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"Civilizing" the Colonial Subject: The Co-Evolution of State and Slavery in South Carolina, 1670–1739

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INTRODUCTION

In spite of the aspirations of Anthony Ashley-Cooper and John Locke, who framed the "Fundamental Constitutions of Carolina" in 1669, the colony settled at Charles Town in 1670 was anything but a well-ordered polity.[1] During the first three decades of settlement, the Lords Proprietors charged the colonists with disorganization, idleness, piracy, and the illegal enslavement of indigenous peoples.[2] In 1708, Rev. Gideon Johnston, the commissary of the Society for the Propagation of the Gospel in Foreign Parts in the colony, complained that the English in Charles Town were "the Vilest race of Men upon the Earth" and "the most factious and Seditious people in the whole World."[3] The colony seemed to fare no better after the colonists revolted against proprietary rule in favor of royal government in 1719. By 1724, the first royal governor of the province, Francis Nicholson, described a colony at risk of collapsing into a

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[1] On the authorship of the constitutions, see David Armitage, "John Locke, Carolina, and the *Two Treatises of Government*," *Political Theory* 32 (2004): 602–27, 607–9.

[2] Langdon Cheves, ed., *The Shaftesbury Papers* (Charleston: Tempus, 2000), 311, 315, 367, 441; Noel Sainsbury, ed., *Records in the Public Record Office Relating to South Carolina, 1663–1782*, 36 vols. (Columbia: South Carolina Department of Archives and History, 1971), 1: 284–85; 2: 59–60, 121–24 (hereafter *PROSC*); Thomas Cooper and David J. McCord, eds., *The Statutes at Large of South Carolina*, 10 vols. (Columbia: A. S. Johnston, 1836–1841), 2: v (hereafter *SSC*); A. S. Salley, Jr., ed., *Journal of the Grand Council of South Carolina*, 2 vols. (Columbia: Historical Commission of South Carolina, 1907), 1: 11–12.

[3] Frank Klingberg, ed., *Carolina Chronicle: The Papers of Commissary Gideon Johnston, 1707–1716* (Berkeley: University of California Press, 1946), 22.

"Primative State of Nature."[4] This prediction was almost borne out when a dispute over paper money caused the collapse of regular governance in 1728–1729.[5] Despite this upheaval, the South Carolina colonists established a robust plantation system that boasted the highest slave-to-freeman ratio in mainland North America after 1708. Before 1720, to be sure, many Carolina plantations were relatively small "frontier" operations, where masters worked and lived in close proximity to their slaves producing livestock, lumber, and crops. However, larger plantations became increasingly common, and by 1720 half of the colony's enslaved population lived on plantations with more than twenty slaves.[6] South Carolina's plantation-colonial complex would go on to fuel the most prosperous of the thirteen colonies by 1775.[7] This paper asks how the disorderly colonists of South Carolina, lacking in material strength, outnumbered by slaves, and surrounded by Indians, managed to establish such a prosperous colonial state.

Traditionally, scholars of slavery have highlighted the role played by "race" in reinforcing colonial governance. One historiographical tradition has argued that the institution of racial slavery provided both a solution to the problem of labor shortages and an avenue for co-opting poor whites to the political program of colonial elites.[8] Colonial states, in this view, established and maintained order by deploying racializing ideologies to separate "dangerous free whites from dangerous slave blacks," as Edmund Morgan put it in his study of early Virginia.[9] However, as scholars have long noted, it is still necessary to account for why the "dangerous" freemen were overwhelming European while the "dangerous" slaves were *exclusively* African and Native American.[10] Certainly this pattern was

[4] *PROSC*, 11: 110.

[5] Ibid., 14: 220; M. Eugene Sirmans, *Colonial South Carolina: A Political History, 1663–1763* (Chapel Hill: University of North Carolina Press, 1966), 158.

[6] Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake & Lowcountry* (Chapel Hill: University of North Carolina Press, 1998), 5–7, 16–17, 39–42; Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: Norton, 1974), 54–55, 95–103.

[7] Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740–1790* (Ithaca: Cornell University Press, 1998), 32–36. By linking plantation slavery and settler colonialism, my "plantation-colonial complex" differs from Philip Curtin's "plantation complex"; see Curtin, *The Rise and Fall of the Plantation Complex: Essays in Atlantic History* (Cambridge: Cambridge University Press, 1990), 11–16.

[8] Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (London: Norton, 1975), 295–337; Robin Blackburn, *The Making of New World Slavery: From the Baroque to the Modern, 1492–1800* (London: Verso, 1997), 12, 323–24; T. H. Breen, *Puritans and Adventurers: Change and Persistence in Early America* (Oxford: Oxford University Press, 1980), 127–47; David Brion Davis, *Slavery and Human Progress* (Oxford: Oxford University Press, 1984), 76–77; Anthony S. Parent, Jr., *Foul Means: The Formation of a Slave Society in Virginia, 1660–1740* (Chapel Hill: University of North Carolina Press, 2003), 55–79, 105–34.

[9] Morgan, *American Slavery*, 328.

[10] Winthrop Jordan, *White over Black: American Attitudes toward the Negro, 1550–1812* (New York: Norton, 1968), 63; David Eltis, *The Rise of African Slavery in the Americas* (Cambridge: Cambridge University Press, 2000), 63.

significantly shaped by the existence of an infrastructure of slave trading in Africa that offered Europeans a source of relatively cheap labor, which colonists were able to augment by inaugurating a slave trade with indigenous Americans.[11] A second tradition has located the racial character of the slave trade in preexisting European conceptions of Africans as racially inferior.[12] Though I find more support for the view that racial slavery had its roots in the American colonial experience, neither of these historiographical traditions adequately explains why only Africans and Native Americans were enslaved in early America.

Here I will bridge these two historiographical traditions as I situate the rise of racial slavery, and the ideology of white supremacy that underpinned it, within the wider ideological logic of settler-colonialism. South Carolina's colonial state did not develop through the accumulation of material power in a centralized governing apparatus. Instead, it emerged as authoritative by rooting the twined processes of plantation slavery and colonization in a juridical distinction between savagery and civility.[13] The plantation-colonial complex that the state sought to secure functioned through the interactions of three archetypal figures: the savage, who was untamed by any law; the slave, whose savagery could only be governed through harsh repressive techniques; and the colonial freeman, who, as the juridical subject of a civilized polity, was supposedly ordered and endowed with rights by the law.[14] Chattel slaves and juridical subjects were denizens of a rising commercial society that they brought into being through their relations of production and exploitation.[15] While the juridical subject was endowed with the civic rights afforded by the law, and the savage allegedly existed in a "wilderness" beyond the law, the slave was at once bound by the law and deprived of those same civic rights by it, inhabiting a state of civic death.[16]

[11] Ibid., 49–54, 114–63; John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400–1800* (Cambridge: Cambridge University Press, 1998), 72–125; Christina Snyder, *Slavery in Indian Country: The Changing Face of Captivity in Early America* (Cambridge: Harvard University Press, 2010), 46–79; Eric Williams, *Capitalism and Slavery* (Chapel Hill: University of North Carolina Press, 1994), 18–20.

[12] Jordan, *White over Black*, 3–43; Carl N. Degler, "Slavery and the Genesis of American Race Prejudice," *Comparative Studies in Society and History* 2 (1959): 49–66; Alden T. Vaughan and Virginia Mason Vaughan, "Before Othello: Elizabethan Representations of Sub-Saharan Africans," *William and Mary Quarterly*, 3d ser., 54 (1997): 19–44.

[13] For the classic study of discourses of savagery and civility in America, see Roy Harvey Pearce, *Savagism and Civilization: A Study of the Indian and the American Mind* (Baltimore: Johns Hopkins Press, 1965), esp. 3–49. I diverge from scholars who treat the language of "savagery" and "civility" as necessarily racialized.

[14] I borrow Michel Foucault's definition of the "juridical subject" as "the possessor, among other rights, of the right to exist." *Discipline & Punish: The Birth of the Prison*, Alan Sheridan, trans. (New York: Vintage, 1977), 13.

[15] Blackburn, *New World Slavery*, 10–12, 16, 311; Eltis, *African Slavery*, 80–84; Onur Ulas Ince, "Primitive Accumulation, New Enclosures, and Global Land Grabs: A Theoretical Intervention," *Rural Sociology* 79 (2014): 104–31, 110–24.

[16] In restricting itself to the slave's status before the law, the term "civic death" avoids the problem of Orlando Patterson's influential notion of "social death," which risks obscuring the autonomous social lives slaves fashioned within the plantation system. *Slavery and Social Death: A*

The savage/civilized distinction was crucial to the establishment of a functioning state apparatus in the colony.[17] Lying beyond the reach of the repressive apparatus of the metropolitan state and intertwined with the emergence of the novel economic apparatus of plantation slavery, the colonial state emerged as an independent and specifically colonial locus of authority.[18] In South Carolina, this state was centered on the Commons House of Assembly, which gained a monopoly on legislating for the colony in 1693 and increasingly deployed an ideology of white supremacy that drew, in part, on parallel ideological developments across the Atlantic world.[19] Yet it is telling that when choosing to justify the racializing order that it was producing in the colony, the Commons House made explicit reference to the struggle between savagery and civility.[20]

The authority claimed by the colonial state, then, was the authority of a "civilized," law-bound polity supposedly constituted amidst a sea of lawless "savagery." But, in contrast to European states that were formed in this same period through the centralization of material power in state institutions, the colonial state in South Carolina had little or no material capacity with which to enforce its authoritative claims.[21] The colony depended on Indian allies, slaves, and free militiamen to defend itself during Queen Anne's War (1702–1713) and the Yamasee War (1715–1717), and social disorder remained rife in the colony until around 1730. Although in this early period the colony did establish a watch, a colonial militia, and after 1704 a slave patrol, these forces depended on the willingness of freemen to serve, which was subject to shirking, and they were organized on a local level rather than

Comparative Study (Cambridge: Harvard University Press, 1982), 38–51; Vincent Brown, "Social Death and Political Life in the Study of Slavery," *American Historical Review* 114 (2009): 1231–49. For accounts of the cultural lives of slaves in colonial America, see Morgan, *Slave Counterpoint*; Olwell, *Masters*; Thornton, *Africa and Africans*, 152–271; Wood, *Black Majority.*

[17] I treat the state as an assemblage of repressive, economic, and ideological apparatuses. See Louis Althusser, *On the Reproduction of Capitalism: Ideology and Ideological State Apparatuses* (London: Verso, 2014), 232–72; Nicos Poulantzas, *State, Power, Socialism* (London: Verso, 2000), 28–34.

[18] Although the colonists acknowledged that they were subject to the sovereignty of the Lords Proprietors, and later of the Crown, they frequently ignored their supposedly sovereign commands. Nevertheless, they continued to envision themselves as loyal British subjects, aping the fashions of "English" society, actively seeking royal government in 1719, and frequently invoking the king's sovereignty. *PROSC,* 7: 271–99; Olwell, *Masters*, 1–6, 38–42.

