MANUMISSION FOR CHIMPANZEES

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I. INTRODUCTION

Chimpanzees, like all nonhuman animals, are living "things" under the laws of all fifty states of the United States.[2] Their thinghood makes it difficult, if not impossible, for nonhuman animals to protect their most fundamental interests.[3] This article explores the ancient and powerful legal tool of manumission. Through manumission, a legal "thing" becomes a legal person who owns herself.[4] Upon manumission, the "thing" becomes a "person," possessed of the capacity for legal rights. These have included the rights to own property, enter into enforceable contracts, sue and be sued, and sometimes citizenship. At minimum, the manumitted "person" is conferred the legal right to self-ownership and freedom from enslavement by another.

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2. SONIA S. WAISMAN, PAMELA D. FRASCH & BRUCE A. WAGMAN, ANIMAL LAW: CASES AND MATERIALS 51 (5th ed. 2014); *see also, e.g.*, Bennett v. Bennett, 655 So. 2d 109, 110 (Fla. Dist. Ct. App. 1995) ("[U]nder Florida law, animals are considered to be personal property.").

3. *See, e.g.*, Alan Watson, *Rights of Slaves and Other Owned Animals*, 3 ANIMAL L. 1, 6 (1997); Thomas G. Kelch, *Toward a Non-Property Status for Animals*, 6 N.Y.U. ENVTL. L.J. 531, 532 (1998). Since December 2013, the Nonhuman Rights Project has been litigating common law habeas corpus cases on behalf of chimpanzees in New York State, seeking to have them declared as "persons" for the purpose of habeas corpus. *See* Nonhuman Rights Project, Inc. *ex rel.* Kiko v. Presti, 999 N.Y.S.2d 652 (App. Div. 2015); People *ex rel.* Nonhuman Rights Project, Inc. v. Lavery, 998 N.Y.S.2d 248 (App. Div. 2014; Nonhuman Rights Project, Inc., *ex rel.* Hercules & Leo v. Stanley, 16 N.Y.S.3d 898 (Sup. Ct. 2015.

4. Tannis v. Doe, 21 Ala. 449, 454 (1852) (holding that slaves may be denied the right "to hold and enjoy property," but "no such incapacity attaches to . . . an emancipated slave"); Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. (3 Tyng) 123, 130 (1808) (ruling that when the slave became free, he could gain a legal settlement in his own right by residing for one year where he was manumitted). Note that the substantive effect of manumission depended on whether it was a complete emancipation or an odd compromise called "quasi-emancipation." JOSEPH A. RANNEY, IN THE WAKE OF SLAVERY 16 (2006) (stating that quasi-emancipations were "devices fashioned by Southern Quakers and other opponents of slavery to get around statutory restrictions on emancipation"); *see also, e.g.*, Young v. Cavitt, 54 Tenn. (2 Heisk.) 18, 30 (1871) ("[T]here always has been an intermediate state between absolute slavery and absolute freedom, recognized by our Courts."); Stephenson v. Harrison, 40 Tenn. (2 Head) 728, 733 (1859) ("No other suit but for freedom, in which may be embraced claims to property, can be brought by slaves, while they are such."); Elias v. Smith, 25 Tenn. (6 Hum.) 33, 34 (1845) (describing a quasi-emancipation).

Manumission is an inherent property right.[5] The "right of the master to manumit his slave is a natural attribute of the condition of slavery."[6] This right "has ever been held in all countries where slavery has obtained, as one of the most valuable and important powers of the master."[7] In 1858, the Supreme Court of Mississippi stressed that an owner's right to manumit "necessarily resulted from his absolute right of disposition of . . . his property."[8] Indeed, "ownership of property carries along the right of disposal, even to the manumission of a slave."[9] In 1867, the Supreme Judicial Court of Massachusetts wrote: "A state of slavery, in which manumission was wholly prohibited, has never been known among civilized nations."[10] Manumission is therefore embedded in the common law, in force in the absence of a statute.[11] As the Tennessee Supreme Court stated in 1834, "By the common law the owner of a slave might manumit him at pleasure."[12] As a chimpanzee is presently a legal thing who may be owned, her owner's right to manumit her is inherent.

Following Roman law, a manumitted slave could not be re-enslaved, for "[l]iberty, once effected, is irrevocable."[13] As the

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5. *See, e.g.*, Dulany v. Green, 4 Del. (4 Harr.) 285, 286 (1845) (noting that manumission is a "gift of property").

6. Ross v. Vertner, 6 Miss. (6 Howard) 305, 344 (1840) (argument of counsel for appellees).

7. *Id.* at 344–45 ("In all the states of the Union, where th[e] institution [of slavery] has prevailed, the master has ever been allowed, in the absence of statutory limitations, to manumit at pleasure . . . ."); *see also* Jones v. Abernathy, 33 N.C. (33 Ired.) 280, 282 (1850) ("[S]ince a power in the owner to manumit is not so absolutely incompatible with slavery . . . such a power, in some form or other, has been tolerated in most countries and in the States of this Union, in which that institution prevails.").

8. Shaw v. Brown, 35 Miss. 246, 313 (1858).

9. Dikes v. Miller, 25 Tex. 281, 288 (1860) (argument of counsel for appellee) (citing Jones v. Laney, 2 Tex. 342, 344 (1847)); *see also* Jackson v. Phillips, 96 Mass. (14 Allen) 539, 564 (1867) ("[I]t would require the most explicit prohibition by law to restrain the right of manumission.").

10. *Jackson*, 96 Mass. (14 Allen) at 564. "Manumission is as universal as slavery; wherever the latter existed, the privilege of being relieved therefrom has concurrently been acknowledged . . . ." THOMAS R.R. COBB, AN INQUIRY INTO THE LAW OF NEGRO SLAVERY IN THE UNITED STATES OF AMERICA 278 (Univ. of Ga. Press 1999) (1858).

11. *See, e.g.*, Atwood's Heirs v. Beck, 21 Ala. 590, 608 (1852); State v. Lyon, 1 N.J.L. 462, 474 (Sup. Ct. 1789); Fisher's Negroes v. Dabbs, 14 Tenn. (14 Yer.) 119, 129 (1834).

12. *Dabbs*, 14 Tenn. (14 Yer.) at 129.

13. Judith Kelleher Schafer, *Roman Roots of the Louisiana Law of Slavery: Emancipation in American Louisiana, 1803–1857*, 56 LA. L. REV. 409, 416 (1996) (alteration in original) (citing LA. CIV. CODE ANN. art. 189 (1825)); *see also In re* Perkins, 2 Cal. 424, 449 (1852) (stating that "a manumission is a title against all the

Supreme Court of Virginia remarked in 1827, "[W]hen she is made free, her condition is wholly changed. She becomes a *new creature* . . . as if she had been born free."[14] In 1858, that court reiterated that "[t]he moment the deed or will, the instruments alone by which slaves can be manumitted, takes effect, he is, in legal contemplation, transformed into a new being; no property in him can exist."[15]

This article reviews manumission's ancient origins and how it became embedded in both English and American common law. It describes the processes by which beings have been manumitted.[16] The article then discusses the substantive effects that such a change has on manumitted things and argues that common law manumission may provide personhood to a chimpanzee. When that occurs, the chimpanzee will "cease[] to be a chattel" and will become a free being, "where before he was the mere chattel of his master."[17]

II. ORIGINS AND EVOLUTION OF MANUMISSION

A. Manumission Defined

Manumission is rooted in Roman law.[18] The Latin word *manus* means "hand."[19] "Manumission" is so called "because the master, holding the bondman's hand, said to the by-standers, *hunc hominem liberum case volo, &c.*—I am willing this man should be free; and then discharge him out of his power and dominion, by emitting him out of his *hand*."[20] Emancipation likely arose "shortly after the introduction of *mancipation*."[21] The "son discharged from Parental

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world") (internal citation omitted)).

14. Fulton v. Shaw, 25 Va. (25 Rand.) 597, 599 (1827) (emphasis added).

15. Williamson v. Coalter's Ex'rs, 55 Va. (55 Gratt.) 394, 399 (1858).

16. *See* Guyora Binder, *The Slavery of Emancipation*, 17 CARDOZO L. REV. 2063, 2066 (1996) (noting that emancipation gave slaves "legal personhood").

17. Ops. of the Justices of the Supreme Judicial Court on Question Propounded by the Senate, 44 Me. 505, 525 (1857) (opinion of Appleton, J.).

18. 4 COMM'RS FOR PUBL'G THE ANCIENT LAWS & INSTS. OF IR., ANCIENT LAWS OF IRELAND lii–lv (Alexander George Richey et al. eds., 1878).

19. *Id.* at lv.

20. Bryan v. Walton, 14 Ga. 185, 201 (1853) (emphasis omitted).

21. EDWIN CHARLES CLARK, EARLY ROMAN LAW: THE REGAL PERIOD 125 (1872). The Twelve Tables recognized the emancipation of a son from his father's power: "[I]f a father shall have thrice sold his son, let the son be free from the father." *Id. Mancipation* was originally "confined to certain kinds of property," and was "applicable only to objects which are acquired by grasping with the hand—such as slaves and cattle." *Id.* at 109–10 (emphasis omitted). Emancipation was also available to Roman wives. *See* 1 HENRY JOHN ROBY, ROMAN PRIVATE LAW IN THE

Power is *emancipated,*" and the "free person who has undergone manumission is *in mancipio.*"[22]

"Emancipation," in its most literal sense, means "to set free"[23] and is the act by which one is "made his own master."[24] While "manumission" and "emancipation" are often used interchangeably, their meanings may differ.[25] Manumission generally describes the voluntary release of an individual from one's control; emancipation further includes the universal grant of freedom to a *class* of such individuals and may include both individual and general freedom.[26] Manumission is therefore best understood as a form of emancipation.

B. Ancient and Civil Law Origins of Manumission

Roman slaves, like American slaves, were once treated "as articles of property, like intelligent animals."[27] Upon manumission, a slave was granted certain legal rights; he became a "freedman" and sometimes obtained citizenship.[28] "The master could not again

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TIMES OF CICERO AND OF THE ANTONINES 68, 70 (1902).

22. COMM'RS FOR PUBL'G THE ANCIENT LAWS & INSTS. OF IR., *supra,* note 18, at lv. The term "emancipated" is often used in modern times in connection with a child freed from the control of the child's parents. *See, e.g.*, Everett v. Sherfey, 1 Iowa (1 Clarke) 357, 361–62 (1855) ("[E]mancipation . . . sets the son free from his subjection, and gives him the capacity of managing his own affairs, as if he was of age.").

23. Porter v. Powell, 44 N.W. 295, 296 (Iowa 1890).

24. S.L. v. A.L., 735 A.2d 433, 437 (Del. Fam. Ct. 1999) (quoting *Emancipation*, BLACK'S LAW DICTIONARY (5th ed. 1979)). "'Emancipation' is the act by which he who is not free, but is under the control of another, is set at liberty, and made his own master." Patek v. Plankinton Packing Co., 190 N.W. 920, 922–23 (Wis. 1923) (quoting jury instructions given at trial in a father's suit to recover his minor son's wages).

25. Binder, *supra* note 16, at 2074 (noting the differences between "individual manumission and mass emancipation").

26. *See id.* at 2072. See also John Phillip Reid, *Lessons of Lumpkin: A Review of Recent Literature on Law, Comity, and the Impending Crisis,* 23 WM. & MARY L. REV. 571, 596 (1982) (noting that certain "Georgia judges opposed abolition in any form, whether it be general emancipation or individual manumission").

27. ROBY, *supra* note 21, at 19; *see also* Jackson v. Lervey, 5 Cow. 397, 400 (N.Y. 1826) (noting that Roman "slaves were like cattle").

28. Roby, *supra* note 21, at 18, 20, 28. Under Roman law, manumission had "the double effect of releasing a man from slavery, and making him a Roman citizen." W.A. HUNTER, A SYSTEMATIC AND HISTORICAL EXPOSITION OF ROMAN LAW IN THE ORDER OF A CODE 172 (2d ed. 1885). American law, on the other hand, distinguishes between the two. In *Bryan v. Walton*, 14 Ga. 185 (1853), the Georgia Supreme Court clarified the difference between the grant of liberty and citizenship, declaring that "the act of manumission confers no other right but that of freedom[;] . . . it does not and cannot confer *citizenship*." *Id.* at 198. For manumission to confer citizenship, the

reduce him to a state of slavery."[29] Manumission was therefore not mere abandonment, but a transfer of permanent rights.

Ancient Roman manumission was accomplished in one of three ways: (1) *manumissio vindicta*, an act of the master in which "[a] third party, in the presence of the praetor, placed his rod (vindicta) on the slave and claimed him as a freeman,"[30] at which point he became free;[31] (2) *manumissio censu*, where the censor, who could "make any one a citizen of Rome," entered the slave's name on the census roll;[32] and (3) *manumissio testamento,*[33] where the master and head of the family either bequeathed a slave his liberty or imposed on his heir an obligation to manumit the slave.[34] In addition, the early Roman Empire permitted manumission by "an oral declaration of freedom in the presence of witnesses."[35]

Roman law placed some restrictions on manumission.[36] "Only actual owners of slaves could free them, and owners could not free their slaves to defraud their creditors."[37] If the owner was not a full owner, or the manumission ceremony was private, lacking the full sanction of the State, "the slave became free, but he did not become a Roman citizen."[38] Additionally, slaveholders could not free slaves under the age of thirty, and a manumitting slaveholder had to be at least twenty-five.[39]

Ancient Greece recognized manumission for slaves, women, and children.[40] France, Spain, and Ireland[41] recognized manumission, which "borrowed from Roman law . . . ."[42]

State had to be "represented either by a magistrate (praetor, or censor) or assemblies." ANDREW STEPHENSON, A HISTORY OF ROMAN LAW WITH A COMMENTARY ON THE INSTITUTES OF GAIUS AND JUSTINIAN 331 (1912).

29. STEPHENSON, *supra* note 29, at 332.

30. *Id.* at 330–31.

31. ROBY, *supra* note 21, at 26.

32. STEPHENSON, *supra* note 29, at 331.

33. *Id.* Constantine's legislation created a fourth mode: "*manumissio in ecclesia*," whereby "the master made a declaration in the presence of the bishop and congregation." *Id.* at 333.

34. *Id.* at 331.

35. *Id.* at 334. "Justinian recognized this form of manumission but required the number of witnesses to be five and requested the declaration to be subsequently written out . . . ." *Id.*

36. Schafer, *supra* note 13, at 412.

37. *Id.*

38. STEPHENSON, *supra* note 29, at 332.

39. *Id.*

40. THE CODE NAPOLEON civ (Bryan Barrett ed., 1811). Manumission gave slaves "personal liberty" and sometimes "excused them from the tortures of the rack." *Id.* at cxii.

41. COMM'RS FOR PUBL'G THE ANCIENT LAWS & INSTS. OF IR., *supra* note 18, at

Under ancient Jewish law, the "manumission of slaves was encouraged" and manumission laws were considered lenient.[43] Manumissions did not have to be in writing and could result from the mere passage of time.[44] If a master died without leaving a male descendent, his slaves were automatically manumitted.[45] Female slaves became free at puberty.[46] In contrast to American Antebellum slave laws that generally required a master's consent before manumission was granted,[47] a Jewish slave did not need permission from her master to become manumitted.[48]

Jewish law also recognized manumission by operation of law. If a master intentionally struck a slave and permanently disabled her, even to the extent of the loss of a tooth, the slave was entitled to freedom by operation of law.[49] If the master sold the slave to a non-Jew, the slave was likewise entitled to freedom.[50] If a slave fled from a foreign land to Israel, "the slave was not restored to slavery and the master was forced to give the slave a deed of manumission."[51]

C. English Common Law

English common law recognized manumission for children and slaves.[52] In *The King v. Inhabitants of Chillesford*, the court held

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lii, lv. Under the Irish law, children could be emancipated from "Paternal Power." *Id.* at lvi (quoting HENRY SUMMER MAINE, LECTURES ON THE EARLY HISTORY OF INSTITUTIONS 216 (1875)).

42. Schafer, *supra* note 13, at 409. Initially, manumissions were liberally granted in France. *Id.* at 412. However, the 1724 Code Noir placed some restrictions on manumission. *Id.* at 413.

43. David M. Cobin, *A Brief Look at the Jewish Law of Manumission*, 70 CHI.-KENT L. REV. 1339, 1341–42 (1995) (noting that the process for manumitting Jewish slaves "could justly be judged a lenient system").

44. *Id.* at 1340, 1348.

45. *Id.* at 1340.

46. *Id.*

47. *See, e.g.*, Malinda v. Gardner, 24 Ala. 719, 725 (1854) (noting that the Alabama Constitution prohibited manumission of slaves without the owner's consent); Allen's Adm'r v. Peden, 4 N.C. (4 Taylor) 442, 442 (1817) (deeming an act of the legislature emancipating slaves without the consent of the estate administrator unconstitutional).

48. Cobin, *supra* note 44, at 1340.

49. *Id.* at 1345. *See Exodus* 21:26 ("And if a man smite the eye of his bondman . . . and destroy it . . . he shall let him go free for his eye's sake. And if he smite out his bondman's tooth . . . he shall let him go for his tooth's sake.").

50. Cobin, *supra* note 44, at 1345.

51. *Id.*

52. While there is some debate as to whether chattel slavery was part of the English common law, the common law recognized manumission for various types of

that a child who had been manumitted by his parents acquired the right to enter into contracts of service on his own behalf.[53] The court made clear that emancipated children are "sui juris for the purpose of gaining a settlement."[54]

"In some respects, [the English] villein was comparable to a Roman slave, a servus . . . ."[55] Some argue that the villein was a thing: "[H]e shall be merely the chattel of his lord to give and sell at his pleasure," wrote Britton, echoing Bracton.[56] As such, "the villein could be bought or sold," and the "lord could manumit a villein, further suggesting slave status."[57] According to Lord Coke, "an express manumission of a villein cannot be on condition, for once free in that case and ever free."[58]

D. Early American Law

Slavery in the United States resembled Roman and Greek slavery, as well as English villeinage.[59] While manumission was

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"unfree" individuals. *See* William M. Wiecek, *The Origins of the Law of Slavery in British North America*, 17 CARDOZO L. REV. 1711, 1715–17 (1996).

53. The King v. Inhabitants of Chillesford (1825) 107 Eng. Rep. 994, 996–97.

54. *Id.* The court held that if an emancipated child enters a contract of service with his father, the parent must pay him wages. *Id.* If the parent failed to pay the child, the child could maintain an action to enforce the contract. *Id.*

55. Wiecek, *supra* note 53, at 1716. The word "serf" comes from the word servus. *Id.* According to *Black's Law Dictionary*, a villein regardant was "a person attached to a manor, who was substantially in the condition of a slave, who performed the base and servile work upon the manor for the lord, and was, in most respects, a subject of property belonging to him." *Villein*, BLACK'S LAW DICTIONARY (6th ed. 1990). A villein in gross was tied to the lord. *Villein in Gross*, BLACK'S LAW DICTIONARY (6th ed. 1990).

