

Repressive Legislation: Slave Codes, Northern Black Laws, and Southern Black Codes

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Summary and Keywords

Beginning in the 1630s, colonial assemblies in English America and later the new United States used legislation and constitutions to enslave Africans and deny free blacks civil rights, including free movement, freedom of marriage, freedom of occupation and, of course, citizenship and the vote. Across the next two centuries, blacks and a minority of whites critiqued the oppressive racist system. Blacks employed varied tactics to challenge their enslavement, from running away to inciting revolts. Others used fiery rhetoric and printed tracts. In the 1760s, when whites began to search for political and philosophical arguments to challenge what they perceived as political oppression from London, they labeled their experience as “slavery.” The colonists also developed compelling arguments that gave some of them the insight that enslaving Africans was as wrong as what they called British oppression. The Massachusetts lawyer James Otis wiped the mirror clean in *The Rights of the British Colonies Asserted and Proved*, stating “The colonists, black and white . . . are free-born British subjects . . . entitled to all the essential civil rights.” The Declaration of Independence polished the stained mirror by asserting, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights.” However, the Constitution of the United States negated these gains by offering federal protection for slavery; it was a covenant with death, as abolitionist William Lloyd Garrison later asserted. After the Revolution, many states passed black laws to deprive blacks of the same rights as whites. Blacks commonly could not vote, testify in court against a white, or serve on juries. States barred black children from public schools. The Civil War offered the promise of equality with whites, but when the war ended, many southern states immediately passed black codes to deny blacks the gains won in emancipation.

Keywords: African Americans, American Revolution, black codes, black laws, British colonies, civil rights, natural law, northwest territory, slavery, Thirteenth Amendment

The enslavement of Africans in the Western Hemisphere came from an economic imperative. The English ruling class of planters, merchants, and others employed European indentured servants, Indigenous populations, and Africans to meet the labor needs of the colonies, especially in the South. American slavery developed piecemeal; the English gradually imposed involuntary servitude almost exclusively upon Africans.¹ They enslaved

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Africans under a few key premises: (1) Blacks came from a distant continent and could not easily escape or be rescued; (2) skin color made blacks distinguishable from whites and thus easily set apart as slaves; and (3) Europeans used Biblical texts to support the enslavement of blacks. Thus, Africans sank deeper and deeper into chattel slavery while European servants improved their quality of life. By the 19th century, most whites in the United States had been conditioned to “accept” slavery as a “natural” and “permanent” status for black people. This contested and frequently stormy relationship between blacks and whites finally led to the Civil War. When the war ended in 1865, Congress adopted several amendments to the Constitution that emancipated enslaved blacks and outlawed all forms of involuntary servitude; granted citizenship to “all persons born or naturalized in the United States” including former slaves; and guaranteed that “the right of [male] citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude.”²

Rooted in the bigotry that undergirded American slavery, the codification of slave codes, northern black laws, and southern black codes in the colonies and later in the states deeply shaped the lives of black people from the 17th through the 20th centuries. Free Africans lived in all thirteen colonies, but freedom from slavery did not mean equality. By the 19th century, states entering the Union had constitutional bans on slavery; however, they denied free blacks the same rights as whites. Northern black laws denied African Americans virtually every privilege and immunity the government gave to whites. In 1865, southern legislatures remembered the example set by northern states and developed black codes to subordinate African Americans.³

The Southern Colonies

Slave Codes of Virginia

English geographer Richard Hakluyt (the elder) and his cousin of the same name felt England was missing an opportunity to establish itself as the center of trade. In *Principall Navigations, Voiages, and Discoveries of the English Nation* (1589), Hakluyt the younger urged the Crown to enter the colonization movement across the Atlantic Ocean.⁴ It would invigorate the nation’s commerce and allow England to expand Christianity to foreign lands, he asserted. To add fuel to the propaganda campaign, Hakluyt told the Crown about the military benefits of putting colonies in North America. Spain, he argued, had already set up an encampment to the south. Should England and Spain go to war, England could cut off the lucrative trade of its rival. Sir Walter Raleigh joined him in pushing the colonization agenda, and in 1585 Raleigh established a colony on the Outer Banks of what would become North Carolina. The project did not survive; nevertheless, investors jumped in to fund joint-stock companies that filled the void left by government inaction. The London, Plymouth, and Massachusetts companies sent colonists to hunt for gold and other riches in North America. These companies established Jamestown (1607), Plymouth

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(1620), and Massachusetts Bay (1632).⁵ Once the colonists gained a stable footing, they got on a fast track to enslave Africans.