[19] A. S. Salley Jr., ed., *The Journal of the Commons House of Assembly of South Carolina*, 21 vols. (Columbia: Historical Commission of South Carolina, 1907–46), *1693*: 21–22 (hereafter *CH*); Sirmans, *Colonial South Carolina*, 67–68; Jack P. Greene, *The Quest For Power: The Lower Houses of Assembly in the Southern Royal Colonies, 1689–1776* (New York: Norton, 1963), 35–39.

[20] *SSC*, 7: 352.

[21] Perry Anderson, *Lineages of the Absolutist State* (London: Verso, 1974); Norbert Elias, *The Civilizing Process: Sociogenetic and Psychogenetic Investigations*, Edmund Jephcott, trans., Eric Dunning, Johan Goudsblom, and Stephen Mennell, eds. (Oxford: Blackwell, 2000); Charles Tilly, *Coercion, Capital, and European States: AD 990–1992* (Oxford: Blackwell, 1992).

centrally.[22] Far from monopolizing "legitimate" force, as in Max Weber's canonical formulation, the colonial state rested precariously on its claim to an exclusive authority to decide on the question of legitimacy itself, a claim that was secured only by co-opting the material force of colonizer and (putatively) colonized alike.[23] By asserting a prerogative over legislation while lacking the centralized means to enforce its laws, the colonial state extended relations of authority and obligation over a population that retained for itself the means of violence necessary to give the state's authoritative pronouncements the force of law.

By paying attention to the savage/civilized binary that underpinned both settler colonialism and slavery, it is possible to isolate an intermediary step between the establishment of plantation slavery and its solidification in a racial order. This step can account for why other marginalized and racialized populations—Jews, South Asians, Turks, or the Irish—were not generally subjected to enslavement in English colonies. By the turn of the eighteenth century, English colonists, slave-traders, and philosophers acknowledged, at least in theory, that only those captured in a "just war" could lose their freedom.[24] However, as I will show, where a juridical subject whose rights were guaranteed by a "civilized" body of law did not face enslavement if captured in such a war, those "savage" peoples who supposedly lived beyond the protection of laws could be freely enslaved. The savage/civilized division is thus indispensible for understanding why Africans and Native Americans were the only populations systematically enslaved in English North America.

In what follows, I trace the process by which the colonial state established its authority in South Carolina and through which the plantation system established its mechanisms of control over an unfree labor system increasingly dominated by slaves of African ancestry. I begin by exploring how the colonial state asserted its authority over the master-slave relationship, a relation that evolved between the founding of the colony in 1670 and the emergence of a slave majority before 1708. I then examine the response of the Commons House to this slave majority. I highlight the conscious efforts of the legislature to order unfree labor, and organize colonial life more broadly, through the conflation of legal statuses (slave/free) with racializing phenotypic descriptions (black/white). The paper's third section is motivated by instances where this conflation of

[22] Salley, *Grand Council*, 1: 10–12; *SSC*, 2: 9–13, 254–55; Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge: Harvard University Press, 2001), 14–24.

[23] Weber, *Economy and Society: An Outline of Interpretive Sociology*, 2 vols., Guenther Roth and Claus Wittich, eds. (Berkeley: University of California Press, 1978), 1: 54. Michael Braddick employs a formulation similar to my own: *State Formation in Early Modern England c. 1550–1700* (Cambridge: Cambridge University Press, 2001), 18.

[24] John Locke, *Two Treatises of Government*, Peter Laslett, ed. (Cambridge: Cambridge University Press, [1690] 1988), II §§23–24, 180; W. L. McDowell, *Journal of the Commissioners of the Indian Trade: September 20, 1710–August 29, 1718* (Columbia: South Carolina Archives Department, 1955), 16.

phenotype and legal status broke down, and seeks to explain these anomalies by analyzing the ideological justification that the Commons House offered for slavery. I show that eligibility for enslavement was tightly bound to the idea of "savagery." In contrast to "Negroes" and "Indians," those who were deemed "civilized" were ineligible for perpetual slavery, even if they were captured in a just war and even if they were not recognized as "white" or "Christian." Finally, I turn to how authority was transformed into effective power and consider the policing of slavery in South Carolina. I offer an account of how the state enforced its authority over the entire colonial population through diffuse and decentralized mechanisms of power and how this policing system reinforced the emergent racial order in the colony.

THE RISE OF THE PLANTATION-COLONIAL COMPLEX

Motivated, in part, by a desire to attract settlers from the Caribbean, and perhaps by their own financial stakes in the African slave trade, the Lords Proprietors of Carolina always envisaged the use of slave labor in the colony.[25] In the Fundamental Constitutions, however, they emphasized the use of English "leet-men" working on a system of lordly manors, suggesting that slaves would merely supplement a largely English workforce.[26] This neo-feudal vision was ultimately undone by the refusal of English settlers to part with the relative freedom they had become accustomed to under the Commonwealth, as well as by the proprietors' success in attracting Barbadian settlers who were already accustomed to the use of enslaved labor.[27]

Although the constitutions themselves were a dead letter,[28] they did outline the initial legal status of the "Negroe slave" in the colony. Most likely reflecting the influence of the family of Sir John Colleton, a Barbadian planter and Lord Proprietor, the constitutions afforded the slave-owner an "absolute power and Authority over his Negroe slaves, of what opinion or Religion soever."[29] Locke, then secretary to the Proprietors, had edited this provision to augment the initial right of "absolute Authority" with "absolute power." While scholars have paid considerable attention to Locke's role in this addition, they

[25] Inconsistent understandings of the terms "slave" and "servant" led the Proprietors to clarify that headrights for each imported servant also applied to slaves. *Shaftesbury Papers*, 164; Christopher L. Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010), 432–33; Oscar Handlin and Mary F. Handlin, "Origins of the Southern Labor System," *William and Mary Quarterly*, 3d ser., 7 (1950): 199–222, 203–8; Wood, *Black Majority*, 14–16.

[26] "The Fundamental Constitutions of Carolina," in Mark Goldie, ed., *Political Essays* (Cambridge: Cambridge University Press, 1997), §§17, 22–25, 98, 101.

[27] S. C. Hughson, "The Feudal Laws of Carolina," *Sewanee Review* 2 (1894): 471–83, 472–73; M. Eugene Sirmans, "The Legal Status of the Slave in South Carolina, 1670–1740," *Journal of Southern History* 28 (1962): 462–73, 463–64.

[28] *PROSC*, 3: 81–83.

[29] "Fundamental Constitutions of Carolina," §101; Sirmans "Legal Status," 463–64.

have done little to explore why this augmentation was necessary.[30] Locke's other political writings offer one way of uncovering the addition's meaning.[31] In his *Second Treatise of Civil Government*, Locke based the condition of slavery on an intersection of the dual authorities of just war theory and natural law. The slave was to occupy a status of suspended death, "which is nothing else but the State of War continued, between a lawful Conquerour, and a Captive [in a just war]," while the master was afforded "an absolute power over the Lives of those, who by putting themselves in a State of War, have forfeited them."[32] In theory, a slave was a justly captured combatant whose death was held in abeyance so that he might serve the will of his captor.

Given the divergences between Locke's theory of slavery in the *Second Treatise* and the practices of enslaving Indians and Africans in Carolina and the Atlantic world, I am less interested in his theory than in what his use of language might tell us about what he meant by "power" and "authority" in the Fundamental Constitutions.[33] Richard Tuck has argued that the power/authority binary in English political thought was an innovation of the Civil War era.[34] According to Tuck, Locke replaced the power/authority binary of his contemporaries with a distinction between force (might, or what his contemporaries called "power") and power (the power of the law, or what his contemporaries called "authority").[35] But it is noteworthy that in place of the power/authority binary of his contemporaries Locke spoke of "authority" alongside the terms "power" and "force." Although he used the terms "authority" and "power" inconsistently across his writings, the meaning of his addition to the Fundamental Constitutions can be grasped in those moments when he used these three terms—force, power, and authority—together.

As Tuck notes, "force" referred to material capability, which is a function of might, and "power" connoted a use of force that was authorized under the law.[36] "Authority," then, denoted a further, curious capacity, sometimes grounded in popular consent and sometimes in natural law, which transformed force into power.[37] For Locke, "authority" was not a synonym for "power" as distinct from "force," but was instead a necessary condition for the exercise of

[30] Armitage, "John Locke," 609. James Farr argues that the addition is not in Locke's hand, but agrees that he was likely present and raised no objection to this change; "Locke, Natural Law, and New World Slavery," *Political Theory* 36 (2008): 495–522, 499, 518 n26.

[31] Armitage, "John Locke," 609.

[32] Locke, *Two Treatises*, II §§24, 180.

[33] Slavery was not heritable for Locke, and his theory prohibited the enslavement of noncombatants; ibid., II §§182–83.

[34] Richard Tuck, "*Power* and *Authority* in Seventeenth-Century England," *Historical Journal* 17 (1974): 43–61, 43–45.

[35] Ibid., 50–51, 55–57.

[36] Ibid., 57.

[37] Locke, *Two Treatises*, II §§155, 202. For ambiguity in Locke's use of these terms individually, see ibid., §§87, 89, 125–26, 152.

power, viz., for the lawful use of force.[38] Claims to this kind of "authority" were to prove crucial to the project of colonial state formation. However, rather than merely deriving from the a priori assertions of colonial charters, these claims to authority also drew upon and developed alongside material and ideological innovations that were affecting the entire Atlantic World. They took their specific form in South Carolina from the collective material and ideological life of a self-constituting moral community of "civilized" settlers, a colonial moral community from which slaves were expressly debarred.[39]

In the final formulation of the master's power and authority under the Fundamental Constitutions, then, the slave was placed under the total control of the Carolina slave-owner and deprived of any legal status in his or her own right. In a strong statement of slavery's patriarchal foundations, the master's relationship to the slave, whether brutal or tender, was a matter of private rather than public law—a question of private property—within which the master could authorize his own use of force against the slave.[40] As *paterfamilias*, Locke argued in the *Second Treatise*, the master could exercise a limited right to punish his wife, servants, and children, though over his slaves he possessed a "Despotical Power … an Absolute, Arbitrary Power one Man has over another, to take away his Life, whenever he pleases."[41] In South Carolina, at least initially, the slave suffered a similar fate, existing in the "civil dominion his master has over him."[42] Unless the actions of the slave breached the peace of the wider society, the legal power of the magistrate did not touch the relation between master and slave.

[38] Ibid., II §202. Although differing over what would render a use of force "authoritative," Locke's model of force-power-authority is similar to Weber's distinction among "power" (*Macht*), "domination" or "authority" (*Herrschaft*), which he took to be a special case of "power," and "legitimacy." *Economy and Society*, 1: 53, 212–16, 2: 941–42, 946. Locke's notion of "power" is also akin to Foucault's "sovereign power," not least in relations of slavery, where for Foucault the appropriation of bodies was too violent to be a form of disciplinary power. *Discipline & Punish*, 137.

