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# The Development of Mastery and Race in the Comprehensive Slave Codes of the Greater Caribbean during the Seventeenth Century

Edward B. Rugemer

FOR the past forty years, historical writing on the development of English slave law in the Greater Caribbean has presented a clear genealogy that began in Barbados in the mid-seventeenth century. In 1661 the first post-Restoration assembly in Barbados passed English America's first comprehensive slave code in order to better manage its profitable but unruly slave society. Three years later, as Richard S. Dunn told the story, Sir Thomas Modyford brought the Barbadian slave code with him to Jamaica when he became that colony's second governor and the Jamaica Assembly adopted it as its own.<sup>1</sup> Then in 1688, after continued slave resistance and

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<sup>1</sup> My use of the term *Greater Caribbean* draws from D. W. Meinig's notion of a "culture hearth," which shapes the societies throughout a broader geographic region through the migration of its people: Meinig, *The Shaping of America: A Geographical Perspective on 500 Years of History: Volume I, Atlantic America, 1492–1800* (New Haven, Conn., 1986), 52. For a similar use of this geographic framework, see Matthew Mulcahy, *Hurricanes and Society in the British Greater Caribbean, 1624–1783* (Baltimore, 2006), 6–7, 19. Richard S. Dunn, *Sugar and Slaves: The Rise of the Planter Class in the English West Indies, 1624–1713* (1972; repr., Chapel Hill, N.C., 2000), 243. What I will refer to as the Barbados Slave Act of 1661 was entitled "An Act for the better ordering and governing of Negroes," and most of its provisions have been reprinted in Stanley Engerman, Seymour Drescher, and Robert Paquette, eds., *Slavery* (New York, 2001), 105–13. I have also consulted copies of the original manuscript, for which I would like to thank Stanley Engerman. The manuscript is in Colonial Office (CO) 30/2/16–26,

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several conspiracies for armed rebellion, the Barbados Assembly revamped its slave code with additional measures to enhance the power of the slave-holding regime. Finally, in 1691 the South Carolina Assembly modeled its own comprehensive slave code on the Barbadian laws.<sup>2</sup>

Dunn is probably correct about the contents of Modyford's trove of papers for his voyage to Jamaica, and there is no question about Jamaica's adoption of the Barbados Slave Act of 1661 (though the Jamaicans did change a few words). But there was another comprehensive Slave Act that historians have missed. In 1684, motivated by continued slave resistance and an order from Whitehall to revisit its laws, the Jamaica Assembly passed a new Slave Act. Jamaica legislators made significant innovations, and when the South Carolina Assembly passed its own slave code in 1691, it did not look to the Barbados laws; rather, it copied the Jamaica act of 1684 almost word for word. Indeed, South Carolinians adopted none of the five new provisions added to the Barbadian slave code in 1688.<sup>3</sup>

The Jamaica Slave Act of 1684 has been a missing link in the history of early English slave law, and finding it invites us to retrace the blend of legal borrowing and innovation that shaped the governance of slaves in the English Empire during the seventeenth century. As I delved into the legislation and its contexts, I realized another problem with this history as I first understood it. Not only did the Barbados Assembly of 1661 pass

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Public Record Office (PRO), National Archives of the United Kingdom (NA), Kew. The Jamaica Slave Act of 1664 was entitled "An Act for the better ordering and governing of Negro Slaves" and is only available in manuscript in CO 139/1/66-69, PRO, NA. I would like to thank Vincent Brown for providing me with a copy of this manuscript.

<sup>2</sup> M. Eugene Sirmans, "The Legal Status of the Slave in South Carolina, 1670-1740," *Journal of Southern History* 28, no. 4 (November 1962): 462-73, esp. 464-65; Dunn, *Sugar and Slaves*, 239; William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *William and Mary Quarterly*, 3d ser., 34, no. 2 (April 1977): 258-80, esp. 263; Alan Watson, *Slave Law in the Americas* (Athens, Ga., 1989), 68-69; Thomas J. Little, "The South Carolina Slave Laws Reconsidered, 1670-1700," *South Carolina Historical Magazine (SCHM)* 94, no. 2 (April 1993): 87-101, esp. 97; Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *American Journal of Legal History* 38, no. 1 (January 1994): 38-54, esp. 49; David Barry Gaspar, "With a Rod of Iron: Barbados Slave Laws as a Model for Jamaica, South Carolina, and Antigua, 1661-1697," in *Crossing Boundaries: Comparative History of Black People in Diaspora*, ed. Darlene Clark Hine and Jacqueline McLeod (Bloomington, Ind., 1999), 343-66, esp. 344; Russell R. Menard, *Sweet Negotiations: Sugar, Slavery, and Plantation Agriculture in Early Barbados* (Charlottesville, Va., 2006), III.

<sup>3</sup> "An Act for the Better Ordering of Slaves" (hereafter Jamaica Slave Act, 1684), in *The Laws of Jamaica, Passed by the Assembly, and Confirmed by his Majesty in Council, April 17, 1684. To Which is added, the State of Jamaica, As it is now under the Government of Sir Thomas Lynch. With a large Mapp of the Island* (London, 1684), 140-48; "An Act for the better ordering of Slaves," in David J. McCord, ed., *The Statutes at Large of South Carolina* (Columbia, S.C., 1840), 7: 343-47.

the first comprehensive Slave Act, that same assembly also passed the first comprehensive Servant Act to govern the relations between masters and indentured servants. The comprehensive acts of 1661, then, reflect a pivotal moment in the evolution of plantation society in Barbados, similar to what Edmund S. Morgan famously argued about seventeenth-century Virginia.<sup>4</sup>

In Barbados, as in Virginia, the historical foundations of race and slavery can be traced to the struggle between the planter elite and a labor force of bound servants and African slaves who resisted oppression. The comprehensive acts of 1661 represent the Barbados Assembly's conscious effort to establish the guidelines of New World mastery and to create clear distinctions between the status of "Christian servants" and that of "Negro slaves." Though Bacon's Rebellion of 1676 might have crystallized for Virginia planters the need to consolidate racial slavery, Barbadian planters had arrived at that same conclusion fifteen years before. Moreover, through the expansion of the Barbadian "culture hearth" into Jamaica and South Carolina, both the practices of New World mastery and the language of "race" continued to develop. Morgan brilliantly explained the historical process that led to black slavery and white solidarity, but evidence from the Slave Laws of Barbados, Jamaica, and South Carolina suggest that what Morgan described was a single colonial chapter in a longer story that unfolded over a much broader geography.<sup>5</sup>

The South Carolina Assembly's decision to adopt the Jamaica Slave Act of 1684 suggests that Carolina's legislators paid careful attention to the development of slaveholding practices in England's Caribbean colonies. South Carolina colonists held slaves and had begun to experiment with rice production, but rice had not yet developed into a dependable export. In contrast, sugar production based on African slavery and a transatlantic slave trade had become the most dynamic sector of the Jamaica economy. The Jamaica Slave Act of 1684 reflected the experience of the first generation of English slave masters to successfully replant the political economy of slavery wrought in Barbados; it was the cutting-edge model for Carolinians who wanted to do the same thing. The colonial assemblies

<sup>4</sup> "An Act for the good Governing of Servants, and Ordering the Rights between Masters and Servants," in *Acts of Assembly, Passed in the Island of Barbadoes, From 1648, to 1718* (London, 1721), 22–29 (hereafter Barbados Servant Act, 1661); Edmund S. Morgan, *American Slavery, American Freedom: The Ordeal of Colonial Virginia* (New York, 1975), chaps. 15–17. See also Gaspar, "With a Rod of Iron," 346; Susan Dwyer Amussen, *Caribbean Exchanges: Slavery and the Transformation of English Society, 1640–1700* (Chapel Hill, N.C., 2007), 129–35.

<sup>5</sup> Alfred D. Chandler, "The Expansion of Barbados," *Journal of the Barbados Museum and Historical Society (JBMHS)* 13, nos. 3–4 (May–November 1946): 106–36; Richard S. Dunn, "The English Sugar Islands and the Founding of South Carolina," *SCHM* 72, no. 2 (April 1971): 81–93; Peter H. Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York, 1974), chap. 1; Meinig, *Shaping of America*, 172–76.

of the Greater Caribbean used comprehensive slave codes to condition the establishment of African slavery. This political work did not evolve in a single colonial context; rather, it developed over time and space.<sup>6</sup>

The enslavement of Africans had been central to the development of an Atlantic world since the late fifteenth century. By the early seventeenth century, when the English began to plant settlements in the Americas, African slavery had been a fixture in the Iberian Atlantic for more than a generation. The English did not have to invent slavery out of whole cloth but, in a similar manner to their French counterparts at the same time, they had to construct the legal and political structures to govern this labor institution, which for them was quite new.<sup>7</sup>

Studying the content of slave codes serves two analytic purposes. At times it can be used as a refracting lens that allows us to glimpse the actions of enslaved individuals reacting to the brutality of New World slavery. The laws can also articulate the prescriptive measures that legislators saw as necessary to establish the order they sought. Read alone, statutes cannot serve as mirrors to lived social experience, but tracing the evolution of these laws can help us understand the critical role they played in the political formation of these slave societies. The moments of slave law codification mark the consolidation and elaboration of a slaveholding interest: 1661 and 1688 in Barbados; 1664, 1684, and 1696 in Jamaica; and 1691 and 1696 in South Carolina. The thirty-five-year process of legislative adoption

<sup>6</sup> It is equally significant that the South Carolina Assembly did not choose to follow Virginia's path. The space of an article does not allow for the development of a comparison with Virginia, but two points of contrast can be made to suggest further research. First, the laws of slavery in Virginia evolved in piecemeal fashion until 1705, when the Virginia Assembly passed its first comprehensive slave code, eighty-six years after enslaved Africans arrived in the colony. Slave law may well have evolved in a piecemeal fashion in Barbados during the 1640s and 1650s, but if so the evidence of it has been lost. The contrast remains stark. The Barbados Assembly passed its comprehensive slave code in 1661, only thirty-four years after settlement, less than half the time it took Virginia; Jamaica and South Carolina followed the Barbadian pattern. Second, while Virginia (and Louisiana) laws paid considerable attention to gender and what would come to be known as interracial sex, the comprehensive slave codes of the Greater Caribbean did not address these issues at all, suggesting the need for a more nuanced understanding of racial formation that is attuned to geography and political economy as well as gender. Dunn, *Sugar and Slaves*, 238; Warren M. Billings, "The Law of Servants and Slaves in Seventeenth-Century Virginia," *Virginia Magazine of History and Biography* 99, no. 1 (January 1991): 45–62; Kathleen M. Brown, *Good Wives, Nasty Wenches, and Anxious Patriarchs: Gender, Race, and Power in Colonial Virginia* (Chapel Hill, N.C., 1996), chap. 4; Anthony S. Parent Jr., *Foul Means: The Formation of a Slave Society in Virginia, 1660–1740* (Chapel Hill, N.C., 2003), chap. 4; Jennifer M. Spear, *Race, Sex, and Social Order in Early New Orleans* (Baltimore, 2009).