Jamestown turned to slavery along the Chesapeake only twelve years after settlement. The act was an “unthinking decision,” historian Winthrop Jordan asserted.⁶ *Dutch sailors, most likely pirates, brought African captives to Jamestown. John Rolfe, a tobacco grower in the colony, wrote, “a dutch man of warre sold us twenty Negars [sic].”*⁷ *Colonists in Jamestown “purchased negroes for the purposes of trade.”*⁸ Historians have thoroughly debated the status of Africans brought to Jamestown that year. Some scholars argue that they fell under the indentured servant law, and after working for a specified number of years, whites released them with a land bounty. Historians cite Anthony Johnson as one of the black colonists who worked off his indenture and acquired land in Jamestown. However, there were many distinctions between black servants and white servants. Many white servants exercised agency when giving their time for transportation to the New World. Indeed, some investors arranged for kidnapping European servants while others came to America because they had been debtors or incarcerated.⁹ None of the Africans chose to live in America, because they were involuntary immigrants. A black minority worked under indentured contracts because it was the only labor system in existence at the time. Since Africans did not choose to immigrate, they did not escape European bigotry based on skin color.¹⁰

Distinctions based on race started to appear subtly in Jamestown at first, as colonial leaders developed slave codes. A series of judicial actions by the government illustrates the debasement of black people. Consensual coupling crossed all racial lines and took place in Jamestown. The government resorted to social engineering to keep blacks and whites apart. For example, Hugh Davis possibly had a consensual sexual relationship with an unnamed black woman, which colonial leaders condemned and prosecuted as fornication. The court agreed with the charge and delivered its sentence on September 17, 1630. Hugh Davis had abused “himself to the dishonor of God and shame of Christians,” the judge wrote. He had defiled “his body in lying with a negro.” The court made sure every Christian would learn to stay clear of social contact with Africans by forcing Davis to acknowledge his transgression on the “next Sabbath day.”¹¹ The same type of racial discrimination in Jamestown applied to government-subsidized weapons. The Virginia gun law (1630) funded weapons and ammunitions for whites but exempted blacks. Lawmakers feared that enslaved Africans might turn their guns on the ruling class.¹²

The court faced another sex case on October 17, 1640, when Robert Sweat found himself in court for having relations with a black woman who got pregnant. The court made Sweat “do public penance for his offense at James City church in the time of devine [sic] service.” But the judge sentenced the woman to a public whipping. The message of the social boundary between blacks and whites was clear for all to see.¹³

Social engineering extended to workers as the Virginia legislature grappled with run-aways. Black and white laborers initially recognized their shared interests and saw the planter class as the common enemy.¹⁴ Lawmakers severed the ties by penalizing blacks

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and whites for escaping together.¹⁵ As the *John Punch* case (1640) illustrates, the Virginia judiciary made distinctions between black and white workers. When John Punch fled the indentured servitude system with Victor, a Dutchman, and a Scotchman named James Gregory, the court treated them differently at sentencing. The court punished white fugitives with additional years of service but made John Punch serve his master for the rest of his life.¹⁶

When lawmakers codified Virginia slavery in 1661, they applied the principle from *John Punch*. Black fugitives from labor were “incapable of making satisfaction by addition of time.”¹⁷ In 1662, lawmakers established that “children should follow the condition of the mother, that is, were slaves for life.”¹⁸ In 1667, they declared that “conversion and baptism should not set the slave free; for it had been a long-cherished idea that a heathen, but not a Christian, could be reduced to servitude.”¹⁹

The Virginia Assembly moved to codify slavery under its most comprehensive legislation in 1705. The statute designated enslaved blacks as chattel property as if they were farm animals. Slave owners could impose harsh punishment on insolent slaves, including physical mutilation and branding. They could restrain rebellious slaves in stocks for theft and other misdemeanors.²⁰ They could engage in the domestic slave trade with the sanction of both the legislature and the courts. The government also regulated the mobility of slaves by requiring them to carry passes for travel beyond the plantation of their owner. The legislature created a separate judicial system for blacks and allowed for the execution of slaves convicted of rape or murder. Moreover, the Virginia code established that “All servants imported and brought into the Country who were not Christians in their native Country shall be accounted and be slaves. All Negro, mulatto and Indian slaves within this dominion shall be held to be real estate. If any slave resists his master correcting such slave and shall happen to kill him or her in such correction the master shall be free of all punishment as if such accident never happened.”²¹

The Virginia legislature established plantation police forces in each county. These runaway slave patrols were armed bands of whites with badges and guns to travel the countryside hunting for escaping slaves. Slave patrols also monitored black assemblies and stood ready to crush slave revolts.²² If they had not known it before, Virginia whites faced the frightening reality that black Americans were not docile or adaptable to their enslavement as the 19th century opened. Gabriel Prosser, a military-minded blacksmith, offered a reminder of this reality in 1800. Prosser hoped to stage a revolt against slavery in Richmond and then incite black insurrections in the rest of the South. However, word of the conspiracy got out, and the government arrested Prosser and his men before the insurrection had begun. Governor James Monroe approved their executions as an example to others. Regular slave patrols around Virginia continued, as well as state action to prevent blacks from becoming literate. Whereas Gabriel Prosser unsuccessfully conspired to revolt, Nat Turner executed a bloody rebellion in Virginia in 1831. Turner believed God had given him a vision to free enslaved black Americans. Joined by forty or more black supporters Turner attacked and killed at least fifty whites before the state captured him and his militia. After the brief formality of a trial, the government executed Turner and his sol-

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diers. The government also approved the killing of approximately one hundred innocent blacks in retribution.²³ As a leader in developing American slavery, Virginia served as the model for other colonies to follow both in codifying slave codes and cracking down on conspiracies to revolt or those leaders who succeeded in executing them.

