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Early American History and Culture
WILLIAMSBURG, VIRGINIA

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Source: *The William and Mary Quarterly*, Vol. 7, No. 2 (Apr., 1950), pp. 199-222

Published by: Omohundro Institute of Early American History and Culture

Stable URL: <http://www.jstor.org/stable/1917157>

Accessed: 13-01-2018 23:51 UTC

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Origins of the Southern Labor System

Oscar and Mary F. Handlin*

IN the bitter years before the Civil War, and after, men often turned to history for an explanation of the disastrous difference that divided the nation against itself. It seemed as if some fundamental fault must account for the tragedy that was impending or that had been realized; and it was tempting then to ascribe the troubles of the times to an original separateness between the sections that fought each other in 1861.

The last quarter century has banished from serious historical thinking the ancestral cavaliers and roundheads with whom the rebels and Yankees had peopled their past. But there is still an inclination to accept as present from the start a marked divergence in the character of the labor force, free whites in the North, Negro slaves in the South. Most commonly, the sources of that divergence are discovered in geography. In the temperate North, it is held, English ways were transposed intact. But the soil and climate of the South favored the production of staples, most efficiently raised under a regime of plantation slavery.

In this case, however, it is hardly proper to load nature with responsibility for human institutions. Tropical crops and climate persisted in the South after 1865 when its labor system changed, and they were there before it appeared.¹ Negro slavery was not spontaneously produced by heat, humidity, and tobacco. An examination of the condition and status of seventeenth-century labor will show that slavery was not there from the start, that it was not simply imitated from elsewhere, and that it was not a response to any unique qualities in the Negro himself. It emerged rather from the adjustment to American conditions of traditional European institutions.

By the latter half of the eighteenth century, slavery was a clearly defined status. It was

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¹ See, in general, Lewis Cecil Gray, *History of Agriculture in the Southern United States to 1860* (New York, 1941), I, 302 ff.

that condition of a natural person, in which, by the operation of law, the application of his physical and mental powers depends . . . upon the will of another . . . and in which he is incapable . . . of . . . holding property [or any other rights] . . . except as the agent or instrument of another. In slavery, . . . the state, in ignoring the personality of the slave, . . . commits the control of his conduct . . . to the master, together with the power of transferring his authority to another.²

Thinking of slavery in that sense, the Englishmen of 1772 could boast with Lord Mansfield that their country had never tolerated the institution; simply to touch the soil of England made men free.³ But the distinction between slave and free that had become important by the eighteenth century was not a significant distinction at the opening of the seventeenth century. In the earlier period, the antithesis of "free" was not "slave" but unfree; and, within the condition of unfreedom, law and practice recognized several gradations.

The status that involved the most complete lack of freedom was villeinage, a servile condition transmitted from father to son. The villein was limited in the right to hold property or make contracts; he could be bought and sold with the land he worked or without, and had "to do all that that the Lord will him command"; while the lord could "rob, beat, and chastise his Villain at his will."⁴ It was true that the condition had almost ceased to exist in England itself. But it persisted in Scotland well into the eighteenth century. In law the conception remained important enough to induce Coke in 1658/9 to give it a lengthy section; and the analogy with villeinage served frequently to define the terms of other forms of servitude.⁵

² Summarized in John Codman Hurd, *Law of Freedom and Bondage in the United States* (Boston, 1858), I, 42, 43.

³ William Blackstone, *Commentaries* . . ., edited by St. George Tucker (Philadelphia, 1803), I, 126, 423. For Somerset's Case, see Hurd, *Law of Freedom and Bondage*, I, 189 ff.; also *ibid.*, I, 185 ff.

⁴ [Thomas Blount], *Les Termes de la Ley; or, Certain Difficult and Obscure Words and Terms of the Common Laws and Statutes . . . Explained* (London, 1685), 648-652; Hurd, *Law of Freedom and Bondage*, I, 136.

⁵ Edward Coke, *First Part of the Institutes of the Laws of England; or, a Commentary upon Littleton* . . ., edited by Charles Butler (Philadelphia, 1853), Bk. II, Ch. 11, Sections 172-212; James Paterson, *Commentaries on the Liberty of the Subject and the . . . Security of the Person* (London, 1877), I, 492; Jacob D. Wheeler, *Practical Treatise on the Law of Slavery* . . . (New York, 1837), 256, 257; Tucker's Appendix to Blackstone, *Commentaries*, I, 43n; Gray, *History of Agriculture*, I, 343 ff.

For, law and practice in the seventeenth century comprehended other forms of involuntary bondage. The essential attributes of villeinage were fastened on many men not through heredity and ancient custom, as in the case of the villein, but through poverty, crime, or mischance. A debtor, in cases "where there is not sufficient distresse of goods" could be "sold at an outcry." Conviction for vagrancy and vagabondage, even the mere absence of a fixed occupation, exposed the free-born Englishman, at home or in the colonies, to the danger that he might be bound over to the highest bidder, his labor sold for a term. Miscreants who could not pay their fines for a wide range of offenses were punished by servitude on "publick works" or on the estates of individuals under conditions not far different from those of villeinage. Such sentences, in the case of the graver felonies, sometimes were for life.⁶

The sale by the head of a household of members of his family entailed a similar kind of involuntary servitude. A husband could thus dispose of his wife, and a father of his children. Indeed, reluctance to part with idle youngsters could bring on the intercession of the public authorities. So, in 1646, Virginia county commissioners were authorized to send to work in the public flaxhouse two youngsters from each county, kept at home by the "fond indulgence or perverse obstinacy" of their parents. Orphans, bastards, and the offspring of servants were similarly subject to disposal at the will of officials.⁷

Moreover servitude as an estate was not confined to those who fell into it against their wills. It also held many men who entered it by agreement or formal indenture, most commonly for a fixed span of years under conditions contracted for in advance, but occasionally for life, and frequently without definite statement of terms under the assumption that the custom of the country was definite enough.⁸

Early modification in the laws regulating servitude did not, in England or the colonies, alter essentially the nature of the condition.⁹ Whether vol-

⁶ See *Maryland Archives* (Baltimore, 1883 ff.), I, 69 (1638/9), 152 ff. (1642), 187 (1642), 192 (1642); William Waller Hening, *Statutes at Large Being a Collection of all the Laws of Virginia . . .* (New York, 1823 ff.), I, 117; Gray, *History of Agriculture*, I, 343; John H. Lefroy, *Memorials of the Discovery and Early Settlement of the Bermudas or Somers Islands, 1518-1685* (London, 1877), I, 127.

⁷ See Hening, *Statutes*, I, 336; also Paterson, *Commentaries*, I, 495; Gray, *History of Agriculture*, I, 343; Susie M. Ames, *Studies of the Virginia Eastern Shore in the Seventeenth Century* (Richmond, 1940), 78 ff.; *infra*, 212.

⁸ Paterson, *Commentaries*, I, 494; *infra*, 209.

⁹ See Gray, *History of Agriculture*, I, 343 ff.

untary or involuntary, the status did not involve substantially more freedom in law than villeinage. It was not heritable; but servants could be bartered for a profit, sold to the highest bidder for the unpaid debts of their masters, and otherwise transferred like movable goods or chattels. Their capacity to hold property was narrowly limited as was their right to make contracts.¹⁰ Furthermore, the master had extensive powers of discipline, enforced by physical chastisement or by extension of the term of service. Offenses against the state also brought on punishments different from those meted out to free men; with no property to be fined, the servants were whipped.¹¹ In every civic, social, and legal attribute, these victims of the turbulent displacements of the sixteenth and seventeenth centuries were set apart. Despised by every other order, without apparent means of rising to a more favored place, these men, and their children, and their children's children seemed mired in a hard, degraded life.¹² That they formed a numerous element in society was nothing to lighten their lot.

