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## **“GOD OF ONE BLOOD”<sup>1</sup>: DEEDS OF MANUMISSION IN THE COUNTIES OF ACCOMACK, NORTHAMPTON, NORFOLK, AND ELIZABETH CITY, VIRGINIA (1785-1824)**

**Gloria Ann Whittico\***

*<sup>1</sup>Associate Professor, School of Law, Regent University, USA*

### **Abstract**

When considering the analytical framework of chattel slavery in the history of this nation, its history has been written in laws, constitutional amendments, cases, and a variety of legal mechanisms and precedents that simply do not tell the entire narrative of that “peculiar institution.”<sup>2</sup> In our examination of American chattel slavery, it is as if we were crafting a quilt commencing with those legal pronouncements as composing the outside frame of that particular construct. But it is only when we consider the individual narratives of those persons for whom slavery was a lived experience that we can see that the institution was composed of a multitude of smaller pieces and patches, that when arranged in a patchwork manner, reveal remarkable narratives of the lives of many brave men, women, and children who lived their lives on both sides of the line, and regardless of which side of the side of the divide, whether enslaved or enslaver.

### **Keywords**

Deeds of Manumission, American Chattel Slavery, Legal Mechanisms, Counties

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### **General Prologue**

*Jeremiah 32:14*

***“This is what the LORD Almighty, the God of Israel, says: Take these documents, both the sealed and unsealed copies of the deed of purchase, and put them in a clay jar so they will last a long time.”***

When considering the analytical framework of chattel slavery in the history of this nation, its history has been written in laws, constitutional amendments, cases, and a variety of legal mechanisms and precedents that simply do not tell the entire narrative of that “peculiar institution.”<sup>2</sup> In our examination of American chattel slavery, it is as if we were crafting a quilt commencing with those legal pronouncements as composing the outside frame of that particular construct. But it is only when we consider the individual narratives of those persons for whom slavery was a lived experience that we can see that the institution was composed of a multitude of smaller pieces and patches, that when arranged in a patchwork manner, reveal remarkable narratives of the lives of many brave men, women, and children who lived their lives on both sides of the line, and regardless of which side of the side of the divide, whether enslaved or enslaver.

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<sup>1</sup> Acts of the Apostles, Chapter 17

<sup>2</sup> “...[A]nte-bellum Southerners lived less comfortably in the world of the nineteenth century. They found themselves increasingly isolated, increasingly on the defensive, increasingly compelled to improvise, as the code by which their fathers has justified the holding of slaves became less and less intelligible. The heathens they had imported from Africa had now become Christians. The theory that it was proper to enslave prisoners taken in ‘just wars’ belonged to the dead past. The fact that many of the ancestors of southern Negroes had been slaves in their own lands now seemed strangely irrelevant. Above all, the ideals of the Enlightenment, especially the doctrine of natural rights and the belief in the inherent goodness and dignity of man, had found one of the most eloquent champions in the South’s greatest statesman. An impressive number of Southerners never would agree that Jefferson’s philosophy was wrong.” *The Peculiar Institution: Slavery in the Ante-Bellum South*. By Kenneth M. Stampp. (New York: Alfred A. Knopf. 1956. P. 19.

Mark Twain, we have been told, once observed that “history does not repeat itself, but it often rhymes”.<sup>3</sup> On July 1, 2020, the law of the state of Virginia permitted localities within the state to “remove, relocate, contextualize, or cover”<sup>4</sup>, among other structures, monuments erected as memorials of veterans of the Confederate States of America. <sup>5</sup>While history here may not be repetition, it may be argued that a curious rhyming, or perhaps variation on a theme, sheds some hopefully redemptive light on the past in the wake of massive political upheaval.

It is against this backdrop that this paper attempts to shed new light on the jurisprudence of slavery in the state of Virginia. In particular, deeds of manumission from selected Virginia jurisdictions will be examined with an eye toward discerning the intent of the grantors for their undertakings with regard to the liberation of the grantees. Redemption, reconciliation, and family restoration are among those motivations. It is hoped that this inquiry will also provide testimony to the agency, determination, and motivation of those who were thus liberated.

And so it is with that spirit, a spirit informed by artistry and imbued with a motivation of telling the stories of loving families that I begin this paper. First, surveying and cataloguing over three hundred individual deeds of manumission from the southeastern littoral of Virginia. Then stepping back and examining those individual narratives, the individual piecework of the emerging quilt. Finally, lovingly stitching them together with the hope of bringing forth a more perfect picture of that “peculiar institution” of chattel slavery in this nation.

## Introduction

### *Leviticus 25:10 (KJV)*

***And ye shall hallow the fiftieth year, and proclaim liberty throughout all the land unto all the inhabitants thereof: it shall be a jubilee unto you; and ye shall return every man unto his possession, and ye shall return every man unto his family.***

In a variety of cultures<sup>6</sup> and since ancient times<sup>7</sup>, enslaved persons have sought liberation from bondage. Among these mechanisms were freedom suits<sup>8</sup>, and the acquisition of freedom pursuant to deeds of manumission or emancipation.<sup>9</sup> This paper examines a number of deeds of manumission made available through the Library of

<sup>3</sup> Although the provenance of this phrase is difficult to trace, see the article by Richard North Patterson, “History Doesn’t Repeat Itself, But it Often Rhymes”, entitled <https://www.owu.edu/news-media/owu-magazine/fall-2018/history-doesnt-repeat-itself-but-it-often-rhymes/> (last visited June 15, 2020.)

<sup>4</sup> Virginia Acts of Assembly-2020 Session” text in PDF on desktop.

<sup>5</sup> This Act repeals in part and amends in part VA Code §15.2-1812 . (text on laptop desktop)

<sup>6</sup> See generally, Moses L. Finley, “Slavery”, *International Encyclopedia of the Social Sciences* (New York , 1968), Finley, *Ancient Slavery and Modern Ideology* (New York, 1980), 79-80, and Keith Hopkins, *Conquerors and Slaves: Sociological Studies in Roman History* (Cambridge: U.K. 1978).

<sup>7</sup> *Id.*

<sup>8</sup> One such example of the determination of enslaved persons to gain their freedom comes from Massachusetts history: “Elizabeth Freeman, also known as “Mumbet” or “Bet,” is a little-known national hero, and a symbol of courage and spirit to all who strive for freedom. She was among the first slaves in Massachusetts to sue for and win her freedom. Born into slavery in 1742, she was given to the Ashley family of Sheffield, Massachusetts, in her early teens. During her period of enslavement to them, she married and had a child, Betsy. In 1780, Mrs. Ashley struck at Betsy with a heated shovel, but Bet shielded her daughter, receiving a deep wound in her arm in the process. Bet left this wound uncovered as it healed, as evidence of her harsh treatment. Soon after the Revolutionary War, Bet heard the Massachusetts Constitution read aloud in the Ashley’s home, and heard these words from Article 1: “All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.” Bet recognized the potential legal and moral import of these words and sought out an attorney to sue for her freedom under the newly ratified state constitution. With the help of Theodore Sedgwick, a Stockbridge attorney and abolitionist, she pled her case in the Court of Common Pleas in Great Barrington in August 1781. When the jury ruled in Bet’s favor, she became the first African-American woman to be set free under the Massachusetts constitution. Her case, *Brom and Bett v.*

Ashley, served as precedent in the State Supreme Court case that brought an end to the practice of slavery in Massachusetts.” Article, “Elizabeth Freeman”, <https://elizabethfreemancenter.org/who-we-are/elizabeth-freeman/> .

<sup>9</sup> Andrew Fede has noted that “{some} ... states adopted statutes that permitted enslaved people to sue for their freedom.... For example, in Virginia, white servants and enslaved people who were Indians, Africans, or mixed race people began filing freedom suits in the mid-seventeenth century. The courts entertained these suits and apparently established procedures on a case-by-case basis until December 25, 1795, when the Virginia legislature adopted a statute that is known as the Freedom Suit Act. Andrew Fede, *Roadblocks to Freedom: Slavery and Manumission in the United States South*, New Orleans, LAW: Quid Pro Quo Books: 2011, p. 143 (citation omitted). Reference is to “An Act to amend an act intituled [sic], and act to reduce into one, the several acts concerning slaves, free negroes, and mulattoes, and for other purposes,” Collection of all such Acts of the General Assembly of Virginia 346 (1803). See also, for example, “An act to enable persons held in slavery to sue for their freedom,” Laws of the Territory of Louisiana ch. 35 at 96-97 ( St. Louis, 1808-09), and “An act to enable persons held in slavery to sue for their freedom,” 1 Laws of Missouri Revised and Digested to February 21, 1825 404-406 (St. Louis, 1825); see generally

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Virginia<sup>10</sup> in the form of digitized, crowd-based transcriptions<sup>11</sup>. After a brief recapitulation of some fundamental legal principles regarding deeds of manumission in general, this paper will explore specific deeds of manumission filed in the courts of Accomack, Northampton, Norfolk County, and Elizabeth City (now Hampton) from 1785 to 1824. Particular attention is paid to the preambles of these deeds, a significant number of which attest to the grantors' strong adherence to Christian virtues as the motivation for their desire to liberate the grantees.