56. BRITTON: AN ENGLISH TRANSLATION AND NOTES 163 (Francis M. Nichols ed., 1901).

57. Wiecek, *supra* note 53, at 1716–17. "In a manumission ritual reminiscent of Roman customs, the lord was to declare that 'the roads are free and the gates open to [the villein].'" *Id.* at 1717 (alteration in original) (quoting LEGAS HENRICI PRIMI ch. 78, § 1 (L.J. Downer ed., 1972)).

58. *In re* Flavell, 8 Watts & Serg. 197, 199 (Pa. 1844) (citing Co. Lit. 274 b).

59. Bryan v. Walton, 14 Ga. 185, 199 (1853); *accord* Jonathan A. Bush, *Free to Enslave: The Foundations of Colonial American Slave Law*, 5 YALE J.L. & HUMAN. 417, 425 (1993). Alabama and Georgia adopted the Roman law of manumission, finding it more applicable than the English common law. Trotter v. Blocker, 6 Port. 269, 290–91 (Ala. 1838) ("Slaves, in this country, are not analogous in their condition, to that of the villeins of feudal ages, but may be more aptly compared to the slaves of the ancient Greeks and Romans."), *overruled in part by* Prater's Adm'r v. Darby, 24 Ala. 496 (1854); *Bryan*, 14 Ga. at 199 ("How different the circumstances of the villain, from the slave of the Southern States."). In *Bryan,* the court explained that the status of the slave in the "Southern States" resembled "much more

primarily governed by the common law,[60] portions of the Roman law on manumission were expressly adopted by some states, including New York and Louisiana.[61] The early colonies were compelled to rely on certain aspects of Roman law for governance on manumission, in part because it was the only "ready-made slave law in the seventeenth century."[62] English writers often "insisted that the common law had an inherent preference for freedom, *favor libertatis*, even though the tag line was borrowed from Roman law."[63] Judges, often in the north, embraced this "predisposition *in favorem libertatis*—in favor of freedom."[64] In *Harris v. Carissa*, the Tennessee Supreme Court explained that "if the construction of a deed of emancipation be doubtful," it should be "liberally construed in favor of liberty."[65] Thus, a "deed of emancipation by which the master manumits his slaves at his death, but directs that they shall serve him as long as he lives . . . passes a present right to freedom."[66]

Even after slavery was abolished in their states, northern courts continued to adjudicate manumission cases, as southern slave owners occasionally took or sent their slaves to northern states

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strikingly the slavery of the Ancient Republics." 14 Ga. at 199. "Their slaves, like ours, had no name, but what their masters gave them. . . . They might be sold or mortgaged. *Partus sequitur ventrem*, was the rule *indiscriminately applied to slaves and cattle*." *Id.* at 200 (emphasis added). "[S]lavery existed in every American colony before 1775 . . . ." Paul Finkelman, *Exploring Southern Legal History*, 64 N.C. L. REV. 77, 89 (1985).

60. Wiecek, *supra* note 53, at 1779. Most states agreed that manumission was a common law right. In *Atwood's Heirs v. Beck*, 21 Ala. 590 (1852), the Supreme Court of Alabama explained that slaves "are now regarded by our law as chattels . . . and when a new species of property is introduced . . . *the common law embraces it*." *Id.* at 608 (emphasis added). Because slaves were governed by the common law, so too were manumissions: "aside from all statutory prohibition, the right of manumission does exist." *Id.* at 610. "Southern judges occasionally invoked medieval villeinage to support the general proposition that bondage and the common law were compatible, and abolitionists cited villeinage to argue that it was the only form of unfreedom permitted by the common law . . . ." Bush, *supra* note 60, at 423–24.

61. Schafer, *supra* note 13, at 409 (noting the strong influence of Roman law on Louisiana slavery). In the mid-1600s, New York adopted the Roman law of manumission as part of its common law. Wiecek, *supra* note 53, at 1764.

62. Bush, *supra* note 60, at 425.

63. *Id.* at 438. Sir Edward Coke and John Fortescue were the best known of the English judges who "praised common law for this preference." *Id.* at 438 n.75.

64. Schafer, *supra* note 13, at 412.

65. 14 Tenn. (14 Yer.) 227, 242 (1834) (holding that children of a slave who were born after the original slave owner's death and before the slave reached twenty-five were also entitled to their freedom); *see also* Hartsell v. George, 22 Tenn. (22 Hum.) 255, 259 (1842) (holding that a child born after the act of manumission and before the contingency was free).

66. *Harris*, 14 Tenn. (14 Yer.) at 242.

where they could live freely and have trust funds set up for their support.[67] Northern courts were then called upon to determine whether the slave could live as a free person or whether the laws of the southern state were controlling.[68] Under ancient Jewish law, slaves removed to a free jurisdiction were recognized as having been manumitted.[69] And, following Lord Mansfield's ruling that slavery was illegal in England in *Somerset v. Stewart*,[70] the Supreme Judicial Court of Massachusetts in *Commonwealth v. Aves*[71] freed an eight-year-old slave sojourning in Massachusetts. The Maryland Court of Appeals, like other high courts of northern and border states, echoed the *Somerset* principle: "once free and always free."[72]

III. METHODS OF MANUMISSION AND RESTRICTIONS

Slaveholders in every state where slavery was recognized had an inherent common law right to manumit their slaves. This

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67. *See, e.g.*, Shaw v. Brown, 35 Miss. 246 (1858); Jolliffe v. Fanning, 44 S.C.L. (10 Rich.) 186 (1856).

68. *E.g.*, Commonwealth *ex rel.* Taylor v. Hasson, 3 Pen. & W. 237, 238 (Pa. 1831) ("[T]he defendant, brought Taylor into Pennsylvania; and by virtue of the deed of manumission and transfer claimed to have his services . . . ."); A.E. Kier Nash, *In re Radical Interpretations of American Law: The Relation of Law and History*, 82 MICH. L. REV. 274, 283 (1984).

69. "If a slave fled from a foreign land to the Land of Israel, the slave was not restored to slavery and the master was forced to give the slave a deed of manumission." Cobin, *supra* note 44, at 1345.

70. Somerset v. Stewart (1772) 98 Eng. Rep. 499; 1 Lofft 1. In this famous case, a Virginia slave owner named Stewart took one of his slaves, James Somerset, with him to England. *Id.* When Somerset ran away, Stewart had him seized. *Id.* Somerset's godparents then applied for a writ of habeas corpus, and the case was argued at length before the Court of King's Bench. *Id.* at 499–509, 1 Lofft at 1–17. One of Stewart's arguments was that, in deciding his authority over Somerset, the Court should give deference to the laws of Virginia, where the relationship had formed and the parties were domiciled. *Id.* at 510, 1 Lofft at 19. Lord Mansfield rejected that argument, holding that since the "odious" practice of slavery did not exist under English law, Somerset was free. *Id. See generally* STEVEN M. WISE, THOUGH THE HEAVENS MAY FALL – THE LANDMARK TRIAL THAT LED TO THE END OF HUMAN SLAVERY (2005) (providing an extensive account of the *Somerset* trial and decision).

71. Commonwealth v. Aves, 35 Mass. (18 Pick.) 193, 224–25 (1836).

72. In Spencer v. Dennis, 8 Gill. 314 (Md. 1849), the court held: "Freedom having once commenced, the act of Assembly confers no power to the testator . . . to . . . restore the condition of slavery. 'Once free and always free,' is the maxim of *Maryland* law upon the subject." *Id.* at 321; *accord* Anderson v. Poindexter, 6 Ohio St. 622, 653 (1856) (Swan, J., concurring).

could generally be accomplished by one of three means: (1) deed or will, (2) contract, or (3) by implication.[73]

A. Deed, Will, and Contract

The most common method to manumit a slave was by deed or will.[74] Attached as Appendix A is a transcribed deed of manumission of a New York slave, dated 1812.[75] When there were technical errors in a will that manumitted a slave, the intention of the testator would prevail, as freedom was preferred.[76]

To prevent fraud, some states, such as New Jersey, required deeds of manumission to be executed in the presence of witnesses.[77] Virginia's Act of 1782 likewise required manumissions to be through a written instrument, legally recorded, and witnessed by two persons.[78] A deed of manumission could be voided if executed by an insolvent man trying to defraud his creditors.[79] In suits brought by

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73. Anthony R. Chase, *Race, Culture, and Contract Law: From the Cottonfield to the Courtroom*, 28 CONN. L. REV. 1, 29 (1995).

74. *See* Sawney v. Carter, 27 Va. (6 Rand.) 173, 175 (1828) (holding that a deed or will of emancipation must be recorded in the courts).

75. *See infra* Appendix A, *Deed of Manumission by Frederick De Peyster*, N.Y. HIST. SOC'Y MUSEUM & LIBR., http://digitalcollections. nyhistory.org/islandora/object/islandora%3A131271#page/1/mode/1up (last visited Feb. 11, 2017).

76. *See, e.g.*, Greenlow v. Rawlings, 22 Tenn. (3 Hum.) 90, 91–92 (1842) (granting manumissions despite technical errors in wills). In *Greenlow* the court held that, although under statutory law a newly manumitted slave had to leave the state as "part of the judgment," an exception could be made in those cases where the contract for manumission was made prior to 1831. *Id.* at 93–94. In 1826, the Pennsylvania Supreme Court explained, "[d]ifferent states, where slavery is tolerated, may prescribe particular forms and terms of manumission," but the court was "judging by the laws of [Pennsylvania], which prescribe no particular solemnity, and on the intention of the testator expressed in his will." Scott v. Waugh, 15 Serg. & Rawle 17, 19 (Pa. 1826). The court further noted that "the intention of the testator is to prevail, and a liberal and large construction should be given to effectuate such intention." *Id.* at 20; *see also* Phebe v. Quillin, 21 Ark. 490, 497, 500 (1860) (holding slaves to be freed persons notwithstanding an 1859 statute forbidding all post-mortem manumission); Elder v. Elder's Ex'r, 31 Va. (4 Leigh) 252, 259 (1833) (disregarding the strict letter of the will in order to effectuate the testator's intent to free his slaves).

77. *See* Overseers of the Poor of Perth Amboy v. Overseers of the Poor of Piscataway, 19 N.J.L. 173, 176–77 (1842) (holding a deed of manumission, although acknowledged and recorded, invalid because the testator did not execute it in the presence of at least two witnesses); State v. Emmons, 2 N.J.L. 6, 10 (1806) (holding deeds not executed in presence of witnesses invalid under the Act of 1798).

78. 11 THE STATUTES AT LARGE: BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 39–40 (William W. Hening ed., 1821).

79. *See* Dulany v. Green, 4 Del. (4 Harr.) 285, 286 (1845) ("[A] man cannot *give*

slaves to establish their freedom, the defendant could prevail by proving the grantor was of unsound mind and incapable of executing a valid deed.[80]

North Carolina's Act of 1830 conditioned the manumission of slaves by will upon their removal from the state,[81] and North Carolina courts liberally upheld manumissions of slaves[82] if they left the state and did not return.[83] In 1858, the North Carolina Supreme Court held that a trust "for carrying the negroes out of North Carolina, to live as free persons, in a free country, [wa]s not illegal, but perfectly valid."[84] Delivery of the document to a third party was sometimes required, as well as the requirement that the manumission be in writing.[85] In New York, some instrument in writing was necessary, and parol manumissions were void.[86] The

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away his property for the purpose of defrauding creditors."); *see also* Allein v. Sharp, 7 G. & J. 96, 105 (Md. 1835) ("[A] right is given to manumit slaves . . . so that such manumission be not in prejudice of creditors.").

80. Jerry v. Townshend, 9 Md. 145, 157 (1856).

81. Thompson v. Newlin, 38 N.C. (3 Ired. Eq.) 338, 341 (1844).

82. For a discussion of a series of eight such manumission cases in which North Carolina judges freed slaves, see A. Nash, Negro Rights and Judicial Behavior in the Old South 52–65 (June 1, 1968) (unpublished Ph.D. dissertation, Harvard University), *microformed on* No. HU 90.9422 (Harvard Coll. Library). *See also* Bernie D. Jones, *"Righteous Fathers," "Vulnerable Old Men," and "Degraded Creatures": Southern Justices on Miscegenation in the Antebellum Will Contest*, 40 TULSA L. REV. 699, 730–31 (2005) (describing North Carolina wills and trusts cases concerning attempted manumissions).

83. *See, e.g.*, Clark v. Bell, 59 N.C. (6 Jones Eq.) 272, 273 (1862) (holding that the refusal of a slave to leave the state "frustrates and makes void the bequest" in the owner's will granting the slave her freedom); Thomas v. Palmer, 54 N.C. (1 Jones Eq.) 249, 251–52 (1854) ("Lucy, being advised that the policy of the laws of [North Carolina] forbade her remaining in the State, and obtaining any of the advantages proposed in this will or codicil removed with her children to the State of Ohio, where they are . . . , by the laws of that State, free persons.").

84. Redding v. Long, 57 N.C. (4 Jones Eq.) 216, 218 (1858). In 1855, the court granted liberty upon the intention of the manumitting testator "to confer upon [his slaves] the boon they hold most dear." Mayo v. Whitson, 47 N.C. (2 Jones) 231, 239 (1855). *But see* Green v. Lane, 45 N.C. (Busb. Eq.) 102, 114–16 (1852) (holding that steps taken to manumit a slave amounted to an illegal attempt to free the slaves and have them remain in the State).

85. *See, e.g.*, Major v. Winn's Adm'r, 52 Ky. (13 B. Mon.) 250, 250–51 (1852); Dunlap v. Archer, 37 Ky. (7 Dana) 30, 33–34 (1838) (finding that any writing for freedom is sufficient for manumission); Winney v. Cartwright, 10 Ky. (3 A.K. Marsh.) 493, 495 (1821) (holding that words granting emancipation in a signed instrument of writing were sufficient); Hughes v. Milly, 5 H. & J. 310, 311–12 (Md. 1814) (holding that manumission must be in writing).

86. 1821 N.Y. Laws 547; Ketletas v. Fleet, 7 Johns. 324, 331 (N.Y. Sup. Ct. 1811) (interpreting the 1801 law); *see also* Trongott v. Byers, 5 Cow. 480, 483 (N.Y. Sup. Ct. 1826) (holding parol agreement with a slave to manumit him was void); *In*

writing had to be delivered by the master to the slave, or to some third person for his benefit.[87] Delaware's Act of 1797 required "all manumissions to be in writing signed and sealed by the master or mistress."[88]

Finally, slaves could be manumitted by contract,[89] and a master's contract to manumit a slave was generally held to be obligatory.[90] Some courts found contracts for manumission to be illusory,[91] while others used equity to make good a master's promise of freedom. For example, in 1831, the Supreme Court of Ohio held that where a slave was purchased under a promise to manumit, such a promise could be executed in equity against the purchaser.[92]

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re Tom, 5 Johns. 365, 366 (N.Y. Sup. Ct. 1810); Link v. Beuner, 3 Cai. 325, 329 (N.Y. Sup. Ct. 1805) ("The purpose of a written manumission . . . is to avoid being answerable for the future support of the slave.").

87. *See In re* Mickel, 14 Johns. 324 (N.Y. Sup. Ct. 1817). *But cf.* Petry v. Christy, 19 Johns. 53, 54 (N.Y. Sup. Ct. 1821) ("[U]ntil the certificate of manumission passed out of the hands of the master . . . the negroes continued to be his slaves."); *Link*, 3 Cai. at 329b (noting that if the owner did not deliver the deed, "the manumission [was] not complete, and the slave [was] not free").

88. Wilson v. George, 2 Del. Cas. 413, 419 (1818); *see also In re* Will of Potter, 275 A.2d 574, 581 (Del. Ch. 1970) (discussing a written will affecting manumission); Smith v. Milman, 2 Del. (2 Harr.) 497, 499 (1838) ("If [the petitioner] was the slave of Ann Smith, then [he is] clearly free by her deed of manumission."). Kentucky passed a statute in 1800 that authorized owners to manumit slaves by "any instrument of writing" as well. *See Dunlap*, 37 Ky. (7 Dana) at 32 (1838). In *Major v. Winn's Adm'r*, 52 Ky. 250 (1852), the court refused to recognize the manumission of a slave where "[n]o writing ha[d] ever been executed emancipating him." *Id.* at 250–51; *see also* Jones v. Lipscomb, 53 Ky. (14 B. Mon.) 239, 243 (1853) (deciding that if the master wished for all the slaves to be free he would have listed them with the others whom he specifically freed).

89. Chase, *supra* note 73, at 30–31. The 1825 Louisiana Code granted slaves the right to contract for their freedom, stating, "[t]he slave is incapable of making any kind of contract, except those which relate to his own emancipation." 1825 La. Acts 90–91. This right was "a legacy of Roman and Spanish law." Schafer, *supra* note 13, at 417.

90. Chase, *supra* note 73, at 30–31. In the context of manumitting a chimpanzee by deed, it might be advisable to have a written document witnessed by a disinterested person and/or notarized. The deed may then be delivered to, and published by, a third party such as local animal control or a national database cataloging all manumitted nonhuman animals. *See infra* Appendix B.

91. *See, e.g.*, Willis v. Bruce, 47 Ky. (8 B. Mon.) 548, 550–51 (1848) (holding that a contract for freedom between master and slave was unenforceable); Anderson v. Poindexter, 6 Ohio St. 622, 632 (1856) (holding that a contract with a slave for freedom was meaningless). "A slave had to fulfill any express conditions imposed by a contract of manumission." Chase, *supra* note 73, at 30; *see also* Julien v. Langlish, 9 Mart. (o.s.) 205, 211 (La. 1821) (holding that freedom given to a slave under the express condition that he serve the master until death, which he afterwards refused to do so, voided his manumission).

92. Tom v. Daily, 4 Ohio 368, 373 (1831). In *Tom,* the son's mother's brother

In addition to slaves, children could be emancipated by contract in some states.[93] In *Inhabitants of Oldtown v. Inhabitants of Falmouth*, the Supreme Judicial Court of Maine explained that "[e]mancipation is, ordinarily, [a] matter of contract, or agreement."[94] Such a contract must be by consent, express or implied, of the parent if living, but need not be in writing.[95]

B. Verbal and Implied Manumission

Children are often manumitted by implication. Express emancipation occurs when a parent allows a child to "go away from home and earn his own living."[96] Implied emancipation "is where the parent, without any express agreement by his acts or conduct, impliedly consents that his infant child may leave home and [work] for himself."[97] American slaves generally could not be manumitted

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purchased the mother at an administrator's sale when she was pregnant. *Id.* at 368. Immediately following the sale, he declared her free but did not execute a deed of manumission. *Id.* The mother then gave birth to a son. *Id.* at 369. The brother attempted to sell the son to a purchaser, and the son's next friend brought an action on the son's behalf seeking an injunction to restore his freedom. *Id.* The court issued an injunction, holding that the brother's declarations before the son's birth constituted a manumission of the mother as a court of equity would enforce. *Id.* at 373. The mother "in equity . . . was virtually, if not actually and formally, free at the time of the birth of the complainant." *Id.* It necessarily followed that her son was free. *Id.*; *see* Andrew Kull, *Restitution in Favor of Former Slaves*, 84 B.U. L. REV. 1277, 1280 (2004).

