to annul the indenture entirely, which was granted that same day.

[866] *Id.*
[867] *Id.*
[868] *Id.* Kaufman filed his second petition on 27 Feb. 1855.
[869] *Id.*



Printed and Sold by J. Robinson, 142 Baltimore-street.

[INDENTURE FOR ORPHAN.]

INDENTURE.

The Subscribers, Justices of the Peace of the State of Maryland, in and for The City of Baltimore, by virtue of the act of Assembly, entitled, "a supplement to the act, entitled an act for the better regulation of Apprentices," have bound out and placed, and by these presents to bind out, and place as an Apprentice, Isaac Cork (colored), an orphan, aged fifteen years, on the fourteenth day of February last, unto Hiram Kaufman until he the said Isaac Cork, (colored) shall arrive to the age of twenty one years; during which time he shall well and truly demean himself, in every respect, as a good and faithful Apprentice: and the said Hiram Kaufman

shall furnish and provide for the said Apprentice; meat, drink, clothes, washing, lodging, and other suitable necessaries, during his Apprenticeship; ~~cause to be taught to read, write, and cast accounts~~; and particularly teach him the art or trade of Butchering & business in all the branches thereof, and when free, the said Apprentice shall be entitled to a suit of clothes, or the customary freedom dues.

WITNESS, our Hands and Seals, this Nineteenth day of August in the Year of our Lord, One Thousand Eight Hundred and fifty three.

Edw.d F. Barry SEAL.

Jesse H. Waggoner SEAL.

Hiram Kaufman SEAL.

To the Register of Wills, for Baltimore County

Figure 4.1: Indenture of Isaac Cork, 19 August 1853[870]

[870] *Id.*

In each of these cases, indenture holders abandoned apprentices simply because retaining their labor did not suit them. Rather than go through the fuss of properly transferring or selling the youths, the indenture holders sought an immediate severing of the relationship. Whether through self-help, an illicit sale, or a petition to the Orphans' Court, indenture holders were keen to dispose of unwanted apprentices. Once jettisoned, it is not clear what these apprentices were expected to do. A select few had family waiting to take them back, offering some hope of support. Others might have immediately rebound, though there is no record of such in these case files. It appears that these apprentices were left to figure things out themselves, whether that meant self-sufficient work and life or finding a new indenture. The end result approximated the conditions of waged labor, in which employers could fire excess workers as needed, regardless of what the indenture contract required.

This was not a complete novelty. In contrast to other jurisdictions, it is at least in part because America had never developed a system of guilds. Former apprentices entered the wage labor market on the same legal footing as any other artisan, farmer, or domestic worker. This atomism was true when apprenticeship had arrived in the United States in the seventeenth century. It remained true throughout the subsistence era of colonial development, later mercantilist commerce, and on into the nation's capitalism.

This stands in contrast to jurisdictions with guilds or other analogous structures. In the Ottoman Empire, a rich tapestry of guilds regulated artisans, merchants, and other professions. For example, in the eighteenth century, Istanbul courts saw filings the guilds of vegetable dealers (*sebzeci*);[871] bakers (*ekmekci*); separate guilds for halva-makers and baklava sellers; tin sellers (*tekneci*), leather workers (*debbag*); candle wax dealers (*mumcu*); porters (*hammal*), and wool textile dealers (*sofci*).[872] By the mid-nineteenth century, guilds had weathered the winds of rebellion, Tanzimat,[873] European encroachment and industry, with varying degrees of success.[874] Some had consolidated into larger guilds, others folded entirely, and there was great regional variation between guilds of the same profession.[875] For example, craft guilds in the Balkans struggled to handle an influx of craftspeople from rural areas, periodically requesting Ottoman officials to enforce the guilds' monopoly rights over their crafts.[876] As Ottoman officials failed to intervene, these rural, non-guild artisans created a "considerable stratum in the major urban areas of the region."[877] In contrast, guilds

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[871] The suffix -ci or -cı indicates "worker" when attached to certain Turkish nouns. For example, balık (fish) + -cı (worker) becomes balıkcı (fisherman) while iş (work) and -ci (worker) becomes işci (worker) and yaz (root of the verb "to write") + -cı becomes yazcı (writer, scribe).

[872] Fariba Zarinebaf-Sharh, "The Role of Women in the Urban Economy of Istanbul, 1700-1850," 60 INT'L LAB. AND WORKING-CLASS HIST. 141, 144 (Fall 2001). *See also* Nalan Turna, "The Shoe Guilds of Istanbul in the Early Nineteenth Century: A Case Study" in BREAD FROM THE LION'S MOUTH: ARTISANS STRUGGLING FOR A LIVELIHOOD IN OTTOMAN CITIES, 158 (Suraiya Faroqhi ed. 2015).

[873] Lit. "Reorganization," Tanzimat was a period of reform in the Ottoman Empire, lasting roughly 1839-1876. Aimed at modernizing or updating the Empire's military, bureaucratic, and administrative apparatus, the period was one of mixed success and debated efficacy.

[874] *See generally* Turna, "Shoe Guilds" in BREAD FROM THE LION'S MOUTH (discussing gyrations and shifts in the shoe guilds' fortunes in response to the Empire's disasters and migrations); Cengiz Kırlı, "A Profile of the Labor Force in Early Nineteenth-Century Istanbul" 60 INT'L LAB. AND WORKING-CLASS HIST. 125 (Fall 2001) (discussing how Istanbul's labor force had demographically shifted in response to migration and refugee crises, despite the Porte's attempts to regulate access to the city).

[875] Donald Quataert, "Labor History and the Ottoman Empire, c. 1700-1922" 60 INT'L LAB. AND WORKING-CLASS HIST. 93, 102 (2015). *But see* Onur Yildirim, "Ottoman Guilds in Early Modern Era" 53, Supplement 16 INT'L R. OF SOC. HIST. 73, 75-6 (arguing all Ottoman guilds declined over the nineteenth and twentieth centuries).

[876] Yıldırım, "Ottoman Guilds in the Early Modern Era" at 82-84.

[877] *Id.* at 82 (quoting Nikolay Todorov, *The Balkan City, 1400-1900*, 119 (1983).

in Aleppo leveraged a similar influx to continue dominating the textile industry.[878] The guilds employed these migrants as wage laborers to meet pilgrims' voracious appetite for cloth on their way to Mecca.[879] Donald Quataert notes that textile guilds shifted production from small cadres of guild artisans to employing girls in women supervised by master weavers.[880] While not every guild successfully navigated the uncertainty of the Empire's final century, some managed to not only adapt, but flourish based on local circumstances and opportunities.[881] Logistics guilds actually experienced something of a boom, "increasing sixteen-fold" in the nineteenth century.[882] Large construction projects, a proliferation of steamships, and the building of railroads all bolstered transport guilds' prominence and numbers.[883]

Guilds were not organs of the state, but forms of corporate self-regulation undertaken by trade communities.[884] Nevertheless, guilds functioned to help regulate production in accordance with the Porte's provisionist[885] priorities.[886] They were responsible for collecting the taxes of their members, allocating raw materials to ensure stable production, and supervising the quality of craft products, among other responsibilities designed to remove uncertainty from the Empire's economy. In particular, they regulated labor markets.

Apprentices lived and learned according to guild priorities, both during their binding and after. Very little is known about apprenticeship in the Ottoman Empire, as apprentices rarely appear in the existent records.[887] As throughout medieval and early-modern Europe, apprentices were obviously the next generation of guild members, training to reach full status within the guild and eventually becoming craftsmasters in their own right. However, if these newly minted artisans were free to set up their own shops and produce willy-nilly, the market might destabilize. Competition would change prices for both finished goods and ingredients while variations in quality would introduce uncertainty. It was therefore critical that at the end of their indenture, and after a period working as mature craft laborers (journeymen), apprentices become master-artisans *within* the guild, not independently.

This apprenticeship-journeymen-master craftsman structure of artisanal work continued into the nineteenth century, even as guilds shifted from a traditional membership structure to use of the *gedik* (lit. "slot" or "space").[888] *Gedik* came in two forms, a permanent tenancy and a licensure, and both mandated apprentices remain with their indenture holders even after their graduation to journeymen. The first form of *gedik*, permanent tenancy, emerged from the Porte's disastrous finances in the eighteenth century. To make up losses in revenue, the government began to seize the

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878 *Id.* at 85.
879 *Id.* at 86-6 (citing Abraham Marcus, *The Middle East on the Eve of Modernity: Aleppo in the Eighteenth Century*, 164-64 (1989)).
880 Quataert, "Labor History and the Ottoman Empire" at 105.
881 This is especially true since most extant guild-related records are from cities (Istanbul, Damascus, Aleppo, Izmir, and Bursa especially).
882 *Id.* at 103-04.
883 *Id.*
884 Suraiya Faroqhi, "Introduction" in Bread from the Lion's Mouth: Artisans Struggling for a Livelihood in Ottoman Cities, 24 (Suraiya Faroqhi ed. 2015).
885 *See supra* at 12.
886 *Id.*
887 *Id.* at 30-31; Nalan Turna, "Ottoman Apprentices and their experiences" 55:5 Middle E. Studs. 683, 685 (2019).
888 Engin Deniz Akarli, "*Gedik*: Implements, Mastership, Shop Usufruct, and Monopoly Among Istanbul Artisans, 1750-1850" WISSENSCHAFTSKOLLEG BERLIN JAHRBUCH 223 (1986); Seven Ağır & Onur Yıldırım, "*Gedik*: What's in a Name?" in BREAD FROM THE LION'S MOUTH: ARTISANS STRUGGLING FOR A LIVELIHOOD IN OTTOMAN CITIES, 217 (Suraiya Faroqhi ed. 2015).

assets of various 'waqf complexes (s. *bedestan*, pl. *bedestanlar*), either through direct taxation or by selling them as tax farms to private landlords in exchange for a periodic lump sum. These landlords were free to charge rent of their tenants, and so sought a return on their investment.

Bedestanlar were often multi-use structures, with workshops, stores, housing, and other functions all under one roof. Market custom maintained artisans of the same craft to cluster in the specific locations, so guilds often plied their trade in the same or proximate *bedestanlar*.[889] Rent for their storefronts could be a serious expense for artisans. Margins in the craft economy were generally slim, especially in the face of tax farmer's avarice or panicked 'waqf attempting to bolster their now-taxed finances.[890] The possibility of permanent tenancy at a low rent was therefore too good to pass up. Under Islamic law, a permanent tenancy could be acquired by paying a 'waqf or tax farmer a large up-front sum (*muaccle*).[891] This entitled the renting artisan to permanent tenancy and low monthly or annual rent payments (*müeccle)* for the duration of their occupancy, however long that may be.

In the late-eighteenth and early-nineteenth century, artisans elaborated on this arrangement by gaining permanent usufruct rights, the *gedik*, in exchange for "improving" the property through their placement of trade capital (e.g. the baker's ovens, the smith's anvil, the weaver's loom).[892] Once acquired and within certain restrictions, g*edik* holding artisans were able to use their slots as collateral for loans and investments, as well as sell, sublease, and bequeath them.[893] Some *gedik* holders chose to earn a profit by subleasing their slots at a higher rate than the original rent.[894] Between those seeking a commercial shop and those after an investment property, there existed a bustling secondary market for *gedik*.[895]

This form of *gedik* throttled apprentices' ability to move on from their dependence into craft mastery. Due to location restrictions, newly minted artisans needed to practice their trade in a set area near their peers. However, if all those storefronts were already locked into a *gedik*, how were they to make their own way? Waiting for a current tenant to die was an uncertain proposition, since they might bequeath their slot to an heir of the body. Worse still, the secondary market for *gedik* raised prices, both directly through increased demand and bidding wars, and indirectly, through increased rent as non-artisan *gedik* holders recouped their investment. Leaving the area was not an option either. Other jurisdictions had their own local guilds and *gediks*. Journeymen from elsewhere were interlopers from outside the locality's guild structure and hence often barred from practicing their craft. Without a fresh slot, journeymen were therefore consigned to remain under the thumb of their original craftmaster.

This intra-guild immobility compounded with the development of *gedik*'s second register: sectorial licensing.[896] License-*gedik*'s origins are softly debated. Engin Akarli finds that over time, these claims to permanent tenancy became claims of monopoly rights over certain trades or markets.[897] Facing increasing price pressure from 'waqf and private landlords, guild artisans began arguing that their *gedik* vested them with an entitlement to shop space in *bedestanlar*, not just a

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[889] Akarli, "*Gedik*" at 226.
[890] Ağır & Yıldırim, "*Gedik*: What's in a Name?" in BREAD FROM THE LION'S MOUTH at 219.
[891] *Id.* at 221.
[892] *Id.*
[893] *Id.* at 221-22.
[894] *Id.* at 223.
[895] *Id.*
[896] Ağır & Yıldırim, "*Gedik*: What's in a Name?" in BREAD FROM THE LION'S MOUTH at 225, Akarli, "*Gedik*" at 226.
[897] Akarli, *Gedik* at 226.

tenancy.[898] Their logic was that their shops were reserved for a given trade by custom and community memory, a powerful argument in the historically-inclined Empire.[899] Furthermore, artisans argued that their repairs, overhauls, and modifications to the shop space had contributed to the *bedestan*'s upkeep and value, thereby entitling them to commensurate compensation.[900] Finally, they offered a policy argument that expelling artisans from their storefronts would disrupt the production of goods, payment of merchants, and general stability of the market.[901]

In navigating the tension between landlords, guilds, and its own desire for an orderly society, the Porte began issuing charters (*nizam*) recognizing individual guilds' claims to permanent tenancy and rent-stability, along with associated practices such as how *gedik* were passed between guild members and how mastery was afforded to journeymen. While not explicitly monopolistic, *nizam* sometimes froze the number of implements allowed to be used in a trade (e.g. capping the number of anvils a guild was permitted to utilize).[902] Akarli finds that even when *nizam* did not create such a ceiling, guilds often invoked their *gedik* and *nizam* as "exclusive of other people, even their own senior assistants."[903] Their markets protected from interlopers, guilds could get back to business.

Onur Yıldırım gives greater weight to this monopolistic impulse than Akarli.[904] He finds that the constant migration of non-guild artisans into cities threatened guild members' livelihoods.[905] During the late-eighteenth century, guilds collaborated with Ottoman officials to create licensure *gedik*, in which master craftsmen registered the tools of their trade with their guild warden (*kethüda*). Without registering one's tools, one was forbidden from practicing a trade and likely cut off from many sources of raw materials.[906] Yıldırım finds that this policy was intended to "fix and stabilize the number of master craftsmen."[907] Once in possession of a licensure-*gedik*, craftmasters were no longer confined by the spatial limitation of certain *bedestan* or storefronts; they could practice their craft anywhere within their guild's jurisdiction.[908]

In collaboration with Seven Ağır, Yıldırım has since modified this thesis as an Ottoman reaction to market instability.[909] In this new, or perhaps parallel, argument, Ottoman jurists wanted to protect the price and availability of staples.[910] To do so, the jurists argued that those dealing in essential commodities (e.g. bread, meat, oil), should be offered permanent tenancy, tenancy-*gedik*.[911] While these were not directly associated with monopolies, these were the same trades associated with regulations specifying the number of souls allowed to practice a given trade or craft (called *inhisar*).[912] The tenancy-*gedik* and *inhisar* gradually became conflated as non-*inhisar* guilds also petitioned for tenancy-*gedik*, gradually leading to licensure-*gedik* and monopolies.[913]

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898 *Id.*
899 *Id.* at 227.
900 *Id.*
901 *Id.*
902 *Id.* at 228.
903 *Id.*
904 *See* Yıldırım, "Ottoman Guilds" in BREAD FROM THE LION'S MOUTH at 89.
905 *Id.*
906 *See id.*
907 *Id.*
908 *Id.* at 91.
909 *See* Ağır & Yıldırım, "*Gedik*: What's in a Name?" in BREAD FROM THE LION'S MOUTH at 227.
910 *Id.*
911 *Id.*
912 *Id.* at 227 (definition of *inhisar*), 228.
913 *See id.* at 227.

The truth is likely somewhere between all of these arguments, a combination of permanent tenancy, protectionism, and legal drift. Regardless of precise origin, licensure-*gedik* limited how many craft masters could practice their trade in a given region. Guild masters could (and did) use their licensure-*gedik* to prevent journeymen from acquiring the same privileges.[914] This protected masters' access to raw materials, market share,[915] and dividends from shares of the guild itself.[916] This in turn meant apprentices were stuck. They could not open their own shops, as they were not licensed to practice their craft independently. Additional licensure-*gedik* could be issued, but only at the urging of the existing craft masters. Despite their qualification for independent artisanry, journeymen were relegated to continued production under the aegis and control of a guild master. Indeed, Nalan Turna finds that the rank of journeyman exists in part because of licensure-*gedik* and associated efforts to limit who could ascend to guild mastery. Turna notes that the term for journeyman, *kalfa*, does not appear in seventeenth century records, only emerging later.[917] Licensure-*gedik* represented a tacit demotion, from the earned rank of masterhood to the subordinate rank of journeyman.[918]

V. Conclusion

American and Ottoman apprentices experienced very different ends to their respective bondage. Whereas American apprentices were immediately cast out into the world as independent wage laborers or artisans-for-hire, Ottoman apprentices were bolted into a continued subordination, unfree to practice their trade as they saw fit. While an interesting dichotomy in its own right (and one ripe for deeper comparison), this difference also reveals something about the fundamental nature of apprenticeship in each nation.