<sup>7</sup> Stuart B. Schwartz, *Sugar Plantations in the Formation of Brazilian Society: Bahia, 1550–1835* (Cambridge, 1985), chap. 1; John Thornton, *Africa and Africans in the Making of the Atlantic World, 1400–1800*, 2d ed. (Cambridge, 1998), chap. 1; Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge, 2012), chap. 1.

and innovation reveals a dialectical contest among masters, indentured servants, and enslaved Africans through which the colonial assemblies worked to establish racial distinction and the practices of New World mastery for England's Caribbean empire.

SETTLED IN 1627 BY A GROUP funded by London merchant William Courteen, Barbados participated in the "first American boom" in tobacco production launched by Virginians earlier in the decade.<sup>8</sup> By 1640 Barbadians had cleared much of the island's thick forests and expanded into sea-island cotton and indigo. Hilary McD. Beckles and Russell R. Menard have shown that cultivation of these commodities led Barbadians to develop the plantation model of agricultural production, large estates dependent on unfree labor, that they would soon adapt to sugar.<sup>9</sup> Indentured servants did most of the labor during this period, but as Henry Winthrop, one of the earliest settlers, observed in 1627, "negeres and Indyenes" were part of the workforce from the very beginning.<sup>10</sup> Barbadians may have been the first among the English to codify the slave status of non-Europeans, since in 1636 the Barbados Council resolved that "Negroes and Indians, that came here to be sold, should serve for Life, unless a Contract was before made to the contrary."<sup>11</sup> At this early stage in socioeconomic development, then, Barbadians made distinctions between those who served for life and those who worked under a contract. The process of racializing slavery began here, though it remained incomplete. The council excluded Europeans from the group who could be bound for life, but they did not yet assume that all Africans or Indians who arrived would be slaves. The next generation of Englishmen in Barbados would embrace a racialized slavery—African slavery.<sup>12</sup>

As the economy developed, planters sought first indentured servants and later both servants and African slaves. Beginning as a small settlement of 100 people in 1627, Barbados had a population of 6,000 ten years later, and only 200 of those were Africans. A few planters began experimenting

<sup>8</sup> Edmund S. Morgan, "The First American Boom: Virginia 1618 to 1630," *WMQ* 28, no. 2 (April 1971): 169–98; Morgan, *American Slavery, American Freedom*, chap. 6.

<sup>9</sup> Hilary McD. Beckles, "Plantation Production and White 'Proto-Slavery': White Indentured Servants and the Colonisation of the English West Indies, 1624–1645," *Americas* 41, no. 3 (January 1985): 21–45; Beckles and Andrew Downes, "The Economics of Transition to the Black Labor System in Barbados, 1630–1680," *Journal of Interdisciplinary History* 18, no. 2 (Autumn 1987): 225–47; Menard, *Sweet Negotiations*, 11–28.

<sup>10</sup> The Henry Winthrop letters are repr. in N. Darnell Davis, *The Cavaliers and Roundheads of Barbados, 1650–1652: With Some Account of the Early History of Barbados* (Georgetown, British Guiana, 1887), 32–36 (quotation, 36).

<sup>11</sup> *Memoirs of the First Settlement of the Island of Barbados*. . . (1743), repr. in P. F. Campbell, *Some Early Barbadian History* (St. Michael, Barbados, 1993), 208.

<sup>12</sup> David Eltis, *The Rise of African Slavery in the Americas* (Cambridge, 2000), 1–29.

with sugar production in the early 1640s and, as Larry Gragg has shown, London merchants who were already invested in transoceanic commerce pioneered a slave trade to the island directly from Africa. By 1643 there were 6,400 Africans on the island, about one-fourth of a population of at least 25,000, and by 1650 the European population had grown to about 30,000 while the number of Africans had increased to 12,800. Menard estimates that by 1660 Barbados had become a black majority society.<sup>13</sup>

The sugar regime was more brutal and profitable than either cotton or tobacco, and the combination of more arduous labor and greater profits seems to have deepened the exploitation of Barbadian laborers, indentured or enslaved. Richard Ligon believed that servants were treated worse than the slaves. He described their poor diet of potatoes, their inadequate lodging, and the cruelty of overseers who would “beat a Servant with a cane about the head” until the blood flowed freely.<sup>14</sup> Father Antoine Biet’s 1654 account concurred about the diet and lodging for both groups of laborers, but he described the treatment of black slaves with far more gruesome language. Servants and slaves were both beaten viciously, but slaves could be “firebrand[ed] all over their bodies which makes them shriek with despair,” and one cruel overseer sliced off the ear of one of his slaves, roasted it, and forced the poor man to eat it.<sup>15</sup> In 1654 John Berkenhead wrote that Barbadians killed their slaves with impunity and ranked them with “doggs.”<sup>16</sup> Henry Whistler described a multiethnic servant population of “English, french, Duch, Scotcs, Irish” and Spanish Jews, along with the “miserabell Negors borne to perpetuall slauery thay and thayer seed.”<sup>17</sup> Whistler’s remarks indicate the Barbadian adoption of hereditary slavery as well as a broad catchment region for European indentured servants. The council in 1636 had not described slavery as hereditary, and the transition by the 1650s simply followed the practice of the Iberians, who emulated ancient Greece and Rome. This transformation took place simultaneously

<sup>13</sup> Gary A. Puckrein, *Little England: Plantation Society and Anglo-Barbadian Politics, 1627–1700* (New York and London, 1984), 31; Larry Gragg, “‘To Procure Negroes’: The English Slave Trade to Barbados, 1627–60,” *Slavery and Abolition* 16, no. 1 (April 1995): 65–84; Gragg, *Englishmen Transplanted: The English Colonization of Barbados, 1627–1660* (New York and Oxford, 2003), 122–24; Menard, *Sweet Negotiations*, 25. For a comprehensive treatment, see Hilary McD. Beckles, *White Servitude and Black Slavery in Barbados, 1627–1715* (Knoxville, Tenn., 1989).

<sup>14</sup> Richard Ligon, *A True & Exact History Of the Island of Barbados. . . .* (London, 1657), 44.

<sup>15</sup> Jerome S. Handler, ed., “Father Antoine Biet’s Visit to Barbados in 1654,” *JBMHS* 32 (May 1967): 56–76, esp. 66–67 (quotation, 67).

<sup>16</sup> J[ohn] Berkenhead to John Thurloe, Feb. 17, 1654, in Thomas Birch, ed., *A Collection Of The State Papers Of John Thurloe, Esq. . . .* (London, 1742), 3: 159.

<sup>17</sup> Neville C. Connel, ed., “An Account of Barbados in 1654 [Extracted from Henry Whistler’s Journal of the West India Expedition, under date 1654. Sloane M.S. 3926 British Museum],” *JBMHS* 5 (August 1938): 184–85 (quotations, 185).

with the emergence of sugar production and the rise in the African population, mostly from importation.<sup>18</sup>

Social relations between planters and their workforce had never been good, but they seem to have worsened with the emergence of sugar. Servants had organized a conspiracy to rebel as early as 1634, and when French traveler Beauchamp Plantagenet visited the island in 1648 he reported seeing “rich men, having Sugar mills” and “many hundreds Rebell Negro slaves in the woods.”<sup>19</sup> Based on the laws passed by the assembly in 1652, we know that indentured servants ran away in significant numbers, fought back against violent overseers, and stole from their estates.<sup>20</sup> In 1649 rebellious servants formed a conspiracy to cut the throats of their masters and “make themselves not only freemen, but Masters of the Island.” Ligon, who penned the only account of the conspiracy, believed it grew from their “sufferings” and the inability of some “to endure such slavery.” Informers told him that the conspiracy reached throughout the entire island, that most servants were involved, and that eighteen were executed.<sup>21</sup> In the 1650s, as sugar production expanded and as Oliver Cromwell completed the conquest of Ireland, thousands of Irish were sent to Barbados as political prisoners. Others deemed “undesirables” were also collected from the streets for shipment to the Caribbean.<sup>22</sup> “Barbadozz’d,” meaning to be forcibly transported to the colonies, became a verb during this period.<sup>23</sup> This happened to Marcellus Rivers and seventy comrades, who testified in a petition to Parliament that they had been arrested during the Salisbury Rising, held for a year in prison, and then shipped to Barbados in 1656. When Rivers arrived he was sold for 1,550 pounds of sugar and reported being bought and sold several more times during his indenture. Rivers stated that

<sup>18</sup> Jennifer L. Morgan, *Laboring Women: Reproduction and Gender in New World Slavery* (Philadelphia, 2004); Menard, *Sweet Negotiations*, 44.

<sup>19</sup> Beauchamp Plantagenet, *A Description of the Province of New Albion*. . . (1648), in Peter Force, comp., *Tracts and Other Papers Relating Principally to the Origin, Settlement, and Progress of the Colonies in North America, From the Discovery of the Country to the Year 1776* (1838; repr., New York, 1947), 2: 5 (quotation); Carl and Roberta Bridenbaugh, *No Peace Beyond the Line: The English in the Caribbean, 1624–1690* (New York, 1972), 108.

<sup>20</sup> [Acts and Statutes] *Of the Island of Barbados*. . . Set forth the seventh day of September, in the year of our Lord God, 1652. . . (London, [1654]), 17, 28, 81.

<sup>21</sup> Ligon, *True & Exact History*, 45–46 (“make themselves,” 46, “sufferings,” 45); Puckrein, *Little England*, 109.

<sup>22</sup> Hilary McD. Beckles, “A ‘riotous and unruly lot’: Irish Indentured Servants and Freemen in the English West Indies, 1644–1713,” *WMQ* 47, no. 4 (October 1990): 503–22, esp. 506–7 (quotation, 507).