This paper was inspired by yet another research project commenced in the late spring of 2016. It was at that time that I began to investigate digitized files made available by the Library of Virginia containing a remarkable trove of legal material relating the African-American history. These precious records are contained in a collection known as "Virginia Untold". Legal records containing coroners' inquest reports, freedom suits, deeds of manumission and a host of other documents illumine the history of African-Americans in Virginia from colonial times through the times of slavery. The original research project focused on freedom suits brought in Virginia in the county courts. The result of this research has been submitted for publication elsewhere. In the process of the production of that piece, a duet of such freedom suits was revealed that proved a remarkable trope on the theme of such a legal proceeding.

In these particular lawsuits, the petitioners based their claims to freedom upon deeds of manumission in which the grantor, in the preamble to their respective deeds, propounds as the basis for her desire to grant freedom to the grantees her firm belief that she was compelled to do so, perforce the dire situation in which she and her family stood at the advent of the Revolutionary War, but also based upon the dictates of Christian virtue. Her motivation to do so prompted the present inquiry. What precisely did the grantor's of deed of manumission set forth as their reasons for their actions? Could these motivations be of a singular accord? Did the religious beliefs of this and of the other grantors stand as testimonials of the firm principles at the foundation of the Gospels? This paper serves as the inaugural inquiry into these questions, beginning with the deeds of manumission contained in the records of the county of Accomack, Virginia.

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A. Leon Higginbotham Jr. & F. Michael Higginbotham, "Yearning to Breathe Free: Legal Barriers Against and Options in Favor of Liberty in Antebellum Virginia," 68 N.Y.U L. Rev. 1212 (1993).

<sup>10</sup> See <https://www.virginiamemory.com/collections/aan/search-the-narrative>.

<sup>11</sup> *Leven Marshall to Joshua Dark*.

[http://digitool1.lva.lib.va.us:8881/R/7CRULJ1JMRNY9S5LJKDRX6TTXY6TBH5YUJ7RU582C1S14CXP97-03630?func=results-jump-full&set\\_entry=000001&set\\_number=664159&base=GEN01-LVA01](http://digitool1.lva.lib.va.us:8881/R/7CRULJ1JMRNY9S5LJKDRX6TTXY6TBH5YUJ7RU582C1S14CXP97-03630?func=results-jump-full&set_entry=000001&set_number=664159&base=GEN01-LVA01).

## PART I: Manumission: Definition and Fundamental Considerations<sup>12</sup>

### *Anne Mifflin's Deeds of Manumission<sup>13</sup>* *Thomas and Mary<sup>14</sup>: An Introduction*

In 1794 and 1795, attorney Griffin Stith filed suit against Edward Roberts, who was represented by his own counsel, John Stratton, pursuant to the writ of *de homine replegiando*. Blackstone has described this ancient and extraordinary writ as a legal mechanism which “lies to replevy [deliver] a man out of prison, or out of the custody of any private person, (in the same manner that chattels taken in distress may be replevied...) upon giving security ... to the sheriff that the man shall be forthcoming to answer any charge against him.”<sup>15</sup>

In the case of *Thomas v. Roberts*, the language of the writ was as follows:

The Commonwealth of Virginia to the Sheriff of Northampton County Greeting, we command you that you should justly and without delay cause to be replevied Thomas, a Negro Man, whom Edward Roberts hath taken, and later, keeps as it is said, unless he be taken for any offence, for which according to the Laws of the Commonwealth, he is not irreplegiable, that we may have no more clamour thereupon for want of Justice.<sup>16</sup>

In this manner and by operation of the writ, the petitioner was brought before the court, thereby conferring upon it the jurisdiction required in order to hear the petitioner's claim. In the same fashion, Mary and her two children, James and Mary, were brought before the court to prosecute their claims to freedom.<sup>17</sup>

The cases of Thomas and Mary are both predicated on a fascinating set of facts that arose out of the aftermath of the Revolutionary War. Their cases provide a compelling glimpse into the circumstances surrounding the War and provide testimony to the ways in which the institution of slavery affected the lives of the enslaved as they struggled for freedom, but also of the lives of slaveholders and the actions taken by some of them as they worked to loosen the bonds of the enslaved.

### *Anne Mifflin Roberts: A Narrative of Liberation Attempted*

In the case of *Thomas v. Roberts*, the parties stipulated to the factual circumstances underlying his claim to freedom. They agreed that Anne Mifflin, who owned in her own right real estate located in Northampton County, Virginia as well as a number of “slaves annexed thereto.” Thomas was one of these slaves, who appear, based upon

<sup>12</sup> All specific deeds of manumission in this paper are available in digital format at the Library of Virginia:

[http://digitool1.lva.lib.va.us:8881/R/GCNTCT131S9L81THNFTL1U5GMPSQ5FFC2RV6MFIEA7Q3A8X735-02537?func=search-advanced-go&LOCAL\\_BASE=2694&ADJACENT=N&find\\_code1=WTY&request1=Deed+of+Emancipation&find\\_operator=AND&find\\_code2=WCV&request2=Accomack+County&find\\_operator2=AND&find\\_code3=&request3=&pds\\_handle=GUEST \(Accomack County, Virginia\);](http://digitool1.lva.lib.va.us:8881/R/GCNTCT131S9L81THNFTL1U5GMPSQ5FFC2RV6MFIEA7Q3A8X735-02537?func=search-advanced-go&LOCAL_BASE=2694&ADJACENT=N&find_code1=WTY&request1=Deed+of+Emancipation&find_operator=AND&find_code2=WCV&request2=Accomack+County&find_operator2=AND&find_code3=&request3=&pds_handle=GUEST (Accomack County, Virginia);)

[http://digitool1.lva.lib.va.us:8881/R/17YMC7B9S1MC77NUN3PK5J4XCPVCR2KIURP9B7J775KCJG1LJ8-02713?func=search-advanced-go&LOCAL\\_BASE=2694&ADJACENT=N&find\\_code1=WTY&request1=Deed+of+Emancipation&find\\_operator=AND&find\\_code2=WCV&request2=Norfolk+County&find\\_operator2=AND&find\\_code3=&request3=&pds\\_handle=GUEST \(Norfolk County, Virginia\);](http://digitool1.lva.lib.va.us:8881/R/17YMC7B9S1MC77NUN3PK5J4XCPVCR2KIURP9B7J775KCJG1LJ8-02713?func=search-advanced-go&LOCAL_BASE=2694&ADJACENT=N&find_code1=WTY&request1=Deed+of+Emancipation&find_operator=AND&find_code2=WCV&request2=Norfolk+County&find_operator2=AND&find_code3=&request3=&pds_handle=GUEST (Norfolk County, Virginia);)

[http://digitool1.lva.lib.va.us:8881/R/G3FL7G2CKNGHTM3B491GCKSDENDGN324QNLGB124LCVB49IAEY-02772?func=search-advanced-go&LOCAL\\_BASE=2694&ADJACENT=N&find\\_code1=WTY&request1=Deed+of+Emancipation&find\\_operator=AND&find\\_code2=WCV&request2=Elizabeth+City+County&find\\_operator2=AND&find\\_code3=&request3=&pds\\_handle=GUEST \(Elizabeth City County, Virginia\).](http://digitool1.lva.lib.va.us:8881/R/G3FL7G2CKNGHTM3B491GCKSDENDGN324QNLGB124LCVB49IAEY-02772?func=search-advanced-go&LOCAL_BASE=2694&ADJACENT=N&find_code1=WTY&request1=Deed+of+Emancipation&find_operator=AND&find_code2=WCV&request2=Elizabeth+City+County&find_operator2=AND&find_code3=&request3=&pds_handle=GUEST (Elizabeth City County, Virginia).)

<sup>13</sup> See generally, Gloria Whittico, *The Rule of Law and the Genesis of Freedom: A Survey of Selected Virginia County Court Freedom Suits (1723-1800)*, *Alabama Civil Rights and Civil Liberties Law Review*, Vol. 9.2 (2018); see also Alejandro De LaFuente and Ariela J. Gross, *Becoming Free, Becoming Black: Race, Freedom, and Law in Cuba, Virginia, and Louisiana*, Cambridge, U.K.: Cambridge University Press (2020). For an earlier, more in-depth treatment of the Accomack County, Virginia freedom suits.