In the United States, apprenticeship was a life stage between childhood and life as a full worker, one commoditized by employers during and after. It was not necessarily a stage aimed at preparing a child for a specific future occupation. Rather, it was predicated on creating generic workers able to be slotted into roughly wherever the labor market might need them, particularly as the nineteenth century went on. The duration of apprenticeship is the first indication, and perhaps the strongest, indicator. No matter the apprentices' age at the time of binding, they would serve until age 18 or 21.[919] If apprenticeship was actually about cultivating skills in a certain job or profession, the apprenticeship should have lasted only until the apprentice had cultivated the relevant skills. After 1844, indenture holders were free to sell the unexpired term of any apprentices.[920] Indenture holders sold their wards as *they* saw fit, not according to the benefit of the apprentice's education. As evidenced by Isaac Smuthers, Thomas Burrows, and others, a sale might result in cosigning the apprentice abruptly into a completely different field or role.[921]

This character of American apprenticeship extended to apprentices' general education as well. The emphasis on literacy over any other subjects or disciplines indicates that those skills were the only ones prized by employers. Ciphering was likely taught for apprenticeships involving

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[914] *Id.* at 229; Akarli, "Gedik" at 228;
[915] *Id.* at 230.
[916] Turna, "Ottoman Apprentices and their experiences" at 689.
[917] *Id.*
[918] Due to the paucity of information on apprenticeship, it is unclear whether journeymen were truly superior in rank to apprentices, or existed in a parallel, intermediate level of subordination to the same craft master.
[919] Assuming no extensions.
[920] "An act supplementary to an act entitled, an act to provide for the better regulation of Free Negroes and Mulatto Children within this State, passed at December session, eighteen hundred and forty-two, chapter thirty-five" Session Laws of the Maryland General Assembly, December 30, 1844 – March 10, 1845, Ch. 247. (Law of 1844).
[921] *See supra* at 86-7, 91.

accounts or inventory, but was otherwise optional. Employers wanted a workforce capable of receiving instructions; any other knowledge was a nice bonus, but not requisite.

After their indenture was at an end, most apprentices could look forward to entering the workforce as unfettered, atomistic laborers not trained craft workers. Whether the indenture ended as scheduled or the apprentice was ejected prematurely, there was no support network on the far side, or guarantee of employment in a trade. Indenture had done its job to mint a new worker, equipped for the labor market in whatever guise and duration employers currently required.

In contrast, Ottoman apprenticeship created a set type of worker, and worked to ensure that they did not deviate from that categorization. Ottoman indentures were typically shorter, either a handful of years to learn the necessary skills[922] or until a certain quantum of product had been produced to craft master's standards.[923] The apprenticeship was specifically targeted towards cultivating relevant skills in a particular craft. Once obtained, the apprentice ascended to the status of journeyman – still subordinate to the craftmaster, just not to the same extent. This continued subordination highlights Imperial apprenticeship's deep-seated focus on continuity. Journeymen were tied to their guild if they wished to practice their profession. They could enter the general market for labor, but not as artisans (at least not legally). *Gedik* of both sorts combined to bind journeymen into established structures and institutions, as opposed to the hurly-burly of American labor.

Finally, when it arrived in the late-nineteenth century, apprentices' official general education was quite broad.[924] In addition to literacy and ciphering, apprentice schools taught religious doctrine, rhetorical skills, history, and geography.[925] These were not immediately practical to the apprentices' crafts. It is more likely that the Porte sought to emphasize how craftspeople were part of the Ottoman national project, thereby motivating artisans to comply with state priorities and supply its needs. While the craft masters shaped an apprentice's skills, the general education shaped the apprentice. In sum, unlike American apprenticeship's milling of generic workers, Ottoman apprenticeship demonstrated a robust, hierarchical path dependence aimed at producing specific, specialized workers.

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[922] Turna, "Ottoman Apprentices and their experiences" at 686 (noting that barbers' apprenticeships lasted 2-5 years, velvet makers lasted 4-5, stonemasons for 3, and crepe silk makers for 9).

[923] *E.g.* the lace makers of Bursa, who were freed from slavery after producing a certain number of bolts of cloth. Murat Çizakça, 23.5 "A Short History of the Bursa Silk Industry (1500-1900)," J. OF THE ECON. & SOC. HIST. OF THE ORIENT 142 (1980).

[924] *See supra* at 98.

[925] *Id.*

Chapter V: Manumission, Households and Slaveholders' Enduring Influence

I. Introduction

Manumission occupied an uncertain place in American slavery. While there were many formulations about the nature of manumission, its core was an individual renouncing any property claim to an enslaved human being.[926] Manumission was a slaveholder's property right par excellence, as only someone with "true" ownership and plenty of money could afford to absorb the cost and profit potential of an enslaved person.[927] Conversely, manumission was indelibly associated with the paranoia surrounding free Black Americans. Frequently labelled as icons of sloth whose "history of indolence, vice, and crime. . . often stained with the blood of their fellows, and frequently our white population" free Black Marylanders were viewed as a fifth column against both white citizens and the state's finances.[928] This distrust engendered a parallel suspicion for manumission.

Given this distrust, it is intriguing that manumission cut all formal strings of control over freedpersons. Once manumitted, Black Americans were ostensibly independent residents of a state, within the boundaries ordained by the legislature and society. This made sense given the broad bourgeois streak in antebellum society: since the slaveholder was no longer receiving the freedperson's labor, there was no obligation to provide anything in return.

This is striking, as almost every other slave societies mandated some form of enduring loyalty from freedpersons. In Islam, *walā'* created lasting bonds, while Latin slavery's *obsequium* gave patrons legal weapons against freedpersons. Since the South broadly maligned Free Black Americans, the absence of a new formal hierarchy is confusing.

This chapter argues that appearances are deceiving: manumission did not, in fact, end the relationship between American slaveholders and freedpersons. While bourgeois sensibilities animated many aspects of antebellum life, manumission was not automatically among that number. Maryland's implicit manumission cases show that although manumission did not create a legally mandated patron-client relationship, there are echoes to what we see in Louisiana and the Ottoman Empire. The hostile territory of Southern society incentivized freedpersons to maintain cordial relations with their ex-captor, or an appropriate substitute. This in turn has ramifications for how we understand the germination of American households, and the rugged mythos surrounding the institution.

II. Bourgeois Paternalism in the Antebellum South

The social architecture of slaveholding households was predicated on internally policing its members. Slaveholders' familial structure goes by many names: yeoman republicanism,[929] bourgeois

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[926] Some jurisdictions considered manumission a gift of freedom, a conveyance, trust, enfranchisement of a villein, and other property formulations.

[927] Formally, emancipation is a society-wide liberation of all enslaved persons. However, manumission and emancipation are often used interchangeably. For this paper, I will be using manumission for individual-initiated liberations, and emancipation for society-wide.

[928] "The Free Negro Question: Letter from Col. C. W. Jacobs of Worcester County" PORT TOBACCO TIMES AND CHARLES COUNTY ADVERTISER, 24 Feb. 1859 at 1. The letter continues onto page 2, which has been lost.

[929] Walter Johnson, RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM, 24 (2013).

law,[930] and classical liberalism,[931] to name a few. Regardless of label, its base definition remained the same. Externally, the household was ruled by a politically empowered patriarch, who was putatively equal with all other patriarchs across the nation, and who owed no other household anything except what was required by law (such as contract or duty of care). Social custom and personal morality certainly directed patriarchs' decisions, but did not bind them; they could change on a whim.

In contrast, the internal architecture of slaveholding households was distinctly illiberal, akin to what social theorist William Booth calls the "Homeric" household.[932] Within the household, the patriarch was a petty sovereign, with broad rights and control over his dependents. Perhaps paradoxically, the patriarch's freedoms were predicated (and depended on) this control, as their labor and production allowed him to engage in statecraft, politics, and associated pursuits.[933] Excess wealth was not the goal, though generosity in spending was certainly a virtue, both for Homeric patriarchs[934] and those in antebellum America. Part and parcel to this dominion was trusting patriarchs to administer their own dependents, whether slaves, women, children, or subordinate men. Keeping with the sovereignty metaphor, external intervention was essentially an invasion and therefore invoked only in the direst circumstances.

Try as they might, slaveholders still could not insulate their patriarchal households from the influence and logics of capitalism, both from the North and the international market. As an expression of social *mores* (at least at the upper-class level), Southern law was deeply intertwined with capitalism.[935] Under a capitalist ethos, money and contract would govern social relations, which was "structurally incompatible" with the "devolved authority" of racial slavery.[936] Under this "considerable stress" and attacks from the North, Southern legislators and jurists continuously attempted to reconcile capitalism and slavery**,** to mixed effect.[937] Both Thomas Morris and Mark Tushnet speculate that, with more time, Southern minds could have found a way to harmonize slaveholders' paternalist ethos with bourgeois capitalism.[938] However, the American Civil War intervened, rendering the effort moot.

The absence of post-manumission supervision of freedpersons appears at least partially informed by these capitalist influences. Maryland law placed no requirement that freedpersons maintain any contact with their former enslavers. Once an enslaved person was freed, there was no formal relationship between the two parties unless they entered a new one, such as tenancy, apprenticeship, or contract. This gives the end of enslavement a faint tinge of liberal social relations, where no duty or obligations exist between two parties without some establishing compact. This makes sense, as the deed of manumission carved off a chunk of the slaveholder's petty kingdom and set it up as a new, autonomous household. Once so organized, the two households were formally equal to one another on a conceptual level, before racial hierarchies, legal restrictions, and social

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[930] Mark Tushnet, THE AMERICAN LAW OF SLAVERY 1810-1860: CONSIDERATIONS OF HUMANITY AND INTEREST, 6, 8, 31 (1981).
[931] This is apparently the more modern terminology. I am indebted to Kyle DeLand and Sage Beringer for the discussions landing here. *See also* William James Booth, HOUSEHOLDS: ON THE MORAL ARCHITECTURE OF THE ECONOMY, (1993).
[932] *See generally* Booth, HOUSEHOLDS at 17-34. Pages 72-3 also provide a splendid summary of Booth's broader argument.
[933] Booth, HOUSEHOLDS at §§2.1 (35-8) and §2.3.1 (42-7).
[934] *Id.* at §2.3 (41-2).
[935] Thomas Morris, SOUTHERN SLAVERY AND THE LAW: 1619-1860, 11-14 (1996); Mark Tushnet, THE AMERICAN LAW OF SLAVERY at 6, 44, 432-34.
[936] Morris, SOUTHERN SLAVERY at 11-14; Tushnet, AMERICAN LAW OF SLAVERY at 40.
[937] Morris, SOUTHERN SLAVERY at 13-14; Tushnet, AMERICAN LAW OF SLAVERY at 230-32.
[938] *See* Morris, SOUTHERN SLAVERY at 432; Tushnet, AMERICAN LAW OF SLAVERY at 10.

power rendered such a claim laughable. With each manumission, slaveholders were essentially fostering the atomistic, internally divided society they so disparaged in the North and in Europe.[939] Unwittingly or not, they were replicating the social relations of bourgeois capitalism, at least on paper.

It is not as if Maryland was unfamiliar with regulating the existence of its free Black population. Manumission itself certainly had requirements and conditions, such as bars against freeing people unable to work or if it would prejudice creditors.[940] Similarly, historian Jeffrey Brackett identified several instances where freedpersons faced categorical supervision, usually as a once-yearly bond or registration.[941] An 1831 law required freedpersons to leave Maryland within one year of their manumission, though an exception allowed those of attested "good character" to remain.[942] Evidently such cruelty was unpopular: Brackett only found one instance where a sheriff was summoned to deport a freedperson in the entire Antebellum Era.[943] In 1860, the legislature proposed a stricter law for certain counties, mandating a means-tested binding of free Black persons in year-long labor contracts or apprenticeships, among other hostile provisions.[944] Any adult who failed to comply was sold as a slave for the year, while the children would be bound out anyway.[945] Fortunately, the legislature decided to put the finalized bill to a plebiscite in the relevant counties, where it was crushingly rejected by a roughly 3:1 margin.[946]

County	For	Against		County	For	Against
Baltimore Co.	681	5,354		Prince George's	282	1,200
Calvert	242	504		Queen Anne's	125	1,467
Charles	328	471		Somerset	1,486	804
Howard	55	1,397		St. Mary's	435	816
Kent	74	1,502		Talbot	121	1,142
				Worcester	842	1,217

Table 5.1: Reproduction of Brackett's Summary of the 1860 Voter Returns on "Jacob's Bill"

However, these two laws express the outer limits of Maryland's willingness to monitor free Black lives. Maryland remained unwilling to mandate a patron-client relationship or other form of close, individualized supervision-cum-regulation. Whether patriarchal or pseudo-contractual, manumission severed the formal links between slaveholder and freedperson.

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[939] Eugene Genovese, THE WORLD SLAVEHOLDERS MADE: TWO ESSAYS IN INTERPRETATION, 121, 166-67, 185-87 (1988). After roughly 1810, slaveholders frequently criticized Northern/capitalist society for placing all workers in a state of war against one another, without support or material safety from the market. Genovese argues that slaveholders saw slavery as more humanitarian than free labor, as slaveholders provisioned the enslaved persons and were tied to them via bonds of affection.

[940] Jeffrey R. Brackett, THE NEGRO IN MARYLAND: A STUDY OF THE INSTITUTION OF SLAVERY (1889). *See* pages 150, 153 (for age and work restrictions), 155 (for other laws related to age and work restrictions), 158 (for creditor's priority), 163-64 (discussing the requirement to register a deed with the courthouse). *See also Allein v. Negro Sharp*, 7 G. & J. 96 (1833) (discussing the impermissibility of manumission at the prejudice of creditors); *Wilson v. Barnett*, 9 G. & J. 158 (1837) (mandating executors hire out enslaved persons to pay off debts while the estate was being settled).

[941] Brackett, THE NEGRO IN MARYLAND at 166, 257-58.

[942] *Id.* at 166.

[943] *Id.*

[944] *Id.* at 260-61. The provisions of "Jacob's Bill" applied if the Black household possessed less than $150 of assessed property, plus $50 for each present child.

[945] *Id.*

[946] *Id.* at 262. Brackett's chart is reproduced here, though all credit remains with him.

This semi-bourgeois ethos seems exceptional for slave societies. Other legal traditions mandated some enduring relationship. Unique among American jurisdictions, Louisiana's *obsequium* mandated freedpersons demonstrate enduring gratitude to the ex-slaveholder.[947] The French (and later American) Code Noir demanded "[freedpersons] [] show special respect towards their former masters, towards the widow and children of same, as any injury to them will be punished more severely than to another."[948] This could be service, performative adulation, and other forms of ostensible repayment. If freedpersons were "ungrateful" the slaveholder could file a complaint in parish court, and a successful suit could lead to re-enslavement.[949] In this way, Louisiana created a new layer of surveillance and control over freedpersons.

Slavery in the Islamic world had a different form of mandatory relationship: *walā'*.[950] This was an heritable patron-client dynamic, in which the freedperson (and their descendants) owed loyalty and service to the ex-slaveholder (and their descendants). As an unbonded patronage relationship, Ottoman freedpersons often remained attached to the ex-slaveholder's household.[951] The elite household acted as an economic and social anchor in exchange for the freedperson's labor and loyalty.[952] An unattached person was a vulnerable person, and so freedpersons sought to find new patrons quickly if the originals died, exiled them, or were more trouble than protection.[953]

This patron-client relationship continued even after a freedperson left the manumittor's orbit. For example, the Ottoman Porte frequently manumitted women from the harem before dispatching them as wives to prominent nobles.[954] The women were facially loyal to their husband and his network, but their enduring ties to the Porte meant his household was now tied to the sultan (as was intended).[955] Similarly, when women retired from the harem without being married off, the harem bureaucracy provided a pension and one-off support payments.[956] These freedwomen were often materially dependent on the palace, having aged out of employment, become physically handicapped, or dedicated their remaining years in religious study. Since the sultanate frequently used patronage as a means of control and state-building, it wished to avoid the embarrassment of clients begging or living in poverty.[957] Essentially, the palace sought to maintain its legitimacy and prestige by providing for freedwomen. Finally, the palace claimed a share of any manumittee's estate, meaning the Porte had a stake in former-harem women's prospects and advancement.[958] These legal bonds licensed palace officials to regulate ex-harem women's material transactions.[959] The palace was allowed to intervene if affiliated freedwomen attempted to sell or donate property, endow a 'waqf

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947 Alexandra T. Havrylyshyn, "Free for a Moment in France: How Enslaved Women and Girls Claimed Liberty in the Courts of New Orleans (1835-1857)" (2018) (Dissertation, University of California, Berkeley) at 2. Available at <https://www.proquest.com/docview/2205734344/abstract/975A7C8E2C3C4C6FPQ/2> [accessed July 22, 2022].
948 Judith Schafer, "Roman Roots of Louisiana Law of Slavery: Emancipation in American Louisiana, 1803-1857," 56:2 LOUISIANA L. R. 409, 414 (1996).
949 Havrylyshyn, "Free for a Moment in France" at 2; Morris, SOUTHERN SLAVERY at 371, 409.
950 Sometimes velâ.
951 Toledano, SLAVERY AND ABOLITION IN THE OTTOMAN MIDDLE EAST, 66-67 (1997).
952 *Id.*
953 *See id.*
954 Betül İpşirli Argıt, "Manumitted Female Palace Slaves and their Material World," in SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE, (Stephen Conermann & Gül Şen eds. 2020).
955 *Id.*
956 Argıt, "Manumitted Female Palace Slaves" in SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE at 189.
957 *Id.* at 192.
958 *Id.* at 197.
959 *Id.* at 198.

