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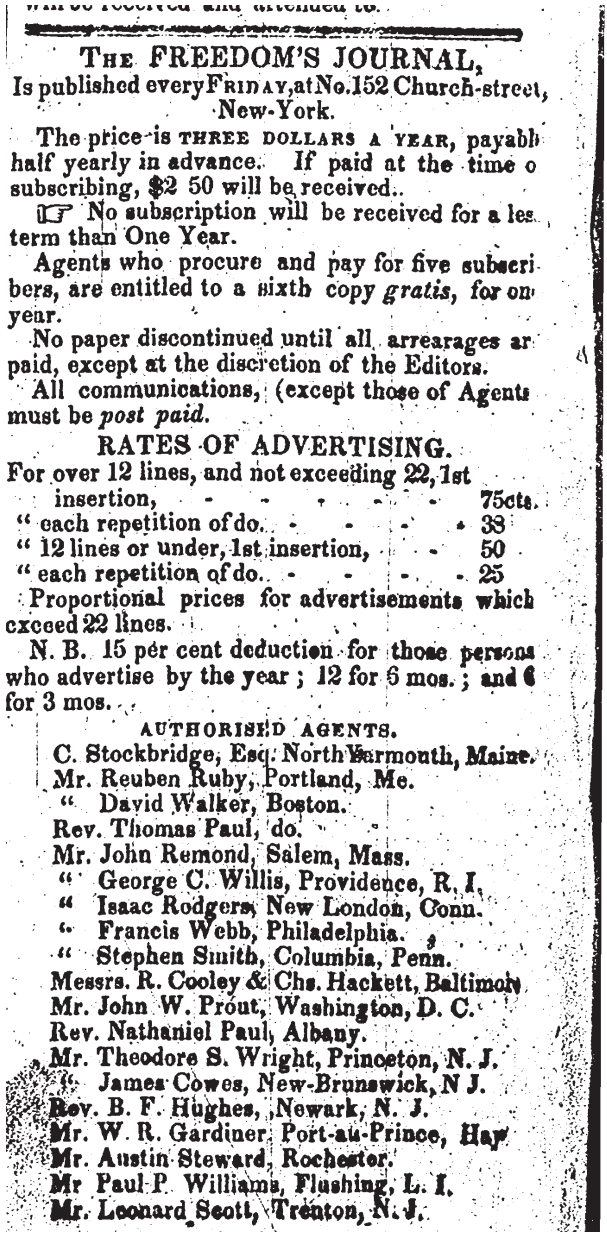
Being a Native, and Free Born

Race and Rights in Baltimore

George Hackett's first lessons about race and rights were learned in his family's Baltimore home. The story of his father, Charles, suggests how much there was to know. Charles Hackett had come of age in the years after the American Revolution, just as Maryland law began to limit the political and economic lives of free men of color. Charles and others like him faced a narrow labor market.[1] He could work as a domestic or at sea, though neither was an easy choice for a man with a family. Charles was left to perform manual labor: cleaning privies, repairing roads, sinking pilings, leveling streets, and digging ditches.[2] Custom, laced with racism, generally excluded free black men from the skilled trades and professions that fueled the city's manufacturing economy. He faced recurring efforts to enact legislation that would have formally barred free men of color from more lucrative and less dangerous vocations.

It is unlikely, however, that Charles Hackett would have recounted his story as simply one of laboring in the city's lowest ranks. His work as an activist told another tale, one about how men and women of color taught themselves how to wrestle with questions of race and rights. His church leadership demanded a spiritual calling and scriptural expertise. It also required legal acumen, and Charles Hackett's earliest legal education came in the form of institution building. He was a lay leader in the African Methodist Episcopal Church, representing hundreds of black Methodists. His congregation was at the vanguard of a movement that rejected the marginalization of black worshipers in white-led Methodism. They had sought independence of thought, especially on slavery, and leadership roles, including ordination to the ministry. In the last years of the eighteenth century, Charles was among those establishing separate, black-led class meetings. His group purchased a lot and small building, naming it Bethel Church.[3] Bethel's leaders purchased the freedom of their minister and hired him to operate Baltimore's first black-led school.[4] In 1816, when black Methodists from Philadelphia, New York, and Baltimore launched



THE FREEDOM'S JOURNAL,
Is published every FRIDAY, at No. 152 Church-street,
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FIGURE 1.1 Agents for *Freedom's Journal*. Black activists developed legal acumen through networks including the African American press. The first such publication, *Freedom's Journal*, was based in New York and employed a Baltimore-based agent, Charles Hackett, who also oversaw publishing for the African American Methodist Episcopal Church. Image courtesy of Martha S. Jones.

an independent denomination – the African Methodist Episcopal Church – Charles Hackett witnessed the culmination of his twenty-five years of religious activism.

Hackett also learned how to think about his community in legal terms. The incorporation of a church, the purchase of land and a building, and arranging for the manumission of an enslaved minister were tasks that offered lessons in law. These transactions demanded negotiations with attorneys, justices of the peace, and clerks. In this sense, law governed the life of Bethel Church. The church also made its own law, titled *The Doctrines and Discipline*, that governed the whole of the denomination and allowed local congregations to hold tribunals that would resolve internal disputes.[5] Charles Hackett was key to this when, in 1820, he was elected the church's book steward. In that role, he visited Baltimore's black Methodists, explaining the importance of church law and raising funds for its publication.[6]

Informal exchanges about law – in church halls, on street corners, over meals, and during the work day – while difficult to recover with any specificity, must have been important. Charles Hackett was only semiliterate, if that. He signed legal documents with an *X* rather than his name, suggesting that he and others relied on those who could read to assist with interpretation of legal texts. Charles knew the power of literacy and made sure that his son George received the best education black Baltimore could provide. In helping to found the Bethel Church school, he would certainly have had his son and other children like him in mind. Even that work was informed by the parameters of law. Maryland never outlawed the education of free people of color. Still, enough slaveholding states did so that those setting up schools needed a keen sense of what might be permissible.[7] Did the Hackett family talk about law during their regular gatherings? Some lessons were unavoidable. Home life, too, turned on the workings of legal culture. Charles Hackett acquired a small bit of property: a lot on Friendship Street. But by 1832 he faced a foreclosure suit brought by his mortgage holders. His family's economic life was made orderly, though neither stable nor secure, by way of law.[8]