The condition of the first Negroes in the continental English colonies must be viewed within the perspective of these conceptions and realities of servitude. As Europeans penetrated the dark continent in search of gold and ivory, they developed incidentally the international trade in Blacks. The Dutch in particular found this an attractive means of breaking into the business of the Spanish colonies, estopped by the policy of their own government from adding freely to their supply of African labor. In the course of this exchange through the West Indies, especially through Curaçao, occasional small lots were left along the coast between Virginia and Massachusetts.¹³

Through the first three-quarters of the seventeenth century, the Negroes, even in the South, were not numerous; nor were they particularly concentrated in any district.¹⁴ They came into a society in which a large part of the population was to some degree unfree; indeed in Virginia under the

¹⁰ *Maryland Archives*, I, 69 (1638/9); Hening, *Statutes*, I, 245, 253, 274, 439, 445; Ames, *Eastern Shore*, 77; *infra*, 214.

¹¹ See, for instance, Hening, *Statutes*, I, 167, 189, 192.

¹² Philip Alexander Bruce, *Institutional History of Virginia . . .* (New York, 1910), II, 614.

¹³ See Elizabeth Donnan, ed., *Documents Illustrative of the History of the Slave Trade to America* (Washington, 1930 ff.), I, 83 ff., 105, 106, 151; Gray, *History of Agriculture*, I, 352.

¹⁴ Philip Alexander Bruce, *Social Life of Virginia in the Seventeenth Century* (Richmond, 1907), 14; James M. Wright, *Free Negro in Maryland 1634-1860* (New York, 1921), 13.

Company almost everyone, even tenants and laborers, bore some sort of servile obligation.¹⁵ The Negroes' lack of freedom was not unusual. These newcomers, like so many others, were accepted, bought and held, as kinds of servants.¹⁶ They were certainly not well off. But their ill-fortune was of a sort they shared with men from England, Scotland, and Ireland, and with the unlucky aborigenes held in captivity. Like the others, some Negroes became free, that is, terminated their period of service. Some became artisans; a few became landowners and the masters of other men.¹⁷ The status of Negroes was that of servants; and so they were identified and treated down to the 1660's.¹⁸

The word, "slave" was, of course, used occasionally. It had no meaning in English law, but there was a significant colloquial usage. This was a general term of derogation. It served to express contempt; "O what a rogue

¹⁵ See Gray, *History of Agriculture*, I, 314 ff.

¹⁶ This fact was first established by the work of James Curtis Ballagh, *History of Slavery in Virginia* (Baltimore, 1902), 9 ff., 28 ff. and John Henderson Russell, *Free Negro in Virginia 1619-1865* (Baltimore, 1913), 23 ff. Their conclusions were accepted by Ulrich B. Phillips, *American Negro Slavery* (New York, 1918), 75; although they ran counter to the position of Philip Alexander Bruce, *Economic History of Virginia in the Seventeenth Century* (New York, 1907), II, 52 ff. They were not seriously disputed until the appearance of Ames, *Eastern Shore*, 100 ff. Miss Ames's argument, accepted by Wesley Frank Craven, *Southern Colonies in the Seventeenth Century 1607-1689* (Baton Rouge, 1949), 402, rests on scattered references to "slaves" in the records. But these are never identified as Negroes; the reference is always to "slaves," to "Negroes or slaves," to "Negroes and slaves," or to "Negroes and other slaves," just as there are many more frequent references to "Negroes and servants" (for the meaning of "slave" in these references, see *infra*, 204. Miss Ames also argues that the free Negroes referred to by Russell may have been manumitted. But unless she could prove—and she cannot—that Englishmen in Virginia had a previous conception of slavery as a legal status within which the Negro fell, it is much more logical to assume with Russell that these were servants who had completed their terms. For the same reasons we cannot accept the unsupported assumptions of Wright, *Free Negro in Maryland*, 21-23.

¹⁷ Marcus W. Jernegan, "Slavery and the Beginnings of Industrialism in the American Colonies," *American Historical Review*, XXV (1920), 227, 228; Ames, *Eastern Shore*, 106, 107.

¹⁸ In such a work as [Nathaniel Butler], *Historye of the Bermudaes or Summer Islands*, edited by J. Henry Lefroy (London, 1882), for instance, the term "slave" is never applied to Negroes (see pp. 84, 99, 144, 146, 211, 219, 242). For disciplinary and revenue laws in Virginia that did not discriminate Negroes from other servants, see Hening, *Statutes*, I, 174, 198, 200, 243, 306 (1631-1645). For wills (1655-1664) in which "Lands goods & chattels cattle monys negroes English servts horses sheep household stuff" were all bequeathed together, see *Lancaster County Records*, Book 2, pp. 46, 61, 121, 283 (cited from Beverley Fleet, ed., *Virginia Colonial Abstracts* [Richmond, 1938 ff.]).

and peasant slave am I," says Hamlet (Act II, Scene 2). It also described the low-born as contrasted with the gentry; of two hundred warriors, a sixteenth-century report said, eight were gentlemen, the rest slaves.¹⁹ The implication of degradation was also transferred to the low kinds of labor; "In this hal," wrote More (1551), "all vyle seruice, all slauerie . . . is done by bondemen."²⁰

It was in this sense that Negro servants were sometimes called slaves.²¹ But the same appellation was, in England, given to other non-English servants,—to a Russian, for instance.²² In Europe and in the American colonies, the term was, at various times and places, applied indiscriminately to Indians, mulattoes, and mestizos, as well as to Negroes.²³ For that matter, it applied also to white Englishmen. It thus commonly described the servitude of children; so, the poor planters complained, "Our children, the parents dieinge" are held as "slaues or drudges" for the discharge of their parents' debts.²⁴ Penal servitude too was often referred to as slavery; and the phrase, "slavish servant" turns up from time to time. Slavery had no meaning in law; at most it was a popular description of a low form of service.²⁵

Yet in not much more than a half century after 1660 this term of derogation was transformed into a fixed legal position. In a society characterized by many degrees of unfreedom, the Negro fell into a status novel to English law, into an unknown condition toward which the colonists unsteadily moved, slavery in its eighteenth- and nineteenth-century form. The

¹⁹ *State Papers Henry VIII, Ireland*, II, 448; also III, 594 (under Sklaw); see also Shakespeare's *Coriolanus*, Act IV, Scene 5.

²⁰ Thomas More, *Utopia* (Oxford, 1895), 161, 221, 222.

²¹ See Russell, *Free Negro*, 19.

²² Paterson, *Commentaries*, I, 492.

²³ See Bruce, *Institutional History*, I, 673; Ames, *Eastern Shore*, 72 ff.; E. B. O'Callaghan, ed., *Documents Relative to the Colonial History of the State of New York* (Albany, 1856 ff.), III, 678.

²⁴ Butler, *Historye of the Bermudaes*, 295, 296. See also Lorenzo Johnston Greene, *Negro in Colonial New England 1620-1776* (New York, 1942), 19, n. 25; Arthur W. Calhoun, *Social History of the American Family* (Cleveland, 1917), I, 82; and also the evidence cited by Richard B. Morris, *Government and Labor in Early America* (New York, 1946), 339, 340.

²⁵ See Abbot Emerson Smith, *Colonists in Bondage* (Chapel Hill, 1947), 158, 186; *Maryland Archives*, I, 41; Gray, *History of Agriculture*, I, 359; Butler, *Historye of the Bermudaes*, 295; Morris, *Government and Labor*, 346. Some of the earliest Negroes in Bermuda and Virginia seem thus to have been held as public servants, perhaps by analogy with penal servitude (Ballagh, *Slavery in Virginia*, 29).

available accounts do not explain this development because they assume that this form of slavery was known from the start.

