

BLACK LAWS OF VIRGINIA

1. Introduction

Both Virginia's colonial legislature and the state's General Assembly passed a massive amount of legislation relating to slaves and the free Negro. The laws that resulted were left to the local jurisdictions to interpret and enforce. In this instance, this was the local county court system.

2. Virginia and the Negro in the Seventeenth Century

Negroes first appeared in Virginia in August 1619, transported aboard a Dutch frigate, not as slaves but as indentured servants. These twenty Negroes, three of whom were women, bound themselves as indentured servants, to work for masters for a specified length of time in return for their passage across the Atlantic. For the next seventy-five years, indentured servitude by both Negroes and whites provided a satisfactory solution to the need for a labor supply.

By 1691, this situation had undergone a dramatic change and it became customary to hold black indentured servants past their term of service. A variety of factors contributed to this change in status for black indentured servants. The supply of free labor decreased while their costs went up. Britain began to take control of the lucrative African and Caribbean slave trade so that there were larger numbers of Negroes from those countries for export to America. By the mid 1660s, Virginia law recognized the word "slave" as referring to an existing class, thus creating a legal basis for slavery. At the same time, the small yeoman holdings were superseded by plantations, dependent upon crops like tobacco and strategically situated along the major rivers leading to the Atlantic. This in turn

Joan W. Peters wrote the introduction to the 1995 edition of of June Guild's *Black Laws of Virginia*. It is printed here with permission from The Afro-American Historical Association of Fauquier County (AAHA).

led to a greater demand for an agricultural labor force.

In 1662, the colonial legislature enacted a law stating that the children of Englishmen and Negro women were to be slave or free according to the condition of the mother.

In 1680, the tidewater planters, now in control of the legislature worried enough about the meetings held by their black bondsmen at plantation gatherings and at burials to usher passage of a law forbidding arms such as clubs, staffs, guns,

swords or other weapons to Negro slaves; furthermore, slaves were forbidden to leave their owner's plantation without a certificate and then only when necessary. In 1681, the legislature became alarmed at the "inconvenience" to the colony that occurred upon the emancipation of Negroes and mulattos (and its resultant increase in a free Negro population). They feared these freed slaves might entice other Negroes from their masters' service or become recipients of stolen goods, or be so elderly that the counties would have to maintain them. So the legislature passed a law forbidding emancipation of any Negro or mulatto unless the owner paid for his transportation outside Virginia within six months of setting the slave free. This law had the effect of making black bondsmen slaves for life.

In the same year, the legislature passed the first of many laws outlawing intermarriage between and English or other white man or woman, bond or free, to a Negro, mulatto, or Indian man or woman, bond or free. The penalty was banishment from Virginia.

In 1698, the colonial legislature reiterated that the condition of children born in Virginia, whether bond or free, was according to the condition of the mother. If the mother was a free woman of color, the child was free. If the mother was a slave, the child was also a slave.

3. A Sampling of Virginia's laws relating to slaves and free Negroes before the Revolutionary War.

- **Emancipation** In 1704, alarmed by the numbers of free Negroes who owned slaves, the legislature decreed that no Negro, mulatto, or Indian could purchase any Christian servant, except of their own complexion, as slaves. Negroes were forbidden to purchase any white Christian servant. During the next year, they reaffirmed the restrictions in travel, forbidding slaves to leave the plantation on which they lived without a certificate of leave. Slaves were also forbidden weapons. Penalty for disobeying these laws was twenty lashes for either offence.

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- In 1723, the legislature addressed emancipation one more. Negro and Indian

slaves could not be set free except for meritorious service, which was to be so adjudged, by the Governor and Council. If slaves were freed without the approval of the Governor and Council, the parish Church wardens were to sell the emancipated slave a public auction. The proceeds were then to be applied for the use of the parish. This law was to remain in effect until after the American Revolution.

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- **Slaves as property** The colonial legislature addressed the nature of slavery

as property twice during the eighteenth century. Earlier in the century, in 1705, they decided that Negroes, mulattos, and Indian slaves held within Virginia, were to be held as real estate and not chattel and could descend unto heirs and widows according to the custom of land inheritance. Slaves, whether Negro, mulatto, or Indian, could be held in absolute ownership. In 1748, the law was repealed and replaced with an ordinance stating that Negroes, mulattos and Indian slaves were to be considered personal property.

