

LIBERTY UNIVERSITY  
COLLEGE OF ARTS & SCIENCES

**He Rode Alone:  
Francis Scott Key as an Advocate for Freedom**

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## Chapter 1

### The Francis Scott Key Problem

In 1842, less than a year prior to his own death, an elderly Francis Scott Key rode his horse in a funeral procession honoring a fellow philanthropist whom he admired. Key, beyond famously authoring the *Star Spangled Banner*, had devoted much of his life, resources, and time to many religious, educational, and political charities. One of the many friends and colleagues he became acquainted with was a free African American man named William Costin. Costin, like Key, sacrificed greatly to improve the condition of his fellow man, going so far as to open schools for other black Americans and even challenge prejudicial laws in the D.C. District Court. Thus, when Costin passed away many citizens participated in the ceremony to honor the life of this notable and highly respected free black in the Washington, D.C., area. Key was one of those people.

On the day of the funeral, dozens of carriages carrying many distinguished guests rolled through the capital city. Francis Scott Key, one of the most prominent and successful lawyers in the nation at the time, very well could have been in one of those carriages, but he was not. Instead, the old lawyer strikingly chose not to ride like many of the other white participants, even though that would have been expected and more acceptable to the white citizens of the city who were Key's primary client base. Following the carriages, however, a vast group of African American men rode on horseback in the open air to pay their respects. They were all black except for the conspicuous example of Francis Scott Key.

Key's actions were so remarkable, that even extreme abolitionist newspapers were forced to applaud the actions of a man they had regularly derided over the course of the previous

decades. Despite this history of coldness or even open hostility, “It must be admitted,” one report explained:

that for a distinguished white citizen of Washington to ride alone among a larger number of colored men in doing honor to the memory of a deceased citizen of color evinces an elevation of soul above the meanness of popular prejudice, highly honorable to Mr. Key’s profession as a friend of men of color. He rode *alone*.<sup>1</sup>

The whole funeral left a remarkable impression on the inhabitants of the city, including congressmen like John Quincy Adams who remarked on the floor of the House the following day that the display of honor for William Costin was, “an evidence of the manner in which he was estimated by the citizens of Washington.”<sup>2</sup>

For people today, such an action by Key might come as a surprise. Francis Scott Key, as it is known, owned slaves throughout his life and therefore has been wholly condemned by activists and iconoclastic historians as an irredeemable racist upon that fact alone. Such conclusions have led people to violently tear down statues of Key by cheering mobs.<sup>3</sup> Calls to replace the *Star Spangled Banner* as the National Anthem are now increasingly entertained.<sup>4</sup> Indeed, over the past few years the historiographical direction of popular commentators and historical writers has fallen in behind those who wish to remove Key from the American landscape.<sup>5</sup> Despite its current popularity, such a view is nevertheless ahistorical and disregards many significant actions Key took throughout his life to end slavery.

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<sup>1</sup> *Massachusetts Spy*, June 15, 1842, quoted by, Marc Leepson, *What So Proudly We Hailed: Francis Scott Key, A Life* (New York: St. Martin’s Press, 2014), 195-196.

<sup>2</sup> “House of Representatives. Tuesday, June 2, 1842,” *The Congressional Globe* (Washington: The Globe Office, 1842), 11.570.

<sup>3</sup> Vincent Barone, “Protestors Tear Down Francis Scott Key Statue in San Francisco,” *New York Post* (June 20, 2020), accessed June 21, 2020, <https://nypost.com/2020/06/20/protestors-topple-francis-scott-key-statue-in-san-francisco-park/>.

<sup>4</sup> Suzy Weiss, “National Anthem Should be Changed to John Lennon’s ‘Imagine,’ Activists Say,” *New York Post* (June 26, 2020), accessed June 27, 2020, <https://nypost.com/2020/06/26/activists-change-national-anthem-to-john-lennons-imagine/>.

<sup>5</sup> See, for example, Christopher Wilson, “Where’s the Debate on Francis Scott Key’s Slave-Holding Legacy?” *Smithsonian Magazine* (July 1, 2016), accessed May 24, 2020, [www.smithsonianmag.com/smithsonian-institution/wheres-debate-francis-scott-keys-slave-holding-legacy-180959550/](http://www.smithsonianmag.com/smithsonian-institution/wheres-debate-francis-scott-keys-slave-holding-legacy-180959550/); Christopher Woolf, “Historians

Such evaluations ignore the fact that, despite being raised in a slave-owning family and inheriting those slaves himself, Key worked tirelessly throughout his life in anti-slavery causes. Indeed, to Key's acquaintances, his actions during Costin's funeral procession would not have been altogether shocking. For instance, Key freed most of his slaves when it was possible. From the earliest days of his career to the last months of his life, Key fought in court for the rights of black Americans and canvassed the country to raise money for the purpose of encouraging emancipation through the American Colonization Society. Throughout all of this, the poetical attorney was assailed by vicious attacks from both radical abolitionists and extreme supporters of slavery. While these rhetorical bombs burst in the air all around Key, he always remained committed to the causes he supported. Just like at Costin's funeral, Key often rode alone in his effort to rid America of slavery, which he wrote was the, "only blot that dim'd the lustre of his country's fame."<sup>6</sup> Although clearly imperfect, the current historical consensus dismisses how Key worked together with African American community as they worked to claim their God-given freedom and inherent natural rights. The recontextualization of Key through an examination of his extensive efforts in court for manumission reveals a more nuanced and accurate perspective on the life of Francis Scott Key.

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Disagree on Whether 'The Star-Spangled Banner' is Racist," *The World* (August 16, 2016), accessed May 24, 2020, [www.pri.org/stories/2016-08-30/historians-disagree-whether-star-spangled-banner-racist](http://www.pri.org/stories/2016-08-30/historians-disagree-whether-star-spangled-banner-racist); A. J. Willingham, "The Unexpected Connection Between Slavery, NFL Protests and the National Anthem," *CNN* (August 22, 2017), accessed May 24, 2020, [www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html](http://www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html); Justin Moyer, "Memorial to 'racist' Francis Scott Key, who wrote 'The Star-Spangled Banner,' vandalized in Maryland," *The Washington Post* (September 13, 2017), accessed May 24, 2020, [www.washingtonpost.com/news/local/wp/2017/09/13/memorial-to-racist-francis-scott-key-who-wrote-the-star-spangled-banner-vandalized-in-maryland/](http://www.washingtonpost.com/news/local/wp/2017/09/13/memorial-to-racist-francis-scott-key-who-wrote-the-star-spangled-banner-vandalized-in-maryland/); John Sharp, "Francis Scott Key Reference Fuels Alabama 'In God We Trust' Debate," *Alabama News* (February 6, 2018). Accessed May 24, 2020, [www.al.com/news/mobile/2018/02/francis\\_scott\\_key\\_reference\\_fu.html](http://www.al.com/news/mobile/2018/02/francis_scott_key_reference_fu.html).

<sup>6</sup> Francis Scott Key to A. A. Turner, April 29, 1834, quoted in, Sina Dubovoy, *The Lost World of Francis Scott Key* (Bloomington: WestBow Press, 2014), 410.

When investigating historical figures like Francis Scott Key it is important to realize that the world in which they lived is radically different than the one of today. The now ubiquitous line from L. P. Hartley always bears repeating when beginning an historical inquiry: “The past is a foreign country: they do things differently there.”<sup>7</sup> The society that surrounded Key when he was born in Maryland on August 1, 1779, just three years after the signing of the Declaration of Independence, was one in which slavery was nearly universally accepted around the world including America. It was only in the years following the American War for Independence that a significant push for widespread emancipation began to make recognizable progress in such a goal. Throughout his childhood years, Key witnessed many of the Northern states completely or partially abolish the institution in their various jurisdictions. Notably, Massachusetts’s 1780 constitution abolished slavery following a series of successful petition for freedom cases.<sup>8</sup> By the first Federal census in 1790 the state had successfully secured freedom for all black citizens in their state, and nearby Vermont only had 17 people awaiting emancipation.<sup>9</sup>

By 1804, when Key was beginning to enter the legal field, all the New England states as well as New Jersey and New York had passed laws for either the immediate or gradual abolition of slavery. The population of these states totaled approximately 48% of the national population slave and free.<sup>10</sup> Six years later the 1810 census reported that those states had successfully emancipated over 99% of the population with only 0.9% remaining enslaved.<sup>11</sup> Over the same period the number of free African Americans increased exponentially from 1790 to 1810, going

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<sup>7</sup> L. P. Hartley, *The Go-Between* (New York: Alfred A. Knopf, 1954), 3.

<sup>8</sup> Emily Blanck, “Seventeen Eighty-Three: The Turning Point in the Law of Slavery and Freedom in Massachusetts,” *The New England Quarterly* 75, no. 1 (2002): 43.

<sup>9</sup> *The American Almanac and Repository of Useful Knowledge for the Year 1858* (Boston: Crosby, Nicholas, and Company, 1858), 214.

<sup>10</sup> *Aggregate Amount of Each Description of Persons Within the United States of America, and the Territories Thereof* (Washington: 1811), 1.

<sup>11</sup> *Ibid.*

from 59,466 to 108,395, displaying a growth rate of 82%. The next decade saw that number expand another 72% to 186,446.<sup>12</sup> During this time Francis Scott Key played a prominent role in advancing emancipation in the remaining states that still continued slavery.

Among his many endeavors, the one activity which he continuously pursued for a longer duration than any other aside from his attendance at church, was as a pro bono advocate for slaves in the District of Columbia petitioning for their freedom. In 1806, a 27-year-old Key represented his first wrongfully enslaved black man by filing a petition for freedom with the D.C. District Court. In his own hand, Key addressed the court saying, “The Petition of Ben (a man of colour) humbly sheweth that he is unjustly held in bondage by a certain Sabritt [sic.] Scott of the District of Columbia who claims your Petitioner as a slave.”<sup>13</sup> Although Key successfully won Ben’s freedom in June of the following year, the defendants fought the judgement all the way up to the Supreme Court. Nevertheless, Key, a young lawyer with a rapidly growing family, continued to advocate for Ben’s freedom despite the fact that he could have pursued lucrative clients. After five years of legal wrangling, Key finally established Ben’s liberty in 1811—just three years before penning the words to the National Anthem.<sup>14</sup>

This case must have had a dramatic impact on Francis Scott Key, because over the next 37 years after filing his first petition he continued to lend his talents to alleviating the plight of the black community in young nation’s capital. In fact, Key’s final appearance as an advocate in the D.C. District Court came a full 16 days after his death when a document he wrote attempting

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<sup>12</sup> Joseph Kennedy, *Preliminary Reports on the Eighth Census, 1860* (Washington DC: Government Printing Office, 1862), 7.

<sup>13</sup> “Petition for Freedom,” September 17, 1806, *Ben v. Sabret Scott*, in *O Say Can You See: Early Washington, D.C., Law & Family*, edited by William G. Thomas III, et al. University of Nebraska-Lincoln, accessed June 27, 2020, <http://earlywashingtondc.org/doc/oscys.case.0001.025>.

<sup>14</sup> “Minute Book Entry,” June 14, 1811, *Ben v. Sabret Scott*, in *O Say Can You See*, accessed June 27, 2020, <http://earlywashingtondc.org/doc/oscys.mb.0001.009>.

to gain the freedom of another slave finally was received by the court.<sup>15</sup> During the intervening years, Key participated in over nearly 100 freedom cases where he assisted the petitioning slave in varying capacities, most often by serving as their counsel without charge.<sup>16</sup> In total, Key helped free nearly 200 slaves including the ones freed by the 1825 *Antelope* case at Supreme Court. In addition to those for which he was directly responsible, Key also assisted indirectly in the emancipation of hundreds more enslaved people through his efforts with the Colonization Society. Although the Society's professed goal was not abolition, Key thought that more slaves would be actually be freed through a program such as colonization and that the quality of their lives would be overall improved. In a speech in Philadelphia raising funds and support for the American Colonization Society, Key explained that Philadelphia ought to become a strong partner because, "the execution of the Society's plan will be followed by the consequence predicted; the promotion of emancipation."<sup>17</sup> Thus, it should not be surprising to find that five years before his death Key confesses to a northern abolitionist that, "I have always been endeavoring to aid in promoting that object [abolition in Maryland], and still do."<sup>18</sup>

In that same letter Key leaves one of his few references to his own practices of representing enslaved men and women in petition for freedom cases. The attorney explains that,

The laws of Maryland contain provisions of various kinds under which slaves, in certain circumstances, are entitled to petition the courts for their freedom. As a lawyer, I always undertook these cases with peculiar zeal, and have been thus instrumental in liberating several large families and several individuals.<sup>19</sup>

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<sup>15</sup> "Summons of Peggy Barnes," January 27, 1843, *George Crowner & David Over v. Peggy Barnes*, in *O Say Can You See*, accessed June 27, 2020, <http://earlywashingtondc.org/doc/oscys.case.0132.007>.

<sup>16</sup> See, "Key, Francis Scott, 1779-1843," in *O Say Can You See*, accessed June 27, 2020, <http://earlywashingtondc.org/people/per.000001>.

<sup>17</sup> Francis Scott Key, "Mr. Key's Address," *The African Repository, and Colonial Journal* Vol. IV, No. 10 (December 1828): 300.

<sup>18</sup> Francis Scott Key, *A Collection of Facts in Regard to Liberia, by Judge Paine, of Vermont: To Which is Added the Correspondence of the Rev. Benjamin Tappan, of Maine; and Francis S. Key, Esquire, of the District of Columbia* (Woodstock: Augustus Palmer, 1839), 20.

<sup>19</sup> *Ibid.*, 23.



Although characteristically humble about how many he successfully won freedom for he later admits that it was a “large number.”<sup>20</sup> The sincere zeal Key had in pursuing these freedom cases is clearly evident by the large number he participated in and especially the reputation he received as a result of his efforts. For example, Key was derogatorily referred to as “The N----r Lawyer,” due to how, “actively hostile was he to the peculiar institution.”<sup>21</sup> An 1808 reward for a runaway D.C. slave reflects the general anxiety that pro-slavery slave owners had about the petition for freedom cases which Key was so fond of pursuing. This owner specifically worries his runaway slave might attempt to, “procure the certificate of some one of the Negroes, who, a few years ago, petitioned by the name of Thomas, and obtained their freedom in Maryland.”<sup>22</sup> Anyone who increased to the number of documented free blacks was clearly a threat to slave power in the capital because it opened yet another avenue for evasion and escape for those who were not emancipated.

The laws which enabled enslaved people to petition the court for their freedom were unique to Maryland and D.C. and very specific in their purview. Key, therefore, became an expert in the intricacies of these statutes, dedicating much of his life to the study. It is noted that a young Francis Scott Key was, “determined to continue the practice of law,” because, “he said that he could graft other activities upon that career. He could study slavery and become an expert in the constitutional aspects of the institution.”<sup>23</sup> The primary legal instrument employed by Key

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<sup>20</sup> Ibid.

<sup>21</sup> Quoted in, Leepson, *What So Proudly We Hailed*, 26.

<sup>22</sup> “One Hundred Dollars Reward,” *The National Intelligencer and Washington Advertiser* (May 18, 1808), 4.

<sup>23</sup> Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York: Farrar & Rinehart, 1935), 180.

and the wrongfully enslaved people was the 1796 Maryland law entitled “An Act Relating to Negroes.”<sup>24</sup> This law, which came to cover the D.C. jurisdiction as well, stipulated:

That it shall not be lawful, from and after the passing of this act, to import or bring into this state, by land or water, any negro, mulatto or other slave, for sale, or to reside within this state; and any person brought into this state as a slave contrary to this act, if a slave before, shall thereupon immediately cease to be the property of the person or persons so importing or bringing such slave within this state, and shall be free.<sup>25</sup>

Such a law enabled those who believed themselves wrongfully enslaved or imported to petition the courts for a redress of grievances, thereby opening a path to freedom. However, the same law demanded that if the petitioner lost their suit then the attorney representing them was required to, “pay all legal costs arising thereon,” except in such instances where the judge concluded that, “that there was probably ground to suppose the said petitioner or petitioners had a right to freedom.”<sup>26</sup> Therefore, when Francis Scott Key took on so many cases pro bono, it always involved a notable financial risk in addition to the growing opprobrium within the community of his cliental.

Throughout the nearly four decades of advocacy, Key served in many capacities both as a private citizen and as a public servant. During the administration of Andrew Jackson, he rose to prominence as a trusted member of his infamous Kitchen Cabinet eventually being appointed as the District Attorney for Washington, D.C. In this role Key assumed many responsibilities and handled several high-profile cases such as the prosecution of Arthur Bowen, the 1835 rioters, and Reuben Crandall. Even prior to his role as the District Attorney, Key had been enlisted to advocate for the freedom of the black captives from the slave ship *Antelope* in 1825. These cases will be investigated in depth later as they significantly inform his perception of race and slavery.

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<sup>24</sup> Clement Dorsey, *The General Public Statutory Law and Public Local Law of the State of Maryland, from the Year 1692 to 1839 Inclusive* (Baltimore: John D. Toy, 1840), 1.334.

<sup>25</sup> *Ibid.*, 334-335.

<sup>26</sup> *Ibid.*, 342.

But the most constant aspect throughout all of his various roles was the general respect he received from those who witnesses his efforts to ameliorate the condition of slaves, fight the slave trade, and push towards emancipation. Perhaps his closest friend, the eccentric Virginian politician John Randolph of Roanoke, admired Key's constant dedication to important causes, explaining that, "He perseveres in pressing on towards the goal, and his whole life is spent in endeavoring to do good for his unhappy fellow-men. The result is, that he enjoys a tranquility of mind, a sunshine of the soul, that all the Alexanders of the earth can neither confer nor take away."<sup>27</sup> Randolph had such a high regard for Key that he was made an executor in Randolph's will and tasked with ensuring the slaves were freed and relocated to a place where they could live without prejudice.<sup>28</sup>

Likewise, upon Francis Scott Key's death many recalled the strenuous efforts he poured into the manumission and freedom cases. In a notably funeral eulogy by Reverend John Brooke, the minister recalled that, "throughout his own region of country," the deceased old lawyer, "was proverbially the colored man's friend," because, "he was their standing gratuitous advocate in courts of justice, pressing their rights to the extent of the law, and ready to brave odium or even personal danger in their behalf."<sup>29</sup> Where Key's sympathies lied was so abundantly clear, Rev. Brooke indisputably recalled that he, "deplored the existence of slavery as a mighty evil.... And if ever man was a true friend to the African race, that man was Francis Scott Key."<sup>30</sup> Similarly, the *African Repository*, which acted as the publishing arm of the Colonization Society, announced Key's death and remarked that, "in the charms of his taste, conversation and manners,

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<sup>27</sup> Hugh Garland, *The Life of John Randolph of Roanoke* (New York: D. Appleton & Company, 1851), 2.144.

<sup>28</sup> "John Randolph's Will," *The Alton Observer* (July 27, 1837): 2.

<sup>29</sup> John Brooke, "Discourse on the Character of the Late Francis Scott Key." *The African Repository and Colonial Journal* (Washington: Alexander and Barnard, 1843), 19.149.

<sup>30</sup> *Ibid.*

and in his habits of thought and action, Mr. Key much resembled Mr. Wilberforce, nor would his influence have been less, had he lived in similar circumstances, and moved in as elevated and wide sphere.”<sup>31</sup> The comparison to the venerable English abolitionist was not a singular instance. Governor Henry Foote of Mississippi remembered even decades later that during the famous 1825 *Antelope* case before the Supreme Court, Key closed his argument, “with a thrilling and even electrifying picture of the horrors connected with the African slave trade, which would have done honor to a Pitt or a Wilberforce in their palmiest days.”<sup>32</sup>

Despite living such a public life and being a man who played such a prominent role in significant national events, the historiographical corpus for Francis Scott Key remains remarkably thin. Within this small cadre of authors who examine Key’s work and life there stand several schools that largely cluster together chronologically. First are the men who knew Key personally and recorded biographical sketches in the years following Key’s passing. These tend to be shorter but more focused on the specific aspects of Key which often are forgotten today—namely his work in the African American community. The second layer of writings come in the period surrounding the efforts to make *The Star Spangled Banner* America’s national anthem. Lastly, a handful of biographical books on Francis Key were published in recent years. Although not unanimous in their evaluation of Key, the majority revise the legacy and recast his actions in an overall negative light.

Naturally, the significant focus in modern evaluations of Francis Scott Key is his stance on slavery and race. This interest, however, has been surprisingly consistent through the historiography because Key himself was heavily invested in the debates surrounding slavery

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<sup>31</sup> “The Late Francis S. Key, Esq.,” *The African Repository and Colonial Journal* (Washington: Alexander and Barnard, 1843), 19.64.

<sup>32</sup> Henry Foote, *Casket of Reminiscences* (Washington DC: Chronicle Publishing Company, 1874), 13.

during the antebellum period. Thus, the funeral eulogies following Key's death frequently highlight his work in the Colonization Society and manumission cases as the most significant part of his life. In an 1843 funeral oration, the aforementioned Rev. John Brooke remembers Key as the "standing gratuitous advocate in courts of justice" for the slaves and free blacks in the Washington DC area.<sup>33</sup> Similarly, the *African Repository* (1843) announced the death by comparing Key to the famous English abolitionist William Wilberforce.<sup>34</sup> Likewise, Governor Henry Foote in his *Casket of Remembrances* (1874) vividly remembered Key's anti-slavery argument in the 1825 *Antelope* trial, which in many ways was Key's biggest manumission trial.<sup>35</sup> Furthermore, even those eulogies that did not specifically mention his work in slavery issues, they highlighted his indefatigable devotion to philanthropic causes, which would have included Key's work in the Colonization Society and as a pro bono advocate.<sup>36</sup>

As the life and death of Francis Scott Key drifted further into the past, the focus of his life likewise drifted into the background. Recollections tended to narrow in on his authorship of *The Star Spangled Banner* over his work to weaken the slave power and the slave trade. Anticipating this historiographical shift is the account of Chief Justice Robert Taney who wrote a widely circulated letter detailing the story behind the famous poem which was published in the *Poems of the Late Francis S. Key* (1857).<sup>37</sup> After Taney's letter a half-century gap exists in the historiography. However, the authorship of *The Star Spangled Banner* remained the prevalent action in Key's life. Thus, when the historian (and great-grandson to the lawyer-poet) Francis

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<sup>33</sup> Brooke, "Discourse on the Character of the Late Francis Scott Key." *The African Repository*, 19.149.