Can it be said, for instance, that the seventeenth-century Englishman might have discovered elsewhere an established institution, the archetype of slavery as it was ultimately defined, which seemed more advantageous than the defined English customs for use in the New World? The internationally recognized "slave trade" has been cited as such an institution.²⁶ But when one notes that the Company of Royal Adventurers referred to their cargo as "Negers," "Negro-Servants," "Servants . . . from Africa," or "Negro Person," but rarely as slaves, it is not so clear that it had in view some unique or different status.²⁷ And when one remembers that the transportation of Irish servants was also known as the "slave-trade," then it is clear that those who sold and those who bought the Negro, if they troubled to consider legal status at all, still thought of him simply as a low servant.²⁸

Again, it has been assumed that Biblical and Roman law offered adequate precedent. But it did not seem so in the perspective of the contemporaries of the first planters who saw in both the Biblical and Roman institutions simply the equivalents of their own familiar forms of servitude. King James's translators rendered the word, "bond-servant"; "slave" does not appear in their version.²⁹ And to Coke the Roman *servus* was no more than the villein ("and this is hee which the civilians call servus").³⁰

Nor did the practice of contemporary Europeans fall outside the English conceptions of servitude. Since early in the fifteenth century, the Portuguese had held Moors, white and black, in "slavery," at home, on the Atlantic islands, and in Brazil. Such servitude also existed in Spain and in Spanish America where Negroes were eagerly imported to supply the perennial shortage of labor in the Caribbean sugar islands and the Peruvian mines. But what was the status of such slaves? They had certain

²⁶ See, for example, Craven, *Southern Colonies*, 219.

²⁷ Donnan, *Documents*, I, 128-131, 156, 158, 163, 164. For continued use of the term, "Negro Servants" by the Royal African Company, see *ibid.*, I, 195.

²⁸ John P. Prendergast, *Cromwellian Settlement of Ireland* (London, 1865), 53n, 238; Patrick Francis Moran, *Historical Sketch of the Persecutions Suffered by the Catholics of Ireland under the Rule of Cromwell and the Puritans* (Dublin, 1907), 343-346, 356, 363.

²⁹ See, for example, Genesis, XIV, 14, XXX, 43; Leviticus, XXV, 39-46; Exodus, XXI, 1-9, 16. See also the discussion by Roger Williams (1637), *Massachusetts Historical Society Collections*, Fourth Series, VI (1863), 212.

³⁰ Coke, *First Institute upon Littleton*, 116a, §172.

property rights, were capable of contracting marriages, and were assured of the integrity of their families. Once baptised it was almost a matter of course that they would become free; the right to manumission was practically a "contractual arrangement." And once free, they readily intermarried with their former masters. These were no chattels, devoid of personality. These were human beings whom chance had rendered unfree, a situation completely comprehensible within the degrees of unfreedom familiar to the English colonist. Indeed when Bodin wishes to illustrate the condition of such "slaves," he refers to servants and apprentices in England and Scotland.³¹

Finally, there is no basis for the assertion that such a colony as South Carolina simply adopted slavery from the French or British West Indies.³² To begin with, the labor system of those places was not yet fully evolved.³³ Travelers from the mainland may have noted the advantages of Negro labor there; but they hardly thought of chattel slavery.³⁴ The Barbadian gentlemen who proposed to come to South Carolina in 1663 thought of bringing "Negros and other servants." They spoke of "slaves" as did other Englishmen, as a low form of servant; the "weaker" servants to whom the Concessions referred included "woemen children slaves."³⁵ Clearly American slavery was no direct imitation from Biblical or Roman or Spanish or Portuguese or West Indian models. Whatever connections existed were established in the eighteenth and nineteenth centuries when those who justified the emerging institution cast about for possible precedents wherever they might be found.

If chattel slavery was not present from the start, nor adopted from elsewhere, it was also not a response to any inherent qualities that fitted the Negro for plantation labor. There has been a good deal of speculation as

³¹ I. [Jean] Bodin, *Six Bookes of a Commonweale*, translated by Richard Knolles (London, 1606), 33. For the Portuguese and Spanish situations, see Jose Antonio Saco, *Historia de la esclavitud desde los tiempos mas remotos hasta nuestros dias* (2d ed., Habana, 1937), III, 266-277; Donnan, *Documents*, I, 15, 16, 29 ff.; Frank Tannenbaum, *Slave and Citizen the Negro in the Americas* (New York, 1947), 43 ff., 55; Gray, *History of Agriculture*, I, 110, 304-306; Marcus W. Jernegan, *Laboring and Dependent Classes in Colonial America, 1607-1783* (Chicago, 1931), 25.

³² See, for example, Edward McCrady, *History of South Carolina under the Proprietary Government 1670-1719* (New York, 1897), 357; Gray, *History of Agriculture*, I, 322.

³³ See *infra*, n.105.

³⁴ *Massachusetts Historical Society Collections*, Fourth Series, VI, 536 ff.

³⁵ *Collections of the South Carolina Historical Society*, V (1897), II, 32, 42, 43.

to the relative efficiency of free and slave, of Negro, white, and Indian, labor. Of necessity, estimates of which costs were higher, which risks—through mortality, escape, and rebellion—greater, are inconclusive.³⁶ What is conclusive is the fact that Virginia and Maryland planters did not think Negro labor more desirable. A preference for white servants persisted even on the islands.³⁷ But when the Barbadians could not get those, repeated representations in London made known their desire for Negroes.³⁸ No such demands came from the continental colonies.³⁹ On the contrary the calls are for skilled white labor with the preference for those most like the first settlers and ranging down from Scots and Welsh to Irish, French, and Italians.⁴⁰ Least desired were the unskilled, utterly strange Negroes.⁴¹

It is quite clear in fact that as late as 1669 those who thought of large-scale agriculture assumed it would be manned not by Negroes but by white peasants under a condition of villeinage. John Locke's constitutions for South Carolina envisaged an hereditary group of servile "leetmen"; and Lord Shaftsbury's signory on Locke Island in 1674 actually attempted to put that scheme into practice.⁴² If the holders of large estates in the Chesa-

³⁶ For material relevant to these questions, see Lucien Peytraud, *L'Esclavage aux antilles françaises avant 1789* (Paris, 1897), 20 ff.; Gray, *History of Agriculture*, I, 362-370; Bruce, *Social Life*, 16; Ulrich B. Phillips, *Life and Labor in the Old South* (Boston, 1929), 23; Ralph B. Flanders, *Plantation Slavery in Georgia* (Chapel Hill, 1933), 9, 10; Ballagh, *Slavery in Virginia*, 51; Wright, *Free Negro in Maryland*, 21; E. Franklin Frazier, *Negro in the United States* (New York, 1949), 29 ff.; Donnan, *Documents*, I, 174.

³⁷ See C. S. S. Higham, *Development of the Leeward Islands under the Restoration 1660-1688* (Cambridge, 1921), 143, 165.

³⁸ Donnan, *Documents*, I, 91, 92, 115-118.

³⁹ Craven, *Southern Colonies*, 25. There is no evidence to support T. J. Wertenbaker's statement that the demand for Negro slaves remained active in Virginia after 1620 and that if England had early entered the slave trade, Virginia and Maryland "would have been from the first inundated with black workers." See *Planters of Colonial Virginia* (Princeton, 1922), 31, 125; *First Americans 1607-1690* (New York, 1929), 23.

⁴⁰ William Berkeley, *A Discourse & View of Virginia* (London, 1663), 4, 5, 7, 8; *Virginia Historical Register*, I, 63; Phillips, *Life and Labor*, 44; T. J. Wertenbaker, *Patrician and Plebeian in Virginia* (Charlottesville, Va., 1910), 137 ff.

⁴¹ Ballagh, *Slavery in Virginia*, 14; McCrady, *South Carolina*, 383; Alexander S. Salley, Jr., ed., *Narratives of Early Carolina 1650-1708* (New York, 1910), 60.