<sup>23</sup> *Oxford English Dictionary Online*, s.v. “Barbados,” <http://www.oed.com>. The first use of the term *Barbadozz’d* in print seems to have been in 1655. See also John Wareing, “‘Violently Taken Away or Cheatingly Duckoyed’: The Illicit Recruitment in London of Indentured Servants for the American Colonies, 1645–1718,” *London Journal* 26, no. 2 (2001): 1–22.

he and others were “whipt at [the planters’] whipping-posts, as Rogues, for their masters pleasure”; they slept in “styes worse than hogs in *England*,” ate nothing but potatoes, and drank nothing but water.<sup>24</sup>

Like their African coworkers, indentured servants were treated as chattel, and both groups strenuously resisted such conditions. In 1655 in Saint Philip Parish, “several Irish servants and negroes [were] out in rebellion” plundering estates, and in 1656 Governor Daniel Searle received another report from the same parish of a “riotous and unruly lot” of Irish servants wreaking havoc. The next year Searle made a public declaration that cited the many Irish who were “now forth in rebellion” and instituted a raft of social control regulations including a pass system and a ban on Irish servants’ possession of weapons.<sup>25</sup> Such laws in response to aggressive resistance from below are significant: during the next forty years, as the plantation model spread, planter-legislators of later generations applied them to Africans as they forged the systems to control slave societies that would last for more than two hundred years.<sup>26</sup>

BEFORE THE COMPREHENSIVE ACTS OF 1661, the Barbados Assembly passed legislation to govern their increasingly unruly society in a piecemeal fashion, much like Virginia until 1705. Most of these laws have not survived, but a compendium of laws passed by the first Barbados assembly to sit after the colony’s civil war (1649–51) sheds light on how the assembly sought to control the labor force for its growing economy.<sup>27</sup>

Some of the 1652 laws treated indentured servants and African slaves in the same act, failing to reflect the distinctions in treatment described by eyewitnesses. One law governing the entertainment of guests, for example, stated that a master must not entertain “any man, or woman, White or Black . . . if he doth not know him to be a Free-man.”<sup>28</sup> Violators genuinely ignorant of a guest’s status would be fined one hundred pounds of

<sup>24</sup> *Englands Slavery, or Barbados Merchandize; Represented in a Petition to the High and Honourable Court of Parliament*, by Marcellus Rivers and Oxenbridge Foyle Gentlemen, on behalf of themselves and threescore and ten more Free-born Englishmen sold (uncondemned) into slavery. . . . (London, 1659), 4–5. See also Carla Gardina Pestana, *The English Atlantic in an Age of Revolution, 1640–1661* (Cambridge, Mass., 2004), chap. 6; Amussen, *Caribbean Exchanges*, 127–28; John Donoghue, “‘Out of the Land of Bondage’: The English Revolution and the Atlantic Origins of Abolition,” *American Historical Review* 115, no. 4 (October 2010): 943–74.

<sup>25</sup> Minutes of the Barbados Council, quoted in Beckles, *WMQ* 47: 515–16 (“several Irish servants,” 515, “now forth,” 516).

<sup>26</sup> Beckles, *WMQ* 47: 515–16.

<sup>27</sup> [*Acts and Statutes*] *Of the Island of Barbados* (1652); Dunn, *Sugar and Slaves*, 238. The Barbados approach to slave law legislation before 1661 was quite similar to that of Virginia before 1705. See Billings, *Virginia Magazine of History and Biography* 99: 45–62; Parent, *Foul Means*, chap. 4.

<sup>28</sup> [*Acts and Statutes*] *Of the Island of Barbados* (1652), 20.

sugar; violators who willfully broke the law would be fined five hundred pounds of sugar. Those who served another, regardless of their complexion or gender, were not worthy of a master's civility. Freedom rather than race was the critical attribute, since the statute implied that a black person could legally expect hospitality if he or she was free. Another law treated both servants and slaves as property that could be seized by a creditor for payment of debt, placing both groups within the same category as cattle, stock, and horses. Servants and slaves were barred from trading by the same act, with a fine imposed on the merchant rather than the servant or slave. These laws defined the economic role played by servants and slaves; both were animate capital more akin to livestock than people.<sup>29</sup>

But these laws asserting equivalence did not treat personal behavior, and in that realm the legislation of 1652 had much more to say about servants than slaves. The laws prescribed punishments for a whole range of servant behaviors deemed inappropriate by the planter-legislators of the assembly. Servants must not hit their masters or overseers; they must not steal, especially not cattle; they must not violate the Sabbath; they must not marry; and servant men must not impregnate servant women. The punishments for all of these infractions involved additional service to their own masters, or to the masters of the women in cases of pregnancy. Violating the Sabbath could result in thirteen lashes on the bare back, and stealing cattle could result in several days in the pillory and the loss of both ears. Servants were not protected in any way from the abuse of masters; only disputes about the amount of time served could be brought before two justices of the peace. The laws relating to slaves touched on none of these issues, reinforcing the conclusions of Beckles and Menard that servants remained more significant to the Barbadian economy until the 1660s.<sup>30</sup>

Only one of the 1652 laws revealed the inclination of the English to treat Africans differently. The "Act to restrain the wandring of Servants and Negro's" punished both servants and slaves who absconded from their plantations, but it did so through different mechanisms and with very different means. Servants were to serve an additional month for every two hours away from the plantation, whereas slaves would be "moderately" whipped and escorted under guard back to their masters' plantations.<sup>31</sup> Moreover, the law spoke to servants directly, threatening them with extended servitude, which would be decided by a justice of the peace. But it approached slaves indirectly, punishing Africans who absconded by commanding others to detain and whip them. For the trouble of capturing, whipping, and escorting an African runaway, the captor would receive ten pounds of sugar

<sup>29</sup> *Ibid.*, 17, 20, 38.

<sup>30</sup> *Ibid.*, 17–19, 28, 33, 79.

<sup>31</sup> "An Act to restrain the wandring of Servants and Negro's," in [*Acts and Statutes of the Island of Barbados* (1652), 81–83 (quotation, 82).

for each mile traveled. There were no such provisions for the capture of servants. And because the law did not restrict the status of slave catchers to free people, it encouraged servants and even slaves to enforce a law that principally benefited slaveholders. Like free people, servants were subject to the laws and the enforcement of legal officers. Africans, however, stood outside the law, and controlling their violations of the social order became subject to the enforcement of any person.<sup>32</sup>

The assembly of 1661 substantially revised the laws governing Barbados laborers. It was the first assembly to sit after the Restoration and was governed by Humphrey Walrond, a sugar planter who had been exiled during the Civil War but was returned to power by Charles II.<sup>33</sup> Whereas the 1652 legislation had been piecemeal, with some laws applied to both groups and others applied only to one or the other, the 1661 assembly formulated two different comprehensive codes: "An act for the good governing of Servants, and ordaining the Rights between Masters and Servants" and "An act for the better ordering and governing of Negroes." Walrond signed these laws within three days of each other in September 1661, suggesting that the assembly worked out this legislation as one comprehensive project for the governance of laborers. The distinctions evident in the 1652 legislative treatment of servants and slaves appear in the very titles of these acts. Both servants and slaves required special laws ordering their governance, but only servants deserved the codification of their "Rights," and whereas servants were named by the contracts they had signed, slaves were named as a peculiar people, "Negroes."<sup>34</sup>

The preambles of these acts elaborated on these distinctions. Both noted a group history of criminality, but Africans were further described as a "heathenish brutish and an uncertain dangerous pride of people" who required harsher "punishmentary Laws for the benefit and good" of the colony.<sup>35</sup> The word *Negro*, meaning African, derived from Portuguese and Spanish usage and was rooted in the word for "black." The code employed *Negro* interchangeably with *slave*, and the language deployed by the law associated Africans with *brutish*, an English word associated with beasts, and *uncertain*, which meant fickle and capricious. Moreover, the

<sup>32</sup> Ibid.

<sup>33</sup> Robert H. Schomburgk, *The History of Barbados: Comprising a Geographical and Statistical Description of the Island; a Sketch of the Historical Events since the Settlement; and an Account of its Geology and Natural Productions* (London, 1848), 286. In fact, Humphrey Walrond governed on behalf of Lord Francis Willoughby, whose claim, dating back to a charter granted by Charles I, included Montserrat, Nevis, and Antigua as well.

<sup>34</sup> Barbados Servant Act, 1661, in *Acts of Assembly . . . Barbadoes*, 22–29; Barbados Slave Act, 1661, in Engerman, Drescher, and Paquette, *Slavery*, 105–13.

<sup>35</sup> Barbados Slave Act, 1661, preamble, in Engerman, Drescher, and Paquette, *Slavery*, 105 (quotations); Barbados Servant Act, 1661, preamble, in *Acts of Assembly . . . Barbadoes*, 22.

law considered Africans not as individuals but as a “pride,” the word used to describe a band of lions. The law defined Africans by pointing out their dark complexions, by asserting offensive cultural characteristics, and by animalizing them as dangerous, exotic lions who needed to be caged. Later generations would produce ever more sophisticated and insidious articulations of race, but its essence was there in 1661, evident in the assertion of cultural and biological difference.<sup>36</sup>

Presumably, the barbarism of Africans precluded them from the possession of rights as the English understood them. Unlike contemporaneous Spanish American and Brazilian legislation based on the medieval *Siete Partidas*, or the French Code Noir that would follow in 1680, the 1661 Slave Act did not attribute any positive rights to slaves whatsoever.<sup>37</sup> But the rights noted in the title of the Servant Act were much more expansive than in 1652, when the only right clearly stated was that two justices of the peace must hear disputes over time served between servants and masters. The new comprehensive legislation declared that “children of the *English* nation” under the age of fourteen could not be indentured (though the status of Irish and Scots children remained unclear); contract disputes over time served were now to be heard under the common law in court; masters were obliged to care for servants who became ill and were prohibited from simply turning them out as had been the practice; and if married servants arrived from Europe together, they could not be separated but rather were to be “sold and disposed of together.”<sup>38</sup> To be sure, indentured servants still could not marry without their masters’ consent, women could not become pregnant, servants could not trade, and masters could not entertain them, but, all things considered, the Servant Act of 1661 expanded the rights allowed to servants.<sup>39</sup>

Servants were to have rights under the law; not so with African slaves. The assembly created a distinct procedure for judging and punishing crimes

<sup>36</sup> *Oxford English Dictionary Online*, s.vv. “brutish,” “uncertain,” “pride,” <http://www.oed.com>. The word *pride* dates to the fourteenth century, and lions were kept in royal menageries in England as early as the thirteenth century. See Deirdre Jackson, *Lion* (London, 2010), 76. I draw my definition of *race* from George M. Fredrickson, *Racism: A Short History* (Princeton, N.J., 2002), 9.

<sup>37</sup> The classic statement of this difference is Frank Tannenbaum, *Slave and Citizen: The Negro in the Americas* (New York, 1946); for a reappraisal of Tannenbaum’s thesis, see Alejandro de la Fuente, “Slave Law and Claims-Making in Cuba: The Tannenbaum Debate Revisited,” *Law and History Review* 22, no. 2 (Summer 2004): 339–69, as well as the comments in the forum “What Can Frank Tannenbaum Still Teach Us about the Law of Slavery?”: María Elena Díaz, “Beyond Tannenbaum,” *Law and History Review* 22, no. 2 (Summer 2004): 371–76; Christopher Schmidt-Nowara, “Still Continents (and an Island) with Two Histories?” *Law and History Review* 22, no. 2 (Summer 2004): 377–82. On the Code Noir, see Ghachem, *Old Regime and the Haitian Revolution*, chap. 1.

<sup>38</sup> Barbados Servant Act, 1661, clauses 1, 9, 10, 14, 16, in *Acts of Assembly . . . Barbadoes*, 22, 24–26 (“children,” 22, “sold,” 26).

