

Note

Abolition Without Deliverance: The Law of Connecticut Slavery 1784-1848

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According to American public memory, slavery in the United States was peculiar to the South. Unless explicitly reminded of the North's history of slavery, most Americans associate the North with abolitionists rather than slaveholders. Alongside this public memory is the work of professional historians that recognizes that slavery existed in the North during the colonial era but asserts that it was abolished during the late eighteenth century. According to such scholarship, as the Revolutionary War brought ideas of natural rights to the forefront of the American consciousness and as economic realities made Northern slavery increasingly unprofitable, states north of Maryland eliminated slavery through a series of legal measures. Some scholars who advance this narrative portray the abolition measures adopted by most Northern states as immediate and comprehensive, as though these measures effectuated the near-instantaneous eradication of slavery in each state that adopted them.¹

In fact, though the number of slaves in the North declined after the Revolutionary War, slavery continued to exist there well into the nineteenth century.² Between 1777 and 1804, all of the states north of Maryland did take steps that would eventually doom slavery within their borders. But only in Massachusetts, Vermont, and New Hampshire were slaves emancipated relatively swiftly, and even in these states abolition measures

1. *See, e.g.*, LORENZO JOHNSTON GREENE, *THE NEGRO IN COLONIAL NEW ENGLAND* 76-77 (Atheneum 1968) (1942) (reporting that “[b]y 1790 all of the New England states had abolished both slavery and the slave trade”).

2. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE & LABOR, *A CENTURY OF POPULATION GROWTH* 133 (1909).

were ambiguous and their implementation inconsistent.³ In Pennsylvania, New Jersey, New York, Connecticut, and Rhode Island, state legislatures adopted gradual abolition legislation, which dismantled slavery over a period of half a century.⁴

Even histories of the North that distinguish gradual from immediate abolition tend to depict the former as an event rather than as a process.

3. Recent scholarship has exposed the lack of clarity regarding the end of slavery in these states. Some historians maintain that slavery in Massachusetts was eliminated by a judicial interpretation of the state constitution of 1780 in a series of cases involving a slave, Quock Walker, and his master, Nathaniel Jennison, but other historians challenge this analysis. See generally John D. Cushing, *The Cushing Court and the Abolition of Slavery in Massachusetts: More Notes on the "Quock Walker Case,"* 5 AM. J. LEGAL HIST. 118 (1961) (discussing the contributions of both judges and laypersons to the *Walker-Jennison* decisions); Elaine MacEacheren, *Emancipation of Slavery in Massachusetts: A Reexamination, 1770-1790*, 55 J. NEGRO HIST. 289 (1970) (emphasizing the role of individual masters who emancipated their slaves and of individual slaves who took their freedom in bringing about the end of slavery in Massachusetts); William O'Brien, *Did the Jennison Case Outlaw Slavery in Massachusetts?*, 17 WM. & MARY Q. 219 (3d Ser. 1960) (suggesting that the decisions in the *Walker-Jennison* cases may have been based on narrow issues rather than on a legal conclusion that slavery was inconsistent with the state constitution); Alfred Zilversmit, *Quock Walker, Mumbet and the Abolition of Slavery in Massachusetts*, 25 WM. & MARY Q. 614 (3d Ser. 1968) (arguing that Massachusetts citizens understood the Supreme Judicial Court's decision in *Caldwell v. Jennison* as outlawing slavery). The 1790 U.S. census found no slaves in Massachusetts. BUREAU OF THE CENSUS, *supra* note 2, at 47. But historians have uncovered evidence that suggests slavery persisted in Massachusetts after that year. See MacEacheren, *supra*, at 304 n.3.

Vermont's constitution of 1777 declared that no male "ought to be holden by law, to serve any person, as a servant, slave or apprentice" after the age of twenty-one and no female after the age of eighteen. It is unclear how soon after the 1777 constitution was adopted that slavery actually disappeared in Vermont; even census figures contain discrepancies. The census of 1790 reported that there were sixteen slaves in Vermont, but some time after the Civil War the Census Bureau reclassified these individuals as "free colored" and concluded that in fact there had been no slaves in Vermont in 1790. See VT. CONST. of 1777, ch. I, art. I (1777); BUREAU OF THE CENSUS, *supra* note 2, at 47. Historian Joanne Melish speculates that the Census Bureau's late nineteenth-century decision to adjust the 1790 census figures for Vermont may have been inspired by the "free-soil pride of place" of the Census Bureau's chief clerk, George Harrington, who was a Vermonter. JOANNE POPE MELISH, *DISOWNING SLAVERY* 64 n.31 (1998).

The conditions that gave rise to the abolition of slavery in New Hampshire are elusive. According to historian Alfred Zilversmit, some residents of New Hampshire interpreted the bill of rights of the 1783 state constitution as prohibiting slavery, but in 1792 there were still nearly 150 slaves in the state. ARTHUR ZILVERSMIT, *THE FIRST EMANCIPATION* 117 (1967) [hereinafter ZILVERSMIT, *THE FIRST EMANCIPATION*]. In 1800, eight slaves remained. BUREAU OF THE CENSUS, *supra* note 2, at 133.

4. An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1784), in 1784 ACTS AND LAWS OF THE STATE OF CONNECTICUT IN AMERICA 233, 235 (New London, Timothy Green) [hereinafter ACTS AND LAWS OF CONNECTICUT] (gradual abolition in Connecticut); An Act for the Gradual Abolition of Slavery (1804), in 1811 LAWS OF THE STATE OF NEW JERSEY 103, 103-04 (Trenton, James J. Wilson) (gradual abolition in New Jersey); An Act for the Gradual Abolition of Slavery (1799), in 4 LAWS OF THE STATE OF NEW YORK PASSED AT THE SESSIONS OF THE LEGISLATURE HELD IN THE YEARS 1797, 1798, 1799 AND 1800, INCLUSIVE 388, 388-89 (Albany, Weed, Parsons & Co. 1887). (gradual abolition in New York); An Act for the Gradual Abolition of Slavery (1780), in 10 THE STATUTES AT LARGE OF PENNSYLVANIA 1682 TO 1801, at 67, 68-69 (1904) (gradual abolition in Pennsylvania); An Act Authorizing the Manumission of Negroes, Mulattoes, and Others, and for the Gradual Abolition of Slavery (1784), in 10 RECORDS OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS IN NEW ENGLAND 1784-1792, at 7, 7 (Providence, Providence Press Co. 1865) (gradual abolition in Rhode Island).

Some accounts elide the decades between the enactment of gradual abolition laws and slavery's actual extinction, as though slavery during this period were unworthy of remark because it was in decline.⁵ Other works minimize or foreshorten the history of Northern slavery after the adoption of gradual abolition through imprecise language and sweeping generalities.⁶ Still other works ignore the mechanics of gradual abolition laws and their effect on slaves entirely.⁷ Historians' cursory treatment of this transitional era insinuates that gradual abolition laws produced slavery's straightforward and timely demise and promotes the image of Northern slavery as fleeting and anomalous.

Using Connecticut as a case study, this Note begins where the traditional narrative concludes. Unlike the standard histories of African Americans and of slavery in Connecticut, this Note probes the law of slavery between 1784, when the state adopted gradual abolition, and 1848, when the state's last slaves became free.⁸ In particular, this Note challenges

5. See, e.g., WINTHROP D. JORDAN, *THE WHITE MAN'S BURDEN* 135-36 (1974) (noting the respective years when several Northern states passed gradual abolition statutes but disregarding Northern slavery thereafter); PETER KOLCHIN, *AMERICAN SLAVERY* 78-79 (1993) (describing Northern emancipation as "painfully slow" but nevertheless condensing the period between abolition legislation and final emancipation to a few lines); EDGAR J. MCMANUS, *BLACK BONDAGE IN THE NORTH* 180-88 (1973) (mentioning the enactment of gradual abolition laws but then quickly turning his attention to free black people). *But see* MELISH, *supra* note 3, at 84-118 (1998) (demonstrating that the ambiguities of gradual emancipation allowed white people to find new ways to reduce freed persons to dependency and arguing that the gradual emancipation process was central to the emergence of a coherent racial ideology in New England); GARY B. NASH & JEAN R. SODERLUND, *FREEDOM BY DEGREES* 137-66 (1991) (examining the role that individual slaves played in dismantling slavery in the aftermath of Pennsylvania's Gradual Abolition Act of 1780).

6. See, e.g., JOHN HOPE FRANKLIN & ALFRED A. MOSS, JR., *FROM SLAVERY TO FREEDOM* 97 (8th ed. 2000) (declaring that "[b]y 1790 slavery in New England was dying rapidly . . . [and] the time was not distant . . . when all the New England states would report that only free blacks lived within their borders"); JAMES OLIVER HORTON & LOIS E. HORTON, *IN HOPE OF LIBERTY* 75 (1997) (stating that "[m]any slaves were freed by the gradual emancipation laws in the North, and in a relatively short time (relative to the existence of the institution of slavery) slavery was abolished in the free states"); NATHAN IRVIN HUGGINS, *BLACK ODYSSEY* 96 (1990) (stating that "[after the Revolutionary War] [t]hose states of New England, where there was a slight investment in slave property, were rather quick to disavow the institution"); DONALD R. WRIGHT, *AFRICAN AMERICANS IN THE EARLY REPUBLIC* 128 (1993) (asserting that "if one deals with the rule rather than the exceptions, by the 1820s slavery had ceased to exist in the northern states").

7. See, e.g., LEON F. LITWACK, *NORTH OF SLAVERY: THE NEGRO IN THE FREE STATES, 1790-1860*, at 3-14 (1961). Litwack's title itself is an example of the tendency to erase the history of slavery in the North during the nineteenth century. By calling his social history of black people in the "Free States" from 1790-1860 "North of Slavery," Litwack suggests that slavery did not exist in the North during this period.

8. Like their Northern counterparts, the histories of African Americans and of slavery in Connecticut neglect and euphemize slavery after the enactment of gradual abolition. See, e.g., William C. Fowler, *The Historical Status of the Negro, in Connecticut: A Paper Read Before the New Haven Colony Historical Society*, in *LOCAL LAW IN MASSACHUSETTS AND CONNECTICUT, HISTORICALLY CONSIDERED; AND THE HISTORICAL STATUS OF THE NEGRO, IN CONNECTICUT* 113, 132 (New Haven, Tuttle, Morehouse & Taylor 1875) (quoting from the Gradual Abolition Act of 1784 and musing about the reasons for its enactment, but devoting little attention to Connecticut slaves or slavery thereafter); Bernard C. Steiner, *History of Slavery in Connecticut*,

the standard account of Connecticut abolition in three respects. First, it presents evidence that Connecticut's 1784 Gradual Abolition Act did not remove slavery from the state in a prompt and orderly fashion. In Connecticut—as in all of those states north of Maryland and south of Massachusetts that enacted gradual abolition laws—slavery's termination was protracted and idiosyncratic. Second, the Note demonstrates that Connecticut's Gradual Abolition Act, while central to the decline of slavery in the state, was only one of several legal and extralegal developments that together caused slavery to disintegrate. Third, this Note considers the experience of Connecticut slaves and their children in the wake of gradual abolition; it examines slavery's stubborn hold on people even as it slowly decayed.⁹

Part I examines Connecticut's Gradual Abolition Act of 1784 and reveals that the law freed no slaves. It did promise eventual freedom to the future-born children of slaves, but, under the law, even these beneficiaries remained in servitude until the age of twenty-five. The law reflected the legislature's intent to end the institution of slavery in the state in a way that respected property rights and preserved social order. Part II challenges the notion that the 1784 law alone extinguished slavery in Connecticut. The population of slaves did decrease after 1784, but only because the Gradual Abolition Act was combined with other legal developments, both legislative

11 JOHNS HOPKINS U. STUD. HIST. & POL. SCI. 371, 400-15 (Baltimore, Johns Hopkins Press 1893), *reprinted in* SLAVERY IN THE STATES (1969) (reciting a number of state laws and court decisions with regard to slavery in the aftermath of the Revolutionary War, but providing little or no analysis of these developments); Ralph Foster Weld, *Slavery in Connecticut*, in 37 TERCENTENARY COMMISSION OF THE STATE OF CONNECTICUT, COMMITTEE ON HISTORICAL PUBLICATIONS 1, 13-14 (1935) (relegating its discussion of slavery in the state after gradual abolition to two or three pages and instead turning to the role that Connecticut institutions and activists played in the national antislavery struggle); Mary H. Mitchell, Speech on Slavery in Connecticut and Especially New Haven (Apr. 9, 1934), in 10 PAPERS OF THE NEW HAVEN COLONY HIST. SOC'Y 286 (1951) (including sporadic references to slavery in the state after 1784, but failing to advance an argument with regard to the subject).