93. *See, e.g.*, Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78, 86–87 (1876); Inhabitants of Dennysville v. Inhabitants of Trescott, 30 Me. 470, 473 (1849) (stating that courts may infer emancipation from the conduct of the parties); Inhabitants of Portland v. Inhabitants of New-Gloucester, 16 Me. 427, 432 (1840) (holding manumission was directly founded upon a contract).

94. Inhabitants of Oldtown v. Inhabitants of Falmouth, 40 Me. 106, 108 (1855).

95. *Id.* at 108–09. In *Lowell*, 66 Me. at 88, the court rejected a claim that "emancipation by contract to be effectual must be in writing." The court observed, "Where the emancipation is by marriage, . . . it is still by contract, for in such case the marriage to be effectual must be by consent of the parent, and consent is virtually a contract." *Id.* at 86.

96. Spurgeon v. Mission State Bank, 151 F.2d 702, 704 (8th Cir. 1945) (quoting Rounds Bros. v. McDaniel, 118 S.W. 956, 958 (Ky. 1909)); *accord* Patek v. Plankinton Packing Co., 190 N.W. 920, 922–23 (Wis. 1923).

97. *Spurgeon*, 151 F.2d 702, at 704–05 (quoting *Rounds Bros.*, 118 S.W. at 958); *see also* Brown's Appeal, 86 Pa. 524, 527 (1878) ("That a father may so manumit his son as to authorize him to contract with an employer, and receive his earnings to his own use, is well established."); Kunkle v. Thompson, 67 Pa. Super. 37, 42 (1917) (holding that even though the son was living with his father, the "son had been practically manumitted" because "he was making his own way in the world and was permitted to receive and expend his own earnings for his own advantage"). The Supreme Court of Kentucky held that "[i]f the father allowed the boy to keep the

by implication. In Delaware, for instance, there could be "no implied manumission."[98] The legislature intended to "abolish all verbal contracts for the manumission of slaves."[99] Maryland generally rejected implied manumissions for slaves as well.[100]

Although less common, some American courts upheld the manumission of a slave without a written instrument.[101] In *State v. Administrators of Prall*, a New Jersey court held that oral declarations by a master that his slave shall be free after his death amounted to "an actual manumission by the master."[102] A year earlier, in *State v. Lyon*, the same court relied on the English common law and held that declarations of the owner, together with the general reputation that the slave had been manumitted, were sufficient to establish the slave's manumission.[103] And in 1826, a New Jersey court again held that evidence that a person was reputed to be free, and had lived as a free person for more than twenty years, was sufficient to demonstrate manumission.[104] Federal

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money, this was a practical *manumission* of him." Mauck v. S. Ry., 146 S.W. 28, 30 (Ky. 1912) (emphasis added) (quoting Louisville & Nashville R.R. v. Davis, 105 S.W. 455, 456 (Ky. 1907)); *see also* Chesapeake & Ohio Ry. v. DeAtley, 151 S.W. 363, 364 (Ky. 1912) ("When the father loses by *manumission* the right to control the services of his son . . . he also loses the right to recover from the person in whose service his son was engaged . . . ." (emphasis added)); Rowland v. Little, 131 S.W. 20, 20 (Ky. 1910) ("[T]he father manumitted his son [where he] allowed him the right to collect and use his own wages . . . .").

98. Wilson v. George, 2 Del. Cas. 413, 418–19 (1818).

99. *Id.* at 422. Before the act requiring a writing, however, the Supreme Court of Delaware upheld a verbal manumission. Dick v. Gibbins, 1 Del. Cas. 222, 223 (1799).

100. *See, e.g.*, Anderson v. Garrett, 9 Gill 120, 136 (Md. 1850).

101. *See Gibbins*, 1 Del. Cas. at 223 ("[The master] took the Negro by the hand and said, 'You are to be free after serving my children one year.'"). The *Gibbons* court ultimately held, "[T]his Negro is entitled to his freedom according to the verbal manumission of . . . his late master." *Id.* at 223.

102. State v. Adm'rs of Prall, 1 N.J.L. 4, 6 (Sup. Ct. 1790).

103. State v. Lyon, 1 N.J.L. 462, 474 (Sup. Ct. 1789).

104. Fox v. Lambson, 8 N.J.L. 275, 277–78 (Sup. Ct. 1826). South Carolina courts allowed manumissions to be presumed by the circumstances. Dingle v. Mitchell, 20 S.C. 202, 211–12 (1883) (holding that when a slave had been at large and acting as a freeman for more than twenty years, a deed of manumission under the Act of 1800 was presumed). In New York, notwithstanding the Act of 1801, which required a written instrument, courts permitted verbal manumissions. Trongoit v. Byers, 5 Cow. 480, 483 (N.Y. Sup. Ct. 1826); Kettletas v. Fleet, 1 Ant. N.P. Cas. 52, 54–55 (N.Y. Sup. Ct. 1808) (citing 1801 N.Y. Laws 547). In *Wells v. Lane,* parol declarations made more than twenty years prior by the owner of a slave, that he purchased her to make her free, were held sufficient for her manumission. 9 Johns. 144, 144–45 (N.Y. Sup. Ct. 1812). The court held that all the manumissions of slaves made before March 1798, although not in strict conformity with the statutes then in

courts sitting in the District of Columbia also upheld informal manumissions.[105]

Minors on the other hand are often manumitted without the need for a written instrument. "There is implied emancipation where . . . the conduct of the parent after the child leaves home is wholly inconsistent with the assertion of the parental right."[106] In 1818, the Supreme Judicial Court of Massachusetts used the emancipation doctrine to protect a minor's right to retain compensation paid for his labor:

> But where the father has discharged himself of the obligation to support the child, or has obliged the child to support himself, there is no principle, but that of slavery, which will continue his right to receive the earnings of the child's labor. . . . [T]he law will imply an emancipation of the son . . . .[107]

In Georgia, a child can be "expressly or impliedly[] manumitted."[108] That minors could be manumitted by implication constituted a liberalization of Georgia's policy on manumission,

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force, would be valid from the time they were made. *Id.* at 145. Missouri was one of the few southern states that permitted the manumission of slaves by implication. *See* Lewis v. Hart, 33 Mo. 535, 541–42 (1863); Durham v. Durham, 26 Mo. 507, 510 (1858). Although manumission by deed and will were preferred, when the facts showed manumission by implication, a deed to that effect was presumed. *See* Milton v. McKarney, 31 Mo. 175, 177–78 (1860) (holding manumission of slaves by will was valid); Keen v. Keen, 83 S.W. 526, 529 (Mo. 1904) (argument of counsel); *see also Lewis*, 33 Mo. at 540–41 (holding that the manumission of a slave could be presumed from the acts of the master); Boyce v. Lake, 17 S.C. 481, 486 (1882) ("[A] deed of manumission to a slave under the act of 1800 was presumed."); Willingham v. Chick, 14 S.C. 93, 103 (1880) ("Where a negro has been at large and acting as a freeman for more than twenty years, a deed of manumission . . . may be presumed.").

105. *See, e.g.*, Bell v. Greenfield, 3 F. Cas. 103, 104 (C.C.D.C. 1840) (No. 1251) ("[U]nder the . . . the Maryland act of 1796 . . . it is not necessary that the instrument of manumission should be signed or acknowledged by the party."); United States v. Bruce, 24 F. Cas. 1279, 1280 (C.C.D.C. 1813) (No. 14,676) (holding that an informal instrument of manumission, accompanied by an actual manumission, was sufficient).

106. Patek v. Plankinton Packing Co., 190 N.W. 920, 922 (Wis. 1923) ("Implied emancipation may be inferred from such circumstances . . . ."). In Florida, the manumission of a child may be executed orally or may be "implied from the surrounding circumstances and from the parents' conduct, such as when the parent declines to sign a financial responsibility document for the child's emergency medical treatment." 5 BRENDA M. ABRAMS, FLORIDA FAMILY LAW § 101.10 (LexisNexis 2016 ed.).

107. Nightingale v. Withington, 15 Mass. (15 Tyng) 272, 274–75 (1818).

108. Jones v. McCowen, 131 S.E. 290, 291 (Ga. Ct. App. 1926).

which had forbidden slaves to be manumitted by implication.[109] Missouri has also relaxed its requirements for manumitting children.[110] In 1905, the Missouri Court of Appeals held that manumission "may be inferred from circumstances like permitting the child to leave the parent and [work] for himself."[111] Similarly, in Indiana, a minor brought an action seeking payment from his employer and averred that he had "been *manumitted* and *set free* by his father."[112] The Court of Appeals of Indiana held that it was not "necessary for the appellee to prove any formal contract between him and his father upon the subject of the appellee's manumission."[113]

Manumission by implication, as with manumission generally, is typically irrevocable. In 1906, the Supreme Court of Arkansas explained that "where the parent has compelled his child to leave home . . . it operates as an act of manumission," and "cannot be revoked by the parent so as to abrogate a contract for service fairly entered into between the emancipated child and his employer."[114] However, in some circumstances, courts have held that implied emancipation "may be revoked by a parent within a reasonable time."[115]

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109. *See* Lamb v. Girtman, 26 Ga. 625, 631 (1859) ("[T]he Act of 1818 makes every sort of [implied] manumission illegal.").

110. *See* Zongker v. People's Union Mercantile Co., 86 S.W. 486, 488 (Mo. Ct. App. 1905) ("No formal act, such as formerly attended the manumission of a slave, is required to effectuate the release of a parent's right to the earnings of his minor child."); *accord* Brosius v. Barker, 136 S.W. 18, 19–20 (Mo. Ct. App. 1911); Johnson v. True, 20 Mo. App. 176, 181 (1886).

111. McMorrow v. Dowell, 90 S.W. 728, 733 (Mo. Ct. App. 1905) (citing Ream v. Watkins, 27 Mo. 516 (1858); Dierker v. Hess, 54 Mo. 246 (1873)) (noting that in *Ream*, a suit by a minor for wages, instructions that Ream could not recover unless the jury found he was entitled to contract on his own and that his father had given consent were deemed erroneous "because they lacked the qualification that the jury might *infer the manumission from circumstances*" (emphasis added)).

112. Haugh, Ketcham & Co. Iron-Works v. Duncan, 28 N.E. 334, 334 (Ind. Ct. App. 1891) (emphasis added).

113. *Id.* at 336.

114. Smith v. Gilbert, 98 S.W. 115, 116 (Ark. 1906); *see also* Rounds Bros. v. McDaniel, 118 S.W. 956, 958–59 (Ky. 1909) (holding that where a son left home with his father's knowledge, secured employment, and for two years received his own earnings, emancipation could not be revoked).

115. *See* Collis v. Hoskins, 208 S.W.2d 70, 72–73 (Ky. 1948) (deciding that even if an infant was impliedly emancipated, emancipation was revoked where the daughter returned to her father's home after becoming pregnant and the father paid for hospital bills).

C. Self-Emancipation and Gift

Under the common law, minors can emancipate themselves.[116] As the Supreme Court of Illinois stated in 2010, "it is widely recognized that minors can emancipate themselves, i.e., place themselves beyond the care, custody, and control of their parents."[117] In several nineteenth century decisions, "the fact that a minor voluntarily abandoned the parent's home to pursue a life free from parental control was alone considered sufficient to support a finding of emancipation."[118]

Additionally, a parent can manumit a child by giving the child away, which is similar to the Roman law of manumission by adoption.[119] In *Town of Tunbridge v. Town of Eden*, the Supreme Court of Vermont held that, to constitute emancipation of an infant by gift, the "parents [must] have absolutely transferred all their right to the care and control of the infant; and all their right to his services, and that the person to whom such rights are transferred has accepted the infant as his own and agreed to stand *in loco parentis*."[120] In Maine, emancipation may be a gift to the child, and while a "promise to give is revocable," if executed, it is irrevocable.[121]

D. Manumission by Operation of Law

Manumission may occur by operation of law. Kansas courts "have recognized constructive emancipation under the common

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116. "Some of the earliest pertinent reported decisions [in America] applied the doctrine of emancipation in common law actions by a third party to recover from parents for 'necessaries' furnished minors who had voluntarily left home." State *ex rel.* R.R. v. C.R., 797 P.2d 459, 462 (Utah Ct. App. 1990); *see, e.g.*, Cooper v. McNamara, 60 N.W. 522, 523–24 (Iowa 1894); Brosius v. Barker, 136 S.W. 18, 20 (Mo. Ct. App. 1911).

117. *In re* Marriage of Baumgartner, 930 N.E.2d 1024, 1030 (Ill. 2010) (emphasis omitted). "At common law, there are several situations in which a minor may be found to be self-emancipated." *Id.*; *accord* French v. French, 599 S.W.2d 40, 41 (Mo. Ct. App. 1980).

118. *State ex rel. R.R.*, 797 P.2d at 462; *see, e.g.*, Hunt v. Thompson, 8 Ill. (3 Scam.) 179, 181 (1841); Ramsey v. Ramsey, 23 N.E. 69, 70 (Ind. 1889); Weeks v. Merrow, 40 Me. 151, 151–52 (1855); Angel v. McLellan, 17 Mass. (16 Tyng) 28, 31 (1819).

119. Town of Tunbridge v. Town of Eden, 39 Vt. 17, 20–21 (1866). In New York, a "father*, without any consideration* as between him and his child, can manumit his child." Fort v. Gooding, 9 Barb. 371, 375 (N.Y. Gen. Term. 1850) (emphasis added).

120. *Tunbridge*, 39 Vt. at 21. The court declared, "The principle of emancipation is held to depend upon rights which may be waived or transferred." *Id.* at 23; *see also In re* Sonnenberg, 99 N.W.2d 444, 449 (Minn. 1959) (reciting the rule in *Tunbridge*).

121. Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78, 88 (1876).

law."[122] In Connecticut, the rule is that a minor who "voluntarily lives apart from her parents . . . is emancipated by operation of common law."[123] Other methods of emancipation by operation of law include manumission by abuse, by marriage, or by service in the military.

1. Entrance into a Free Jurisdiction

Some states recognized manumission by operation of law upon a slave's entrance into a free jurisdiction. In *Frank v. Powell*,[124] the Supreme Court of Louisiana held that a slave brought into Ohio, whose law forbade slavery, became manumitted by operation of law. His former owner was "presumed to have consented to all of the necessary legal consequences resulting from his removal to another State."[125]

Southern masters, even in those states that prohibited manumission by last will and testament, "always had the right to remove their slaves to a free state and there release them from bondage," as "no slave state could deprive them of this right."[126]

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122. *In re* Marriage of George, 988 P.2d 251, 253 (Kan. Ct. App. 1999) (citing Longhofer v. Herbel, 111 P. 483, 484 (Kan. 1910); Lewis v. Mo., Kan. & Tex. Ry., 108 P. 95, 95 (Kan. 1910)).

123. Town v. Anonymous, 467 A.2d 687, 689 (Conn. Super. Ct. 1983) (citing Wood v. Wood, 63 A.2d 586 (1948); Milford v. Greenwich, 11 A.2d 352 (1940)). The court explained, "By voluntarily removing herself from her parents' home . . . the minor has effectively removed herself from parental controls." *Id.* This, "combined with her parents' acquiescence therein, result[ed] in her becoming, under common law principles, an emancipated minor." *Id.*

124. Frank v. Powell, 11 La. 499, 501 (1838).

125. Anderson v. Poindexter, 6 Ohio St. 622, 629 (1856) (citing *Frank*, 11 La. at 501).

126. KENNETH M. STAMPP, THE PECULIAR INSTITUTION: SLAVERY IN THE ANTEBELLUM SOUTH 234–35 (1956). In Massachusetts, "if a slave [was] *voluntarily* brought into that State by his master, or [came] there with his consent, he bec[ame] free, and [could not] be coerced to return." *Anderson*, 6 Ohio St. at 629–30 (citing Commonwealth v. Aves, 35 Mass. (18 Pick.) 193 (1836); Commonwealth v. Taylor, 44 Mass. (3 Met.) 72 (1842)). The same was true for a slave brought from Georgia to Connecticut. *See* Jackson v. Bulloch, 12 Conn. 38, 53–54 (1837) (holding that a slave, left in Connecticut, became free immediately); *see also* Barclay v. Sewell, 12 La. Ann. 262, 262 (1857) ("The power of the master to manumit his slave within the limit of Louisiana, has always been qualified by her laws; but no law of Louisiana in existence in 1839, placed any restraint upon the power of the master . . . to manumit a slave in a foreign State . . . ."). In 1859, the Supreme Court of Mississippi explained that "it is not against the policy of the State for the owner of slaves to send them out of the State for manumission." Mitchell v. Wells, 37 Miss. 235, 240 (1859). In Shaw v. Brown, 35 Miss. 246 (1858), the court added that although a freedman could neither enter nor leave Mississippi, if out of the state, he could receive a pecuniary legacy of

Masters from southern states frequently sought to manumit their slaves in Ohio.[127] In *Anderson v. Poindexter*,[128] the court made clear that a "slave brought into the State of Ohio . . . becomes free and emancipated by the operation of law." Similarly, in *Cleland v. Waters*,[129] the Georgia Supreme Court upheld the grant of freedom from a will directing the executor to take the testator's slave to a free jurisdiction.

While North Carolina law forbade the manumission of slaves within the state, it never prohibited their removal to a free state so as to make them free there.[130] Indeed, the Act of 1830 was enacted for "promoting and *encouraging* their emancipation."[131] In *Thompson*

Mississippi property there. *Id.* at 269–70. The Supreme Court of Alabama also stated in 1859 that "[w]e have not been able to find any statute, or legislative policy, which prohibits the removal of slaves from Alabama." Pool's Heirs v. Pool's Ex'r, 35 Ala. 12, 18 (1859); *see also* Atwood's Heirs v. Beck, 21 Ala. 590, 614–16 (1852) (holding that an owner had the right to take a slave to a free state, where he might enjoy his freedom).