<sup>34</sup> "The Late Francis S. Key, Esq.," *The African Repository*, 19.64.

<sup>35</sup> Foote, *Casket of Reminiscences*, 13.

<sup>36</sup> See, for example, "Supreme Court of the U.S. Friday, January 13, 1843," *Alexandria Gazette* (January 16, 1843): 2; "Circuit Court of the District of Columbia for the Country of Washington, Saturday, January 14, 1843," *The Washington Globe* (January 17, 1843), 3.

<sup>37</sup> Francis Scott Key, *Poems of the Late Francis S. Key* (New York: Robert Carter & Brothers, 1857), 13-28.

Scott Key-Smith wrote his biography on his namesake, the narrative only paused to mention Key's anti-slavery efforts in the freedom trials once in passing.<sup>38</sup>

In 1931 Key's historical currency received a major boost when the *Star Spangled Banner* was made the national anthem. In response, two full length biographies were produced to answer the increase in public interest. The first was Victor Weybright's *Spangled Banner: The Story of Francis Scott Key* (1935). Although deficient in examining Key's religious side, Weybright does devote time to carefully examining Key's relationship with race and slavery demonstrating a shift back to the focus of the original eulogies.<sup>39</sup> Based on his examination, Weybright relates instances where Key "prophesied that they would see the day when slavery would be abolished,"<sup>40</sup> and summarized how, "Key had defended Negroes in court, taught his father's and his own slaves to read and write, and encouraged their joining the African Methodist Church...out of his own deep religious nature he knew that slavery was wrong."<sup>41</sup> Similarly, the next major biography of Key sprouting from the elevation of his poetry was Edward Delaplaine's 1937 *Francis Scott Key: Life and Times*. As a prominent Maryland attorney and judge, Delaplaine naturally highlights the soaring and varied legal career of Key. He comes to largely the same conclusions as Weybright, and writes that, "Francis Scott Key was always a bitter foe of slavery."<sup>42</sup> However, Weybright and Delaplaine both fail to significantly examine the manumission trails except in passing if at all.

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<sup>38</sup> F.S. Key-Smith, *Francis Scott Key, Author of The Star Spangled Banner: What Else He Was and Who* (Washington DC: Key-Smith and Company, 1911), 94.

<sup>39</sup> Cf. Sina Dubovoy, *The Lost World of Francis Scott Key* (Bloomington: WestBow Press, 2014), xiii-xiv.

<sup>40</sup> Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York: Farrar & Rinehart, 1935), 27.

<sup>41</sup> *Ibid.*, 183-184.

<sup>42</sup> Edward Delaplaine, *The Life and Times of Francis Scott Key* (Stuarts Draft, Virginia: American Foundation Publications, 1998), 191.

With the exception of one brief work published in 1995,<sup>43</sup> the historiographical slate for Francis Scott Key remained blank until the 2010's. Although not strictly a biographical work, Jefferson Morley's *Snow-Storm in August* (2012) set the tone for the mainstream revisionist consensus surrounding Key's legacy in the modern era. Employing Key as the antagonist in the events surrounding the 1835 race riots in Washington DC, Morley dismisses the conclusions of Weybright and Delaplaine regarding Key's anti-slavery goals. Indeed, Morley even recognizes the uniqueness of Key emancipating most of his own slaves but in the same breath rejects that it shows any sort of progressive perspective on the issue.<sup>44</sup> Going further, Morley scoffs at the fact that Key was known as "the Black's lawyer" and claims that Key gave himself the title (although fails to provide a citation as to where such a conclusion might come from).<sup>45</sup> As one could infer, Morley does not dwell long on Key's extensive history of advocating for freedom in the courts because it would undermine his casting of Key as the racial aggressor in his story.

The year of 2014 saw two new dedicated biographies on Key which dramatically differed from one another. The first and more mainstream was written by popular author Marc Leepson and titled *What So Proudly We Hailed*. Leepson takes a more balanced perspective on many issues in Key's life, and deserves credit for paying genuine attention to Key's sincere religious beliefs. However, Leepson ascribes to Morley's interpretation on several issues and likewise dismisses the importance of the manumission trials in understanding Key's position on slavery. More than the others though, Leepson refers to several of the more prominent freedom cases argued by Key throughout the narrative, but fails to offer a comprehensive interpretation as to their significance. That said, Leepson still discounts many of Key's actions in order to postulate

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<sup>43</sup> Sam Meyer, *Paradoxes of Fame: The Francis Scott Key Story* (Annapolis: Eastwind Publishing, 1995).

<sup>44</sup> Jefferson Morley, *Snow-Storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835* (New York: Nan A. Talese/Doubleday, 2012), 60.

<sup>45</sup> *Ibid.*, 154.

that, “Key’s legacy with respect to the ‘peculiar institution’ is cloudy,”<sup>46</sup> and then follows Morley in deciding that the lawyer must have “believed that blacks were inferior to whites,” with a similar lack of documentary evidence.<sup>47</sup>

On the other hand, Sina Dubovoy’s extensive 2014 book *The Lost World of Francis Scott Key* seeks to dispel this cloudiness by re-contextualizing Key within the wider world that he lived in. Focusing more than any of the other biographies on Key’s family and spiritual life, Dubovoy takes a very sympathetic view on Key and slavery. Even in her account of the Crandall trial which Morley used to rework Key as a villain, Dubovoy explains that Key might have withheld evidence which would have further condemned the targeted abolitionist.<sup>48</sup> As will be discussed later, while Key served as District Attorney he prosecuted Rueben Crandall for distributing radical abolitionist literature shortly after a slave had attempted to murder his mistress. Throughout the heavily reported case Key’s own views on abolition and colonization were attack and ultimately the jury acquitted Crandall. Dubovoy notes that while someone whose temperament was more like John Randolph would have abandoned efforts to emancipate slaves after a case like the Crandall trial, Key much rather, “continued as ‘the black’s lawyer,’ doing so in the face of, as we now know, his many detractors.”<sup>49</sup> Dubovoy goes on to explain, “that the men and women he helped to freedom chose to remain in their native country rather than emigrate to Africa was not an issue for Frank.”<sup>50</sup> What additionally sets Dubovoy’s work apart from Morley, Leepson, and even the older Weybright and Delaplaine, is that she pours over the lines of Key’s poetry. This previously untapped wealth of information reveals that Key believed

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<sup>46</sup> Leepson, *What So Proudly We Hailed*, xi.

<sup>47</sup> *Ibid.*, xiii.

<sup>48</sup> Dubovoy, *The Lost World of Francis Scott Key*, 399.

<sup>49</sup> *Ibid.*, 400.

<sup>50</sup> *Ibid.*



slavery to be the, “only blot that dim’d the lustre of his country’s fame,”<sup>51</sup> which is a line out of a poem neither Morley or Leepson acknowledge.

The following year Key again made a notable appearance as a major character within a wider drama which was in many ways exactly opposite of the story Morley told in 2012. Focusing on a different trial, Jonathan Bryant’s *Dark Places of the Earth* (2015) highlights the famous 1825 *Antelope* case which Key argued before the Supreme Court. Bryant paints a masterful picture of Key’s vigorous plea for the freedom of the captured Africans, although he does misunderstand some significant constitutional issues. Nevertheless, Bryant largely returns to the eulogetic view and that of Webright and Delaplaine concerning Key’s anti-slavery nature. In fact, so vital was Key to the trial that the hearing before the Supreme Court itself is seen to be “the result of work by one man: Francis Scott Key.”<sup>52</sup> Not even the John Quincy Adams sought to bring the issue before the highest court. What is even more interesting, however, is that Key later was instrumental in Adams’ successful execution of the more famous *Amistad* case, and without Key’s guidance that case possibly could have concluded quite differently.<sup>53</sup>

The corrective efforts of Dubovoy and Bryant failed, however, to stem the tide of revisionism started by Morley and continued by Leepson. In the aftermath of prominent public figures protesting the National Anthem based upon the premises of Morley, many articles were published in a variety of magazines and online publications. This newest layer to the historiography of Key is largely derivative from the works of Morley,<sup>54</sup> and even Morley himself

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<sup>51</sup> Ibid., 410.

<sup>52</sup> Jonathan Bryant, *Dark Places of the Earth: The Voyage of the Slave Ship Antelope* (New York: Liveright Publishing Corporation, 2015), 208.

<sup>53</sup> Ibid., 296-298.

<sup>54</sup> See, the example recorded in Footnote 6.

enters the fray to more forcefully denounce Key as a racist.<sup>55</sup> Such views have become so prevalent that in recent days rioters have torn down a statue of Key due to his assumed racism.<sup>56</sup>

Throughout all of these various texts, however, there is a noticeable lack of dedicated evaluations of Francis Scott Key's relationship with race and slavery—especially ones which review all of the available evidentiary sources for Key's life, including his poetry, his unpublished letters, and most notably his manumission trials. Due to Key not having a complete edited collection of his works and letters, there are many manuscripts which have not been properly integrated into the wider discussion and can only be found in various archives, private collections, or even the records from auction houses.<sup>57</sup> Not a single one of the historiographical traditions for Key give the necessary attention to the over one hundred petition for freedom cases he participated in over the course of his life. This stunning gap in the scholarly interpretation on a man as remarkable as Francis Scott Key will be remedied through taking a wholistic view of Key's actions regarding slavery with a focus on his freedom cases.

The primary sources for this investigation will be the exhaustive documents contained in the excellent, yet often overlooked, *O Say Can You See* database houses hundreds of petition for freedom cases from Washington, D.C., during the decades leading up to the Civil War.<sup>58</sup> This source along with others recording the cases Key argued including Judge William Cranch's

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<sup>55</sup> Jefferson Morley and Jon Schwartz, "More Proof the U.S. National Anthem has Always Been Tainted with Racism," *The Intercept* (September 13, 2016), accessed May 24, 2020, [theintercept.com/2016/09/13/more-proof-the-u-s-national-anthem-has-always-been-tainted-with-racism/](https://theintercept.com/2016/09/13/more-proof-the-u-s-national-anthem-has-always-been-tainted-with-racism/).

<sup>56</sup> Vincent Barone, "Protestors Tear Down Francis Scott Key Statue in San Francisco," *New York Post* (June 20, 2020), accessed June 21, 2020, <https://nypost.com/2020/06/20/protestors-topple-francis-scott-key-statue-in-san-francisco-park/>.

<sup>57</sup> See, for example, Francis Scott Key, "Francis Scott Key Reflects on the Death of a Devoted Slave in a Letter, Lot 110," December 12, 1807, *WorthPoint*, accessed June 7, 2020, <https://www.worthpoint.com/worthopedia/francis-scott-key-reflects-death-1867008554>.

<sup>58</sup> William G. Thomas III, Kaci Nash, Laura Weakly, Karin Dalziel, and Jessica Dussault. *O Say Can You See: Early Washington, D.C., Law & Family*. University of Nebraska-Lincoln. Accessed May 23, 2020. <http://earlywashingtondc.org>.

reports of the DC District Court and more allow the gap in the scholarship to be suitably addressed.<sup>59</sup> A systematic review of the entire corpus of Key's freedom cases, with several of the more important ones highlighted, combined with a reevaluation of the major slavery cases he tried will show that Key consistently strove for the diminishing of slavery both at home and abroad.

Chapter Two will elucidate the nature of the emancipation trails by offering a statistical overview of the over one hundred cases Francis Scott Key tried during the course of his professional life. By identifying his specific role in these cases, as well as their outcome, a comprehensive look as to the effectiveness and relative cost to Key will be revealed. In addition to examining the archives contained in the *O Say Can You See* database, the reports of Judge Cranch will be reviewed for additional insights into several of the more prominent and significant cases, including tracing the ones which eventually worked their way all the way up to the Supreme Court of the United States through the appellate system. Furthermore, by comparing Key's efforts in this area to the other prominent attorneys at the time and the various cases they argued it will be seen that Key, more than nearly anyone else, acted upon his beliefs and worked more than many others for the emancipation of slaves during the period of the early Republic.

Chapter Three will expand upon the legal aspects of Key's relationship with slavery and incorporate the findings of the analysis of the freedom cases in understanding the more prominent slavery-related cases Key worked on during his career. Key was heavily involved in the cases of the *Antelope* captives (who were illegally enslaved upon a Spanish ship when it was captured by Americans), Arthur Bowen (a slave who nearly assaulted his owner with an ax while

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<sup>59</sup> William Cranch, *Reports of Cases Civil and Criminal in the United States Circuit Court of the District of Columbia, from 1801 to 1841* (Boston: Little, Brown and Company, 1852); see also, R. Kent Newmyer, *John Marshall and the Heroic Age of the Supreme Court* (Baton Rouge: Louisiana State University Press, 2007), 426-428.

intoxicated), the Snow Riots (the white rioters who destroyed much of the free black community in the aftermath of the Bowen case), and Rueben Crandall (an abolitionist who was suspected of distributing incendiary pamphlets with the intention of causing a slave revolt in the capital).

These cases receive significant attention from previous historians who looked at Francis Scott Key as a lawyer, but never interpreted his arguments through the wider lens of Key's lifelong activism against slavery and the manumission trials. Due to this, a thorough re-evaluation of the major slavery cases is necessary if a more accurate view of Key is to be achieved.

Chapter Four will look at the personal life of Key and his philanthropic pursuits outside of the courtroom. Naturally, his position as a founding member of the American Colonization Society (ACS) must be carefully examined. Often today the ACS is written off as blatantly racist, but such a view is reductionist at best and revisionist at worst. Contrary to this recent view, slave owners historically attacked the Society for being an abolition society in disguise. In fact, one slave owner writing shortly after Key's famous anti-slavery argument in the *Antelope* case that, bewailed that the members of the ACS sought to abolish slavery, "by the exertion of a great moral principle to be created among us."<sup>60</sup> Indeed, Key's own activities within the organization as well as his speeches, letters, and actions outside of it will be used to reveal the type of character he displayed when confronting race and slavery in America. Rarely examined poems, letters, and writings will highlight that much of this overlooked material reflects Key's deep desire for the abolition of slavery and the empowerment of the black community, both domestically and abroad. Additionally, Key's professional and familial relationships will be investigated as to their bearing upon the slavery question, including his conspicuous brother-in-law's Chief Justice Rodger Taney and Joseph Hopper Nicholson.

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<sup>60</sup> "For the Enquirer. To Bushrod Washington, Esq. President of the American Colonization Society," *Richmond Enquirer* (October 11, 1825): 3.

Lastly, Chapter Five will offer a summary of the evidence and draw conclusion based upon the findings. In the end, the modern narrative of Francis Scott Key stands far off from the historical truth as the evidence will show. Although Key was far from perfect, he undeniably worked alongside black Americans in their march towards liberty—often being one of the few in his generation to do so. Instead of indiscriminately tearing down statues of Key, Americans ought to be reconsider the life of a man who consistently braved insults and the threat of physical violence to stand by his convictions. Key spent his life working through the courts to advance the cause of freedom at a time when to do so meant that both the abolitionist and the pro-slavery camps would disparage and denigrate him. Nevertheless, Key's steadfast devotion to a cause which he considered of utmost importance never wavered. In the face of seeming insurmountable odds, and through the perilous night of political agitation and increasing tension, Francis Scott Key, in many ways, rode alone.

## Chapter 2

### “F. S. Key for the Petitioner”

The petition for freedom cases in which Francis Scott Key advocated for emancipation remain perhaps the most overlooked yet significant aspect of his relation to race and slavery during the first half of the 17<sup>th</sup> century. In fact, none of the academic biographies of his life give these cases hardly more than a passing nod, and more times than not, a dismissive one at that.<sup>61</sup> Such disregard is unfair, for aside from his steadfast attendance in church and a similarly unflinching concern for his family, no other activity occupied a more consistent position in Key’s professional life. From the beginning of his legal career in the early 1800’s to the final year of his life in 1843, Key appeared in at least 113 total petition for freedom cases in the District Court of Washington DC, with 104 of those—an overwhelming 92% majority—on behalf of the slave petitioning for their liberty.<sup>62</sup> Over the nearly four decades of advocacy, many dozens of legal documents flooded the District Court bearing the inscription, “F. S. Key for the petitioner.”<sup>63</sup> This aspect of Key’s life, overlooked and neglected for so long, must be examined in detail if an accurate evaluation of his position on race and slavery is to be discovered.

A petition for freedom is a legal action through which slaves could bring a cause before the court in order to argue that, for various reasons, they ought to be free. Different jurisdictions

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<sup>61</sup> Marc Leepson, *What So Proudly We Hailed: Francis Scott Key, A Life* (New York: St. Martin’s Press, 2014), xiii.

<sup>62</sup> These numbers are derived from the *O Say Can You See: Early Washington, D.C., Law & Family* database, as well as the records in William Cranch, *Reports of Cases Civil and Criminal in the United States Circuit Court of the District of Columbia, from 1801 to 1841* (Boston: Little, Brown and Company, 1852); for a discussion of the other 8% see below.

<sup>63</sup> See, for example, “Anne v. Elisha W. Williams. Petition for Freedom,” April 20, 1811, *O Say Can You See: Early Washington, D.C., Law & Family* (University of Nebraska-Lincoln), accessed August 4, 2020, <http://earlywashingtondc.org/doc/oscys.case.0273.002>; “George Crowner & David Over v. Peggy Barnes. Petition for Freedom,” June 8, 1840, *O Say Can You See*, accessed August 4, 2020, <http://earlywashingtondc.org/doc/oscys.case.0132.001>; “Jack Rhodes v. William Glover. Petition for Freedom,” September 20, 1836, *O Say Can You See*, accessed August 4, 2020, <http://earlywashingtondc.org/doc/oscys.case.0146.001>.

had different paths to liberty based upon the local laws, usages, and customs. In Massachusetts for example, John Adams, answering a questionnaire upon the subject of slavery in his state, remembered that even in the early days of the growing independence movement, “I was concerned in several Causes, in which Negroes sued for their Freedom before the Revolution.... I never knew a Jury, by a Verdict to determine a Negro to be a slave—They always found them free.”<sup>64</sup> Even after the Revolutionary War the petition for freedom cases continued to play a significant role in the state.

In fact, Massachusetts’s petitioners directly led to the abolition of slavery in the state by consistently bringing their causes before the sympathetic juries that ruled for freedom. Based on provisions in the 1780 state constitution, slaves successfully petitioned for freedom culminating in a court ruling that banned slavery outright. The Massachusetts constitution begins with a declaration of rights which states that:

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing, and protecting property; in fine, that of seeking and obtaining their safety and happiness.<sup>65</sup>

On paper these principles of universal liberty were now extended to all inhabitants—not just white free-born citizens.

In order to breathe life into these words, however, people still held in slavery had to be emancipated. To achieve this, a slave named Quock Walker sued his owner after being beat following an escape attempt in 1781. Walker’s case went all the way up to the Massachusetts Supreme Court. In his charge to the jury, Chief Justice William Cushing declared that finally, “a

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<sup>64</sup> John Adams, “John Adams to Dr. Belknap, Quincy, March 21, 1795,” *Collections of the Massachusetts Historical Society* (Boston: Massachusetts Historical Society, 1877), 401-402.

<sup>65</sup> The Massachusetts Constitution, Part 1, Article 1, *The Constitutions of the Several Independent States of America* (New York: E. Oswald, 1786), 11.

different idea has taken place with the people of America, more favorable to the natural rights of mankind, and to that natural, innate desire of Liberty, with which Heaven (without regard to color, complexion, or shape of nose features) has inspired the human race.”<sup>66</sup> Cushing then relied upon the new 1780 constitution and explained that, “upon this ground our Constitution of Government...is totally repugnant to the idea of being born slaves. This being the case, I think the idea of slavery is inconsistent with our own conduct and Constitution; and there can be no such thing as perpetual servitude of a rational creature.”<sup>67</sup> While the decision did not technically end all slavery in the state immediately, “the Massachusetts freedom suits culminated in the Quock Walker cases,”<sup>68</sup> and by the end of the decade slavery had been thoroughly eradicated. Thus, by the first national census in 1790, Massachusetts gained the distinguished honor of being the first political entity to rid the institution of slavery from their borders—some 43 years before England eventually followed suit.<sup>69</sup>

Although they were the first, the citizens of Massachusetts were far from alone in their progress towards abolition. During the American War for Independence, and for the subsequent decades following, there existed a general atmosphere of emancipation in the northern states which materialized in a dramatic rise in the number of free black people entering into the new American world. For instance, from the first census in 1790 to the one in 1810, the number of free blacks increased from 59,466 to 108,395—an 82% rate of growth in just twenty years. The next ten years, from 1810 to 1820, the number rose another 72% which meant that now some

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<sup>66</sup> “The Commonwealth v. Nathaniel Jennison,” *Proceedings of the Massachusetts Historical Society, 1873-1875* (Boston: Published by the Society, 1875), 294.

<sup>67</sup> *Ibid.*

<sup>68</sup> William Wiecek, *The Sources of Antislavery Constitutionalism in America, 1760-1848* (Ithaca: Cornell University Press, 1977), 45.

<sup>69</sup> *The American Almanac and Repository of Useful Knowledge for the Year 1858* (Boston: Crosby, Nicholas, and Company, 1858), 214.



186,446 people were now free from the slaver's shackles.<sup>70</sup> Such a rapid increase can be attributed to the many activists in the northern states who fought for legislation to end the institution of slavery, as well as many slaves striving in the courtrooms across the nation in petition for freedom cases. Ultimately, this represents one of the largest examples of voluntary or peaceful manumissions in the history of the world and has been termed by historians as "the first emancipation."<sup>71</sup> It was during this time that Key operated and contributed to the growing number of emancipated men and women through his efforts in the courtroom.

As mentioned above, each state had differing laws and regulations concerning manumissions, importation, and petitions. For Francis Scott Key, the laws of Maryland governed the vast majority of the petitions for freedom he handled because Maryland law extended to those portions of Washington DC which were originally ceded from the state. As with nearly all early American legal codes surrounding the institution of slavery, the Maryland laws that Key dealt with could be complicated, and sometimes changed due to amendments and evolving precedents. The most significant of these laws, however, was "An Act relating to Negroes" passed by the Maryland legislature in 1796. Catalogued as chapter 67 in the bills enacted during that year's session, it added certain regulations further restricting the importation of slaves into Maryland. Through these new rules, slaves gained additional opportunities to successfully petition the court for their freedom. The first section, and that most important for the petitioners, dictated:

That it shall not be lawful, from and after the passing of this act, to import or bring into this state, by land or water, any negro, mulatto or other slave, for sale, or to be within this state; and any person brought into this state as a slave contrary to this act,

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<sup>70</sup> Joseph Kennedy, *Preliminary Reports on the Eighth Census, 1860* (Washington DC: Government Printing Office, 1862), 7.