⁴² Locke also anticipated a lower form of labor to be performed by Negro slaves. But while the leetmen would be held only by the lords of manors, any freeman would have power to hold slaves. See John Locke, *First Set of the Fundamental Constitutions of South Carolina*, articles 22-26, 101 (a draft is in *Collections of the South Carolina Historical Society*, V, 93 ff.); also Gray, *History of Agriculture*, I, 323-325.

peake colonies expressed no wish for a Negro labor supply, they could hardly have planned to use black hands as a means of displacing white, whether as a concerted plot by restoration courtiers to set up a new social order in America,⁴³ or as a program for lowering costs.⁴⁴

Yet the Negroes did cease to be servants and became slaves, ceased to be men in whom masters held a proprietary interest and became chattels, objects that were the property of their owners. In that transformation originated the southern labor system.

Although the colonists assumed at the start that all servants would "fare alike in the colony," the social realities of their situation early gave rise to differences of treatment.⁴⁵ It is not necessary to resort to racialist assumptions to account for such measures; these were simply the reactions of immigrants lost to the stability and security of home and isolated in an immense wilderness in which threats from the unknown were all about them. Like the millions who would follow, these immigrants longed in the strangeness for the company of familiar men and singled out to be welcomed those who were most like themselves. So the measures regulating settlement spoke specifically in this period of differential treatment for various groups. From time to time, regulations applied only to "those of our own nation," or to the French, the Dutch, the Italians, the Swiss, the Palatines, the Welsh, the Irish, or to combinations of the diverse nationalities drawn to these shores.⁴⁶

In the same way the colonists became aware of the differences between themselves and the African immigrants. The rudeness of the Negroes' manners, the strangeness of their languages, the difficulty of communicating to them English notions of morality and proper behavior occasioned sporadic laws to regulate their conduct.⁴⁷ So, Bermuda's law to restrain the insolencies of Negroes "who are servants" (that is, their inclina-

⁴³ William E. Dodd, "The Emergence of the First Social Order in the United States," *American Historical Review*, XL (1935), 226, 227.

⁴⁴ See Wertenbaker, *Planters*, 86 ff.; Wertenbaker, *Patrician*, 144 ff.; Wertenbaker, *First Americans*, 42 ff. In addition it might well be questioned whether large producers in a period of falling prices would have driven out the small producer who operated with little reference to conditions of prices and costs. See *Maryland Archives*, II, 45, 48 (1666); Gray, *History of Agriculture*, I, 231, 232, 276.

⁴⁵ Hening, *Statutes*, I, 117.

⁴⁶ See *Maryland Archives*, I, 328, 331, 332 (1651), III, 99 (1641), 222 (1648); Gray, *History of Agriculture*, I, 87, 88; Higham, *Leeward Islands*, 169 ff.

⁴⁷ See Bruce, *Social Life*, 139, 152; Bruce, *Institutional History*, I, 9.

tion to run off with the pigs of others) was the same in kind as the legislation that the Irish should "straggle not night or dai, as is too common with them."⁴⁸ Until the 1660's the statutes on the Negroes were not at all unique. Nor did they add up to a decided trend.⁴⁹

But in the decade after 1660 far more significant differentiations with regard to term of service, relationship to Christianity, and disposal of children, cut the Negro apart from all other servants and gave a new depth to his bondage.

In the early part of the century duration of service was of only slight importance. Certainly in England where labor was more plentiful than the demand, expiration of a term had little meaning; the servant was free only to enter upon another term, while the master had always the choice of taking on the old or a new servitor. That situation obtained even in America as long as starvation was a real possibility. In 1621, it was noted, "vittles being scarce in the country noe man will tacke servants."⁵⁰ As late as 1643 Lord Baltimore thought it better if possible to hire labor than to risk the burden of supporting servants through a long period.⁵¹ Under such conditions the number of years specified in the indenture was not important, and if a servant had no indenture the question was certainly not likely to rise.⁵²

That accounts for the early references to unlimited service. Thus Sandys's plan for Virginia in 1618 spoke of tenants-at-half assigned to the treasurer's office, to "belong to said office for ever." Again, those at Berkeley's Hundred were perpetual "after the manner of estates in England."⁵³ Since perpetual in seventeenth-century law meant that which had "not

⁴⁸ Lefroy, *Memorials*, I, 308; Smith, *Colonists in Bondage*, 172. For the dangers of reading Negro law in isolation, see the exaggerated interpretation of the act of 1623, Craven, *Southern Colonies*, 218.

⁴⁹ That there was no trend is evident from the fluctuations in naming Negroes slaves or servants and in their right to bear arms. See Hening, *Statutes*, I, 226, 258, 292, 540; Bruce, *Institutional History*, II, 5 ff., 199 ff. For similar fluctuations with regard to Indians, see Hening, *Statutes*, I, 391, 518.

⁵⁰ Charles M. Andrews, *Colonial Period of American History* (New Haven, 1934 ff.), I, 137.

⁵¹ *Maryland Archives*, III, 141. See also the later comment on the Barbados by Berkeley, *Discourse*, 12; and the complaint of Thomas Cornwallis that the cost of maintaining many servants was "never defrayed by their labor," *Maryland Archives*, I, 463.

⁵² That the practice of simply renewing expired terms was common was shown by its abuse by unscrupulous masters. See *infra*, n. 71, n. 78.

⁵³ Gray, *History of Agriculture*, I, 316, 318 ff.

any set time expressly allotted for [its] . . . continuance," such provisions were not surprising.⁵⁴ Nor was it surprising to find instances in the court records of Negroes who seemed to serve forever.⁵⁵ These were quite compatible with the possibility of ultimate freedom. Thus a colored man bought in 1644 "as a Slave for Ever," nevertheless was held "to serve as other Christians servants do" and freed after a term.⁵⁶

The question of length of service became critical when the mounting value of labor eased the fear that servants would be a drain on "vittles" and raised the expectation of profit from their toil. Those eager to multiply the number of available hands by stimulating immigration had not only to overcome the reluctance of a prospective newcomer faced with the trials of a sea journey; they had also to counteract the widespread reports in England and Scotland that servants were harshly treated and bound in perpetual slavery.⁵⁷

To encourage immigration therefore, the colonies embarked upon a line of legislation designed to improve servants' conditions and to enlarge the prospect of a meaningful release, a release that was not the start of a new period of servitude, but of life as a freeman and landowner.⁵⁸ Thus Virginia, in 1642, discharged "publick tenants from their servitudes, who, like one sort of villians anciently in England" were attached to the lands of the governor; and later laws provided that no person was to "be adjudged to serve the collonie hereafter."⁵⁹ Most significant were the statutes which reassured prospective newcomers by setting limits to the terms of servants without indentures, in 1638/9 in Maryland, in 1642/3 in Virginia.⁶⁰ These acts seem to have applied only to voluntary immigrants "of our own nation."⁶¹ The Irish and other aliens, less desirable, at first re-

⁵⁴ We have discussed the whole question in "Origins of the American Business Corporation," *Journal of Economic History*, V (1945), 21 ff. See also Smith, *Colonists in Bondage*, 108.

⁵⁵ Russell, *Free Negro*, 34.

⁵⁶ Helen Tunnicliff Catterall, *Judicial Cases Concerning American Slavery and the Negro* (Washington, 1926 ff.), I, 58.

⁵⁷ *Collections of the South Carolina Historical Society*, V, 152; Wertenbaker, *Planters*, 60; Higham, *Leeward Islands*, 169; Jeffrey R. Brackett, *Negro in Maryland* (Baltimore, 1889), 23.

⁵⁸ *Maryland Archives*, I, 52, 97 (1640).