<sup>14</sup> Freedom Suits of *Thomas v. Roberts*: [http://digitool1.lva.lib.va.us:8881/R/TSA7NL3PCGFQNXAVF572Q2718CB2QGIULXSJAHA57A1CSSCX1-02913?func=results-jump-full&set\\_entry=000008&set\\_number=664158&base=GEN01-LVA01](http://digitool1.lva.lib.va.us:8881/R/TSA7NL3PCGFQNXAVF572Q2718CB2QGIULXSJAHA57A1CSSCX1-02913?func=results-jump-full&set_entry=000008&set_number=664158&base=GEN01-LVA01); *Mary v. Roberts*: [http://digitool1.lva.lib.va.us:1801/view/action/nmets.do?DOCCHOICE=1074967.xml&dvs=1663439627909~87&locale=en\\_US&search\\_terms=thomas+mary+freedom+suit+accomack+county&adjacency=N&VIEWER\\_URL=/view/action/nmets.do?&DELIVERY\\_RULE\\_ID=1&divType=&usePid1=true&usePid2=true](http://digitool1.lva.lib.va.us:1801/view/action/nmets.do?DOCCHOICE=1074967.xml&dvs=1663439627909~87&locale=en_US&search_terms=thomas+mary+freedom+suit+accomack+county&adjacency=N&VIEWER_URL=/view/action/nmets.do?&DELIVERY_RULE_ID=1&divType=&usePid1=true&usePid2=true)

<sup>15</sup> 3 William Blackstone, *Commentaries*, at \*129.

<sup>16</sup> *Supra* n. 14.

<sup>17</sup> *Id.*

<sup>18</sup> | “God of One Blood”- Deeds of Manumission in The Counties: Gloria Ann Whittico

a deed subsequently executed by Mifflin, to have numbered approximately thirty men, women, and children. Mifflin married Humphrey Roberts, the defendant's father, and thereby gained title to the property, both real and human. However, at the commencement of the Revolutionary War, "the said Humphrey being a Briton born and then resident of in Virginia sought the protection of the British Government and removed to and remained within the Territories of Great Britain" from 1775 until the war's end. During the course of the war, Anne and her two daughters, children of Humphrey, and the defendant Edward, continued to live in Virginia.<sup>18</sup>

On January 7, 1782, Anne set off on a path designed to ensure the liberation of the enslaved persons by the execution of a "Deed" that purported to free them from bondage after a period of years of service. The language of the deed provides compelling evidence of the gravitas associated with her actions, and also provides testimony to the Christian virtues that were at least a part of her motivation:

Whereas I Ann Roberts of Northampton County in Virginia being possessed of a Number of Negroes as Slaves and through the adverse occurrences permitted by divine Providence, and so the present calamitous Dispensation to overtake us, whereby I am separated from my Husband and one child, thereby I am in my own experience have to witness the greivous [sic]hardship of being forcibly separated from those near connexions [sic], whereunto the Affrican [sic] Slave has for a long series of Time been subjected by the oppressive practices of making them Slaves, which I am fully persuaded is inconsistent with Christianity and totally derogatory to the Injunction of Jesus Christ our holy Lawgiver, where he enjoins his followers that whatsoever they would that others should do unto them, they should suffer it to be the governing rule of their Conduct to do so by them, which I do fully believe to be indispensably obligatory on Me, and altho' my Husband Humphrey Roberts may yet be living nevertheless as no human prospect appears of his return in a short space if ever, believe it my duty as full as in my power to Manumit and set absolutely free all the Negroes I am possessed of in the Manner and form following in which my oldest Son Charles Mifflin, being under the former Laws, Heir to all those Negroes after my decease and Now willing to unite with no person, which for the more full and clear liberating them is concluded on Wherefore Know all Men by this present Instrument of Writing that we Ann Roberts of the County abovesaid and Charles Mifflin of the City of Philedelphia [sic] for the reasons above mentioned hereby manumits and set free the following Named Negroes, as fully and intire [sic] as is in our power to do.<sup>19</sup>

The Deed then enumerates thirty individuals by name, including Thomas, age fifteen, and his mother, Cate, age approximately forty seven. Another child, John, age fourteen, was omitted from the original listing, but was added at the end of the document prior to the sealing and delivery of the Deed. The terms of the Deed specify that the male children were to be granted their freedom when they reached the age of twenty-one; the female children would attain freedom when they reached the age of eighteen. This manumission schedule comports with the requirements of the 1782 Virginia statute making manumission lawful and circumscribing certain requirements regarding the procedures for the same.<sup>20</sup> Anne affixed her seal to the Deed on March 25, 1782, and was witnessed by Edward Roberts, James Spady, and Warner Mifflin.

Charles Mifflin's signature and delivery were witnessed by Samuel Lewis and Warner Mifflin. The Deed contained in the Virginia court records provided the basis for the preparation of a "true transcript" of the original Deed of Manumission and was subsequently entered into "the Manumission Book of Records, for the Monthly Meeting of the people called the Quakers of Duck Creek in Kent County and State of Delaware" on June 25, 1792. The record also reveals that "at the instance and request of the said Ann Roberts the original was returned to her in order to be proven and recorded among the records of the County of Northampton in the State of Virginia, agreeable to a Law of said State."<sup>21</sup>

Mifflin posits dual motivations for her actions. The apparent empathy and compassion she exemplifies when describing her own pain of separation from her husband and child and the attending uncertainty regarding their fates, and the manner in which she shared this pain with the enslaved who certainly suffered under the same emotional load in light of what must have been undeniable familial separations of their own, stand as a powerful motivation for her actions.

More powerful is the articulation of her Christian witness, in which she attributes her actions as having been compelled by the "Injunction of Jesus Christ our holy Lawgiver" to comply with the Golden Rule contained in Scripture, "And as ye would that men should do to you, do ye also to them likewise." Luke 6:31 (KJV)<sup>22</sup>.

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> Act of 1782 William Waller Hening, ed., *The Statutes at Large; Being a Collection of All the Laws of Virginia from the First Session of the Legislature, in the Year 1619* (Richmond: J. & G. Cochran, 1821) 11:39–40.

<sup>21</sup> *Supra* n. 14.

<sup>22</sup> *Id.*

The Deed provides evidence that despite the dual motivations of empathy and Christian virtue, the import of practicality and financial imperative tempered the zeal with which these laudable intentions were realized. . Mifflin hired “a cropper, and agreed to put several of the Negroes aforementioned under him for and during the space of one year, for which reason, a reserve is made of one year of all those that are of lawful age till the first day of this Year One Thousand seven Hundred and eighty three.” The terms of the deed contemplated that “reasonable Compensation agreed to be made to those over age, for the years service reserved in the foregoing [Deed].” After the expiration of this one year of “reserve”, the Deed specified that the “aforesaid Negroes [were then] to be respectively at their own disposal and at Liberty to act for themselves as free people without the let, Hindrance or Molestation of us, our Heirs, Exors: Admors [executors or administrators] or any of us forever.”<sup>23</sup>

As was mentioned above, there was a second case filed against Edward Roberts in the year following that of Thomas. In this case, Mary, who was also manumitted in the same deed, sued for her freedom and that of her children. It appears that Mary took the words of the deed to heart and attempted to exercise her freedom at the expiration of the period of reserve specified in the deed. However<sup>24</sup>, that period of freedom was short-lived.

### ***Edward Roberts' Inheritance: Liberation's End***

In a turn of events that may strike contemporary sensibilities as being somewhat melodramatic, Humphrey Roberts who has absconded from Virginia in the wake of the commencement of hostilities returned to Virginia in 1785 “soon after the peace concluded on by Treaty between Great Britain and America.” According to court records containing the statement of Anne Roberts, “the said Humphrey Roberts returned into this State and took possession of the whole of the said Negroes ...including the said Mary [and Thomas]: that in the years 1783, 1784 and 1785 the said Mary went at large in the County aforesaid without rendering any service to the said Humphrey and Anne Roberts; that in the Year 1786 the said Mary was taken by the said Humphrey across the Bay to Portsmouth and retained there in the service of his Family for some time, and then eloped and returned to the County aforesaid.”<sup>25</sup> It is apparent that Mary experienced some period of freedom, although the circumstances of this freedom were without doubt severely circumscribed by Virginia law<sup>26</sup> that functioned to curtail her ability to go about as a free woman of color. When Mary fled, John Harmanson, as agent of Humphrey Roberts, “took up the said Mary, alledging [sic] her to be the Slave of the said Humphrey, and the said Mary being so in custody, thereupon claiming to be free, sued out a writ of Homine replegiando against the said John Harmanson ...; and was thereupon discharged from [his] custody.” Due to the death of Harmanson on March 16, 1787, the writ was abated. Mary then “went at large till the day before the Date of the writ in the present suit.”<sup>27</sup>

At some point in time after Mary absconded, Humphrey Roberts gave his last will and testament in which he devised Mary and the other persons claiming their freedom under Anne Mifflin's deed to his son Edward. When Humphrey died, Edward took Mary into his possession on the day before the writ in this case. She then filed another writ against Edward. The parties, through their counsel George Parker for the plaintiff, and Thomas Evans for the defendant based upon the stipulations mentioned above, entered the following into the court record: “If upon the facts above stated and agreed upon the Laws touching the same, it be of the Opinion of the Court that the Law is for the Plaintiff, we agree that Judgment be entered for the Plaintiff & one shilling Damages, but if the Law be for the Defendant that Judgment be entered for the Defendant.” A similar statement appears in the court records in Thomas' case. In both cases, the court found for the defendant. Although it appears that Thomas and Mary both filed appeals, the outcomes are not clear from the record. However, the judgments of the court in both trials are quite clear. The court writes: “It seems to the Court that the Law arising upon the case stated by the said parties is for the Defendant & that the said Plaintiff ought not to have & maintain ...said action against the Defendant. It is therefore considered by the Court that the said [plaintiffs] do take nothing by ..,[the] writ[s] aforesaid, but that [they] be in Mercy for [their] false clamour hereof, and that the said Edward do go thereof without Day & that he have return of the said [plaintiffs] aforesaid to be returned to himself irreplegiable forever &c.”<sup>28</sup> With this words, the brief periods of freedom for Thomas, Mary, and the others enumerated in the ill-fated deed of manumission of Anne Mifflin came to an end.