[39] On the roots of ideology in material life, see Karl Marx and Frederick Engels, *The German Ideology* (New York: International Publishers, 1947), esp. 1–43. I borrow my understanding of moral community from Emile Durkheim, *The Elementary Forms of Religious Life*, Karen E. Fields, trans. (New York: Free Press, 1995), 209–11. Colonists were not the only people to form authoritative moral communities in colonial America. As Natalie Zemon Davis has shown, slaves also fashioned autonomous and morally authoritative communities exemplified by mechanisms of self-policing on plantations. "Judges, Masters, Diviners: Slaves' Experience of Criminal Justice in Colonial Suriname," *Law and History Review* 29 (2011): 925–84.

[40] On the patriarchal (and later paternalistic) character of colonial American slavery, see Kathleen M. Brown, *Good Wives, Nasty Wenches, & Anxious Patriarchs: Gender, Race and Power in Colonial Virginia* (Chapel Hill: University of North Carolina Press, 1996), 319–66; Morgan, *Slave Counterpoint*, 261–300.

[41] Locke, *Two Treatises*, II §§71, 86, 172 (quoted), 174. Patriarchy, as Kathleen Brown notes, remained a highly contested form of authority in early America. *Good Wives,* 4–5, passim.

[42] "Fundamental Constitutions of Carolina," §98.

The Fundamental Constitutions offer crucial insight into how the project of settling Carolina was imagined. However, they were quickly replaced by the settlers' own visions for the new polity, which were substantially shaped by a powerful group of Barbadians that made up almost half of Carolina's European settlers in 1670.[43] These Barbadians aspired to an economy based on plantation agriculture, and they imported African slaves from the West Indies to the colony from the outset.[44] Yet Africans were not the only unfree laborers in the infant colony; Indian slaves were a growing demographic until the end of the Yamasee War in 1717, and the early years of the colony also saw the arrival of significant numbers of European indentured servants.[45] By the end of the seventeenth century, though, and coinciding with the adoption of rice as a staple crop, the colony turned more and more toward the use of slaves, primarily from Africa.[46]

As slavery emerged as the colony's primary source of labor, the colonial legislature redefined the power of the master over the slave. Without a firm precedent in English law, the colonists looked to the Caribbean in their search for a definition of slavery.[47] In the colony's first "better ordering" statute, of 1691, the slave was defined as "freehold" property.[48] As freehold or real estate, slaves were attached to and inseparable from specific landed estates and could only be alienated in settlement of a debt.[49] By 1696, the Commons

[43] Richard S. Dunn, "The English Sugar Islands and the Founding of South Carolina," *South Carolina Historical Magazine* 72 (1971): 81–93, 81; Jack P. Greene, "Colonial South Carolina and the Caribbean Connection," *South Carolina Historical Magazine* 88 (1987): 192–210, 197–99.

[44] Between a quarter and a third of the colony's earliest inhabitants were of African descent, all or most of whom were unfree laborers. Wood, *Black Majority*, 20–25.

[45] William Ramsey, "'All and Singular the Slaves': A Demographic Profile of Indian Slavery in Colonial South Carolina," in Jack P. Greene, Rosemary Brana-Shute, and Randy J. Sparks, eds., *Money Trade and Power: The Evolution of South Carolina's Plantation Society* (Columbia: University of South Carolina Press, 2001), 166–86; Abbot E. Smith, *Colonists in Bondage: White Servitude and Convict Labor in America, 1607–1776* (Chapel Hill: University of North Carolina, 1947), 57, 331–32; Alan Gallay, *The Indian Slave Trade: The Rise of the English Empire in the American South, 1670–1717* (London: Yale University Press, 2002), 48–50. Early prohibitions on Indian enslavement were ignored and later superseded by a licensed trade in Indian slaves. *Shaftesbury Papers*, 367; *PROSC*, 2: 59–60.

[46] Wood, *Black Majority*, 35–62. For a critique of the claim that settlers turned to African slaves because of their skill in rice cultivation, see David Eltis, Philip Morgan, and David Richardson, "Agency and Diaspora in Atlantic History: Reassessing the African Contribution to Rice Cultivation in the Americas," *American Historical Review* 112 (2007): 1329–58. On the shift away from white servant labor in Anglo-America, see Eltis, *African Slavery*, 45–54.

[47] Hadden, *Slave Patrols*, 8–9; Thomas J. Little, "The South Carolina Slave Laws Reconsidered, 1670–1700," *South Carolina Historical Magazine* 94, 2 (1993): 86–101, 97; Edward B. Rugemer, "The Development of Mastery and Race in the Comprehensive Slave Codes of the Greater Caribbean during the Seventeenth Century," *William and Mary Quarterly*, 3d ser., 70 (2013): 429–58, 452–53; Sirmans "Legal Status," 464–65. Bradley Nicholson argues that colonial slave codes borrowed features of English laws against vagabondage. "Legal Borrowing and the Origins of Slave Law in the British Colonies," *American Journal of Legal History* 38 (1994): 38–54.

[48] *SSC*, 7: 343–44. This act was disallowed by the Lords Proprietors only to be reenacted by the Commons House in 1693 and 1695. Ibid., 2: 78, 96; Little, "Slave Laws," 97 n33, 99 n43.

[49] Sirmans "Legal Status," 465; Wood, *Black Majority*, 51–52 n63.

House again redefined the slave's status. This definition remained in force until 1740, and declared: "All Negroes, Mollatoes, and Indians which at any time heretofore have been bought and Sold or now are and taken to be or hereafter Shall be Bought and Sold are hereby made and declared they and their Children Slaves to all Intents and purposes."[50] In resting on a vague "all Intents and purposes" language, the legal definition of the slave became a matter of custom. That is to say, according to this statute a slave was a person who was known to be a slave, with the specific understanding of this term being derived from the existing practice of slavery.[51] By the early decades of the eighteenth century, this practice took the form of chattel slavery throughout the colony, which allowed slaves to be freely alienated by their masters.[52]

This transformation in the legal foundation of slavery took for granted the state's role in mediating the master-slave relationship.[53] By defining the slave's status in law, the colonial state was both acknowledging the peculiarity of an institution of property in human beings and making itself the arbiter of the condition of slavery. Even though the definition of the slave was to be a matter of custom, the authority of custom was itself rooted in positive law.[54] As such, the relationship between master and slave depended on the recognition of the state, which also took it upon itself to regulate that relationship. The master-slave relationship was replaced by the nexus slave-state-master at the heart of the plantation-colonial complex, with the colonial state taking responsibility for limiting the freedom and entitlements of labor and for policing the activities of laborers and masters alike. By asserting a right to legislate and adjudicate the master-slave relationship in the name of public order, the colonial state denied that this was a purely private relation.

Though it is impossible to determine with certainty what motivated the turn to policing the master-slave relationship, two persistent concerns in "better ordering" statutes—fraternization among unfree laborers on the Sabbath, and the laxity with which some slave-owners treated their slaves—suggest that the state's progressive arrogation of authority over this relation was motivated by the concern that a lack of discipline on some plantations could precipitate a widespread slave revolt.[55] Moreover, at least initially, this

[50] Quoted in Sirmans, "Legal Status," 466. See also L. H. Roper, "The 1701 'Act for the better ordering of Slaves': Reconsidering the History of Slavery in Proprietary South Carolina," *William and Mary Quarterly*, 3d ser., 64 (2007), 395–418, 408 (hereafter "1701 Act"); *SSC*, 7: 352, 371, 385.

[51] Tomlins, *Freedom Bound*, 439–40 n122; Sirmans, "Legal Status," 466.

[52] Ibid., 466–68. South Carolina's judiciary consistently treated slaves as chattels. A. Leon Higginbotham, Jr., *In the Matter of Color. Race and the American Legal Process: The Colonial Period* (New York: Oxford University Press, 1978), 211–12.

[53] Alan Watson sees this public law dimension as peculiar to English colonial slavery. *Slave Law in the Americas* (Athens: University of Georgia Press, 1989), 66.

[54] Cf. Sirmans, "Legal Status," 471.

[55] *SSC*, 7: 347; 1701 Act, 414–15; *CH, 1702*: 99–101.

concern extended to the prospects of an alliance between indentured Europeans and enslaved Africans and Indians, which had well-known precedents in North Carolina, Virginia, and across the Caribbean.[56] The policing of slaves beyond the plantation also came under scrutiny toward the end of the seventeenth century, with the colonists establishing special criminal courts for trying slaves for petty and serious offenses in 1691.[57] The earliest such court, established in 1687, was designed to prosecute slaves and servants for trading away their masters' possessions without permission.[58] Although the authority of the master to police petty offenses on his plantation remained the norm, this 1687 procedure marked an early institutional intrusion into the master-slave relationship.

However, even if the master retained the authority to punish petty offenses on the plantation, the state added two constraints on the use of force against slaves. First, masters were now *required* to punish slaves guilty of minor offenses, with any failure to do so incurring a fine.[59] The master became an agent of the state within the "jurisdiction" of the plantation; he possessed the legal power of a magistrate and he was strictly obliged to apply it over his slaves. His relationship to the slave was no longer the purely private relation of ownership, but was now saturated with a public obligation to ensure the orderliness of his slaves, often through the application of harsh and life-threatening punishments.[60] Second, the force that masters could legally use against their slaves was constrained to a set of carefully enumerated punishments. They could punish a slave only to the extent allowed by the law, and any excessive use of force was prohibited. For example, in 1691 any person (including the slave-owner) who killed a slave "out of wilfulness, wantoness, or bloody mindedness" was to be imprisoned and forced to pay £50 to the slave's owner. Over the next four decades, the Commons House reduced the punishment for the inhumane treatment of slaves to a fine, even as imperial authorities in London called for masters who willfully killed their slaves to be executed.[61] The colonial state, that is, claimed for itself the authority to judge a master's punishment of his slaves.

That the restrictions the Commons House placed on the master's power to punish did not mark a humanitarian concern for slaves was evidenced by the fact that legislators simultaneously required masters to mutilate disobedient

[56] Blackburn, *New World Slavery*, 317; Breen, *Puritans and Adventurers*, 136–39; Little, "Slave Laws," 89–90, 95; Morgan, *American Slavery*, 250–70.
[57] *SSC*, 7: 345–46.
[58] Ibid., 2: 22–23.
[59] Ibid., 7: 345, 353; 1701 Act, 410.
[60] In a further extension of state power over the plantation, after 1722 state-appointed constables and slave patrols took over the master's prior responsibility for searching "negro [slave] houses" for weapons. *SSC*, 7: 372–73.
[61] Ibid., 7: 346–47, 363, 381; 393–94; *PROSC*, 8: 136; 14: 186.

slaves.[62] By 1701, for instance, slaves who repeatedly ran away faced escalating punishments from public whipping to mutilation, castration, and ultimately death. In an effort to overcome laxity in the punishment of slaves, the colony compensated slave-owners in the event that a slave died in the course of a mandated punishment, and threatened fines where punishments were not carried out.[63] While offering no comfort to the slave, then, limitations on the legal power of the master exemplified a shift in the legal foundation of the master-slave relationship away from a purely private relationship to one saturated with public authority. Moreover, the obligation to police slaves fell to the population of white freemen as a whole. Freemen were required by law to challenge slaves encountered outside of a plantation to produce a "ticket" of permission from their master, and after 1701 could be impressed into the service of the colony's slave patrols.[64] Thus to be free in Carolina was to bear a dual obligation to defend the property of the slave-owner and to secure the public interest of the colony.