127. *See, e.g.*, Elstner v. Fife, 32 Ohio St. 358, 360 (1877) (upholding a will directing manumission in Ohio). In *Shaw v. Brown*, 35 Miss. 246 (1858), James Brown took his slave and their two children to Ohio, gave them deeds of manumission, and then took them to Indiana where he owned property. *Id.* at 249–50. The Mississippi Supreme Court upheld the manumission. *Id.* at 311–12. In *Mitchell v. Wells*, 37 Miss. 235 (1859), a case with facts similar to *Shaw,* the court refused to uphold the bequest. *Id.* at 264. "[T]he testator took complainant to Ohio in fraud of the laws of Mississippi, and with the intention to return to this State." *Id.* at 237. In *Berry v. Alsop,* 45 Miss. 1 (1871), "the right to remove slaves to another state and there manumit them . . . [was] vindicated." Cowan v. Stamps, 46 Miss. 435, 448 (1872). In *Berry*, the testator who resided in Mississippi took several of his slaves to Ohio, where he manumitted and left them. 45 Miss. at 3. The testator's will directed that a portion of his estate in Mississippi be invested in land in Ohio and conveyed to the manumitted slaves. *Id.* The court held the slaves were competent to take under the will, finding "no declaration of policy against manumissions in other states." *Id.* at 5.

128. *Anderson*, 6 Ohio St. at 649 (Swan, J., concurring) (citing *Frank*, 11 La. 499). This, "according to the modern and well-settled principles of the slave system, operates as an act of manumission on the part of the master," and is "sufficiently expressive of his consent that the slave should be free." *Id.* at 650. The rule was that if a master voluntarily placed "his slave in a situation which work[ed] his manumission, it [was] in every respect as much his own voluntary act as the execution of a deed of manumission." *Id.* at 641.

129. Cleland v. Waters, 19 Ga. 35, 53 (1855). Five years later, in *Myrick v. Vineburgh*, 30 Ga. 161, 163 (1860), the court again held that a will providing for the removal of slaves and their subsequent manumission was valid. This, the court said, did "not violate the policy of our statutes against manumission." *Id.* However, the court warned that "[i]f the will gives the slave his freedom to be enjoyed but for *one hour* within the limits of Georgia, it is void." *Id.* (emphasis added).

130. Thompson v. Newlin, 43 N.C. (8 Ired. Eq.) 32, 51 (1851).

131. *Id.* at 45 (emphasis added); *see also* Cameron v. Comm'rs of Raleigh, 36 N.C. (1 Ired. Eq.) 436, 440–41 ("[I]t is the declared policy of this State to

v. Newlin,[132] the court conceded that the Legislature may "qualify the right of manumission," but implied that it would take something much more extraordinary before a court could "impose a restraint on a citizen, by depriving him of the *natural right* of sending his slave, where he can do us no hurt, that he may live and be free there."

If the child of a manumitted slave was born in a free state, that child was often considered free at birth by both northern and southern courts.[133] However, in many states, if a master wished to manumit his slave by entrance into a free state, the slave could not return to the state where slavery existed.[134]

2. Abuse and Neglect

Manumission can also occur by operation of law, such as when a master or parent abuses the slave or child, respectively.[135] Some courts recognize that where "by such ill treatment or abuse" a child is "practically driven away," or where it would be "unsafe for the child to live under such surroundings," or where parents "fail[] to give proper support when able to do so," there may be "emancipation by operation of law."[136] This method of manumission stems in part from ancient Jewish law, which provided that if a master intentionally struck and permanently disabled a slave, the slave was entitled to manumission.[137]

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promote and encourage their emancipation . . . .").

132. *Id.* at 51 (emphasis added). *But see* Green v. Lane, 45 N.C. (Busb. Eq.) 102, 104 (1852) (deciding a case where Morris brought Patsy and her children to Pennsylvania for the purpose of manumitting them, only to bring them back to North Carolina, where they lived as free people).

133. *E.g.*, Union Bank of Tenn. v. Benham, 23 Ala. 143, 151 (1853). In *Benham,* the Alabama Supreme Court held that a black man born in a free state could try by habeas corpus the legality of his detention by a sheriff for execution of a debt. *Id.* at 152–53. The court rejected the argument that freedom could not be tried on a writ of habeas corpus. *Id.* at 154.

134. *See, e.g.*, Cross v. Black, 9 G. & J. 198, 198–99 (Md. 1837) (holding that time spent in Ohio did not operate to divest the master of his property in the slaves on his return to Maryland, despite the fact that the master had signed deeds of manumission in Ohio). Such was the law in Mississippi, as well. *See* Shaw v. Brown, 35 Miss. 246, 269–70 (1858); Leiper v. Hoffman, 26 Miss. 615, 622 (1853); Leech v. Cooley, 14 Miss. (6 S. & M.) 93, 95 (1846); Ross v. Vertner, 6 Miss. (5 Howard) 305, 342 (1840).

135. For instance, in Louisiana, as in Roman law, "if a court convicted slave owners of excessive cruelty toward their slaves, the judge could order the sale of a slave 'to place him out of reach of the power which his master has abused.'" Schafer, *supra* note 13, at 415 (citation omitted).

136. Patek v. Plankinton Packing Co., 190 N.W. 920, 922 (Wis. 1923).

137. Cobin, *supra* note 44, at 1345.

Some courts have held that the death or poverty of a parent effectively manumits a child. In *Town of Plymouth v. Town of Waterbury,* a Connecticut court held that the death of a girl's father was an event "which of course effected her manumission."[138] In *Lowell v. Newport,* the Supreme Court of Maine held that a child could be emancipated by virtue of the father's poverty.[139] And, in *Monroe v. Jackson*,[140] the Supreme Court of Maine held that "persons *non compos mentis*" could be "emancipated by the death or desertion of the parent."

3. Military Service, Marriage, and Age

In the United States, slaves who served in the military were manumitted by operation of law.[141] The manpower needs of the Revolutionary War caused many states and the Continental Congress to offer manumission to slaves who enlisted; they would receive their freedom when their military service was completed.[142]

Marriage to the slave owner was another road to freedom. The California Supreme Court found this to be an implied manumission[143] and held that the marriage between the master and his female slave "operated by analogy to the *rule of the common law* . . . since such manumission was indispensable to her assumption of her new relation of wife to her former master."[144]

Minors are, as a matter of course, manumitted by operation of law, including by age (eighteen in most states; twenty-one in a few others),[145] marriage,[146] and enlistment in the military. Regarding

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138. 31 Conn. 515, 516 (1863). The court explained that "her place of residence was changed in consequence of her emancipation by his death." *Id.*

139. Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78, 86 (1876) (holding that death is a method of emancipation).

140. Inhabitants of Monroe v. Inhabitants of Jackson, 55 Me. 55, 58 (1867).

141. Binder, *supra* note 16, at 2075. Many states recognized this method, including Virginia, South Carolina, Georgia, and Connecticut. Paul Finkelman, THE LAW OF FREEDOM AND BONDAGE: A CASEBOOK 111 (1986); Wiecek, *supra* note 53, at 1783; *see also* Arabas v. Ivers, 1 Root 92, 93 (Conn. Super. Ct. 1784) (holding that service in the army amounts to a manumission).

142. AUGUST MEIER & ELLIOTT RUDWICK, FROM PLANTATION TO GHETTO 52 (3d ed. 1976).

143. Pearson v. Pearson, 51 Cal. 120, 124 (1875).

144. *Id.* at 124–25 (emphasis added). The court reasoned, she "certainly could not . . . be both the slave and the wife." *Id.*

145. Sprecher v. Sprecher, 110 A.2d 509, 511–12 (Md. 1955); *see also* Draper's Adm'r v. Draper, 64 Ala. 545, 547–48 (Ala. 1879) ("When an infant arrives at full age, the relation of guardian and ward ceases . . . and the ward is free . . . .").

146. Charles W. Marchbanks, *What Constitutes Emancipation of a Child*, 9 S.C.

marriage, in 1894, the Supreme Court of Vermont explained that "[a]ll the authorities agree that marriage emancipates a child, even though a minor."[147] In Connecticut, "[i]t is the general rule that marriage emancipates the child," which "results in common-law emancipation."[148]

E. Judicial Manumission

Manumission may be pursuant to court order. Under North Carolina's Act of 1777, no slave could be set free, except for meritorious service as adjudged by the county court.[149] The Act of 1830 later authorized the manumission of slaves by will.[150]

In some states, judges had broad discretion to manumit slaves.[151] In 1833, the Supreme Court of Virginia disregarded the letter of a will to effectuate the presumed manumitting intent of the testator.[152] By 1858, however, the court was less solicitous of the

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L.Q. 269, 274 (1957); *see, e.g.*, Christenson v. Tanner, 980 A.2d 1059, 1061 (Del. Fam. Ct. 2009); Guillebert v. Grenier, 32 So. 238, 238–39 (La. 1902); Merchant v. Merchant, 343 N.W.2d 620, 626 (Mich. Ct. App. 1983); Henry v. Boyd, 473 N.Y.S.2d 892, 896 (App. Div. 1984) (holding that the marriage of a child renders him or her emancipated). In *Christenson*, the court noted that "[c]ase law in several other states supports the common law principle that the marriage of a minor has the effect of emancipating the minor as a matter of law." 980 A.2d at 1062. The court found "that Delaware still follows the common law rule on this issue." *Id.*; *see also* Lawson v. Brown, 349 F. Supp. 203, 207 (D. Va. 1972) (noting that Virginia follows the "general American common law rule that marriage of a minor child, even if not consented to by the parents, emancipates the minor child from his parents"); State v. Clark, 452 A.2d 316, 317 (Conn. Super. Ct. 1982) (holding that the child had married prior to attaining the age of eighteen and had thereby become emancipated under the common law).

147. Town of Craftsbury v. Town of Greensboro, 29 A. 1024, 1025 (Vt. 1894).

148. *Clark*, 452 A.2d at 317–18 (citing Town of Bozrah v. Town of Stonington, 4 Conn. 373, 375 (1822); Kowalski v. Liska, 397 N.E.2d 39, 40 (Ill. App. Ct. 1979); Town of Fremont v. Town of Sandown, 56 N.H. 300, 302 (1876)). Even though Connecticut has a statute governing the subject, the court found that there was "no reason to distinguish between statutory and common-law emancipation." *Id.* at 318.

149. Bryan v. Wadsworth, 18 N.C. (1 Dev. & Bat.) 384, 386 (1835).

150. Thompson v. Newlin, 41 N.C. (6 Ired. Eq.) 380, 385 (1849).

151. Massachusetts juries "would generally side with the slave against the master . . . on questions of manumission[] before the revolution." Orr v. Quimby, 54 N.H. 590, 633 (1874) (Doe, J., dissenting); Finkelman, *supra* note 60, at 92 ("[T]he court freed the slaves because of the judges' humanitarian instincts, even though existing law had to be ignored or rejected.").

152. Elder v. Elder's Ex'r, 31 Va. (4 Leigh) 252 (1833). *But see* Bailey v. Poindexter's Ex'r, 55 Va. (14 Gratt.) 132, 152 (1858) (rejecting *Elder* and holding that when a will leaves emancipation to the slave's option, the slave having no capacity to elect, the provision is void and of no effect); Jones' Adm'r v. Jones' Adm'r, 24 S.E. 255, 256 (Va. 1896) ("[W]e would not consider [*Bailey*] as precluding us from a re-

testator's intention. In *Bailey v. Poindexter's Executor*,[153] it rejected *Elder*'s adherence to the testator's intent because, by that time, a majority of the justices opposed manumission on political grounds. A year later, Mississippi's highest court refused to enforce the intent of a testator with respect to his slaves on purely political grounds.[154] In the 1830 case of *Jordan v. Bradley*, a Georgia court refused to apply, but could have applied, Georgia's anti-manumission law retroactively to a will directing out-of-state manumission.[155] In *Roser v. Marlow*, one of the first manumission cases in Georgia, Judge Charlton created an exception to the Act of 1818 and declared that postmortem manumission was legal if the slaves were taken outside the state.[156]

Children are often manumitted by court order, an act sometimes known as "judicial emancipation," which refers to the "*nonstatutory* termination of certain rights and obligations of the parent-child relationship during the child's minority."[157] In *Everett v. Sherfey*, the Iowa Supreme Court noted that emancipation "was formerly done by the formality of an imaginary sale," but that "[t]his was subsequently abolished, and the simple process of *manumission* before a magistrate, substituted."[158] This "simple process" existed as a matter of common law: "In the *absence of statute*, the rule that now obtains, is, that such emancipation . . . may be proved by direct proof, or from circumstances."[159] Some states, such as California, statutorily require a judicial hearing for the emancipation of minors, which was also required for the emancipation of slaves in Louisiana.[160]

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examination of that question, since [it is] in conflict with the prior decisions of this court during a period of more than 50 years . . . .").

153. *Bailey*, 55 Va. (14 Gratt.) at 428.

154. Mitchell v. Wells, 37 Miss. 235, 243 (1859). *Mitchell* rejected *Hinds v. Brazealle,* 2 Miss. 88 (1838) and *Shaw v. Brown*, 35 Miss. 246 (1858).

155. Jordan v. Bradley, 1 Dudley 170, 171 (Ga. Super. Ct. 1830).

156. Roser v. Marlow, 1 Charlton 542, 548 (1837). In *Sibley v. Maria*, 2 Fla. 553 (1849), the Florida Supreme Court upheld judgment for a slave in an action to establish her right to freedom under a testator's will made in South Carolina. *Id.* at 566.

157. State *ex rel.* R.R. v. C.R., 797 P.2d 459, 462 (Utah Ct. App. 1990) (emphasis added).

158. Everett v. Sherfey, 1 Iowa (1 Clarke) 357, 362 (1855) (emphasis added).

159. *Id.* (emphasis added). The court found that "there was a manumission." *Id.*

160. Matthew Bennett, *Methods of Emancipation: Today's Children, Yesterday's Slaves*, 11 J. CONTEMP. LEGAL ISSUES 632, 634 (1997) ("[A]s with emancipation of minors in California, the statutory emancipation of slaves in Louisiana required a judicial hearing on the matter.").

While the primary method of emancipation for married women has been through legislation, some states allowed judicial manumission for women.[161] In 1948, the Tennessee Supreme Court conceded that the text of the "statute emancipating married women . . . does not expressly authorize her to contract with her husband," but it found that "courts of equity have given full recognition to the right of the wife to contract with her husband with reference to her personal property."[162] In 1974, the court again went beyond statutory law and expressly emancipated women.[163] The court observed, "The fact that Tennessee clings to the common law concept of coverture . . . points up the need for bringing this phase of our law into harmony with modern thinking."[164] Similarly, in 1975, the Supreme Court of Pennsylvania overturned the presumption that a husband owns the household items of the wife, in "light of the 'emancipation of married women over their property' and changing social conditions."[165]

F. Legislative and Constitutional Manumission

Manumission can be granted by an act of the legislature. Most states' Married Women's Property Acts emancipated women from their common law disabilities.[166] In 1871, the Supreme Court of

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161. *See e.g.*, Pendexter v. Pendexter, 363 A.2d 743, 749 (Me. 1976); Hamilton v. Fulkerson, 285 S.W.2d 642, 644 (Mo. 1956) (holding that courts should construe statutes in favor of emancipation of women); DiFlorido v. DiFlorido, 331 A.2d 174, 179 (Pa. 1975); De Feo v. Di Bacco, 60 A.2d 597, 599 (Pa. Super. Ct. 1948) (deciding that acts should be "construed liberally in the direction of freedom of a married woman to contract"); Wick v. Wick, 212 N.W. 787, 789 (Wis. 1927) (Crownhart, J. dissenting) ("This court, with slow and halting step, has finally given to women full emancipation from the restrictions of the common law . . . ."), *abrogated by* Goller v. White, 122 N.W.2d 193 (Wis. 1963). In *Hamilton,* the court explained, "*Irrespective of statutes*, any common-law rule based upon the fiction of the identity of husband and wife . . . should not be applied to any 'first impression' fact situation arising in this state." 285 S.W.2d at 645 (emphasis added).

162. Hull v. Hull Bros. Lumber, 208 S.W.2d 338, 341 (Tenn. 1948) (emphasis added) (referring to the Tennessee Married Women's Emancipation Act).

163. *See* Robinson v. Trousdale County, 516 S.W.2d 626, 632 (Tenn. 1974).

164. *Id.*

165. DiFlorido v. DiFlorido, 459 Pa. 641, 648–51 (1975) (quoting Fine v. Fine, 77 A.2d 436, 437 (Pa. 1951)). The court emphasized that "*this Court* has striven to insure the equality of rights under the law and to eliminate sex as a basis for distinction." *Id.* (emphasis added).

166. *See, e.g.*, People v. Morton, 127 N.Y.S.2d 246, 247 (Kings Cty. Ct. 1954); Hoyt v. Hoyt, 372 S.W.2d 300, 304 (Tenn. 1963) (holding that the Act "fully emancipates a married woman in regard to her property and right to contract"); Scates v. Nailling, 268 S.W.2d 561, 563 (Tenn. 1954) (holding that the disability of

Alabama held that the legislative body could "emancipate the wife from all her disabilities as a *feme covert* at common law."[167] The Supreme Court of Vermont explained in 1973 that "[w]hile statutes designed to remove married women from the disabilities . . . vary greatly in their scope," the Vermont statute "wholly emancipated [a woman] from the condition of thraldom in which she was placed at common law."[168] State constitutional amendments also emancipated married women.[169] In *State v. Herndon*, the Supreme Court of Florida held that the common law rule vesting the ownership of the wife's property in the husband was "abrogated in Florida by the Constitution."[170] In 1975, the Supreme Court of Wisconsin ruled that "the constitutional amendment permitting women to vote . . . emancipated [married women] from the common law rules which held them, in effect, in *bondage* to their husbands."[171]

G. Limitations upon Manumission

Antebellum Southern states placed tighter restrictions on manumission than did border and northern states.[172] Although no

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coverture was removed by Act); Elliott v. Markland, 170 S.W.2d 662, 663 (Tenn. Ct. App. 1942) (deciding principle that marriage amounts to an absolute gift by wife to husband of her personalty did not apply in view of Act); Richard v. Richard, 300 A.2d 637, 641 (Vt. 1973) (holding that the Act wholly emancipated married woman). "Mississippi was one of the first states to emancipate women from the medieval, common-law limitations on their right to own and control property." State v. Hall, 187 So. 2d 861, 871 (Miss. 1966) (Ethridge, C.J., dissenting). The Code of 1871 "manumit[ted] the minor wife, giving her and her husband power to make all settlements with guardians or other persons having her personal estate in their hands." Sledge v. Boone, 57 Miss. 222, 223 (1879) (argument of counsel).

167. Stone v. Gazzam, 46 Ala. 269, 274 (1871).

168. *Richard*, 300 A.2d at 641.

169. *See e.g.*, Green v. Cannady, 57 S.E. 832, 835 (S.C. 1907) (holding that the constitutional provision, which declared that the real and personal property of a woman held at the time of her marriage was her separate property, emancipated women from her common law status); *see also* Burwell v. S.C. Tax Comm'n, 126 S.E. 29, 32–33 (S.C. 1924) ("[U]nder the provisions of the present Constitution . . . a married woman has power to enter into a contract of partnership with her husband.").