In addition, these works tend to present Whiggish accounts of Connecticut slavery. One describes the deterioration of the institution as the result of "the general progress of civilization," Weld, *supra*, at 31, while another declares that "[t]here [was] a steady and progressive development of the conduct of the State towards slavery." Steiner, *supra*, at 451. As this Note will reveal, this emphasis on an inevitable or linear course toward abolition obscures the contingency and irregularity of the abolition process.

It is also worth noting that a number of these histories romanticize Connecticut slavery, referring to the institution as "comparatively mild and lenient," "kind and generous," and "very far from being the absolute and rigid kind," and contending that even at its height, Connecticut slavery "took a mild form." Steiner, *supra*, at 378, 451; Fowler, *supra*, at 148; Weld, *supra*, at 31. Fowler goes so far as to suggest that emancipation was "injurious" to the slave and that emancipation caused "a great falling off in the morals of the negroes." Fowler, *supra*, at 138-39.

9. In short, this Note seeks to challenge the view of Tapping Reeve—the founder of Connecticut's and arguably the nation's first law school—who, in the aftermath of the enactment of Connecticut's Gradual Abolition Act, asserted that the law "respecting slaves [in Connecticut] must now be uninteresting." TAPPING REEVE, THE LAW OF BARON AND FEMME; OF PARENT AND CHILD; OF GUARDIAN AND WARD; OF MASTER AND SERVANT; AND OF THE POWERS OF COURTS OF CHANCERY 340 (New Haven, Oliver Steele 1816).

and judicial, that so cut off the supply of new slaves as to ensure slavery's atrophy. Despite these legal restrictions, individuals continued to introduce new slaves into Connecticut through a variety of means, both lawful and unlawful. Furthermore, neither the 1784 law, nor any other law, emancipated living slaves. These slaves' sole hope for freedom was the voluntary acts of slaveholders. To the extent that statutory law addressed such manumissions, it discouraged rather than promoted it.

Part III explores the effect of the Gradual Abolition Act on Connecticut slaves. Even after the enactment of gradual abolition, slaves remained subject to the wills of their masters and constrained by a slave code, a legal regime that controlled and managed slaves. In some senses, the 1784 law made slave life more uncertain because the law created incentives for slaveholders to export their bondpeople from Connecticut. Part IV shows that even the future-born children of slaves, to whom the Gradual Abolition Act promised freedom, did not experience unmitigated salvation. For twenty-five years, such individuals remained "in servitude," bound to their mothers' masters in a state of near-slavery, the contours of which were unsettled. Part V concludes with a summary of the Note's principal arguments and seeks to orient its analysis of abolition in Connecticut within the context of scholarship about Northern abolition more generally.

The Gradual Abolition Act of 1784 did not neatly lift slavery from the social landscape of Connecticut. Nor did the Act initiate a linear process of abolition. If one keeps an eye on the law and an eye on those whom its vagaries affected, one begins to discover a turbulent story. Certainly, when measured against the alternative of perpetual slavery, the 1784 statute was a monumental achievement. However, through the eyes of both slaves and free black people, and of those who existed—as this Note will show—in between, the decades following the 1784 Act were bittersweet at best. The slaves who lived during these generations lived in a world of social limbo; for them, "abolition" ushered in an era of confusion and ambiguity rather than unqualified deliverance.

I. THE GRADUAL ABOLITION ACT OF 1784

Although instrumental in the eventual demise of slavery in the state, Connecticut's Gradual Abolition Act of 1784 freed no slaves. The law, actually an amendment to An Act Concerning Indian, Molatto, and Negro Servants and Slaves, provided that the children born to slaves after March 1, 1784, could not be held "in servitude" beyond the age of twenty-five.¹⁰ The law declared:

10. An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1784), *in* 1784 ACTS AND LAWS OF CONNECTICUT, *supra* note 4, at 233, 235. For the sake of simplicity and

[N]o Negro or Molatto Child, that shall, after the first Day of *March, One thousand seven hundred and eighty-four*, be born within this State, shall be held in Servitude, longer than until they arrive to the Age of twenty-five Years, notwithstanding the Mother or Parent of such Child was held in Servitude at the Time of its Birth; but such Child, at the Age aforesaid, shall be free; any Law, Usage or Custom to the contrary notwithstanding.¹¹

Thus, the law was a *post nati* statute: It emancipated not slaves, but the future-born children of slaves. And even these future children of slaves were not born free; rather, they became free only after twenty-five years “in servitude.”¹² By the terms of the 1784 law, not one individual would gain freedom from bondage prior to March 2, 1809, and even then, only those born after March 1, 1784, would be eligible for emancipation. To slaves born prior to March 2, 1784, the law conferred neither instantaneous nor eventual liberation. These slaves remained slaves for life. Thus, although historians often refer to the law as providing for gradual *emancipation*,¹³ from the perspective of slaves alive at the time the law was enacted, it is more appropriately understood as providing for gradual *abolition*. The sole comfort that the 1784 law extended to slaves born prior to March 2, 1784, was that, should they have children in the future, those children would be subject to twenty-five years “in servitude” rather than a lifetime of slavery. While the 1784 law placed Connecticut on the path toward abolition, it ensured that the transition from slave state to free state would be a lengthy process that left many in bondage even as it slowly began to free others.

The gradual and piecemeal nature of the 1784 law reflected the polity’s ambivalence about abolition and emancipation. Although there were those in Connecticut who believed that slavery was inconsistent with the word of God and the natural rights of man, there were those who defended slavery on the basis of those very principles. The legislature, no doubt cognizant of this conflict, sought to balance the interests of abolitionists with those of slaveholders.¹⁴ As a result, it is not surprising that the Gradual Abolition

conclusion, throughout this Note, I refer to this legislation as the Gradual Abolition Act. As this Note will argue, however, the Act might more accurately be seen as modifying the ongoing relations between Connecticut masters and their slaves, rather than abolishing that relationship.

11. *Id.*

12. “In servitude” was a term of art. Those “in servitude” were neither enslaved, nor free, nor in a caste identical to that of white apprentices or indentured servants. I will enclose the words “in servitude” in quotation marks throughout this Note to distinguish this unique condition from the common, more general meaning of those words. The status of those “in servitude” is the subject of Part IV of this Note.

13. See ELIAS B. SANFORD, A HISTORY OF CONNECTICUT 126 (Hartford, S.S. Scranton & Co. 1887); ROBERT AUSTIN WARNER, NEW HAVEN NEGROES, at xi (Arno Press 1969) (1940).

14. In his work on the politics of abolition in the North, Alfred Zilversmit speculates that the Connecticut legislature may have enacted the Gradual Abolition Act without realizing it. ZILVERSMIT, THE FIRST EMANCIPATION, *supra* note 3, at 123-24. He asserts that the legislature “perhaps unwittingly” took its first step toward abolition when it assigned Roger Sherman and

Act contained no ringing proclamation of religious, moral, or political principle. Rather, in language more banal than majestic, the preamble to the law stated: “[W]hereas sound Policy requires that the Abolition of Slavery should be effected as soon as may be, consistant with the Rights of Individuals, and the public Safety and Welfare.”¹⁵ Nowhere in the Act did the legislature disclose why, precisely, “sound policy” required that slavery be abolished. Did this invocation of “policy” reflect a concern for the dignity and welfare of the enslaved? Or, rather, was it animated by the impact that slavery had on the white population? A decade earlier, the Assembly had lamented the “injurious” effects slavery had on the poor, as slaves performed jobs that otherwise would have been available to underemployed whites.¹⁶ The same concern may, at least in part, have motivated the legislature when it passed the Gradual Abolition Act.

Whatever the policy concerns that motivated the impulse toward abolition, the 1784 law evinced the intent to balance this impulse against other competing interests. The preamble to the law insisted that abolition proceed in a way “consistent” with the “rights of individuals” to their property in slaves.¹⁷ As such, the law portrayed the end of slavery and individual rights as opposing forces. Furthermore, the preamble suggested that an immediate and absolute emancipation threatened “safety” and good order.¹⁸ Legislators feared that uncivilized and uneducated blacks, emerging en masse from bondage into freedom, would endanger the fragile workings of Connecticut’s new republic. Only by liberating the bound little by little could the political and economic system hope to assimilate such individuals.

Richard Law the task of preparing a revision of state law—that is, reorganizing the acts of the General Assembly and placing them in some sort of rational order. *Id.* at 123. According to Zilversmit, during this process, Sherman and Law tacked the gradual abolition law to the end of the revised code’s section on slavery so that when the legislature voted to approve the revised code, it “automatically adopted” the gradual abolition provision. *Id.* at 123-24. Zilversmit then asks rhetorically, “Was the abolition section . . . inserted by Sherman and Law or was it added by the legislature? Is it possible that some members of the legislature did not realize that by adopting the revised code they had enacted an abolition law?” *Id.* at 124. While Zilversmit’s speculations may be warranted, absent some more substantial evidence that the legislature enacted the gradual abolition statute unwittingly, it seems more reasonable to presume that the Act reflected the legislative intent of the General Assembly.

15. An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1784), in 1784 ACTS AND LAWS OF CONNECTICUT, *supra* note 4, at 233, 235.

16. The preamble to a 1774 law limiting slave importation read, “Whereas the increase of slaves in this Colony is injurious to the poor and inconvenient.” An Act for Prohibiting the Importation of Indian, Negro or Molatto Slaves (1774), in 14 THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT 329, 329 (Hartford, Case, Lockwood & Brainard 1887) [hereinafter PUB. REC. COL. CONN.]. See *infra* Subsection II.A.2 for a discussion of the 1774 Nonimportation Act.

17. An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1784), in 1784 ACTS AND LAWS OF CONNECTICUT, *supra* note 4, at 233, 235.

18. *Id.*

Lest there be doubt about the conditional nature of Connecticut's commitment to abolition, in 1794 the legislature considered and explicitly rejected a bill that would have abolished slavery in the state on April 1, 1795. Unlike the Gradual Abolition Act of 1784, which provided relief only to those born subsequent to the law's enactment, the 1794 bill, entitled "An Act for the Abolition of Slavery in this State, and to provide for the Education and Maintenance of such as shall be emancipated thereby," promised liberation to all held as slaves in the state. Furthermore, in stark contrast to the 1784 law, the failed 1794 bill included language decrying the effect that slavery had on slaves. In particular, the preamble indicted slavery for keeping the "minds" of slaves "in ignorance," and characterized slavery as "destructive of those natural rights which every member of an equal and just Government ought to enjoy."¹⁹ That such a bill failed a decade after the legislature enacted the 1784 *post nati* statute demonstrates that Connecticut's embrace of gradual abolition should not be misconstrued as an endorsement of antislavery measures generally. In the late eighteenth century, Connecticut adopted gradual abolition, but it rejected unqualified and immediate emancipation.

As Justice Bissell of the Supreme Court of Errors of Connecticut would later explain, the legislators that enacted the 1784 law sought to bring an eventual end to slavery, but they "did not intend to interfere, nor did they interfere, with the relation existing between masters and their slaves. The latter still continued to be held as property, subject to the controul of their masters"²⁰ The 1784 law reflected the contingent nature of Connecticut's support for abolition. The law sought not to end slavery but to end slavery in a manner consistent with property rights and the need for civic stability. It sought to end slavery without freeing any slaves.

II. THE DECLINE OF CONNECTICUT SLAVERY

According to the traditional narrative, the Gradual Abolition Act of 1784 effectuated the extinction of slavery in Connecticut. This narrative is supported by U.S. census returns that show a steady decline in Connecticut's slave population in the decades subsequent to the law's enactment. In 1790, the slave population numbered 2764.²¹ It decreased by sixty-six percent over the next decade, and by 1800 slaves numbered 951.²²

19. Proposed Bill Entitled, An Act for the Abolition of Slavery in This State, and To Provide for the Education and Maintenance of Such as Shall Be Emancipated Thereby (1794) (unpublished document, on file in the Conn. State Archives, Misc. Papers, Ser. 2, Vol. 1, Doc. No. 56, Conn. State Library, Hartford, Conn.).

20. *Jackson v. Bulloch*, 12 Conn. 38, 60 (1837) (Bissell, J., dissenting).

21. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE & LABOR, HEADS OF FAMILIES AT THE FIRST CENSUS OF THE UNITED STATES TAKEN IN THE YEAR 1790, CONNECTICUT 8 (1908).

22. BUREAU OF THE CENSUS, *supra* note 2, at 133.

By 1820, there were fewer than 100 slaves in Connecticut,²³ and by 1840 there were only seventeen.²⁴ Historians maintain that in 1848, when the General Assembly enacted an immediate and comprehensive emancipation law,²⁵ there were but six slaves left in the state.²⁶

Connecticut slavery did steadily decay in the aftermath of the 1784 Act, and the Act was central to that process. But the closer one studies this transitional period, the more one unearths a complex story in which the Gradual Abolition Act—and the law more generally—plays a far from exclusive role in Connecticut slavery’s extinction.