African American print culture extended the legal education of black Baltimoreans like Charles Hackett. In his role as an agent for the nation's first African American newspaper, *Freedom's Journal*, Charles was responsible for connecting his city to an emerging network of free black communities. Published in New York City, the weekly's editors included Samuel Cornish, a Presbyterian minister who had been a missionary in Maryland before settling in Philadelphia and then New York.[9] Perhaps he and Hackett met in Baltimore. It may have been that the two met in a political meeting. However they became acquainted, Hackett was among the first to represent Cornish's paper to the world, selling subscriptions and distributing newspapers in Baltimore.[10] *Freedom's Journal* framed its mission and the struggles of black Americans in expressly legal terms: "We shall ever regard the constitution of the United States as our polar star." Cornish and Hackett brought news to the street

corners and parlors of black Baltimore, and with it came ideas about how law was one weapon in their arsenal.[11]

In this chapter, we encounter black Baltimoreans as they developed a legal acumen that undergirded their claims to citizenship. Their first primer was the African American press, where they encountered examples of how the United States Constitution might be used to challenge local laws and thus take on meaning in their daily lives. They also looked to legislators, but there found a muddled scene that failed to fix the status of people of color.[12] In New York, for example, black people were citizens but with inferior voting rights. In Missouri, according to Congress, they could be regulated though not barred from the state. When a free sailor named Gilbert Horton was arrested in Washington, DC, and threatened with sale as a slave, black Baltimoreans were right to be alarmed. Horton was detained in the nation's capital under a Maryland law, and his liberty turned on the benevolence of white men in faraway New York City. Many insisted that Horton was a free citizen of New York and immune from sale. But in the streets and jails of Washington, as in Baltimore, free black people were especially vulnerable with legal authorities so divided.

Competing views about race and rights clashed in Baltimore. From the North came news about how states such as New York and Pennsylvania had implemented gradual emancipation schemes. There, free black men could sometimes vote. From the South, the fact of slavery's expansion was apparent, and a new domestic slave trade threatened the security of free black Baltimoreans. Still other perspectives on the life of free people of color entered by way of the port. Men and women connected to the maritime trades knew of how race and rights intersected in the Caribbean and South America. Throughout the Americas, free black men and women confronted dynamic and uncertain futures. Sailors and draymen related tales of rebellion and liberty in far-flung locales where slaveholding was reluctantly giving way to free soil. Making comparisons between Baltimore and other cities became yet another way to understand life and law in Baltimore.

Maryland's complex character, reflecting North and South, was forged through commerce, finance, trade, and shipbuilding.[13] The city was also a global port with ties to the Caribbean and the South Atlantic. Aboard ships of far-flung origins came goods, news, and thousands of mariners. Free people of color knew these dynamics well. Their churches and political organizations tied them to the North. Slavery linked them to the South. And their labor – as seamen, dockworkers, boardinghouse keepers, and carters – ensured that they knew well the talk in the port. Baltimore was the third largest city in the United States, and more so than in any other, it was a city that was sustained by a many-faceted economy of exchange with the Americas.[14]

Ties of water, steel, and paper shaped the city. Canals connected it with Washington, DC, in one direction, and Pennsylvania's Susquehanna Valley in another. Turnpikes carried stages, wagons, and buggies through Baltimore via the National Road and seven additional turnpikes constructed

between 1798 and 1816 that linked Baltimore to the West. By the 1820s, railroad projects – the Baltimore and Susquehanna, the Baltimore and Washington, and the Baltimore and Ohio – were revolutionizing the city, the exchange and export of goods, and the in- and out-migrations of people.[15] Law was a partner to the development of the city's character. The example of how joint stock companies emerged illustrates how the city was increasingly linked to other regions. Between 1787 and 1815, Baltimore became home to ten insurance companies (five for marine risks), seven turnpike companies, two bridge companies, and a water company, along with three manufacturing companies.[16] Print culture was also key. Hezekiah Niles's weekly news magazine, *Niles' Register*, published in Baltimore, was the country's paper of record. The Quaker abolitionist Benjamin Lundy chose Baltimore as his base when he began publishing the *Genius of Universal Emancipation*. There, a young journalist and antislavery convert, William Lloyd Garrison, would join him in 1829.[17]

By 1800, Baltimore's connections to the Caribbean and South America were nearly two centuries old. Some links were wrought from the trade in goods. Maryland merchants exported staple crops – food, household wares, and manufactured items – to the British, Spanish, and French empires, and Maryland tobacco was packed and loaded for Caribbean destinations. Baltimore was known as the "granary of the West Indies," as staples produced in northern Maryland and southern Pennsylvania were shipped to Caribbean markets. In addition, ships built in Baltimore, especially the much-admired Baltimore Clipper, took the city's name, along with its artisanship, manufacturing, and mariners, throughout the hemisphere.[18]

For free black households, links to the North were reinforced through a rich African American public culture of churches, fraternal orders, and newspapers. No connection was stronger than that established by the founding of African American churches. Black Christians in Baltimore were part of a rich and growing religious culture that was bound together by doctrine and worship styles as well as revivals and conventions. Black Baltimoreans also relied on the circulation of newspapers and tracts. Antislavery newspapers and, by 1827, the African American press knit free blacks in Baltimore together with communities in New York, Boston, Newport, and Philadelphia. *Freedom's Journal* included regular reports about happenings in Baltimore. News of colonization-society activities and the kidnappings of free black Marylanders thus reached black readers throughout the North.[19] *Freedom's Journal* was also an outlet for local news. For example, the head of Baltimore's Sharp Street Methodist school, William Lively, advertised for black students in its pages.[20]