170. State v. Herndon, 27 So. 2d 833, 834 (Fla. 1946).

171. Kruzel v. Podell, 226 N.W.2d 458, 464 (Wis. 1975) (emphasis added).

172. The Supreme Court of Arkansas, for instance, held that where the law prescribed a certain manner for manumission, no other could be pursued. Harriet v. Swan, 18 Ark. 495, 503–05 (1857) (holding that the only methods were "1st, by last will and testament[;] 2d, by some other instrument of writing"). South Carolina's Act of 1841 prohibited manumission by will; manumission could only be valid by deed. Willis v. Jolliffee, 32 S.C. Eq. (11 Rich. Eq.) 447, 451–52 (S.C. Ct. App. 1860). The Supreme Court of Alabama also held that slaves could only be made free in the mode

state outright prohibited manumission, some states forbade freed slaves from entering their states.[173] Arkansas and other states, required freed blacks to leave the state or be sold into slavery at public auction.[174]

Georgia,[175] South Carolina, Florida, Alabama,[176] and Tennessee,[177] at some point, enacted statutes that required legislative approval of each individual manumission. In Tennessee,

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provided by statute. Alston v. Coleman, 7 Ala. 795, 797 (1845). In Virginia, masters were strictly limited to the methods prescribed by the Act of 1782, i.e., a will or other written instrument. Thrift v. Hannah, 29 Va. (2 Leigh) 300, 319 (1830) (noting that manumissions must "be exercised by the owners in the manner prescribed by those laws"); *see also* Phoebe v. Boggess, 42 Va. (1 Gratt.) 129, 138 (1844) (argument of counsel that, between 1620 and 1691, slaves were manumitted "at the pleasure of the owner," and that later statutes "limited a preexisting right . . . to emancipate his slave"). The Act of 1782 allowed private manumission "by . . . last will and testament, or by any other instrument in writing." 11 THE STATUTES AT LARGE: BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 39–40 (William W. Hening ed., 1821); *see also* Middlesex County v. Hamilton, 28 Va. Cir. 283, 292 (1992) ("Statutes required that deeds of emancipation be acknowledged in court and then recorded and redelivered to the parties so entitled."). The New Jersey legislature similarly demanded strict conformance with its statutes. The Act of 1769 "declared that all attempts to set slaves free, not conformable to the directions therein laid down, should be '*utterly void, and of none effect*.'" State v. Emmons, 2 N.J.L. 6, 10 (1806) (opinion of Rossell, J.). The same was true for the Act of 1798. *Id.*

173. In 1843, Arkansas barred the further immigration of freed slaves into the state. Campbell v. Campbell, 13 Ark. 513, 521–22 (1853) (holding that the Act of 1843 forbidding re-entry did not repeal, by implication, the act authorizing the manumission of slaves by deed or will and characterizing the 1843 statute as a "measure of self-defense"). Virginia, Florida, North Carolina, Maryland, Tennessee, Texas, and Kentucky required freed slaves to leave the state or, typically, pay a fine or re-enter slavery. *See, e.g.*, Heirs of Bryan v. Dennis, 4 Fla. 445 (1852); Sanders v. Ward, 25 Ga. 109 (1858); Jackson v. Collins, 55 Ky. (16 B. Mon.) 214 (1855); Shue v. Turk, 56 Va. (15 Gratt.) 256 (1859).

174. 1858–59 Ark. Acts 175 (approved Feb. 12, 1859); 1858–59 Ark. Acts 69 (approved Feb. 2, 1859) (prohibiting the emancipation of slaves by deed or will). No other state took the extreme step of expelling all free blacks. Paul Finkelman, *"Let Justice Be Done, Though the Heavens May Fall": The Law of Freedom*, 70 CHI.-KENT L. REV. 325, 333 (1994).

175. Three laws made it illegal to manumit a slave without the permission of the legislature in Georgia. *See* 1859 Ga. Laws. 68 (approved Dec. 14, 1859); DIGEST OF THE LAWS OF THE STATE OF GEORGIA 787, 794 (Oliver H. Prince ed., 2d ed. 1837).

176. *See* Malinda v. Gardner, 24 Ala. 719, 723–24 (1854) (upholding legislative manumission). In *Malinda*, the legislature gave effect to the testator's wishes, passing an act that manumitted slaves Tom, Charity, and their two children. *Id.* at 725.

177. Fisher's Negroes v. Dabbs, 14 Tenn. (6 Yer.) 119, 127 (1834) (holding that assent of the State to a contract between a master and a slave is a matter of public concern).

however, courts held that the master had the power to emancipate his slave without the assent of the State if he removed his slave to a free state.[178] Eventually, Tennessee authorized almost any form of manumission, making it far more favorable to slaves than other southern or border states.[179] For instance, unlike most southern states, slaves could be manumitted in non-slave states and then return to Tennessee as free persons.[180] Texas's manumission laws were also more liberal than those of other southern states.[181]

Maryland's 1796 Act required deeds of manumission to be recorded within six months after the date of the deed.[182] Maryland's stringent recording requirements were strictly enforced by its courts. In 1819, the Maryland Court of Appeals emphasized that "it is the recording of a deed of manumission within the time prescribed by law, which entitles him to his freedom," and thus, the slave "continues a slave . . . until it is so recorded."[183] Alabama placed many limitations on manumissions, hoping to keep the population of free blacks to a minimum. Alabama conditioned manumission for slaves upon the consent of their owners or the State[184] and

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178. *E.g.*, Jane v. Hagen, 29 Tenn. (10 Hum.) 332, 335 (1849); Blackmore v. Phill, 15 Tenn. (7 Yer.) 451, 465–66 (1835).

179. *See, e.g.*, Andrews v. Page, 50 Tenn. (3 Heisk.) 653, 670 (1870) (granting freedom from parol contract); McCloud v. Chiles, 41 Tenn. (1 Cold.) 248, 250–51 (1860) (upholding a contract in writing); Isaac v. Farnsworth, 40 Tenn. (3 Head) 275, 279 (1859) (upholding a deed granting freedom); Lewis v. Daniel, 29 Tenn. (10 Hum.) 305, 314–15 (1849) (upholding a will by operation of law); *see also* Abram v. Johnson, 38 Tenn. (1 Head) 120, 121 (1858) ("No deed, or writing of any kind, was necessary at the common law for the purpose of parting with the master's right. Acts *in pais*, from which freedom might be implied, have been held sufficient."). Most southern states refused to uphold manumissions by parol or implied manumissions, but Tennessee allowed both. *See* Lewis v. Simonton, 27 Tenn. (8 Hum.) 185, 189 (1847) ("By the *common law*, the master by his own act might manumit his slave by parol, and that manumission would even be implied from the acts and conduct of the master." (emphasis added)).

180. *Blackmore*, 15 Tenn. (7 Yer.) at 464.

181. Guess v. Lubbock, 5 Tex. 535, 550 (1851). By the 1860s, however, Texas limited the right to manumit slaves. Hunt v. White, 24 Tex. 643, 648–49 (1860) ("[T]here cannot be, in this state, an implied manumission of a slave, in any of the modes known to the civil law, or the laws of those states where manumission may be effected without . . . legal formalities . . . .").

182. Wicks v. Chew, 4 H. & J. 543, 545 (Md. 1819) (citing 1796 Md. Laws 62). The legislature, in 1834, passed a law providing that when slave owners recorded the deed of manumission, it was as valid and effectual as if the owner had duly recorded it within the time required by law. *See* Wright v. Rogers, 9 G. & J. 181, 192 (Md. 1837) (holding the act void as an unconstitutional taking of a person's property).

183. *Wicks*, 4 H. & J. at 547.

184. *See* Malinda v. Gardner, 24 Ala. 719, 725 (1854) (holding that the Alabama Constitution prohibited the manumission of slaves without their owners' consent, but

eventually prohibited testamentary manumissions altogether.[185] Numerous states placed such conditions on manumissions as the posting of a bond, ostensibly to prevent the newly freed slaves from becoming a burden on society.[186]

Limitations were also placed on who could manumit a slave. For instance, an 1813 New York case held that a manumission of a slave by an infant, though done with the consent of his guardian, was voidable.[187] Although Tennessee approved many methods of manumission, the act usually was not complete until a court approved it, but if a master failed to file a manumission petition, any legally competent person could do so.[188]

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where "the Legislature regarded the slaves as the property of the State, [then] in the capacity of owner" the State could emancipate them).

185. Under the Act of 1834, any attempt at manumission by will was illegal. Evans v. Kittrell, 33 Ala. 449, 453 (1859) (holding "slaves cannot be emancipated in this State by will" and "[t]he same rule must exist . . . in every attempt to emancipate slaves in this State by private contract" (quoting Trotter v. Blocker, 6 Port. 269, 269 (Ala. 1837))); *accord* Pool v. Harrison, 18 Ala. 514, 518 (1850); Welch's Heirs v. Welch's Adm'r, 14 Ala. 76, 82–83 (1848); Alston v. Coleman, 7 Ala. 795, 796–97 (1845).

186. Wiecek, *supra* note 53, at 1786. North Carolina, Tennessee, Kentucky, and Florida required masters to post a bond in case the manumitted slave became impoverished. *See, e.g.*, Heirs of Bryan v. Dennis, 4 Fla. 445, 454–55 (1852); Black v. Meaux, 34 Ky. (4 Dana) 188, 189 (1836). Other legislatures forbade freeing old or sick slaves or required the master to post a bond. *See* 3 THE STATUTES AT LARGE: BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619, at 86–88 (William W. Hening ed., 1821). Delaware's statutes and Maryland's Acts of 1796 and 1831 limited manumissions to slaves who were of a certain age and were capable of earning a livelihood. *See* Le Grand v. Darnall, 27 U.S. 664, 668–70 (1829) (holding that Darnall, although only eleven years old, was entitled to his freedom because the act did not apply to him, as witnesses from the community vouched for him); Wigle v. Kirby's Ex'r, 29 F. Cas. (3 Cranch) 1179, 1180 (C.C.D.C. 1829) (No. 17,631). In 1748, Virginia "passed a law to prevent the manumission of slaves, except for meritorious services . . . ." Pleasants v. Pleasants, 6 Va. (2 Call) 319, 346–47 (1800) (Carrington, J., concurring). Similarly, Louisiana's Act of 1807 added the requirement that slaves demonstrate "honest conduct" for four years prior to the manumission. Schafer, *supra* note 13, at 414. Running away or committing a criminal act "automatically disqualified a slave for manumission." *Id.* The Act of 1807 imposed a $100 fine if slave owners did not meet the prescribed requirements. *Id.*

187. Ex'rs of Rogers v. Berry, 10 Johns. 132, 133 (N.Y. Sup. Ct. 1813) ("The sale, gift and actual delivery of a chattel, by an infant, is voidable.").

188. See Lewis v. Simonton, 27 Tenn. (8 Hum.) 185, 190 (1847) ("The matter as to the person by whom the application shall be made, whether the former owner . . . [or] merely of next friend, is regarded as mere form . . . .").

While certainly less onerous than the laws placed on slaves, some states have imposed restrictions on manumitting minors. For instance, some statutes impose an age requirement on emancipation.[189] In some states, the emancipation of minors is governed by the common law.[190] Other states, such as Wyoming, recognize "both statutory and common law emancipation."[191]

IV. SUBSTANTIVE EFFECT OF MANUMISSION ON DIFFERENT CLASSES

As discussed above, manumission can be accomplished through different methods in the United States. The practical effect of the manumission is ultimately the same, however. The Supreme Judicial Court of Maine recognized this in *Gardiner v. Farmingdale*,[192] when it explained: "[i]t is well settled . . . that married women, infants, slaves, and others in like condition, cannot,

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189. For example, emancipation under the California Code imposes an age requirement. Matthew Bennett, *Methods of Emancipation: Today's Children, Yesterday's Slaves*, 11 J. CONTEMP. LEGAL ISSUES 632, 632–33 (2000). California requires that the minor be at least fourteen to be eligible for emancipation. *Id.* at 633. *But see In re* Sonnenberg, 99 N.W.2d 444, 448 (Minn. 1959) (holding there was no reason "why a child of tender age may not be emancipated").

190. *See, e.g.*, Ison v. Fla. Sanitarium & Benevolent Ass'n, 302 So. 2d 200, 201 (Fla. Dist. Ct. App. 1974) ("The Florida law has rather consistently held that a common law emancipation may be effected between parties notwithstanding non-compliance with the *statutory* means of securing emancipation . . . .") (emphasis in original) (citations omitted); Fla. Bd. of Regents of the Dep't of Educ., Div. of Univs. v. Harris, 338 So. 2d 215, 217 (Fla. Dist. Ct. App. 1976) (holding that the disability of non-age had been removed by "common law emancipation"). Similarly, it has been held that Connecticut's emancipation statute "in no way deprives families of the benefits, or detriments, available to them . . . under the doctrine of *common law emancipation*." Town v. Anonymous, 467 A.2d 687, 689 (Conn. Super. Ct. 1983) (emphasis added) (holding that a pregnant minor was emancipated under the common law). In *Jackson v. Jackson*, No. 305041J, 1992 WL 229156, at *2 (Conn. Super. Ct. Aug. 28, 1992), the court held that "Elaine Jackson became emancipated under the common law . . . when she moved out of her parents' residence." The court made clear that, although "[n]either Elaine Jackson nor her parents invoked [the] statutory procedure, . . . such procedure 'does not affect the common law rules of emancipation.'" *Id.* (quoting Mills v. Theriault, 499 A.2d 89, 90 (Conn. Super. Ct. 1985)); *see also Mills*, 499 A.2d at 90 ("The general rule at common law in this state is that '[a] minor is emancipated if placed in a new relation inconsistent with the former relation as part of his parent's family' . . . ." (alteration in original) (quoting Wood v. Wood, 63 A.2d 586, 587 (Conn. 1985); Plainville v. Milford, 177 A. 138, 140 (Conn. 1935))).

191. Garver v. Garver, 981 P.2d 471, 474 (Wyo. 1999). "In Wyoming, emancipation is recognized under both statutory and common law." McElwain v. McElwain, 123 P.3d 558, 562 (Wyo. 2005).

192. Inhabitants of Gardiner v. Inhabitants of Farmingdale, 45 Me. 537, 539 (1858).

unless emancipated, gain a settlement in their own right, by a residence separate from their husbands, parents or masters." The court observed that "such persons while in that subordinate condition . . . are supposed to have no will . . . and their legal residence follows that of their superiors."[193] However, the law was equally "well settled that a minor, who has been emancipated, may acquire a legal settlement in his own right."[194] The court applied this same conclusion to slaves[195] and to persons who are *non compos mentis*.[196] In short, manumission confers self-ownership. But the analysis does not end there. A legal person may be entitled to some rights but not others. The substantive effect of manumission on different classes of persons is discussed below.

A. The Effect of Manumission on Human Slaves

Human slaves in the United States were considered mere chattel. They could not sue or be sued, enter into contracts, marry, or, with few exceptions, own property.[197] Manumission, as described by the Maryland Court of Appeals, "conferr[ed] on such slave the identical rights, interests and benefits which would pass, if the testator had bequeathed the same slave to another person."[198] Likewise, the Supreme Court of Pennsylvania explained that "[t]he effect of . . . manumission is to give to the colored man the right to acquire, possess and dispose of lands and goods, as fully as the white man enjoys these rights."[199] The Louisiana Supreme Court similarly held that manumission "gives to the slave his civil rights."[200]

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193. *Id.* at 539–40 (citing Inhabitants of Hallowell v. Inhabitants of Gardiner, 1 Me. 93 (1820)).

194. *Id.* at 540 (citing Inhabitants of Oldtown v. Inhabitants of Falmouth, 40 Me. 106 (1855); Inhabitants of Lubec v. Inhabitants of Eastport, 3 Me. 220 (1824)).

195. *Id.* (citing Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. (3 Tyng) 123 (1808)).

196. *Id.*

197. MEIER & RUDWICK, *supra* note 163, at 60; Chase, *supra* note 73, at 23; *see also, e.g.*, Gist v. Toohey, 31 S.C.L. (2 Rich.) 424, 425–26 (S.C. Ct. App. 1846) (holding that an executory contract made with a slave who was not acting as an agent for his master failed to create a right of action for either party); 38 C.J.S. *Marriage* § 25 (1925) (stating that slave marriages were voidable).

198. Spencer v. Dennis, 8 Gill 314, 320 (Md. 1849) (quoting State v. Dorsey, 6 Gill 388, 390 (Md. 1848)).

199. Foremans v. Tamm, 1 Grant 23, 25 (Pa. 1853). The court reasoned, "it would be a mockery to tell him he is a 'free man,' if he be not allowed the necessary means of sustaining life." *Id.*

200. Pierre v. Fontenette, 25 La. Ann. 617, 617–18 (1873).

B. The Effect of Manumission on Minors

The primary effect of manumission on a child is similar to its effect on a slave—self-ownership. "'Emancipation' is the act by which he who is not free . . . is set at liberty, and made his own master. In the case of a minor child emancipation is the release of the child from his duty to serve the parent."[201]

A manumitted minor is transformed from a child to a legal adult.[202] In 1855, the Supreme Court of Iowa explained that by manumission, a father "sets the son free from his subjection, and *gives him the capacity* of managing his own affairs, as if he was of age."[203] In 2005, a Missouri court explained, "[u]nder the common law," emancipation is "the freeing of a child for all the period of its minority . . . *conferring* on the child the *right* to its own earnings."[204] Manumission also grants the child the right to acquire a domicile or a settlement separate from his parents.[205]

Manumission further allows children to manage and own their own property. In *Stanley v. National Union Bank*,[206] the validity of debts turned on the question of "whether a parent has power to manumit an infant child and vest her with authority to acquire property and possess the same in her own right." The New York Court of Appeals held that it was well-settled "that a parent may emancipate an infant child and *confer a right upon* [the child] to acquire property and possess it as against all persons

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201. Patek v. Plankinton Packing Co., 190 N.W. 920, 922–23 (Wis. 1923) (quoting jury instructions); *accord* Green v. Green, 447 N.E.2d 605, 609 (Ind. Ct. App. 1983); Wulff v. Wulff, 500 N.W.2d 845, 850 (Neb. 1993) (holding that emancipation "means the freeing of the child . . . from the care, custody, control, and service of its parents" (quoting Wadoz v. United Nat'l Indem. Co., 80 N.W.2d 262, 265 (Wis. 1957))); Niesen v. Niesen, 197 N.W.2d 660, 663 (Wis. 1968).

202. "Emancipation works a severance of the filial relation as completely as if the child were of age." Iroquois Iron Co. v. Indus. Comm'n, 128 N.E. 289, 290 (Ill. 1920).