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- **Voting Rights**

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- The colonial legislature moved to abolish voting rights for free Negroes and Indians in 1723.

4. Eighteenth century laws regarding illegitimate children and poor orphans and poor children of color.

There were several laws passed during the eighteenth century regarding illegitimate children and poor orphans or poor children of color. In 1750, indentured women servants who had illegitimate children by a Negro or mulatto, were liable for a £15 fine for the use of the parish or sale of the servant for five years after the expiration of her original indenture. The children of such a union were to be bound out as servants until they reached the age of thirty-one.

Sixty years later, in 1765, the legislature passed a law decreeing that illegitimate children of women servants and Negroes or free Christian white women by Negroes, were to be bound out. The boys were to serve until they reached the age of twenty-one, the girls until they were eighteen.

In 1785, the General Assembly transferred this responsibility to the Overseers of the Poor. Then, in the first decade of the nineteenth century, Overseers of the Poor were forbidden to bind out any black or mulatto orphan to a master that would teach his apprentice reading, writing, or arithmetic.

5. Sheep Farming and Black Laws

In 1752, the legislature moved to protect sheep farming. This law prohibited Negroes or slaves from carrying any dog whatsoever from one plantation to another. The penalty for ignoring the law was two fold: the death of the dog and a whipping of 20 lashes on the perpetrator. There was, however nothing in this law to hinder an owner from sending a slave from place to place with the owner's hounds, spaniels, pointers or setters.

6. Black Laws after the Revolutionary War

- **Emancipation** The last two decades of the eighteenth century saw the

General Assembly pass a host of laws relating to free Negroes and to slaves. Following the aftermath of the American Revolution and its ideals engendered by the Declaration of Independence, the Virginia legislature decided to allow emancipation of slaves by deed, will, or other instrument of writing. The document had to be signed, sealed and witnessed.

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- The former owner was to be responsible for the support of any emancipated

slaves not of sound mind and body or over the age of **five. Likewise, the emancipator was to be responsible for children: boys under 21 year of age and girls under 18 years of age. A copy of the emancipation was to be given to the freed slave. The penalty for being not with a copy was jail, especially if the freed slave traveled outside the county. Liberated slaves, who could not pay parish or county levies, could be hired out by the Sheriff for as long as it took to raise the money they owed.

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- During this same period, the General Assembly granted immediate

emancipation to any Negro slave who had served in the Revolutionary war. For owners neglecting to emancipate these veterans, the General Assembly gave them the right to petition the local County Court for the right to sue for their freedom.

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- **Legal definitions •**

- Two years after the close of the Revolutionary War, the members of the

Virginia General Assembly wrestled with the definitions of Negro and mulatto. Every person whose grandfathers or grandmothers were Negro, although all other progenitors were white, were to be deemed as “Negro”. Any person with one quarter or more Negro blood was to be deemed

“mulatto.” •

- **Restrictions to individual rights •**

- At the same time that the Assembly was loosening some of the bonds of

slavery, they were tightening others. In 1785, the General Assembly enacted legislation proscribing slaves from traveling from his residence without a license or a letter showing he has permission to do so from his master. Slaves were also forbidden to keep arms; riots and unlawful assemblies were punishable by whipping.

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- The year 1792 was a busy year for lawmakers and for legislation relating to

free Negroes. In that year, Negroes and mulattos were forbidden to carry firearms although free Negroes could be permitted one gun; Negroes, bond or free, living on the frontier could be licensed to carry a gun. In 1806, free Negroes were proscribed from carrying a “firelock” of any kind without a license.

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- In 1792, there were a variety of other laws passed: conspiracy to rebel, or make

or cause and insurrection, became a felony punishable by death. Negro and mulatto slaves were adjudged to be personal estate. Slaves were not to trade as free men. Intermarriage between a Negro man or woman and a free white man or woman was punishable by a six-month jail term. The legislature levied a \$30.00 fine on the parties involved and a \$250.00 fine on the minister.

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- **Certificates of Freedom •**

- Other laws were passed that related to indentured servants who were issued a Certificate of Freedom upon satisfactory proof of the termination of their service. The county courts extended this certificate to emancipated Negroes upon proof of their emancipation by deed or will or other instrument of writing.

