# Introduction

In the summer of 1750, South Carolina colonist Peter Manigault traveled to England to acquire a legal education.[1] At first Peter, the son of wealthy merchant Gabriel Manigault, saw "nothing" in England that he preferred to his "Native Country." However, he quickly changed his mind, throwing himself into the hustle and bustle of eighteenth-century metropolitan life and peppering his father with requests for funds, including money to purchase a gold watch, "a very Necessary Article" in his "present Situation."[2] When he was not sampling the delights of London's social season, he dedicated himself to his legal studies, moving from Bow Street, which was "situated in the very Center of all the bad Houses in Covent Garden," to the Inner Temple. From this convenient location, he frequented the Temple Library and snagged "Bargains" on used law books at sales "about Temple Bar."[3] He also rode the Oxford circuit, an

[1] "Six Letters of Peter Manigault," *The South Carolina Historical and Genealogical Magazine* 15 (1914): 113–123. Peter Manigault was one of many South Carolinians who traveled to England to acquire a legal education in the second half of the eighteenth century. In fact South Carolina colonists sent more sons to be educated in England than any mainland colony in the late colonial period. Some of these students were less dedicated to their studies than Manigault, including Jack Garden, who concluded that "a person can not be a good Lawyer & an honest Man at the same time" and instead became a "Hackney Writer," or Billy Drayton, the son of a famous planting family, who became embroiled in a scandal over dueling. Peter Manigault to Ann Manigault, December 8, 1753, Manigault Papers, 11/275/11, South Carolina Historical Society, Charleston, South Carolina (SCHS).

[2] Peter Manigault to Gabriel Manigault, August 1, 1750, Manigault Papers, SCHS.

[3] Peter Manigault to Ann Manigault, July 20, 1752, Manigault Papers, 11/275/8, SCHS; Peter Manigault to Ann Manigault, September 25, 1752, Manigault Papers, 11/275/8, SCHS; Peter Manigault to Gabriel Manigault, October 18, 1752, Manigault Papers, 11/275/8, SCHS.



https://doi.org/10.1017/9781108861762.001 Published online by Cambridge University Press

"expensive" enterprise that involved not only hazardous travel conditions, but also the tedium of "attending the Courts all day & writing out any Notes in the Evening."[4] Indeed, after making "Notes of all Causes of Consequence that ha[d] been argued" since he arrived in England, after filling his "Law Books" with countless "Remarks and References," and after listening to "very tedious affidavits" at Westminster, Manigault came to the conclusion that "Mirth and Law are incompatible." Thus resigned to the dullness of his chosen profession, he was called to the Bar in 1754 and returned to South Carolina, where he became part of that "Respectable Body of Men, who (provided they are well paid for it) make it their sole Business in this Life, to take care of the Lives & Estates of their Fellow Creatures."[5]

Manigault never lost his distaste for law. Although he did practice in South Carolina for a decade, he ultimately abandoned the profession, selling his books "at 10 per Cent lower than they were bought" because his "Inclination" to quit was "so strong."[6] Nonetheless, Manigault's English legal education continued to provide him with the wherewithal to make a living. Applying his legal expertise to the running of his own plantations and those of absentee South Carolina planters whose affairs he managed, he leveraged his knowledge of English law to ensure his clients the greatest return on their investments in land and, most importantly, slaves. Indeed, as Manigault and other South Carolina colonists were well aware, knowledge of English law was the sine qua non of mastery over slaves. Because slaves were colonists' most significant form of productive property, the ownership of enslaved people made it necessary to acquire at least a rudimentary English legal education. Local statutes provided a legal superstructure that allowed colonists to own, police, and punish slaves, but most daily legal practices surrounding slave ownership were rooted in English precedents and procedures. Colonists categorized slaves as property using English legal terms; they bought and sold slaves with printed English legal forms; and they followed English legal procedures as they litigated over enslaved people in court. They did

[4] Peter Manigault to Gabriel Manigault, October 18, 1752, Manigault Papers, 11/275/8, SCHS; Peter Manigault to Ann Manigault, November 30, 1752, Manigault Papers, 11/275/8, SCHS.

[5] Peter Manigault to Gabriel Manigault, September 27, 1753, Manigault Papers, 11/275/11, SCHS; Peter Manigault to Ann Manigault, September 27, 1753, Manigault Papers, 11/275/11, SCHS; Peter Manigault to Gabriel Manigault, August 18, 1753, Manigault Papers, 11/275/11, SCHS; Peter Manigault to Ann Manigault, February 19, 1753, 11/275/9, SCHS.

[6] Peter Manigault to unknown, [October] 1768, Manigault Papers, 11/278/7, 80, Peter Manigault Letterbook, SCHS.

so not merely out of a desire to emulate metropolitan culture.[7] Rather, English law provided colonists with a discourse and with plural modes of proceeding that aligned with the commercial imperative to treat people as property in a variety of transactions. Slave law was an organic part of, not separate from, English law in colonial South Carolina and throughout plantation America.

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It is tempting to think of slave law in colonial British America as a legal aberration. Although English people owned slaves and traded them at English ports, England had no statutory law of slavery.[8] Parliament never explicitly authorized the ownership of human beings, nor did the English Crown issue a definitive statement outlining how enslaved people should be treated at law – there was no English equivalent to the Spanish *Siete Partidas* and *Recopilacións*, or the French *Le Code Noir*.[9] This lack of statutory authorization was legally significant. As Lord Mansfield resoundingly claimed in the landmark case of *Somerset v. Stewart* (1772), slavery was "so odious" that it must be grounded in "positive law." Because it was not – because Parliament had never sanctioned chattel slavery, Mansfield concluded, a slave in England could not be detained against his will.[10] Scholars have shown that Mansfield's holding in *Somerset* was narrow in its application.[11] Nonetheless, his assertion has

[7] Robert Olwell, *Masters, Slaves, and Subjects: The Culture of Power in the South Carolina Low Country, 1740–1790* (Ithaca: Cornell University Press, 1998), 60–61; Christopher Tomlins, *Freedom Bound: Law, Labor, and Civic Identity in Colonizing English America, 1580–1865* (Cambridge: Cambridge University Press, 2010), 450–451.

[8] The custom of English merchants was to regard slaves as chattel property until they were sold. Moreover, English courts occasionally grappled with issues relating to slavery, including whether trover would lie for slaves as if they were chattels (courts initially held that it would), and whether assumpsit might be brought on the sale of a slave in England (no, but it would for the sale of a slave in Virginia). Additionally, "[s]laves were regularly sold on the Liverpool and London markets, and actions on contracts concerning slaves were common in the eighteenth century." J. H. Baker, *An Introduction to English Legal History*, 4th ed. (London: Butterworths Lexis Nexis, 2002), 475–477.

[9] Jonathan A. Bush, "Free to Enslave: The Foundations of Colonial American Slave Law," *Yale Journal of Law & the Humanities* 5 (2003): 422; Sally E. Hadden, "The Fragmented Laws of Slavery in the Colonial and Revolutionary Eras," in *The Cambridge History of Law in America*, edited by Michael Grossberg and Christopher Tomlins, 3 vols. (Cambridge: Cambridge University Press, 2008), 1: 259–260.

[10] *Somerset* v. *Stewart* (1772) 98 Eng. Rep. 499, 510.

