THE LEGAL STATUS OF FREE BLACKS IN EARLY KENTUCKY, 1792-1825

By Juliet E. K. Walker*

The free black population in early Kentucky was relatively small compared to the numbers of slaves and whites.[1] Yet, under the law, while free blacks were not slaves, they were not entirely free. Their legal status determined by organic law, statutory enactment, and judicial interpretation was worked out in the early years of statehood from 1792 to 1825.[2] By 1830 Kentucky laws imposed severe legal disabilities and damaging social proscriptions on its free black population. These laws also differed little from similarly constituted laws in force throughout the South which regulated the lives of free blacks. In Kentucky free blacks were never secure in their freedom and could always be enslaved. They were required to carry certificates of freedom, be gainfully employed under penalty of imprisonment, observe curfews, and exercise restraint and discretion in their associations. Statutory law limited their rights in court, and punishment for criminal and civil violations was much more severe for free blacks than for whites.

Natural increase accounted for a large segment of Kentucky's free black population. Manumission while allowed was not encouraged and the migration of out-of-state free blacks was often met with hostile restrictions. Restrictive social and economic conditions circumscribed the lives of Kentucky's free black population, but

*Juliet E. K. Walker, Ph.D., teaches history at the University of Illinois.

1 See U.S. Bureau of the Census, *A Century of Population Growth from the First Census of the United States to the Twelfth, 1790-1900* (Washington, D.C., 1909) for Kentucky's population.

Year	Free Blacks	Slave Blacks	Whites
1790	114	12,430	61,133
1800	741	40,343	179,873
1810	1,713	80,561	324,237
1820	2,759	126,723	434,644
1830	4,917	165,213	517,787

2 For a review of the general laws which regulated the lives of free blacks in the South, see Henry W. Farnam, *Chapters in the History of Social Legislation in the United States to 1860* (Washington, D.C.: Carnegie Institution, 1938). Also see John C. Hurd, *The Law of Freedom and Bondage in the United States* (2 vols.; Boston, 1858-63, reprinted New York, 1968). Important judicial decisions concerning free blacks are included in Helen T. Catterall, ed., *Judicial Cases Concerning American Slavery and the Negro* (Washington, D.C.: Carnegie Institution, 1936); and Jacob D. Wheeler. *A Practical Treatise on the Law of Slavery* (n.p.: Allan Pollock, Jr., 1837; reprint ed., New York: Negro Universities Press of Greenwood Publishing Corp., 1968). For a review of the legal status of free blacks in colonial America, see A. Leon Higginbotham, Jr., *In the Matter of Color, Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978).

with limited options elsewhere, few left the state.[3] Still, they were unwanted as Kentucky's leading statesman Henry Clay noted. In a speech before the American Colonization Society in 1829, Clay, reflecting popular sentiment, undeservedly described free blacks as "corrupt, depraved and abandoned. . . ." He also detailed their ambiguous legal status emphasizing that: "The laws, it is true, proclaim them free: but prejudices more powerful than any law, deny them the privileges of freedom."[4] Yet the laws even qualified and restricted the limited freedom allowed Kentucky's free blacks. A review of the state's regulatory power which determined their legal status underscores this point: the laws stood as a constant reminder that blacks, slave or free, would remain subordinate to whites.

The conditions of freedom allowed Kentucky's free blacks offered little that substantially altered their lives from that of slave blacks. Ownership of property, unrestricted mobility, and protection of the sanctity of the family are considered qualifying indicators that distinguished the lives of free blacks from slaves. Still, there were limitations even in these areas making less clear the distinctions that existed between the two groups. Sometimes a slave who hired his own time had access to unrestricted use of property at his disposal.[5] Protection of property rights inherent in slave ownership often enabled a slave who hired his own time as much "freedom" as free blacks had pursuing their employment options. Although the practice was illegal, it was in the interest of the slaveholder who expected an annual income to deflect any interference with his