(Islamic charity), or otherwise make big financial decisions.[960] Much like Louisiana, the ex-slaveholder protected their interests by controlling freedpersons. While that control was different than slavery proper, it was more than sufficient to bind freedpersons to their erstwhile captor-cum-patrons.

American slavery therefore appears exceptional. With no formal relationship between freedperson and ex-enslaver, no obvious successor dependence maintained the South's socio-racial hierarchies. Yet, given the anxieties surrounding free Black Southerners' existence, we would expect *something* to buttress racial subjugation.

The Maryland Court of Appeals' implicit manumission doctrine shows that the break actually was not a clean one. Ex-slaveholders remained an important presence in freedpersons lives, across a variety of roles. However, before we dig into that, a quick detour is necessary to explain what manumission is, and what it looked like in antebellum Maryland.

III. Maryland Manumission Law in the Post-Revolutionary Moment

In general, Maryland had a fairly benign relationship with manumission. Typically for American slave states, Maryland was fairly open to manumission immediately after the Revolution, before gradually ratcheting down restrictions over time.[961] According to Barbara Fields, Maryland elites recognized that the state's free Black population was an integral component of cereal and fruit production; artisanal work; and various maritime trades.[962] Elites also complained that they never had enough free Black labor, and so were reluctant to risk any exodus of new Black workers.[963] As a result, the Maryland legislature only passed a handful of laws regulating manumission or imposing restrictions on new manumittees – one in 1796, a spatter in 1831-33, then banning manumission entirely in 1860.

The progenitor law was passed in 1796, when the legislature established the basic form of manumission for the rest of the antebellum era.[964] Manumission was permitted when the potential freedperson was younger than forty-five; possessed "healthy constitutions, and sound in mind and body, capable by labour to procure to him or them sufficient food and raiment, with other requisite necessaries of life."[965] If the manumission was testamentary, then the liberation could not prejudice any creditors; no such restriction existed for inter vivos manumissions. Both required the paperwork be "evidenced" by two "good and sufficient witnesses," acknowledged by a justice of the peace, and then filed with the clerk of the respective county. Failure to fulfill any of these requirements invalidated the manumission and the potential freedperson remained enslaved.

The 1796 schema was quite liberal for its time. Other states only permitted manumission for "meritorious service" (North Carolina), after four years of pre-manumission "good behavior" (Louisiana), or via special legislative or judicial act (Mississippi, Alabama, and Tennessee).[966] Georgia

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[960] *Id.* at 198-201.
[961] *See* Andrew Fede, ROADBLOCKS TO FREEDOM: SLAVERY AND MANUMISSION IN THE UNITED STATES SOUTH 91, 95 (2011).
[962] Barbara Fields, SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY, 70-71 (1985).
[963] *Id.* at 69-72.
[964] Manumission had actually been banned prior to this law.
[965] "An ACT relating to negroes, and to repeal the acts of assembly therein mentioned" in PROCEEDINGS AND ACTS OF THE GENERAL ASSEMBLY, 1796, Ch. LXVII, §XV, 251 (Archives of Maryland 2000) (Hereafter the 1796 Statute).
[966] Fede, ROADBLOCKS TO FREEDOM at 97, 100-02.

banned manumission entirely in 1801.[967] While Maryland courts were quite willing to scuttle any manumissions which did not conform, eligibility was straightforward, if rather categorial. Not even 1808's influx of Haitian émigré-slaveholders could dampen this regime. Manumission remained unmodified until 1831, when Nat Turner's Southampton Revolt terrified white Southerners into clamping down on Black Americans' lives across the board.

IV. The Maryland Court of Appeals' Implicit Manumission Doctrine

While this was the formal law, slaveholders did not always obey. Whether knowingly or not, many slaves gained their liberty from legally improper manumissions. Those "freed" under procedurally flawed manumissions were legally still enslaved, and could therefore be claimed by heirs, creditors, and anyone else with a valid property interest against the relevant slaveholder.

Such cases ran the gamut from improperly witnessed deeds[968] to attempts to manumit when the estate owed outstanding debts. A manumission might also be deemed improper if the manumission deed was lost, or misfiled, or had never been filed at all. To address such cases, the Maryland Court of Appeals created a doctrine of implicit manumission. An odd doctrine, implicit manumission law essentially conjured a fictive manumission deed to replace the absent, hypothetical one. While the precise justification shifted depending on the case, it appears that the Court was engaged in the normal common law practice of generating a fiction under circumstances in which it was proper to assume someone had acted lawfully, at least until there was evidence of malfeasance. As this doctrine congealed, freedpersons and their counsel learned how to invoke their neighbors to protect their liberty.

V. Hall v. Mullin (1819)

In 1819, Maryland Court of Appeals received its first case involving resident African Americans "living as free": *Hall v. Mullin*. Setting the tone for each of the court's living as free cases, *Hall v. Mullin* was an intergenerational family affair. In 1803, Benjamin Hall "duly made and executed his last will and testament," in which he freed Basil Mullin via testamentary manumission.[969] At the time of Benjamin's[970] death in 1803, three things were true: Basil Mullin was older than forty-five, Basil Mullin had a daughter, Dolly,[971] and Benjamin's son inherited Dolly and bits of Benjamin's property. In 1810, this son, Henry Lowe Hall, sold Dolly to her father for £50, who immediately filed her deed of manumission.

The Mullins evidently lived quiet lives and stayed on good terms with the Halls. Basil Mullin set up his household adjacent to the Halls' farmlands, as Henry Hall's 1817 will bequeathed to Dolly "one hundred and forty-one acres of the land. . . being called Partnership and part of what is called The Manorland . . . and laid off adjoining the now dwelling house of Basil Mullen [sic]."[972] The land

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[967] *Id.* at 100.

[968] *See e.g. James v. Gaither*, 2 H. & J. 176 (1807). (ruling a slaveholder's deathbed manumissions were invalidated because only one person signed the deed of manumission, despite numerous people being present. The Court of Appeals held that this was insufficient to satisfy the statute's "evidenced" requirement, despite robust testimony from the witnesses who saw the deed drawn up and affirmed).

[969] *Hall v. Mullin*, 5 H. & J. 190 (Md. Ct. App. 1821).

[970] Since the following cases will involve numerous members of the same families, I will be using first names to keep everyone straight. I will refrain from cluttering things up with surnames unless there are multiples of the same given name (e.g. multiple Williams).

[971] The records also call her Doll and/or Mullen, but I will use Dolly Mullin since it is the name of record on the appellate case.

[972] *Hall v. Mullin* Trial Judgments at 18.

was to be Dolly's during her lifetime, then pass immediately to her son, the tellingly named Henry Mullin. Dolly also received two enslaved persons named Aaron and Joan, a bay mare with colt, three milk cows, and two yearling cows.[973] Henry Mullin also received several direct bequests: a feather bed, four sets of sheets, two table cloths, all of Henry Hall's dishes, three milk cows, twelve head of sheep, the enslaved woman Patey, a grey horse, and eight leather chairs. The two had everything they needed to support themselves. Other heirs received less generous bequests: the enslaved man Jim received $400 and his freedom, while all other named heirs were devised specific enslaved persons.[974] Any enslaved person not specifically bequeathed was manumitted by the will's residuary clauses.[975]

While Henry's nephew[976] and executor, William A. Hall, actually sold the Mullin's bequests (rather than turn them over),[977] things remained relatively cordial until 1819, when William ransacked timber groves on Dolly's land. William (or his workers) "felled, cut down, and carried away" some three hundred oak, ash, and poplar trees.[978] Dolly immediately filed suit, arguing damages of somewhere between £150-300.[979]

It is not clear what Hall's precise arguments were, or when he raised them; the trial file is mostly Dolly Mullin's filings and copies of the various wills and deeds. However, at some point William Hall argued that there could be no trespass because Dolly was a slave and therefore did not own the land at all. Hall's logic was simple: Basil was older than forty-five at the time of his manumission and therefore barred from freedom by the 1796 statute.[980] Since he died a slave, Basil could never have owned Dolly much less manumitted her. As a slave herself, Dolly could not accept Henry Hall's bequests and devises as enslaved persons' property was all legally owned by their proximate slaveholder. As Henry Hall's executor, William Hall held legal control and disposition over the land and timber Dolly claimed, so there could be no trespass.

Amusingly, the trial court refused to rule, and instead immediately referred the case to the Court of Appeals.[981] From the beginning, the appellate court essentially agrees with Hall. Basil's manumission was invalid, as he was too old for freedom. Furthermore, the sale itself was invalid. According to Maryland law, "all persons are prohibited to. . . commerce. . . with any slave without the leave" of the proximate slaveholder.[982] Since Henry Hall and Basil did not have the posthumous

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973 *Hall v. Mullin*, 5 H. & J. at 191.
974 *See id.* Jim also received his freedom as part of the residual manumission clause.
975 *Id.*
976 The precise identity of William A. Hall has proven elusive. The repetition of names has left records of the Hall family tree rather knotty, with multiple viable possibilities.
977 Dolly would later sue in chancery court for the value, but the case never proceeded beyond the pleadings state. *See Henry Mullen v. Benjamin H. Clarke & William A. Hall*, CHANCERY COURT (CHANCERY PAPERS), MSA S512-9845.
978 *Hall v. Mullin* Trial Judgments at 2.
979 Dolly Mullin's initial complaint stated each destroyed grove was worth £50 (£150 total), but her later filings assess the value at £100/grove (£300 total).
980 *See Proceedings and Acts of the Maryland General Assembly, 1796*, Ch. LXVII, sec. XIII. Located in Archives of Maryland Online, Volume 105, page 249.
<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000105/html/index.html>.
981 *Hall v. Mullin*, 5 H. & J. at 190 ("In order to bring the cause speedily before this court, where, let the decision of the county court be what it might, the case was only to terminate, a judgment *pro forma* was entered in favour of the plaintiff, subject to revision and determination of this court.")
982 *Id.* at 193 (internal quotations omitted).

consent of Basil's deceased owner, Basil could not claim any right to free his daughter under the bargain.[983] This double blow to Basil's legal standing left Dolly's liberty was on shaky ground.

However, William Hall's luck ran out here. The court pivoted to identifying the myriad ways in which Dolly *was*, in fact, a free woman. First, the court was deeply skeptical that Henry Hall would be foolish enough to leave such enormous bequests to someone incapable of receiving them.[984] After all, "her freedom by implication is indispensably necessary to give efficacy to [the bequests and devises]. Without such an implication, all the dispositions of his property, made in her behalf, would be void; with the will is carried into effect and complete operation."[985] While the court skirted entering *cy pres* doctrine itself, the clear trajectory is to assume a deed of manumission via holistic, contextual analysis.[986]

The court went one step further by placing the burden on Hall to rebut the presumption of freedom. To do so, Hall would need to show how the absence of a manumission deed more clearly showed Dolly's bondage than her proximate slaveholder's clear, individual, and considered legacies. Setting up our later cases, the *Hall* court was quite willing to find manumissions even without documentary support.

However, none of this was necessary. Dolly Mullin was not the only one to receive legacies. At the end of the will, Henry Hall declared "all the remainder part of my [slaves] free," thereby manumitting any enslaved person not specifically devised to an heir. If Dolly was not freed by Basil, she would fall into this residual clause. Either way, she was a free woman and Benjamin Hall had trespassed against her.

Hall v. Mullin is intriguing both for the Maryland Court of Appeals' ruling and the gaps we see in the relationships. The court never needed to create an implied manumission doctrine. Dolly Mullin was clearly free via the residual manumission clause.[987] In what could have been a two-paragraph case, the court spent pages of dicta spelling out each way Dolly was free, opening the doors to other, similar manumissions in the future.

More intriguing is the inter-generational, post-manumission links between the Halls and the manumittees' families. Orthodox expectations of manumission hold that that a freedperson would leave soon after the ink dried on their paperwork.[988] State laws required exile or colonization of freedpersons, as well as enslaved persons' departures during and after the Civil War. After

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[983] It is not clear why the court is unwilling to code Henry Hall as Basil's owner. First, Henry Hall was Benjamin's sole executor, so he technically held ownership of Basil until his status was ironed out. Second, as one of Benjamin Hall's heirs, there is a good faith argument that Henry would have inherited Basil. Either way, the court ignores that Henry Hall would only need to consent with himself.

[984] *Id.* at

[985] *Id.* at 194-95.

[986] *Cy pres* doctrine being a particularly arcane form of legal interpretation in which courts work to intuit the intent behind wills, trusts, legacies, and the like. *Cy pres* frequently cropped up in the testamentary manumission context as the deference for slaveholders' wishes collided with social pressure against manumission. *See* Fede, *Roadblocks* at 231 (discussing Southern jurists' distaste for the "monstrous" *cy pres* doctrine).

[987] Alternatively ownership was prescripted when Henry Hall did not devise real property that he owned.

[988] After the Nat Turner insurgency, Maryland would require all freedpersons leave the state within one year or be reenslaved. *See* "AN ACT relating to the People of Colour in this State," § 1, 3, 4 in Clement Dorsey, THE GENERAL PUBLIC STATUTORY LAW AND PUBLIC LOCAL LAW OF THE STATE OF MARYLAND : FROM THE YEAR 1692 TO 1839 INCLUSIVE, WITH ANNOTATIONS THERETO, AND A COPIOUS INDEX, 1035-37. [Accessed via Archives of Maryland Online on Jan 3, 2023].
<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--1037.html>. (Hereafter the 1831 Statute).

emancipation, freedpersons stuck around the plantations long enough to get their bearings and satisfy moral pressures to support certain slaveholders, but otherwise set out to establish their lives.[989] This might entail long journeys but could also mean just moving a few miles away in order to create their own space.

In contrast, Basil moved in next door. His home (and that of the fourteen other Black Americans in his household) was directly adjacent to the Hall's land.[990] It is difficult to interpret this proximity. Perhaps Basil and the Halls were on truly good terms, happy neighbors with a new social status between them. Alternatively, this could have been a form asymmetric dependence. In Ottoman Studies, asymmetric dependency posits that slavery was an "involuntary relationship of mutual dependence between two quite unequal partners."[991] However, slavery was not a unique in placing humans in hierarchical forms of interrelation, but rather one location on a broad, universal spectrum of duty and obligation.[992] At one pole sit have persons with absolutely no obligations or duties. Perhaps a hermit in the middle of nowhere (or some other fictitious person). On the other end is someone whose entire existence is constrained by bondage, Stanley Elkins' vision of slavery as a total institution.[993]

All human lives can be found between these two points, including slaves *and* slaveholders. According to Ehud Toledano, slaveholders and enslaved are not categorically different statuses, but rather different answers to the question "how burdened is this person by duties and obligations?" Toledano's vision allows for intra- and inter- group differences within any answer to that question.

On a slaveholder-enslaved level, the range of supervision levels and deployment of slave labor modulated the obligations placed on an enslaved person. Theoretically the need to provision oneself is reduced the closer one lives in proximity to the slaveholder, e.g. domestic workers being fed from the Big House's kitchen, but this proximity also came with increased surveillance from the slaveholder. Conversely, an enslaved person dispatched to town was more responsible for their own food and lodgings and was not supervised in the same way as an enslaved person in the Big House or even on the plantation. However, background scrutiny by strangers and authorities would be higher, and there would be fewer people to vouch for the hired-out enslaved person. Meanwhile the slaveholder is desirous of some benefit from the enslaved persons' labor, whether social, productive, or personal satisfaction.

On an intra-group level, enslaved persons ranged across the spectrum of domination. Gender dynamics and expectations placed different levels of control and obligation on enslaved persons, even before formal employment entered the picture. Kin structure mattered as well. Were they a new arrival, or tolerated pariah, struggling to build a support network? Or were they a firmly

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[989] See the final chapters of Thavolia Glymph's OUT OF THE HOUSE OF BONDAGE: THE TRANSFORMATION OF THE PLANTATION HOUSEHOLD, (2008).

[990] For household numbers, *see* Prince George's County Planning Department, *List of Free Blacks in Prince George's County 1790-1860*, 28 (2009).