<sup>39</sup> *Ibid.*, clauses 3, 6, 7, 8, 18, in *Acts of Assembly . . . Barbadoes*, 22, 24–26.

such as theft, murder, and robbery committed by slaves. “Negroes . . . being brutish Slaves” did not deserve to be tried for such offenses by a jury of twelve of their peers as English law prescribed.<sup>40</sup> Rather, the assembly established what would come to be known as the slave court: an impromptu court of two justices of the peace and three freeholders, who were endowed with the power not only to pass judgment on the accused but also to decide on and enforce a punishment in accordance with the law.<sup>41</sup>

Among both servants and slaves, running away from the authority of the master was the most common form of active resistance to oppression. The 1652 runaway laws had made a two-pronged distinction between servants and slaves that separated these groups by their relationship to the law and by the dissimilar punishments ordered for the same offense. The 1661 acts retained the same distinctive relationships to the law, but they embellished the differences in punishment.

Both comprehensive acts, for example, included a ticketing clause to curtail runaways, but the laws operated in very different ways. The Slave Act required masters or overseers to write tickets for any slave sent off the plantation; those who failed to provide tickets were to be fined five hundred pounds of sugar, half of which was to go to “the Informer” and half to the public treasury.<sup>42</sup> And the slaveholder or overseer who failed to capture and whip a runaway slave also faced a fine of five hundred pounds of sugar. In contrast, masters of servants had no such responsibilities; rather, the Servant Act made the servant responsible for procuring the ticket if he or she wished to go abroad. The laws acted on the different groups in very different ways. Servants were compelled to secure tickets to travel, and though slaves also needed tickets, the law aimed to compel Europeans to control the movements of Africans through the threat of a hefty fine. And with the use of informers, a group that included indentured servants, the law created an incentive structure for all Europeans, free and bound, to monitor their neighbors’ management of enslaved Africans.<sup>43</sup>

Likewise, the punishments and enforcement mechanisms for servants and slaves caught off the plantation diverged widely from the law of 1652. The assembly significantly reduced the punishment for runaway servants from an additional month to an additional day of servitude for every two hours’ absence; runaway Africans would still be moderately whipped. And

<sup>40</sup> Barbados Slave Act, 1661, clause 14, CO 30/2/22, PRO, NA.

<sup>41</sup> Ibid.

<sup>42</sup> Barbados Slave Act, 1661, clause 1, in Engerman, Drescher, and Paquette, *Slavery*, 106.

<sup>43</sup> Ibid.; Barbados Servant Act, 1661, clause 9, in *Acts of Assembly . . . Barbadoes*, 24. Other examples of the use of informers include the order that overseers search the slave quarters twice a week for runaways, weapons, and stolen goods. Overseers who neglected this duty, if informed upon, were fined one hundred pounds of sugar per offense.

while the enforcement of runaway servants was still left to the justice of the peace, the assembly enhanced the enforcement structure for the capture, punishment, and imprisonment of Africans who ran away. The financial incentive for capturing a runaway African increased from ten pounds of sugar per mile escorted to a flat fee of one hundred pounds of sugar. Slave catchers were to bring runaways to the owners, if known, or to the provost marshal of the island. And if a servant brought in a runaway slave, he or she would be relieved of all future service for the trouble. The legal status of servants made them subject to the law like any free person. Slaves' indirect relationship to the law, however, made them subject to the power of the society at large. The law encouraged the brutal treatment of Africans with rewards and penalized those who failed to act accordingly. The laws governing the mastery of servants did no such thing.<sup>44</sup>

With simultaneous action, the comprehensive acts of 1661 raised the status of indentured laborers and reduced the condition of African slaves, a process further illustrated by the governance of physical altercations between a master and a laborer. In 1652 an indentured servant who struck his or her master could be subjected to two additional years of servitude; in 1661 the assembly reduced this punishment to one year. The 1652 assembly did not imagine an African slave striking a master, but under the Slave Act of 1661 any "Negro" who struck a "Christian" could be severely punished. The first offense incurred a severe whipping; on the second the offender would have his or her "nose slit" and face branded. The third offense demanded unspecified but "greater Corporal punishment" to be ordered by the governor and the council, probably execution. Significantly, the law dealing with African offenders replaced the term *master* with "Christian," significantly broadening the group protected under the statute to include indentured servants as well as slaveholders.<sup>45</sup> Moreover, the statute introduced a level of physical disfigurement that had not been evident in English law. As Bradley J. Nicholson has shown, the sixteenth-century vagrancy codes that Barbados legislators probably consulted prescribed both whipping and branding, but for no crime did these laws require the mutilation of the nose. Slitting of the nose would have left the victim's face permanently deformed in an unusual manner that provides empirical evidence for

<sup>44</sup> "An Act to restrain the wandring," in [*Acts and Statutes*] *Of the Island of Barbados* (1652), 81; Barbados Servant Act, 1661, clause 9, in *Acts of Assembly . . . Barbadoes*, 24; Barbados Slave Act, 1661, clause 6, in Engerman, Drescher, and Paquette, *Slavery*, 107. Clauses 5, 7, 8, 9, 10, 12, and 13 of the Barbados Slave Act of 1661 also relate to runaways. Clauses 5, 7, 12, and 13 are repr. in Engerman, Drescher, and Paquette, *Slavery*, 107–10, but clauses 8, 9, and 10 are not; for those three clauses, see Barbados Slave Act, 1661, CO 30/2/19–20, PRO, NA.

<sup>45</sup> Barbados Slave Act, 1661, clause 2, in Engerman, Drescher, and Paquette, *Slavery*, 106 (quotations); "Item," in [*Acts and Statutes*] *Of the Island of Barbados* (1652), 17; Barbados Servant Act, 1661, clause 4, in *Acts of Assembly . . . Barbadoes*, 23.

David Brion Davis's argument that the "bestialization" of the enslaved lay at the heart of slavery.<sup>46</sup>

Finally, the assembly of 1661 acknowledged that some masters had taken the punishment of servants and slaves to the point of death. The laws of 1652 had not addressed this issue, but the comprehensive acts of 1661 did so in harshly different terms. A master was prohibited from burying any Christian servant who died on his or her plantation until the body had been viewed by a justice of the peace and two neighbors. Punishment for violation of this statute was a fine of twenty thousand pounds of sugar. In stark contrast, if a master killed an African slave during punishment no crime was committed. In the case of a killing that resulted from "cruel intention," the assembly prescribed a fine of only three thousand pounds of sugar.<sup>47</sup>

By distinguishing "Christians" from "Negros" in the physical punishment of the body, the Barbados Assembly laid the empirical foundation for the idea of racial distinction stated with such stark simplicity in the preamble. Their law ordered laborers guilty of the same infraction to be punished differently according to their "race," to use a modern term. The racialization of slavery should be seen as a historical process that developed gradually. Though Barbadians did use the term *white* on occasion to denote people of European descent, neither comprehensive Act of 1661 did so, preferring the term *Christian servant*. European indentured servants experienced great brutality in seventeenth-century Barbados, but the comprehensive acts of 1661 sought to ameliorate the treatment they received and to protect them from the violence of Africans. The use of physical violence lay at the core of enslavement, and protecting "Christians" from the violent actions of Africans created a privilege among laborers who would later be known as whites. The Barbados Assembly sought to divide the laboring class into two separate and unequal groups, "Christians" and "Negros." And because of their views about Africans, men in the assembly could not imagine that a Negro could also be Christian. Race as an ideological construction had not yet fully emerged, but race as an exercise of power was clearly at work.

THE BARBADOS COMPREHENSIVE ACTS were passed at roughly the same moment that significant white settlement began in Jamaica. The English took Jamaica from Spain in 1655 as part of Lord Protector Oliver

<sup>46</sup> David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (New York, 2006), 32 (quotation), 52; Nicholson, *American Journal of Legal History* 38: 40–49; the relevant statutes include 27 Hen. 8, c. 25 (1535), and 39 Eliz. 1, c. 4 (1597).

<sup>47</sup> Barbados Slave Act, 1661, clause 20, in Engerman, Drescher, and Paquette, *Slavery*, 111–12 (quotation, 111); Barbados Servant Act, 1661, clause 12, in *Acts of Assembly . . . Barbadoes*, 25.

Cromwell's audacious but ultimately pathetic Western Design. England's conquering expedition included 3,500 men from Barbados, and though the Spanish ceded the island relatively quickly, the English faced devastating resistance from enslaved Africans freed by the conquest, and thousands succumbed to mosquito-borne diseases. The English population in Jamaica dropped to as low as 2,200 men in 1660, and only through immigration from England and Barbados did this number begin to increase. In the first census taken under English governance, in 1662, there were about 3,500 whites and 550 blacks.<sup>48</sup> Jamaica's first assembly did not take up the governance of either servants or slaves, but the second assembly, which met in October 1664, three months after the arrival of the new governor, Sir Thomas Modyford, and more than a thousand land-hungry Barbadians, passed barely altered versions of both the Slave Act and the Servant Act of the Barbados Assembly, as well as a declaration of war on the "outlying Spanish Negroes."<sup>49</sup>

A trained barrister, Modyford had migrated to Barbados in 1647 after being exiled for his loyalty to Charles I. He had arrived with good credit and soon invested, with Thomas Hilliard, in a sugar plantation of 500 acres, 28 servants, and 102 slaves. Modyford was a cousin of George Monck, later Lord Albemarle, who served Cromwell as Commander of the Army of Scotland but also helped orchestrate the return of Charles II in 1660. Modyford became a major player in Barbadian politics and switched allegiances at least twice during the Barbadian civil war. He participated in the committee that advised Cromwell as he planned the Western Design and served as the speaker of the Barbados House of Assembly and briefly as that colony's governor. Modyford deftly maneuvered the politics of the Restoration and became the Barbados agent for the newly formed Royal African Company in 1663. The following year, he won the appointment to be Jamaica's next governor and brought with him to the new colony an intimate understanding of the effort to establish racial slavery.<sup>50</sup>

Comparison of the moment of slave law codification in Jamaica with that of Barbados illustrates the impact that Barbadian development had

<sup>48</sup> S. A. G. Taylor, *The Western Design: An Account of Cromwell's Expedition to the Caribbean* (Kingston, Jamaica, 1965); J. R. McNeil, *Mosquito Empires: Ecology and War in the Greater Caribbean, 1620–1914* (Cambridge, 2010), 97–106; Trevor Burnard, "European Migration to Jamaica, 1655–1780," *WMQ* 53, no. 4 (October 1996): 769–96, esp. 771–72.

<sup>49</sup> *Journals of the Assembly of Jamaica* ([Spanish Town], Jamaica, 1811), 1: 1–3. The text for "An Act for the better ordering and governing of Negro Slaves" (hereafter Jamaica Slave Act, 1664) is only available in manuscript in CO 139/1/66–69, PRO, NA. On Modyford's arrival with Barbadians, see Burnard, *WMQ* 53: 772.