A. *Limitations on the Introduction of New Slaves*

The Gradual Abolition Act did set all children born to slaves in Connecticut after March 1, 1784, on a gradual course to freedom and thus prevented the growth or replenishment of the slave population through procreation. But traditionally there were other methods for introducing new slaves into the state, such as capture and importation, and the slave population could have been continually replenished had it not been for statutory and common-law developments that limited the introduction of new slaves through these other methods. Thus, the 1784 statute should not be viewed in isolation, but rather should be understood as part of a larger legal framework, the constituent parts of which were not foreordained.

1. *The Prohibition of Slave Capture*

While the legislature—through its enactment of the Gradual Abolition Act—played the principal role in preventing the regeneration of slaves through birth, it was the judiciary that curbed the practice of slave capture.²⁷

Indians captured during the course of Anglo-Indian conflict were often converted to slaves. This enslavement of prisoners of war was later recognized and sanctioned by law. For example, the Articles of Confederation of the United New England Colonies—a document signed

23. *Id.*

24. *Id.*

25. An Act To Prevent Slavery (1848), in 1849 THE REVISED STATUTES OF THE STATE OF CONNECTICUT 584, 584 (Hartford, Case, Tiffany & Co.).

26. 2 CONNECTICUT AS A COLONY AND AS A STATE, OR ONE OF THE ORIGINAL THIRTEEN 258-59 (Forrest Morgan et al. eds., 1904); GEORGE L. CLARK, A HISTORY OF CONNECTICUT 161 (2d ed. 1914). Neither work cites the origin of the figure.

27. By “slave capture,” I refer to the conversion of free people into slaves within the state. Of course, a number of slaves imported to Connecticut from Africa were born outside of slavery in Africa and subsequently were captured there. I discuss those individuals separately in a section on the Nonimportation Act of 1774. *Infra* Subsection II.A.2. From the perspective of Connecticut residents and, it seems, Connecticut law, those individuals captured and enslaved in Africa were not “captured” in the same sense that those converted within the state were.

by delegates from the Plymouth, Massachusetts, Connecticut, and New Haven colonies—stipulated that the signatories would equally distribute any “*persons,*” lands, and goods “taken as the spoils of war.”²⁸ Indian slaves were not merely captured in the context of formal warfare. Early Connecticut law permitted magistrates, at the request of a plaintiff, to send a band of colonists to “seize and bring away” an Indian who had committed “willfull wrongs” against the plaintiff.²⁹ Early Connecticut law also permitted colonists to seize any member of an Indian community that protected or harbored the offending Indian. Upon such seizure, if the community was unwilling or unable to pay damages, an Indian captive could be forced to serve the plaintiff or could “bee shipped out and exchanged for neagars, as the case [would] justly beare.”³⁰

The practice of converting free inhabitants of Connecticut into slaves declined as Connecticut established and affirmed the principle that the child of a free woman living in Connecticut was free and could not be enslaved. The 1787 case of *Wilson v. Hinkley*³¹ symbolizes this principle. The case involved Timothy Caesar, who was enslaved through capture and who lived as a “slave and servant” to Joseph Hovey of Mansfield. The superior court determined that Caesar was “not a slave” because he was “born of a free woman.”³² Since the court appeared to conclude that no person could be a slave whose mother was free,³³ the capture of free people could no longer be a reliable method of replenishing the slave population.

2. *The Nonimportation Act of 1774*

In addition to procreation and capture, slaves in Connecticut also traditionally were produced through importation. But on the eve of the American Revolution, the colony passed landmark legislation that virtually barred the import of slaves of all kinds. The 1774 law entitled “An Act for Prohibiting the Importation of Indian, Negro or Molatto Slaves” provided that no “indian, negro or molatto slave” could be “brought or imported” into the colony by “sea or land,” from “any place or places whatsoever,” in order to be “disposed of, left or sold within this Colony.”³⁴ Furthermore,

28. Fowler, *supra* note 8, at 114.

29. Code of Laws (1650), in 1 PUB. REC. COL. CONN., *supra* note 16, at 509, 532 (Hartford, Brown & Parsons 1850).

30. *Id.*

31. 1 Kirby 199 (Conn. Super. Ct. 1787).

32. *Id.* at 202.

33. When the court concluded that an individual born of a free woman is free, it apparently meant that an individual born of a free woman in Connecticut or elsewhere in the United States is free. There is no evidence that the case freed Connecticut slaves whose mothers lived free in Africa.

34. An Act for Prohibiting the Importation of Indian, Negro or Molatto Slaves (1774), in 14 PUB. REC. COL. CONN., *supra* note 16, at 329, 329 (1887).

the law imposed a £100 per slave fine on those who imported slaves or purchased imported slaves.³⁵ The 1774 law was not motivated by humanitarian impulses—at least not humanitarian impulses toward slaves. The preamble to the Act stated that “the increase of slaves in this Colony is injurious to the poor and inconvenient.”³⁶ The legislature’s thinking appears to have been that slaves performed labor that otherwise would have been available to unskilled whites—a group that suffered from poor wages and underemployment. Imposing a limit on the introduction of new slaves would increase economic opportunity for these poor whites.

Although historians tend to focus on the 1784 Gradual Abolition Act as the legal foundation for the demise of slavery in Connecticut, it was, in fact, only one of several important legal developments that together limited the introduction of new slaves into the state. In hindsight, one might see this legal regime as a reflection of the gradual awakening of the moral sense of Connecticut residents to the evils of slavery. At the time, however, these measures were understood primarily in practical rather than moral terms.

3. *Evading the “Ban” on New Slaves: Limits, Loopholes, and Transgressions*

Although the ban on slave capture, the 1774 Nonimportation Act, and the 1784 Gradual Abolition Act together virtually choked off the creation of new slaves, they did not prohibit the creation of new slaves entirely. Limits and loopholes built into the legislative acts themselves continued to permit the introduction of new bondpeople into the state. The most glaring of these was the main clause of the Gradual Abolition Act, which permitted masters to hold the future children of slaves “in servitude” until the age of twenty-five. Those who lived “in servitude” will be the focus of Part IV. But, for now, suffice it to say that the servitude clause left hundreds of individuals in a state of legal purgatory—neither enslaved nor free.

In addition, textual ambiguities in the nonimportation law allowed masters to elude the law’s apparent ban on slave importation. The 1774 law specified that “[n]o indian, negro or molatto slave shall at any time hereafter be brought or imported” into Connecticut “by sea or land, from any place or places whatsoever, to be disposed of, left or sold” within Connecticut.³⁷ The statute was not a general ban on the importation of slaves; rather, it prohibited the import of slaves for particular purposes—to dispose of, leave, or sell them. Bringing slaves into Connecticut for other purposes remained permissible. The language of the statute, however, left

35. *Id.*

36. *Id.*

37. *Id.*

unclear the meaning of the words “disposed of,” “left,” and “sold,” and thus the parameters of the ban were subject to interpretation.

The exact contours of the ban remained contested in Connecticut at least until the mid-1830s, six decades after the enactment of the nonimportation law. In June 1835, for example, Nancy Jackson, a slave born in Georgia, was brought into Connecticut by her master, James S. Bulloch. Subsequently, Jackson sued for her freedom, claiming that her master was impermissibly holding her in bondage in violation of the nonimportation law. Bulloch did not deny that he had held Jackson in the state for two years, but he maintained that his residence in Connecticut was only temporary; he had twice returned to Georgia (without Jackson) during the previous two years,³⁸ and he intended to move back to Georgia permanently. Thus, Bulloch argued, he was not in violation of the nonimportation law because he had not brought Jackson into the state for the purpose of disposing of, leaving, or selling her. As the Supreme Court of Errors of Connecticut framed it, the case hinged on the definition of the word “left”:

It is not claimed that *Nancy Jackson* was brought into this state to be sold or disposed of; and the respondent [Bulloch] also insists upon it, she was not brought here to be *left*. On the other side, it is contended, that as she was brought here, and has been suffered to remain, for nearly two years, she has been *left* here, within the true intent and meaning of this statute. This brings us to the question, how far does this word “left” qualify and limit the previous [prohibition] provision of this statute? . . . How then is the term “left” to be understood?³⁹

The court rejected a variety of understandings of the verb “to leave” in the statute, such as “to forsake, to abandon, to depart from,” all of which would have suggested that the prohibited activity was the master removing himself from the slave.⁴⁰ According to the court, such a construction made no sense. The General Assembly would not have perceived the need to legislate against such a harm since no person would “bring his slaves here, merely to abandon or forsake them.”⁴¹ Instead, the court concluded that the term “left” must mean something akin to “suffered to remain.”⁴²

38. During the two instances in which Bulloch returned to Georgia for months at a time, Jackson remained in Connecticut in order to care for Bulloch’s family, who had not returned to Georgia with him.

39. *Jackson v. Bulloch*, 12 Conn. 38, 48 (1837).

40. *Id.*

41. *Id.*

42. *Id.* at 49.

But, the court asked rhetorically, how long must slaves “suffer to remain” in the state “before they could be said to be *left*”?⁴³ On the one hand, the court rejected the idea that the slave must be permanently left in Connecticut in order to be “left” within the meaning of the statute. Such an understanding, the court reasoned, would have eviscerated the very purpose of the statute, for it would allow a master to bring his slave into the state and keep the slave there indefinitely as long as the master claimed that he planned to depart with the slave at some point in the future. On the other hand, the court rejected the idea that a slaveholder merely passing through Connecticut with his slaves would violate the statute. It reasoned that the General Assembly did not intend to “give offence to our sister states, by impeding their citizens in travelling through this state, with their servants or slaves.”⁴⁴ But, to the supreme court, James Bulloch did not seem like a traveler merely passing through the state with his slave. As the supreme court held:

A slave, then, brought from another state or country into this state, may, in our opinion, be considered as *left* in this state, although the owner does not intend to reside here permanently himself, or to suffer such slave permanently to remain here. So long as he is a traveller, passing through the state, he cannot be said to have *left* her here. But when he and his family are residing here, for years; and when he has suffered his slave to remain here, for almost two years; he cannot claim the privilege of a traveller, even although he intended, at some future time, to return with his family to his former residence.⁴⁵

Even as the *Jackson* court helped to clarify some of the language in the nonimportation law, it allowed a certain amount of ambiguity to remain. The court interpreted the prohibition against leaving imported slaves to apply to those who brought slaves into the state and caused those slaves to remain in the state, even temporarily. At the same time, the court made clear that travelers did not forfeit their property in slaves upon entering the state. Yet the *Jackson* court failed to specify the length of time a slave and his master had to remain in the state before the master would violate the prohibition against leaving imported slaves. Clearly, the court said, when a master and his family remain “for years” and the slave remains for “almost two years,” this is a violation of the statute. But this was all the guidance that the court offered. It did not draw a clear line between a traveler and one who suffered a slave to remain. Furthermore, insofar as the court’s decision appears to rest on the fact that *Jackson* was “suffered to remain” in

43. *Id.* at 50.

44. *Id.*

45. *Id.* at 50-51.

Connecticut for almost two years, would the ruling have been different if Bulloch had taken Jackson back and forth with him on his occasional trips to Georgia? While, as a practical matter, these residual ambiguities did not represent a license that slaveholders could or would exploit in order to import slaves into Connecticut en masse, to those like Nancy Jackson situated on the edge of the law's prohibition, where the line was mattered immensely.

While some like James Bulloch brought slaves into Connecticut by exploiting limits written into the 1774 statute, others breached the ban with the blessing of the General Assembly. Through the mechanism of the private act, the legislature gave a number of slaveholders special permission to introduce new slaves into the state using methods that otherwise would have been unlawful. For example, in 1783 the General Assembly granted a request by John Smith to bring slaves into the state despite the 1774 nonimportation law. In his appeal to the legislature, Smith attested that he had "several Negroe Slaves and a Sum of Money" in New York which he had "reason to beleive he could obtain if he could send for them."⁴⁶ The General Assembly authorized Smith's agent to go to New York and return with "any such Negroes of said John as he may be able to obtain."⁴⁷ In 1790, the General Assembly gave Andrew Munrow, a native of Branford who had been residing in St. Croix for "about seven years," license to return to Branford with two "Industrious and faithfull Negro Men."⁴⁸ In his petition to the legislature, Munrow emphasized that the slaves, skilled "Mechanicks," were "very desirous of comeing" with him to Connecticut and that he was "unwilling to leave [them] behind."⁴⁹

Although the General Assembly accommodated the requests of John Smith and Andrew Munrow, it did not approve all such petitions. For example, in 1783, Job Bartram of Norwalk sought permission to go to Long Island, New York, to retrieve slaves who had run away and sought British protection during the Revolutionary War. The Assembly resolved that Bartram could go to Long Island and there "Sell or dispose" of the slaves; it did not accede to Bartram's request that he be authorized to return the slaves to Connecticut.⁵⁰

Together, statutes and judicial decisions so curtailed the introduction of new slaves for life that they effectively doomed the institution in Connecticut. But this legal regime did not prevent the generation of new slaves entirely. Some slaveholders found ways, both legal and illegal, to

46. Private Act of 1783, in 5 THE PUBLIC RECORDS OF THE STATE OF CONNECTICUT 46, 46 (1943) [hereinafter PUB. REC. ST. CONN.].