The narrative of the relationship between Anne Mifflin Roberts, Thomas and Mary, and the other individuals discussed in the first part of this paper present a stark and compelling account of the ways in which the rule of law was used to the benefit and simultaneous detriment of the parties involved. The deed of manumission pointed the way to freedom; the freedom suit, at least in these cases, resulted in a loss of that freedom. In the next part of this paper, the focus will turn to a closer examination of the notion of the deed of manumission itself, including a definition, some attendant philosophical implications, and a classification schema of a survey

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Supra* n. 14.

<sup>28</sup> *Id.*

of Virginia deeds, based upon the expressed motivations of the grantors as contained in the recitals of each deed examined.

### Manumission: Definition and Philosophical Implications

As a conceptual jumping-off point for the discussion of manumission, one writer as offered the following definition:

Manumission in the United States is best thought of as the master's gift of liberty to the person he or she holds as a slave. The English word manumission is derived from the Latin *manumittere*, which means "'to let go from the hand or set at liberty'".<sup>29</sup>

It is interesting to note that this definition does not take into account the motivation of the grantor. It may be argued that as a consequence any examination of deeds of manumission provide an intriguing opportunity to probe the intentions of the grantors; it is hoped that the present inquiry will cast some light on this line of inquiry. Fede's analysis of the concept of manumission expands with the following analogical assertion:

Manumission's better analogy, therefore, may be with the owner's right to use and destroy her or her property. Both Roman law and the Anglo-American common law included this right—called *jus dbutendi* [sic] *et abutendi* – among the property owners' powers and rights. This right's legal nature and its justification are not "well developed." The owner destroys not only his or her own right to obtain the benefits of property ownership; he or she also destroys that right for "future generations." Thus, [t]he law of property destruction...governs whether and under what circumstances the owner may deprive a resource of its immortality."<sup>30</sup>

As discussed above, Orlando Patterson has offered commentary regarding the definition of manumission.<sup>31</sup> In addition, he offers interesting discussion of the philosophical implications of the concept. Patterson has observed:

The slave was a man possessed who was incapable of possession, and this included, quintessentially, the possession of self. This being so, attempting to release someone from slavery posed at least three problems. One was the problem of alienation from the master. The most familiar instances of this were found in more advanced societies in which property played an important role in the economy and self-purchase was a major means of release. How was it possible for the slave to buy himself since everything he owned belonged to the master?

Actually, this was not the really interesting problem, since slave societies have found all sorts of rough-and-ready means of getting around this in purely practical terms—the Roman *peculium* and its modern derivations, especially in Latin America, being the best-known means.<sup>32</sup>

Having acknowledged the arguably inconsistent nature of the relationship between the enslaved qua slave as this relationship relates to the transactional nature of the act of manumission, Patterson also observes:

Far more interesting was the fact that both ancient and modern legal theorists have had a hard time coming up with a legal conception of the manumission process. The temptation is to conceive of it as a conveyance, but a moment's reflection shows that it is no such thing, since conveyancing involves the passing of something from a seller or conveyancer to a buyer of conveyance, and what the latter receives is that which the former parts with. This, however, was not what happened in a manumission transaction since the master did not pass his power or dominion over to the slave. What the master gave up—his power over the slave—was not what the slave received.<sup>33</sup>

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<sup>29</sup> Fede, Andrew, *Roadblocks to Freedom: Slavery and Manumission in the United States South*. New Orleans, LA Quid Pro Quo Press, 2011, p. 35. Citing Orlando Patterson, *Three Notes of Freedom: The Nature and Consequences of Manumission*, included in *Paths to Freedom: Manumission in the Atlantic World*, edited by Rosemary Brana-Shute and Randy J. Sparks, Columbia, S.C.: The University of South Carolina Press (2009), p. 15.

<sup>30</sup> Fede, *supra* note 1. Internal citations omitted.

<sup>31</sup> *Supra* note 1.

<sup>32</sup> Orlando Patterson, *Three Notes of Freedom: The Nature and Consequences of Manumission*, included in *Paths to Freedom: Manumission in the Atlantic World*, edited by Rosemary Brana-Shute and Randy J. Sparks, Columbia, S.C.: The University of South Carolina Press (2009), p. 16.

<sup>33</sup> *Id.*

The real mystery of manumission was that it involved the social construction, by the master and slave, of something entirely new. Equally problematic was the fact that the slave was essentially a nonperson, someone without a will of his own, a mere surrogate of another. How did such a nonperson become a person? If one is to believe the master's claim—that his slaves were mere surrogates of his own will—how did it happen that one of these surrogates suddenly became a person with a will of his own?<sup>34</sup>

It may be argued that the epistemic evaluation of the “real mystery of manumission” was not at the center of the thought processes by which the grantors’ of the deeds considered in this paper. For the modern reader, however, a more complete and robust consideration of their motivations and intentions, whether complex in nature or of Doric simplicity, may facilitate a better understanding of these transactions themselves.

### ***Intent: The Philosophy of Enlightenment***

The motivations recited in the preambles of a number of the deeds 35 examined tend to implicate the ideals of the Enlightenment movement of the 18 th century<sup>36</sup>. One of the best known of the philosophers of this movement, John Locke, elucidates the concept of slavery:

#### **CHAP. IV. Of SLAVERY§. 22.**

THE *natural liberty* of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The *liberty of man*, in society, is to be under no other legislative power, but that established, by consent, in the common-wealth; nor under the dominion of any will, or restraint of any law, but what that legislative shall enact, according to the trust put in it. Freedom then is not what Sir *Robert Filmer* tells us, *Observations*, A. 55. *a liberty for every one [213] to do what he lists, to live as he pleases, and not to be tied by any laws:* but *freedom of men under government* is, to have a standing rule to live by, common to every one of that society, and made by the legislative power erected in it; a liberty to follow my own will in all things, where the rule prescribes not; and not to be subject to the inconstant, uncertain, unknown, arbitrary will of another man: as *freedom of nature* is, to be under no other restraint but the law of nature.<sup>37</sup>

As mentioned above, the notion that “the natural liberty of man is to be free from any superior power on earth” resonates in the language of some of the deeds, revealing the intention of the grantors, and shedding specific light on their motivations. For example, in a 1790 deed of manumission, William Marshall of Accomack County granted to grantees Caesar, Tob, Daniel, Bill, and several others, “...for diverse good causes me thereunto moving and more especially believing liberty to be their just and equitable right”.<sup>38</sup>

Six years later, on January 25, 1796, Crippen Taylor’s deed of manumission to George was acknowledged by a court in Accomack County.<sup>39</sup> In the deed’s preamble, Taylor documents his motivation as follows: “I, Crippen Taylor of the county of Accomack being under a conscientious notion that nature and providence decrees[sic] to

<sup>34</sup> *Id.*

<sup>35</sup> Approximately forty of the deeds reveal such a motivation. This tabulation is based upon a review of documents on file in the office of the author.

<sup>36</sup> “[...]Ante-bellum Southerners lived less comfortably in the world of the nineteenth century. They found themselves increasingly isolated, increasingly on the defensive, increasingly compelled to improvise, as the code by which their fathers has justified the holding of slaves became less and less intelligible. The heathens they had imported from Africa had now become Christians. The theory that it was proper to enslave prisoners taken in ‘just wars’ belonged to the dead past. The fact that many of the ancestors of southern Negroes had been slaves in their own lands now seemed strangely irrelevant. Above all, the ideals of the Enlightenment, especially the doctrine of natural rights and the belief in the inherent goodness and dignity of man, had found one of the most eloquent champions in the South’s greatest statesman. An impressive number of Southerners never would agree that Jefferson’s philosophy was wrong.”

*The Peculiar Institution: Slavery in the Ante-Bellum South.* By Kenneth M. Stampp. (New York: Alfred A. Knopf. 1956. P. 19.