⁵⁹ Hening, *Statutes*, I, 259, 459; Gray, *History of Agriculture*, I, 316, 346.

⁶⁰ *Maryland Archives*, I, 37, 80, 352 (1654); Hening, *Statutes*, I, 257.

⁶¹ *Maryland Archives*, I, 80, 402-409 (1661), 453 (1662); Hening, *Statutes*, I, 411. The Maryland act specifically excluded "slaves."

ceived longer terms.⁶² But the realization that such discrimination retarded "the peopling of the country" led to an extension of the identical privilege to all Christians.⁶³

But the Negro never profited from these enactments. Farthest removed from the English, least desired, he communicated with no friends who might be deterred from following. Since his coming was involuntary, nothing that happened to him would increase or decrease his numbers. To raise the status of Europeans by shortening their terms would ultimately increase the available hands by inducing their compatriots to emigrate; to reduce the Negro's term would produce an immediate loss and no ultimate gain. By midcentury the servitude of Negroes seems generally lengthier than that of whites; and thereafter the consciousness dawns that the Blacks will toil for the whole of their lives, not through any particular concern with their status but simply by contrast with those whose years of labor are limited by statute. The legal position of the Negro is, however, still uncertain; it takes legislative action to settle that.⁶⁴

The Maryland House, complaining of that ambiguity, provoked the decisive measure; "All Negroes and other slaues," it was enacted, "shall serve Durante Vita."⁶⁵ Virginia reached the same end more tortuously. An act of 1661 had assumed, in imposing penalties on runaways, that *some* Negroes served for life.⁶⁶ The law of 1670 went further; "all servants not being christians" brought in by sea were declared slaves for life.⁶⁷

But slavery for life was still tenuous as long as the slave could extricate himself by baptism. The fact that Negroes were heathens had formerly justified their bondage, since infidels were "perpetual" enemies of Chris-

⁶² See Virginia acts of 1654/5 and 1657/8, Hening, *Statutes*, I, 411, 441, 471.

⁶³ *Ibid.*, I, 538, II, 113, 169, 297. The provision limiting the effectiveness of the act to Christians is not surprising in view of contemporary attitudes. See the act of the same year excluding Quakers, *ibid.*, I, 532. For later adjustments of term, see *Maryland Archives*, II, 147 (1666), 335 (1671).

⁶⁴ For an example of such uncertainty, see the case of "Degoe the negro servant" (Virginia, 1665), *Lancaster County Record Book*, Book 2, p. 337; also Craven, *Southern Colonies*, 219. It is instructive to note how that question was evaded by ninety-nine year terms in Bermuda as late as 1662. See Lefroy, *Memorials*, II, 166, 184.

⁶⁵ *Maryland Archives*, I, 526 ff., 533; Wright, *Free Negro in Maryland*, 21; Brackett, *Negro in Maryland*, 28.

⁶⁶ Hening, *Statutes*, II, 26, 116; Catterall, *Judicial Cases*, I, 59.

⁶⁷ Hening, *Statutes*, II, 283; it was reenacted more stringently in 1682, *ibid.*, II, 491. See also McCrady, *South Carolina*, 358.

tians.⁶⁸ It had followed that conversion was a way to freedom. Governor Archdale thus released the Spanish Indians captured to be sold as slaves to Jamaica when he learned they were Christians.⁶⁹ As labor rose in value this presumption dissipated the zeal of masters for proselytizing. So that they be "freed from this doubt" a series of laws between 1667 and 1671 laid down the rule that conversion alone did not lead to a release from servitude.⁷⁰ Thereafter manumission, which other servants could demand by right at the end of their terms, in the case of Negroes lay entirely within the discretion of the master.⁷¹

A difference in the status of the offspring of Negro and white servants followed inevitably from the differentiation in the length of their terms. The problem of disposing of the issue of servants was at first general. Bastardy, prevalent to begin with and more frequent as the century advanced, deprived the master of his women's work and subjected him to the risk of their death. Furthermore the parish was burdened with the support of the child. The usual procedure was to punish the offenders with fines or whippings and to compel the servant to serve beyond his time for the benefit of the parish and to recompense the injured master.⁷²

The general rule ceased to apply once the Negro was bound for life, for there was no means of extending his servitude. The most the outraged master could get was the child, a minimal measure of justice, somewhat

⁶⁸ See Saco, *Historia de la esclavitud*, III, 158 ff.; Hurd, *Law of Freedom and Bondage*, I, 160; Donnan, *Documents*, I, 3, 4.

⁶⁹ John Archdale, *A New Description of the Province of Carolina* (1707), in Salley, *Narratives*, 300. For English law on the question, see Gray, *History of Agriculture*, I, 359.

⁷⁰ Catterall, *Judicial Cases*, I, 57; Henning, *Statutes*, II, 260; Locke, *Constitutions*, Article 101; *Maryland Archives*, I, 526, II, 265, 272; Ballagh, *Slavery in Virginia*, 46-48; Russell, *Free Negro*, 21; Wright, *Free Negro in Maryland*, 22; Hurd, *Law of Freedom and Bondage*, I, 210; Brackett, *Negro in Maryland*, 29.

⁷¹ For the feudal derivation of manumission, see Coke, *First Institute upon Littleton*, I, 137b, §204. For the application to servants see Bodin, *Six Bookes*, 33; Henning, *Statutes*, II, 115 (1661/2). The requirement for manumission of servants in Virginia, to some extent, seems to have become a means of protection against labor-starved masters who coerced their servants into new contracts just before the old expired. See Henning, *Statutes*, II, 388 (1676/7).

⁷² *Maryland Archives*, I, 373 (1658), 428, 441 (1662); Henning, *Statutes*, I, 438, II, 114 (1661/2), 168 (1662), 298 (1672), III, 139; Bruce, *Institutional History*, I, 45-50, 85, 86; Calhoun, *American Family*, I, 314. Women were always punished more severely than men, not being eligible for benefit of clergy. See Blackstone, *Commentaries*, I, 445n.

tempered by the trouble of rearing the infant to an age of usefulness.⁷³ The truly vexing problem was to decide on the proper course when one parent was free, for it was not certain whether the English law that the issue followed the state of the father would apply. Maryland, which adopted that rule in 1664, found that unscrupulous masters instigated intercourse between their Negro males and white females which not only gave them the offspring, but, to boot, the service of the woman for the life of her husband. The solution in Virginia which followed the precedent of the bastardy laws and had the issue follow the mother seemed preferable and ultimately was adopted in Maryland and elsewhere.⁷⁴

By the last quarter of the seventeenth century, one could distinguish clearly between the Negro slave who served for life and the servant for a period. But there was not yet a demarcation in personal terms: the servant was not yet a free man, nor the slave a chattel. As late as 1686, the words slave and servant could still be conflated to an extent that indicated men conceived of them as extensions of the same condition. A Frenchman in Virginia in that year noted, "There are degrees among the slaves brought here, for a Christian over 21 years of age cannot be held a slave more than five years, but the negroes and other infidels remain slaves all their lives."⁷⁵

It was the persistence of such conceptions that raised the fear that "noe free borne Christians will ever be induced to come over servants" without overwhelming assurance that there would be nothing slavish in their lot. After all Pennsylvania and New York now gave the European newcomer a choice of destination.⁷⁶ In Virginia and Maryland there was a persistent

⁷³ Ballagh, *Slavery in Virginia*, 38 ff.; Greene, *Negro in New England*, 290 ff.

⁷⁴ See Coke, *First Institute upon Littleton*, I, 123a, §187; *Maryland Archives*, I, 526-533; Wright, *Free Negro in Maryland*, 21, 22, 27; Wheeler, *Practical Treatise*, 3, 21; Russell, *Free Negro*, 19, 21; Greene, *Negro in New England*, 182 ff.