We should bear in mind that slave codes do not tell us everything about the day-to-day practice of slavery, not least because they were often unevenly enforced.[65] But because South Carolina's slave codes were the result of a deliberative process in a popularly elected assembly, they reveal a great deal about the ideological ground on which the plantation-colonial complex was constructed.[66] Moreover, the failure of slave-owners to enforce the colony's "better ordering" statutes suggests that the colonial state was increasingly arrogating authority over the master-slave relationship against the interests of individual slave-owners. Rather than affording the master unfettered personal power and authority over his slaves, the state sought to place his localized power on the plantation in the service of public order.

RACIALIZING PHENOTYPIC DIFFERENCE

The "better ordering" statutes evolved, as I have noted, alongside the emergence of a non-European majority in the colony. By 1703, the colonial population was almost evenly divided between free and unfree persons, with all but two hundred of the 3,550 unfree laborers being non-European slaves. Within five years, the Carolina slave population had ballooned to 5,500, including 1,400 Indians. This compared with 120 "white" servants and 3,960 "free whites."[67] It is

[62] *CH, 1697*: 20. Reverend Francis LeJau expressed horror at witnessing severe punishments meted out to slaves. Frank Klingberg, ed., *The Carolina Chronicle of Francis LeJau* (Berkeley: University of California Press, 1956), 55, 108, 116, 130.

[63] *CH, 1697*: 20; *1734–1735*: 82–83; 1701 Act, 410–11; *SSC*, 7: 359–60.

[64] 1701 Act, 408, 415; *SSC*, 3: 459–60, 7: 352–54.

[65] Davis, *Slavery and Progress*, 12.

[66] Jordan, *White over Black*, 588; Higginbotham, *Matter of Color*, 7–8; Tomlins, *Freedom Bound*, 417 n59. Watson argues that the close association between legal institutions and rules and the "ethos" of a society is peculiar to English colonial slavery. *Slave Law, xii*, 64–65.

[67] *PROSC*, 5: 203–4.

significant that the colony's first census, in 1708, unlike later such reports, did not give primacy to a racialized phenotype. Instead the population was divided along the axes of age (child/adult), legal status (free/servant/slave), and phenotype (white/Negro/Indian), with adults also being divided according to their phenotypic sex (men/women). This multiplicity of divisions betrayed the inchoate and relatively unstable status of "white" identity at this point.

The Carolina Commons House first invoked the language of "whiteness" in the "better ordering" statute of 1691, borrowing from the Jamaican slave law of 1684. This is consistent with Winthrop Jordan's finding that such language became fashionable in America after 1680.[68] Despite this relatively late turn to a language that cast most European settlers as a coherent "white" assemblage, many historians of colonial slavery have treated "race" as a material fact about human beings rather than a contingent and fluid social construct, and have thereby reified race and presupposed its salience.[69] In contrast, I follow Rogers Brubaker and Frederick Cooper in treating race as a "category of practice" rather than a "category of analysis," in the hope of explaining "the processes and mechanisms though which what has been called the 'political fiction' of [race] … can crystallize at certain moments, as a powerful, compelling reality."[70] "Race," then, was (and still is) a practice by which phenotypic differences were made politically salient. This practice was not invented in the Americas,[71] but it was there that "race" first came to structure an entire social order. Indeed, it would be a mistake to read the inclusion of phenotypic terminology in the first census of 1708 as exemplifying an already existing racial order. Instead, censuses, and the wider practices of labor management in colonial America, were precisely the means by which the colonial state established and maintained a racial order in the first instance, in part by making "race" appear to be a taken-for-granted marker of social, economic, and political standing.

In South Carolina, the salience of phenotypic difference became ever more apparent after the Yamasee War. Three reports produced in 1720—by Governor Robert Johnson, the Commons House, and the colony's London agents—highlighted the fact that the colony's slave population was now almost double that of the "white inhabitants," which was thought to be "to

[68] *SSC*, 7: 343–47; Jordan, *White over Black*, 95; Rugemer, "Mastery and Race," 450, 452.
[69] Degler, "Slavery"; Jordan, *White over Black*, 583–85; Morgan, *American Slavery*, 315.
[70] Rogers Brubaker and Frederick Cooper, "Beyond 'Identity,'" *Theory and Society* 29 (2000): 1–47, 5. Historians of race and gender in colonial America are especially attuned to the intersecting histories of race, class, gender, and ethnicity. Brown, *Good Wives*, 4, 109–16; Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia: University of Pennsylvania Press, 2004), 5–6. On intersectionality, see Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43 (1991): 1241–99; Patricia Hill Collins, *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment* (London: Routledge, 2000).
[71] Morgan, *Laboring Women*, 12–49; Jordan, *White over Black*, 3–43.

the great indangering of the Province."[72] Significantly, none of the reports of the 1720s mentioned the numbers of European indentured servants or Indian slaves in the colony, suggesting that a cleavage in the colonial labor force had crystallized around a phenotypic schema defined in terms of a white/black binary.

These omissions were not the result of a disappearance of Indian slaves or white servants. The number of European servants in Carolina was actually climbing through this period, and although the colony had begun to discourage the enslavement of Indians after the Yamasee War, references to indigenous slaves persist.[73] Instead, Indian slaves and those of some combination of Indian, African, or white ancestry appear to have been assimilated into the category of "negro slave" or "blacks" for the purpose of demographic calculations. For example, Governor James Moore's parish-by-parish count of 11,828 "slaves" in the colony in 1721 is strikingly similar to the figure of twelve thousand "Negro slaves" or "blacks" respectively offered by the Commons House and the London agents in 1720.[74] The extent of this conflation was made clear in tax statutes of 1716 and 1719. Whilst acknowledging the persistence of Indian slavery, the colonial legislature declared that "for preventing all doubts and scruples that may arise, what ought to be rated on mustees, mulattoes, &c., all and every such slave who is not entirely Indian, shall be accounted as negro."[75] The "disappearance" of the Indian slave from population statistics, then, and the exceptional treatment of slaves who were "entirely Indian," appear to have been effects of the progressive organization of labor according to a racializing schema that ran together the categories of "slave" and "Negro."[76]

The racial order that congealed in Carolina depended on the conflation of blackness with unfreedom. Moreover, rather than being the "unthinking decision" of settlers already convinced of their white supremacy, this racial order and the plantation-colonial complex that rested on it had to be carefully

[72] *PROSC*, 8: 66–67. There were approximately twelve thousand slaves in the colony in 1720, with a white population of between 5,220 and 6,400. Ibid., 7: 233–34, 265; 9: 23.

[73] *SSC*, 3: 14–20; Theo D. Jervey, "The White Indentured Servants of South Carolina," *South Carolina Historical and Genealogical Magazine* 12 (1911): 163–71, 167; Ramsey, "All and Singular," 173–80; Smith, *Colonists in Bondage*, 331. Upward of fifty-one thousand Indians were enslaved in the Carolina trade before the Yamasee War, most being exported to other English colonies. In the 1720s, South Carolina imposed an import duty on Indian slaves between two and five times the duty applied to African slaves. Gallay, *Indian Slave Trade*, 294–99, 338–39; *PROSC*, 15: 92; 18: 19.

[74] Ibid., 7: 265; 8: 66–67; 9: 23.

[75] *SSC*, 2: 671; 3: 77. Although colonists did not subdivide the category of "slaves" by ancestry or "race" in census reports after 1708, "better ordering" statutes did use terms like "mulatto," "mustee," or "mustizo" to refer to slaves whose ancestors included some combination of Europeans, Africans, and Native Americans. Ibid., 7: 371.

[76] For a similar interpretation, see Ramsey, "All and Singular," 172. This conflation of phenotype and material or status location was a pervasive feature of colonial societies. Frantz Fanon, *The Wretched of the Earth*, Richard Philcox, trans. (New York: Grove Press, 2004), 5.

cultivated by the Commons House of Assembly.[77] The large number of Barbadian settlers who arrived in the colony did bring with them ideas about and institutions of African slavery. Yet the colony of South Carolina faced its own particular challenges, situated as it was on a remote imperial periphery, surrounded by European rivals and powerful indigenous neighbors, and with a population of unfree laborers that included an appreciable number of Native Americans.[78] In this context, the Commons House chose to regulate unfree labor in part by fostering cleavages within the colony's laboring population, consciously fashioning a racial order.

For example, in 1716 the legislature banned the importing of seditious whites such as criminals, "native Irish," or "Papists," who were thought likely to ally with Britain's imperial rivals or with slaves in the event of a war or revolt.[79] The following year, an act to discipline newly arrived servants penalized a host of relationships between whites and either free blacks or slaves. It threatened any white servant convicted of fleeing the colony with a slave with execution.[80] Moreover, a penalty of seven years of service was to be imposed on any white woman, free or servant, who conceived a child with a "negro or other slave or free negro." Similarly, if a "free negro" fathered a child with a white woman, or if a white man, whether free or servant, fathered a child with "any negro woman," he too was to be sentenced to seven years of servitude.[81] Here, the condition of servitude was to be heritable, albeit temporarily, with the "children of such unnatural and inordinate copulation" being bound as servants until adulthood.[82] Through these measures, the Commons House sought to instruct newly arrived servants in the racializing logic of the plantation-colonial complex in the hope of creating a white bulwark against the threat of slave insurrection.

This statute prescribed no punishment for a "negro woman" who begot a child with a white man, and made no mention of the fate of the child of such a relationship. The colonial legislature most likely presumed black women would already be slaves whose children automatically inherited their condition of enslavement. Matrilineal slave status was not enshrined in statute in Carolina until

[77] For the language of "unthinking decision," see Jordan, *White over Black*, 44–98.
[78] Ramsey, "All and Singular," 166–67; Higginbotham, *Matter of Color*, 169.
[79] *SSC*, 2: 647; Blackburn, *New World Slavery*, 316–17; Jervey, "Indentured Servants," 166.
[80] *SSC*, 3: 17.
[81] Ibid., 3: 20. An unmarried woman who had a child in South Carolina could be condemned to four years of servitude if she refused to name the child's father and was unable to pay a fine. Nicholas Trott, *The Laws of the Province of South-Carolina*, 2 vols. (Charles-Town, 1736), 1: 97–98. Similar laws in Virginia were disproportionately applied to white servant women, revealing the gendered as well as the racial components of this legislation. Brown, *Good Wives*, 187–211, esp. 199–200; Rebecca A. Goetz, *The Baptism of Early Virginia: How Christianity Created Race* (Baltimore: Johns Hopkins University Press, 2012), 61–85.
[82] *SSC*, 3: 20.