[11] J. H. Baker cautions that *Somerset* – frequently misread by historians – did not specifically outlaw slavery in England, primarily because Lord Mansfield confined "himself to the narrow point that a slave could not be made to leave England against his will." Baker, *An*

left us with a lingering impression that "there was no slave law in England" and therefore that slave law developed apart from early modern English law.[12] From this presumption springs a portrait of legal deviance, of plantation colonists who warped English law to police their slaves, and of self-conscious slaveholders who became increasingly conflicted about the extent of their society's legal divergence from metropolitan norms over the course of the eighteenth century. By the early nineteenth century, according to historians, their strident defense of slavery masked an acute anxiety over treating people as things and hid a fractured system that was increasingly vulnerable to outside critiques and enslaved people's resistance.[13]

In *Bonds of Empire*, I follow South Carolina colonists of all sorts, from wealthy merchant-planters to illiterate sailors, as they used English law to maximize the value of the people they treated as property. I also place their activities in a larger Atlantic context, attending in particular

*Introduction to English Legal History*, 475–477. Elsa V. Goveia's reading of *Somerset* is, like Baker's, narrow. Indeed, according to Goveia, it was not because English law failed to recognize slavery that Somerset was freed, but due to "the lack of the superstructure raised on this basis." Prior to and after *Somerset*, "slaves were taken to and from England, as the case of the slave Grace shows; and so long as they did not refuse to serve, as Somersett did, it may be said that they remained property and did not become subjects in fact, though in theory this change was supposed to take place on their arrival in England." Elsa V. Goveia, "The West Indian Slave Laws of the Eighteenth Century," in *Caribbean Slavery in the Atlantic World: A Student Reader*, edited by Verene A. Shepherd and Hilary McD. Beckles (Kingston, Jamaica: Ian Randle, 2000), 584. See also George Van Cleve, "Somerset's Case and Its Antecedents in Imperial Perspective," *Law and History Review* 24 (2006): 602–603.

[12] Alan Watson, *Slave Law in the Americas* (Athens: University of Georgia Press, 1989), 62. An older historiography assumed *arguendo* that there was no English law of slavery, largely because England lacked a statutory framework that either authorized slavery or provided for the policing of slaves. Alan Watson, for example, begins his study with the premise that "[t]here was no slavery in England, hence there was no slave law in England." Indeed, "a law of slavery had to be made from scratch." *Ibid*., 62. More recently, historians have begun to challenge this characterization. For example, Elsa V. Goveia argues that under both West Indian and English laws, "trading in slaves was a recognized and legal activity. Under both, there were provisions for regulating the mortgage of slaves and obliging their sale as chattels in cases of debt. This point is worth stressing. The idea of slaves as property was as firmly accepted in the law of England as it was in that of the colonies." Goveia, "The West Indian Slave Laws of the Eighteenth Century," 584.

[13] An older literature that suggested slavery became less economically viable over the course of the colonial period has been thoroughly debunked. See Kenneth Morgan, *Slavery, Atlantic Trade, and the British Economy, 1660–1800* (Cambridge: Cambridge University Press, 2001); Trevor Burnard, "'Prodigious Riches': The Wealth of Jamaica before the American Revolution," *The Economic History Review*, new ser. 54 (2001): 506–524.

to Jamaica and other Caribbean colonies. Emphasizing legal practice rather than proscription, I offer a different narrative, one in which English law imbued plantation slavery with its staying power even as it insulated slave owners from contemplating the moral implications of owning human beings. Rather than describing a system destined to collapse under the weight of moralist critiques in an Age of Revolutions, I depict a legal culture of astonishing flexibility that emerged unscathed at the dawn of the new republic.[14] In fact, following plantation colonists as they cobbled together legal systems from the bottom up reveals that they engaged in the same practices of creative legal adaptation that scholars have observed in English colonial settlements around the world, from Bombay to Botany Bay. American slave owners were participants in a wider English legal culture, one in which settlers harnessed English law's astonishing flexibility to establish their societies at the expense of enslaved people and indigenous populations. Despite our tendency to conflate English legal and political institutions with liberty, the extension of English law into imperial spaces was not an unequivocal good; from India to Ireland to Australia, English law was a ready vehicle for dispossession and exploitation. Plantation slavery and the laws that governed it were not beyond the pale of English imperial legal history. They were yet another invidious manifestation of English law's protean potential.[15]

[14] This perspective supports and extends scholarship that depicts colonial Lowcountry planters as "calculative participants" in a transatlantic economy, as intelligent market actors who zealously pursued profit maximization. S. Max Edelson, *Plantation Enterprise in Colonial South Carolina* (Cambridge: Harvard University Press, 2006), 5; David W. Galenson, *Traders, Planters, and Slaves: Market Behavior in Early English America* (Cambridge: Cambridge University Press, 1986), 1. Also, it links with recent early republic and antebellum scholarship that characterizes planters as capitalist modernizers who were not immune to larger economic and cultural trends. Joyce E. Chaplin, *An Anxious Pursuit: Agricultural Innovation & Modernity in the Lower South, 1730–1815* (Chapel Hill: University of North Carolina Press, 1993); Michael Tadman, *Speculators and Slaves: Masters, Traders, and Slaves in the Old South* (Madison: University of Wisconsin Press, 1989); Walter Johnson, "The Pedestal and the Veil: Rethinking the Capitalism/Slavery Question," *Journal of the Early Republic* 42 (2004): 299–308; Steven Deyle, *Carry Me Back: The Domestic Slave Trade in American Life* (Oxford: Oxford University, 2005); Calvin Schermerhorn, *Money over Mastery, Family over Freedom: Slavery in the Antebellum Upper South* (Baltimore: Johns Hopkins University Press, 2011).

[15] For recent work on the impact of English legal plurality in colonial environments, see Tomlins, *Freedom Bound;* Lauren A. Benton, *A Search for Sovereignty: Law and Geography in European Empires, 1400–1900* (Cambridge: Cambridge University Press, 2009); Ken MacMillan, *Sovereignty and Possession in the English New World: The Legal Foundations of Empire, 1576–1640* (Cambridge: Cambridge University Press, 2006); and

## THE PROBLEM WITH MANSFIELD

When Lord Mansfield opined on the primacy of positive law in *Somerset v. Stewart*, he did so at a historical moment in which legislation was in the ascendant. Throughout the early modern period, as Parliament morphed from an event into an institution, statutes became an increasingly significant source of English law and ultimately eclipsed other sources of binding legal authority. This trend began with the English Reformation, as King Henry VIII sought to ground his ecclesiastical authority in statute and continued through the eighteenth century, when most Britons conceded Parliamentary sovereignty.[16] This pattern also held in the American colonies and in the independent United States, where positive law has retained its importance into the twenty-first century. After all, when a modern-day American asks what "the law" is, they likely expect to receive a substantive answer, one based upon information gleaned from local or federal statutes. This conflation of "law" with legislation is understandable, but it was not always the case. In fact, in the early modern period (as well as today), law was much more complex and multifaceted than this emphasis on statutory law suggests. Legal historians have done much to promote this perspective, dispelling older assumptions about what law was and how people engaged with it throughout history. Rather than viewing law as something separate from society, scholars now see it as deeply imbricated within the very fabric of past societies. This broader definition of legal culture has had profound consequences for the study of legal history, freeing scholars to understand "the legal"

Lisa Ford, *Settler Sovereignty: Jurisdiction and Indigenous People in America and Australia, 1788–1836* (Cambridge: Harvard University Press, 2010).

[16] As Mark Knights notes, Parliamentary elections were held frequently after 1679. There were "sixteen general elections" between that date and 1716, and these elections were increasingly contested. "After 1689, there were sessions every year without fail," which in turn resulted in an increase in legislation. Between 1660 and 1688, "parliament passed on average about 26 statutes per session; between 1689 and 1714 this rose to 64 per session." Mark Knights, *Representation and Misrepresentation in Later Stuart Britain: Partisanship and Political Culture* (Oxford: Oxford University Press, 2005), 11–12. Justices of the Peace increasingly found their duties enumerated in statutes, and judges were "manifestly being discouraged from the creative exegesis they had bestowed on medieval statutes" as statutes became longer, and preambles became more specific. To complicate matters further, this sixteenth-century growth of legislation also can be attributed to a more amorphous but important shift in *mentalité*, as "humanist legislators confident in their ability to improve things by the right use of power" sought to shape society through statutes. And emphasis on the importance of positive texts was both driven by and contributed to significant changes in printing technology. Baker, *An Introduction to English Legal History*, 207.

much more broadly and therefore to tap underutilized sources to great effect. Whereas legal historians once focused solely upon narrow doctrinal disputes, statutes, or judicial opinions, we now peer past the sovereign-as-lawgiver and attend to how law shaped the lives of everyday people and how they, in turn, shaped law.[17]

Applying these insights to early modern England, scholars have already begun to uncover a legal culture that was much messier but infinitely more interesting than a fixation with statute implies. Law in early modern England "was a layered and hybrid affair, resting on multiple constitutional foundations and constantly negotiated."[18] It was astonishingly varied from a procedural as well as an institutional perspective. Parliamentary statutes, of course, were an important source of legal authority, but so too were proclamations, charters, and letters patent. English men and women also engaged in a variety of legal transactions that historians can never quantify: they made contracts and executed bonds; they bought and sold merchandise; they made wills and gave inter vivos gifts to sons and daughters. In fact, these quotidian activities are difficult to trace and recreate precisely because they were so commonplace.