Cities like Philadelphia and New York were touchstones for free black Baltimoreans. Like enclaves in the Maryland city, Northern black communities had grown up out of the revolutionary era's wave of abolition. But their trajectories had diverged as slavery was slowly done away with in the North. In Massachusetts, enslaved litigants succeeded in undoing slavery by judicial

decree by the 1780s. New York set in place a gradual emancipation scheme in 1799 and then abolished the institution altogether in 1827.[21] No example was more proximate than that of Pennsylvania. That state's 1780 abolition act freed the children of enslaved people and helped fuel the emergence of an important and thriving African American public culture. With Philadelphia just over a hundred miles from Baltimore by coach, African Americans were able to move between the two cities for work and to strengthen ties of politics, church, and family. The questions black Baltimoreans asked about rights and citizenship did not differ greatly from those being posed in New York and Philadelphia.[22]

Connections to the South were more difficult to maintain. Baltimore was a city of migrants, and in this sense the presence of former slaves and fugitives linked Baltimore to the South, especially to its nearest neighbor, Virginia. During the summer season, free black men and women from Baltimore labored at the region's resorts and spas, where they encountered other Southerners, black and white. Still, black laws increasingly restricted travel, and local authorities curbed the development of independent black institutions such as churches. Farther south in Charleston, for example, the Reverend Morris Brown and his AME congregation were harassed and their church was closed down by the city when officials discovered alleged plans for a slave uprising. Brown would relocate to Philadelphia and become the denomination's second bishop, but the demise of his Charleston church reflected how regionally restricted such institutions were.[23]

Free black Baltimoreans looked to the South and saw slavery gaining ground as a political and economic institution.[24] The success of cotton fueled a new demand for enslaved labor. Upper South states like Maryland were drawn into a new slave trade, a domestic one in which prices for enslaved people sold out of Baltimore were driven by the demand of markets in Natchez and New Orleans. These forces were being felt as early as 1790, and by 1820 a robust internal slave trade was in operation. Some Maryland commentators condemned it.[25] Journalist Hezekiah Niles "supremely hated" the trade for its overall inhumanity, and underscored how "wretches" were kidnapping free African Americans and selling them as slaves.[26] Maryland lawmakers attempted to prohibit the domestic trade beginning in 1780, later stepping up their efforts by prohibiting the out-of-state sale or transport of slaves who had been promised their freedom after a term of years.[27] Still, the traffic in persons continued. A local grand jury published its observations of widespread kidnapping. It was an "evil," the jury members explained, that persisted despite legislation to the contrary. The demand from markets further south led to the out-of-state sale of term slaves – those bound for a number of years rather than for life – and the kidnapping of "free negroes decoyed by stratagem or dragged by force . . . and sent away."[28]

Black Baltimore's far-reaching vantage point is perhaps best understood by way of the people who moved into and out of the city. Human migrations large

and small linked Baltimore to a geography that stretched to the Caribbean and South America. Some journeys were solitary. Such was the case for free black sailors who passed through the port. Although their numbers are difficult to document, we can say something about the numbers of men from Maryland who became mariners. In 1810, for example, 7.4 percent of black heads of households were said to be seamen.[29] Such men were "vectors of experience and information" in regional networks of communication. Black seamen shared news by word of mouth, the passing of newspapers, and their very demeanor, which could generate rumors and debate about happenings in distant locales.[30] Other black migrants came into the city as parts of households and under compulsion or duress. When Caribbean planters migrated to Maryland, as many did during the Haitian Revolution, they established plantations south and east of Baltimore, bringing with them enslaved workers. Many labored as domestics; some lived independently and were hired out for wages. Some escaped, disappearing into the city's growing free black enclaves.[31]

White Baltimoreans did not agree about how to regard the growing free black population. Between 1790 and 1820 the free black population in Baltimore had exploded from just 323 persons to more than 10,000. The overall percentage of black households in the city had doubled, from 11.7 percent to 23.5 percent.[32] Some expressed alarm, like Luther Martin, an antifederalist member of the United States Constitutional Convention and former Maryland attorney general. Martin wrote that the city risked becoming "the head quarters of free blacks and people of colour, not only from other states in the Union, but from the islands."[33] He was especially distressed about a recent court proceeding in which a woman, alleged to be a fugitive slave, had been released. There were differences over the merits of the case, but Martin's true concern was how the city's free black community was growing by way of local manumissions and the in-migration of black people from the lower South and the Caribbean. Not everyone agreed with Martin, and he received a quick public retort. The pseudonymous "Humanity" defended the court's action in freeing the alleged fugitive, and then generally decried the presumption that black people were slaves. "Such a proposition," the writer urged, was "opposed to every principle of law, of justice, and of humanity and it is in vain to urge in support of it, that the colour of a negro alone is sufficient evidence of his being a slave."[34] Over time this position would be defeated and color would raise the presumption of slave status. Still, Humanity's perspective was important. It admitted that Baltimore was becoming a haven for free black people and then urged that they should expect due process and fairness. With people like Martin and Humanity at odds, Baltimore was an awkward haven.