Slave Codes of Maryland, Carolina, and Georgia

The rest of the South followed Virginia when establishing slavery. Tobacco, rice, indigo, and other cash crops dominated the economy in the South. John Ogilby said everyone was trading one crop for another, and tobacco was the linchpin to hold the economy together.²⁴ Cultivation of tobacco required cheap labor, and the colonists wasted no time in enslaving blacks. Africans trickled into Maryland at first, with slave traders bringing in only forty or so during the 1640s. The slave trade spiked over the next two decades when the African population jumped to nearly eight hundred people. The legislature felt a need to enact laws to define the status of these slaves and manage them, including defining the status of mixed-race children and the effect of baptism on slaves.²⁵ As one lawmaker put it, “a valuable source of labor was at stake,” and the law needed to be clear.

The Maryland legislature codified slavery in the mid-1600s. Lawmakers established that imported Africans would serve *durante vita*, or for life.²⁶ They punished whites for engaging in interracial sex. They designated mixed-race children as slaves if their mother was a slave. They outlawed the assembly of blacks. They adopted a runaway slave law in 1692.²⁷ In 1715, Maryland legislators passed a slave code to regulate the mobility of blacks and authorized whites to capture runaway slaves. The slave code also outlawed doing business with blacks.²⁸ In 1723, Maryland denied blacks due process and inaugurated the runaway slave patrol. In 1724, the legislature passed “an act for the more effectual punishing of negroes and other slaves; and for taking away the benefit of clergy from certain offenders.”²⁹ (Benefit of clergy was a legalism through which whites might have escaped the death sentence but a black slave did not qualify.) The slave code prescribed that the right hand of any slave convicted of stealing or other serious crimes be cut off. Lawmakers additionally allowed for the execution of a black person with his or her “Head severed from the Body, the Body divided into Four Quarters, and Head and Quarters set up, in the most public Places.”³⁰

Maryland consolidated provisions to deal with rebellious slaves in 1736. The law covered crimes committed by slaves such as revolts, rape of a white woman, arson, and murder. Legislators prescribed the death penalty for blacks convicted of felonies. They also denied blacks sentenced to death a Christian burial and the “benefit of clergy.”³¹ The legislature tried to strike fear into the hearts of slaves by outlawing false testimony in cases regarding a plot against slavery. Any slave found to be guilty of giving false statements would have one ear cut off on the day of his or her conviction and one day later suffer the same for the other ear, as well as bearing thirty-nine lashes on their bodies on both days. The government compensated owners if state action caused the death of their slaves. The legislature exempted whites from prosecution if a slave died in the process of recapture

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or punishment. The government also directed sheriffs to read the law in public once a year.³²

Carolina, a proprietary colony, was founded in 1660 by eight English nobles. Situated south of Virginia, the proprietors had many difficulties attracting mainland settlers from Virginia and New England. Hence, they turned to England for new colonists, but the long voyage continued to be dangerous and expensive. The proprietors then turned to John Locke, an English philosopher, to help them attract settlers, along with their servants and slaves, from the Caribbean Islands. In declarations written in 1663, Carolina gave head rights (free land) to any settler bringing workers into the colony. Settlers instantly acquired a hundred-acre land bounty, plus twenty acres for each black male (ten acres for black females) they brought into the colony. The Fundamental Constitutions of 1669 also gave slave owners “absolute power and authority over his negro slaves, of what opinion or religion soever.”³³ The Constitutions closed the door to faith as a path to freedom by allowing slave owners to Christianize their slaves while assuring them that “no slave shall hereby be exempted from that civil dominion his master hath over him, but be in all things in the same state and condition he was in before.”³⁴ These incentives worked, and by 1683 the black population in Carolina nearly equaled the whites. In a short time, Carolina had a black majority, and the sheer number of enslaved blacks in the colony induced white fears of potential black rebellions.³⁵

The worst fear of whites in South Carolina came true on September 29, 1739, when a group of black men launched the Stono Rebellion. The government sent twenty enslaved blacks near the Stono River to build a road. They assigned one of their “trusted” slaves to supervise the project, but he too had a hunger for freedom. On Sunday morning, the ninth day of September, Jemmy, the leader, organized the men to form a militia and steal weapons from a store in Charleston. As the armed men marched back to the Stono River, more than one hundred other men joined them. They hoped to reach Seminole or Spanish communities in Florida, or even establish a so-called Maroon Colony. South Carolina was prepared for such an incident. Lt. Gov. William Bull chanced upon the “black militia” without being seen, and once clear of them he sounded the alarm. The armed white posse outgunned the “black militia” and crushed the rebellion.³⁶ Legislators felt compelled to pass a comprehensive slave code after the Stono Rebellion.