47. *Id.*

48. Private Act of 1790, in 7 PUB. REC. ST. CONN., *supra* note 46, at 140, 141 (1948).

49. *Id.*

50. Private Act of 1783, in 5 PUB. REC. ST. CONN., *supra* note 46, at 57, 57-58 (1943).

evade the prohibitions. These episodes were ultimately few in number, but they reflect the incomplete and piecemeal character of Connecticut's approach to abolition.

B. *The Decline of the Existing Slave Population*

While the Nonimportation Act, the Gradual Abolition Act, and the judicial ban on slave capture may explain why Connecticut residents were generally unable to introduce new slaves into the state, none of these legal developments freed slaves already in the state. To the extent that these existing slaves found salvation, it was generally not through legal measures, but through the voluntary actions of individual slaveholders.

1. *Manumission: A Master's Prerogative*

Because the Gradual Abolition Act of 1784 made no provision for the immediate or even the eventual emancipation of a single slave born prior to March 2, 1784, such slaves remained slaves for life. For these slaves, manumission remained their sole prospect for freedom. In Connecticut, though the slaveholder's right to manumit was not established by statute, the norm was so powerful that Connecticut courts recognized it as a common-law right. As the supreme court of errors phrased it, manumission was "necessarily incident to the relation of master and slave."⁵¹ According to the court, historical analysis confirmed that the right to emancipate inhered in the right to enslave:

Slavery has existed in almost every country on the globe, whether *Heathen, Jewish* or *Christian*, from periods so remote, that its origin is, perhaps, beyond the definite researches of history; but it is not known that any where, the code of slavery has been so unrelenting as to deny to the master the humane power of emancipation⁵²

Thus, the court concluded, the right to manumit existed independent of statutory authorization. So long as the legislature did not regulate or repeal this right, nothing "impaired the right of the master to give entire freedom to his slave at any time."⁵³

In late eighteenth-century Connecticut, masters manumitted their slaves for a variety of reasons. Some masters sought to reward their slaves for faithful service. Other masters permitted slaves to purchase their freedom or

51. Colchester v. Lyme, 13 Conn. 274, 277 (1839).

52. *Id.*

53. *Id.*

permitted free people to purchase their enslaved relatives. Still other masters manumitted their slaves because the masters came to believe that slavery was unjust or unholy. For example, in 1791, when the Reverend Jonathan Todd of Guilford posthumously freed his slaves in his will, he explained, "I have long been convinced . . . that the enslaving of the Africans brought from Africa or those born in this country is unjust; and it is one of the sins of the land, and I would endeavor to free my estate from the cry of such a sin against it."⁵⁴

During the Revolutionary era, as Americans proclaimed the natural rights of man, a number of Northern slaveholders "yielded to the logic of the Revolution" and manumitted their slaves.⁵⁵ For example, when he liberated his slave, Abijah Holbrook of Torrington explained that he believed that "all mankind by nature are entitled to equal liberty and freedom."⁵⁶ In 1778, Rachel Johnson of Wallingford emancipated her slave stating simply, "I believe all mankind should be free."⁵⁷

A substantial number of Connecticut slave owners manumitted their slaves during the Revolution, but not all did so on the basis of high principle. Some masters freed their slaves only on the condition that the slave fight for the cause of American independence. For example, John Wright and Luke Fortune agreed to free their slave Abner Andrews, and, in return, Andrews agreed to enlist in the Continental Army.⁵⁸ Some masters allowed slaves to use the wages they earned as soldiers to purchase their freedom. For example, in 1777 a slave, Pompey Edore, enlisted in the Continental Army with the consent of his master Peter Tyler. Edore agreed to pay Tyler a portion of his wages and in return, Tyler agreed to emancipate Edore.⁵⁹ Under a law that allowed individuals to avoid service if they produced a substitute, a number of masters fulfilled their military obligations by freeing their slaves and permitting the slaves to serve in their stead.⁶⁰ By some estimates, several hundred Connecticut slaves gained their freedom through their service in the armed forces during the Revolutionary War.⁶¹

54. BERNARD CHRISTIAN STEINER, A HISTORY OF THE PLANTATION OF MENUNKATUCK AND OF THE ORIGINAL TOWN OF GUILFORD, CONNECTICUT 355 (Baltimore, B.C. Steiner 1897).

55. IRA BERLIN, MANY THOUSANDS GONE 232 (1998).

56. Steiner, *supra* note 8, at 439.

57. MARY HEWITT MITCHELL, 1 HISTORY OF NEW HAVEN COUNTY CONNECTICUT 419 (1930).

58. 2 THE MEMORIAL HISTORY OF HARTFORD COUNTY, CONNECTICUT 1633-1884, at 475 (J. Hammond Trumbull ed., Boston, Edward L. Osgood 1886).

59. Private Act of 1790, in 7 PUB. REC. ST. CONN., *supra* note 46, at 198, 198-99 (1948).

60. ZILVERSMIT, THE FIRST EMANCIPATION, *supra* note 3, at 122-23.

61. MCMANUS, *supra* note 5, at 155.

2. *The Manumission of State-Owned Slaves*

Although manumissions were generally executed by individual masters, during and after the Revolutionary War, the state itself became the owner of slaves and, as such, exercised its prerogative to manumit. For example, when Connecticut confiscated the property of a loyalist, Jeremiah Leming of Norwalk, Leming's slave Pomp petitioned the General Assembly for his freedom. In October 1779, as the state prepared to sell Leming's property, the Assembly determined that Pomp ought not be "continued in slavery by an act of government," or "sold for the benefit of the State."⁶² And, thus, the Assembly resolved that Pomp be emancipated.⁶³ Since Leming's estate had been seized and the state had effectively become Pomp's new master, the Assembly apparently saw no need to seek Leming's approval before it manumitted Pomp.

In other situations, however, the state declined to manumit slaves it acquired when it confiscated the property of a loyalist. When Connecticut seized the estate of William Brown,⁶⁴ the inventory included a number of slave children, who, with the help of Benjamin Huntington, an administrator appointed to manage the estate, petitioned the legislature for their freedom. The petition stated that though the children had "flat noses, crooked shins, and other queerness of make, peculiar to Africans," they "are yet of the human race," and hoped that their "good mistress, *the free State of Connecticut*," would not sell "friends of the freedom and independence of America" in order to "raise cash" to support the war effort.⁶⁵ The Assembly rejected their petition and eventually ordered that the "Sundry small Negro Children" belonging to the estate be bound out by the Judge of Probate for the District of Norwich "at his Discretion in such manner as to Save the Publick from Cost."⁶⁶ In addition to protecting the state coffers from the costs of caring for such dependents, the Assembly also seems to have believed that Brown's former slaves would benefit from bondage, as this would ensure that the slave children would be "well Governed and educated."⁶⁷

62. Private Act of 1779, in 2 PUB. REC. ST. CONN., *supra* note 46, at 427, 427-28 (1895).

63. *Id.*

64. His surname is spelled "Brown" in some documents and "Browne" in others.

65. GEORGE LIVERMORE, AN HISTORICAL RESEARCH RESPECTING THE OPINIONS OF THE FOUNDERS OF THE REPUBLIC ON NEGROES AS SLAVES, AS CITIZENS, AND AS SOLDIERS 117 (Burt Franklin 1968) (4th ed. 1862).

66. Private Act of 1784, in 5 PUB. REC. ST. CONN., *supra* note 46, at 303, 303 (1943).

67. *Id.*

3. *Court-Ordered Manumissions*

While manumission was generally understood to be a right possessed by a master that he could choose to exercise at his discretion, Connecticut courts occasionally ordered the manumission of a slave notwithstanding the master's objection. In *Geer v. Huntington*,⁶⁸ for example, the superior court examined the case of a "negro boy" born a slave for life whose mistress, Mrs. Stanton, had promised him that "he should be free at twenty-five years of age" and that he "should be a servant to nobody but to her."⁶⁹ Apparently Mrs. Stanton changed her mind, as she subsequently sold the slave to another master. When the slave reached the age of twenty-five, he insisted that he was free "by force of a manumission" by Mrs. Stanton.⁷⁰ In response, Geer, the slave's new master, brought an action for the slave's services. The court, however, found Mrs. Stanton's declaration that her slave should be free at the age of twenty-five "amounted to a manumission" at that age, and the court proclaimed the slave a free person.⁷¹

The *Geer* decision appears to establish the precedent that, once made, a master's pledge to manumit her slave cannot be revoked. Admittedly, there is little reason to believe that many slaves were liberated as a result of the *Geer* rule; it seems unlikely that many masters would have promised to manumit their slaves but subsequently changed their minds. To *Geer*'s slave, however, the decision was monumental.

The judiciary manumitted slaves over the objection of their masters in other cases as well. In one case, the superior court seemed to go even further than it did in *Geer*: It liberated a slave though the master had never expressed an intent to manumit that slave. The case, *Arabas v. Ivers*,⁷² involved a slave named Jack who, with the consent of his master, Ivers, enlisted in the Continental Army during the Revolutionary War. Upon Jack's discharge, Ivers reclaimed Jack as his slave. Jack fled, Ivers pursued him, and eventually Jack was taken into custody by the jailer of New Haven. The superior court issued a writ of habeas corpus to determine the

68. 2 Root 364 (Conn. Super. Ct. 1796).

69. *Id.* at 364.

70. *Id.*

71. *Id.* Although Connecticut's legendary court reporter, Judge Jesse Root, included a summary of the case in his *Reports*, no transcript of the court's opinion has survived. Thus, one can only speculate as to the reasoning the court employed to reach its result. The decision appears to stand for the proposition that a mistress's promise to manumit her slave voluntarily at a given age was in fact a contract that bound the mistress to do so. Understanding the decision in contractual terms does, however, present some problems. In the *Geer* case, what did the slave give Mrs. Stanton as consideration? Since Mrs. Stanton was already entitled to the slave's labor for life prior to her promise of manumission, surely that labor could not have constituted consideration. If the court was relying on some sort of contract theory, was the court suggesting that Connecticut slaves possessed contractual rights that their masters were bound to respect?

72. 1 Root 92 (Conn. Super. Ct. 1784).

grounds of Jack's imprisonment. After a hearing, the court held that Jack had been "absolutely manumitted from his master by enlisting and serving in the army." The court therefore ordered that Jack be released from prison "on the ground that he was a freeman," not a fugitive slave.⁷³

Like the *Geer* case, the full opinion of the court in *Arabas* has not survived, and, as a result, the *Arabas* case raises as many questions as it answers. Was the court's decision simply a reward for Jack's service to the cause of American independence? Or, was the court suggesting that a master who allowed a slave to enlist and fight made an implied promise to manumit that slave? If one understands a master's consent to his slave's enlistment as an implied promise of manumission, then the *Arabas* case begins to look like a companion case to *Geer*. The latter stands for the proposition that a master may not revoke her explicit promise to manumit her slave, the former for the proposition that a master may not revoke his implicit promise to do the same. Of course, the implicit promise theory of the *Arabas* case raises the question of why a master's consent to his slave's enlistment in the Continental Army should be viewed as an implied promise to manumit. One explanation may be that during the Revolutionary War it was common for masters to free their slaves in return for their slaves' service in the Continental Army. Since masters commonly manumitted slaves in return for military service, the court in *Arabas* may have reasoned that a promise to manumit was implied whenever a master gave his slave permission to enlist. Alternatively, the *Arabas* result might be understood as establishing the principle that a slave is no longer a slave if he lives free of his master's authority for an extended period of time with his master's consent. According to this line of reasoning, Jack's military service with Ivers's consent would constitute a manumission, because, while enlisted, Jack lived beyond the authority of Ivers. Whatever the legal principle that underlay the court's decision in *Arabas*, the case both reflected and reinforced the general conviction that slaves who served in the Revolutionary War should be manumitted. This custom of manumission for military service was one of the few ways that Connecticut slaves born prior to March 2, 1784, could become free.

Although Connecticut courts occasionally ordered slave manumissions over the objection of the slave's master, in other cases Connecticut courts suggested that a slave could not be manumitted without his master's consent. For example, in the 1820 case *Town of Columbia v. Williams*,⁷⁴ before determining whether the heirs of William Williams, Esq., were liable for the care of the decedent's slave Adam, the supreme court of errors first considered whether Adam was a slave or a freedman. Plaintiff's counsel

73. *Id.* at 93.