1740, but it had long been the practice there.[83] This heritability of slavery through the status of the mother was a powerful factor in the solidification of racial slavery, inasmuch as it tethered slavery to the verifiable fact of some black (or Indian) ancestry.[84] It also worked to redefine what it meant to be "white," "negro," or "mulatto," as children with European ancestry came to be included in the category of "negro slaves." This process replaced purely phenotypic distinctions with an increasingly racial order, but it did so only because the figure of the female "negro slave" had already been defined as eligible for enslavement.

It is also revealing that the colonial legislature could not apply the same penalty for sexual fraternization to slaves, for whom the threat of extended service was meaningless—both slaves and servants could be corporeally punished, but only servants or free persons could be condemned to further service.[85] This distinction reflected the different legal foundations of slavery and indentured servitude. Specifically, servitude was predicated on the notion that juridical subjects, already civilized and subject to a body of law, could freely contract themselves into temporary bondage.[86] In practice, this system was subject to considerable abuse, with servitude often being the result of kidnapping or press-ganging. However, servants were empowered to bring suit against their masters, and although they did so before courts dominated by the class of their oppressors, some servants do seem to have succeeded before the courts.[87] The lot of the slave was dire in comparison. As a captive in a supposedly "just" war whose execution was held in abeyance, the civically dead slave was deprived of almost all legal rights. Slaves could not sue their masters, and although the state could intervene in the master-slave relation, as chattels slaves had no right to appeal for it to do so.[88] Moreover, as presumptively uncivilized persons, slaves were thought morally incompetent to give

[83] Ibid., 7: 397; Morgan, *Laboring Women*, 93–94.

[84] Ibid., 69–106; Brown, *Good Wives*, 128–35. Sexual relations between whites and free Indians may have been excluded from this act because of their importance to the Indian trade. Alexander Moore, ed., *Nairne's Muskhogean Journals: The 1708 Expedition to the Mississippi River* (Jackson: University Press of Mississippi, 1988), 60–61.

[85] See also *SSC*, 2: 22–23.

[86] Even Irish rebels served out "penal contracts" in the colonies. Blackburn, *New World Slavery*, 317.

[87] Ibid., 240–41; Warren B. Smith, *White Servitude in Colonial South Carolina* (Columbia: University of South Carolina Press, 1961), 38–40; Williams, *Capitalism & Slavery*, 10–11; Higginbotham, *Matter of Color*, 212–14.

[88] Ibid., 8–9. That slaves who were alleged to have broken the law were subject to trials in special slave courts suggests that some minimum of legal rights was afforded to slaves. For example, the 1740 "better ordering" statute put the point clearly, noting, "Natural justice forbids that any person, of whatever condition soever, should be condemned unheard." Nevertheless, this was hardly akin to a freeman's justice, with matters brought before the slave courts being "determine[d] … in the most summary and expeditious manner." *SSC*, 7: 400–1, 400. For a study of the functioning of slave courts in colonial North Carolina, which were modeled on those of South Carolina, see: Alan D. Watson, "North Carolina Slave Courts, 1715–1785," *North Carolina Historical Review,* 60 (1983): 24–36, esp. 26.

evidence, except in the case where they were incriminating themselves or other slaves.[89] Tellingly, by 1740 this legal disability extended to any "negro, Indian, mulatto or mustizo, claiming his, her or their freedom," who was required to enlist the aid of a (presumably white) guardian to bring suit on his or her behalf.[90]

That this legal disability attached to both free and enslaved people of color mirrors the conceptual slippage noted earlier between the terms "slave" and "negro." In this case, it was "freedom" that was conflated with "whiteness." Although people of color could have their right to freedom confirmed by the courts, they could only do so with the aid of a white person, whose freedom could safely be presumed.[91] This conflation of freedom with whiteness and bondage with blackness was also evident in statutes in 1722 and 1735, which required slave-owners to finance the departure of any freed slave from the colony. If an erstwhile slave failed to depart within a year of being manumitted, he or she would "lose the benefit of such manumission, and continue to be a slave."[92] The concept of a free person of color in South Carolina was becoming something of a contradiction in terms.

Nevertheless, a small number of free people of color continued to live in the province after 1722. For example, fifteen "Free negroes and Indians" were reported to be living in St. George's parish in 1726.[93] Although being "black" came to be the primary marker of unfreedom in this period, that free people of color like the family of Gideon Gibson could live in the colony, sometimes "passing" for white, suggests the continued fluidity of racial categories as well as the powerful force of the category of juridical subjecthood.[94] Former slaves and their descendants were endowed with the right of self-ownership through an act of legally recognized manumission, even though as people of color they often enjoyed fewer rights than white freemen.[95] A former slave

[89] Ibid., 28–29. Before 1735, certain restrictions were placed on how the court might interpret the evidence of slaves. While the evidence of a single slave could be used to convict a fellow slave of a petty crime where the court found that evidence convincing, a slave could only be convicted of a capital crime by their own confession, by "the oath of christian evidence," or "by the plain and positive evidence of two negroes or slaves, so circumstantiated as that there shall not be sufficient reason to doubt the truth thereof." SSC, 7: 356–57; cf. ibid., 7: 389.

[90] Higginbotham, *Matter of Color*, 194; *SSC*, 7: 397–98; H. M. Henry, *The Police Control of the Slave in South Carolina* (Emory: n.p., 1914), 8–15.

[91] For the confirmation of a "negro" petitioner's freedom by the Commons House, see *CH, 1706–1707*: 14–15.

[92] *SSC*, 7: 384, 396. Restrictions on manumission marked an obvious intrusion into the master-slave relationship by constraining the master's capacity to extinguish his claim to property over the slave. Higginbotham, *Matter of Color*, 47.

[93] Frank Klingberg, *An Appraisal of the Negro in Colonial South Carolina: A Study in Americanization* (Washington, D.C.: Associated Publishers, 1941), 60.

[94] On Gibson, see Jordan, *White over Black*, 171–74.

[95] The Commons House excluded non-white free men from the franchise in 1716, an act that was confirmed by the Crown in 1721. *SSC*, 2: 688, 691; 3: 3–4, 50–55, 135–40. For an account of the attenuation of free black women's rights relative to white women in Virginia, see Brown, *Good Wives*, 120–28.

might be compelled to a period of unfree labor for violating the law, as might any white person, but this would no longer be an unlimited bondage. A person recognized by the law as bearing a right of self-ownership could not be transformed into a slave.[96]

SAVAGERY, CIVILITY, AND THE ORIGINS OF RACIAL SLAVERY

The possibility of a black "juridical subject" in the context of a progressive conflation of slavery and blackness implies that there was a missing term in the logic of racial slavery that did the work of connecting phenotype and legal status. Examining the colonial assembly's own justifications for its slave codes offers a means of tracing this link. At the heart of these justifications lay the very binary of savagery and civility that underpinned the project of settler colonialism—it was not one's phenotype or "race" that made someone eligible for enslavement, but rather his or her putative savagery.

In 1712, the Commons House, borrowing from the Barbados statute of 1688, justified special ordinances for slaves with the following preamble:[97]

> Whereas, the plantations and estates of this Province cannot be well and sufficiently managed and brought into use, without the labor and service of negroes and other slaves; and forasmuch as the said negroes and other slaves brought unto the people of this Province for that purpose *are of barbarous, wild, savage natures*, and such as *renders them wholly unqualified to be governed by the laws, customs, and practices of this Province*; but that it is absolutely necessary, that such other constitutions, laws and orders, should in this Province be made and enacted, for the good regulating and ordering of them, as may *restrain the disorders, rapines and inhumanity*, to which they are *naturally prone* and inclined.[98]

Although earlier Carolina statutes had borrowed elements from the Barbadian "better ordering" law of 1661 (and from the Jamaican statute of 1684), they had not adopted its preamble, which described Africans in similar terms as "an heathenish brutish and uncertain dangerous pride of people."[99] Historians have often observed that charges of barbarism, savagery, and heathenism were used to justify the enslavement of Africans, along with the biblical authority

[96] On the coincidence of the rise of Atlantic slavery and of conceptions of self-ownership among Europeans, see Eltis, *African Slavery*, 18–24, 55–56, 80. In accounts of sixteenth-century Africa, Europeans depicted "Negroes" (as opposed to "Moors") as lacking the capacity for self-ownership. Emily C. Bartels, "Imperialist Beginnings: Richard Hakluyt and the Construction of Africa," *Criticism* 34 (1992): 517–38, 530.

[97] Tomlins, *Freedom Bound*, 441–42.

[98] *SSC*, 7: 352 (my emphasis). This preamble was modified in 1735 to describe slaves as "generally of a barbarous and savage nature." Reflecting the racial order's entrenchment, the 1740 slave code replaced the preamble with the declaration that "negroes, Indians, mulattoes and mustizoes," were "absolute slaves" who were to be reduced to "due subjection and obedience" by the law. Ibid., 7: 385, 397.

[99] "Barbados Slave Code, 1661," in Stanley Engerman, Seymour Drescher, and Robert Paquette, eds., *Slavery* (New York: Oxford University Press, 2001), 105; Rugemer, "Mastery and Race," 452–53; Tomlins, *Freedom Bound*, 439–44; cf. Sirmans, "Legal Status," 466.

of the "Curse of Ham."[100] It is noteworthy that Carolina eschewed the religiously inflected language of "heathenism," perhaps reflecting the fact that the laws of Carolina had envisaged the possibility of Christian slaves from the first settlement of the colony.[101] Instead, the 1712 statute defined the slave as "barbarous, wild, and savage," in opposition to the colony's questionable self-image as a civilized, well-ordered polity. I am interested in drawing attention to the specifically juridical content of this savage/civilized binary.

This was the first time that the colony provided a justification for its harsh slave code. Partially echoing an earlier argument by a prominent Indian agent, Thomas Nairne, for "civilizing" intractable Indians through enslavement, this preamble justified special measures to counter the slave's "natural" inclination for "disorders, rapines, and inhumanity."[102] David Brion Davis notes that slave-owning societies often envisaged enslavement as a means of "civilizing" foreign peoples, but the 1712 statute implied no such telos.[103] With the exception of those instances where masters voluntarily manumitted their slaves, acts that were subject to legal restrictions in the colony, the disciplining power of the slave code would not produce newly civilized persons. Instead, by entering a condition of civic death, the slave was thrown into a nebulous conceptual space between savagery and civility. A slave might be trained in a craft or converted to Christianity, but he or she could not become a juridical subject without the intervention of the master.