Although much of law's daily business never saw the inside of a courthouse, a hodgepodge of courts also dotted early modern England's crowded jurisdictional landscape. These legal institutions proceeded in distinct ways and grounded their authority in different sources.[19] From the central courts at Westminster, to Vice Admiralty Courts, to ecclesiastical courts, to manor courts, each of these jurisdictions had its own rules, vocabularies, and practices, which in turn shaped the behavior of litigants who came to them for remedies. Adding layers of jurisdictional complexity, other institutions exercised judicial power in addition to executive and legislative functions. Parliament, the Privy Council, and the Council of the Marches and Wales, for example, also acted as judicial bodies on specific occasions. Moreover, corporate entities

[17] Hendrik Hartog, "Pigs and Positivism," *Wisconsin Law Review* 4 (1985): 934.

[18] Phillip J. Stern, *The Company State: Corporate Sovereignty and the Early Modern Foundations of the British Empire in India* (Oxford: Oxford University Press, 2012), 10.

[19] As J. H. Baker has noted, "we have made an error if we have treated the history of the common law solely as a history of decided cases. There is a whole world of law which never sees a courtroom." J. H. Baker, "Why the History of English Law Has Not Been Finished," *Cambridge Law Journal* 59 (2000): 78. Amy Louise Erickson, *Women and Property in Early Modern England* (London: Routledge, 1993), 5; Tomlins, *Freedom Bound*, 188.

like the East India Company ran Company courts as part of a broader exercise of their corporate "statehood."[20] Jurisdiction – the power to "speak law" – resided in many places and spoke in many competing voices in the early modern English world.

In this pluralistic jurisdictional landscape, legal procedure was often more significant than substantive law. This, in turn, owed much to the early development of English common law, which coalesced around a set of formal procedures and rules administered by the king's central courts in Westminster. Among the most important of these was the writ system, which gave litigants access to remedies in the Court of Common Pleas and the Court of King's Bench. Plaintiffs who sought relief in these new royal courts were first required to purchase a writ, which "worked like a pass admitting suitors to the kind of justice for which they had paid." Although there were a number of different writs that were used in various circumstances, what is important for our purposes is that the formulae of the writs were "frozen" in place in the thirteenth century and remained so until Parliament ushered in a series of sweeping legal reforms in the nineteenth century. A plaintiff who sought a remedy at common law therefore could not "concoct" a new writ to suit the facts of a case but was required to fit his complaint within a preexisting writ form.[21] As a practical matter, this was important because it meant that "remedies were only available, to the extent that appropriate procedures existed to give them form." Legal procedure acted as a barrier to entry and shaped the trajectory of litigation from start to finish, and this ultimately "gave rise to a formalistic legal culture which affected legal thought at every turn." As a result of this reification of form, early modern litigants, judges, and lawyers did not think of "law" as a creature of substance, as we do. Rather, they encountered "law" first and foremost as a creature of procedure.[22] For John Rastell, writing in the sixteenth century, this meant that law was as much a verb as it was a noun. "Law," he explained, was "when an action of debt is brought against one."[23] Contrast this definition with William Blackstone's perspective nearly two centuries later. When the first Vinerian Professor of English law penned his *Commentaries on the Laws of England*, he defined law as "a science,

[20] Stern, *The Company State*, passim.
[21] Baker, *An Introduction to English Legal History*, 55–56. [22] *Ibid.*, 53.
[23] John Rastell, *Les Termes de la Ley: Or, Certain Difficult and Obscure Words and Terms of the Common and Statute Laws of England, Now in Use, Expounded and Explained* (Boston: Watson and Bangs, 1812), 277.

which distinguishes criterions between right and wrong." Blackstone's definition conforms more closely to the vernacular understanding of law today, but it was itself the product of centuries of evolving legal thought rather than an inevitability.[24] Before Blackstone, early modern participants in English legal culture understood it first and foremost as performative and procedural.

In a world in which "law" was an action rather than an object, early modern litigants transformed legal procedure into a site of innovation. Although the common law writ system was rigid in form, clever litigants, advocates, and judges learned to work within its confines in order to accomplish their particular legal goals. They found ingenious ways to jump the writ system's barrier to entry by making new facts fit old forms. Legal fictions were a particularly useful tool in this regard. For example, early modern attorneys fine-tuned the fictitious "Bill of Middlesex," which allowed them to sue in debt in the Court of King's Bench without a writ.[25] The point of this complicated dodge was to allow a plaintiff to seek a remedy at common law, but without the constraints of the traditional forms of action. Instead, the plaintiff could initiate suit with a bill, which was a petition to the court setting out the facts of the case and demanding relief. More "convenient" for litigants, bill procedure allowed plaintiffs to bring multiple claims before the court simultaneously. Bills also were open-ended, unlike highly formulaic writs, and this gave litigants ample room to expand upon their many grievances.[26] The availability of the Bill of Middlesex in King's Bench, then, attracted business to the court, where the number of lawsuits "rose as much as tenfold" between 1560 and 1640.[27] Indeed, early modern litigants were savvy forum shoppers, preferring to sue in jurisdictions that offered the most advantageous procedures at the lowest cost. Judges, in turn, encouraged this by actively supporting procedural innovations that would "win back the patronage of litigants" from other jurisdictions and therefore increase their fees.[28] For example, in the sixteenth century, the central courts at Westminster all engaged in "an internecine struggle for business" by streamlining their procedures.[29] Two centuries later, Lord Mansfield himself attempted to drum up business for King's Bench when he allowed "actions on the case to enforce informal promises and negotiable

[24] Sir William Blackstone, *Commentaries on the Laws of England*, 4 vols. (Chicago: University of Chicago Press, 1979), 1: 27.
[25] Baker, *An Introduction to English Legal History*, 42. [26] *Ibid.*, 41. [27] *Ibid.*, 43.
[28] *Ibid.*, 40. [29] *Ibid.*, 41.

instruments of credit," which other jurisdictions would not do.[30] By tweaking procedures that no longer seemed relevant in an increasingly commercial society, Mansfield responded to the needs of litigants who wanted courts to recognize handshake deals and newer systems of monetary exchange. Like countless legal actors before him, he worked within the confines of extant procedures, creatively adapting them to meet the needs of legal consumers.

## AN ENGLISH LAW OF SLAVERY

As colonists sought to impose order upon New World societies, they drew on an English legal culture characterized by diversity, not uniformity, one in which legal change occurred at the level of procedure. *Bonds of Empire* shows that this was as true in plantation societies organized around slave labor as it was in Massachusetts, Nova Scotia, or Delhi. Slave law was a natural extension of England's hybrid, improvisational legal system rather than an outlier. This idea that the legal practices of slavery were normative only becomes apparent, however, when we loosen the grip of positive law on our legal imaginary. Scholars – taking a cue from Mansfield – have conflated the law of slavery with the slave codes promulgated by colonial assemblies.[31] Cobbled together on an ad hoc basis, these statutes are among our only prescriptive sources for understanding the development of plantation legal regimes. Primarily comprised of criminal and policing provisions, they reveal how colonists erected an apparatus of legal terror to support white supremacy and promote their economic interests. They were bloody and punitive, prescribing tortuous punishments for alleged legal infractions while at the same time stripping enslaved people of the rights that English men and women had come to expect as their birthright. Occasionally, such laws attempted to set standards for the ways in which masters were to treat those they enslaved in the hopes of forestalling violent reactions. Recently, scholars have used slave codes to document the manifold ways in which slaves resisted their captivity and to highlight moments in which whites reckoned with their

[30] David Lemmings, *Professors of the Law: Barristers and English Legal Culture in the Eighteenth Century* (New York: Oxford University Press, 2000).