[991] Ehud Toledano, AS IF SILENT AND ABSENT: BONDS OF ENSLAVEMENT IN THE ISLAMIC MIDDLE EAST, 32-34 (2007).

[992] Ehud Toledano, "Models of Global Enslavement", SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE, 32-33 Stephan Conermann & Gül Şen eds. 2020); Stephen Conermann & Gül Şen, "Introduction" in SLAVES AND SLAVE AGENCY IN THE OTTOMAN EMPIRE, 12 (Stephen Conermann & Gül Şen eds. 2020).

[993] Stanley Elkins, SLAVERY: A PROBLEM IN AMERICAN INSTITUTIONAL AND INTELLECTUAL LIFE, 81-140 (Third Edition 1976) (arguing that the totally encompassing nature of American slavery reduced enslaved persons to "Sambos," utterly dependent on the slaveholder for material needs and direction This was in part a reaction to the then-recent research by Bruno Bettelheim and others on how the regimentation and cruelty of Nazi concentration camps influenced the personalities of those confined within).

established figure, supporting and being supported by their family, both blood and chosen? Skills and aptitudes also played a role in locating a slave on the spectrum. And of course this position could change across a human life.

In this instance, Basil would have maintained proximity to his family, stable employment, and proximity to someone who could vouch that he was a free man. On the Hall's side, Basil's proximity could have been a form of inter-generational exploitation. Slaveholders could easily maintain control of freedpersons in mixed-status families by keeping the younger generation in bondage, in this case Dolly Mullen. A mixed-status family would be forced either to remain within range of exploitation, abandon loved ones, or scrape enough money to purchase their freedom.

Humans were not the only property used to maintain control. Henry Hall bequeathed "Charles Tilghman son of Peggy Tilghman" 100 acres of the plantation Partnership, held in trust by one Thomas Clarke until Charles turned thirty-five. This seems quite banal until one peers into who the Tilghmans were: a family enslaved by the Hall family. Peggy Tilghman had been enslaved by Henry Hall's cousins until her 1814 manumission.[994] Charles was enslaved until manumitted by Henry Hall's will, alongside his siblings, Rachel, Betsey, Daniel, Rachel[995] and John.[996] However, these manumissions did not completely free the Tilghmans. Charles Tilghman's land was still held in trust by Thomas Clarke for at least twenty-six more years.[997]

It is not clear who Thomas Clarke was. It is possible he was a free member or friend of the Tilghman family. The 1820 census recorded a free Black man named Thomas Clarke in Prince George's County, heading a household of nine free Black persons.[998] While the 1820 census did not record any names except the head of household's, the recorded ages match up to the six Tilghmans manumitted by Henry Hall plus Peggy Tilghman and one unknown Black woman.[999]

Alternatively, Thomas Clarke might have been a white man. Henry Hall's will does not refer to Benjamin Clarke (his nephew-executor) or Anna Maria Clarke (his niece) as Black.[1000] It is unlikely

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994 *See also Certificate of Freedom for Margaret Tilghman* in PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), 208, MSA Cite C1171-1. *Will of Richard Hall*, PRINCE GEORGE'S COUNTY REGISTER OF WILLS (WILLS), 1698-1979, 130, MSA C1326-5.

995 It appears Peggy Tilghman had two daughters named Rachel. The older born in 1807 and described as "a bright mulatto with a small scar on her forehead over the left eye," and whose freedom was witnessed by William A. Hale (possibly a mis-transcription of William A. Hall). Certificate of Freedom for Rachel in PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), 104, MSA Cite C1171-1. In contrast, the younger Rachel was born in 1812 and was described as "a bright mulatto with scar under her lip and another on her left wrist," and whose freedom was witnessed by William A. Hall. *Certificate of Freedom for Rachel* in PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), 74, MSA Cite C1171-1.

996 The other Tilghman children's certificates of freedom are in the same volume as the Rachels' Certificates of Freedom. *See* PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), MSA C1171-1 at 78 (Daniel Tilghman), 82 (Betsey Tilghman) 175 (John Tilghman).

997 *See Will of Henry Lowe Hall*, PRINCE GEORGE'S COUNTY REGISTER OF WILLS (ESTATE PAPERS), MSA C2119-40.

998 1820 U.S. Census; Census Place: Queen Anne, Prince George, Maryland; Page: 53; NARA Roll: M33_44; Image: 184. There are also two certificates of freedom issued to Thomas Clarkes, but both postdate the Henry Hall will. One dated 1826 for the son of "Peggy Clarke a free woman of color" and the other memorializing an 1828 manumission by Francis Magruder. *Certificate of Freedom for Thomas Clarke* in PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), 222, MSA C1171-1 and *Certificate of Freedom for Rachel* in PRINCE GEORGE'S COUNTY REGISTER OF WILLS (CERTIFICATES OF FREEDOM), 127, MSA C1171-1, respectively.

999 The census indicates three free Black males under age fourteen (corresponding to Daniel (7-8), John (7), and Charles (12); one Black man aged 26-44 (presumably Thomas Clarke himself) two Black females under age 14 (Betsey (11) and Rachel (8); one Black woman aged 26-44 (Peggy Tilghman (41)), and an unknown Black woman older than 45.

1000 *E.g.* by referring to them as "a Negro" or other descriptor.

(though not impossible) that Henry Hall would appoint a Black man to be his executor; as a wealthy white man his reputation would suffer from such action. Finally, there are also no Clarkes in the Henry Hall inventory of enslaved persons, suggesting that the Clarke family did not span that particular enslaved-free divide.

If Thomas Clarke was white, then who was he? There was a slaveholding Thomas Clarke in Charles County, claiming thirteen enslaved persons.[1001] Charles County is immediately adjacent to Prince George's, so it is feasible that this Thomas Clarke was a white friend of Henry Hall. Keeping things within the family, Henry Hall's deceased brother-in-law (and the father of Benjamin Clarke) was also named Thomas Clarke. The will could be referring to the departed Thomas Clarke by mistake, or to another Clarke named in honor of the late Thomas.

Henry Hall's generous bequests might also be due to some familial connection between Henry Hall, Dolly Mullin, and Peggy Tilghman – namely, that Henry Hall was the father of Henry Mullin and Charles Tilghman. There is only circumstantial evidence for this position, but what exists is suggestive. First, Henry Hall evidently lacked direct (white) heirs of the body, as his bequests and devises only go to nieces, nephews, and formally unrelated parties.

Second, the prominence and size of the Mullen/Tilghman legacies is noteworthy. Dolly Mullen's devise of land is the very first item in Henry Mullin's will.[1002] It is one of three devises of land: 140 acres to Dolly, 100 acres to Charles Tilghman, and the "all the remainder part of my land called Partnership" to William A. Hall, the defendant.[1003] Dolly and Henry Mullin are the only two people to receive specific bequests of goods and items. Judging by a later Orphans' Court ruling, the Mullins' legacies were worth in excess of $1,300, making their bequests at least three times more valuable than anyone else's.[1004] For their part, the Charles Tilghman's land was the *second* item in Henry Hall's will. None of Charles' five siblings received any gifts, only Charles. This might indicate that the other Tilghman children were not Henry Hall's (instead perhaps Thomas Clarke's). Conversely, the Rachels were both described as "mulatto," lightly suggesting that Henry Hall was also their father. If so perhaps Henry Hall was exercising a form of primogeniture by giving these bequests to "his" oldest son Charles.

The size of these legacies created an intriguing dynamic between the Halls, Mullins and Tilghmans, one which smacks of similar legacies in 18th century Egypt. It was not unheard of for rich Egyptian slaveholders to set up *'waqf* (charitable foundations) to support freedpersons.[1005] To skirt inheritance law and maintain posthumous control of their assets, Egyptian slaveholders would create a trust.[1006] From there, the favored manumittee would either be named an administrator of that trust (e.g. the head of a soup kitchen or dean of a medrese) and thereby earn a salary,[1007] or the foundation would be devoted to financially supporting the enslaved person.[1008]

[1001] U.S. Census of 1830, District 3, page 153. Accessed via the Legacy of Slavery in Maryland databases.
[1002] *See id.* at Item 1.
[1003] *Hall v. Mullin*, Trial Judgments at 20-21.
[1004] With Jim's as the clearest financial comparison ($400 v. $1300). Judging by the inventory of Henry Hall's estate, the Mullin's bequests totaled roughly $1035. However this estimate is made without Patey (who does not appear in the inventory), the horses and cattle lumped as undifferentiated masses (e.g. "10 head of horses valuing $330"), and none of the land appraised.
[1005] Ron Shaham, "Masters, Their Freed Slaves, and the Waqf in Egypt (Eighteenth-Twentieth Centuries)," 43:2 J. OF ECON. AND SOC. HIST. OF THE ORIENT. 162, (2000).
[1006] *Id.* at 163.
[1007] *Id.* at 173.
[1008] *Id.* at 167-71.

Both parties benefitted from these arrangements, though not equally. Provided the 'waqf did not fold, the freedperson received a degree of financial security and an enduring endorsement from the proximate slaveholder. However, this came at the cost of being a client to the slaveholder-patron and the service expected of such a relationship.[1009] While not the same flavor of coercion as slavery, there was still a strong hierarchical relationship between freedperson and former-owner.

For their part, slaveholder-patrons gained a variety of theological and property benefits.[1010] First, manumission is a pious act, one which earns great rewards in heaven.[1011] Manumitting enslaved persons was also a socially prestigious act, as it denoted piety, financial success, and good moral character. Nor was it a losing deal for slaveholders, as they minted a new client for their patronage network. Careful cultivation of the network could yield political power, as evidenced by the Mamluks and Ottoman states, which used patronage networks as the building blocks of governance.

Slaveholders also used 'waqf to dictate where their money ended up.[1012] Under Islamic inheritance laws, certain relations were entitled to various shares of an estate. Similar to "widow's thirds" certain heirs were entitled to a set proportion of an estate. Any bequests which intruded upon those shares was invalidated. However, if that money was donated to a 'waqf pre- or posthumously, then it was beyond the reach of those strictures. This made it an appealing mechanism for Muslims to launder money out of their relatives' reach.

Finally, a 'waqf was a useful hook to keep freedpersons loyal to the patron-slaveholder.[1013] Through their charters, slaveholder-patrons ordered 'waqf dividends be given to freedperson-clients or their agnates. The patron's blood relations had no claim until all freedperson-clients died without heirs. By dictating these complex webs of tiered entitlements, savvy slaveholder-patrons could make 'waqf dividends inheritable, thereby maintaining a patronage relationship well after the original parties had passed.[1014] This fended off predatory heirs, but also ensured that the heirs did not shortsightedly cut off a valuable client. Altogether, 'waqf were a powerful tool for rich slaveholders to maintain claims over freedpersons and their families, even after manumission.

It is possible the Hall-Mullin dynamic operated in a similar register. Benjamin Hall made the tactical decision to manumit Basil, while keeping Dolly enslaved. Basil Mullin was a skilled carpenter, so keeping him close by would be useful. However, Basil was also at least 45 in 1803, and therefore at least 52 when he manumitted Dolly in 1810.[1015] Manumission allowed the Halls to keep Basil's labor accessible, while exonerating them from supporting him. And so Basil moved in next door.

Setting aside the potential sexual relationship between Henry Hall and Dolly Mullin, the devises to Dolly and Henry Mullin were akin to an Egyptian 'waqf. Dolly and Henry were granted a substantial legacy of land, cows, and horses on a plot directly adjacent to the new generation of Halls. Everything they needed to establish and support themselves was provided by the Mullins. But their new land also meant they did not go very far. Henry Hall's will divided Partnership between the Mullins, William Hall, and Charles Tilghman. With Basil Mullin's fourteen-person household and

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[1009] *Id.* at 162.
[1010] *Id.*
[1011] In the "very good deed" sense. Manumission was also required to expiate certain sins (manslaughter and perjury), but commentators have noted that charitable donations could also fulfill that purpose.
[1012] *Id.* at 163-64.
[1013] *Id.* at 163.
[1014] *Id.* at 174-78.
[1015] *See Hall v. Mullin*, 5 H. & J. at 191.

Dolly Mullin's own, the Halls potentially had ready access to sources of labor, dairy, wool/mutton, and timber.

The same was true of the Tilghmans. Charles was under the thumb of Thomas Clarke (whoever he was) for at least twenty-six years before the trust ended. While the other Tilghman children were manumitted, they were also close at hand living with Peggy Tilghman and Charles. This makes Thomas Clarke's identity all the more important. If Thomas Clarke was a white man, it is most likely he was a relative of Henry Hall's brother-in-law; the Hall and Clarke families swirled together repeatedly during the 1800s. However, if Thomas Clarke was a free Black man, what was his link to Henry Hall? Was he another freedman-client, expanding the network for his patron? The father of some number of Peggy Tilghman's children? These questions have stakes for what level of continued deference and control loomed over Charles Tilghman and his family.

Whatever Henry Hall's motivations, William Hall messed everything up. By selling off the Mullin's bequests and poaching their trees, he severed some of the ties that undergird the Mullins' clientage. It is possible he thought the quick buck was worth more than their continued goodwill, but the record peters out before we can see the full fallout.

Taken together, *Hall v. Mullin* offers a baseline example of how manumission was not the end of the relationship between enslaved and slaveholder. While America did not have formal patron-client obligations, that does not mean they did not emerge. This was especially true with mixed-status families, as slaveholder-patrons could string obligation across multiple generations of a single family. In this case, the Mullins received material benefits in exchange for their continued, albeit somewhat independent, service. However, this was not the only form post-manumission relations took, nor were proximate slaveholders the only beneficiaries.

VI. Intermission: Nat Turner and the Slavery Question

The second batch of manumission statutes arrived in the early 1830s. Partially a response to Nat Turner's attempted revolution, partially due to the increased political heat around slavery, the Maryland legislature took several steps to reduce the state's free Black population. In 1831, the legislature passed a law that required newly freedpersons to leave the state in one calendar year.[1016] Refusal to self-exile was grounds for re-enslavement.[1017] The 1831 act also chartered and funded the Maryland Colonization Society to aid this prospective ethnic cleansing.[1018] Sheriffs were supposed to arrest and jail any freedperson who resisted transportation.[1019] Evidently no one liked this particular policy as there is only one recorded instance of a sheriff being summoned for that purpose.[1020] While none of these statutes tightened restrictions on manumission itself, the legislature was keen to act on the back end.

The second new law forbade immigration of free Black persons into Maryland and barred forced immigration of enslaved Americans into Maryland.[1021] Free Black immigrants were to be fined

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[1016] Brackett, THE NEGRO IN MARYLAND at 165-66; Law of 1831, *supra* at 140 n. 988.
[1017] *Id.*
[1018] *Id.*
[1019] *Id.*
[1020] Brackett, THE NEGRO IN MARYLAND at 166.
[1021] "AN ACT relating to Free Negroes and Slaves" in Clement Dorsey, THE GENERAL PUBLIC STATUTORY LAW AND PUBLIC LOCAL LAW OF THE STATE OF MARYLAND: FROM THE YEAR 1692 TO 1839 INCLUSIVE, WITH ANNOTATIONS THERETO, AND A COPIOUS INDEX, 1108, Maryland State Law Library, KFM1230.5.D71/1.

(and enslaved to pay off the fines, if they could not). Meanwhile enslaved persons were eligible for manumission (and immediate exile to Liberia), while the importing enslaver would face a felony charge.[1022] However, this ban was quickly softened in the next legislative session,[1023] and again in 1833 where the legislature allowed importation if the slaveholders paid a fee per enslaved person.[1024] Evidently there was ambivalence about cutting off a major source of new labor, despite the supposed risks.

VII. Burke v. Joe (1834)

In 1834's *Burke v. Joe*, the Court of Appeals would again use putatively enslaved persons' relationships to conjure a manumission into existence. In 1784, William Mackubin claimed two enslaved women: Dinah and her daughter Lavinia.[1025] However, by 1797, the two women were "going at large as free-women."[1026] They appear to have thrived. According to (presumably white)[1027] witnesses, the two bought land, from which they rented out "tenements."[1028] They contracted with various parties, collected rent, and initiated proceedings to confiscate debtors' assets in lieu of payment.[1029] This was all done with the Mackubins' knowledge: Mr. Mackubin was apparently a "hearty and active" man who often encountered the women in his circuits around the neighborhood.[1030]

When William Mackubin died in 1805, he bequeathed all his property to his wife, Elizabeth. Acting as administrator, Elizabeth sorted out her husband's affairs, a process which never listed Dinah and Lavinia as part of the estate.[1031] Following William's death, Dinah and Lavinia frequently visited Elizabeth Mackubin. Sometimes their visits were as hired laborers, others were social calls.[1032] However, no matter the visit's character, the women "acted as free persons."[1033] When Elizabeth herself died in 1824, Dinah and Lavinia were again absent from the inventory and never considered for paying off creditors.[1034]

Unfortunately, a deed of manumission was also missing. This gave one of Elizabeth's distant heirs, John Burke, the opening he needed to resurrect Elizabeth Mackubin's settled estate, anoint

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<https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--1068.html> [Access via Archives of Maryland Online on Jan. 27, 2023].