<sup>37</sup> Emphasis added. John Locke, *The Two Treatises of Civil Government (Hollis ed.)* [1689] <https://oll.libertyfund.org/titles/locke-the-two-treatises-of-civil-government-hollis-ed>

<sup>38</sup> *Marshall to Caesar et al.*, Accomack County, April 26, 1790.

<http://digitool1.lva.lib.va.us:8881/R/S3VTPXSTQ1MR7N4RG3U92M1VPGX3BF5K4A21FP9GEP6YNTJ2-02234?func=search-advanced->

[go&LOCAL\\_BASE=2694&ADJACENT=N&find\\_code1=WRD&request1=william+marshall&find\\_operator=AND&find\\_code2=WTY&request2=Deed+of+Emancipation&find\\_operator2=AND&find\\_code3=WCV&request3=Accomack+County&pds\\_handle=GUEST](http://digitool1.lva.lib.va.us:8881/R/S3VTPXSTQ1MR7N4RG3U92M1VPGX3BF5K4A21FP9GEP6YNTJ2-02234?func=search-advanced-go&LOCAL_BASE=2694&ADJACENT=N&find_code1=WRD&request1=william+marshall&find_operator=AND&find_code2=WTY&request2=Deed+of+Emancipation&find_operator2=AND&find_code3=WCV&request3=Accomack+County&pds_handle=GUEST)

<sup>39</sup> *Taylor to George*, Accomack County, January 26, 1796

[http://digitool1.lva.lib.va.us:8881/R/TD8ED3HNYHJQTC5UVXF8FKT6G65CURAICGAGY2ME45N7RG158-03126?func=results-jump-full&set\\_entry=000001&set\\_number=534365&base=GEN01-LVA01](http://digitool1.lva.lib.va.us:8881/R/TD8ED3HNYHJQTC5UVXF8FKT6G65CURAICGAGY2ME45N7RG158-03126?func=results-jump-full&set_entry=000001&set_number=534365&base=GEN01-LVA01)

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every individual of the human race personal liberty....”<sup>40</sup>

Employing language similar to that of John Locke<sup>41</sup>, John Edmunds writes in a deed of manumission granted to Esther Goliah and others, “I John Edmunds of Accomack County, Virginia, considering freedom from a state of slavery the natural and proper right of the black people as well as the white people in society”<sup>42</sup> With this assertion, Edmunds purported to grant them liberation.

Although care has been taken with respect to the methodology of categorizing the deeds of manumission examined in this paper, a deed from 1802 from grantor Abel Teackle to grantee Prince presents an interesting example of the hybrid motivations of the grantor. <sup>43</sup>Teackle’s preamble contains the following language: “ Now be it known to all Christian people and others that in consideration of the natural rights which all of the human family are entitles to in their personal liberty and as well for the further consideration of the sum of five shillings to me in hand paid by the [aforementioned] Prince.”<sup>44</sup> This language reflects the grantor’s dual motivations, and lends credence to the notion that the grantee was directly involved with demonstrated agency in connection with securing his own grant of freedom.

## PART II: Review of Selected Deeds of Manumission

The narrative of the relationship between Anne Mifflin Roberts, Thomas and Mary, and the other individuals discussed in the first part of this paper present a stark and compelling account of the ways in which the rule of law was used to the benefit and simultaneous detriment of the parties involved. The deed of manumission pointed the way to freedom; the freedom suit, at least in these cases, resulted in a loss of that freedom. In the next part of this paper, the focus will turn to a close examination of selected deeds of manumission, and a classification schema of these deeds based upon the express motivations of the grantors as contained in the recitals of each deed examined.

However one attempts to explain the legal nature of the deed of manumission, it cannot be stressed enough how different this type of deed is from the typical contract. Professor Murray has commented on the use of the word “contract” in common parlance:

Frequently the word” contract” is used to refer to the written memorial (the signed writing) or other utterance which evidences a legally enforceable promise or group of promises. The writing is not the contract; the words the parties use if they contract orally is not the contract; the conduct or customs of the parties which manifest their legally enforceable agreement are not the contract. All of these manifestations are mere evidence of the contract. Where is the contract? One cannot touch, hear, smell or feel the contract. The evidence of the contract is subject to sensory perception. But the contract is an abstract legal relationship between the parties thereto. The legal relationship is composed of enforceable rights and correlative enforceable duties.<sup>45</sup>

Perhaps the most significant language in the excerpt above is “legally enforceable”. It may be argued that certain species of the deeds examined in this paper might have been considered to be legally enforceable should they ever become the subject of litigation. For example, deeds for which the grantor received financial consideration, or in which the grantee agreed to withdraw a freedom suit in which the grantee was the defendant, are likely candidates for inclusion in this category. Other deeds, such as those predicated upon the quality of service rendered in the past, or those demonstrating religious or philosophical motivations may not have fared as well in a court of law. The foregoing statement is, it is readily conceded, a matter of pure conjecture in the absence of court records in which these claims might have been litigated in the event of the change of heart of the grantee. This line of inquiry is beyond the scope of this paper; perhaps future research by others will shed more light on this area. The cases of Thomas and Mary against Roberts<sup>46</sup> suggest, however, that the likelihood of success would have been marginal at best.

<sup>40</sup> *Id.*

<sup>41</sup> *Supra* note 2.

<sup>42</sup> *Edmunds to Esther Goliah, Accomack County, October 1, 1801*  
[http://digitool1.lva.lib.va.us:8881/R/FVUH6529BAGDKDFQQ8SHIXCI82GD4Q1UJL5XBEJ18P63SK8K8A-01451?func=results-jump-full&set\\_entry=000001&set\\_number=534386&base=GEN01-LVA01](http://digitool1.lva.lib.va.us:8881/R/FVUH6529BAGDKDFQQ8SHIXCI82GD4Q1UJL5XBEJ18P63SK8K8A-01451?func=results-jump-full&set_entry=000001&set_number=534386&base=GEN01-LVA01)

<sup>43</sup> *Teackle to Prince, Accomack County, (1802).*  
[http://digitool1.lva.lib.va.us:1801/view/action/nmets.do?DOCCHOICE=1299636.xml&dvs=1600889369600~96&locale=en\\_US&search\\_terms=prince+deed+emancipation+accomack+county&adjacency=N&VIEWER\\_URL=/view/action/nmets.do?&DELIVERY\\_RULE\\_ID=1&divType=&usePid1=true&usePid2=true](http://digitool1.lva.lib.va.us:1801/view/action/nmets.do?DOCCHOICE=1299636.xml&dvs=1600889369600~96&locale=en_US&search_terms=prince+deed+emancipation+accomack+county&adjacency=N&VIEWER_URL=/view/action/nmets.do?&DELIVERY_RULE_ID=1&divType=&usePid1=true&usePid2=true)

<sup>44</sup> *Id.*

<sup>45</sup> Murray on Contracts , Second Revised Edition of Grismore on Contracts, John Edward Murray, Jr., Indianapolis and New York: The Bobbs-Merrill Company, Inc. , 1974, p.5. §2 Internal citations omitted.

<sup>46</sup> *Id.*

It was suggested above that many of the deeds examined in this paper, while not passing muster as enforceable contracts, might best be thought of as quasi-contractual in nature.

Professor Murray has commented that "...the purpose of quasi- contract is "... to place the parties in status quo...[and that] the purpose of true contracts is to fulfill those reasonable expectations which have been induced by the making of a promise."<sup>47</sup> The attempt to reconcile the precise legal nature of these deeds is fraught with imprecision. Perhaps these instruments are best viewed through the lens of historicity as they testify to the intent of the grantors and to the hope of freedom from bondage that they promised to the grantees. As more is learned about that period of American history during which chattel slavery reigned supreme, it is hoped that this knowledge will contribute to the evolution of a reconciliation of our past with the present.

### Review of Selected Deeds of Manumission

As described above, approximately three hundred deed of manumission were surveyed for this paper. Based upon a review of the recitals of these deeds, they have been placed into one of eight categories in which the specific motivations of the grantor(s) were set forth. These categories are as follows:

- a. no motivation specified;
- b. monetary consideration paid to the grantor;
- c. "diverse good causes" in the estimation of the grantor;
- d. in exchange for the settlement of a freedom suit filed by the grantee;
- e. quality of past service rendered by the grantee;
- f. respect for Enlightenment virtues by the grantor;
- g. family unification; and
- h. Christian motivations of the grantor.<sup>48</sup>

#### **a. No Motivation Specified**

In fifty of the deeds examined in this paper, no specific motivation was identified by the grantor. For example, in 1794, Peter Delastiasius "...set free from bondage my negro man Kent also my negro man Harry and do by these presents relinquish unto them all right and title to any estate that they the said Kent and Harry may acquire through industry acclaiming them absolutely free from me and all claiming under me."<sup>49</sup>

In a similar vein, in the 1801 deed from William Scarburgh to Tony Scribings, the grantor merely writes that "... by these presents [I do by] manumit set free and liberate a negroe man named Tony Scribings, which I do for myself my heirs executors and administrators do forever discharge the said Tony from slavery."<sup>50</sup>

An interesting variation on a theme is presented in an 1805 deed from grantors Elizabeth, Ann, and Sarah Muir.<sup>51</sup> The grantors write " we do hereby certify that Negro Peter the bearer hereof go free and be free from henceforward during his life: and that we do voluntarily and firmly emancipate the said negroe Peter or mulatto Peter from all further slavery to us or our heirs from this time."<sup>52</sup> The identification of the grantee as the "bearer" of the instrument lends credence to the notion that the paper itself was intended as a reification of the underlying emancipatory transaction, providing true evidence of the nature of the grant of freedom.