In distributing the pages of *Freedom's Journal* in Baltimore, Charles Hackett disseminated a retort that sought to clarify how free black Americans fit into the landscape of the city and of the nation. Civil rights, readers learned, were "the greatest value," and the paper's editors vowed that "it shall ever be our duty to vindicate our brethren, when oppressed, and to lay the case before the

publick."[35] Those rights, the paper's prospectus asserted, were rooted in the nation's founding document, the Constitution.[36]

The black quest for rights had a long history, *Freedom's Journal* reported. A story reprinted from the *Liverpool Mercury* illustrated how quotidian claims intersected with constitutional principles through the life of one of the early nineteenth century's most commercially successful and politically influential black leaders, Paul Cuffe. In 1780 Cuffe, a Dartmouth, Massachusetts, mariner, and his brother John had been called on by a local collector to pay a personal tax. The two puzzled over their obligation, knowing that the laws and the constitution of the state linked taxation to citizenship. If the law demanded the payment of a tax, they reasoned, the same laws should "much necessarily and constitutionally" invest them with the right of representing and being represented in the state legislature. The two decided to insist on such a recognition of their rights. The Cuffes, explained the paper, won their claim. There was for readers of *Freedom's Journal* an instructive quality to the link between a ministerial act, such as paying taxes, and the securing of rights as citizens.[37] In his influential though short life – he died in 1817 – Paul Cuffe was remarkable for his business acumen, his political deftness, and even his intellectual contributions to an "African" identity among black Americans. He was also remarkable for his quest for citizenship.[38]

The Cuffe brothers' experience as seamen during the American Revolution hinted at how they developed expectations about citizenship through exchanges during their service aboard whalers and their detention in cells of the British Empire. *Freedom's Journal* brought such vantage points home, inviting readers to share in knowledge that made possible a comparative and transnational point of view. Sometimes this took the form of speculation. "What will be the case, when the slaves in the West Indies and the Spanish states, become all free citizens?" the paper asked.[39] Haitian history provided an example of what slavery's abolition might bring. Readers were reminded how, for example, in 1791 the French National Assembly had extended to free people of color "all the privileges of French citizens," including the right to hold office.[40] In "South America and Hayti," readers learned, "the Man of Colour is seen in all the dignity of man, freed from the prejudices, and endowed with the rights, and enjoying all the privileges of citizenship."[41] Comparative thinking about citizenship opened minds to the prospect of colonization and migration to Liberia. It was a "mere waste of words to talk of ever enjoying citizenship in this country," the journal's editors declared, and the Liberian example provided an important counterpoint.[42] As one correspondent put it, these examples and others ensured that free black men and women were "so far enlightened, as to know that they are unjustly, in this land of liberty, denied the rights and privileges of free citizens."[43]

Freedom's Journal also brought questions about free black citizenship close to home for Baltimoreans. In 1828 a correspondent reported, after a short visit to the city, that a free man of color "may be respected in his business; he may

be encouraged; but when we come to talk of liberty – of the rights of citizenship – of his evidence in a court of justice against his fairer brethren, we cannot but perceive that there is little justice doled out to him by the republican laws of the state of Maryland."[44] Men from cities such as New York or Philadelphia recognized their relative status. "Baltimore was never designed to be the abode of your humble servant," a correspondent wrote. "A man of colour, educated at the north, can never feel himself at home in Baltimore," learned the paper's readers.[45] This view had merit. Black Baltimoreans made their way in a world framed by a particular if not unique legal culture, one that offered no certainty about their status.

If geography opened Baltimore up to the world, legal culture threatened to close it off. The city's free black men and women lived at the crossroads of geography, culture, and politics. But legal culture worked to close off these influences. Lawmakers found it nearly impossible to fix the status of free black Marylanders. Instead, they put in place a piecemeal scheme of requirements and restrictions aimed at curbing the very mobility and independence that life in the port city might invite. This tension, between ambition and possibility on the one hand and repression and control on the other, led free black families to study law. Their rights and status, confused and uncertain, relied on no single text, ruling, or statute.

Constitutions were one touchstone, and founding texts seemed to suggest that free people of color might expect to live as fully rights-bearing persons, equivalent to their white counterparts. The constitutions of the United States and Maryland were silent on the status of free black people. The 1776 Maryland state constitution did not use the word "citizen," although it recognized inhabitants and free men. It ascribed differences among Marylanders: there were non-Christians whose religious liberty was not guaranteed, clergy members who could own property only with permission of the legislature, and those under twenty-one or without property who were politically disenfranchised. Free people of color appeared to stand on a par with whites. The United States Constitution elided the question of who was a citizen. Its broad categories distinguished among free people, enslaved people, and Indians. It did not address the status of those who, though descended from slaves or the formerly enslaved, were now free. The Constitution's only references to citizens were fragmentary and implicit: only citizens could serve as members of Congress; only "natural born" citizens as president; only citizens could sue in federal courts. The Constitution thus guaranteed privileges and immunities of citizens but did not delineate how to distinguish citizens from noncitizens. The matter of race and citizenship, in both state and federal terms, remained unsettled. For Baltimoreans, neither constitution expressly barred legal distinctions grounded in race, leaving an opening for legislative action.[46]

There was little express collaboration between state and federal lawmakers in the early nineteenth century on the question of free black people, and the character of what emerged from Congress and from the state assembly

differed. Maryland reached aggressively into the lives of free black people in the early republic, but Congress was more restrained. When setting the terms of the first national census enumeration in 1790, Congress provided that enumerators should distinguish between "the sexes and colors of free persons." Hence, the census schedule was divided into the categories of free whites, "all other free persons" including free African Americans, and slaves.[47] Congress did immerse itself in more local questions through its governance of the new District of Columbia. In 1802 Congress limited the vote and service in the militia in the district to "free white male inhabitants of full age."[48] No single piece of congressional legislation was felt more in Baltimore than the Naturalization Act of 1790, in which Congress expressly limited naturalization to free white persons; free people of color were not eligible to become naturalized citizens of the United States.[49] Thus in Baltimore, a destination for free black people from throughout the Americas, especially seamen, prohibitions against naturalization distinguished free black men and women from their white counterparts.