⁷⁵ [Durand], *A Frenchman in Virginia Being the Memoirs of a Huguenot Refugee in 1686*, edited by Fairfax Harrison, (Richmond, 1923), 95 ff. For laws conflating servant and slave, see Brackett, *Negro in Maryland*, 104. This contradicts the assumption of Catterall, *Judicial Cases*, I, 57, that the status of Negroes was completely fixed by 1667.

⁷⁶ The agitation against transportation of felons was also evidence of the desire to supply that assurance. See *Maryland Archives*, I, 464; Hening, *Statutes*, II, 509 ff., 515 (1670); Ballagh, *Slavery in Virginia*, 10; Phillips, *Life and Labor*, 25. The attractiveness of rival colonies may account for the low proportion of servants who took up land in Maryland. See Abbot Emerson Smith, "The Indentured Servant and Land Speculation in Seventeenth Century Maryland," *American Historical Review*, XL (1935), 467 ff.; Gray, *History of Agriculture*, I, 88, 348.

effort to make immigration more attractive by further ameliorating the lot of European servants. The custom of the country undoubtedly moved more rapidly than the letter of the law. "Weake and Ignorant" juries on which former servants sat often decided cases against masters.⁷⁷ But even the letter of the law showed a noticeable decline in the use of the death penalty and in the power of masters over men. By 1705 in some colonies, white servants were no longer transferable; they could not be whipped without a court order; and they were protected against the avaricious unreasonable masters who attempted to force them into new contracts "some small tyme before the expiration of their tyme of service."⁷⁸

Meanwhile the condition of the Negro deteriorated. In these very years, a startling growth in numbers complicated the problem. The Royal African Company was, to some extent, responsible, though its operations in the mainland colonies formed only a very minor part of its business. But the opening of Africa to free trade in 1698 inundated Virginia, Maryland, and South Carolina with new slaves.⁷⁹ Under the pressure of policing these newcomers the regulation of Negroes actually grew harsher.

The early laws against runaways, against drunkenness, against carrying arms or trading without permission had applied penalties as heavy as death to all servants, Negroes and whites.⁸⁰ But these regulations grew steadily less stringent in the case of white servants. On the other hand fear of the growing number of slaves, uneasy suspicion of plots and conspiracies, led to more stringent control of Negroes and a broad view of the master's power of discipline. Furthermore the emerging difference in treatment was calculated to create a real division of interest between Negroes on the one hand and whites on the other. Servants who ran away in the company of slaves, for instance, were doubly punished, for the loss of their own time and for the time of the slaves, a provision that discouraged such joint ventures. Similarly Negroes, even when freed, retained some disciplinary

⁷⁷ See the complaint of Thomas Cornwallis, *Maryland Archives*, I, 463 ff.

⁷⁸ See Hening, *Statutes*, II, 117, 156, 157, 164 (1661/2), 388 (1676/7), 464 (1680); *Maryland Archives*, II, 30 (1666), 351 (1674); Smith, *Colonists in Bondage*, 110, 228, 233; Bruce, *Economic History*, II, 11 ff.

⁷⁹ See Donnan, *Documents*, I, 86, 87; Gray, *History of Agriculture*, I, 352-355; Bruce, *Economic History*, II, 85; Salley, *Narratives*, 204; Higham, *Leeward Islands*, 162 ff.; Craven, *Southern Colonies*, 401; Russell, *Free Negro*, 29; Hening, *Statutes*, II, 511 ff.

⁸⁰ See Hening, *Statutes*, I, 401, 440; *Maryland Archives*, I, 107 ff. (1641), 124 (1642), 193 (1642), 500 (1663); McCrady, *South Carolina*, 359.

links with their less fortunate fellows. The wardens continued to supervise their children, they were not capable of holding white servants, and serious restrictions limited the number of manumissions.⁸¹

The growth of the Negro population also heightened the old concern over sexual immorality and the conditions of marriage. The law had always recognized the interest of the lord in the marriage of his villein or neife and had frowned on the mixed marriage of free and unfree. Similarly it was inclined to hold that the marriage of any servant was a loss to the master, an "Enormious offense" productive of much detriment "against the law of God," and therefore dependent on the consent of the master.⁸² Mixed marriages of free men and servants were particularly frowned upon as complicating status and therefore limited by law.⁸³

There was no departure from these principles in the early cases of Negro-white relationships.⁸⁴ Even the complicated laws of Maryland in 1664 and the manner of their enactment revealed no change in attitude. The marriage of Blacks and whites was possible; what was important was the status of the partners and of their issue.⁸⁵ It was to guard against the complications of status that the laws after 1691 forbade "spurious" or illegitimate mixed marriages of the slave and the free and punished violations with heavy penalties.⁸⁶ Yet it was also significant that by then the prohibition was couched in terms, not simply of slave and free man, but of

⁸¹ *Maryland Archives*, I, 249 (1649), 348 (1654), 451 (1662), 489 (1663), II, 146 (1666), 224 (1669), 298 (1671), 523 (1676); Henning, *Statutes*, II, 116, 118 (1661/2), 185, 195 (1663), 239 (1666), 266 (1668), 270, 273 (1669), 277, 280 (1670), 299 (1672), 481 (1680), 492 (1682), III, 86 ff., 102 (1691), 179 (1699), 210 (1701), 269, 276, 278 (1705); Thomas Cooper and David J. McCord, eds., *Statutes at Large of South Carolina* (Columbia, 1836 ff.), VII, 343 ff.; Brackett, *Negro in Maryland*, 91 ff.; Phillips, *Life and Labor*, 29; Russell, *Free Negro*, 10, 21, 51, 138 ff.; Bruce, *Social Life*, 138; Bruce, *Economic History*, II, 120 ff.; Ames, *Eastern Shore*, 99; also Addison E. Verrill, *Bermuda Islands* (New Haven, 1902), 148 ff.

⁸² See Henning, *Statutes*, I, 252, 433, 438; *Maryland Archives*, I, 73, 97 (1638/9), 428, 442 ff. (1662), II, 396 (1674). For English law, see Coke, *First Institute upon Littleton*, 135b, 136a, §202; *ibid.*, 139b, 140a, §209.

⁸³ Henning, *Statutes*, II, 114 (1661/2); Jernegan, *Laboring and Dependent Classes*, 55, 180.

⁸⁴ Henning, *Statutes*, I, 146, 552.

⁸⁵ See *supra*, 213; Wright, *Free Negro in Maryland*, 28-31.

⁸⁶ Henning, *Statutes*, III, 86-87, 453 (1705); Brackett, *Negro in Maryland*, 32 ff., 195 ff.; Russell, *Free Negro*, 124; Craven, *Southern Colonies*, 402. For the use of "spurious" in the sense of illegitimate see the quotations, Calhoun, *American Family*, I, 42.

Negro and white. Here was evidence as in the policing regulations of an emerging demarkation.

The first settlers in Virginia had been concerned with the difficulty of preserving the solidarity of the group under the disruptive effects of migration. They had been enjoined to "keepe to themselves" not to "marry nor give in marriage to the heathen, that are uncircumcised."⁸⁷ But such resolutions were difficult to maintain and had gradually relaxed until the colonists included among "themselves" such groups as the Irish, once the objects of very general contempt. A common lot drew them together; and it was the absence of a common lot that drew these apart from the Negro. At the opening of the eighteenth century, the Black was not only set off by economic and legal status; he was "abominable," another order of man.