[31] David Barry Gaspar, "'Rigid and Inclement': Origins of the Jamaica Slave Laws of the Seventeenth Century," in *The Many Legalities of Early America*, edited by Christopher L. Tomlins and Bruce H. Mann (Chapel Hill: University of North Carolina Press, 2000), 78–96; William M. Wiecek, "The Statutory Law of Slavery and Race in the Thirteen Mainland Colonies of British America," *WMQ* 34 (1977): 266.

humanity. Because slave codes punished rebellion, marronage, and running away, they stand as an enduring testament to the personality of individual enslaved people in the face of a legal system that treated them as property. As alleged criminals, enslaved people put the lie to the legal fiction inherent in chattel slavery, and their stories remind us that transforming people into property was always aspirational rather than fully descriptive of reality.[32]

Although slave codes are an invaluable resource for historians, a myopic focus on prescriptive law has left historians with an incomplete view of slave law in plantation America, one that emphasizes criminal law at the expense of so-called private law and proscription over daily practice. In *Bonds of Empire*, I seek to correct this. Probing a wide array of neglected sources – including litigation records, personal papers, and transactional documents – I emphasize more quotidian manifestations of slave law. Without discounting the significance of criminal law, I focus upon the routine "private" practices and civil litigation that made slavery work on a daily basis. Doing so gives us a more complete view of what slave law was and how it functioned. Indeed, when we broaden our source base, we begin to see that throughout British plantation America, all law was slave law. Rather than finding a narrow system devoted to policing enslaved people and preventing insurrection, we encounter a pervasive set of rules and practices designed to manage slaves as capital, labor, and property. Slavery and the legal practices that undergirded it not only set master against slave in a coercive relationship, it organized every aspect of white and Black colonists' lives. Slave mortgages bound white colonists to one another, while the availability of slaves as collateral shaped their economic choices when insolvency loomed. Shipwrecks triggered litigation over the ownership of Black mariners, pitting white sailors against their captains and the Crown against colonists as litigants claimed property rights in people. And a father's death set in motion acrimonious bickering over the ownership of hired-out slaves, fracturing customary working arrangements on plantations. State-sanctioned violence and the threat of physical brutality were key components of a legal culture that was built from the bottom up to control enslaved people, but this legal culture also worked quietly and invidiously to commodify enslaved people on a daily basis. In quotidian acts of economic exchange and in

[32] Philip J. Schwarz, *Slave Laws in Virginia* (Athens: University of Georgia Press, 1996), 1; Jeannine Marie DeLombard, *In the Shadow of the Gallows: Race, Crime, and American Civic Identity* (Philadelphia: University of Pennsylvania Press, 2012), 4.

litigation that proceeded from the assumption that people were things, white colonists adhered to the "chattel principle," the notion that monetary value inhered in the bodies of people of African descent.[33] The perception that enslaved people were property ultimately worked a violence of its own sort, not only by transforming slaves into valuable commodities, but also by teaching white colonists to view Black people as less than human.

Perhaps more important, moving beyond prescription to describe legal practice lays bare the English legal origins of slave law. Colonists may have mined a variety of other legal systems for precedents when constructing the more coercive elements of slave regimes in the New World, but English law supplied the forms, procedures, and vocabulary that made slavery possible and profitable on a daily basis.[34] "Chattel" is, after all, an

[33] Walter Johnson, *Soul by Soul: Life inside the Antebellum Slave Market* (Cambridge: Harvard University Press, 1999), 2; D. R. Berry, "'We'm Fus' Rate Bargain': Value, Labor and Price in a Georgia Slave Community," in *The Chattel Principle: Internal Slave Trades in the Americas*, edited by Walter Johnson (New Haven: Yale University Press, 2004), 55–71; Phillip Troutman, "Grapevine in the Slave Market: African American Geopolitical Literacy and the 1841 *Creole* Revolt," in *The Chattel Principle: Internal Slave Trades in the Americas*, edited by Walter Johnson (New Haven: Yale University Press, 2004), 203–233.

[34] Alan Watson, for example, has insisted that the law of slavery in the Americas "came into being bit by bit," often influenced by custom, but more importantly as judges in the late colonial period borrowed from Roman law. Watson, *Slave Law in the Americas*, 64. Elsa V. Goveia points to Spanish influence in the developing slavery regimes of the West Indies, although she also emphasizes the role that slave-owning planters played in adapting the Spanish system of slavery to meet their local needs. Goveia, "The West Indian Slave Laws of the Eighteenth Century," 580. In 1965, Arnold A. Sio offered a similar comparative analysis of Roman and American slavery. Arnold A. Sio, "Interpretations of Slavery: The Slave Status in the Americas," *Comparative Studies in Society and History* 7 (1965): 289–308. And Christopher Tomlins, while allowing that English common law adaptations were important in a developing law of slavery, suggests that the rationale for slavery as well as some of its most important legal doctrines emerged from the *ius naturale* and *gentium* (the law of nature and the law of nations), which legitimized the enslavement of captives and "brutes." Tomlins, *Freedom Bound*, 418. While a majority of scholars argue for the Continental jurisprudential origins of slave law, several historians aver that colonists looked to their English legal heritage when they cobbled together slave codes. These historians, however, primarily link slave law with English policing statutes or criminal law. Bradley Nicholson, for example, suggests that England's "often brutal police law," developed in the sixteenth century as a response to the problem of "masterless men," provided a template for laws meant to control and police a lower stratum of people. Bradley J. Nicholson, "Legal Borrowing and the Origins of Slave Law in the British Colonies," *The American Journal of Legal History* 38 (1994): 41. Olwell likewise finds that "while inimitable in fact, the example of English criminal justice was nonetheless a very real presence in the mental worlds of South Carolina jurists" as they crafted and interpreted slave legislation. Olwell, *Masters, Slaves, and Subjects*, 61. Thomas D. Morris

English legal term, and colonists did not settle upon this classification scheme by happenstance. As we shall see, English merchants and settlers began treating slaves as chattel property – first by custom and later by statute – in order to fit their human property into an extant English legal system, one that had evolved over the early modern period to maximize the power of owners to alienate chattel property without restraint. Properly categorized as chattel, slaves could be slotted into preprinted bills of sale, mortgages, trusts, and conditional bonds. They also could be substituted for other moveable property in common law causes of action or in Vice Admiralty litigation, where they could be treated as cargo.

By allowing white colonists to analogize slaves to ships, cows, or horses, the language of chattel slavery unlocked a host of ways of proceeding that suited plantation colonists' need to manage their slaves as a species of property.[35] The legal category of chattel itself became a site of innovation, as colonists perpetuated the most consequential legal fiction in the history of English law. Indeed, the sleight of hand by which human beings were transformed into property was purposeful; colonists carefully weighed their legal choices before committing to concepts, instruments, and conventions. At the same time, they inhabited a broader legal culture in which their decisions were to a certain extent dictated by a set of extant categories and formulas. The language of English law limited colonists' practical options and guided them toward workable solutions. Acknowledging this not an act of exoneration; rather, it is a reminder that law's language operates autonomously, shaping our perceptions of the possible and therefore channeling behaviors on the ground.

## SLAVE LAW IN THE LOWCOUNTRY

In *Bonds of Empire*, I reconstruct an English law of slavery using records from South Carolina, and I supplement this with evidence from the West Indian colony of Jamaica. These two colonies dominated a Greater Caribbean region that was vitally important in both strategic and economic terms to the broader British imperial project. American slavery may have originated in Virginia, but historians have increasingly recognized

has proven the boldest advocate of the English origins of the "Southern" law of slavery, rooting slave law in English property law. Morris, however, focuses almost entirely upon nineteenth-century slave law. Thomas D. Morris, *Southern Slavery and the Law, 1619–1860* (Chapel Hill: University of North Carolina Press, 1996), 42.