74. 3 Conn. 467 (1820).

argued that a slave “*at large*,” that is, a slave “*not under the controul of his master*,” is “a slave set at liberty.”⁷⁵ Thus, according to the plaintiff, when a slave’s master died and the master’s heirs failed to claim the slave and exert authority over him, the slave became manumitted and no longer a slave. The court, however, disagreed. It explained:

[W]hen no authority is exercised over a slave, and he is suffered, without restraint, to reside or migrate where he pleases he *in fact* is free, and will continue so, until his master shall resume the government, which he has suspended; but the slave has not been “set at liberty.” This expression denotes the putting of him in a permanent condition of freedom, and implies the *extinguishment of the right*, which the master had over his slave, and not the mere temporary cessation of actual authority.⁷⁶

The court, in essence, determined that the condition of slavery was defined by more than the mere de facto exertion of authority by a master over one in bondage. “Slave” was a formal legal identity. The mere failure of a master to exert control over a slave was not sufficient to terminate the master-slave relationship nor was that failure sufficient to transform a slave into a free person in the eyes of the law.

The result of *Town of Columbia* undoubtedly disappointed Adam, who discovered that, although he had been living as a free man for some time, he remained in bondage, subject to the authority and control of William Williams’s heirs. But the court’s opinion had broader implications for Connecticut slaves and slave masters. It fortified a master’s right to his human chattel in a state that had eliminated its pass law some twenty-three years earlier.⁷⁷ The decision made clear that if a slave fled, eluded capture, and lived independently, this did not make the slave free. A master could resubjugate the slave at any time.

The principle, articulated in *Town of Columbia*, that a slave remained a slave until formally manumitted also meant that slaves who were living as free but had not been manumitted were abandoned property. As abandoned property, such slaves might be converted by others for their use. In 1789, Cesar, a “Negro,” and his wife Lowis, whose master had abandoned them during the Revolutionary War and moved to London, appealed to the General Assembly for protection from poachers who had been trying to seize them. Cesar and Lowis explained that they and their children lived “in continual fear of being secretly taken . . . and sold out of this State.”⁷⁸ To

75. *Id.* at 469.

76. *Id.* at 471.

77. The pass law is discussed in Section III.B as part of a more general discussion of Connecticut’s Slave Code and its repeal.

78. Private Act of 1789, in 6 PUB. REC. ST. CONN., *supra* note 46, at 531, 531-32 (1945).

protect themselves from conversion, Cesar and Lowis asked the Assembly that they and their children be “emancipated and declared free.”⁷⁹ Even if the General Assembly formally declared them free, Cesar and Lowis might still have been unlawfully seized and sold into slavery, but their appeal to the Assembly suggests that Cesar and Lowis believed that, as abandoned property, their status was even more tenuous.

4. *State Regulation of Manumission*

Despite the exceptional examples discussed above, in which the judiciary ordered the manumission of a slave without the master’s consent, for the most part, manumission remained the exclusive right of the master. But even as the state recognized the master’s right to manumit, so too the state regulated manumissions in a way that both protected the welfare of slaves and shielded localities from the expense of providing for manumitted slaves. An effect of these regulations was to discourage slaveholders from manumitting their slaves.

Since Connecticut law required localities to care for the destitute within their midst,⁸⁰ prior to state regulation of manumission, a slaveholder could manumit his slaves and the local town would be financially responsible if those slaves became destitute. Thus, a master could manumit his slave in order to escape the master’s norm-based obligation to provide a lifetime of care for the slave.⁸¹ A master could extract years of productive labor from a slave and then liberate the slave when the slave became old or otherwise enfeebled. By so doing, a master could shift the costs of caring for his unproductive slaves to localities.

To prevent this possibility, the General Court enacted a statute in 1702 requiring slaveholders who manumitted their slaves to bear the costs if those slaves became destitute. The law also extended this liability to the

79. *Id.* at 532.

80. As early as 1672, Connecticut established the principle that towns are responsible for maintaining their poor. 1 THE PUBLIC STATUTE LAWS OF THE STATE OF CONNECTICUT 552, 552 n.1 (Hartford, Hudson & Goodwin 1808).

81. In Connecticut, as elsewhere in America, the master-slave relationship was one of reciprocal obligations. The slave was expected to work for the master and the master was expected to provide sustenance and basic care for the slave. The supreme court of errors recognized and gave legal sanction to this long-standing social norm in *Town of East-Hartford v. Pitkin* when it said:

There is a binding obligation on the father to support his child until he arrives at twenty-one years of age. This is a duty prescribed by the law of nature. The child, in return, is bound to serve the parent until that period. On the same principle, the master is bound to support the slave, where slavery is tolerated, for the service which the slave is bound to render. . . . These principles rest on the common law. . . . [T]he common law obliges the master, if living, and his representatives, when he has deceased, to provide for the support of this slave.

8 Conn. 392, 396 (1831).

master's heirs, executors, or administrators.⁸² Although the measure discouraged masters from abandoning their manumitted slaves, it also had a chilling effect on manumissions. By holding a master responsible for the support of the slaves he liberated, the statute eliminated the primary benefit a master might expect from manumission. The statute made a master who manumitted his slave liable for the same costs as a slaveholder who did not, even though the master who manumitted gave up the benefit of his slave's labor. Under the law, even a compassionate master who wanted to manumit a relatively youthful and skilled slave might not do so, for fear that, decades in the future, he might be held responsible if that slave became sick or injured. Thus, while the 1702 law was intended to prevent masters from using manumission as a mechanism for abandoning old and otherwise unproductive slaves, its effect was to discourage manumissions generally, including manumissions of those slaves who were capable of supporting themselves.

In 1711, the legislature enacted a measure which provided further protection for freed slaves.⁸³ The law required the selectmen of each town to provide support to destitute freed slaves whose masters were unable or unwilling to provide for them. Thus, even if a master failed to fulfill his statutory responsibility to care for his freed slave, the freedman would not be entirely abandoned. The measure, in turn, allowed localities to sue the recalcitrant master to recover "all the charge and cost" of the relief the town provided to the freed slave "as in the case of any other debts."⁸⁴ By designating a way for towns to recoup the expense of caring for manumitted slaves, the law provided some financial protection to localities and their constituent taxpayers. However, localities were not fully protected from such financial burdens. If a master was unable to care for his freed slave because the master was himself destitute, the law required the locality to care for the freed slave even though the prospect of recompense was remote.

These measures remained unchanged for more than half a century until, in 1777, the General Assembly enacted an exception to the general principle that a master was responsible for the future care of the slaves he manumitted. The 1777 law allowed a master to apply to his local selectmen for a certificate exempting the master from responsibility for the care of a slave he intended to manumit. The selectmen were then expected to inquire into the physical abilities and moral character of the slave to be manumitted

82. Act of 1702, in 4 PUB. REC. COL. CONN., *supra* note 16, at 375, 375-76 (1868); *see also* An Act for Negro and Malatta Servants To Be Maintained by Their Masters (1703), in 4 PUB. REC. COL. CONN., *supra* note 16, at 408, 408 (1868) (reaffirming the 1702 Act).

83. An Act Relating to Slaves, and Such in Particular as Shall Happen To Become Servants for Time (1711), in 5 PUB. REC. COL. CONN., *supra* note 16, at 233, 233 (1870).

84. *Id.*

in order to determine that slave's prospects as a free person. In particular, the law directed selectmen to examine the "age, abilities, circumstances and character" of the slave and to ascertain whether or not the slave was of "good and peaceable life and conversation."⁸⁵ If a majority of the selectmen concluded that "it is probable" that the slave, if freed, would "be able to support his or her own person," and that freeing the slave was "consistent" with the slave's "real advantage," then the selectmen would issue a certificate discharging the master from the care of that slave once freed.⁸⁶ Conversely, the selectmen could refuse to grant such a certificate if they concluded that the slave was incapable of living a virtuous, independent, and productive life as a free person. If the selectmen refused to issue the master a certificate, the master could still manumit the slave, but the master would remain liable for the freed slave's relief.

Thus, the 1777 law did not abandon the principle that a master was financially responsible for the slaves he manumitted; the law merely provided an exception relieving masters from this responsibility if the slave was adjudged to be capable of becoming a self-sufficient free person. For slaves capable of living independent lives, the 1777 law represented a dramatic advance, for it gave their masters an economic incentive to manumit.

In 1792, the General Assembly enacted a law which changed the criteria certificate issuers used as they considered whether or not to exempt a master from the future care of a slave that he intended to liberate. The 1777 law had directed selectmen to weigh abstract factors like the "abilities, circumstances and character" of the slave and to speculate about the slave's future ability to support himself.⁸⁷ The 1792 law replaced these criteria with a more rigid standard that afforded certificate issuers less discretion. The 1792 Act specified that if the slave was between the ages of twenty-five and forty-five and "in good Health," the master should be granted a certificate, so long as upon an "Actual examination, of the Slave to be made free" the certificate issuers determined that the slave was in fact "desirous" of being liberated.⁸⁸ No longer did the law require certificate issuers to make subjective judgments about whether the slave had a "good

85. An Act in Addition to and Alteration of an Act Entituled An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1777), in 1 PUB. REC. ST. CONN., *supra* note 46, at 415, 415 (1894).

86. *Id.*

87. *Id.*

88. An Act in Addition to and Alteration of an Act Concerning Indian Mulatto, and Negro Servants and Slaves (1792), in 7 PUB. REC. ST. CONN., *supra* note 46, at 379, 379-80 (1948).

and peaceable life and conversation,” nor did they have to speculate about the slave’s future ability to support himself as a free person.⁸⁹

The 1792 law gave slaves a voice in the exemption process. Unlike the 1777 law, which required certificate issuers to assess whether freeing the slave was “consistent” with the slave’s “real advantage,” the 1792 law specified that they should ask the slave himself whether he desired to be freed. This effectively gave slaves the power to veto their own manumission, although how often slaves invoked this power is unclear.⁹⁰

In a more fundamental sense, however, the 1792 law represented a regression for slaves. Unlike the 1777 law, which allowed the certification of slaves who had the capacity to be self-sufficient regardless of their ages, the rigid age requirement of the 1792 law restricted certification to slaves between twenty-five and forty-five years old. Thus, the 1792 law limited the number of masters with an incentive to manumit. A master who sought to manumit a vigorous and healthy slave who was younger than twenty-five or older than forty-five might be discouraged from doing so because the master would remain liable for that slave’s care.

Evidence suggests that some masters who wanted to manumit their slaves decided against doing so because the slave was ineligible for a certificate of exemption. According to Connecticut historian Mary H. Mitchell, Nicholas Street professed a willingness to free his slave, Tom, if Street could have been cleared of his responsibility to care for Tom in Tom’s old age.⁹¹ In some instances, a master even seems to have been reluctant to allow a slave to purchase his freedom because the master feared that he would be held liable for that slave’s care in the future. For example, Hezekiah Edgerton of Norwich was only willing to allow his slave, Pomp Mendo, to purchase his freedom if Edgerton could do so in a way that made his estate “harmless from all Costs and expence.”⁹² Venture Smith’s master, Hempstead Miner of Stonington, allowed Smith to purchase his freedom, but demanded an “unreasonably high price” as insurance against the additional costs Miner would have to bear if Smith ever became

89. An Act in Addition to and Alteration of an Act Entituled an Act Concerning Indian, Molatto, and Negro Servants and Slaves (1777), in 1 PUB. REC. ST. CONN., *supra* note 46, at 415, 415-16 (1894).

90. According to the *North Haven Annals*, Hezekiah Miller’s slave Tom “refused” to be manumitted, presumably exercising his prerogative under the 1792 law. SHELDON THORPE, NORTH HAVEN ANNALS: A HISTORY OF THE TOWN FROM ITS SETTLEMENT IN 1680, TO ITS FIRST CENTENNIAL 1886, at 178 (New Haven, Price, Lee & Adkins Co. 1892). However, it is difficult to assess the accuracy of Thorpe’s portrait of Tom as preferring slavery over freedom. Thorpe also states that a slave in North Haven “in privilege so far exceeded his southern brother as to make his bondage in many cases merely nominal.” *Id.* at 176-77. Such comments suggest that Thorpe’s description of Tom may reflect a desire to downplay the harshness of slavery in Connecticut. On the other hand, it is possible that some slaves did prefer to remain in the reciprocal relationship of slavery rather than live as independent freed persons.