[1022] *Id.* at 1069.

[1023] "A SUPPLEMENT to an ACT, entitled, an Act relating to Free Negroes and Slaves, passed at December session, eighteen hundred and thirty-one, chapter three hundred and twenty-three." in Clement Dorsey, THE GENERAL PUBLIC STATUTORY LAW AND PUBLIC LOCAL LAW OF THE STATE OF MARYLAND: FROM THE YEAR 1692 TO 1839 INCLUSIVE, WITH ANNOTATIONS THERETO,AND A COPIOUS INDEX, Vol. 141 pp. 1108. Access via Archives of Maryland Online on Jan. 27, 2023 <https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000141/html/am141--1108.html>. (allowing loopholes for people who married an out-of-state woman bringing slaves into the marriage, with land in Maryland and somewhere else, slaves used in traveling work (e.g. steamboat workers), and other interstate persons).

[1024] Statute of 1833,

[1025] *Burke v. Negro Joe*, 6 G. & J. 136 (Md. Ct. App. 1834).

[1026] *Id.* at 137.

[1027] None of the names in the county court witness list have the typical "a Negro" appended to them. Further, Maryland law barred Black witnesses from testifying against a white defendant.

[1028] *Burke v. Negro Joe* Trial Judgments, COURT OF APPEAL (JUDGMENTS, WESTERN SHORE), 1806-1861, MSA S382-22.

[1029] *Id.*

[1030] *Burke v. Negro Joe*, 6 G. & J. at 137.

[1031] *Id.*

[1032] *Id.* at 138.

[1033] *Id.*

[1034] *Id.*

himself administrator, and kidnap Lavinia's children as his slaves for life.[1035] Burke's basic premise is familiar: since there was no deed of manumission, Dinah and Lavinia had died enslaved, therefore all their children were also slaves. A deeply formalist position, Burke was arguing that Dinah and Lavinia's lived independence, and the Mackubins' knowledge of that independence, did not matter without a deed to formalize their freedom. Seeking to dodge *Hall*'s implicit manumission ruling, Burke further argued that because allowing an enslaved person to live as free was a crime, no length of time could legitimate that liberty.[1036] The logic here is similar to ownership of stolen property. No amount of time will give a thief proper title to their loot, as crime cannot formalize rights. Here, the criminal origin of Dinah and Lavinia's independence therefore meant no span of time could ever grant them true liberty, so they remained slaves.

This reasoning also implicitly conflates the Mackubins' salutary neglect with Dinah and Lavinia having somehow *stolen themselves*. Usually the self-theft trope was deployed in cases of *gran marronage*. If enslaved persons were property, and theft was the unlawful appropriation of someone else's property, then the property had stolen itself. However, Dinah and Lavinia did not steal themselves, they were licensed by the Mackubins to live their lives. Burke's arguments were therefore more of a dog-whistle designed to raise the jury's collective hackles and prime them into finding Joe was enslaved.

Broadly speaking, Joe agreed with Burke's argument, at least regarding the Maryland criminal code. Allowing an enslaved person to live as free was certainly a crime. However, Joe's counsel concluded that this required the assumption of a lost manumission deed, not criminality. Established law required the presumption of proper action when an omission would be criminal.[1037] Presuming the Mackubins had criminally allowed Dinah and Lavinia to live as free was therefore improper, and manumission deeds must be presumed.[1038] Furthermore, *Hall v. Mullin*'s implicit manumission doctrine allowed the assumption of a lost deed when the context demonstrates "from circumstances, inconsistent with any other condition than freedom."[1039] Dinah and Lavinia's social calls on the Mackubins, therefore empowered the jury to presume a lost manumission deed. When the jury ruled in Joe's favor, Burke appealed.

For all the fluff and build-up, the court's opinion was quite straightforward. The Court of Appeals started by recognizing that deeds of manumission operate under the same rules as any other "deed[], patent[], &c."[1040] While generally deeds must be properly and timely filed (becoming null if noncompliant), courts could direct juries to presume proper filing if "a proper foundation" was laid.[1041]

Applying these rules to Joe's petition, the court quickly ruled in his favor. Through witnesses, the jury and courts knew Dinah and Lavinia owned and rented properties, all within a few

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[1035] *Id.* Dinah and Lavinia having both passed by 1832.
[1036] *Id.* at 139-40; *see also* "Ch. XXXIII: An ACT to prevent the inconveniencies arising from slaves being permitted to act as free," in LAWS OF MARYLAND 1787-1791 231 (2000). A re-compilation of Frederick Green's GENERAL ASSEMBLY (LAWS), 1785-1791 (Unknown date) < https://msa.maryland.gov/megafile/msa/speccol/sc2900/sc2908/000001/000204/html/am204--231.html> [Accessed 7 May 2025] (Hereafter Act of 1787).
[1037] *Burke v. Joe*, 6 G. & J. at 139-40.
[1038] *Id.*
[1039] *Id.* at 140.
[1040] *Id.* at 141.
[1041] *Id.*

miles of the Mackubin residence.[1042] The freedwomen socialized with Elizabeth Mackubin, encountered Mr. Mackubin on his meanderings through the neighborhood, and were never inventoried as part of either Mackubin estate.[1043] Each was an act inconsistent with continued slavery, and therefore fertile ground for presuming a manumission.

The court devoted slightly more time to Burke's criminality argument. Acknowledging that the Act of 1787 did indeed penalize allowing enslaved persons to live as free, the court was unwilling to assume that the Mackubins had indeed broken the law.[1044] Here, the court relied on the absence of any prosecution against the Mackubins or their heirs.[1045] William Mackubin had "allowed" the women to go as free for eight years (1797-1805) with no charges landing on him.[1046] Elizabeth Mackubin would be an even greater scofflaw, with nineteen years of alleged lawbreaking (1805-1824), again without charges.[1047] And, until Burke, the various heirs and executors had allowed a further decade of unlawful living without censure.[1048] With tangible scorn, the court cheerfully accepted that the absence of criminal sanctions proved that the Mackubins had manumitted Dinah and Lavinia according to all proper forms.[1049] The women (and therefore their children) were free.

The Court of Appeals teased at the breadth and depth of evidence in this case, noting that counsels' "ingenious and elaborate investigation" offered a wealth of information to draw upon.[1050] Tragically, the case judgments and dockets offer only an illegible witness list of eight scribbles, and the docket's case notes section is unfinished, noting only "petition f".[1051] However, the power of public involvement and reputation making is still on clear display.

At first glance, *Burke* seems to follow a similar path to *Hall:* the patronage of a slaveholder was critical for preserving freedom, as that acceptance overrode the absence of a deed. There is some truth to this, as testimony about the Mackubins' enduring links with Dinah and Lavinia formed the heart of the jury and appellate verdicts. However, by the time Burke kidnapped Joe and his siblings, Dinah, Lavinia, and the Mackubins were all long dead. None of them directly intervened in the case, nor was their posthumous involvement quite as direct or specific as Henry Hall's legacies.

What matters here is what *everyone else* saw, heard, and did. Joe had six witnesses come forward to discuss the Mackubins' relationship with the freedwomen. Judging by the "elaborate investigation" comment, the lawyers spoke to many who knew of Dinah and Lavinia's commercial dealings and social lives. People were well aware what Dinah and Lavinia had been doing ever since their de facto manumission.

[1042] *Id.* at 142.
[1043] *Id.* at 142-43.
[1044] *Id.* at 143 ("any person who shall permit or authorize any slave belonging to him or herself, in his or her own right, or possessed in the right of another, to go at large, or hire him or herself within this state, shall incur the penalty of five pounds current money per month, except ten days at harvest.") (quoting the Act of 1787, ch. 33).
[1045] *Id.* at 143-44.
[1046] *Id.* at 143.
[1047] *Id.* at 143-44.
[1048] *Id.* at 144.
[1049] *Id.*
[1050] *Id.* at 141.
[1051] Presumably the missing text would be "or Freedom." Anne Arundel County Court (Docket), 10/1832, Petition 2 – Negro Joe v. John Burke, 54-5, MSA C64-48.

Why did people believe their claim to freedom? While Maryland did not have a legal presumption of enslavement for all Black persons,[1052] many Black escapees did pretend to be free persons, which was sure to raise suspicions. The answer likely lies in performance. By conforming with societal norms and expectations for free Black women, Dinah and Lavinia avoided censure, close scrutiny of their status, and predatory slaveholders. The benefits take two registers: camouflage and credit-generating performance. Performing a racial role mattered in the antebellum South. Habits, behaviors, etiquette, and speech were all appended to certain racial categories, and white Southerners (and their courts) prided themselves on being able to intuit somebody's race based on their mannerisms.[1053] With the proper look (either genetically or though a disguise), some practice and a hefty pinch of luck, one could recategorize oneself simply by acting the part.

Michelle McKinley has written about a similar phenomenon in baroque Lima: *blanqueamiento*. In a city where so many populations (Andean, Black, white Iberian, *mestizo*, and others) swirled together, a strict racial hierarchy was almost impossible to construct. While whiteness was the preeminent social category, Liman elites struggled to determine the measure of individuals' whiteness (or Blackness, or indigeneity). Therefore, social stratum was determined through a combination of blood purity (whiteness ascertained via genealogy) and *calidad* (the sum of one's reputation, piety, credibility, and behavior) which together determined an individual's place in the social hierarchy.[1054]

Blanqueamiento (lit. whitening) was the process through which mixed-race persons laundered their heritage into whiteness through strong, positive *calidad* and a dose of eugenics. By marrying white partners, a mixed-race person could launder their bloodline closer and closer to "real" whiteness.[1055] However, as one approached whiteness, surveillance increased, as self-anointed gatekeepers sought to bar anyone not "truly" white.[1056] Here, *calidad* was the little extra that could nudge a mixed-race person into the apex of Lima's social hierarchy. By acting the part (dressing finely, displaying gracious manners, displaying certain forms of piety, etc.) an uncertainly white person could cement their status as white.

Calidad was so powerful that it spawned an entire genre of marriage annulments. McKinley has found dozens of annulment cases hinging on either *error de persona* (mistaken identity) or *notoria desigualdad* (notorious inequality). The former are cases where the plaintiff "discovered"[1057] post-marriage that their spouse was an enslaved person.[1058] *Notoria desigualdad* was simpler: Spanish law

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[1052] *Hughes v. Jackson*, 12 MD. 450 (Md. 1858) (ruling that there is no legal presumption that any Black litigant was enslaved and that opposing counsel must raise enslavement as an affirmative defense to thwart a Black plaintiff).

[1053] *See* Walter Johnson, RIVER OF DARK DREAMS: SLAVERY AND EMPIRE IN THE COTTON KINGDOM, 46-73 (Chapters 2) & 126-151 (Chapter 5) (2013) (discussing the paranoia and scrutiny of patrolling the color line against performance-based passing); Ariella Gross, WHAT BLOOD WON'T TELL: A HISTORY OF RACE ON TRIAL IN AMERICA, 2-3, 56 (2010) (discussing weight of white-performance and its stickiness once granted).

[1054] Michelle McKinley, FRACTIONAL FREEDOMS: SLAVERY, INTIMACY, AND LEGAL MOBILIZATION IN COLONIAL LIMA, 1600-1700, 115 (2016).

[1055] *Id.* at 116.

[1056] *Id.*

[1057] The scare quotes here signal the courts' (and McKinley's) skepticism that petitioners only freshly discovered their spouse's bondage. The many signals and social cues surrounding status made it especially unlikely that such a gambit could be pulled off. McKinley finds it more likely that petitioners were claiming fresh discovery as a legal argument, not as a reflection of truth. *See id.* at 109, 111, 123, 132.

[1058] While enslaved persons had a right to marriage under Spanish law, this right was not unencumbered. Since an enslaved spouse owed duties to their spouse and the slaveholder, tension often arose between the two. Second, for enslaved women, the matrilineal heritability of slavery had obvious repercussions for the couple's children. Finally, the

forbade people of distant social ranks from marrying one another. According to Liman sensibilities, an enslaved person was unfit to marry an Iberian freeman, so their marriage was legally impossible. However, such marriages happened anyway, in no small part because of *calidad*. By comporting oneself as white, dressing the part, and socializing with the correct people, enslaved Limans could "trick" freepersons into inappropriate marriages.

Nor was the power of performance restricted to South America. In Louisiana, Alexina Morrison's fight for liberty illustrates how one could ward off accusations of slavery by acting the part of a genteel, white lady.[1059] A light-skinned woman, Morrison waged successful legal warfare against her putative owner, despite strong documentary and testimonial evidence of the claimant-enslaver. How? She charmed her guards and wardens with genteel manners and delicacy.[1060] She had attended their balls, slept alongside their daughters, and generally fit every behavioral marker of whiteness. Morrison charmed dozens of self-proclaimed experts on discerning race into agreeing she was white.[1061] Multiple Louisiana juries agreed: out of three trials, one found her white, and two hung (leaning in her favor). Since racism prevented jurors from believing such a refined lady could be Black, they ruled she was white.

While Morrison's case is unusual in the depth of its record, other confirmedly enslaved persons pulled off similar feats. Uncountably many enslaved persons performed their way onto a steamboat to freedom. Sometimes this was the light-skinned enslaved person using manners gleaned from serving a thousand dinner parties to charm their way into a berth, posing as ambiguously "Spanish."[1062] Other times it was a working escape, as enslaved persons leveraged steamboat captains' tight deadlines and hunger for labor to board as coalmen, firemen, and cooks.[1063] Spending time at labor fairs helped landlubbing enslaved persons pick up the boating skills or connections necessary to secure a berth (or at least enough to fake it).[1064] Regardless of form, acting the (racial) part was sometimes enough to clinch the role.

Dinah and Lavinia performed so well, they protected Joe from beyond the grave. Dinah and Lavinia had already entered freedom; they did not need to pass or hustle their way out. Rather, their actions *afterwards* were important for entrenching their status in the minds of others. Enslaved persons did not own land, collect on debts,[1065] or rent out rooms. Law would not let them. Dinah and Lavinia did, thereby publicly proclaiming their freedom to all who saw an advertisement for their "tenements," signed over a deed, or had their property confiscated to cover a debt.

The Mackubins' relationship with the freedwomen played a key role in the performance. American slavery is allegedly unique in its bourgeois sense of responsibility and reciprocity. Following manumission, slaveholder and freedperson formally owed each other nothing, and were no different from any other atomistic households in America. This clearly differs from other forms of pseudo-bondage in other slaveholding societies. While Islamic societies often had a form of walā', baroque Lima had a different set of expectations on freed persons. In a rigorous exploration of

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petitioner had agreed to marry an unenslaved someone. their spouse's bondage constituted fraud in the contract and therefore grounds for annulment. *Id.* at 109 – 111.

[1059] Gross, WHAT BLOOD WON'T TELL at 1-2.

[1060] *Id.*

[1061] *Id.*

[1062] Johnson, RIVER OF DARK DREAMS at 138.

[1063] *Id.* at 144.

[1064] *Id.* at 143-44.

[1065] *But see* Kimberly Welch, BLACK LITIGANTS IN THE ANTEBELLUM SOUTH, 10, 131 (2018) (noting instances of enslaved persons suing white persons for unpaid debts).

baptismal records, *cartas de Libertad* (freedom papers), and wills, Michelle McKinley identified a consistent practice of liberating enslaved children while preserving access to their labor. Various stratagems were used to affirm this control, all hinging on children's status as dependents. If a child-manumittees' parents were still enslaved by the manumittor, then the ex-slaveholder still had easy access to the child's labor even into adulthood. Dialing the child-manumittee into the slaveholder's household established rhythms and expectations which served to preserve control.[1066] Other times the child-manumittee was gifted to a favored client or religious institution, where they joined the underclass of dependent laborers necessary to keep the various monasteries and abbeys functioning.[1067] Regardless of form, legal manumission did not end the high degree of control exerted by Liman slaveholders over former bondspersons.

This dynamic was exacerbated by the strings slaveholders attached to manumission. McKinley finds that slaveholders could attach codicils to manumission requiring years of post-manumission "companionship and service."[1068] Thus one slaveholder manumitted Catalina on condition that she serve his widow for seven years thereafter.[1069] Failure to perform suitably could result in the revocation of her liberty.[1070]

It is important to emphasize how pseudo-slavery in Lima facially differs from that of Maryland, even though this difference is in fact illusory. Unlike Maryland's term slavery (serve for X years, then you will be freed), Liman conditions attached *after* emancipation (you are freed, now serve for X years). Under Maryland law, the Liman paradigm would be invalid as condition-subsequent.[1071] In a string of cases across the nineteenth century, the Maryland Court of Appeals held that ex-slaveholders' attempts to levy post-manumission demands on freedpersons were nullities.[1072] For example, in *Spencer v. Negro Dennis*, the Court held that slaveholders could not dictate freedpersons' post-manumission actions.[1073] Slaveholders could not exile freedpersons to Liberia, demand they leave Maryland or anything else, because there was no remaining claim to their obedience.[1074] Furthermore, to re-enslave a freedperson required an act of legislature, which slaveholders' freedom contracts were not. Under Maryland law, the Liman form of pseudo-bondage would be legally impossible. Unlike Istanbul and Lima, American slavery looks exceptional in its bourgeois sensibility and unwillingness to allow continued bondage without a formal relationship.[1075]

However, as we see from Dinah and Lavinia's case, the apparently legal dichotomy between Maryland and Istanbul/Lima does not mean society did not incentivize the same result. Dinah and Lavinia's continued relationship with the Mackubins can be explained as a softer, socially-demanded form of deference and clientage. The freedwomen and their children definitely called on Elizabeth Mackubin during her widowhood, "frequently [visting] at the place where [Elizabeth] resided."