[35] Watson, *Slave Law in the Americas*, 64.

that the first colony was an outlier rather than a bellwether. Instead, the developmental trajectory of the Greater Caribbean region – which was characterized by the exploitation of African labor and the production of agricultural commodities for Atlantic markets – was more typical.[36] South Carolina was a vital node in this dynamic region. Although there is still a tendency to associate the colony with its neighboring mainland southern colonies, South Carolina's history, climate, and economic trajectory made it more like Britain's West Indian colonies and less like North Carolina or Virginia.[37] Settled by Barbadians with experience using enslaved labor to cultivate sugar, South Carolina colonists adapted this plantation model to the Lowcountry's unique environment, ultimately finding in rice and, later, indigo, the cash crops that would make their fortunes.[38] Rice transformed South Carolina from a marginal frontier province into the wealthiest colony on the mainland. Indeed, South Carolina was second only to Jamaica in per capita wealth by the middle of the eighteenth century, and its residents – including Peter Manigault – ranked among the richest in the British Empire.[39] Jamaica followed an even more dramatic trajectory. There, the refinement of a Barbadian plantation complex devoted to the production of sugar transformed the former pirate haven into Great Britain's most valuable colony on the eve of the American Revolution.[40]

Settlers in both South Carolina and Jamaica built their economic success on the backs of enslaved Africans. The agricultural labor that made colonists rich depended upon a steady supply of slaves, which were transshipped across the Atlantic and sold in the port cities that became vital nodes in the transatlantic slave trade (Charlestown in South Carolina and Kingston in Jamaica).[41] In both places, the voracious

[36] Virginia plays an outsized role in older studies of slavery, including Edmund S. Morgan, *American Slavery, American Freedom* (New York: Norton, 1975).

[37] For a discussion of the historiography of the Greater Caribbean region, see Matthew Mulcahy, *Hubs of Empire: The Southeastern Lowcountry and British Caribbean* (Baltimore: Johns Hopkins University Press, 2014).

[38] By 1710, Charlestown merchants exported 1.5 million pounds of rice, a number that increased to 6 million pounds by the 1720 shipping season. Trevor Burnard, *Planters, Merchants, and Slaves: Plantation Societies in British America, 1650–1820* (Chicago: University of Chicago Press, 2015), 13.

[39] Russel Menard, "Financing the Lowcountry Export Boom: Capital and Growth in Early South Carolina," *WMQ* 51 (1994): 659.

[40] Burnard, "Prodigious Riches," 508.

[41] Jamaica accounted for fully one-third of all British slave imports in the eighteenth century, and Kingston, Jamaica, was the "major market" for slaves that were sold to Jamaican planters and also slaves that were resold into Spanish America. Trevor Burnard and

demand for slaves roughly tracked cycles of agricultural development. At the turn of the eighteenth century, when South Carolina planters began staking their fortunes on rice production, they also accelerated their commitment to African slavery. Colonists purchased African slaves in increasingly large numbers after 1700 – an earlier trade in Native American slaves effectively ended after 1715 – and Blacks outnumbered whites in the colony by 1710.[42] Slave imports nearly doubled each decade until the 1740s, only to accelerate again in the 1750s.[43] By "1760 all but three Lowcountry rural parishes were more than 70 per cent black."[44] The prevalence of Black people in the Lowcountry led Swiss settler Samuel Dyssli to observe in 1737 that "Carolina" seemed "more like a negro country than a country settled by white people."[45] South Carolina's demography, in fact, made it less like Virginia and more like Jamaica by the eighteenth century. There, the sugar boom of the 1740s combined with appalling life expectancy to fuel the "largest demand for slaves of any British colony in the Americas."[46] In fact, Jamaica received between 40 and 50 percent of African slaves that crossed the Atlantic in British vessels, and enslaved people comprised nearly 90 percent of Jamaica's population by the middle of the eighteenth century.[47]

The slaves toiling in Jamaican sugarcane fields and Lowcountry rice swamps were valued primarily for their productive labor. However, enslaved people also comprised a "large component of white wealth" in both colonies.[48] Colonists in South Carolina and Jamaica perceived enslaved people to be a form of human capital, and they learned to exploit the value inherent in Black bodies. Although slave prices fluctuated in tandem with a variety of economic factors, they rose in secular terms over time, making slaves a profitable form of investment for colonists as the eighteenth century progressed. Mortgaging the value of the slaves they owned in order to purchase more slaves, colonists used enslaved people to

Kenneth Morgan, "The Dynamics of the Slave Market and Slave Purchasing Patterns in Jamaica, 1755–1788," *WMQ* 58 (2001): 205–206.

[42] Edelson, *Plantation Enterprise*, 64.

[43] Philip D. Morgan, *Slave Counterpoint: Black Culture in the Eighteenth-Century Chesapeake and Lowcountry* (Chapel Hill: University of North Carolina Press, 1998), 59–60.

[44] *Ibid*., 95.

[45] R. W. Kelsey, ed., "Swiss Settlers in South Carolina," *SCHM* 23 (1922): 90.

[46] Burnard and Morgan, "Dynamics of the Slave Market," 205.

[47] Burnard, *Planters, Merchants, and Slaves*, 169.

[48] Burnard, "Prodigious Riches," 508.

build a perfect "white man's country," a place where the acquisition of slaves and land enabled upward mobility for white colonists from a variety of backgrounds.[49]

English law facilitated this process of commodification. Using categories, procedures, and forms that had congealed long before New World colonization, plantation colonists elaborated legal systems that made it possible in theoretical as well as practical terms to treat human beings as property. This was particularly true in South Carolina, where from the colony's founding in 1670, stakeholders in plantation society began to graft African slavery onto an extant English legal framework. In fact, we can see the beginning of this process in South Carolina's first governing document, the *Fundamental Constitutions of Carolina* (1669). Drafted by proprietor Anthony Ashley Cooper and his secretary, John Locke, the *Constitutions* made it clear that African slavery was compatible with a legal system that otherwise hearkened back to a feudal English past. Alongside passages that established a hereditary aristocracy and allowed subinfeudation, the document endowed settlers in Carolina with "absolute power and authority over [their] negro slaves."[50] This blend of old and new was meant to assure aspiring colonists (many of whom were living in the Black-majority island of Barbados) that their property rights in people would remain secure in the fledgling colony. Simultaneously

[49] Menard, "Financing the Lowcountry Export Boom," 667. See also Bonnie Martin, "Slavery's Invisible Engine: Mortgaging Human Property," *The Journal of Southern History* 76 (2010): 820.

[50] *The Fundamental Constitutions of Carolina*, March 1, 1669 (hereinafter, "*FC*"), ¶110, available at Yale Law School, Avalon Project, http://avalon.law.yale.edu/17th_century/nc05.asp. Louis H Roper, *Conceiving Carolina: Proprietors, Planters, and Plots, 1662–1729* (New York: Palgrave, 2004), 29. Contemporary accounts discuss the *Constitutions* in both the singular (as a document) and plural (as a series of constitutional provisions).

Although most scholars agree that Ashley and Locke collaborated in drafting the *Constitutions*, it is difficult to quantify how much each figure contributed to this intellectual endeavor. David Armitage has recently suggested that John Locke played a greater role in drafting the text and in guiding the colony than previously has been thought. David Armitage, "John Locke, Carolina, and the Two Treatises of Government," *Political Theory* 32 (2004): 602–627. Vicki Hseuh, countering Armitage, has characterized Locke's role as that of an "administrative functionary." Vicki Hseuh, *Hybrid Constitutions* (Durham: Duke University Press, 2010), 70. Ashley's biographer has suggested a more collaborative relationship. K. H. D. Haley, *The First Earl of Shaftesbury* (Oxford: Clarendon Press, 1968), 242. For a recent discussion of John Locke and slavery, see Holly Brewer, "Slavery, Sovereignty, and 'Inheritable Blood': Reconsidering John Locke and the Origins of American Slavery," *American Historical Review* 122 (2017): 1038–1078.

a practical acknowledgement of colonial realities and an advertisement for Carolina, the *Constitutions* assumed *arguendo* that "negro" slavery was compatible with English law.

When Ashley and Locke grafted slavery onto their utopian New World scheme, they previewed the type of legal adaptation that would become typical of the colony's subsequent legal development. South Carolina colonists ultimately rejected the *Constitutions* and its elaborate system of governance, but the document remained a "compasse" that they "steere[d] by" in one key respect: its presumption that people could be property under English law.[51] Unlike Virginia, where legislators elaborated the legal status of slaves over time, South Carolina colonists treated people of African descent as slaves from the beginning, and they assumed that English law's categories and procedures could accommodate human property. Treating slaves as chattel property in practice and later, via statute, they fit slaves into a legal system that maximized the power of property owners to control human beings as a type of property, with few restraints.