The juridical binary of savagery and civility traced a line between slavery and freedom that no longer coincided with religious differences. This marked a rupture in prevailing prohibitions on the enslavement of fellow Christians.[104] Rebecca Goetz, writing about Virginia, argues that this unmooring of freedom from Christianity redefined what it meant to be truly Christian, which came to be bound up with "whiteness."[105] I would assert that it also reflected a longer-run change in understandings of freedom itself. Although

[100] For contending views on the "Curse of Ham," see Blackburn, *New World Slavery*, 64–76; Benjamin Braude, "The Sons of Noah and the Construction of Ethnic and Geographical Identities in the Medieval and Early Modern Periods," *William and Mary Quarterly*, 3d ser., 54 (1997): 103–42; Davis, *Slavery and Progress*; Goetz, *Baptism*; Jordan, *White over Black*.

[101] "Fundamental Constitutions of Carolina," §98; *SSC*, 7: 343–44, 364–65; 1701 Act, 416.

[102] Moore, *Nairne's Journals*, 75–76.

[103] Davis, *Slavery and Progress*, 23–32.

[104] Blackburn, *New World Slavery*, 38–39, 42–44, 49–50. In the mid-sixteenth century, the Spanish theologian Francisco de Vitoria argued that any Christian soldiers captured in a just war against another Christian state would be "captives, but not slaves." What marked the difference, he suggested, was that "they [Christians] are able to appear in a court of justice and do other things of that sort, which nevertheless could not be permitted if they were slaves. The acts of a [Christian] captive are valid, and a Christian could not sell him at all." We can already discern the outlines of juridical subjecthood here, albeit restricted to the Christian rather than the civilized person. Francisco de Vitoria, "De Jure Gentium et Naturali," Francis Crane Macken, trans., in James Brown Scott, *The Spanish Origin of International Law: Francisco De Vitoria and His Law of Nations* (Oxford: Clarendon Press, 1934), cxiii–cxiv.

[105] Goetz, *Baptism*, 6–12, 86–111.

Englishmen may have thought that the decline of bonded labor in England was tethered to the rise of Christianity, by the time Carolina was founded it was no longer one's faith but one's status as a rights-bearing subject that guaranteed a claim to freedom.[106] Moreover, Englishmen had long seen Christianity as itself dependent on the attainment of civility.[107] With the unmooring of freedom from Christianity, therefore, came a simultaneous separation of Christianity from civility, revealing the roots of formal freedom in that latter condition. An Englishman was protected from enslavement because, as a subject of the civilized English king, he was endowed with the "Liberties and Properties" of juridical subjecthood.[108] And yet the idea that Christianity, civility, and freedom were interrelated persisted among slave-owners and, more importantly, among their slaves. Carolina slave-owners objected to conversion because they feared it would make their slaves intractable or would be used as a path to manumission, and their slaves may well have had precisely that goal in mind.[109] But the conceptual ground of freedom had shifted behind the back of this struggle for freedom through Christian conversion, coming to rest on the rights afforded by human laws.[110]

That protection from enslavement flowed from juridical subjecthood rather than baptism is reflected in the English prohibition on the enslavement of certain non-Christian populations. In spite of the richness of the historiography of racial slavery, scholars have failed to offer an adequate account of why colonies like South Carolina only utilized African and Native American slaves. As David Eltis has asked: "If the elite could kill Irish, Huguenots, Jews, prisoners of war, convicts, and many other marginalized groups, why could they not enslave them?"[111] Certainly, Eltis and others are correct that the predominance of African and Native American slaves depended on existing indigenous practices of enslavement in Africa and America, and on the relative costs of enslaved, indentured, and free wage labor.[112] However, the ready availability of African and Indian slaves cannot alone account for why no Jew or Irishman

[106] On the English connection between Christianity and freedom, see ibid., 17–18; Jordan, *White over Black*, 49–50.

[107] "Documents concerning Reverend Samuel Thomas, 1702–1707," *South Carolina Historical and Genealogical Magazine* 5 (1904): 21–55, 37, 43–44; Wilberforce Eames, ed., *John Eliot and the Indians, 1652–1657* (New York: Adam & Grace Press, 1915), 21; Nicholas P. Canny, "The Ideology of English Colonization: From Ireland to America," *William and Mary Quarterly*, 3d ser., 30 (1973): 575–98, 585–86; Pearce, *Savagism*, 29.

[108] A concern for these rights was central to the colonists' revolt against the Proprietors in 1719. *PROSC*, 7: 273.

[109] Klingberg, *LeJau*, 50, 52–55, 60, 86, 97, 102, 121, 136; Goetz, *Baptism*, 98–110; Olwell, *Masters*, 126–29.

[110] Some slave-owners saw limited slave baptisms as a means of controlling their slaves. Ibid., 116–26; Parent, *Foul Means*, 249–64.

[111] Eltis, *African Slavery*, 84.

[112] Ibid., 49–54, 114–92; Davis, *Slavery and Progress*, 63–82; Snyder, *Slavery in Indian Country*, 4–8, 47–50; Thornton, *Africa and Africans*, 72–125.

ever served as a slave in Anglo-America. Nor can it explain why specific non-Christian peoples were ineligible for enslavement. Eltis argues that the enslavement of Europeans had become inconceivable as a result of a salient division of the world by this point into Europe and its outside, with a prohibition on enslaving those "brought up as European."[113] However, he offers little evidence of any shared "European" identity in the seventeenth century,[114] nor is it clear that peripheral populations such as the Irish would have been counted within such an assemblage, even if they were increasingly identified as "white" in the Americas. Moreover, in treating Europe as an aggregate, Eltis obscures variation in practices of enslavement across European states. The English, for example, shied away from the enslavement of certain non-European populations, not least the Turks and the Chinese, but also the inhabitants of South Asia and Southeast Asia, where the East India Company opted instead to import slaves from Madagascar and the Comoro Islands.[115] It is in these variations that the work of the savage/civilized binary comes most clearly to the fore.

As "infidels," Jews and Turks were subject to forms of racial stereotyping similar to those applied to Africans, yet they were not enslaved in the English Atlantic. On the contrary, although formally banned from England until the mid-seventeenth century, Jews were among the first settlers of the English colony of Barbados in the 1630s and 1640s.[116] Moreover, in an act of 1682 that explicitly readmitted the possibility of Native American slavery in Virginia, the legislature banned the enslavement of servants who were "Turks and Moors whilest in amity with his majesty." All others who could not prove they were Christians before their capture were condemned to be "adjudged, deemed, and taken to be slaves."[117] This provision was clarified in 1705 to add a protection from enslavement for those who could prove they were "free in England, or any other christian country" before arriving in the colony.[118] Juridical subjecthood was not confined to Christians or Europeans.

[113] Eltis, *African Slavery,* 224, 66–70, 79–80.

[114] See, for example, ibid., 234–42.

[115] Frenise A. Logan, "The British East India Company and African Slavery in Benkulen, Sumatra, 1687–1792," *Journal of Negro History* 41 (1956): 339–48; Blackburn, *New World Slavery*, 65. Eltis and Davis note the long-standing exploitation of European, African, and Middle Eastern slaves in Mediterranean Europe before the rise of Atlantic slavery. Eltis, *African Slavery*, 60, 71–72; Davis, *Slavery and Progress*, 51–61.

[116] Blackburn, *New World Slavery*, 230; Davis, *Slavery and Progress*, 100–1; Eltis, *African Slavery*, 239–41.

[117] William W. Hening, ed., *The Statutes at Large Being a Collection of all the Laws of Virginia*, 13 vols. (New York: RW&G Bartow, 1809–1823), 2: 491–92. Native American slavery was prohibited in Virginia between 1670 and 1682. Ibid., 2: 283.

[118] Ibid., 3: 447–48. Englishmen often divided the African population between "civilized," if untrustworthy, "Moors" and "uncivilized," if occasionally civil, "Negroes." Bartels, "Imperialist Beginnings," 525–31. Bruce Hall argues that this distinction between "Moors" and "blacks" was salient in the southern Saharan region before the late seventeenth century. "The Question of

As the figure who had supposedly escaped the state of nature and come to inhabit a recognized legal order, the juridical subject was imagined to possess legal rights irrespective of his or her faith or phenotype. This is not to suggest that the English thought all civilized societies were equal.[119] The proviso that this protection extended to Turks and Moors "in amity with his majesty" left open the possibility that a "just" war might allow for the enslavement of such persons. As subjects of non-Christian Princes, Turks were never considered to be the equals of Englishmen—or Christians for that matter, who could not be enslaved in a just war—but by the seventeenth century they were afforded protections that were not extended to Indians or Africans in amity with the Crown. Admittedly, traders in South Carolina were prohibited from knowingly purchasing any so-called "free Indian" from any "Nation that is in Amity and under the Protection of [the colonial] Government."[120] Although the colony treated allied or subject Indians as "free," and manumitted them where they were found as slaves within the colony, they did not order the purchase and manumission of such Indians who were offered in trade by indigenous slave-traders. In contrast to a Frenchman held as a slave among the Cherokee, who was purchased and freed by the colony, the "protection" offered to Indians allies was limited to preventing their enslavement within South Carolina.[121]

Perhaps most anomalous is the treatment of the oft-maligned "pagan" and "savage" Irish. Their protection from enslavement was not a consequence of Irish "whiteness" or Christianity, which were often contested, but rather of their existing liege subjection to the King of England, Scotland, France, and Ireland, which afforded them the protection of juridical subjecthood.[122] Whilst jurists often questioned the extent of English jurisdiction over Ireland,[123] the

'Race' in the Pre-Colonial Southern Sahara," *Journal of North African Studies* 10 (2005): 339–67. On the prominence of Turkish and Moorish merchants, traders, and ambassadors in Elizabethan and Stuart England, see Nabil I. Matar, *Turks, Moors, and Englishmen in the Age of Discovery* (New York: Columbia University Press, 1999), 19–42.

[119] Bartels, "Imperialist Beginnings," 529–30.

[120] McDowell, *Journal of the Commissioners*, 86; *CH, 1703*: 75–76.

[121] McDowell, *Journal of the Commissioners*, 16–17, 125–27, 189.

[122] Noel Ignatiev, *How the Irish Became White* (London: Routledge, 1995), 34–59; Canny, "Ideology of English Colonization," 583–88. The definition of a natural born subject of the King of England was settled in the landmark case of the *post-nati* in 1608. Edward Coke's judgment in the case held that Scots born after the accession of James VI and I to the English throne were "natural born subjects" at English law, bound to the king by a relationship of ligenace and hence entitled to the same benefits or privileges as any Englishman. Coke also held that since the "conquest" of Ireland by Henry II, "any that was born in Ireland was no Alien to the Realm of England" but a "natural born Subject[]." *Calvin v. Smith* (1608), 7 Coke Rep., 1a–28b, quoted at 17b, 23a, 26b. For an annotated copy of Coke's judgment in this case, see Steve Sheppard, ed., *The Selected Writings of Sir Edward Coke*, 3 vols. (Indianapolis: The Liberty Fund, 2003), 1: 166–232.