#### **b. Monetary Consideration**

Approximately a dozen deeds contain evidence that the grantors' motivation was based solely upon the payment of money.<sup>53</sup> In a 1795 deed, the grantor acknowledges receipt of the "sum of twenty pounds current money...by my negro man Fortune".<sup>54</sup> One decade later, Thomas Leatherberry documents his motivation for granting freedom to the grantee as being "for and in consideration of the sum of 100 pounds current money of Virginia by me received of Negro James through his wife Dority Hill."<sup>55</sup>

<sup>47</sup> *Id.*

<sup>48</sup> See Appendix for a full description of each of the deeds examined in this paper.

<sup>49</sup> *Delestiasius to Kent and Harry*, Accomack County (1794).

<sup>50</sup> *Scarburgh to Scribings*, Accomack County (1800).

<sup>51</sup> *Muir et al. to Peter*, Accomack County (1805)

<sup>52</sup> *Id.*

<sup>53</sup> See, for example, *Ward to James*, Accomack County (1798): " for and in consideration of the sum of sixty pounds lawful money of Virginia to me in hand paid by a certain negro man James, the receipt whereof I the said Jesse Ward do hereby acknowledge."

<sup>54</sup> *Rodgers to Fortune*, Accomack County (1795).

<sup>55</sup> *Leatherberry to James*, Accomack County (1806).

### c. “Diverse Good Causes”

In approximately fifty of the deeds examined, the recitals contain a common phrase, “for diverse good causes me thereunto moving” as an expression of the grantor’s motivation for the grant of freedom embodied in the deed.<sup>56</sup> A number of the deeds contain this or similar language<sup>57</sup>. Other deeds combine this or related language with other phraseologies indicative of motivations that may be characterized as dual or hybrid.<sup>58</sup> Ten of the deeds reference Virginia statutes governing manumission as controlling in the drafting of the documents.<sup>59</sup> In particular, two specific Acts of the Virginia General Assembly, one promulgated in 1782 and another from 1792, are referenced.<sup>60</sup>

### d. Settlement of Freedom Suits

On Christmas Day in 1795, a Virginia General Assembly’s statute, the purpose of which was “[t]o reduce into one the several acts concerning slaves, free negroes, and mulattoes [sic] and for other purposes,” became effective. The preamble of this statute leaves little to the reader’s imagination regarding the legislative intent of its drafters:

Whereas great and alarming mischiefs have arisen in other states of the Union, and are likely to arise in this by voluntary associations of individuals, who under cover of effecting that justice towards persons unwarrantably held in slavery, which the sovereignty and duty of society alone ought to afford; have in many instances been the means of depriving masters of their property in slaves, and in others occasioned them heavy expenses in tedious and unfounded law suits: To the end that a plan and easy mode may be pointed out by law for the recovery of freedom where it is unjustly and illegally denied, and that all such practices may in future be made useless and punished:

1. Be it enacted, that when any person shall conceive himself or herself illegally detained as a slave in the possession of another, it shall and may be lawful for such person to make complaint thereof either to a magistrate out of court, or to the court of the district, county or corporation where he or she shall reside, and not elsewhere. When the complaint shall be made to a magistrate of such illegal detention, it shall be the duty of the said magistrate forthwith to issue his warrant, summoning the owner or possessor of such complainant, to appear before him or some other magistrate of the county, to answer the complaint so made, and upon his appearance shall compel him to give bond with security, equal at least to the full value of such complainant, conditioned that he shall suffer him or her to appear at the next court to be held for the district, county or corporation wherein he or she resides, for the purpose of petitioning the said court to be allowed to sue therein in forma pauperis, for the recovery of his or her freedom; and if such master or holder shall fail or deny to give security as aforesaid, such magistrate shall order the complainant into the custody of the officer serving the warrant, to be kept by him safely at the expense of such master or holder, until the sitting of the first court that shall happen after such judgment by him given, and produce him or her before such court.<sup>61</sup>

In two of the Accomack County deeds of manumission examined in this paper, the grantees had filed previously freedom suits in the courts to vindicate their claims to freedom from slavery. In both deeds, the language of the preambles evidences the desire of the grantors to be relieved of the legal consequences of the freedom suits. In the first deed so examined, the grantee, George, received a deed of manumission in 1794 from Thomas Wood Potter.<sup>62</sup> The language of the deed specifies that the deed is predicated upon and “in consideration of the past services...also to prevent further litigation concerning his claim to freedom & for other good causes”.<sup>63</sup> This language is can be characterized as a hybrid approach to the description of the grantor’s motivation. An 1801 deed<sup>64</sup> from Ann Maria Andrews to the grantee, Majer, articulates, with Doric simplicity, the particulars of the grantor’s motivation and intent, viz. that the deed of manumission is given “in consequence of a suit in the District Court now pending and instructed by Majer for his freedom against me”.<sup>65</sup> It may be can that the employment of the dismissal of litigation brought under the Virginia Freedom Suits statute to bolster the grantees’ pursuit of

<sup>56</sup> See also, for example, *L. Bell to Peter, et al.*, Accomack County( 1787).

<sup>57</sup> See also, for example, *J. Bell to Ann and Isaac*, Accomack County (1788): “for diverse good causes moving me.”

<sup>58</sup> See also, for example, *Roberts to London*, Accomack County( 1788) :”for diverse good causes and considerations me hereunto moving but more especially for the meritorious services of a certain slave named London.”

<sup>59</sup> See, for example, *Scarburgh to Pat and York*, Accomack County, ( 1788): “ for good causes and considerations...and by virtue of an act passed in the year of our Lord 1782.” . See also Ames to Milley, et al., (1805), referencing the 1792 Act.

<sup>60</sup> Supra note and , respectively.

<sup>61</sup> Gloria Whittico, *The Rule of Law and the Genesis of Freedom: A Survey of Selected Virginia County Court Freedom Suits (1723-1800)*, *Alabama Civil Rights and Civil Liberties Law Review*, Vol. 9.2, pp. 423-435 (2018).

<sup>62</sup> *Potter to George*

<sup>63</sup> *Id.*

<sup>64</sup> *Ann Maria Andrews to Majer*

<sup>65</sup> *Id.*

liberation from bondage is vivid and compelling evidence of both the quest for freedom and the adroit ability to exploit the dictates of the rule of law and its power to achieve that goal.

#### e. *Quality of Grantee's Service*

**“Slaves are to be submissive to their own masters in everything; they are to be well-pleasing, not argumentative, not pilfering, but showing all good faith, so that in everything they may adorn the doctrine of God our Savior.” Titus 2:9-10 ESV**

A number of the deeds refer to the quality of the service rendered by the grantee to the grantor as the predicate for the deeds.<sup>66</sup> A 1793 deed from Henry Custis Bayside to Babel refers to the grantee's “faithful service...and for many other considerations me thereunto moving.”<sup>67</sup>

The Virginia legislature promulgated a statute that provided that enslaved persons might be granted their freedom upon the performance of so-called “meritorious service.”<sup>68</sup> In a 1803 deed from John Smith to Sipio, the grantor's motivation was described as being “in consideration of his meritorious services.”<sup>69</sup> One writer has observed that “The Virginia legislature permitted freedom for “meritorious services, to be judged of by the Governor and Council. Revelation of a slave conspiracy constituted “[m]eritorious services.”<sup>70</sup> Although it is not clear what the nature of the grantee's service was in the deed to Sipio, it is possible that the use of the language of the statute is not merely coincidental.

The modern reader of the history of enslavement and liberation in this nation may be tempted to view these matters in terms of philosophical motivation, religious sentiment, or a number of other factors that will be the topics of consideration in the balance of this paper. The writer trusts that the reader of this paper will no doubt recognize at this point that the rule of law and its dictates were of central importance as the questions of who was or was not eligible for liberation from slavery, and based upon which specific legal precepts, operated to sanction, either positively or negatively, freedom for the enslaved. The following section outlines the applicable legal principles governing the manumission of the enslaved based upon the supposed value of their service and several examples of the language employed by grantors as they memorialized their motives.<sup>71</sup>

<sup>66</sup> See, also, for example, Bayly, Sr. to Patience, Accomack County (1806)

<sup>67</sup> *Bayside to Babel*, Accomack County, Accomack County (1791)

<sup>68</sup> An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 53 (1819), in 1 THE REVISED CODE OF THE LAWS OF VIRGINIA:

BEING A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY, OF A PUBLIC AND PERMANENT NATURE, AS NOW ARE IN FORCE; WITH A GENERAL INDEX 421, 433–34 & n.\* (Richmond, Thomas Ritchie 1819)

<sup>69</sup> *Smith to Sipio*, Accomack County, October 31, 1803.