<sup>71</sup> Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* (Chicago: The University of Chicago Press, 1968).

if a slave before, shall thereupon immediately cease to be the property of the person or persons so importing or bringing such slave within this state, and shall be free.<sup>72</sup>

By making it illegal to bring slaves into the state for the purpose of sale or temporary residency this provision opened a wider path to emancipation. By preventing the importation of more slaves Maryland, as a middle state, moved closer to abolition because, as Francis Scott Key later observed, “no slave State adjacent to a free State can continue so.”<sup>73</sup> However, the Act of 1796 was far from being an outright law for even gradual emancipation; it still preserved certain protections for slave-owners amid the various regulations and restrictions. For example, the second section explained “that it shall and may be lawful for any citizen or citizens of the United States, who shall come into this state with a *bona fide* intention of settling therein, to import or bring into this state or within one year thereafter, any slave or slaves,” if the said slaves had lived in America for at least three years prior to being imported.<sup>74</sup> However, it was still illegal to then sell any such slave unless, after settling therein, they had resided there for an additional three full years.<sup>75</sup>

Although this statute was lengthy and some sections were reworked considerably throughout the subsequent decades, the major provisions relating to those petitioning for freedom remained largely untouched. Therefore, over the years a sizable body of case law interpreting the 1796 Act developed in the Washington, DC District Court where Francis Scott Key served as an advocate. These cases had serious implications for the entire slave population of the capital since a bad opinion from the Court could make acquiring freedom tougher than it already was. For

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<sup>72</sup> Virgil Maxcy, *The Laws of Maryland* (Baltimore: Philip H. Nicklin & Co. 1811), 351-352.

<sup>73</sup> Francis Scott Key, *A Collection of Facts in Regard to Liberia, by Judge Paine, of Vermont: To Which is Added the Correspondence of the Rev. Benjamin Tappan, of Maine; and Francis S. Key, Esquire, of the District of Columbia* (Woodstock: Augustus Palmer, 1839), 21.

<sup>74</sup> Maxcy, *The Laws of Maryland*, 352.

<sup>75</sup> *Ibid.*

example, in *Negro William Jordan v. Lemuel Sawyer* (1823) a representative from North Carolina, Lemuel Sawyer, had brought with him William Jordan as a slave. But since the congressman had no intention to settle in DC, Sawyer attempted to sell Jordan out of the area before he could seek his freedom. However, Jordan managed to avoid being shipped away and successfully filed a petition with the help of Francis Scott Key.<sup>76</sup> Because Representative Sawyer had not technically brought Jordan into DC for the express purpose of selling him, and due to the Maryland Act of 1796 not explicitly providing a punishment for sojourners who then decided to sell a slave while traveling, the case stood to affect many future petitions depending on the opinions of the judges.

The Court, in the report, confessed that “the Maryland Act was very obscure,” but after a brief review of the sections, the original intent of the law could reasonably be discerned and applied in the Jordan issue.<sup>77</sup> It was observed that while section four, which “provides that nothing in the act shall be construed to affect the right of persons travelling or sojourning with any slave; such slave not being sold, or otherwise disposed of, in the State, but carried, by the owner, out of the State,” it nevertheless “does not give any penalty for selling” a slave while a sojourner.<sup>78</sup> The Court went on to state that although the letter of the law was silent, the spirit of the law revealed that, “it seems to be the intention of the legislature to prohibit such sale. If such was their intent, we must construe the 4<sup>th</sup> section to mean that such a sale must be considered as conclusive evidence that the slave was imported for sale; and such we are inclined to think must be the construction.”<sup>79</sup> However, despite this beneficial perspective the facts of the case were

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<sup>76</sup> “William Jordan v. Lemuel Sawyer. Petition for Freedom,” March 14, 1823, *O Say Can You See: Early Washington, D.C., Law & Family* (University of Nebraska-Lincoln), accessed May 23, 2020, <http://earlywashingtondc.org/doc/oscys.case.0050.001>.

<sup>77</sup> William Cranch, *Reports of Cases Civil and Criminal in the United States Circuit Court of the District of Columbia, from 1801 to 1841* (Boston: Little, Brown and Company, 1852), 2.375.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, 375-376.

such that the one judge, with one judge dissenting and another being absent, still, “was of opinion, that...the law was for the defendant, because the jury had not found that the petitioner was brought in ‘for sale or to reside.’”<sup>80</sup> Key, seeing that the sitting judge was inclined against his client, moved to suspend any final judgement until the next term of the Court, during which time the parties came to an agreement and settled the case. Even though the facts of the case did not necessarily side with Key and Jordan, the Court established that the underlying principle of the 1796 Act leaned toward freedom whenever there was a sale—even if the importation was not directly linked to such a desire.

Some five years after the case of William Jordan, the Circuit Court took the opportunity to further clarify their interpretation of the Maryland Act of 1796 in the case *Negro John Battles v. Thomas Miller* (1828).<sup>81</sup> In this petition for freedom case the issue at hand was similar to *Jordan v. Sawyer* in that it concerned whether or not the petitioner was entitled to freedom if they were to be sold outside the district. Specifically, John Battles had been brought into the District of Columbia by his owner Thomas Miller. Miller had certainly come with the *bona fide* intent to settle therein which meant that legally Battles could not petition for freedom. However, prior to the required three-year residency proscribed by the Maryland Act of 1796, Miller attempted to sell Battles out of the District by transporting him there first. Battles escaped back to the District of Columbia and sued for his freedom. The legal question was if selling a slave out of the District was actionable under the 1796 law. The Court, citing their conclusions in *Jordan v. Sawyer* as precedent, sided with Battles and offered a maximalist perspective on the law explaining that, “if the slave was sold by the importer within the three years, the importer is not protected by the 2d section of the Act of 1796, c. 67, from the prohibition contained in the first

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<sup>80</sup> *Ibid.*, 376.

<sup>81</sup> The petitioner’s name is sometimes spelled “John Battaile” as in the *O Say Can You See* database.

section.”<sup>82</sup> The Court then continued to breakdown the law and how the various sections interact with each other as it pertains to those petitioning for freedom:

The 1st section contains the general principle—the prohibition to import slaves. The 2d section contains the exception in favor of those who come to reside. The 3d section is an exception to the second. If the case be within the 3d section, it is not within the 2d, and if not within the 2d it is within the first. He was also of opinion that it was immaterial whether the sale was made in or out of the county of Washington.<sup>83</sup>

The general operative principle of the Maryland Act of 1796 was to restrict slavery by ending importation, and while some exceptions were granted, the overwhelming tendency of the law was to reduce and suppress the institution of slavery. Key’s own legal principles for interpreting the true meaning of a law followed the Court’s originalist tendency, contending that, “in considering a statute, the intention of the legislature is the only sure guide to its construction.”<sup>84</sup>

Based on the opinion of the Court, the verdict was made for the petitioner and John Battles gained his freedom.

Important cases like *Jordan v. Sawyer* and *Battles v. Miller* set precedent which lawyers had to be familiar with were they to be successful advocates at the bar. It was within this pocket of law in the nation’s capital city that Francis Scott Key spent countless hours over nearly four decades fighting for the freedom of those held in bondage. Early in his career, Key made the conscious decision to, “study slavery and become an expert in the constitutional aspects of the institution.”<sup>85</sup> Possibly the first time Key entered the fray surrounding the slavery issue within Washington DC occurred in 1806 when he filed a petition for freedom on behalf of a man known

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<sup>82</sup> Cranch, *Reports*, 298.

<sup>83</sup> *Ibid.*

<sup>84</sup> William Cranch, *Reports of Cases Civil and Criminal in the United States Circuit Court of the District of Columbia, from 1801 to 1841* (Boston: Little, Brown and Company, 1852), 4.629.

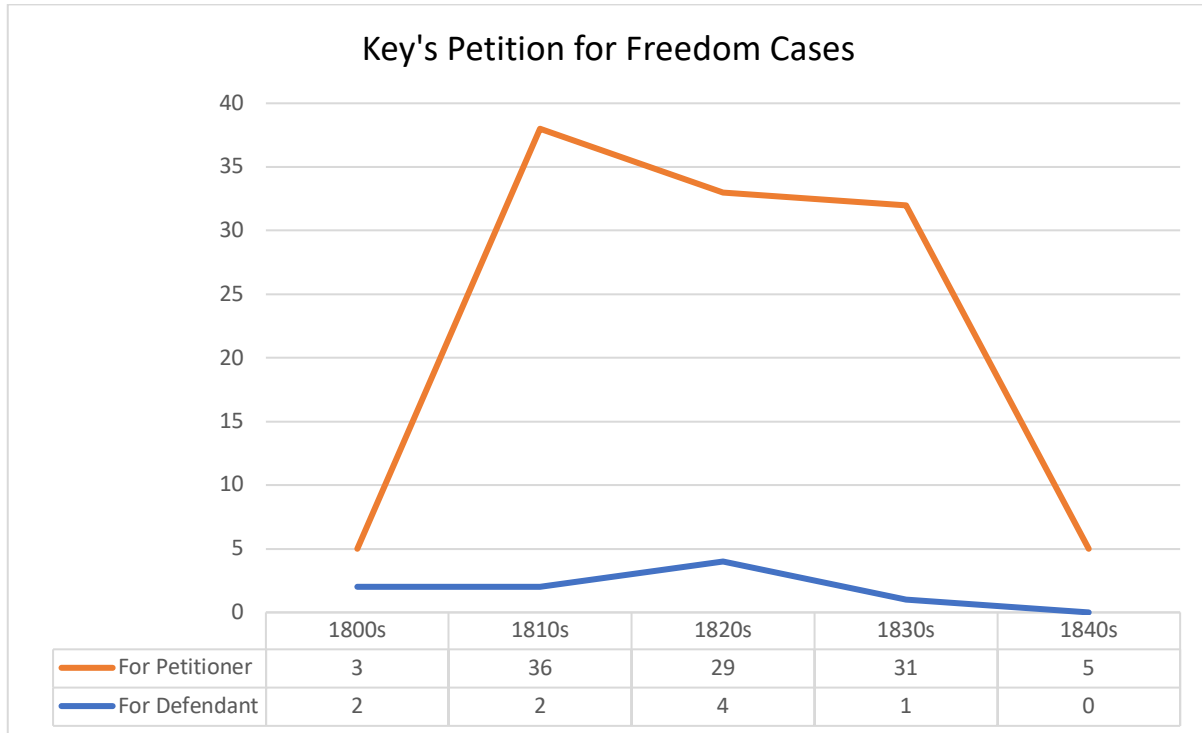
<sup>85</sup> Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York: Farrar & Rinehart, 1935), 180.

as “Negro Ben.”<sup>86</sup> While it took nearly five years for Ben’s case to reach its conclusion wherein he gained his freedom, Key became heavily involved in petition for freedom cases following his involvement in Ben’s case. In fact, over the next several decades until his death in 1843, Key participated in a total of 113 cases, of which 104 he worked toward freedom. Generally, such cases for the petitioning slaves were conducted *pro bono* by the attorney representing them, and no record indicates that Francis Scott Key ever broke from such custom. The fact that he advocated in so many cases, most likely done for free, over the duration of his professional life while also working to support a large family, indicates just how important it was for Key to serve in this capacity.

Taking a closer look at the volume of cases Key participated in during various decades reveals certain trends concerning his involvement. Basing the dates off of the year in which the legal action concluded, Key volunteered for the petitioners in freedom suits 3 times between 1800-1809, 36 times from 1810-1819, 29 times from 1820-1829, 31 times from 1830-1839, and in the last three years of his life he still managed to participate in 5 cases from 1840-1843. This is compared to only 2 cases where Key was hired by the slave-owning defendant from 1800-1809, 2 more instances between 1810-1819, 4 from 1820-1829, and then 1 final case in the 1830s. In fact, the last freedom suit in which Key’s services were retained by a slave owner was in 1832, over ten years prior to his death. The following chart visualizes this data:

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<sup>86</sup> “Ben v. Sabret Scott. Petition for Freedom,” September 17, 1806, *O Say Can You See: Early*, accessed August 4, 2020, <http://earlywashingtondc.org/doc/oscys.case.0001.025>.



As evidenced by this chart, Key worked steadily for petitioning slaves who sought their freedom in court up to the year he died. Even while serving as the District Attorney for Washington DC from 1833-1841 Key, in addition to acting as an advisor to President Andrew Jackson, nevertheless continued to represent slaves in Court at a substantially similar rate. Indeed, Key concluded 27 cases for the petitioner, or roughly 26% of the total, while also fulfilling his duties as the District Attorney.

Out of the 104 cases in which Key was for the petitioner, the results of many of them were settled outside of court and the final conclusions were lost to history. However, in 38 of those cases a verdict is recorded. Key won 20 and lost 18, creating a 52.6% win rate. While this might seem low, the conclusion of the vast majority of his petition for freedom cases are not known. Many of them ended with an out-of-court settlement which might very well have secured freedom for the slave, or at least some beneficial end if freedom was impossible. In fact, Francis Scott Key's skill as a negotiator was so respected that in 1833 President Andrew Jackson sent

him to Alabama to settle a brewing conflict between the Creek Indians and settlers who occupied stolen land. Federal troops had killed some of the belligerent Alabamans and open conflict seemed likely until Key, with his amenable disposition and polished manners, calmed tensions and enabled the parties to reach an agreement without further bloodshed.<sup>87</sup>

Furthermore, during his lifetime Key's associates regarded him as a highly skilled lawyer whose oratorical skills made him a dangerous opposing counsel. Upon his passing, members of the DC bar who had advocated both with Key and against him recalled that the deceased old lawyer was always, "a bright and unsurpassed model of combined excellence as a lawyer, and orator, a scholar, a gentleman, and a Christian."<sup>88</sup> Another associate remembered that Key spent his life:

In the very midst of the passions, the struggles, and the warfare of action, and even in public life he was always in the heart and dust of the arena, armed and equipped for conflict; he omitted no opportunity of doing good, which either chance or design afforded him; and his patriotism and his philanthropy vied with each other in turning to account every moment of his time.<sup>89</sup>

Additionally, in one of the most extensive funeral eulogies given for Key, the Rev. John Brooke explained that, "when he did prepare himself for argument, he was able; and...a readiness of perception, an intuitive acumen, and a remarkable depth and variety of original resource, which taxed the strength of his ablest professional brethren, and made him prompt and efficient in every species of debate." So clearly, a 52.6%<sup>90</sup> win rate in petition of freedom cases was not viewed as a poor rate, especially in a society which still was heavily prejudiced against anything which could be construed as abolitionism.

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<sup>87</sup> Hugh A. Bayne, "When Francis Scott Key Was an Ambassador," *The Yale University Library Gazette* 27, no. 4 (1953): 153-59.

<sup>88</sup> "Circuit Court of the District of Columbia for the Country of Washington, Saturday, January 14, 1843." *The Washington Globe*. January 17, 1843), 3.

<sup>89</sup> "Supreme Court of the U.S. Friday, January 13, 1843," *Alexandria Gazette* (January 16, 1843): 2.

<sup>90</sup> John Brooke, "Discourse on the Character of the Late Francis Scott Key." *The African Repository and Colonial Journal* (Washington: Alexander and Barnard, 1843), 19.146.



In proof of heavy prejudice Key witnessed in the courtroom, anti-abolitionist tendency would arise throughout the legal proceedings surrounding the petition for freedom cases. This perhaps was most noticeable during the jury selection process when the attorneys for slaveowners would interrogate potential jurors for anti-slavery beliefs, thereby ensuring that only people who supported institutional slavery would be qualified to sit in the trials. In one of the few cases where Key was hired by the defendant in a petition for freedom case, a potential juror was challenged and evaluated by jurors already sworn in on the suspicion of bias against slavery. The other jurors heard testimony that they, “had better not summon him on negro causes, for he would free them all.”<sup>91</sup> Upon hearing this, the Court ruled that he “did not stand indifferent between parties,” and therefore could not serve on the jury.<sup>92</sup>

Specific examples of the kind of screening questions asked during the selection process are seen in *Negro Matilda v. Mason & Moore* (1822). The attorney for the defendant claimed that common practice was to ask each person prior to being sworn in two questions. First, they were asked, “Have you any conscientious scruple which disinclines you to find a verdict against the petitioners for freedom, and inclines you to find a verdict in their favor, even when the law and evidence, upon strict legal principles, are against them?”<sup>93</sup> Second, the attorney posed the question to each potential juror, “Do you consider yourself in conscience, and upon principle, bound to find a verdict in favor of the petitioner, if the evidence be doubtful?”<sup>94</sup> Anybody who expressed a propensity towards abolition or freedom was rejected and not allowed to sit as a

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<sup>91</sup> Cranch, *Reports*, 1.528.

<sup>92</sup> *Ibid.*

<sup>93</sup> *Ibid.*, 2.343.

<sup>94</sup> *Ibid.* It must be noted also that in this specific case the attorney for the defendant asked the Court to pose these questions to the potential jurors, which it did. However, upon later review the Court decided that it had done so in error and that it was the attorney’s responsibility to ask such questions. However, there was no objection from the Court as to the propriety of the content or the principle of the interrogation.

juror. Thus, the proceedings could often accumulate a significant anti-abolitionist character, making it ever more difficult for the petitioning slaves and the attorneys representing them.

In spite of the clear and pervasive prejudice inherent in the petition for freedom cases, Francis Scott Key staunchly argued for a maximalist interpretation of the rights of slaves and African Americans. Going all the way back to his first petition for freedom case in 1806, Key pushed the limits of what the law would tolerate concerning slaves and their freedom. In the issue of *Negro Ben v. Sabret Scott*, Key tried to convince the Court to grant restitution pay to Ben for all the time which he had been unlawfully held in servitude. The Court refused, however, on the grounds of lacking authority.<sup>95</sup> Two years later, in 1808, Key prevented a slave owner from separating a wife and her children from the father by quickly submitting not only the simple petition but also an affidavit simultaneously, thereby triggering a subpoena which was returnable immediately. Basically, Key stopped the slave owner by expediting their appearance before court in a way that prevented any legal escape—clearly setting an important precedent for families constantly under threat of separation.<sup>96</sup> In an 1822 case, Key proposed that because, “there is no law to prevent a verbal manumission,” it was therefore legal until such a law was passed.<sup>97</sup> In yet another case, Key for the petitioner argued that because, “it is not necessary, under the law of Maryland, that there should be a deed of manumission,” it was entirely possible that, “freedom may be obtained by implication.”<sup>98</sup>

It seems as though Key’s legal principle was that where the law does not specifically forbid it, African Americas naturally had full rights. This is not only humanitarian and constitutional, but also progressive for his era wherein a minimal view of rights was typically

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<sup>95</sup> Ibid., 1.350.

<sup>96</sup> Ibid., 1.523.

<sup>97</sup> Ibid., 2.302.

<sup>98</sup> Ibid., 2.635.

assumed in contrast to Key's distinct maximalist legal theory. He would continue to apply that interpretation of maximum rights in a wide variety of instances, including when he ruled as District Attorney that black men were competent to testify against whites in all circumstances where not specifically restricted by explicit statutory restrictions.<sup>99</sup>

In *Negro Thomas Butler et al. v. Gabriel Duvall* (1829) Key expanded his maximum approach to the rights of slaves by proposing that slaves had the inherent natural right to petition for freedom and that the color of their skin had no legal bearing on their condition. The opposing counsel had claimed that Thomas Butler could not petition for freedom because he did not reside within the particular county wherein the petition had been filed. The attorney for the slaveowner went on to say that "A colored man is *prima facie* a slave; he can, therefore, only sue in the mode given by statute."<sup>100</sup> Key, however, pushed back with the bold argument that slavery is never the natural condition of any man, and that no man-made laws "give the right to petition for freedom; it existed long before."<sup>101</sup> The Court accepted Key's argument that someone's color did not determine their freedom and that all men—black and white—have the inalienable right to petition for their freedom. The ruling explained that "the right is personal, and accompanies the person wherever he goes."<sup>102</sup> Key's reasonings led the Court to secure the right to petition for African Americans and conclusively declare that, "there is no reason to suppose, that the legislature intended altogether to deprive any class of persons of the protection of the laws."<sup>103</sup> No one could be less enfranchised since the natural right to petition was inherent in all. After two

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<sup>99</sup> Francis Scott Key, "To the Hon. John M. Botts," *Richmond Enquirer* (October 9, 1840): 1-2.

<sup>100</sup> Cranch, *Reports*, 3.614.

<sup>101</sup> *Ibid.*

<sup>102</sup> *Ibid.*, 3.611.

<sup>103</sup> *Ibid.*, 3.616.

full years of arguments Key eventually secured freedom not only for Thomas Butler but also for his wife, three children, and two grandchildren.<sup>104</sup>

The instances of Francis Scott Key pushing the limits of the law as it regarded the liberties and rights of the African American citizens in or surrounding Washington DC are almost as numerous as the cases themselves. In *Negro Esther, and her two children, v. Bernard H. Buckner* (1832), yet another important precedent-setting case, Key successfully argued that the year provided for legal importation of slaves by a person with a *bona fide* intention of permanently settling in the District as prescribed by the Maryland Act of 1796, chapter 67, section 2, stated as soon as the said slave owner begins relocation, not once it is completed. Through this argument Key won freedom for Ester and her two children who were moved to Washington after their one-time owner had been engaged in the process of moving for over a year.<sup>105</sup> *Negroes Eliza and Kitty Chapman v. Robert Fenwick* (1834) was a lengthy and legally significant case concerning the weight of emancipation in wills and whether or not emancipated slaves could be held in slavery or even re-enslaved by the executors if freedom might be considered in prejudice of creditor. Key, however, convinced the Court to rule that it was “clearly the intention of the testator that the petitioners should have their freedom.”<sup>106</sup> Even more, Key’s argument secured that the legal assumption was in favor of manumission and that the defendants had the burden of proof to show that the manumission was in prejudice of creditors; that is, that manumissions in wills were on face value always valid unless a presentation of evidence could conclusively show otherwise.<sup>107</sup>

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<sup>104</sup> Ibid., 4.167-169,

<sup>105</sup> Ibid., 4.253-254.

<sup>106</sup> Ibid., 4.433.

<sup>107</sup> Ibid., 4.435.