[123] Sir John Davies, *A Discovery of the True Causes Why Ireland Was Never Entirely Subdued…*, James P. Myers Jr., ed. (Washington, D.C.: Catholic University of America Press, [1612] 1988),

Crown insisted that its native Irish subjects warranted legal protections. Queen Elizabeth, for example, insisted that the Irish were rightful subjects who were entitled to the protection of the Queen's law, allowing them to contest the seizure of lands in the Munster plantation in the courts.[124] Irish servants arriving in America without contracts of indenture, on the other hand, did often serve longer terms than their English counterparts, and native Irishmen were often likened to Native Americans.[125] Nonetheless, the Irish were spared the condition of perpetual bondage by their subjection to a body of "civilized" law.

Whilst living in a condition of savagery made a person's enslavement thinkable for Englishmen, it was not sufficient to condemn a person to enslavement. The requirement of capture in a "just" war remained central to English justifications of slavery. In practice, such justifications were rarely tested, but when they were it was not beyond English colonial courts to find against slave-traders and to manumit slaves deemed to have been unjustly enslaved. In Massachusetts in 1645, two African slaves captured in Guinea were released from bondage after the General Court deemed them to have been "unlawfully taken."[126] Similar manumissions occurred in Maryland in 1676 and in Barbados in 1702, and they were often seen in South Carolina's trade in Indian slaves.[127] The Massachusetts Court was clear that the primary issue in the trial of the accused slavers was the manner of the Africans' enslavement —"y^{e} hainous & crying sinn of man stealing"—rather than the fact of slavery itself.[128] Massachusetts, for its part, had not shied away from enslaving Block Island or Pequot Indians in the colony's supposedly just war of 1637, and had passed a law in 1641 that limited lawful slavery to those captured in such just wars.[129] However, the failure of Europeans to enslave "civilized" captives of European wars suggests that capture in a just war was, by itself, an insufficient basis for slavery. Furthermore, there is something telling about the grounds on which Massachusetts claimed jurisdiction over this case of "man stealing" in Guinea, namely that these "acts and outrages" were committed by residents of the colony in a place "where there was noe civill government

71–79; Bradin Cormack, *A Power to Do Justice: Jurisdiction, English Literature, and the Rise of Common Law, 1509–1625* (Chicago: University of Chicago Press, 2007), 136–37.

[124] Ibid., 149.

[125] Jordan, *White over Black*, 87; James Muldoon, "The Indian as Irishman," *Essex Institute Historical Collections* 111 (1975): 267–89.

[126] Nathaniel B. Shurtleff, ed., *Records of the Governor and Company of the Massachusetts Bay in New England*, 5 vols. (Boston: W. White, 1853–1854), 2: 168.

[127] Eltis, *African Slavery*, 180; Thornton, *African and Africans*, 147; McDowell, *Journal of the Commissioners*, 4, 26; *CH, 1706–1707*: 13–14.

[128] Shurtleff, *Records*, 3: 84.

[129] Ibid., 1: 181; John Winthrop, *The History of New England from 1630 to 1649*, 2 vols., James Savage, ed. (Boston: Little, Brown, & Co. 1853), 1: 279; William H. Whitmore, ed., *The Colonial Laws of Massachusetts Reprinted from the Edition of 1672* (Boston: Rockwell and Churchill, 1890), 53.

which might call them to accompt."[130] The savage/civilized binary traced a distinction between two types of societies: "savage" communities, where just wars could make slaves of peoples who supposedly lacked any rights grounded in law, and civilized polities, which claimed from themselves the sole right to adjudicate the justice of any given war, and where even in the event of a just war subjects were protected from falling into enslavement. It was only when a just war was tethered to the savage/civilized binary that the conditions for lawful enslavement were met.

In practice, commercial interests played a significant role in tracing the boundary between savagery and civility and in determining which Africans and Indians were protected from enslavement.[131] English depictions of Africans, whether "Moors" or "Negroes," linked civility with a preference for trade and wildness with an inclination to oppose it; "Negroes" were generally represented as being more uncivilized and lawless than "Moors."[132] Despite these representations, Englishmen depended on the trading infrastructures of independent African polities to acquire the vast majority of African slaves. Unlike the "savage" spaces described by the Massachusetts Court, English traders recognized the authority of these polities, which were sufficiently powerful to command equitable trade relations and resist colonization.[133] The African slave-trader, whether "Moor" or "Negro," was recognized as a juridical subject and was not rendered eligible for enslavement by his appearance, even though he was likely cast as less "civilized" than the Englishman.

This reflected the formal equality that was granted, as Robin Blackburn notes, to those who had "something to sell" in an emergent capitalist order.[134] In contrast, Africans (and Native Americans) who had little of value to trade were depicted as uncivilized persons ripe for enslavement. This connection of commercialism, civility, and freedom on one hand, and savagery and bondage on the other, is well illustrated in the case of Ayuba Suleiman Diallo of Bondu. Held as a slave in Maryland, Ayuba was purchased by a group of Englishmen who saw in his reputed high birth, his ability to write Arabic, and his "affable carriage" the marks of "no common slave." He was eventually emancipated with the aid of the Royal African Company, which hoped to use him as a factor as it sought to expand its trade in his native Senegambia. Ayuba's commercial usefulness and his civil ways underwrote his juridical subjecthood.[135]

[130] Winthrop, *History*, 2: 463.
[131] Eltis, *African Slavery*, 180.
[132] Bartels, "Imperialist Beginnings," 523, 525–31.
[133] Eltis, *African Slavery*, 148–49; Thornton, *Africa and Africans*, 43–71; Blackburn, *New World Slavery*, 81.
[134] Ibid., 16.
[135] Philip D. Curtin, ed., *Africa Remembered: Narratives by West Africans from the Era of the Slave Trade* (Madison: University of Wisconsin Press, 1967), 17–59, quote at 42.

As the antithesis of the juridical subject, the slave was assumed to have had nothing to bring to market except under the sovereign direction of the master, dispossessed even of ownership over his or her labor power.[136] Far from being an unspoken "cultural norm," however, the justification for enslaving particular non-European populations was contested and worked out in a dense thicket of discourse about savagery and civility.[137]

POLICING UNFREE LABOR

After "savages" had been enslaved and the colonial state had asserted its authority over the master-slave relationship, it still faced the problem of how to transform this authority into effective power. Doing so depended on mobilizing a material capacity beyond its immediate control. White servants, freemen, allied Indians, and even slaves would be called upon to fight and die to preserve the plantation-colonial complex.

As noted earlier, through the saturation of the master-slave relationship with public obligation, unfree laborers were governed primarily on the plantation itself. Crucial to the evolution of this system of plantation governance, as the Commons House saw it, was the increased importation of European servants, who were to check slave resistance, and the slowing of the rate of slave imports.[138] The idea that white servants would provide a buffer against black insurrection presupposed an affinity between white laborers and their masters. However, rather than resting on the presumption of white racial solidarity, the Commons House sought to drive a wedge between these white servants and their fellow unfree laborers and thereby fracture opportunities for class solidarity. As I have said, one part of this policy was the imposition of harsh penalties for sexual fraternization between whites and blacks and for servants who fled their servitude in the company of slaves. Another was the mandating of managerial hierarchies within the laboring class on the plantation. By requiring plantations to maintain a minimum ratio of whites to slaves, and by insisting that one of the white men employed on every plantation be either the "master or manager," the colonial government after 1701 aimed to divide black and Indian laborers from white overseers.[139]

[136] In spite of the connection of commercialism and juridical subjecthood, slaves were often commercial innovators in the colonies. Some Carolina slave-owners reduced the cost of maintaining their slaves by allowing them to work for themselves. These slaves occasionally acquired property in livestock or became traders in the Charles Town market, much to the chagrin of colonists who complained of slaves driving up the prices. *PROSC*, 17: 304; *SSC*, 2: *v*, 22–23, 7: 368, 382–83, 393, 408–10; Olwell, *Masters*, 141–80; Wood, *Black Majority*, 62, 138–39, 207–17.

[137] Cf. Eltis, *African Slavery*, 114.

[138] *SSC*, 2: 153–56; 3: 272; 7: 367, 370; *PROSC*, 14: 177.

[139] 1701 Act, 416; *SSC*, 3: 272; 7: 68; *CH, 1725*: 73–74; Henry, *Police Control*, 18–21. Solidarity among slaves usually led masters to reject the use of slaves as overseers. Blackburn, *New World Slavery*, 344–50; Morgan, *Slave Counterpoint*, 218–25.

Despite the increased racialization of slavery, and in contrast to Morgan's account of early Virginia, in eighteenth-century South Carolina class conflict persisted between poor whites and the planter and merchant elites.[140] Poorer Carolinians may indeed have aspired to the elevated social status that came with slave-ownership, but colonial policies often made it difficult for these colonists to purchase slaves.[141] As late as 1726, a quarter of households in the relatively affluent parish of St. George's owned no slaves, and over half of the remaining households owned fewer than seven slaves.[142] Slave-ownership was even less common in the poorer parishes on the colonial periphery.[143] While low country plantation owners focused on the threat of slave revolts, this was likely a less immediate concern for poorer settlers in the borderlands who faced renewed attacks by the Yamasee in 1727.[144]

This divergence of interests came to a head in 1728–1729 in a crisis over paper money, which left the colony without a functioning legislature, judiciary, or system of tax collection. The details of the dispute are beyond the scope of this paper, but the solution to the crisis highlights the connections between the project of settler colonialism and the solidification of South Carolina's racial order.[145] Its centerpiece was a "township scheam" for the settlement of the backcountry proposed by Governor Robert Johnson. The scheme proposed ten new towns to be settled by European Protestants on the lands of the Catawba and other Indians.[146] The towns would create a buffer between the agriculturally productive low country and the surrounding Indians and bolster the colony's white minority. The scheme was to be financed in part by a £10 duty on the purchase of each slave imported to the colony.[147] The proposal, then, promised increased security for poor whites living in the borderlands even as it made it more difficult for them to acquire slaves. While preserving class differences, this solution also bolstered the racial order. After all, captive Africans would provide the labor to "make good the expulsion of the Indians," as Blackburn puts it, and duties on this human commodity would cover the cost of securing the colony against putatively hostile Indians and of shoring up the white population against the black slave majority.[148]

[140] Morgan, *American Slavery*, 338–89. Anthony Parent highlights persistent class conflict in eighteenth-century Virginia. *Foul Means*, 173–94.

[141] On the aspiration to slave ownership, see Olwell, *Masters*, 44–45. Despite these difficulties, there were fewer non-slaveholding whites in South Carolina than in Virginia. Morgan, *Slave Counterpoint*, 17.

[142] Klingberg, *Appraisal*, 58–60.

[143] Sirmans, *Colonial South Carolina*, 59–60, 145, 226–29.

[144] Ibid., 156–57.

[145] On the paper money crisis, see ibid., 144–77; Richard M. Jellison, "Paper Currency in Colonial South Carolina: A Reappraisal," *South Carolina Historical Magazine* 62 (1961): 134–47.

[146] James H. Merrell, *The Indians' New World: Catawbas and Their Neighbors from European Contact through the Era of Removal* (London: Norton, 1991), 136.