---

3 For general information on the legal constraints imposed on free blacks in the South during this period, see Ira Berlin, *Slaves Without Masters: The Free Negro in the Antebellum South* (New York: Random House, 1974). See also, Juliet E. K. Walker, *Free Frank: A Black Pioneer on the Antebellum Frontier* (Lexington: University Press of Kentucky, 1983), pp. 38-47, 64-67. Important state studies are John Hope Franklin, *The Free Negro in North Carolina, 1790-1860* (Chapel Hill: University of North Carolina Press, 1943); Russell Garvin, "The Free Negro in Florida Before the Civil War," *Florida History Quarterly* 46 (July, 1967), 1-17; Donald J. Senese, "The Free Negro and the South Carolina Courts, 1790-1860," *South Carolina Historical Magazine*, 68 (July, 1967), 140-53; Ralph B. Flanders, "The Free Negro in Antebellum Georgia," *North Carolina Historical Review*, 9 (July, 1932), 250-72; Charles S. Snydor, "The Free Negro in Mississippi Before the Civil War," *American Historical Review*, 32 (July, 1927), 769-88; J. Merton England, "The Free Negro in Antebellum Tennessee," *Journal of Southern History*, 9 (February, 1943), 37-58; Roger A. Fischer, "Racial Segregation in Ante-Bellum New Orleans," *American Historical Review*, 74 (February, 1969), 926-37.

4 Henry Clay, Speech Given to the American Colonization Society, *African Repository and Colonial Journal*, 6 (1830), 12.

5 For information on a slave who hired his own time in Kentucky, see Juliet E. K. Walker, "Pioneer Slave Entrepreneurship on the Kentucky Pennyroyal Frontier," *Journal of Negro History* (1984, forthcoming), for other states, see also John Hope Franklin, "Slaves Virtually Free in Antebellum North Carolina," *Journal of Negro History*, 28 (July, 1943), 284-310; John Hebron Moore, "Simon Gray, Riverman: A Slave Who Was Almost Free," *Mississippi Valley Historical Review*, 49 (December, 1962), 472-84; and, Loren Schweninger, "The Free-Slave Phenomenon: James P. Thomas and the Black Community in Ante-Bellum Nashville," *Civil War History*, 22 (December, 1976), 293-307.

slave's employment. Few free blacks were afforded comparable protection in their economic pursuits. There also existed a greater inclination among whites to employ slaves rather than free blacks, and occupational mobility for all blacks was limited as well.

Freedom of movement for free blacks was also restricted. The presumption was that anyone of African descent was a slave and the certificate of freedom was as important to the free black as a slave's pass from his owner. J. Winston Coleman, in his study of Kentucky slavery, emphasized the difficulties free blacks encountered when traveling:

> The liberty of free Negroes, while they remained at home among their neighbors, was not questioned; but when they began to move about from place to place, they were usually suspected and often taken up and imprisioned as fugitive slaves. All known Negroes who could not produce their "free papers" were taken up as runaways. Free Negroes thus arrested were occasionally sold secretly and cheaply by unscrupulous patrollers to the despised "nigger traders."[6]

As to the protection of the sanctity of their families, many free blacks were married to slaves and their children were slaves who could be sold at will. Others purchased their families from slavery but could not free them because of their inability to post the security bond required by the state. In some states laws required newly manumitted slaves to leave, thus forcing the separation of the family. Relocation for free blacks could lead to enslavement, and the difficulties encountered in securing employment saw many free blacks reluctant to give up the limited security they had in their home state. At the same time little recourse was provided under the law when a free black was forced to protect his family or property from harm by whites.

In Kentucky both the comprehensive 1798 act regarding, "Slaves, Free Negroes, Mulattoes and Indians" and the 1799 Kentucky Constitution provided the foundation for the legal status of the state's free black population.[7] Both derived their authority from the 1792 Kentucky Constitution which made the distinction between slave blacks and free blacks in the provision which allowed slaveholders to emancipate their slaves.[8] The 1792 Constitution,

---

6 J. Winston Coleman, *Slavery Times in Kentucky* (Chapel Hill: University of North Carolina Press, 1940), p. 201.

7 For information on the law entitled, "An Act to reduce into one, the several acts respecting Slaves, Free Negroes, Mulattoes and Indians," see William Littell, ed., *The Statute Law of Kentucky to 1816, Comprehending Also the Laws of Virginia and Acts of Parliament in Force in this Commonwealth* (5 vols.; Frankfort: W. Hunter, 1808-19), II, 113-23. Kentucky was first a county and then a district of Virginia until statehood was granted in 1792. This 1798 act included various provisions regarding free blacks that were incorporated in Virginia's Black Laws. See Adele Hast, "The Legal Status of the Negro in Virginia, 1705-1765," *Journal of Negro History*, 54 (July, 1969) 234-36.