<sup>70</sup> Andrea Dennis, *A Snitch in Time* see Note p. 15

<sup>71</sup> In 1691 the General Assembly passed a law aimed at making masters think twice before freeing any of their slaves. While manumission by deed or will was legal under this law, it required newly freed slaves to leave the colony within six months and their former masters to pay for the trip. This legislation may have checked the urge to manumit to an extent, but there is no way to know in what numbers slaves were freed and forced to leave Virginia during the 32 years it was in effect. Manumission became much more difficult in 1723. A bill passed that year stated:

*No negro, mullatto, or Indian slaves, shall be set free, upon any pretence whatsoever, except for some meritorious services, to be adjudged and allowed by the governor and council, for the time being, and a licence thereupon first had and obtained.*

Should a slave be set free in any other manner (by will or deed, for example), the act required parish churchwardens to return the person so freed to slavery by sale at public outcry. The “meritorious service” in which Virginians were most interested was, of course, for slaves to alert authorities to slave conspiracies and insurrections, and indeed, one or two slaves gained their freedom on these grounds. Over time, though, petitioners learned to expand the meaning of “meritorious service” to include such qualities as exemplary character and faithfulness in service or marriage—and the governor and Council advanced their own thinking in approving petitions for freedom on those grounds.

The consequences of the 1723 act were many and deep. For example, if a former slave was intent upon freeing his enslaved wife and children, the various steps he had to take were fraught with pitfalls. Perhaps years before petitioning the governor and Council, this father and husband had to persuade the owner of his family members to agree to sell them to him and to set a price. Even if the owner was willing, he or she might die before the amount could be paid off. It is not hard to imagine that even after receiving payment, a master might not honor the agreement. Even if the deal went through, the former slave now owned his family and was faced with the expense and gaining access to the legal knowledge about how to make the case for their manumission.

Fewer than 25 souls in Virginia gained freedom in this manner between 1723 and the American Revolution. In May 1782, perhaps under the egalitarian impulse of the time, Virginia legislators passed a law that permitted slave owners to free their enslaved workers at will (barring any other claims on the slave owners or his or her estate), only obligating former owners of persons over 45 years of age to provide for their living if needed. A modest increase in the free black population followed this action. Legislators took a step back in 1806 by once again requiring the person so freed to be transported out of the Commonwealth of Virginia. Many remained in the neighborhoods where they were known without difficulty; others petitioned

Although the statute of 1723 contains language relating to the quality of service of the grantee as motivation to support the manumission, it is not contended here that the grantors necessarily had the law's terms in mind when memorializing their intentions in the preambles of the deeds. In other words, it is possible that their motivations were described in language that may be characterized as performative in nature.<sup>72</sup>

A number of the deeds refer to the quality of the service rendered by the grantee to the grantor as the predicate for the deeds.<sup>73</sup> A 1793 deed from Henry Custis Bayside to Babel refers to the grantee's "faithful service...and for many other considerations me thereunto moving."<sup>74</sup>

The Virginia legislature promulgated a statute that provided that enslaved persons might be granted their freedom upon the performance of so-called "meritorious service."<sup>75</sup> In a 1803 deed from John Smith to Sipio, the grantor's motivation was described as being "in consideration of his meritorious services."<sup>76</sup> One writer has observed that "The Virginia legislature permitted freedom for "meritorious services, to be judged of by the Governor and Council." Revelation of a slave conspiracy constituted "[m]eritorious services."<sup>77</sup> Although it is not clear what the nature of the grantee's service was in the deed to Sipio, it is possible that the use of the language of the statute is not merely coincidental.

#### **f. Enlightenment Ideals: "Arbitrary Will of Another Man"**

One of the best-known and often-recited formulations of the principles of the Enlightenment period is the familiar refrain contained in the Declaration of Independence:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.<sup>78</sup>

It can be argued that these words function, in an arguably *ursprache* like manner, as a short-hand statement of the Enlightenment ideals of those individuals who founded this nation. The relationship between these

the House of Delegates for permission to remain in Virginia [www.ouramericanrevolution.org/index.cfm/page/view/m0153](http://www.ouramericanrevolution.org/index.cfm/page/view/m0153) last visited August 4, 2021

<sup>72</sup> For an excellent treatment of the practice of freeing enslaved persons based upon the performance of a form of Meritorious service" involving individuals who informed on others who were engaged or intended to engage in rebellious activities, see Andrea L. Dennis, *A Snitch in Time: An Historical Sketch of Black Informing During Slavery*, 97Marq. L. Rev. 279 (2013), Available at: [https://digitalcommons.law.uga.edu/fac\\_artchop/960](https://digitalcommons.law.uga.edu/fac_artchop/960). Historian

Linda Rowe has described the meritorious services grounds for manumission:

In 1691, the General Assembly passed a law aimed at making masters think twice before freeing any of their slaves. While manumission by deed or will was legal under this law, it required a newly freed slave to leave the colony within six months and the former master to pay for the trip. Although legislation likely had a dampening effect on the urge to manumit, it is not clear how many slaves were freed and forced to leave Virginia during the thirty-two years it was in effect.

Manumission became much more difficult in 1723. Paragraph 17 of the 1723 Act Directing the Trial of Slaves Committing Capital Crimes; and for the More Effectual Punishing Conspiracies and Insurrection of Them; and for the Better Government of Negroes, Mulattos, and Indians, Bond or Free stated that "No negro, mullatto, or Indian slaves, shall be set free, upon any pretence whatsoever, except for some meritorious serves, to be adjudged and allowed by the governor and council, for the time being."

Passed in response to rumored slave insurrections, this act permitted manumission only upon approval of the governor and Council and then only as a reward for public service. Should a slave be set free in any other manner (by will or deed, for example), the act required churchwardens to return the person so freed to slavery by sale at public outcry.

Historians have said that the "meritorious service" in which Virginians were most interested was for slaves to alert authorities to slave conspiracies and insurrections, but records of the governor's Council show that no slaves gained their freedom on those grounds after 1723. Instead, meritorious service came to include such qualities as exemplary character and faithfulness. In spite of the 1723 law, a few slave owners left instructions in their will to free a slave. It was then up to their executors or administrators to petition the governor and the Council. Rowe, L. (2005, February 4). *After 1723, Manumission Takes Careful Planning and Plenty of Savvy*. Colonial Williamsburg Teacher Gazette:

[www.history.org/history/teaching/enewsletter/volume3/february05/manumission.cfm](http://www.history.org/history/teaching/enewsletter/volume3/february05/manumission.cfm)

<sup>73</sup> See, for example, *Thomas Custis to Miriam and daughter, Sarah*, Accomack County (1804)

<sup>74</sup> *Henry Custis Bayside to Babel*, Accomack County ( 1791)

<sup>75</sup> An Act Reducing into One, the Several Acts Concerning Slaves, Free Negroes and Mulattoes, no. C.111, § 53 (1819), in 1 THE REVISED CODE OF THE LAWS OF VIRGINIA:

BEING A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY, OF A PUBLIC AND PERMANENT NATURE, AS NOW ARE IN FORCE; WITH A GENERAL INDEX 421, 433-34 & n.\* (Richmond, Thomas Ritchie 1819)

<sup>76</sup> *Smith to Sipio*, Accomack County, October 31, 1803.