[147] *PROSC*, 14: 58–60, 71–74; 15: 135–36; 16: 199–201; *CH, 1734–1735*: 64, 139.

[148] Blackburn, *New World Slavery*, 311.

The linkage of threats posed by Indians and slaves ran throughout the colonial regime of labor policing. In the materially weak colonial state, the policing of unfree labor—whether black, white, or Indian—depended on the assistance of the indigenous populations that the township scheme was supposed to defend against. In the early years of settlement, the Lords Proprietors had encouraged the colonists to maintain good relations with their neighboring Indians who might prove helpful in returning runaway slaves, mirroring the role that slave patrols would play within the colony.[149] In 1701, 1707, and 1721 temporary laws were passed authorizing Indians to use force against any person leaving the colony who was unable to produce a "tickett" from the secretary of the province permitting their departure. They could "beat, maime or assault any [runaway]," and as long as there was a white man accompanying the Indians they were entitled to kill the runaway if necessary.[150] Whether white, black, or Indian, and whether free or unfree, those fleeing the colony were made legally subject to the neighboring Indians in their capacity as agents of the colonial state.

At the same time that Indians were policing the bounds of the colony for runaways, unfree laborers were being enlisted to defend it against external threats, not least from surrounding Indian communities.[151] Although difficult to fathom given the colonists' persistent concerns about slave insurrections, between Queen Anne's War and the Yamasee War the government of South Carolina armed slaves to defend the colony against enemy incursions, with half the militia being composed of black slaves in 1708.[152] Only "trusty" slaves were to be enlisted and trained for service in the militia, and in the event that they killed or captured an enemy they were to be rewarded with their freedom.[153] Slaves may well have served diligently out of the reasonable fear that their own lives were put at risk by Indian attacks, though the role

[149] "Lords Proprietors to the Governor and Council," 5 June 1692, Colonial Office Series, United Kingdom National Archives (Kew), CO5/286, 195; *CH, 1693*: 27; Gallay, *Indian Slave Trade*, 94; Henry, *Police Control*, 28–36.

[150] *SSC*, 2: 180–81, 299; 3: 120–21. It is unclear how largely illiterate Indian populations assessed the authenticity of tickets. They may have been assisted by Englishmen who accompanied some Indian patrols, or they may have been familiar with colonial seals from treaty documents. For an early colonial passport, see "Passport Issued by Governor Merchant of Albemarle County, Carolina to John Hastings," 18 Aug. 1690, Sloane Series, British Library (London), Sloane 2717, 28. On Indian illiteracy, see Patricia Causey Nichols, *Voices of Our Ancestors: Language Contact in Early South Carolina* (Columbia: University of South Carolina Press, 2009), 85–86.

[151] *CH, 1734–1735*: 233.

[152] *PROSC*, 5: 204. Following the Yamasee War, the militia dispensed with enslaved militiamen and merged with the slave patrol to become the primary force for policing unfree labor within the colony. Hadden, *Slave Patrols*, 21; Wood, *Black Majority*, 127–28, 274–76.

[153] *SSC*, 7: 347–51; George Chicken, "Journal … to the Cherokee … 1715–16," in Langdon Cheves, ed., *Yearbook of the City of Charleston* (Charleston: Walker, Erono, & Cogswell, 1894), 323.

played by Indians in capturing runaway slaves also meant that strong surrounding Indian polities worked against the interests of the slave.

The colonial government also found other means to foreclose cooperation between neighboring Indians, slaves, and free blacks and Indians living in the colony. After 1701, the Commons House sought to limit the involvement of slaves and servants in the Indian trade, and in 1731 the legislature enacted heavy penalties for the employment of free or enslaved "Indians or negroes" in the trade.[154] In 1725, Commissioner for Indian Affairs George Chicken argued that slaves employed in the Indian trade might forge an alliance with neighboring Indians against the colony.[155] He had good reason to be concerned; a decade earlier, when Chicken attempted to draw the Cherokee Indians to the colony's side in the Yamasee War, his efforts were stymied by two black runaways who told the Cherokee "a parcell of Lies which hindred their coming down."[156]

The effect of Indian familiarity with African slaves was also evident during the Tuscarora War of 1712. While attempting, among other things, to recover twenty-four runaway black slaves being harbored by the Tuscarora, the colonial forces encountered and were unable to breach an advanced Indian fortification, which had been constructed under the tutelage of a runaway slave.[157] An alliance between Indians and slaves could afford the latter a refuge from their bondage, and the skills of slaves trained as craftsmen or militia soldiers, or of those who brought military expertise with them from Africa, could pose a significant threat to the colonial settlements.[158] Exemplifying this potential for alliance, Indians continued to offer an avenue of escape to slaves during and after the Yamasee War.[159]

The possibility of cooperation between slaves and Indians indicates both the relative weakness of cleavages separating the unfree laborers of Carolina from the surrounding Indian communities and the incompleteness of the colonial government's control over populations in and around the colony. Still, moments of resistance that brought blacks and Indians into coalition against the colonial state are more remarkable for their rarity than for their frequency. As the Yamasee, in league with the Spanish at St. Augustine, were seeking to liberate African slaves, South Carolina was enlisting Creek Indians to recover

[154] *CH, August 1701*: 8–9; *SSC*, 3: 332; William S. Willis, "Divide and Rule: Red, White, and Black in the Southeast," *Journal of Negro History* 48 (1963): 157–76, 162–63; Wood, *Black Majority*, 114–17.

[155] George Chicken, "Journal to the Cherokees, 1725," in Newtown Mereness, ed., *Travels in the American Colonies* (New York: Macmillan, 1916), 159.

[156] Chicken, "Journal 1715–16," 344.

[157] "Journal of John Barnwell," *Virginia Magazine of History and Biography* 6 (1898): 42–55, 44–45, 47, 52–54.

[158] John Thornton, "African Dimensions of the Stono Rebellion," *American Historical Review* 96 (1991): 1101–13.

[159] *PROSC*, 13: 61–70; *CH, 1734–1735*: 235.

those same runaways.[160] Moreover, just as the colony could count on black militiamen at the height of the Yamasee War, so too did it plan to enlist the aid of allied Indians, this time the Chickasaw and the Catawba, in response to the Stono Rebellion of 1739.[161] Although slaves and surrounding Indian communities often found creative ways to manipulate the colonial state to their own ends, the colonial order also benefited from tensions among Indian communities and between the interests of slaves and free Indians. The choices made by slaves and neighboring Indians, whether in resistance or in pursuit of their own interests, all too often reinforced, perhaps unwittingly, the colonial state's authority.

CONCLUSION

In presenting the management of unfree labor in colonial South Carolina as an instance of state formation, I have focused on how the displacement of the authority to adjudicate the master-slave relationship from the master to the colonial government entailed obligations for a range of actors. Masters compelled to enforce state-mandated punishments against slaves, "white" indentured servants appointed to oversee their fellow unfree laborers, and Indians employed to return runaways were all drawn into relations of obligation to preserve the plantation-colonial complex. At the same time, "trusty" slaves were enlisted to defend the colony against threats from without. Each of these sets of actors worked, often unwittingly, to reinforce the savage/civilized binary in which the authority of the colonial state and the racialization of colonial life were grounded. However, colonial freemen also fell under regimes for policing unfree labor, however, whether they were merchants who trafficked in slaves or planters who owned them. I want to conclude by briefly suggesting that these freemen must have been aware of the material weakness of the colonial state and that this may have contributed to the deepening of the savage/civilized divide and its eventual subsumption into an ideology of white supremacy.

Again, in 1701 the Commons House passed a temporary law restricting the departure from the colony of any person—whether free or unfree, rich or poor, white, black, or Indian—without express permission from the secretary of the province. This statute, revived in 1707 and again in 1721, was designed to prevent settlers from deserting the colony for "Virginia and other Governments," and amounted to an extension over the entire colonial population of the "ticketing" system originally designed to police slaves found off their plantations.[162] Those found outside the notional spatial boundaries of the colonial state—"the northward of Sante River or … the southward of Savana River"—could be challenged for their ticket and returned to the judgment of

[160] *PROSC*, 13: 129.
[161] Ibid., 20: 187.
[162] *SSC*, 2: 180–81, 299; 3: 120–21, and see also 2: 23.

the colony, violently if necessary.[163] Under this statute, the freemen of the colony, in an admittedly narrow sense, found themselves subject to the same regimes of control as those applied to unfree laborers.

Perhaps most striking is how this statute revealed the colonial state's tenuous foundations. When the Commons House empowered allied Indians to intercept those departing the colony, the rights-bearing juridical subject came to be policed by the allegedly "wild" and "savage" Indian polities that ruled over the colonial borderlands. In authorizing Indians to act as agents of the state beyond the reach of the colony's own power, the Commons House effectively co-opted the material force of autonomous Indian communities through a precarious claim to extra-jurisdictional authority. In doing so, it underscored both the spatial and material limits of the colonial state, and the conceptual and practical dependence of its putatively "civilized" order on the "savage" exterior that lay beyond the colonial settlements.

As the freeman passed beyond the settlements, then, he cannot have been unaware of the liminality of the borderlands—a space over which colonial and imperial claims to authority were articulated, but within which the colonial state lacked the material capacity necessary to effect legal power. This liminality may have suggested to the freeman the highly contingent nature of his social, economic, and political privileges, which were products of an infrastructure of domination that bled, at its limit, into the very savagery that he imagined himself to have been raised above. Moreover, the realization that the settlements were surrounded not by a disorderly wilderness, but instead by communities of well-ordered and materially powerful Indians challenged the very self-conception of the "civilized" colonial settler. Faced with the fiction of the savage/civilized binary, and constrained by their material weakness, those colonists intent on perpetuating their privilege had little option but to deepen their ideological commitment to a claimed supremacy that was increasingly cast in racial terms.

[163] Ibid., 2: 180–81.

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Abstract: South Carolina was a staggeringly weak polity from its founding in 1670 until the 1730s. Nevertheless, in that time, and while facing significant opposition from powerful indigenous neighbors, the colony constructed a robust plantation system that boasted the highest slave-to-freeman ratio in mainland North America. Taking this fact as a point of departure, I examine the early management of unfree labor in South Carolina as an exemplary moment of settler-colonial state formation. Departing from the treatment of state formation as a process of centralizing "legitimate violence," I investigate how the colonial state, and in particular the Commons House of Assembly, asserted an exclusive claim to authority by monopolizing the question of legitimacy itself. In managing unfree laborers, the colonial state extended its authority over supposedly private relations between master and slave and increasingly recast slavery in racial terms. This recasting of racial slavery rested, I argue, on a distinction, pervasive throughout English North America, which divided the world into spheres of savagery and civility. Beneath the racial reordering of colonial life, the institution of slavery was rooted in the same ideological distinction by which the colonial state's claims to authority were justified, with the putative "savagery" of the slave or of the Indian being counterpoised to the supposed civility of English settlers. This article contributes to the literatures on Atlantic slavery and American colonial history, and invites comparison with accounts of state formation and settler colonialism beyond Anglo-America.