One of the clearest examples of Francis Scott Key's legal acumen and clever arguments in the petition for freedom cases is witnessed in *Negro Jos. Crawford v. Robert A. Slye* (1834). This petition for freedom hinged on the facts that in sections 8 and 11 of the Maryland Act of 1796, it stipulated that if an owner were to import slaves for work and not for sale, the said owner could only do so if, "a list of such slave or slaves, containing their names, sexes and ages, be delivered, in writing, and signed by the owner, his overseer or agent, to the clerk of the county into which such slave or slaves shall be brought to reside within three months thereafter."<sup>108</sup> However, in this instance the owner, Robert A. Slye, only listed the slave's name as "Jo." and argued that such was sufficient to indicate also the slave's gender in accordance with the law. Key rejected this and insisted that the strict letter of the law must be abided by and thankfully the Court agreed that, "the list required...must designate the sex as well as the name; and that the list offered does not designate the sex; and that therefore the petitioner is entitled to freedom."<sup>109</sup> Due to this technical slip, Joe Crawford secured his liberty with the assistance of Key.

At other times Key even used the weight of his office as the Washington, DC, District Attorney to protect the right of African Americans to petition for their freedom if they believed themselves to be illegally enslaved. In *United States v. Thomas N. Davis* (1839), the defendant sought to remove three black people from the jurisdiction of the District Court to prevent them from pursuing their rights in Court. Key called "a number of witnesses...whose testimony tended to show that Davis had removed the negroes, because he suspected they would apply for a writ of *habeas corpus*."<sup>110</sup> When questioned about why he refused or failed to produce the bodies of the black people who had filed for *habeas corpus*, Davis failed to give reasonable proof that such a

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<sup>108</sup> Maxcy, *The Laws of Maryland*, 353-354.

<sup>109</sup> Cranch, *Reports*, 4.457.

<sup>110</sup> *Ibid.*, 5.622.

request was impossible and, “Mr. Key, for the prisoners, contended that the answer was insufficient and evasive.”<sup>111</sup> Davis’s response so irked Key and raised his ire to such a degree, the District Attorney declared that, “The sending the prisoners away with intent to avoid the expected process of this Court, is of itself an obstruction of justice, and a contempt of court.”<sup>112</sup> Such a threat finally forced Davis to comply with the Court’s demand to respect the rights of the black Americans, and through Key’s staunch advocacy, “these negroes afterwards established their right to freedom, and were discharged.”<sup>113</sup>

Indeed, throughout the many chapters of his life, Francis Scott Key consistently, “demonstrated that he was never too proud or too busy to represent a Negro, often at the risk of personal danger and criticism, in courts of law.”<sup>114</sup> Key received significant notoriety during his lifetime for his steadfast legal efforts aimed at ameliorating the condition of slaves in the DC area. As mentioned previously, pro-slavery elements labeled him the “The N---r Lawyer.”<sup>115</sup> So prominent were his anti-slavery activities one representative in Congress declared, “it may safely be said, (for I have not only heard it a hundred times in conversation, but have seen it stated in the public prints of the District,) that it there is one man in the District of Columbia more obnoxious to the people than another on the question of Abolition, it is this same District Attorney, Mr. Key.”<sup>116</sup> Such a statement is powerful considering that despite freeing many of his slaves, Key never successfully emancipated all of them and owned slaves at the end of his life (largely due to the laws of Maryland which restricted emancipation over the age of 45).<sup>117</sup>

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<sup>111</sup> Ibid.

<sup>112</sup> Ibid.

<sup>113</sup> Ibid., 623.

<sup>114</sup> Weybright, *Spangled Banner*, 61.

<sup>115</sup> Quoted in, Marc Leepson, *What So Proudly We Hailed: Francis Scott Key, A Life* (New York: St. Martin’s Press, 2014), 26.

<sup>116</sup> Quoted in, Key, “To the Hon. John M. Botts,” *Richmond Enquirer*, 1.

<sup>117</sup> See Chapter 4 for a full discussion of Key’s slave owning and the reasons why he did not free all of his slaves by the time of his death in 1843.

Nevertheless, Key earned a reputation for being staunchly antislavery due to his indefatigable work as a pro bono advocate for slaves petitioning for their freedom.

In addition to his enemies, Key's friends also recognized how significant such activities were to the famous lawyer. They saw that, "Key had defended Negroes in court, taught his father's and his own slaves to read and write, and encouraged their joining the African Methodist church."<sup>118</sup> In fact, William Cranch, the Circuit Court judge who heard many if not all of the petition for freedom cases Key argued, remarked upon Key's death that:

We have reason to believe, from our long acquaintance with him, and our long association with him in the administration of justice, that he has left undischarged no duty to his fellow-men or to his God, which, under the imperfection of human nature, he was enabled to perform. He seemed to be constantly actuated by an overbearing sense of duty.<sup>119</sup>

Such sentiments were echoed by the Rev. John Brooke who remembered that Key, "was proverbially the colored man's friend," because, "he was their standing gratuitous advocate in courts of justice, pressing their rights to the extent of the law, and ready to brave odium or even personal danger in their behalf."<sup>120</sup> Key himself, a few years before his death, remarked that, "No northern man began the world with more enthusiasm against slavery than I did. For forty years and upwards....I have always been endeavoring to aid in promoting that object, and do so still."<sup>121</sup>

It was evident to all, friend and foe alike, that Francis Scott Key sought to alleviate the condition of the African American community in the Washington DC area. Through the course of his 104 cases where he represented the petitioning slave, Key suffered verbal abuse from those

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<sup>118</sup> Weybright, *Spangled Banner*, 183-184.

<sup>119</sup> "Circuit Court of the District of Columbia for the Country of Washington, Saturday, January 14, 1843." *The Washington Globe*. January 17, 1843), 3.

<sup>120</sup> Brooke, "Discourse on the Character of the Late Francis Scott Key," 19.149.

<sup>121</sup> Francis Scott Key, *A Collection of Facts in Regard to Liberia, by Judge Paine, of Vermont: To Which is Added the Correspondence of the Rev. Benjamin Tappan, of Maine; and Francis S. Key, Esquire, of the District of Columbia* (Woodstock: Augustus Palmer, 1839), 20.

who stood against him not to mention the amount of revenue he lost from the time it took and the clients such activities drove away. Regardless of such facts, Key never once complained or indicated that he regretted anything other than the fact he was unable to do more. In fact, he wrote that when freedom suits were made, “as a lawyer, I always undertook these cases with peculiar zeal, and have been thus instrumental in liberating several large families and several individuals.”<sup>122</sup> Although Key participated in many other efforts to chip away at the institution of slavery in America, including his work as an agent of the American Colonization Society, perhaps the most powerful, yet overlooked, testimony of his underlying anti-slavery aim was the dozens of documents entered into the Court with the simple signature, “F. S. Key for the petitioner.”

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<sup>122</sup> Ibid., 23.



### Chapter 3

#### The Lawyer-Philanthropist

Francis Scott Key's life, both as an attorney and an anti-slavery activist, extend well beyond the bounds of the petition for freedom cases discussed in the previous chapter. While those constitute perhaps the most overlooked aspect of Key's relation to the pressing issues of race and slavery, they by no means encompass all of the lawyer's activities in that arena. Over the course of his professional career as a premier member of the bar in the District of Columbia, the courtroom chamber echoed with the sound of Key's eloquent oratory—oftentimes while denouncing slavery. Over the nearly four decades of legal prominence he enjoyed, the talented lawyer argued many of the most significant cases pertaining to race and slavery in America before both the DC Circuit Court and the Supreme Court. During the same time, however, Francis Scott Key was not only donating his time to continuing the petition for freedom cases but also became a leading philanthropist in many different causes. He helped spearhead educational, religious, and missionary charities and philanthropic societies. For example, he was a founding member of the Bible Society of the District of Columbia<sup>123</sup> as well as a reported teacher of one of the first Sunday schools for blacks in America.<sup>124</sup> Out of all the philanthropic movements Key participated in, the one to which he devoted the most time, effort, and energy to was the American Colonization Society (ACS). Francis Scott Key's additional work both in the courtroom and through the Colonization Society provides significant and valuable context to the freedom suits he tried and his position on race throughout his life, revealing his progressive and forward-thinking anti-slavery beliefs.

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<sup>123</sup> Sina Dubovoy, *The Lost World of Francis Scott Key* (Bloomington: WestBow Press, 2014), 176.

<sup>124</sup> Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York: Farrar & Rinehart, 1935), 233; Dubovoy, *The Lost World of Francis Scott Key*, 322.

Today, the American Colonization Society remains largely overshadowed by the wider national movement and debate over slavery in the years prior to the Civil War. Officially meeting for the first time in 1817, the Society developed out of decades of conversation and experiments from both black and white leaders who sought to ameliorate the conditions of African Americans while at the same time striking against slavery and the slave trade. In fact, several of the earliest ships to sail to Africa from America with freed blacks were equipped by the famous entrepreneur and black leader from Massachusetts, Paul Cuffe. He was one of the first to take active steps to transport, support, and attempt to secure government aid in the voluntary colonization Africa by freed slaves. Peter Johnson recalled in a speech commemorating Cuffe's life in 1817 that the successful businessman, "Saw, it is true, many benevolent men engaged in releasing them [slaves] from bondage, and pouring into their minds the light of literature and religion."<sup>125</sup> But Cuffe also saw, "the force of prejudice operating so powerfully against them, as to give but little encouragement to hope," unless there was a place, "where they would have greater incentives to improvement, and more favorable opportunities than would probably be ever afforded them where the bulk of the population are whites."<sup>126</sup>

This consideration drove Cuffe and other likeminded men to seek a solution in which the freed slaves could exert sovereignty and enjoy the full complement of their inherent God-given rights without discriminatory laws and attitudes. A return to Africa seemed like a natural idea and Williams confirmed that this was Cuffe's belief, announcing in his eulogy, "my brethren of the African race in general, Capt. C. was an advocate of African colonization. He wished to see that part of our nation...returning to the land of their ancestors, carrying with them the light of

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<sup>125</sup> Peter Williams, *A Discourse Delivered on the Death of Capt. Paul Cuffee: Before the New York African Institution, in the African Methodist Episcopal Zion Church, October 21, 1817* (New York: W. Alexander, 1818), 17-18.

<sup>126</sup> *Ibid.*

science and religion.”<sup>127</sup> Cuffe’s notable ventures inspired the early members of the American Colonization Society to coalesce into a more organized group to further the project.<sup>128</sup>

In the latter half of December 1816, interested parties from across America joined together in Washington DC to lay the groundworks for a national Colonization Society. Francis Scott Key was one of the first advisors who, “thought [it] expedient to call a public meeting, and particularly to invite some of the most distinguished men then in Washington to attend.”<sup>129</sup> As these men, many of them slaveowners, gathered to discuss the volatile issues of slavery, emancipation, and human rights, it was observed that at its core the Society “had for its object the melioration... particularly of the free people of color, whose degraded state robs them of the happiness of self-government, so dear to the American people.”<sup>130</sup> While such intentions were not always respected, nor were all the members motivated by benevolent charity, at its noblest the American Colonization Society sought to identify and execute a practical plan for empowering emancipated slaves to live freely with the power of autonomy and without oppressive discrimination. Furthermore, it was hoped that by providing help in transportation, the ACS would encourage slaveowners to free more slaves since many Southern states required either the exportation of free blacks out of the state or prohibitively large sums of money as security. By removing some of the obstacles attendant to manumission, slavery might be diminished while also helping those emancipated at the same time.

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<sup>127</sup> Ibid., 28.

<sup>128</sup> Matthew Spooner, “‘I Know This Scheme is From God:’ Toward a Reconsideration of the Origins of the American Colonization Society” *Slavery & Abolition: A Journal of Slave and Post-Slave Studies* Vol. 35, No. 4 (2014): 562; Henry Sherwood, “The Formation of the American Colonization Society,” *The Journal of Negro History* Vol. II, No. 3 (July 1917): 210.

<sup>129</sup> Archibald Alexander, *A History of Colonization on the Western Coast of Africa* (Philadelphia: William S. Martien, 1846), 80.

<sup>130</sup> Ibid., 88.

During the December meeting Key was appointed to several important committees which decided the early direction of the ACS. On one committee he, along with Elias B. Caldwell (clerk of the Supreme Court), John Randolph (then a Representative from Virginia), Richard Rush (Attorney General of the United States and son of Declaration signer Benjamin Rush), and others were tasked “to present a respectful memorial to Congress, requesting them to adopt such measures as may be thought most advisable, for procuring a territory in Africa or elsewhere, suitable for the colonization of the free people of color.”<sup>131</sup> Additionally, Key joined the committee assigned with preparing the constitution for the ACS along with Bushrod Washington (Supreme Court Justice and nephew to George Washington), Caldwell, Rush, and several others. In the end, “Frank wrote part, or all, of the constitution of this new organization,”<sup>132</sup> which explained that, “The object to which its attention is to be exclusively directed, is to promote and execute a plan for colonizing (with their consent) the free people of color, residing in our country, in Africa, or such other place as Congress shall deem most expedient.”<sup>133</sup>

At the end of this meeting in late December 1816, it was decided that the American Colonization Society, now armed with a constitution, would hold its first annual meeting on January 1, 1817, in order to elect officers and proceed to the business at hand. Assembling in the House of Representatives on Capitol Hill, this first class of officers speaks not only to the widespread interest and influential support of the project but also reflects how the scheme of colonization served as a middle path in between the more radicalism of the Northern abolitionist and the growing fanaticism of the Southern slave masters. Many of the early leaders came from border areas in the Middle States such as Maryland and Virginia. For example, Justice Bushrod

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<sup>131</sup> Ibid., 89.

<sup>132</sup> Dubovoy, *The Lost World of Francis Scott Key*, 250.

<sup>133</sup> *The First Annual Report of the American Society for Colonizing the Free People of Color of the United States* (Washington City: D. Rapine, 1818), 3.

Washington from Virginia was elected to be the first president, and among the thirteen vice presidents three were from Maryland, one from Virginia, and another from Washington DC.<sup>134</sup> Altogether over 40% of the executive body came from the middle part of the country which saw both the entrenched institutionalized slavery of the South and the effects of widespread emancipation in the North.

Originally, Francis Scott Key was elected to the board of managers who were primarily in charge of the logistical and technical operations of the Society. He held this position for many years, only being off the board for a brief period,<sup>135</sup> before eventually becoming one of the vice presidents.<sup>136</sup> As a member of the Board of Managers in 1817, however, his first task was to present to Congress a memorial soliciting the aid of the federal government in starting a colony for free blacks along the Coast of Africa. This memorial consolidates the main arguments which the ASC proposed for why colonization was not only a charitable idea, but one which the nation should adopt as public policy. Key and the managerial board begin with the simple premise that, “that the existence of distinct and separate castes, or classes, forming exceptions to the general system of policy adapted to the community, is an inherent vice in the composition of society.”<sup>137</sup> This was not to say that African Americans were in anyway inferior or of less value, but rather that the reality of slavery created a class system which was untenable and evil. Acknowledge that such an oppressed group existed, the memorial explained that, “their deprivation of most of those independent, political, and social rights, so indispensable to the progressive melioration of our nature; rendered, by systematic exclusion from all the higher rewards of excellence, dead to all the elevating hopes that might prompt a generous ambition to excel,” led the ACS to formulate

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<sup>134</sup> Alexander, *A History of Colonization*, 91.

<sup>135</sup> Dubovoy, *The Lost World of Francis Scott Key*, 350.

<sup>136</sup> “Annual Meeting,” *The African Repository, and Colonial Journal* Vol. XIX, No. 2 (February 1843): 38.

<sup>137</sup> Alexander, *A History of Colonization*, 92.

the proposed remedy.<sup>138</sup> The free black communities suffered from unequal laws, disadvantaged employment opportunities, and many Southern states even began restricting manumission altogether. This led to “the total abrogation of a right, which benevolent or conscientious proprietors had long enjoyed under all the sanctions of positive law and ancient usage.”<sup>139</sup> Thus:

Your memorialists beg leave, with all deference, to present, that the fairest and most inviting opportunities are now presented to the general government, for repairing a great evil in our social and political institution, and at the same time for elevating, from a low and hopeless condition, a numerous and rapidly increasing race of men, who want nothing but a proper theatre, to enter upon the pursuit of happiness and independence in the ordinary paths which a benign Providence has left open to the human race.<sup>140</sup>

Through such methods the ACS thought that America could redeem herself from the evils attendant upon her participation in slavery by helping to “rear the glorious edifice of well-ordered and polished society, upon the deep and sure foundation of equal laws and diffusive education,” in Africa, thereby providing the benefits “of the all-prevailing power of liberty, enlightened by knowledge and corrected by religion.”<sup>141</sup> With this perspective the certain members of the ACS sought to untie the Gordian knot of slavery which perplexed the United States without having to resort to the sword.<sup>142</sup>

However, the American Colonization Society was anything but a cohesive group of people sharing similar perspectives, beliefs, or even goals. In the modern historiographical tradition the ACS is presented in a dramatically oversimplified fashion wherein every member’s only aim was to remove anyone that was black in order to create a homogeneous white

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<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid., 92-93.

<sup>141</sup> Ibid., 93.

<sup>142</sup> Although the overall effectiveness of the Colonization movement in securing these goals may be rightly questioned in hindsight, the scope of this paper is only to look at what Francis Scott Key’s involvement in the Society meant.

society.<sup>143</sup> Far from a coherent or unified front, the Society struggled and floundered in part due to the contradicting worldviews which attempted to use colonization as a means to their desired end. On the one hand there were racist slave owners who saw colonization as a way to dispose of free blacks and thereby raise the value of their own slaves. Opposite of this, however, were the members who viewed colonization as a pragmatic step on the path to ending the slave trade, abolishing slavery, and securing liberty for African Americans. Modern criticisms of the ACS focus almost exclusively on the former perspectives and ignore the more complicated and nuanced issue of the sincere anti-slavery colonization supporters. Interestingly, the works that present this narrow view almost never mention Key except in passing and never discuss his reasons for supporting the Society—to do so would undercut their premises and assumptions.

For example, in an essay on the topic author Haroon Kharem claims that “the ACS recruited support from four sections of American society,” all of which were anti-black.<sup>144</sup> This approach, which is echoed in other works like Eric Burin’s popular history, ignores the ideological diversity which existed and fails to acknowledge members like Key who saw colonization as the only plan which had any chance of making progress against the institution of slavery. Another gap in the current consensus historiographical tradition on colonization is the rejection of any personal agency on the part of African American who inspired, supported, and participated in the Society. For example, many scholars have fundamentally disregarded or completely ignored Cuffe’s importance in the colonization movement.<sup>145</sup> However, the

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<sup>143</sup> Eric Burin, *Slavery and the Peculiar Solution a History of the American Colonization Society* (Gainesville: University of Florida Press, 2005), 1.

<sup>144</sup> Haroon Kharem, “The American Colonization Society,” *Counterpoints: A Curriculum of Repression: A Pedagogy of Racial History in the United States* Vol. 208 (2006): 84.

<sup>145</sup> E.g., Eric Burin, “Rethinking Northern White Support for the African Colonization Movement: The Pennsylvania Colonization Society as an Agent of Emancipation,” *The Pennsylvania Magazine of History and Biography* Vol. 127, No. 2 (2003): 197-229; Kharem, “The American Colonization Society,” *Counterpoints*; Burin, *Slavery and the Peculiar Solution*.

historiographical tradition is not entirely one sided concerning the American Colonization Society and other scholars have concluded that, “it should not be presumed, as many historians have, that the idea of colonization fed on racism.”<sup>146</sup> While there undoubtedly were many in the American Colonization Society who viewed the plan as nothing more than a way to enact a racist vision, that was by no means universally accepted within the group and notable members such as Francis Scott Key cannot be placed within that category. Older scholarship acknowledged this non-racist component of colonization support and Paul Cuffe’s vital position as a forerunner to the ACS.<sup>147</sup> In fact, even notable authors such as W. E. B. DuBois explained that although not everyone who participated in the Colonization Society “altogether sincere,” it was certainly a part of the movement to genuinely eradicate the slave trade and thereby slavery itself.<sup>148</sup>

None of this is to suggest that the American Colonization Society was effective in producing the results that the sincere members, like Key, hoped for. The Society never surmounted the vast financial difficulties contingent in their scheme and the idea of voluntary colonization never achieved widespread acceptance in the communities it claimed to assist.<sup>149</sup> Furthermore, the ideological controversy within the group continually kept the anti-slavery members from successfully advancing abolition in the South through colonization. While some members condemned the institution of slavery as morally reprehensible, with Francis Scott Key being a notable instance, the Society itself never achieved that level of moral cohesion or clarity. For America to become the land of the free it would take a bloody Civil War and a revolution in

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<sup>146</sup> Douglas Egerton, “‘Its Origin Is Not a Little Curious’: A New Look at the American Colonization Society,” *Journal of the Early Republic* Vol. 5, No. 4 (1985): 470.

<sup>147</sup> Frankie Hutton, “Economic Considerations in the American Colonization Society’s Early Effort to Emigrate Free Blacks to Liberia, 1816-36,” *The Journal of Negro History* Vol. 68, No. 4 (1983): 376.

<sup>148</sup> W. E. B. DuBois, *The Suppression of the African Slave Trade to the United States: 1638-1870* (New York: Longmans, Green, and Co., 1904), 197.

<sup>149</sup> Ella Forbes, “African-American Resistance to Colonization,” *Journal of Black Studies* Vol. 21, No. 2 (1990): 210-223.



the laws, hearts, and minds of the people to secure that liberty for all. While history shows that colonization was insufficient, ineffective, and inadequate to the task of abolishing slavery, at the beginning it offered another attempt to circumvent the growing tensions.

Thus, to Francis Scott Key in the early 1800s the American Colonization Society seemed to offer a pragmatic way to both end slavery and to improve the conditions facing the emancipated slaves. Although still in the process of emancipating the slaves he had inherited from his slave-owning family, Key explained that slavery was evil and that America had a moral obligation to expunge the institution from her borders. In a speech to the ACS he told the members, “If we believe in the existence of a great moral and political evil amongst us, and that duty, honor and interest call upon us to prepare the way for its removal, we must act.”<sup>150</sup> Elsewhere he denounced slavery saying, “it is admitted by all, with the exception perhaps of one in a million, to be a great evil,” and that “no political evil is irremediable, and especially as Providence will prosper wise and faithful attempts to remove it.”<sup>151</sup> The fact that Key was himself the owner of slaves, related to slaveholding families, and the resident of a slave community did not stop him from taking the stand that slavery was without question “our greatest evil.”<sup>152</sup> Even his poetry bemoaned slavery as, “the only blot that dim’d the lustre of his Country’s fame.”<sup>153</sup>

Alongside Key’s open denunciation of slavery also came the further realization that the issue was extremely nuanced and that many slaveowners, no matter how desirous of the institution’s end, were unable to free their slaves. In 1838, a northern abolitionist minister named

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<sup>150</sup> “Annual Meeting of the American Colonization Society.” *The African Repository, and Colonial Journal* Vol. III, No. 12 (February 1828): 356.