<sup>77</sup> See Andrea L. Dennis, *A Snitch in Time: An Historical Sketch of Black Informing During Slavery*, 97Marq. L. Rev. 279 (2013), Available at: [https://digitalcommons.law.uga.edu/fac\\_artchop/960](https://digitalcommons.law.uga.edu/fac_artchop/960)

<sup>78</sup> <https://www.archives.gov/founding-docs/declaration-transcript>

ideals and the often-observed fact that the word “slavery” did not become a part of the corpus of the U.S. Constitution until the introduction into that text of the Reconstruction Amendments is beyond the scope of this paper.<sup>79</sup>

As mentioned above, the principle embraced by Enlightenment thinkers that “the natural liberty of man is to be free from any superior power on earth” resonates in the language of some of the deeds, revealing the intention of the grantors, and shedding specific light on their motivations. For example, in a 1790 deed of manumission, William Marshall of Accomack County granted to grantees Caesar, Tob, Daniel, Bill, and several others, “...for diverse good causes me thereunto moving and more especially believing liberty to be their just and equitable right.”<sup>80</sup>

Six years later, on January 25, 1796, Crippen Taylor’s deed of manumission to George was acknowledged by a court in Accomack County.<sup>81</sup> In the deed’s preamble, Taylor documents his motivation as follows: “I, Crippen Taylor of the county of Accomack being under a conscientious notion that nature and providence decrees[sic] to every individual of the human race personal liberty....”<sup>82</sup>

Employing language similar to that of John Locke,<sup>83</sup> John Edmunds writes in a deed of manumission granted to Esther Goliah and others, “I John Edmunds of Accomack County, Virginia, considering freedom from a state of slavery the natural and proper right of the black people as well as the white people in society.”<sup>84</sup>

Although care has been taken with respect to the methodology of categorizing the deeds of manumission examined in this paper, a deed from 1802 from grantor Abel Teackle to grantee Prince presents an interesting example of the hybrid motivations of the grantor.<sup>85</sup> Teackle’s preamble contains the following language: “Now be it known to all Christian people and others that in consideration of the natural rights which all of the human family are entitles to in their personal liberty and as well for the further consideration of the sum of five shillings to me in hand paid by the [aforementioned] Prince.”<sup>86</sup> This language reflects the grantor’s dual motivations, and lends credence to the notion that the grantee was directly involved with demonstrated agency in connection with securing his own grant of freedom.

### **g. Family Unification**

#### **Accomack County (1791-1824) Elizabeth City County (1830-1859)**

**“Your offspring shall be like the dust of the earth, and you shall spread abroad to the west and to the east and to the north and to the south, and in you and your offspring shall all the families of the earth be blessed.” Genesis 28:14 ESV**

One of the most familiar tropes regarding chattel slavery and the enslaved themselves inheres in the notion that the enslaved were interminably dependent upon others, typically white abolitionists, for any activities aimed toward liberation.<sup>87</sup> In approximately fourteen of the Accomack County deeds examined in this paper<sup>88</sup> as well as several Elizabeth County deeds<sup>1</sup>, the actions of formerly enslaved grantors are documented and reveal their intentions to liberate either family members or fictive kin, resulting in the re-unification of formerly separated families. Several of these deeds are discussed below.

In a 1790 deed from John Blake Doe, the grantor records his motivations as follows:” I...manumit emancipate and forever set free...my wife Nesther and my son.”<sup>91</sup> Doe indicates that he purchased his wife and son who were being sold in connection with a sheriff’s sale.<sup>1</sup> Another poignant exemplar of the agency that motivated this group of grantors appears in the 1793 deed of Abraham Guthrie to Pender and Isaac.<sup>89</sup> Guthrie records his motivation for the liberation of his relatives that “... it would be against nature, & utterly abhorrent to my intention ...to hold my mother and my brother bound in the duties of slavery to me.”<sup>90</sup> Guthrie, a freeman, had purchased his

<sup>79</sup> “Neither *slavery* nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” U.S. Const. amend. XIII, § 1. (emphasis added).

<sup>80</sup> Marshal to Caesar, et al.

<sup>81</sup> Id.

<sup>82</sup> Id.

<sup>83</sup> Id.

<sup>84</sup> Id.

<sup>85</sup> Id.

<sup>86</sup> Id.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Id.

<sup>90</sup> Id.

mother and brother at estate sales of their respective owners.<sup>91</sup> The texts of several of these deeds follows:

**Primus Mallory<sup>92</sup>**

Know all men by these presents that I Mary Mallory generally called Polly Mallory of the county of Elizabeth City, have emancipated, manumitted and set free a negro man slave named Primus Mallory generally known by the name of Primus, who was purchased by Peggy Mallory a free woman of color from Dr. William Hope, from which said Peggy Mallory the said slave Primus descended to me the said Polly Mallory her only child. And I do hereby declare the said Primus to be entirely liberated, and entitled to all the privileges of a free person with which under the law, I can invest him. The said Primus is a man of very dark complexion about six feet [illegible in original ] high and is now in his seventy sixth year. In testimony whereof I have hereto signed my name, and affixed my seal this twenty third day of February in the year one thousand eight hundred and thirty

Sealed and delivered in  
 Mary X her  
 mark Mallory L.S. The presence of }

**James Baley<sup>93</sup>**

Know all men by these presents that I Nancy Tarrant of Hampton County of Elizabeth City, have manumitted, emancipated and set free, and by these presents do manumit, emancipate and set free, a negro man slave named James Baley who was sold and delivered to me by George Hope on the [ ] day of [ ] said County. And I hereby declare the said James Baley to be entirely liberated from slavery and entitled to all the rights and privileges of a free person with which it is in my power to vest him.

He the said James Baley hereby emancipated, is a man of yellow complexion, about five feet 8 ½ inches and will be fifty five years of age on the 8<sup>th</sup> day of April next. In testimony whereof I have hereunto set my hand and seal this 8<sup>th</sup> day of January 1839.

Witnesses } Nancy Tarrant/L.S.  
 John C. Ham }  
 Wm. Ham } Signed and acknowledge (sic) before  
 me William Hope a Notary Public in and  
 for the County of Elizabeth City  
 January 8<sup>th</sup> 1839. Wm. Hope N.P

**Catharine Combs<sup>94</sup>**

Know all men by these Presents, that I George W. Semple of the county of Elizabeth city and in consideration of one thousand five dollars to me in hand paid by Junius Stewart of said county a free person of color. And for divers other good causes and considerations me moving. Do by these presents manumit, emancipate and set free from slavery negro woman slave named Catherine Combs, a bright mulatto woman aged about 34 years and her two children. Dianna aged about 6 years and Albert aged about 3 years which said slaves were purchased by me from William R. Milles commissioner at a sale and under decree of the circuit court for the county of Elizabeth City: in the suit of Job Henry v. Collin &c.

Witness my hand & seal this 2d day of August 1859  
 G Wm Semple / L.S.

Clerk’s Office of the County Court of Elizabeth City Count, August 10<sup>th</sup> 1859. This deed of Emancipation was acknowledged by Geo. W. Semple, party hereto and admitted to record

Teste  
 S.S. Howard Clk

**h. Christian Motivations of the Grantor**

In seventeen of the deeds examined in this paper, ample evidence is presented that tends to confirm the Christian

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Id.

motivations of the grantors. In the section of the paper that follows, an examination of deeds of manumission the

motivation for which was religious belief and virtues will be explored.

The deeds of manumission that contain implicate Christian virtues may be categorized by the particular formulation of the language employed by the grantors. For example, one such deed simply cites the grantor's belief that holding others in slavery constitutes a "violation of our blessed Christian Religion."<sup>95</sup>

Another grantor expresses motivation as follows: "that black people shall be free, as well as the white people in society". "from motives of humanity, Justice, and policy, and as it is repugnant to Christianity repugnant to Christianity and even common honesty to live in ease and affluence by the labor of those whom fraud and violence have reduced to slavery; (altho [sic] sanctified by general consent and supported by the law of the land)."<sup>96</sup>

#### **Variation: "Having weighed in the Scale of Justice"**

A number of grantors employed a variation on the theme of religious motivation and included reference to the importance of personal liberty, perhaps thereby implication Enlightenment principles as they set forth their sentiments. The language employed by these grantors is as follows:

having weighed in the Scale of Justice, the condition of Slavery am sensibly convinced that it is unwarrantable as well by the laws of Religion as morality....God originally distributed equaty to the human Race the unalienable righ[t] t the enjoyment of personal lib[e]rty so it behoves each man to restore to his fellow Creatures that invaluable blessing of which he by unjust & impoliti[c] Law is possessed"<sup>97</sup>

#### **Variation: "God of One Blood"**

Perhaps the most compelling variation on the theme of Christian motivation is contained in a suite of Accomack deeds of manumission given between 1805 until 1818. The language employed in these deeds appears to have been taken from the Acts of the Apostles (supra note\_\_\_\_\_) and proceeds as follows: "Considering that God of one blood made all nations of men, and that it is his will that the Black People should be free, as the White People in society". (See, for example, **1804 Dix to Morris; 1805 Ashby to Carter; 1806 Bagwell to Lonnon ; 1806 Bagwell to Savage (Lear); 1806 Bagwell to Savage (Leon); and 1818 Elliott to Kellam**).

The similarity of language and apparent reliance on the same Scriptural passage lends credence to the notion that the grantors of this particular tranche of deeds worked in concert with respect to their efforts to grant liberation to their respective grantees, perhaps thereby shedding new light on the what Sheppard has so aptly described as "something unusual " that occurred in Accomack County on Virginia's Eastern Shore regarding efforts to end slavery for those grantees affected by these deeds. (See Sheppard supra note \_\_\_\_).

<sup>95</sup> 1787 Paramore to Bemellee

<sup>96</sup> Corbin to James 1787

<sup>97</sup> 1790 Bagwell to Daniel, et al. 1792 Teackle to Leah, et al. 1793 Ames to Otter , et al.

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