<sup>50</sup> Bridenbaugh and Bridenbaugh, *No Peace Beyond the Line*, 131; Nuala Zahedieh, "Sir Thomas Modyford," *Oxford Dictionary of National Biography*, <http://www.oxforddnb.com>; Abigail Leslie Swingen, "The Politics of Labor and the Origins of the British Empire, 1650–1720" (Ph.D. diss., University of Chicago, 2007), 57.

on the expansion of slavery in the English Empire. In Barbados in 1661, African slaves made up about half of the total population and sugar had become the staple crop. In Jamaica in 1664, the black population stood at only about 15 percent of the island's population and sugar production had not yet begun. Jamaica's adoption of the Barbadian slave and servant codes reflected economic aspirations that quickly materialized. Though sugar production did not begin until the late 1670s, Jamaica exported cocoa (produced by slaves) as early as 1660. Modyford himself invested in cocoa production, and he facilitated the beginning of a transatlantic slave trade to the island, which had carried almost five thousand Africans by the time Modyford left in 1670. A census taken in 1673 estimated that the black population was about 7,700, half of the island's total. It had taken Barbados about thirty years to reach that point; in Jamaica it had taken thirteen.<sup>51</sup>

As they had in Barbados, runaways posed the greatest challenge to the establishment of slavery. In May 1670 John Style reported the capture and return of large numbers of Africans who had absconded from their plantations. Slave catchers were being rewarded with twenty shillings for each runaway, forty shillings if the runaway came from the scarcely populated "north side."<sup>52</sup> Hideouts for runaway slaves and servants on the North Side posed such a problem that in September 1672 the Council of Jamaica drastically increased the reward for slave catchers to forty pounds. A few months later, the council acted against a rare leniency in the law. At some unrecorded point after the act of 1664, the ticketing clause had been altered to allow enslaved people a four-mile radius around their plantations where they could venture unmolested without a ticket. The council considered this "extraordinary latitude" dangerous, as the "safety and Interest of all the Planters in this Island does consist in restraining by all ways imaginable the communication of the Negroes one with another."<sup>53</sup> Henceforth, ordered the council, all masters were to keep their slaves on their plantations and allow none to go abroad without a ticket. And anyone who encountered a slave off his or her plantation without a ticket should exact a whipping right then and there, regardless of distance from the plantation.<sup>54</sup>

<sup>51</sup> Richard B. Sheridan, *Sugar and Slavery: An Economic History of the British West Indies, 1623–1775* (Baltimore, 1973), 211–12; *Voyages: The Trans-Atlantic Slave Trade Database*, <http://www.slavevoyages.org>.

<sup>52</sup> John Style to the Secretary of State, May 2, 1670 (Jamaica), no. 180, in W. Noel Sainsbury, ed., *Calendar of State Papers, Colonial Series: America and West Indies* (Vaduz, 1964), 7: 65. The North Side was the region along the northern coast of Jamaica, now a principal tourist destination.

<sup>53</sup> Jamaica Council Minutes (ms 60), vol. 3, Jan. 8, 1672/3, 16, National Library of Jamaica, Kingston.

<sup>54</sup> Jamaica Council Minutes (ms 60), vol. 3, Sept. 26, 1672, and Jan. 8, 1672/3, 11, 16. The four-mile radius may be evidence of the early development of the provision

With the expansion of Jamaica's slave trade, larger groups of Africans struck out against their enslavement. More than two hundred "Coromantines" on Lobby's estate in Saint Ann's, Jamaica, revolted in 1673, killing a dozen whites and establishing themselves in the nearby mountains.<sup>55</sup> In 1675 there was another mass escape from a plantation in Saint Mary's. The council invoked the powers of the Slave Act and ordered a company of twenty men to be raised and "kept in pay" for two months to rout the rebels. Specific rewards were offered for the capture or killing of the principal leaders of the revolt: twenty pounds for Peter and Scanderberg, fifteen pounds for "the negro called Doctor," and five pounds per head for the rest of the band. Governor Henry Morgan issued a proclamation that described the "sole cause" of the recent insurrections to be "the remissness of all persons in not putting the laws for the right ordering and government of the negroes in due execution." He ordered that the Slave Act be printed and posted throughout the colony and that the island's leading men consider what new provisions in the law might curtail future disturbances to the "peace and planting this island."<sup>56</sup>

In addition to the resistance of enslaved Africans, in 1676 the Jamaica Assembly also faced a reproach from the Lords of Trade, who could not accept the word *servitude* in the island's "Act for the Good Governing of Christian Servants." "*Servitude*" struck the Lords as "being a mark of bondage and slavery," inappropriate to use in a description of persons who were "only apprentices for years."<sup>57</sup> The assembly does not seem to have responded to the Lords until 1681, when they passed a new "Act for regulating Servants." The African population had more than tripled to about 24,000 in 1681, while the white population had actually declined to approximately 7,500. Whites were now outnumbered three to one by Africans, and merchants brought more than 1,800 Africans to the island every year. Moreover, sugar production had permanently replaced cocoa as the island's export staple. By 1675 there were seventy plantations capable of producing fifty tons a year, and forty more plantations were being built.<sup>58</sup> A political

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ground system, under which slaves produced their own food on lands allotted to them, lands that were sometimes quite distant from their plantations.

<sup>55</sup> [James Knight], "History of the Revolted Negroes in Jamaica," Additional Manuscripts 12431, British Library, London, in *Materials on the History of Jamaica in the Edward Long Papers* (Wakefield, U.K., 2006), reel 8, fol. 70.

<sup>56</sup> *Ibid.*; "Journal of the Council of Jamaica," Jan. 23, 1676, no. 793, in Sainsbury, *Calendar of State Papers, Colonial*, 9: 339 ("kept in pay"); "Minutes of the Council of Jamaica," Dec. 15, 1675, no. 741, *ibid.*, 9: 315 ("sole cause"); "Journal of the Council of Jamaica," Feb. 17, 1676, no. 820, *ibid.*, 9: 353; Michael Craton, *Testing the Chains: Resistance to Slavery in the British West Indies* (Ithaca, N.Y., 1982), 75–76.

<sup>57</sup> "Journal of the Lords of Trade and Plantations," May 30, 1676, no. 927, in Sainsbury, *Calendar of State Papers, Colonial*, 9: 394 (italics in original).

<sup>58</sup> These population numbers are estimates based on Burnard, *WMQ* 53: 772; *Voyages*, <http://www.slavevoyages.org>. For sugar production capabilities, see "Observations

economy dependent on the export of sugar and the exploitation of Africans had been firmly planted. Presented with the opportunity by the Lords of Trade, the Jamaica Assembly sought to place this political economy on a more solid foundation.

As in Barbados twenty years before, the consolidation of slavery involved the governance of both servants and slaves, lifting the status of servants while depressing that of slaves. It was easy enough for the assembly to strike the word *servitude* from the act governing servants, but the Jamaica Assembly took innovation still further, employing the new Servant Act to introduce a deficiency clause to address the island's demographic imbalance. The law required every slaveholder to keep "One White Man-Servant, Overseer, or hired Man" for every five slaves he or she possessed.<sup>59</sup> (Though a similar deficiency clause had been part of the Barbados slave code of 1661, the Jamaica slave code of 1664 had not adopted it, presumably because the demographic situation did not warrant it.) The 1681 Servant Act also continued the legal effort to ameliorate the treatment of servants through a ban on whipping naked white servants and the prescription of fines for masters who failed to supply servants with the legally allotted provisions of food and clothing.<sup>60</sup>

The assembly deployed a relatively new word, *white*, in its Servant Act of 1681, a change that illuminates the continued efforts of the English in the Caribbean to racialize slavery. Previous servant acts had consistently used the term *Christian* to refer to European indentured servants, but Jamaica's 1681 Servant Act dropped *Christian* in favor of *white*. As previously discussed, the Barbados Assembly in its 1661 comprehensive acts made clear distinctions between "Christian servants" and "Negro slaves." But though Barbadians had begun to articulate the language of race in their description of the "Negro," the law had not employed the term *white*.<sup>61</sup>

The word *white* as a description of Europeans had emerged gradually and inconsistently.<sup>62</sup> We can see the transition through various writings

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on the Present State of Jamaica by M. Cranfield," Dec. 14, 1675, no. 740, in Sainsbury, *Calendar of State Papers, Colonial*, 9: 314–15.

<sup>59</sup> "An Act for regulating Servants" (1681), in John Baskett (comp.), *Acts of Assembly, Passed in the Island of Jamaica: From 1681, to 1737, Inclusive* (London, 1738), 2 (clause 1).

<sup>60</sup> *Ibid.*, 4 (clause 13). In 1661 the Barbados Assembly had ordered all freeholders who owned more than twenty acres of land to keep "one Christian Servant" for every twenty acres of land owned; see Barbados Slave Act, 1661, clause 22, in Engerman, Drescher, and Paquette, *Slavery*, 112.

<sup>61</sup> "Act for regulating Servants" (1681), in Baskett, *Acts of Assembly . . . Jamaica*, 2 (clause 1).

<sup>62</sup> Based on evidence entirely from Virginia, Winthrop D. Jordan argued that the use of *white* as a racial designator did not emerge until after 1680. This interpretation has been challenged over the past ten years, not by scholars of slavery but by historians of European-Indian relations. Nancy Shoemaker has suggested that *white* emerged first in Barbados, then spread to South Carolina and moved slowly northward. But when

as early as the Barbadian legislation of 1652 that prohibited a master from entertaining anyone, "White or Black," if the master did not know the person to be free.<sup>63</sup> This early appearance of *white* suggests Barbadian origins, but the language of whiteness had by no means pervaded the discursive community of the empire. In 1669, for example, an anonymous account of the "Carybee Islands" counted "40,000 Blacks" in Barbados with "6,000 Christians in the standing militia." But in describing Montserrat, the writer noted "1400 whites and 300 blacks," most of the whites being Irish.<sup>64</sup> The Jamaica Assembly in 1673 passed one law referring to "negroes" and another to "Christian servants," but in correspondence from the previous year, Sir Thomas Lynch advised Lord Cornbury to stock his newly patented land with "24 white servants" and "100 Negroes."<sup>65</sup> In 1676 the Lords of Trade sent a letter to the governor of South Carolina asking "what number of Whites Blacks or Mulattos have been born . . . for these 7 yeares last past."<sup>66</sup> Yet in a 1679 account of arrivals in Jamaica, only the terms "Christians" and slaves "from Guinea" were used.<sup>67</sup> The trend of usage suggests that *white*, from its origins in Barbados in the late 1640s when the African population began to rise, then traveled slowly into the writing of the English Empire's discursive community, where for at least thirty years it was used interchangeably with *Christian*.