Black School in Whitley County, 1883

The Filson Club

Black School in Whitley County, 1883

The Filson Club

however, did not stipulate the conditions of freedom that free blacks would derive from emancipation. This was provided for in the 1798 act which stated that once freed, former slaves were to "enjoy as full freedom as if they had been born free."[9] By the same act, however, free blacks were still subject to many of the same restrictions as slaves. And the 1799 Constitution which detailed the rights of free men sharply distinguished the rights of whites from those denied free blacks.

These distinctions can be seen when one examines three areas in the Kentucky constitutions of 1792 and 1799 in which specific rights were accorded those who were recognized as free men. These were the right to vote, the right to bear arms in the defense of the state, and the right to exercise the freedoms guaranteed in Kentucky's bill of rights, the "social compact," which included the right of self-defense. While the 1792 Constitution was not specific in categorically delineating those who were to enjoy these rights, the 1799 Constitution made these distinctions. In regard to suffrage, the 1792 Constitution provided that "in elections by the citizens, all free males of the age of twenty-one years . . . shall enjoy the rights of an elector. . . ."[10] The 1799 Constitution, with its marked distinctions between free blacks and whites, specified that "in all elections for representatives every free male citizen (negroes, mulattoes and Indians excepted) . . . shall enjoy the right of an elector. . . ."[11] In 1790 there were only 114 free blacks in Kentucky. One year after the 1799 Constitution went into effect there were only 741 free blacks in the state compared to 179,873 whites. Free blacks were obviously not in a position to exert any political influence. To deny them suffrage, however, excluded them from the body politic, making an important distinction in their legal status compared to the state's white population.

The second distinction between free blacks and whites was in the right to bear arms to defend the state. The 1792 Constitution required that "the free men of this commonwealth shall be armed and disciplined for its defense."[12] The 1799 Constitution, however, stated that "the freedom of this commonwealth (negroes, mulattoes and Indians excepted) shall be armed and disciplined for its defense."[13] The 1799 Constitution also distinguished free blacks

8 Kentucky *Constitution* (1792), art. 9.
9 Littell, *Statute Law of Kentucky*, I:119.
10 Kentucky *Constitution* (1792), art. 3, sec. 1.
11 Kentucky *Constitution* (1799), art. 2, sec. 8.
12 Kentucky *Constitution* (1792), art. 6, sec. 2.
13 Kentucky *Constitution* (1799), art. 3, sec. 28. See also Littell, *Statute Law of Kentucky*, V, 213.

from whites by excluding them from exercising the civil rights and liberties specifically accorded whites which were detailed in the "social compact." The "social compact" section of the 1792 Constitution stated that "all *men* [emphasis mine], when they form a social compact, are equal."[14] However, the 1799 Constitution stated that "all *freemen* [emphasis mine], when they form a social compact, are equal."[15]

Free blacks were excluded from the rights provided "freemen" in Kentucky's 1799 Constitution because the precedent had been established which provided that free blacks as a group would be included in the same statutory provisions that regulated slaves. This was accomplished in the 1798 law entitled, "An ACT to reduce into one, the several Acts respecting Slaves, Free Negroes, Mulattoes and Indians."[16] The 1798 act included specific provisions to circumscribe those areas in which it appeared that distinctions between blacks and whites might be threatened if free blacks were considered separate and apart from slaves. That these distinctions would be maintained was seen in the 1799 Constitution which specifically excluded blacks from exercising the rights of an elector and from exercising the right to bear arms in defense of themselves and the state.

Free blacks, for example, under the 1798 act were provided with the right to bear arms, but this right was qualified and could be exercised only under the most limiting circumstances. One provision of the 1798 act was that "every free negro, mulatto or Indian, being a housekeeper, may be permitted to keep one gun, powder, and shot." Yet this provision was followed by a separate regulation which stated that this right applied only to non-whites, slave or free, "living at any frontier plantation licensed by justices of the peace."[17] Thus free blacks were legally authorized to possess guns only to aid in defense of the frontier communities, but this same right was also granted to slaves who lived on the frontier.