State lawmakers also began to draw boundaries around black Marylanders, attempting to fix them in place and in status through what came to be termed black laws. These did not constitute a comprehensive or coherent code such as that governing slavery and free people of color in the French and Spanish Americas.[50] Between 1780 and 1820, Maryland lawmakers set in place a piecemeal series of regulations. That about which the constitution had been silent now regularly animated the state assembly in Annapolis, as lawmakers asked where free African Americans stood in Maryland's legal culture.[51]

Central to this new legal regime were restrictions on mobility. By 1820, Maryland had closed its border to the in-migration of free black people, rendering its own residents increasingly isolated. State laws defined free black men and women in part by restricting their comings and goings. Maryland began by first restricting the slave trade into and through the state. By 1783, the legislature codified what was already true in practice: importing slaves from other states or countries was strongly discouraged, first by prohibitive taxes and then by criminal penalties. It would be another twenty-plus years before lawmakers regulated the movement of free black people. When they did so, in 1806, they imposed a hefty ten-dollar-per-day fine on those who migrated into the state. To make the state's position all the more clear, the new law added extra discouragement: failure to pay such fines could result in being sold out of Maryland, in essence enslaving free people.

For those remaining in Maryland, no authority spoke directly to their citizenship. Still, their rights narrowed between 1780 and 1820. Free black men had voted until the last years of the eighteenth century, but that door gradually closed. Initially lawmakers drew a distinction between "historically" and "newly" free people. Those free before 1783 retained a broad set of rights, while those born or manumitted after 1783 were distinguished by the rights they did not possess: they could neither vote nor hold public office. By 1783,

"newly" freed people were barred from testifying against whites, although, notably, "historically" freed people were not. This distinction did not hold very long, however. By 1801, the constitution had been amended to limit the vote in Maryland to "free white male citizens, and no other." All free black people were thus disenfranchised.[52]

This fissure and others suggest how courts remained more porous institutions even as political rights were being revoked. When Maryland's high court attempted to interpret the state's tangled laws regulating black testimony, it failed. In the case of *State v. Fisher*, a trial court had allowed a free "mulatto" woman to testify against the interests of the defendant, a "free born white Christian man." The verdict was guilty. On appeal the high court asked whether a free mulatto woman could so testify. The justices scrutinized the statutes going back to the early eighteenth century and found they "could not agree in opinion upon the question." There was, as the decision put it, "a diversity of opinion." The testimony and the verdict were thus permitted to stand.[53] Legislators also suggested that courthouses remained open venues for free black Marylanders. The laws of 1783 generally sought to limit the rights of "newly" free black people. But there were important exceptions. They could by positive law "hold property" and "obtain redress in law or equity for an injury to . . . person or property."[54]

Maryland's early black laws, adopted in fits and starts, were never comprehensive. Nor did they bar African Americans from the courthouse. Instead, omissions left spaces through which free black people might insert their interests in courtrooms that remained open to black litigants. Maryland allowed the education of free African Americans, and in Baltimore, church-sponsored schools were in place by the first decade of the nineteenth century. The state's borders, which were crowded with legal barriers, expressly retained important openings. Black seamen, along with wagoners and messengers, could enter the state while performing their duties without risking punishment. There were no formal restrictions on the movement of free black Marylanders themselves. They could leave and reenter the state at will, another avenue by which networks remained intact.[55]

The 1820s marked a turning point, and two poles of a debate emerged. One view was that free African Americans were citizens of the individual states and of the United States, entitled to the privileges and immunities of citizenship guaranteed by the Constitution. The opposing view was that they were persons other than citizens, perhaps aliens or denizens. As such, free black men and women were subject to black laws as well as policies promoting colonization, banishment, and other modes of removal from the United States. Citizenship and the rights that might attend it took on new saliency. Some saw in it a strategy for resisting removal. Others saw in it an extension of rights to persons who must not become part of the body politic. The issue was joined in 1821, in a congressional debate over Missouri's state constitution and in a New York State constitutional convention. Lawmakers faced off, charting out the terms

by which the question would be debated going forward. Black Marylanders watched as arguments over their status heated up.

When Congress took up Missouri's admission to the union in 1821, no one anticipated how free black citizenship would nearly derail the process. A slaveholding territory, Missouri proposed a state constitution that mandated laws "to prevent free negroes and mulattoes from coming to and settling in the State, under any pretext whatsoever." The proposal was harsh, and it gave Congress members pause. Would a prohibition against the in-migration of free persons of color violate the US Constitution's "privileges and immunities" guarantee? The answer, all agreed, turned on the citizenship status of free African Americans. If African Americans were citizens, Missouri's proposal drew impermissible distinctions such that its constitution would be refused. Were they not, Missouri would be free to bar black Americans, and the proposed constitution would become law.

The resulting debate stretched over many days and fills scores of pages in the *Annals of Congress*. In the Senate and the House, lawmakers reasoned aloud about what rights flowed from citizenship and to whom such rights belonged. Free African Americans were the hard case; everyone was aware of the state black laws already in place. Citizenship had never before been subject to such exacting scrutiny, with such forceful advocates on both sides. Some lawmakers took the position that free black people were citizens. As one argued: "If a person was not a slave or a foreigner – but born in the United States, and a free man, going into Missouri, he has the same rights as if born in Missouri." This was jus soli, or birthright citizenship. Others saw no conflict in permitting Missouri to bar black migrants, the implication being that free black Americans were not citizens. These were remarkably serious, well-reasoned, and in some cases lengthy examinations of the question. Those present were immersed in nothing short of a primer on the history and the practice of citizenship.