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*white* reached the middle colonies and New England, Shoemaker argues, it was principally used to contrast Europeans with "red" people, Indians. See Jordan, *White over Black: American Attitudes toward the Negro, 1550–1812* (Chapel Hill, N.C., 1968), 95; Shoemaker, *A Strange Likeness: Becoming Red and White in Eighteenth-Century North America* (New York, 2004), 129–40. David J. Silverman and Peter Silver emphasize the impact of brutal Indian wars in generating a "white" identity among Europeans. For Silverman this took place in New England in the aftermath of King Philip's War in 1676, while for Silver, working on the mid-Atlantic region, it was the Indian wars of the 1750s. Silverman argues that the conflict with the Indians generated a transition from "Christian" to "white" as the principal name for Europeans. In the mid-Atlantic, Silver believes that Europeans were divided by Old World ethnicity before the Indian wars; only afterwards did they form a "new group" of people who saw themselves as whites. See Silver, *Our Savage Neighbors: How Indian War Transformed Early America* (New York, 2008), xx ("new group"), 114–15, 347 n. 39; Silverman, *Red Brethren: The Brothertown and Stockbridge Indians and the Problem of Race in Early America* (Ithaca, N.Y., 2010), 24–25.

<sup>63</sup> [Acts and Statutes] *Of the Island of Barbados* (1652), 20.

<sup>64</sup> "An Account of the Carybee Islands" [May 12, 1669], William Blathway Papers (BL 368), Huntington Library, San Marino, California.

<sup>65</sup> *Journals of the Assembly of Jamaica*, 1: 7 ("negroes"); Sir Thomas Lynch to Lord Cornbury, Mar. 29, 1672, in "Papers Relating to the West Indies, 1654–1682," Add. MS 11410, fol. 259, British Library ("24 white servants").

<sup>66</sup> *Records in the British Public Record Office Relating to South Carolina, 1663–1684* (Atlanta, Ga., 1928), 1: 38.

<sup>67</sup> "Account of Passengers, Servants, and Slaves Brought to Jamaica," Mar. 25, 1679, no. 945, in Sainsbury, *Calendar of State Papers, Colonial*, 10: 344.

The Jamaica Assembly's replacement of *Christian* with *white* advanced the political work in the consolidation of racial slavery begun by the Barbados Assembly. The importance of whiteness stemmed from the efforts of influential Christian groups to challenge the planters' efforts to establish an unfettered mastery in the Greater Caribbean. A sizable Quaker community had developed in Barbados, and at some point in the 1670s the Quakers began inviting black people to their meetings. The assembly did not approve and passed a law to ban the practice, to which the Quakers responded with a petition of protest to the Lords of Trade.<sup>68</sup> Though the Lords did not take the Quakers seriously, in 1680 the bishop of London ordered that efforts be taken among Church of England leaders in Barbados to Christianize Africans. Absentee Barbadians in London attended a meeting with the Lords of Trade to nip this idea in the bud. The planters blended racial assumptions and scaremongering, citing a recent slave insurrection as a warning against conversion. Africans were averse to learning, the planters argued, and because "converted negroes grow more perverse and intractable than others," allowing their conversion was dangerous.<sup>69</sup> Left unstated was the fact that Christian conversion of blacks nullified the categorical difference between "Christian" and "Negro," which undermined the ideological work begun with the comprehensive acts of 1661.

Slave resistance, the evolution of racial language, and the possibility of conversion all played a role in the consolidation of English slavery, but a critical moment came in 1683 when the Lords of Trade compelled the Jamaica Assembly to revisit its Slave Code. In February of that year, the Lords informed the assembly that the king would not approve the colony's Slave Act because of the provision that punished "wilfully" or "wantonly" killing a slave with a mere fine. The Lords complained that the clause seemed to "encourage the wilful shedding of blood" and ordered the governor to convey the report to the assembly, which should develop a gentler

<sup>68</sup> "Complaint and Request of the People called Quakers to the Lords of Trade and Plantations," July 6, 1676, no. 977, in Sainsbury, *Calendar of State Papers, Colonial*, 9: 426. On the Quakers in Barbados, see Larry Gragg, *The Quaker Community on Barbados: Challenging the Culture of the Planter Class* (Columbia, Mo., 2009).

<sup>69</sup> "Journal of Lords of Trade and Plantations," Oct. 8, 1680, no. 1535, in Sainsbury, *Calendar of State Papers, Colonial*, 10: 611–12 (quotation, 10: 611); "Memorandum by the Bishop of London concerning the Church in Barbadoes," [Aug. 28], 1680, no. 1488, *ibid.*, 10: 590. However, the Lords did not heed the planters' advice; see "Instructions to Sir Richard Dutton, Governor of Barbados," Oct. 30, 1680, no. 1563, *ibid.*, 10: 622; "Sir Richard Dutton's speech to the Assembly of Barbados," Mar. 30, 1681, no. 59, *ibid.*, 11: 24–25; Amussen, *Caribbean Exchanges*, 114–16. There was also a small Jewish population in Jamaica at this time, but Jews in Jamaica were merchants rather than indentured laborers and it does not seem likely that their presence affected the development of legislation regarding servants and slaves. On Jews in the early British Empire, see Holly Snyder, "A Sense of Place: Jews, Identity and Social Status in Colonial British America, 1654–1831" (Ph.D. diss., Brandeis University, 2000), 63–68.

provision.<sup>70</sup> Changing the law to meet the king's specific demand was easy enough: the assembly simply altered the punishments for those who willfully killed a slave.<sup>71</sup> But Jamaica's comprehensive act of 1684 did much more.

The Jamaica Assembly of 1684 focused on three principal arenas: the control of runaways, the regulation of whites' enforcement of the slave law, and property rights in slaves. Whereas the act of 1664 had established a flat reward of one pound for the return of runaways, the act of 1684 implemented a mileage charge for transporting runaways that accounted for Jamaica's extensive geography (in contrast to Barbados) and potentially doubled the bounty. Slave catchers would receive 12d. per mile for the first five miles and 8d. per mile thereafter, with a maximum of two pounds. If a slave returned a runaway, he or she was now eligible for the entire reward, and any person denying payment to a slave would be fined triple the value owed. The new Slave Act also made it more difficult for whites to avoid participation in the enforcement of the act. It imposed a twenty-pound fine on any freeholder who refused to participate in a slave court; it also created a legal mechanism that enabled all fines outlined in the slave act to be collected by debt action in the courts, despite the poverty of the white negligent in enforcing the act.<sup>72</sup>

Even more significant was the codification of chattel slavery. Though both indentured servants and enslaved Africans had been bought and sold as chattels for many decades, the legal foundations for chattel slavery in the English Empire remained unclear. The preamble to the Barbados Act of 1661 likened slaves to "other goods and Chattels" but offered no further definition of slaves in a financial sense.<sup>73</sup> Seven years later the Barbados Assembly clearly defined African slaves as real estate, which meant that heirs and widows could not lose their slaves to the creditors of a deceased slaveholder. Two provisos made clear that slaves could still be bought and sold by the living, but the law protected a planter's investment in slaves as if they were a landed estate, to be preserved for his descendants. The Jamaica Assembly did away with this precedent. Instead, the 1684 law declared that when a slaveholder died in debt (as most did) slaves who had been made part of dowries or who belonged to heirs must be sold to satisfy

<sup>70</sup> "Lords of Trade and Plantations to Sir Thomas Lynch," Feb. 17, 1683, no. 948, in Sainsbury, *Calendar of State Papers, Colonial*, II: 386–87 (quotations, II: 386); *Journals of the Assembly of Jamaica*, I: 65.

<sup>71</sup> Jamaica Slave Act, 1684, in *Laws of Jamaica*, 147. If the murderer was a "Servant," then he or she would receive thirty-nine lashes on the bare back and serve an additional four years of service to the owner of the killed slave (ibid.). But if the person was not a servant, three months' imprisonment without bail and a fifty-pound fine to the owner of the murdered slave was considered sufficient. The king's ministers must have agreed, as the new law was approved in April 1684.

<sup>72</sup> Jamaica Slave Act, 1684, in *Laws of Jamaica*, 143, 145, 148.

<sup>73</sup> Barbados Slave Act, 1661, preamble, in Engerman, Drescher, and Paquette, *Slavery*, 105.

creditors. This innovation codified the liquidity of slave property, which democratized slaveholding. The Barbados Assembly had attempted to create a gentry of sugar planters by grafting slave law onto Old World legal practices that privileged landed wealth. The Jamaica law instead favored merchants and creditors, who could sell slaves one by one, even to buyers off the island, to recoup their financial losses. A political economy of slavery based on a highly mobile labor force became the foundation for New World wealth, and we can see its legal roots in the Jamaica innovations of 1684.<sup>74</sup>

The 1684 act also used whiteness to transcend the increasingly opaque distinction between Christians and Africans that had been so important to the Barbadians in 1661. In the ticketing clause, the Jamaica Assembly stipulated that if a “White Servant” accompanied a slave beyond the plantation a ticket was unnecessary.<sup>75</sup> From 1661 to 1684 only one impactful word changed in this clause, “Christian” became “white. The law also stated quite clearly that if a slave were to become a Christian, conversion would in no way alter his or her status as a slave. For slaves in Jamaica, Christianity became irrelevant to the quest for freedom. If Quakers or the bishop of London wanted to attempt the conversion of Africans to Christianity, the Jamaica Assembly would not stand in the way (yet), but they would not allow conversion to erode slavery. They simply changed the law.<sup>76</sup>

English imperialists had only begun to use *white* to describe European servants. And within the same historical moment, they began to assert that *servitude* and *slavery* were inappropriate terms to describe the status of whites but that Africans who were Christian were nevertheless slaves. In 1661 the Barbados Assembly had neatly divided their laboring class into two groups, “Christian” and “Negro.” Christians could be harshly treated servants, but they would ultimately be freed and they were a privileged group to be protected from the violence of Africans. Because they were “an heathenish brutish uncertain and dangerous pride of people,” Africans were slaves, pure and simple. But King Charles II, the Quakers, and the bishop of London had obscured these categories by suggesting that Africans and their descendants should be made Christians. This confusion motivated those English engaged in the imperial project to search for a new language that would explain the peculiar violence of West Indian slavery. And in the process, they began to formulate the language we call race.

<sup>74</sup> “An Act declaring the Negro Slaves of this Island to be Real Estate,” in *Acts of Assembly . . . Barbadoes*, 63–64; Jamaica Slave Act, 1684, in *Laws of Jamaica*, 140–41.

<sup>75</sup> Jamaica Slave Act, 1684, in *Laws of Jamaica*, 140.

<sup>76</sup> Barbados Slave Act, 1661, clause 1, in Engerman, Drescher, and Paquette, *Slavery*, 106; Jamaica Slave Act, 1684, in *Laws of Jamaica*, 140. For later efforts of the Jamaica Assembly to impede the conversion of slaves, see Mary Turner, *Slaves and Missionaries: The Disintegration of Jamaican Slave Society, 1787–1834* (Urbana, Ill., 1982).