Under no circumstances were free blacks allowed to own weapons, for the 1798 act also stated that: "No negro, mulatto or Indian whatsoever, shall keep or carry any gun, powder shot, club or other weapon whatsoever, offensive or defensive, but all and every gun, weapon and ammunition found in the possession or custody

---

14 Kentucky *Constitution* (1792), art. 12, sec. 1.
15 Kentucky *Constitution* (1799), art. 10, sec. 1.
16 Littell, *Statute Law of Kentucky* I, 113-23.
17 *Ibid.*, p. 113-14.
18 *Ibid.*, p. 113.

of any negro, mulatto, or Indian, may be seized by any person."[18] Yet, under the 1799 Constitution, "freemen" were provided the right to bear arms not only to protect the state but also for self-defense under any circumstances. The 1798 act, however, qualified the right of self-defense for free blacks, making it a crime for them to defend themselves against whites in a regulatory provision which stated:

> If any negro, mulatto, or Indian, bond or free, shall at any time lift his or her hand in opposition to any person not being a negro, mulatto or Indian, he or she so offending, shall, for every such offence, proved by the oath of a party before a justice of the peace . . . shall . . . receive thirty lashes on his or her bare back. . . .[19]

The right of association and assembly for free blacks was also circumscribed in the 1798 act which, paradoxically, also infringed on the civil liberties of whites since the law made it illegal for "any white person, free negro, mulatto or Indian . . . [to be] at any time found in company with slaves at any unlawful meeting or . . . harbor or entertain any slave without the consent of his or her owner."[20] The intent of the law is clear. Possessing few rights that distinguished them from slaves, few free blacks had sufficient interest in or identification with the social order that would prevent them from collaborating with slaves in instigating collusive acts against the system.

Thus a precedent had been established in the 1798 act which categorically denied free blacks the right to defend themselves. The act also limited their right to associate with slaves in whose interest it would be to weaken the basis of the society on which the system of bondage rested. In addition by including free blacks in the 1798 act regulating slaves, a precedent was also established for distinguishing free blacks from "freemen" thus excluding them from the rights whites were accorded in the 1799 Kentucky Constitution's "social compact." In each instance, the effect was the same, free blacks were denied the legal status of whites. Even more important, the 1799 Constitution confirmed that free blacks were not citizens, that they were like slaves, outside the general body politic.

Subsequent legislation reinforced this legal status. In most instances free blacks were included with slaves in the state's regulatory provisions. While the 1978 act was periodically amended,

19 *Ibid.*, p. 116. See also Ely v. Thompson, 3 March 73 which declared this section of the law unconstitutional on two counts: for both slave and free blacks, a violation of Kentucky *Constitution* (1799) art. X, sec. 10, "the rights of person prosecuted criminally;" for free blacks alone it was held to be a violation of Section 15, "cruel punishment."

20 Littell, *Statute Law of Kentucky*, V, 114-15.

only one law was passed before 1823 which specifically applied to Kentucky's free blacks, although the construction of the law suggests that perhaps it was more to the benefit of whites. This was an 1801 law which made it a crime to steal and sell a free black as a slave.[21] Considering the general attitude of the society toward free blacks, it appears that this law was more a reaction to the possibility that some whites, unable to prove themselves so, might be seized and sold rather than to any humanitarian concern for the protection of the freedom of free blacks.

One example of the attitude of whites toward free blacks can be seen in the 1808 act which prohibited the migration of free blacks into Kentucky. The preface and the stated purpose of the law clearly indicate that as far as the white population was concerned, the fewer the blacks in the state the better it was for them. The preface to the law stated:

> WHEREAS it is represented to the present general assembly, that a very serious evil is likely to be produced by the emigration of emancipated slaves from different parts of the Union to this state, and that many of the states have passed laws compelling slaves when emancipated by citizens of their respective states to remove out of such state within a given time, for remedy whereof . . .[22]

This law made it illegal for free blacks to either migrate to or to be brought into Kentucky. All citizens, i.e., whites, were given the authority to seize and arrest any free blacks who were thought to be migrants. The accused had to post a bond of $500.00 or wait in jail for his trial. If judged to be a migrant, he had to leave within twenty days or be sold as a slave.[23]