<sup>151</sup> “Mr. Key’s Address,” *The African Repository, and Colonial Journal* Vol. IV, No. 10 (December 1828): 303.

<sup>152</sup> *Ibid.*

<sup>153</sup> Dubovoy, *The Lost World of Francis Scott Key*, 410.

Benjamin Tappan mailed Francis Scott Key a questionnaire concerning slavery and the lawyer's opinion, observations, and beliefs concerning it. Key's lengthy response begins by explaining that he had spent the better part of forty years working to see Maryland become a free state and had the utmost faith that it should soon become so. Naturally, Key used the opportunity to discuss how colonization would not only provide the most effectual method for eradicating slavery, but that it would also be "advantageous to the liberated slaves."<sup>154</sup> The most interesting and complex portion of the letter is the line Key draws between slavery being an evil institution and slave owning not being necessarily a sin. He explains saying:

You ask, then, if we believe that slaveholding, as practiced in this country, is sanctioned by the Word of God. I answer, that they believe generally, I think, that Scripture contains neither an express sanction nor an express prohibition on the subject. It gives general rules to govern men's conduct towards each other, applicable to this and all other cases. If men cannot hold slaves without violating these rules, they must not hold them; and, if these rules permit or require us, under any circumstances to hold slaves, then the Word of God sanctions such slaveholding. Take, then, the great rule of the Gospel—"Do unto others as you would they should do unto you." This must govern all possible cases of human conduct, and bears, of course, upon this question as to slaveholding.<sup>155</sup>

Key, ever the churchman, suggests that the golden rule provides the absolute moral standard for all human relations, and that even something like slaveholding only becomes an explicit sin when it violates that precept. Echoing the language of St. Paul, Key draws a distinction that even though slavery might be permitted by the laws of the land that does not mean it is beneficial or edifying.<sup>156</sup>

In explaining the complicated nuances which embroiled slave-holding communities Key provides several examples of why someone who is anti-slavery might be led to purchase slaves

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<sup>154</sup> Francis Scott Key, *A Collection of Facts in Regard to Liberia, by Judge Paine, of Vermont: To Which is Added the Correspondence of the Rev. Benjamin Tappan, of Maine; and Francis S. Key, Esquire, of the District of Columbia* (Woodstock: Augustus Palmer, 1839), 22.

<sup>155</sup> *Ibid.*, 25.

<sup>156</sup> 1 Corinthians 10:23

for non-racist, anti-slavery reasons. He describes that, “A slave may have an unkind master—may be about to be sold away from his friends or family—a family of slaves may be liable to separation.”<sup>157</sup> In cases like these, along with many others, “a man who is known to be a good master, and who has the means of employing them so as to maintain them comfortably, will be importuned to purchase them. It will be a manifest improvement in their condition.”<sup>158</sup> Although Key ultimately desired the end of the institution he likewise believed that the time was not ripe for immediate abolition. Therefore, Key avoided villainizing slaveholding without acknowledging that sometimes extenuating circumstances kept people who wished to end slavery from identifying the best measures to achieve that goal. Using his own situation as an example, Key admits that, “I am still a slaveholder, and could not, without the greatest inhumanity, be otherwise. I own, for instance, an old slave, who has done no work for me for years. I pay his board and other expenses, and cannot believe it a sin in doing so.”<sup>159</sup> In the society of Maryland at that time, still being a slave state, an old slave newly emancipated would not be able to find enough practical employment in order to provide for himself. Such being the case the old man, although legally free, would either starve, be homeless, or be forced to resort to crime in order to survive. After this discussion Key nevertheless reiterates that slave trading, abuse, and chasing profit is wholly wrong:

The persons among us who buy and sell slaves for profit are never, as I have ever heard or believe, professors of religion. Such conduct, or any immorality or ill treatment towards their slaves, would forfeit their Christian character and privileges, if their minister did his duty. And nothing more disgraces a man, in general estimation, than to be guilty of nay immorality or ill treatment towards his slaves.<sup>160</sup>

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<sup>157</sup> Key, *A Collection of Facts in Regard to Liberia*, 25.

<sup>158</sup> *Ibid.*, 25-26.

<sup>159</sup> *Ibid.*, 23.

<sup>160</sup> *Ibid.*, 26.

Key's lengthy response was republished by the American Colonization Society in their publications and even by several influential newspapers in the North who were forced to admit, "Mr. Key appears to understand perfectly the subject on which he writes."<sup>161</sup>

Therefore, it is evident that, "out of his own deep religious nature [Key] knew that slavery was wrong...yet it could not be abolished overnight."<sup>162</sup> So how could America safely advance the cause of abolition without stirring the South to indignation and open rebellion? How could abolition be accomplished not only with the consent of slaveowners, but even with their assistance? The answer which Key settled on, similar to what Paul Cuffe had earlier attempted, was the voluntary and subsidized colonization of Africa by free blacks. The general idea was that, "If a foothold, a colony, could be found for freed slaves, thought Key and his companions, it was possible that slavery would disappear gradually and without suffering to either whites or blacks."<sup>163</sup> In their minds it provided a practical solution which accomplished the most good for the most people in the shortest amount of time. Driven by such philanthropic motives, the poet-lawyer believed that colonization "is the cheapest and most direct method of promoting Abolition."<sup>164</sup> Believing as he did about the evils of slavery, Key threw his whole weight himself into supporting the Colonization Society as it provided, in his opinion, the most likely path to successfully reach nationwide abolition.

One of the unfortunate facts which haunted Key concerning the petition for freedom cases he so frequently argued was that often the freed men and women rarely enjoyed their newly acquired liberty. Between the hardships of finding work, lodging, and sustenance, they

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<sup>161</sup> "Correspondence Between Mr. Tappan and Mr. Key," *The African Repository, and Colonial Journal* Vol. XV, No. 19 (June 1839): 164.

<sup>162</sup> Weybright, *Spangled Banner*, 184.

<sup>163</sup> Ibid.

<sup>164</sup> "Pennsylvania State Col. Society," *The African Repository, and Colonial Journal* Vol. VI, No. 5 (July 1830): 138-139.

also had to deal with imperfect civil rights and staunch prejudice from a large body of the population. In an 1836 legal case dealing with abolition and colonization Key explained that:

In the course of his professional life he had (as their Honors on the bench well knew) been the common advocate of the petitioners for freedom in our courts. He had tried no causes with more zeal and earnestness. He had considered every such cause as one on which all the worldly weal or woe of a fellow creature depended, and never was his success in any contests so exulting as when, on these occasions, he had stood forth as the advocate of the oppressed, “The poor his client, and Heaven’s smile his fee.”<sup>165</sup>

Key of course refers here to the one-hundred and four cases where he advocated for the freedom of slaves in the DC area. The lawyer sadly confessed that, “an experience of thirty-five years had abated much of his ardor—for he had seen that much the greater number of those in whose emancipation he had been instrumental, had been far from finding in the result the happiness he had expected.”<sup>166</sup> The reason for this being that the recently liberated men and women, “would be placed in situations in which its best privileges and enjoyments would be denied to them.”<sup>167</sup> Colonization, therefore, provided those who successfully petitioned for their freedom a place where they could freely exercise their newfound liberty without the unfortunate impediments which confronted them still in America. Because of this option, “he was far from being cold and indifferent on the subject,” and “he did rejoice when he saw it given under circumstances that justified the hope that it would be a real blessing and not a dangerous mockery: When they were to bear it to a land of their own, where all its privileges and blessings were to be theirs.”<sup>168</sup>

Key’s hope that colonization would lead to a better life which would enable the free black men and women who emigrated there to live with their rights and liberties unimpaired had been at least partially justified when, in 1833, a Colvert Barker wrote a letter back to America

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<sup>165</sup> “Mr. Key on the Colonization Society.” *The African Repository, and Colonial Journal* Vol. XII, No. 11 (November 1836): 349.

<sup>166</sup> Ibid.

<sup>167</sup> Ibid.

<sup>168</sup> Ibid.

enjoining the ACS to, “Tell all my friends that I am free, and enjoy the same rights and privileges that the white people do in the U.S.”<sup>169</sup> Beyond that, Barker specifically required that they “Tell Mr. Key...that I am *free* and so is every one that is here.”<sup>170</sup> Although the colonies in Africa were fraught with difficulties and Key often accepted the ACS-endorsed reported uncritically, his reasons for supporting it and his sincere hope that Africa would provide the blessings of liberty to emancipated slaves could not be questioned. As he confessed before a Colonization Society meeting in Washington DC, Key believed that it would have a “benevolent influence upon the character and hopes of the colored race.”<sup>171</sup> In addition to hopefully improving the quality of life which freed slaves would be able to enjoy and incentivizing slave owners to manumit their slaves, colonization also served as a way of attacking the ongoing illegal slave trade.<sup>172</sup>

Therefore, with the same stroke the Society attacked both domestic slavery and the international slave trade. In his last speech at the annual convention of the American Colonization Society before his death, Francis Scott Key endeavored to definitively show that it was in the interest of not only America, but indeed the world, for the colonies to be protected and supported by the government due to the positive effect they had in dismantling the international slave trade. Through “Commerce, Civilization and Colonization” Key believed that not only the freed slaves would be empowered to live at perfect liberty, they would enact a total cultural revolution across Africa and thereby end the slave trade by replacing it with legitimate trade.<sup>173</sup>

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<sup>169</sup> “From the Fredericktown Herald.” *The African Repository, and Colonial Journal* Vol. IX, No. 6 (August 1833): 189.

<sup>170</sup> Ibid.

<sup>171</sup> “Colonization Meetings in the City of Washington.” *The African Repository, and Colonial Journal* Vol. XIV, No. 6 (June 1838): 166.

<sup>172</sup> “Mr. Key’s Address,” *The African Repository, and Colonial Journal* Vol. IV, No. 10 (December 1828): 302.

<sup>173</sup> “Proceedings of the Convention (Concluded),” *The African Repository, and Colonial Journal* Vol. XVIII, No. 9 (July 1842): 209.

By committing to Africa and protecting the colonists who traveled there the Society members thought that all the slave trade, both internal and international, would finally be exterminated. In his final big speech before his sudden death, Key looked forward hopefully to that day:

But these horrors will have an end. The dawning of a better day appears. These wronged and wretched out-casts will be brought back into the family of nations... Man's heart shall be softened and humanized; and glowing with love to God and man, go forth on this errand of compassion. Thus the virtue and benevolence of man shall repair the outrages committed by the inhumanity of man.<sup>174</sup>

It was no small consolation for the old lawyer that the reports from the African coast were encouraging, and he announced to the annual convention that, "There are now on the coast of Africa, nations who no longer trade in human beings. There are now hundreds of miles on that coast where this awful trade has ceased."<sup>175</sup> Furthermore, the author of *The Star Spangled Banner* also called upon the power of the United States navy to be employed in the systematic and full annihilation of the slavers' vessels, asking audiences, "What American would not feel more pleasure to see the flag of his country giving protection to these messengers of peace and joy, than to behold it waving in triumph over the field of blood? It is thus, we may recompense the wrongs of this injured people; thus, we may atone for the part we have been forced to take in these wrongs."<sup>176</sup> In this way America could become more fully "the land of the free and home of the brave."<sup>177</sup>

In advocating for colonization, Key became all things to all people and tailored his arguments depending on the audiences he spoke to. When addressing a Southern or more pro-slavery meeting he would promote that voluntary manumission and colonization was a safe

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<sup>174</sup> Ibid., 204.

<sup>175</sup> Ibid.

<sup>176</sup> "Mr. Key's Address," *The African Repository* (December 1828): 304.

<sup>177</sup> Francis Scott Key, "The Star Spangled Banner," *Poems of the Late Francis S. Key, Esq.* (New York: Robert Carter & Brothers, 1857), 31.

alternative to the radical methods of the abolitionists and would improve the economic fortunes by gradually substituting slave labor (which was expensive and depressed the price of land) with more fiscally viable free labor. In his native Maryland, the influx and availability of free labor created a situation to where slavery was more expensive to maintain and “slave labor is no longer profitable.”<sup>178</sup> Elsewhere Key explained the situation in the Southern states and the strategy the Society pursued in depth:

Can any one believe that the states in which slavery exists, desire its perpetuation; that they will not make an effort to relieve themselves of this evil, if a practicable and safe plan be presented to them? Slave-holders are like other men, governed by the same feelings, influenced by the same motives. Can it be supposed that they are insensible to their own interests? They see the injurious effects of the slave system: that the value of their lands is lessened by it, the progress of improvements retarded, the increase of population checked.<sup>179</sup>

From these inducements the Society argued that colonization was the only safe, persuasive, and practical means of dismantling slavery in the shortest amount of time and with the lowest total cost. The benefits to the South would be immeasurable because slavery stunted the economic development of the slaveholding states. The superiority of freedom over slavery led Key to declare repeatedly that Maryland could not long remain a slave state, and its ultimate conversion, “will be a demonstration to all our land of this fact:—*that no slave State can continue such by the side of a free State*—while the advantages of the change will be so great and obvious.”<sup>180</sup>

When presenting in front of a Northern audience, however, Key maintained that the plans of the American Colonization Society provided the only practicable method for actually reducing slavery and thereby leading to the total abolition of slavery. This approach was seen most clearly in an important speech given by Francis Scott Key in 1828 while on a trip to Philadelphia. To

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<sup>178</sup> Key, *A Collection of Facts in Regard to Liberia*, 36.

<sup>179</sup> “Mr. Key’s Address,” *The African Repository* (December 1828): 300.

<sup>180</sup> “Mr. Key on the Colonization Society,” *The African Repository* (November 1836): 350.



this Northern assembly Key revealed that he “looked with confidence to Philadelphia, in particular, knowing that many of her citizens were zealous in the cause of the abolition of slavery.”<sup>181</sup> Francis Scott Key proceeded to tell the philanthropic abolitionists, “that one of the consequences expected from the success of the Society, was, that manumission would be promoted...[and] that a way is thus gradually and safely to be opened for the peaceful termination of slavery throughout the country.”<sup>182</sup> Both the abolitionists and the ACS shared similar goals—that being the end of slavery—but employed different means. While the radical looked to abolish slavery through force or immediate edict, the American Colonization Society endeavored to eradicate slavery through incentivizing manumission. Key explained that, “whatever plan may be adopted to effect this great object, it must be carried on *with the consent of the slave owners*. Success without this, I insist is hopeless,”<sup>183</sup> and colonization provided the most efficient method to “take from thousands of slave-holders all their objections to emancipation.”<sup>184</sup> Therefore, “The Society and their friends have always declared their hope, that emancipation would be a result of the success of their scheme.”<sup>185</sup>

The middle ground position and multifaceted argumentation employed by Francis Scott Key and other members of the American Colonization Society led to many misunderstandings. It opened the avenue for groups both in the North and the South to attack the Society as something which it was not. Key explained that, “It had scarcely been formed when it was assailed by opponents of the most contrary character, from the North and the South. Men, who held, upon these subjects, the most opposite views, who agreed in no one thing that related to our colored

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<sup>181</sup> Mr. Key’s Address,” *The African Repository* (December 1828): 298.

<sup>182</sup> *Ibid.*, 299.

<sup>183</sup> *Ibid.*

<sup>184</sup> *Ibid.*, 300.

<sup>185</sup> *Ibid.*, 302-303.

population, united in denouncing us.”<sup>186</sup> On the one hand, radical abolitionists claimed that the ACS was just trying to get rid of free black for racist reasons and as a way of protecting the institution of slavery. On the other hand, however, slaveowners denounced the ACS as merely abolitionist wolves in sheep’s clothing. Key rather optimistically remarked that, “The middle course of sound and prudent policy, steadily pursued by the Society, can alone account for these erroneous and inconsistent opinions respecting their purpose. Impressions so different cannot long subsist.”<sup>187</sup> Such impressions, however, continued and in an 1825 open letter addressed to Bushrod Washington, who was then the president of the Society, a pro-slavery Southerner denounced the ACS for “openly avowing and propagating doctrines leading directly to the general abolition of slavery.”<sup>188</sup> Going further, the aggravated slaveholder bemoaned that the Colonization Society was “attempting to create a great moral principle in society, favorable to emancipation.”<sup>189</sup>

Francis Scott Key also received many attacks from pro-slavery supporters for being an undercover abolitionist—an association he sought to avoid due to the negative effect it would have on his effectiveness as an agent for the ACS. In fact, when Key was still the District Attorney he wrote an advisory opinion that African Americans could testify against whites in a naval court martial case because there were no explicit laws forbidding it. This modicum of legal equality infuriated slaveholders who desired not only the continuation but even the expansion of slavery. Therefore, Virginia Representative John Minor Botts publicly denounced the District Attorney’s decision, saying:

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<sup>186</sup> “Annual Meeting of the American Colonization Society,” *The African Repository* (February 1828): 353.

<sup>187</sup> Mr. Key’s Address,” *The African Repository* (December 1828): 299.

<sup>188</sup> “For the Enquirer. To Bushrod Washington, Esq. President of the American Colonization Society,” *Richmond Enquirer* (October 11, 1825): 3.

<sup>189</sup> *Ibid.*

With regard to Mr. Key, I have no doubt he is as much in favor of equality between the blacks and whites, as the President himself is and it may safely be said, (for I have not only heard it a hundred times in conversation, but have seen it stated in the public prints of the District,) that it there is one man in the District of Columbia more obnoxious to the people than another on the question of Abolition, it is this same District Attorney, Mr. Key.<sup>190</sup>

Such an attack was especially dangerous to Key's desire to see the safe and gradual extermination of slavery through colonization, because if slaveowners thought he was in league with the radical abolitionists—as Representative Botts claimed—then they would not be willing to work with Key to manumit their slaves. In a letter to the Southern audiences he assured them that he was no radical although to Northern audiences he continued to explain that colonization must certainly lead to abolition, albeit gradually and by eliciting Southern cooperation. What is even more stunning, however, is that even the abolitionists recognized that pro-slavery advocates often censured Key for being too anti-slavery. One abolitionist who was about to be prosecuted by the District Attorney for distributing incendiary literature—Dr. Reuban Crandall—even remarked that Key, “has been called, heretofore, the black's lawyer, as he took their cases for them when they sue for their freedom, and in this way, has a great many enemies.”<sup>191</sup>

Key's activity in the Colonization Society burst into the courtroom during the explosive 1835-1836 sessions of the District of Columbia Circuit Court. During that year the Capitol witnessed several interconnected, contentious, and high-profile legal cases relating to slavery. Francis Scott Key, District Attorney at the time, played a lead role in all of them. First, several hours after midnight on the morning of August 5, 1836, a slave named Arthur Bowen drunkenly stumbled home after attending an abolitionist meeting in town. Upon arriving at his mistress' house, he entered her bedroom wielding an axe with the clear intention of killing her in order to

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<sup>190</sup> Francis Scott Key, “To the Hon. John M. Botts,” *Richmond Enquirer* (October 9, 1840): 1.

<sup>191</sup> Dubovoy, *The Lost World of Francis Scott Key*, 395.

attain his freedom as the near victim explained soon afterwards.<sup>192</sup> Before Bowen's ill-thought and alcohol-inspired scheme could be executed, he "was prevented by the awakening of his mistress and her servant [who happened to be Bowen's mother], and by their noise, and his being seized and forced out of the room."<sup>193</sup> When the constables finally arrived and found Bowen, he echoed the words he had heard at the radical abolitionist meeting earlier that night, explaining that, "he had a right to be free, and until they were free, there would be so much confusion and bloodshed as would astonish the whole earth."<sup>194</sup> The case was fairly open and shut as alcohol was not deemed a sufficient excuse, and Bowen "was convicted, and on the 23d of January, 1836, sentenced to be hanged on the 26th of February; but he was reprieved from time to time and finally pardoned at the insistence of his mistress."<sup>195</sup>

This incident, however, put the District on edge as images of Nat Turner's 1831 rebellion and subsequent massacre were still fresh on the minds of the white inhabitants. If the radical abolitionists were instructing DC area slaves to violently rise up and slaughter the slaveowners they certainly considered it something to be worried about. The rising tensions burst into a literal inferno the day after Bowen's drunken affair when a well-to-do black restaurant owner named Beverley Snow was accused of making less than kind comments about the families of the white Irish mechanics who worked at the Navy Yard. This was too much for the poor lower-class whites of DC who were resentful of the success of Snow's popular restaurant which was frequented by representatives and notable residents of the District, and they marched on Snow's business then began attacking other notable free black establishments.<sup>196</sup> They refused to stop

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<sup>192</sup> Ibid., 388.

<sup>193</sup> William Cranch, *Reports of Cases Civil and Criminal in the United States Circuit Court of the District of Columbia, from 1801 to 1841* (Boston: Little, Brown and Company, 1852), 4.605.

<sup>194</sup> Dubovoy, *The Lost World of Francis Scott Key*, 392.

<sup>195</sup> Cranch, *Reports*, 4.605.

<sup>196</sup> Jefferson Morley, *Snow-Storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835* (New York: Nan A. Talese/Doubleday, 2012), 153.

there, however, and even marched to Francis Scott Key's house to punish him for reportedly being himself an abolitionist. The *Liberator*, the leading anti-slavery newspaper, reported that, "Mr. Key had to guard his house with armed men, as a reputed abolitionist, against an infuriated mob, for several nights in succession."<sup>197</sup> Apparently Key's decades of helping slaves gain their liberty through petitions for freedom and by encouraging manumission with colonization had caught up to him, so that even the low-class dock workers were aware of Key's anti-slavery perspective.