As a practical matter, classifying enslaved people as chattel property also allowed them to slot slaves into extant legal procedures and forms as they litigated in the colony's multiple jurisdictions. In contrast to Virginia, where county courts blended features of common law and equity courts, South Carolina possessed institutionally distinct jurisdictions for common law (Court of Common Pleas and Court of General Sessions of the Peace), equity (Court of Chancery), ecclesiastical (Court of Ordinary), and Vice Admiralty (Vice Admiralty Court) from an early date.[52] This legal landscape changed little over time, despite sporadic attempts to introduce county courts in the colony.[53] Centered in Charlestown, the availability of different jurisdictions multiplied colonists' options when it came to litigating over slaves. Such jurisdictional plurality also made South Carolina's jurisdictional landscape seem more English. In fact, legal practice in South Carolina defies the traditional "Anglicization" narrative,

[51] Ashley to Maurice Matthews, 6/20/72, *SP*, 399.

[52] John Edker Douglass, "The Creation of South Carolina's Legal System, 1670–1731" (PhD diss., University of Missouri-Columbia, 1984), v. By 1731, the colony had four courts of record, located in Charlestown, as well as magistrate and slave courts that functioned at the parish level. The Court of Common Pleas was a civil jurisdiction that sat four times a year. The Court of General Sessions of the Peace heard criminal cases twice per year. Both common law courts were presided over by the Chief Justice. Douglass, "The Creation of South Carolina's Legal System," 153, 285.

[53] *Ibid.*, 84.

which posits that colonists increasingly conformed their laws and institutions to those of England over the course of the eighteenth century.[54] Certainly, the education of attorneys in South Carolina improved over time – more students from South Carolina studied at the Inns of Court in England in the late colonial period than from any other mainland colony – and pleading, particularly in the common law Court of Common Pleas, became more elaborate.[55] But throughout the colonial period, South Carolina colonists conformed their institutions and practice as closely to that of England as possible, and this early emulation meant that those who sought a judicial resolution to disputes over slaves could take advantage of multiple jurisdictions and a variety of ways of proceeding at law.

Like Britons elsewhere, South Carolina colonists were consumers of law, and they displayed a surprising degree of legal literacy. Indeed, the economic importance of slaves meant that South Carolinians of all sorts became adept at buying, selling, and litigating over slaves in order to access credit and expand their plantation and mercantile enterprises. The legal proficiency of merchant, planter, and official Henry Laurens suggests that some colonists achieved an astonishing degree of expertise in this regard. Although historians most commonly have viewed Laurens as a merchant or political figure, an examination of Laurens's voluminous correspondence reveals that he was also legally literate, attaining significant "knowledge of the laws and legal process" of the colony.[56] Laurens deftly managed his business affairs in the colony's common law, Vice Admiralty, and equity jurisdictions. Similarly, he acted in a legal capacity for his business associates in England and the West Indies, arbitrating disputes over debts and offering legal advice as to the timing and utility of initiating lawsuits. And he, like many other merchants, served as an appraiser in South Carolina's Vice Admiralty Court, applying his expertise in slave trading to the valuation of prizes or lost slave cargoes.

Laurens was among the colony's wealthiest men, but those of more modest means also understood that mastery of English law was essential to

[54] John M. Murrin, "Anglicizing an American Colony: The Transformation of Provincial Massachusetts" (PhD diss., Yale University, 1966), *passim*.

[55] Robert M. Weir, *Colonial South Carolina: A History* (Columbia: University of South Carolina Press, 1997), 251; William E. Nelson, *The Common Law in Colonial America, Volume II: The Middle Colonies and the Carolinas, 1660–1730* (New York: Oxford University Press, 2013), 70.

[56] Mary Sarah Bilder has provided this useful definition of "legal literacy" in the Atlantic world. Mary Sarah Bilder, "The Lost Lawyers: Early American Legal Literates and Transatlantic Legal Culture," *Yale Journal of Law and the Humanities* 11 (1999): 60.

maintain mastery over slaves. Take Arthur Matthews, who in March 1743 complained that a marshal had attempted to seize "some Negros" that had been mortgaged to him. Matthews prevented the officer from removing the slaves, insisting that he had "[a]cted in all Cases as the Law Directs in Relations to Negros under Mortgage." Satisfied – according to his own assessment of what the law was – that his actions had been entirely proper, Matthews ended his missive on a defiant note: the "Gentlemen that has Directed you to Sease right or wrong may Com on Me for the Slaves," he dared, but "I Shall Defend them Till I am Sattisfied."[57] Cloaking the human tragedy of slavery in a distinctively English idiom of property law and inheritance, colonists like Matthews deployed stock phrases to manage their slaves at law. They exhibited the same dexterity in commanding enslaved people using English legal jargon as they did in manipulating the environment to suit the needs of rice agriculture.

## ENGLISH LAW'S TRAGEDY

*Bonds of Empire* reveals how English law ultimately served colonists' desire to command slave labor, but it also illustrates the tragic human consequences that their reliance upon English law set in motion. As a primary matter, the assumption that slaves were valuable things at law limited slave resistance. Enslaved people who struggled against their bondage not only found themselves checked by the coercive apparatus of the state, but also by more subtle legal practices that assumed they were property and by colonists who had learned by repeating these practices to treat them (and think of them) as mere things. When an Black mariner named Ned slipped away from his owners and hopped a ship bound for Great Britain in 1718, for example, he found himself condemned and sold in a Vice Admiralty Court, not hauled into a slave court.[58] When Henry Laurens's "likely" slave Sampson ran away in 1764, he faced not the lash, but the prospect of sale as his punishment.[59] Transactions and physical brutality answered resistance in plantation America, and in handling slaves as property under the watchful eye of the law, masters set limits for enslaved people's actions in pervasive and effective ways.

[57] Arthur Matthews to Samuel Hurst, Esq., March 1, 1742/1743, SCDAH.
[58] *Masters et al.* v. *Sloop Revenge*, November 19, 1718, South Carolina Vice-Admiralty Court Records, A-B vols., 276–300, Library of Congress, Manuscripts Division, Washington, DC.
[59] Henry Laurens to John & Thomas Tipping, December 4, 1764, *HLP*, vol. 4, 513–514.

In fact, historians have grossly underestimated the extent to which the routine and the mundane – litigation over property and debt, buying and selling, mortgaging and conveyancing – contracted rather than expanded space for slave agency. Forms as well as force policed freedom's boundaries. No matter how legally savvy slaves were, no matter how daring, the ubiquity of law in plantation society meant that it was nearly impossible for slaves to anticipate and counteract legal threats. Although nineteenth-century historians have shown that enslaved people might influence the outcome of a particular slave sale, the sheer variety of invisible legal obstacles that confronted slaves ultimately made it difficult for them to devise effective strategies for resistance. It was hard for an enslaved field hand to know whether or not she had been mortgaged or when a creditor might foreclose on that mortgage. A Black mariner could not anticipate when his ship might be hauled into a Vice Admiralty Court, and he might not know which colonial Vice Admiralty jurisdiction would determine his fate. Likewise, an owner's sudden death might result in a house slave's emancipation, or it might reveal the extent of a colonist's indebtedness, shattering that slave's family through a court-ordered sale. This is not to say that slaves did not resist, that resistance did not matter, or that enslaved people were not keenly aware that an encompassing legal regime held sway over their fates. Although this book takes as its subject the activities of white colonists, we also shall see evidence that slaves struggled against their bondage by running away, stopping work, and taking advantage of wartime disruptions to claim freedom for themselves and their families.[60] Nonetheless, in a place where slavery's laws were everywhere, enslaved people learned that freedom was only "unbound" where law could not follow.[61]

[60] A voluminous literature on slave resistance in South Carolina includes Peter Wood, *Black Majority: Negroes in Colonial South Carolina from 1670 through the Stono Rebellion* (New York: Random House, 1974); Jim Piecuch, *Three Peoples, One King: Loyalists, Indians, and Slaves in the American Revolutionary South, 1775–1782* (Columbia: University of South Carolina Press, 2013); Silvia R. Frey, *Water from the Rock: Black Resistance in a Revolutionary Age* (Princeton: Princeton University Press, 1991); Robert Olwell, "'Domestick Enemies': Slavery and Political Independence in South Carolina, May 1775-March 1776," *The Journal of Southern History* 55 (1989): 21–48; and Olwell, *Masters, Slaves, and Subjects*.