The South Carolina Slave Code of 1740 (the Negro Act) reduced enslaved Africans to chattels, akin to beasts of burden. The law affirmed the ban against black assemblies without direct supervision by whites. It denied black adults and youths the right to learn to read and write. It outlawed the African custom of drumming, recognizing that it was a form of communication among African people. The slave code denied blacks their agency by prohibiting them from engaging in trade and commerce. Any white person without provocation could stop and interrogate a black person not accompanied by another white and who appeared beyond the borders of his or her plantation. The legislature prescribed severe penalties for enslaved blacks accused of committing a crime against a white person. A black who killed a white person would suffer death; however, a white who murdered a black was required to pay a fine to compensate the slave owner for the loss. In ef-

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fect, enslaved blacks in South Carolina, like those in other states, had few legal rights that a white person was bound to respect. Blacks could be whipped, interrogated, jailed, and killed on suspicion of committing a serious crime against a white person.³⁷ The statute remained in effect in South Carolina until the Thirteenth Amendment abolished slavery.

Georgia started as a reform colony for English poor under James Oglethorpe in 1732. While government leaders used blacks to build the settlement, they later outlawed slavery. The ban on slavery faced resistance from its neighbor in the north and at home. South Carolina slave owners accused Georgia of being a haven for runaway slaves. English colonists in Georgia argued that they suffered economically without slavery. The colonial government finally relented, and by 1751 Georgia had become a slaveholding colony.³⁸

Georgia appropriated the slave codes of South Carolina. In 1755, the Georgia legislature established slavery for life. Legislators made it illegal for blacks to go far away from a plantation without supervision or a pass signed by a white person. They empowered whites to interrogate and punish blacks who traveled without a pass. The legislature limited the number of black men in a group to seven unless a white man accompanied them. Legislators punished anyone who forged a pass for blacks. They required planters with more than twenty-five slaves to arm at least one white man to police them. They strengthened the statute after Nat Turner's revolt and required slaveholders to arm one white overseer for every sixteen slaves.³⁹

Once Georgia legislators had set up controls to manage the slave population, they outlined instructions for how whites should treat blacks. The lawmakers realized that black people would fight back if they believed the owners were unfair. The legislature retrained slave owners and set aside a few "rights" for enslaved blacks. Slave owners could not legally work a slave more than seventeen hours a day. They should use restraint when disciplining slaves. Slaves were encouraged to recognize the Sabbath. Legislators also required slave owners to provide sufficient provisions to keep blacks safe during inclement weather and with enough food to sustain their lives. The legislature made it unlawful for anyone to help a runaway slave.⁴⁰

Slaveholding states stiffened laws against educating slaves after free blacks in the North began publishing antislavery newspapers and pamphlets. Reverend Peter Williams Jr. and African American leaders in New York City founded *Freedom's Journal* in 1827, the first black-owned newspaper in the United States. Edited by John B. Russwurm and Samuel Cornish, the newspaper advocated for civil rights protections and promoted literacy among over three hundred thousand free blacks in the country.⁴¹ The editors established a clear mission for the newspaper in the first edition. "We deem it expedient to establish a paper," they wrote, "and bring into operation all the means with which our benevolent creator has endowed us, for the moral, religious, civil and literary improvement of our race."⁴² They exclaimed that blacks should speak for themselves; others had spoken for them had degraded them for too long.

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David Walker called for the immediate abolition of slavery from his new home in Boston, Massachusetts. Born in Wilmington, North Carolina circa 1785 to an enslaved father, he escaped bondage because he had a free mother. In *An Appeal to the Coloured Citizens of the World* (1829) he urged blacks to unite to overthrow slavery. Not only did he write the articles, Walker organized a network of black sailors to carry them throughout the nation as well. Georgia lawmakers placed a curfew on black seamen coming into the state and made it illegal to remove slaves by sea. The legislature required captains of vessels with black seamen to register the ship with the chief magistrate in any city or town where docked and give a \$100 bond assuring the state that the sailors would not remove slaves or encourage slaves to rebel. The statute also outlawed communication between free blacks and sailors.⁴³

Slave Codes in New England

Pilgrims and Puritans entered New England and establish Plymouth and Massachusetts. The region did not share the agricultural potential of the South, so they turned to the international slave trade and sold African captives. Puritan religious sensibilities restrained them to a point, but financial gain inevitably led them to enslave Africans. On February 28, 1638, John Winthrop, governor of Massachusetts, wrote into his journal: “Mr. [William] Pierce, captain of the ship *Desire*, returned from the West Indies after seven months. He brought some cotton, and tobacco, and Negroes.”⁴⁴ Not long after, the Massachusetts Assembly passed the *Body of Liberties*. The document affirmed the right to freedom but recognized slavery in cases where people had been “taken in just wars, and such strangers as willingly sell themselves or are sold to us.”⁴⁵ The assembly made children slaves based on the status of their mothers. Slavery, therefore, reigned virtually unabated in New England until the revolutionary era, when natural rights entered the colonial mind as the struggle for American freedom heated up with England. Debates over slavery and freedom began here and set the stage for the sectional conflict in the ensuing century.