Key, however, refused to let the rioters avoid the consequences of their actions and vigorously prosecuted them afterwards. During the trial Key explained to the jury that because rioters had, "assembled together with others, to the number of nearly one hundred, for the purpose of seizing one Beverly Snow...without legal authority," it therefore clearly "constituted a riot."<sup>198</sup> The rioters were convicted and sentenced accordingly. The Court announced in its judgement that, "Civil society cannot exist without laws to protect the weak against the strong. These laws are of no avail unless supported by the strength of the whole society, or, at least, of a majority."<sup>199</sup>

Less than a week after both the Bowen affair and the beginning of the Snow riots, boxes of radical abolitionist literature were discovered in the office of Dr. Reuben Crandall, a newly arrived botanist from New York. This exasperated the rioters and set the stage for Crandall's trial to become a major legal battle. In less than a week there had been an attempted murder by a slave seemingly inspired by abolitionist literature, race riots against successful free blacks including Beverly Snow's business partner who had anti-slavery tracks, and now a discovery of

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<sup>197</sup> "Correspondence of the Boston Courier," *The Liberator* Vol. VI, No. 18 (April 30, 1836): 71.

<sup>198</sup> Cranch, *Reports*, 4.678.

<sup>199</sup> *Ibid.*, 4.680.

more abolitionist tracks in the home of a newly arrived activist. With such a dramatic series of events in such brief period, some began to worry that it was all a part of a larger conspiracy in the capitol city.<sup>200</sup> This also could provide an opportunity for Key to dispel the dangerous rumors that he was an undercover radical abolitionist, and the case soon became a “cause célèbre.”<sup>201</sup>

Although Key served “an indictment for publishing libels tending to excite sedition among the slaves and free colored persons in this district,”<sup>202</sup> the trial did not focus on that specific charge. It was undeniable that he had them and at least reasonably certain that he had passed some of them out. Indeed, after being arrested Crandall confess to writing “read and circulate” on several of the tracts.<sup>203</sup> The main contention of the case therefore rested on whether or not the content of the abolitionist literature met the bar of libel or not. In the closing argument, Key clarified that, “The Counsel for the Traverser [i.e. Crandall] had not been satisfied to rest his defense on the denial of the publication of the alleged libels: They were boldly defended, justified, or excused; they were declared not to be libelous—so that if the Traverser did publish them, he was still to be acquitted.”<sup>204</sup>

To this end Crandall’s attorneys adopted a clever tactic which played directly into Key’s apparent reputation for being a closest abolitionist. To prove that Crandall’s tracts were not seditious libel, they read sections of Key’s speeches out of the Colonization Society’s publications. Key’s resounding condemnations of the slave trade and slavery echoed throughout the court room. The conclusion, they claimed, was that if Crandall has published dangerous literature, Francis Scott Key—the District Attorney prosecuting the case—had done just as much

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<sup>200</sup> Dubovoy, *The Lost World of Francis Scott Key*, 392.

<sup>201</sup> Weybright, *Spangled Banner*, 194.

<sup>202</sup> Cranch, *Reports*, 4.684.

<sup>203</sup> Dubovoy, *The Lost World of Francis Scott Key*, 395-396.

<sup>204</sup> “Mr. Key on the Colonization Society,” *The African Repository* (November 1836): 339.

if not even more. In the defense's opening argument, they hammered this point in and "read part of a speech of F. S. Key in the colonization meeting of 1828."<sup>205</sup> This prompted the Chief Justice to ask where the selection was from and the attorney replied, "From a speech made by the District Attorney at a colonization meeting."<sup>206</sup> At this information the Chief Justice "replied that he had thought that Mr. Bradley [the defense attorney] was reading from some of the libels that had been given in evidence."<sup>207</sup> Key naturally objected to the judge's remark but the damage was undoubtedly already done.

For his part, Key used the case as yet another opportunity to expound upon the differences between abolitionism and the mission of the Colonization Society. He naturally suggested that there was a connection between the Arthur Bowen incident and the sudden appearance of the northern Dr. Crandall with tracts bearing the inscription "read and circulate." In his closing argument Key suggested that the abolitionist literature truly was dangerous, saying:

"It had indeed been said that as to these publications, we are in no danger from them—that we occupy a middle ground, and that here there has been no disturbance or excitement. He was compelled (he said) to think differently. The testimony in this cause shewed that there had been excitement and danger here. Dr. Crandall was told shortly after his arrival here with these publications, that the attempt upon the life of his mistress by Mrs. Thornton's slave, for which he has been since convicted, was instigated by the New York abolition pamphlets, passages from which he had been heard to repeat."<sup>208</sup>

After making this connection he quickly shifted to his favorite topic—the benefits of colonization and how that remedy would be far superior to those offered by abolitionists.

Maintaining the position he always took when discussing slavery, Key told the jury that the

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<sup>205</sup> *The Trial of Reuben Crandall, M.D. Charged with Publishing Seditious Libels, by Circulating the Publications of the American Anti-Slavery Society* (New York: H. R. Piercy, 1836), 30.

<sup>206</sup> *Ibid.*

<sup>207</sup> *Ibid.*

<sup>208</sup> "Mr. Key on the Colonization Society," *The African Repository* (November 1836): 341.

speeches of the Colonization Society were materially different from the Abolitionist Society because although they both acknowledged the same evil, they seek different solutions. Key, who was a manager for the ACS at that time, explained the distinction saying that the Colonization Society certainly does, “admit the evils of slavery,” and seeks “to discover a remedy for those evils.”<sup>209</sup> But that path to emancipation is only, “by removing an otherwise insuperable bar to emancipation, in providing a place of transportation for the slaves, presented the only safe and practicable remedy for the gradual cure of these evils.”<sup>210</sup>

Although it took eight months for Crandall’s case to come to trial, once there it only took ten days for the evidence to be presented and the arguments heard. On the last day of the trial, “the District Attorney, Mr. Key, concluded his Speech, which the *Metropolitan* pronounces to be one of the most powerful it ever heard him make—and the Jury retired to their room. After three hours’ deliberation, they returned a verdict of *Not Guilty!*”<sup>211</sup> Although one might think that Key’s reputation must have suffered from his defeat in this trial it does not seem to be the case as it was rarely talked about upon his passing. Key himself rarely spoke of it publicly except in passing to sarcastically remark that, “In the course of my official duty, I prosecuted Dr. Crandall on a charge of distributing Abolition pamphlets in the District, and never understood that anybody imagined that I manifested any want of zeal in the prosecution.”<sup>212</sup> From all appearances Key threw all he had into the case, with newspapers reporting that, “Great exertions were made by the very able U.S. Attorney, Mr. Key, in behalf of the prosecution.”<sup>213</sup>

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<sup>209</sup> *Ibid.*, 344.

<sup>210</sup> *Ibid.*

<sup>211</sup> “Crandall’s Trail,” *Richmond Enquirer* (April 29, 1836): 3.

<sup>212</sup> Key, “To the Hon. John M. Botts,” *Richmond Enquirer* (October 9, 1840): 1.

<sup>213</sup> “Trial of Crandall,” *Vermont Telegraph* (May 5, 1836): 127.



However, all was not as it seemed. In a private letter to the abolitionist leader Lewis Tappan an entire five years after Crandall's exoneration, Francis Scott Key made a startling confession: "I knew he [Crandall] had given some of his abolition tracts to a servant of one of the Judges... & kept (as did also the judge) this information a secret that it might not prejudice his cause."<sup>214</sup> Between the riots and the siege upon his home for being an abolitionist sympathizer, Key had every reason to reveal this evidence but for reasons he did not write down he refused, and instead, "risqued in some measure my own personal safety in his protection."<sup>215</sup> Another one of the many ironies and intricacies in the trial was that when Key called a black man to the stand in order to testify concerning Crandall's activities, the legal counsel representing the defendant—a man claiming to believe in full and immediate abolition and equality—actually objected to the witness since typically blacks were not allowed to testify against whites at the time in DC.<sup>216</sup>

Additionally, during this time and in the middle of all the racial tensions of 1835, Key devoted time to prosecuting a man "for attempting to sell a free mulatto boy as a slave for life."<sup>217</sup> What is more striking though is that during this case Key not only implied that the law fundamentally views white and black as equal unless specifically instructed by the legislature but also that the laws punishing illegal slavery almost exclusively apply to whites since they far and away are the most likely demographic group to commit such crimes. In this case Key argued that, "it would be a strange construction to say that Congress intended to punish a free colored person for an offence which is rarely committed by that class of persons, and not to punish a free white man for the same offence, which was almost universally committed by persons of that

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<sup>214</sup> Dubovoy, *The Lost World of Francis Scott Key*, 399.

<sup>215</sup> Ibid.

<sup>216</sup> Cranch, *Reports*, 4.692.

<sup>217</sup> Ibid., 4.608.

description.”<sup>218</sup> This type of activity would have been far from shocking for those acquainted with Key’s track record on such issues, and may very well have played into the Snow rioters’ repeated attempts upon his DC home. Indeed, Key routinely used his government position to defend the rights of African Americans at a time when another man in a similar position would have looked the other way. For example, in 1834, he prosecuted a man “for disturbing the congregation of the African meeting-house while engaged in the worship of God.”<sup>219</sup> As District Attorney, Key unwaveringly declared that, “Every man has a perfect right to worship God in the manner most conformable to the dictates of his conscience, and to assemble and unite with others in the same act of worship, so that he does not interfere with the equal rights of others.”<sup>220</sup>

The most famous example of Key boldly arguing in the courtroom for the innate equality and the inherent humanity of black people came ten years prior to the contentious year of 1835. In 1825 Francis Scott Key’s notoriety rocketed to perhaps its highest altitude aside from when he penned the future national anthem. A drawn out and convoluted case, the *Antelope* trials concerned a ship smuggling slaves out of Africa which eventually was captured by an American revenue cutter off the coast of Georgia. With the international slave trade being highly illegal in America at the time and additional laws demanding that any slaves discovered would be sent back to Africa, it would seem like a rather open and shut case. Complicating the matter, however, were the Spanish and Portuguese petitioners who claimed that at least some of the captured slaves were their rightful property—the unfortunate people having been first captured by pirates off the coast of Africa. Even though the official position of the United States was that these Africans were illegally brought to American and ought to be freed and returned to their

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<sup>218</sup> Ibid., 4.646.

<sup>219</sup> Ibid., 4.427.

<sup>220</sup> Ibid., 4.429.

homes in Africa, when the case was first tried in Georgia, the Circuit Court awarded nearly all of them to the Spanish and Portuguese.<sup>221</sup> The federal district attorney refused to let the case end there and appealed to the Supreme Court. But the Supreme Court refused to take up the case for a full three and a half years—continually shifting it down the docket due to worries about the sensitivity of the subject.<sup>222</sup>

In fact, one of the only reasons why the appeal did not spend more time gathering dust even while the illegal slaves were being forced to work the entire time was because of Francis Scott Key. President James Monroe and Secretary of State John Quincy Adams both pushed away from having the case brought to trial because of both the potential international ramifications and the internal sensitivities surrounding the issue. The Attorney General William Wirt had seriously considered dropping the case altogether; that the US Government “did not abandon this inconvenient case, and the *Antelope* was finally heard in 1825, was the result of work by one man: Francis Scott Key.”<sup>223</sup> Through his connections in DC, such as Elias B. Caldwell who was both the Secretary of the Colonization Society and also the clerk of the Supreme Court who handled the case docket, Francis Scott Key was largely responsible for convincing Wirt and Caldwell to finally move the *Antelope* up the docket so that the captives might have another chance to escape slavery. Therefore, Attorney General William Wirt naturally asked Francis Scott Key to be the lead attorney during the trial.

Key’s role as a founder of the American Colonization Society and as a long-standing advocate for African Americans in petition for freedom cases uniquely recommended him for the

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<sup>221</sup> Edward Delaplaine, *The Life and Times of Francis Scott Key* (1937; repr., Stuarts Draft, Virginia: American Foundation Publications, 1998), 209.

<sup>222</sup> Dubovoy, *The Lost World of Francis Scott Key*, 300.

<sup>223</sup> Jonathan Bryant, *Dark Places of the Earth: The Voyage of the Slave Ship Antelope* (New York: Liveright Publishing Corporation, 2015), 208.

role. Indeed, “As the founder and principal promoter of the American Colonization Society, the object of which was the emancipation and colonization of the negroes...Mr. Key’s sympathies with the negro cause were well and favorably known.”<sup>224</sup> On top of this, “Key was one of the leading advocates of the black man in America” and clearly, “had a genuine sympathy for the wretched creatures that were captured by the man-hunters along the coast of Africa.”<sup>225</sup> Thus, few who knew Key could have been surprised by his participation in the trial.

As expected, once the case was announced, eyes all around the nation looked to the small chamber of the Supreme Court to see which way it would rule in a case with potentially wide-sweeping ramifications. Newspapers reported to their subscribers that, “Mr. Wirt and Mr. Key on behalf of the Unites States...asserted no property in themselves, but insisted on the right of the Africans to freedom.”<sup>226</sup> The argument which Key employed was bold and revolutionary in that he returned to the basic understanding that natural law as recognized in the Declaration of Independence rightly sees all men as created equal. Therefore, the presumption exists in favor of freedom, even more so when the slave trade had already been banned for nearly twenty years. Thus, Key continued to earn his reputation as “the black’s lawyer” by standing upon a national stage and dismissing any Spanish, Portuguese, or American claims to the captives found aboard the *Antelope* saying, “We repel the claim, by asserting their right to liberty.”<sup>227</sup> He went on to explain that through the series of anti-slave trade laws passed the preceding decades America had given a “solemn pledge to all nations interested in the suppression of this inhuman traffic, and to

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<sup>224</sup> F.S. Key-Smith, *Francis Scott Key, Author of The Star Spangled Banner: What Else He Was and Who* (Washington DC: Key-Smith and Company, 1911), 35-36.

<sup>225</sup> Delaplaine, *The Life and Times of Francis Scott Key*, 210.

<sup>226</sup> “The Captured Slaves.” *Cheraw Gazette and Pee Dee Farmer* (September 20, 1839): 178.

<sup>227</sup> Henry Wheaton, “The Antelope. The Vice-Consuls of Spain and Portugal, *Libellants*.” *Reports of Cases Argued and Adjudged in The Supreme Court of the United States. February Term, 1825* (New York: R. Donaldson, 1825), 10.71.

Africa herself.”<sup>228</sup> Indeed, the *Antelope* case was an opportunity to take another step, “In the great moral and legal revolution which is now going on in the world respecting this trade.”<sup>229</sup> He resolutely affirmed that the color of the captive’s skin had little to no bearing on the legality of the case as it could not be assumed that they were slaves merely on the basis of that alone. They were not merchandise to be bought and sold, taken and given away, instead, Key argued, “these are men, of whom it cannot be affirmed, that they have universally and necessarily an owner.”<sup>230</sup>

In perhaps the most stunning and climatic moment of his argument, Francis Scott Key, speaking on behalf of the United States government before the Supreme Court, resoundingly declared that “by the law of nature all men are free.”<sup>231</sup> Finally, he concluded that because the Spanish and Portuguese claimants could not specifically identify which captives they believed were theirs, all of them ought to be freed. The attorney explained that, “if some of these Africans were the property of the claimants, some were not; and, failing to identify their own, they are not entitled to restitution of any as slaves, since among them may be included some who are entitled to their freedom.”<sup>232</sup> Again Key offered a maximalist interpretation of the law attempting to free as many men and women as possible. Ultimately, Key along with Attorney General William Wirt achieved more success than what had been enjoyed at the lower courts although the precedent was not necessarily the best. After extended wrangling over specifics and technicalities the counselors for the United States “managed to whittle down the number of Africans that were to be returned, to their ‘rightful’ owners to thirty-nine” while the remaining one hundred and thirty-one were given their liberty and transported back to Africa.<sup>233</sup>

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<sup>228</sup> Ibid., 10.72.

<sup>229</sup> Ibid., 10.75.

<sup>230</sup> Ibid., 10.72-73.

<sup>231</sup> Ibid., 10.73

<sup>232</sup> Ibid., 10.80-81.

<sup>233</sup> Dubovoy, *The Lost World of Francis Scott Key*, 305.

Key's speech caused a dramatic effect at the time, wooing the listeners and shocking the nation. Some fifty years later Governor Henry Foote, who had been there to listen to Key's argument, vividly recalled the day. An elderly Foote wrote that:

On this occasion he [Key] greatly surpassed the expectations of his most admiring friends. The subject was peculiarly suited to his habits of thought, and was one which had long enlisted, in a special manner, the generous sensibilities of his soul. It seemed to me that he said all that the case demanded, and yet no more than was needful to be said; and he closed with a thrilling and even an electrifying picture of the horrors connected with the African Slave Trade, which would have done honor either to a Pitt, or a Wilberforce in their palmiest days.<sup>234</sup>

Another attentive listener during all of this was the now President-Elect John Quincy Adams. Even though Adams was no friend of Key's, he sat in the tiny Supreme Court chamber to watch the Jacksonian Key deliver one of the most impassioned arguments for freedom the Court had ever heard. Almost twenty years later Key and Adams would discuss the case when the now elderly statesman took on a very similar case concerning the illegal slave trading vessel called the *Amistad*. An aged Key begged Adams to remember the *Antelope* case while preparing for the oral arguments before the Supreme Court.<sup>235</sup> This conversation prompted Adams to spend many hours refreshing himself on the details and the Court's decision. Adams wrote in his diary that after this conversation, "I went, therefore, into the Supreme Court library-room, and took out the volume of Wheaton's Reports containing the case of the Antelope. I read as much of it as I could, and longed to comment upon it as I could; but I have neither the time nor heart for it—nothing but the heart."<sup>236</sup> Adams eventually journeyed to the reading room at least eleven times prior to the trial. When giving his famous closing argument he spent over 30% of his time discussing the *Antelope* trial which led to the liberation of all the *Amistad* captives.<sup>237</sup> So even

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<sup>234</sup> Henry Foote, *Casket of Reminiscences* (Washington DC: Chronicle Publishing Company, 1874), 13

<sup>235</sup> Bryant, *Dark Places of the Earth*, 296.

<sup>236</sup> *Ibid.*, 296-297.

<sup>237</sup> *Ibid.*, 302.

decades after Key delivered his stirring address, his words of freedom were still echoing strongly in the chambers of America's highest court.

Francis Scott Key fought throughout his life both through charities and in the courtroom to see his vision for America come to fruition—to make it truly “the land of the free.” Although continually beset by the opposition of both bigots and radicals who either despised or misunderstood what Key stood for, the philanthropist-lawyer never retreated from the field of action. Through his work as a founder and leader in the American Colonization Society he helped encourage voluntary emancipation while also suppressing the slave trade. Despite vitriolic attacks from both North and South, Key stood unaffected and continued to pursue the route which he believed would bring the most freedom to the most people in the shortest amount of time. Through his legal career he navigated the treacherous grounds surrounding the issues of race and slavery while continually reaching for more and greater equality where it could be achieved. Even in the face of armed and belligerent mobs, Key pressed forward in his sincere pursuit of justice for all. Without looking at his activities both within and outside of the judicial chambers the image of Key's clear anti-slavery attitudes would be severely misunderstood.

## Chapter 4

### The Person, the Poet, and Perspective

Much has been said concerning Francis Scott Key's relationship to the issues of race and slavery from a professional and philanthropic prospective, but it must be remembered that Key also had a very personal connection with slavery as well. Born into a slaveholding family in addition to marrying into one, Key's life was surrounded by the context of a slave society. No matter how much he longed to see Maryland become a free state, during his life slavery stood as the status quo. With the context provided by his decades of visible activism and advocacy in both charities and courtrooms, his personal dealings with slavery can be better understood. Nowhere is this contextualization more important than when it comes to interpreting the meaning of the *Star Spangled Banner*. Current academic and popular perspectives claim that the National Anthem is racist based on a reading of the lyrics viewed through the lens of Key's ownership of slaves.<sup>238</sup> However, such assessments must be reevaluated through the additional information and context provided by his legal career, charitable work, and private life. A proper view of Key's person will provide the right perspective to correctly interpret his most famous poem.

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<sup>238</sup> Cf. Jefferson Morley, *Snow-Storm in August: Washington City, Francis Scott Key, and the Forgotten Race Riot of 1835* (New York: Nan A. Talese/Doubleday, 2012); Marc Leepson, *What So Proudly We Hailed: Francis Scott Key, A Life* (New York: St. Martin's Press, 2014); Christopher Wilson, "Where's the Debate on Francis Scott Key's Slave-Holding Legacy?" *Smithsonian Magazine* (July 1, 2016), accessed May 24, 2020, [www.smithsonianmag.com/smithsonian-institution/wheres-debate-francis-scott-keys-slave-holding-legacy-180959550/](http://www.smithsonianmag.com/smithsonian-institution/wheres-debate-francis-scott-keys-slave-holding-legacy-180959550/); Christopher Woolf, "Historians Disagree on Whether 'The Star-Spangled Banner' is Racist," *The World* (August 16, 2016), accessed May 24, 2020, [www.pri.org/stories/2016-08-30/historians-disagree-whether-star-spangled-banner-racist](http://www.pri.org/stories/2016-08-30/historians-disagree-whether-star-spangled-banner-racist); A. J. Willingham, "The Unexpected Connection Between Slavery, NFL Protests and the National Anthem," *CNN* (August 22, 2017), accessed May 24, 2020, [www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html](http://www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html); Justin Moyer, "Memorial to 'racist' Francis Scott Key, who wrote 'The Star-Spangled Banner,' vandalized in Maryland," *The Washington Post* (September 13, 2017), accessed May 24, 2020, [www.washingtonpost.com/news/local/wp/2017/09/13/memorial-to-racist-francis-scott-key-who-wrote-the-star-spangled-banner-vandalized-in-maryland/](http://www.washingtonpost.com/news/local/wp/2017/09/13/memorial-to-racist-francis-scott-key-who-wrote-the-star-spangled-banner-vandalized-in-maryland/); John Sharp, "Francis Scott Key Reference Fuels Alabama 'In God We Trust' Debate," *Alabama News* (February 6, 2018). Accessed May 24, 2020, [www.al.com/news/mobile/2018/02/francis\\_scott\\_key\\_reference\\_fu.html](http://www.al.com/news/mobile/2018/02/francis_scott_key_reference_fu.html).