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- **Apprenticeships and Care of the Poor •**

- In 1765, the colonial legislature passed legislation dealing with

apprenticeships. The House of Burgesses provided apprenticeships for bastard children of women servants and Negroes or free white women and Negroes. Boys were to be “Bound out” until they were twenty-one; girls until they were eighteen. The former law apprenticing children until they were thirty-one was thought to be too severe on the children and was repealed.

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- In 1785, legislation provided for district overseers of the poor in the county.

The Assembly transferred powers held by the old church warden system to the overseers of the poor. •

- Then, in 1792, the General Assembly passed a law providing for the poor, lame, blind and others who are unable to maintain themselves. They empowered overseers of the poor to provide poor houses, nurses and doctors of the care of the poor.

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- The county courts directed the overseers of the poor to apprentice orphans and

children to a person that the court approved. Boys were bound out until they were twenty-one, girls until they were eighteen.

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- **The “Quasi-free”: the practice of hiring slaves out as free •**
- The year 1793 proved to be as busy. The legislature voted to stop the practice

of Negro slaves from hiring out as free persons and to keep a closer eye on the free Negro population found throughout the local communities in the Commonwealth.

- Slave holders had tended to allow their Negro slaves to hire themselves out, especially those who were skilled artisans. No the legislature forbade this practice; owners of these “quasi-free” slaves could be indicted by a grand jury for hiring their slaves out contrary to law. The Negro slave found himself in jail while the owner was hauled into court and made to pay jail fees.

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- **Registers of Free Negroes •**
- During the same year, the General Assembly passed legislation to register all

free Negroes and mulattos in the Commonwealth with the clerk of the Court in the community in which they lived. [They were] free to sell their services, [and] were to be registered and numbered in a book by the town Clerk. This register recorded name, age, color, status of emancipation details—by whom and in which county court the registered Negro had been freed.

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- The law required free Negroes and mulattos to re-register every three years.

Unregistered free Negroes could be jailed as runaway slaves. •

- These certificates and registers served as the free Negroes’ legal identity; these

“free papers: as they came to be called, kept free people of color from jail or from being identified mistakenly as slaves. Recent research indicates that while some free Negroes came in to make the initial registration, many did not re-register unless their original papers had been lost.

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- Law involving the registration of free Negroes remained in effect until the

Civil War. Only one substantial change was made and that occurred in 1834. The Court alone could order the registration of free Negroes by the clerk of the county court, the register was now to include notes of marks and scars in the description of the registrant.

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- **Law for Petitions to sue for Freedom •**

- The General Assembly also make it lawful in 1793 for any Negro slave who

felt that he or she was held illegally in bondage to petition the Court for the right to sue for their freedom. Research concerning these petitions suggests that while there were some notices of these suits in local county courts, there were only a few instances in the Minutes or Orders where one could trace the outcome of these petitions.

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- **Laws about forging counterfeit registers •**

- In 1795, the legislature decreed that any person who forged or counterfeited

papers giving a slave freedom was to pay a \$200.00 fine and suffer imprisonment for one year without bail.

8. A Sampling of Nineteenth Century Black Law • Commissioner of Revenue Lists of Free Negroes •

- In 1801, the state legislature decreed that county commissioners of the revenue were to return a complete list of all free Negroes in their district on an annual basis. This list was to contain names, gender, residence, and trade of each free Negro. A copy of the list was to be posted on the door of the

county court house. If a registered free Negro moved to another county, then magistrates there could issue a warrant for him unless he was employed. Otherwise, he would be jailed as a vagrant.

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- **Petitions to remain in Virginia** •

- In 1806, the General Assembly moved to remove the free Negro population

from Virginia with a law that stated that all emancipated slaves, freed after May 1, 1806, who remained in the Commonwealth more than a year, would forfeit his right to freedom and be sold by the Overseers of the Poor for the benefit of the parish. Families wishing to stay were to petition the legislature through the local county court.

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- In 1826 the Sheriff replaced the Overseers of the Poor as the selling agent for

free Negroes remaining in Virginia. The Court could authorize this sale only upon a jury verdict or confession by the party. In 1831 the law was amended slightly: the sheriff could sell the free Negroes at an auction who remained in Virginia contrary to the 1806 law.

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- This law remained in effect until 1837 when the General Assembly changed

their mind, inundated by this time with petitions from free Negroes and from whites dependent upon their skills. Now, the legislature said, any slave emancipated since May 1, 1806 could apply to the local court for permission to remain in Virginia.