[61] As Christopher Tomlins has shown, it was only when a long and bloody civil war temporarily displaced law that colonial plantation America's slave regimes ceased to function. Tomlins, *Freedom Bound*, 569. See also G. Edward White, who argues that "law in America could not serve as a mechanism for transcending, or resolving, disputes about slavery because it had been enlisted on one side of those disputes. If law could not resolve the dispute, the only remaining options were force or the Union's dissolution."

Perhaps more important, the extensive replication of English institutions, forms, and procedures in plantation America contributed directly to the dehumanization of enslaved people. Historians have long puzzled over the capacity of colonists in plantation America to treat human beings as property, especially as they were entertaining broadening notions of natural rights. Indeed, slave owners persisted in treating slaves as things at law despite the fact that many colonists, particularly by the mid-eighteenth century, understood that enslaved people were human beings. Henry Laurens, for example, recognized the humanity of slaves when he lamented the fate of "three wretched human creatures call'd Negroes" who had been consigned to him, only to boast in the same letter that their sale was "the greatest Sale" he had ever made.[62] He also condemned the "inhumanity of seperating & tareing assunder" slave families, which he claimed he would "never do or cause to be done" except, of course, "in case of irresistable necessity."[63] Colonist Catherine Percy likewise thanked her male relation for his "care & attention" in attending to "the sale" of her "Negroes," expressing her "concern" for the slaves. But she also celebrated the fact that her human property had "more then doubled the interest" and "sold most extravagantly high."[64]

Laurens and Percy, like colonists throughout plantation America, oscillated between understanding the slaves they owned as human beings and as objects as it suited their economic interests. They did so without any enduring discomfort or concern, despite our expectation that they should have perceived treating people as property as a troubling contradiction. In fact, some historians have suggested that it *was* troubling; that as the eighteenth century progressed, slave owners grew increasingly conflicted over their ownership of human property; and that paternalism and its accompanying rhetoric helped to ease their psychological discomfort.[65] But when we watch what eighteenth-century slave owners did, not what they said, we see that they suffered no cognitive dissonance when they claimed property rights in people.

G. Edward White, *Law in American History: Volume 1: From the Colonial Years through the Civil War* (Oxford: Oxford University Press, 2012), 381.

[62] Henry Laurens to John and Thomas Tipping, Barbados, December 4, 1764, *HLP*, vol. 4, 513–514.

[63] Henry Laurens to Elias Ball, April 1, 1765, *ibid.*, 595–597.

[64] Catherine Percy to Barnard Elliot, October 5, 1778, Baker Family Papers, 11/537/10, SCHS.

[65] Eugene D. Genovese, *Roll, Jordan, Roll: The World the Slaves Made* (New York: First Vintage Books, 1976).

We are left to wonder why. The fact that slavery was ubiquitous in the early modern world partially explains why colonists suffered no qualms about treating people as property. As D. B. Davis has famously observed, it is antislavery rather than slavery that requires an explanation, so pervasive was the practice of slaveholding in the ancient, medieval, and early modern periods.[66] But the very nature of English law, far from puncturing this understanding of human slavery as normative, in fact, made it easier for colonists to dehumanize enslaved people. Indeed, the early modern English law that colonists brought with them to North America was a law of procedures and forms, of categories and catchphrases. It provided a vocabulary and a meta-language that seems at first glance to be inflexible but in practice was highly adaptable. As long as colonists could fit slaves into this preexisting linguistic framework, they could access a legal system that had evolved over time to suit the needs of a rapidly commercializing society. In fact, the logic of English law made it *necessary* for colonists to insert slaves into English legal categories and to deploy older procedural formulae if they hoped to maximize the value of their human property. In this sense, legal procedure functioned instrumentally in plantation America, giving colonists access to particular ways of proceeding at law that suited their desire to build wealth, accrue political power, and fashion themselves as elites within the broader British Empire. As was the case for nineteenth-century slave owners, legal procedure gave them practical access to different registers of empire-building, allowing them to treat slaves as capital investments while also constructing themselves through the buying and selling of human beings.[67]

At the same time, the language of English law was more than a mere tool for slaveholders bent on maximizing the value of their human property. It also performed an important psychological function, insulating colonists from the need to contemplate the moral consequences of initiating legal choices. Procedure in British plantation America served to reduce friction, in much the same way that Hannah Arendt found that "officialese," clichés, and stock phrases allowed twentieth-century Nazi functionaries to participate in the mass murder of Jewish people without reflecting upon their actions. For Arendt, the repetition of empty phrases was "connected with an inability to think," and these phrases were the "most reliable of all safeguards" against "reality." Evil for Arendt was

[66] David Brion Davis, *The Problem of Slavery in the Age of Emancipation* (New York: Random House, 2014).
[67] Johnson, *Soul by Soul*, 88.

banal, and it appeared in the guise of categories, jargon, and bureaucracy.[68] In much the same way, when British colonists analogized slaves to things and when they classified enslaved people as property, they shielded themselves from the need to see slaves as simultaneously human beings and as objects as law, and from registering this as a contradiction. For British colonists, categories were placeholders, devoid of any intrinsic moral value. They deployed them instrumentally in order to fit slaves into a familiar English property law rubric. But when they did so, they also made it possible for themselves to participate uncritically in a genocidal economic system.

Legal categories and legal language did not merely function instrumentally in plantation America, nor did they simply act as a psychological balm. Rather, the language of law also constituted new social realities. As anthropologists, linguists, and legal theorists have begun to recognize, law is "the locus of a powerful act of linguistic appropriation, where the translation of everyday categories into legal language effects powerful changes."[69] In other words, the language of law possesses "dynamics of its own that contribute to social results."[70] Legal language "creates new meanings through its use in social context," and when we "only focus on the content (semantics) rather than the form (pragmatics) of speech, we miss a great deal about the creative function of language."[71] When colonists categorized slaves as chattel property, they not only smoothed over the apparent contradiction of treating people as things, they also created "a social reality that did not exist prior to the act of speaking."[72] Indeed, by calling slaves chattel, by treating Black people as things at law, colonists throughout plantation America constructed a legal world in which slaves were not just *like* things, they *were* things. Through the act of categorization, they rendered factual what had been a mere supposition – that people of African descent were less than human. Repeated over centuries, slotting slaves into English legal categories in turn foreclosed the possibility that enslaved people might be considered anything other than chattel, just as the classification of slaves as subjects in other imperial contexts ultimately

[68] Hannah Arendt, *Eichmann in Jerusalem: A Report on the Banality of Evil* (New York: Penguin, 2006), 46–47.
[69] Elizabeth Mertz, "Legal Language: Pragmatics, Poetics, and Social Power," *Annual Review of Anthropology* 23 (1994): 435–455
[70] *Ibid.*, 437.
[71] Elizabeth Mertz, "Language, Law, and Social Meanings: Linguistic/Anthropological Contributions to the Study of Law," *Law & Society Review* 26 (1992): 421–422.
[72] *Ibid.*, 422.

opened up space for negotiation and resistance.[73] Far from an item of antiquarian interest, then, English law's forms and procedures, not just its substance, matter tremendously in accounting for the dehumanization of Black people throughout the British Atlantic World.

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*Bonds of Empire* follows colonists as they fit slavery into an English legal rubric, and it is therefore a book organized around legal words. From a modern perspective, these words are meaningless jargon – stock phrases like "chattel," "credit," "in rem," "equity." But to eighteenth-century colonists, they were the building blocks of a shared legal heritage, one that English people used to construct new legal systems across the globe. Just as colonists sought to transform the American environment into something that resembled their idealized notions of an English landscape, they deployed these words to create familiar legal cultures in America. They did so with alacrity, because they found that English law was flexible enough to accommodate their desire to impose legal order on what they perceived as an uncivil wilderness.