[1066] McKinley, FRACTIONAL FREEDOMS at 146.
[1067] *Id.* at 148-49.
[1068] *Id.* at 152.
[1069] *Id.* at 157.
[1070] *Id.*
[1071] Condition-subsequent appears in both contract and property law. We are using the property law formulation, in which one attempts to exercise ownership powers after severing the ownership relationship. In these cases, the freedperson is essentially a "self-owner" and therefore has full legal control over themselves; the ex-slaveholder can no longer demand compliance with their wishes.
[1072] *See e.g., Spencer v. Negro Dennis*, 8 GILL 314 (Md. Ct. App. 1849); *Vansant v. Roberts*, 3 MD. 119 (Md. Ct. App. 1852).
[1073] *Spencer v. Dennis*, 8 GILL at 321.
[1074] *Id.*
[1075] Something which likely explains the pivot to new forms of formal bondage during Reconstruction and Jim Crow (e.g. criminal law & convict leasing; contract & sharecropping; poverty law & apprenticeships).

Other visits were for work, as witnesses attested that the women were "hired by the family in which she lived, and received wages as free persons."[1076] Read in one light, these could be the big-hearted kindnesses from one neighbor to another. Alternatively, this was a soft expression of a patron-client relationship in which the freedwomen owed some amount of labor and ostentatious respect. Either way, these are not actions which would be taken by enslaved persons. Their attentions, labor, and deference were expected to be constant, not episodic, and therefore far less noteworthy. By complying with this expectation of post-manumission deference, Dinah and Lavinia solidified the audience's understanding that they were free, and so Joe was too.

But performance was also powerful in a second register: the generation of "credit."[1077] Coined by Laura Edwards, credit is the abstract sum of reputation, social capital, and goodwill. Everyone had credit, from the most prominent white statesman to the most ill-provisioned enslaved person.[1078] Similar to *calidad*, credit was important in that it served as a shorthand for someone's trustworthiness, reliability, and moral character. Higher credit indicated better character, and lower credit served as a billowing red flag.

What is important here is how credit was accrued: performance of one's societal role. White men who were generous, wealthy, and reliable breadwinners fulfilled their patriarchal role, and were credited accordingly. So too white women who were deferential, well-mannered, and domestic, or the industrious, obsequious enslaved person, and so on.[1079] Class also played into credit. Since hard work was conflated with moral fibre, Southerners who supported themselves and their families accrued credit.[1080] Persistent poverty or reliance on others chiseled away at one's credit, as did the "wasted substance" of squandered opportunities, talents, or potential.[1081]

Freedpersons were certainly within credit's purview, accruing it and losing it just like everyone else. Despite grumbles and whingeing, white Southerners recognized Black Americans' presence and the roles they played in society. For white Marylanders as a class, this was a source of cheap, seasonal labor perfect to hire for harvests and forget until the next.[1082] Judging by Reconstruction-era remonstrations, white Southerners also expected deference from Black Americans.[1083] Other Black Marylanders had a different view of their brethren: as a source of support (both material and emotional), fellow congregants, teachers, rivals, lovers, and competitors in the harsh labor market. Enslaved Marylanders saw a possible future, camouflage, and other roles frowned upon by white Southerners.

However, Southerners were not doomed to fit solely within the confines of their class, race, or gender. Personal relationships and stories shaped a person's credit more than demographics.

[1076] *Burke v. Negro Joe*, 6 G. & J. at 138.
[1077] And arguably *calidad*.
[1078] Laura Edwards, THE PEOPLE AND THEIR PEACE: LEGAL CULTURE AND THE TRANSFORMATION OF INEQUALITY IN THE POST-REVOLUTIONARY SOUTH, 111 (2009). This universality separates credit from honor (which was the exclusive domain of white men).
[1079] *Id.* at 121-131.
[1080] *Id.*
[1081] *Id.* at 170.
[1082] Fields, MIDDLE GROUND at 69-72.
[1083] Sadiya Hartman, SCENES OF SUBJECTION: TERROR, SLAVERY, AND SELF-MAKING IN NINETEENTH CENTURY AMERICA, 125-164 (Revised Edition 2022); Glymph, OUT OF THE HOUSE OF BONDAGE at 204-27; Stephanie Jones-Rogers, THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVE OWNERS IN THE AMERICAN SOUTH, 181-200 (2019).

Consider waggoneers and batteauxmen.[1084] Plying their trades up and down Southern roads and waterways, both types of teamsters were a vital component of Southern society. As a class, such teamsters were considered shifty and ill-mannered. Their time on the road meant they were dirty, difficult to trace, and liable to disappear when problems arose. For Black teamsters, this profession-based suspicion was compounded by the usual racial surveillance.

Such *prima facie* suspicion was allayed by simply knowing the man piloting the batteaux or caring for the wagon team. White and Black, free and enslaved teamsters intermixed on the road.[1085] They formed convoys and stayed at the same boarding houses, offering great opportunities to learn about one another, and earn one another's trust.[1086] Commercial contacts offered the same, with repeated voyages engendering a level of camaraderie and trust between merchants, recipients, and their deliverymen.[1087] Eventually, this level of trust and credit could even allay criminal charges. In 1841, free Black boatman Randolph Brandum was accused of stabbing an enslaved person.[1088] Prosecutors quickly dropped the charges in part because Brandum was well known to be reliable, respectful, and industrious.[1089] While certainly tinged with Southern paternalism, Brandum had played his role of "free Black worker" well enough to overcome the presumptions against his race and profession. Indeed, his credit was so great that magistrates in two counties bent over backwards to help him renew his freedom papers.[1090] One went so far as to engage in some light fraud, changing the date of Brandum's manumission such that he was not required to leave Virginia.[1091]

These varying conceptions social roles meant the strength of one's performance therefore also depended on the audience, raising the intriguing possibility of different "banks," and that setting mattered for whose peace was to be kept. Regardless, white society demanded some level of deference was required from Black Americans, free and enslaved, and therefore one element for assessing their performance of expected social role.

The benefits of high credit were many. It meant neighbors were more willing to give you the benefit of the doubt or interpret a situation in your favor. It meant faux pas and lapses in judgment were forgiven more easily (though a loss of credit meant they were not forgotten). It meant that that someone was understood as trustworthy, and their words could be taken at face value.

Dinah and Lavinia had played their roles to perfection. Publicly associated with loyal fealty to their prior slaveholders (and therefore to white society), they fulfilled expected traits of free Black persons. Their clear industry and commercial success further boosted their credit, especially since it bucked the Southern stereotype of free Black persons needing charity to scrape by. There is every indication that the two freedwomen amassed quite the credit balance.

[1084] A batteaux is a long, flat-bottomed boat with a very shallow draft. Ideal for hauling large cargos, batteaux were a staple of river traffic in Virginia.

[1085] Melvin Patrick Ely, ISRAEL ON THE APPOMATTOX: A SOUTHERN EXPERIMENT IN BLACK FREEDOM FROM THE 1790S THROUGH THE CIVIL WAR, 149 (2004).

[1086] *Id.*

[1087] *See id.* at 149 (describing the white aristocrat Clem Read's relationship with many free Black batteauxmen); 160 (describing white residents' positive recollections of batteauxmen).

[1088] *Id.* at 168.

[1089] *Id.*

[1090] *Id.* 168-69.

[1091] *Id.* Under Virginia law, any Black person manumitted after 1806 was required to leave the state. Brandum was born in 1808, but the magistrate recorded his time of freedom as "prior to the year 1806."

And even after death, this high credit paid dividends. Numerous witnesses were willing to come and testify on Joe's behalf, with many more apparently chatting with his lawyers.[1092] Each told the same tale: Dinah and Lavinia were free, we knew them to be free, of course those women were free.[1093] In fact, the only evidence they *were not* free was the absence of a deed; there were no dissenters or doubters on the record. Dinah and Lavinia's credit had sustained their freedom and that of their children.

In this case, the asymmetric dependence is softer than in *Hall*'s direct material support, or what we will shortly see in *Henderson v. Jason*. If the patron-client relationship is real, then there is some level of relationship between the freedwomen and the Mackubins in which recognition of freedom is given for performance of loyalty. But that relationship takes a backseat to the freedwomen's relationship with the community. The two filled some kind of economic niche, likely by providing housing to workers in the area. Being useful and visibly non-threatening, was sufficient to build a buffer of favor amongst the community and thereby the goodwill and credit necessary to ward off Burke.

VIII. Henderson v. Jason (1851)

The Court of Appeal's final living-as-free case was 1851's *Henderson v. Jason*.[1094] Like *Burke*, the people involved in the case matter more than its legal findings. However, while *Burke* revolved around the need for durable relationships in the community, *Henderson* emphasizes the importance of *powerful* relationships.

In 1847, Aaron Jason filed a bill of trover against one William T. Henderson.[1095] Trover is a civil action in which the plaintiff sues to recover property misappropriated by the defendant (called a conversion). It is a cousin to trespass to chattels (discussed above with Dolly Mullin's timber grove). Under historical English common law, trespass to chattels was for somewhat minor interference (e.g. vandalism, some damage, brief deprivation, etc.) with a plaintiff's property rights, warranting damages, while conversions related involved substantial interference (e.g. theft, total destruction, etc.), warranting greater damages or the full value of the property. Trover is the action to coerce such repayment and if the defendant is found liable, they must either return the property (called a replevin) or compensate the plaintiff (damages).

According to the bill, Henderson had trespassed against Jason by holding "said goods and chattels. . . of right to belong to and appertain to [Aaron Jason] . . . fraudulently intending, craftily, and subtily [sic] to deceive and defraud. . . [Aaron Jason]." What were these goods and chattels? Four of Aaron Jason's children: Bill, Asbury, Reuben, and Louisa.[1096] From the surviving record, it is not clear how Henderson came into possession of the children, nor what spurred Aaron Jason to file his bill. Subsequent litigation indicates that the Jasons were all living as free "at the time of [their] seizure by [Henderson]," but Henderson's precise claim is not mentioned.[1097]

What is clear is that Aaron Jason did not initially argue that the children were free. Rather, he demanded Henderson either return the "said goods and chattels" or pay between $3,000 and $5,000 in damages. On September 28th, 1849, the jury found for Aaron Jason and assessed $1,245 of

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[1092] *See Burke v. Negro Joe*, 6 G. & J. at 136-39, 141.
[1093] *Id.*
[1094] 9 GILL 483 (Md. Ct. App. 1851).
[1095] *Henderson v. Jason* Trial Judgments at 8, MSA S832-86.
[1096] *Id.* at 8-9.
[1097] *See Jason v. Henderson*, 7 MD. 430, 441 (Md. Ct. App. 1855).

damages.[1098] However, it seems Henderson was not going to pay, as the court's writ of fieri facias (ordering a sheriff to confiscate assets for non-payment of a judgment) yielded no returns.[1099] Aaron Jason thereafter filed a motion for new trial, which the court granted.[1100]

However, Aaron Jason never pursued this new trover suit. Instead, Aaron Jason filed a petition for freedom on behalf of his children. One of the few causes of action enslaved persons were allowed to file, petitions for freedom were essentially requests for a declaratory judgment that the petitioner was unlawfully or improperly held in bondage. The change of tactics is interesting.

Why the new trial at all, and why the new cause of action? The answer is likely damages. The trover jury assessed $1,245 in damages, but did not order Henderson to release the children. It is entirely possible that Henderson was simply collecting the money to pay off Aaron Jason before either selling or working the Jason children himself. At the time of filing, the children were seventeen, eleven, thirteen and fifteen; all early on in their working years according to Southern sensibilities.[1101] Henderson probably figured that keeping the children would yield a larger profit, and so embraced the damages. Seeing that his verdict was a poisoned chalice, Aaron Jason moved for a new trial, likely to avoid *res judicata*.[1102] From there, he pivoted to a freedom petition to avoid a similar result.[1103]

In this new suit, the plaintiffs first sought to establish that the children were all born of a free mother. In 1831, Mrs. Frances Warfield struck a deal with Aaron Jason: if Aaron took in and supported Rachel Jason (Aaron's wife and the petitioners' mother) and her two existing children (Sam and Arch), then Rachel (and only Rachel) would be freed. No fool, Aaron accepted the agreement and Rachel, Sam, and Arch moved in with him. No one would ever again lay claim to Rachel herself.[1104] When Frances Warfield died in 1846, her estate did not include Rachel, nor did Frances's executors or heirs attempt to repossess her.

This arrangement was no secret. An Alfred Warfield heard Frances Warfield repeatedly refer to Aaron and Rachel as free persons. The Jason household was only a few miles from Frances's home, well within the range of news and gossip. Meanwhile, the grand patriarch of the extended Warfield clan, Dr. Gustavus Warfield actually treated Aaron and the children as their physician. In his medical accounts book, Dr. Gustavus notes that "Aaron Jason, Freed by Beni Warfield" accrued up $4 in charges during September 1838.[1105] All of these were paid by Aaron himself, not a

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[1098] *Henderson v. Jason* Trial Judgments at 9, MSA S382-86.

[1099] *See id.* at 10, where Aaron Jason moves for the sheriff to seize Henderson's property (a motion for fieri facias) sufficient to pay the damages.

[1100] *Id.*

[1101] *See Henderson*, 9 GILL at 484 (noting that in 1851, William was 19, Reuben "thirteen or fourteen," Asbury 15, and Louisa 17 years old).

[1102] This is a legal principle which bars relitigating a *claim* that has been decided on its merits. This is different from collateral estoppel, which bars relitigating specific *issues* which had been decided in a prior case, even if the legal claim is different. Here, Jason would be barred from relitigating the trover claim against Henderson unless he had the verdict set aside for a new trial.

[1103] For his part, it is possible Henderson did not contest the new trial motion in hopes of winning without damages, or a repeat verdict. Alternatively, any objections were overruled and not included in the appellate filings.

[1104] It appears that, since the agreement was to free Rachel (and only Rachel) the two remained enslaved. In fact, Frances Warfield's executor, Eli G. Warfield, took Sam and Arch from the Jasons sometime after Rachel moved in with Aaron, indicating there was still some legal claim on the two.

[1105] Medical Account Books of Dr. Gustavus Warfield, MCHC MS 874.

proximate slaveholder.[1106] Since William, Asbury, Reuben, and Louisa were all born *after* Rachel moved in with her husband, they would be free; Henderson had no claim to them.

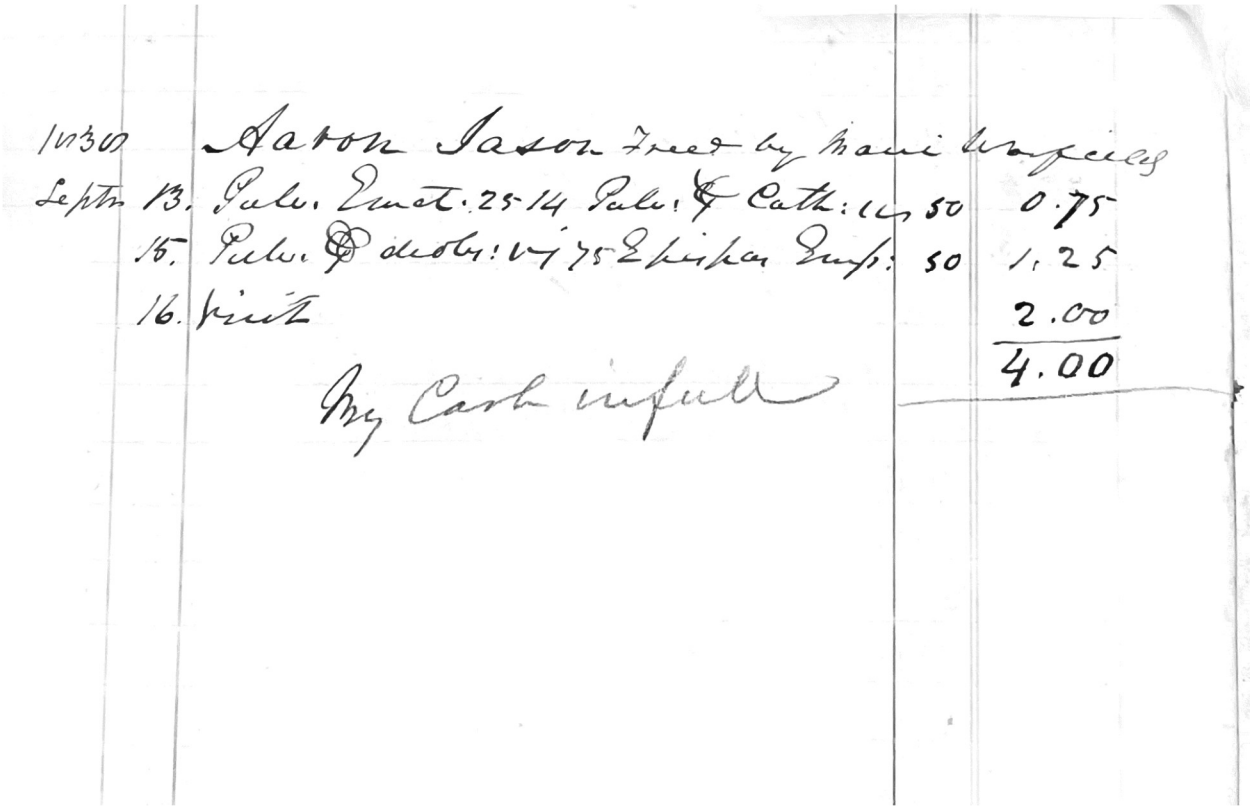

Figure 5.1: Account Entry for Aaron Jason, September 1838[1107]

Henderson responded with a multi-pronged attack on Rachel's freedom, and therefore the freedom of her children. First, he attacked the Jasons' fulfillment of the agreement itself. In either 1832 or 1838, Frances Warfield's agent took Sam and Arch away from the Jasons and back into Frances' service. Since the agreement was that Aaron and Rachel would raise Arch and Sam, Henderson argued the Jasons failed their end of the bargain and Rachel's freedom was nullified. Rachel would therefore remain a slave.