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- Upon satisfactory proof that the petitioner was of good character, peaceable,

orderly, industrious, and not addicted to drunkenness, or other vices, permission could be granted. A notice had to appear on the court house door for two months announcing the petitioner's intent to remain in the State and

three-quarters of the justices of the court had to agree that the individual, couple, or family could remain.

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- **Asylum for freed slaves outside the continental United States** •
- In 1816, the General Assembly sought to obtain asylum beyond the United

States for free persons of color and passed a resolution to request the Governor to correspond to the President for the purpose of obtaining territory on the coast of Africa, or on the shore of the North Pacific, now within the boundaries of the United States which would serve as an asylum for free Negroes.

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- Then in 1833, after the abortive Nat Turner slave rebellion, the legislature

appropriated \$18,000.00 per year for five years to encourage the transportation and subsistence of free persons of color to emigrate to Liberia or other areas on the west coast of Africa.

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- **Criminal Offenses** In 1823, any free Negro who was convicted of an offense

punishable by imprisonment for more than two years, was not punished by whipping and sold as a slave and banished from Virginia, at the discretion of the Court of a jury. If free Negroes or slaves willfully assaulted and beat a white person with intent to kill and was convicted of this offense, they too could be punished by a public whipping and banishment from the

state. If the convicted person returned to Virginia, he or she could be

hanged. •

- **Impact of Nat Turner's failed slave rebellion** After the failure of the Nat turner slave rebellion in 1830, the Virginia General Assembly passed a variety of laws curtailing slave and free Negroes' right to assembly. To prevent free Negroes from assembling and speaking at church, the

legislature forbade preaching by slaves, free Negroes, or mulattos at religious meetings. Indeed free people of color and slaves were forbidden to hold any religious meeting during the day or evening. The penalty for violating this ordinance was a public whipping of thirty-nine lashes.

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- Slaves attending religious meetings without the consent of their master were

also liable to a public whipping. However, religious instruction to slaves of free Negroes could be given during the day by a licensed white minister and the slaves of any one owner could assemble for religious instruction during the day.

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- In 1832, the Assembly addressed riots, unlawful assembly, trespass, sedition,

and conspiracy to commit insurrection. If slaves or free Negroes wrote or printed anything advising people of color to commit insurrection or rebellion, the perpetrators were to be whipped. The same penalty was instituted for riots, unlawful assembly, trespass and seditious speeches.

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- During the same year, the legislature prohibited Negroes from selling or giving

away liquor near any public assembly. The penalty for violating this law was also a public whipping. •

- **Free Negroes' rights to own slaves** Another law passed in 1832 curtailed the rights of free people of color to own slaves. After this date, no free Negro would be able to acquire ownership of any slave, except through inheritance, other than his own spouse or children.

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- In 1858, further restriction took place. Free Negroes could now own slaves

only through inheritance. •

- **Laws that curtailed individual rights** In 1843, the legislature curtailed slave and free Negro rights to dispense medicine. Selling, preparing or administering medicine became a misdemeanor whose penalty was a public whipping. Preparation of drugs by free Negroes that caused abortions carried a penalty of five to ten years in prison. If a slave prepared a drug to cause abortion, the first time offender received a public whipping. Any offense after that was a hanging offense.

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- In 1858, free people of color could not buy wine or ardent spirits unless they had written permission from three or more justices that they were sober, orderly and of good character. In 1860, free Negroes could not be ordinary or tavern keepers and were proscribed from selling hard liquor.

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- **Laws relating to Criminal Offenses** In 1846, the General Assembly granted

justices of the peace the right to try any free Negro who committed simple larceny of offenses valued to \$20.00. If convicted, the free Negro faced a public whipping of thirty-nine lashes. If acquitted, the acquittal was final.

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- If a free person of color assaulted a white person with intent to kill, his

conviction carried with it a prison term between five and eighteen years

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- In 1860, the legislature decreed that free Negroes who committed offenses punishable by imprisonment in the penitentiary could be, at the discretion of the county court, sold into absolute slavery.

The foregoing is a sampling of the laws passed by the Virginia legislature before

the Civil War. It is against this backdrop of legislation that the editors invite your inspection of June Guild's enduring classic: *The Black Laws of Virginia*.