91. Mitchell, *supra* note 8, at 295.

92. Private Act of 1789, in 7 PUB. REC. ST. CONN., *supra* note 46, at 28, 28-29 (1948).

destitute. As a result, Smith spent additional months enslaved as he worked to earn the difference between the market price and the price that Miner demanded.⁹³

Occasionally a master who sought to manumit a slave that did not qualify for a certificate petitioned the General Assembly to pass a special bill exempting the master from future liability notwithstanding the 1792 law. For example, Isaac Mills of New Haven owned a slave girl, Dorcas, whom he wanted to manumit. Because Dorcas was under twenty-five years old, however, Mills could not obtain a certificate. Mills wrote to the General Assembly, and the Assembly passed a private act in 1801 granting Mills's request for an exemption on the condition that local officials first determine that Dorcas was in good health and desired to be made free. In other words, the private act allowed Mills to apply for a certificate as though Dorcas were between the ages of twenty-five and forty-five, although she was only "about Twenty one."⁹⁴

The legislature did not always grant such petitions, however. In 1800, Elnathan Mitchell of Washington wrote the Assembly requesting that he be permitted to apply to his local officials for a certificate though the slaves he sought to free were not yet twenty-five.⁹⁵ The Assembly rejected the petition, and Mitchell's slaves, aged nineteen to twenty-three, remained enslaved.⁹⁶ The principle that a master might be held liable for the future support of a slave he manumitted, and the age limits of the 1792 law that made getting an exemption from such liability difficult, extended the bondage of a number of slaves who would otherwise have been made free.

Whether with or without a certificate of exemption, a number of Connecticut masters did manumit their slaves during the late eighteenth and early nineteenth centuries, and this may partly explain the rapid decrease of Connecticut's slave population between 1790 and 1820.⁹⁷ For example, in 1795 Joel Blakeslee of North Haven manumitted his slave, Ben, after Blakeslee received a certificate confirming that Ben was between the ages of twenty-five and forty-five, "of a healthy Constitution," and "desirous of being Emancipated."⁹⁸ In 1799, Dr. Mather of Lyme manumitted his fifty-six year old slave Jenny, even though Jenny was too old to qualify for a certificate.⁹⁹ Although manumission represented a dream fulfilled for some

93. VENTURE SMITH, A NARRATIVE OF THE LIFE AND ADVENTURES OF VENTURE, A NATIVE OF AFRICA, BUT RESIDENT ABOVE SIXTY YEARS IN THE UNITED STATES OF AMERICA 22 (Middletown, Conn., J.S. Stewart 1897) (1798).

94. Private Act of 1801, in 10 PUB. REC. ST. CONN., *supra* note 46, at 369, 369-70 (1965).

95. Petition of Elnathan Mitchell (Oct. 1800) (unpublished document, on file in the Conn. State Archives, Misc. Papers, Ser. 2, Vol. 1, Doc. No. 92, Conn. State Library, Hartford, Conn.).

96. *Id.*

97. *See supra* text accompanying notes 21-23.

98. THORPE, *supra* note 90, at 177.

99. *See Colchester v. Lyme*, 13 Conn. 274, 275 (1839).

slaves like Ben and Jenny, other Connecticut slaves were not so fortunate. For them, liberation would come only in death.

Thus, the contraction of Connecticut's existing slave population in the decades after 1784 cannot be attributed exclusively to the Gradual Abolition Act or even to legislation more generally. The population of such slaves waned primarily through extralegal means—through death and voluntary manumissions.

One might argue that the Gradual Abolition Act of 1784 indirectly encouraged slaveholders to manumit their slaves. The Act pronounced the future-born children of Connecticut slaves free at the age of twenty-five, and, by so doing, the Act limited the value of slaves as propagators of future laborers. By eliminating this benefit that a master might expect to receive from his slave, the Gradual Abolition Act inadvertently made manumission a bit more likely.

For the most part, however, state action—in particular, state laws regulating manumission—hindered rather than promoted the liberation of existing slaves. But, even as one begins to appreciate the idiosyncratic means by which some slaves became free in the decades after the 1784 law, one must not lose sight of the experience of those who remained enslaved.

III. THE EXPERIENCE OF SLAVES AFTER THE GRADUAL ABOLITION ACT OF 1784

A. *The Fear of Being Exported*

Although the Gradual Abolition Act of 1784 did put slavery on the path to extinction, the law did little to improve the condition of Connecticut's slaves and may have increased the hardships of some. As we saw earlier, the Gradual Abolition Act did not free a single living slave. The law did provide that the future children of slaves would become free at the age of twenty-five, and this undoubtedly was a comfort to many. But the law also permitted and even encouraged Connecticut slaveholders to sell both slaves and the children of slaves “down river”—that is, to sell them at market to a resident of another state. To those Connecticut slaves who experienced such a fate, the Gradual Abolition Act was no cause for celebration.

From the perspective of slaves and those “in servitude” until the age of twenty-five, being exported from the state meant being wrenched from their homes and compelled to go to new and unfamiliar surroundings. It fractured the bonds linking an individual to his family and friends. Of course, the institution of slavery had always carried with it the potential for such disruption. But the Gradual Abolition Act encouraged masters to export their human chattel and thus made life in bondage less stable and more disorienting than it had been previously.

The Gradual Abolition Act imposed no limitations on the export of slaves, and the law gave Connecticut masters ample incentive to sell their slaves on the interstate market. Export simply was the best way for masters to protect their investment in human chattel from the devaluation that resulted from state regulation. Prior to March 1784, the children of slaves were themselves slaves for life, and masters were entitled to a life's worth of labor from these children. Because the Gradual Abolition Act provided that the future-born children of slaves could not be held "in servitude" past the age of twenty-five, the law drastically reduced the value of such children to their Connecticut masters. But in a state that had neither abolished slavery nor provided for emancipation at a given age, that child would continue to fetch a price that reflected a lifetime's worth of labor rather than a mere twenty-five years. By the same logic, the Gradual Abolition Act gave Connecticut masters a lesser but still significant incentive to sell slaves born prior to March 1784—that is, slaves for life—to investors from states without abolition or gradual abolition measures. After all, in such states, the progeny of slaves for life would be slaves for life, rather than merely "in servitude" until the age of twenty-five. Thus, even a slave born prior to March 1784 was more valuable in a state without an abolition law than that same slave was worth in Connecticut. In the aftermath of the 1784 law, masters were well aware of the advantages to be gained by exporting their slaves. As James Mars explained in his slave narrative: "[My master thought his] chattels . . . would fetch him in a southern market, at a moderate estimate, two thousand dollars; they would furnish him pocket change for some time" ¹⁰⁰

1. *Legislative Efforts To Prohibit the Export of Slaves*

In 1788, four years after the Gradual Abolition Act, the General Assembly took an initial step to curb the transport of those in bondage from the state. This measure, entitled "An Act To Prevent the Slave Trade," provided that any person who kidnapped, decoyed, or forcibly carried off a person entitled to his freedom at the age of twenty-five or who aided or assisted anyone who did so would pay a fine of £100 to the state. Furthermore, the law authorized "friends" of those "in servitude" until the age of twenty-five to prosecute such lawsuits and to collect such damages as the court shall judge "[j]ust and reasonable" for the use of the victim or his family. ¹⁰¹ A year later, the General Assembly offered the general public an incentive to prosecute such suits, when it amended the Act so that half of

100. JAMES MARS, LIFE OF JAMES MARS, A SLAVE BORN AND SOLD IN CONNECTICUT 7 (Hartford, Case, Lockwood & Co. 1865).

101. An Act To Prevent the Slave Trade (1788), in 6 PUB. REC. ST. CONN., *supra* note 46, at 472, 472-73 (1945).

the £100 fine would be rewarded to the prosecutor himself.¹⁰² To further protect those “in servitude” from clandestine transport across state lines, the 1788 law included a provision requiring Connecticut slaveholders to register with the clerks of their towns the name, age, and sex of every child born to a slave after March 1, 1784. Masters who failed to do this within six months of the law’s enactment or within six months of a subsequent child’s birth would be fined forty shillings for each month they were in neglect.¹⁰³

It was not until 1792 that the legislature enacted similar legislation to protect slaves for life from being exported. The law imposed a corresponding £100 fine on those who carried slaves out of the state for the purposes of sale; those who bought or sold slaves with the intent to transport them out of the state; those who sold slaves previously transported out of the state; and those who aided, assisted, or abetted any of the above. The law also declared void all notes or other payments for slaves bought or sold in violation of the law.¹⁰⁴ Unlike the 1788 nonexportation law, however, the 1792 law did not require slaveholders to register their slaves with local authorities, and therefore it may have remained easier for traffickers to transport slaves out of the state illegally than for traffickers similarly to transport those “in servitude.”¹⁰⁵

2. *Exceptions to and Transgressions of the Nonexportation Laws*

Both the 1788 law protecting those “in servitude” until the age of twenty-five from export and the 1792 law protecting slaves for life from export contained exceptions that authorized the interstate transport of such individuals under some circumstances. Both laws explicitly permitted slaveholders “removing out of this State for the purpose of residence” to carry or transport those bound to them with them.¹⁰⁶ In 1798, when the Reverend Thompson of North Canaan decided to relocate to Virginia, it is

102. An Act in Addition to an Act Entitled An Act To Prevent the Slave Trade (1789), in 7 PUB. REC. ST. CONN., *supra* note 46, at 71, 71 (1948).

103. An Act To Prevent the Slave Trade (1788), in 6 PUB. REC. ST. CONN., *supra* note 46, at 472, 473 (1945).

104. An Act in Addition to an Act Entitled An Act To Prevent the Slave Trade (1792), in 7 PUB. REC. ST. CONN., *supra* note 46, at 379, 379 (1948).

105. Compare An Act To Prevent the Slave Trade (1788), in 6 PUB. REC. ST. CONN., *supra* note 46, at 472, 472-73 (1945), with An Act in Addition to an Act Entitled An Act To Prevent the Slave Trade (1792), in 7 PUB. REC. ST. CONN., *supra* note 46, at 379, 379 (1948). In 1793, the General Assembly considered but failed to enact a law that would have required masters to register their slaves with local authorities. Proposed Bill Requiring That All Owners of Slaves Within the State Make a Return of These Slaves to Selectmen of the Town in Which They Reside Before September Next (1793) (unpublished document, on file in the Conn. State Archives, Misc. Papers, Ser. 2, Vol. 1, Doc. No. 54, Conn. State Library, Hartford, Conn.).

106. An Act To Prevent the Slave Trade (1788), in 6 PUB. REC. ST. CONN., *supra* note 46, at 472, 472-73 (1945); An Act in Addition to an Act Entitled An Act To Prevent the Slave Trade (1792), in 7 PUB. REC. ST. CONN., *supra* note 46, at 379, 379 (1948).

presumably under this exception to the 1788 statute that Thompson sought to bring the eight-year-old James Mars with him. Thompson sought to bring Mars's parents as well, presumably under a similar exception to the 1792 Act. Although Thompson suggested that he ultimately planned to sell Mars and his family once they reached Virginia, such a sale would not have constituted a transgression of the law.¹⁰⁷ The exceptions to the Nonexportation Acts did not prohibit a master who relocated from disposing of his slaves and those "in servitude" if he so chose. Despite the general prohibition on exportation, the law offered no protection from export and subsequent sale to slaves whose masters relocated outside the state.

Although some masters removed their slaves and those "in servitude" from the state legally—pursuant to the relocation exceptions written into the 1788 and 1792 Nonexportation Acts—other masters deceitfully cited the exceptions in an effort to conceal their illicit traffic in human chattel. For example, in 1795 the Superior Court of Connecticut heard the appeal of an action brought against Nickols, a man accused of removing two black children from the state in violation of the 1788 Nonexportation Act.¹⁰⁸ At trial, Nickols admitted that he had carried the children to Virginia, but he claimed that this was permissible because he intended to resettle there himself. As evidence that he now resided in Virginia, Nickols produced a number of depositions, one certifying that he had paid taxes in Virginia and one confirming that his name appeared on the state's militia rolls. Since this evidence suggested that Nickols had, in fact, relocated to Virginia and therefore was not in violation of Connecticut's slave trade laws, the jury acquitted.¹⁰⁹ But faced with new evidence that Nickols's depositions were fraudulent and that he had not gone to Virginia "for the purpose of settling," but rather "for the purpose of trafficking, and trading in land and negroes," the Superior Court of Connecticut ordered a new trial.¹¹⁰

Isaac Hillard,¹¹¹ the citizen who prosecuted Nickols, brought lawsuits against several other individuals for violations of the 1788 and 1792 laws. For example, in 1796 he brought two actions against Stephen Betts of Reading before the county court in Danbury for selling or transporting Tamer, a "Negro Woman," and Amos, a "Negro Boy," into New York in violation of the nonexportation laws.¹¹² That same year, Hillard brought cases against Hezekiah Sanford of Reading and Benjamin Dean of Ridgefield for similar offenses.¹¹³ And in 1797 he brought actions against

107. MARS, *supra* note 100, at 6-8.

108. *Hylliard v. Nickols*, 2 Root 176, 176-77 (Conn. Super. Ct. 1795).

109. *Id.* at 176.

110. *Id.* at 177.