Henderson then invoked Aaron Jason's bill of trover.[1108] In that case, Aaron was seeking to recover *property*, specifically his enslaved children. Alfred Warfield had also testified for the Jasons in the bill of trover, stating that Rachel was *sold* to Aaron Jason, not sent to live with him.[1109] Taken together, Henderson painted a picture where Rachel and the children were not free persons at all, but enslaved by their husband and father.

Finally, Henderson argued that Aaron was himself enslaved. According to Charles D. Warfield (another cousin of Frances), Aaron had been the slave of Charles' father.[1110] In 1829 or

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[1106] *Id.*
[1107] *Id.*
[1108] *Henderson v. Jason*, Trial Judgments 6.
[1109] *Id. See also Henderson v. Jason*, 9 Gill at 485-86.
[1110] *Henderson v. Jason*, 9 Gill at 485. Unfortunately, due to the Warfield family's tendency to repeat names, Charles' father was either Benjamin Warfield (1755-1829) or Charles D. Warfield Sr. (1780-1852).

1830, Charles D. agreed to "let [Aaron] go free" in exchange for $100.[1111] While Aaron paid the sum, he did so after he turned 45, meaning his manumission was automatically invalid under the Act of 1796.[1112] It is not clear why Henderson pursued this line of argument. Aaron's bargain with Frances would have been unenforceable no matter his status, and Henderson had no claim to Aaron himself. It is possible Henderson was aiming for a dismissal, as Aaron could not serve as the children's next friend if he was enslaved. Alternatively, this was part of alleging Aaron bought Rachel from Frances Warfield. Since enslaved persons could not legally own other enslaved persons, the sale would have been a nullity, defaulting Rachel back into Frances' ownership.

Despite the thoroughness and breadth of Henderson's arguments, each tribunal ruled in the Jasons' favor. The trover jury assessed damages, the petition for freedom jury found for their liberty, and the Court of Appeals affirmed the trial ruling without comment or opinion.

While gaps and losses in the archive mean we will likely never know precisely *why* each factfinder reached their ruling, the Jasons' litigation strategy illustrates lessons about mutual dependence and the post-manumission ties between slaveholders and enslaved. First, the Jasons' case underscores the necessity of a powerful white patron in Southern society. Legally speaking, Henderson was right. Frances Warfield's failure to file a deed of manumission meant Rachel Jason was a slave and so were her children. Bargain or not, Maryland's statutory law was clear on the matter, along with the wealth of court cases affirming that liberty required a complete and proper deed.[1113] It was in fact a crime to allow enslaved persons to live as free.[1114] So why did two juries find Rachel to be free? The answer lies in who the Jasons called to the stand.

The Warfields were one of Maryland's wealthiest and most prominent families. They had arrived in one of the first waves of English colonization, alongside the Carrolls, Howards, and other families who would lend their names to Maryland's various counties.[1115] Since their arrival, the Warfields had prospered, with Warfield-owned plantations liberally sprinkled across the map. The family's scions were similarly prominent, flourishing in business, serving on blue ribbon commissions, and elected to office. The family took great pride in its military record during the Revolutionary War,[1116] and remained prominent throughout the state's history. It was to this august lineage that the Jasons went for help. Warfields comprised over half the witnesses listed on the trial docket.[1117]

To overcome Henderson's physical evidence (the absence of a manumission deed), the Jasons needed high-credit witnesses to create a new reality. According to Laura Edwards credit was essential to determining truth.[1118] Much of Southern law relied on subjective, personal information

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[1111] *Id.*

[1112] *See* Law of 1796, *supra* at 24 n. 182.

[1113] *See e.g. James v. Gaither*, 2 H. & J. 176 (Md. Ct. App. 1807) (holding a deed, properly witnessed, was not valid unless both witnesses signed the document); *Negro Clara v. Meagher*, 5 H. & J. 111 (Md. Ct. App. 1820) (holding that a Delaware manumission deed was not valid due to a procedural flaw, even though the state of Delaware recognized the manumission as valid)..

[1114] Law of 1787, *infra* at 147 n. 1036.

[1115] *See* Joshua Dorsey Warfield, THE WARFIELDS OF MARYLAND, 10 (1898).

[1116] For their patriotism, the most successful Warfield Revolutionary would be Wallis Simpson (neé Warfield), whose romance with Edward, Prince of Wales (later Edward VIII) eventually led to the latter's abdication and couple's pseudo-exile to America.

[1117] *See Henderson v. Jason*, Trial Docket, Howard District Court (Judgment Docket), MSA C64-84.

[1118] Edwards, THE PEOPLE AND THEIR PEACE at 111-14.

and reports.[1119] In assessing who to believe or how to interpret physical evidence, the witness's credit was a key metric in determining reliability.[1120] With a sufficient credit balance, witnesses created truth simply by repeating their belief and understanding.[1121] Other witnesses, even documents, could be discounted by a witness with high enough credit. If someone so reliable, so respected believed it, how could it be otherwise?

Through the Warfields, the Jasons constructed their freedom. Frances was a reputable woman. She had the attributes and pedigree to marry into the Warfield family.[1122] She was rich enough not only to own slaves, but also to forgo Rachel's labor and productivity voluntarily. She had fulfilled her maternal duties, having borne eight children, each of whom went on to maintain the Warfield name.[1123] She played her role well. Was it likely that such a personage had entirely neglected to submit a deed of manumission, as required by law and society? Was it not more likely that the deed had simply been lost to time and untidy bureaucracy? When buttressed by her surviving relatives, Rachel's freedom was laundered from assumption to clear reality.

This helps explain the presence of Dr. Gustavus Warfield. His testimony does not add anything beyond a bare endorsement that he knew Aaron and Rachel to live as free man and wife; it was cumulative with Alfred's evidence. However, as the well-respected county physician and Warfield patriarch, the doctor's strong credit reinforced that proposition. If he knew Aaron and Rachel to be free, then so it was. Without these strong, credit-rich supporters, the Jasons would not have been able to overcome the absence of a deed. They needed powerful patrons as a bulwark against human predators, physical evidence, and legal presumptions.

So why were the Warfields so willing? The freedom of a Black woman and her children had no real impact on their lives. In fact, Henderson was the creditor of one Reuben Warfield, so the confiscation might actually go to pay off some of their debts.[1124] But failure to support the Jasons in the matter would have embarrassed the family and chiseled their (social) credit. Frances Warfield's laissez-faire exploitation of the Jasons was socially distasteful and illegal under Maryland law. Free Black Americans were slaveholders' bogeyman, supposedly stirring up slaves' discontent, encouraging marronage, and burdening the public coffers. It was undisputed that Frances Warfield allowed the Jasons to live together and as free persons. As Rachel's proximate slaveholder, Frances would know if one of her bondspersons had just upped and left with her two children. Given the proximity of the Jason household, Frances could have easily dispatched her agents to retake Rachel. After all, she did so with Sam and Arch.

Carelessly contributing to Maryland's free Black population threatened not only bad press for Frances and the Warfields, but also criminal sanctions. As noted by Jason, the law of 1787 criminalized allowing an enslaved person to live as free. Conviction carried a fine of $20 for every month of such allowance, along with confiscation of the enslaved person by the state for the rest of the year.[1125] Unless Howard District and Anne Arundel county were subject to special, increased fees, Frances Warfield would have owed the state approximately $3,360 in fines just for Rachel.[1126]

[1119] *Id.* at 112. As does today's, though we dress it up differently.
[1120] *Id.*
[1121] *Id.* at 114.
[1122] *See* THE WARFIELDS OF MARYLAND at 22. Originally Frances Dorsey, of another prominent Maryland family.
[1123] *Id.* at 22.
[1124] *See Warfield v. Owens,* 4 GILL 364, 365 (Md. Ct. App. 1846).
[1125] *See* Act of 1787, *infra* at 147 n. 1086. *See also*, Brackett, THE NEGRO IN MARYLAND at 105.
[1126] Assuming Frances Warfield died in 1846.

William, Asbury, Reuben, and Louisa would have added more on top. After Frances's death in 1846, her estate would have accrued at least another $1,200 in fines for the five.

Faced with such financial and social embarrassment, it makes sense that the Warfields would come out in force for the Jasons. A ruling against the Jasons was tacitly a ruling against Frances Warfield's character. It also reflected poorly on the Warfield men. According to Southern mores, a strong, proper patriarch would have controlled Frances's mischief and kept her on the straight and narrow. The proceedings cast doubts on the Warfield men's fitness and character. The only way out was to support the Jasons' suit and offer what they knew.[1127] If Rachel was manumitted, then the outcome would be no fines, no failure on Frances's part, and no mud on the Warfield name.

IX. Enduring Bonds – Asymmetry After Manumission

Overall, the Maryland Court of Appeals' implicit manumission cases offer three distinct lessons: the relationship between slaveholder and freedperson did not end with manumission; ex-slaveholders' patronage was useful (perhaps even necessary) to preserve liberty; and ex-slaveholders' support helped establish that liberty in the first place.

All of our cases demonstrate that manumission was not a clean break between slaveholders and freedpersons. The Mullins moved in next door, and the Tilghmans were tied to Thomas Clarke (and his service to the Hall family). Dinah and Lavinia maintained a convivial relationship with the Mackubins, while the Jasons were on speaking terms with the ex-slaveholder's family.

Why so? Economic and familial pressures likely played a role. Moving meant swapping all one's familial ties, business relationships, and space in the local economy for all the uncertainties and travails of a new and strange community. It meant sacrificing some number of friendships and family members, especially if a family was mixed between free and enslaved persons.

Even if proximity were required by material concerns, the texture of the relationship undermines a strictly adversarial relationship between slaveholder and freedperson. Just because people live close to one another and see each other in the community, does not mean they will socialize, call upon one another, or maintain ties. And yet here we see three instances of at least cordial relationships. This is not to say that there was *bon homie* between the parties, nor in any way to undermine the brutality, cruelty, and blood which undergirded slaveholders' dominion. But humans are complicated. In her superb work on Sarah "Sally" Hemings of Monticello, historian Annette Gordon-Reed does not ignore the possibility that a slaveholder and an enslaved person could build substantive, genuine affection, despite the long, deep shadow of bondage. [1128] The implicit (and explicit) violence certainly changes the texture of possibilities, but Gordon-Reed does not discount love as an impossibility. In these three cases, it is possible (even probable) that an affectionate relationship developed such that the freedpersons kept in touch with their erstwhile enslavers.

A less rosy conception is that these relationships were tactical, in recognition of the social dangers which loomed over freedpersons. *Henderson* and *Burke* demonstrate that ex-slaveholders' good graces were important for preserving hard won liberty. By working for and socializing with the Mackubins, Dinah and Lavinia entrenched their neighbors' understandings of their freedom. The

[1127] This is not to say the Warfields were at all lying. On balance, it does seem like Frances Warfield just dispensed with the formalities of a deed. However, that does not mean the Warfields were ignorant of the stakes here.
[1128] Annette Gordon-Reed, THE HEMINGSES OF MONTICELLO: AN AMERICAN FAMILY, 81-82, 106-09 (2009).

Court of Appeals heavily relied on this testimony in its decision; without this relationship, Joe's case would likely have been much closer.

The Jason-Warfield relationship has similar, though more direct, contours. The Jasons called upon an entire lineage to testify on their behalf. While this makes sense for Warfields who were involved in Frances Warfield's bargain, the presence of uninvolved witnesses like Dr. Gustavus Warfield makes much less sense. He was not a party to the original deal, he did not have a direct interest in the Jason children, nor was his testimony particularly useful. His presence looks to be simple clout and hopes that his monumental credit would sweep aside juror's doubts and concerns. It also appears he testified by choice: his name is on the docket witness list and there is no record of subpoenas being issued, both of which indicate he was not there under duress. While some element of this was likely performative paternalism, it is unlikely he would appear on behalf of everyone who asked. This is especially true in this case, where antebellum society coded the Jasons as dangerous, while Henderson was a close associate of the Warfield family (or at least close enough to be the administrator of Frances Warfield's estate).[1129] Something must have prodded the Warfields into mustering their best, like a patron within the family or the necessity of protecting a favored client.

Hall offers a different lesson, that the slaveholder's patronage could set a freedperson up for success, or at least mitigate the risks of setting up an independent household. While the Mullins never received the animals and home goods from Henry Hall's will, the gift of land was still enough for Dolly Mullin to set up substantial timber production. She was making money independently, rather than in a way that placed her back under the command of someone else or risked indebtedness. It is not clear why Dolly Mullin and Charles Tilghman received land from Henry Hall when so many others did not. A sexual relationship (whether through violence or the compromised consent described by Gordon-Reed) between Dolly Mullin/Peggy Tilghman and Henry Hall might partially explain the largesse. As "favored" enslaved persons, Dolly Mullin and Peggy Tilghman would be more likely to receive special favors and gifts. The devises would be equivalent to the Porte's patronage of freed harem women, keeping the Mullins close. Alternatively, if Henry Mullin and Charles Tilghman were Henry Hall's sons, then a desire to provide for the boys might have motivated the devises.

Finally, *Burke* offers the final lesson that canny freedpersons maintained ties with both the ex-slaveholder *and* their community. By the time Burke kidnapped Joe and his siblings, the Mackubins were long dead. Neighbors' memories and communal lore were the crux of Joe's efforts to preserve his freedom. If Joe had been unpopular with his neighbors (a brawler, a drunk, a womanizer), how many details would have been forgotten? With tattered credit, Joe would have been coded as someone the peace needed to pacify, or whose claims of freedom were simple lies trading on Dinah and Lavinia's good name. This created a tension between living one's own genuine life and avoiding trouble from tut-tutting neighbors.

This self-censoring seems almost a precursor to the deference and "self-immolation of the free [Black] individual" identified by Sadiya Hartman during Reconstruction.[1130] Hartman finds that white Southerners were ill-prepared for a waged labor market involving Black Americans.[1131] Worried that the freedpersons would be idle without some means of compelling labor, white Southern elites teamed up with the Freedmen's Bureau to train

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[1129] *Jason v. Henderson*, 7 Md. at 430 ("[Louisa Jason] was seized and claimed by the defendant as belonging to the estate of Mrs. Frances Warfield, of which he was administrator.")

[1130] Hartman, *Scenes of Subjection* at 263.

[1131] *Id.* at 224.

> "the formerly enslaved. . . as free laborers since they had never worked under conditions of consent and contract and were ignorant of the principles of self-reliance and restraint. The goal of this training. . . was to replace the love of leisure with the love of gain and to supplant bawdy pleasure with dispassionate acquisitiveness."[1132]

To that end, newly minted freedpersons were almost immediately ensnared by a web of obligation, contract, criminal sanctions, and "indebted servitude."[1133] Long-duration labor contracts were required of freedpersons, with criminal penalties for quitting (and extra-legal violence besides).[1134] Practical and pedagogical "manuals" were also written, instructing Black Americans in the "proper" ways of laboring, public conduct, hygiene, piety, chastity, and consumption.[1135] "Servility" and obsequiousness were skills of particular emphasis, as they were critical facades to ameliorate white Southerners' distaste for the new social order.[1136] Freedpersons were "asked to refrain from asserting their liberty in every meaningful and imaginable way," whether it was advocating for better wages and conditions, personal treatment, or any other friction liable to enflame the prejudices of white neighbors.[1137] When the Freedmen's Bureau helped arrange new labor contracts, it primarily used the opportunity to regulate the freedpersons' behaviors.[1138] "Respectable," "prudent," "orderly," and "sober" described the ideal worker more than any actual qualifications for the role.[1139] The quest to control freedpersons even continued slavery's penchant for controlling workers' access to family members, gating visitation rights behind good behavior requirements.[1140] The freedmen's manuals went so far as to advise the freedpersons to "think kindly" of their former enslavers, and "join your interests if you can, and live and die together."[1141] For those who left their original enslavers, criminal law forced freedpersons to remain employed by a white person; failure to do so could lead to vagrancy charges, criminal enslavement or a variety of corporal punishments.[1142] Hartman correctly concludes that the post-emancipation South created a new form of bound labor, one predicated on fictive debt, erroneously allocated Black guilt for slavery, and the full cooperation of legal and extralegal sources of violence.