Northern state legislatures weighed in, speaking on behalf of those black men and women whom they deemed citizens. From New York came the insistence: "If the provisions contained in any proposed constitution of a new State deny to any citizens of the existing States the privileges and immunities of citizens of such new State, that such proposed constitution should not be accepted or confirmed."[56] Vermont also cried foul, interpreting the Constitution's privileges and immunities clause. Missouri proposed to prohibit the in-migration of "citizens of the United States" solely "on account of their origin, color or features," Vermont legislators said, while their state deemed free men of color "citizens of the United States."[57]

On the floor of the Senate the debate over Missouri was an elaborate exegesis on how the privileges and immunities clause might apply to black Americans. Southern lawmakers, like William Smith of South Carolina, endorsed Missouri's effort to bar free black migrants who sought entry into the state. Smith opined that Missouri's constitution was "republican" and without "objection."[58] Lawmakers split along sectional lines, with men of the North

explaining the status of black men and women in their states and then invoking on their behalf full protection under the Constitution. Rhode Island's James Burrill mocked Missouri's proposed constitution, pointing to black military service: "We have colored soldiers and sailors, and good ones, too, but under no pretext whether of duty or any other motive, can they enter Missouri." Citizenship, he went on to explain, turned on birthright: "If a person was not a slave but a foreigner – but born in the United States, and a free man – going into Missouri, he has the same rights as if born in Missouri."[59]

In the House of Representatives, the debate was similarly divided. Pennsylvania's John Sergeant, chair of the judiciary committee, delivered one of the most elaborate presentations, lasting "upwards of two hours." Much in his remarks went to defeating the suggestion that Congress should leave questions about the propriety of Missouri's constitution to the judiciary. Sergeant was emphatic that Congress was charged with safeguarding the Constitution and its privileges and immunities clause by way of its power to review Missouri's admission as a state. When he finally turned to the merits, Sergeant explained that he disagreed with Congressman William Lowndes of South Carolina: The privileges and immunities clause "made no distinction of classes, but extended equally to both classes." Free people of color were, in his view, citizens of individual states, including "North Carolina, New York, and Massachusetts." They did not vote when not freeholders, "yet no one would deny them to be citizens of those States." What he and others sought was the affirmation of "the humble simple privilege of locomotion . . . a right indispensable to citizenship."[60]

Maryland lawmakers were silent. And their silence is remarkable if only because, amid a great deal of speechmaking, they did not weigh in even as their state was invoked repeatedly in the House. The example of "the Jews of Maryland" was used to complicate who was a citizen and what rights might flow from that.[61] It was reported that under Maryland's "old constitution" free people of color had voted, only to have the terms later changed to exclude them.[62] Maryland's black laws were said to show that the states had always regulated free black people "wholly independent of any federal control."[63] The state's representatives did vote on the various interim motions and did so as a block with other Southerners. But what precisely they thought was not recorded.

The sixteenth US Congress fumbled, letting ambiguity prevail. Missouri would be allowed to retain the clause in question. The state could bar free African Americans from entering. Still, Congress went on to admonish Missouri not to enact any law that would impair the rights of citizens from other states, including citizens of color. Were free African Americans citizens protected by the privileges and immunities clause, or were they not? Congress tried to have it both ways, it seems. The result left Missouri to act on its own conscience and kept free African Americans in limbo.

New York's state lawmakers confronted the same thorny question: Were free black Americans citizens, and if so, what rights derived from that status?

An 1821 statewide convention met in Albany to revise the state constitution. Spurred by a Republican Party faction, the expansion of the franchise in New York was front and center. The state's property qualification was slated for elimination. How might this affect the rights of the state's 20,000 free people of color?[64] While a small number of property-holding free black men had long enjoyed the franchise, lifting the property qualification would open the door to widespread black voting. Some among the convention's delegates sought to ensure that it would not. Their objective became clear by way of a proposal to broadly extend voting rights to men who paid taxes, served in the militia, or worked on the public roads, the vast majority of whom were white.

The convention split. Proponents of a race qualification argued that black New Yorkers were incapable of exercising political judgment. On the other side were men who argued that free black men stood equal to their white counterparts when it came to political rights. Congress's Missouri debates were invoked; if black people were citizens then they could not be deprived of privileges and immunities. The United States Constitution, it was argued, barred the use of race as a voting qualification. The arguments were lengthy and eloquent, but the result was another awkward compromise. The attempt to include the qualification "white" was defeated. Claims that endorsed the political capacities and citizenship status of black Americans seemed to carry the day – at least until later in the convention. Before they adjourned, delegates set in place a freehold property qualification of $250 only for black men. Thus, in New York, free black people were citizens, and yet their citizenship was circumscribed in ways that the citizenship of white men was not. Lawmakers fumbled, enabling differing conclusions. Free black New Yorkers were citizens of the state, but citizens of a distinct or second class. Free black New Yorkers were not citizens at all, making their qualified disfranchisement permissible. Or they were citizens in a state where voting rights were determined by race rather than citizenship status. Whatever the interpretation, the end point was further confusion.[65]

New York's debate reached well beyond that state, circulating widely through the writings of a delegate named James Kent. Kent's *Commentaries on American Law* became a standard reference for antebellum practitioners and jurists, and he devoted extensive thought to the puzzle of free black citizenship, pulling together many of the small bits of lawmaking that shed light on the topic. Of the deliberations at his home state's constitutional convention, he wrote: "It is certain that the constitution and statute law of New-York, speaks of men of colour as being citizens, and capable of being freeholders, and entitled to vote." Kent's own opinion was uncharacteristically muddled, however. He began: "Negroes or other slaves, born within and under the allegiance of the United States, are natural-born subjects, but not citizens." But then he took the other view: "If a slave born in the United States be manumitted, or otherwise lawfully discharged from bondage, or if a black man be born within the United States, and born free, he becomes thenceforward a citizen, but under

such disabilities as the law of the state respectively may deem it expedient to prescribe to free persons of color."[66] Jurists who consulted the era's most widely read commentaries found the question of black citizenship among the issues raised. What they did not find was a clear answer.

Back in Baltimore, debates over rights in New York and Missouri were instructive, though remote. The principles that were being worked out may have appeared abstract, at least until *Freedom's Journal* brought the case of Gilbert Horton to the attention of Baltimore readers. A free black mariner, Horton had been threatened with sale as a slave in Washington, DC. That city's proximity to Baltimore might have been enough to generate real concerns. As unsettling, however, was how law's intricacies left black Marylanders especially vulnerable. Horton had been detained as an alleged fugitive under an "old law of Maryland," one that had been repealed in the state but not in the District of Columbia, which had adopted Maryland law at its founding.[67] The case required both lay people and lawmakers to closely examine where free people of color stood.