203. Everett v. Sherfey, 1 Iowa (1 Clarke) 357, 361–62 (1855) (emphasis added).

204. Scruggs v. Scruggs, 161 S.W.3d 383, 389 (Mo. Ct. App. 2005) (emphasis added) (citing Randolph v. Randolph, 8 S.W.3d 160, 164 (Mo. Ct. App. 1999)); *see In re* Marriage of Heddy, 535 S.W.2d 276, 279 (Mo. Ct. App. 1976)).

205. *See* Woolridge v. McKenna, 8 F. 650, 682 (C.C.W.D. Tenn. 1881) ("[T]he right of emancipation so as to change the child's domicile in the matter of parish settlements . . . seems established [at common law]."). "[T]he doctrine, that a minor emancipated may gain a settlement independent of the parent . . . has been recognized and settled by a long and unbroken series of cases." Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78, 85–86 (1876) (collecting cases).

206. Stanley v. Nat'l Union Bank, 22 N.E. 29, 31 (N.Y. 1889).

whatsoever."[207] In 1912, the Supreme Court of Michigan reasoned that it was not necessary, in proceedings "brought to collect the wages of minors, for a next friend to be appointed where the minors have been *manumitted*."[208]

While emancipation of children is regulated by statute in a few states, most states regard it as part of the common law.[209] Ohio,[210] Pennsylvania,[211] New York,[212] Minnesota,[213] Utah,[214] Kansas[215] and

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207. *Id.* (emphasis added); *see also* Nassen v. Anfenson, 163 N.W. 577, 578 (Iowa 1917) (holding that a minor reaches majority at age fourteen for the purpose of selecting a guardian of the property and that the statute "worked a limited manumission" for a minor over fourteen who selects a guardian).

208. Craig v. Brown, 137 N.W. 126, 127 (Mich. 1912) (emphasis added). "Neither these minors nor their parents who had manumitted them could repudiate their action in designating plaintiff to collect the wages . . . ." *Id.*

209. *See, e.g.*, Lawson v. Brown, 349 F. Supp. 203, 207 (D.C. Va. 1972); *In re* Marriage of Taylor, 175 Cal. Rptr. 716, 719 (Cal. Ct. App. 1981); *In re* Antina B., 1997 WL 112785, at *2 (Conn. Super. Ct. Jan. 21, 1997); Mills v. Theriault, 499 A.2d 89, 90 (Conn. Super. Ct. 1985) ("Emancipation of minors in Connecticut derives both from statute and common law."); Ison v. Fla. Sanitarium & Benevolent Ass'n, 302 So. 2d 200, 201 (Fla. Dist. Ct. App. 1974); *In re* Marriage of George, 988 P.2d 251, 253 (Kan. Ct. App. 1999) (recognizing emancipation under common law); *In re* Sonnenberg, 99 N.W.2d 444, 447 (Minn. 1959); Ross v. Pa. Dep't of Pub. Welfare, 431 A.2d 1135, 1138 (Pa. Commw. Ct. 1981); State *ex rel*. R.R. v. C.R., 797 P.2d 459, 462 (Utah Ct. App. 1990) (holding that common law doctrine of emancipation is part of Utah law); Town of Poultney v. Town of Glover, 23 Vt. 328, 331 (1851); Garver v. Garver, 981 P.2d 471, 474 (Wyo. 1999) ("Wyoming law recognizes both statutory and common law emancipation."). Although "undeveloped at English common law," the doctrine of "emancipation has been described as a 'basic tenet of family law' . . . , applied by American courts since the early nineteenth century." *State ex rel. R.R.*, 797 P.2d at 462. A Delaware court explained in 1999, "There is legal precedent for the Delaware courts . . . to consider emancipation both as a defense and as a unique cause of action. Emancipation has been recognized by Delaware Courts since the later 1800s." S.L. v. A.L., 735 A.2d 433, 441 (Del. Fam. Ct. 1999) (citing Bowring v. Wilmington Malleable Iron Co., 67 A. 160 (Del. Super. Ct. 1907); Wilkins v. Wilson, 41 A. 76 (Del. Super. Ct. 1895); Farrell v. Farrell, 8 Del. (3 Houst.) 633 (Del Super. Ct. 1868)).

210. *See* Livingston v. Livingston, No. 855, 1975 WL 182220, at *1 (Ohio Ct. App. Aug. 20, 1975) (finding "insufficient evidence to support what may be described as a common law emancipation").

211. *Ross*, 431 A.2d at 1138 (citing Detweiler v. Detweiler, 57 A.2d 426 (1948)) ("At common law, a minor is emancipated when there is a severing of the filial tie . . . .").

212. Henry v. Boyd, 473 N.Y.S.2d 892, 896 (App. Div. 1984).

213. *Sonnenberg*, 99 N.W.2d at 447; Lufkin v. Harvey, 154 N.W. 1097, 1098 (Minn. 1915).

214. *State ex rel*. R.R., 797 P.2d at 462 (holding that common law emancipation is part of Utah common law).

215. "In Kansas, we have recognized constructive emancipation under the common law." *George*, 988 P.2d at 253 (citing Longhofer v. Herbel, 111 P. 483 (Kan. 1910); Lewis v. Mo., Kan. & Tex. Ry., 108 P. 95 (Kan. 1910)).

Vermont[216] all explicitly recognize "common law emancipation." The Supreme Court of Vermont upheld the "common law doctrine of emancipation" against the argument that "the doctrine of emancipation should be repudiated."[217] Courts in New York,[218] Washington,[219] Illinois,[220] West Virginia,[221] Michigan,[222] Iowa,[223] Ohio,[224] Delaware,[225] Pennsylvania,[226] Georgia,[227] Kentucky,[228] and

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216. Town of Poultney v. Town of Glover, 23 Vt. 328, 331 (1851) (ruling that a child, upon arriving at full age, would be prima facie emancipated).

217. *Id.* The court found "[n]o authorities" to "sustain this proposition." *Id.* (citing Inhabitants of Springfield v. Inhabitants of Wilbraham, 4 Mass. 493 (1808)).

218. Stanley v. Nat'l Union Bank, 22 N.E. 29, 31 (N.Y. 1889); Fort v. Gooding, 9 Barb. 371, 375 (N.Y. Gen. Term 1850) ("The father, without any consideration as between him and his child, can manumit his child . . . ."); *see also* Shoemaker v. Hastings, 61 How. Pr. 79, 81 (N.Y. Gen. Term 1881) ("Although one of the plaintiffs was then under twenty-one years of age, he had been manumitted by the father . . . .").

219. Dean v. Or. R.R. & Nav., 87 P. 824, 825 (Wash. 1906).

220. Lockerby v. O'Gara Coal Co., 147 Ill. App. 311, 313 (1909) (determining "whether or not there were facts tending to show the manumission of Ado by his father"); Kooser v. Housh, 78 Ill. App. 98, 100 (1898) ("The evidence fail[ed] to show manumission by the father . . . .").

221. Adkins v. Hope Eng'g & Supply Co., 94 S.E. 506, 507 (W. Va. 1917) (ruling that, under the common law, the father ordinarily had the right to the control and custody of his children "unless sooner manumitted by him").

222. Craig v. Brown, 137 N.W. 126, 127 (Mich. 1912) (noting that the "infants . . . had been manumitted by their parents"); Baker v. Flint & Pere Marquette R.R., 51 N.W. 897, 899 (Mich. 1892) ("If the case here had been for the earnings of the minor son," and it appeared that the son "had recovered the value of his wages . . . with the consent of the father," that fact would be "tantamount to *manumission of the infant* . . . and the father would be estopped from recovery of the same wages." (emphasis added)); Bell v. Bumpus, 29 N.W. 862, 863 (Mich. 1886) (holding that the evidence was conclusive that the father manumitted the daughter and that the she alone was entitled to her wages).

223. Nassen v. Anfenson, 163 N.W. 577, 578 (Iowa 1917).

224. Bowe v. Bowe, 26 Ohio C.C. 409, 414 (1903) (noting that a minor could not be liable to his mother "unless he had been manumitted or there was some contract between them which was shown").

225. Bowring v. Wilmington Malleable Iron Co., 67 A. 160, 163 (Del. Super Ct. 1907) ("If the case here had been for the earnings of the minor son . . . the father acting as his next friend, he had recovered the value of his wages with the consent of his father, that fact would be held tantamount to *manumission of the infant* as far as that suit was concerned, and the father would be estopped from recovery of the same wages." (emphasis added) (quoting *Baker*, 51 N.W. at 899)).

226. *See, e.g.*, Irvine v. Killen, 165 A. 528, 528 (Pa. Super. Ct. 1933) ("If the defendant's minor son in this case had been so far manumitted that he received and kept his own wages, . . . liability would not have attached . . . ."); *see also* Gosh v. Lehigh & Wilkes-Barre Coal Co., 68 Pa. Super. 63, 72 (1917) (noting "[t]he intention of a manumitted son").

227. "Ordinarily the presumption is that the father is entitled to the earnings of his son; and this presumption must be overcome by proof of a manumission." Evans

North Carolina[229] all expressly recognize manumission for minors. In Illinois, "a minor may become emancipated based on statute or common law."[230] Similarly, "Florida law has rather consistently held that common law emancipation may be effected between parties notwithstanding non-compliance with the Statutory means of securing emancipation."[231]

C. The Effect of Manumission on Married Women

The status of "wife" under feudal law was "for many purposes indistinguishable from her husband's chattels."[232] Under the common law, the "husband was considered the lord and master of his wife," and thus "all personalty acquired by her during marriage belonged to her husband, while that acquired by the husband was solely his."[233] As chattel, a wife "could act only through her husband or next friend."[234] As one court explained:

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v. Caldwell, 184 S.E. 440, 446 (Ga. Ct. App. 1935); *id.* ("Allowing a son to receive the proceeds of his own labor amounts to emancipation."); *accord* Irby v. State, 196 S.E. 101, 102 (Ga. Ct. App. 1938); Spivey v. Lovett, 172 S.E. 658, 658 (Ga. Ct. App. 1934).

228. "When the father loses by *manumission* the right to control the services of his son, . . . he also loses the right to recover from the person in whose service his son was engaged . . . ." Chesapeake & Ohio Ry. v. De Atley, 151 S.W. 363, 365 (Ky. 1912) (emphasis added) (citing Rounds Bros. v. McDaniel, 118 S.W. 956 (Ky. 1909)).

229. Shipp v. United Stage Lines, 135 S.E. 339, 341 (N.C. 1926); *see also* Hurt v. W. Carolina Power Co., 140 S.E. 730, 731 (N.C. 1927) ("The father is entitled to the services and earnings of his minor child so long as the latter is . . . not manumitted."). North Carolina also recognized common law emancipation of minors. 3 LEE'S NORTH CAROLINA FAMILY LAW § 233 (5th ed. 2015); *see also* Gillikin v. Burbage, 139 S.E.2d 753, 757 (1965) (finding common law emancipation when a parent surrendered "all right to the services and earnings of the child"); Holland v. Hartley, 88 S.E. 507, 507–08 (N.C. 1916). But the common law was superseded by N.C. GEN. STAT. § 7B-3509 (1979) ("All other common-law provisions for emancipation are superseded by this Article."). *But see* Bolkhir v. N.C. State Univ., 365 S.E.2d 898, 902 (1988) (using common law emancipation terminology).

230. *In re* Marriage of Baumgartner, 930 N.E.2d 1024, 1030 (Ill. 2010) (footnote omitted); *see* 750 ILL. COMP. STAT. ANN. 30/2 (West 2008). Likewise, the emancipation of minors in Connecticut "derives both from statute and common law." Mills v. Theriault, 499 A.2d 89, 90 (Conn. Super. Ct. 1985).

231. Ison v. Fla. Sanitarium & Benevolent Ass'n, 302 So. 2d 200, 201 (Fla. Dist. Ct. App. 1974) (citing, *inter alia*, Jackson v. Citizens' Bank & Tr. Co., 44. So. 516, 530 (Fla. 1906)).

232. R.W. Baker, *Consortium and the Alleged Emancipation of the Married Woman*, 2 U.W. AUSTL. ANN. L. REV. 80, 80 (1953). Indeed, in an action for assault and battery on his wife, the husband brought an action of trespass. *See* Smith v. Hixon (1734) 93 Eng. Rep. 977; Guy v. Livesey (1618) 79 Eng. Rep. 428. Trespass lay "because the husband had a property interest in his wife." Baker, *supra*; *see* Barham v. Dennis (1600) 78 Eng. Rep. 1001.

233. DiFlorido v. DiFlorido, 331 A.2d 174, 178 n.9 (Pa. 1975); *accord* Du Pont v.

> She could not contract on her own count, she lost control over her real property during the existence of the marital relationship, the title to personal property was forfeited, a husband had the right to control his wife's conduct and any wages that she earned outside the home could be appropriated by him.[235]

Beginning in the 1840s, state legislatures began to pass Married Women's Property Acts designed to make "the law . . . recogni[z]e that a married woman's status is one of mutuality and equality with her husband."[236] These acts allowed married women to control their own property and to protect it from their husbands.[237] The Supreme Court of Arizona stated that "the effect of the married women's laws [was to] emancipat[e] her from the common-law *slavery*."[238] The Supreme Court of Virginia noted that the married woman had "secured an *emancipation* from the *legal bondage* of the common law."[239] And the Supreme Court of Missouri found that the goal of the "emancipation of married woman" was to free her "from the shackles by which she was fettered at common law."[240]

In 1908, the Supreme Court of Colorado held that, upon emancipation, the married woman is "vested with absolute control

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Du Pont, 98 A.2d 493, 494 (Del. Ch. 1953).

234. Liggett v. Liggett's Estate, 3 Ohio N.P. (n.s.) 518, 523 (Prob. Ct. 1905).

235. State *ex rel.* Hundley v. McCune, 27 Ohio N.P. (n.s.) 77, 81 (Ct. Com. Pl. 1928). In *Lyzen v. Lyzen*, 191 N.W. 6 (Mich. 1922), the Supreme Court of Michigan held that "in the absence of *manumission*, the wife's services belong to the husband." *Id.* at 7 (emphasis added).

236. Baker, *supra* note 233, at 93. Her "emancipation" elevated her "from a position of inferiority and dependence." *Id.*

237. Richard H. Chused, *Married Women's Property Law: 1800–1850*, 71 GEO. L. J. 1359, 1359 (1983).

238. Hageman v. Vanderdoes, 138 P. 1053, 1059 (Ariz. 1914) (emphasis added); *see also* Austin v. Austin, 100 So. 591, 592 (Miss. 1924) ("Our Constitution and statutes . . . emancipate her from the common-law *slavery* to her husband." (emphasis added)).

239. Sutherland v. Commonwealth, 198 S.E. 452, 456 (Va. 1938); *see also* Commonwealth v. Rutherfoord, 169 S.E. 909, 912 (Va. 1933) (holding that an "incident of her emancipation from the bondage of the common law" was "a recognition of her status as that of one who is *sui juris*"). An Ohio judge observed that "the trend" was "toward *emancipation* of married women from the common law rules of *bondage* . . . to that of being accorded the right to contract with her husband and others, to own property . . . and to have the right of franchise." State *ex rel.* Krupa v. Green, 177 N.E.2d 616, 623 (Ohio Ct. App. 1961) (Skeel, J., concurring) (emphasis added).

240. Farmers' Exch. Bank v. Hageluken, 65 S.W. 728, 729 (Mo. 1901); *see also* Heitz v. Bridge, 39 A.2d 287, 288 (Pa. Super. Ct. 1944) (noting the same).

and dominion over her property and her person."[241] Emancipation ultimately transferred personhood rights to married women:

> She may sue and be sued . . . ; she may engage in business on her own account; she may sell and convey her property . . . her property is not liable for her husband's debts; she is entitled to the earnings of her labor; she may execute any bond, bill or promissory note, and may contract debts in her own name.[242]

D. The Effect of Manumission on Mentally Incapacitated Individuals

Married women, children, slaves,[243] Jews,[244] and mentally

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241. Schuler v. Henry, 94 P. 360, 361 (Colo. 1908).

242. *Id.* Emancipation also put women on a status equal to men in terms of child support. Hoover v. Hoover, 30 N.E.2d 940, 946 (Ill. App. Ct. 1940) ("[S]ince the emancipation of the wife by law, . . . she is held legally responsible for the support of their minor children equally with her husband . . . ."). Likewise, the "husband is no longer entitled to the exclusive possession of the children." *Schuler*, 94 P. at 361; *see also* Garver v. Thoman, 135 P. 724, 727 (Ariz. 1913) (disagreeing with the contention that "Elizabeth Thoman, being a married woman, was incapable of contracting her services" because "[m]arried women have been emancipated in Arizona"); Musselman v. Galligher, 32 Iowa 383, 384–85 (1871) (stating that "[a]t the common law, a married woman was incapable of binding herself by contract," but manumission gives the wife the "right to sue and be sued"); Brown v. Gosser, 262 S.W.2d 480, 484 (Ky. 1953) ("[A] married woman may [now] sue and be sued as a single woman."); De Feo v. Di Bacco, 60 A.2d 597, 598–99 (Pa. Super Ct. 1948) (holding similarly); McClain v. Holder, 279 S.W.2d 105, 107 (Tex. Civ. App. 1955) (holding that, upon emancipation, "the rights of married women to contract and acquire property stand upon the same footing as those of married men"); Heagy v. Kastner, 138 S.W. 788, 788–89 (Tex. Civ. App. 1911) (holding that, upon manumission, "[s]he may enter into contracts, and the right to make them carries with it the right to enforce them without joining the recreant husband").

243. *Compare* Town of East Hartford v. Pitkin, 8 Conn. 393, 395–96 (1831) (recognizing slaves as property), *and* Town of Columbia v. Williams, 3 Conn. 467, 470 (1820) (same), *with* Jackson v. Bulloch, 12 Conn. 38, 40 (1837) (noting that "slavery is contrary to the principles of natural right" and thus that slaves are free), *and* Somerset v. Stewart (1772) 98 Eng. Rep. 499, 510; 1 Lofft 1, 19 (finding that slavery is "so odious that nothing can be suffered to support it but positive law"). *See generally* David Menschel, *Abolition Without Deliverance: The Law of Connecticut Slavery 1784–1848*, 111 YALE L.J. 183, 185–87 (2001) (exploring the gradual process of abolition in Connecticut law). In *Pitkin*, Judges Daggett, Hosmer, and Peters "showed little or no moral outrage while deciding a technical financial issue concerning a particular slave, while the two newer judges appointed in 1829, Williams and Clark Bissell, expressed their moral outrage in dissent." Wesley W. Horton, *The Pre-Civil War Connecticut Supreme Court*, 34 CONN. L. REV. 1209, 1210 (2002).