111. His surname is spelled "Hylliard" in some documents and "Hillard" in others.

112. Private Act of 1796, in 8 PUB. REC. ST. CONN., *supra* note 46, at 463, 463 (1951).

113. *Id.*

Jeremiah Bates of Stamford and Salla Pells of Danbury, among others.¹¹⁴ The proximity of Danbury (six miles), Stamford (ten miles), Ridgefield (two miles), and Reading (fifteen miles) to the border of New York—a state that had yet to pass a law providing for the abolition or gradual abolition of slavery¹¹⁵—suggests that the allure of selling one’s chattel increased and the fear of getting caught diminished the closer one lived to the state line. While the dogged Hillard hauled Nickols, Betts, Sanford, Dean, Bates, and Pells into court to answer for their apparent legal transgressions, it is not clear how frequently citizens brought such suits. Citizen-prosecutors who proved victorious were awarded one-half of the £100 fine, but this prospective bounty may not have proved sufficient to compensate individuals for the considerable expense of bringing such actions. Hillard himself petitioned the General Assembly on at least four separate occasions, asking the Assembly to award him the state’s portion of the £100 fine (in addition to his own) because of the “extraordinary Cost Trouble and expence” of bringing such suits.¹¹⁶

Most of those in bondage in Connecticut were probably unaware of the vagaries and fine points of the Nonexportation Acts. Those who were transported from the state suffered the same rending of bonds with family and friends whether they were transported prior to the enactment of the Nonexportation Acts, pursuant to them, or in violation of them. Just as significantly, Connecticut slaves and servants lived in constant fear of displacement, whether they ultimately experienced such a fate or not.

When the Reverend Thompson announced his intention to relocate his household to Virginia, James Mars and his family became anxious. They accepted the conventional wisdom that slavery was a more callous institution in the South than it was in Connecticut. They worried that, in Virginia, their master would put them up for sale—and with sale came the risk of family dissolution. James himself, born in 1790, had even more at stake than his parents: In Connecticut he was entitled to his freedom at the age of twenty-five; in Virginia he would be a slave for life. Just hours before they were to depart for Virginia, James and his family fled. They lived as fugitives, hiding in the homes of sympathetic neighbors, moving from town to town, one step ahead of Reverend Thompson and the vigilantes that sought their capture. Finally, Thompson acquiesced. He freed James’s parents, sold James to a Norfolk, Connecticut, farmer, and moved to Virginia without them. James’s parents found a home nearby, and

114. Private Act of 1797, in 9 PUB. REC. ST. CONN., *supra* note 46, at 74, 74 (1953).

115. New York did not pass a law providing for the gradual abolition of slavery until 1799. *See supra* note 4.

116. Private Act of 1797, in 9 PUB. REC. ST. CONN., *supra* note 46, at 124, 124-25 (1953); Private Act of 1797, in 9 PUB. REC. ST. CONN., *supra* note 46, at 74, 74 (1953); Private Act of 1796, in 8 PUB. REC. ST. CONN., *supra* note 46, at 463, 463-64 (1951); Private Act of 1793, in 8 PUB. REC. ST. CONN., *supra* note 46, at 123, 123-24 (1951).

James was permitted to visit with them once every few weeks.¹¹⁷ Because of the powerful incentives that masters had to export those bound to them, many of Connecticut's slaves and servants were not so lucky.

B. *The Slave Code and Its Repeal*

1. *A Legal Regime To Control and Manage Slaves*

Although the Gradual Abolition Act of 1784 ushered in an era of new fears and new opportunities for slaves, in other respects slave life remained unchanged. In particular, under the law, slaves remained subject to the Slave Code—an elaborate legal regime that sought to control and manage slaves through broad restrictions on their conduct that supplemented the social norm and common-law rule that slaves were subject to the will and discretion of their masters.

The Slave Code regulated slave life and wrested from slaves many of the most basic human freedoms. One law prohibited any “Negro, Molatto or Indian Servant or Slave” from being “abroad from Home” after nine o'clock at night without “special Order” from his master.¹¹⁸ Violators were to be publicly whipped “on the naked Body, not exceeding ten Stripes,” and were required to pay the costs of court.¹¹⁹ Another provision prohibited slaves from selling or giving to others any “Money, Goods, Merchandizes, Wares or Provisions” if it “appear they were stolen.” The punishment was a whipping, “not exceeding thirty Stripes.”¹²⁰ Furthermore, the law forbade free people from buying or receiving money or goods from a slave without permission from the slave's master.¹²¹ Harsh penalties imposed on those who acquired goods from a slave without the consent of the slave's master meant that slaves had to seek out their master's approval before they sold or traded their own possessions. As a result, even those few personal effects that slaves legally acquired became subject to the control of their masters.

Perhaps the Slave Code's most comprehensive effort to control slaves and protect masters' property was the pass law, a measure which enabled all free persons to regulate the movement of slaves. The law declared that any “Negro, Molatto or Indian Servant or Servants” who were “found wandering out of the Bounds of the Town or Place to which they belong” without a pass from their master or the local authority would be “deemed and accounted to be Run-aways, and may be treated as such.” The law

117. MARS, *supra* note 100, at 19-22.

118. An Act Concerning Indian, Molatto, and Negro Servants and Slaves (1784), *in* 1784 ACTS AND LAWS OF CONNECTICUT, *supra* note 4, at 233, 234.

119. *Id.*

120. *Id.* at 233.

121. *Id.*

empowered all inhabitants of the state to “seize and secure” suspected runaways and instructed them to bring such suspects to the local authorities so that the suspects might be “examined and returned to [their] Master[s].”¹²² In order to hinder fugitives, the law also specifically prohibited “Ferry-men” from carrying slaves without a pass. Violators would be fined twenty shillings.¹²³ While the pass law undoubtedly made matters difficult for fugitives, it also chilled a significant amount of harmless conduct. By refusing to issue his slave a pass, a mistrustful or callous master could prevent his slave from using his small amount of free time to attend church or visit friends and relatives in a nearby town. Perhaps that was the intended effect: to ensure that a slave, even in his unassigned time, could not traverse from one location to another without the explicit permission of his master.

A number of provisions of the Slave Code could be enforced not only by officers of the law, but by all free persons. In this sense, the Slave Code made all free people the communal masters of all slaves. For example, the law that prohibited slaves from being away from home after nine o’clock at night made it lawful for “any Person or Persons[] to apprehend and secure” offenders and bring them before the justice of the peace.¹²⁴ Similarly, the pass law essentially deputized all free persons and empowered them to stop and interrogate any slave, and, when appropriate, to apprehend the slave and deliver him to law enforcement officials.¹²⁵ Even carrying a pass did not protect slaves from the initial harassment of being stopped and accosted—perhaps by a total stranger—and forced to produce a pass. Under such circumstances, the simple act of walking down the street must have inspired fear in slaves.

2. *The Repeal of the Slave Code*

In 1797, without expression of moral principle—indeed, without any explanation at all—the General Assembly dismantled the Slave Code.¹²⁶ The decision was a remarkable one. It symbolized the withdrawal of state support for the institution of slavery itself. Masters still benefited from the

122. *Id.*

123. *Id.*

124. *Id.* at 234.

125. *Id.* at 233.

126. The repeal of the Slave Code actually annulled portions of three separate laws. An Act To Repeal Part of an Act Entitled “An Act for the Punishment of Defamation” (1797), in 9 PUB. REC. ST. CONN., *supra* note 46, at 91, 91-92 (1953); An Act To Repeal Certain Paragraphs of an Act Entitled, “An Act Concerning Indian, Mulatto, and Negro, Servants, and Slaves” (1797), in 9 PUB. REC. ST. CONN., *supra* note 46, at 92, 92 (1953); An Act To Repeal Part of an Act Entitled, “An Act Against Breaking the Peace” (1797), in 9 PUB. REC. ST. CONN., *supra* note 46, at 92, 92 (1953). The full text of the repeal consists of six sentences and mentions the word “slavery” but once.

common-law prerogatives associated with the ownership of human chattel, but, in a sense, the repeal left masters to manage their slaves on their own. Connecticut would continue to tolerate slavery for another half century, but it would no longer fortify slavery through its positive law. For slaves themselves, the repeal of the Slave Code loosened the bonds of their condition, if only a little. To be sure, slaves remained chattel. They remained bound to their masters. But no longer did the law subject slaves to interrogation by any person they encountered. Unlike the Gradual Abolition Act of 1784, which left the status and condition of living slaves unchanged, the repeal of the Slave Code in 1797 removed many of the statutory burdens of slavery, and thus allowed slaves a taste of what had been the exclusive privileges of freedom.

IV. THE LIMINAL STATUS OF THOSE “IN SERVITUDE”

Even for those unborn, future children of slaves to whom the 1784 Gradual Abolition Act promised freedom, the law did not secure immediate, unconditional emancipation, but rather held them “in servitude” until the age of twenty-five. Such individuals lived in a state of temporal bondage; they would have to wait decades to realize their latent liberty. Furthermore, because the meaning of the term “in servitude” was unsettled, and the rights and obligations attendant to it contested, even those who lived “in servitude” could not know its contours. In short, such individuals lived in a liminal state—not quite slave and not yet free.

In part, the contested nature of the servitude provision mirrored the multiple denotations of the word in eighteenth-century Connecticut. At times, the word “servant” referred to indentured servants; at other times, the word was used as a synonym (or a euphemism) for “slave”; still other times, the word referred to unfree labor generally—that is, collectively, to slaves and those bound under various forms of apprenticeship and indenture.¹²⁷

The purpose of the servitude provision of the 1784 law was also contested. Some viewed the servitude provision as a paternalistic measure designed to ensure that the children of slave mothers would be cared for until they were old enough to care for themselves. After all, an enslaved woman who was bound to work for her master and who generally received no wages for her work could not raise her child herself. Others viewed the servitude provision as a property-rights measure designed to mitigate the

127. 1 JOHN CODMAN HURD, *THE LAW OF FREEDOM AND BONDAGE IN THE UNITED STATES* 331 (Boston, Little Brown & Co. 1862) (“It is also highly probable that . . . the term ‘servants’ was taken to include Negro slaves.”); 1 *CONNECTICUT AS A COLONY AND AS A STATE, OR ONE OF THE ORIGINAL THIRTEEN*, *supra* note 26, at 503 (noting that “servants” may mean slaves or indentured servants).

property loss that masters experienced as a result of gradual abolition. According to this view, by emancipating the children of slaves at age twenty-five, the *post nati* provision of the 1784 law represented a taking of the master's chattel. After all, prior to the law, the child of a slave was the master's property for that child's entire life. Allowing masters to hold the children of slaves "in servitude" until the age of twenty-five partially mitigated the economic loss slaveholders experienced as a result of gradual abolition. According to a third view, which combined elements of the previous two, the servitude provision was a compensatory measure: The provision ensured that the children of slaves would be reared responsibly, but recognized that such rearing represented a considerable expense for which the child should compensate the master through labor. Given these textual and purposive ambiguities, it should come as no surprise that individuals disagreed about the impact of the servitude provision on the rights and duties of those "in servitude."

A. *Exposing the Implications of the Servitude Provision*

1. *Windsor v. Hartford and the Status of Those "in Servitude"*

The case of *Windsor v. Hartford*¹²⁸ reflects the contested nature of the servitude provision in the aftermath of the 1784 law. The case centered around Fanny Libbet, an "illegitimate" child born in Hartford in 1785 to Sarah, a slave of Jonathan Butler. When Fanny was three years old, Butler gave Fanny to his son Frederick, an inhabitant of Wethersfield. At the age of twenty-five, Fanny became free and moved to Windsor.¹²⁹ Soon after she arrived in Windsor, Fanny became a pauper, and the town of Windsor eventually sued the town of Hartford for the cost of her care. In order to decide which town should care for Fanny (under a law that required each town to care for paupers who had legal settlements within that town),¹³⁰ the supreme court of errors first found it necessary to determine in which town Fanny had a legal settlement. This question, in turn, required the court to establish the exact nature of the servitude in which Fanny had lived between her birth and age twenty-five, as traditionally, slaves took the settlement of their masters. Counsel for the town of Windsor, the plaintiff, contended that "Fanny never was a slave,"¹³¹ and thus, Fanny's settlement must, by birth, be in Hartford. Counsel for Hartford, the defendant, argued

128. 2 Conn. 355 (1817).

129. Fanny may have moved to Windsor in order to be with her mother, Sarah, who had been sold to a Windsor master and subsequently emancipated. *See id.* at 355.

130. An Act for Maintaining and Supporting the Poor (1808), in 1 THE PUBLIC STATUTE LAWS OF THE STATE OF CONNECTICUT, *supra* note 80, at 552, 552-55.