THE EXPLORATION, PLANNING, AND EARLY SETTLEMENT of English Carolina were all rooted in the transformation of Barbados and were in some ways similar to the planting of Jamaica. Charles II had established the colony in 1663 as a proprietorship, and the leading men in this endeavor, Sir John Colleton, the Virginia governor William Berkeley, and Sir Anthony Ashley Cooper, 1st Earl of Shaftesbury, all had extensive experience in the empire. Colleton had become a sugar planter in Barbados in the 1640s. Shaftesbury had invested in Barbados and had served on the Privy Council committee charged with charting the government of Jamaica in 1661. Berkeley had been governor of Virginia as that colony experienced a plantation revolution similar to Barbados's; it was still in transition to a dependence on African slaves.<sup>77</sup>

These men planned the Carolina colony, and by the end of 1663 about two hundred "gentlemen and persons of good quality" had organized themselves as the "Corporation of Barbados Adventurers." In their petition for grants of land, the Adventurers emphasized their capacity as "experienced planters" with "Negros and other servants fit for such labor" as would be required in the founding of a new colony.<sup>78</sup> No settlement resulted from these early efforts, but in 1669 the proprietors took an active interest in supporting the venture, funding an expedition and composing the Fundamental Constitutions of Carolina, which they hoped would govern the new colony.<sup>79</sup> The Constitutions clearly recognized African slavery with a guarantee that "Every Freeman of Carolina shall have absolute Authority over his Negro Slaves." And, foreshadowing the changes in slave law that the Jamaica Assembly would make in 1684, the Constitutions allowed slaves to enter any church they chose but made it clear that conversion of any kind would not change the lawful "civil dominion" that a master had over a slave.<sup>80</sup>

<sup>77</sup> Agnes M. Whitson, *The Constitutional Development of Jamaica—1660 to 1729* (Manchester, 1929), 10; Louise Fargo Brown, *The First Earl of Shaftesbury* (New York, 1933), 150–52; Charles M. Andrews, *The Colonial Period of American History* (New Haven, Conn., 1964), 3: 183–85; M. Eugene Sirmans, *Colonial South Carolina: A Political History, 1663–1763* (Chapel Hill, N.C., 1966), 4. The remaining five proprietors were Lord John Berkeley, Sir George Carteret, the Earl of Craven, the Duke of Albemarle, and the Earl of Clarendon. In fact, the land that became Carolina had been granted in 1629 by Charles I, but nothing was ever done with the grant.

<sup>78</sup> Langdon Cheves, ed., *The Shaftesbury Papers and Other Records Relating to Carolina and the First Settlement on Ashley River prior to the year 1676* (Charleston, S.C., 2010), 10–11 ("gentlemen," 10, "Corporation," 11), 44.

<sup>79</sup> Richard Waterhouse, *A New World Gentry: The Making of a Merchant and Planter Class in South Carolina, 1670–1770* (Charleston, S.C., 2005), 22–24.

<sup>80</sup> The text of the first draft of the Fundamental Constitutions is in Mattie Erma Edwards Parker, ed., *North Carolina Charters and Constitutions, 1578–1698* (Raleigh, N.C., 1963), 132–52 (quotations, 150). There is some debate on the authorship of the Fundamental Constitutions. An older interpretation advanced by M. Eugene Sirmans and Robert M. Weir argued that they were a collaborative effort by Sir Anthony Ashley Cooper, 1st Earl of Shaftesbury, and his secretary, the famous philosopher John Locke.

While the proprietors' aspirations were probably greater, the Fundamental Constitutions were little more than an exercise in political theory, since the first settlers had little chance of establishing a staple-producing slave society any time soon. English slavers had not yet extended the transatlantic slave trade to Carolina, and the black population had only grown to about 1,500 people in 1690 (about 40 percent of the colony). The early Carolina economy depended on two principal branches of commerce: trade with the West Indies, whereby Indian slaves, beef, pork, corn, and lumber went to the Caribbean, sometimes in exchange for black slaves, and trade in pelts and deerskins procured from Indians and shipped to England. During the first twenty years of English settlement, Charleston merchants built up considerable capital and Carolina planters experimented with various staples as they attempted to follow the West Indian path to wealth. The successful staple would be rice, but not until 1689–90 do we have records of experiments with rice production and not until 1699 was a considerable harvest exported. South Carolina's moment of slave law codification, in 1691, therefore coincided with what must have been successful experiments in the production of rice for export.<sup>81</sup>

In this momentous historical moment, the South Carolina Assembly was dominated by a faction known as the Goose Creek men, Anglican Barbadians who were some of the colony's first settlers. In 1691 the assembly adopted Jamaica's 1684 Slave Act as South Carolina's own. They added "Indian" to the definition of *slave* and dropped a few provisions of the Jamaica law that were not applicable.<sup>82</sup> The rest of the act—word for word—was taken from the Jamaica legislation. It should not be surpris-

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More recently, David Armitage has argued that Locke was the principal author, while Holly Brewer has likened Locke to Shaftesbury's lawyer and attributed authorship to Shaftesbury. Though I find Brewer's argument more convincing, I still favor the older interpretation of collaboration because of the relationship between the men that Brewer describes and because of Locke's brilliance, which Shaftesbury could not have ignored. See Sirmans, *Colonial South Carolina*, 7–9; Weir, *Colonial South Carolina: A History* (Millwood, N.Y., 1983), 53; Armitage, "John Locke, Carolina, and the *Two Treatises of Government*," *Political Theory* 32, no. 5 (October 2004): 602–27; Brewer, "Slavery and 'Inheritable Blood' in the Wake of the Glorious Revolution: The Struggle over Locke's Virginia Plan of 1698" (paper presented to the Yale British Historical Studies Colloquium, New Haven, Conn., December 2008), cited with permission of the author.

<sup>81</sup> Converse D. Clowse, *Economic Beginnings in Colonial South Carolina, 1670–1730* (Columbia, S.C., 1971), chaps. 3–4; Russell R. Menard, "Financing the Lowcountry Export Boom: Capital and Growth in Early South Carolina," in *Migrants, Servants, and Slaves: Unfree Labor in Colonial British America* (Aldershot, U.K., 2001), 659–76; S. Max Edelson, *Plantation Enterprise in Colonial South Carolina* (Cambridge, Mass., 2006), 63. Menard's evidence begins in the eighteenth century, but it is probable that his argument applies to the 1690s. David Barry Gaspar has also emphasized the "economic aspirations" of the assembly, reflected in the timing of Carolina's codification. See Gaspar, "With A Rod of Iron," 355.

<sup>82</sup> "An Act for the better ordering of Slaves," in McCord, *Statutes at Large of South Carolina*, 7: 343.

ing that Carolinians turned to Jamaica rather than Barbados for their slave code. The two colonies were closely linked through trade and correspondence and, as we have seen, the Jamaica Assembly had made important innovations in the law.<sup>83</sup> It had consolidated the slave court system and established a legal structure for catching runaways that was far more compatible with Carolina geography. In contrast, the Barbados Assembly in 1688 had enacted five new provisions that must not have appeared particularly useful to Carolinians. Barbadians had extended the list of property crimes committed by slaves and made the punishments for those crimes more severe, adopted a provision ground requirement that Jamaica had developed in 1684, and added to the search provision “Drums, Horns, or any other loud Instruments.”<sup>84</sup> This last provision reflected Barbados planters’ fears of African methods of spreading rebellion, based upon their experience with the Coromantee conspiracy in 1675. But without a direct slave trade with Africa, Africans were probably few in South Carolina (where creoles were predominant), and there had not even been a conspiracy scare, much less an insurrection.<sup>85</sup>

Unlike the assemblies in Barbados and Jamaica that passed the first slave codes, however, the South Carolina Assembly did not pass a servant act at the same time. There were relatively few white servants in South Carolina at this time; moreover, by 1691 the distinctions in status and treatment between white indentured servants and enslaved Africans had already been codified. This political work had been done and Carolina slaveholders reaped the benefits.<sup>86</sup>

Just five years later, the South Carolina Assembly had to revisit its slave laws. The Goose Creek men had always been in conflict with the proprietors, and because of this political rift the proprietors rejected all the laws passed by the assembly of 1691. The assembly returned to its slave code in

<sup>83</sup> Maurice Mathews, “A Contemporary View of Carolina in 1680,” *SCHM* 55, no. 3 (July 1954): 153–59, esp. 159; Thomas Ashe, *Carolina; or, A Description of the Present State of that Country* (1682), in Alexander S. Salley Jr., ed., *Narratives of Early Carolina, 1650–1708* (repr., New York, 1967), 158.

<sup>84</sup> “An Act for the Governing of Negroes,” in *Acts of Assembly . . . Barbadoes*, 137–44 (quotation, 137).

<sup>85</sup> On the Coromantee rebellions in Barbados, see *Great Newes from the Barbadoes; or, A True and Faithful Account of the Grand Conspiracy of the Negroes against the English*. . . (London, 1676); Craton, *Testing the Chains*, 105–11; Hilary Beckles, *Black Rebellion in Barbados: The Struggle against Slavery, 1627–1838* (Bridgetown, Barbados, 1984), 30–42.

<sup>86</sup> The South Carolina Assembly did not pass a servant act until 1717. See the list of surviving laws from this period in Charles H. Lesser, *South Carolina Begins: The Records of a Proprietary Colony, 1663–1721* (Columbia, S.C., 1995), 258–71. The census of South Carolina taken in 1708 listed only 120 white servants in a white population of 4,080, only about 3 percent; see Warren B. Smith, *White Servitude in Colonial South Carolina* (Columbia, S.C., 1961), 128.

1696 after the new governor, John Archdale, fostered a working relationship among the colony's political factions that M. Eugene Sirmans credits with the establishment of political stability. "Archdale's Laws" would govern the colony for the next twenty years. On the surface, not much had changed since 1691. The black population was slightly higher but no different with respect to proportion, a direct slave trade with Africa had still not begun, and there were still no recorded incidents of conspiracy or rebellion. Nevertheless, the assembly made significant innovations; one of them is simply astonishing.<sup>87</sup>

The first clause of the 1696 Slave Act offered a new definition of slavery, which now included "Mollatoes" in addition to Africans and Indians. It explicitly declared slave status hereditary (which the Barbados and Jamaica acts had not done) and determined by the simple fact of having been "Bought and Sold for Slaves." And in its opening clause, the act explained the provisions that followed by warning of "too much Liberty" that might arise, particularly "as the number of Slaves Shall increase."<sup>88</sup> The simplicity of Carolinians' definition of slavery went beyond the work of the Barbados and Jamaica Assemblies by doing away with the real estate distinction altogether. They saw slaves as chattels, nothing more, nothing less. And yet they were guarded, concerned about the dangers implicit in the black majority society they seemed to predict.<sup>89</sup>

But the most remarkable innovation had to do with runaways, now defined as those slaves over the age of sixteen who ran away for more than two weeks. For the first offense, the runaway, whether man or woman, was to be branded with an "R," but for the second offense a man was to be gelded and a woman to lose an ear. The statute further stated that if a slaveholder refused to punish a chronic runaway in accordance with the law, he or she could lose possession of the slave through a suit in court brought by an informer, who could win possession of the slave. But the person who won such a slave was also obliged to carry out the punishment and would be subject to a fifty-pound fine if he or she failed to do so. Another clause allowed a slaveholder twenty pounds if his or her slave died as a result of the punishment, presumably to encourage the potentially mortal violence called for.<sup>90</sup>

<sup>87</sup> Sirmans, *Colonial South Carolina*, 46–50; Weir, *Colonial South Carolina*, 66–67.