The debate surrounding Horton's circumstances made plain how abstract constitutional interpretations could play out in the lives of free black men and women. Horton, a free man from New York, had been "travelling in the pursuit of his lawful business to Washington" when he was "seized and imprisoned as a run-away slave."[68] Horton's story – that of a free black man whose trade drew him across state lines and who was not able to document his liberty or pay his jail fees – paralleled the circumstances of many black Baltimoreans. They had to ask themselves: Were *they* citizens, or could they be sold as slaves without due process of law?

Gilbert Horton was still a young man when he found himself in a Washington jail facing his sale as a slave for life. Enslavement was not wholly unfamiliar to Horton. He had been born enslaved in Westchester County, New York, at the end of the eighteenth century, just as that state passed a gradual emancipation law.[69] Its terms provided that Horton would be manumitted at age twenty-eight.[70] However, in a turn of good fortune, Horton's father, Peter, struck a deal with his son's owner.[71] Peter Horton labored one year in exchange for his son's freedom. As his father later reported, Gilbert was around eight years of age when manumitted. His freedom was followed by a period of indenture. Gilbert spent many of his early years in service.[72] The complexities of slavery and freedom were thus not new to the young man, though likely nothing had prepared him for the auction block and reenslavement.

Horton made his living as a mariner, a vocation that required him to leave New York and enter less familiar slaveholding ports. In 1826 he was serving aboard the navy's USS *Macedonian*. He left the frigate's service that June in the port of Norfolk, Virginia. By July Horton was in Washington, where he was a relative stranger. On a July day, as he headed along the streets of the capital city wearing what were described as a "tarpaulin hat, linen shirt, blue cloth jacket and trowsers [*sic*]," Horton was detained.[73] Unable to produce evidence

of his free status, he was presumed to be a fugitive slave. Horton insisted that he was not.

Horton's fate took a turn when a local marshal placed an ad in Washington's *National Intelligencer*. The notice generally assumed Horton to be a slave, urging his "owner or owners . . . to come and prove him, and take him away, or he will be sold, for his jail fees and other expenses, as the law directs." But something about his story rang true enough that the notice added Horton's assertion that "he was born free, in the State of New-York, near Peekskill." This caught the attention of editors throughout the North, and news of Horton's legal predicament spread. A Connecticut newspaper reprinted the notice beneath an excerpt from the Declaration of Independence, putting it to readers that if "all men are created equal," how could it be that, "for the colour of the skin . . . a man born free is attainted, cast into prison, and sold as a slave?"[74] A New York paper remarked that Horton's detention violated "every principle of humanity and justice, and of constitutional law."[75] Another New York newspaper, the *Commercial Advertiser*, most closely chronicled the case. Horton's capture symbolized how untenable was a nation divided between slaveholding and non-slaveholding states, especially when free black men were in some jurisdictions regarded as citizens. The paper captured the view that would drive the ensuing debate: "The declaration – 'I am a Roman citizen,' was once a passport to the respect and protection of the world. So let it be with respect to the citizens of New-York."[76]

Deeds followed words. James Brown of Peekskill issued a short note to those holding Horton, confirming his free status: "[he is] a native of this town, and a free man, and has a father living, who is anxious to have him released, and is willing to offer any testimony concerning him in his power."[77] Westchester County leaders organized to steer Horton's fate. Farmer Oliver Green invited "citizens of West Chester County" to meet at his home, where they would confirm Horton's status, obtain his "immediate liberation," and express "their sense of this outrage on personal liberty in a territory under the immediate jurisdiction and control of the government of the United States."[78] The men of Westchester were not the only ones to act on Horton's case. Papers reported how others had visited Horton in his cell, confirming what the original notice suggested: Horton was a free man whose father lived in Yorktown. He provided the names of white men in New York City who would confirm his story: a Judge Oglesby, a grocer named Abraham Pearce, and dairy operator Job Griffin. Horton had spent some time in New York City, enough time to have develop white allies who could corroborate his story. There was "little reason to doubt" the young man's story, Horton's visitors reported, adding that they would "of course be happy to lend our aid to release him."[79] News of Horton's case reached Baltimore at the end of August, by way of a notice in the *Baltimore Patriot*.[80]

Testimonials continued to surface, fueling the construction of legal arguments back in Westchester. John Owen of Somers, New York, wrote in

to the *Commercial Advertiser* to advise that Horton was "unquestionably a free man," having been manumitted and then apprenticed.[81] With this and other witness statements in hand, Oliver Green and Judge William Jay, son of Governor John Jay, hosted Westchester's public meeting on the evening of August 30. The gathering issued eight resolutions, including one that turned on state citizenship and a reading of the US Constitution: "Resolved, that the fourth Article of the Constitution of the U. States, the citizens of each State, are entitled to all the privileges and immunities of citizens of the several States; and that it is the duty of the State of New York, to protect its citizens in the enjoyment of this constitutional right, without regard to their complexion."

Events unfolded quickly in the days that followed, made all the more complicated by the delay in transmitting news between New York and Washington. Governor DeWitt Clinton of New York was asked to issue a demand for Horton's release, which he did in a letter to President John Quincy Adams. Clinton reiterated the conclusions of the Westchester meeting: Horton was a citizen of New York being subject to a Washington law that was "at least void and unconstitutional in its application to a citizen."[82] Horton was released unconditionally, likely even before Clinton's letter arrived.[83]

At least one newspaper's editor advised that Horton's "friends" should "take immediate measure to enable him to prosecute the persons who have subject him to imprisonment, for the double purpose of doing him justice, and trying the question of the constitutionality, or unconstitutionality of the act under which he suffered." The editorial continued: "An action may be commenced before the District Court, and carried to the Supreme Court of the United States, where the specific question must be tried and determined."[84] William Jay issued a memorial to Congress consistent with the Westchester resolutions: "The outrage offered to a citizen of this county, and a violation of the constitutional rights involved in that outrage, afford to the meeting new and strong evidence of the impropriety of the continuance of slavery."[85]