When Francis Scott Key was born in 1779, he became a member of a slave-owning family, living in a slave-owning state, within a world in which slave-owning was practically a universal practice. It was only in the years following the American War for Independence that the institution of slavery fell under increasingly heavy censure and anti-slavery movements were formed. While slavery in all forms must be condemned, the available evidence suggests that the Keys were quite progressive when compared to the rest of the slave-owning society they had been born into. The Keys unique position, being only about a dozen miles from the Mason-Dixon line, meant that young Francis was “reared among Quakers and Methodists as well as among the German sects that were early opposed to slavery.”<sup>239</sup> There is no evidence that the family viewed African Americans as sub-human or as anything less than people endowed with the faculties of reason and capacity of soul exactly equal to their own. This suggests that as Francis Scott Key was raised to see that slavery was a condition unnaturally imposed by the unequal laws of man rather than by nature. Key explained as much in the famous *Antelope* case previously discussed, saying, “these are *men*, of whom it cannot be affirmed, that they have universally and necessarily an owner....but by the law of nature all men are free.”<sup>240</sup> For this reason they largely avoided the term “slave,” preferring to address them by name or more generally as servants—similar to as if they were hired freemen.<sup>241</sup> Weybright remarked in his biography that on their small farm, the Key family almost, “dwelt in the center of a black colony as outnumbered by Negroes as if they had suddenly moved to an African village.”<sup>242</sup>

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<sup>239</sup> Victor Weybright, *Spangled Banner: The Story of Francis Scott Key* (New York: Farrar & Rinehart, 1935), 183-184.

<sup>240</sup> Henry Wheaton, “The Antelope. The Vice-Consuls of Spain and Portugal, *Libellants*,” *Reports of Cases Argued and Adjudged in The Supreme Court of the United States. February Term, 1825* (New York: R. Donaldson, 1825), 10.73.

<sup>241</sup> Sina Dubovoy, *The Lost World of Francis Scott Key* (Bloomington: WestBow Press, 2014), 85.

<sup>242</sup> Weybright, *Spangled Banner*, 7.

From his immediate family young Francis Scott Key, “learned to treat the black man with kindness,”<sup>243</sup> through examples which were atypical and somewhat extraordinary for the time. For example, Key’s grandmother had been permanently blinded by a fire while working to rescue two of the family slaves from the flames.<sup>244</sup> His mother likewise continued in a similar tradition by daily calling all the slaves together at sundown to conduct prayers communally with them.<sup>245</sup> Additionally she read them the Bible, sang hymns together, and she taught them how to read and write as well.<sup>246</sup> By the time Francis had begun his college education in earnest, the Key’s slaves had reportedly become, “famous for their hymn-singing”<sup>247</sup> Key’s father, John Ross Key, himself seemingly, “had misgivings about slavery, which he conveyed to his children.”<sup>248</sup> So much so that neighboring slave-owners even took out advertisements in local newspapers warning that runaway slaves might seek refuge at John Ross’s farm.<sup>249</sup> Every Sunday morning John Ross would hold a sort of home church meeting with all of the servants and deliver a short address or sermon.<sup>250</sup>

Francis Scott Key and his sister Ann (who would later marry Rodger Taney) grew up viewing black Americans as equally human as themselves. Indeed, a former slave even recalled that Francis’s sister, was “one who I had every reason to respect and regard for the many kindnesses and attentions shown me while a servant in her father’s family.”<sup>251</sup> Always the closest of friends throughout their lives, Francis’ and Ann’s “conversation more than once turned to the

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<sup>243</sup> Edward Delaplaine, *The Life and Times of Francis Scott Key* (1937; repr., Stuarts Draft, Virginia: American Foundation Publications, 1998), 6.

<sup>244</sup> Weybright, *Spangled Banner*, 5.

<sup>245</sup> Delaplaine, *The Life and Times of Francis Scott Key*, 6.

<sup>246</sup> Weybright, *Spangled Banner*, 7.

<sup>247</sup> *Ibid.*, 26.

<sup>248</sup> Dubovoy, *The Lost World of Francis Scott Key*, 65.

<sup>249</sup> Richard Bond, “Sixteen Dollars Reward,” *The Maryland Gazette* (July 5, 1792), 3.

<sup>250</sup> Weybright, *Spangled Banner*, 7.

<sup>251</sup> Dubovoy, *The Lost World of Francis Scott Key*, 85.

subject of slavery.... With the superior wisdom of a college graduate who had kept abreast of the French Revolution, Francis prophesied that they would see the day when slavery would be abolished.”<sup>252</sup> This hope of abolition remained with Key throughout his life, as has been seen, although he always considered gradual, voluntary emancipation with the option for colonization to be the best plan for accomplishing that goal. That said, as Francis Key went off to college the family servants were reported to be, “excessively proud of their educated young master and... used to race across the field to greet him on his home-comings, anxious to ask curious questions which they had been formulating for weeks.”<sup>253</sup> Key himself continued the practice of creating an atmosphere of education on the plantation and taught both his father’s and his own slaves to read and write, and also as “encouraged their joining the African Methodist church.”<sup>254</sup> For other slave owners the thought of teaching slaves to read or write was incomprehensible, and in the South especially to educate slaves was routinely met with violent resistance.<sup>255</sup>

By the time Francis Scott Key entered into the professional world as a lawyer he emerges as a man who clearly sees the undeniable humanity of the slave. In an 1807 letter to his mother Key mourns the passing of a slave, explaining that, “poor Harry’s illness—it has ended as I for some time feared—he died the day before yesterday.”<sup>256</sup> The young man affirmed that, “I have felt much for him & shall miss him as long as I live.”<sup>257</sup> Key then proceeded to eulogize the admirable spiritual qualities of the deceased Harry: “Few die with less guilt to answer for, with

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<sup>252</sup> Weybright, *Spangled Banner*, 25-26.

<sup>253</sup> Ibid.

<sup>254</sup> Ibid., 183-184.

<sup>255</sup> Frederick Douglass, *Narrative of the Life of Frederick Douglass, An American Slave* (Boston: Anti-Slavery Office, 1845), 55.

<sup>256</sup> Francis Scott Key, “Francis Scott Key Reflects on the Death of a Devoted Slave in a Letter, Lot 110,” December 12, 1807, *WorthPoint* (accessed June 7, 2020): <https://www.worthpoint.com/worthopedia/francis-scott-key-reflects-death-1867008554>. *WorthPoint* is an archival resource which records auction lots. This letter was sold in 2015 to what appears to be a private collector which prevents obtaining a better citation.

<sup>257</sup> Ibid.

more composure or better hopes. I have every reason to feel satisfied & to believe that he has left my service for one far more glorious & happy.”<sup>258</sup> Perhaps it was these reflection which prompted Key in 1812 to write letters for his wife and children to be read upon his passing when they opened his final will. In the letter to his wife, Key gives what would have been his final guidance, asking her to, “bring our children up in honest industry. Do not be ashamed, nor let any of them be ashamed, to labor.”<sup>259</sup> Even though Key was a slaveowner raising his family in a slave society, he was from an early period wary of raising children who took advantage of their privileged social position to shun work and deem labor as something to be despised instead of emulated. He sought to teach his family the same lessons of equal worth that he had learned while growing up under similar conditions.

Prior to his marriage Key had legally owned no slaves outright, although his parents did. However, when he got married he became the owner of over ten slaves, “although strictly speaking, they were hers rather than his.”<sup>260</sup> As the head of the household and a prominent land owner, Key only ever bought slaves under particular circumstances. For instance, in late 1813 Key wrote to his father that he had acquired two slaves to assist his aging mother in maintaining their house, explaining that, “I bought at Montg[omer]y Court an old woman & a little girl about 12 or 13 yrs old. I know but little of them—the girl is used to housework & the old woman chiefly to plantation work.”<sup>261</sup> It is significant to note that legally both of the women were ineligible for emancipation under Maryland law—with one being too young and the other too old. Furthermore, the elder woman was to be employed in the house rather than the harsher labor of the field, leading some to speculate that Key had been motivated by considerations of a more

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<sup>258</sup> Ibid.

<sup>259</sup> “Old Letters Which Are New,” *The Spirit of '76* No. 1 (September 1894), 6.

<sup>260</sup> Dubovoy, *The Lost World of Francis Scott Key*, 148.

<sup>261</sup> Ibid., 175.

benevolent sort in agreement with his repeated declarations on the subject.<sup>262</sup> Additionally, there is no record of Key ever selling a slave for profit, instead choosing emancipation.

As Key took over the family farm and became a famous member of the community he assumed the responsibilities of being a landowning farmer. Among the many considerations involved with this was figuring out how to harmonize his anti-slavery views, being born into slave owning, and the maintenance of his property. Aside from the two slaves aforementioned which he purchased for his mother, Key never sought to grow the number of slaves he owned, instead opting to rely on hiring freemen or ex-slaves whenever he needed additional help.<sup>263</sup> By the time his father died and Key assumed full control over the estates there were only twelve slaves in the entire workforce including women and children, and a decade later that number had fallen to eight slaves with only two being men.<sup>264</sup> If Key was seeking to make a profit off of his farm he certainly did not have enough people to effectively run a plantation in the slightest. People in the community later remembered that, Francis Scott Key, “never approved of slavery, and years before the slavery question was agitated freed his slaves. He was impulsive and generous in spending money, and a common saying in Frederick was that ‘Farmer Key spent all the money Lawyer Key made.’”<sup>265</sup>

The fiscal considerations never appeared to bother Key, however, and he continued to emancipate his slaves whenever he could—sometimes even manumitting them so that he could hire them back as a freeman. The most notable example of this practice was with his servant and long-time plantation manager Clem Johnson. Johnson, more commonly called Uncle Clem, had been owned by Francis Scott Key’s parents and was apparently inherited by the younger Key

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<sup>262</sup> Ibid.

<sup>263</sup> Weybright, *Spangled Banner*, 271.

<sup>264</sup> Dubovoy, *The Lost World of Francis Scott Key*, 271.

<sup>265</sup> *The Temple* Vol. III, No. 15 (July 1898), 116.

when his father passed away.<sup>266</sup> A decade after the death of his father, Francis Scott Key decided to manumit Clem in a way that would most secure his freedom. Travelling up to Gettysburg, the seat of the neighboring county in Pennsylvania where Key had been one of the first men added to the bar over twenty years earlier, Key submitted Johnson's emancipation there in a more solidly free state. The official manumission document went through on October 3, 1831, and left no doubt as to Key's commitment to Johnson's liberty:

Pennsylvania, Adams County, ss. Whereas I, Francis Scott Key of the District of Columbia, being the owner of a certain man of color called Clem Johnson, now in Gettysburg, in the State of Pennsylvania, and being desirous for divers good causes and considerations to emancipate the said Clem Johnson and having agreed with him to leave him in the State of Pennsylvania free to continue there or to go wheresoever he may please. Now therefore in consideration of Five Dollars to me in hand paid & for other good causes and considerations I do hereby manumit & set free the said Clem Johnson aged about 45 years forthwith & hereby release & discharge the said Clem Johnson from all services to me, my heirs, executors & administrators.<sup>267</sup>

The five-dollar payment was largely nominal and Johnson returned to Maryland with his former master to take charge of the Key farm as the head manager. After securing his freedom, "Clem willingly left a free state to return to a slave state in order to take up the position Frank offered him."<sup>268</sup> His responsibilities as the paid overseer of the estate included running the kitchen, serving as the, "custodian of the recipes, superintendent of the kitchen garden," and as the "boss of the field hands."<sup>269</sup> Indicating the level of respect and authority Johnson had on the small plantation, "Clem often conducted the evening prayers in the Terra Rubra quarters," just as Francis Scott Key had done previously.<sup>270</sup>

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<sup>266</sup> Dubovoy, *The Lost World of Francis Scott Key*, 267.

<sup>267</sup> William McClean, "An Emancipation by the Author of 'The Star Spangled Banner,'" *The Independent* Vol. XLVII, No. 2432 (July 11, 1895): 6.

<sup>268</sup> Dubovoy, *The Lost World of Francis Scott Key*, 349.

<sup>269</sup> Weybright, *Spangled Banner*, 230-231.

<sup>270</sup> *Ibid.*

Despite the fact that Key was a founding member and long-time advocate of the American Colonization Society, he never suggested or requested Johnson migrate to Africa. In fact, none of the numerous slaves Key personally emancipated journeyed to Africa. When two young slaves decided not to go to Africa after promising Key they desired to be freed for the purpose of colonization, Francis Scott Key accepted this and respected his promise to emancipate them.<sup>271</sup> Going even further, Key lobbied the Maryland legislature to not pass a law which would have forced Johnson to at least move out of the state if not immigrate to Africa. Shortly after Nat Turner's bloody massacre in 1831, Maryland, along with many other states, began contemplating passing laws requiring that manumitted slaves and free blacks be sent out of the state or be forced back into slavery. In response to this, and most likely thinking about the recently freed Clem Johnson who would be forced to flee under the proposed laws, Key wrote to a Maryland legislator enjoining him to at the very least add an exception for particular cases. In the letter Key suggested:

I should like it coupled with a proviso (& similar to one in Virg[ini]a) that exceptions might be made & residence in the state permitted in particular cases to be approved of by the judge of the county courts. This would be desirable in the upper counties where there are few slaves & no danger from them or the free negroes.<sup>272</sup>

And so Clem stayed with Francis Scott Key, taking over most of the day to day operations of the small plantation while his former master worked in the young nation's capital.

Francis Scott Key personally freed the majority of the slaves which he was legally allowed to do by the laws in the state of Maryland. Numerous early biographers erroneously concluded that Key seemingly was successful in emancipating all of his slaves by the time he

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<sup>271</sup> Dubovoy, *The Lost World of Francis Scott Key*, 289-290.

<sup>272</sup> *Ibid.*, 349.

passed away in 1843,<sup>273</sup> but Key himself explained that he had not done so. In 1838, five years before his death, in the lengthy response to abolitionist Benjamin Tappan, he wrote, “I have emancipated seven of my slaves. They have done pretty well, and six of them, now alive, are supporting themselves comfortably and creditably.”<sup>274</sup> Key somberly reflect though that, “Yet I cannot but see that this is all they are doing now; and when age and infirmity come upon them, they will probably suffer,”<sup>275</sup> due to the discrimination and conditions they would face in America. Key therefore sought to equip them with all the skills necessary to help them thrive in freedom, educating and training the slaves so that, “when emancipated, [they] were far better suited for the duties and trials of their new condition than the general mass.”<sup>276</sup>

Many difficulties faced older slaves when manumitted elderly ex-slaves who often struggled to provide for themselves. This reality caused Key to take a different route instead of emancipation with one of his old servants. To Tappan he described that, “Yet I am still a slaveholder, and could not, without the greatest inhumanity, be otherwise. I own, for instance, an old slave, who has done no work for me for years. I pay his board and other expenses, and cannot believe it a sin in doing so.”<sup>277</sup> His sudden death left less than ten slaves still remaining to be freed. Part of the problem was that in 1840 only two of his slaves were even eligible for manumission under the increasingly strict regulations Maryland imposed.<sup>278</sup> Nevertheless, in his final will Key stipulated that the slaves left would be passed to his wife’s jurisdiction to serve her until she died and then be freed, “unless (which I wish she would do) she should chuse [sic.]

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<sup>273</sup> Esmeralda Boyle, *Biographical Sketches of Distinguished Marylanders* (Baltimore: Kelly, Piet & Company, 1877), 263; Weybright, *Spangled Banner*, 230-231.

<sup>274</sup> Francis Scott Key, *A Collection of Facts in Regard to Liberia, by Judge Paine, of Vermont: To Which is Added the Correspondence of the Rev. Benjamin Tappan, of Maine; and Francis S. Key, Esquire, of the District of Columbia* (Woodstock: Augustus Palmer, 1839), 23.

<sup>275</sup> *Ibid.*

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

<sup>278</sup> Dubovoy, *The Lost World of Francis Scott Key*, 454.



sooner to manumit them.”<sup>279</sup> No physical or documentary evidence exists to conclusively prove that Mrs. Polly Key followed her dead husband’s wish concerning emancipation, but the tradition that Francis Scott Key had freed all of his slave possibly indicates that Mrs. Key did indeed free them shortly after his death.<sup>280</sup> Altogether, between his private manumission, his legal acumen in the courtroom, and his advocacy for colonization, Francis Scott Key was either directly or indirectly responsible for the liberation of at least several hundred slaves.

Between the generational family history, Key’s personal practice of education and manumission, as well as men like Clem Johnson largely running the property, the farm provided a stark difference from the contentious Washington, D.C. Francis Scott Key especially valued escaping back to the farm as he enjoyed the company and conversation of the servants and slaves far more than that of legislators and lawyers. In return, every indication suggests that his slaves returned the sentiments and enjoyed the company of their distinguished master.<sup>281</sup> In a letter to his wife, Francis Scott Key revealed his joy at returning to the farm, writing that:

I find it a most agreeable change, to get away from following up Members of Congress & secretaries & clerks, worrying them & they worrying me; to have no body to talk to but Uncle Clem, & Aunt Prissy, & to walk or sit in the Piazza, & look around upon the fields of green & gold, instead of dusty avenues....Clem says, we shall make three times the quantity of hay we did last summer. I do not think I have seen such wheat since I was a boy.<sup>282</sup>

Further suggesting the state of Key’s farm is that no record exists of any of Key’s slaves running away or otherwise leaving. Considering that they were hardly twelve miles from a free state, had they wanted to escape to immediate freedom it would have been well within their

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<sup>279</sup> Marc Leepson, *What So Proudly We Hailed: Francis Scott Key, A Life* (New York: St. Martin’s Press, 2014), 191.

<sup>280</sup> Dubovoy, *The Lost World of Francis Scott Key*, 486.

<sup>281</sup> Delaplaine, *The Life and Times of Francis Scott Key*, 470.

<sup>282</sup> *Ibid.*, 471.

capability. Key himself understood this and reflected in a speech that where his farm was, being “near the Pennsylvania line, there are but few slaves but such as are willing to continue so.”<sup>283</sup>

Beyond his private dealings with slavery, Key continued to look for ways to ameliorate the condition of slaves whenever he saw an opportunity to do so—often times working on his own, outside of the Colonization Society, to organize aid and assistance. One of the most interesting ways this help was administered was through buying slaves who might have been owned by cruel masters, being threatened to be sold far away from their family, or in otherwise terrible situations. Francis Scott Key repeatedly, “joined with his friends in buying back Negroes that had been sold into the South.”<sup>284</sup> Key described this practice in the widely printed letter to the abolitionist Benjamin Tappan, writing that:

There are, again, other instances when a benevolent man will meet, in a slave community, with such appeals to his charity, that he will buy and hold slaves, because he wishes to do as he would be done by. Many are so bought and held. A slave may have an unkind master—may be about to be sold away from his friends or family—a family of slaves may be liable to separation: in all these cases, a man who is known to be a good master, and who has the means of employing them so as to maintain them comfortably, will be importuned to purchase them. It will be a manifest improvement in their condition.<sup>285</sup>

Although Key acknowledged that it would be even better to then subsequently free the slaves after purchase, he explained that often prohibitive regulations and the additional cost of emancipation prevented it. In this situation, he thought that even if emancipation was not possible, it still could not be morally evil to purchase a slave if it meant helping them stay with their families or escape a crueler fate. “Shall he refuse to do the lesser charity,” Key hypothetically asked, “because he has not means to do the greater?”<sup>286</sup>

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<sup>283</sup> Key, *A Collection of Facts in Regard to Liberia*, 21.

<sup>284</sup> Weybright, *Spangled Banner*, 230-231.

<sup>285</sup> Key, *A Collection of Facts in Regard to Liberia*, 25-26.

<sup>286</sup> *Ibid.*, 26.

There were many times throughout his life where Key used his prestige as both a top-shelf Washington lawyer and the author of the “Star Spangled Banner” to collect money and gain support for buying slaves for charitable reasons. One example of this occurred when a slaveowner in the county sold all of his slaves to buyers in Georgia presumably in order to shift to the less expensive free labor which was becoming increasingly more available in that part of Maryland. Key led the charge and, along with others, “raised a fund to buy them back and give them their freedom.”<sup>287</sup> As an interesting complication to this situation, Key himself was astonished when one of the slaves, an elderly woman, refused his offer of freedom and instead “preferred to remain a slave in the South.”<sup>288</sup> In another instance of Key’s desire to help assist slaves keep their families together, he acquired and then “sold” a slave woman to her husband for the procedural price of one dollar—most likely a fraction of one percent of what the “market” value would have been.<sup>289</sup>

To compare, in 1835, Key joined together with District of Columbia Circuit Court Judge, Buckner Thruston, to buy a slave for an astonishing price of \$600. In the legal agreement drafted by Key, he wrote, “Judge Thurston and myself have agreed to purchase a slave named Stephen Clark from his master, Samuel Hamilton, of Maryland, for the price of six hundred dollars, for the purpose of enabling said slave to obtain his freedom.”<sup>290</sup> Key apparently mentioned this instance in his argument during the 1836 Crandall trial. On one of his side points Key again mentioned that at times, “the relation of master and slave often commences in an act of the plainest and purest charity,” announcing that:

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<sup>287</sup> Weybright, *Spangled Banner*, 284.

<sup>288</sup> Ibid.

<sup>289</sup> Ibid. In yet another case, Key advised a wealthy Maryland land owner to free the mother first and then “sell” her daughter to her as a way of working around very strict laws pertaining to childhood emancipation, see, T. Stephen Whitman, *The Price of Freedom: Slavery and Manumission in Baltimore and Early National Maryland* (Lexington: The University Press of Kentucky, 1997), 69.

<sup>290</sup> Gates P. Thruston, *Autograph Collections and Historic Manuscripts* (Sewanee Review: 1902), 7

One of their Honors (he was sure) would remember a remarkable instance of this—in which they had prevailed upon a Quaker friend of theirs to forget his principles and join them in the purchase of a negro. He was about to be sold, most probably, away from his family. He had been in the service of the Quaker, and his wages for a few years would amount to the price demanded for him. He begged us to buy him, and let him work out the price. With the Quaker's help and share in the risk, we advanced the money; and the man repaid us, and was free. If this was a sin, (he said) he certainly had not repented of his share of it. It is true we might (if able to do so) have advanced the price as a gift, and it would have been a greater charity: but we were not able to do more than we did—perhaps if we had been very prudent, or it had been a less urgent case, we would not have thought ourselves able to do that. But the reasoning of the Abolitionists did not even occur to the Quaker.<sup>291</sup>

Quakers were one of the first groups of any kind in America to denounce slavery and start advocating for emancipation, so Key is making the point that sometimes purchasing a slave was the best and most direct path to freedom.

In an extremely tragic incident in the District of Columbia, Francis Scott Key once again leaped in to lend a hand in ameliorating at least some of the suffering. A black woman named Dorcas, who had been promised freedom but never provided any of the formal documents, shockingly killed two of her own children upon learning they all were to be sold back into hard slavery in the South away from her husband. After a trial the jury acquitted her by reason of insanity but she still was a slave and to be sold along with her two remaining children. Key stepped in and started raising money so that Dorcas' husband could buy her freedom and secure legal custody of her—thereby protecting her against any slave dealers.<sup>292</sup> So effective was Key in this effort he even got John Quincy Adams—a longtime political adversary—to “give fifty dollars towards it.”<sup>293</sup> Adams lamented that having to resort to such a process was necessary but was forced to acknowledge that even to be vocal about the injustices of the situation could result

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<sup>291</sup> “Mr. Key on the Colonization Society,” *The African Repository, and Colonial Journal* Vol. XII, No. 11 (November 1836): 349.