<sup>88</sup> "An Act for the Better Ordering of Slaves" (1696), in *Acts of the General Assembly*, vol. 6, Mar. 2–16, 1696 (Governor Archdale's Laws), fols. 60–66 (quotations, fol. 60), South Carolina Department of Archives and History, Columbia, S.C.

<sup>89</sup> *Ibid.*

<sup>90</sup> "Guilded" is my transcription of the 1696 manuscript of "An Act for the Better Ordering of Slaves"; however, in the 1712 act the provision is clearly transcribed as "gelt." There are interesting changes in the 1712 act, but this particular statute did not change. See "An Act for the Better Ordering and Governing of Negroes and Slaves," in McCord, *Statutes at Large of South Carolina*, 7: 352–65.

Carolínians not only legislated gelding, they did it. In 1697 the assembly ordered the gelding of three runaways who attempted to escape to Saint Augustine. In 1710 one Baptist planter provoked outrage in his congregation when he gelded one of his slaves. Why did the Carolina Assembly prescribe such terrifying punishments, and where did they get such an awful idea? Gelding as a punishment had no precedent in English law, and neither Jamaica nor Barbados legislated gelding in the comprehensive slave laws of 1684, 1688, or 1696. That said, in the aftermath of a slave rebellion in 1693, the Barbados Assembly paid one Alice Mills for the castration of forty-three rebels. Jamaica planters also castrated rebel slaves in the aftermath of insurrections. These were fraught moments of terrifying bloodshed when masters resorted to brutal terror to reassert their dominance. But in neither island did such moments lead to a legislative process that became formal policy. What was different about South Carolina?<sup>91</sup>

Modern readers associate the castration of black men with the mob lynchings of Jim Crow America and the alleged protection of white women. But there is not a shred of evidence from the slave societies of the seventeenth or early eighteenth centuries that would suggest such an explanation. The only American legislatures to prescribe castration for black men who threatened to rape white women during this period were mid-Atlantic colonies, Pennsylvania (1704) and New Jersey (1709). These were societies with slaves in which slaveholders were few and legislatures resorted to drastic punishments. But in slave societies in which every white man was trained in subjugation, legislators likely presumed that the protection of white women happened as a matter of course. The threat of gelding played a different role.<sup>92</sup>

Another line of reasoning might argue that this attack on black masculinity stemmed from threats to white men's masculinity. If we accept that military prowess was an important component of seventeenth-century masculinity (and I think we can), then the masculinity of white Carolínians was under severe stress. With the rise of the black population and the constant threat of war against the Indians and the Spanish in Saint Augustine, white Carolínians were in a rather weak position. But if we place the South Carolina statute in comparative perspective with Jamaica's revisions of the same year, gelding as a defense of white masculinity does not hold.

David Barry Gaspar has rightly argued that the rewriting of Jamaica's slave law in 1696 arose principally from "internal circumstances," specifically the increase of the African population and a series of slave rebellions far more intense than any violence that the English in Barbados or South Carolina had encountered from their slaves.<sup>93</sup> There had been major insurrections in

<sup>91</sup> Jordan, *White over Black*, 155–56; David Buisseret, ed., *Jamaica in 1687: The Taylor Manuscript at the National Library of Jamaica* (Kingston, Jamaica, 2008), 274–79.

<sup>92</sup> Jordan, *White over Black*, 156–57.

<sup>93</sup> David Barry Gaspar, "'Rigid and Inclement': Origins of the Jamaica Slave Laws of the Seventeenth Century," in *The Many Legalities of Early America*, ed. Christopher L. Tomlins and Bruce H. Mann (Chapel Hill, N.C., 2001), 78–96 (quotation, 80).

1685 and 1690, and in 1692 the council had to raise parties of slave catchers to attempt to capture bands of runaways that made constant depredations on the plantations. The French invaded in 1694 and destroyed more than fifty sugar works on the eastern side of the island that had just been rebuilt. More bands of runaways formed in the aftermath of this invasion and the council raised further parties to attempt their suppression. Despite this series of calamities, English slavers continued to bring more than two thousand enslaved Africans to the island every year. In short, Jamaica slaveholders were under far greater threats than their counterparts in South Carolina, and yet they did not write laws to geld.<sup>94</sup>

This is not to say that Jamaica slaveholders were benevolent. The 1696 act increased the punishment for a slave striking a white to summary execution by a slave court. It developed a new category of criminal, the “rebellious” slave, defined as one away from the plantation for twelve months. Such a slave, when caught, received a severe whipping and exile from the island. If a white killed or captured a rebellious slave, he or she received five pounds; a slave could receive forty shillings and a serge coat for the same act. Slaves were prohibited from gathering in public and masters were ordered to ban drumming or any sort of meeting among slaves on their estates. And any slave who even “imagine[d] the Death of any white Person” could be executed.<sup>95</sup>

Rather than a direct assault on black masculinity or an effort to protect white women, the South Carolina provision to geld two-time male runaways should be understood as a method of bestializing black men. It was rooted in the common practice of gelding bull calves. If we consider the centrality of work in shaping the lives and social relations of enslaved people (and, in seventeenth-century South Carolina, their masters as well), then the origin of the gelding statute becomes apparent.<sup>96</sup> Unlike in the staple-producing agricultural societies of Barbados and Jamaica, the management of open-range cattle herds still played a critical role in seventeenth-century South Carolina. As early as 1680, Maurice Mathews wrote that there were already “severall Thousands” of cattle in Carolina and only newcomers did not possess them. Two years later Samuel Wilson wrote that some individuals owned seven or eight hundred head of cattle. With the colony’s extremely mild winters, early Carolina cattle owners simply

<sup>94</sup> Jamaica Council Minutes (ms 60), vol. 11, Feb. 22, 1692, Dec. 10, 1694; Sheridan, *Sugar and Slavery*, 214; *Voyages*, <http://www.slavevoyages.org>.

<sup>95</sup> “An Act for the better Order and Government of Slaves” (1696), in Baskett, *Acts of Assembly . . . Jamaica*, 73–82 (“rebellious,” 76, “imagine[d],” 77).

<sup>96</sup> Schwartz, *Sugar Plantations*, xiv, 98–131; Ira Berlin, *Many Thousands Gone: The First Two Centuries of Slavery in North America* (Cambridge, Mass., 1998), 5; Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill, N.C., 1998), xxi, esp. xxi n. 10. Morgan also provides further examples of slaveholders treating their slaves as cattle; see Morgan, *Slave Counterpoint*, 271.

let their herds fend for themselves. German engineer William Gerard DeBrahm described herding practices in the mid-eighteenth century: “The Cow Pen-keepers determine the Number of their Stocks by the Number of Calves, which they mark [brand] every Spring and Fall; if one marks 300 Calves per annum, he reckons his Stock to consist of 400 Heifers, 500 Cows and 300 Steers, in all 1,500 Heads.”<sup>97</sup> DeBrahm’s account suggests a biannual practice of hunting down all of the cows in a herd, branding the calves, and gelding most of the young bulls.<sup>98</sup> As Peter H. Wood has shown, black slaves would have been key participants in these events, as many slaveholders entrusted their herds to only a few male slaves.<sup>99</sup> The practice of gelding, then, would have been extremely common and well understood by both whites and blacks in early Carolina. By threatening enslaved black men with gelding, the South Carolina Assembly literally treated them as beasts with a procedure that would have been immediately recognizable and terrifying. Severe whippings, the slitting of noses, the slicing off of ears, and ultimately gelding—all of these punishments had the same aim, the bestialization of black people and the consolidation of racial slavery.

OVER THE COURSE OF THIRTY-FIVE YEARS, the assemblies of Barbados, Jamaica, and South Carolina forged a political foundation for slavery in England’s Greater Caribbean empire. For the English in the seventeenth century, this was quite new, but in the longer flow of human history their actions were as old as slavery itself. The Hammurabi code did not recognize the killing of a slave as murder, and male slaves were castrated in ancient Rome, medieval Egypt, and sixteenth-century Peru. Laws ordered payments for slave catchers in ancient Rome and in sixteenth-century Mexico, just as they did in the English colonies. Assertions of slaves’ biological difference were not new either. Aristotle wrote of the “natural slave” and likened them to “tame animals,” while medieval Jewish and Muslim writers had views of sub-Saharan Africans that were similar to the Barbados Assembly’s description of the “Negro.”<sup>100</sup>

<sup>97</sup> Mathews, *SCHM* 55: 157, quoted in Gary S. Dunbar, “Colonial Carolina Cowpens,” *Agricultural History* 35, no. 3 (July 1961): 125–31, esp. 127–28 (“severall,” 127); Louis De Vorsey Jr., ed., *DeBrahm’s Report of the General Survey in the Southern District of North America* (Columbia, S.C., 1971), 96 (“Cow Pen-keepers”).

<sup>98</sup> Dunbar, *Agricultural History* 35: 127–28.

<sup>99</sup> Wood, *Black Majority*, 30–33.

<sup>100</sup> David Brion Davis, *The Problem of Slavery in Western Culture* (New York, 1966), 56; Frederick P. Bowser, *The African Slave in Colonial Peru, 1524–1650* (Stanford, Calif., 1974), 155, 196–97; Colin A. Palmer, *Slaves of the White God: Blacks in Mexico, 1570–1650* (Cambridge, Mass., 1976), 123; K. R. Bradley, *Slaves and Masters in the Roman Empire: A Study in Social Control* (New York, 1987), 128; Bernard Lewis, *Race and Slavery in the Middle East: An Historical Inquiry* (New York, 1990), 52; Davis, *Inhuman Bondage*, 33, 68–69.

The significance of these early comprehensive slave laws lies not in their novelty but in the political work they did in consolidating racial slavery in the English Empire. It may well have been an “unthinking decision” in 1636 that led the English in Barbados to enslave Africans and Indians, for as Winthrop D. Jordan observed long ago, the English simply emulated the practices of the Iberians and the Dutch.<sup>101</sup> But the Restoration coincided with the culmination of a socioeconomic transition whereby the profits gained through slavery had begun to change habits on Barbados. The Barbados laws of 1652 suggest that Europeans were encouraged to treat enslaved Africans with especial severity, and the comprehensive acts of 1661 enhanced the distinctions made between European and African laborers. These distinctions were justified with language that adumbrated racial thinking, specifically the naming of “Negroes.” And as the political economy of slavery spread into Jamaica and South Carolina, racial language became more sophisticated with the naming of “white” people. Through a decades-long struggle fraught with blood, terror, sweat, and considerable investment, these English colonial assemblies used the power of the law to forge the habits of mastery and a political economy of racial slavery that would last for two hundred years.

<sup>101</sup> Jordan, *White over Black*, 44–98.