131. *Windsor*, 2 Conn. at 356.

that Fanny's condition until the age of twenty-five "was such that her master was as much bound to support her as one who is a slave for life."¹³² Therefore, the defendant argued, Fanny's master, Frederick Butler of Wethersfield, was responsible for Fanny.¹³³

The supreme court of errors sided with the plaintiff, concluding that Hartford was responsible for Fanny's care. In its brief opinion, the court provided the basic outline of its understanding of the legal status of those "in servitude." In particular, the court found that Fanny "never was a slave."¹³⁴ The court further explained that during her time with Frederick Butler (from the age of three until the age of twenty-five), Fanny was "to be considered on the footing of an apprentice, or minor, living in another town, by the consent of parents or guardians."¹³⁵

But others, including the children of slaves themselves, seem to have accepted the view that the court dismissed—that children of slaves were in fact slaves, at least for a time. In the subtitle to his autobiography, James Mars, born in 1790 to parents who were slaves, referred to himself as "a Slave Born and Sold in Connecticut."¹³⁶ According to the Gradual Abolition Act of 1784, Fanny Libbet and James Mars were members of the same legal caste. The fact that the supreme court ruled that Libbet was free, yet Mars felt that he was a slave, suggests that for those "in servitude" the distinction between slavery and freedom was blurred.

Examining the rights and duties attendant to being "in servitude" helps to confirm that under the law, the children born to slaves after 1784 were neither "on the footing of an apprentice," as *Windsor v. Hartford* suggests, nor slaves in the truest sense. Rather, they fell somewhere in between. Those "in servitude" like James Mars and Fanny Libbet shared one important characteristic with apprentices and indentured servants that clearly distinguished them from slaves: Those "in servitude" were bound to their masters for a fixed length of time, not for life. But, unlike apprentices and indentured servants, those "in servitude" did not labor under a formal contractual agreement that specified the obligations of both parties. Apprenticeship and indenture contracts generally specified the duties of the bound laborer—to be obedient and work diligently, for example. And the contract specified the reciprocal obligations of the master who often was expected to instruct the bound laborer in a trade and prepare him for his future status as a free and independent member of civil society.¹³⁷ Those who lived "in servitude" were not parties to such an agreement.

132. *Id.*

133. Alternatively, the defendant argued that if Fanny did not have a settlement with Frederick Butler, she had one with her mother in *Windsor*. *Id.*

134. *Id.*

135. *Id.*

136. MARS, *supra* note 100, at title page.

137. MELISH, *supra* note 3, at 77-78.

Furthermore, under the servitude provision, bondspeople gained their freedom four years later than apprentices typically did, and, unlike apprentices, servants were not compensated upon emancipation. These distinctions were not lost on James Mars, who wrote in his slave narrative:

I soon found out that I was to live or stay with the man until I was twenty-five. I found that white boys who were bound out were bound until they were twenty-one. I thought that rather strange, for those boys told me they were to have one hundred dollars when their time was out. They would say to me sometimes, you have to work four years longer than we do, and get nothing when you have done, and we get one hundred dollars, a Bible, and two suits of clothes. This I thought of.¹³⁸

2. *Windsor v. Hartford and the Rights and Privileges of Masters and Slaves*

Not only did the servitude provision of the 1784 Gradual Abolition Act render ambiguous the status of slave children, but it also rendered more uncertain the status of slaves themselves. In *Windsor v. Hartford*, when the court concluded that Fanny Libbet “never was a slave,” but rather was “on the footing of an apprentice” from birth until her unconditional freedom at age twenty-five, the court said that Fanny’s labor in another town ought to be considered as work “by the consent of parents or guardians.”¹³⁹ But to whose “consent” was the court referring? One could interpret the court’s opinion as suggesting that Fanny lived with Frederick Butler from the age of three until the age of twenty-five with the consent of Fanny’s mother Sarah. But if Sarah, a slave for life, had the power to consent to hiring out her daughter, did that imply that the 1784 law, by changing the status of the children of slaves, gave slaves control over their children “in servitude”? For slaves, such control would represent a dramatic advance. Prior to the *post nati* statute, the children of slaves were slaves. As a result, such children lived subject to the authority of their masters. If Fanny truly lived with and worked for Frederick Butler with Sarah’s consent, this fact suggests that Sarah could have withheld her consent. Sarah and those like her could have used this new authority to keep their families intact.

Of course, reading *Windsor v. Hartford* as recognizing the rights of slaves to control their children is only one of two reasonable readings of the opinion. After all, the court said that Fanny, while living with Frederick Butler, ought to be considered as an apprentice living in another town with the consent of “parents *or guardians*.”¹⁴⁰ Rather than implying that Fanny

138. MARS, *supra* note 100, at 23.

139. *Windsor*, 2 Conn. at 356.

140. *Id.* (emphasis added).

had been hired out to Frederick Butler with the consent of her mother Sarah, the court instead could have intended to suggest that Fanny had been hired out by Sarah's master, Jonathan Butler, who was in effect Fanny's "guardian" until the age of twenty-five. This reading of the court's opinion implies that those "in servitude" until the age of twenty-five lived not under the authority of their parents, but of their enslaved mothers' masters. This interpretation of the opinion certainly has less radical implications because it confers no new authority on slaves.

But if one accepts this more conservative understanding of *Windsor v. Hartford* as buttressing the powers of masters, the opinion raises a host of new questions about the status of those "in servitude." For example, if Jonathan Butler, as Fanny's initial guardian, had the power to give Fanny to his son Frederick, why did not Frederick become her guardian? In other words, why did Fanny live with Frederick "by the consent of her parents or guardians"?¹⁴¹ When a slave was sold or given by one master to another, the slave lived with the new master by that new master's right, not by the initial master's consent. Did this principle not apply to those "in servitude"? If Sarah had been sold to a new master, would the new master have had authority over Fanny, or would the authority have remained with Jonathan Butler, Fanny's master at birth? Perhaps the best way to explain the court's insistence that Jonathan Butler retained guardianship over Fanny is to conclude that the court assumed that Jonathan had not gifted Fanny to his son Frederick, but had merely let Frederick borrow Fanny on a continuing basis. However, this understanding of Fanny's transfer from Jonathan to Frederick seems in conflict with the court reporter's summary of the facts, which specifically states that Jonathan Butler "gave [Fanny], and with her the right to all her services" to his son Frederick.¹⁴² If Frederick had a "right" to all Fanny's services, the transfer begins to seem more like a permanent gift than a temporary loan.

Not only did one's interpretation of the servitude provision affect the rights of masters, slaves and those "in servitude," but it also affected the rights of free blacks. Because different family members could be emancipated at different times and through different mechanisms, or not be emancipated at all, the relationships between husband and wife, parent and child, and brother and sister could be transformed by external legal considerations. In 1785, the year Fanny Libbet was born, Fanny held a status that was, by most measures, marginally less constricted than that of her mother Sarah, who was a slave for life. According to the court, if not practical experience, Fanny "never was a slave,"¹⁴³ and the law clearly

141. *Id.*

142. *Id.* at 355.

143. *Id.* at 356.

promised Fanny her unconditional freedom at the age of twenty-five. In 1801, however, when Sarah was manumitted and became free, Fanny remained “in servitude.” Under a traditional slave regime, it was understandable—indeed it was axiomatic—that an enslaved parent would not have control or authority over his or her child. But it was equally axiomatic for a free parent to have control over his or her child. Fanny’s continued bondage to Frederick Butler, even after Sarah was manumitted, meant that Sarah’s freedom was qualified. If one of the primary hardships of slavery was the destruction of family and familial rights, then for Sarah, no doubt one of the great promises of emancipation was the right to try to reconstruct such family ties. Because the servitude provision of the Gradual Abolition Act left her daughter Fanny bound to the Butlers, Sarah was deprived of one of the main ingredients of freedom. Sarah was no longer enslaved, but she was not free.

B. *The 1797 Amendment and Further Uncertainty*

To complicate matters further, in 1797 the legislature amended the Gradual Abolition Act of 1784 in order to reduce the age at which the child of a slave was entitled to freedom from twenty-five to twenty-one.¹⁴⁴

While the 1797 law applied prospectively to those children born to slaves on or after August 1, 1797, it did not apply retroactively to those born prior to that date. Thus, after the enactment of the 1797 law, the child of a Connecticut slave could—depending upon his date of birth and the status of his parents—belong to one of four different castes, each with a different legal status: (1) A child born to a female slave prior to March 2, 1784, was, under the law, a slave for life; (2) a child born to a female slave between March 2, 1784, and August 1, 1797, could be held “in servitude” until the age of twenty-five; (3) a child born to a female slave after August 1, 1797, could be held “in servitude” until the age of twenty-one; (4) a child born to a male slave and a free woman was free at birth (as Connecticut had long embraced the common-law doctrine of *partus sequitur ventrem*, the principle that the slave follows the condition of his mother).¹⁴⁵

Like so much of the law regarding the children of Connecticut slaves, the twin servitude provisions of 1784 and 1797 proved confusing to

144. An Act in Addition to an Act, Entitled, An Act Concerning Indian Mulatto and Negro Servants and Slaves (1797), in 9 PUB. REC. ST. CONN., *supra* note 46, at 38, 38 (1953).

145. The principle that a Connecticut slave followed the condition of his mother was affirmed by the General Court at least as early as 1704 when it ruled that Abda, whose mother was a slave and whose father was English, was a slave. Documents regarding the status of Abda (1702-1704) (unpublished documents, on file in the Conn. State Archives, Misc. Papers, Ser. 1, Vol. 2, Doc. No. 10-21, Conn. State Library, Hartford, Conn.).

individuals trying to navigate the legal landscape. In 1811, James Mars's master, Mr. Munger, had to ask his nephew Warren, a law student, to examine the gradual abolition statutes in order to determine whether James, born in 1790, was entitled to his freedom at the age of twenty-one or twenty-five.¹⁴⁶ Under the law, James was to remain "in servitude" until age twenty-five. But for James, the expectation of freedom was so potent that, at twenty-one, he fled. When his master and the sheriff tracked him down, Mars insisted he would rather go to jail than continue to live "in servitude" to Mr. Munger for another four years. At least in jail he would get "the liberty of the yard."¹⁴⁷

The uncertainty surrounding the statutes' age provisions was a synecdoche for the condition itself. The servitude created by the 1784 and 1797 laws was best defined not by what it was, but by what it was not and by what it almost was. To those who lived "in servitude," this liminality was the source of existential confusion and distress. Looking back on his childhood, James Mars wrote, "I wonder sometimes why I was not more contented than I was, and then I wonder why I was as contented as I was."¹⁴⁸ To those in Mars's position, the promise of unconditional freedom must have seemed almost palpable, even as they lived in a condition of not quite slavery.

V. CONCLUSION

Historical accounts of Connecticut that attribute the end of slavery in the state to the 1784 Gradual Abolition Act are not so much incorrect as incomplete. While the 1784 Act was indispensable to abolition in the state, an exclusive focus on the Act obscures the idiosyncratic process by which Connecticut slavery withered. Because improving the welfare of Connecticut's slave population was just one of several competing motives for antislavery legislation, the state adopted a patchwork approach to abolition. Only in concert with other legislative and judicial acts did the Gradual Abolition Act choke off the replenishment of the slave population, and even these measures, taken together, did not comprehensively prevent the generation of new slaves.

Neither the Gradual Abolition Act nor any other law offered relief to Connecticut slaves born prior to 1784. On rare occasions, Connecticut courts ordered masters to liberate such slaves, but generally, for the existing slave population, voluntary private action remained the sole hope for redemption. Although, in some ways, the legal system gave slaveholders

146. MARS, *supra* note 100, at 28.

147. *Id.* at 31.

148. *Id.* at 23.

incentives to manumit their slaves, in other ways, the law discouraged slaveholders from so doing.

For most of Connecticut's slaves, the Gradual Abolition Act was no jubilee. They remained in bondage; their lives, for the most part, unchanged. In some ways, however, the decades following the enactment of gradual abolition were ones of both new dislocations and new possibilities, as the fear of export increased on the one hand, and the repressive Slave Code was repealed on the other. Those children of slaves who lived "in servitude" embodied the uncertainties of an era in which people continued to live in various forms of bondage even as the institution of slavery crumbled around them.

The complex story of abolition in Connecticut interrogates the ways in which historians and the general public have understood Northern slavery. In order to debunk the misconception that slavery was a "peculiar institution"—that is, peculiar to the American South—over the last half-century, historians have explored the birth and development of slavery in the North. But they have devoted far less attention to Northern slavery's protracted demise. As a result, the general public has tended to regard slavery in the North as a short-lived aberration, and the myth of the North as antislavery stronghold has persisted. By embracing the narrative of slavery's putatively abrupt termination at the close of the American Revolution, Northerners have unjustly minimized their moral responsibility for what is arguably the nation's most shameful legacy.

Slavery was not abolished throughout the North at the close of the American Revolution. In most Northern states, the gradual abolition legislation that contributed to slavery's ultimate demise did so over a period of decades, not years, and did so only with the support of additional laws, judicial decisions, and private actions. If Connecticut is representative—and there is reason to think that it is, at least of those states south of Massachusetts and north of Maryland that adopted *post nati* legislation—slavery's gradual decay in the North was, for those black people and Indians who lived through it, as traumatic and confusing as it was liberating. For these individuals, freedom and slavery were not opposing conditions but overlapping ones.