<sup>292</sup> Dubovoy, *The Lost World of Francis Scott Key*, 441.

<sup>293</sup> John Quincy Adams, *Memoirs of John Quincy Adams, Compromising Portions of His Diary from 1795 to 1848* (Philadelphia: J. B. Lippincott & Co., 1876), 9.423.

in some sort of harm for him, Key, and those helping Dorcas. “Such is the condition of things in these shambles of human flesh,” the elderly statesman remarked, “that I could not now expose this whole horrible transaction but at the hazard of my life.”<sup>294</sup> With the rising tensions in the country surrounding slavery and only two years after the fiery pro-slavery riots of 1835, any open support for abolitionism could mark Adams for violence as it had Key in the Snow-riots.

In addition to his personal, private, and public efforts to emancipate slaves or ameliorate their condition if freedom proved unattainable, Francis Scott Key worked to open educational and religious doors to African Americans. For example, he helped found the District of Columbia branch of the American Bible Society, and, “As time would tell, nobody worked more devotedly to promote Bibles—in schools and churches and to the poor (blacks and slaves included)—than Frank.”<sup>295</sup> As has been seen already, Key fostered religion among his slaves, often joining them in prayer and teaching them how to read so that they could investigate the scriptures for themselves. Additionally, Key acted as the teacher of one of the first Sunday schools for blacks in all of America.<sup>296</sup> A significant reason behind his support for the American Colonization Society was the hope that the immigrating slaves would bring Christianity to African and act as effective missionaries in a way that others would not be able to. Key argued in a speech before the Society that the liberated slaves would, “dispense there, the blessings they have received here—the arts of civilized life—the restraints of law and order—principles and habits of morality and industry—and above all, the great teacher and dispenser of all good, the

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<sup>294</sup> Ibid., 9.429.

<sup>295</sup> Dubovoy, *The Lost World of Francis Scott Key*, 176.

<sup>296</sup> Weybright, *Spangled Banner*, 233.

Christian religion.”<sup>297</sup> Continuing, he confessed that, “They are also, if not the only men, that can affect the redemption of Africa, certainly the best qualified to accomplish it.”<sup>298</sup>

Despite this background of personal emancipations, public activism, and a general anti-slavery attitude, recently Francis Scott Key has become the focus of a historical re-evaluation based on claims of his racism. The vast majority of these modern critics take issue specifically with the “Star Spangled Banner” itself, claiming that the poem by Key expresses anti-black sentiments. The idea of a racist National Anthem largely begins in 2016 when on July 4<sup>th</sup> of that year Professor Jason Johnson, building off of the work of Jefferson Morley, railed against the poem calling it “a diss track to black people who had the audacity to fight for their freedom.”<sup>299</sup> Johnson points to the third stanza of “The Star Spangled Banner” which says:

And where is that band who so vauntingly swore  
That the havock of war and the battle's confusion  
A home and a country should leave us no more?  
Their blood has wash'd out their foul foot-steps' pollution,  
No refuge could save the hireling and slave,  
From the terror of flight or the gloom of the grave.<sup>300</sup>

The contention is that Key is heralding the defeat and death of the British attackers, but specifically that the “slave” mentioned referred to a small detachment of escaped American slaves who joined the British army when promised freedom. Based on this one-word Johnson,

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<sup>297</sup> “Proceedings of the Convention (Concluded).” *The African Repository, and Colonial Journal* Vol. XVIII, No. 9 (July 1842): 211.

<sup>298</sup> Ibid.

<sup>299</sup> Jason Johnson, “Star-Spangled Bigotry: The Hidden Racist History of the National Anthem,” *The Root* (July 4, 2016), accessed May 24, 2020: <http://www.theroot.com/star-spangled-bigotry-the-hidden-racist-history-of-the-1790855893>.

<sup>300</sup> Francis Scott Key, *Poems of the Late Francis S. Key, Esq.* (New York: Robert Carter & Brothers, 1857), 33.

and those who followed after him, contend that, “Key was, in fact, taking pleasure in the deaths of freed black slaves who had fought with the British against the United States.”<sup>301</sup>

To “prove” this bold claim, however, Professor Johnson makes a number of subsequent accusations concerning Key’s general character regarding race and slavery which are manifestly wrong as evidenced by the information contained in the preceding chapters. Francis Scott Key is alleged to be, “like most enlightened men at the time, not against slavery,” and “about as pro-slavery, anti-black and anti-abolitionist as you could get at the time.”<sup>302</sup> After giving no sources or further explanation of these allegations, Johnson says that because Key was so “anti-black” he must have hated the existence of a company of British colonial marines who had participated at the Battle of Bladensburg which was a major defeat for Key and the American militiamen that allowed for the burning of Washington DC. The colonial marines were a military unit formed by the British from escaped slaves who were promised freedom if they fought against the Americans. One company of the Marines fought at the Battle of Bladensburg outside of the District of Columbia in 1814—a battle at which Francis Scott Key was also present. Johnson and those after him assume that since both the colonial marines and Key participated in the conflict, Key must have seen them and hated them because of his alleged racism.

But several considerations must be taken into account before anyone can assume that Key was even aware of the Marines, much less harbored any special animus against them. For one thing, Key served in an artillery company and volunteered as an aide to Gen. Walter Smith, so it is questionable how much actual frontline combat he saw.<sup>303</sup> When the number of troops at the

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<sup>301</sup> AJ Willingham, “The Unexpected Connection Between Slavery, NFL Protests and the National Anthem,” *CNN* (August 22, 2017), accessed May 24, 2020: [www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html](http://www.cnn.com/2016/08/29/sport/colin-kaepernick-flag-protest-has-history-trnd/index.html).

<sup>302</sup> Johnson, “Star-Spangled Bigotry,” *The Root*.

<sup>303</sup> Dubovoy, *The Lost World of Francis Scott Key*, 192.

battle is factored in as well—with nearly 6,000 American troops and some 4,000 British soldiers—the chances of Key, as a military aide in an artillery company, encountering the colonial marines, who would not have been a part of the initial attacks since they were untried soldiers, is relatively small.<sup>304</sup> Historically there is no evidence that Key ever encountered, was aware of, or even saw the black British Colonial Marines at any time on the field during the Battle of Bladensburg or in the intervening weeks before writing *The Star Spangled Banner*. Beyond even this, there is just as high if not an even higher likelihood that Key served alongside black American soldiers in defense of Washington. When Commodore Joseph Barney was ordered to disembark around five hundred of his mariners and join the American forces on land,<sup>305</sup> the overwhelming probability is that many of his sailors-turned-infantry were free blacks. During the War of 1812 the American Navy was highly integrated, and “there was not an American war vessel, perhaps, whose crew, in part, was not made up of negroes...and they are entitled to no small share of the meed of praise given the American seamen.”<sup>306</sup> When Key volunteered as a militiaman to defend the city, he joined a multifaceted and diverse army and most likely served alongside African Americans in the Battle of Bladensburg.

What is more, there is no reason to assume that even if Francis Scott Key knew of the existence of this regiment of escaped slaves that it would have caused any sort of general anti-black sentiment in Key’s mind. By no means did African Americans, either slave or free, universally or predominately support the British during the war. It must be remembered that black sailors were being impressed by the British as well which contributed to the war too. Also

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<sup>304</sup> Robert Tomes, *Battles of America by Land and Sea* (New York: Patterson & Neilson, 1878), 279.

<sup>305</sup> Benjamin Lossing, *The Pictorial Field-Book of the War of 1812* (New York: Harpers & Borthers, 1896), 926.

<sup>306</sup> Joseph Wilson, *The Black Phalanx; A History of the Negro Soldiers of the United States in the Wars of 1775—1812, 1861—‘65* (Hartford: American Publishing Company, 1888), 79-80.



when the British raided the coastal towns during the war they often started, “stealing from the poor negroes their clothing and pigs,” and even captured slaves in order to resell for profit in the Carribean.<sup>307</sup> For these reasons there were many famous instances of African Americans who fought on the American side and the efforts of slaves and free blacks were vital in defending against the British attacks. Immediately after the attack on Washington, DC, over 2,500 African Americans in Philadelphia worked to prepare the city to defend against a British attack, and “a battalion of colored troops was at the same time organized in the city, under an officer of the United States army.”<sup>308</sup> Gen. Andrew Jackson, who would later become a close associate with Key and appoint him as District Attorney of DC, very conspicuously recruited African American soldiers in the defense of New Orleans and praised them as excellent men and soldiers saying,:

I expected much from you; for I was not ignorant that you possessed qualities most formidable to an invading enemy. I knew with what fortitude you could endure hunger and thirst, and all the fatigues of a campaign. I knew well how you loved your native country.... You have done more than I expected. In addition to the previous qualities I before knew you to possess, I found among you a noble enthusiasm, which leads to the performance of great things. Soldiers! The President of the United States shall hear how praiseworthy was your conduct in the hour of danger.<sup>309</sup>

Most African Americans, however, joined the American Navy significantly, “swelling the number of those who, upon the rivers, lakes, bays and oceans, manned the guns of the war vessels, in defense of Free Trade, Sailor’s Rights and Independence on the seas as well as on the land.”<sup>310</sup> So many black sailors joined in the war effort that, “It is quite impossible to ascertain the exact number of negroes who stood beside the guns that won for America just recognition from the maritime powers of the world.”<sup>311</sup> One man recalled that during the war, “there seemed

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<sup>307</sup> Dubovoy, *The Lost World of Francis Scott Key*, 180, 189.

<sup>308</sup> William Nell, *The Colored Patriots of the American Revolution* (Boston: Robert F. Wallcut, 1855), 191.

<sup>309</sup> *Ibid.*, 288.

<sup>310</sup> Wilson, *The Black Phalanx*, 78; for rates of naval integration cf. Gerard T. Altoff, *Amongst My Best Men: African-Americans and the War of 1812* (Put-in-Bay: The Perry Group, 1996), 21.

<sup>311</sup> *Ibid.*

to be an entire absence of prejudice against the blacks as messmates among the crew.”<sup>312</sup> In another instance, a major Commodore happily announced that his black mariners, “are not surpassed by any seamen we have in the fleet: and I have yet to learn that the color of the skin...can effect a man’s qualifications or usefulness. I have nearly fifty blacks on board of this ship, and many of them are among my best men.”<sup>313</sup> Key, being as involved with events as he was, must have been aware of vast number of black Americans who boldly fought against the British and it is entirely possible that he even witnessed the bravery of some first hand during the fateful Battle of Bladensburg. So, the assumption from Professor Johnson lacks significant context and understanding, not only of Francis Scott Key’s record on slavery but also of the War of 1812 and the Battle of Bladensburg.

If Key is not referring to literal slaves then what could “hireling and slave” be referring to? The most basic and obvious conclusion is that Key is using “slave” to refer to the loyalist soldiers of the British army. Being under a tyrannical monarch the Americans viewed the British subjects and soldiers as fundamentally deprived of liberty and at the mercy of the overarching and arbitrary power of the monarch or parliament. This perspective was ingrained in the American mind by the history of the War for Independence and can be seen throughout the War of 1812. When General William Hull attempted to persuade Canada to leave England, he promised that if they joined America they, “will be emancipated from tyranny and oppression, and restored to the dignified station of freedom.”<sup>314</sup> In other words, those who stayed with England would be choosing to remain slaves—completely subordinate to the will of the crown.

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<sup>312</sup> Ibid.

<sup>313</sup> Alexander Mackenzie, *The Life of Commodore Oliver Hazard Perry* (New York: Harper & Brothers, 1840), 1.186-187.

<sup>314</sup> J. Russell, Jr., *The History of the War, Between the United States and Great Britain* (Hartford: B. & J. Russell, 1815), 112.

This terminology was used extensively during the War for American Independence with many major leaders relying on it in their speeches. For example, Patrick Henry famously asked, “Is life so dear and peace so sweet, as to be purchased at the price of chains and slavery?”<sup>315</sup>

When the War of 1812 broke out it was commonly referred to as the second war for independence, and therefore it is little surprise to see similar language being employed by American patriots. Just as it would have been slavery to submit to the English tyranny in 1776, it would have been doubly so to allow the British to reestablish their oppression after America became an independent sovereign nation. In proof of this the language “hireling and slave” was used in martial poetry prior to Key during the War of 1812. For example, a poem titled *The Death of Warren* published on May 15, 1813, called the British forces from the Revolutionary War a “slavish and foreign...hireling band,” with the clear parallel being to the ongoing conflict.<sup>316</sup> Based on archival research of newspapers and manuscripts from 1780-1816 Professor Glenn Johnson from Stevenson University concluded, “that slave and hireling were each used in a pejorative fashion to describe free people carrying out the wishes of a more powerful person,” and that, “it is entirely credible that Key used hireling and slave in that fashion.”<sup>317</sup> For Key to use the words “hireling and slave” to refer to the regular British army would not have been unprecedented or even unexpected in the climate of that period.

Another possible meaning is that the use of “slave” in the third stanza of the ‘Star Spangled Banner’ is referring to the widespread and ongoing practice of impressment. Since the Revolutionary War, British ships had been raiding American vessels in order to both recover

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<sup>315</sup> William Wirt, *Sketches of the Life and Character of Patrick Henry* (Philadelphia: James Webster, 1817), 123.

<sup>316</sup> “The Death of Warren,” *Lancaster Intelligencer and Journal* (May 15, 1813): 2.

<sup>317</sup> Glenn Johnson, “Racism, Rhetoric, and Research: Francis Scott Key and Our National Anthem,” *Stevenson University* (May 1, 2019), accessed October 17, 2020: <https://www.stevenson.edu/academics/undergraduate-programs/history/blog-news-events/racism-or-rhetoric-francis-scott-key-and-the-defence-of-fort-mchenry>.

English sailors who had deserted or force Americans to fight for the British navy. At first, American ships were only searched in order to discover deserters, but as more English sailors deserted the navy to sail instead on American merchant ships due to the higher standard of living, England began to impress a corresponding number of American seamen to compensate the loss. Indeed, as the United States became a land of opportunity and a safe haven for sailors seeking a better life, the British stopped caring who was an American and who was a deserter, “and impressment grew more and more rigorous, till at last the officer who searched an American ship laughed at protections and...took off with him such men as pleased his fancy, and cared not a rush where they were born.”<sup>318</sup> This practice was viewed as a base kind of enslavement, and often people who had been pressed into service were referred to as slaves. For instance, in an early anti-impressment pamphlet published by an Englishman who had been made to serve in the navy, the author signed the introduction merely as, “your most depressed servant, or rather, a British slave. A late impressed Mariner of Hull.”<sup>319</sup> The impressment of American citizens—both black and white—into the British navy was one of the leading causes of the war itself, so for Key to at least tangentially refer to the practice in the poem inspired by the conflict would not be at all surprising.

The British army was composed of mercenary “hirelings” along with impressed seamen and soldiers who were “slaves” to a tyrannical government. There is nothing about the lyrics or the context of the “Star Spangled Banner” which necessitates or suggests a racial reading of the poem, and indeed no one even suggested such an interpretation for over two hundred years after

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<sup>318</sup> John Bach McMaster, *A History of the People of the United States, From the Revolution to the Civil War* (New York: D. Appleton and Company, 1895), 3.243.

<sup>319</sup> *Familiar Expostulations Addressed to Messrs. Pitt and Thurlow* (London: J. Ridgeway, 1800), ii.

it was written.<sup>320</sup> Indeed, it would be shocking to discover, after so many years of some blatant racism in the simple words of the song, especially since “The Star Spangled Banner” was commonly sung by the black Union soldiers during the Civil War who relished “its thrilling notes, soaring above the battles’ gales.”<sup>321</sup> The author of the poem himself saw the American flag as a symbol of equality which would stop the slave trade and eventually end slavery at home and abroad. In his final big speech before his death, Key told the audience that:

He thought he valued, as he ought, her deeds of patriotism and valor, the triumphs achieved by her flag. But when that standard flings forth its folds over the destitute and abandoned; when it calls together the outcasts of a dark and distant land, guides them to a happy heritage, and there waves over them, their pride and their protection; then are its stars a constellation of glory; then does it achieve a higher triumph than its proudest battle fields have won.<sup>322</sup>

Key considered the suppression of the slave trade and the amelioration of the conditions for black Americans to be more significant to American patriotism than the successful defense of Fort McHenry which had inspire his immortal song in the first place. He closed that speech with his hope that, “by being active and eminent in a work of mercy....He did covet for his native land the honor of repairing the wrongs and re-peopling the desolations of injured Africa,” by stopping the slave trade and working towards widespread emancipation.<sup>323</sup>

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<sup>320</sup> See, Oscar George Theodore Sonneck, “*The Star Spangled Banner*” (*Revised and enlarged from the “Report” on the Above and other airs, issued in 1909*) (Washington: Government Printing Office, 1914); *Hearings Before the Committee on the Judiciary House of Representatives Seventy-First Congress Second Session on H. R. 14* (Washington: United States Government Printing Office, 1930).

<sup>321</sup> Wilson, *The Black Phalanx*, 269.

<sup>322</sup> “Proceedings of the Convention (Concluded).” *The African Repository* (July 1842): 217.

<sup>323</sup> *Ibid.*

## Chapter 5

### Conclusions and Further Considerations

Although far from perfect Francis Scott Key certainly adopted a more progressive stance than the vast majority of people during that period of history. In both his private and professional life, in courtrooms and charities, Key strove to eliminate, “the only blot that dim’d the lustre of his Country’s fame.”<sup>324</sup> Despite receiving nearly four decades of punishment from people both in the North, who thought he was too moderate, and in the South, who thought he was too radical, Key appeared to sincerely pursue his principles and beliefs. While it is easy today to look back on Key and identify the very evident faults that he had, after a careful review of his life, efforts, and writings, the current historiographical consensus surrounding Key must be reevaluated. We may fairly censure Key for failing to emancipate all of his slaves before his death, but we likewise must acknowledge that he manumitted many of his own slaves and assisted hundreds of other men and women in their petitions for freedom. We may justly criticize Key for subscribing to the American Colonization Society which never lived up to the grand idealistic claims of its proponents, but nevertheless we must acknowledge that his reasoning was devoid of racism and rather based on his pragmatic optimism. Ultimately, Key was a man of his world, but occasionally he caught glimpses of a better world and pursued that vision in both his professional and private life.

Not content to simply talk about the issues of race and slavery, Francis Scott Key devoted himself to action in the hope of eradicating what he considered was America’s “greatest evil.”<sup>325</sup>

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<sup>324</sup> Dubovoy, *The Lost World of Francis Scott Key*, 410.

<sup>325</sup> “Mr. Key’s Address,” *The African Repository, and Colonial Journal* Vol. IV, No. 10 (December 1828): 303.

Risking personal wealth and private safety, the lawyer fought a total of one-hundred and four petition for freedom cases seeking to liberate people from slavery. When the courtroom proved insufficient, he routinely helped raise money in order to buy slaves to free or to deliver into the custody of a family member—saving them from being sold into the deep South and separated. Seeing that free African Americans still had to deal with unequal laws, Key helped found the American Colonization Society so that black men and women could have the option of having their own country without the prejudice they would sadly face then by remaining in America. The slave trade always found a staunch and indefatigable enemy in Francis Scott Key and he continued to support military intervention in order to finally annihilate the abominable practice from the shores of Africa.

Key routinely showed himself to be anti-slavery through his words and deeds—even if he was the only one willing to take that stand. When the foreign governments of major world powers sought to pressure America into surrendering helpless Africans into perpetual slavery in the 1825 *Antelope* trial, Key boldly stood in their defense. When racist rioters surrounded his house in the summer of 1835 because of his desire to see slavery abolished, Key continued to fight for freedom. And when a free black who was a respected colleague and advocate for civil liberty passed away late in 1842, Francis Scott Key, who was soon to die himself, was the only white man to ride on horseback in the entire funeral procession. On that incident an abolitionist newspaper remarked that such an action, “evinces an elevation of soul above the meanness of popular prejudice, highly honorable to Mr. Key’s profession as a friend of men of color. He rode *alone*.”<sup>326</sup> Indeed, throughout his life Key often seemed to ride alone in his efforts to untie the dangerous Gordian knot of slavery which threatened to unravel the Union and destroy American

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<sup>326</sup> Leepson, *What So Proudly We Hailed*, 195-196.

from within. Although he never lived to see the end of slavery, he constantly looked forward to the day when the Star Spangled Banner would finally wave over a nation where all were finally free and enjoying the bounties of liberty they so richly deserved.

But, in truth, Key did not actually ride “alone” that day in the funeral of William Costin as the radical abolitionist paper suggests. Much rather he rode amongst a great host of men who strove to rise above the base discrimination which oppressed them and their families. The man who coined America as “the land of the free and home of the brave” traveled side by side with the same group of people he had spent decades of his life working for. Key would never have tried a petition for freedom case if not for the brave men and women who stood up and demanded that their inherent rights and liberties as human beings. Their push towards liberty was joined and assisted by Francis Scott Key who wished to bring the vision of America he saw offshore at Fort McHenry into fruition. In focusing on Key as an advocate for freedom in a world where liberty was just beginning to burst into the scene of world this is not to diminish or ignore the agency and indomitable resistance of the people who refused to accept slavery. Indeed, in Key’s native Maryland hundreds of slaves won freedom for themselves and their families through petitioning the courts, and entire groups dedicated themselves to assisting the slaves on their march to freedom.<sup>327</sup>

There remain many further avenues of research and consideration surrounding the life of Francis Scott Key. To date, no one has compiled or editing his letters and writings, and the debate surrounding the true meaning of the *Star Spangled Banner* is only just know beginning in earnest. These areas must be addressed moving forward, but any scholar attempting to wade into such waters must place Key’s word and deed into the proper context and acknowledge the

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<sup>327</sup> Whitman, *The Price of Freedom*, 61, 65.



lengthy career he had in both the courtroom and in charities as he worked—however imperfectly—to give life to his hope that America would someday unequivocally be “the land of the free.” For that to happen it would take many brave souls from all walks of life and all areas of the fledgling nation, and Francis Scott Key was among the first to ride in that lengthy procession which finally ended slavery in the United States.

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