Although Kentucky did not immediately attempt to remove its own free black population until the 1850s, it very early provided laws to suppress some specific activities of blacks, both slave and free, which were not provided for in the 1798 act.[24] An examination of a law passed in 1811, entitled "AN ACT for the more effectual preventing of Crimes, Conspiracies and Insurrections of Slaves, Free Negroes and Mulattoes, and for their better government," reveals that in Kentucky certain conditions existed which the white population believed, if not controlled, could constitute a "serious evil."[25] The act contained six provisions: four applied to all blacks;

21 C. S. Morehead and Mason Brown, eds., *A Digest of the Statute Laws of Kentucky, of a Public and Permanent Nature*, (2 vols.; Frankfort: A. G. Hodges, 1834), 2:1268. Kentucky's racial definition was based on a 1785 Virginia act which classified a mulatto as "every person who shall have one-fourth part or more negro blood." See, *ibid.*, 2:1219.

22 *Ibid.*, 2:1219-20.

23 *Ibid.*, 2:1220-21.

24 Kentucky General Assembly, *Acts Passed at the Sessions of the General Assembly for the Commonwealth of Kentucky*, 1849-50 and 1859-60.

25 Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 2:1287-88.

and, two presumably only to slaves. It was a response to the direct threat felt by whites from blacks, slaves as well as free. In force, the law attempted to suppress any action that could lead to conspiracies. At the same time it was designed to intimidate blacks, slaves especially, from conspiring to secretly murder their owners or other whites.

The act passed in January, 1811, was a reaction to a slave plot which had been uncovered in Lexington two months earlier. In his discussion of the activities surrounding the attempted uprising, Herbert Aptheker provided information which showed that: "At the end of November, 1810, 'a dangerous conspiracy among the negroes was discovered' in Lexington, Kentucky. 'A great many negroes were put in jail,' but what became of them is not known."[26] One provision of the act suggests, however, that they were executed. The law required:

> That if any negroes or other slaves shall at any time hereafter conspire to rebel or make insurrection, every such conspiring shall be adjudged and deemed felony, and the slave or slaves duly convicted thereof shall suffer death.[27]

The assumption is that if some free blacks were involved, they were included under the term "any negroes," and thus would suffer the same punishment as slaves. If not, free blacks would theoretically be prosecuted under the law of treason. For "petit treason," prosecution would be the same as for murder, and for "high treason" the punishment was from six to twelve years of hard labor.[28] In reality, most blacks, slave or free, implicated in such conspiracies suffered death either legally or illegally.[29]

This 1811 act also included provisions that sought to suppress manslaughter attempts and any other actions by blacks, especially in towns, which would be considered dangerous to whites. The two provisions which covered murder also included the punishment: "That any slave or slaves, free negro or mulatto, hereafter duly convicted of voluntary manslaughter, shall suffer death."[30] The other provision was that it was illegal for "any negro or other slaves . . . [to] consult or advise the murder of any person or persons whatever."[31] The provision designed to control the black

---

26 Herbert Aptheker, *American Negro Slave Revolts* (New York: International Publishers, 1943), p. 248, quoting from an entry made in the diary of a University of Kentucky student who was in Lexington at the time the conspiracy was discovered.
27. Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 2:1288.
28. *Ibid.*, 2:1265.
29 Aptheker, *American Negro Slave Revolts*, p. 370.
30 Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 2:1288.
31 *Ibid.*, 2:1287.

population in towns did not specify any particular acts that were considered dangerous. It was inclusive so that the conditions and circumstances would in themselves determine whether blacks were misbehaving. This section of the act stated:

> That it shall be lawful for any trustee of a town to issue his warrant to cause any slave, free negro or mulatto, misbehaving within the limits of the town, to be apprehended and brought before him or some other trustee, of said town, who shall have the power to punish such slave or slaves, free negro or mulatto, as is now vested by law in a justice of the peace.[32]

The two provisions respecting slaves alone involved administering medicine or poison "with the evil intent that death may thereupon ensue" and attempted rape of a white female.[33] Both penalties brought death to the accused slave. However, the penalty for free men who administered poison that did not lead to the death of the victim was from one to five years imprisonment.[34] For rape, the punishment was "not less than four years, nor more than twenty-one years."[35] Little reflection is needed to realize, however, that if a free black were accused of these two crimes, especially if the victim were white, he suffered a much harsher punishment than whites since as Farnam indicates "in all of the Southern States there were laws which to a greater or lesser degree imposed upon free Negroes special penalties more severe than those imposed on white people for the same offense, and which in many cases classified them with slaves."[36]

In the 1820s, however, there were four laws passed that applied specifically to free blacks. Two passed at the 1823 session were related and involved the certificate of emancipation. The first law stated that all emancipated slaves had to appear at the county courthouse so the clerk could see them and record their descriptions on the certificates.[37] The companion law made it illegal for a free black to give his certificate to a slave, "designing to enable said slave to use the same as evidence of his freedom."[38] The punishment was imprisonment for one to two years for the first offense and two to five years for the second.