244. R.A. Routledge, *The Legal Status of the Jews in England*, 3 J. LEGAL HIST.

incapacitated humans have been deemed mere "things" under the law.[245] As it does with children, manumission transfers personhood rights to the *non compos mentis*.[246] In *Overseers of the Poor v. Overseers of Selinsgrov*e,[247] the Pennsylvania Supreme Court posited that an "insane adult child, as to emancipation, stands in the same position as a minor child." In *Town of Tunbridge v. Town of Eden*, for example, the Supreme Court of Vermont held that a *non compos mentis* pauper was emancipated by virtue of being given away at the age of eighteen months.[248]

Maine has repeatedly recognized that mentally incapacitated human beings may be emancipated and thereby gain certain legal rights.[249] In *Inhabitants of Gardiner v. Inhabitants of Farmingdale*, the Supreme Judicial Court of Maine found that a minor who had been *non compos mentis* since birth could gain a settlement in her own right because she "had been *emancipated* by the death of both her parents."[250] Similarly, in *Monroe v. Jackson*,[251] the Supreme Judicial Court reiterated that various Maine decisions had held that persons *non compos mentis* may be "*emancipated* by the death or desertion of the parent" and, upon manumission, "gain a settlement in their own right."[252]

91, 93–94, 98, 103 (1982) (demonstrating that, at least during the thirteenth century, the Jews were the chattel of the King).

245. Ralph Slovenko & Elliot Luby, *On the Emancipation of Mental Patients*, 3 J. PSYCHIATRY & L. 191, 193 (1975); George S. Swan, *A New Emancipation: Toward an End to Involuntary Civil Commitments*, 48 NOTRE DAME L. REV. 1334, 1354 (1973).

246. "*Non compos mentis*" is Latin for "not master of one's mind." *Non Compos Mentis*, BLACK'S LAW DICTIONARY (10th ed. 2014).

247. Overseers of the Poor v. Overseers of Selinsgrove, 4 A. 374, 374 (Pa. 1886) (holding that the settlement of an insane pauper was ordinarily that of her father at the time of her emancipation).

248. Town of Tunbridge v. Town of Eden, 39 Vt. 17, 24 (1866).

249. Inhabitants of West Gardiner v. Inhabitants of Manchester, 72 Me. 509, 511 (1881).

250. Inhabitants of Gardiner v. Inhabitants of Farmingdale, 45 Me. 537, 539 (1858) (emphasis added). The law was "well settled," however, "that a minor, who has been *emancipated*, may acquire a legal settlement in his own right." *Id.* at 540 (emphasis added). "So, too, of slaves." *Id.* (citing Inhabitants of Winchendon v. Inhabitants of Hatfield, 4 Mass. (3 Tyng) 123 (1808)). "The same rule is applicable to persons *non compos mentis*." *Id.*

251. Inhabitants of Monroe v. Inhabitants of Jackson, 55 Me. 55, 58 (1867).

252. *Id.* (emphasis added); *see also* Town of Plymouth v. Town of Waterbury, 31 Conn. 515, 517 (1863) (citing *Gardiner*, 45 Me. at 537); Inhabitants of Friendship v. Inhabitants of Bristol, 170 A. 496, 497 (Me. 1934) ("A person *non compos*, of age and emancipated, can acquire a pauper settlement in his own right."); *West Gardiner*, 72 Me. at 511 (citing Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78 (1876)) (holding, as to an "insane pauper" emancipated during her minority, that it was "clearly established" that "she was emancipated"); Inhabitants of Corinth v.

V. MANUMISSION REMAINS VIABLE IN THE UNITED STATES

Manumission, being inherent in any system of slavery, is imbedded into the common law and continues to be an available remedy to owners of living chattel. The right to manumit a slave "arises from the power of the owner of property to renounce his right to him [and] requires no permission or sanction to give it validity and effect."[253]

Since the passage of the Thirteenth Amendment,[254] however, the statutes that placed restrictions on manumission are no longer in effect.[255] As the Supreme Judicial Court of Massachusetts declared, "As between master and slave, it would require the most explicit prohibition by law to restrain the right of manumission."[256] No such statute exists in any state.

In *Atwood's Heirs*,[257] the court held that under the common law "the right of manumission does exist, and is deducible not only from the absolute ownership of the master in the slave as a chattel, but from analogous rules applicable to slavery as it has obtained in every civilized country." In another Alabama case, it was said that even absent legislative acts, "it was permissible at common law, for the owner to set at liberty his slaves."[258] The "comm[on] law right of emancipation was, . . . abundantly proven, by the history of the prohibitory legislation of Virginia, North Carolina, and our statute."[259] The court could not "see how, by any legitimate mode of construction, that statute abrogated that right."[260]

Manumission has never been limited to slaves, but has been applied to infants, married women, mentally and physically disabled

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Inhabitants of Bradley, 51 Me. 540, 542 (1863) (finding the *non compos mentis* person emancipated and entitled to a new settlement).

253. COBB, *supra* note 10, at 279.

254. "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction. Congress shall have power to enforce this article by appropriate legislation." U.S. CONST. amend. XIII, §§ 1, 2.

255. For instance, prior to Virginia's Act of 1782, the "common law govern[ed] an owner's right to manumit his slaves" in Virginia. A. Leon Higginbotham, Jr. & F. Michael Higginbotham, *"Yearning to Breathe Free": Legal Barriers Against and Options in Favor of Liberty in Antebellum Virginia*, 68 N.Y.U. L. REV. 1213, 1258 (1993). However, even after the Act, courts exercised some discretion. *Id.*

256. Jackson v. Phillips, 96 Mass. (14 Allen) 539, 564 (1867).

257. Atwood's Heirs v. Beck, 21 Ala. 590, 610 (1852).

258. Trotter v. Blocker, 6 Port. 269, 292 (Ala. 1838), *overruled in part by* Prater's Adm'r v. Darby, 24 Ala. 496 (1854).

259. *Id.* at 284.

260. *Id.*

individuals, and prisoners. Courts continue to use "manumission" synonymously with "emancipation"[261] in cases involving children[262] and married women.[263] Courts in Arkansas,[264] Georgia,[265] and

261. *See, e.g.*, Spurgeon v. Mission State Bank, 55 F. Supp. 305, 307–08 (W.D. Mo. 1943) (using "manumission" interchangeably with "emancipation" for a minor), *rev'd*, 151 F.2d 702 (8th Cir. 1945).

262. *See, e.g.*, United States v. Lim Yuen, 211 F. 1001, 1007 (E.D.N.C. 1914) ("manumission of the minor children"); Smith v. Gilbert, 98 S.W. 115, 116 (Ark. 1906) ("[W]here the parent has compelled his child to leave home and seek temporary employment elsewhere . . . it operates as an act of manumission . . . ."); Bowring v. Wilmington Malleable Iron Co., 67 A. 160, 163 (Del. Super Ct. 1907) ("tantamount to manumission of the infant"); Wilbur v. Bankers Health & Life Ins. Co., 66 S.E.2d 918, 919 (Ga. 1951) ("[H]e had been manumitted by his mother . . . ."); Kehely v. Kehely, 36 S.E.2d 155, 156 (Ga. 1945) ("The earnings of a minor child being to the father, unless the child has been manumitted by the father." (quoting Mock v. Neffler, 95 S.E. 673, 674 (Ga. 1918))); New v. S. Ry., 42 S.E. 391, 393 (Ga. 1902) (asking "whether or not the contract did operate to manumit the minor"); Smith v. Smith, 37 S.E. 407, 408 (Ga. 1900); Hicks v. Fulton Cty. Dep't of Family & Children Servs., 270 S.E.2d 254, 255 (Ga. Ct. App. 1980) ("Subsequent manumission does not follow from the fact that a minor has lived away from home with a sister for several months . . . ."); City Council of Augusta v. Drawdy, 43 S.E.2d 569, 572, 548 (Ga. Ct. App. 1947); Bell v. Lewis, 38 S.E.2d 686, 689 (Ga. Ct. App. 1946) ("[T]he father will be conclusively presumed to have consented . . . and this obviated the necessity of further proof of the manumission . . . ."); Evans v. Caldwell, 184 S.E. 440, 446 (Ga. Ct. App. 1935) ("proof of a manumission"); Spivey v. Lovett, 172 S.E. 658, 658 (Ga. Ct. App. 1934); Coleman v. Dublin Coca-Cola Bottling Co., 170 S.E. 549, 551 (Ga. Ct. App. 1933) ("manumit the child"); Jones v. McCowen, 131 S.E. 290, 291 (Ga. Ct. App. 1926) ("[The] presumption must be overcome by proof of the fact that the father has, either expressly or impliedly, manumitted the minor . . . ."); Hunt v. State, 69 S.E. 42, 44 (Ga. Ct. App. 1910); Nassen v. Anfenson, 163 N.W. 577, 578 (Iowa 1917) ("worked a limited manumission"); Cincinnati, N. Orleans & Tex. Pac. Ry. v. Troxell, 137 S.W. 543, 546 (Ky. 1911); Pa. R.R. v. Cecil, 73 A. 820, 822 (Md. 1909) ("He had been manumitted by his father . . . ."); Craig v. Brown, 137 N.W. 126, 127 (Mich. 1912) ("their parents who had manumitted them"); Hurt v. W. Carolina Power Co., 140 S.E. 730, 731 (N.C. 1927) ("The father is entitled to the services and earnings of his minor child so long as the latter is . . . not manumitted."); Irvine v. Killen, 165 A. 528, 528 (Pa. Super. Ct. 1933) ("If the defendant's minor son in this case had been so far manumitted that he received and kept his own wages, . . . liability would not have attached . . . ."); Gosh v. Lehigh & Wilkes-Barre Coal Co., 68 Pa. Super. 63, 71–72 (1917) ("a manumitted son"); Kunkle v. Thompson, 67 Pa. Super. 37, 41–42 (1917) ("The son had been practically manumitted."); Gentry v. Ciomperlik, 378 S.W.2d 732, 733 (Tex. Civ. App. 1964) ("The purpose and intent of this agreement being . . . to manumit the said minor . . . as though he were of lawful age."); Dean v. Or. R.R. & Nav., 87 P. 824, 825 (Wash. 1906); Adkins v. Hope Eng'g & Supply Co., 94 S.E. 506, 507 (W. Va. 1917) ("unless sooner manumitted by him"); Sharon v. Winnebago Furniture Mfg. Co., 124 N.W. 299, 301 (Wis. 1910) ("[T]he charge was correct so far as the earning capacity was concerned after manumission or majority.").

263. *See, e.g.*, Weber v. Weber, 169 S.W. 318, 321 (Ark. 1914) ("[T]he Legislature has clearly manifested its purpose to manumit her . . . ."); Sessions v. Parker, 162 S.E. 790, 795 (Ga. 1932); Lyzen v. Lyzen, 191 N.W. 6, 7 (Mich. 1922) ("[I]n the absence of manumission, the wife's services belong to the husband . . . ."); Cardamone

Kentucky[266] use the term "manumission" in child-emancipation cases.

Some states treat manumission as a remedy with equitable properties.[267] For example, the Supreme Court of Vermont noted that the "doctrine of emancipation of minor children is founded on principles of equity, humanity and domestic policy."[268] In Arkansas, chancery courts are authorized to manumit children.[269] And in Kentucky,[270] Maryland,[271] Tennessee,[272] and the District of

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v. Cardamone, 9 Pa. D. & C. 723, 724 (Pa. Ct. Com. Pl. 1927) ("manumitting married women"); Heagy v. Kastner, 138 S.W. 788, 788–89 (Tex. Civ. App. 1911) ("the law as fully manumits the wife").

264. Lyons v. First Nat'l Bank, 142 S.W. 856, 858 (Ark. 1911) (contending that Ike Lyons "was manumitted when he was 12 or 13 years old"); Smith v. Gilbert, 98 S.W. 115, 116 (Ark. 1906).

265. Kehely v. Kehely, 36 S.E.2d 155, 156 (Ga. 1945); Mock v. Neffler, 95 S.E. 673, 674 (Ga. 1918); Smith v. Smith, 37 S.E. 407, 408 (Ga. 1900); Harris v. Johnson, 25 S.E. 525, 526 (Ga. 1896) ("[T]he plaintiff's mother had virtually manumitted him . . . ."); Holt v. Anderson, 25 S.E. 496, 498 (Ga. 1896); Atlanta & W. Point R.R. v. Smith, 20 S.E. 763, 764 (Ga. 1894) (noting that "the manumission extended up to the time of his majority"); Bell v. Lewis, 38 S.E.2d 686, 688 (Ga. Ct. App. 1946) ("[T]he manumission of the plaintiff, a minor . . . will be considered here."); Irby v. State, 196 S.E. 101, 102 (Ga. Ct. App. 1938) ("[M]arriage just as effectively manumits the child as arrival at majority does."); Alford v. Alford, 190 S.E. 402, 403 (Ga. Ct. App. 1937); Evans v. Caldwell, 184 S.E. 440, 446 (Ga. Ct. App. 1935); Coleman v. Dublin Coca-Cola Bottling Co., 170 S.E. 549, 551 (Ga. Ct. App. 1933); Jones v. McCowen, 131 S.E. 290, 291 (Ga. Ct. App. 1926); S. Bell Tel. & Tel. Co. v. Shamos, 77 S.E. 312, 315 (Ga. Ct. App. 1913); Vale Royal Mfg. Co. v. Bradley, 70 S.E. 36, 40, (Ga. Ct. App. 1911); Hunt v. State, 69 S.E. 42, 44 (Ga. Ct. App. 1910) (noting "that the minor had been manumitted"); Richter v. Va.-Carolina Chem. Co., 57 S.E. 939, 939 (Ga. Ct. App. 1907) (referring to "a minor, showed by uncontradicted evidence that he had been manumitted by his father").

266. Chesapeake & Ohio Ry. v. De Atley, 151 S.W. 363, 364 (Ky. 1912); Mauck v. S. Ry., 146 S.W. 28, 30 (Ky. 1912); Cincinnati, N. Orleans & Tex. Pac. Ry. v. Troxell, 137 S.W. 543, 546 (Ky. 1911); Rowland v. Little, 131 S.W. 20, 20 (Ky. 1910); Rounds Bros. v. McDaniel, 118 S.W. 956, 960 (Ky. 1909); Louisville & Nashville R.R. v. Davis, 105 S.W. 455, 456 (Ky. 1907); Chesapeake & Ohio Ry. v. Davis, 60 S.W. 14, 15 (Ky. 1900).

267. Principles of equity are part of the common law in some states. *See* Busch v. City Tr. Co., 134 So. 226, 228 (Fla.1931) (holding that equitable principles and rules administered in English chancery courts, so far as applicable, have also been adopted as part of Florida's common law).

268. Town of Tunbridge v. Town of Eden, 39 Vt. 17, 22–23 (1866).

269. *See* Hudson v. Newton, 103 S.W. 170, 171 (1907) (referring to "manumission by the chancery").

270. Aleck v. Tevis, 34 Ky. (4 Dana) 242, 244 (1836). The court responded, "[i]n such a case, an appeal to the Chancellor for his peculiar aid and *guardian protection* may be much more safe and effectual than a resort to the more circumscribed discretion and limited power of a Court of law." *Id.* (emphasis added). Thus, the court concluded that a court of equity had jurisdiction in manumission cases. *Id.* at 243;

Columbia,[273] courts employed equity jurisdiction to manumit slaves and protect their new rights.

Manumission is less restrictive today than it was before the passage of the Thirteenth Amendment to the United States Constitution.[274] In 1905, a Missouri court held that "[n]o formal act, such as formerly attended the manumission of a slave, is required to effectuate the release of a parent's right to the earnings of his minor child."[275] Similarly, the Supreme Court of Michigan explained:

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accord Ferguson v. Sarah, 27 Ky. (4 J.J. Marsh.) 103, 105 (1830). The chancery court enjoined the creditor and the Supreme Court of Kentucky affirmed, finding that after manumission, the slave was free as against the creditor and the world. *Aleck*, 34 Ky. (4 Dana) at 243. Likewise, in Jones v. Bennet, 39 Ky. (9 Dana) 333, 334 (1840), it was held that "[t]here may, undoubtedly, be a decree for a specific execution of a contract for removeable property, whenever the right is clear and the remedy by action in a court of law is inadequate." The court continued, "[I]f, in any case, a court of equity may specifically enforce a contract for personalty, it should do it for the flesh and blood of the party invoking the Chancellor's aid." *Id.*

271. Townshend v. Townshend, 5 Md. 287, 287–89 (1853) (holding that mental capacity to execute a deed of manumission should be determined by the same tribunal that would rule on the petition for freedom). "[M]anumitted slaves . . . ha[d] a right to the aid of a court of equity, in the marshaling of the assets of the testator under whose will they claim their freedom." Charles v. Sheriff, 12 Md. 274, 279 (1858); *see also* Cornish v. Willson, 6 Gill 299, 328 (Md. 1848) (holding that a slave manumitted by will could sue in equity to restrain the executor from selling the slave for payment of the debts of the testator); Peters v. Van Lear, 4 Gill 249, 262 (Md. 1846) (holding that the trial court in equity could properly direct the executor to execute the deeds of manumission in order to enable the slaves to assert their claim to freedom in a court of law).

272. As the Tennessee Supreme Court explained in 1871, there "always has been an intermediate state between absolute slavery and absolute freedom . . . in which intermediate state the inchoate legal right to freedom, and the vested equitable right to its benefits, have been regarded as substantive things, capable of being enforced and consummated in Courts of Equity." Young v. Cavitt, 54 Tenn. (7 Heisk.) 18, 30 (1871).

273. *See* Thomas v. Mackall, 23 F. Cas. 961, 961 (C.C.D.C. 1839) (No. 13,903) (establishing a bill in equity to restrain the defendant from removing a slave from the District before the complainant, who had a reversionary interest in the slave, could manumit her). In 1824, a District of Columbia court held that where a slave who had been manumitted lost her deed of manumission, a court of equity would decree her emancipation on proof of such facts. Alice v. Morte, 1 F.Cas. 408, 408 (C.C.D.C. 1824) (No. 198).

274. Nonetheless, some of the methods for manumitting children are similar to the methods for manumitting slaves. Bennett, *supra* note 160, at 11. Children can be emancipated directly by their parents, implicitly by conduct, and also by obtaining a court order. *Id.* The Antebellum south offered three similar methods by which slaves could be manumitted: direct manumission by their masters, the slave's purchase of freedom from his master, or court proceedings known as "freedom suits." *Id.*

275. Zongker v. People's Union Mercantile Co., 86 S.W. 486, 488 (Mo. Ct. App. 1905) ("The idea of a formal emancipation is repugnant to the natural love existing

"Emancipation of a son by a father involves no such formality as oldtime manumission of a slave. It may be special or general, partial or complete. It may be express, or established by circumstances."[276]

VI. MANUMISSION OF CHIMPANZEES

To summarize, manumission can be characterized as the (1) transfer of legal rights, (2) by an owner of chattel, (3) to that chattel, (4) by which the latter "ceases to be a chattel" and becomes a self-owned entity with the capacity for legal personhood.[277] Prior to manumission, the chattel is not a "person[], but property."[278] Through manumission, the chattel becomes a "person" in the eyes of the law. Slaves in the United States were unambiguously entitled to manumission at a time when our society assigned them to the same legal status that nonhuman animals currently occupy—that of property.[279]

Nothing in the law prohibits a chimpanzee owner from manumitting her chimpanzee. It is well-established that one need not be a human being to be deemed a "person."[280] Nor must a legal

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between parent and child . . . .").