The informal patron-clientage of *Hall, Burke* and *Henderson* describe an informal prelude to the more legalistic deference requirements of the Reconstruction era. The post-emancipation contract requirements locked freedpersons into the surveillance of their new employer, a relationship that encompassed perceived morality just as much as it did labor. Certainly, Reconstruction's culture of deference had a labor dimension absent in the antebellum patronage relationship, but the situation had markedly changed. Black labor and Black life were not so closely intertwined as in the antebellum era. The constant churn of Black Americans finding new jobs, new homes, and new opportunities meant that white supervision was far less secure than when there was a traceable chain of owners and deeds, all readily available at the county courthouse. Upgrading the

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[1132] *Id.* at 225.
[1133] *Id.* at 222.
[1134] *Id.* at 222, 227-28.
[1135] *Id.* at 227.
[1136] *Id.* at 226, 228.
[1137] *Id.* at 263.
[1138] *Id.* at 260.
[1139] *Id.*
[1140] *Id.*
[1141] *Id.* at 264, 266-67 (quoting a manual titled *Plain Counsels for Freedmen*, by Clinton Bowen Fisk).
[1142] *Id.* at 209, 220; *see generally* David M. Oshinsky, WORSE THAN SLAVERY: PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1997); Douglas A. Blackmon, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2008).

supervision from public deference to a patron into a more formalized, sanctionable labor form deputized a broader swathe of white Southerners into keeping tabs on the freepersons and their behavior.

All told, it is clear that freedpersons could not always sever relations with their ex-slaveholders. As a buffer against a hostile society, a source of material patronage, and a reservoir of proxy-credit, it was risky for freedpersons to go at it alone. Nor was this unique to the ex-slaveholder: the community itself was courted for its memory, if not approval. This places American slavery well within the ambit of other slave societies. While not as formal as wala' or obsequium, there was still a patronage relationship between American slaveholders and their former bondspeople. such relationships bear consideration as American slavery's prominence and ostensible uniqueness is reconsidered.[1143]

[1143] *See* discussion of global and Atlantic Studies, *supra* at 6.

Conclusion: Continuities and Reflections

The Civil War and emancipation indelibly changed the social and economic landscape of Maryland. Where once fields and orchards were tended by fieldhands, waged workers would need to be hired. Where silver was once polished and children nursed by enslaved maids, new help would need to be hired. At least in theory.

In reality, post-war Maryland was a tangled mess of hierarchical uncertainty and possible futures. Black Marylanders worked to position themselves for the future, taking advantage of federal support to reclaim the fruits of their labor and sort out how they wished to live in the new social order.[1144] White citizens wanted a return to "normal," or at least familiar, social relations.

One aspect of this was the desire to reestablish racial hierarchy, and gradations of bondage remained a tool in that fixation. Where slavery once stood, white and Redeemer politicians used apprenticeship as a multi-headed cudgel. First was the direct cooptation of Black children. Following emancipation thousands of Black children were abruptly freed, and just as abruptly re-bound to white farmers, plantation masters, and other employers.[1145] This was a highly regional outburst of white supremacy. In Washington County (a remote, sparsely settled, and highly industrialized area) only three children were indentured upon emancipation. In Baltimore, only nine.[1146] Six of Maryland's rural counties (Anne Arundel, Calvert, Talbot, Dorchester, Somerset, and Worcester) accounted for 90% of the emancipation indentures.[1147]

In these latter counties, children were hauled "by the wagonload" to courts for binding.[1148] Procedural protections such as parental consent were nullified. Sometimes parents were never informed of the binding, and their "failure to object" was interpreted as acquiescence.[1149] In others, parents fought tooth and nail to protect their children, but were forced to "consent." Court records show that physical violence was threatened and used against objecting parents. One Kent County would-be indenture holders threatened to "break [] [the] d**d head, or words to that effect" of an objecting mother.[1150] A Freedmen's Bureau complaint notes that when the Croudy family appeared to contest the binding of one of their children, "the constable. . . finding the mother obstinate, and deaf to reason. . . struck her in the face with his fist in the presence of the judges."[1151] Still other planters simply lied, telling Black parents it was the law for the children to be bound out, thereby obtaining their consent. By hook and by crook, Maryland employers regained control of Black youth.

[1144] Dylan Penningroth, "Slavery, Fredom, and Social Claims to Property among African Americans in Liberty County, Georgia, 1850-1880," 84:2 J. AM. HIST. 405 (1997) (discussing Georgia freedpersons invoked rights and federal intervention through the Freedman's Bureau in the immediate aftermath of the Civil War); Thavolia Glymph, OUT OF THE HOUSE OF BONDAGE: THE TRANSFORMATION OF THE PLANTATION HOUSEHOLD, 167-227, (2008); Stephanie Jones-Rogers, THEY WERE HER PROPERTY: WHITE WOMEN AS SLAVE OWNERS IN THE AMERICAN SOUTH, 151-200 (2019).

[1145] Richard Paul Fuke, "Planters, Apprenticeship, and Forced Labor: The Black Family under Pressure in Post-Emancipation Maryland," 62:4 AGRIC. H. 57 (1988); T. Stephen Whitman, "Manumission and Apprenticeship in Maryland, 1770-1870" MARYLAND HIST. MAG. 57, 69-71 (2006).

[1146] *Id.* at 70.

[1147] *Id.*

[1148] Barbara Fields, SLAVERY AND FREEDOM ON THE MIDDLE GROUND: MARYLAND DURING THE NINETEENTH CENTURY, 139 (1985).

[1149] *Id.*

[1150] *Id.* at 140.

[1151] Fuke, "Planters, Apprenticeship, and Forced Labor" at 66.

Fitting with the times, the demographics of these indentures were unusual. Talbot County judges indentured 227 Black children in November and December 1864, compared with thirteen in all of 1860 and an average of 5-6 per year before 1851.[1152] More than 50% of these new indentures bound children younger than ten (and so below the threshold for hard farm labor), and more than 40% were bound girls (three times more than the normal proportion).[1153] By 1866, a traveler to the Eastern Shore estimated that two-thirds of all Black children were in the hands of a white master once again.[1154]

The planters themselves claimed this was done on humanitarian grounds, to provide for a needy class of children suddenly thrust, unprotected, into a tumultuous new world.[1155] There did exist "dozens" of indentures where the apprentice was recorded to possess "no parents" or "parents cannot be found."[1156] However, these constituted a slim minority of the thousands of emancipation-indentures. The planters' protestations of humanity and charity were also betrayed by mass expulsion of elderly and disabled freedpersons from their homes.[1157] Worries for the freedpersons' wellbeing were apparently coterminous with their profitability.

Whitman argues that the goal of these indentures was not to gain custody of future workers, but rather their parents. If Black children were retained by employers, their parents could not leave for better opportunities or to find their own future. Stuck in place, Black parents would be forced back into previous patterns of employment and control.[1158] This did indeed turn out to be the case for many Black families.

However, mass apprenticeship was a transitional form of bondage, both in intent and as an institution. As the dust from the Civil War settled and federal control consolidated, Black Marylanders brought their complaints and stories to the Freedmen's Bureau and other officials.[1159] The Bureau, US Army, and Maryland's Radical Republicans eventually took action to free the bound children and ultimately dismantled that form of apprenticeship.[1160] With their chosen medium destroyed, Maryland's employer class turned to contract as their chosen means of coercing labor.

Sharecropping was a one preferred form of contractual coercion. In this relationship, Black farmers lived on a white planter's land, in company housing, and used employer-provided tools, seed, and resources to grow a crop. The sharecropper promised the landlord a share of the crop to pay rent and for costs, usually two-thirds of the total. Everything left over was the sharecropper's to keep.

Sharecropping was fertile ground for debt, tying Black famers to their landlords in semi-serfdom. Sharecropping differs from a tenancy in that the sharecropper's labor is, from the beginning, alienated to the landlord-employer. Whereas a tenant could keep their entire crop, paying off debts and costs as necessary, the bulk of a sharecropper's produce *prima facie* belonged to another. Sharecroppers therefore had to buy more of their food and supplies on credit from local

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[1152] *Id.*
[1153] *Id.*
[1154] *Id.* at 63
[1155] Fields, MIDDLE GROUND at 140-41; Fuke, "Planters, Apprentices, and Forced Labor" at 63-4.
[1156] Fuke, "Planters, Apprentices and Forced Labor" at 64.
[1157] Fields, MIDDLE GROUND at 142.
[1158] Fuke, "Planters, Apprentices and Forced Labor" at 66.
[1159] *Id.* at 71-4.
[1160] *Id.*

merchants. If the remaining share of the crop could not cover the sharecropper's expenses, their debt was tied to the next year's crop through a crop lien.

For many sharecroppers, this credit cycle created lasting debts tying them to the landlord. They could not leave without the resources to make a new start, which required paying off their debts and saving up some money. Alternatively, their landlord might clear the debt to the merchants, but that simply transferred the dependence. Sharecroppers were stuck.

Contract was also leveraged to created bound labor through standardization and time penalties. Many planters held public meetings to try and coordinate their hiring power for mutual benefit. For example, in 1864, Prince George's County planters met to "promote the one-year contract and a uniform wage scale. . . which provided a maximum of $120 a year plus board" for male laborers, while women and minor-aged boys would earn $60 per year.[1161] Charles County planters reached a similar conclusion while Talbot County planters decided on an $150 yearly maximum for male workers, "$90 for older bows, and $50 for women."[1162]

On its face, such coordination seems relatively banal. While the yearly wages were certainly stingy, barely enough to provide for basic necessities, underpayment of workers is nothing new in capitalist production. The interplay of contract and criminal law is where employers succeeded in rebinding ostensibly free workers. However, Maryland law penalized "free negroes (but not free whites) for leaving employers to whom they had hired themselves."[1163] The 1860 Black Code made breaking a hire contract a misdemeanor, punishable by service to completion of the contract, with all legal fees, lost time costs, and other expenses paid from the laborer's wages.[1164] If a worker absconded again after the infliction of such a sentence, the employer was entitled to jail them, "exercise all the power over him that a master may over his free negro apprentice," and deduct confinement costs from wages.[1165] In a manner reminiscent of antebellum employers' power to acquire and dispose of apprentices, no law bound postbellum employers to keep contracted laborers for the duration of the bargain.

Criminal law was also used more blatantly to re-enslave Black workers. Likely using an 1858 law, postbellum courts began sentencing Black defendants to term slavery.[1166] Under *An act to modify the punishment of free negroes, convicted of larceny and other crimes in this State* (the Law of 1858), if convicted of certain enumerated offenses, free Black defendants could be enslaved for the duration of their incarceration.[1167] All of these offenses were property crimes. For example, larceny greater than $5 incurred a term of enslavement from 2-5 years, while robbery was a flat 10-year sentence.[1168] Theft of a "horse, mare, colt, or gelding, ass or mule" brought a 2-14 year sentence, while maiming the same would earn 2-4 years.[1169]

[1161] *Id.* at 69.
[1162] *Id.* (citing for Talbot County "Freed Labor in Maryland," The *Baltimore Sun*, 5 Dec. 1864 at 4).
[1163] Fields, MIDDLE GROUND at 138 (internal quotes omitted).
[1164] Art. LXVI – Negroes, THE MARYLAND CODE : PUBLIC GENERAL LAWS AND PUBLIC LOCAL LAWS, 1860, §76-79.
[1165] *Id.* at §86.
[1166] The 1860 Black Code does not contain a provision for re-enslavement of free Black defendants.
[1167] "AN ACT to modify the punishment of free negroes, convicted of Larceny and other crimes in this State," LAWS OF THE MARYLAND GENERAL ASSEMBLY, JANUARY 6, 1858 – MARCH 10, 1858, Ch. 34, §1.
[1168] *Id.*
[1169] *Id.*

While the Thirteenth Amendment permitted such enslavement,[1170] it was unclear how many of the law's provisions would apply. Could criminal slaveholders sell the term slave beyond the borders of Maryland, as allowed under the Law of 1858? What level of control and discipline was permitted under the state's new Constitution? Regardless, Maryland's governors were a fan of the policy, defending judges who inflicted enslavement for such trifles as "the theft of a one-dollar pocketbook, a three-dollar pig, a beehive said to be worth five dollars, and a twenty-five-dollar lot of tobacco."[1171] Similar systems would eventually expand to characterize criminal law during Jim Crow, as chain gangs and convict leasing replaced slavery in the denigration of Black labor.[1172] Despite the high rhetoric and bloodshed of the Civil War, Maryland's bound labor regime had simply evolved, using contract and criminal law where once slavery and apprenticeship stood.

Such dramatic changes in a polity's labor landscape are not unprecedented. The Ottoman Empire had been experiencing something similar for centuries. Between the Circassian Crisis, ongoing warfare, famines, and other cataclysms, the Empire had weathered mass urbanization and refugee crises before and would do so until its demise in 1922. Each time, the Porte was forced to manage a glut of unattached workers who did not neatly fit into established local hierarchies or patterns. The resultant attempts to handle this churn ranged from forcible expulsion from cities and mandatory resettlement, to fostering budding industrialists' efforts to exploit the labor surplus as cheap labor.

While this conclusion does not seek to offer a deeper insight into how Maryland and the Ottomans handled these tumults, this juxtaposition does gesture towards the benefits and opportunities still available for such a comparative project. In this dissertation, we have seen that comparative work offers new perspectives on preexisting assumptions. Ottoman and Liman forms of clientage underscore the ways antebellum American required softer forms of patronage, less formal than *obsequium* and 'wala but no less powerful. In contrast, the purpose and structure of American apprenticeships reveal that the institution was deeply steeped with capitalist logics of fungible, disposable labor, in contrast to Ottoman equivalent's emphasis on path dependence and stability; in this facet, American might indeed be unique.

These juxtapositions also offer traction as to how Ottoman Studies might reenvision some of its own touchstones. Rival geographies raises questions about how enslaved persons understood bondage. While elites and prior commentators might see enslavement as a life stage and origin, did the bondspeople themselves? Or was it a trial to be endured with lasting consequences as to self-image and one's relationship with community and the state?

There is a rich vein left to excavate for such insights. Bringing in further Ottoman primary sources, particularly judicial records, would offer sharper comparison with turbulence petitions. *Itaatlar* are an obvious candidate for further work, and the recently published İstanbul Kadı Sicilleri

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[1170] Permitted under the Thirteenth Amendment's carveout for slavery and involuntary servitude as punishment for a crime. This remains true to this day. *See e.g.* Cayla Mihalovich, "Anti-slavery measure Prop. 6 fails, allowing forced labor to continue in California prisons" CAL MATTERS 10 Nov. 2024 <https://calmatters.org/politics/elections/2024/11/california-election-result-proposition-6-fails/> [accessed 7 April 2025].

[1171] Fields, MIDDLE GROUND at 152.

[1172] *See* Douglas A. Blackmon, SLAVERY BY ANOTHER NAME: THE RE-ENSLAVEMENT OF BLACK AMERICANS FROM THE CIVIL WAR TO WORLD WAR II (2009); David M. Oshinsky, "WORSE THAN SLAVERY": PARCHMAN FARM AND THE ORDEAL OF JIM CROW JUSTICE (1996); Michael Gibson-Light, ORANGE-COLLAR LABOR: WORK AND INEQUALITY IN PRISON (2023); PRISON PROFITEERS: WHO MAKES MONEY FROM MASS INCARCERATION, (Tara Herivel & Paul Wright eds. 2009).

database offers the prospect of many cases of all stripes.[1173] Comprised of approximately 10,000 court records from the greater İstanbul area across the fifteenth through twentieth centuries, the database offers an exciting resource for further research for scholars unable to visit the archives in Turkey.[1174]

Broadened horizons and deeper comparisons promise further insights into the nature of labor, whether bound or free. Not every act of agency or resistance was an attempt to self-liberate or burn down the structures which oppressed them. Sometimes it was simple workplace dissatisfaction, expressed in the tools available. As employer and laborer negotiated their way to the next chapter of their relationship, the legal spoor they left behind offers the skeleton upon which we can interpret and imagine their actions and negotiations. Understanding how bound laborers contested the strictures imposed upon them gives texture and depth to our understandings of their lives.

[1173] *See* https://kadisicilleri.org/
[1174] *Id.*

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