Massachusetts developed a slaveholding culture nonetheless. The government allowed colonists to buy and sell blacks and Indians as slaves and authorized separating children from their parents. The legislature also punished runaway slaves and authorized their recapture. Historian Wendy Warren tells a painful story of a woman known vicariously as “Mr. Mavericks Negro woman,” who arrived on the slave ship *Desire* in 1638. Samuel Maverick had traveled to Virginia and had witnessed the emerging plantation economy. He purchased a woman, then boasted that he wanted a “breed of Negroes.” He sent a black man to have her hoping she would become pregnant, but the woman turned him away. Maverick then ordered the man to rape her, which left the woman wailing for all to hear. The government did not legally approve breeding enslaved women, but it did not punish Maverick for arranging the rape.⁴⁶ Slave codes followed, although they were not voluminous. In 1680, the assembly prohibited enslaved blacks boarding ships without permission to discourage runaways. A 1693 law forbade whites from doing business with slaves.⁴⁷ As the black population increased, the legislature established a 9:00 p.m. curfew. Lawmakers penalized emancipating slaves by requiring owners to pay fifty pounds for each person freed. The legislature imposed a fine on ministers who performed mar-

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riage ceremonies for a white and black. A 1707 statute banned the enrollment of blacks in the militia.⁴⁸

Massachusetts granted its black residents a few civil rights. Free and enslaved blacks could work for their own benefit. They could also assert their rights in court, and it was common for a black person to press charges against a white for assault and battery with confidence that a judge might judiciously apply the statute. African Americans took advantage of opportunities to litigate. Once they identified these pathways to freedom, they used the judicial system to press their cases. Before the legislature prohibited it, blacks claimed baptism had emancipated themselves from slavery. John and Joan Jackson used baptism to secure their freedom in 1730, a victory made possible in a community with a consciousness of freedom as a natural right. Afro-Yankees also relied on the respectability argument to advance their freedom, urging that they contributed to society, while conceding that some among their race were guilty of criminality.⁴⁹

Once natural law entered Massachusetts courts, black litigants quickened the pace of filing freedom suits under claims such as assault and battery and violations of natural rights. Jenny Slew (1765) successfully sued John Whipple for unlawfully detaining her as a slave and for committing injuries against her person. The Superior Court took the case on appeal, and a jury reversed the trial court and awarded Slew damages plus expenses. A black man named James sued Richard Lechmere for assault and battery and for illegally holding him as a slave. Here again, the trial court ruled against James, but on appeal the Superior Court ruled in his favor. Elizabeth Freeman (Mum Bett) had lived through the Revolutionary War as a slave and had lost her husband to the war for independence. She had heard the arguments for white freedom and had a keen sense that she too warranted freedom under natural law. Instead, the owner assaulted her and the incident moved her to litigate. The Massachusetts Supreme Judicial Court heard *Brom and Bett v. Ashley* in 1781 and held that slavery was contrary to the state constitution.⁵⁰

In 1773, African American leaders sent a series of petitions to the state government where they pleaded for their freedom under the law of nature. In “A Petition of Slaves in Boston” sent to Governor Thomas Hutchinson, his council, and the House of Representatives, the men cautiously asked the government to take their condition under consideration and grant them the liberty they deserved as productive residents of the province. Other petitions followed later but prompted no response. Finally, in a famous case involving the black litigant Quock Walker in 1783, the High Court of Massachusetts rendered slavery illegal under the state Constitution of 1780, which, the judges explained, did not explicitly endorse slaveholding in the state.⁵¹

Slave Codes in New York

Even though England had established dominance on the world stage in the 18th century, The Netherlands (Holland) had controlled international commerce until the mid-17th century. The Dutch established New Amsterdam (present-day New York City) in 1625. Under Dutch rule, enslaved Africans trickled into the colony during the 1620s. The Dutch West

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Indian Company was a slave-trading corporation, so it is not surprising that Holland established a slaveholding society in New Amsterdam. By 1630, the Dutch West Indian Company had approximately one hundred enslaved Africans working in New Amsterdam, and slave owners hired whites to supervise them. However, Dutch colonists were not as cruel as slave owners in the South. For example, a 1652 law protected enslaved blacks by restraining slave owners when punishing slaves. Slave owners could not whip a slave without explicit permission from the government. The government allowed slave owners to emancipate their slaves unilaterally. Under a moderate colonial government, Africans began petitioning for their freedom, to which legislators agreed to a point and inaugurated a practice commonly known as half-freedom. New Amsterdam insured that it would still procure commercial goods from half-free blacks. Colonial leaders expected Africans to make up any shortages in the production of staples. The Dutch also gave them land and levied a tax on them payable in agricultural products. The colony required half-free Africans to serve as a military buffer between warring Dutch colonists and Native Americans. Moreover, while African petitioners gained limited freedom, their children would remain slaves for the rest of their lives. While half-freedom gave blacks limited rights, it protected corporate interests in New Amsterdam.⁵²

Dutch rule in New Amsterdam collapsed in 1664 at the climax of the Anglo-Dutch War, which ended when England seized Dutch property in North America. England immediately established New York and acquired approximately eight hundred new slaves. The New York assembly passed the 1664 slave code to legalize English slavery. A 1680 statute banned the sale of liquor to black people, prohibited their assembly in groups of four or more, and outlawed their possession of weapons. The legislature also prohibited free blacks and whites from entertaining slaves in their homes. A 1702 code denied enslaved blacks the opportunity to engage in free trade without the slave owner's consent, and they could not gather in groups larger than three. Moreover, the colony fined whites five pounds plus three times the value of the goods purchased from slaves. New York, therefore, denied enslaved blacks the agency to act in their interest. In addition, lawmakers gave slave owners authority to punish slaves for their misdeeds even though they stopped short of allowing them to carry out death sentences or chopping off the limbs of slaves.⁵³