By the early 1820s, then, Kentucky had developed legislation which denied free blacks rights equal to whites and had also

---

32 *Ibid.*, 2:1288.
33 *Ibid.*, 2:1287-88.
34 *Ibid.*, 2:1281.
35 *Ibid.*, 2:1265.
36 Farnam, *Social Legislation*, p. 206.
37 Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 1:610.
38 *Ibid.*, 2:1293.

instituted a system of repressive measures to contain any expressions of their discontent. Finally by the mid-1820s Kentucky, using its police power, moved to regulate the lives of free black families. The precedent was derived from an 1824 court case which provided legal recognition of the existence of the free black family. In a decision in the Free Frank and Lucy v. Denham Administrators case, the Kentucky Court of Appeals ruled that free blacks had the right to marry. Making distinctions between slaves and free blacks, the court said: "Whilst in a state of slavery we admit that persons of color are incapable of contracting marriage, for any legal purpose . . . but immediately upon being emancipated, the restraint which was imposed upon their will and action is removed and with that, their competency to contract marriage is restored."[39]

However, after the free black family was legally recognized, the Kentucky legislature only one year later gave the state the power to apprentice free black children without the consent of their parents. The legislation was specifically designed as the statute indicates to apply only to poor children, "whose parents are incapable of bringing them up in honest courses. . . ."[40] At the same time while the law emphasized that, "no distinction is made between white children and children of color," few blacks because of their limited economic options were not poor. Since the determination of poverty was made by the state, the children of most free black families in Kentucky could be arbitrarily seized at will without their parents' consent and apprenticed off to work under conditions that sometimes differed little from slavery.

Under the law, apprenticeship required the teaching of a craft or skill, and providing room and board for the young apprentice. The apprenticer was also required to teach the apprentice reading and spelling, but in 1843, the provision requiring education for the young black apprentice was repealed.[41] It was also in 1825 that the state corrected an oversight by requiring that free blacks work on the public roads. This requirement had been imposed on white males in 1820—one of the responsibilities of citizenship—in a law which stipulated that "white males" only were to work on the roads.[42] The statute which exempted free blacks from this responsibility was amended five years later. The 1825 act required all "free persons of color," which under the law meant that free black

39 Free Frank and Lucy v. Denham's Administrator, Littell, V, 330.
40 Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 1:1162-63.
41 Kentucky, General Assembly, *Acts Passed*, 1842-43.
42 Morehead and Brown, *Digest of the Statute Laws of Kentucky*, 2:1404.

women as well as free black men, to work the roads.[43] Thus even the dignity of a free black woman found little protection under the law. The construction of the statute however, which required both free black men and women to work on the roads was important as a measure to maintain the distinctions between free blacks and whites.

Thus the legal status of Kentucky's free blacks was worked out in the period from 1792 to 1825. Subsequent laws were passed, but these statutes only qualified the constraints already imposed. During the early years of statehood, it would appear that the philosophical heritage of the revolutionary era helped encourage the liberalization of laws which regulated the lives of Kentucky's free black population. In the 1792 Constitution, free blacks were not statutorily excluded from bearing arms, serving in the state militia, or voting. Yet within seven years through both the 1798 act and the 1799 Constitution, free blacks were denied these rights. Consequently it appears that to most of the post-Revolutionary War generation, to be born free and to enjoy the privileges of freedom were conditions that could only apply to whites.[44] The very premise on which freedom for Kentucky's free blacks was based was specious from the beginning.

Paradoxically too, Kentucky, a border state, often seen to be more western than southern in its origin and development was more restrictive in its treatment of its free black population than its sister state, Tennessee to the south. Until 1834, free blacks in Tennessee could vote.[45] In Kentucky, still, there was always a segment of the white population that was progressive in calling for the gradual abolition of slavery, but their position on free blacks differed little from that of the American Colonization So-

---

43 *Ibid.*, 2:1407.