Yet the ban on intermarriage did not rest on any principle of white racial purity, for many men contemplated with equanimity the prospect of amalgamation with the Indians.⁸⁸ That did not happen, for the mass of Redmen were free to recede into the interior while those who remained sank into slavery as abject as that of the Blacks and intermarried with those whose fate they shared.⁸⁹

Color then emerged as the token of the slave status; the trace of color became the trace of slavery. It had not always been so; as late as the 1660's the law had not even a word to describe the children of mixed marriages. But two decades later, the term mulatto is used, and it serves, not as in Brazil, to whiten the Black, but to affiliate through the color tie the offspring of a spurious union with his inherited slavery.⁹⁰ (The compiler of the Virginia laws then takes the liberty of altering the texts to bring earlier legislation into line with his own new notions.⁹¹) Ultimately the complete

⁸⁷ *Ibid.*, I, 323.

⁸⁸ Almon W. Lauber, *Indian Slavery in Colonial Times* (New York, 1913), 252.

⁸⁹ See Hening, *Statutes*, I, 167, 192 (1631/2), 396, 415 (1655/6), 455, 456, 476 (1657/8), II, 340, 346 (1676); *Maryland Archives*, I, 250 (1649); Catterall, *Judicial Cases*, I, 69, 70; Lauber, *Indian Slavery*, 105-117, 205, 287; Brackett, *Negro in Maryland*, 13; Craven, *Southern Colonies*, 367 ff.; Ballagh, *Slavery in Virginia*, 34, 47-49; McCrady, *South Carolina*, 189, 478; Greene, *Negro in New England*, 198 ff.; Peytraud, *L'Esclavage*, 29; Gray, *History of Agriculture*, I, 361.

⁹⁰ By 1705, a mulatto was a person with a Negro great grandparent. See Hening, *Statutes*, III, 252; also Ballagh, *Slavery in Virginia*, 44; Tannenbaum, *Slave and Citizen*, 8.

⁹¹ See Hening, *Statutes*, II, iii, 170. For other alterations to insert "slave" where it had not originally been, see *ibid.*, II, 283, 490.

judicial doctrine begins to show forth, a slave cannot be a white man, and every man of color was descendent of a slave.⁹²

The rising wall dividing the legal status of the slave from that of the servant was buttressed by other developments which derogated the qualities of the Negro as a human being to establish his inferiority and thus completed his separation from the white. The destruction of the black man's personality involved, for example, a peculiar style of designation. In the seventeenth century many immigrants in addition to the Africans—Swedes, Armenians, Jews—had brought no family names to America. By the eighteenth all but the Negroes had acquired them. In the seventeenth century, Indians and Negroes bore names that were either an approximation of their original ones or similar to those of their masters,—Diana, Jane, Frank, Juno, Anne, Maria, Jenny. In the eighteenth century slaves seem increasingly to receive classical or biblical appellations, by analogy with Roman and Hebrew bondsmen.⁹³ Deprivation by statute and usage of other civic rights, to vote, to testify, to bring suit, even if free, completed the process. And after 1700 appear the full slave codes, formal recognition that the Negroes are not governed by the laws of other men.⁹⁴

The identical steps that made the slave less a man made him more a chattel. All servants had once been reckoned property of a sort; a runaway was guilty of "Stealth of ones self."⁹⁵ Negroes were then no different from others.⁹⁶ But every law that improved the condition of the white servant chipped away at the property element in his status. The growing emphasis upon the consent of the servant, upon the limits of his term, upon the ob-

⁹² Catterall, *Judicial Cases*, II, 269, 358; Wheeler, *Practical Treatise*, 5, 12.

⁹³ *Lancaster County Record Book*, Book 2, p. 285; Catterall, *Judicial Cases*, II, 7, 8; Greene, *Negro in New England*, 201; Calhoun, *American Family*, I, 190; Bruce, *Institutional History*, I, 673.

⁹⁴ No earlier laws covered the same ground. See *Maryland Archives*, II, 523 ff. (1676); Hening, *Statutes*, III, 298, 447-453 (1705); *Statutes of South Carolina*, VII, 343 ff.; Craven, *Southern Colonies*, 217; Morris, *Government and Labor*, 501; Russell, *Free Negro*, 117-119, 125 ff.

⁹⁵ *Maryland Archives*, I, 72; Morris, *Government and Labor*, 432; Smith, *Colonists in Bondage*, 234.

⁹⁶ Thus the inclusion of the Negroes among the Virginia tithables was at first a recognition of their status as personalities rather than as property. The tax was not intended to be discriminatory, but to apply to all those who worked in the fields, white and black. The first sign of discrimination was in 1668 when white but not Negro women were exempt. See Hening, *Statutes*, I, 144, 241, 292, 356, 361, 454, II, 84, 170, 267, 296; Russell, *Free Negro*, 21; Bruce, *Institutional History*, II, 458, 546 ff. For other difficulties in treating Negroes as chattels see Hening, *Statutes*, II, 288.

ligations to him, and upon the conditional nature of his dependence, steadily converted the relationship from an ownership to a contractual basis. None of these considerations applied to the Negro; on the contrary considerations of consent and conditions disappeared from his life. What was left was his status as property,—in most cases a chattel though for special purposes real estate.⁹⁷

To this development there was a striking parallel in the northern colonies. For none of the elements that conspired to create the slave were peculiar to the productive system of the South. The contact of dissimilar peoples in an economy in which labor was short and opportunity long was common to all American settlements. In New England and New York too there had early been an intense desire for cheap unfree hands, for “bond slavery, villinage or Captivitie,” whether it be white, Negro, or Indian.⁹⁸ As in the South, the growth in the number of Negroes had been slow until the end of the seventeenth century.⁹⁹ The Negroes were servants who, like other bondsmen, became free and owners of land. But there too, police regulations, the rules of marriage, and the development of status as property turned them into chattel slaves.¹⁰⁰

A difference would emerge in the course of the eighteenth century, not so much in the cities or in the Narragansett region where there were substantial concentrations of Blacks, but in the rural districts where handfuls of Negroes were scattered under the easy oversight of town and church. There the slave would be treated as an individual, would become an equal, and acquire the rights of a human being. Men whose minds would be ever more preoccupied with conceptions of natural rights and personal dignity would find it difficult to except the Negro from their general rule.¹⁰¹

⁹⁷ See *Maryland Archives*, II, 164 (1669); Hurd, *Law of Freedom and Bondage*, I, 179; Hening, *Statutes*, III, 333 (1705); Gray, *History of Agriculture*, I, 359; Brackett, *Negro in Maryland*, 28.

⁹⁸ *Massachusetts Historical Society Collections*, Fourth Series, VI, 64 ff.; Greene, *Negro in New England*, 63, 65, 125.

⁹⁹ *Ibid.*, 73 ff., 319.

¹⁰⁰ For an abstract of legislation, see Hurd, *Law of Freedom and Bondage*, I, 254-293. See also Greene, *Negro in New England*, 126-139, 169, 170, 178, 184, 208 ff.; George Elliott Howard, *History of Matrimonial Institutions* (Chicago, 1904), II, 225, 226; Calhoun, *American Family*, I, 65, 210; J. H. Franklin, *From Slavery to Freedom* (New York, 1947), 89-98; Ellis L. Raesly, *Portrait of New Netherland* (New York, 1945), 104, 161, 162.

¹⁰¹ Greene, *Negro in New England*, 86, 103 ff., 140; Calhoun, *American Family*, I, 82.