In each chapter, I examine one of these words in depth in order to explicate different facets of slavery's many laws. Chapter 1 emphasizes the relationship between English property law and slavery. I follow colonists as they sought to classify slaves as property and as they deployed their knowledge of English property law on a daily basis to manage slaves. Fitting slaves into an extant legal system that bifurcated property into real estate or chattels personal was an act with long-term practical consequences. American colonists – including those beyond plantation America – understood that each particular category unlocked different ways of proceeding at law that impacted their ability

[73] As Malick W. Ghachem shows, slaves in the French colony of San Domingue strategically invoked provisions of the Code Noir in asserting claims to freedom. The authors of the Code, which governed the behavior of both masters and slaves throughout the colonial period, "aimed to strike a balance between the view of the slave as outside the bounds of sovereign authority and an alternative view of the slave as a subject (however disfavored and mistreated) of absolute monarchy." Malick W. Ghachem, *The Old Regime and the Haitian Revolution* (Cambridge: Cambridge University Press, 2012), 58. This is not to say that slaves in British colonies were more submissive or less prone to rebellion than other slaves in Spanish America. Rather, the statutory law of slavery in British colonies provided slaves with fewer protections that could be used to hold masters accountable to royal oversight. Indeed, when imperial authorities did offer slaves the Crown's protection, particularly during the American Revolution, they eagerly seized upon these assurances. See, e.g., Piecuch, *Three Peoples, One King*, 68.

to buy and sell slaves and to shield them from creditors. Building upon customary practice in the transatlantic slave trade, South Carolina colonists treated enslaved people as chattel property, at first by custom and later via statute. Whereas most plantation colonies settled upon some mixture of chattel and real property when they determined how to classify their slaves, South Carolina colonists ultimately adopted pure chattel slavery in order to facilitate commercial transactions involving enslaved people and to expand their credit with British merchants. Treating slaves as a chattel property was economically beneficial for South Carolinians, but it had far-reaching cultural implications. Through close readings of legal forms, including marriage settlements, trusts, and wills, I also watch small acts of legal transformation, moments in which colonists analogized slaves to things. In these acts of legal transmutation, South Carolina colonists compared enslaved people to livestock and other valuable moveable objects, not because they believed them to be the same as those objects, but because they believed them to be the same at law. Nonetheless, these small acts of transformation had much larger consequences, giving motion and meaning to statutory schemes that allowed colonists to treat slaves as things.

In Chapter 2, I examine the specific legal consequences of colonists' decision to categorize slaves as chattels at law. Properly fit into an English law rubric, colonists in South Carolina and throughout plantation America transformed human beings into a dynamic form of capital that could be bought, sold, and financed with ease. As a practical matter, classifying slaves as chattel gave colonists access to a set of commercial forms and procedures that had coalesced to facilitate long-distance trading. Conditional bonds were among the most important of these, and I follow this legal form of debt as it became part of an expanding Atlantic commercial system. Originating in the Middle Ages, conditional bonds coalesced into a distinctive form that was easier to enforce in common law than other forms of debt. The enforceability of conditional bonds made them surprisingly portable as they traveled across the globe. Although this instrument had originated to suit the needs of an agrarian society, the conditional bond easily accommodated commercial ventures that assumed people could be property. The power of conditional bonds to hold debtors to account in colonial courts made them particularly useful in shoring up a trade that was built entirely upon credit. Ultimately, bonds became an unremarkable feature of commercial life in plantation societies like South Carolina and Jamaica, where creditors relied upon this much older instrument to secure a wide variety of commercial transactions.

Following conditional bonds across the Atlantic underscores English law's flexibility, even when it was embodied in seemingly rigid forms. We see a similar dynamic at work in Chapter 3, an examination of slave litigation in the Vice Admiralty Courts of colonial South Carolina and Jamaica. Following litigants of all sorts – including planters, merchants, and sailors – I show how they used centuries-old admiralty procedure to claim slaves and free Black sailors on ships as valuable prizes (commonly called in rem procedure). By comparing enslaved people to objects that could be seized and sold just like ships and cargo, these litigants convinced Vice Admiralty Courts to condemn and sell human beings for their benefit. The paper trail they left behind also provides a rare glimpse into the lives of free and enslaved Black mariners, showing how their commodification at English law's hands blunted the advantages that seafaring offered them. Although Black people who spent their working lives on water moved more freely through plantation societies than agricultural laborers, their voyages often brought them into contact with Vice Admiralty Courts, where litigants claimed them as property. In places where human beings were made things at law, the Vice Admiralty Court – a jurisdiction that specialized in seizing, appraising, and condemning things – demarcated the boundaries of slave agency even as it extended English law's reach.

In Chapter 4, I turn to another set of English legal procedures and categories that plantation colonists used to commodify enslaved people. Analyzing manuscript Chancery Court records, I show how colonists adapted the legal language of "equity" to claim enslaved people as property in the context of property and inheritance disputes. Equity in early modern England was pliable; it meant different things to different people. We conflate the term today with fairness, but in early modern England it was commonly associated with a grab bag of Western philosophical, legal, and political traditions, including "God's law, the public good," and "the king's conscience."[74] In places where people were deemed objects at law, however, equity opened up space for litigants to articulate property claims to human beings and to adjudicate complex inheritance cases involving slaves. Using procedures common to the English Court of Chancery and invoking familiar descriptions of equity as a legal concept, litigants in plantation colonies like South Carolina effectively transformed a court of the king's conscience into a slave court.

[74] Mark Fortier, *The Culture of Equity in Early Modern England* (Aldershot: Ashgate Publishing, 2005), 4.

British newcomers to South Carolina saw no irreconcilable tension between English law and the ownership of slaves, and in Chapter 5 I explore how administrative law in occupied Charlestown evolved to manage an increasingly mobile slave population. Rather than reforming colonial slave law, British administrators and military officers relied heavily upon colonial precedents as they balanced their need to maintain South Carolina's plantation economy against their desire to employ the labor of slaves in British army departments. Individual British administrators also learned to buy, sell, and argue over slaves, adopting slavery's legal language as they sought to supplement their incomes and build wealth. As they established their own plantations and confiscated the human property of people they called rebels, they, too, treated slaves as things on a daily basis, replicating local legal practices that did not appear from their perspective to be maladaptive. Consequently, the legal administration of occupied Charlestown tended to support rather than undermine slavery as an institution, despite growing antislavery sentiment in England.

I conclude with a preview of slave law in the early republic. Although independence transformed English subjects into American citizens, much about slave law remained the same; English law and English legal procedure continued to be useful for citizens living in a slaveholders' republic. Republican legal forms were not, in the end, significantly different from forms used under a monarchy, and this had far-reaching consequences. In particular, this legal continuity from the colonial period meant that the commodification of slaves not only continued, but also spread along with the expanding United States. Settlers in new plantation areas of the Deep South, who were steeped in a legal culture that valued tradition, modeled their slave laws on those of South Carolina and, therefore, on the language, practices, and precedents of English chattel slavery. The plantation society that they constructed, by hewing so closely to English legal forms, perpetuated the invidious legal fiction that people were things as a working reality in the slave South.

Taken together, *Bonds of Empire* asks us to rethink traditional narratives that link English law's extension overseas with the flowering of liberty. The rights-talk and liberal political ideology that we often associate with English law's proliferation across the globe obscures the fact that, in practice, English law was not a benign or even morally neutral force. When we move beyond the sweeping rhetoric that colonists so deftly deployed – when we look at what they did rather than what they said – a more insidious pattern emerges. In quotidian legal activities, in court rooms and private transactions, English law accommodated and indeed

perpetuated slavery. The forms and procedures, the bonds and bills of sale, and Chancery petitions that gather dust in archives attest to this fact. Monuments to English law's enduring power to shape actions and mold realities, these documents and the words they bear failed to shed their potency even as Britain disavowed the transatlantic slave trade and, eventually, embraced emancipation. If we seek to understand the origins and persistence of American slavery, we must first look to them.