44 For information on the attitudes of early Kentucky legislators, see Asa Earl Martin, *The Anti-Slavery Movement in Kentucky Prior to 1850* (Louisville: Standard Publishing Co., 1911). Chapters 1 and 2 are an excellent source of information for surveying the attitudes that prevailed in the 1792 and 1799 Kentucky constitutional conventions. Also see Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: The University of Chicago Press, 1967) for a contrasting perspective. Still with the exception of some New England states, free blacks in the North encountered many of the same restrictions as free blacks in the South. See Leon F. Litwack, *North of Slavery: The Negro in the Free States, 1790-1860* (Chicago: The University of Chicago Press, 1961). Further insights are provided in Don B. Kates, "Abolition, Deportation, Integration: Attitudes toward Slavery in the Early Republic," *Journal of Negro History*, 53 (1968), 33-47; William W. Freehling, "The Founding Fathers and Slavery." *American Historical Review*, 77 (February, 1972), 81-93; and William M. Wiecek, *The Sources of Antislavery Constitutionalism, 1760-1848* (Ithaca, N.Y.: Cornell University Press, 1977).

45 See Anita Goodstein, "Black History on the Nashville Frontier, 1780-1810," *Tennessee Historical Quarterly*, 38 (Winter, 1974), 418 who said: "Free blacks were technically able to vote until 1835 and at least four black citizens were enrolled in Davidson County's militia company in 1811. . . ."

ciety. Asa Martin has indicated in his discussion of the Kentucky anti-slavery movement that these societies, "adopted colonization as one of their objects in 1823." Their activities to encourage the emigration of free blacks from Kentucky was given increasing prominence, and by the late 1820s Martin notes that "they had become in reality colonization societies."[46] The American Colonization Society had been founded in Kentucky in 1816, however, and between 1823 and 1829, five branches of this society were organized in the state. In its 1829 constitution, the American Colonization Society reiterated its purpose which was: "to relieve the Commonwealth from the serious inconvenience resulting from the existence among us, of a rapidly increasing number of free persons of color who are not subject to the restraints of slavery."[47]

In Kentucky, by 1830, the general consensus was that slavery should be allowed to remain and free blacks encouraged to go. The 1820s was a period of transition for the South, and the expansion of the plantation system required the protection, preservation, and perpetuation of slavery. The period of the 1820s also saw a substantial increase in the numbers of slaves; they represented an economic value too great to dispose of by manumission. The ready money market for slaves made the conditions of freedom increasingly precarious for free blacks. Their ambiguous legal status afforded little protection from the threat of being kidnapped and sold into slavery as even Ulrich B. Phillips noted: "Kidnapping was, of course, a crime under the laws of the state generally; but in view of the seeming ease of its accomplishment and the potential value of the victims it may well be thought remarkable that so many thousands of free negroes were able to keep their liberty."[48]

With increasingly restrictive legislation and the threat of kidnapping, the most pressing problem for Kentucky's free blacks by 1830 was to retain their freedom in a society which resented their presence. Still, survival for most blacks during this period was determined not so much by their status of being either a slave or freeman, but by the conditions of "freedom" available. As a slave the mobility of a black was constrained by his master

---

46 Martin, *Anti-Slavery Movement*, p. 52; and pp. 48-62 for a detailed discussion of the colonization movement in Kentucky from 1816 to 1830. See also the more recent study, Lowell H. Harrison, *The Antislavery Movement in Kentucky* (Lexington: University Press of Kentucky, 1978).

47 Martin, *Anti-Slavery Movement*, p. 54.

48 Ulrich B. Phillips, *American Negro Slavery* (Baton Rouge: Louisiana State University Press, 1966), p. 445.

through the power extended to slaveowners by the state. As a freeman, the mobility of blacks was directly regulated by the state. With both, the general population was used as an extension of the regulatory power of the state to control and limit the freedom of the black population. Including free blacks in the 1798 act regulating slaves while at the same time excluding them from the status of freemen detailed in the 1799 Kentucky Constitution meant that free blacks were denied the civil liberties and rights accorded whites. Thus the legal status of Kentucky's free black population as it developed between 1792 and 1825 did not provide them equality under the law but instead assured the continued legal distinctions between the blacks and whites pervasive in the new nation.