As the black population increased, the New York legislature passed laws to further anchor slavery. A 1706 law protected slavery by making children follow the status of their mother. The legislature cracked down on slave revolts and offered stiff penalties for conspirators. In 1708, for example, the assembly passed an "act for preventing the conspiracy of slaves." Under this law, the colony would impose the death penalty on any slave who conspired to kill his or her owner. Moreover, the legislature adopted "an act for the suppressing and punishing the conspiracy and insurrection of negroes and other slaves" in 1712. The law gave slave owners the authority to punish rebellious slaves but stopped short of authorizing mutilations, such as cutting off body parts and sanctioning the death penalty without due process. Only the courts could impose the death penalty under due process of law for crimes such as murder, rape, arson, or assault on a white person. The law also restricted the ability of slave owners to free their slaves by requiring them to pay two hundred pounds to the government and provide the slave with an annual annuity of

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twenty pounds. The legislature extended limited rights to free blacks, such as the right to own property. But the government consolidated these privileges in 1737, under “an act for the more effectual preventing and punishing the conspiracy and insurrection of negro and other slaves and for better regulating them.”⁵⁴ Under this measure, free blacks could not own or possess firearms, swords, or any other weapon such as knives or clubs. The code denied freedom of assembly to three or more slaves meeting together unless they did so in the employment of their owner. The slave code set the curfew for blacks to after dark unless their owner accompanied them.⁵⁵

The revolutionary era reformed slavery in New York, just as it had done in New England. The tenets of natural law made it easier for slave owners with limited agricultural potential to end slavery. New York began to take steps to end slavery in 1785 when it allowed slave owners to emancipate slaves under fifty years of age. The government required that slave owners issue certificates stating that they were capable of caring for themselves. Legislators also passed a gradual emancipation act in 1799 that freed slave children born after July 4 but indentured them until they were twenty-five if female and twenty-eight if male. All blacks gained legal rights, including trial by jury in serious cases. Finally, on January 28, 1817, the New York governor sent a message to the legislature that they should pick a year no later than 1827 when “slavery shall cease within this state.”⁵⁶ Under a complex system of age grades in a legislative effort to preserve the economic benefits of slavery as long as possible, slavery lingered in New York until 1848, since authorities often tolerated slave owners visiting from other states with slaves.

Indeed, slavery persisted in other parts of the North, including the states of Pennsylvania and New Jersey. The pattern of legislative acts to anchor slavery, as well as gradual acts leading to emancipation, was similar in other colonies. Freedom, therefore, came by degrees everywhere in the American North following Independence.

The Black Laws of the North

The institution of human bondage had thrived in the colonies until the American Revolution. The independence of the United States of America under the theorem of natural law ushered in the phenomenon of free states and territories. The Northwest Ordinance of 1787 outlawed slavery in a region that made it likely that any future state from there would ban slavery forever. As expected, five states from the Northwest Territory—Ohio, Indiana, Illinois, Michigan, and Wisconsin—all prohibited slavery in their constitutions. The movement to end slavery did not come easily and, contrary to law, enslaved blacks reached the Northwest Territory under the guise of indentured servitude. What was also apparent in the free states of the North was that freedom for blacks did not mean they were considered equal with whites under state law. With Ohio as a leader in 1803, legislators systematically denied free black Americans civil rights and oppressed them under black laws. A black law was a statute enacted to restrict black Americans in the exercise of their civil rights merely because of their skin color.⁵⁷

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Beginning in 1804, the Ohio Assembly passed a series of laws to regulate black and mulatto persons. The black laws were designed to discourage black immigration to the Buckeye State. Not only did prejudice against blacks encourage this legislation, lawmakers also wanted to send a signal to slaveholding states south of the Ohio River that white Buckeyes would not shelter slaves. The legislature hoped their conservative message would preserve their lucrative southern trade and keep Ohio white. The first statute, therefore, required blacks coming into the state to prove their free status for permanent residence. An employment law required that whites would only hire free blacks. A bond law in 1807 required that blacks enter an agreement with at least two freeholders who guaranteed the amount of \$500 that they would not become dependent on the state or exhibit bad behavior. A testimony law in 1809 prevented a black person the right to offer evidence in court against a white person. The black laws also denied blacks jury service and closed public schools to black children.⁵⁸

Further north, in the State of Connecticut, the experiences of Prudence Crandall, a white school teacher, further illustrate the operation of black laws. When twenty-seven-year-old Crandall established the Canterbury Female Seminary in 1831, it opened for white children. The community initially embraced the school and readily assisted where possible. No one could foresee what would happen next. Sarah Harris, a black woman who had been around the school as a domestic worker, asked Crandall if she could sit in on classes. Later, Harris asked the schoolmistress if she could enroll in the institution. Crandall initially stalled, and then relented to allow Sarah to enroll. While she expected opposition from whites, she could not have predicted the firestorm that resulted. Her white friends and sponsors turned against her, and the legislature passed a black law to keep African Americans from coming into Connecticut and enrolling in the seminary school.⁵⁹