276. Van Sweden v. Van Sweden, 230 N.W. 191, 193 (Mich. 1930).

277. Ops. of the Justices of the Supreme Judicial Court on Question Propounded by the Senate, 44 Me. 505, 525 (1857) (opinion of Appleton, J.).

278. *Id.*

279. The Roman law even classed animals and delinquent slaves in the same category. J. Kerr Wylie, *Injuries by Animals in Roman Law*, 51 S. AFR. L.J. 168, 172 (1934) (noting that the doctrine of "natural law" rendered it "possible for animals which caused damage to be conceived guilty of delict . . . and so to be classed together with delinquent slaves").

280. Certain "persons" under the law are not human beings. Corporations are deemed to be legal persons. *See, e.g.*, Louisville, Cincinnati, & Charleston R.R. v. Letson, 43 U.S. (2 How.) 497, 558 (1844); Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (1 Wheat.) 518, 636 (1819). However, they do not possess the privilege against self-incrimination mandated by the Fifth Amendment. Bellis v. United States, 417 U.S. 85, 89–90 (1974). Ships are treated as legal persons. *See, e.g.*, Tucker v. Alexandroff, 183 U.S. 424, 438 (1902). Neither the corporation nor the ship is expected to have human qualities; the personhood status is understood to be a legal fiction, a necessity that enables these entities to act in a legal capacity. *See id.* An agreement between the indigenous peoples of New Zealand and the Crown recently granted New Zealand's Whanganui River Iwi "legal personality" so that it owns its riverbed and is itself incapable of being owned. TŪTOHU WHAKATUPUA 10 (Aug. 30, 2012), http://www.wrmtb.co.nz/new_updates/TuutohuWhakatupuaFinalSigned.pdf. In July of 2014, the Te Urewara park in New Zealand was designated as a "legal entity [that] has all the rights, powers, duties, and liabilities of a legal person." Te Urewera Act 2014, pt 1, subpt 3, s 11 (N.Z.). The Indian Supreme Court has designated the Sikhs' sacred text as a "legal person." Shiromani Gurdwara Parbandhak Comm., Amritsar v. Shri Som Nath Dass & Ors, AIR 2000 SC 421

thing be capable of attaining citizenship rights in order to be manumitted.[281] Mental or physical disabilities are not a bar to manumission: individuals labeled as weak, unhealthy, decrepit,[282] very young,[283] and insane,[284] have all been entitled to manumission.[285]

Just as masters of slaves or fathers of children possessed transferable property rights in those living beings, so do owners of nonhuman animals possess transferrable property rights in those animals.[286] And, just as the master could transfer rights *to* the slave, the owner of a nonhuman animal can transfer rights *to* the animal.

(India). The High Court of Uttarakhand declared two rivers in India — the Ganga and Yamuna — as "legal persons" with rights under the Constitution of India. *See Mohd. Salim v. State of Uttarakhand & Others*, (PIL) 126/2014 (High Court Uttarakhand, 03/20/2017). Pre-Independence Indian courts designated Punjab mosques as legal persons, to the same end. Masjid Shahid Ganj & Ors v. Shiromani Gurdwara Parbandhak Comm., Amritsar, AIR 1938 369 (Lah. HC). A pre-Independence Indian court designated a Hindu idol as a "person" with the capacity to sue. Pramath Nath Mullick v. Pradyumna Kumar Mullick, AIR 1925 PC 139. Recently, a writ of habeas corpus was granted on behalf of a chimpanzee named Cecelia in the Third Court of Guarantees in Mendoza, Argentina, in File No. P-72.254/15 (Nov. 3, 2016), http://www.nonhumanrightsproject.org/wp-content/uploads/2016/12/Chimpanzee-Cecilia_translation-FINAL-for-website.pdf. The court analyzed the argument that Cecelia should be given rights as a nonhuman legal person. *Id.* at 1. It was asked to determine whether she had been "illegally and arbitrarily deprived of her freedom of movement and a decent life" by the authorities at the City of Mendoza Zoo. *Id.*

281. Bryan v. Walton, 14 Ga. 185, 198 (1853) ("[M]anumission . . . does not and cannot confer citizenship . . . ."); Heirn v. Bridault, 37 Miss. 209, 233 (1859) ("The freed negro does not become a citizen by virtue of his manumission here.").

282. Trs. of the Poor v. Hall, 3 Del. (3 Harr.) 322, 325 (1841) (allowing manumission for a slave who was "unhealthy, decrepit, blind, lame or maimed, and incapable of getting his livelihood").

283. *In re* Sonnenberg, 99 N.W.2d 444, 448 (Minn. 1959) (finding no reason "why a child of tender age may not be emancipated to the extent of terminating all parental rights of control").

284. Inhabitants of West Gardiner v. Inhabitants of Manchester, 72 Me. 509, 511 (1881) (holding that an insane person could be emancipated); Inhabitants of Monroe v. Inhabitants of Jackson, 55 Me. 55, 58 (1867) (holding that one *non compos mentis* may be emancipated); Inhabitants of Gardiner v. Inhabitants of Farmingdale, 45 Me. 537, 541 (1858) (same); Town of Tunbridge v. Town of Eden, 39 Vt. 17, 18 (1866) (holding that a *non compos mentis* pauper was emancipated at eighteen months).

285. One need not be capable of taking care of oneself, for "[a] guardian may be appointed on these grounds as well as mental incapacity." Inhabitants of Friendship v. Inhabitants of Bristol, 170 A. 496, 497 (Me. 1934) (holding that a person *non compos* can be emancipated).

286. "A father had a legal property interest in the services of his child. He still does." Hoffman v. Dautel, 388 P.2d 615, 619 (Kan. 1964).

A. Chimpanzee Autonomy and Cognitive Complexity

The Nonhuman Rights Project consistently argues that autonomy is a sufficient condition for personhood, at least for the purpose of a common law writ of habeas corpus.[287] For the same reasons, autonomy should be a sufficient condition to support the manumission of chimpanzees. Chimpanzees live autonomous, intellectually rich, and sophisticated individual, family and community lives. They can recall their past and anticipate their future.[288] Chimpanzees' cognitive abilities include but are not limited to their possession of an autobiographical self, episodic memory, self-determination, self-consciousness, self-knowingness, self-agency, referential and intentional communication, empathy, a working memory, language, numerosity, material, social, and symbolic culture, intentional action, sequential learning, mediational learning, mental state modeling, visual perspective-taking, and cross-modal perception.[289] They possess the abilities to understand cause-and-effect and the experiences of others, to imagine, imitate, and engage in deferred imitation, to innovate, and to engage in imagination and play pretend.[290]

As do humans, chimpanzees have brains that are plastic, flexible, and heavily dependent upon learning; human and chimpanzee brains share similar circuits, symmetry, cell types, and stages of cognitive development.[291] Chimpanzees and humans share similar behavior and emotional and mental processes, including self-recognition, self-awareness, self-agency, and metacognition.[292] Chimpanzees are aware of their past, mentally represent their future, have an autobiographical sense of self with a past and future, engage in "mental time travel" and long-term planning, and can remember something for decades.[293]

Chimpanzees engage in referential and intentional communication and exhibit imagination and humor. Chimpanzees possess mirror neurons, are attuned to the emotional states of

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287. See footnote 3.

288. Brief for Peititoner-Appellant at 3, People *ex rel.* Nonhuman Rights Project, Inc. v. Lavery, 998 N.Y.S.2d 248 (App. Div. 2014) (No. 162358/15), http://www.nonhumanrightsproject.org/wp-content/uploads/2016/10/The-Nonhuman-Rights-Project-Inc.-on-behalf-of-Tommy-v.-Patrick-C.-Lavery_Nonhuman-Rights_Appellate-Brief.pdf.

289. *Id.* at 9–10.

290. *Id.* at 10.

291. *Id.* at 8.

292. *Id.*

293. *Id.*

others, possess highly developed empathetic abilities, and demonstrate compassion.[294] Chimpanzees show an understanding of the distinction between living and non-living, and they feel grief and compassion when dealing with mortality, including bereavement-induced depression.[295]

Chimpanzee social life is cooperative and represents a purposeful and well-coordinated social system.[296] Chimpanzees understand and carry out duties and behave in ways that seem both lawful and rule-governed. Chimpanzees possess moral inclinations and a level of moral agency. They ostracize individuals who violate social norms and respond negatively to inequitable situations, such as being offered lower rewards than companions for the same task. Chimpanzees show concern for the welfare of others and have expectations about appropriate behavior in a range of situations.[297]

B. The Substantive Effect of Manumitting a Chimpanzee

A manumitted chimpanzee would become a legal person, for "'[e]mancipation' is the act by which he who is not free, but is under the control of another, is set at liberty, and *made his own master*," analogous to the manumission of a human child or mentally incapacitated human.[298] The former owner may have a duty to provide for or arrange for her ongoing care and support just as masters of human slaves were often required to support their manumitted slaves, particularly where the slave was infirm or unable to support herself.[299] Likewise, the emancipation of a child

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294. *Id.* at 9.
295. *Id.* at 8–9.
296. *Id.* at 12.
297. *Id.* at 9–10.
298. Patek v. Plankinton Packing Co., 190 N.W. 920, 922–23 (Wis. 1923) (quoting jury instructions) (emphasis added).
299. Pennsylvania imposed on owners a continuing duty to support manumitted slaves. N. Middleton Twp. Overseers v. Baker's Ex'rs, 2 Watts 280, 281 (Pa. 1834). However, unlike most states, this requirement was interpreted by the courts to be for the benefit of the newly freed slaves and not simply for the State. As the court explained in 1810, "[i]ndented servants gain a settlement . . . and it would be a reflection on humanity to say, that a manumitted slave was entitled to no support in case of the insolvency of the master, or his neglect to support him." Overseers of the Poor v. Overseers of the Poor, 3 Binn. 22, 25 (Pa. 1810). Significantly, the court opined that "[t]his seems to have been always taken for granted, because by the old laws . . . the person manumitting a slave was obliged to give security to indemnify the township." *Id.* Connecticut courts also ensured that manumitted slaves were taken care of by imposing continuing duties on masters or the town to provide support for them. Kingsbury v. Town of Tolland, 2 Root 355, 355 (Conn. 1796)

does not terminate all the duties of a parent to support that child's basic needs.[300] Thus, while manumitting a chimpanzee, an owner may still retain a duty of support. In most states, an owner can fulfill this duty by creating a trust adequate to fund the care and maintenance for the remainder of the chimpanzee's natural life.[301] The new legal relationship between the former owner and the animal would then be analogous to the relationship between that of a guardian and a ward.

C. Methods of Manumitting Chimpanzees

Chimpanzees can be manumitted through most of the same methods as those used to free human slaves and children. A chimpanzee may be manumitted through a deed, will, or trust executed by the owner. A chimpanzee may also be manumitted by court order.[302] Manumission by court order has been available to children and slaves.[303]

Manumission of a chimpanzee may also be achieved by operation of law.[304] Our modern understanding of "operation of law" is that a transfer of rights occurs automatically, based on existing law, rather

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(holding executors liable for expenses incurred for support of manumitted slaves); *accord* Town of Colchester v. Town of Lyme, 13 Conn. 274, 277 (1839); Town of East Hartford v. Pitkin, 8 Conn. 393, 397 (1831) ("A manumitted slave, in case he needs support, may be furnished with it, by the town, and a recovery be had of the master . . . .").

300. Mills v. Theriault, 499 A.2d 89, 91 (Conn. Super. Ct. 1985) (holding that there was nothing in the child-support statute "to suggest that *common law emancipation* absolutely relieves a parent of his or her support obligation" and ruling that father's eviction of child amounted to common-law emancipation of child, but did not preclude child's guardian from recovering child support from father (emphasis added)). "[T]he trend of the law in the United States appears to be toward a more flexible concept of emancipation and away from the all-or-nothing view that emancipation is a complete severance, for all purposes, of the parent-child relationship." *Id.*; *accord* Bailey v. O'Hare, No. 20622, 2006 WL 164917, at *4 (Ohio Ct. App. Jan. 13, 2006).

301. Bennett, *supra* note 160, at 11; *see Establishing a Trust for your Animals*, ANIMAL LEGAL DEF. FUND (Sept. 11, 2009), http://aldf.org/press-room/press-releases/establishing-a-trust-for-your-animals.

302. Emancipation by court order, or "judicial emancipation," refers to the "*nonstatutory* termination of certain rights and obligations of the parent-child relationship during the child's minority." State *ex rel.* R.R. v. C.R., 797 P.2d 459, 462 (Utah Ct. App. 1990) (emphasis added).

303. Bennett, *supra* note 160, at 11.

304. *Cf.* Patek v. Plankinton Packing Co., 190 N.W. 920, 923 (Wis. 1923) (discussing emancipation by operation of law). Kansas courts "have recognized constructive emancipation under the common law." *In re* Marriage of George, 988 P.2d 251, 253 (Kan. Ct. App. 1999).

than a contractual obligation on or case law. For example, the guardianship of a minor automatically terminates when the minor turns eighteen.[305] The emancipation of a minor may also "be accomplished by wrong and violence."[306] Automatic emancipation by "operation of law" for minors occurs when "by such ill treatment or abuse" the child is "practically driven away," or where "it would be improper and unsafe for the child to live under such surroundings," or where the parents "fail[] to give proper support when able to do so."[307] When the law of a jurisdiction recognizes a chimpanzee as a "person," this method of manumission may be available by permanently transferring the chimpanzee to that jurisdiction. Attached as Appendix B is a proposed Grant of Manumission for a Chimpanzee**.**

VII. CONCLUSION

For millennia, human slaves were treated as legal things who lacked the capacity for legal personhood. Yet, one way in which they were able to obtain their personhood, the capacity to possess legal rights, was through the property right of manumission that is inherent in the idea of slavery. Through manumission owners can privately bestow legal personhood upon their slaves; they can bring about a legal transubstantiation that confers personhood and therefore the capacity for legal rights including the right of self-ownership upon them. Manumission once bestowed is irreversible.

Chimpanzees are extraordinarily cognitively complex and autonomous beings who are presently characterized as legal "things" who lack the capacity for any legal rights. Consequently, they are treated as slaves and there is nothing they, or those who desire to vindicate even their most fundamental interests as a matter of legal right, can do so long as they remain things. One way to change their legal thinghood to legal personhood is through manumission. Despite the enactment of the Thirteenth Amendment to the United States Constitution, manumission remains viable as a method of privately bestowing personhood, and therefore the capacity for legal rights, at a minimum to those present-day slaves who are cognitively complex and autonomous beings. These include chimpanzees.

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305. *See* Sprecher v. Sprecher, 110 A.2d 509, 511–12 (Md. 1955).

306. Inhabitants of Lowell v. Inhabitants of Newport, 66 Me. 78, 86–87 (1876). Under ancient Jewish manumission law, if a master intentionally struck a slave and permanently disabled him, the slave could be automatically manumitted. Cobin, *supra* note 44, at 1345.

307. *Patek*, 190 N.W. at. 922.

APPENDIX A

Transcription of Deed of Manumission by Frederick De Peyster[308]

Know all Men by these Presents, That I Frederick De Peyster Executor of Samuel Hake late of the City of New York Deceased who was the owner of Phoebe Jackson the Slave hereinafter mentioned[,] **DO,** by these presents, for good and valuable considerations, fully and absolutely Manumit, make Free, and set at Liberty, the said slave, named Phoebe Jackson hereby willing and declaring that the said Phoebe Jackson shall and may; at all times hereafter, exercise, hold, and enjoy, all and singular the liberties, rights, privileges, and immunities of a free woman fully to all intents and purposes, as if she had been born free . . . . And I do hereby, for myself my Executors, Administrators, and Assigns, absolutely relinquish and release all my right, title, and property, whatsoever in and to the said Phoebe Jackson as a slave.
IN TESTIMONY WHEREOF, I have hereunto set my hand and seal the seventh day of August, one thousand eight hundred and twelve.

SEALED AND DELIVERED IN} Frederick De Peyster
THE PRESENCE OF }

J. [John] Nitchie
Henry M. Fine

City of New-York, ss.

John Nitchie one of the subscribing witnesses as to the above deed appeared before me and being duly sworn said that he saw the above Frederick De Peyster execute the above as his voluntary act and deed and that he and Henry M. Fine subscribed their names thereto as [?] which bring to me satisfactory evidence of the execution. I allow it to recorded.

Dated 28th [?] 1812
Dewitt Clinton

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308 *Deed of Manumission by Frederick De Peyster*, N.Y. HIST. SOC'Y MUSEUM & LIBR.,http://digitalcollections.nyhistory.org/islandora/object/islandora%3A131271#page/1/mode/1up (last visited Feb. 11, 2017).

APPENDIX B

Proposed Grant of Manumission for a Chimpanzee

Grant of Manumission to Tommy, a chimpanzee

I, Sue Smith, state the following:

1. I am the lawful, registered owner of Tommy, a male chimpanzee.

2. Tommy is a cognitively and emotionally complex and autonomous being.

3. The legal status of "thing" is insufficient to provide protection for Tommy's fundamental interests.

MANUMISSION:

I hereby manumit Tommy. As of the signing of this grant of manumission, and for all times hereafter, it is my intention that Tommy is and shall remain a legal person, with the capacity to possess legal rights within this state and the United States.

IDENTIFICATION OF TOMMY:

1. As of the date of manumission, Tommy is approximately _____ years of age and in excellent health. Tommy's veterinarian, Dr._____, located at _____, is in possession of all of Tommy's veterinary records.

2. A microchip has been implanted in the back of Tommy's neck to ensure that he can be positively identified as the chimpanzee who is the subject of this grant of manumission. Tommy's microchip number is _____.

3. Current photographs of Tommy are attached to this grant of manumission and are incorporated by reference herein.

PUBLICATION AND DISSEMINATION OF THIS GRANT OF MANUMISSION TO TOMMY:

A copy of this document has been delivered to: the City of _____ Animal Services, _____ County Humane Society, Dr. _____, DVM (Tommy's veterinarian), and _____Police Department, and published in the national database of manumitted and emancipated animals, located at www._____.

(signed)_____ Date: _____
Sue Smith

NOTARY

State of _____
County of _____

On the (_____) day of (_____) in the year (20___) before me, the undersigned, personally appeared (Sue Smith), personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

(Signature and office of individual taking acknowledgment.)

Signature:_____
Typed or Printed Name:_____

SEAL