Congress once again became a main stage. Horton's dilemma was resolved, but the debate continued. Exchanges about the rights of a free man of color and citizenship in New York crystallized the tension between state citizenship and those protections guaranteed to all citizens by the Constitution. The debates of 1821 – over the constitutions of New York and Missouri – were revived. Aaron Ward, a representative from Westchester County, set forth a resolution that embroiled Congress in a disagreement over the status of Horton and men like him. Ward's objective was amending the laws of the District of Columbia to prevent circumstances such as that which Horton confronted. The congressional Committee on the District of Columbia would, by the terms of the resolution, inquire into and consider the repeal of "any law that authorize[d] the imprisonment of any free man of color, being a citizen of any of the United States, and his sale as an unclaimed slave, for gaol fees and other charges." Ward explained that he was acting in accordance with his sense of duty to his constituents and reminded the members of Horton's case, describing the

latter as "a free man of color, and a citizen of that county, and of the State of New York."[86]

Ward anticipated objections, and his extended remarks urged that it was "the duty of every Representative on this floor, to guard and protect the rights of this Union," including for free men of color. He alluded to the law under which Horton had been detained and threatened with sale, and then gave a brief treatise on its unconstitutionality. Article 2, section 3, protected a "free citizen" from servitude for life without a trial and the allegation of a crime. The Fourth, Fifth, and Sixth Amendments established the "absolute rights of persons, and secure to every free person, whatever may be his complexion, the right of personal security, personal liberty, and private property." All citizens, he concluded, were "entitled to the privileges and immunities of citizens in the several states," pursuant to article 4. To leave no doubt as to his position, Ward reiterated that the district could not "strip the free man of color of his privileges as a citizen of the free and independent State of New York." He challenged the House: "Is a free citizen, then, because his color happens to be dark, to be less protected by the laws than the poor debtor, in the fangs of a merciless creditor?"[87]

House members like John Forsyth Sr. of Georgia attempted to table or otherwise defer consideration of Ward's resolution. As Kentucky representative Charles Wickliffe explained: "He had no wish to see the Missouri Question brought back into this house." For those with memories of 1821, the resolution's terms – in particular, its claim that free men of color were citizens entitled to constitutional protections – were "calculated to rouse feelings and produce excitement."[88] And Wickliffe was right, if not about Ward's intent then about his effect. Forsyth captured the broad strokes of the debate, explaining that there was a "radical difference of opinion." Some, he reported, "claim as a matter of right, that black persons, held to be citizens of the United States, in the State of New York, should enjoy in every other state the same privilege." Southern delegates "deny this claim," he went on: "We hold that we have the right to exclude free People of Color, to eject them and to limit their privileges, when we admit them to reside among us."[89] Forsyth proposed a compromise. If Ward would admit that the laws of the district were constitutional, he would endorse an inquiry into altering them.[90]

Ward ultimately accepted the compromise, gaining an inquiry into the laws of the district at the expense of making citizenship for free black people a part of the formal record. Still, the debate exposed deep fissures among lawmakers about black citizenship. Indeed, the exchanges on the floor of Congress were broadly instructive as they reached a wide readership when published in newspapers. It would be two weeks before the Committee on the District of Columbia would return its recommendations. It proposed much of the substance that Ward initially sought, including a prohibition against the sale into slavery of free persons of color for "prison fees and other charges

of apprehension." Gone, however, was any mention of citizenship. In place of Ward's bold conclusions were terms such as "any person" and "free persons of color."[91] When the committee's final proposals made their way to the floor of Congress later in January, the same conservative position held sway. Horton's case, while a triumph in the sense that his liberty was restored, was also a defeat. Lawmakers had advocated that free black men and women were citizens entitled to constitutional protections, but they had compromised on that position when confronted with an entrenched opposition.[92] Nothing in the language of the final bills denied free black citizenship, but the silence reflected a missed opportunity.[93]

Freedom's Journal made the significance of Horton's case clear for black Baltimoreans. Lawmakers were divided in the wake of the mariner's arrest, moving closer to a legal regime that left free people of color presumptive slaves. In Washington, one paper suggested, Horton as a citizen of New York was as vulnerable to arbitrary treatment as he would be in "Algiers or Tunis . . . Carolina or Georgia." In a tone that bordered on outrage, *Freedom's Journal* urged its readers to sharpen their minds: "In common with other citizens, we have rights which are dear to us; and we shall never sit patiently; and see them trampled upon, without raising our feeble voice, and entering our protest against the unconstitutionality of all laws which tend towards curtailing them in the least degree."[94] Long after the debate faded, the antislavery press ensured that Horton's case remained instructive. William Lloyd Garrison's *Liberator*, in 1833 and 1834, recounted it and emphasized that lawmakers, from local judges like William Jay to New York governor DeWitt Clinton and Congress member Aaron Ward had asserted that Horton and men like him were citizens of New York and of the United States.[95] The story evidenced how free black men and women had attracted highly placed allies to their cause. Their assertions of citizenship were no mere flight of fancy. Horton's trial and the congressional debates that followed served as a lesson on how claims to citizenship might be seriously debated and nearly won.[96]

Being smart about law was, as Horton's case illustrates, not enough. Judges and legislators predictably disagreed about the bounds of citizenship, leaving free black men and women to arm themselves with knowledge and then to hope for a lucky break if threatened with detention or worse. It was an uneasy climate. Arguments for citizenship and against the terms of black laws had become sophisticated and sometimes held sway. Still, Baltimoreans did not enjoy even the modest assumptions that New Yorkers did when it came to citizenship, and the pressure they faced would only increase. Baltimore's port was a gateway to knowledge. It was also a locus for exit schemes, be they designed as voluntary emigration or coerced colonization. Black activists there would craft their own strategies for self-defense and begin to draw on ties to local legal minds to build their claim to place.