The Canterbury race crisis was not an isolated event in 19th-century America. State legislatures elsewhere passed black laws throughout the country until the emancipation of blacks in 1865. An 1850 California law deprived blacks of the right to offer testimony in court against a white person. The Arizona legislature made interracial marriages illegal in 1864, and it voided those unions already consummated in the territory as did the Colorado state assembly that year. Northern governments had set the paradigm. Several other states joining the Union after the Civil War prohibited interracial marriages and provided for segregated public education. Freedom from slavery did not immediately translate into equality for all Americans. Hence, following general emancipation, southern legislators turned to black codes as another way to subordinate black Americans and restrict their civil rights.

The Black Codes of the South

The State of Mississippi led the way in limiting the civil, political, and economic rights of African Americans. In a law ironically called “an act to confer civil rights on freedmen,” the legislature proceeded to strip black Americans of their freedom. Lawmakers intended to return the state to the old social order, although formerly enslaved blacks were now

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free. The statute conferred a few rights on black residents, giving them the right to rent land in urban areas. Upon analysis, however, the “land law” deprived black Americans of the opportunity to own property and be independent farmers. The statute empowered whites to impose involuntary servitude on blacks, which the Thirteenth Amendment had explicitly prohibited.⁶⁰ For example, the law required black males to present proof of employment each year or be arrested for vagrancy and pressed to work for various planters and industries. Employed black Americans labored under strict one-sided contracts. The state provided that if anyone quit their jobs before the end of the contract period, they would forfeit their wages. The state also forced black men to work to pay off any debt they might have owed the state. The law fostered separation by punishing whites for giving aid to a black. The Mississippi black codes allowed the government to assume custody of black children whose impoverished parents could not adequately care for them. The practice, dignified by the term apprenticeship, reduced children to slavery, with their “masters” holding a legal right to apply corporal punishment for insolence.⁶¹ Under these terms, Mississippi endeavored to restore a form of American slavery.

Other southern states quickly followed suit, and the region’s leaders shamelessly declared that they needed to place limits on black freedom. They wanted to make the change from the old South as “slight as possible,” said an ex-Confederate officer. “The general interest of both the white man and the negro requires that he should be kept as near to the condition of slavery as possible,” he concluded. The South Carolina black codes virtually closed professions to blacks. State law required African American professionals to pay an annual head tax of up to \$100. Thus, the legislature intended to restrict blacks to servant jobs. The black codes made vagrancy a crime and required black Americans to obey the terms of their labor contracts. In sum, the law denied black workers freedom of choice in employment. A free man or woman did not have the agency to refuse to work for an employer that mistreated them. The laws produced a vicious cycle; when blacks did not have a job, they were then convicted as vagrants and forced to work without pay. The black codes of South Carolina also forced black children into apprenticeship under the guise of teaching them a trade. The legislature created separate courts to try blacks for crimes and meted out the death penalty for theft. Black Americans, though free, could not engage in commerce as other residents of South Carolina. The rest of the states followed by passing laws that made the condition of freedom in the South closely resemble the old system of slavery. The social custom at the time required blacks to recognize that whites had power over them, just as they did under slavery.⁶²

Although the Thirteenth Amendment ended slavery, Congress quickly recognized that little else had changed in southern culture. From the *Report on the Condition of the South* by Carl Schurz and the *Report of the Joint Committee on Reconstruction* submitted by representatives and senators, radical Republicans in Congress could clearly see that something else needed to be done to bring about lasting reform in the South. The United States needed to secure the civil rights of black Americans, Schurz and congressional investigators asserted. Congress then inaugurated a radical plan of reconstruction. It passed the nation’s first civil rights act in 1866, which made citizenship in the United States a matter of birth; gave blacks the same rights as whites; and secured blacks the

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right to enter into contracts and buy and sell property. It passed a series of Reconstruction Acts starting in 1867, which denied the vote to disloyal whites and enfranchised loyal black and white union men; it divided southern states into military districts under the command of military governors, with authority to convene constitutional conventions to write new state constitutions. It called for new elections based on male suffrage and ushered in a period whereby black men could walk the halls of Congress and state legislatures for the first time in the history of the country. Congress also adopted the Fourteenth Amendment in 1868, which made citizenship a part of the nation's constitution as well as established state citizenship. It recognized that citizens had privileges and immunities and denied states the ability to take the life or liberty of any citizen or deny them the equal protection of the laws.⁶³

The slave codes of the 17th–19th centuries, the black laws of the early 19th century, and the black codes after the Civil War had one thing in common: they limited the social, economic, and political rights of black Americans. The slave codes enslaved Africans forcibly removed from their homeland and made them the primary labor source in the colonies and the United States. Once freed, the black laws of the North did not recognize black Americans as equal to whites; thus, these laws denied black Americans the vote, jury service, testimony against whites in court, and a plethora of other civil and economic rights. The black codes of the South not only mirrored these laws but went further by robbing the free of the freedom the Thirteenth Amendment conferred. Indeed, the amendment granted enslaved blacks their physical freedom; however, the black codes negated it and reduced black Americans to virtual slaves under various acts southern legislatures passed to maintain white supremacy. Due to a counterrevolution launched by Congress starting with the Thirteenth Amendment, the United States of America and a national commitment to equality under the law eventually trumped all stratagems of southern legislatures and courts that hindered the full expression of the vision of the revolutionary generation from becoming a reality.