But by the time the same preoccupations would fire imaginations in the South, the society in which the slave lived would so have changed that he would derive no advantage from the eighteenth-century speculations on the nature of human rights. Slavery had emerged in a society in which the unit of active agriculture was small and growing smaller; even the few large estates were operated by sub-division among tenants.¹⁰² After 1690, however, South Carolinians (and still later Georgians) turned from naval stores and the fur trade to the cultivation of rice, cotton, and indigo. In the production of these staples, which required substantial capital equipment, there was an advantage to large-scale operations. By then it was obvious which was the cheapest, most available, most exploitable labor supply. The immense profits from the tropical crops steadily sucked slaves in ever growing numbers into the plantation. With this extensive use, novel on the mainland, the price of slaves everywhere rose sharply, to the advantage of those who already held them. The prospect that the slaveowner would profit not only by the Negroes' labor, but also by the rise in their unit value and by their probable increase through breeding, accounted for the spread of the plantation to the older tobacco regions where large-scale production was not, as in the rice areas, necessarily an asset.¹⁰³

The new social and economic context impressed indelibly on the Negro the peculiar quality of chattel with which he had been left, as other servants escaped the general degradation that had originally been the common portion of all. Not only did the concentration of slaves in large numbers call for more rigid discipline, not only did the organization of the plantation with its separate quarters, hierarchy of overseers, and absentee owners widen the gulf between black and white, but the involvement of the whole southern economy in plantation production created an effective interest against any change in status.¹⁰⁴

Therein, the southern mainland colonies also differed from those in the West Indies where the same effective interest in keeping the black man debased was created without the prior definition of his status. The actual condition of the Negro differed from island to island, reflecting variations in the productive system, in the labor supply, and in economic trends. But

¹⁰² See Ames, *Eastern Shore*, 16, 17, 30 ff., 37 ff.; McCrady, *South Carolina*, 189; Werkenbaker, *Planters*, 45, 52 ff.; Phillips, *Life and Labor*, 34; Craven, *Southern Colonies*, 210 ff.

¹⁰³ Flanders, *Plantation Slavery*, 20; Gray, *History of Agriculture*, I, 120, 278, 349.

¹⁰⁴ [Durand], *Frenchman in Virginia*, 112 ff.; Phillips, *Life and Labor*, 47; Salley, *Narratives*, 207, 208.

with surprising uniformity, the printed statutes and legislative compilations show no concern with the problems of defining the nature of his servitude. The relevant laws deal entirely with policing, as in the case of servants.¹⁰⁵ A similar unconcern seems to have been characteristic of the French, for the most important aspects of the royal *Code noir* issued from Paris in 1685 were entirely disregarded.¹⁰⁶

The failure to define status may have been due, in the islands which changed hands, to contact with the Spaniards and to the confusion attendant upon changes of sovereignty. More likely it grew out of the manner in which the Negroes were introduced. Places like the Barbados and St. Christopher's were at the start quite similar to Virginia and Maryland, societies of small farmers, with a labor force of indentured servants and *engagées*. The Negroes and the sugar plantation appeared there somewhat earlier than on the continent because the Dutch, English, and French African companies, anxious to use the islands as entrepôts from which their cargoes would be re-exported to Latin America, advanced the credit not only for purchase of the Blacks, but also for sugar-making equipment. But the limited land of the islands meant that the plantation owner and the yeoman competed for the same acres, and in the unequal competition the farmer was ultimately displaced.¹⁰⁷

The planter had no inveterate preference for the Negro, often expressed a desire for white labor. But the limits to the available land also prevented him from holding out the only inducements that would attract servants with a choice,—the prospect of landed freedom. From time to time desultory laws dealt with the term of service, but these showed no progression

¹⁰⁵ See *Montserrat Code of Laws from 1668 to 1788* (London, 1790), 8, 16, 38; *Acts of Assembly Passed in the Island of Nevis from 1664, to 1739, Inclusive* (London, 1740), 9, 10, 11, 17, 25, 28, 31, 37, 46, 75; *Acts of Assembly Passed in the Island of Barbadoes from 1648 to 1718* (London, 1721), 22, 101, 106, 137 ff.; *Acts, of Assembly Passed in the Island of Jamaica from the Year 1681 to the Year 1768, Inclusive* (Saint Jago de la Vesga, 1769), I, 1, 57; [Leslie], *New History of Jamaica* (2d ed., London, 1740), 204 ff., 217 ff. There seem to have been two minor exceptions. The question of slave status was implicitly touched on in the laws governing inheritance and the sale of property for debt (*Acts of Barbadoes*, 63, 147) and in early orders affecting term of service. See *Calendar of State Papers, Colonial*, I, 202; [William Duke], *Some Memoirs of the First Settlement of the Island of Barbados . . .* (Barbados, 1741), 19.

¹⁰⁶ Peytraud, *L'Esclavage*, 143 ff., 158 ff., 208 ff.

¹⁰⁷ See Peytraud, *L'Esclavage*, 13-17; Gray, *Southern Agriculture*, I, 303-309; Donnan, *Documents*, I, 92, 100, 108-111, 166, 197, 249 ff.; Vincent T. Harlow, *History of Barbados 1625-1685* (Oxford, 1926), 42.

and had no consequences. The manumitted were free only to emigrate, if they could, or to hang about, hundreds of them "who have been out of their time for many years . . . [with] never a bit of fresh meat bestowed on them nor a dram of rum."¹⁰⁸ The process of extending the rights of servants, which on the mainland was the means of defining the status of the slave, never took place on the islands.

The term, slave, in the West Indies was at the start as vague as in Virginia and Maryland; and when toward mid-century it narrowed down to the plantation Negroes as sugar took hold through the stimulus of the Africa traders, it does not seem to have comprehended more than the presumption of indefinite service.¹⁰⁹ To Europeans, any service on the islands continued to be slavery. For whatever distinctions might be drawn among various groups of them, the slavish servants remained slavish servants. All labor was depressed, Negro and white, "domineered over and used like dogs." That undoubtedly affected emigration from the islands, the decline of white population, the relationships of Blacks and whites, the ultimate connotation of the term slave, the similarities in practice to villeinage, the savage treatment by masters and equally savage revolts against them, the impact of eighteenth-century humanitarianism, and the direction of emancipation.¹¹⁰

The distinctive qualities of the southern labor system were then not the simple products of the plantation. They were rather the complex outcome of a process by which the American environment broke down the traditional European conceptions of servitude. In that process the weight of the plantation had pinned down on the Negro the clearly-defined status of a chattel, a status left him as other elements in the population achieved their liberation. When, therefore, Southerners in the eighteenth century came to think of the nature of the rights of man they found it inconceivable

¹⁰⁸ Smith, *Colonists in Bondage*, 294.

¹⁰⁹ See Richard Ligon, *True & Exact History of the Island of Barbados* . . . (London, 1657), 43-47; [Charles C. de Rochefort], *History of the Caribby-Islands* . . . , translated by John Davies (London, 1666), 200 ff.

¹¹⁰ Smith, *Colonists in Bondage*, 294. For examples of servant legislation, see *Acts of Barbadoes*, 22 ff., 80 ff., 145 ff., 150, 168, 204 ff. (1661-1703). See also Peytraud, *L'Esclavage*, 38, 135 ff.; Donnan, *Documents*, I, 97; Morris, *Government and Labor*, 503; Leslie, *New History of Jamaica*, 89, 148 ff.; Morgan Godwyn, *Negro's and Indian's Advocate* (London, 1680), 12 ff.; Frank W. Pitman, "Slavery on British West India Plantations in the Eighteenth Century," *Journal of Negro History*, XI (1926), 610 ff., 617; William L. Mathieson, *British Slavery and Its Abolition, 1823-1838* (London, 1926), 44, 50 ff.

that Negroes should participate in those rights. It was more in accord with the whole social setting to argue that the slaves could not share those rights because they were not fully men, or at least different kinds of men. In fact, to the extent that Southerners ceased to think in terms of the seventeenth-century degrees of freedom, to the extent that they thought of liberty as whole, natural, and inalienable, they were forced to conclude that the slave was wholly unfree, wholly lacking in personality, wholly a chattel.

Only a few, like St. George Tucker and Thomas Jefferson, perceived that here were the roots of a horrible tragedy that would some day destroy them all.¹¹¹

¹¹¹ See the eloquent discussion in Tucker's appendix to Blackstone, *Commentaries*, I, 35 ff.