Discussion of the Literature

There are a few mandatory sources to understand the development of slavery in British America. The thesis in the “Origins of the Southern Labor System” by Oscar and Mary Handlin that appeared in the *William and Mary Quarterly* in 1950 is still valid. The English colonists had an economic imperative for cheap laborers, and they did not care about the color of their skin. Once it became clear from experience that there were reasons why Africans offered a better financial investment, racism based on color became entrenched in the colonies, even though there are many arguments that people rank sameness in their culture higher than differences. Europeans might have had a preference for white laborers but chose blacks because they could get away with exploiting them. Also, Aloysius Leon Higginbotham's *In the Matter of Color: Race and the American Legal Process* remains the best narration of slavery and colonial law ever written. William M. Wiecek's “The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America” is also mandatory reading on the legal development of slavery in the colonial

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period. In addition, Timothy H. Breen and Stephen Innes's landmark book, *Myne Owne Ground: Race and Freedom on Virginia's Eastern Shore*, provides evidence on the evolution of slavery in Virginia; that is, they show how black colonists were early landholders with a degree of autonomy over their property. With these sources in place, books and articles by Edmund Morgan, *American Slavery, American Freedom*; Carl Degler, "Slavery and the Genesis of American Race Prejudice"; and a host of other contemporary scholarship provide a firm foundation for understanding the development of American slavery.⁶⁴

For the transformation of the law of slavery in the revolutionary period, Higginbotham's *In the Matter of Color* is an excellent source on how blacks and whites appropriated natural rights in the struggle to abolish slavery. Judge Higginbotham provides essential details about Jenny Slew, Elizabeth Freeman, Quock Walker, and others involved in the legal battle for freedom. The English influence is also significant when evaluating natural rights and American courts. Wiecek's *The Sources of Anti-Slavery Constitutionalism in America, 1760–1848* offers an analysis of how a British judge in the case of *Somerset v. Stewart* (1772) influenced the American judicial system to lean toward freedom. For understanding of the northwest territory and how freedom's ring in its member states started there, see Paul Finkelman, *An Imperfect Union*, and Stephen Middleton, *The Black Laws*. Both books address tensions between slavery and freedom in the old northwest; Middleton goes on to show how such pressures pervaded the free states in the 19th century, namely the black laws. From these sources, written by eyewitnesses, readers will be compelled to recognize the urgency felt by Radical Republicans that something needed to be done to bring the nation together and secure the gains of the Civil War. Robert J. Kaczorowski's book *To Begin the Nation Anew: Congress, Citizenship, and Civil Rights after the Civil War* is a definitive work on the counterrevolution of Congress during the reconstruction period. In many ways he explains that Congress rewrote the United States Constitution with the Thirteenth, Fourteenth, and Fifteenth Amendments, which not only altered the old theory of federalism but also empowered the nation to impose federal protection of civil rights.⁶⁵

Primary Sources

Technology (the Internet) makes it easier for researchers to uncover the rise of slavery, including the international slave trade. One digitized collection, "Voyages: The Transatlantic Slave Trade," allows investigators to probe the origins and dispersion of Africans across the Atlantic world. *The Statutes at Large: Being a Collection of all the Laws of Virginia, from the First Session of the Legislature* by William W. Hening is the most definitive source of colonial statutes on American slavery. Several online collections are useful in understanding America's peculiar institution. *Virtual Jamestown* offers information on "The Practice of Slavery," including the laws supporting slavery to 1705. *Early English Books Online* is a searchable database that allows researchers to gain an understanding about how whites thought about slavery as well as its expansion.

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The American Revolution altered the trajectory of slavery on the British mainland in a significant way. James Otis's *Rights of the British Colonies Asserted and Proved* is mandatory reading for understanding the force of the natural rights argument in the fight to abolish slavery. An online collection, *Natural Law, Natural Rights, and American Constitutionalism: Classical and Medieval Sources of Natural Law*, offers a virtual library on the law of nature. Once freed from slavery African Americans faced laws to subjugate them. Middleton's *The Black Laws in the Old Northwest* is an excellent collection of legislative enactments in the free states of Ohio, Indiana, Illinois, Michigan, and Wisconsin. Original sources that illustrate why Congress felt compelled to reform the South with stringent measures can be found in the *Report on the Condition of the South* by Carl Schurz and the *Report of the Joint Committee on Reconstruction*. Moreover, William Loren Katz's *Eye-witness: A Living Documentary of the African American Contribution to American History* offers an excellent first-hand account of racial repression during the era of reconstruction.

Links to Digital Materials

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